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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

The Honorable Marvin H. Dukes, III
Beaufort County
Trial Court Case No. 2018-CP-07-1622

APPELLATE CASE NO. 2020-000862

J & W Corporation Of Greenwood,

Appellant,

vs.

Broad Creek Marina Of Hilton Head, LLC;
Broad Creek Marina Operations, LLC;
Broad Creek Marina Properties, LLC; and
Broad Creek Development, LLC,

Respondents.

RECORD ON APPEAL

(Print Volume 1 of 5)

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ATTORNEYS FOR RESPONDENTS BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK DEVELOPMENT, LLC.

ELECTRONICALLY FILED - 2019 Jan 18 10:55 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
J & W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a/ Hilton Head Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC., Defendants.	)	Case No.: 2018-CP-07-1622 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

This matter came before the Court on Tuesday, December 18, 2018, for the hearing of Defendants' Motion for Partial Summary Judgment. Based on the factual record, the legal authorities, and the findings and conclusions set forth below, the Court grants the Motion in part and denies the Motion in part.

LEGAL STANDARD

When plain, palpable and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Singleton v. Sherer,* 377 S.C. 185, 659 S.E.2d 196 (2008). A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact. *Guinan v. Tenet Healthsystems of Hilton Head, Inc.,* 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009). Furthermore, Rule 56(e), SCRCP provides that an adverse party may not rely on the mere allegations in his

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pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial. *Strickland v. Madden*, 323 S.C. 63, 67–68, 448 S.E.2d 581, 584 (Ct. App. 1994). It is established that "[t]he plain language of Rule 56(c) mandates the entry of summary judgment [. . .] against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357, 650 S.E.2d 68, 71 (2007).

FINDINGS AND CONCLUSIONS

1. ***SUMMARY JUDGMENT IS GRANTED AS TO PLAINTIFF'S THIRD CAUSE OF ACTION FOR TRESPASS.*** Plaintiff J&W Corporation of Greenwood ("Plaintiff") asserted a cause of action for trespass against Defendants relating to the alleged filling of "Barge Creek" by Defendants. It is undisputed that what Plaintiff calls "Barge Creek" is part of Broad Creek, an ecosystem of navigable waterways and wetlands that are property of the State of South Carolina held in trust for the public. *See, e.g., State v. Hardee*, 259 S.C. 535, 539, 193 S.E.2d 497, 499 (1972). Plaintiff, as a private litigant, is incapable of pursuing a civil claim for trespass against Defendants relating to navigable waterways or wetlands owned by the State of South Carolina. A trespass is an interference with "one's right to the **exclusive**, peaceable possession of **his** property." *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013) (emphasis added). Neither Broad Creek, nor its tributaries, nor its affiliated wetlands are the property of Plaintiff over which Plaintiff has "exclusive" use. The Court finds Plaintiff has failed fails to demonstrate further discovery would uncover additional relevant evidence or create a genuine issue of material fact. On this basis, summary judgment is GRANTED to Defendants as to Plaintiff's third cause of action for trespass.

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2. ***SUMMARY JUDGMENT IS GRANTED AS TO PLAINTIFF'S FOURTH CAUSE OF ACTION FOR PRIVATE NUISANCE.*** As its fourth cause of action, Plaintiff asserted a claim for private nuisance also relating to the alleged filling of a portion of Broad Creek by Defendants. This claim fails as a matter of law because, as with the claim for trespass, Plaintiff cannot pursue a private right of action for alleged obstruction of a public waterway. *See Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 575, 614 S.E.2d 619, 622 (2005). It is undisputed that neither Plaintiff nor Defendants "own" or "control" Broad Creek. This undisputed fact precludes the assertion of a claim for private nuisance by Plaintiff relating to Broad Creek. *See Clark v. Greenville Cty.*, 313 S.C. 205, 210, 437 S.E.2d 117, 119 (1993) (holding that "one who has no control over property at the time of the alleged nuisance cannot be held liable therefor.") The Court finds Plaintiff has failed fails to demonstrate further discovery would uncover additional relevant evidence or create a genuine issue of material fact. On this basis, summary judgment is GRANTED to Defendants as to Plaintiff's fourth cause of action for private nuisance.

3. ***SUMMARY JUDGMENT IS GRANTED AS TO PLAINTIFF'S FIFTH CAUSE OF ACTION FOR NEGLIGENCE.*** As its fifth cause of action, Plaintiff asserted a cause of action for negligence relating to an incident when Plaintiff's boat captain ran a ferry boat aground on an oyster bank as an alleged result of the presence of other watercraft that were allegedly moored in unauthorized locations on the docks at Broad Creek Marina. This cause of action fails as a matter of law because Plaintiff, in the Lease Agreement, stipulated to the waiver any such claims for damages against the Landlord. The relevant provisions include the following:

> 27. Damage to Personal Property. All personal property, merchandise, fixtures, and equipment placed or moved into the Property shall not be at the risk

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> of Tenant or the owners thereof, and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.
>
> 30. Indemnity and Liability. [. . .] Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Property or as may result from any accident in or about the Property or which may be the result directly or indirectly from any act or neglect to the Property of which the lease is a part. Landlord shall not be responsible for any loss or damage to Tenant's merchandise, equipment, fixtures, or other personal property of Tenant or Tenant's business. [. . .]

See Lease Agreement, at Sections 27 and 30. Plaintiff has failed to present a question of fact as to the validity and applicability of these binding contractual stipulations under the circumstances. Additionally, South Carolina law has long recognized the principle that tort claims are not available in a situation the relevant rights and duties of the parties are defined by a contract. *See, e.g., Meddin v. Southern Ry.–Carolina Div.,* 218 S.C. 155, 62 S.E.2d 109, 112 (1950) ("[I]f the cause of action is predicated on the alleged breach, or even negligent breach, of a contract between the parties, an action in tort will not lie."); *Foxfire Village, Inc. v. Black & Veatch, Inc.,* 304 S.C. 366, 404 S.E.2d 912, 917 (Ct.App.1991) (same). The Lease Agreement contains the binding expression of the rights and duties of the parties and cannot be circumvented through assertion of a negligence claim that contradicts the terms of the contract.

Furthermore, even if such a claim were proper, Plaintiff has not made a sufficient showing relating to each required element of a cause of action for negligence, including the existence of an applicable duty, any breach of the applicable duty, or the proximate causation of Plaintiff's alleged damages by any act or omission of Defendant. The Court also finds that Plaintiff has failed to demonstrate further discovery would uncover additional relevant evidence or create a genuine issue of material fact as to this claim. Accordingly, summary judgment is GRANTED to Defendants as to Plaintiff's fifth cause of action for negligence.

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4. ***SUMMARY JUDGMENT IS GRANTED TO DEFENDANT ROGER FREEDMAN IN HIS INDIVIDUAL CAPACITY ON ALL CAUSES OF ACTION.*** Additionally, summary judgment is granted to Defendant Roger Freedman on all causes of action asserted by Plaintiff against him in his individual capacity. Mr. Freedman is not a party to the Lease Agreement, the Release and Settlement Agreement, or to any contract or agreement with Plaintiff. Although he is the owner of Defendant Broad Creek Marina of Hilton Head, LLC, he is not a proper defendant in his individual capacity as to any of the claims asserted in this case based on the fact that he is member or manager of the entity. *See* S.C. Code § 33-44-303 ("Except as otherwise provided in subsection (c), the debts, obligations, and liabilities of a limited liability company, whether arising in contract, tort, or otherwise, are solely the debts, obligations, and liabilities of the company. A member or manager is not personally liable for a debt, obligation, or liability of the company solely by reason of being or acting as a member or manager.") Mr. Freedman, in his individual capacity, owes no contractual or legal duty to Plaintiff relating to the claims asserted. On the record before the Court, Plaintiff has failed to make a showing sufficient to establish the existence of each of the elements essential to any claim against Mr. Freedman in his individual capacity. Accordingly, summary judgment is GRANTED as to Plaintiff's claims against Defendant Freedman in his individual capacity.

5. ***SUMMARY JUDGMENT IS DENIED AS TO PLAINTIFF'S CLAIM FOR LOST PROFITS.*** Defendants argue that Plaintiff has failed to present any evidence of lost profits, and for this reason any reference to lost profits must be stricken from Plaintiff's Amended Complaint. Although no specific figure has been presented to date, the Court believes that it would be premature to grant summary judgment on this issue until the corporate

deposition of Plaintiff has been completed. For this reason, the Court declines to grant summary judgment on Plaintiff's claim for lost profits at this stage.

6. ***THE REMAINING PORTIONS OF THE MOTION WERE WITHDRAWN.*** At the hearing, Defendants withdrew the remainder of their Motion as it relates to Plaintiff's eighth cause of action for declaratory judgment and Plaintiff's ninth cause of action for permanent injunctive relief. As a result, no further action or decision is needed from the Court at this time regarding those two causes of action.

AND IT IS SO ORDERED.

The Honorable Marvin H. Dukes, III
Beaufort County Master-In-Equity

This _____ day of January, 2019

Beaufort, South Carolina

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Beaufort Common Pleas

Case Caption: J W Corporation Of Greenwood , plaintiff, et al VS Broad Creek Marina Of Hilton Head Llc , defendant, et al

Case Number: 2018CP0701622

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2019 May 29 12:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT J & W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No.: 2018-CP-07-1622 **INTERIM ORDER RELATING TO RELOCATION OF PLAINTIFF'S OFFICE SPACE**

This case came before the undersigned for a trial on the merits beginning May 15, 2019, and concluding May 16, 2019. All parties appeared and were represented by counsel. The case involves claims and counterclaims regarding multiple issues, which issues generally stem from a 99-year Lease Agreement ("Lease") executed on September 23, 1993, between Plaintiff J & W Corporation of Greenwood ("J & W"), as the Tenant, and Hilton Head Island Marina, L.P., a predecessor-in-interest to Broad Creek Marina Properties, LLC ("BCMP"), as the Landlord.

The Lease relates to certain portions of Broad Creek Marina located on Hilton Head Island, South Carolina.[1] Eleven years after the initial Lease was executed, in connection with a prior landlord/tenant dispute involving the Lease, the parties entered into a Release and Confidential Settlement Agreement dated December 13, 2004.

[1] A copy of the Lease was entered into evidence as Defendants' Exhibit 1. The testimony at trial indicates that Landlord owns the property and is assisted in the administration of the Lease by an affiliated entity, Broad Creek Marina Operations, LLC ("BCMO"), which operates the Broad Creek Marina.

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The claims and counterclaims in the current dispute arise from both the Lease and the Release and Settlement Agreement.[2] At the conclusion of the trial, the matter was taken under advisement by the Court and will be resolved in the near future by the Court in one or more orders. However, the Court recognizes that one issue — the future location of J & W's commercial office space — needs immediate resolution. The urgency has arisen in part based on a notice issued by the Town of Hilton Head ("Town") to BCMP/BCMO indicating that a commercial office use of the structure where J & W's office is currently located has not been previously authorized or permitted by the Town. The Town's notice was dated May 3, 2019, and states that the commercial office use of the structure must be discontinued within sixty (60) days of the notice, or by July 3, 2019. Although representatives of the Town testified that the deadline could be extended if sufficient, good faith progress toward relocating J&W's office is being made, the Court believes, and the parties agree, that the issue is appropriate for expedited resolution.

The parties disagree, however, as to the respective rights, responsibilities, liabilities, and damages relating to the issue of the office. The Court will make a final resolution of all of these issues in a final order, but issues this Interim Order to provide the parties with immediate guidance for the resolution of the issue as to where the future location of J & W's office space will be on a going forward basis. The Court's decision on this issue was assisted substantially by the fact that the testimony of both sides confirms a willingness for the office to be placed in the location that the Court is establishing within this Interim Order.

Therefore, based on the exhibits and testimony in the record, it is **ORDERED, ADJUDGED, AND DECREED** that Defendants BCMP and BCMO shall immediately at their

[2] A copy of the Release and Settlement Agreement was entered into evidence as Defendants' Exhibit 2. The signatories to the Release and Settlement Agreement were J & W and Defendant Broad Creek Marina of Hilton Head, LLC, which is also a predecessor-in-interest to BCMP under the Lease.

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sole expense, take all reasonable and necessary steps to permit and obtain a temporary portable rental office (as described in testimony by Mr. Freedman and Mr. Jones at trial), which shall be placed in a location mutually agreeable to the parties but in such a place as to not require any additional site work (foundation, etc.). BCMP/BCMO shall pay the expenses necessary to make utilities (specifically electricity, phone and internet) available in the temporary space. J & W shall post any account deposits and pay directly for all monthly utility charges and trash pickup charges for the temporary office.

Further, immediately upon the permitting and availability of the temporary office, J & W shall, at its expense, vacate the current structure and move to the temporary office provided, where J & W shall operate until BCMP and BCMO provide the new floating office location that is set forth below. Once J & W has vacated the current structure and is operating in the temporary office, Defendants may demolish or reutilize the current structure as they see fit.

With regard to the permanent relocation of J&W's office for the unexpired portion of the Lease, it is further ordered that as soon as reasonably possible, BCMP/BCMO shall at their sole expense, take all reasonable steps to permit and acquire a new floating office with at least 300 square feet of commercially useable space and at least a 20-year anticipated service life. The floating office will remain the legal property of BCMP as an improvement to the real property, but shall be a portion of the "Leased Property" for all purposes under the Lease and the Release and Settlement Agreement, as applicable.

Once the new floating office has been properly permitted, installed, and a Certificate of Occupancy issued, J & W shall at its expense, vacate the temporary office and move to the new floating office. Immediately upon the issuance of a Certificate of Occupancy, all future costs and expenses of maintenance, repair, upkeep, environmental and regulatory compliance, sanitation,

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utilities, trash service, taxes, insurance and future replacement of the floating office, shall be the sole responsibility of J & W. Additionally, Tenant, at Tenant's expense, will cause the floating office to be separately metered for applicable utilities within 30 (thirty) days of taking occupancy of the floating office. The various provisions of the Lease and the Release and Confidential Settlement Agreement shall be applicable to the floating office and the other "Leased Property," as defined in the Lease and as redefined in the Release and Confidential Settlement Agreement.

The location of the new floating office shall be the area marked on the diagram attached as Exhibit A, so as to be adjacent to J & W's leasehold dockage, and as close to shore as possible, but not using any of J & W's leasehold dock footage. If an amendment to the existing floating office permit to allow for the location indicated on Exhibit A is not approved by OCRM, either party can petition the Court upon an expedited basis under Rule 60, SCRCP, or otherwise, for an expedited ruling on an alternate location in the event that the parties cannot agree to an alternate location for the new floating office that OCRM does approve.

In the event that the parties cannot agree as to other issues relating to aspects/specifications of the temporary office or aspects/specifications of the floating office, or other matters, the Court is prepared to assist them. The Court shall also fully resolve all claims, counterclaims and remaining issues through a final order or orders to be issued upon further review and consideration of the record.

IT IS SO ORDERED.

The Honorable Marvin H. Dukes, III
Master-in-Equity and Special Circuit Judge for
Beaufort County

May ____, 2019

Beaufort, South Carolina

//

ELECTRONICALLY FILED - 2019 May 29 12:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018 CP-07-1622

J & W Corporation of Greenwood, Inc.	Broad Creek Marina of Hilton Head, LLC; Broad Creek Marina Operations, LLC; Broad Creek Marina Properties, LLC; and Broad Creek Development, LLC
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Ellis R. Lesemann	**Attorney for :** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.
Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

ELECTRONICALLY FILED - 2019 May 29 12:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Beaufort Common Pleas

Case Caption:	J W Corporation Of Greenwood , plaintiff, et al VS Broad Creek Marina Of Hilton Head Llc , defendant, et al
Case Number:	2018CP0701622
Type:	Master/Order/Other

So Ordered:

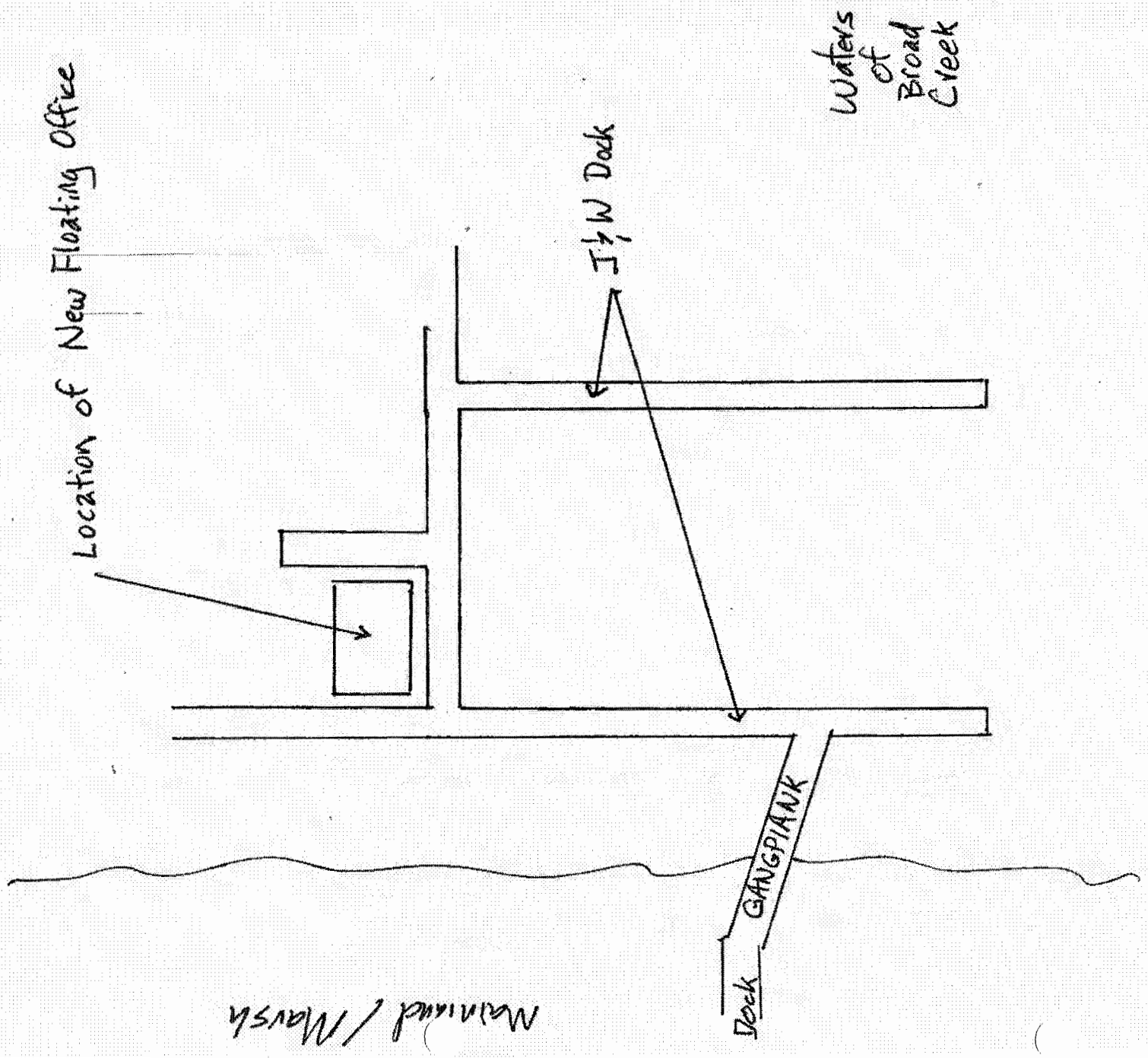
s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2019 May 28 2:42 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622
ELECTRONICALLY FILED - 2019 May 29 12:49 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

EXHIBIT A

SITE DIAGRAM INDICATING NEW LOCATION OF FLOATING OFFICE

Exhibit A


Location of New Floating Office
I ½ W Dock
Waters of Broad Creek
GANGPLANK
Dock
Mainland / Marsh

ELECTRONICALLY FILED - 2019 Nov 25 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2018-CP-07-01622
JW Corporation of Greenwood, et al., **Plaintiff(s),** vs. Broad Creek Marina of Hilton Head, et al., **Defendant(s).**	**ORDER ON FLOATING OFFICE**

This came before me November 18th, 2019 on Plaintiff JW Corporation of Greenwood's Motion to Allow Additional Discovery and Defendant Broad Creek Marina of Hilton Head's Motion to Implement and Enforce the Master's Interim Order, or in the Alternative, for Relief from the Interim Order, filed September 26th, 2019. Attorney Thomas Taylor appeared for the Plaintiffs and Attorney Ellis Lesemann appeared for the Defendants.

The issue in these Motions relates to the type of floating office to be obtained and used in furtherance of my prior Order on the same. I agree with the Defendants that the fiberglass pontoon hulled floating office is in compliance with the Order of this Court and may be obtained and utilized as the floating office.

I therefore:
1) Deny the Motion to Allow Additional Discovery and;
2) Grant the Motion to Implement and Enforce the Master's Interim Order.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

November _____, 2019
Beaufort, South Carolina

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ELECTRONICALLY FILED - 2019 Nov 25 4:44 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Beaufort Common Pleas

Case Caption:	J W Corporation Of Greenwood , plaintiff, et al VS Broad Creek Marina Of Hilton Head Llc , defendant, et al
Case Number:	2018CP0701622
Type:	Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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ELECTRONICALLY FILED - 2020 Jan 09 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)	BEFORE THE MASTER-IN-EQUITY MARVIN H. DUKES, III
J&W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC, Defendants.	)	Case No.: 2018-CP-07-1622 **ORDER AND JUDGMENT**

This case came before the Court for a trial on the merits that began May 15, 2019 and concluded May 16, 2019.[1] Having fully considered the record and reviewed applicable law, the Court now enters this Order and Judgment based upon the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

The case arises from a long-term, commercial landlord/tenant relationship. The subject leased premises ("Lease Property") is a portion of the Broad Creek Marina, located on Hilton Head Island. The tenant, Plaintiff J&W Corporation of Greenwood ("Tenant"), operates a

[1] On May 30, 2019, the Court entered an Interim Order Relating to Relocation of Plaintiff's Office Space ("Interim Order"), which addresses the issue of the commercial office space going forward. Presently, a Motion to Alter or Amend the Interim Order (filed by Tenant) and a Motion to Enforce the Interim Order (filed by Landlord) are already pending. These motions, as well as others that may be filed, may result in modification of the Interim Order and/or this Order and Judgment. The parties may also file motions seeking attorney's fees. For these reasons, the Court shall retain jurisdiction until all motions are resolved.

ELECTRONICALLY FILED - 2020 Jan 09 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

commercial barge and passenger ferries from the marina to Daufuskie Island, among other business activities. The landlord, Defendant Broad Creek Marina Properties, LLC ("Landlord"), is the successor in title to the original landlord, Hilton Head Island Marina, L.P. ("HHIM"). Following a corporate restructuring in 2015, Defendant Broad Creek Marina Operations, LLC ("BCMO"), an entity affiliated with Landlord, now acts as the managing/operating entity for the marina.

The underlying Lease Agreement ("Lease") was initially executed on September 23, 1993, for a lease term of ninety-nine (99) years. *See Lease* (Pl. Ex. 1). The parties agreed to the Lease after Tenant assigned its contract to purchase the marina property to HHIM. The Lease Property leased to Tenant, as defined in Exhibits A and A-1 to the Lease, included the following: (1) 300 square feet of commercial office space (which was a portion of a houseboat that was moored to the docks); (2) barge docking, loading, and unloading facilities; (3) 300 linear feet of commercial dock space; (4) an embarkation and debarkation area; (5) a parking area; and (6) certain access areas. In exchange for the right to occupy and use the Lease Property during the 99-year term, Tenant agreed to pay Rent, Additional Rent and Additional Charges to Landlord as set forth under the Lease and to otherwise comply with all terms of the Lease.

Tenant has successfully operated its business from the Lease Property. However, over the years, various disagreements have arisen between Tenant and Landlord. A prior litigation was resolved through a Release and Confidential Settlement Agreement dated December 13, 2004 ("2004 Settlement Agreement"). Several years later, another set of disputes arose, resulting in the claims and counterclaims asserted in this action. Although several items are in dispute, the primary issues relate to: (1) Tenant's nonpayment of Additional Rent and Additional Charges under the Lease; (2) Tenant's failure to reimburse Landlord for repairs to the Lease Property, and

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specifically the dock area; and (3) the adequacy of the commercial office space. Notably, these same issues were also raised in the prior lawsuit, but continue to be a source of dispute.

Tenant asserted a cause of action for breach of contract against Landlord seeking monetary damage relating to the commercial office space. However, Tenant did not present any amount of alleged damages at trial. Conversely, Landlord presented a counterclaim for breach of contract against Tenant seeking monetary damages relating to the amounts due under the Lease, both in terms of unpaid charges and reimbursement for dock repairs relating to the Lease Property following Hurricane Matthew. In support of this counterclaim, Landlord provided evidence of the underlying charges, copies of invoices, and corroborating testimony from witnesses. *See Defs. Exs.* 25, 26, 27, 52, 53, 54, and 55; *see also Tr.* at 527-556 (Testimony of Robbin Rachels).

As set forth during the trial, the total amount claimed by Landlord is **$134,983.73**, including claimed prejudgment interest,[2] itemized as follows:

CATEGORY	AMOUNT	PREJUDGMENT INTEREST	TOTAL
Unreimbursed Lease Charges	$56,371.27	$20,348.70	$76,719.97
Dock Damage Repair Costs	$44,398.00	$8,792.88	$53,190.88
Unreimbursed Miscellaneous Charges	$2,866.25	$2,206.63	$5,072.88
TOTAL	**$103,635.52**	**$31,348.21**	**$134,983.73**

[2] Landlord has provided itemized calculations of prejudgment interest for each unpaid charge, some of which go back to 2008. *See Defs. Ex.* 52. In making these calculations, Landlord used the statutory prejudgment interest rate of eight and three fourths percent (8.75%). *See* S.C. Code §34-31-20; *see also Tr.* at 527-556 (Testimony of Robbin Rachels).

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The first component of Landlord's damages relates to unreimbursed Additional Rent and Additional Charges under the Lease. Under Paragraph 3 of the Lease, Tenant is obligated to pay Landlord for Tenant's share of expenses for utilities, property taxes, lot maintenance, insurance, and additional charges. Tenant is also obligated to pay for other charges incurred for the hauling of vessels or storage of vessels. However, with a few exceptions, Tenant has not paid these charges since 2008, which has required Landlord to continuously fund Tenant's obligations for over a decade. Tenant asserts that it has refused to pay the charges due to Tenant's dissatisfaction with the commercial office space provided after the prior floating office became unusable. *Tr.* at 144:3-11; *Tr.* at 178:14-17; *Tr.* at 182:14-23. The Lease does not include a provision that would allow Tenant to unilaterally withhold amounts due to Landlord whether on this basis or for any other reason. In fact, Tenant's obligations to pay the charges to Landlord are phrased in mandatory language. *See, e.g., Lease, Pl. Ex.* 1, at Paragraph 3(b). Also, it has been established that Tenant has had ongoing use of the barge facilities, dock space, parking, access areas, and office space during this time frame and has been able to conduct its operations but has refused to pay the vast majority of the charges due under the Lease. Nevertheless, it is hard for the Court to ignore the fact that the "office space" (an un-insulated converted boat shed) provided was substandard and questionable in terms of code compliance.

The second category of damages sought by Landlord relates to the cost of repairs to the dock space that is part of the Lease Property following Hurricane Matthew.[3] During the storm, Tenant's vessels had remained moored to the docks at the Broad Creek Marina during Hurricane

[3] Hurricane Matthew made landfall in South Carolina on October 8, 2016.

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Matthew, although Landlord had instructed Tenant to move the vessels.[4] *Tr.* at 617:18-618:5; *Tr.* at 618:6-10; *Tr.* at 618:11-15. When Mr. Jones returned to the marina to assess the damage caused by Hurricane Matthew, he confirmed that the portions of the dock where Tenant's vessels had been moored were significantly damaged. Mr. Jones testified that Hurricane Matthew caused very little damage to the marina other than to the Lease Property where Tenant's vessels were moored. *Tr.* at 642:13-15. At trial, Landlord provided evidence fully establishing the amounts paid. *See Defs. Exs.* 18 and 19; *Tr.* at 548-552.

In support of its claim to recover the repair costs from Tenant, Landlord points to several provisions within the Lease. The first of those provisions is Paragraph 6 of the Lease, entitled "Dock Repair," which reads as follows:

> **Dock Repair**. As it becomes necessary to repair or replace the dock which is a portion of the Lease Property, Landlord shall complete said repairs or replacement and **Tenant shall pay Landlord all costs attributed to its use**, said costs to be paid as they are incurred by Landlord.

See Lease at Paragraph 6 (emphasis added). At trial, witnesses for Landlord confirmed that the $44,398 in repair costs related solely to the dock space used by Tenant. These repair costs are attributed to Tenant's use, as no other party was using or was allowed to use this section of the docks at the time. The subject section of the docks remains attributed to Tenant's use until such time as the Lease is amended, expires or otherwise terminates. The evidence presented at trial confirmed that Tenant's vessels were physically moored to the Lease Property during the storm.

Other provisions of the Lease also indicate Tenant's responsibility for the costs of the dock repairs. The Lease addresses Tenant's financial responsibility for any repairs arising due to

[4] The Lease permits Landlord to make and impose reasonable rules and regulations upon Tenant. *See Lease* at Paragraph 24.

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"casualty," which would include damage arising from a hurricane. Specifically, Paragraph 26 of the Lease provides as follows:

> **Damages to or Destruction of Property**. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith," Tenant shall apply for all necessary permits and approvals and shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business. Any and all insurance proceeds from insurance policies carried by Landlord (or in Landlord's name) resulting from damage to the Lease Property, shall be held in trust and dispersed for repairs, restoration, rebuilding, or replacement undertaken by Tenant pursuant to this paragraph unless Landlord and Tenant otherwise agree. **If the insurance proceeds are insufficient to pay the damage, then Tenant shall pay for the difference.**

See Lease at Paragraph 26 (emphasis added). No insurance proceeds for the damage were available, as Landlord understood its deductible to be $50,000.00, which exceeded the amount of the dock repairs ($44,398.00). As a result, no insurance proceeds were sought. Although testimony was adduced at trial to indicate that the deductible may have been only $40,000.00, there is no evidence that the Landlord's decision not to seek insurance proceeds was based on anything other than a good faith belief that the existing policy deductible exceeded the amount of damages.

Tenant has acknowledged its financial responsibility for the repairs, but has refused to pay for them. In a letter sent by Tenant to its insurance carrier, North American Specialty Insurance Company, relating to this specific incident, Tenant admitted that "[u]nder the terms of both [the Lease and the Settlement Agreement], J&W is responsible for repairs to its leasehold property in the event of damage." *See Defs. Ex.* 16. Additionally, at trial, Mr. Scurry acknowledged that the Lease obligated Tenant to pay for the dock repairs. *See Tr.* at 189-190 ("The cost of the repairs, in my understanding, was for the landlord to make and bill me.") On

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these bases, Tenant does not appear to dispute its underlying obligation to pay for the dock repairs.

Landlord also seeks intervention from the Court to require Tenant to comply with various other obligations under the Lease. One example is Tenant's failure to name Landlord as an additional insured on Tenant's insurance policies and to cause the coverage on the policies "to be upwardly adjusted yearly to reflect inflation rates." *See Lease* at Paragraph 17. Tenant acknowledges that it failed to name Landlord as an additional named insured. Also, Tenant has not adjusted the policy amounts to account for inflation since 1993. *Tr.* at 197:3-6. Furthermore, Landlord alleges that Tenant is in continuing breach of Tenant's obligation to separately meter its utilities, to refrain from using and occupying additional portions of the Landlord's property that are not part of the Lease Property without authorization, and to dispose of its debris and garbage.

The final issue presented to the Court for resolution relates to the applicability of a use restriction within the Lease to an adjoining parcel owned by a different entity that is not a party to the Lease. The adjoining parcel, known as the Lucas tract, is owned by Broad Creek Marina Development, LLC, which is a separate entity from Landlord. The Lucas Tract is not identified or referenced in the Lease and specifically not within Exhibit B of the Lease, where the Landlord's "Property" is defined. On April 17, 2017, Broad Creek Marina Development, LLC received a permit from SCDHEC/OCRM to construct a ferry terminal on the Lucas Tract. Tenant alleges that the construction of a ferry terminal on the separate Lucas Tract would violate Paragraph 12 of the Lease, which prevents the "marina" from "competing with the Tenant's commercial ferry and barge service." However, as noted above, the Lucas Tract is a separate parcel that is not part of the marina, is not referenced in the Lease, and is not owned by Landlord.

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II. TENANT'S CLAIMS AGAINST DEFENDANTS

In its Amended Complaint, Tenant had asserted nine causes of action: (1) breach of contract; (2) declaratory judgment relating to the office space and dock space; (3) trespass; (4) private nuisance; (5) negligence; (6) temporary and permanent injunctive relief; (7) sanctions for alleged violation of existing temporary injunction; (8) declaratory judgment regarding a competing ferry service at Broad Creek Marina; and (9) permanent injunctive relief regarding the operation of a competing ferry service at Broad Creek Marina.

On January 18, 2019, the Court granted summary judgment to Defendants on three of these causes of action: negligence, trespass, and private nuisance. Additionally, at the close of trial, Plaintiff withdrew its sixth cause of action for temporary and permanent injunctive relief. *See Tr.* at 652:15-22. Tenant also withdrew the portion of its second cause of action for declaratory judgment relating to dock space, leaving only the portion of the claim that related to commercial office space, which the Court has already addressed in the Interim Order. Tenant did not present evidence or damages in support of its claim for seventh cause of action for sanctions for alleged violation of the temporary injunction, which Tenant admitted had not been a recent issue of concern. For these reasons, judgment is granted in favor of Defendants on the seventh cause of action for sanctions.

As a result, the remaining claims are the first cause of action for breach of contract, the eighth cause of action for declaratory judgment, and the ninth cause of action for declaratory judgment relating to a competing ferry service on the Lucas Tract. These remaining causes of action are addressed below.

A. JUDGMENT IS GRANTED IN FAVOR OF DEFENDANTS ON TENANT'S CLAIM FOR BREACH OF CONTRACT

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Tenant's cause of action for breach of contract alleges that Landlord breached the Lease and the 2004 Settlement Agreement by failing to provide Tenant with "an appropriate office space." *See Am. Compl.*, ¶ 14. Landlord asserts that Tenant has been offered replacement space but has declined or interfered with Landlord's efforts to relocate Tenant into a floating office.

The evidence shows that an office space was provided to Tenant, albeit, in fact a converted boat shed. Nonetheless, Tenant confirmed that it has been able to conduct and administer its various businesses, which grew in terms of revenue during the time frame in question. As noted above, the Court has already resolved the claims of both parties for declaratory judgment through the Interim Order. So, the remaining question is whether Tenant has proven a claim for breach of contract for purposes of obtaining an award of monetary damages. Upon review of the record, the Court finds that Tenant has failed to meet its burden of proof on a claim for breach of contract relating to the office space.

Following the ratification of the 2004 Settlement Agreement, various efforts were made to place Tenant in a replacement to the floating office. Landlord presented evidence at trial that a permit was obtained to place a floating office in the location that the parties had mutually chosen in the 2004 Settlement Agreement. *See, e.g., Defs. Ex.* 12. However, through no fault of either party, the intended location for the floating office became infeasible due to the accretion of the marsh bank. For a number of reasons, the parties were unable to agree upon a replacement location for the floating office prior to the trial.

Tenant presented evidence that the office space that it was utilizing prior to trial was not permitted by the Town of Hilton Head Island for that purpose, although it had been openly used for that purpose for a number of years. However, the permitting status of the office space was known to Tenant. Also, according to the terms of the Lease, would be an issue for Tenant to

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address. *See Lease* at Paragraph 19 (stating that "[s]ubject to the provisions of paragraph 7, entitled 'Cooperation and Good Faith,' Tenant shall procure any and all permits required from local, state and federal governmental agencies, and/or otherwise, which may be required to run its business.") On this issue, it is important to remember, as was established at trial, that the original office space provided was in the form of a portion of a "floating office" moored to the docks, which was also the intended resolution of the prior dispute relating to office space. To the extent that the office space (or other portion of the Lease Property) requires additional maintenance, repair, improvements, compliance efforts, or replacement, the Lease was written in such a manner to place such obligations upon Tenant, not Landlord. The Court is not at liberty to rewrite these provisions for the parties. *See, e.g., C.A.N. Enters., Inc. v. S.C. Health & Human Servs.,* 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988) (stating that courts are "without authority to alter a contract by construction or to make new contracts for the parties" but are "limited to the interpretation of the contract made by the parties themselves").

Although there has been a delay in Tenant's return to a floating office, Tenant has not proven a claim for monetary damages arising from its occupancy of the converted shed. Tenant asserted a claim for lost profits, but did not present an alleged amount of lost profits during trial. Proof of lost profits "may be established with reasonable certainty with the aid of expert testimony, economic and financial data, market surveys and analyses, business records of similar enterprises, and the like. *Moore v. Moore*, 360 S.C. 241, 254 (Ct. App. 2004). The crucial requirement in a lost profit determination is that the alleged lost profits be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." *See S.C. Fin. Corp. of Anderson v. W. Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E.2d 329, 336 (1960). Based on the record before the Court, Tenant has not provided an evidentiary basis for

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any lost profits claim that the Court could consider. Although the Court could consider an award of nominal damages, Tenant has still failed to prove a breach of contract by a preponderance of the evidence, as Tenant was provided with office space throughout the term. Also, in light of the provisions of the Lease that place obligations upon Tenant for the condition of the office space, the Court is unable to conclude that the circumstances establish a breach of contract by Landlord. *See Fuller v. Eastern Fire & Casualty Ins. Co.,* 240 S.C. 75, 124 S.E.2d 602, 610 (1962) (holding that the burden is on the plaintiff to prove the existence of a binding contract, its breach, and damages suffered by the plaintiff a result of such breach). Accordingly, the Court finds in favor of Landlord on Tenant's claim for breach of contract.

B. JUDGMENT IS GRANTED IN FAVOR OF DEFENDANTS ON TENANT'S CLAIMS FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF RELATING TO A POTENTIAL FERRY SERVICE ON THE LUCAS TRACT

Tenant seeks a declaratory judgment and permanent injunction that Broad Creek Marina Development, LLC, an entity that is separate from Landlord that is not a party to the Lease, should be prohibited from operating a commercial ferry service on the Lucas Tract. Tenant's claim is based on Paragraph 12 of the Lease, entitled "Use of Property," which provides as follows:

> Use of Property. Tenant agrees to use the Lease Property to operate a commercial ferry; to operate a commercial barge operation; to operate tour services; to rent jet ski, boat rental excursion and fishing boats, and for other similar commercial purposes. The Tenant will not compete with the marina in the leasing, sub-leasing or in any way charging a second party for any dockage at the marina and shall not use the Lease Property for any other purposes. It is, however, understood that from time to time Tenant may use its commercial rights at the marina for the purpose of embarkation and debarkation of passengers for business affiliated with Tenant without the constraint of fuel purchases, except when the vessel is docked overnight. **The marina is excluded from competing with the Tenant's commercial ferry and barge service.** Other operations of the Tenant are non-exclusive. Tenant's portion of the floating store is to function as an office for booking charters, running its operations located at the marina, and selling tourist

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> and novelty items related to its business. The Tenant, affiliated business, and other vessels docked at the marina are barred from selling food, beverages, and items sold in a marina/sports or convenience store, except for novelty and tourist items related to its business. Tenant shall conduct its activities in the jointly utilized embarkation and debarkation area reasonably so as not to unnecessarily interfere with the conduct of Landlord's activities.

See Lease at Paragraph 12 (emphasis added).

Tenant alleges that the term "marina," as used in Paragraph 12 of the Lease, was intended to be binding on any company in any location affiliated with Landlord or its owner, Roger Freedman, as opposed to referring to a physical locality.

Words of a restrictive covenant will be given the common, ordinary meaning attributed to them at the time of their execution. *See Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 863 (1998). "Restrictive covenants are contractual in nature," so that the paramount rule of construction is to ascertain and give effect to the intent of the parties as determined from the whole document. *See Palmetto Dunes Resort v. Brown*, 287 S.C. 1, 336 S.E.2d 15 (1985). In the context of a deed, unless there is a manifest intention to the contrary, a general covenant will be construed as limited to the premises purchased." *Cheves v. City Council of Charleston*, 185 S.C. 544, 549, 195 S.E. 113, 115 (1938). Under South Carolina law, the use restriction must be construed narrowly rather than broadly. "A restriction on the use of property must be created in express terms or by plain and unmistakable implication, and all such restrictions are to be strictly construed, with all doubts resolved in favor of the free use of property." *Hamilton v. CCM, Inc.*, 274 S.C. 152, 157, 263 S.E.2d 378, 380 (1980). "It follows, of course, that where language of the restrictions is equally capable of two or more different constructions that construction will be adopted which least restricts the use of the property." *Taylor*, 332 at 4, 498 S.E.2d at 864.

Paragraph 12 of the Lease indicates that "[t]he marina is excluded from competing with the Tenant's commercial ferry and barge service. Other operations of the Tenant are non-

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exclusive." *See Lease* at Paragraph 12. The word "marina" is not a defined term in the Lease but would necessarily be restricted to the property that is encompassed by the Lease, as opposed to other properties, entities, or even people (such as Mr. Freedman, personally).

The term "marina," as it is commonly understood, is defined as a "a dock or basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities." *See* https://www.merriam-webster.com/dictionary/marina. Under applicable law relating to contract interpretation, the Court is unable to adopt an interpretation of the term that would be so inconsistent with the plain meaning of the term "marina" so as to include Roger Freedman, an individual, or a separate entity that owns a separate parcel, as being included within the term "marina" used in the Lease. Accordingly, the Court finds that Tenant is not entitled to a declaratory judgment or permanent injunctive relief.

III. LANDLORD'S COUNTERCLAIMS

In its Answer to the Amended Complaint and Counterclaims, Landlord has asserted three counterclaims for: (1) breach of contract; (2) specific performance; and (3) negligence. The claim for breach of contract seeks monetary damages of $134,983.73. This amount includes three components: (1) unpaid amounts of Additional Rent, Additional Charges under the Lease, and other miscellaneous charges due from Tenant; (2) unpaid amounts incurred by Landlord for repairs to the Lease Property following Hurricane Matthew; and (3) prejudgment interest on these amounts calculated at the statutory rate of eight and three fourths percent (8.75%). The negligence claim relates to other damage that Landlord alleges Tenant to have caused to the property as a result of Tenant's operations.

The claim for specific performance against Tenant seeks the following relief: (1) compelling Tenant to accept a replacement of the floating store as its commercial office space;

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(2) requiring Tenant to adhere to its obligation to pay Additional Rent and Additional Charges in a timely manner; (3) enforcing Tenant's obligation to name Landlord as an additional named insured on Tenant's insurance policies and to increase the amounts of insurance coverage in accordance with the escalation provision; (4) preventing Tenant's further usage of areas of property that are not part of the Lease Property; and (5) requiring Tenant to separately meter its utilities.

A. JUDGMENT IS GRANTED IN FAVOR OF LANDLORD ON ITS CLAIM FOR BREACH OF CONTRACT AGAINST TENANT

Landlord alleges that Tenant has breached various provisions of the Lease and the 2004 Settlement Agreement resulting in damages incurred by Landlord. Specifically, Landlord seeks an award of **$134,983.73**, the amounts payable to Landlord under the Lease, including reimbursement of amounts paid by Landlord for repairs to Tenant's dock, as well as payment of invoices issued to Tenant for maintenance, utilities, and Tenant's share of Landlord's insurance and property taxes. Furthermore, Landlord requests that the Court award prejudgment interest on the outstanding balance, as the amounts due are sums certain.

In support of this claim, Landlord has demonstrated: (1) a binding contract entered into by the parties; (2) breach of the contract by Tenant; and (3) damage suffered by Landlord as a direct and proximate result of the breach. *See, e.g., Fuller v. Eastern Fire & Casualty Ins. Co.*, 240 S.C. 75, 124 S.E.2d 602, 610 (1962). Each of these three elements has been proven by a preponderance of the evidence. Although there is some dispute regarding the implications of certain portions of the Lease and Settlement Agreement, Tenant has acknowledged its duty to pay the charges under the Lease, which is an obligation that the parties clearly intended to place upon Tenant based on the wording that the parties have used in the Lease. In a contract dispute, the court's "ultimate duty is confined to interpreting the contractual provisions agreed to by the

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parties – regardless of their wisdom or folly, apparent unreasonableness, or any failure of the parties to guard their interests carefully." *Maybank v. BB&T Corp.*, 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016).

Ultimately, the purpose of all rules of contract construction is to ascertain the intention of the parties to the contract. *See, e.g., Parker v. Byrd*, 309 S.C. 189, 191, 420 S.E.2d 850, 852 (1992). "It is fundamental that[,] in the construction of the language of a contract, it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning." *Id.* at 498–99, 649 S.E.2d at 502. With these principles in mind, the Court can address and resolve the disputed issues under the Lease and 2004 Settlement Agreement raised by Landlord's claim for breach of contract.

i. Tenant is Obligated to Pay Landlord for Costs Incurred for Tenant's Use and Possession of Leased Premises

In the Lease, Tenant and Landlord agreed that Tenant shall pay taxes, license fees, insurance, utilities, and all other costs of ownership and possession of the Leased Property, which includes the dock and office space. *See Lease* at Paragraph 5. However, Tenant has not upheld its obligations under Paragraph 3 of the Lease causing Landlord to bear the burden of the out-of-pocket expenses while Tenant has continued to benefit from its use of the Lease Property. *See Lease* at Paragraph 3. Paragraph 1(e) of the 2004 Settlement Agreement, entitled "Common Area Charges," provides that Tenant "agrees to pay all common area charges as identified in the Lease that come due and payable beginning January 2005. To resolve the prior dispute, the parties agreed to a formula for determining the specific amounts due and payable by the Parties for common area charges that is attached to the 2004 Settlement Agreement as Exhibit F. *See 2004 Settlement Agreement at Ex. F.* However, these obligations have not been upheld by

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Tenant. The Court concludes that Landlord is entitled to judgment for the unpaid charges with prejudgment interest.

ii. Tenant is obligated to Reimburse Landlord for Dock Repairs

Landlord has completed the necessary repairs and replacement but has refused to pay Landlord for the repairs. The Lease provides the allocation of these responsibilities. Tenant acknowledges that it is responsible for repairs to its leasehold property in the event of damage, in accordance with the Lease and 2004 Settlement Agreement. *See Defs. Ex.* 16. Tenant further acknowledges that Landlord completed the necessary repairs to the portions of the leased property that were damaged during Hurricane Matthew and that Tenant has not reimbursed Landlord for the repairs to the dock.

In addition to the sections of the Lease already discussed, the parties included a detailed set of provisions regarding "Indemnity and Liability," which also place the burden upon Tenant to reimburse Landlord for any arising from the occupancy or use by Tenant of the Property as a whole, which includes the Lease Property:

> **Indemnity and Liability**. **Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorneys' fees arising from the occupancy or use by Tenant of the Property**. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Property or as may result from any accident in or about the Property or which may be the result directly or indirectly from any act or neglect to the Property of which the lease is a part. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business. Landlord shall not be responsible or liable to Tenant or those claiming by, through or under Tenant for any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Property. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building constituting the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused or resulting from bursting, breakage, or

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> by or from leakage, ice, running, backing up, seepage, or the overflow of water or sewage in any part of the Property or from any injury or damage caused by or resulting from acts of God or the elements or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, building, machinery, apparatus or equipment by any person or by or from the acts or negligence or any occupant of the Property. In the event Landlord transfers this Lease, except as collateral security for a loan, upon such transfer Landlord will be released from all liability and obligations hereunder. The indemnities provided in this Lease shall survive the termination or expiration of this Lease or any renewals; provided, however, Landlord shall be liable for the negligent acts of Landlord and its agents.

See Lease at Paragraph 30 (emphasis added). Also, Paragraph 3(c) of the Lease includes amounts incurred by Landlord for repairs done by order of Tenant as "Additional Charges," which shall be payable to Landlord as Additional Rent. *See Lease* at Paragraph 3(c). On this basis, there are at least four different sections of the Lease that establish Tenant's responsibility to repair the docks that are the portion of the Lease Property or to reimburse Landlord for any amounts incurred to make such repairs. Landlord has shown that it has incurred damages for the repair and replacement of the dock for which it is entitled to reimbursement by Tenant based on the terms of the Lease.

During trial, the question arose as to whether Landlord must "prove" that it was Tenant, as opposed to an act of God, that "caused" the damage to the dock which necessitated the repairs. If Tenant were an unrelated third-party, as opposed to a tenant under a binding Lease, Landlord would likely be held to such a standard of proof of causation. However, under the circumstances presented, the duties and financial responsibilities of Tenant and Landlord are spelled out in the Lease. Upon review of the relevant provisions of the Lease, which have been cited above, it is clear that Tenant's responsibility for payment of repairs to the dock is not limited to those situations were Tenant has been the proximate cause of damage to the Lease Property. On the contrary, the various provisions of the Lease lead to a uniform conclusion: Tenant is responsible

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for the cost of repairs and maintenance to the docks that are the portion of the Lease Property, regardless of the legal cause of the damage. *See Lease*, at Paragraphs 3(c), 6, 18, 26, and 30. Furthermore, to whatever extent it would be argued that the provisions are ambiguous (which neither party alleged), Tenant's admission of responsibility for the repairs in written correspondence with its insurance carrier is significant evidence of the understanding of the parties on this issue. Similarly, Tenant acknowledged responsibility for dock repairs during Mr. Scurry's testimony at trial. Although insurance proceeds would be applicable to defray the cost of the repairs, ultimately, there were no insurance proceeds obtained from any carrier. For these reasons, if the Court were to decline to hold Tenant responsible for the payment of these repairs, the mutual agreement of the parties as set forth in the Lease would be undermined. It is the Court's duty to enforce, rather than modify, the terms of the Lease. Therefore, the Court enters judgment in favor of Landlord for the unreimbursed repairs to the dock plus prejudgment interest.

iii. Landlord is Entitled to Prejudgment Interest on the dock repair

The amounts paid for the dock repair are a liquidated sum certain. Under South Carolina law, "[i]n all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." *See* S.C. Code § 34-31-20. "Stated another way, prejudgment interest is allowed on a claim of liquidated damages; i.e., the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties." *Butler Contracting, Inc. v. Court St., LLC*, 369 S.C. 121, 133, 631 S.E.2d 252, 258–59 (2006). Prejudgment interest is not allowed on an unliquidated claim in the absence of an agreement or statute." *Id.* Liquidated damages "are damages the amount of which

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has been made certain and fixed either by the act and agreement of the parties or by operation of law to a sum which cannot be changed by the proof." 22 Am. Jur. 2d Damages § 489 (2003). In general, damages are unliquidated where they are an uncertain quantity, depending on no fixed standard, referred to the wise discretion of a jury, and can never be made certain except by accord or verdict." *Id.*

The Court finds that Landlord is entitled to an award of prejudgment interest for the loss of use of the dock repair funds. *See W. Virginia v. United States*, 479 U.S. 305, 311, 107 S. Ct. 702, 706 (1987) ("Prejudgment interest serves to compensate for the loss of use of money due as damages from the time the claim accrues until judgment is entered, thereby achieving full compensation for the injury those damages are intended to redress."). An award of prejudgment interest on the dock repair is appropriate and shall be awarded to Landlord based on the calculation entered into evidence.

As to the balance of the claim, it is undisputed that the parties were unable to place the Tenant in office space of the quality that was anticipated under the contracts and agreements. Although it is clear that Tenant owes all back payments as set forth above, to add pre-judgment interest in the face of an obvious deficiency in the office space would be inequitable and would be contrary to the interests of justice in this case.

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B. JUDGMENT IS GRANTED IN FAVOR OF TENANT ON LANDLORD'S CLAIM OF NEGLIGENCE AGAINST TENANT

Landlord's second cause of action for negligence seeks damages from Tenant as a result of damage done to the docks and subject property from Tenant's barge and ferry operations. However, as was the case with Tenant's claim for breach of contract against Landlord, Landlord did not present evidence of a specific amount of damages that it seeks under this cause of action, separate from the $44,398.00 in damages that have already been awarded to Landlord in connection with its cause of action for breach of contract against Tenant. As a result, judgment will be granted in favor of Tenant on Landlord's cause of action for negligence, as the other damages were not quantified at trial.

C. JUDGMENT IS GRANTED IN FAVOR OF LANDLORD ON LANDLORD'S CLAIM FOR SPECIFIC PERFORMANCE AGAINST TENANT

Landlord seeks an order from the Court compelling Tenant to perform certain obligations and duties of Tenant under the Lease for the remainder of the Lease term. Landlord requests that, going forward, Tenant be compelled to pay the Additional Rent and Additional Charges in a timely manner. Landlord asserts that Tenant has failed to uphold its obligation under Paragraph 17 by failing to name Landlord has an additional insured. Paragraph 17 includes an escalation clause calling for the minimum coverage amounts "to be upwardly adjusted yearly to reflect inflation rates." Tenant has failed to adjust the policy amounts to account for inflation since 1993. *Tr.* at 196:24-197:13.

Specific performance may be granted where there is no adequate remedy at law and specific enforcement of the contract is equitable between the parties. *See King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984). In order to compel specific performance, a court of equity must find: (1) there is clear evidence of a valid agreement; (2) the agreement had been

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partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). Specific performance is not an absolute right and a court granting it must follow established principles and carefully consider all circumstances of a particular case. *See Bishop v. Tolbert*, 249 S.C. 289, 298, 153 S.E.2d 912, 917 (1967). In terms of the character of the underlying obligations, specific performance is an appropriate and available remedy.

Relating to the payment of Additional Rent and Additional Charges, the Court finds that it is appropriate for Tenant to be required to pay the charges due under the Lease within thirty (30) days of receipt of an invoice. The Lease is silent as to the time frame within which Tenant must pay the Additional Rent and Additional Charges due to Landlord, which allows for the Court to imply and impose a reasonable time. *See, e.g., Ebert v. Ebert*, 320 S.C. 331, 341, 465 S.E.2d 121, 126 (Ct. App. 1985). Timelines of payment has been a problem, as many invoices from Landlord to Tenant have gone unpaid for years. Under the circumstances, the Court concludes that a period of thirty (30) days from the date of invoice is a reasonable time for payment by Tenant, which shall be enforceable by Landlord going forward.

Landlord is entitled to an order of specific performance to compel Tenant to name Landlord as an additional named insured on Tenant's insurance policies. Although Tenant concedes that it is bound by the obligations in Paragraph 17, Tenant's corporate representative testified that Tenant is unaware of whether it has named Landlord as an additional insured on the policies as required by Paragraph 17 of the Lease. *See Pl.'s 30(b)(6) Dep.* at 77:5-25. The Lease provides Landlord the "right to demand exact compliance with the terms of the Lease." *See Lease* at Paragraph 23. With regard to insurance policies, Tenant is required to "keep in full force

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and effect at Tenant's expense, insurance for personal property, trade fixtures and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the insured." Also, the minimum coverage of one million dollars for the policies were to be "upwardly adjusted yearly to reflect inflation rates." Tenant concedes that it is bound by the obligations in Paragraph 17 but was unaware whether Tenant has caused Landlord to be named as an additional insured on the policies as required by Paragraph 17 of the Lease. *See Pl.'s 30(b)(6) Dep.* at 77:5-25. Tenant was also unaware whether the amount of coverage had been adjusted for inflation. The Court also grants Landlord's claim in order to require Tenant to include the coverage amounts in accordance with the terms of the Lease.

Other aspects of Landlord's claim for specific performance relate to Tenant's use of portions of the Landlord's property that are not part of the Lease Property and Landlord's allegation that Tenant is failing to dispose of its garbage. At trial, Landlord presented pictures of the placement of picnic tables, umbrellas, and vehicles by Tenant in locations that are not authorized under the Lease. *See, e.g., Defs. Exs.* 71 and 74. The Court finds that it is appropriate for Tenant to be limited to the use and occupancy of the Lease Property, as opposed to other portions of the Property that are reserved to Landlord. Therefore, within 15 days of the date of this Order, Tenant shall remove its personal property from any areas of the Property that are not a portion of the Lease Property. Tenant shall park its vehicles within the fifty (50) spaces that are allocated to Tenant under the Lease. Additionally, effective as of the date of this Order and Judgment, Tenant shall dispose of its own garbage and shall not leave garbage or debris on the Property or Lease Property.

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For these reasons, the Court finds that Landlord is entitled to an order compelling specific performance of Tenant's obligations under the Lease.

IV. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that judgment is hereby granted in this matter as follows:

- Judgment is granted in favor of Landlord on Tenant's first cause of action for breach of contract;
- As to Tenant's second cause of action for declaratory judgment and Landlord's second counterclaim for specific performance regarding the commercial office space, no further findings or conclusions are needed, as these matters were addressed in the Interim Order;
- Judgment is granted in favor on Defendants on Tenant's third cause of action for sanctions, eighth cause of action for declaratory judgment relating to a competing ferry service, and ninth cause of action for permanent injunctive relief relating to a competing ferry service;
- Judgment is granted in favor of Landlord on Landlord's first counterclaim for breach of contract under the Lease and 2004 Settlement Agreement against Tenant in the amount of **$112,428.40**;
- Judgment is granted in favor of Landlord on Landlord's second cause of action for specific performance relating to Tenant's obligations under the Lease such that Tenant: (1) pay Additional Rent and Additional Charges due to Landlord within thirty (30) days of receiving invoices; (2) name Landlord as an additional named insured on Tenant's insurance policies and increase the amounts of insurance coverage in accordance with annual inflation; (4) refrain from further usage of areas of the Property that are not part of the Lease Property; and (5) separately meter its utilities;
- Judgment is granted in favor of Tenant on Landlord's third cause of action for negligence; and
- The temporary injunction previously entered in this case by the Court in this case is hereby dissolved.

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The Lease includes a provision allowing for an award of all costs, including reasonable attorney's fees to the prevailing party. *See Lease* at Paragraph 36. Any motions seeking an award of attorney's fees under this provision should be filed within fifteen (15) days of the date of this Order and Judgment.

IT IS SO ORDERED.

_____
The Honorable Marvin H. Dukes, III
Master-in-Equity and Special Circuit Judge for
Beaufort County

_____, 2019
Beaufort, South Carolina

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COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

CASE NO. 2018 CP-07-1622

J&W CORPORATION OF GREENWOOD

PLAINTIFF(S)

BROAD CREEK MARINA OF HILTON HEAD, LLC, et al.

DEFENDANT(S)

Submitted by: Ellis R. Lesemann, Esq.	**Attorney for :** ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendant Broad Creek Marina Properties, LLC	Plaintiff J&W Corporation of Greenwood	$112,428.40
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

43

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2020 Jan 09 4:04 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Beaufort Common Pleas

Case Caption:	J W Corporation Of Greenwood , plaintiff, et al VS Broad Creek Marina Of Hilton Head Llc , defendant, et al
Case Number:	2018CP0701622
Type:	Order/Form 4

So Ordered:

s/Marvin H. Dukes III #3069

ELECTRONICALLY FILED - 2020 May 04 5:00 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA **COUNTY OF BEAUFORT**	**IN THE COURT OF COMMON PLEAS** **CASE NO:** 2018-CP-07-01622
JW Corporation of Greenwood, et al., **Plaintiff(s),** vs. Broad Creek Marina of Hilton Head, et al., **Defendant(s).**	**ORDER DENYING MOTION TO AMEND**

This came before me February 11, 2020 on Plaintiff JW Corporation of Greenwood's Motion to Alter or Amend the January 9th, 2020 Order and Judgment, filed January 17th, 2020. After hearing from parties and review of the file, I hereby deny the motion.

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court
Judge for Beaufort County

April _____, 2020
Beaufort, South Carolina

ELECTRONICALLY FILED - 2020 May 04 5:00 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Beaufort Common Pleas

Case Caption:	J W Corporation Of Greenwood , plaintiff, et al VS Broad Creek Marina Of Hilton Head Llc , defendant, et al
Case Number:	2018CP0701622
Type:	Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-01704
	)	
J & W CORPORATION OF GREENWOOD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**AMENDED COMPLAINT FOR DAMAGES, FOR TEMPORARY AND PERMANENT INJUNCTIVE RELIEF AND FOR A DECLARATORY JUDGMENT**
BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a Hilton Head Island Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.	)	
	)	
Defendants.	)	[A Non-jury Matter]

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PURSUANT TO an Order of this Court dated March 8, 2016 authorizing the filing of an Amended Complaint in this now consolidated action, the Plaintiff, by and through its undersigned counsel, complaining of the Defendants, alleges and shows unto this Honorable Court the following:

1. The Plaintiff J & W Corporation of Greenwood, Inc. (hereinafter sometimes referred to as "J & W") is a corporation duly organized under the laws of South Carolina, authorized to do business and doing business in Beaufort County, South Carolina.

2. The Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Island Marina, LLC, and Broad Creek Marina, Inc., are one in the same corporations by succession, and are on information and belief, duly organized under the laws of South Carolina, authorized to do business and doing business in Beaufort County, South Carolina. Both defendants are hereinafter sometimes referred to as "BCM."

3. The Defendant Roger M. Freedman (hereinafter sometimes referred to as "Freedman"), is a citizen and resident of Beaufort County, South Carolina.

4. The Plaintiff and all Defendants, and all matters set forth herein, are within the jurisdiction of this Honorable Court.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

6. On or about September 23, 1993, J & W entered into a 99-year Lease Agreement, with an entity known as Hilton Head Island Marina, L.P. A true and correct copy of that Lease Agreement was attached to J & W's original Complaint filed in this matter, and is incorporated herein by reference.

7. The Hilton Head Island Marina, L.P. entity, on information and belief, is a predecessor in interest to the Defendant BCM, and all of the rights and responsibilities of Hilton Head Island Marina, L.P. under the Lease Agreement have now been legally acquired by the Defendant BCM.

8. Prior to December 13, 2004, J & W's office that had been in a "floating store" in the dock area of Broad Creek Marina, was destroyed through no part of any party.

9. Prior to December 13, 2004, by agreement, J & W was provided "temporary" office space by the Defendants adjacent to the Marina Office.

10. Due to certain disputes that arose between the original parties to the Lease Agreement, a "Release and Confidential Settlement Agreement" was entered between J & W and BCM on or about December 13, 2004. That agreement is sometimes referred to herein as the "RCSA."

11. Under the express terms of the RCSA, BCM covenanted and agreed to provide J & W with permanent appropriate office space in one of four specific ways:

a. BCM had the option of seeking approval from the necessary regulatory authorities for the replacement of the former floating store that J & W had earlier used as its office space; or,

b. If and only if the floating store was not replaced due to denial of any of the permits required for its replacement, then BCM covenanted and agreed to provide J & W with 300 usable square feet of office space in the Dockmaster's House; or,

c. If BCM was unable to provide space to J & W in a new floating store or in the Dockmaster's House, then J & W was promised that it would be allowed to continue to occupy its then existing space in the Marina Office; or,

d. If BCM decided at a future time to relocate the Marina Offices, the space that was then to be provided to J & W under the RCSA was to be in a "mutually agreeable location of a size, kind and quality at least comparable to the existing space, and such replacement space shall be located in the center of the commercial and retail activity at the Marina."

12. Following the execution of the RCSA in December 2004, BCM and Freedman elected not to pursue the option of seeking approval from the necessary regulatory authorities for

replacement of the former floating store that J & W had earlier used as its office space and instead directed that J & W use the Marina Office area as its permanent office.

13. Following BCM and Freedman's decision to relocate the Marina Offices in or about 2009, J & W was evicted from the Marina Offices and forced into an old storage building, that was not designed or permitted as office space, and that J & W never agreed to accept as appropriate office space. It is not of a size, kind and quality at least comparable to its former space in either the floating store or the Marina Office, and is not located in the center of the commercial and retail activity at the Marina.

14. The actions of BCM in failing to provide J & W with appropriate office space pursuant to the express terms of the RCSA, amounted to a material breach of contract and have resulted in, and continue to cause, J & W damages in myriad forms.

15. J & W alleges that it is entitled to an award of damages in an amount to be fairly decided upon by a jury, in compensation for the damages that have accrued as a direct result of BCM's failure to provide appropriate office space as agreed upon in the RCSA, for more than 6 years.

FOR A SECOND CAUSE OF ACTION
(For a Declaratory Judgment regarding the office space and dock lease)

16. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

17. The South Carolina Declaratory Judgment Act, Section 15-53-20, Code of Laws of South Carolina (1976), as amended, provides that this Court has the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.

18. Under the express terms of the RCSA executed on December 13, 2004, the Defendant BCM covenanted and agreed to provide J & W with office space in one of the four specific options set forth above in Paragraph 9.

19. BCM has failed and refused to provide the office space in one of the four alternatives, despite repeated demands.

20. The "office space" to which J & W is relegated by its Landlord BCM, is woefully inadequate, unsafe, un-permitted, and not one of the options J & W agreed to under the RCSA.

21. A justiciable controversy exists between J & W and BCM as to the requirement that BCM provide appropriate office space to J & W.

22. Plaintiff J & W Corporation of Greenwood seeks a declaratory judgment that Defendant Broad Creek Marina must provide appropriate office space to J & W as agreed upon in the RCSA, within a reasonable time period of no more than 90 days from this Court's order.

23. In addition, J & W alleges that under the terms of the original Lease Agreement dated September 23, 1993, J & W obtained exclusive leasehold rights for 99 years to all of the dock space on the inside (northern side) of the inner most (northern most) finger of the floating dock immediately northeast of and adjacent to the then existing "Floating Store," with the exception of the southwestern most seventy five linear feet of that floating dock, which is designated as the "Embarkation and Debarkation Area." That "Embarkation and Debarkation Area" is a "shared use" area between J & W and BCM, and no vessels are to occupy the area for intervals of longer than fifteen (15) minutes at a time.

24. The parties reaffirmed the designated location of the Embarkation and Debarkation Area under the RCSA executed on or about December 13, 2004 as being the southwestern most 75 feet of that dock area.

25. After the execution of the Lease Agreement and the RCSA, BCM and/or Freedman added an extension to the specific dock referenced in paragraph number 19 above.

26. Plaintiff J & W Corporation of Greenwood further seeks a declaratory judgment that the Embarkation and Debarkation Area effective under the current Lease agreement, consists of the southwestern most seventy five linear feet of the existing dock (as extended after execution of the RCSA) and that all other dock space on that particular dock is part of the active, exclusive leasehold of the J & W Corporation.

FOR A THIRD CAUSE OF ACTION
(Trespass)

27. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

28. For more than twenty (20) years, J & W has been granted authorization by the State of South Carolina, to use those tidal waters known as the "Barge Creek" for purposes of moving a floating barge in and out of the creek in order to serve the residents and visitors of nearby Daufuskie Island, South Carolina.

29. All food, medicine, supplies, and building materials necessary for daily living on Daufuskie Island must be transported by barge, because there is no road connecting Daufuskie to the mainland.

30. The area of access to the Barge Creek is part of J & W's leasehold interest under the terms of the 99-year Lease Agreement referenced above.

31. On information and belief, neither BCM nor Freedman have ever had any authorization from the State or any applicable regulatory body to access or fill the Barge Creek.

32. In order to be able to properly access the barge from land, J & W, more than 20 years ago, working with appropriate State and Federal regulators, constructed a concrete landing pad on pilings in Barge Creek. The concrete landing pad was specifically designed and

constructed so as not to impede the natural tidal flow of water through Barge Creek, to insure that the tidal flow continued unabated on the rising and falling tides.

33. In or about 2012, BCM and Freedman, through agents and directed contractors, filled in that portion of Barge Creek directly adjoining J &W's concrete barge landing pad, and said fill dirt has completely filled and blocked that portion of Barge Creek that formerly existed to the north side of J & W's landing pad, and further, the fill migrated as a natural result of its artificial placement, below the landing pad, and has now completely or in large part, blocked the tidal flow from that section of Barge Creek.

34. On information and belief, neither BCM, nor Freedman, nor any of their agents or contractors who filled that portion of Barge Creek, had the appropriate permits or regulatory permission from the United States Corps of Engineers, the State of South Carolina, Beaufort County, nor the Town of Hilton Head Island.

35. As a direct and proximate result of the un-permitted and un-authorized filling of this section of Barge Creek by BCM and Freedman, Barge Creek no longer carries the traditional tidal flow of the in-going and out-going tides, and is filling with dirt, sand and mud.

36. As a direct and proximate result of the filling of Barge Creek due to the restriction in tidal movement caused by BCM and Freedman's filling of the creek, J & W's barge cannot navigate Barge Creek during the normal hours of tide that it has for more than 20 years. Instead, J & W is restricted in the hours that it can use the Barge Creek for ingress and egress of its barge. These restricted hours of operation directly impact J &W's barging operations by reducing the amount of time the barge can enter and leave the Creek, which in turn has reduced the amount of cargo J & W can transport safely.

37. The restriction in hours of operation of the barge has directly reduced J & W's barging operation profits, and thus damaged J & W.

38. The unauthorized and un-permitted filling of Barge Creek by BCM and Freedman amounts to a trespass upon J & W's rights of usage of the Barge Creek, and entitles J & W to a compensatory damage award from a jury.

39. The above-described actions of BCM and Freedman in filling Broad Creek show a wanton, willful and reckless disregard of J & W's rights, and entitle J & W to a further award of punitive damages.

FOR A FOURTH CAUSE OF ACTION
(In the alternative, Private Nuisance)

40. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

41. The unauthorized and un-permitted filling of Barge Creek by BCM and Freedman has worked hurt, inconvenience and damage upon J & W in that it has restricted J & W's ability to use the Barge Creek and directly reduced its profitability.

42. Further, the natural filling in of Broad Creek that is occurring as a direct and proximate result of BCM and Freedman's filling of the area adjacent to and under the concrete landing pad, has made it more difficult to navigate the barge in the creek by restricting the available water upon which the barge floats.

43. The unauthorized and un-permitted filling of Barge Creek by BCM and Freedman is an unreasonable interference with J & W's use and enjoyment of its rights to the Barge Creek and as such, amounts to a private nuisance under the common law of South Carolina.

44. This continuing private nuisance being caused by BCM and Freedman, entitles J & W to a compensatory damage award from a jury. In addition, the above-described actions of BCM and Freedman in filling Broad Creek show a wanton, willful and reckless disregard of J & W's rights, and entitle J & W to a further award of punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Negligence)

45. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

46. Under the specific terms of the RCSA, J & W was granted exclusive rights to the use of the dock space shown on Exhibit B to the RCSA, specifically designated as "Wick 211'."

47. On a daily basis for more than 10 years, J & W has operated a ferry boat from Hilton Head Island to Daufuskie Island and back, which has, for more than 10 years, docked at the space shown on the RCSA Exhibit B as "Wick 89'." In order to access and leave this designated dock space, the ferry boat captain must carefully navigate the ferry boat in a series of turns that bring the ferry boat close to the end of the dock marked on Exhibit B at "Wick 211'."

48. In early June 2014, agents and employees of BCM and/or Freedman, without authorization, began to tie up boats on the exclusive dock space of J & W referenced above as "Wick 211'."

49. On June 9, 2014, counsel for J & W wrote counsel for Freedman and BCM, warned him of the inappropriate actions of the BCM/Freedman employees in tying up boats on J & W's dock, and advised him that tying up boats on that dock created an "immediate danger" because it created an impediment to J & W's ferry captains "attempting to safely navigate our ferry boats away from and back into our leasehold dock space." A true and correct copy of that June 9, 2014 letter is attached hereto as Exhibit 1.

50. On July 4, 2014, agents and employees of BCM and/or Freedman, again without authorization, again tied up boats on the exclusive dock space of J & W referenced above as "Wick 211'."

51. On July 4, 2014, the boats that were inappropriately tied up to J & W's dock created an impediment to J & W's ferry captain's ability to turn the vessel and safely maneuver the ferry away from the Broad Creek Marina.

52. Despite using his best professional efforts, J & W's ferry captain on July 4, 2014, as a direct and proximate result of the negligence of BCM/Freedman in tying up boats to J & W's dock after warning and notice, ran J &W's ferry boat on to a sandbar, causing serious damages to the vessel, the loss of revenue from that trip and many others, and damage to J & W's good name and reputation.

53. The actions of BCM and/or Freedman in failing in insure that their employees and agents stopped docking boats on J & W's leasehold dock after June 9, 2014, was negligent, reckless, willful and wanton, exhibiting a total lack of regard for J & W's rights. As such, J & W is entitled to an award of actual compensatory damages, as well as punitive damages in an amount that a jury would deem just and proper.

FOR A SIXTH CAUSE OF ACTION
(Prayer for Temporary and Permanent Injunctive Relief regarding restrooms, golf cart usage on dock, parking and denial of access to leasehold)

54. On April 27, 2012, then counsel for the Defendant Broad Creek Marina, wrote a letter to counsel for the Plaintiff J & W, stating that Broad Creek Marina would on May 7, 2012 undertake the following actions:

a. Close four of the available 6 restroom facilities on the grounds of the Marina to J & W and its customers, and then charge them to use the sole restrooms remaining available;

b. Deny J & W the use of its golf cart on the 700 foot walkway which goes to the docks;

c. Deny access to certain parking spaces and tow the cars of J & W's employees or customers parked therein; and,

d. Block access to certain areas of the marina to J & W and bar deliveries on the marina property to J & W during business hours.

55. In response to the April 27, 2012 letter referenced above, the Plaintiff sought a Temporary Injunction from this Court, and filed an Affidavit from J & W President William P. Scurry in support of that Motion. J & W asserts, and Mr. Scurry's Affidavit shows, that if the threatened actions are taken by BCM and/or Mr. Freedman, those threatened actions by Broad Creek Marina would have the following results:

a. If its customers were denied use of four of the six restrooms, it would force J & W's employees and customers to walk over 700 feet down a dock to another restroom, and then pay to use the restroom.

b. If it were denied the use of a golf cart on the 700 foot walkway to the dock, the elderly and handicapped citizens of Daufuskie riding the ferry provided by J & W, and guests of J & W, would be rendered unable to get to the ferry boat and it would be extremely difficult for J & W to transport groceries, luggage and other personal items of those persons riding the ferry to Daufuskie.

c. If Broad Creek Marina were to deny access to certain parking spaces allowed under the terms of the Lease and tow the cars of J & W's employees or customers parked therein, it would have an immediate harmful effect on J & W's business.

d. If Broad Creek Marina were to block access to certain areas of the marina over which J & W has both an express and implied easement of access and bar deliveries on the marina to J & W during business hours, it would have an immediate harmful effect on J & W's business.

56. A Temporary Injunction was issued by this Court on May 23, 2012, which provides at page 8 as follows:

The Defendant is hereby temporarily enjoined from taking any of the following actions:

a. Closing any of the restroom facilities to J & W's usage or charging a direct charge to J & W's customers, employees or agents for usage of the restroom. The Defendant's claims that J & W should be making contribution for the sewer costs pursuant to the Lease shall be resolved in the ongoing litigation as a claim for damages.

b. Prohibiting or blocking the use of J & W's golf cart on the 700 foot walkway going to the dock. J & W, as a matter of law, may be liable for any negligence of it or its employees in connection with operation of the golf cart.

c. Prohibiting J & W's employees, agents, or guests from crossing those portions of the Marina property necessary to access the business operations of J & W.

d. Prohibiting deliveries to J & W after 7 a.m.

57. The Plaintiff alleges that the threatened actions will have the same damaging effect if taken today, as are set forth in Mr. Scurry's Affidavit, and prays that this Honorable Court issue a Permanent Injunction consistent with the Temporary Injunction currently in effect.

58. The Plaintiff further alleges that the Defendants' actions in docking and/or tying up boats on the leasehold space of J & W, as is alleged in specificity in Paragraphs 48 through 51 above, is in violation of the Lease Agreement and is causing and will cause in the future, immediate, irreparable harm to J & W's business. Thus, J & W requests that this Honorable Court enter a Temporary Injunction and a Permanent Injunction barring the Defendants and any agents or employees acting under their direction, from tying up, docking boats, or in any other way, interfering with J & W's leased dock space.

FOR A SEVENTH CAUSE OF ACTION
(Sanctions for contempt for violation of existing Temporary Injunction)

59. On or about April 20, 2014, the Defendants BCM and Freedman, in clear violation of the existing Temporary Injunction dated May 23, 2012, brought in to an access area used by J & W, a large moveable "bungee jump" and erected a barrier chain across the access gate, blocking J & W's customers from using the access area.

60. J & W's representatives attempted in good faith, as provided for under the terms of the original 99-year Lease Agreement, to work with BCM and Mr. Freedman to coordinate times when the chain barrier would be removed and the "bungee jump" moved so that J & W's customers could use the access area to off-load luggage and personal items for their ferry transportation.

61. On or about June 1, 2014, BCM and Freedman brought in a second large piece of equipment (a moveable "rock climbing wall") and also located it in the access area, which together with the "bungee jump," presented obstacles to J & W's employees and business invitees attempting to safely use the access area.

62. J & W formally notified BCM and Freedman on June 3, 2014 of the violation of the existing Temporary Injunction, and demanded the access area be opened for J & W's business use and the obstacles located elsewhere on the BCM property. A true and correct copy of that notice letter is attached to the original Complaint in this matter as Exhibit 2.

63. On June 5, 2014, J & W again notified BCM and Freedman in writing of the continuing violation of the Temporary Injunction, and demanded that the obstacles be removed and the access area opened immediately. J & W further advised the defendants that if the access area was not cleared and opened, it would immediately file a Motion for Contempt and a Motion for a Writ of Mandamus, seeking to have the Sheriff enter and clear the access area.

64. Shortly after receipt of the June 5, 2014 letter from J & W's counsel, the access area was opened and the barricades removed.

65. Four days later, on June 9, 2014, BCM and/or Mr. Freedman again barricaded the access area with a chain, and set up the "bungee jump" and the "rock climbing wall," which

immediately interfered with and blocked J & W's usage of the access area, and caused it damages in the form of lost revenue and injury to its business reputation.

66. On June 10, 2014, BCM and Freedman removed the barricades and opened the chain barrier, thereby allowing access to J & W's business clients and employees.

67. The actions of Freedman and BCM between June 3, 2014 and June 10, 2014, were in direct, intentional and blatant violation of this Court's Temporary Injunction, and the actions forced J & W to expend substantial monies in attorney's fees to address the issues, which had been specifically addressed in the Temporary Injunction Order of May 23, 2012.

68. J & W requests this Honorable Court issue sanctions under its inherent contempt authority and/or under Rule 11 SCRCP, awarding damages to J & W from both defendants in an amount to be proven at trial, to reimburse J & W for its legal fees incurred between June 3, 2014 and June 10, 2014 relating to the denial of access.

FOR AN EIGHTH CAUSE OF ACTION
(Request for a Declaratory Judgment regarding competing ferry service at Broad Creek Marina)

69. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

70. All provisions of the Original Lease not specifically modified by the terms of the RCSA, were ratified by the RCSA.

71. None of the terms of Original Lease at issue in this cause of action were modified by the RCSA.

72. Defendant Freedman negotiated and executed both the Original Lease and the RCSA. Freedman signed as the "President" of that entity known as the "Hilton Head Marina, Inc." which purported to be the controlling entity of the "Landlord" Hilton Head Island Marina, L.P. on the Original Lease. He signed the RCSA as the "Owner Manager" of Broad Creek Marina of Hilton Head, LLC.

73. Defendant Freedman, as the President of the controlling entity of the Landlord in the Original Lease, and as the owner manager of the Broad Creek Marina of Hilton Head, LLC under the RCSA, is bound individually under the terms and conditions of the Original Lease and the RCSA.

74. Under the express terms of the Original Lease, the Landlord Hilton Head Island Marina, L.P. and Tenant J & W agreed on a detailed breakdown of each of the entities' rights under the leasehold, to conduct certain business operations. Specifically at Paragraph 12, the parties agreed to "Use of Property" as follows:

> 12. Use of Property. Tenant agrees to use the Lease Property to operate a commercial ferry; to operate a commercial barge operation; to operate tour services; to rent jet skis, boat rental excursion and fishing boats, and for other similar commercial purposes. The Tenant will not compete with the marina in the leasing, sub-leasing or in any way charging a second party for dockage at the marina and shall not use the Lease Property for any other purposes. It is, however, understood that from time to time Tenant may use its commercial rights at the marina for the purpose of embarkation and debarkation of passengers for business affiliated with Tenant without the constraint of fuel purchases, except when the vessel is docked overnight. *The marina is excluded from competing with the Tenant's commercial ferry and barge service.* [Emphasis added] Other operations of the Tenant are non-exclusive. Tenant's portion of the floating store is to function as an office for booking charters, running its operations located at the marina, and selling tourist and novelty items related to its business. The Tenant, affiliated business, and other vessels docked at the marina are barred from selling food, beverages, and items sold in a marina/sports or convenience store, except for novelty and tourist items related to is business. Tenant shall conduct its activities in the jointly utilized embarkation and debarkation area reasonable so as not to unnecessarily interfere with the conduct of Landlord's activities.

75. The term "the marina" as used and set forth in Paragraph 12 of the Original Lease, was intended to describe and does describe, the Landlord Hilton Head Island Marina, L.P., its legal successor Broad Creek Marina of Hilton Head, LLC, its President, Defendant Freedman, and all other entities operating at the Broad Creek Marina by, through, or under those entities.

76. Pursuant to the explicit agreement of the parties reflected in Paragraph 12 of the Original Lease, "[t]he marina is excluded from competing with the Tenant's commercial ferry and barge service."

77. The exclusive right to provide commercial ferry service from Broad Creek Marina is a valuable right belonging to J & W and the revenues from that commercial ferry service make up an important component of J & W's overall business revenues.

78. The explicit and clear intention of the parties in drafting and executing the Original Lease was to vest in J & W the exclusive right to provide commercial ferry service from the Broad Creek Marina over the term of the 99-year Original Lease agreement.

79. If another entity were to offer commercial ferry service from the Broad Creek Marina, it would cause immediate, irreparable harm to the Plaintiff J & W by undercutting the revenues it now generates as the only commercial ferry service provider from Broad Creek Marina.

80. On information and belief, the Defendant Freedman, acting individually and through one or more corporate entities that he controls, is currently engaged in the acquisition of

property on Daufuskie Island, with the intention of operating a commercial ferry service from Broad Creek Marina to Daufuskie Island to serve the new development and generate profits for Freedman and/or his corporate entities.

81. In a good faith effort to warn Defendant Freedman not to proceed with expending money to develop such a water park dependent upon Freedman providing commercial ferry service from the Broad Creek Marina, the Plaintiff J & W served upon Mr. Freedman certain Requests to Admit in a formerly pending action in Beaufort County's Court of Common Pleas that was assigned Civil Action No. 2010-CP-07-5068. That case has now been consolidated in to this case.

82. In its Request to Admit, J & W asked the Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Island Marina, LLC and Roger Freedman, to admit that "under the express written contract known as the September 23, 1993 Lease Agreement, the Defendants are excluded from competing with the J & W Corporation of Greenwood's commercial ferry and barge services from the Broad Creek Marina to Daufuskie Island."

83. In response to the Request to Admit, Defendants Freedman and the Broad Creek Marina of Hilton Head, LLC denied the Request to Admit and further stated: "Further responding to the Request to Admit #5, Defendants state that the relevant portion of the Lease Agreement, within Section 12, indicates that '[t]he marina is excluded from competing with the Tenant's commercial ferry and barge service. Other operations of the Tenant are non-exclusive.' The word 'marina' is not a defined term in the Lease Agreement."

84. The Original Lease further provides at Paragraph 36 that "In the event it is necessary for either party to employ an attorney ... to enforce any covenant of this Lease ..., the non-prevailing party shall pay all costs, including reasonable attorneys' fees."

85. The South Carolina Declaratory Judgment Act, Section 15-53-20, Code of Laws of South Carolina (1976), as amended, provides that this Court has the power to declare rights, status and other legal relations whether or not further relief is or could be claimed.

86. South Carolina Code Annotated Section 15-53-30 specifically provides that any person interested under a written contract may have determined by this Court, any question of construction or validity arising under the instrument and obtain a declaration of rights, status or other legal relations thereunder. Further, Code Section 15-53-40 provides that a declaratory judgment of construction or interpretation may be given either before or after there has been a breach of the written contract.

87. Under S.C.R.Civ.P. 57, this Court may order a "speedy hearing" on an action for a declaratory judgment, and "may advance it on the calendar."

88. Under the express terms of the Original Lease, the Defendants Freedman and the Broad Creek Marina of Hilton Head, LLC, and all entities operating through, by or under those entities, are expressly prohibited from operating a commercial ferry service from the Broad Creek Marina.

89. A justiciable controversy exists between J & W and Defendants Freedman and the Broad Creek Marina of Hilton Head, LLC, as to the exclusivity provision of Paragraph 12 of the Original Lease.

90. Plaintiff J & W Corporation of Greenwood seeks a declaratory judgment that Defendants Freedman and the Broad Creek Marina of Hilton Head, LLC, and all entities operating through, by or under those Defendants, are prohibited from operating a commercial ferry service from the Broad Creek Marina during the term of the Original Lease

FOR A NINTH CAUSE OF ACTION
(Prayer for Permanent Injunctive Relief regarding Defendants operation of a commercial ferry service from Broad Creek Marina)

91. All allegations set forth above are incorporated herein by reference as if each were specifically re-alleged as pled above.

92. The Plaintiff alleges that the threatened actions of the Defendants operating a commercial ferry service from Broad Creek Marina will cause irreparable harm to the Plaintiff, and prays that this Honorable Court issue a Permanent Injunction prohibiting Defendants Freedman and the Broad Creek Marina of Hilton Head, LLC from operating any such commercial ferry service as long as the Original Lease remains in effect.

WHEREFORE, the Plaintiff J & W Corporation of Greenwood respectfully requests this Honorable Court inquire into this matter and render its judgment as follows:

a. Awarding to the J & W Corporation of Greenwood an award of damages against the Defendant Broad Creek Marina of Hilton Head, LLC, in an amount to be determined by a jury appropriate to compensate the Plaintiff for the damages that have accrued as a direct result of the Defendant's breach of contract in failing to provide appropriate office space as agreed upon in the RCSA, for more than 5 years.

b. Awarding to the J & W Corporation of Greenwood a Declaratory Judgment that Broad Creek Marina must within 90 days, provide to J & W appropriate office space as agreed to in the RCSA.

c. Awarding to the J & W Corporation of Greenwood a Declaratory Judgment that under the existing and controlling Lease Agreement and subsequent agreements, that the "Embarkation and Debarkation Area" consists of the southwestern most seventy five linear feet of the existing dock (as extended after the execution of the RCSA) and that all other dock space on that particular dock is part of the active, exclusive leasehold of the J & W Corporation. Further, that no vessels are to be tied up at the Embarkation and Debarkation Area longer than 15 minutes.

d. Awarding to the J & W Corporation of Greenwood an award of damages against the Defendants Broad Creek Marina of Hilton Head, LLC and Mr. Freedman jointly and severally, in an amount to be determined by a jury appropriate to compensate the Plaintiff

for the damages that have accrued as a direct result of the Defendants' actions in filling the Barge Creek and thereby trespassing upon J & W's rights and leasehold estate.

e. Awarding to the J & W Corporation of Greenwood an award of damages against the Defendants Broad Creek Marina of Hilton Head, LLC and Mr. Freedman jointly and severally, in an amount to be determined by a jury appropriate to compensate the Plaintiff for the damages that have accrued as a direct result of the Defendants' actions in filling the Barge Creek and thereby creating a private nuisance that has negatively impacted J & W's rights and leasehold estate.

f. Awarding to the J & W Corporation of Greenwood an award of damages against the Defendants Broad Creek Marina of Hilton Head, LLC and Mr. Freedman jointly and severally, in an amount to be determined by a jury appropriate to compensate the Plaintiff for the damages that have accrued as a direct and proximate result of the Defendants' negligence set forth with specificity in the Fifth Cause of Action. Further because the Defendants' actions set forth in the Fifth Cause of Action were reckless, willful and wanton, the Plaintiff requests an award of punitive damages in an amount a jury may deem just and proper.

g. Awarding a Permanent Injunction barring the threatened actions by the Defendants set forth in Paragraphs 51 through 54 above.

h. Awarding a Temporary and Permanent Injunction barring the Defendants from tying up and/or docking boats on the leasehold space of J & W.

i. Awarding to the J & W Corporation of Greenwood an award of damages against the Defendant Roger Freedman to reimburse J & W for its attorney's fees expended between June 3, 2014 and June 10, 2014, under this Court's inherent contempt power and/or under Rule 11, SCRCP, as punishment for Mr. Freedman's intentional violations of the existing Temporary Injunction between June 3, 2014 and June 10, 2014.

j. Awarding to the J & W Corporation of Greenwood, a Declaratory Judgment that Defendants Freedman and the Broad Creek Marina of Hilton Head, LLC are prohibited from operating a commercial ferry service from the Broad Creek Marina during the term of the Original Lease agreement;

k. Awarding to the J & W Corporation of Greenwood an award of costs and attorney's fees against the Defendants Broad Creek Marina of Hilton Head, LLC and Mr. Freedman jointly and severally, in an amount to be determined by the Court, appropriate to compensate the Plaintiff for the costs incurred as a direct result of the Defendants' intentions to operate a commercial ferry service in clear violation of the terms of the Lease Agreement;

l. Awarding a Permanent Injunction barring the threatened actions by the Defendants set forth in Paragraph 80 above; and,

m. For such other and further relief as this Court may deem just and the facts at trial so support.

LAW OFFICE OF THOMAS C. TAYLOR, LLC

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S.C. Bar #: 5499
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Email: tom@thomastaylorlaw.com

ATTORNEY FOR PLAINTIFF J & W
CORPORATION OF GREENWOOD

March 23, 2016
Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 10-CP-07-01704
	)	
J & W CORPORATION OF GREENWOOD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**CERTIFICATE OF SERVICE**
BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a Hilton Head Island Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.	)	
	)	
Defendants.	)	

2016 MAR 29 PM 4:18

I, Thomas C. Taylor, Esq. of the Law Office of Thomas C. Taylor, LLC., Attorney for **J & W CORPORATION OF GREENWOOD** do hereby certify that I have served a copy of the foregoing, **Amended Complaint For Damages, For Temporary And Permanent Injunctive Relief And For A Declaratory Judgment** in connection with the above-referenced case by e-mail attachment and by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

ELLIS R. LESEMANN, Esq.
Lesemann & Barks LLC
80 Alexander Street, 2nd Floor
Charleston, SC 29403; and,

erl@lalawsc.com

The original Amended Complaint For Damages, For Temporary And Permanent Injunctive Relief And For A Declaratory Judgment has been mailed to the Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court this day for filing.

THOMAS C. TAYLOR, Esq.

ATTORNEY FOR THE PLAINTIFF
J & W CORPORATION OF GREENWOOD

Hilton Head Island, South Carolina
March 23, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-1704
J & W CORPORATION OF GREENWOOD,	)	
Plaintiff,	)	**DEFENDANTS' ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIMS**
vs.	)	
BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a/ Hilton Head Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.	)	
Defendants.	)	

2016 MAY 31 PM 3:44
JEORI ANN ROSEREAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC ("Landlord"), Roger M. Freedman ("Freedman"), and Broad Creek Marina, Inc., (collectively referred to as "Defendants"), by and through their undersigned counsel, hereby respond to Plaintiff J & W Corporation of Greenwood's ("Tenant" or "Plaintiff") Amended Complaint for Damages, for Temporary and Permanent Injunctive Relief and for a Declaratory Judgment and assert their counterclaims, as follows:

FOR A FIRST DEFENSE

Each and every allegation of the Amended Complaint not hereinafter specifically admitted is denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

1. Upon information and belief, Defendants admit the allegations contained in Paragraph 1 of the Amended Complaint.

2. Defendants deny the allegations contained in Paragraph 2 of the Amended Complaint, but further respond that Landlord is duly organized under the laws of the State of South Carolina and is authorized to do business and doing business in Beaufort County, South Carolina.

3. Defendants admit the allegations contained in Paragraph 3 of the Amended Complaint, but deny that Freedman or Broad Creek Marina, Inc., are proper defendants in this action.

4. Defendants admit the allegations contained in Paragraph 4 of the Amended Complaint in so far as they relate to Landlord and Tenant, but deny that Freedman or Broad Creek Marina, Inc., are proper defendants in this action.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

5. In response to the allegations contained in Paragraph 5 of the Amended Complaint, Defendants restate and re-allege their prior responses.

6. Defendants admit the allegations contained in Paragraph 6 of the Amended Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of the Amended Complaint as written, but admit that Landlord is the successor-in-interest and assignee under the Lease Agreement.

8. Defendants admit the allegations contained in Paragraph 8 of the Amended Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Amended Complaint.

10. In response to the allegations contained in Paragraph 10 of the Amended Complaint, Defendants admit that the parties have had numerous problems and disputes and that the Release and Confidential Settlement Agreement ("Release and Settlement Agreement") represented an attempt to resolve some of those problems and disputes. However, Plaintiff has habitually failed and refused to honor the Release and Settlement Agreement.

11. In response to the allegations contained in Paragraph 11 of the Amended Complaint, Defendants deny the allegations, including subparts, and crave reference to the Release and Settlement Agreement.

12. Defendants deny the allegations contained in Paragraphs 12 through 15 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 15 or otherwise. Defendants further respond that Tenant's office space was relocated due to various circumstances and that Tenant agreed to relocate. Furthermore, as set forth more fully below, Tenant has declined to relocate into the Floating Office space despite Landlord's intention to relocate Tenant into the Floating Office.

AS TO THE SECOND CAUSE OF ACTION
(For a Declaratory Judgment Regarding the Office Space and Dock Lease)

13. In response to the allegations contained in Paragraph 16 of the Amended Complaint, Defendants restate and re-allege their prior responses.

14. Defendants admit the allegations contained in Paragraph 17 of the Amended Complaint.

15. Defendants deny the allegations contained in Paragraphs 18 through 22 of the Amended Complaint, and further respond that Landlord has complied with its relevant obligations during a timeframe when Tenant's business has exponentially increased.

16. In response to the allegations contained in Paragraph 23 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

17. In response to the allegations contained in Paragraph 24 of the Amended Complaint, Defendants deny the allegations and crave reference to the Release and Settlement Agreement.

18. Defendants deny the allegations contained in Paragraphs 25 and 26 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 26 or otherwise.

AS TO THE THIRD CAUSE OF ACTION
(Trespass)

19. In response to the allegations contained in Paragraph 27 of the Amended Complaint, Defendants restate and re-allege their prior responses.

20. In response to the allegations contained in Paragraph 28 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same and demand strict proof thereof.

21. In response to the allegations in Paragraph 29 of the Amended Complaint, Defendants admit only that Daufuskie Island is not connected to the mainland by a road, but deny the remaining allegations.

22. Defendants deny the allegations in Paragraph 30 of the Amended Complaint and further respond that the terms of Exhibit A to the Lease Agreement, as amended, speak for themselves.

23. Defendants deny the allegations in Paragraph 31 of the Amended Complaint, and further respond that Defendants are entitled to "access" Broad Creek and associated marshlands without specific authorization from the State or any applicable regulatory body.

24. In response to the allegations contained in Paragraph 32 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same and demand strict proof thereof.

25. Defendants deny the allegations contained in Paragraphs 33 through 39 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraphs 38 and 39 or otherwise.

AS TO THE FOURTH CAUSE OF ACTION
(In the alternative, Private Nuisance)

26. In response to the allegations contained in Paragraph 40 of the Amended Complaint, Defendants restate and re-allege their prior responses.

27. Defendants deny the allegations contained in Paragraphs 41 through 44 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 44 or otherwise.

AS TO THE FIFTH CAUSE OF ACTION
(Negligence)

28. In response to the allegations contained in Paragraph 45 of the Amended Complaint, Defendants restate and re-allege their prior responses.

29. In response to the allegations contained in Paragraph 46 of the Amended Complaint, Defendants deny the allegations and crave reference to the Release and Settlement Agreement.

30. Defendants deny the allegations contained in Paragraphs 47 and 48 of the Amended Complaint.

31. In response to the allegations contained in Paragraph 49 of the Amended Complaint, Defendants admit only that their counsel received a letter from counsel for Plaintiff dated June 9, 2014, but deny the remaining allegations contained in Paragraph 49.

32. Defendants deny the allegations contained in Paragraphs 50 through 53 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 53 or otherwise.

AS TO THE SIXTH CAUSE OF ACTION
(Prayer for Temporary and Permanent Injunctive Relief)

33. In response to the allegations contained in Paragraph 54 of the Amended Complaint, Defendants deny the allegations and crave reference to the letter.

34. In response to the allegations contained in Paragraph 55 of the Amended Complaint, Defendants deny the allegations, including subparts, and crave reference to the Affidavit of William P. Scurry, which Defendants vigorously contest.

35. In response to the allegations contained in Paragraph 56 of the Amended Complaint, Defendants deny the allegations, including subparts, and crave reference to the Temporary Injunction.

36. Defendants deny the allegations contained in Paragraphs 57 and 58 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraphs 57 and 58 or otherwise.

AS TO THE SEVENTH CAUSE OF ACTION
(Sanctions for contempt for violation of existing Temporary Injunction)

37. Defendants deny the allegations contained in Paragraphs 59 and 60 of the Amended Complaint, but admit that, consistent with the terms of the Lease Agreement, the

Temporary Injunction, and property rights, Landlord made use of certain areas of the property for business purposes, including a bungee jump.

38. In response to the allegations contained in Paragraph 61 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same.

39. In response to the allegations contained in Paragraphs 62 and 63 of the Amended Complaint, Defendants deny the allegations and crave reference to the letters and communications with regard to Plaintiff's various allegations.

40. Defendants deny the allegations contained in Paragraphs 64 through 68 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 68 or otherwise, but admit only that counsel for Plaintiff has written various letters and leveled various allegations.

AS TO THE EIGHTH CAUSE OF ACTION
(Request for a Declaratory Judgment regarding competing ferry service at Broad Creek Marina)

41. In response to the allegations contained in Paragraph 69 of the Amended Complaint, Defendants restate and re-allege their prior responses.

42. Defendants admit the allegations contained in Paragraph 70 of the Amended Complaint.

43. Defendants admit the allegations contained in Paragraph 71 of the Amended Complaint.

44. In response to the allegations contained in Paragraphs 72 and 73 of the Amended Complaint, Defendants admit only that Plaintiff and Hilton Head Island Marina, L.P., entered into a 99-year Lease Agreement on or about September 23, 1993 ("Lease Agreement"), and a

written Release and Confidential Settlement Agreement dated on or about December 13, 2004 ("Release and Settlement Agreement"). Defendants further admit only that Defendant Broad Creek Marina of Hilton Head, LLC is the successor-in-interest to Hilton Head Island Marina, L.P., under the Lease Agreement and the Release and Settlement Agreement. Defendants deny that Freedman or Broad Creek Marina, Inc., are parties to the Lease Agreement and the Release and Settlement Agreement and deny the remaining allegations contained in Paragraphs 72 and 73. Freedman is not "individually bound" to any agreement that he has not entered in his personal capacity.

45. In response to the allegations contained in Paragraph 74 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

46. Defendants deny the allegations contained in Paragraph 75 of the Amended Complaint. The term "marina" describes the marina, which is Broad Creek Marina, and is neither a defined term nor a reference to Freedman personally or any entity other than Landlord or other tenants within Broad Creek Marina.

47. In response to the allegations contained in Paragraph 76 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

48. In response to the allegations contained in Paragraph 77 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same.

49. In response to the allegations contained in Paragraph 78 of the Amended Complaint, Defendants deny the allegations and state that the relevant portion of the Lease Agreement, within Section 12, indicates that "[t]he marina is excluded from competing with the

Tenant's commercial ferry and barge service. Other operations of the Tenant are non-exclusive." Defendants further state that the word "marina" is not a defined term in the Lease Agreement.

50. In response to the allegations contained in Paragraph 79 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same.

51. Defendants deny the allegations contained in Paragraph 80 of the Amended Complaint.

52. In response to the allegations contained in Paragraph 81 of the Amended Complaint, Defendants admit only that Plaintiff served Requests to Admit upon Defendants in a formerly pending action in Beaufort County's Court of Common Pleas that was assigned Civil Action No.: 2010-CP-07-5068 and that has been consolidated into this case. Defendants deny the remaining allegations contained in Paragraph 81.

53. In response to the allegations contained in Paragraph 82 of the Amended Complaint, Defendants admit only that Plaintiff served Requests to Admit upon Defendants, but deny the remaining allegations contained in Paragraph 82.

54. Defendants admit the allegations contained in Paragraph 83 of the Amended Complaint.

55. In response to the allegations contained in Paragraph 84 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

56. Defendants admit the allegations contained in Paragraphs 85 through 87 of the Amended Complaint.

57. In response to the allegations contained in Paragraph 88 of the Amended Complaint, Defendants deny and allegations and further state that Freedman and Broad Creek

Marina, Inc., are not parties to any written agreements with Plaintiff relating to the property commonly known as Broad Creek Marina.

58. In response to the allegations contained in Paragraph 89 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

59. Defendants deny the allegations contained in Paragraph 90 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 90 or otherwise.

AS TO THE NINTH CAUSE OF ACTION
(Prayer for Permanent Injunctive Relief regarding Defendants' operation of a commercial ferry service from Broad Creek Marina)

60. In response to the allegations contained in Paragraph 91 of the Amended Complaint, Defendants restate and re-allege their prior responses.

61. Defendants deny the allegations contained in Paragraph 92 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 92 or otherwise.

62. Defendants deny the allegations contained in the "WHEREFORE" clause of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A THIRD DEFENSE
(Failure to State a Claim)

63. The Amended Complaint fails to state a claim for which relief can be granted and therefore should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Unclean Hands/In Pari Delicto)

64. Plaintiff's claims are barred by doctrines of unclean hands and in pari delicto.

FOR A FIFTH DEFENSE
(Waiver)

65. Plaintiff's claims are barred due to waiver.

FOR A SIXTH DEFENSE
(Estoppel)

66. Plaintiff's claims are barred by the doctrine of estoppel.

FOR A SEVENTH DEFENSE
(Laches)

67. Plaintiff's claims are barred by the doctrine of laches.

FOR AN EIGHTH DEFENSE
(Failure to Mitigate Damages)

68. Plaintiff's claims are barred to the extent that Plaintiff has failed to mitigate damages, if any.

FOR A NINTH DEFENSE
(Prior Breach)

69. Some or all of Plaintiff's claims should be dismissed because Plaintiff breached its promises and obligations to Defendants.

FOR A TENTH DEFENSE
(Lack of Standing)

70. Plaintiff's claims for trespass and private nuisance should be dismissed because Plaintiff lacks standing to assert such claims relating to physical areas that are under the ownership, jurisdiction and control of the State of South Carolina.

FOR AN ELEVENTH DEFENSE
(Additional Defenses)

71. Defendants assert all of their additional affirmative defenses that may be revealed during the course of discovery in this action.

FOR A TWELFTH DEFENSE AND
IN SUPPORT OF DEFENDANTS' COUNTERCLAIMS

72. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

73. Due to multiple acts of negligence on the part of Tenant, there has been significant property damage to the Marina and interference with the operations of the Marina, Landlord's other operations, and the operations of other tenants. In terms of physical damage, several single pilings have been forcibly wedged at an angle into the concrete pier as a result of the barge colliding into the pilings. Furthermore, when Tenant's barge is moored, the physical weight of the barge pushes against the concrete pier as a result of the displaced single pilings. Also, Tenant has negligently rammed its vessels into the floating docks, causing additional damage that Tenant has unlawfully refused to repair, including an incident as recently as October 20, 2014, where Tenant crashed into the Marina causing significant damage and having potentially life-threatening consequences. To address these circumstances, Landlord will incur significant expense to repair the concrete pier, which expenses are the Tenant's responsibility.

74. The relevant provisions of the Lease Agreement state: that barge operations must not interfere with the operations of the marina and that Tenant is responsible for the maintenance and repairs that become necessary as a result of barge operations. The following excerpts from the Lease Agreement address these issues:

> Non-Interference. As stated in paragraph 8 herein, none of the Lease Property shall be used as a parking or staging area for the barge service. All barge traffic

shall proceed via the "access" to the barge as provided for in paragraph 9 herein. **The barge operations shall be conducted in a manner so as not to interfere with any and all operations of the marina and other operations on the Property. All barge operations shall be maintained solely by Tenant, including but not limited to, maintenance of the barge ramp.** Workers, passengers, invitees, employees, guests, and all other persons shall not loiter in and around the barge area or on the Property.

* * *

Maintenance and Repair. [. . .] **Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair**, neat and clean and generally in a manner consistent with the operation of a first class marina.

75. Unfortunately, Tenant has breached these duties in numerous respects and has failed to operate its business activities in a safe and appropriate manner that does not interfere with any and all operations of the marina and other operations on the Property.

76. Tenant's unsafe and reckless actions are exacerbated by the fact that Tenant has also refused to comply with provisions of the Lease Agreement relating to insurance. The Lease Agreement between the parties includes Paragraph 17, entitled "Liability Insurance," which provides as follows in relevant part:

Liability Insurance. [...] Tenant agrees to pay, upon demand, as Additional Rent, any and all premiums of insurance carried by the Landlord on the Property resulting from Tenant's use or occupancy. **Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the insured** with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof.

77. On July 30, 2014, counsel for Defendants wrote a letter to counsel for Tenant requesting copies of the relevant insurance policies and confirmation of Landlord's status as an

additional named insured on Tenant's insurance policies. Tenant initially refused to provide the information, but then provided it upon making an admission that Tenant had failed to cause Landlord to be named as an additional named insured. Tenant's failure to name Landlord as an additional named insured exposes Landlord to significant potential losses due to the increasingly high-volume, yet increasingly unsafe character of Tenant's operations.

78. Tenant has also failed to comply with numerous other provisions in the Release and Settlement Agreement, such that Tenant fails and refuses to pay amounts owed to Landlord as they become due. For example, the Release and Settlement Agreement includes Paragraph 1(e), entitled "Common Area Charges," which provides as follows:

> **Common Area Charges.** J & W agrees to pay all common area charges as identified in the Lease that come due and payable beginning January 2005. The formula for determining amounts due and payable by the Parties for common area charges is attached as Exhibit F. HHIM agrees to waive any and all previously accrued charges.

However, Tenant has failed and refused to pay its agreed-upon share of Common Area Charges, causing Landlord to incur damages.

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

79. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

80. The Lease Agreement is an enforceable contract between Tenant and Landlord, as is the Release and Settlement Agreement.

81. Tenant, however, has violated numerous provisions of the Lease Agreement and the Release and Settlement Agreement, including failing to cause Landlord to be named as an additional insured on its insurance policies pursuant to Paragraph 17 of the Lease Agreement, failing to pay Additional Rent for property taxes, Landlord's insurance, utilities, sales taxes,

maintenance, and related charges, which constitutes breach of contract and entitles Landlord to recover damages.

82. Furthermore, Tenant has caused its barge operations to interfere with the operations of the marina in violation of Paragraph 14 of the Lease Agreement, which is a breach of the Lease Agreement causing damages to Landlord.

83. Furthermore, after crashing its vessels into the marina, Tenant has failed to make necessary repairs as provided in Paragraph 18 of the Lease Agreement, which states in pertinent part that "Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina."

84. Tenant failed to provide notice to Landlord that its barge operations have resulted in physical damage to the Property in violation of Paragraph 26 of the Lease Agreement, which provides in pertinent part as follows:

> Damages to or Destruction of Property. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith," Tenant shall apply for all necessary permits and approvals and shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business.

It is fully anticipated that additional discovery will yield several more instances of collisions and crashes that Tenant has failed to report, which not only violates the Lease Agreement but also violates the state and federal laws and regulations that govern Tenant's activities.

85. The barge operations conducted by Tenant have created a dangerous condition as a result of contact between the barge and the existing pilings. The existing single pilings are

inadequate to withstand contact with the barge and provide insufficient protection to the concrete pier.

86. In addition to the breaches of the Lease Agreement set forth above, Tenant has expanded and changed the scope of its business beyond that stated or contemplated in the Lease Agreement. Tenant's barge operations now interfere with Landlord's operations, as well as those of other tenants, all in violation of the Lease Agreement. As additional instances of breach of contract on the part of Tenant that have resulted in damages to Landlord: (a) Tenant has operated a "long-term parking" business on the Premises in violation of the Lease Agreement; (b) Tenant and its Invitees have used areas that are not part of the Premises and are the leased property of other businesses; (c) Tenant has caused damage to various parts of the Premises without repairing that damage; (d) Tenant has refused to dispose of its own garbage; (e) Tenant has refused to separately meter its utilities; and (f) Tenant has violated the provisions of the Lease Agreement requiring Tenant to make all fuel purchases from Landlord, causing Landlord to be deprived of an intended contribution to overhead.

87. Tenant's breaches of the Lease Agreement are material to the agreement it entered into with Landlord.

88. Tenant's breaches of the Lease Agreement have proximately caused Landlord to suffer damages including, but not limited to, property damage, repairs, maintenance, the cost of enforcing the covenants contained in the Lease Agreement, and the actual and consequential damages arising from the various breaches outlined above.

89. Landlord is entitled to all costs and reasonable attorney's fees incurred in enforcing the covenants contained in the Lease Agreement pursuant to Paragraph 36 of the Lease

Agreement and other provisions of the Lease Agreement and the Release and Settlement Agreement, as well as prejudgment interest.

FOR A SECOND COUNTERCLAIM
(Specific Performance)

90. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

91. The Release and Settlement Agreement includes a paragraph entitled "Office Space," which provides in relevant part as follows:

> a. Office Space. i. HHIM will seek approval from the necessary regulatory authorities for the replacement of the floating store. . . Any replacements of the floating store must be of a design and construction acceptable to HHIM. J & W agrees to accept 300 usable square feet in full substitution for office space located in the southwestern end of the store. The usable 300 square feet . . . shall have a separate entrance and shall be an enclosed space with appropriate ventilation and windows and shall be provided with the same utility services as the remainder of the New Floating Store. Said utilities shall be separately metered and shall be the sole responsibility of J & W.

92. Landlord is ready, willing and able to relocate Tenant to the Floating Store, but Tenant declines to cooperate, placing inapplicable conditions and contingencies before it will agree to move. As a result, Tenant has failed to uphold its obligation to relocate to the newly constructed Floating Store and continues to occupy the office space located in the Marina Office.

93. Landlord has no adequate remedy at law for Tenant's failure to relocate to the newly constructed Floating Store, refusal to name Landlord as an additional named insured, and refusal to pay Additional Rent, such that Landlord is entitled to an order of specific performance compelling Tenant to comply with the relevant aspects of the Lease Agreement and the Release and Settlement Agreement.

94. Landlord also seeks specific performance of Tenant's obligation to name Landlord as an additional named insured on Tenant's policies, to compel Tenant to pay

Additional Rent, and to compel Tenant's obligation to allow Landlord its rightful use of the overall property, allow Landlord its rightful ability to reconfigure access, prevent Tenant's use and abuse of Landlord's property that is not subject to the Lease Agreement, prevent Tenant from using property belonging to other entities that is not part of the leased premises, including restrooms, require Tenant to separately meter its utilities, and to enforce Tenant's obligation not to interfere with Landlord's overall operations or those of the other tenants, along with an award of attorney's fees pursuant to the relevant provisions of the Lease Agreement.

FOR A THIRD COUNTERCLAIM
(Negligence)

95. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

96. Tenant is the operator of the commercial barge and ferry on the Property and owes a duty to Landlord and Defendants to exercise reasonable care while operating the barges and ferries.

97. On several occasions, Tenant has crashed its vessels into the docks, piers and wetlands at the Marina, which resulted in substantial structural damage.

98. Tenant breached its duty of care to Defendants by recklessly, willfully, and wantonly failing to exercise reasonable care while operating its barges. Also, a duty arises by contract, namely the Lease Agreement, that Tenant's activities be conducted in such a manner as not to interfere with Landlord's operations at the Marina, other portions of Landlord's property, and the operations of other tenants.

99. As a result of the frequent crashes and collisions involving Tenant's barge operations, Landlord has incurred substantial property damage, and will continue to incur substantial damages relating to the interruption of its business and lost profits.

100. Tenant's negligence is the direct and proximate cause of the damage to Landlord's Property and Landlord's operations.

101. Landlord is entitled to an award of actual, consequential, and punitive damages in an amount to be determined at the trial of this action.

WHEREFORE, having fully answered the Amended Complaint, and asserted their counterclaims, Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC, Roger M. Freedman, and Broad Creek Marina, Inc., respectfully pray that the Court dismiss the Amended Complaint with prejudice and that Plaintiff recover nothing by reason of the Amended Complaint; that the Court enter a judgment in Defendants' favor on their counterclaims, including an award of actual damages, consequential damages, punitive damages, attorney's fees, and prejudgment interest; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: _____

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Attorneys for Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Island Marina, LLC, Roger M. Freedman, and Broad Creek Marina, Inc.

May 25, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	Civil Action No.: 2015-CP-07-1704
J & W Corporation of Greenwood,)	
Plaintiff,)	
vs.)	**REPLY OF PLAINTIFF J & W CORPORATION OF GREENWOOD TO DEFENDANTS' ANSWER TO THE AMENDED COMPLAINT AND COUNTERCLAIMS**
Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC, Roger M. Freedman, and Broad Creek Marina, Inc.)	
Defendants.)	

TO: DEFENDANTS BROAD CREEK MARINA OF HILTON HEAD, LLC F/K/A HILTON HEAD MARINA, LLC, ROGER M. FREEDMAN AND BROAD CREEK MARINA, INC. BY AND THROUGH THEIR LEGAL COUNSEL ELLIS R. LESEMANN:

THE PLAINTIFF J & W CORPORATION OF GREENWOOD, by and through its undersigned counsel of record, replies as follows to these Defendants' Answer to the Amended Complaint and Counterclaims:

1. The Plaintiff J & W Corporation of Greenwood (hereinafter sometimes referred to as "J & W") denies each and every allegation of this Defendants' Counterclaims not hereinafter specifically and expressly admitted.

2. Paragraphs 1-72 of the Answer do not require a response from J & W, but to the extent they may be interpreted to require a response, they are denied and strict proof is demanded thereof.

3. As to Paragraph 73, the Plaintiff denies that it has committed multiple acts of negligence, caused significant property damage nor interfered with the operations of the marina. The Plaintiff admits its barge has made contact with wooden posts that were negligently placed in the area by the Defendants after notice that they were an impediment to navigation in the barge creek. Plaintiff denies the Defendants will incur any significant expenses to repair damages to the pier caused by any actions of the Plaintiff.

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4. As to Paragraph 74, the Plaintiff craves reference to the Lease Agreement and to the extent it varies from the paragraph, denies the allegations.

5. The allegations contained in Paragraph 75 are denied.

6. The allegations contained in Paragraph 76 are denied because the requirements regarding Liability Insurance contained in the original Lease Agreement were changed by Settlement Agreement.

7. The allegations contained in Paragraph 77 concerning a letter being written dated July 30, 2014, are admitted. The remaining allegations of the paragraph are denied.

8. The allegations contained in Paragraph 78 are denied.

9. The responses contained in Paragraphs 1 through 8 above are repeated in reply to Paragraph 79.

10. The allegations of Paragraph 80 are admitted.

11. The allegations contained in Paragraphs 81 through 85 are denied.

12. The allegations contained in Paragraphs 86, 87, 88 and 89 are denied.

13. The responses contained in Paragraphs 1 through 12 above are repeated in reply to Paragraph 90.

14. As to Paragraph 91, the Plaintiff craves reference to the Release and Settlement Agreement and to the extent it varies from the paragraph, denies the allegations.

15. As to the allegations contained in Paragraph 92, the Plaintiff contends that a plain reading of the Release and Settlement Agreement shows the Defendants have long-since waived the provision relating to "re-location" of the Plaintiff to a "floating store," and are in breach of the Release and Settlement Agreement by failing to relocate the Plaintiff to a mutually agreeable building in the main marina area. Thus, the allegations of Paragraph 92 are denied.

16. The allegations of Paragraph 93 are denied.

17. Paragraph 94 does not contain allegations of fact against the Plaintiff, but to the extent it may be interpreted as doing so, they are denied.

18. The responses contained in Paragraphs 1 through 17 above are repeated in reply to Paragraph 95.

19. The allegations of Paragraph 96 are admitted.

20. Regarding the allegations of Paragraph 97, the Plaintiff denies it has crashed its vessels in the docks, piers and wetlands at the Marina "on several occasions," but admits that it did so on one occasion and that its insurance company has fully reimbursed the Defendant for all damages suffered therein, and that a complete Release has been signed by the Defendants as to that claim.

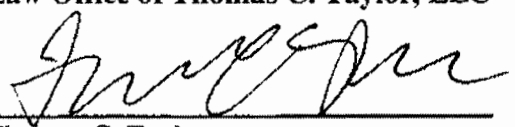
21. Regarding Paragraph 98, the Plaintiff denies it breached its duty of care to the Defendant. Further, the Plaintiff denies that it has breached any duty arising under contract.

22. The allegations contained in Paragraphs 99, 100 and 101 are denied.

23. Any allegations made in Counterclaim that have not been specifically admitted, denied or otherwise addressed above, are denied.

WHEREFORE, having set forth its Reply to the Defendants' Counterclaims, the Plaintiff J & W Corporation of Greenwood prays that this Honorable Court inquire more fully into the matters alleged herein, dismiss the Counterclaims asserted by the Defendants and award the Plaintiff the relief sought by the Amended Complaint for Damages, Temporary and Permanent Injunctive Relief and For a Declaratory Judgment.

Law Office of Thomas C. Taylor, LLC



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ATTORNEY FOR PLAINTIFF
J & W CORPORATION OF
GREENWOOD

June 24, 2016
Hilton Head Island, South Carolina

ELECTRONICALLY FILED - 2017 Sep 14 8:56 AM - BEAUFORT - COMMON PLEAS - CASE#2015CP0701704

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO.: 2015-CP-07-1704
J & W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a/ Hilton Head Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC. Defendants.	)	**DEFENDANTS' AMENDED ANSWER TO AMENDED COMPLAINT AND COUNTERCLAIMS**

Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC ("Landlord"), Roger M. Freedman ("Freedman"), and Broad Creek Marina, Inc., (collectively referred to as "Defendants"), by and through their undersigned counsel, hereby respond to Plaintiff J & W Corporation of Greenwood's ("Tenant" or "Plaintiff") Amended Complaint for Damages, for Temporary and Permanent Injunctive Relief and for a Declaratory Judgment and assert their counterclaims, as follows:

FOR A FIRST DEFENSE

Each and every allegation of the Amended Complaint not hereinafter specifically admitted is denied and strict proof thereof is demanded.

FOR A SECOND DEFENSE

1. Upon information and belief, Defendants admit the allegations contained in Paragraph 1 of the Amended Complaint.

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2. Defendants deny the allegations contained in Paragraph 2 of the Amended Complaint, but further respond that Landlord is duly organized under the laws of the State of South Carolina and is authorized to do business and doing business in Beaufort County, South Carolina.

3. Defendants admit the allegations contained in Paragraph 3 of the Amended Complaint, but deny that Freedman or Broad Creek Marina, Inc., are proper defendants in this action.

4. Defendants admit the allegations contained in Paragraph 4 of the Amended Complaint in so far as they relate to Landlord and Tenant, but deny that Freedman or Broad Creek Marina, Inc., are proper defendants in this action.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

5. In response to the allegations contained in Paragraph 5 of the Amended Complaint, Defendants restate and re-allege their prior responses.

6. Defendants admit the allegations contained in Paragraph 6 of the Amended Complaint.

7. Defendants deny the allegations contained in Paragraph 7 of the Amended Complaint as written, but admit that Landlord is the successor-in-interest and assignee under the Lease Agreement.

8. Defendants admit the allegations contained in Paragraph 8 of the Amended Complaint.

9. Defendants admit the allegations contained in Paragraph 9 of the Amended Complaint.

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10. In response to the allegations contained in Paragraph 10 of the Amended Complaint, Defendants admit that the parties have had numerous problems and disputes and that the Release and Confidential Settlement Agreement ("Release and Settlement Agreement") represented an attempt to resolve some of those problems and disputes. However, Plaintiff has habitually failed and refused to honor the Release and Settlement Agreement.

11. In response to the allegations contained in Paragraph 11 of the Amended Complaint, Defendants deny the allegations, including subparts, and crave reference to the Release and Settlement Agreement.

12. Defendants deny the allegations contained in Paragraphs 12 through 15 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 15 or otherwise. Defendants further respond that Tenant's office space was relocated due to various circumstances and that Tenant agreed to relocate. Furthermore, as set forth more fully below, Tenant has declined to relocate into the Floating Office space despite Landlord's intention to relocate Tenant into the Floating Office.

AS TO THE SECOND CAUSE OF ACTION
(For a Declaratory Judgment Regarding the Office Space and Dock Lease)

13. In response to the allegations contained in Paragraph 16 of the Amended Complaint, Defendants restate and re-allege their prior responses.

14. Defendants admit the allegations contained in Paragraph 17 of the Amended Complaint.

15. Defendants deny the allegations contained in Paragraphs 18 through 22 of the Amended Complaint, and further respond that Landlord has complied with its relevant obligations during a timeframe when Tenant's business has exponentially increased.

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16. In response to the allegations contained in Paragraph 23 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

17. In response to the allegations contained in Paragraph 24 of the Amended Complaint, Defendants deny the allegations and crave reference to the Release and Settlement Agreement.

18. Defendants deny the allegations contained in Paragraphs 25 and 26 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 26 or otherwise.

AS TO THE THIRD CAUSE OF ACTION
(Trespass)

19. In response to the allegations contained in Paragraph 27 of the Amended Complaint, Defendants restate and re-allege their prior responses.

20. In response to the allegations contained in Paragraph 28 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same and demand strict proof thereof.

21. In response to the allegations in Paragraph 29 of the Amended Complaint, Defendants admit only that Daufuskie Island is not connected to the mainland by a road, but deny the remaining allegations.

22. Defendants deny the allegations in Paragraph 30 of the Amended Complaint and further respond that the terms of Exhibit A to the Lease Agreement, as amended, speak for themselves.

23. Defendants deny the allegations in Paragraph 31 of the Amended Complaint, and further respond that Defendants are entitled to "access" Broad Creek and associated marshlands without specific authorization from the State or any applicable regulatory body.

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24. In response to the allegations contained in Paragraph 32 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same and demand strict proof thereof.

25. Defendants deny the allegations contained in Paragraphs 33 through 39 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraphs 38 and 39 or otherwise.

AS TO THE FOURTH CAUSE OF ACTION
(In the alternative, Private Nuisance)

26. In response to the allegations contained in Paragraph 40 of the Amended Complaint, Defendants restate and re-allege their prior responses.

27. Defendants deny the allegations contained in Paragraphs 41 through 44 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 44 or otherwise.

AS TO THE FIFTH CAUSE OF ACTION
(Negligence)

28. In response to the allegations contained in Paragraph 45 of the Amended Complaint, Defendants restate and re-allege their prior responses.

29. In response to the allegations contained in Paragraph 46 of the Amended Complaint, Defendants deny the allegations and crave reference to the Release and Settlement Agreement.

30. Defendants deny the allegations contained in Paragraphs 47 and 48 of the Amended Complaint.

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31. In response to the allegations contained in Paragraph 49 of the Amended Complaint, Defendants admit only that their counsel received a letter from counsel for Plaintiff dated June 9, 2014, but deny the remaining allegations contained in Paragraph 49.

32. Defendants deny the allegations contained in Paragraphs 50 through 53 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 53 or otherwise.

AS TO THE SIXTH CAUSE OF ACTION
(Prayer for Temporary and Permanent Injunctive Relief)

33. In response to the allegations contained in Paragraph 54 of the Amended Complaint, Defendants deny the allegations and crave reference to the letter.

34. In response to the allegations contained in Paragraph 55 of the Amended Complaint, Defendants deny the allegations, including subparts, and crave reference to the Affidavit of William P. Scurry, which Defendants vigorously contest.

35. In response to the allegations contained in Paragraph 56 of the Amended Complaint, Defendants deny the allegations, including subparts, and crave reference to the Temporary Injunction.

36. Defendants deny the allegations contained in Paragraphs 57 and 58 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraphs 57 and 58 or otherwise.

AS TO THE SEVENTH CAUSE OF ACTION
(Sanctions for contempt for violation of existing Temporary Injunction)

37. Defendants deny the allegations contained in Paragraphs 59 and 60 of the Amended Complaint, but admit that, consistent with the terms of the Lease Agreement, the

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Temporary Injunction, and property rights, Landlord made use of certain areas of the property for business purposes, including a bungee jump.

38. In response to the allegations contained in Paragraph 61 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same.

39. In response to the allegations contained in Paragraphs 62 and 63 of the Amended Complaint, Defendants deny the allegations and crave reference to the letters and communications with regard to Plaintiff's various allegations.

40. Defendants deny the allegations contained in Paragraphs 64 through 68 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 68 or otherwise, but admit only that counsel for Plaintiff has written various letters and leveled various allegations.

AS TO THE EIGHTH CAUSE OF ACTION
(Request for a Declaratory Judgment regarding competing ferry service at Broad Creek Marina)

41. In response to the allegations contained in Paragraph 69 of the Amended Complaint, Defendants restate and re-allege their prior responses.

42. Defendants admit the allegations contained in Paragraph 70 of the Amended Complaint.

43. Defendants admit the allegations contained in Paragraph 71 of the Amended Complaint.

44. In response to the allegations contained in Paragraphs 72 and 73 of the Amended Complaint, Defendants admit only that Plaintiff and Hilton Head Island Marina, L.P., entered into a 99-year Lease Agreement on or about September 23, 1993 ("Lease Agreement"), and a

written Release and Confidential Settlement Agreement dated on or about December 13, 2004 ("Release and Settlement Agreement"). Defendants further admit only that Defendant Broad Creek Marina of Hilton Head, LLC is the successor-in-interest to Hilton Head Island Marina, L.P., under the Lease Agreement and the Release and Settlement Agreement. Defendants deny that Freedman or Broad Creek Marina, Inc., are parties to the Lease Agreement and the Release and Settlement Agreement and deny the remaining allegations contained in Paragraphs 72 and 73. Freedman is not "individually bound" to any agreement that he has not entered in his personal capacity. As a further response, Defendants note that the Lease Agreement does not and cannot restrict the ownership or use of separate parcels of real property land that are not the subject of the Lease Agreement.

45. In response to the allegations contained in Paragraph 74 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

46. Defendants deny the allegations contained in Paragraph 75 of the Amended Complaint. The term "marina" describes the marina, which is Broad Creek Marina, and is neither a defined term nor a reference to Freedman personally or any entity other than Landlord or other tenants within Broad Creek Marina.

47. In response to the allegations contained in Paragraph 76 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

48. In response to the allegations contained in Paragraph 77 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same.

49. In response to the allegations contained in Paragraph 78 of the Amended Complaint, Defendants deny the allegations and state that the relevant portion of the Lease

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Agreement, within Section 12, indicates that "[t]he marina is excluded from competing with the Tenant's commercial ferry and barge service. Other operations of the Tenant are non-exclusive." Defendants further state that the word "marina" is not a defined term in the Lease Agreement.

50. In response to the allegations contained in Paragraph 79 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations, and therefore deny the same.

51. Defendants deny the allegations contained in Paragraph 80 of the Amended Complaint.

52. In response to the allegations contained in Paragraph 81 of the Amended Complaint, Defendants admit only that Plaintiff served Requests to Admit upon Defendants in a formerly pending action in Beaufort County's Court of Common Pleas that was assigned Civil Action No.: 2010-CP-07-5068 and that has been consolidated into this case. Defendants deny the remaining allegations contained in Paragraph 81.

53. In response to the allegations contained in Paragraph 82 of the Amended Complaint, Defendants admit only that Plaintiff served Requests to Admit upon Defendants, but deny the remaining allegations contained in Paragraph 82.

54. Defendants admit the allegations contained in Paragraph 83 of the Amended Complaint.

55. In response to the allegations contained in Paragraph 84 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

56. Defendants admit the allegations contained in Paragraphs 85 through 87 of the Amended Complaint.

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57. In response to the allegations contained in Paragraph 88 of the Amended Complaint, Defendants deny and allegations and further state that Freedman and Broad Creek Marina, Inc., are not parties to any written agreements with Plaintiff relating to the property commonly known as Broad Creek Marina.

58. In response to the allegations contained in Paragraph 89 of the Amended Complaint, Defendants deny the allegations and crave reference to the Lease Agreement.

59. Defendants deny the allegations contained in Paragraph 90 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 90 or otherwise.

AS TO THE NINTH CAUSE OF ACTION
(Prayer for Permanent Injunctive Relief regarding Defendants' operation of a commercial ferry service from Broad Creek Marina)

60. In response to the allegations contained in Paragraph 91 of the Amended Complaint, Defendants restate and re-allege their prior responses.

61. Defendants deny the allegations contained in Paragraph 92 of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in Paragraph 92 or otherwise.

62. Defendants deny the allegations contained in the "WHEREFORE" clause of the Amended Complaint and state that Plaintiff is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A THIRD DEFENSE
(Failure to State a Claim)

63. The Amended Complaint fails to state a claim for which relief can be granted and therefore should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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FOR A FOURTH DEFENSE
(Unclean Hands/In Pari Delicto)

64. Plaintiff's claims are barred by doctrines of unclean hands and in pari delicto.

FOR A FIFTH DEFENSE
(Waiver)

65. Plaintiff's claims are barred due to waiver.

FOR A SIXTH DEFENSE
(Estoppel)

66. Plaintiff's claims are barred by the doctrine of estoppel.

FOR A SEVENTH DEFENSE
(Laches)

67. Plaintiff's claims are barred by the doctrine of laches.

FOR AN EIGHTH DEFENSE
(Failure to Mitigate Damages)

68. Plaintiff's claims are barred to the extent that Plaintiff has failed to mitigate damages, if any.

FOR A NINTH DEFENSE
(Prior Breach)

69. Some or all of Plaintiff's claims should be dismissed because Plaintiff breached its promises and obligations to Defendants.

FOR A TENTH DEFENSE
(Lack of Standing)

70. Plaintiff's claims for trespass and private nuisance should be dismissed because Plaintiff lacks standing to assert such claims relating to physical areas that are under the ownership, jurisdiction and control of the State of South Carolina.

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FOR AN ELEVENTH DEFENSE
(Additional Defenses)

71. Defendants assert all of their additional affirmative defenses that may be revealed during the course of discovery in this action.

FOR A TWELFTH DEFENSE AND IN SUPPORT OF DEFENDANTS' COUNTERCLAIMS

72. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

73. Due to multiple acts of negligence on the part of Tenant, there has been significant property damage to the Marina and interference with the operations of the Marina, Landlord's other operations, and the operations of other tenants. In terms of physical damage, several single pilings have been forcibly wedged at an angle into the concrete pier as a result of the barge colliding into the pilings. Furthermore, when Tenant's barge is moored, the physical weight of the barge pushes against the concrete pier as a result of the displaced single pilings. Also, Tenant has negligently rammed its vessels into the floating docks, causing additional damage that Tenant has unlawfully refused to repair, including an incident as recently as October 20, 2014, where Tenant crashed into the Marina causing significant damage and having potentially life-threatening consequences. To address these circumstances, Landlord will incur significant expense to repair the concrete pier, which expenses are the Tenant's responsibility.

74. The relevant provisions of the Lease Agreement state: that barge operations must not interfere with the operations of the marina and that Tenant is responsible for the maintenance and repairs that become necessary as a result of barge operations. The following excerpts from the Lease Agreement address these issues:

> Non-Interference. As stated in paragraph 8 herein, none of the Lease Property shall be used as a parking or staging area for the barge service. All barge traffic

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shall proceed via the "access" to the barge as provided for in paragraph 9 herein. **The barge operations shall be conducted in a manner so as not to interfere with any and all operations of the marina and other operations on the Property. All barge operations shall be maintained solely by Tenant, including but not limited to, maintenance of the barge ramp.** Workers, passengers, invitees, employees, guests, and all other persons shall not loiter in and around the barge area or on the Property.

* * *

Maintenance and Repair. [. . .] **Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair**, neat and clean and generally in a manner consistent with the operation of a first class marina.

75. Unfortunately, Tenant has breached these duties in numerous respects and has failed to operate its business activities in a safe and appropriate manner that does not interfere with any and all operations of the marina and other operations on the Property.

76. Tenant's unsafe and reckless actions are exacerbated by the fact that Tenant has also refused to comply with provisions of the Lease Agreement relating to insurance. The Lease Agreement between the parties includes Paragraph 17, entitled "Liability Insurance," which provides as follows in relevant part:

Liability Insurance. [...] Tenant agrees to pay, upon demand, as Additional Rent, any and all premiums of insurance carried by the Landlord on the Property resulting from Tenant's use or occupancy. **Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the insured** with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof.

77. On July 30, 2014, counsel for Defendants wrote a letter to counsel for Tenant requesting copies of the relevant insurance policies and confirmation of Landlord's status as an

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additional named insured on Tenant's insurance policies. Tenant initially refused to provide the information, but then provided it upon making an admission that Tenant had failed to cause Landlord to be named as an additional named insured. Tenant's failure to name Landlord as an additional named insured exposes Landlord to significant potential losses due to the increasingly high-volume, yet increasingly unsafe character of Tenant's operations.

78. Tenant has also failed to comply with numerous other provisions in the Release and Settlement Agreement, such that Tenant fails and refuses to pay amounts owed to Landlord as they become due. For example, the Release and Settlement Agreement includes Paragraph 1(e), entitled "Common Area Charges," which provides as follows:

> **Common Area Charges**. J & W agrees to pay all common area charges as identified in the Lease that come due and payable beginning January 2005. The formula for determining amounts due and payable by the Parties for common area charges is attached as Exhibit F. HHIM agrees to waive any and all previously accrued charges.

However, Tenant has failed and refused to pay its agreed-upon share of Common Area Charges, causing Landlord to incur damages.

79. Furthermore, Tenant has failed to reimburse Landlord for the expenses incurred to repair the dock from the damage sustained during Hurricane Matthew in October 2016. Paragraph 6 of the Lease Agreement, entitled "Dock Repair," provides in part as follows:

> **Dock Repair**. As it becomes necessary to repair or replace the dock which is a portion of the Lease Property, Landlord shall complete said repairs or replacement and Tenant shall pay Landlord all costs attributed to its use, said costs to be paid as they are incurred by Landlord.

80. Landlord notified Tenant of the expenses incurred by Landlord for the necessary dock repairs in the amount of $44,548.00. However, Tenant has refused to uphold its obligation to indemnify Landlord for these costs and expenses in accordance with Paragraph 30 of the Lease Agreement, which provides as follows:

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Indemnity and Liability. ***Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorneys' fees arising from the occupancy or use by Tenant of the Property. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Property or as may result from any accident in or about the Property or which may be the result directly or indirectly from any act or neglect to the Property of which the lease is a part. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business.*** Landlord shall not be responsible or liable to Tenant or those claiming by, through or under Tenant for any loss or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Property. ***Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building constituting the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused or resulting from bursting, breakage, or by or from leakage, ice, running, backing up, seepage, or the overflow of water or sewage in any part of the Property or from any injury or damage caused by or resulting from acts of God or the elements or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, building, machinery, apparatus or equipment by any person or by or from the acts or negligence or any occupant of the Property.*** In the event Landlord transfers this Lease, except as collateral security for a loan, upon such transfer Landlord will be released from all liability and obligations hereunder. The indemnities provided in this Lease shall survive the termination or expiration of this Lease or any renewals; provided, however, Landlord shall be liable for the negligent acts of Landlord and its agents. (emphasis added).

81. Tenant's obligation to pay the costs and expenses incurred for the repair and maintenance is also set forth in the parties' Release and Settlement Agreement. Paragraph 1(f) of the Release and Settlement Agreement provides in part as follows:

> **New Docks**. HHIM agrees to pay for all costs related to the purchase and installation of new docks at the Marina. J&W agrees to be responsible for all costs of dock maintenance and repair for the Leased Property as contemplated in the Lease.

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FOR A FIRST COUNTERCLAIM
(Breach of Contract)

82. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

83. The Lease Agreement is an enforceable contract between Tenant and Landlord, as is the Release and Settlement Agreement.

84. Tenant, however, has violated numerous provisions of the Lease Agreement and the Release and Settlement Agreement, including failing to cause Landlord to be named as an additional insured on its insurance policies pursuant to Paragraph 17 of the Lease Agreement, failing to pay Additional Rent for property taxes, Landlord's insurance, utilities, sales taxes, maintenance, and related charges, which constitutes breach of contract and entitles Landlord to recover damages.

85. Furthermore, Tenant has caused its barge operations to interfere with the operations of the marina in violation of Paragraph 14 of the Lease Agreement, which is a breach of the Lease Agreement causing damages to Landlord.

86. Furthermore, after crashing its vessels into the marina, Tenant has failed to make necessary repairs as provided in Paragraph 18 of the Lease Agreement, which states in pertinent part that "Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina."

87. Tenant failed to provide notice to Landlord that its barge operations have resulted in physical damage to the Property in violation of Paragraph 26 of the Lease Agreement, which provides in pertinent part as follows:

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> Damages to or Destruction of Property. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith," Tenant shall apply for all necessary permits and approvals and shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business.

It is fully anticipated that additional discovery will yield several more instances of collisions and crashes that Tenant has failed to report, which not only violates the Lease Agreement but also violates the state and federal laws and regulations that govern Tenant's activities.

88. The barge operations conducted by Tenant have created a dangerous condition as a result of contact between the barge and the existing pilings. The existing single pilings are inadequate to withstand contact with the barge and provide insufficient protection to the concrete pier.

89. In addition to the breaches of the Lease Agreement set forth above, Tenant has expanded and changed the scope of its business beyond that stated or contemplated in the Lease Agreement. Tenant's barge operations now interfere with Landlord's operations, as well as those of other tenants, all in violation of the Lease Agreement. As additional instances of breach of contract on the part of Tenant that have resulted in damages to Landlord: (a) Tenant has operated a "long-term parking" business on the Premises in violation of the Lease Agreement; (b) Tenant and its Invitees have used areas that are not part of the Premises and are the leased property of other businesses; (c) Tenant has caused damage to various parts of the Premises without repairing that damage; (d) Tenant has refused to dispose of its own garbage; (e) Tenant has refused to separately meter its utilities; and (f) Tenant has violated the provisions of the Lease Agreement requiring Tenant to make all fuel purchases from Landlord, causing Landlord to be deprived of an intended contribution to overhead.

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90. Tenant has breached the following provisions of the Lease Agreement and the Release and Settlement Agreement relating to Tenant's obligation to reimburse Landlord for the costs and expenses incurred to repair and replace the dock: (i) Paragraph 6 of the Lease Agreement providing that Tenant shall pay Landlord all dock repair costs attributable to Tenant's use and shall pay the costs as incurred by Landlord; (ii) Paragraph 18 providing that Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair; (iii) Paragraph 26 of the Lease Agreement providing that, in the event of property damage due to any form of casualty, Tenant shall repair, restore, rebuild or replace the damaged Lease Property; (iv) Paragraph 30 of the Lease Agreement providing that Tenant shall indemnify Landlord for any and all damages, costs and expenses arising from the occupancy or use by Tenant of the Property; and (v) Paragraph 1(f) of the Release and Settlement Agreement in which Tenant agrees to be responsible for all costs of dock maintenance and repair for the Lease Property as contemplated in the Lease.

91. Tenant's breaches of the Lease Agreement are material to the agreement it entered into with Landlord.

92. Tenant's breaches of the Lease Agreement have proximately caused Landlord to suffer damages including, but not limited to, property damage, repairs, maintenance, the cost of enforcing the covenants contained in the Lease Agreement, and the actual and consequential damages arising from the various breaches outlined above.

93. Landlord is entitled to all costs and reasonable attorney's fees incurred in enforcing the covenants contained in the Lease Agreement pursuant to Paragraph 36 of the Lease Agreement and other provisions of the Lease Agreement and the Release and Settlement Agreement, as well as prejudgment interest.

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FOR A SECOND COUNTERCLAIM
(Specific Performance)

94. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

95. The Release and Settlement Agreement includes a paragraph entitled "Office Space," which provides in relevant part as follows:

> a. Office Space. i. HHIM will seek approval from the necessary regulatory authorities for the replacement of the floating store. . . Any replacements of the floating store must be of a design and construction acceptable to HHIM. J & W agrees to accept 300 usable square feet in full substitution for office space located in the southwestern end of the store. The usable 300 square feet . . . shall have a separate entrance and shall be an enclosed space with appropriate ventilation and windows and shall be provided with the same utility services as the remainder of the New Floating Store. Said utilities shall be separately metered and shall be the sole responsibility of J & W.

96. Landlord is ready, willing and able to relocate Tenant to the Floating Store, but Tenant declines to cooperate, placing inapplicable conditions and contingencies before it will agree to move. As a result, Tenant has failed to uphold its obligation to relocate to the newly constructed Floating Store and continues to occupy the office space located in the Marina Office.

97. Landlord has no adequate remedy at law for Tenant's failure to relocate to the newly constructed Floating Store, refusal to name Landlord as an additional named insured, and refusal to pay Additional Rent, such that Landlord is entitled to an order of specific performance compelling Tenant to comply with the relevant aspects of the Lease Agreement and the Release and Settlement Agreement.

98. Landlord also seeks specific performance of Tenant's obligation to name Landlord as an additional named insured on Tenant's policies, to compel Tenant to pay Additional Rent, and to compel Tenant's obligation to allow Landlord its rightful use of the overall property, allow Landlord its rightful ability to reconfigure access, prevent Tenant's use

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and abuse of Landlord's property that is not subject to the Lease Agreement, prevent Tenant from using property belonging to other entities that is not part of the leased premises, including restrooms, require Tenant to separately meter its utilities, and to enforce Tenant's obligation not to interfere with Landlord's overall operations or those of the other tenants, along with an award of attorney's fees pursuant to the relevant provisions of the Lease Agreement.

FOR A THIRD COUNTERCLAIM
(Negligence)

99. Defendants hereby reassert their responses contained in the preceding paragraphs and incorporate the same herein as if stated verbatim.

100. Tenant is the operator of the commercial barge and ferry on the Property and owes a duty to Landlord and Defendants to exercise reasonable care while operating the barges and ferries.

101. On several occasions, Tenant has crashed its vessels into the docks, piers and wetlands at the Marina, which resulted in substantial structural damage.

102. Tenant breached its duty of care to Defendants by recklessly, willfully, and wantonly failing to exercise reasonable care while operating its barges and ferries. Also, a duty arises by contract, namely the Lease Agreement, that Tenant's activities be conducted in such a manner as not to interfere with Landlord's operations at the Marina, other portions of Landlord's property, and the operations of other tenants.

103. As a result of the frequent crashes and collisions involving Tenant's barge and ferry operations, Landlord has incurred substantial property damage, and will continue to incur substantial damages relating to the interruption of its business and lost profits.

104. Tenant's negligence is the direct and proximate cause of the damage to Landlord's Property and Landlord's operations.

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105. Landlord is entitled to an award of actual, consequential, and punitive damages in an amount to be determined at the trial of this action.

WHEREFORE, having fully answered the Amended Complaint, and asserted their counterclaims, Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC, Roger M. Freedman, and Broad Creek Marina, Inc., respectfully pray that the Court dismiss the Amended Complaint with prejudice and that Plaintiff recover nothing by reason of the Amended Complaint; that the Court enter a judgment in Defendants' favor on their counterclaims, including an award of actual damages, consequential damages, punitive damages, attorney's fees, and prejudgment interest; and grant such other and further relief as the Court may deem just and proper.

Respectfully submitted,

By: *s/ Ellis R. Lesemann*
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Attorneys for Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Island Marina, LLC, Roger M. Freedman, and Broad Creek Marina, Inc.

September 13, 2017
Charleston, South Carolina

ELECTRONICALLY FILED - 2018 Nov 27 2:48 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
J & W CORPORATION OF GREENWOOD,	)	Case No.: 2018-CP-07-1622
Plaintiff,	)	
vs.	)	**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**
BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a/ Hilton Head Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.,	)	
Defendants.	)	

COME NOW Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC ("Landlord"), Roger M. Freedman ("Freedman"), and Broad Creek Marina, Inc. (collectively referred to as "Defendants"), by and through their undersigned counsel, hereby move the Court for an Order granting their Motion for Partial Summary Judgment against Plaintiff J&W Corporation of Greenwood ("Tenant" or "Plaintiff") on the grounds that there exists no genuine issue of material fact on the below-listed causes of action and that Defendants are entitled to judgment as a matter of law.

1. Plaintiff's **third cause of action for trespass** relating to Broad Creek fails because a private party is incapable of pursuing a claim for trespass regarding navigable waterways or wetlands owned exclusively by the State of South Carolina. A trespass is any interference with "one's right to the **exclusive**, peaceable possession of **his** property." *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 139, 747 S.E.2d 468, 473 (2013) (emphasis added). Neither Broad Creek nor the surrounding wetlands are Plaintiff's property. On this basis, Plaintiff's claim for trespass fails as a matter of law.

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2. Plaintiff's **fourth cause of action for private nuisance** fails because Plaintiff is incapable of pursuing a claim for private nuisance regarding property owned exclusively by the State of South Carolina. A nuisance, trespass's counterpart, provides a remedy for invasions of a property owner's right to the use and enjoyment of his property. *Clark v. Greenville Cnty.*, 313 S.C. 205, 209, 437 S.E.2d 117, 119 (1993). Neither Broad Creek nor the surrounding wetlands are Plaintiff's property. On this basis, Plaintiff's claim for private nuisance fails as a matter of law. Additionally, Plaintiff has failed to present any evidence that it has suffered any actual or substantial injury as a result of any action of Defendants. The South Carolina Supreme Court has held that recovery under a nuisance claim requires proof of actual and substantial injury. *Babb v. Lee Cty. Landfill SC, LLC*, 405 S.C. 129, 145, 747 S.E.2d 468, 476 (2013).

3. Plaintiff's **fifth cause of action for negligence** fails because Plaintiff fails to identify an applicable legal duty or breach of a legal duty, fails to create a question of fact as to proximate cause, and fails to create a question of fact as to damages. Additionally, by contract, Plaintiff contractually waived any claim for negligence relating to the condition of the Property, including the presence of other watercraft in the marina.

4. Plaintiff's **eighth cause of action for declaratory judgment** fails because Plaintiff is not entitled, as a matter of law, to declaratory judgment for the following reasons: (1) Plaintiff fails to state a justiciable controversy; (2) the Lease Agreement applies only to the property that is subject to the Lease Agreement; and (3) Defendants do not have any intention, nor have they ever had any intention, of operating a competing ferry service out of the property that is subject to the Lease Agreement. Furthermore, by contract, Plaintiff contractually waived its rights to seek judicial relief relating to the Ferry Operations governed by Paragraph 12 of the

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Lease Agreement by agreeing that any disagreement over the interpretation of Paragraph 12 of the Lease Agreement would be submitted to a single arbitrator for a binding decision.

5. Plaintiff's **ninth cause of action for permanent injunctive relief** fails because Plaintiff is not entitled, as a matter of law, to permanent injunctive relief for the following reasons: (1) Plaintiff fails to identify any threat of irreparable harm; (2) has failed to present any evidence that would tend to show the likelihood of Plaintiff's success on the merits; or (3) the absence of any adequate remedy at law. Defendants do not have any intention, nor have they ever had any intention, of operating a competing ferry service out of the property that is subject to the Lease Agreement. However, if Defendants were to attempt to operate a competing ferry service out of the property that is subject to the Lease Agreement, Plaintiff's remedy would be for money damages for a breach of contract, rather than any injunction. Furthermore, by contract, Plaintiff contractually waived its rights to pursue injunctive relief relating to the Ferry Operations governed by Paragraph 12 of the Lease Agreement by agreeing that any disagreement over the interpretation of Paragraph 12 of the Lease Agreement would be submitted to a single arbitrator for a binding decision.

6. Plaintiff has failed to present any evidence of lost profits, and for this reason any reference to lost profits must be stricken from Plaintiff's Amended Complaint. Proof of lost profits "may be established with reasonable certainty with the aid of expert testimony, economic and financial data, market surveys and analyses, business records of similar enterprises, and the like. *Moore v. Moore*, 360 S.C. 241, 254 (Ct. App. 2004).

7. Additionally, summary judgment should be granted to Defendant Roger Freedman on all causes of action asserted by Plaintiff. Mr. Freedman is not a party to the Lease

Agreement or the Release and Settlement Agreement. He owes no legal duty or contractual duty to Plaintiff.

WHEREFORE, as will be shown through the pleadings, discovery, applicable precedent, affidavits, depositions, memorandums, and any other admissible evidence presented to this this Court, Defendants respectfully request that their Motion for Partial Summary Judgment be granted.

Respectfully submitted,

By: *s/Ellis R. Lesemann*

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Attorneys for Defendants

November 27, 2018
Charleston, South Carolina

///

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ELECTRONICALLY FILED - 2019 May 10 2:43 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	
J & W CORPORATION OF GREENWOOD,)	Case No.: 2018-CP-07-1622
)	
Plaintiff,)	
)	**DEFENDANTS' MOTION TO QUASH SUBPOENA AND FOR A PROTECTIVE ORDER AND AN AWARD OF ATTORNEY'S FEES AND COSTS**
vs.)	
)	
BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a/ Hilton Head Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.,)	
)	
Defendants.)	

COME NOW Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC, and Broad Creek Marina, Inc. (collectively referred to as "Defendants"), by and through their undersigned counsel, and pursuant to Rules 45(b)(1), 45(c)(3)(A)(iv), and 26(c) of the South Carolina Rules of Civil Procedure, hereby move the Court for an Order quashing Plaintiff J&W Corporation of Greenwood's ("Plaintiff" or "Tenant") trial subpoenas served upon Robbin Rachels and Nate Jones ("Trial Subpoenas") and for a Protective Order and award of attorney's fees and costs associated with this Motion.

GROUNDS FOR MOTION

This matter has been litigated between Plaintiff and Defendants for over 7 years. The parties have engaged in extensive discovery. On January 29, 2019, this matter was scheduled for a date certain trial to begin on May 15, 2019.

Now, one week before trial, Plaintiff's counsel served the Subpoenas attached as Exhibit A on Nate Jones and Robbin Rachels, employees of the Defendants. Both of the Subpoenas command the appearance at trial by Mr. Jones and Ms. Rachels. The Subpoena served upon Nate

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Jones is accompanied by a 6-page single spaced Exhibit A seeking to command Mr. Jones to bring hundreds if not thousands of pages of documents with him to trial. The Subpoena served upon Ms. Rachels is accompanied by a similar 5-page single spaced Exhibit A seeking to command Ms. Rachels to bring hundreds if not thousands of pages of documents with her to trial.

As set forth more fully herein, Defendants seek to quash the untimely, burdensome, and oppressive Subpoenas issued on its employees, Nate Jones and Robbin Rachels, by Plaintiff for the following reasons:

1. The Subpoenas are improper and should be quashed because they were not served at least 10 days prior to the time specified for compliance, as required by Rule 45(b)(1) of the South Carolina Rules of Civil Procedure. Each Subpoena is dated May 8, 2019, only 7 days prior to the start of this trial.
2. The Subpoenas are improper and should be quashed because they impose an undue burden on Defendant and its employees, on the eve of trial, to respond and because they seek information that has already been provided by Defendants in discovery and instead is intended to oppress and harass Defendant in the final days leading up to trial.
3. Attorney's fees and costs should be awarded, pursuant to Rule 45(c)(1), because Plaintiff failed to take reasonable steps to avoid imposing an undue burden or expense Defendant.

This Motion is based upon the South Carolina Rules of Civil Procedure and applicable law, and/or any supplemental memorandum of law filed prior to or at any hearing scheduled on this Motion.

CONCLUSION

Based on the foregoing, Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton

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Head Marina, LLC, and Broad Creek Marina, Inc., respectfully request that the Court issue an Order quashing Plaintiff's Subpoenas served upon Nate Jones and Robbin Rachels, entering a Protective Order to prevent Plaintiff or Plaintiff's counsel from further harassing Defendants and/or their employees by serving any more similar improper Subpoenas seeking to command Defendants or their employees to produce the same or similar information at trial, and awarding Defendants their costs, including reasonable attorney's fees, associated with this Motion.

Pursuant to Rule 11(a), undersigned counsel certifies that, prior to filing this Motion, he attempted in good faith to resolve the matter at issue in this Motion.

Respectfully submitted,

By: *s/ J.Taylor Powell*
Ellis R. Lesemann
erl@lalawsc.com
J. Taylor Powell
jtp@lalawsc.com
Michelle A. Matthews
mam@lalawsc.com
LESEMANN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155

Attorneys for Defendants

May 9, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF BEAUFORT

J & W CORPORATION OF GREENWOOD,

Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a Hilton Head Island Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.,

2018-CP-07-1622

Defendants.

Pending in Beaufort County

TO: NATE JONES

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

PLACE OF TESTIMONY	COURTROOM 212
Courtroom of Judge Marvin H. Dukes Master in Equity and Special Circuit Judge Beaufort County Court House 102 Ribaut Road, Beaufort, SC 29902	DATE AND TIME May 15, 2019, 10:00 A.M.

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

SEE ATTACHED EXHIBIT A.

PLACE	DATE AND TIME
Courtroom of Judge Marvin H. Dukes Master in Equity and Special Circuit Judge Beaufort County Court House 102 Ribaut Road, Beaufort, SC 29902	May 15, 2019, 10:00 A.M.

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

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

05/08/2019

THOMAS C. TAYLOR, ATTORNEY
ATTORNEY FOR PLAINTIFF
22 Bow Circle, Ste. A, Hilton Head Island, SC 29928-(843)785-5050

Date

THOMAS C. TAYLOR, ESQ.

Clerk of Court/Issuing Officer's Signature

Date

Print Name

Pro Se Litigant's Name, Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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EXHIBIT A TO NATE JONES SUBPOENA
DOCUMENTS TO BE PRODUCED AT TRIAL ON MAY 15, 2019

a. Copies of all correspondence (including emails) between you and any representative of any insurance company regarding Broad Creek Marina's alleged damages suffered in Hurricane Matthew in October 2016.

b. Originals of all documents you have created, referred to or relied upon in putting together the alleged monies owed to Broad Creek Marina by the J & W Corporation of Greenwood as of the date of trial.

c. Copies of all documents referring to, relating to, or otherwise evidencing, any and all actions that you or any other representative of Broad Creek Marina have undertaken between January 1, 2005 and the date of trial, regarding any "floating offices" or "floating buildings" of any type at Broad Creek Marina. This request includes, but is not limited to, all documents showing any efforts to plan, construct or permit any type of "floating office" at BCM during this time frame.

d. Copies of all documents in Broad Creek Marina's possession, custody or control, referring to, relating to, or otherwise evidencing any and all "floating offices" that you contend Broad Creek Marina has provided to the J & W Corporation of Greenwood during the term of the 99-year Lease here at issue. This request specifically includes, but is not limited to, all documents evidencing what BCM paid for the "floating offices," how they sunk, the damages incurred when they sunk, any monies that BCM paid to J & W in reimbursement for their lost equipment, and the cost of removing the sunken "floating offices."

e. Copies of all documents referring to, relating to, or otherwise evidencing BCM's acquisition and/or construction of the "floating office" building/shed currently in use by or marked "Sky Pirates" at Broad Creek Marina. This request includes documents showing the acquisition of the building structure, acquisition of the floating base, labor for the "construction" of the floating office, and all blueprints/specifications for the building. In addition, this request includes all documents relating to any applications made or permits acquired allowing commercial usage of the building, from either DHEC/OCRM, Beaufort County or the Town of Hilton Head Island.

f. Copies of all applications made by Broad Creek Marina or any of its affiliates or officers, to construct, locate or make commercial use of any "floating offices" at Broad Creek Marina between January 1, 2005 and the date of trial. This request includes, but is not limited to, any applications to OCRM/DHEC or to the Town of Hilton Head Island.

g. Copies of all documents in your possession, custody or control, referring to, relating to, or otherwise evidencing any investigations, reviews, inspections or the like, that Broad Creek Marina or any of its agents, have conducted regarding the storage shed structure currently being used by the J & W Corporation of Greenwood as an office.

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h. Copies of all documents in your possession, custody or control, referring to, relating to, or otherwise evidencing any communications between Broad Creek Marina (or its officers) and the Town of Hilton Head Island, regarding the structure currently being used by the J & W Corporation of Greenwood as an office. This request specifically includes, but is not limited to, any paperwork, applications or permits, submitted to the Town when BCM "converted" the former boat storage shed into the "office."

i. Copies of all paperwork in your possession, custody or control, referring to, relating to, or otherwise evidencing the costs of the "conversion" or "construction" of the former boat storage garage into the current "office" being used by the J & W Corporation of Greenwood at Broad Creek Marina. This request specifically includes, but is not limited to, all documents indicating who was paid to do the "construction" or "conversion" work on the boat storage shed, when it was done, what plans were drawn up, what plans were used for the construction, and any paperwork submitted to the Town of Hilton Head Island for authorization or permission to construct or convert the building into a commercial office.

j. Copies of all paperwork referring to, relating to, or otherwise evidencing, all payments Broad Creek Marina (or any of its affiliates) have ever made to any person or entity for maintenance, repair or upkeep of the "office" that J & W is housed in at Broad Creek Marina. This request is specifically directed to documents that will show the total costs that Broad Creek Marina has paid to construct and/or maintain the "office" such as electrical improvements, roofing repairs, carpeting, plumbing or the like.

k. Copies of all documents in your possession, custody or control, showing any drawings, plans, specifications, ideas, or the like, for the construction of any alternative offices, buildings, sheds, or the like, that BCM has considered between January 1, 2005 and the date of trial, for the J & W Corporation of Greenwood.

l. Originals (or complete copies) of all insurance policies, premium invoices, and DEC sheets, procured by or on behalf of Broad Creek Marina (or whatever named entity was doing business as the "owner" of Broad Creek Marina at the time) for what you call "General Liability" insurance and "Docks & Piers" Insurance on those invoices tendered by both Broad Creek Marina Operations, LLC and Broad Creek Marina to the J & W Corporation of Greenwood under what you call the "Expense Reimb. Account" between January 1, 2009 and the date of trial. IN ADDITION, originals (or true and correct copies) of all documents referring to, relating to, or otherwise evidencing the actual amount of money that Broad Creek Marina paid for each policy of insurance (to include cancelled checks or bank statements), along with any paperwork showing any rebates or refund of premiums received by Broad Creek Marina on any of the aforementioned policies.

m. As to that entity known as Sonny C. Charters, Inc. and/or Sonny Compher, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the

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agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

n. As to that entity known as Sky Pirate Parasail and/or Doug Roth, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

o. As to that entity known as Island Skiff Adventure Tour and/or Jeff Gale, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and

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the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

p. As to that entity known as Cheers Charters and/or Bill Passoloukis, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

q. As to that entity known as Tail Tamer Fishing Charters and/or Terry Hall, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an

"additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

r. As to that entity known as Megabite Charter Fishing Hilton Head and/or Kent Bird, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

s. As to that entity known as Kayak Hilton Head and/or Dave Kerns, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

t. As to that entity known as Top Shot Sport Fishing and/or Jay Prescott, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for

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this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

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STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF BEAUFORT

J & W CORPORATION OF GREENWOOD,

Plaintiff,

v.

SUBPOENA IN A CIVIL CASE

BROAD CREEK MARINA OF HILTON HEAD, LLC f/k/a Hilton Head Island Marina, LLC, ROGER M. FREEDMAN, and BROAD CREEK MARINA, INC.,

2018-CP-07-1622

Defendants.

Pending in Beaufort County

TO: ROBBIN RACHELS

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

PLACE OF TESTIMONY	COURTROOM 212
Courtroom of Judge Marvin H. Dukes Master in Equity and Special Circuit Judge Beaufort County Court House 102 Ribaut Road, Beaufort, SC 29902	DATE AND TIME May 15, 2019, 10:00 A.M.

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

SEE ATTACHED EXHIBIT A.

PLACE	DATE AND TIME
Courtroom of Judge Marvin H. Dukes Master in Equity and Special Circuit Judge Beaufort County Court House 102 Ribaut Road, Beaufort, SC 29902	May 15, 2019, 10:00 A.M.

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

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

05/08/2019

Date

THOMAS C. TAYLOR, ESQ.

THOMAS C. TAYLOR, ATTORNEY
ATTORNEY FOR PLAINTIFF
22 Bow Circle, Ste. A, Hilton Head Island, SC 29928-(843)785-5050

Clerk of Court/Issuing Officer's Signature | Date | Print Name

Pro Se Litigant's Name, Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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EXHIBIT A TO ROBBIN RACHELS TRIAL SUBPOENA
DOCUMENTS TO BE PRODUCED AT TRIAL ON MAY 15, 2019

a. Copies of all correspondence (including emails) between you and any representative of any insurance company regarding Broad Creek Marina's alleged damages suffered in Hurricane Matthew in October 2016.

b. Originals of all documents you have created, referred to or relied upon in putting together the alleged monies owed to Broad Creek Marina by the J & W Corporation of Greenwood as of the date of trial.

c. Copies of all documents referring to, relating to, or otherwise evidencing all payments made by, or bills received by, Broad Creek Marina (or any affiliated or related entities) regarding the "floating office" building/shed currently in use by or marked "Sky Pirates" at Broad Creek Marina. This request includes documents showing the charges for acquisition of the building structure, acquisition of the floating base, and labor for the "construction" of the floating office.

d. Copies of all checks issued by Broad Creek Marina to DHEC/OCRM between January 1, 2005 and the date of trial, for permits or applications.

e. Copies of all checks issued by Broad Creek Marina to the Town of Hilton Head Island between January 1, 2005 and the date of trial, for development permits or development applications.

f. Copies of all financial paperwork (including copies of checks) referring to, relating to, or otherwise evidencing the costs of the "conversion" or "construction" of the former boat storage garage into the current "office" being used by the J & W Corporation of Greenwood at Broad Creek Marina. This request specifically includes, but is not limited to, all documents indicating who was paid to do the "construction" or "conversion" work on the boat storage garage.

g. Copies of all financial paperwork referring to, relating to, or otherwise evidencing, all payments Broad Creek Marina (or any of its affiliates) have ever made to any person or entity for maintenance, repair or upkeep of the "office" that J & W is housed in at Broad Creek Marina. This request is specifically directed to documents that will show the total costs that Broad Creek Marina has paid to construct and/or maintain the "office" such as electrical improvements, roofing repairs, carpeting, plumbing or the like.

h. Originals (or complete copies) of all insurance policies, premium invoices, and DEC sheets, procured by or on behalf of Broad Creek Marina (or whatever named entity was doing business as the "owner" of Broad Creek Marina at the time) for what you call "General Liability" insurance and "Docks & Piers" Insurance on those invoices tendered by both Broad Creek Marina Operations, LLC and Broad Creek Marina to the J & W

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Corporation of Greenwood under what you call the "Expense Reimb. Account" between January 1, 2009 and the date of trial. IN ADDITION, originals (or true and correct copies) of all documents referring to, relating to, or otherwise evidencing the actual amount of money that Broad Creek Marina paid for each policy of insurance (to include cancelled checks or bank statements), along with any paperwork showing any rebates or refund of premiums received by Broad Creek Marina on any of the aforementioned policies.

i. As to that entity known as Sonny C. Charters, Inc. and/or Sonny Compher, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

j. As to that entity known as Sky Pirate Parasail and/or Doug Roth, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

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k. As to that entity known as Island Skiff Adventure Tour and/or Jeff Gale, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

l. As to that entity known as Cheers Charters and/or Bill Passoloukis, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

m. As to that entity known as Tail Tamer Fishing Charters and/or Terry Hall, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever

named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

n. As to that entity known as Megabite Charter Fishing Hilton Head and/or Kent Bird, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

o. As to that entity known as Kayak Hilton Head and/or Dave Kerns, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage

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of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

p. As to that entity known as Top Shot Sport Fishing and/or Jay Prescott, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the gross revenues, net revenues or other sources of revenue for this entity on a yearly basis between 2010 and the date of trial, as were reported to you for purposes of computing lease/rental payments to Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence the Lease, Rental Agreement or other similar document executed between this entity and Broad Creek Marina or whatever named entity was doing business as the "landlord" at Broad Creek Marina when the agreement was entered, giving this entity any rights of access to, or usage of, any of the docks or lands of Broad Creek Marina between 2010 and the trial. IN ADDITION, any and all original documents (or complete copies) in your custody, possession or control, that refer to, relate to or otherwise evidence any insurance carried by this entity that in any way insures (or insured in the past) Broad Creek Marina's property, docks, buildings or other structures. IN ADDITION, copies of all certificates of insurance coverage or certificates of insurance showing Broad Creek Marina as an "additionally insured" on this entity's insurance policy tendered to Broad Creek Marina between 2010 and the trial.

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ELECTRONICALLY FILED - 2019 Jun 06 2:30 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT J & W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No.: 2018-CP-07-1622 **PLAINTIFF'S S.C.R.Civ.R. 59 (e) NOTICE OF MOTION AND MOTION TO ALTER OR AMEND JUDGMENT**

You will please take notice that the Plaintiff, by and through its undersigned counsel of record, will, ten (10) days after the filing of this Notice of Motion and Motion or at such other time that may be set by the Court, move the Hon. Marvin E. Dukes III to alter or amend his Interim Order entered in this matter on May 29, 2019, and reconsider certain matters properly encompassed in the Order.

As the basis for this Motion, the Plaintiff would show unto this Honorable Court that the Court's decision to assign responsibility for the future replacement of the new floating office to the Plaintiff is not in keeping with the letter and spirit of the controlling documents, to wit, it was clearly the intention of the parties in both the original Lease Agreement and the Confidential Settlement Agreement and Release, that the Defendant Landlord will provide the Plaintiff with a

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commercial office from which the Plaintiff can reasonably be expected to conduct its business during the course of the 99-year Lease. Plaintiff asserts that a floating office has a judicially recognizable life span of no more than 20 years on the salt waters of coastal South Carolina, and that since the Defendant Landlord has chosen (and the Court has adopted) the provision of a new floating office as opposed to the location of the new office in the permitted Dockmaster's Office location or on high ground, that it would be just and proper for the Defendant to remain responsible for the provision of a new floating office at that point in the future when the 2019 floating office ceases to be functional as a commercial floating office in the normal and expected life span of a building constructed to float upon and be used in the salt water of the Broad Creek Marina in Hilton Head island, SC.

This Motion may be supported by Affidavits and/or a Memorandum in Support.

I SO MOVE.

Law Office of Thomas C. Taylor, LLC
S/Thomas C. Taylor
Thomas C. Taylor
SC Bar No.: 5499
P.O. Box 5550
Hilton Head Isl., SC 29938
Phone: 843-785-5050
Fax: 843-785-5030
Email: tom@thomastaylorlaw.com

ATTORNEY FOR PLAINTIFF
J & W CORPORATION OF GREENWOOD

Hilton Head Island, South Carolina
June 6, 2019

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ELECTRONICALLY FILED - 2019 Sep 26 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA)) COUNTY OF BEAUFORT)	BEFORE THE MASTER-IN-EQUITY
J & W CORPORATION OF GREENWOOD,)) Plaintiff,)	Case No.: 2018-CP-07-1622
vs.)	**DEFENDANTS' MOTION TO IMPLEMENT AND ENFORCE THE MASTER'S INTERIM ORDER, OR IN THE ALTERNATIVE, FOR RELIEF FROM THE INTERIM ORDER**
BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC,)) Defendants.)	

In connection with this ongoing landlord/tenant dispute, the landlord has confirmed and is prepared to implement a suitable "floating office" solution. The tenant, however, refuses to accept the solution and is attempting to impose demands relating to the floating office that exceed the provisions of the relevant documents and this Court's Interim Order, adding more delay, burden and expense to what the landlord has already endured.

For these reasons, as will be described more fully in further pleadings and in arguments presented to the Court, Defendant Broad Creek Marina Properties, LLC ("Landlord"), hereby moves for an order requiring Plaintiff J&W Corporation of Greenwood ("Tenant") to cooperate and comply with this Court's Interim Order Relating to Relocation of Plaintiff's Office Space dated May 29, 2019 ("Interim Order").

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I. LANDLORD IS PREPARED TO PROCURE AND PROVIDE A FLOATING OFFICE TO RESOLVE THIS ISSUE WITHOUT FURTHER LITIGATION

Following Tenant's refusal of the Aqua Lodge Floating Vessel, Landlord seeks an order affirming that a customized 12' x 32' Aqua Lodge vessel ("Aqua Lodge Floating Office") manufactured by Catamaran Cruisers satisfies all relevant requirements of: (1) the Lease Agreement ("Lease") dated September 23, 1993; (2) the Release and Confidential Settlement Agreement dated December 13, 2004 ("Settlement Agreement"); and (3) this Court's Interim Order. The Aqua Lodge Floating Office will have the specifications shown in Exhibit A. To procure the Aqua Lodge Floating Office, Landlord will pay Sixty-Two Thousand Nine Hundred Sixty and 00/100 Dollars ($62,960.00). As set forth in the attached signed statement of Dirk Wiley, President of Catamaran Cruisers, the Aqua Lodge Floating Office is a durable and suitable solution for the commercial office space requirement in this case. Mr. Wiley's statement is attached as Exhibit B.

II. THE PROPOSED FLOATING OFFICE MEETS APPLICABLE SPECIFICATIONS UNDER THE LEASE AND THE SETTLEMENT AGREEMENT

The Aqua Lodge Floating Office will conform with all applicable specifications for the office. As this Court is aware, the provision of "commercial space" has been a part of the Lease since its inception, and the provision of a "floating office" (as opposed to an office on high land) has always been acceptable. The Aqua Lodge conforms to all requirements and should be approved as Tenant's commercial space going forward, so that a key component of this protracted dispute can be resolved. Following extensive discovery and a two-day trial, there is no dispute that the original commercial space under the Lease was a houseboat referred to as a "floating store." When describing the Lease Property, the Lease refers to "the southwestern most 300 square feet of the

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floating store[.]" *See* Lease at Exhibit A, Item 1 (a copy of the Lease is attached to this Motion as Exhibit C). Furthermore, in settlement of a prior litigation involving this same relationship, the acceptability of a "floating store" was also confirmed as the "*primus inter pares*" option for Tenant's commercial space. *See* Settlement Agreement at Section 1(a)(i) (attached as Exhibit D). Landlord is trying to implement this solution but needs this Court's assistance in light of Tenant's unjustified resistance.

It is important to note that the Settlement Agreement indicated that "any replacement of the floating store must be of a design and construction acceptable to [Hilton Head Island Marina] (*i.e.*, Landlord **not** Tenant). Under the Lease and Settlement Agreement, there is **no** requirement that the floating office: (1) consist of a building affixed to a floating dock; (2) be constructed of steel instead of fiberglass; (3) have a pitched roof; or (4) have a 20-year guarantee or warranty.[1] Under the Lease, the existing floating store was accepted on an "as-is" basis. Subsequently, the only specific requirements stated within the Settlement Agreement were that the floating store would need to include 300 usable square feet of space and "have a separate entrance and shall be an enclosed space with appropriate ventilation and windows and shall be provided with the same utility services as the remainder of the New Floating Store." *See* Settlement Agreement at Section 1(a)(i). The Aqua Lodge Floating Office meets each of these specifications, but has been rejected by Tenant, who is attempting to dictate and impose specifications that will create an unduly burdensome and unjustifiable expense upon the Landlord. In a landlord/tenant relationship where

[1] Tenant has indicated its personal preference for a steel structure, rather than fiberglass, and for a pitched roof. Also, Tenant has refused to accept the Aqua Lodge Floating Vessel, which necessitated this Motion. *See* Email from Tenant, attached as Exhibit E. As set forth within the Statement of Dirk Wiley, the Aqua Lodge Floating Office is fully suitable for this intended roof, and the design and construction methods result in a durable roof that is designed not to leak. The presence of a steel structure, which Tenant will presumably leave unattended in the marina during named storms, presents a significant risk of danger to the rest of the marina. A fiberglass structure is suitable and will not cause the same damage that a steel structure will cause.

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Tenant pays $1 in Rent per year and has, in breach of the Lease, refused to pay the Additional Rent over the past decade, there is no possible reason to allow Tenant to further abuse this situation.

III. THE PROPOSED FLOATING OFFICE MEETS APPLICABLE SPECIFICATIONS UNDER THE INTERIM ORDER

Recognizing that a floating office was in keeping with the requirements of the Lease and the Settlement Agreement, this Court issued an Interim Order determining that a floating office would be provided as a replacement to the existing office location. Landlord was ordered, at its sole expense, take all reasonable steps to obtain a new floating office with at least 300 square feet of commercially usable space. As will be further explained through additional pleadings, affidavits, a witness testimony, Landlord has engaged in extensive research and effort to arrive at a solution that meets the requirements of the Lease, Settlement Agreement, and Interim Order.

The Aqua Lodge Floating Office is of sufficient size. It has a 5' x 11.5' deck, which is usable for the sale of tickets and interactions with customers, and a 25' x 11.5' cabin, which is usable as private offices. *See* Interim Order, page 3. Furthermore, it has a sufficient "anticipated service life." The Interim Order indicated that Landlord must provide a floating office "with at least a 20-year anticipated service life." *Id.* This requirement does not mandate a 20-year "guarantee" or even a 20-year "warranty," as Tenant claims. Instead, it suggests that, if properly maintained and not left unprotected by tenant in the direct path of successive hurricanes and tropical storms, the Aqua Lodge Floating Office is not expected to fail in less than 20 years. As demonstrated through the statement provided by Dirk Wiley, President of Catamaran Cruisers, the Aqua Lodge vessel meets this expectation in terms of an anticipated service life. Additionally, by being an operation vessel (as opposed to a fixed structure on a dock), the Aqua Lodge Floating Office can be hauled out of the water or otherwise relocated during the approach of named storms.

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As confirmed by the President of Catamaran Cruisers, when properly maintained, Aqua Lodge Vessels have should remain in service for 20 years or longer. Photographs of already-constructed Aqua Lodge Vessels (of different sizes than the Aqua Lodge Floating Office to be provided in this case) are attached as Exhibit F. Additional information relating to the Aqua Lodge vessels is attached as Exhibit G. As stated above, Defendants are attempting to implement this Court's Interim Order. However, Plaintiff is not cooperating and, as before, is delaying the provision of the floating office. The Aqua Lodge Floating Office satisfies all requirements under the Lease, Settlement Agreement, as well as this Court's Interim Order, and should be implemented through this Court's enforcement of the Interim Order.

IV. IN THE ALTERNATIVE, THIS COURT SHOULD MODIFY THE INTERIM ORDER TO DELETE THE REFERENCE TO A "20-YEAR ANTICIPATED SERVICE LIFE"

After receiving the Interim Order, Landlord has applied countless hours and considerable resources to the provision of a temporary office and, going forward, a floating office that complies with the relevant specifications. The provision of the Interim Order relating to a 20-year anticipated service life was unanticipated, because neither the Lease nor the Settlement Agreement contains any provisions as to anticipated service life. Certainly, this Court was seeking to balance the interests and issues in order to arrive at a viable solution. However, in a manner that was likely unintended by the Court, Tenant has co-opted the reference in the Interim Order in order to demand a guarantee or warranty of a 20-year duration. Upon extensive review and research, Landlord has found that no such guarantees or warranties are commercially available. They are also unwarranted in this circumstance. As the record in this case shows, Tenant does not take steps to relocate its vessels to safe harbor in the event of a storm. Furthermore, there is evidence demonstrating that Tenant does not engage in proper maintenance of its vessels, resulting in enforcement actions by

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the United States Coast Guard relating to the Jake Washington and extended periods of dormancy relating to Tenant's other vessels. No landlord or vessel manufacturer can be reasonably expected to immunize Tenant from the unavoidable consequences of failing to engage in proper maintenance or leaving movable vessels in harm's way. For these reasons, under Rule 60(b)(1), 60(b)(2), 60(b)(3), and 60(b)(5), Landlord requests that the Interim Order be modified to delete the reference to a 20-year anticipated service life.

CONCLUSION

Based on the foregoing, Defendant Broad Creek Marina Properties, LLC respectfully requests that the Court grant Defendants' Motion and issue an Order implementing the customized 12' x 32' Aqua Lodge manufactured by Catamaran Cruisers as the floating office under the Lease, which will be placed in the location shown on Exhibit A of the Interim Order.

Respectfully submitted,

By: *s/Ellis R. Lesemann*

Ellis R. Lesemann
erl@lalawsc.com
J. Taylor Powell
jtp@lalawsc.com
LESEMANN & ASSOCIATES LLC
418 King Street, Suite 301
Charleston, SC 29403
(843) 724-5155

ATTORNEYS FOR DEFENDANTS

September 26, 2019
Charleston, South Carolina

Custom 12'x32'

	58,490	BASE PRICE
		25' CABIN - 5' FRONT DECK - 2' MOTOR POD
		6 CABIN WINDOWS - SLIDING GLASS DOOR ON FRONT DECK
		110V OUTLETS
		ROOFTOP A/C
		30 AMP ELECTRICAL SERVICE
		20' ROOM IN BACK FOR OFFICE
		HEAVY DUTY DECK EDGE BUMPER
		BOTTOM PAINT

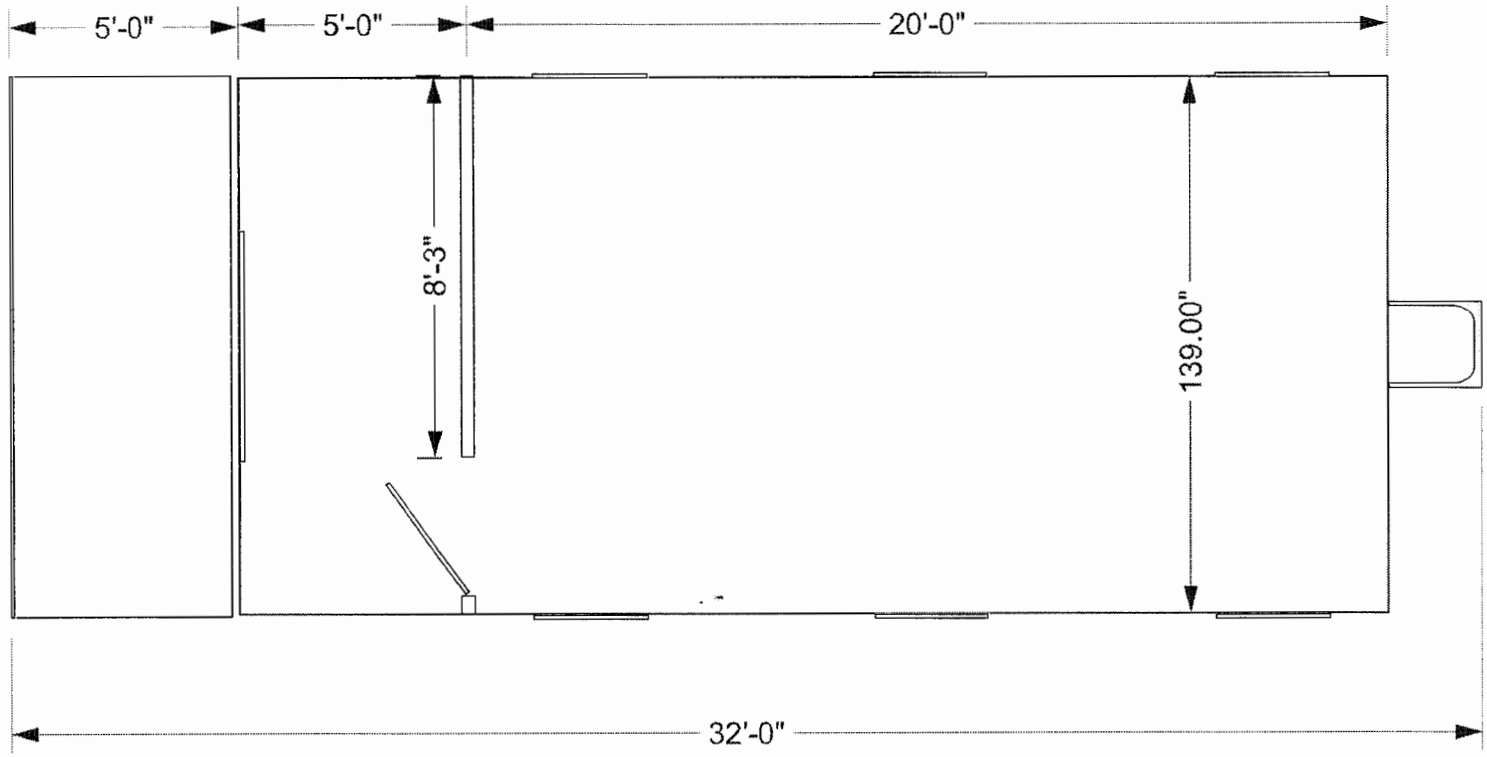
DATE: 7/24/19		SERIAL #		MODEL: CUSTOM SIZE: 12'x32'			
TITLE TO: Broad Creek Marina				DATE DESIRED:			
CONTACT: Nate Jones				PHYSICAL DELIVERY 18 Simmons Road			
PH: 843.681.3625		nate@broadcreekmarinahh.com		Hilton Head Island, South Carolina 29926			
BASE PRICE	58,490			OPTIONS	0	SUBTOTAL	58,490
FREIGHT	4470	TOTAL	62,960	DEPOSIT	21000	BALANCE	41,960

TERMS: 1/3 NON REFUNDABLE DEPOSIT WITH ORDER: BALANCE DUE BEFORE DELIVERY CERTIFIED.
Prices and specifications subject to change without prior notice. American Redi-Bilt, Inc. operates from its office in the State of Tennessee. By choosing to purchase your Catamaran Cruiser from within or outside the State of Tennessee you agree to be subject to the jurisdiction of the courts of the State of Tennessee. All disputes, complaints, controversies and causes of action shall be resolved through binding arbitration located in, Maury County, Tennessee. American Redi-Bilt, Inc. disclaims any implied warranty of merchantability of fitness for a particular purpose.

Catamaran Cruisers 4166 Demastus Ln. Columbia , TN 38401
1-800-365-1255 E-mail: sales@catamarancruiser.com- www.catamarancruiser.com

DATE: _____ CUSTOMER ACCEPTANCE: _____

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Catamaran Cruisers HOUSEBOATS	4166 Demastus Lane Columbia, TN 38401 Phone 800-365-1255 Fax 931-388-6234 www.catamarancruiser.com	**Broad Creek Marina 12x32 Office** Approximate Dimensions 1/4" Scale	WIDTH CABIN FRONT DECK REAR DECK	12ft - 0in 25ft - 0in 5ft - 0in 0ft - 0in

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THIS STATEMENT IS NOT A WARRANTY OR GUARANTEE

1. My name is Dirk Wiley. I am the President of Catamaran Cruisers, which manufactures houseboats and "Aqua Lodges." We are located in Columbia, Tennessee and have been in business since 1981.

2. It is my understanding that a customized 12' x 32' Aqua Lodge vessel is under consideration for use as a "floating office" at the Broad Creek Marina located in Hilton Head Island, South Carolina. Aqua Lodges are regularly used for commercial offices and as residences. In fact, many Aqua Lodges are used as in-water rental properties.

3. There are many advantages to our Aqua Lodge vessels, including no bilges to collect water or gas fumes. They have greater stability than do pontoon crafts. The hull of the Aqua Lodge is made of fiberglass hull, which is better for longevity of service. Fiberglass, unlike aluminum or steel, will not corrode or rust, even when exposed to salt water. Bottom paint would be applied to the fiberglass hull of the Aqua Lodge. In the event of damage, fiberglass is easily repaired if it is ever damaged.

4. A significant advantage of an Aqua Lodge vessel, when compared to a fixed office structure affixed to a dock pier, is that the Aqua Lodge vessel is a fully-operational aquatic vessel. In the event of an approaching storm it can be relocated to safe harbor or hauled out of the water altogether until the storm event has passed.

5. The Aqua Lodge model under consideration utilizes a bonded gel coat fiberglass interior and exterior. All exterior decks and roofs feature hand rolled fiberglass with a non-skid surface. Some competitors utilize stretched rubber on roofs and carpet on decks which will deteriorate and require periodic replacement.

6. Additionally, our exclusive "three deck" construction means the cabin walls are on the outside of the floor and the cabin deck is separated from both the front and rear decks. The roof is set down over the walls (like a shoe box lid). The result is a sealed seamless cabin with maximum strength and weather tightness.

7. Power can be provided to the Aqua Lodge through dockside hookups allow the use of 110v appliances and air conditioning when in a marina.

8. Aqua Lodges are manufactured to high quality standards. It is not possible to provide multi-year guarantees of performance due to the variables that are inherent in weather conditions and whether the vessel is maintained appropriately. However, when properly maintained, Aqua Lodges can remain in service for twenty (20) years or longer.

9. However, as noted above, this statement is **not** a warranty or guarantee. I am not aware of any manufacturer of such structures that guarantees the performance of their vessels for twenty (20) years. With proper care and precaution, our Aqua Lodge vessels are designed for a long service life, as indicated by the testimonials featured on our website.

Dirk Wiley
President of Catamaran Cruisers, Inc.

September 16, 2019

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33007

Exhibit A

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") executed this 23rd day of September, 1993, to be effective as set forth in paragraph 33, entitled "Effective Date of Lease", by and between **HILTON HEAD ISLAND MARINA, L.P.**, a South Carolina limited partnership ("Landlord") and/or its assigns, and **J & W CORPORATION OF GREENWOOD**, a South Carolina corporation ("Tenant").

W I T N E S S E T H :

WHEREAS, Tenant had a right of first refusal (the "Right") on the Property (as defined herein) and validly exercised the Right.

WHEREAS, pursuant to that letter dated May 14, 1993 from Tenant to First Union National Bank of South Carolina ("First Union"), Tenant was substituted as the "Purchaser" under that certain contract of sale, offer and acceptance dated April 27, 1993 (the "Indigo Contract"); and

WHEREAS, Tenant has validly assigned the Indigo Contract to Landlord pursuant to that certain Assignment of Contract by Purchaser dated June 17, 1993 as amended; (the "Assignment"); and

WHEREAS, as consideration for the Assignment and other consideration, Landlord has agreed to enter into this Lease; and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Property as defined herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) in hand paid by Tenant to Landlord, the receipt and sufficiency of which are hereby acknowledged and in consideration of the rents to be paid to Landlord by Tenant, and in consideration of the Assignment and covenants and agreements herein agreed to be performed by Landlord and Tenant, Landlord does hereby grant and lease to Tenant in an "As Is" condition, the following described property, subject to the following terms and conditions:

1. Property. The leased property (the "Lease Property") is described on Exhibit A, being a part of Broad Creek Marina (the "Property") which is described on Exhibit B.

2. Term. The term ("Term") of this Lease shall be ninety-nine (99) years, commencing on the date that Landlord acquires fee simple title to the Property (the "Commencement Date").

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3. Rental.

(a) Annual Rental. Tenant shall pay to Landlord a yearly Base Rent (the "Rent") in the amount of One and 00/100 Dollars ($1.00) per year payable each year on the first (1st) day of January, beginning January 1, 1994.

(b) Additional Rent. In addition to the Rent, Tenant shall pay additional rent ("Additional Rent") as follows:

(i) Utilities. Tenant agrees to pay all utilities including, but not limited to, water, sewer and electricity that is attributable to Tenant's use of the Lease Property.

(ii) Municipal State, County or Federal Taxes. Tenant, at all times, shall be responsible for and shall pay, before delinquency, all municipal, county, state or federal taxes assessed against the Lease Property and all taxes attributable to Tenant's use.

(iii) Insurance. Tenant shall pay annually, commencing with the execution of this Lease, any and all amounts expended by Landlord for liability, property and casualty insurance pursuant to paragraph 17, entitled "Liability Insurance" or to be allocated pursuant to paragraph 5, entitled "Licensing Fees and Other Costs".

(c) Additional Charges. Any charges due Landlord by Tenant, including but not limited to, damage to the Property, legal fees, costs of default remedies and past due charges for utilities, cleaning, maintenance and repairs, etc., or for work done on the Property by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable).

4. Priority of Lease and Subordination/Nondisturbance. This Lease shall be recorded prior to the lien of any purchase money mortgage or any other lien upon the Lease Property. TENANT AND NATIONSBANK HAVE SIMULTANEOUSLY ENTERED INTO A NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT, WHICH WILL GOVERN THE RESPECTIVE RIGHTS AND OBLIGATIONS OF NATIONSBANK (as defined herein) AND TENANT. Except for the immediately preceding sentences, the provisions of this paragraph shall not apply to NationsBank. At the request of Landlord or any subsequent owner of the Property, provided Landlord or such successor landlord is not in default under the Lease, Tenant shall enter into a non-disturbance, subordination and attornment agreement in substantially the same form with any subsequent institutional, commercial lender taking a mortgage on the Property. Such agreement will subordinate the Lease to the lien of the lender and shall be binding on their respective legal representatives, successors and assigns and provide, among other provisions, that: (a) Tenant shall not be joined as a Defendant in any proceeding

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which may be instituted to foreclose or enforce the mortgage; and (b) Tenant's possession and use of the Lease Property in accordance with the provisions of this Lease shall not be affected or disturbed by reason of the subordination to or any modification of or default under the mortgage. If the mortgagee or any successor in interest shall succeed to the rights of Landlord under the Lease, whether through possession, surrender, assignment, subletting, judicial or foreclosure action, or delivery of a deed or otherwise, Tenant will attorn to and recognized such successor Landlord as Tenant's Landlord, and the successor Landlord will accept such attornment and recognize Tenant's rights of possession and use of the Property in accordance with the provisions of the Lease. This clause shall be self-operative and no further instrument of attornment or recognition shall be required. Further, if any prospective mortgagee of the Property requires, as a condition precedent to issuing its lien, the modification of this Lease in such manner as it does not materially lessen Tenant's rights or increase Tenant's obligations or risks hereunder, Tenant shall not delay or withhold its consent to such modification and shall execute and deliver such conforming documents therefore as such mortgagee and requires. Notwithstanding anything stated herein to the contrary, Landlord, in its sole unfettered discretion and without any consent from Tenant, can refinance the Property or sell the Property under any and all conditions Landlord desires as long as any subsequent lender or purchaser complies with the terms and conditions of this Lease.

5. Licensing Fees and Other Costs. Tenant shall pay taxes, license fees, insurance, utilities, and all other costs of ownership and possession for the Lease Property. To the extent such items are not separately assessed, charged, or metered, as the case may be, the parties will allocate or prorate them in an equitable manner. If one party pays any such item with respect to a portion of the Property for which it or they are not responsible, the other party shall reimburse the paying party on or before the later of the date upon which such payment is due or ten (10) days after demand for reimbursement, subject to the right of either party to contest the amount of any such tax, assessment, fee or charge.

6. Dock Repair. As it becomes necessary to repair or replace the dock which is a portion of the Lease Property, Landlord shall complete said repairs or replacement and Tenant shall pay to Landlord all costs attributed to its use, said costs to be paid as they are incurred by Landlord. If the dock, while in need of repair or replacement, is reconfigured pursuant to paragraph 10, entitled "Reconfiguration", Tenant shall pay its pro-rata portion of the repair or replacement costs toward reconfiguration costs.

7. Cooperation and Good Faith. The parties will cooperate with each other in obtaining any licenses, permits, or other governmental or regulatory authorizations appropriate for the

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Property and operations of each of them, including obtaining any such authorization in the name of one party, if that is more convenient, and allowing the other to utilize any such authorization subject to the requirements thereof. During the term of the Lease, the parties will cooperate in marketing; coordinating special events; coordinating maintenance, repair and replacement work; obtaining permits and licenses; and in any other manner that is mutually beneficial.

8. Parking. Tenant shall be provided with a minimum of 50 parking spaces, the initial location shall be as shown on Exhibit A-1. These parking spaces may be used by Tenant, Tenant's employees, agents, invitees and guests. Upon notice from Landlord to Tenant, for any reason or no reason whatsoever, the parking can be moved to any location which is on the Property and is appropriate for such use; provided, however, if Landlord desires to place Tenant's parking at any other location, said location must be mutually acceptable to Landlord and Tenant. Also the employees, agents, guests and invitees of Tenant will be allowed to park in designated parking areas of the Property other than the Lease Property at such times and to the extent such parking does not interfere with the parking for the employees, agents, guests and invitees of Landlord. THIS LEASE DOES NOT INCLUDE ON-SITE PARKING FOR BARGE TRAFFIC OR A STAGING AREA FOR THE BARGE SERVICE.

9. Access. Tenant shall have the non-exclusive right to use convenient means of access to and between all the parcels or segments of the Lease Property to the extent they are not contiguous. Tenant shall also have non-exclusive access between the Lease Property and the public roadways. The initial access is shown on Exhibit A-1 and any other access shall be mutually acceptable to Landlord and Tenant. Except as provided for in paragraph 14, Tenant shall conduct its activities in said access areas reasonably so as not to unnecessarily interfere with the conduct of the Landlord's activities.

10. Reconfiguration. Landlord will have the right to reconfigure the uses of the Property including all docks and the Lease Property, at its own expense, except as provided in paragraph 6, entitled "Dock Repair", all subject to the approval of Tenant, which shall not be unreasonably withheld. Any such reconfiguration will take into consideration the size, number and types of vessels that Tenant is then or is likely thereafter to dock at the Lease Property, the convenience of access between and among the parking area, the commercial space, the floating dock areas, and the barge loading and related maneuvering areas. Tenant will have the right to rebuild, replace and reconfigure the Lease Property at its own expense, subject to the approval of Landlord, which shall not be unreasonably withheld.

11. Permits. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith", Tenant shall procure any and

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all permits required from local, state and federal governmental agencies, and/or otherwise, which may be required to run its business. Any and all costs associated with such permits shall be the sole responsibility of Tenant.

12. Use of Property. Tenant agrees to use the Lease Property to operate a commercial ferry; to operate a commercial barge operation; to operate tour services; to rent jet skis, boat rental excursion and fishing boats, and for other similar commercial purposes. The Tenant will not compete with the marina in the leasing, sub-leasing or in any way charging a second party for dockage at the marina and shall not use the Lease Property for any other purposes. It is, however, understood that from time to time Tenant may use its commercial rights at the marina for the purpose of embarkation and debarkation of passengers for business affiliated with Tenant without the constraint of fuel purchases, except when the vessel is docked overnight. The marina is excluded from competing with the Tenant's commercial ferry and barge service. Other operations of the Tenant are non-exclusive. Tenant's portion of the floating store is to function as an office for booking charters, running its operations located at the marina, and selling tourist and novelty items related to its business. The Tenant, affiliated business, and other vessels docked at the marina are barred from selling food, beverages, and items sold in a marina/sports or convenience store, except for novelty and tourist items related to its business. Tenant shall conduct its activities in the jointly utilized embarkation and debarkation area reasonably so as not to unnecessarily interfere with the conduct of Landlord's activities.

13. Default. Notwithstanding any other provision to the contrary, neither party shall be in default under this Lease unless it fails to cure a breach of any of the provisions, covenants and conditions provided for herein within a reasonable time after the non-performing party has received written notice of the same. Landlord shall have no right to eject Tenant or to terminate this Lease. Landlord's sole remedy shall be to obtain a money judgment against Tenant, and if the judgment remains unpaid, Landlord can execute on the same. In the event NationsBank of South Carolina, N.A., its successor entities, or any commercial financial institution that acquires the interest of NationsBank of South Carolina, N.A. under any mortgage on the Lease Property becomes the landlord under this Lease, ("NationsBank"), but not the purchaser of the Lease Property from NationsBank, shall have all rights and remedies available to it at law and in equity.

14. Non-Interference. As stated in paragraph 8 herein, none of the Lease Property shall be used for parking or a staging area for the barge service. All barge traffic shall proceed via the "access" to the barge as provided for in paragraph 9 herein. The barge operations shall be conducted in a manner so as not to interfere with any and all operations of the marina and other

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operations on the Property. All barge operations shall be maintained solely by Tenant, including, but not limited to, maintenance of the barge ramp. Workers, passengers, invitees, employees, guests and all other persons shall not loiter in and around the barge area or on the Property.

15. Fuel Purchases. Tenant agrees to purchase all fuel and oil for boats docked at the Lease Property of any type whatsoever exclusively from Landlord, provided, however, the fuel and oil is supplied at commercially reasonable rates (the "Rate") as defined by the average charged by other Hilton Head Island marinas with commercial fuel rates. Should Landlord charge in excess of the Rate, Tenant shall still be required to purchase fuel from Landlord, but will only be required to pay the Rate.

16. Examination of Property. Tenant has examined the Property and is familiar with its present condition. Tenant, relying on said examination, agrees to accept the Lease Property in its present condition.

17. Liability Insurance. Tenant shall not carry any stock of goods or do anything in or about the Property, including carrying, transporting, or disposing of any hazardous or toxic materials, as such terms are defined under applicable federal, state and local statutes, rules and regulations, which would, in any way, restrict or invalidate any insurance coverage of the Property. Tenant agrees to pay, upon demand, as Additional Rent, any and all premiums of insurance carried by the Landlord on the Property resulting from Tenant's use or occupancy. Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the Insured with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof. Should Tenant fail to carry such public liability insurance, the Landlord may, at its option (but shall not be required to do so) cause public liability insurance as aforementioned, to be issued, and, in such event, the Tenant agrees to pay the premium for said insurance promptly upon Landlord's demand.

18. Maintenance and Repair. Subject to the provisions of paragraph 6, entitled "Dock Repair", Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Tenant refuses or neglects to commence the necessary repairs and maintenance within a reasonable time, not to exceed fifteen (15)

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days, after demand by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof (except if caused by Landlord's or Landlord's agent's negligence), and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default under this Lease. Landlord shall maintain and repair the Property except the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Landlord fails to maintain and repair the Property, except the Lease Property, as contemplated herein, Tenant may make such repairs without liability to Landlord for any loss or damage to the Property, except damage attributable to Tenant's or Tenant's agents' negligence, and Landlord shall pay to Tenant, upon Tenant's demand, the cost of such repair.

19. Regulations and Sanitation. Tenant shall keep the Lease Property in compliance with all laws, ordinances, regulations and requirements of any legally constituted public authority, including all environmental rules and regulations. If Tenant fails to comply with any such laws, ordinances, regulations and requirements, or any aspect thereof, including notice requirements, such failure shall constitute a default by Tenant under this Lease. Landlord, may, without being liable for trespass, immediately re-enter the Lease Property and take whatever steps Landlord deems necessary to protect Landlord's interest. Tenant shall keep clean all areas in the Lease Property and surrounding areas. Cleaning includes removing any trash or refuse deposited upon the Property attributable by Tenant, Tenant's invitees, employees, customers or anyone else. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand, non-payment of which shall constitute a default of this Lease.

20. Alterations. Tenant shall have the right to make alterations, additions, improvements or rewiring in or to the Lease Property subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld.

21. Assignment or Sub-Lease. Tenant shall have the right to assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease, or sublet the Lease Property, or any part thereof; provided, however, all subsequent parties shall be bound by all covenants, obligations and terms herein, including, but not limited to, paragraph 12, entitled "Use of Property" and all subsequent parties shall be financially capable of complying with this Lease. Landlord shall have the right to assign this Lease without any consent from Tenant to a party acquiring title to the Property.

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22. Signs or Awnings. Tenant shall place no signs, notices, pictures or advertising matter upon the Property (except the Lease Property), except those shown on Exhibit A-1 unless consented to by Landlord in writing, such consent not be unreasonably withheld. Landlord shall consent to such directional and informational signs as are reasonably appropriate for the convenient conduct of Tenant's business. Any and all signs placed on the Property by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs. Tenant shall be responsible to Landlord for any damages caused by installation, use, maintenance, or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense or if provided by Landlord, shall be paid for by Tenant.

23. Waiver of Rights. No failure by Landlord to exercise any power given by Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligations hereunder, and no custom or practice of the parties at variance with the terms hereof will constitute a waiver of Landlord's rights to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to use another.

24. Rules and Regulations. Landlord reserves the right, at any time, to make further reasonable rules and regulations (to be applied uniformly to all users, including Landlord) as in Landlord's judgment may be necessary for the safety, care, appearance and cleanliness of the Property and the preservation of the good order therein, and such other reasonable rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

25. Liens. Tenant shall not create any liens for labor or material against Landlord's interest in the Property. All persons contracting with the Tenant for the election, installation, alteration, repair or demolition of any building or other improvements on the Property, and all materials, suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only in the Property to secure payment of any bill for work or material furnished during the rental period created by this Lease. In the event that liens are placed on record against the Property by contractors, mechanics, laborers, material suppliers, etc., because of action by Tenant it will constitute a default of this Lease.

26. Damages to or Destruction of Property. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith", Tenant shall apply for all necessary permits and approvals and

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shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business. Any and all insurance proceeds from insurance policies carried by Landlord (or in Landlord's name) resulting from damage to the Lease Property, shall be held in trust and dispersed for repairs, restoration, rebuilding or replacement undertaken by Tenant pursuant to this paragraph unless Landlord and Tenant otherwise agree. If the insurance proceeds are insufficient to repair the damage, then Tenant shall pay for the difference.

27. Damage to Personal Property. All personal property, merchandise, fixtures, and equipment placed or moved into the Property shall be at the risk of Tenant or the owners thereof, and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

28. Quiet Enjoyment. As long as Tenant is not in default under the covenants of this Lease, Tenant's quiet and peaceable enjoyment of the Lease Property shall not be disturbed or interfered with by Landlord or any person claiming by, through, or under Landlord. So long as Landlord is not in default under the covenants of this Lease, Tenant shall conduct itself in a manner not to disturb Landlord's or other tenants' quiet enjoyment of the Property.

29. Condemnation. If the whole of the Property or such portion thereof as will make said Property unusable for the purpose herein leased, be condemned by any legally constituted authority, then, on the date when possession thereof is taken by public authorities, rental shall be accounted for as between Landlord and Tenant as of that date. This shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damages caused by condemnation. Neither the Tenant nor the Landlord shall have any rights in any award made to the other by any condemnation authority.

30. Indemnity and Liability. Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorneys' fees arising from the occupancy or use by Tenant of the Property. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Property or as may result from any accident in or about the Property or which may be the result directly or indirectly from any act or neglect to the Property of which the lease is a part. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business. Landlord shall not be responsible or liable to Tenant or those claiming by, through or under Tenant for any loss

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or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Property. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building constituting the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused or resulting from bursting, breakage, or by or from leakage, ice, running, backing up, seepage, or the overflow of water or sewage in any part of the Property or from any injury or damage caused by or resulting from acts of God or the elements or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, building, machinery, apparatus or equipment by any person or by or from the acts or negligence or any occupant of the Property. In the event Landlord transfers this Lease, except as collateral security for a loan, upon such transfer Landlord will be released from all liability and obligations hereunder. The indemnities provided in this Lease shall survive the termination or expiration of this Lease or any renewals; provided, however, Landlord shall be liable for the negligent acts of Landlord and its agents.

31. Hazardous Substances. Except for the materials handled and transported in the ordinary course of Tenant's business which are transported and handled in compliance with all applicable local, state and federal environmental laws, rules, regulations and ordinances, Tenant covenants that it shall not permit any hazardous or toxic wastes or substances or other hazardous materials regulated, controlled or prohibited by any federal, state or local environmental laws, including all materials defined as hazardous or toxic wastes or substances under any local, state or federal environmental statutes, laws, rules, regulations or ordinances, and petroleum, petroleum products, oil and asbestos and other contaminants ("Hazardous Materials") to be brought onto the Leased Property, or if so brought or found located thereon, shall be immediately removed, with proper disposal, and all required environmental cleanup procedures shall be diligently undertaken pursuant to all such laws, ordinances and regulations. Tenant agrees to notify Landlord of any enforcement, cleanup, remediation or other actions regarding the Leased Property and any claims made or threatened by third parties against Tenant relating to losses or injuries resulting from Hazardous Materials. Tenant shall provide to Landlord, in form and substance satisfactory to Landlord, copies of all documentation and data relating to or dealing with any Hazardous Materials used, stored or released in or on the Leased Property and the easements or rights of access to the Leased Property for the purposes of conducting environmental investigations and audits deemed necessary or desirable by Landlord.

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Tenant agrees that it will reimburse Landlord for an hold Landlord harmless from all fines or penalties made or levied against Landlord by any local, state or federal governmental authority or other authority as a result of or in connection with i) the use of the Leased Property, ii) the use of facilities thereon, iii) the use, generation, storage, transportation, discharge, release or handling of any Hazardous Materials, or any other material, the use, generation, storage, transportation, discharge, release or handling of which is regulated by any federal, state or local statute, law, rule, regulation, ordinance or order at any time, or iv) any release of any nature onto the ground or into the water or air from or upon the Leased Property at any time. Tenant also agrees that it will reimburse Landlord for and indemnify and hold Landlord harmless from any and all costs and expenses (including reasonable attorneys' fees), and for all civil judgments or penalties incurred, entered, assessed, or levied against Landlord as a result of Tenant's use of the Leased Property. Such reimbursement or indemnification shall include, but not be limited to, any and all judgments or penalties to recover the cost of cleanup of any such release by Tenant from or upon the Leased Property and all expenses incurred by Landlord as a result of such civil actions, including, but not limited to, reasonable attorneys' fees. In addition, Tenant hereby agrees to indemnify, defend and hold Landlord and its successors and assigns harmless from and against any and all claims, demands, suits, losses, damages, assessments, fines, penalties, costs or other expenses (including attorneys' fees and court costs) arising from or in any way related to actual or threatened damage to the environment, agency costs of investigation, personal injury or death, or property damage due to a release or alleged release of Hazardous Materials in the surface or ground water arising from Tenant's business operations, or gaseous emissions arising from Tenant's business operations or any other condition existing or arising from Tenant's business operations resulting from the use or existence of Hazardous Materials, whether such claim proves to be true or false. Tenant further agrees that its indemnity obligations include, but are not limited to, liability for damages resulting from the personal injury or death of any employee of Tenant, regardless of whether Tenant has paid the employee under the workers' compensation laws of any state or other similar federal or state legislation for the protection of employees. The term "property damage" as used in this paragraph includes, but is not limited to, damage to any real or personal property of Tenant, Landlord and any third parties.

Tenant's obligations under this paragraph shall survive the termination of this Lease by eviction or otherwise.

32. Reversion. Tenant shall surrender to Landlord at the end of the Term of this Lease or upon cancellation of this Lease, the Lease Property in as good condition as the Lease Property was at

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the beginning of the Term of this Lease, normal wear and tear accepted.

33. Effective Date of Lease. This Lease shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant and Landlord's fee simple acquisition of the Property.

34. Notices. All notices, demands, or other written communications required under this Lease shall be made in writing, signed by the parties serving the same and hand delivered or deposited in the registered or certified United States Mail, return receipt requested, postage prepaid, and (i) if intended for Landlord, shall be addressed to:

Hilton Head Island Marina, L.P.
c/o Hilton Head Marina, Inc., General Partner
18 Simmons Road
Hilton Head Island, SC 29925

with a copy to:

Geoffrey M. Smith, Esq.
Geoffrey M. Smith & Associates
Post Office Box 20458
Charleston, SC 29413

(ii) if intended for Tenant, shall be addressed to:

J & W CORPORATION OF GREENWOOD
Post Office Box 21565
Hilton Head Island, SC 29925

with a copy to:

Frederick C. Hack, Jr., Esquire
Ruth, Hack & MacNeille, P.A.
Post Office Drawer 5706
Hilton Head Island, SC 29938

35. Estoppel Certificates. Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Lease is in full force and effect. This statement should also state whether or not Landlord is in default in performance of any covenant and shall constitute an acknowledgement by Tenant that this Lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by Landlord which may have existed prior to the date of such notice and are not revealed therein.

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36. Attorneys' Fees. In the event it is necessary for either party to employ an attorney for the collection of Rent or any other sum due hereunder, or to enforce any covenant of this Lease, or the termination of this Lease, or for the possession of the Lease Property or any part thereof, the non-prevailing party shall pay all costs, including reasonable attorney's fees.

37. Entire Agreement. Except for any executory provisions of the Assignment, this Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Property or of the remainder of the Term of this Lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

38. Applicable Law. The parties executing this Lease acknowledge that the negotiations and anticipated performance of this Lease occurred or shall occur, and that this Lease is executed in the State of South Carolina, and that, therefore, the parties irrevocably and unconditionally agree that South Carolina law shall govern the interpretation of this Lease and the rights and duties of the parties hereto.

39. Survival of Representations and Warranties. All representations, warranties, covenants and agreements contained in this Lease and in all documents and agreements incorporated herein shall survive the execution and termination of this Lease.

40. Severability. If any provision of this Lease is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision shall be fully severable, and this Lease shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Lease, and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Lease.

41. Heirs, Successors and Assigns. This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

42. Interpretation Presumption. This Lease has been negotiated by the parties hereto and by the respective attorneys for each party. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease. In the event of a dispute concerning the interpretation of this Lease, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the Lease.

43. Exhibits. All exhibits referred to herein are hereby incorporated into this Lease.

IN WITNESS WHEREOF, the parties hereto have their duly authorized representative to execute this Lease on the day and year first above written.

WITNESSES:

Sue H. Thomas

LANDLORD:

HILTON HEAD ISLAND MARINA, L.P.,
a South Carolina limited partnership

By: HILTON HEAD MARINA, INC.,
a South Carolina Corporation
Its: General Partner

By: _____
Richard Freedman
Its: President

WITNESSES:

Sue H. Thomas

TENANT:

J & W CORPORATION OF GREENWOOD,
a South Carolina corporation

By: _____

Its: President

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STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF Charleston)

BEFORE ME personally appeared the undersigned witness and made oath that (s)he saw the within-named Hilton Head Island Marina, L.P., a South Carolina limited partnership, by its General Partner, Hilton Head Marina, Inc., a South Carolina corporation, by Richard Freedman, its President, sign, seal and as its act and deed, deliver the within written Lease Agreement; and that (s)he with the other witness subscribed above, witnessed the execution thereof.

(Signature of 1st or 2nd witness)

SWORN to before me this
23rd day of SEPTEMBER, 1993.

Sue H. Thornton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 29, 1993

STATE OF SOUTH CAROLINA)
) PROBATE
COUNTY OF Charleston)

BEFORE ME personally appeared the undersigned witness and made oath that (s)he saw the within-named J & W Corporation of Greenwood, a South Carolina corporation, by William P. Searcy, its President sign, seal and as its act and deed, deliver the within written Lease Agreement; and that (s)he with the other witness subscribed above, witnessed the execution thereof.

(Signature of 1st or 2nd witness)

SWORN to before me this
23rd day of SEPTEMBER, 1993.

Sue H. Thornton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 29, 1995

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EXHIBIT A

LEASE PROPERTY

The Lease Property shall be the following described areas of the Property, which are located as indicated on the attached Exhibit A-1 as such areas may be reconfigured from time to time:

1. Commercial Space. The southwestern most 300 square feet of the floating store (designated "Floating Store" on Exhibit A-1);

2. Barge Docking, Loading, and Unloading Facilities. The barge docking facility immediately east of the concrete ramp designated as "Concrete Ramp" on Exhibit A-1.

3. Commercial Dock Space. The northeastern most two-hundred and fifty-eight (238') linear feet of floating dock space on the outside (southern side) of the innermost (northern most) finger of floating docks indicated on Exhibit A-1 as "Floating Dock/333'" and the forty-two (62') linear feet of floating dock space on the inside (northern side) of the inner most (northern most) finger of floating docks immediately northeast of and adjacent to the"Floating Store";

4. Embarkation and Debarkation Area. The southwestern most seventy-five (75') linear feet of floating dock on the outside of the inner most finger of floating docks. Tenant will have shared use of this area and its vessels will not occupy this area for purposes of embarkation and debarkation for intervals of longer than fifteen (15) minutes at a time.

5. Parking Area. A designated parking area containing parking area for not less than fifty (50) vehicles located on the Property.

6. Access. The Lease Property includes the access areas described in paragraph 9, entitled "Access" and the loading, unloading and maneuvering area generally to the north of the docking facility and concrete ramp and indicated on Exhibit A-1 as "Conc".

7. Reconfiguration. The Lease Property and the access areas may be reconfigured from time to time pursuant to paragraphs 8, 9 and 10, entitled "Parking", "Access", and "Reconfiguration", respectively.

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EXHIBIT B

ALL that certain piece, parcel or tract of land containing 4.55 acres, more or less, together with all improvements thereon, located on Hilton Head Island, Beaufort County, South Carolina, as reflected on a plat thereof entitled "A Composite Plat of Broad Creek Marina Located on Marshland Road", dated May 29, 1992, and prepared by Jerry L. Richardson S.C.R.L.S. #4784, which said plat has been recorded in the Beaufort County RMC Office in Plat Book 44 at page 47. According to said Plat, said property is bounded on the West, North and East by lands now or formerly of Charles Simmons and on the South by the mean high water mark of Broad Creek.

TOGETHER WITH the concrete ramp, floating dock, wooden walkway, floating store, gas pumps, electrical panel, and other real and personal property as reflected on said Plat.

TOGETHER WITH ingress and egress from Marshland Road along a fifty foot (50') right of way and also along an area designated as Access Easement as reflected on said Plat, and all other applicable easements affecting the property.

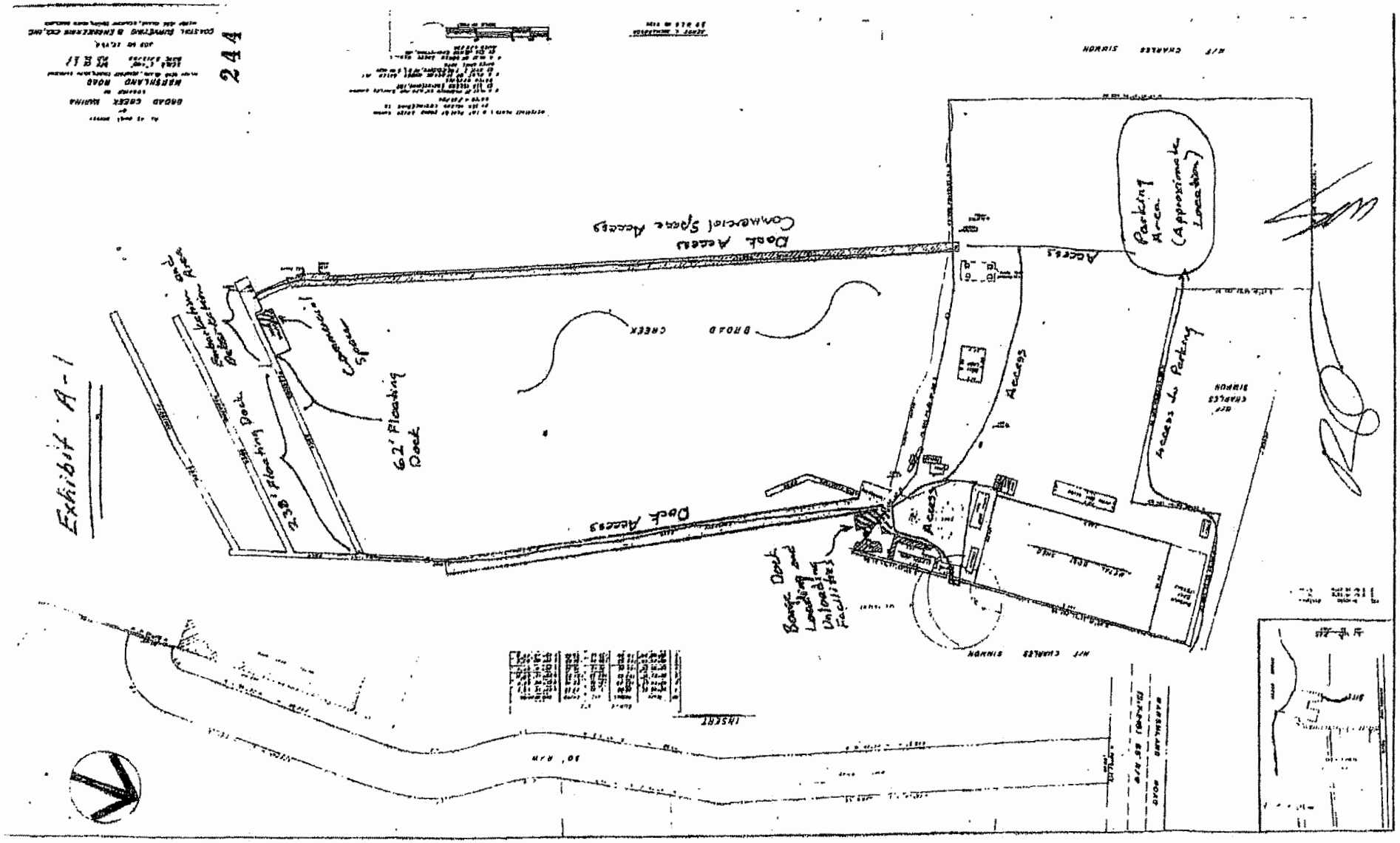
TOGETHER WITH all right, title and interest in and to all property above and below the mean high water mark of Broad Creek and the southern boundary of the property.

BEING the same property conveyed to First Union National Bank of South Carolina by deed of Broad Creek Holdings, A Limited Partnership, dated July 28, 1992, and recorded August 18, 1992, in Book 605 at page 1010, in the Beaufort County RMC Office; and being conveyed by First Union National Bank of South Carolina to Hilton Head Island Marina, L.P. by deed dated September 23, 1993, and recorded in Book ___ at page ___ in aforesaid RMC Office.

TMS #: 510-11-0-7F-0

Grantee's Address:
Hilton Head Island Marina, L.P.
18 Simmons Road
Hilton Head, SC 29925

5287\exhibit.a\bbd\09\21\93


Exhibit A-1
244
Dock Access
Commercial Space Access
Parking Area (Approximate Location)
Access
Access to Parking
62' Floating Dock
238' Floating Dock
Commercial Space
Swimming Area
BROAD CREEK
Barge Dock Loading and Unloading Facilities
Dock Access
HWY CHARLES SIMMON

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RELEASE AND CONFIDENTIAL SETTLEMENT AGREEMENT

This Release and Confidential Settlement Agreement ("Settlement Agreement") is entered into by and between Broad Creek Marina of Hilton Head, LLC, f/k/a HILTON HEAD ISLAND MARINA, L.P., a South Carolina Limited Partnership ("HHIM") and J & W CORPORATION OF GREENWOOD, a South Carolina corporation ("J&W"), and together with HHIM, the "Parties") this 13 day of December, 2004.

RECITALS

WHEREAS, HHIM is the fee simple owner of real property known as the Broad Creek Marina on Hilton Head Island, South Carolina (the "Marina").

WHEREAS, J&W is a corporation organized and existing under the laws of the State of South Carolina and doing business in Beaufort County.

WHEREAS, on or about September 23, 1993, HHIM, as Landlord, and J&W as Tenant, entered into a 99 Year Lease Agreement (the "Lease"). A copy of the Lease is attached as Exhibit "A" and its terms are incorporated herein by reference.

WHEREAS, under the terms of the Lease, Landlord granted and leased to Tenant in "As-Is" condition certain real property and improvements, which are part of the Marina.

WHEREAS, a dispute has arisen involving the terms, conditions, and interpretation of the Lease.

WHEREAS, the parties are involved in certain litigation in the Court of Common Pleas for Beaufort County in a suit captioned Hilton Head Island Marina, LP v. J&W Corporation of Greenwood, CASE NO.: 03-CP-07-2291) (the "Litigation").

WHEREAS, the Parties desire to compromise and settle, pursuant to the terms and conditions set forth in this Settlement Agreement, all claims and disputes between them.

WHEREAS, the Parties deem such settlement to be in their respective best interest.

WHEREAS, the Parties also desire to memorialize as part of this settlement their agreement to reconfigure the docks and the Lease Property according to certain plans which are attached hereto as Exhibits "B" (Dock Reconfiguration Plan) and "C " (Site Plan) and incorporated herein by reference.

WHEREAS, the Parties specifically reaffirm and ratify the terms and conditions of the Lease attached hereto and incorporated herein by reference, not specifically modified by the terms of this document.

To Pete From Wick

One page

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AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for the covenants and agreements set forth in this Settlement Agreement and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. **Consideration.**

a. **Office Space**. J&W previously occupied office space identified in the Lease as part of the Lease Property. As a result of a total casualty loss to the floating store, J&W's office operations are currently located in the Marina Office. J&W shall continue to occupy its existing space in its current location at the Marina office until such time as new office space is available for its use and occupation ("New Office Space"). The New Office Space shall be in substitution for the office space previously located in the floating store as identified in the Lease. J&W agrees that they waive any entitlement, if any, to the insurance proceeds that HHIM received from the casualty loss to the floating store. The Parties agree that HHIM may provide one of the following alternatives as substitute office space for J&W:

i. HHIM will seek approval from the necessary regulatory authorities for the replacement of the floating store. A copy of the Plan is attached as Exhibit D. Any replacement of the floating store must be of a design and construction acceptable to HHIM. J&W agrees to accept 300 usable square feet in full substitution for office space located in the southwestern end of the store. The 300 usable square feet as shown on Exhibit "D" shall have a separate entrance and shall be an enclosed space with appropriate ventilation and windows and shall be provided with the same utility services as the remainder of the New Floating Store. Said utilities shall be separately metered and shall be the sole responsibility of J&W. J&W can seek approval if landlord's application is denied subject to the landlord's review and approval of the design and construction and such approval shall not be unreasonably withheld.

ii. **Dockmaster's House**: If and only if the floating store is not replaced due to denial of any permits required for its replacement, or for any reason at all, HHIM agrees to provide J&W with 300 usable square feet of office space in the Dockmaster's House. A copy of the plan for the Dockmaster's House is attached as Exhibit E and incorporated herein by reference.

iii. **Hub of Activity**. If and only if HHIM is unable to provide space to J&W in a new floating store or in the Dockmaster's House, then J&W will continue to occupy its existing space in the Marina Office. If HHIM decides at some time in the future to relocate the Marina Offices, the space provided to J&W for its office and business needs shall be relocated to a mutually agreeable location of a size, kind and quality at least comparable to the existing space, and such replacement space shall be located in the center of the commercial and retail activity at the Marina.

b. **Reconfiguration**. J&W agrees to and approves the following:

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1. the reconfiguration of the wet slips at the marina according to the plans attached as Exhibit B

2. the demolition of the existing dry stack facility and the reconstruction of an indoor\outdoor dry stack facility that may accommodate as many boats as permitted by appropriate authorities; and

3. any further commercial development at the Marina that is consistent with and approved by the Town of Hilton Head Planning Department.

4. HHIM will have the right to change the access to the docks in order to maintain flexibility for future development.

c. **Parking**. J&W agrees to and approves of the relocation of its allocated parking spots to shaded area set out in Exhibit "C." J&W and HHIM further agree that Paragraph 8 of the Lease is amended to provide that J & W, its agents, employees, guests, invitees, or licensees will have the use of Fifty (50) of the planned total of One Hundred Forty-Five (145) parking spots at the Marina as designated above. HHIM, its agents, employees, guests, invitees, or licensees will have the exclusive use of Sixty (60) parking spots at the Marina to be designated or identified, in writing, within a reasonable time after completion of parking lot improvements. HHIM retains the right to move its 60 spots and\or the 35 undesignated sparking spots to new locations at its sole discretion as long as such move does not affect the parking rights of J&W. J& W 's agents, employees, guests, invitees, or licensees may park in the additional, undesignated parking spots to the extent that such parking does not interfere with the agents, employees, guests, invitees, or licensees of HHIM. HHIM and J&W, their agents, employees, guests, invitees, or licensees shall observe and obey all parking and traffic regulations imposed at the Marina. HHIM reserves the right to designate no-parking zones, traffic rights-of-way and general parking area procedures including the right to designate special parking areas for staff employees of HHIM.

HHIM shall have the right to move J&W's allocated parking spots either back to the original location as identified in the Lease, or to a new, mutually agreed upon location. HHIM agrees to pay for the parking improvements at the Marina that are contemplated by the site plan set forth in Exhibit "C." After January 2005, or the completion of the new parking areas, J&W agrees to pay its pro rata share of maintenance and repair for the parking area as those expenses are incurred. J&W agrees to pay its share of any expenses incurred within fifteen days of receipt of any invoice. HHIM agrees to waive any and all previously accrued charges for repair or maintenance to the parking area. Any parking rights described herein do not include rights to park in the condominium development area. Nothing in the Lease or this Settlement Agreement shall be deemed to confer upon J&W any parking rights on any other development at the Marina. The access and parking provided to J&W's customers and staff shall always be of equal quality and value as that provided to HHIM or its assigns, customers and staff. All further provisions of Paragraph 8 Parking in the Lease remain in full force and effect to the extent not modified herein.

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d. **Ferry Operations.** The parties disagree with each other's interpretation of Paragraphs 12 and 21 of the Lease as those paragraphs relate to the permitted use of the Lease Property by Tenant and the conveyance by lease, assignment or otherwise of those rights. The parties agree to submit this sole issue to a single arbitrator for a binding decision, and shall enter into a separate agreement to identify the rules, procedures and mechanics of such arbitration. The parties agree to maintain the status quo until a final, binding award is issued in arbitration.

e. **Common Area Charges.** J&W agrees to pay all common area charges as identified in the Lease that come due and payable beginning January 2005. The formula for determining amounts due and payable by the Parties for common area charges is attached as Exhibit F. HHIM agrees to waive any and all previously accrued charges.

f. **New Docks.** HHIM agrees to pay for all costs related to the purchase and installation of new docks at the Marina. J&W agrees to be responsible for all costs of dock maintenance and repair for the Lease Property as contemplated in the Lease. HHIM agrees to waive any and all previously accrued costs that would be due and payable by J&W as contemplated by the Lease J&W shall have water and electrical hookups (30 and 50 amp service) at intervals and spaces comparable and similar to those provided at the original dock. In addition, J&W shall pay for the installation or shall secure the installation of separate meters for J&W's water and electrical meters and J&W shall pay for all of its own electrical and water use.

g. **Renovation and Construction Period.** J&W understands and agrees that construction and renovations at the Marina will affect its operations. HHIM will limit any construction that interferes with J&W's barge operations to a period not to exceed twenty-one (21) business days and will keep J&W apprised of its construction and renovation timetable. Nothing contained herein shall constitute HHIM's agreement to indemnify or hold J&W harmless from and against, any liability or loss arising from or due to the construction and renovation period exceeding twenty-one (21) days. HHIM agrees to provide an interim accommodation for J&W's Ferry Operation during the construction and renovation period. HHIM will either provide a temporary dock located at the Marina for J&W's use for the Ferry Operation, or will make arrangements with an adjoining landowner for J&W's temporary use of its docking facilities, with either option being at no cost to J&W.

h. **Survival of Lease.** Except as set forth, amended or modified herein, all terms and conditions of the Lease remain in full force and effect.

2. **Release of Claims.**

Except as expressly set forth in this Agreement, , HHIM and J&W, on behalf of themselves and their past and present agents, officers, directors, employees, shareholders, attorneys, accountants, insurers, representatives, affiliates, subsidiaries, parent companies,

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successors and assigns, hereby mutually release and forever discharge each other and each of their past and present officers, directors, employees, shareholders, attorneys, accountants, insurers, representatives, affiliates, subsidiaries, parent companies, successors and assigns ("Released Parties") from any and all claims, demands, obligations, losses, causes of action, costs, expenses, attorneys' fees and liabilities of any nature whatsoever whether based on contract, tort, statutory or other legal or equitable theory of recovery which they have, had, or claim to have, whether known or unknown, from the beginning of time until the date of execution hereof, against any of the Released Parties.

3. **Parties to Bear Own Costs and Attorneys' Fees**. Other than the costs which may be included in the Judgment Amount, the Parties shall each bear its own costs, expenses, attorneys' fees incurred in or arising out of, or in any way connected with the matters which are referenced herein.

4. **Representations and Warranties Regarding No Assignment and Authorization to Compromise**. Each Party hereby represents and warrants that it has not assigned, encumbered, hypothecated, sold, alienated or otherwise transferred any of the claims, causes of action or other matters that are the subject of the Litigation. Each Party represents and warrants that it is authorized to execute and enter this Settlement Agreement and that the person purporting to execute this Settlement Agreement on behalf of such Party has been duly authorized to so act.

5. **Disclaimer of All Other Representations, Warranties, Promises, and Inducements**. Except as expressly set forth in paragraph 5, the Parties make no other representations or warranties to the other, whether express or implied or by operation of law or otherwise. Without in any way of limiting the foregoing, the Parties agree and acknowledge that no additional promise or agreement has been made as consideration for this Settlement Agreement and that the execution of this Settlement Agreement has not been induced by any representations or statements regarding the nature, extent or duration of damages sustained or any other matter. Each Party has undertaken such independent investigation as it deems appropriate and is entering into this Settlement Agreement in reliance on that investigation and evaluation and not in reliance on any advice, disclosure, representation or information by or expected from any other Party or its attorneys or representatives.

6. **Entire Agreement**. This Settlement Agreement constitutes the entire agreement among the Parties and supersedes all prior and contemporaneous agreements, representations, warranties, and understandings of the Parties, whether oral, written, or implied, as to the subject matter hereof. No supplement, modification, or amendment of this Settlement Agreement or waiver of rights hereunder shall be binding unless executed in writing by the Party affected thereby.

7. **Assigns and Successors**. This Settlement Agreement is and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

8. **No Admissions**. Nothing in this Settlement Agreement or any negotiations, proceedings or pleadings filed in connection herewith or with respect to the Litigation, shall constitute or be deemed or claimed to be evidence of any admission by any Party of any liability, violation of

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law, or wrongdoing whatsoever, or the truth or untruth or merit or lack of merit, of any claim or defense of any Party. Neither this Settlement Agreement nor any negotiations or proceedings in connection herewith may be used in any proceeding against any Party for any purpose whatsoever except with respect to effectuation and enforcement of this Settlement Agreement.

9. **Interpretation and Construction**. Each Party acknowledges that it has been or has had the opportunity to be represented by counsel and has received or had the opportunity to receive independent legal advice regarding the meaning of this Settlement Agreement. The Parties acknowledge and confirm that their respective attorney has participated jointly in the drafting, review and revision of this Settlement Agreement and that it has not been written solely by counsel for one party. Accordingly, each Party agrees that any rule of interpretation or construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation, construction, or enforcement of this Settlement Agreement. The laws of the State of South Carolina will apply to any litigation arising out of or relating to this Settlement Agreement.

10. **Further Assurances**. The Parties agree that they will cooperate in executing all documents necessary to effectuate this Agreement and the covenants contemplated hereby.

11. **Counterparts**. This Settlement Agreement may be executed in two or more counterparts, in which case this Agreement shall include each such executed and delivered counterpart, each of which shall be deemed to be part of a single instrument.

12. **Effectiveness**. This Settlement Agreement shall become effective upon the first date after which each of the parties have executed this Settlement Agreement.

13. **Notices**. Any notices required under terms of this Settlement Agreement shall be sent to the following:

If to HHIM:
Broad Creek Marina
Attn: Marina Manager
18 Simmons Rd,
Hilton Head Island, SC

With a copy to:
Robert A. Kerr, Jr., Esq.
Hagood & Kerr, PA
P.O. Box 220
Mount Pleasant, SC 29465
Telephone: (843) 972-1000
Facsimile: (843) 972-1005

If to J&W:
Wick Scurry
50 Bush's Branch Rd.
Bluffton, SC 29910

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With a copy to:

Peter L. Fuge, Esquire
Peter L. Fuge, P.A.
P. O. Box 237
Beaufort, SC 29901
Telephone: (843)379-2000
Facsimile: (843)379-2009

Notice shall be deemed complete upon mailing unless the time that a Party intends to take any action in accordance with such notice will occur in less than five (5) business days. In the event that a Party intends to take any action contemplated by this Settlement Agreement on less than five (5) business days notice, then any such written notice shall be delivered to the other Party by facsimile (with a hard copy sent by regular United States Mail, proper postage pre-paid) and/or by hand-delivering such notice.

IN WITNESS WHEREOF, the parties have set their hands as of the day and year first above written.

WITNESSES

Name:

Name:

BROAD CREEK MARINA OF HILTON HEAD, LLC

12-13-04

Name: Roger Freeman
Title: owner-manager

WITNESSES

Name:

Name:

J & W CORPORATION OF GREENWOOD

12-13-04

Name:
Title: President

LIST OF EXHIBITS:

A. Lease

B. Dock Reconfiguration Plan

C. Site Plan

D. Floating Store Plan

E. Dockmaster's House Plan

F. Common Area Charges Formula

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RELEASE AND CONFIDENTIAL SETTLEMENT AGREEMENT BROAD CREEK MARINA OF HILTON HEAD, LLC, F/K/A HILTON HEAD ISLAND MARINA, L.P., A SOUTH CAROLINA LIMITED PARTNERSHIP AND J & W CORPORATION OF GREENWOOD, A SOUTH CAROLINA CORPORATION DATED DECEMBER 13 2004.

EXHIBIT A

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33007

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") executed this 23rd day of September, 1993, to be effective as set forth in paragraph 33, entitled "Effective Date of Lease", by and between **HILTON HEAD ISLAND MARINA, L.P.**, a South Carolina limited partnership ("Landlord") and/or its assigns, and **J & W CORPORATION OF GREENWOOD**, a South Carolina corporation ("Tenant").

W I T N E S S E T H :

WHEREAS, Tenant had a right of first refusal (the "Right") on the Property (as defined herein) and validly exercised the Right.

WHEREAS, pursuant to that letter dated May 14, 1993 from Tenant to First Union National Bank of South Carolina ("First Union"), Tenant was substituted as the "Purchaser" under that certain contract of sale, offer and acceptance dated April 27, 1993 (the "Indigo Contract"); and

WHEREAS, Tenant has validly assigned the Indigo Contract to Landlord pursuant to that certain Assignment of Contract by Purchaser dated June 17, 1993 as amended; (the "Assignment"); and

WHEREAS, as consideration for the Assignment and other consideration, Landlord has agreed to enter into this Lease; and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Property as defined herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) in hand paid by Tenant to Landlord, the receipt and sufficiency of which are hereby acknowledged and in consideration of the rents to be paid to Landlord by Tenant, and in consideration of the Assignment and covenants and agreements herein agreed to be performed by Landlord and Tenant, Landlord does hereby grant and lease to Tenant in an "As Is" condition, the following described property, subject to the following terms and conditions:

1. Property. The leased property (the "Lease Property") is described on Exhibit A, being a part of Broad Creek Marina (the "Property") which is described on Exhibit B.

2. Term. The term ("Term") of this Lease shall be ninety-nine (99) years, commencing on the date that Landlord acquires fee simple title to the Property (the "Commencement Date").

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3. Rental.

(a) Annual Rental. Tenant shall pay to Landlord a yearly Base Rent (the "Rent") in the amount of One and 00/100 Dollars ($1.00) per year payable each year on the first (1st) day of January, beginning January 1, 1994.

(b) Additional Rent. In addition to the Rent, Tenant shall pay additional rent ("Additional Rent") as follows:

(i) Utilities. Tenant agrees to pay all utilities including, but not limited to, water, sewer and electricity that is attributable to Tenant's use of the Lease Property.

(ii) Municipal State, County or Federal Taxes. Tenant, at all times, shall be responsible for and shall pay, before delinquency, all municipal, county, state or federal taxes assessed against the Lease Property and all taxes attributable to Tenant's use.

(iii) Insurance. Tenant shall pay annually, commencing with the execution of this Lease, any and all amounts expended by Landlord for liability, property and casualty insurance pursuant to paragraph 17, entitled "Liability Insurance" or to be allocated pursuant to paragraph 5, entitled "Licensing Fees and Other Costs".

(c) Additional Charges. Any charges due Landlord by Tenant, including but not limited to, damage to the Property, legal fees, costs of default remedies and past due charges for utilities, cleaning, maintenance and repairs, etc., or for work done on the Property by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable).

4. Priority of Lease and Subordination/Nondisturbance. This Lease shall be recorded prior to the lien of any purchase money mortgage or any other lien upon the Lease Property. TENANT AND NATIONSBANK HAVE SIMULTANEOUSLY ENTERED INTO A NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT, WHICH WILL GOVERN THE RESPECTIVE RIGHTS AND OBLIGATIONS OF NATIONSBANK (as defined herein) AND TENANT. Except for the immediately preceding sentences, the provisions of this paragraph shall not apply to NationsBank. At the request of Landlord or any subsequent owner of the Property, provided Landlord or such successor landlord is not in default under the Lease, Tenant shall enter into a non-disturbance, subordination and attornment agreement in substantially the same form with any subsequent institutional, commercial lender taking a mortgage on the Property. Such agreement will subordinate the Lease to the lien of the lender and shall be binding on their respective legal representatives, successors and assigns and provide, among other provisions, that: (a) Tenant shall not be joined as a Defendant in any proceeding

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which may be instituted to foreclose or enforce the mortgage; and (b) Tenant's possession and use of the Lease Property in accordance with the provisions of this Lease shall not be affected or disturbed by reason of the subordination to or any modification of or default under the mortgage. If the mortgagee or any successor in interest shall succeed to the rights of Landlord under the Lease, whether through possession, surrender, assignment, subletting, judicial or foreclosure action, or delivery of a deed or otherwise, Tenant will attorn to and recognized such successor Landlord as Tenant's Landlord, and the successor Landlord will accept such attornment and recognize Tenant's rights of possession and use of the Property in accordance with the provisions of the Lease. This clause shall be self-operative and no further instrument of attornment or recognition shall be required. Further, if any prospective mortgagee of the Property requires, as a condition precedent to issuing its lien, the modification of this Lease in such manner as it does not materially lessen Tenant's rights or increase Tenant's obligations or risks hereunder, Tenant shall not delay or withhold its consent to such modification and shall execute and deliver such conforming documents therefore as such mortgagee and requires. Notwithstanding anything stated herein to the contrary, Landlord, in its sole unfettered discretion and without any consent from Tenant, can refinance the Property or sell the Property under any and all conditions Landlord desires as long as any subsequent lender or purchaser complies with the terms and conditions of this Lease.

5. Licensing Fees and Other Costs. Tenant shall pay taxes, license fees, insurance, utilities, and all other costs of ownership and possession for the Lease Property. To the extent such items are not separately assessed, charged, or metered, as the case may be, the parties will allocate or prorate them in an equitable manner. If one party pays any such item with respect to a portion of the Property for which it or they are not responsible, the other party shall reimburse the paying party on or before the later of the date upon which such payment is due or ten (10) days after demand for reimbursement, subject to the right of either party to contest the amount of any such tax, assessment, fee or charge.

6. Dock Repair. As it becomes necessary to repair or replace the dock which is a portion of the Lease Property, Landlord shall complete said repairs or replacement and Tenant shall pay to Landlord all costs attributed to its use, said costs to be paid as they are incurred by Landlord. If the dock, while in need of repair or replacement, is reconfigured pursuant to paragraph 10, entitled "Reconfiguration", Tenant shall pay its pro-rata portion of the repair or replacement costs toward reconfiguration costs.

7. Cooperation and Good Faith. The parties will cooperate with each other in obtaining any licenses, permits, or other governmental or regulatory authorizations appropriate for the

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Property and operations of each of them, including obtaining any such authorization in the name of one party, if that is more convenient, and allowing the other to utilize any such authorization subject to the requirements thereof. During the term of the Lease, the parties will cooperate in marketing; coordinating special events; coordinating maintenance, repair and replacement work; obtaining permits and licenses; and in any other manner that is mutually beneficial.

8. Parking. Tenant shall be provided with a minimum of 50 parking spaces, the initial location shall be as shown on Exhibit A-1. These parking spaces may be used by Tenant, Tenant's employees, agents, invitees and guests. Upon notice from Landlord to Tenant, for any reason or no reason whatsoever, the parking can be moved to any location which is on the Property and is appropriate for such use; provided, however, if Landlord desires to place Tenant's parking at any other location, said location must be mutually acceptable to Landlord and Tenant. Also the employees, agents, guests and invitees of Tenant will be allowed to park in designated parking areas of the Property other than the Lease Property at such times and to the extent such parking does not interfere with the parking for the employees, agents, guests and invitees of Landlord. THIS LEASE DOES NOT INCLUDE ON-SITE PARKING FOR BARGE TRAFFIC OR A STAGING AREA FOR THE BARGE SERVICE.

9. Access. Tenant shall have the non-exclusive right to use convenient means of access to and between all the parcels or segments of the Lease Property to the extent they are not contiguous. Tenant shall also have non-exclusive access between the Lease Property and the public roadways. The initial access is shown on Exhibit A-1 and any other access shall be mutually acceptable to Landlord and Tenant. Except as provided for in paragraph 14, Tenant shall conduct its activities in said access areas reasonably so as not to unnecessarily interfere with the conduct of the Landlord's activities.

10. Reconfiguration. Landlord will have the right to reconfigure the uses of the Property including all docks and the Lease Property, at its own expense, except as provided in paragraph 6, entitled "Dock Repair", all subject to the approval of Tenant, which shall not be unreasonably withheld. Any such reconfiguration will take into consideration the size, number and types of vessels that Tenant is then or is likely thereafter to dock at the Lease Property, the convenience of access between and among the parking area, the commercial space, the floating dock areas, and the barge loading and related maneuvering areas. Tenant will have the right to rebuild, replace and reconfigure the Lease Property at its own expense, subject to the approval of Landlord, which shall not be unreasonably withheld.

11. Permits. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith", Tenant shall procure any and

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all permits required from local, state and federal governmental agencies, and/or otherwise, which may be required to run its business. Any and all costs associated with such permits shall be the sole responsibility of Tenant.

12. Use of Property. Tenant agrees to use the Lease Property to operate a commercial ferry; to operate a commercial barge operation; to operate tour services; to rent jet skis, boat rental excursion and fishing boats, and for other similar commercial purposes. The Tenant will not compete with the marina in the leasing, sub-leasing or in any way charging a second party for dockage at the marina and shall not use the Lease Property for any other purposes. It is, however, understood that from time to time Tenant may use its commercial rights at the marina for the purpose of embarkation and debarkation of passengers for business affiliated with Tenant without the constraint of fuel purchases, except when the vessel is docked overnight. The marina is excluded from competing with the Tenant's commercial ferry and barge service. Other operations of the Tenant are non-exclusive. Tenant's portion of the floating store is to function as an office for booking charters, running its operations located at the marina, and selling tourist and novelty items related to its business. The Tenant, affiliated business, and other vessels docked at the marina are barred from selling food, beverages, and items sold in a marina/sports or convenience store, except for novelty and tourist items related to its business. Tenant shall conduct its activities in the jointly utilized embarkation and debarkation area reasonably so as not to unnecessarily interfere with the conduct of Landlord's activities.

13. Default. Notwithstanding any other provision to the contrary, neither party shall be in default under this Lease unless it fails to cure a breach of any of the provisions, covenants and conditions provided for herein within a reasonable time after the non-performing party has received written notice of the same. Landlord shall have no right to eject Tenant or to terminate this Lease. Landlord's sole remedy shall be to obtain a money judgment against Tenant, and if the judgment remains unpaid, Landlord can execute on the same. In the event NationsBank of South Carolina, N.A., its successor entities, or any commercial financial institution that acquires the interest of NationsBank of South Carolina, N.A. under any mortgage on the Lease Property becomes the landlord under this Lease, ("NationsBank"), but not the purchaser of the Lease Property from NationsBank, shall have all rights and remedies available to it at law and in equity.

14. Non-Interference. As stated in paragraph 8 herein, none of the Lease Property shall be used for parking or a staging area for the barge service. All barge traffic shall proceed via the "access" to the barge as provided for in paragraph 9 herein. The barge operations shall be conducted in a manner so as not to interfere with any and all operations of the marina and other

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operations on the Property. All barge operations shall be maintained solely by Tenant, including, but not limited to, maintenance of the barge ramp. Workers, passengers, invitees, employees, guests and all other persons shall not loiter in and around the barge area or on the Property.

15. Fuel Purchases. Tenant agrees to purchase all fuel and oil for boats docked at the Lease Property of any type whatsoever exclusively from Landlord, provided, however, the fuel and oil is supplied at commercially reasonable rates (the "Rate") as defined by the average charged by other Hilton Head Island marinas with commercial fuel rates. Should Landlord charge in excess of the Rate, Tenant shall still be required to purchase fuel from Landlord, but will only be required to pay the Rate.

16. Examination of Property. Tenant has examined the Property and is familiar with its present condition. Tenant, relying on said examination, agrees to accept the Lease Property in its present condition.

17. Liability Insurance. Tenant shall not carry any stock of goods or do anything in or about the Property, including carrying, transporting, or disposing of any hazardous or toxic materials, as such terms are defined under applicable federal, state and local statutes, rules and regulations, which would, in any way, restrict or invalidate any insurance coverage of the Property. Tenant agrees to pay, upon demand, as Additional Rent, any and all premiums of insurance carried by the Landlord on the Property resulting from Tenant's use or occupancy. Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the Insured with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof. Should Tenant fail to carry such public liability insurance, the Landlord may, at its option (but shall not be required to do so) cause public liability insurance as aforementioned, to be issued, and, in such event, the Tenant agrees to pay the premium for said insurance promptly upon Landlord's demand.

18. Maintenance and Repair. Subject to the provisions of paragraph 6, entitled "Dock Repair", Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Tenant refuses or neglects to commence the necessary repairs and maintenance within a reasonable time, not to exceed fifteen (15)

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days, after demand by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof (except if caused by Landlord's or Landlord's agent's negligence), and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default under this Lease. Landlord shall maintain and repair the Property except the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Landlord fails to maintain and repair the Property, except the Lease Property, as contemplated herein, Tenant may make such repairs without liability to Landlord for any loss or damage to the Property, except damage attributable to Tenant's or Tenant's agents' negligence, and Landlord shall pay to Tenant, upon Tenant's demand, the cost of such repair.

19. Regulations and Sanitation. Tenant shall keep the Lease Property in compliance with all laws, ordinances, regulations and requirements of any legally constituted public authority, including all environmental rules and regulations. If Tenant fails to comply with any such laws, ordinances, regulations and requirements, or any aspect thereof, including notice requirements, such failure shall constitute a default by Tenant under this Lease. Landlord, may, without being liable for trespass, immediately re-enter the Lease Property and take whatever steps Landlord deems necessary to protect Landlord's interest. Tenant shall keep clean all areas in the Lease Property and surrounding areas. Cleaning includes removing any trash or refuse deposited upon the Property attributable by Tenant, Tenant's invitees, employees, customers or anyone else. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand, non-payment of which shall constitute a default of this Lease.

20. Alterations. Tenant shall have the right to make alterations, additions, improvements or rewiring in or to the Lease Property subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld.

21. Assignment or Sub-Lease. Tenant shall have the right to assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease, or sublet the Lease Property, or any part thereof; provided, however, all subsequent parties shall be bound by all covenants, obligations and terms herein, including, but not limited to, paragraph 12, entitled "Use of Property" and all subsequent parties shall be financially capable of complying with this Lease. Landlord shall have the right to assign this Lease without any consent from Tenant to a party acquiring title to the Property.

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22. Signs or Awnings. Tenant shall place no signs, notices, pictures or advertising matter upon the Property (except the Lease Property), except those shown on Exhibit A-1 unless consented to by Landlord in writing, such consent not be unreasonably withheld. Landlord shall consent to such directional and informational signs as are reasonably appropriate for the convenient conduct of Tenant's business. Any and all signs placed on the Property by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs. Tenant shall be responsible to Landlord for any damages caused by installation, use, maintenance, or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense or if provided by Landlord, shall be paid for by Tenant.

23. Waiver of Rights. No failure by Landlord to exercise any power given by Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligations hereunder, and no custom or practice of the parties at variance with the terms hereof will constitute a waiver of Landlord's rights to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to use another.

24. Rules and Regulations. Landlord reserves the right, at any time, to make further reasonable rules and regulations (to be applied uniformly to all users, including Landlord) as in Landlord's judgment may be necessary for the safety, care, appearance and cleanliness of the Property and the preservation of the good order therein, and such other reasonable rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

25. Liens. Tenant shall not create any liens for labor or material against Landlord's interest in the Property. All persons contracting with the Tenant for the election, installation, alteration, repair or demolition of any building or other improvements on the Property, and all materials, suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only in the Property to secure payment of any bill for work or material furnished during the rental period created by this Lease. In the event that liens are placed on record against the Property by contractors, mechanics, laborers, material suppliers, etc., because of action by Tenant it will constitute a default of this Lease.

26. Damages to or Destruction of Property. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith", Tenant shall apply for all necessary permits and approvals and

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shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business. Any and all insurance proceeds from insurance policies carried by Landlord (or in Landlord's name) resulting from damage to the Lease Property, shall be held in trust and dispersed for repairs, restoration, rebuilding or replacement undertaken by Tenant pursuant to this paragraph unless Landlord and Tenant otherwise agree. If the insurance proceeds are insufficient to repair the damage, then Tenant shall pay for the difference.

27. Damage to Personal Property. All personal property, merchandise, fixtures, and equipment placed or moved into the Property shall be at the risk of Tenant or the owners thereof, and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

28. Quiet Enjoyment. As long as Tenant is not in default under the covenants of this Lease, Tenant's quiet and peaceable enjoyment of the Lease Property shall not be disturbed or interfered with by Landlord or any person claiming by, through, or under Landlord. So long as Landlord is not in default under the covenants of this Lease, Tenant shall conduct itself in a manner not to disturb Landlord's or other tenants' quiet enjoyment of the Property.

29. Condemnation. If the whole of the Property or such portion thereof as will make said Property unusable for the purpose herein leased, be condemned by any legally constituted authority, then, on the date when possession thereof is taken by public authorities, rental shall be accounted for as between Landlord and Tenant as of that date. This shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damages caused by condemnation. Neither the Tenant nor the Landlord shall have any rights in any award made to the other by any condemnation authority.

30. Indemnity and Liability. Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorneys' fees arising from the occupancy or use by Tenant of the Property. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Property or as may result from any accident in or about the Property or which may be the result directly or indirectly from any act or neglect to the Property of which the lease is a part. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business. Landlord shall not be responsible or liable to Tenant or those claiming by, through or under Tenant for any loss

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or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Property. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building constituting the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused or resulting from bursting, breakage, or by or from leakage, ice, running, backing up, seepage, or the overflow of water or sewage in any part of the Property or from any injury or damage caused by or resulting from acts of God or the elements or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, building, machinery, apparatus or equipment by any person or by or from the acts or negligence or any occupant of the Property. In the event Landlord transfers this Lease, except as collateral security for a loan, upon such transfer Landlord will be released from all liability and obligations hereunder. The indemnities provided in this Lease shall survive the termination or expiration of this Lease or any renewals; provided, however, Landlord shall be liable for the negligent acts of Landlord and its agents.

31. Hazardous Substances. Except for the materials handled and transported in the ordinary course of Tenant's business which are transported and handled in compliance with all applicable local, state and federal environmental laws, rules, regulations and ordinances, Tenant covenants that it shall not permit any hazardous or toxic wastes or substances or other hazardous materials regulated, controlled or prohibited by any federal, state or local environmental laws, including all materials defined as hazardous or toxic wastes or substances under any local, state or federal environmental statutes, laws, rules, regulations or ordinances, and petroleum, petroleum products, oil and asbestos and other contaminants ("Hazardous Materials") to be brought onto the Leased Property, or if so brought or found located thereon, shall be immediately removed, with proper disposal, and all required environmental cleanup procedures shall be diligently undertaken pursuant to all such laws, ordinances and regulations. Tenant agrees to notify Landlord of any enforcement, cleanup, remediation or other actions regarding the Leased Property and any claims made or threatened by third parties against Tenant relating to losses or injuries resulting from Hazardous Materials. Tenant shall provide to Landlord, in form and substance satisfactory to Landlord, copies of all documentation and data relating to or dealing with any Hazardous Materials used, stored or released in or on the Leased Property and the easements or rights of access to the Leased Property for the purposes of conducting environmental investigations and audits deemed necessary or desirable by Landlord.

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Tenant agrees that it will reimburse Landlord for an hold Landlord harmless from all fines or penalties made or levied against Landlord by any local, state or federal governmental authority or other authority as a result of or in connection with i) the use of the Leased Property, ii) the use of facilities thereon, iii) the use, generation, storage, transportation, discharge, release or handling of any Hazardous Materials, or any other material, the use, generation, storage, transportation, discharge, release or handling of which is regulated by any federal, state or local statute, law, rule, regulation, ordinance or order at any time, or iv) any release of any nature onto the ground or into the water or air from or upon the Leased Property at any time. Tenant also agrees that it will reimburse Landlord for and indemnify and hold Landlord harmless from any and all costs and expenses (including reasonable attorneys' fees), and for all civil judgments or penalties incurred, entered, assessed, or levied against Landlord as a result of Tenant's use of the Leased Property. Such reimbursement or indemnification shall include, but not be limited to, any and all judgments or penalties to recover the cost of cleanup of any such release by Tenant from or upon the Leased Property and all expenses incurred by Landlord as a result of such civil actions, including, but not limited to, reasonable attorneys' fees. In addition, Tenant hereby agrees to indemnify, defend and hold Landlord and its successors and assigns harmless from and against any and all claims, demands, suits, losses, damages, assessments, fines, penalties, costs or other expenses (including attorneys' fees and court costs) arising from or in any way related to actual or threatened damage to the environment, agency costs of investigation, personal injury or death, or property damage due to a release or alleged release of Hazardous Materials in the surface or ground water arising from Tenant's business operations, or gaseous emissions arising from Tenant's business operations or any other condition existing or arising from Tenant's business operations resulting from the use or existence of Hazardous Materials, whether such claim proves to be true or false. Tenant further agrees that its indemnity obligations include, but are not limited to, liability for damages resulting from the personal injury or death of any employee of Tenant, regardless of whether Tenant has paid the employee under the workers' compensation laws of any state or other similar federal or state legislation for the protection of employees. The term "property damage" as used in this paragraph includes, but is not limited to, damage to any real or personal property of Tenant, Landlord and any third parties.

Tenant's obligations under this paragraph shall survive the termination of this Lease by eviction or otherwise.

32. Reversion. Tenant shall surrender to Landlord at the end of the Term of this Lease or upon cancellation of this Lease, the Lease Property in as good condition as the Lease Property was at

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the beginning of the Term of this Lease, normal wear and tear accepted.

33. Effective Date of Lease. This Lease shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant and Landlord's fee simple acquisition of the Property.

34. Notices. All notices, demands, or other written communications required under this Lease shall be made in writing, signed by the parties serving the same and hand delivered or deposited in the registered or certified United States Mail, return receipt requested, postage prepaid, and (i) if intended for Landlord, shall be addressed to:

Hilton Head Island Marina, L.P.
c/o Hilton Head Marina, Inc., General Partner
18 Simmons Road
Hilton Head Island, SC 29925

with a copy to:

Geoffrey M. Smith, Esq.
Geoffrey M. Smith & Associates
Post Office Box 20458
Charleston, SC 29413

(ii) if intended for Tenant, shall be addressed to:

J & W CORPORATION OF GREENWOOD
Post Office Box 21565
Hilton Head Island, SC 29925

with a copy to:

Frederick C. Hack, Jr., Esquire
Ruth, Hack & MacNeille, P.A.
Post Office Drawer 5706
Hilton Head Island, SC 29938

35. Estoppel Certificates. Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Lease is in full force and effect. This statement should also state whether or not Landlord is in default in performance of any covenant and shall constitute an acknowledgement by Tenant that this Lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by Landlord which may have existed prior to the date of such notice and are not revealed therein.

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36. Attorneys' Fees. In the event it is necessary for either party to employ an attorney for the collection of Rent or any other sum due hereunder, or to enforce any covenant of this Lease, or the termination of this Lease, or for the possession of the Lease Property or any part thereof, the non-prevailing party shall pay all costs, including reasonable attorney's fees.

37. Entire Agreement. Except for any executory provisions of the Assignment, this Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Property or of the remainder of the Term of this Lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

38. Applicable Law. The parties executing this Lease acknowledge that the negotiations and anticipated performance of this Lease occurred or shall occur, and that this Lease is executed in the State of South Carolina, and that, therefore, the parties irrevocably and unconditionally agree that South Carolina law shall govern the interpretation of this Lease and the rights and duties of the parties hereto.

39. Survival of Representations and Warranties. All representations, warranties, covenants and agreements contained in this Lease and in all documents and agreements incorporated herein shall survive the execution and termination of this Lease.

40. Severability. If any provision of this Lease is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision shall be fully severable, and this Lease shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Lease, and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Lease.

41. Heirs, Successors and Assigns. This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

42. Interpretation Presumption. This Lease has been negotiated by the parties hereto and by the respective attorneys for each party. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease. In the event of a dispute concerning the interpretation of this Lease, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the Lease.

43. Exhibits. All exhibits referred to herein are hereby incorporated into this Lease.

IN WITNESS WHEREOF, the parties hereto have their duly authorized representative to execute this Lease on the day and year first above written.

WITNESSES:

Sue H. Thomas

LANDLORD:

HILTON HEAD ISLAND MARINA, L.P.,
a South Carolina limited partnership

By: HILTON HEAD MARINA, INC.,
a South Carolina Corporation
Its: General Partner

By: _____
Richard Freedman
Its: President

WITNESSES:

Sue H. Thomas

TENANT:

J & W CORPORATION OF GREENWOOD,
a South Carolina corporation

By: _____

Its: President

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STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

PROBATE

BEFORE ME personally appeared the undersigned witness and made oath that (s)he saw the within-named Hilton Head Island Marina, L.P., a South Carolina limited partnership, by its General Partner, Hilton Head Marina, Inc., a South Carolina corporation, by Richard Freedman, its President, sign, seal and as its act and deed, deliver the within written Lease Agreement; and that (s)he with the other witness subscribed above, witnessed the execution thereof.

(Signature of 1st or 2nd witness)

SWORN to before me this
23rd day of SEPTEMBER, 1993.

Sue H. Thornton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 29, 1993

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

PROBATE

BEFORE ME personally appeared the undersigned witness and made oath that (s)he saw the within-named J & W Corporation of Greenwood, a South Carolina corporation, by William P. Searcy, its President sign, seal and as its act and deed, deliver the within written Lease Agreement; and that (s)he with the other witness subscribed above, witnessed the execution thereof.

(Signature of 1st or 2nd witness)

SWORN to before me this
23rd day of SEPTEMBER, 1993.

Sue H. Thornton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 29, 1995

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EXHIBIT A

LEASE PROPERTY

The Lease Property shall be the following described areas of the Property, which are located as indicated on the attached Exhibit A-1 as such areas may be reconfigured from time to time:

1. Commercial Space. The southwestern most 300 square feet of the floating store (designated "Floating Store" on Exhibit A-1);

2. Barge Docking, Loading, and Unloading Facilities. The barge docking facility immediately east of the concrete ramp designated as "Concrete Ramp" on Exhibit A-1.

3. Commercial Dock Space. The northeastern most two-hundred and fifty-eight (238') linear feet of floating dock space on the outside (southern side) of the innermost (northern most) finger of floating docks indicated on Exhibit A-1 as "Floating Dock/333'" and the forty-two (62') linear feet of floating dock space on the inside (northern side) of the inner most (northern most) finger of floating docks immediately northeast of and adjacent to the"Floating Store";

4. Embarkation and Debarkation Area. The southwestern most seventy-five (75') linear feet of floating dock on the outside of the inner most finger of floating docks. Tenant will have shared use of this area and its vessels will not occupy this area for purposes of embarkation and debarkation for intervals of longer than fifteen (15) minutes at a time.

5. Parking Area. A designated parking area containing parking area for not less than fifty (50) vehicles located on the Property.

6. Access. The Lease Property includes the access areas described in paragraph 9, entitled "Access" and the loading, unloading and maneuvering area generally to the north of the docking facility and concrete ramp and indicated on Exhibit A-1 as "Conc".

7. Reconfiguration. The Lease Property and the access areas may be reconfigured from time to time pursuant to paragraphs 8, 9 and 10, entitled "Parking", "Access", and "Reconfiguration", respectively.

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EXHIBIT B

ALL that certain piece, parcel or tract of land containing 4.55 acres, more or less, together with all improvements thereon, located on Hilton Head Island, Beaufort County, South Carolina, as reflected on a plat thereof entitled "A Composite Plat of Broad Creek Marina Located on Marshland Road", dated May 29, 1992, and prepared by Jerry L. Richardson S.C.R.L.S. #4784, which said plat has been recorded in the Beaufort County RMC Office in Plat Book 44 at page 47. According to said Plat, said property is bounded on the West, North and East by lands now or formerly of Charles Simmons and on the South by the mean high water mark of Broad Creek.

TOGETHER WITH the concrete ramp, floating dock, wooden walkway, floating store, gas pumps, electrical panel, and other real and personal property as reflected on said Plat.

TOGETHER WITH ingress and egress from Marshland Road along a fifty foot (50') right of way and also along an area designated as Access Easement as reflected on said Plat, and all other applicable easements affecting the property.

TOGETHER WITH all right, title and interest in and to all property above and below the mean high water mark of Broad Creek and the southern boundary of the property.

BEING the same property conveyed to First Union National Bank of South Carolina by deed of Broad Creek Holdings, A Limited Partnership, dated July 28, 1992, and recorded August 18, 1992, in Book 605 at page 1010, in the Beaufort County RMC Office; and being conveyed by First Union National Bank of South Carolina to Hilton Head Island Marina, L.P. by deed dated September 23, 1993, and recorded in Book ___ at page ___ in aforesaid RMC Office.

TMS #: 510-11-0-7F-0

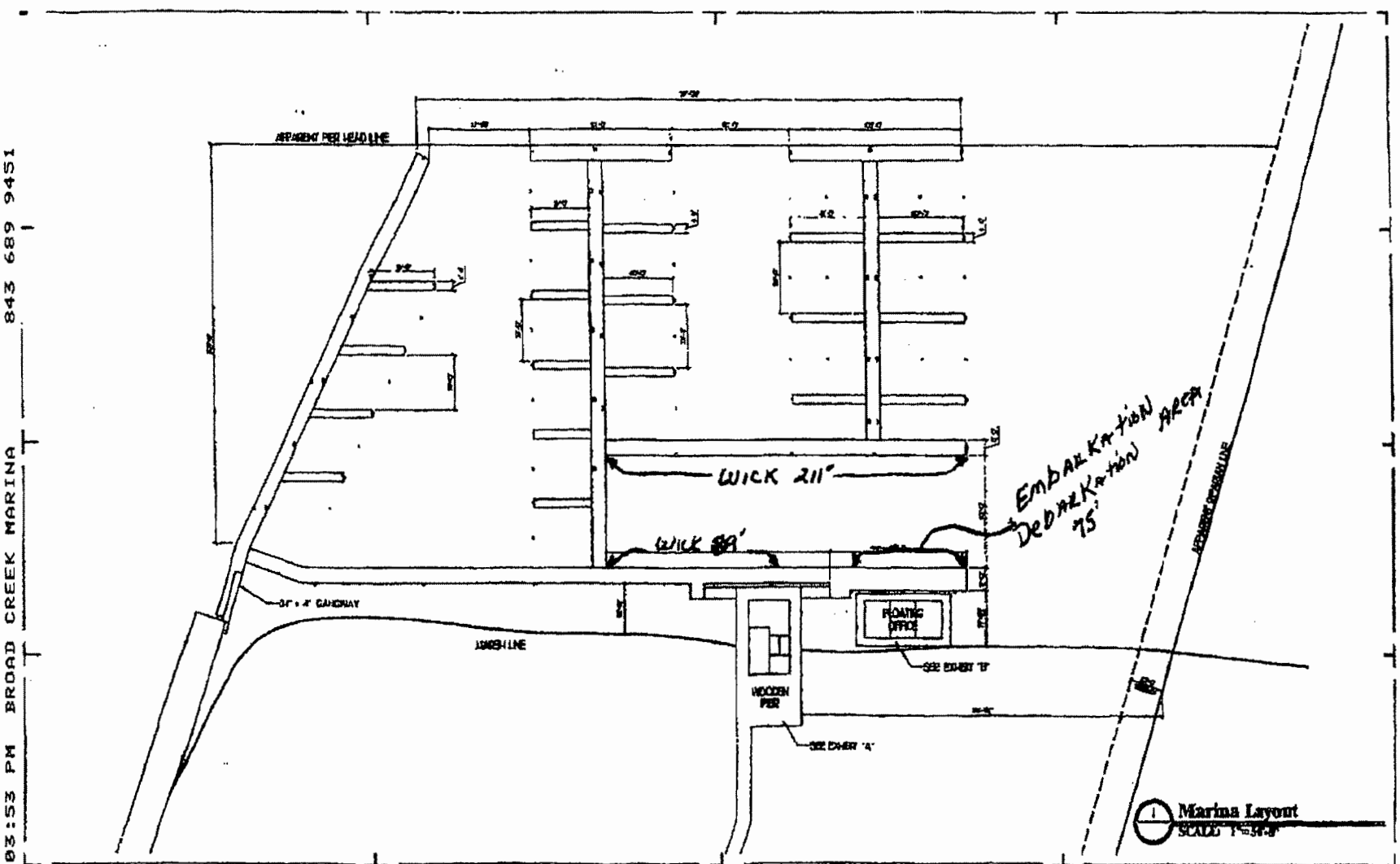
Grantee's Address:
Hilton Head Island Marina, L.P.
18 Simmons Road
Hilton Head, SC 29925

5287\exhibit.a\bbd\09\21\93

EXHIBIT B

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DEC-02-2004 03:53 PM BROAD CREEK MARINA 843 689 9451 P.02



KRA INC.
ARCHITECTURE, PLANNING, ENGINEERING

Broad Creek Marina

RELEASE AND CONFIDENTIAL SETTLEMENT AGREEMENT BROAD CREEK MARINA OF HILTON HEAD, LLC, F/K/A HILTON HEAD ISLAND MARINA, L.P., A SOUTH CAROLINA LIMITED PARTNERSHIP AND J & W CORPORATION OF GREENWOOD, A SOUTH CAROLINA CORPORATION DATED DECEMBER 13 2004.

EXHIBIT C

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Broad Creek Marina 000048

Property Overview

Broad Creek
MARINA
Hilton Head Island

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RELEASE AND CONFIDENTIAL SETTLEMENT AGREEMENT BROAD CREEK MARINA OF HILTON HEAD, LLC, F/K/A HILTON HEAD ISLAND MARINA, L.P., A SOUTH CAROLINA LIMITED PARTNERSHIP AND J & W CORPORATION OF GREENWOOD, A SOUTH CAROLINA CORPORATION DATED DECEMBER 13 2004.

EXHIBIT D

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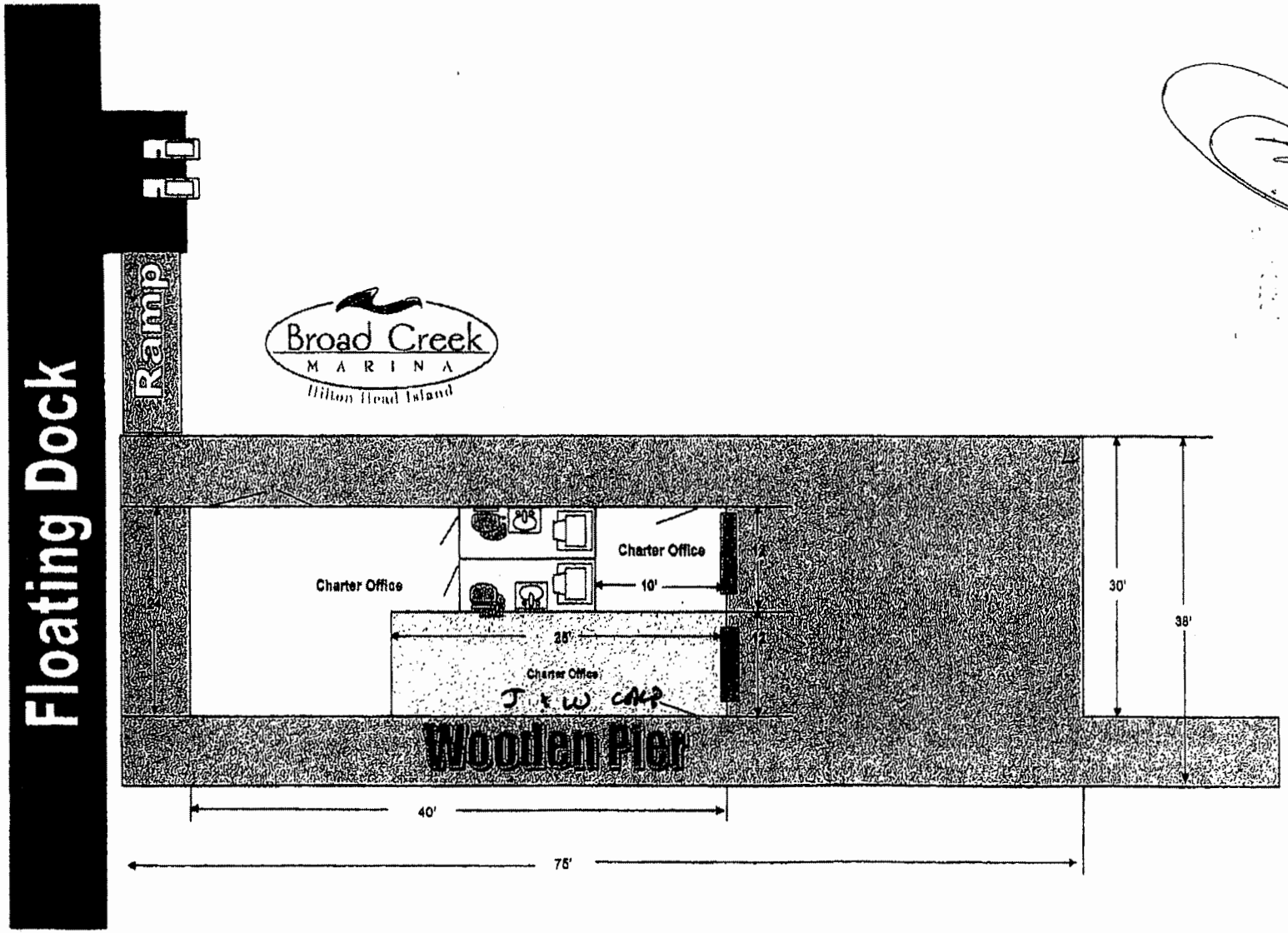
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Exhibit B

RELEASE AND CONFIDENTIAL SETTLEMENT AGREEMENT BROAD CREEK MARINA OF HILTON HEAD, LLC, F/K/A HILTON HEAD ISLAND MARINA, L.P., A SOUTH CAROLINA LIMITED PARTNERSHIP AND J & W CORPORATION OF GREENWOOD, A SOUTH CAROLINA CORPORATION DATED DECEMBER 13 2004.

EXHIBIT E

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Floating Dock
Ramp
Broad Creek
MARINA
Hilton Head Island
Charter Office
Charter Office
10'
12'
25'
12'
30'
38'
Charter Office
Wooden Pier
40'
75'

RELEASE AND CONFIDENTIAL SETTLEMENT AGREEMENT BROAD CREEK MARINA OF HILTON HEAD, LLC, F/K/A HILTON HEAD ISLAND MARINA, L.P., A SOUTH CAROLINA LIMITED PARTNERSHIP AND J & W CORPORATION OF GREENWOOD, A SOUTH CAROLINA CORPORATION DATED DECEMBER 13 2004.

EXHIBIT F

ELECTRONICALLY FILED - 2019 Sep 26 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

ELECTRONICALLY FILED - 2019 Sep 26 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Broad Creek Marina
&
J. & W. Corp
Annual Shared Liabilities

Item	To Whom	Annual Cost	J. & W. % of Liability	J. & W. Liability
General Liability				
Docks, Wharves & Piers	Costal Plains Insurance	$22,100.00	7.5%	$1,657.50
Lot Maintenaince	Broad Creek Marina Staff			
8 Man hours per wk.		$4,492.00	32.0%	$1,437.44
Real Property	Costal Plains Insurance	$3,398.00		
Storage Shed		$163.92	0.0%	
Dry Stack Building		$1,279.36	0.0%	
Floating Store or Dock Masters Office		$467.76	33.3%	$155.76
Dock and Piers		$2,074.96	7.5%	$155.62
Property Taxes	Beaufort Co Treasure	$16,148.00	10.0%	$1,614.80
			Total	$5,021.13

ELECTRONICALLY FILED - 2019 Sep 26 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Ellis Lesemann

From: Nate Jones
Sent: Tuesday, September 10, 2019 2:43 PM
To: Ellis Lesemann
Subject: FW: Proposed Office

See forwarded

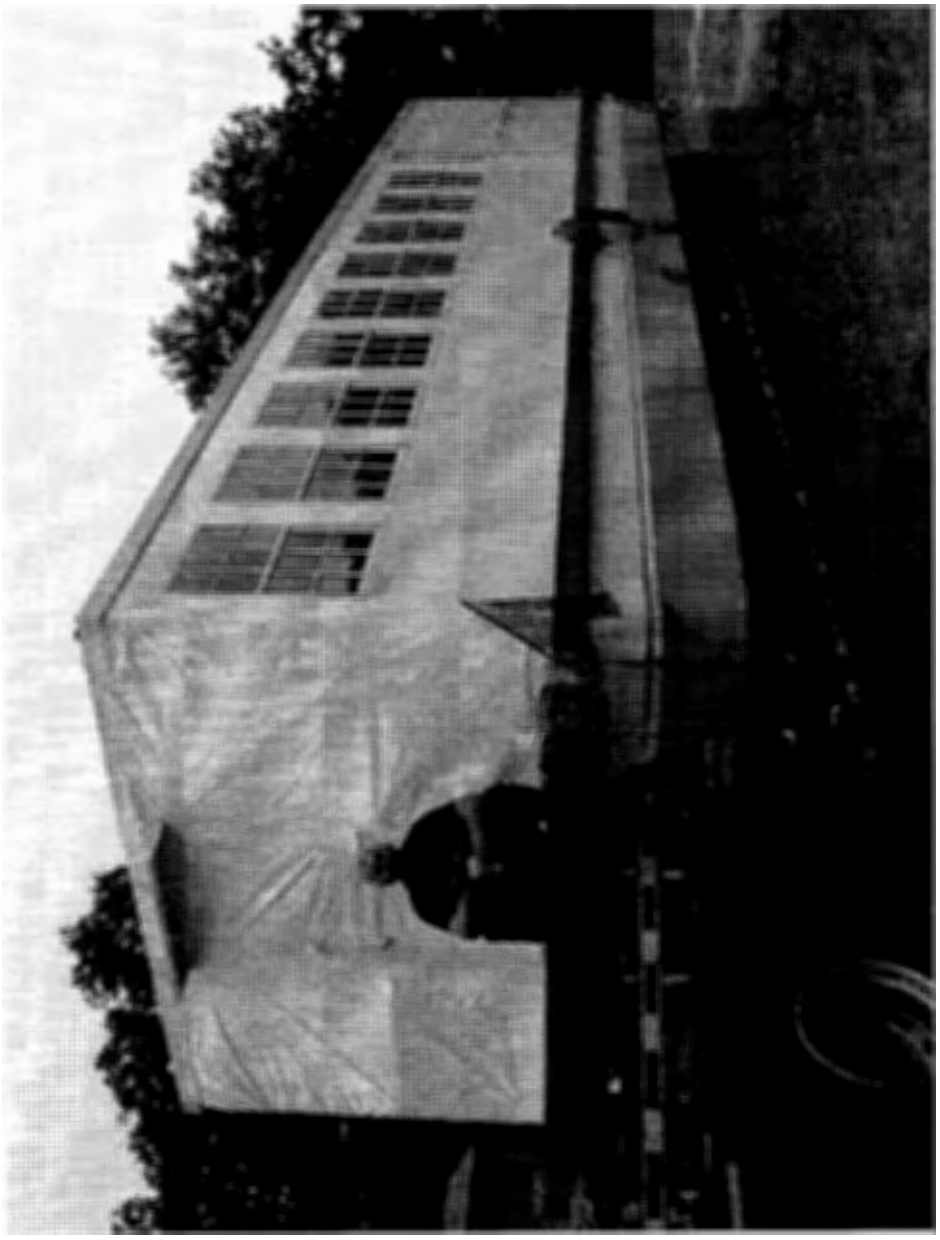
From: mary ward <daufuskiedifferencemw@gmail.com>
Sent: Saturday, August 10, 2019 12:51 PM
To: Nate Jones <nate@broadcreekmarinahh.com>
Subject: Proposed Office

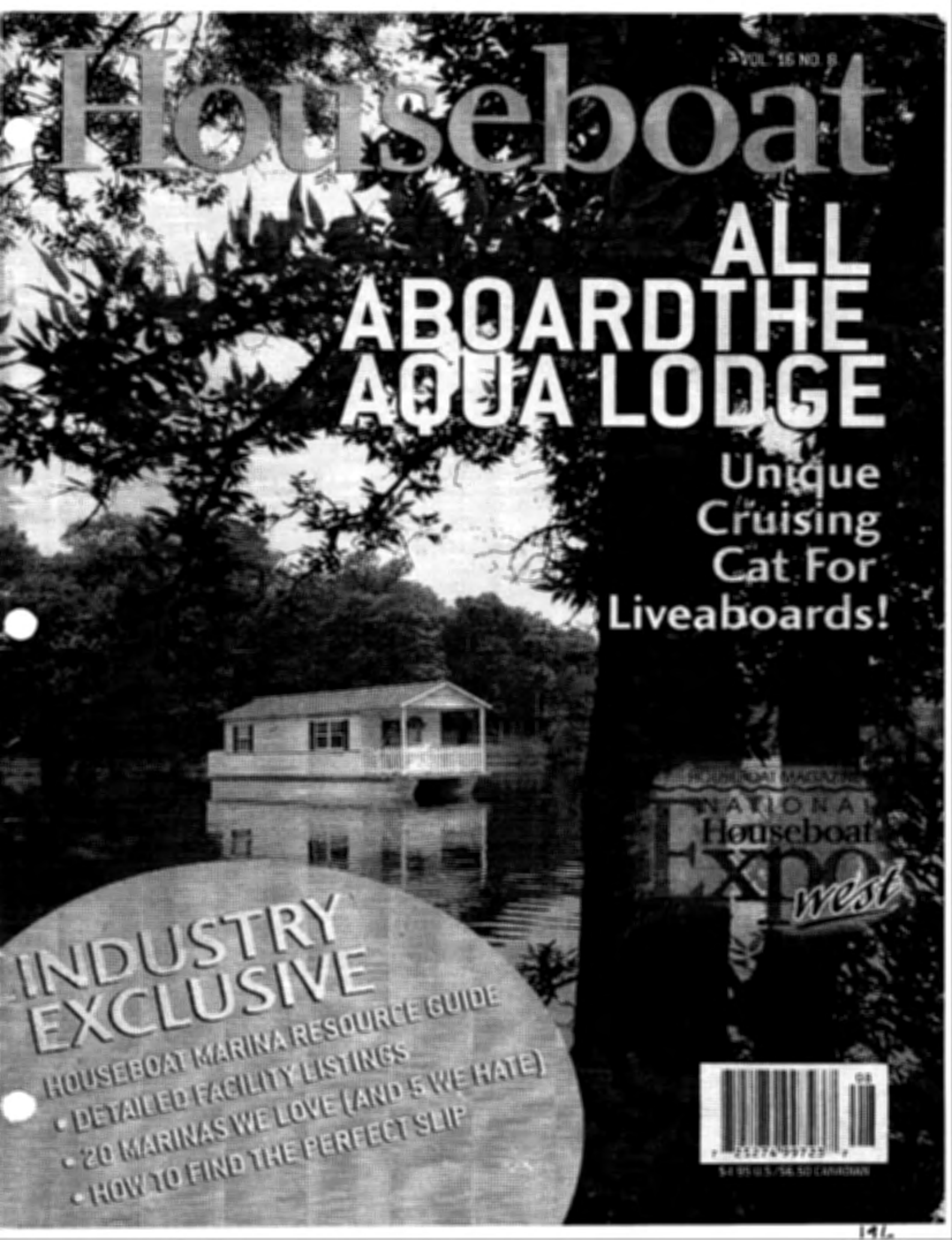
Nate,
I appreciate you sending me the pictures and drawings of the boat as our office. Unfortunately, I don't think it will work for us, for several reasons. The fiberglass catamaran pontoons, much like the bathrooms you have on the dock, are not nearly stable enough for the movement in an office situation. The flat roof has No pitch at all and really like a camper will eventually leak. I called the manufacturer of the boat and he informed me the pontoons only had a limited year warranty. As you know our settlement agreement requires a minimum of a 20 year life for the building, I would again offer my original suggestion which is to put the building on a steel barge.

Sincerely,
Wick

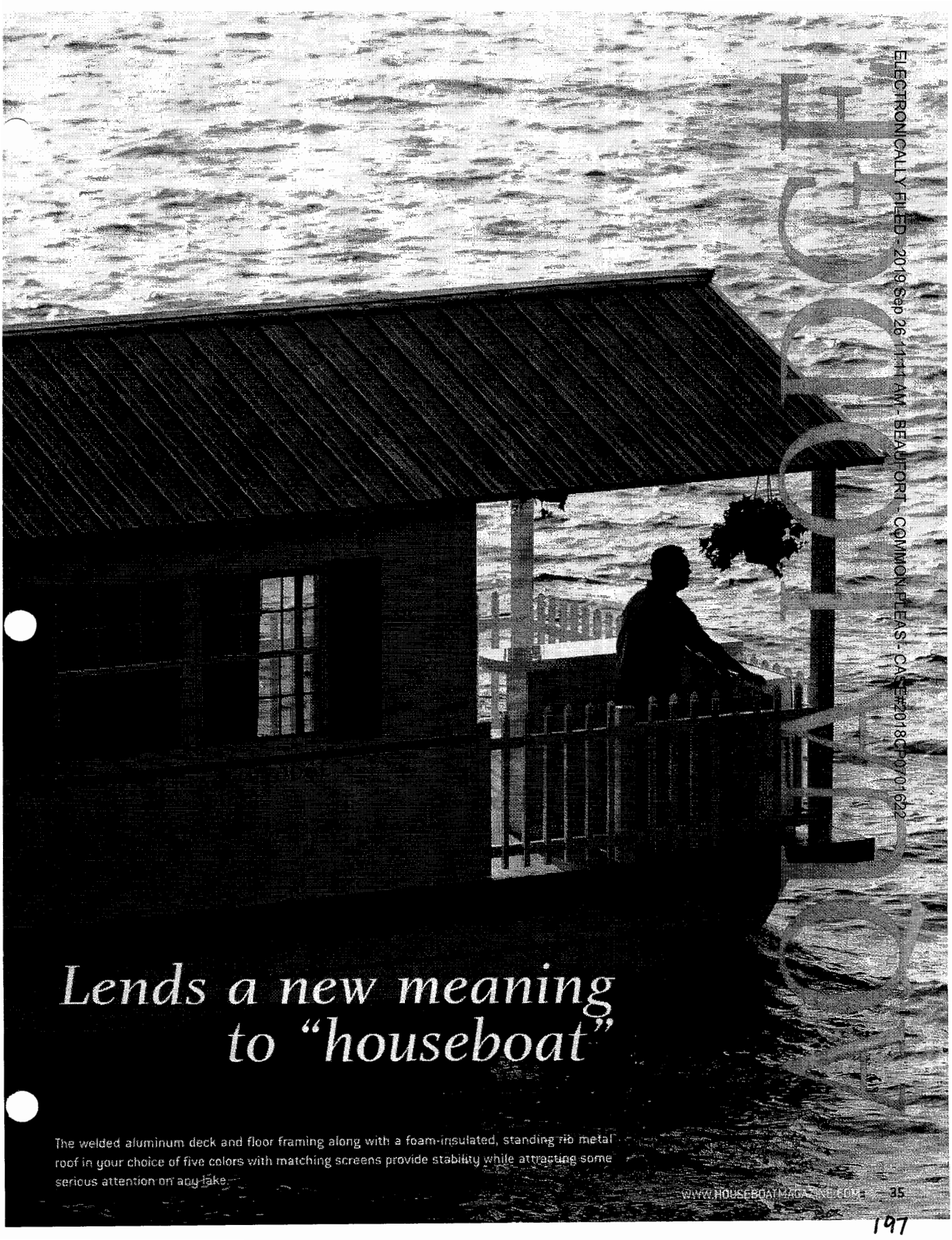
daufuskiedifferencemw@gmail.com
www.daufuskiedifference.com
843-342-8687

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Houseboat
VOL. 16 NO. 8
ALL ABOARD THE AQUA LODGE
Unique Cruising Cat For Liveaboards!
NATIONAL Houseboat EXPO west
INDUSTRY EXCLUSIVE
HOUSEBOAT MARINA RESOURCE GUIDE
• DETAILED FACILITY LISTINGS
• 20 MARINAS WE LOVE (AND 5 WE HATE)
• HOW TO FIND THE PERFECT SLIP

ELECTRONICALLY FILED - 2019 Sep 26 11:11 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622



Lends a new meaning to "houseboat"

The welded aluminum deck and floor framing along with a foam-insulated, standing rib metal roof in your choice of five colors with matching screens provide stability while attracting some serious attention on any lake.

"...who hasn't dreamt of having a cottage by the lake? But let's face it, waterfront property is not affordable for most people."

With 24 years of experience, Catamaran Cruisers always seems to be looking for the next innovation. Its portfolio ranges from the 30-foot trailerable land or sea Vagabond Combo, to its 62-foot luxury Aqua Cruiser.

The ingenuity that this southern, family-owned business demonstrates may be attributed to its owner's vision. Bill Baldwin's experience in the RV industry lends a unique approach to how he sees houseboating. His initial inspiration developed from a desire to build an RV that could be used on land and in the water. It was called the Scooter. Built in 1972, it featured plastic pontoons and retractable wheels making it trailerable, like a camper. Since then, Baldwin has continued to think above the water line, developing a full line of houseboat choices for consumers of all types.

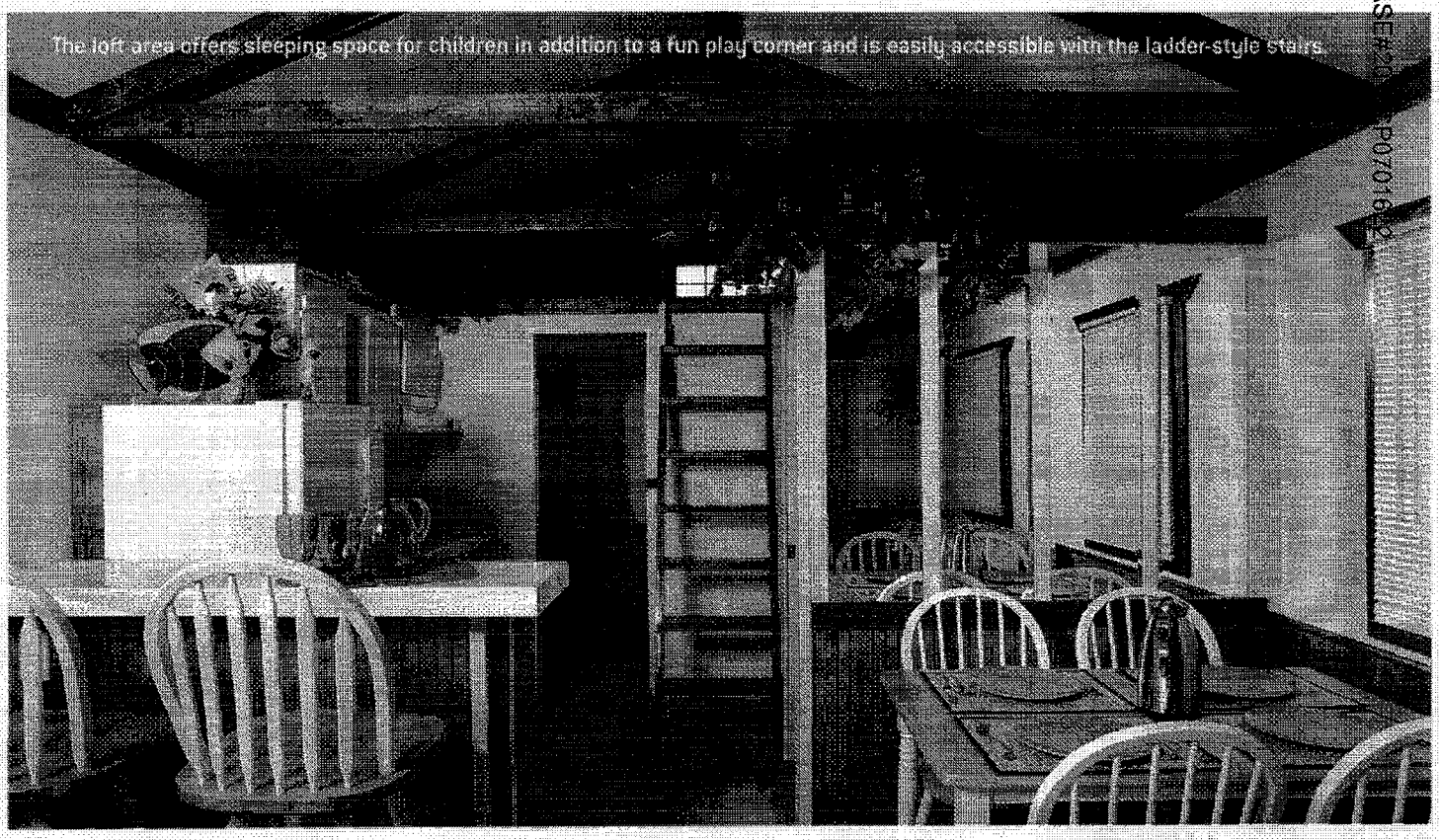
Its newest creation, the Aqua Lodge, offers condo-style comfort for a relaxing on-water adventure. If not for its floating status, the Aqua Lodge might well be mistaken for a small home with its most noticeable feature being its cabin-like feel.

You may wonder what inspired this unique-looking houseboat.

"There were actually two motivating factors. Feedback from our customers indicated a majority of their time aboard was spent dockside." Said Baldwin, "and who hasn't dreamt of having a cottage by the lake? But let's face it, waterfront property is not affordable for most people."

In addition to comfortably accommodating an entire family, Catamaran includes extras like picket fences on the bow and stern, which create a "front porch" feel. The wood beamed cathedral ceilings feel homey and comfortable for a weekend away and the three separate areas can accommodate up to 10 people overnight. This unique liveaboard boasts other comfort amenities as well. The interior design offers an amazing feeling of spaciousness. The private master stateroom features mirrored closet doors and a queen sized bed. The salon sofas convert to sleeping for two more people. Bathrooms have full-sized showers and plenty of space for dressing. The kitchenettes offer double bowl sinks and upper and lower cabinets with a built-in microwave oven. A three-burner gas cook top and under-counter refrigerator is standard.

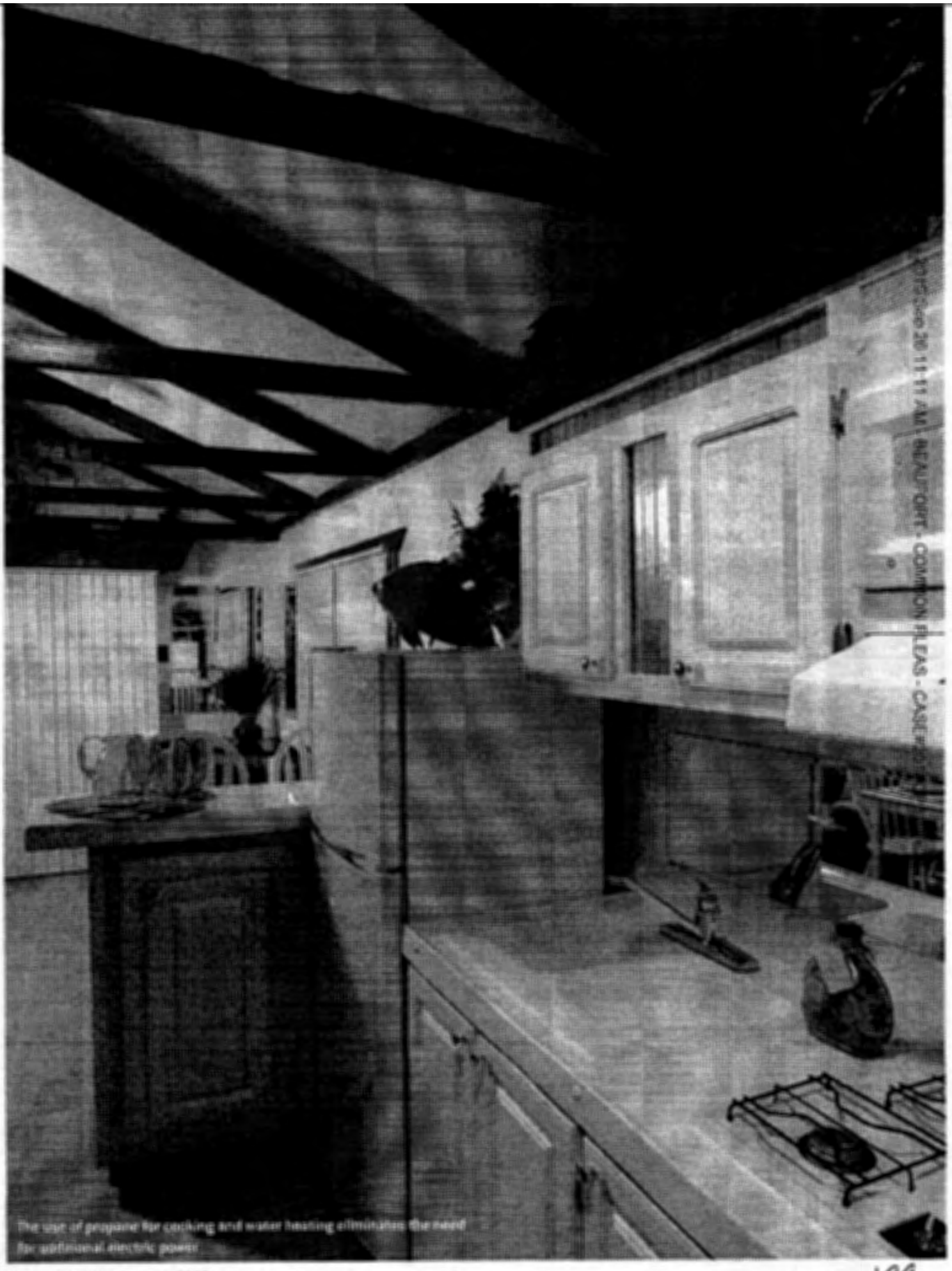
The Aqua Lodge can be customized to meet your individual needs with wood interiors for a cabin appeal or liveaboard insulation and heat. This boat can be used independent of dock



The loft area offers sleeping space for children in addition to a fun play corner and is easily accessible with the ladder-style stairs.

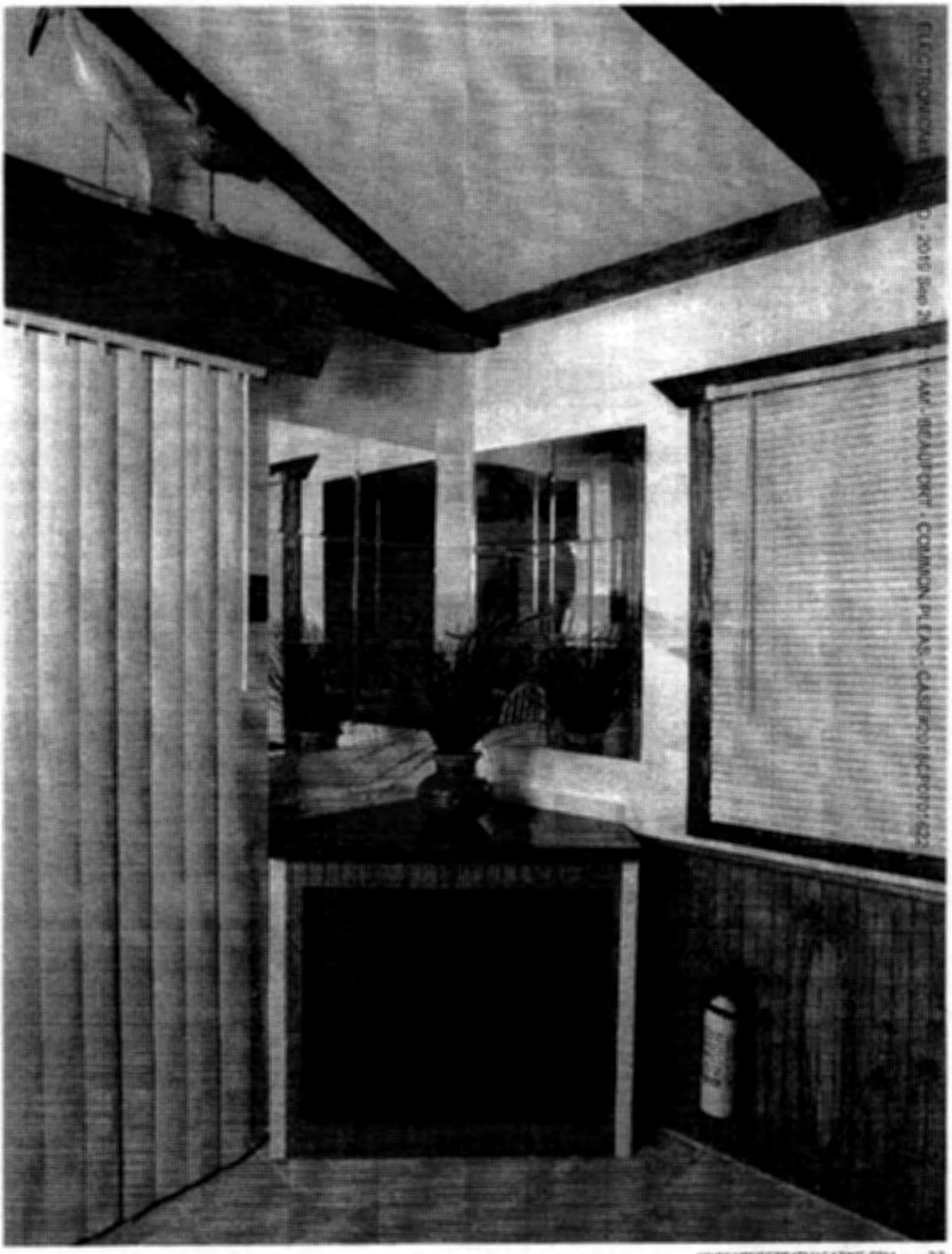
ELECTRONICALLY FILED 2009 Sep 28 11:11 AM BEAUFORT COMMON PLEAS CASE#2009CP0701626

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The use of propane for cooking and water heating eliminates the need for additional electric power.

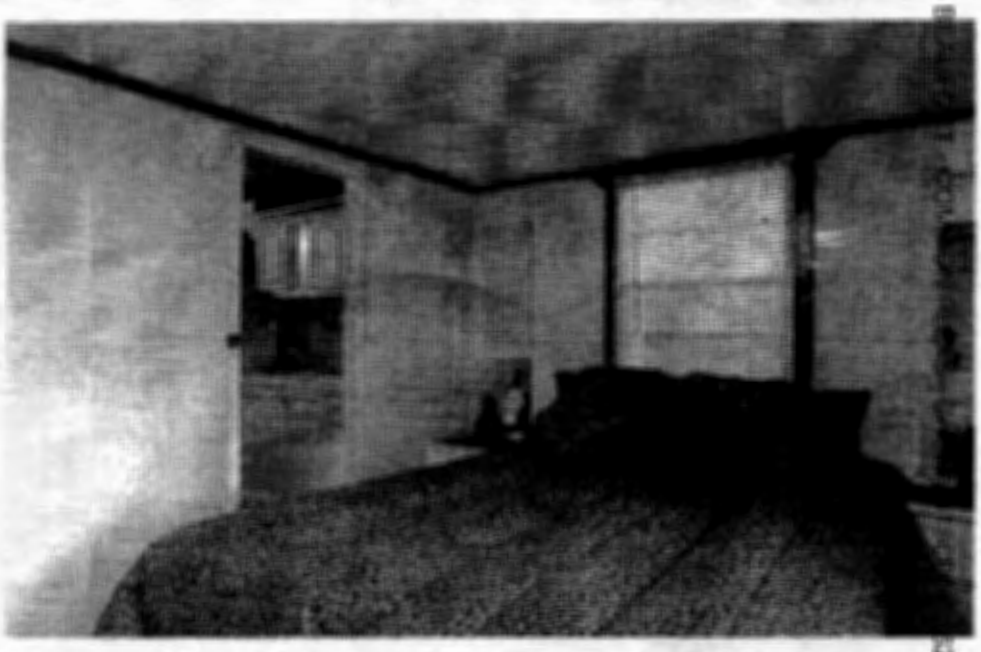
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Optional outboard power allows these units the mobility of a houseboat with the comfort of a floating cabin anchored off shore in your favorite quiet bay.







utilities when self-contained, and features a 100-gallon holding tank for a multiple night's stay aboard. You'll find the deck areas perfect at different times of the day for sunning or shading, and because of its home-like appeal, the Aqua Lodge is like having year-round waterfront access.

The layout and amenities of this houseboat optimize comfort for living aboard. Standard Aqua lodges are designed for use in temperatures above freezing. But for use in sub-freezing conditions or liveaboard use, there are several options like additional insulation, gas or electric heat and insulated doors and windows. If you are interested in investing in a second home or a rental unit, the Aqua Lodge is ideally suited for both and qualifies for second home tax savings. For boaters concerned about high gas prices, this houseboat is an economical choice. Additionally, it meets applicable Coast Guard standards and can accommodate everything you'll need for a little recreational fun.

Visit Catamaran Cruisers' website at www.catamarancruiser.com or call 800-365-1255 for the dealer nearest you. ■

SPECS

- Fiberglass multi-compartment hulls
- Hulls bulk headed on four-foot centers
- 18-foot draft allows use in shallow waters
- Seamless fiberglass exterior
- Welded aluminum deck and floor framing
- Ideal for use in salt water
- Propane gas or electric water heater
- Can be enjoyed with or without outboard power
- Step flush water saver toilet with 100-gallon holding tank
- More space than most luxurious motor homes
- Available options allow customizing to meet individual needs
- Foam insulated roof
- Molded top bathroom vanity
- Seamless Armstrong vinyl floor
- 30 AMP electrical system

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ELECTRONICALLY FILED - 2019 Nov 08 8:52 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT J & W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No.: 2018-CP-07-1622 **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO ALLOW ADDITIONAL DISCOVERY**

You will please take notice that the Plaintiff, by and through its undersigned counsel of record, will, on November 18, 2019 at 9:00 a.m., move the Hon. Marvin E. Dukes III to enter an Order allowing the Plaintiff to tender additional limited Interrogatories and a Request for Production in the matter, and take the telephone deposition of Dirk Wiley, President of Catamaran Cruisers, all as relate directly to this Court's consideration of the Defendants' pending Motion to Implement and Enforce the Master's Interim Order in this case.

As the basis for this Motion, the Plaintiff would show unto this Honorable Court that the Court's Interim Order dated May 29, 2019, requires the Defendants to provide the Plaintiff with a commercial office from which the Plaintiff can reasonably be expected to conduct its business during the course of the 99-year Lease, which has 73 years remaining. Further, the Interim Order

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requires the Defendants to provide a new floating office with at least 300 square feet of commercially useable space and at least a twenty (20) year anticipated service life.

In response to that Interim Order, the Plaintiff filed its Motion to Alter or Amend Judgment on June 6, 2019, arguing that the Court's decision to assign the responsibility for the future replacement of the floating office to the Plaintiff was not in keeping with the letter and spirit of the controlling documents, because it was clearly the intention of the parties that the Landlord would remain responsible for the provision of an office for the Tenant throughout the term of the 99 year Lease Agreement. Plaintiff has argued, and the Court has under consideration, that Motion to Alter or Amend, based upon the Plaintiff's contention that the Court should take judicial notice that a "floating office" on the salt waters of Broad Creek in Beaufort County will have a reasonably anticipated life span of no more than twenty years, and thereby leave the Plaintiff responsible for the future several replacements of the floating office that will undoubtedly become necessary before this Lease Agreement ends in 2092.

Since the Interim Order was filed, and the Motion to Alter or Amend was filed and argued, the parties have worked together to get the Plaintiff into a "temporary office" as per the Court's Order. The Plaintiff moved in on September 10, 2019, and immediately resumed paying its common area charges to the Defendant that had been earlier terminated because the Defendants would not, after demand, provide a Town-authorized, to-code office space as required under the Lease Agreement.

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ELECTRONICALLY FILED - 2019 Nov 08 8:52 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

As to a permanent office, under the Court's Interim Order, the Defendants "as soon as reasonably possible," were to take all reasonable steps to permit and acquire a new floating office "with at least 300 square feet of commercially useable space and at least a 20-year anticipated service life." Unfortunately, the Defendants failed, despite repeated requests from the Plaintiff, to move forward reasonably to permit and acquire the new floating office. (See Exhibits 1 and 2.)

Finally, in early August 2019, the Defendants apparently decided to jettison any consideration of an actual floating office, and instead signaled their intention to fulfill their Court-required obligation with a fiberglass hulled houseboat, and sent the Plaintiff's President William P. Scurry, pictures and drawings of a houseboat office to be built in Tennessee by "Catamaran Cruisers," and sought his input. On August 10, 2019, Mr. Scurry advised the Defendants that he felt the houseboat would not work for several reasons: "The fiberglass catamaran pontoons, much like the bathrooms you have on the dock, are not nearly stable enough for the movement in an office situation. The flat roof has no pitch at all and really like a camper will eventually leak. I called the manufacturer of the boat and he informed me the pontoons only had a limited year warranty....I would again offer my original suggestion which is to put the building on a steel barge." See Exhibit E to the Defendant's Motion to Implement.

Apparently unwilling to consider the recommendation of Mr. Scurry that any floating office should be on a steel barge, the Defendants filed the instant Motion on September 26, 2019. In reply, the Landlord, through counsel on October 10, requested that before the Court consider

ELECTRONICALLY FILED - 2019 Nov 08 8:52 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

the Motion to force the Tenant to accept a houseboat with fiberglass pontoons as the "floating office," that the Plaintiff be provided with certain documentation concerning the design and manufacturing of the houseboat, so that the Plaintiff could have an engineer/architect analyze the houseboat and render an opinion that would assist the Court in evaluating the proposal. The documents requested were:

a. Any and all documents (including emails) that refer to, relate to, or otherwise evidence any communications between representatives of Broad Creek Marina and Aqua Lodge, regarding their potentially providing a floating office.

b. All plans, specifications and engineering drawings for the specific houseboat that is proposed to be used as the floating office in this case.

c. All documents (including emails) that refer to, relate to, or otherwise evidence any communications between representatives of Broad Creek Marina and either DHEC/OCRM and/or the Town of Hilton Head Island regarding the potential permitting and use of this specific houseboat as a "floating office" under Judge Dukes' Order.

d. Any and all documents (including emails) that refer to, relate to, or otherwise evidence any communications between representatives of Broad Creek Marina and any other manufacturer, builder, boat-builder or the like, regarding alternatives to the "Aqua Lodge" that were investigated and/or considered by BCM to provide a floating office.

See Exhibit 3.

In addition, the Plaintiff, by its lawyer's letter of October 10, 2019, requested the Defendants agree to the Plaintiff taking the telephone deposition of Catamaran Cruiser President Dirk Wiley, who has filed an Affidavit attached to the Defendants' pending motion, proclaiming and admitting:

1. "Aqua Lodges are manufactured to high quality standard. It is not possible to provide multi-year guarantees of performance due to the variables that are inherent in weather

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conditions and whether the vessel is maintained appropriately. However, when properly maintained, Aqua Lodges can remain in service for twenty (20) years or longer."

2. "However, as noted above, this statement is not (his emphasis added) a warranty or guarantee. I am not aware of any manufacturer of such structures that guarantees the performance of their vessels for twenty (20) years. With proper care and precaution, our Aqua Lodge vessels are designed for a long service life, as indicated by the testimonials featured on our web site."

See Exhibit B to the Defendant's Motion To Implement and Enforce.

Plaintiff has received no formal reply to the letter of October 10, 2019, and the Defendants have not produced any of the requested documents nor agreed to the telephone deposition.

Thus, Plaintiff hereby moves the Honorable Court to hold the Defendants' Motion to Implement and Enforce the Master's Interim Order in abeyance, and for good cause shown, enter its Order allowing the Plaintiff to tender discovery requests covering the documents set forth above, and conduct a telephonic deposition of Mr. Wiley. Once the information is produced and the deposition taken, the Court will be in a much better position to evaluate whether the floating houseboat office meets the Court's requirements, and the parties' expectations.

It is clear —based upon the Affidavit of the President of the houseboat manufacturer—that even he does not expect the houseboat office to survive for twenty years. He highlighted for the Court in his Affidavit, that he makes no warranty or guarantee on the houseboat, and states what the Plaintiff has consistently argued: that a houseboat is not made for, nor expected to serve as, a commercial office. If the Defendants are allowed to fulfill the Court's Order by purchasing a houseboat as proposed, it will place the Plaintiffs in a similar position as they were in at the

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initiation of the Lease Agreement, where the "floating (houseboat) office" provided by the Defendants, sank twice and all furnishings, computers and office contents, were lost.

This Motion may be supported by Affidavits and/or a Memorandum in Support.

I SO MOVE.

Law Office of Thomas C. Taylor, LLC
S/Thomas C. Taylor
Thomas C. Taylor
SC Bar No.: 5499
P.O. Box 5550
Hilton Head Isl., SC 29938
Phone: 843-785-5050
Fax: 843-785-5030
Email: tom@thomastaylorlaw.com

ATTORNEY FOR PLAINTIFF
J & W CORPORATION OF GREENWOOD

Hilton Head Island, South Carolina
November 7, 2019

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EXHIBIT L

LAW OFFICE OF

THOMAS C. TAYLOR, LLC

22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928

TELEPHONE 843-785-5050
TELECOPIER 843-785-5030
www.thomastaylorlaw.com • tom@thomastaylorlaw.com

ADMITTED TO THE UNITED STATES SUPREME COURT BAR

ADMITTED IN SOUTH CAROLINA AND GEORGIA

CERTIFIED CIRCUIT COURT MEDIATOR

MAILING ADDRESS
P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

ELECTRONICALLY FILED - 2019 Nov 07 2:50 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

June 28, 2019

Via U.S. Mail and E-Mail Attachment
Ellis R. Lesemann, Esq.
Lesemann & Associates, LLC
418 King Street, Suite 301
Charleston, SC 29403

Re: J & W Corporation of Greenwood v. Broad Creek Marina et al, Beaufort County Civil Action Number 2018-CP-07-1622; floating office proposals

Dear Ellis:

I am writing today to inquire as to the status of BCM's efforts to permit and acquire a new floating office for J & W's future use. As you know from Judge Dukes' Order of May 29, 2019, BCM was to begin "as soon as reasonably possible…at their sole expense [to] take all reasonable steps to permit and acquire a new floating office with at least 300 square feet of commercially useable space and at least a 20-year anticipated service life." Would you please provide me with a summary in writing as to where BCM stands in this process?

I have filed a Motion per SCRCP 59(e) for Judge Dukes to alter or amend that Order because we do not believe that a relatively short "20-year anticipated service life" comports with the letter or spirit of what BCM is required to provide J & W under the terms of the original Lease Agreement or the Confidential Settlement Agreement and Release. It is scheduled to be argued on July 19, 2019. An important part of my argument will center on the issue of what "service life" can actually be expected from any floating office in the waters of Broad Creek under generally accepted standards of anticipated wear and tear. I have a forensic engineer and architect standing by to review the proposed plans/specifications of the floating office BCM intends to provide, and I need to get them those plans/specs at least two weeks prior to the hearing to give them time to analyze them and provide an affidavit regarding their professional opinions about the projected service life of the structure.

Please let me know at your earliest convenience where BCM and you stand in this process and provide us with the proposed plans and specifications of the proposed floating office. And of course, assuming you have language from the architect or manufacturer concerning the anticipated service life, I need to see that specific language. Thank you very much. I look forward to hearing from you.

Cordially yours,

Thomas C. Taylor

TCT/dpt
cc: Mr. Wick Scurry, via E-mail attachment

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Exhibit 2

LAW OFFICE OF
THOMAS C. TAYLOR, LLC
22 BOW CIRCLE
SUITE A
HILTON HEAD ISLAND, SC 29928
TELEPHONE 843-785-5050
TELECOPIER 843-785-5030
www.thomastaylorlaw.com • tom@thomastaylorlaw.com

ADMITTED TO THE UNITED STATES SUPREME COURT BAR
ADMITTED IN SOUTH CAROLINA AND GEORGIA
CERTIFIED CIRCUIT COURT MEDIATOR

MAILING ADDRESS
P.O. BOX 5550
HILTON HEAD ISLAND, SC
29938

ELECTRONICALLY FILED - 2019 Nov 07 2:50 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

September 26, 2019

Via U.S. Mail and E-Mail Attachment to: erl@lalawsc.com

Ellis R. Lesemann, Esq.
Lesemann & Associates, LLC
418 King Street, Suite 301
Charleston, SC 29403

Re: J & W Corporation of Greenwood v. Broad Creek Marina et al, Beaufort County Civil Action Number 2018-CP-07-1622; proposed permanent office issues

Dear Ellis:

I am writing today in advance of our telephone conference with Judge Dukes tomorrow at 2 p.m., to inquire again as to the status of BCM's efforts to permit and acquire a new floating office for J & W's future use. As you know from Judge Dukes' Order of May 29, 2019, BCM was to begin "as soon as reasonably possible…at their sole expense [to] take all reasonable steps to permit and acquire a new floating office with at least 300 square feet of commercially useable space and at least a 20-year anticipated service life." I wrote you on June 28, 2019, and asked for a written summary as to where BCM stood in the process at that time to permit and acquire the new floating office. I don't believe I ever received a written reply and neither Wick Scurry nor I have been consulted or asked for substantive input into the process of selecting a floating office manufacturer.

We are now nearly three months further down the road, and I want to reiterate that Wick and I stand ready to offer assistance and/or input as to the planning, permitting or purchasing of an appropriate office consistent with the Court's Order. Please let me or Wick know if we can assist in any way as we work together toward this goal.

As you know from my June 28, 2019 letter, we have a forensic engineer and architect standing by to review whatever proposed plans/specifications for a floating office BCM intends to provide, and I hope you and your client will give us the courtesy of at least allowing us to review the plans and specifications prior to BCM signing a contract for the construction of the floating office. If we can all agree on the plans and specifications of the proposed office before a contract is signed, it will certainly lessen the chances of having a dispute concerning the propriety of the office once it is built. Thank you for understanding and considering this request.

Please let me know at your earliest convenience where BCM and you stand in this process and provide us with copies of any proposed plans and specifications for a proposed floating office. And of course, assuming you have language from the architect or manufacturer concerning the anticipated service life, I'd like to see that specific language. Thank you again. I look forward to hearing from you concerning this important issue.

On another matter, I also look forward to hearing from you or Nate in reply to my letter of September 10, 2019, in which I advised you that J & W was resuming payments for "common area" charges as per the Confidential Settlement Agreement and Release, since J & W has now been provided with a Town-permitted Temporary Office. J & W stands ready to pay its prorated share of the insurance purchased by BCM as set forth in my letter, once we have the documentation to establish the numbers as requested. Likewise with the annual property taxes for 2019, once the tax bill is rendered in late 2019. Please contact me if you have any questions.

Cordially yours,
LAW OFFICE OF THOMAS C. TAYLOR, LLC

Thomas C. Taylor

TCT/dpt
cc: Mr. Wick Scurry, via E-mail attachment

ELECTRONICALLY FILED - 2019 Nov 07 2:50 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

ELECTRONICALLY FILED - 2020 Jan 17 3:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT J & W CORPORATION OF GREENWOOD, Plaintiff, vs. BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT Case No.: 2018-CP-07-1622 **PLAINTIFF'S S.C.R.Civ.R. 59 (e) NOTICE OF MOTION AND MOTION TO ALTER OR AMEND ORDER AND JUDGMENT ENTERED ON JANUARY 9, 2020**

You will please take notice that the Plaintiff, by and through its undersigned counsel of record, will, ten (10) days after the filing of this Notice of Motion and Motion or at such other time that may be set by the Court, move the Hon. Marvin E. Dukes III to alter or amend his Order and Judgement entered in this matter on January 9, 2020, and reconsider certain matters encompassed in the Order.

As the basis for this Motion, the Plaintiff would show unto this Honorable Court that the Court's Order and Judgment does not provide a setoff as to the Defendants' admitted breach of contract regarding the office space, does not address certain key issues in the case, overlooks certain evidence from trial of the matter, and further the Order and Judgment failed to properly take into account certain evidence adduced at trial regarding the failure of the Defendant to properly provide back-up documentation required under the Lease Agreement and Confidential Settlement Agreement and Release relating to property insurance reimbursement.

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ELECTRONICALLY FILED - 2020 Jan 17 3:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Specifically, the Plaintiff moves the Court to reconsider its Order and Judgment based upon the argument of counsel and the transcript of record as follows:

A. Amend the Order and Judgment to hold that the Defendant materially breached the terms of the original Lease Agreement and the Confidential Release and Settlement Agreement by failing to provide the Plaintiff Tenant a properly permitted, commercially reasonable office space for more than nine years (despite repeated demands), and award the Plaintiff at least nominal damages for the admitted breach.

B. Reduce the amount of damages awarded the Defendants for "Unreimbursed Lease Charges" by a reasonable amount as an equitable setoff for the Plaintiff's being forced to operate its business out of an unpermitted, snake and vermin infested storage shed for more than nine years after notice to the Landlord that the building was not properly permitted by the Town;

C. Reduce the amount of damages awarded for "Unreimbursed Lease Charges" by any interest added as an equitable setoff for the Plaintiff's being forced to operate its business out of an unpermitted, snake and vermin infested storage shed for more than nine years after notice to the Landlord that the building was not properly permitted by the Town;

D. Reduce the amount of damages awarded for "Unreimbursed Lease Charges" by any amount encompassed therein representing "reimbursement" for property insurance paid by the Landlord, because the Landlord's bookkeeper failed and refused to produce documentation proving the amounts due for months prior to the trial, and at trial;

ELECTRONICALLY FILED - 2020 Jan 17 3:11 PM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

E. Reduce and/or strike the amount of damages awarded for "Dock Damage Repair" because the testimony produced at trial failed to establish by a preponderance of the evidence that the Plaintiff was in any way negligent, and/or the testimony and exhibits failed to establish by a preponderance of the evidence that the damage that occurred to the docks during Hurricane Matthew was caused by anything other than the hurricane--an act of God. Further, there was no evidence presented at trial that the dock damage suffered during Hurricane Matthew was in any way caused by the Plaintiff's "use" of the docks, as addressed in paragraph 6 of the original Lease Agreement;

F. Reduce and/or strike the amount of damages awarded for "Dock Damage Repair" because the testimony produced at trial established that the Landlord insured the docks, but chose a deductible of $40,000, and thus assumed the risk of at least a $40,000 bill for hurricane damage, and further, the evidence showed clearly that the Landlord failed and refused to mitigate the Landlord's damages by filing a claim for insurance on its own policy, that would have covered any damages above $40,000;

G. Reduce and/or strike the amount of damages awarded for "Dock Damage Repair" because the testimony produced at trial established that the Tenant had no contractual duty under either the original Lease Agreement nor the CSRA to move its boats and vessels from the marina prior to the storm and that in any event, the Tenant was never directed to move the boats and vessels;

H. Reduce and/or strike the amount of damages and interest awarded for "Dock Damage Repair" because the testimony produced at trial established that the Landlord carried property insurance on the docks that would have paid for all or a portion of the alleged

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damages, and that the Defendants failed and refused to make a claim on that property insurance (that is being paid for in part by the Plaintiff), thereby equitably waiving any claims against the Plaintiff to pay for damages that the Defendants had insured;

I. Supplement the Order and Judgment by entering the Court's further Order for a declaratory judgment that the parties clearly amended and supplemented the terms of the original Lease Agreement when they entered into the Confidential Settlement Agreement and Release, which provides that the Plaintiff would have no further responsibility for insuring nor responding in damages to destruction or loss of its leasehold interest on the docks because the Plaintiff became contractually obligated under the CSAR to pay its mutually agreed upon pro rata portion of the property insurance to be provided by the Landlord over all of the docks at Broad Creek Marina. Under the CSAR, the Landlord assumed all responsibility for insuring the docks at Broad Creek Marina and released the Plaintiff from any future obligation to insure same and/or respond in monetary damages to any future damage to the docks. Specifically, the Plaintiff prays this Court answer the question presented by consent at trial: What was the clear intention of the parties under the CSRA regarding future property insurance payments on the docks at Broad Creek Marina and was the Plaintiff released from any obligations under the original Lease Agreement to repair its leasehold interests by the CSRA?;

J. Amend the Order and Judgment to provide that neither party is considered the prevailing party in the case and thus the Court will not further consider any requests for attorney's fees. Both sides will absorb their costs and fees due to the failures in certain areas, of both parties to live up to the terms of the Lease Agreement and the Confidential Settlement Agreement and Release;

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K. Amend the Order and Judgment to provide that future payments of Additional Rent and Additional Charges by the Tenant will be due within thirty (30) days of receipt of an invoice and *any requested reasonable and necessary back-up documentation* proving the Landlord's actual payment of amounts for which the CSRA requires contribution from the Tenant; and,

L. Further, the Plaintiff requests this honorable Court further amend or alter its Order and Judgment to provide that it was clearly the intention of the parties in both the original Lease Agreement and the Confidential Settlement Agreement and Release, that the Defendant Landlord will provide the Plaintiff with a commercial office from which the Plaintiff can reasonably be expected to conduct its business during the course of the 99-year Lease. Plaintiff asserts that a floating office has a judicially recognizable life span of no more than 20 years on the salt waters of coastal South Carolina, and that since the Defendant Landlord has chosen (and the Court has adopted) the provision of a new floating office as opposed to the location of the new office in the permitted Dockmaster's Office location or on high ground, that it would be just and proper for the Defendants to remain responsible for the provision of a new floating office at that point in the future when the 2020 floating office ceases to be functional as a commercial floating office in the normal and expected life span of a building constructed to float upon and be used in the salt water of the Broad Creek Marina in Hilton Head Island, SC.

This Motion may be supported by a Memorandum in Support to be submitted at least five days prior to a hearing on the Motion.

I SO MOVE.

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Hilton Head Island, South Carolina
January 17, 2020

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
)	
J & W CORPORATION OF GREENWOOD,)	Case No.: 2018-CP-07-1622
)	
Plaintiff,)	
)	**PLAINTIFF'S MEMORANDUM IN SUPPORT OF ITS S.C.R.Civ.R. 59 (e) MOTION TO ALTER OR AMEND ORDER AND JUDGMENT ENTERED ON JANUARY 9, 2020**
vs.)	
)	
BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC,)	
)	
Defendants.)	

The Plaintiff has timely moved this Honorable Court to alter or amend its Order and Judgement entered in this matter on January 9, 2020, and reconsider certain matters encompassed in the Order. For the following reasons, the Plaintiff urges the Court to amend the Order or enter a new Order providing as follows:

A. Amend the Order and Judgment to hold that the Defendant materially breached the terms of the original Lease Agreement and the Release and Confidential Settlement Agreement by failing to provide the Plaintiff Tenant a properly permitted, commercially reasonable office space for more than ten years (despite repeated demands), and award the Plaintiff at least nominal damages for the admitted breach.

The evidence presented at trial proved that Mr. Freedman, acting on behalf of Broad Creek Marina, repeatedly refused to relocate J & W into a properly permitted, legal, safe office space, despite the covenant made in the Release and Confidential Settlement

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Agreement executed on December 13, 2004 (hereinafter the "RCSA"), that it would "seek approval from the necessary regulatory authorities for the replacement of the floating store." RCSA, p. 2. Trent Shaw from OCRM testified that as of the date of trial, May 15, 2019, there were no active permits issued to BCM that would allow the placement of a floating office in any location other than the inside portion of the finger dock located closest to the marsh, where all parties agreed, a floating office would be on mud for at least half a day, every day. *See* Trent Shaw's testimony at Transcript p. 65. Mr. Shaw also confirm that in order to place a floating office elsewhere at BCM, Mr. Freedman would have to file a request to amend the existing permit, which had not been done as of May 15, 2019. Transcript, p. 83.

Mr. Scurry testified that after the RCSA was entered, BCM moved J & W's office operations into a houseboat on the docks, which "sunk" causing J & W to lose all of its computers and office equipment. Transcript p. 120. According to Mr. Scurry, that's when BCM moved J & W into the boat shed that Mr. Scurry had earlier constructed "to house a rich guy's boat." Transcript p. 121. Mr. Scurry told Mr. Freedman at the time that the shed was an "illegal building" and asked him to move J & W into another office building as they had agreed to do in the RCSA. Transcript pp. 123-124. J & W never agreed to accept the shed as an office, and shortly thereafter, ceased paying its common area charges in order to try to force BCM and Mr. Freedman to live up to the terms of the RCSA. Transcript, p. 126.

Winters in the shed for the J & W staff were "treacherous." Transcript, p. 128. There was no heat nor insulation. Mr. Scurry found a copperhead snake in his office once, along with marsh rats, roaches, and spiders. Transcript, p. 129. There was never another

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"floating office' nor any other office offered to J & W from 2008 until the time of trial. Transcript, p. 130-131.

Chris Yates, the Town of Hilton Head Island Building Official, confirmed under oath that the converted boat shed had never been properly permitted by BCM or Mr. Freedman between 2008 and the trial in 2019. Transcript p. 254-255. Mr. Yates confirmed that the converted shed had "egress and life safety issues" (Transcript p. 256-257) and that the building was being "illegally occupied as a commercial building" as of May 3, 2019. Transcript, p. 261. Mr. Yates testified that Mr. Freedman did not disagree with the Town's assessment of the illegality of the shed being used as an office. Transcript p. 285.

Mr. Freedman's testimony concerning the office situation was conflicting and fuzzy. "My recollections are really hazy." Transcript p. 314. However, he did remember telling J & W in late 2009 that "there was some office space where they are now that would be suitable for their office." Transcript, p. 316. When asked if J & W accepted the converted shed as appropriate office space, Mr. Freedman replied, "I don't remember a huge dumpster fire blowing up in conversations." He apparently reasoned that "I knew there was a requirement of space and it was communicated to me the space would satisfy." Transcript, pp. 319-320.

When asked for specific details of the relegation of J & W into the boat shed, Mr. Freedman admitted that the unpermitted boat shed was not an office space contemplated under the RCSA (Transcript p. 416), admitted that the placement of J & W into the shed was supposed to be "temporary" (Transcript p. 388), admitted that as an experienced developer he knew the building had to be permitted to be legal (Transcript, p. 391), and

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admitted that between the time he placed J & W in the boat shed and the trial (a period of over 10 years), that neither he nor BCM ever had an alternative floating office available for J & W (Transcript p. 413). Despite those admissions, Mr. Freedman told the Court that in his opinion, the provision of the unpermitted, illegal boat shed for J & W's use as on office for over 10 years, was "generous." Transcript p. 497.

Nate Jones, BCM's General Manager, also testified that the placement of J & W into the unpermitted, illegal boat shed in or around 2009, was supposed to be a "temporary solution" to the office situation. Transcript, p. 609.

The testimony at trial from the parties and the Town of Hilton Head Island shows clearly and convincingly that Mr. Freedman, on behalf of BCM, being an experienced developer, knew that the relegating of J & W into the boat shed in 2008 or 2009 was wrongful, illegal, and at variance with the Lease Agreement and the RCSA. And that decision, and the failure of BCM to move J & W into a properly permitted, permanent office during the following ten (10) years, was clearly a material breach of the Lease Agreement and the RCSA. As to why Mr. Freedman and BCM refused to live up to the RCSA and put J & W into a properly permitted office building, Mr. Freedman indicated that BCM had probably saved at least $75,000 over the years by not building the Dockmaster's Building that was called for in the RCSA and that was and is properly permitted to BCM today. Transcript, p. 506.

Despite the fact that J & W's efforts to run its business out of the unpermitted, illegal, and vermin-infested boat shed were successful, J & W is entitled to a finding by this Court that its prosecution of this civil suit was necessary and appropriate as the only

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means J & W had to force BCM and Mr. Freedman to live up to the terms of the Lease Agreement and RCSA, and to an award of at least nominal damages. Otherwise, BCM and Mr. Freedman will be rewarded for the material breach and the years of J & W's staff working in conditions that were legally prohibited by the Town, simply because J & W chose not to allow Mr. Freedman's actions to break the company.

B. Reduce the amount of damages awarded the Defendants for "Unreimbursed Lease Charges" by a reasonable amount as an equitable setoff for the Plaintiff's being forced to operate its business out of an unpermitted, snake and vermin infested storage shed for more than ten years after notice to the Defendant Landlord that the building was not properly permitted by the Town.

As the transcript review set forth above shows clearly, BCM materially breached the Lease Agreement and the RCSA by failing to provide J & W with a proper, permitted, safe office space for more than ten years, despite repeated demands. This Court is empowered under the law of the State of South Carolina to craft an equitable remedy for that admitted breach. The legal maxim "Equity will not suffer a wrong without a remedy" is established law in South Carolina, and equity fashions a remedy for a wrong when justice demands it. *See* Verenes v. Alvanos, 387 S.C. 11 (2010). The equitable rules a Court employs are not "cast iron rules," rather the rules exist to do fairness and are flexible so that relief is granted, when denying such relief would cause one party to suffer a gross wrong at the hands of another. Hooper v. Evenezer Senior Services & Rehabilitation Ctr., 386 S.C. 108 (2009). This Court should reduce the amount of damages to be awarded BCM for the common area charges not paid, by an amount sufficient to equitably "set off" the damages suffered by J & W over the 10 years its staff worked out of a boat shed.

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C. Reduce the amount of damages awarded for "Unreimbursed Lease Charges" by any amount encompassed therein representing "reimbursement" for property insurance paid by the Landlord, because the Landlord's bookkeeper failed and refused to produce documentation proving the amounts due for months prior to the trial, and at trial.

Implicit in every contract executed in the State of South Carolina is a covenant of good faith and fair dealing. Paragraph 7 of the original Lease Agreement binds the parties to work together in good faith. However, when it came time to produce the appropriate backup documentation for the common area charges BCM sought reimbursement for in their counterclaims, BCM declined repeatedly, leaving J & W with no choice but to decline the requested reimbursement until such time as the documents were produced. When trial came, they were still absent.

Mr. Scurry testified that he asked for proof of insurance and the back up documentation showing that BCM had paid for the insurance for which it sought reimbursement. Transcript, p. 134. The Defendant then called Robbin Rachels, its bookkeeper, and Ms. Rachels admitted that she has not provided J & W with the "backup documentation" on the property insurance for which BCM seeks reimbursement. *See* Transcript, pp 577-585. She further admitted that she had failed to produce such "back up" documentation months prior when the corporation's 30(b)(6) deposition was taken, and that she had known for months that J & W was looking for the back up documentation. Her basic premise was "trust me, the numbers are good."

Ms. Rachel's testimony being the only testimony supporting BCM's claims for monetary damages, and BCM having the burden of proof on this issue, the testimony is

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lacking to support – by a preponderance of the evidence— the amounts sought for reimbursement relating to property insurance supposedly procured and paid for by BCM. As such, it is only right and proper for this Court to deny those portions of the monetary damages sought relating to property insurance.

D. Reduce and/or strike the amount of damages awarded for "Dock Damage Repair" because the testimony produced at trial failed to establish by a preponderance of the evidence that the Plaintiff was in any way negligent, and/or the testimony and exhibits failed to establish by a preponderance of the evidence, that the damage that occurred to the docks during Hurricane Matthew was caused by anything other than the hurricane-- an Act of God. Further, there was no evidence presented at trial that the dock damage suffered during Hurricane Matthew was in any way caused by the Plaintiff's "use" of the docks, as addressed in paragraph 6 of the original Lease Agreement.

Mr. Scurry testified that he did not believe that the damage to the BCM docks during Hurricane Matthew was caused by J & W's boats being tied up to the docks during the storm. Transcript p. 206. Mr. Scurry further testified that he personally saw that there were a number of boats that remained tied to the BCM docks during Hurricane Matthew, and that there was dock damage throughout the marina—both in areas where boats had been tied and areas that were empty docks. Transcript, pp. 232-233.

BCM's own agent and General Manager Nate Jones, admitted under oath that J & W was never instructed to move its boats in the face of the storm, but that he simply asked J & W's then General Manager Joe Pelletier if the boats were going to be moved: "I asked Joe if he was going to remove the boats, and that answer was no." Transcript, p. 618. But

of far more import than the fact that J & W had not obligation to move its boats from its leasehold, is that fact that Mr. Jones also admitted he had no knowledge of actually what caused the dock damage: "It was a combination. I don't know that we can properly allot what [was] wave action, wind action and boat action," and acknowledged that there was an additional $10,000 in damages to other areas of BCM's docks during Hurricane Matthew that could not have been allegedly impacted by J & W's boats being tied to the docks. Transcript, pp. 642-646.

There was no presentation of expert testimony by any party as to the cause of the dock damage, and Mr. Jones acknowledges that it is impossible to determine with any specificity, whether storm winds, rains, water swells, waves, or other windblown debris, caused the dock damage. Thus, there was an insufficiency of evidence on this point to hold J & W responsible in any way for the alleged damages to the docks during Hurricane Matthew.

Equitably speaking, this Court should also take into consideration on this point, that BCM had property insurance on the docks as per the requirements of the RCSA, but chose a $40,000 deductible, of which Mr. Jones was unaware. With dock damages exceeding $54,000 in total to BCM's docks, they failed to call upon their insurance which would have saved them at least $15,000 on these dock damage claims.

E. Reduce and/or strike the amount of damages awarded for "Dock Damage Repair" because the testimony produced at trial established that the Landlord insured the docks, but chose a deductible of $40,000, and thus assumed the risk of at least a $40,000 bill for hurricane damage, and further, the evidence showed clearly that the Landlord failed

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and refused to mitigate the Landlord's damages by filing a claim for insurance on its own policy, that would have covered any damages above $40,000.

Please see the discussion of testimony referenced above under paragraph D. In addition, the Court should consider the contractual changes in insurance coverage agreed to by the parties in 2004 when the RCSA was executed and the responsibility for property insurance coverage on the docks of Broad Creek Marina was accepted by the Landlord BCM, with the agreement that J & W would thereafter pay a pro-rata share of the annual property insurance coverage to be procured by BCM. J & W is to pay 7.5 percent of the cost of the property insurance on the "docks, wharves and piers" and thus should equitably pay no more than 7.5 percent of any damages caused by BCM's decisions on what size of deductible it wanted to take and expose itself and J & W to paying. At most, the damages that should be attributable to J & W as a result of the alleged damages to the docks under its lease by Hurricane Matthew, should be 7.5 percent of the $40,000 deductible that BCM chose, or $3,000.

F. Reduce and/or strike the amount of damages awarded for "Dock Damage Repair" because the testimony produced at trial established that the Tenant had no contractual duty under either the original Lease Agreement nor the RCSA to move its boats and vessels from the marina prior to the storm and that in any event, the Tenant was never directed to move the boats and vessels.

Please see the above-referenced transcript of Mr. Jones' testimony regarding J & W's contractual obligation to move its boats before a storm. It is acknowledged by the parties that there is no provision within the Lease Agreement nor the RCSA requiring J &

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W to move its boats in the face of a named storm. While BCM has bound some of its other Lessees to such an agreement, J & W is not so bound. And no supposed Rules and Regulations calling for such removal (which the Plaintiff asserts would have no effect) were tendered into evidence nor testified to. Again, as is admitted, Nate Jones simply asked Joe Pelletier if J & W was going to move its boats in the face of the storm, and was told "no." Apparently a number of other boat owners made the same decision as there were many boats docked at BCM during the storm. Transcript p. 233.

G. Supplement the Order and Judgment by entering the Court's further Order for a Declaratory Judgment that the parties clearly amended and supplemented the terms of the original Lease Agreement when they entered into the RCSA, which provides that the Plaintiff would have no further responsibility for insuring nor responding in damages to destruction or loss of its leasehold interest on the docks because the Plaintiff became contractually obligated under the RCSA to pay its mutually agreed upon pro rata portion of the property insurance to be provided by the Landlord over all of the docks at Broad Creek Marina. Under the RCSA, the Landlord assumed all responsibility for insuring the docks at Broad Creek Marina and released the Plaintiff from any future obligation to insure same and/or respond in monetary damages to any future damage to the docks. Specifically, the Plaintiff prays this Court answer the question presented by consent at trial: What was the clear intention of the parties under the RCSA regarding future property insurance payments on the docks at Broad Creek Marina and was the Plaintiff released from any obligations under the original Lease Agreement to repair its leasehold interests by the RCSA?

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This is the most important issue that the Court must address for the benefit of the parties and for the benefit of the judicial system avoiding future, needless continuing controversy between the parties. A judicial declaration as to the parties' intentions concerning insurance coverage in the RCSA is imperative.

J & W's President, Wick Scurry, testified that he and Mr. Freedman have distinctly different interpretations as to what the RCSA requires concerning insurance on the docks and which entity is to procure it, maintain it and pay for it. Transcript p. 112. The Court even noted during trial that the parties "agree on all but insurance requirements." Transcript, p. 115. Mr. Scurry further testified that to his understanding, the RCSA requires BCM to insure the docks, and J & W to contribute to that insurance annually. Transcript, p. 134. Mr. Scurry testified that he tried to insure his leasehold interest in the BCM docks, but that his insurance agent told him the docks could not be "double insured." Transcript, pp. 225-226. Ed Barteet, both J & W's and BCM's insurance agent, affirmed that statement. Transcript p. 303.

Mr. Freedman's testimony as to his interpretation of the insurance requirements post-RCSA is unhelpful. His testimony there continued to be "hazy": he said he had "no recollection" about any RCSA insurance changes (Transcript, p. 332) and that he didn't remember about any insurance issues being discussed (Transcript, p. 331), and that he really didn't have much memory about the entire negotiations and agreement on the RCSA (Transcript, p. 331). However, of course, the RCSA specifically sets up a new "Common Area Charges" formula for "determining amounts due and payable by the Parties for common area charges" beginning in January 2005, and those Common Area Charges are

broken down specifically in Exhibit F to the RCSA. Exhibit F states that J & W is to pay 7.5 percent of the "Insurance: General Liability, Docks, Wharves and Piers."

The only clear and reasonable interpretation of the insurance requirements between the parties effective January 2005 under the mutually-agreed upon RCSA is that BCM is to procure, maintain and pay for the General Liability and property insurance on the docks, wharves and piers, and that J & W is to reimburse BCM for 7.5 percent of the costs of that insurance upon presentation of proof of payment having been made by BCM. The only reasonable interpretation to be made of the RCSA is that J & W was released from any and all obligations (if any) contained in the original Lease Agreement requiring J & W to purchase and maintain insurance of any type on the docks at BCM, and instead, all insurance would be provided by BCM with a certain amount reimbursed by J & W based upon the 7.5 percent agreement. There is no other possible interpretation of the RCSA that would explain why J & W would have agreed to pay the 7.5 percent of BCM's insurance costs on an annual basis going forward, unless J & W was being released from any claims from BCM that J & W had to maintain a second layer of insurance on the leasehold docks (which Mr. Scurry testified, he could not get).

Plaintiff J & W thus requests this Court enter its declaration of interpretation of the RCSA as follows:

1. BCM is to provide general liability and property insurance coverage over all docks, wharves and piers at Broad Creek Marina with a deductible as BCM sees fit to procure. J & W is to reimburse BCM within 30 days of presentment to J & W of documentation showing the purchase price and coverage of the

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insurance, 7.5 percent of the cost of the insurance paid by BCM. The documentation must be sufficient to easily determine the nature and scope of the insurance and the relationship of the policy to the docks, wharves and piers alone. If a claim is made to which the deductible applies, J & W shall pay a maximum of 7.5 percent of the deductible incurred by BCM.

2. BCM is to provide general liability and property insurance coverage over the parking lots and the new floating office to be provided to J & W with a deductible as BCM sees fit to procure. J & W is to reimburse BCM within 30 days of presentment to J & W of documentation showing the purchase price and coverage of the insurance, 32 percent of the cost of the insurance paid by BCM. The documentation must be sufficient to easily determine the nature and scope of the insurance and the relationship of the policy to the parking lots and floating office alone. If a claim is made to which the deductible applies, J & W shall pay a maximum of 32 percent of the deductible incurred by BCM.

H. Amend the Order and Judgment to provide that neither party is considered the prevailing party in the case and thus the Court will not further consider any requests for attorney's fees. Both sides will absorb their costs and fees due to the failures in certain areas, of both parties to live up to the terms of the Lease Agreement and the RCSA.

I. Amend the Order and Judgment to provide that future payments of Additional Rent and Additional Charges by the Tenant will be due within thirty (30) days of receipt of an invoice and *any requested reasonable and necessary back-up*

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documentation proving the Landlord's actual payment of amounts for which the RCSA requires contribution from the Tenant.

J. Further, the Plaintiff requests this honorable Court further amend or alter its Order and Judgment to provide that it was clearly the intention of the parties in both the original Lease Agreement and the RCSA, that the Defendant Landlord will provide the Plaintiff with a commercial office from which the Plaintiff can reasonably be expected to conduct its business during the course of the 99-year Lease. Plaintiff asserts that a floating office has a judicially recognizable life span of no more than 20 years on the salt waters of coastal South Carolina, and that since the Defendant Landlord has chosen (and the Court has adopted) the provision of a new floating office as opposed to the location of the new office in the permitted Dockmaster's Office location or on high ground, that it would be just and proper for the Defendants to remain responsible for the provision of a new floating office at that point in the future when the 2020 floating office ceases to be functional as a commercial floating office in the normal and expected life span of a building constructed to float upon and be used in the salt water of the Broad Creek Marina in Hilton Head Island, SC.

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Hilton Head Island, South Carolina
February 6, 2020

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	FOURTEENTH JUDICIAL CIRCUIT
	)	
J & W CORPORATION OF GREENWOOD,	)	Case No.: 2018-CP-07-1622
	)	
Plaintiff,	)	
	)	**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION TO ALTER OR AMEND JUDGMENT**
vs.	)	
	)	
BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC,	)	
	)	
Defendants.	)	
	)	

For the past several years, this Court has had numerous opportunities to weigh the merits of this dispute. Following motions practice, extensive briefing, a two-day trial, further motions practice, and the submission of proposed orders, all issues have been resolved in a manner consistent with applicable law. This Court has properly interpreted and applied the provisions of the 99-year Lease Agreement dated September 23, 1993 ("Lease") and the Release and Confidential Settlement Agreement dated December 13, 2004 ("Settlement Agreement") and has considered the testimony and additional evidence. Although it is recognized that Plaintiff might never cease litigating this landlord/tenant relationship, there is no basis for this Court to alter or amend any part of the Order and Judgment issued January 9, 2020. With two exceptions as noted below, Plaintiff has already asked, repeatedly, for the Court to adopt the same arguments and issues that are reiterated in the Motion to Alter or Amend. For the reasons set forth below, this Court should deny Plaintiff's Motion and proceed with resolution of the pending Motions for Attorney's

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Fees and Costs.

FACTUAL BACKGROUND

The Court has carefully considered the claims and counterclaims in connection with the Lease and the rights and obligations of Landlord and Tenant arising thereunder. Both sides have presented arguments and evidence relating to the claims and counterclaims in this case through the trial on the merits that began on May 15, 2019 and concluded on May 16, 2019.

On May 30, 2019, the Court entered an Interim Order relating to the relocation of Tenant's office space (the "Interim Order"). The Interim Order addressed Tenant's claim for declaratory judgment and Landlord's counterclaim for specific performance relating to the commercial office space.

On January 9, 2020, the Court issued the Order and Judgment ("Order and Judgment"), which resolved the remaining claims and counterclaims. The Court entered judgment in favor of Landlord in the amount of **$112,428.40**, which represents: (1) the unreimbursed Lease charges in the amount of $56,371.27; (2) the dock damage repair costs ($44,398.00) plus prejudgment interest ($8,792.88) in the combined amount of $53,190.88; and (3) the unreimbursed miscellaneous charges in the amount of $2,866.25. The Court found that Landlord had proven its breach of contract counterclaim by a preponderance of the evidence. *See* Order and Judgment, p. 14. The Court found that Landlord had proven that Landlord incurred damages for the repair and replacement of the dock for which it is entitled to reimbursement from Tenant based on the terms of the Lease. *See* Order and Judgment, p. 17. Additionally, to provide for an adjustment to the judgment amount awarded, the Court declined to allow interest on the unreimbursed Lease charges, which reduced the award in favor of Defendants by $20,348.70.

The Court found in favor of Landlord on the specific performance claim and compelling

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Tenant: (1) to comply with the obligation under the Lease to name Landlord as an additional insured on Tenant's insurance policies and to cause the coverage on the policies to be upwardly adjusted yearly to reflect inflation rates; (2) to pay the charges due under the Lease within thirty (30) days of Tenant's receipt of invoices issued by Landlord; and (3) to comply with other aspects of the Lease relating to Tenant's use of portions of the property that are not part of the Lease Property and to dispose of Tenant's garbage and debris. *See* Order and Judgment, pp. 20-23.

ARGUMENT

Plaintiff's Motion to Alter or Amend needlessly requires the Court to examine the same arguments and evidence that it has already considered in entering the Order and Judgment. Plaintiff asks the Court to reduce or strike the amount of damages awarded to Landlord and to find that Landlord breached the Lease. Plaintiff does not identify any evidence from the trial that was overlooked. Rather, Plaintiff simply disagrees with the Court's interpretation of the Lease. There is no error in law or fact upon which the Order and Judgment is based. The Court's findings as to the obligations of Tenant and Landlord under the Lease and Settlement Agreement has a sound basis in law and in fact.

For the reasons set forth below, Tenant fails to present a legal or factual basis for Tenant's request to alter or amend the findings in the Order and Judgment.

I. THE COURT PROPERLY ADDRESSED TENANT'S BREACH OF CONTRACT

Tenant requests that the Court amend the Order and Judgment to hold that Landlord materially breached the terms of the Lease by failing to provide office space to Tenant and award Tenant nominal damages. Tenant's argument lacks merit and does not warrant relief under Rule 59(e), SCRCP.

Tenant's breach of contract claim was thoroughly addressed by the Court in the Order. *See*

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Order and Judgment at p. 9 ("Upon review of the record, the Court finds that Tenant has failed to meet its burden of proof on a claim for breach of contract relating to the office space"). Because Tenant failed to prove the necessary elements for a claim for breach of contract, the Court found that Tenant failed to prove a breach of contract by a preponderance of the evidence. *See* Order and Judgment at p. 11. Tenant failed to establish the element of damages. *See* Order and Judgment at p. 3. Tenant was provided with an office space in which Tenant was able to conduct and administer its various business activities. *See* Order and Judgment at p. 9. Tenant confirmed that it has been able to conduct its business in the office space. *Id.* p. 4. The Court properly weighed the evidence presented and found that Tenant asserted a claim for lost profits but did not present an alleged amount of lost profit damages. *See* Order and Judgment at pp. 10-11.

II. THE COURT PROPERLY ADDRESSED LANDLORD'S COUNTERCLAIM FOR BREACH OF CONTRACT

a. The Court properly awarded damages to Landlord relating to Additional Rent

Based on the provisions of the Lease and evidence presented, the Court entered judgment in favor of Landlord on the counterclaim for breach of contract relating to the amounts owed by Tenant for unreimbursed Additional Rent and Additional Charges due under the Lease. It is undisputed that Tenant has not paid these charges since 2008. *See* Order and Judgment at p. 4. Tenant acknowledged such payment was due to Landlord and that Tenant refused to pay. That Tenant owes all back payments. *See* Order and Judgment at p. 19. Tenant is obligated under the Lease to pay the maintenance and utility charges attributed to Tenant's use of the Lease Property. The Lease provides Landlord with the "right to demand exact compliance with the terms of the Lease." *See* Lease at Paragraph 23.

The Court properly considered the relevant provisions of the Lease and the Settlement Agreement, as well as applicable law relating to the rules of contract construction.

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b. The Court properly awarded dock repair damages to Landlord

The Court's interpretation of Tenant's responsibility to reimburse Landlord for dock damage attributed to Tenant's use is reasonable based on several provisions of the Lease. Paragraph 6 of the Lease, entitled "Dock Repair," which reads as follows:

> **Dock Repair**. As it becomes necessary to repair or replace the dock which is a portion of the Lease Property, Landlord shall complete said repairs or replacement and **Tenant shall pay Landlord all costs attributed to its use**, said costs to be paid as they are incurred by Landlord.

See Lease at Paragraph 6 (emphasis added). In Paragraph 18 of the Lease, entitled "Maintenance and Repair," Landlord and Tenant stipulated as follows:

> **Maintenance and Repair**. Subject to the provisions of paragraph 6, entitled "Dock Repair," Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Tenant refuses or neglects to commence the necessary repairs and maintenance within a reasonable time, not to exceed fifteen (15) days, after demand by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof (except if caused by Landlord or Landlord's agent's negligence), and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default under this Lease. Landlord shall maintain and repair the Property except the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Landlord fails to maintain and repair the Property, except the Lease Property, as contemplated herein, Tenant may make such repairs without liability to Landlord for any loss or damage to the Property, except damage attributable to Tenant's or Tenant's agents' negligence, and Landlord shall pay to Tenant, upon Tenant's demand, the cost of such repair.

See Lease at Paragraph 18.

Additionally, Paragraph 26 of the Lease provides as follows:

> **Damages to or Destruction of Property**. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith," Tenant shall apply for all necessary permits and approvals and shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business. Any and all insurance

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> proceeds from insurance policies carried by Landlord (or in Landlord's name) resulting from damage to the Lease Property, shall be held in trust and dispersed for repairs, restoration, rebuilding, or replacement undertaken by Tenant pursuant to this paragraph unless Landlord and Tenant otherwise agree. **If the insurance proceeds are insufficient to pay the damage, then Tenant shall pay for the difference.**

See Lease at Paragraph 26 (emphasis added).

Tenant's financial responsibility for the repair costs related solely to the dock space used by Tenant is clear. Nothing in the Settlement Agreement modifies or amends Paragraph 6 of the Lease. Other provisions of the Lease also indicate Tenant's responsibility for the costs of the dock repairs, which were not modified or amended by the Settlement Agreement. Tenant asks the Court to interpret the Settlement Agreement as a release of any and all obligations in the Lease requiring Tenant to purchase and maintain insurance and instead limiting Tenant's reimbursement to 7.5%. Tenant's request is inconsistent with the plain language of the Lease and Settlement Agreement and contrary to the principles of equity. Tenant's failure to take appropriate steps to prevent foreseeable damage to the Lease Property should not be excused.

The Court addressed the question presented by Tenant as to whether Landlord must "prove" that it was Tenant, as opposed to an act of God, that caused the dock damage. The Court properly determined that the duties and financial responsibilities of Tenant and Landlord are provided for in the Lease, which does not limit Tenant's responsible for payment of repairs to the dock to those situations in which Tenant is the proximate cause of damage to the Lease Property. *See* Order and Judgment at p. 17. Based on the relationship between Landlord and Tenant under a binding Lease, the standard proof of causation for these damages does not need to be established. Tenant is responsible for the cost of repairs and maintenance to the dock regardless of the legal cause of the damage. *See* Lease at Paragraphs 3(c), 6, 18, 26, and 30. Although Tenant argues that it had no contractual obligation to remove its boats and vessels prior to the storm, Tenant disregards

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the contractual obligation whereby Tenant shall pay Landlord all costs attributed to its use of the dock. *See* Lease at Paragraph 6.

Furthermore, the evidence presented to the Court establishes that the dock damage was attributed to Tenant's use. Mr. Freedman's testimony established that Tenant's operations cause damage to the dock. *Tr.* at 458:1-15. Landlord instructed Tenant to move Tenant's vessels from the dock prior to Hurricane Matthew. The evidence presented at trial confirmed that Tenant's vessels were physically moored to the Lease Property during the storm thereby causing significant damage to the portions of the dock used by Tenant. *See* Order and Judgment at p. 5. The Court interpreted the language of the Lease and determined that Tenant is responsible for the costs of the dock repairs. *See* Lease at Paragraphs 6 and 26. The evidence established the cost of the dock repair. The evidence established that Landlord incurred the costs of the dock repair and that Tenant has not reimbursed Landlord for those costs. The evidence further established that Tenant acknowledge its financial responsibility for the dock repairs. *See Tr.* at 189-90; *Defs. Ex.* 16.

Tenant requests an amendment to the Order and Judgment to reduce the amount of reimbursement on the alleged basis that Defendants failed to provide documentation. The Court relied upon the evidence presented at trial and found that Landlord provided evidence fully establishing the amounts paid for the dock damage repairs. *See* Order and Judgment at p. 5; *see also Defs. Exs.* 18 and 19; *Tr.* at 548-552. The Court relied upon the evidence presented at trial of the underlying charges, copies of invoices, and testimony from witnesses. *See* Order and Judgment at p. 3; *see also Defs. Exs.* 25, 26, 27, 52, 53, 54 and 55; *Tr.* at 527-556 (Testimony of Robbin Rachels).

c. The Court properly addressed Tenant's obligations under the Lease and Settlement Agreement

In its Motion to Alter or Amend, Tenant asks the Court to answer the following questions:

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(1) what was the clear intention of the parties under the Settlement Agreement regarding future property insurance payments on the docks at Broad Creek Marina; and (2) did the Settlement Agreement release Tenant from any obligations under the original Lease to repair Tenant's leasehold interests? These questions have been addressed and resolved by the Court. The Settlement Agreement did not release Tenant from its obligation to reimburse Landlord for the repairs or replacement to the dock which is portion of the Lease Property. *See* Lease at Paragraph 6. The intention of the parties under the Settlement Agreement is clear: "**J&W agrees to be responsible for all costs of dock maintenance and repair for the Lease Property as contemplated in the Lease**." *See* Settlement Agreement at Paragraph 1(f) (emphasis added). As Tenant confirmed at trial that the word "insurance" does not appear in Paragraph 6 of the Lease, entitled "Dock Repair." *Tr.* at 236:5-10. The Settlement Agreement does not impliedly amend the remaining portions of the Lease that are not expressly amended or modified by the Settlement Agreement. *See* Settlement Agreement at Paragraph 1(h). The annual shared liabilities set forth in Exhibit F to the Settlement Agreement does not create or eliminate any right or obligation under the Lease. Tenant is obligated to carry its own insurance. Nothing in the Settlement Agreement relieves Tenant of its obligation to pay its own insurance.

The Court's findings are appropriate in light of the undisputed facts in this case. The Court appropriately entered judgment in favor of Landlord for the unreimbursed dock damage repair costs.

III. THE COURT PROPERLY FOUND THAT TENANT IS NOT ENTITLED TO FURTHER EQUITABLE SETOFF

At trial, counsel for Tenant argued that Tenant's refusal to pay the charges was under a theory of recoupment or setoff due to Tenant's dissatisfaction with the commercial office space provided. *See Tr.* at 28:3-9. In response to Defendants' Motion for Directed Verdict, after the close

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of evidence, Tenant asked the Court to consider a "setoff" of damages in the amount of $60,000 in common area charges that have not been paid by Tenant. *Tr.* at 520:21-521:1. As indicated in the Order and Judgment, the Court found that the Lease "does not include a provision that would allow Tenant to unilaterally withhold amounts due to Landlord on this basis or for any other reason." *See* Order and Judgment at p. 4. Rather, "Tenant's obligations to pay the charges to Landlord are phrased in mandatory language." *Id.*

Additionally, as arguments of counsel are not evidence, there is no basis within the evidentiary record for the Court to re-consider this request. *See, e.g., Beaufort Realty Co. v. Beaufort Cty.*, 346 S.C. 298, 302, 551 S.E.2d 588, 590 (Ct. App. 2001) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered"), *citing McManus v. Bank of Greenwood,* 171 S.C. 84, 89, 171 S.E. 473, 475 (1933). A claim for setoff or recoupment was not pled, either as a claim or as an affirmative defense. Furthermore, the record presents no basis upon which to award a setoff or recoupment. First, the amount of any setoff would have to be invented out of thin air, as there were no damages. Secondly, Tenant made full use of the Leased Premises during this entire timeframe, including three hundred linear feet (300') of dedicated dock space, thousands more linear feet of walkways, fifty (50) parking spaces, the entire barging area, utilities, amenities, and the office space. Tenant used all of these things while refusing to pay for them, hiding behind a provision in the Lease that purports to disallow ejectment. Any right to setoff or recoupment, if it had been pled, could arise only in equity. Tenant's unclean hands preclude such relief.

The Court, however, already denied prejudgment interest in the amount of $20,336.03. As indicated in the Order and Judgment, the Court found that "[a]lthough it is clear that Tenant owes all back payments as set forth above, to add pre-judgment interest in the face of an obvious

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deficiency in the office would be inequitable and would be contrary to the interests of justice in this case." *See* Order and Judgment at p. 19. In other words, the Court applied the principle of equitable setoff to the award of damages to Landlord for the unreimbursed Lease charges. Landlord sought unreimbursed Lease charges in the amount of $76,719.97, which represented the amount of the unreimbursed Lease charges plus prejudgment interest for each unpaid charge at the statutory rate of eight and three fourths percent (8.75%). By denying Landlord prejudgment interest for the unreimbursed Lease charges in the amount of $20,336.03, the Court has already accomplished what Tenant is asking the Court to do.

Ultimately, the Court appropriately considered and weighed the evidence and testimony presented at trial and properly found that Tenant failed to prove its claim for breach of contract and that Landlord had proven its counterclaim for breach of contract. The Court properly resolved these claims under the Lease and the Settlement Agreement. Tenant attempts to force an interpretation of the Lease and Settlement Agreement that is inconsistent with the plain terms of the underlying agreements. Therefore, Tenant's Motion should be denied.

IV. THE ORDER PROPERLY CONSIDERS THE ADDITIONAL RIGHTS AND OBLIGATIONS

Tenant improperly requests that this Court amend the Order and Judgment to alter the rights and obligations provided in the Lease and the Settlement Agreement.

In its Motion to Alter or Amend, Tenant asks this Court to amend the Order and Judgment to require Landlord to go above and beyond the requirements set forth in the Settlement Agreement and Lease, neither of which require a 20-year minimum service life, and to impose an ongoing requirement that Landlord provide Tenant with a new floating office as needed for the remainder of the 99-year Lease. No such obligation is contemplated in the Lease or the Settlement Agreement.

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Tenant also encourages the Court to alter the portion of the Order and Judgment allowing the parties to file motions seeking attorney's fees under Paragraph 36 of the Lease. Paragraph 36 of the Lease, entitled "Attorneys' Fees," provides as follows:

> **Attorneys' Fees**. In the event it is necessary for either party to employ an attorney for the collection of Rent or any other sum due hereunder, or to enforce any covenant of this Lease, or the termination of this Lease, or for the possession of the Lease Property or any part thereof, ***the non-prevailing party shall pay all costs, including reasonable attorney's fees***.

See Lease at Paragraph 36 (emphasis added). As set forth in Defendant's Motion for Attorney's Fees and Expenses, Landlord is the prevailing party as to its counterclaims for the collection of other sums due under the Lease and to enforce Tenant's compliance with the covenants of the Lease. *See* Lease at Paragraph 36. Landlord incurred significant legal fees and expenses to recover amounts that are due to Landlord in accordance with the Lease, including, but not limited to, the covenants set forth in Paragraphs 6, 17, 18, 26, and 30 of the Lease. Furthermore, Tenant filed its own Motion for Attorney's Fees based on Paragraph 36 of the Lease.

For the first time in its Motion to Alter or Amend, Tenant argues that the Order and Judgment be amended to require a sort of audit process before Tenant would remit payment for the invoices issued by Landlord. Tenant seeks to impose a requirement whereby Landlord must provide "reasonable and necessary back-up documentation" as a condition for Tenant's payment of such invoices, the reasonableness and sufficiency of which would be determined by Tenant in its sole discretion. A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not. *See Hickman v. Hickman*, 301 S.C. 455, 456, 392 S.E.2d 481, 482 (Ct. App. 1990). Even if Tenant had properly presented this argument, the Order and Judgment should not be amended to impose such a contingency upon payment of the amounts owed to Landlord under the Lease. Inventing and imposing such a requirement upon the parties

would only serve to invite future conduct by Tenant relating to its payment obligations.

The Court is not at liberty to rewrite these provisions for the parties. *See, e.g., C.A.N. Enters., Inc. v. S.C. Health & Human Servs.*, 296 S.C. 373, 378, 373 S.E.2d 584, 587 (1988) (stating that courts are "without authority to alter a contract by construction or to make new contracts for the parties" but are "limited to the interpretation of the contract made by the parties themselves"). The Court properly resolved the disputed issues under the Lease and the Settlement Agreement and properly weighed the evidence and testimony presented at trial. Accordingly, Tenant's Motion to Alter or Amend should be denied.

CONCLUSION

Based on the foregoing, Defendants Broad Creek Marina of Hilton Head, LLC f/k/a Hilton Head Marina, LLC, and Broad Creek Marina, Inc., respectfully request that the Court deny Plaintiff J&W Corporation of Greenwood's Motion to Alter or Amend the Order and Judgment.

Respectfully submitted,

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February 11, 2020
Charleston, South Carolina

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
J & W CORPORATION OF GREENWOOD,)	Case No.: 2018-CP-07-1622
Plaintiff,)	
)	**DEFENDANTS' OPPOSITION TO PLAINTIFF'S PETITION FOR WRIT OF SUPERSEDEAS**
vs.)	
BROAD CREEK MARINA OF HILTON HEAD, LLC; BROAD CREEK MARINA OPERATIONS, LLC; BROAD CREEK MARINA PROPERTIES, LLC; and BROAD CREEK MARINA DEVELOPMENT, LLC,)	
Defendants.)	

By filing a Petition for Writ of Supersedeas, Plaintiff J & W Corporation of Greenwood ("Tenant") is attempting to get permission from the Court to continue violating the underlying Lease Agreement ("Lease") by occupying the Leased Premises without payment to Landlord. This Court has already entered a judgment against Tenant for **$112,428.40**, on the basis that Tenant wrongfully refused to pay to Landlord the amounts due under the Lease for more than 10 years.

Tenant has not only refused to pay the judgment, but has also refused to pay **$14,004.60** in additional charges that have become due under the Lease since the date of the trial. Landlord, on the other hand, has acted in good faith, incurring **$94,877.40** in expenses since the date of trial relating to the temporary trailer and the floating office. Although the fact that Tenant has unclean hands is itself sufficient to refuse Tenant's request for supersedeas, the request also violates a stipulation in the Lease providing that the right to enforce unpaid judgments is Landlord's "sole remedy" against Tenant in the event of a payment default. For these reasons, this Court must

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refuse Tenant's request for a stay. Otherwise, Tenant will continue to ignore the Lease as well as the Order and Judgment without any consequences, while Landlord has to shoulder the financial burden of Tenant's use and occupation of the Leased Premises.

FACTUAL BACKGROUND

On January 9, 2020, the Court issued the Order and Judgment ("Order and Judgment"), which included a monetary judgment in favor of Landlord in the amount of **$112,428.40**, which represents: (1) the unreimbursed Lease charges in the amount of $56,371.27; (2) the dock damage repair costs ($44,398.00) plus prejudgment interest ($8,792.88) in the combined amount of $53,190.88; and (3) the unreimbursed miscellaneous charges in the amount of $2,866.25.

The Lease, which has been confirmed to be a binding contract between Landlord and Tenant, has specific provisions stipulating that Landlord (as its sole remedy) shall be allowed to enforce any judgment that is obtained against Tenant should the judgment remain unpaid:

> 13. Default. Notwithstanding any other provision to the contrary, neither party shall be in default under this Lease unless it fails to cure a breach of any of the provisions, covenants and conditions provided for herein within a reasonable time after the non-performing party has received written notice of the same. **Landlord shall have no right to eject Tenant or to terminate this Lease. Landlord's sole remedy shall be to obtain a money judgment against Tenant, and if the judgment remains unpaid, to execute on the same.** In the event NationsBank of South Carolina, N.A., its successor entities, or any commercial financial institution that acquires the interest of NationsBank of South Carolina, N.A. under any mortgage on the Lease Property becomes the landlord under this Lease, ("NationsBank"), but not the purchaser of the Lease Property from NationsBank, shall have all rights and remedies available to it at law and in equity.

See Lease, ¶ § 13 (emphasis added), attached as Exhibit A. The highlighted provisions represent a voluntary trade-off negotiated at arm's length between sophisticated parties. Landlord consented to forego the ability to seek ejectment of Tenant, and Tenant consented that Landlord could execute on any unpaid monetary judgment by Landlord. Tenant has refused to pay the judgment, which entitles Landlord to execute upon the judgment based on the provisions of the Lease.

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In the meantime, Landlord continues to perform under the Lease. Following the entry of the Interim Order (that Tenant challenged because it requires Tenant to pay certain expenses that the Lease expressly obligates Tenant to pay), Landlord has incurred $31,277.40 in expenses to provide Tenant with a temporary office. *See Expense Records for Temporary Office*, attached as Exhibit B. Additionally, Landlord has incurred significant expense in order to obtain the floating office for Tenant, which is a customized 12' x 32' Aqua Lodge vessel manufactured by Catamaran Cruisers. The purchase price of the Aqua Lodge, with freight, was $63,080.00. Landlord also paid the registration cost for the Aqua Lodge to the South Carolina Department of Natural Resources in the amount of $520.00, for an interim total of $63,600.00. *See Expense Records for Floating Office,* attached as Exhibit C. A photograph of the floating office, which has been delivered and is being prepared for bottom paint prior to placement in the water, is included below:



Furthermore, as has been the case since 2008, Landlord has continued to pay expenses, property taxes, maintenance and other charges that Tenant has refused to pay. Subsequent to trial, unreimbursed Lease charges in the amount of $14,004.60 have accrued, including Tenant's share of property taxes for 2018 and 2019. *See Lease Invoices from June 2019 through June 2020*, attached as Exhibit D.

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Although Tenant represented to this Court that Tenant would pay the amounts that became due under the Lease, the fact is that Tenant has only submitted to checks for $119.79 each, or a total of $239.58. *See Tenant's Negligible Short Payments,* attached as Exhibit E. Because Tenant issued the checks in the wrong amounts, the checks have not been cashed. Tenant's counsel also sent a lengthy letter explaining why Tenant was refusing to pay the monthly amounts invoiced by Landlord. However, this Court has subsequently adopted and enforced the monthly charges through the Order and Judgment, which awards the monthly charges at the specific rates charged by Landlord, which have not changed subsequent to the trial.

ARGUMENT

Tenant has appealed the Order and Judgment (under which Tenant claims to be the prevailing party for purposes of seeking attorney's fees). The monetary judgment obtained against Tenant is not stayed unless and until a stay of execution is granted. *See* S.C. App. Ct. R. 241(b)(1); S.C. Code 18-9-130(A)(1). Under South Carolina law, an order staying proceedings pending appeal should be made only when it appears that the party making the application has just reason to apprehend that without a stay he would be deprived of the benefit of the favorable result of the appeal. *See Porter v. Lesesne*, 85 S.C. 399, 67 S.E. 453, 453 (1910). This is not the case here. Tenant has failed to provide any basis to show or even suggest that, if the judgment is later overturned, Tenant would be deprived of the benefit of the result. Landlord is the owner in fee simple of the subject property and has an ongoing relationship with Tenant. Furthermore, Tenant's request is unequitable, as it seeks to undermine Landlord's sole remedy under the Lease, which is to enforce unpaid judgments obtained against Tenant. This Court should not intervene to perpetuate Tenant's unyielding refusal to make the payments that are due.

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I. A STAY OF EXECUTION OF THE JUDGMENT SHOULD NOT BE GRANTED UNDER THE CIRCUMSTANCES OF THIS CASE

In the Order and Judgment, this Court confirmed that Tenant is obligated to pay Landlord for Tenant's share of expenses for utilities, property taxes, lot maintenance, insurance, and additional charges, and must do so within thirty (30) days of the invoice date. The judgment remains unpaid. Furthermore, since the date of trial, Tenant has refused to pay amounts that have become due under the Lease.

A stay of execution should be denied as Landlord should not be deprived of his "sole remedy" under the Lease for the mere purpose of allowing Tenant a free ride at Landlord's expense. Landlord would typically have the right to seek ejectment of Tenant in such circumstances, but the Lease includes stipulations that "Landlord shall have no right to eject Tenant or to terminate this Lease" and that "Landlord's sole remedy shall be to obtain a money judgment against Tenant, and if the judgment remains unpaid, Landlord can execute on the same." *See* Lease, ¶ 13.

Through this stipulation, Tenant protected itself from ejectment in exchange for waiving the right to seek a stay of execution in the event that a judgment is obtained against Tenant but remains unpaid. This Court should not intervene to rewrite the written provisions of the Lease, particularly when doing so would merely serve to perpetuate wrongful conduct by Tenant. When the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect. *Jordan v. Security Group, Inc.,* 311 S.C. 227, 428 S.E.2d 705 (1993). The court's duty is to enforce the contract made by the parties regardless of its wisdom or folly, apparent unreasonableness, or the parties' failure to guard their rights carefully. *Ellis v. Taylor*, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). Tenant agreed that Landlord would have the right to execute upon unpaid judgments and received consideration in

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return for that request, which was to be insulated from ejectment proceedings. Under the circumstances, a stay of execution would contrary to the terms of the Lease and would deprive Landlord from receiving the benefit of the bargain contained in the Lease.

It is important that keep in mind that, while Tenant continues to breach the Lease and disregard this Court's judgment, Tenant continues to use and occupy the dock space, the office space, the parking spaces, the barge facility, and the common areas without making proper payment to Landlord. If Landlord is not going to be allowed to enforce the judgment, Tenant cannot be insulated from ejectment proceedings if the Lease is to be honored.

Additionally, this situation does not involve a set of facts that warrant the intervention of equity on Tenant's behalf. It is well recognized that "[h]e who seeks equity must do equity." *Provident Life & Accident Ins. Co. v. Driver,* 317 S.C. 471, 479, 451 S.E.2d 924, 929 (1994). This principle applies to one who affirmatively seeks equitable relief. *See Regions Bank v. Wingard Properties, Inc.,* 394 S.C. 241, 259, 715 S.E.2d 348, 357 (Ct. App. 2011), *citing City of Columbus v. Mercantile Trust & Deposit Co.,* 218 U.S. 645, 662 (1910). In order for justice to be done between parties, a party is required to do equity when asking the court to invoke the aid of equity. *See Ingram v. Kasey's Assocs.,* 340 S.C. 98, 107, 531 S.E.2d 287, 291 (2000). On this basis, where Tenant refuses to pay the judgment and refuses to pay additional amounts that have become due under the Lease after the trial, it is impossible to conclude that Tenant has behaved in an equitable manner towards Landlord. Tenant's unequitable conduct should not be rewarded.

II. IF A STAY OF EXECUTION OF THE JUDGMENT IS TO BE CONSIDERED, IT MUST BE ACCOMPANIED BY A CASH BOND THAT INCLUDES THE JUDGMENT, LANDLORD'S ATTORNEY'S FEES, AND INTEREST.

Notably, Tenant did not request to pay a bond, but instead only asked the Court to prevent enforcement of the judgment outright. As a result, the Court should simply deny Tenant's Petition,

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as a stay is unwarranted and would inappropriately deprive Landlord of its sole remedy under the Lease. However, should the Court consider the issue further, the bond must be in cash and must include the full judgment amount ($112,428.40), the amount of attorney's fees sought in Defendants' Motion for Attorney's Fees and Costs ($179,677.37), or such specific amount of the fees and costs that the Court awards, and 18 months of postjudgment interest on these amounts at the applicable postjudgment interest rate of 8.75% per year ($38,373.89), for a total bond amount of **$330,479.66**. It is recognized that the bond amount is a matter committed to this Court's sound discretion. *See, e.g., United Dominion Realty Tr., Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992) (recognizing that the amount of an appeal bond is committed to the sound discretion of the courts below).

Also, the Court would need to make the stay conditional upon Tenant making payments that become due during the appeal. If this condition is not upheld, the stay should be lifted. Otherwise, Tenant will continue to breach the Lease, leaving Landlord to continue to shoulder the complete burden of Tenant's use and occupation of the Property. However, as stated above, the appropriate result is for Tenant's Petition to be denied outright, so that Tenant might begin to uphold its obligations under the Lease.

[*SIGNATURE ON NEXT PAGE*]

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CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court deny Plaintiff J&W Corporation of Greenwood's Petition for Writ of Supersedeas and allow Landlord to enforce and collect the judgment, as stipulated within the Lease.

Respectfully submitted,

By: *s/Ellis R. Lesemann*
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Attorneys for Defendants

June 16, 2020
Charleston, South Carolina

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EXHIBIT A

Lease Agreement

33007

Exhibit A

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") executed this 23rd day of September, 1993, to be effective as set forth in paragraph 33, entitled "Effective Date of Lease", by and between **HILTON HEAD ISLAND MARINA, L.P.**, a South Carolina limited partnership ("Landlord") and/or its assigns, and **J & W CORPORATION OF GREENWOOD**, a South Carolina corporation ("Tenant").

W I T N E S S E T H :

WHEREAS, Tenant had a right of first refusal (the "Right") on the Property (as defined herein) and validly exercised the Right.

WHEREAS, pursuant to that letter dated May 14, 1993 from Tenant to First Union National Bank of South Carolina ("First Union"), Tenant was substituted as the "Purchaser" under that certain contract of sale, offer and acceptance dated April 27, 1993 (the "Indigo Contract"); and

WHEREAS, Tenant has validly assigned the Indigo Contract to Landlord pursuant to that certain Assignment of Contract by Purchaser dated June 17, 1993 as amended; (the "Assignment"); and

WHEREAS, as consideration for the Assignment and other consideration, Landlord has agreed to enter into this Lease; and

WHEREAS, Landlord desires to lease to Tenant and Tenant desires to lease from Landlord the Property as defined herein.

NOW, THEREFORE, for and in consideration of the sum of Ten and no/100 Dollars ($10.00) in hand paid by Tenant to Landlord, the receipt and sufficiency of which are hereby acknowledged and in consideration of the rents to be paid to Landlord by Tenant, and in consideration of the Assignment and covenants and agreements herein agreed to be performed by Landlord and Tenant, Landlord does hereby grant and lease to Tenant in an "As Is" condition, the following described property, subject to the following terms and conditions:

1. Property. The leased property (the "Lease Property") is described on Exhibit A, being a part of Broad Creek Marina (the "Property") which is described on Exhibit B.

2. Term. The term ("Term") of this Lease shall be ninety-nine (99) years, commencing on the date that Landlord acquires fee simple title to the Property (the "Commencement Date").

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3. Rental.

(a) Annual Rental. Tenant shall pay to Landlord a yearly Base Rent (the "Rent") in the amount of One and 00/100 Dollars ($1.00) per year payable each year on the first (1st) day of January, beginning January 1, 1994.

(b) Additional Rent. In addition to the Rent, Tenant shall pay additional rent ("Additional Rent") as follows:

(i) Utilities. Tenant agrees to pay all utilities including, but not limited to, water, sewer and electricity that is attributable to Tenant's use of the Lease Property.

(ii) Municipal State, County or Federal Taxes. Tenant, at all times, shall be responsible for and shall pay, before delinquency, all municipal, county, state or federal taxes assessed against the Lease Property and all taxes attributable to Tenant's use.

(iii) Insurance. Tenant shall pay annually, commencing with the execution of this Lease, any and all amounts expended by Landlord for liability, property and casualty insurance pursuant to paragraph 17, entitled "Liability Insurance" or to be allocated pursuant to paragraph 5, entitled "Licensing Fees and Other Costs".

(c) Additional Charges. Any charges due Landlord by Tenant, including but not limited to, damage to the Property, legal fees, costs of default remedies and past due charges for utilities, cleaning, maintenance and repairs, etc., or for work done on the Property by order of Tenant, shall be considered as Additional Rent due (in addition to all other rent payable).

4. Priority of Lease and Subordination/Nondisturbance. This Lease shall be recorded prior to the lien of any purchase money mortgage or any other lien upon the Lease Property. TENANT AND NATIONSBANK HAVE SIMULTANEOUSLY ENTERED INTO A NON-DISTURBANCE, SUBORDINATION AND ATTORNMENT AGREEMENT, WHICH WILL GOVERN THE RESPECTIVE RIGHTS AND OBLIGATIONS OF NATIONSBANK (as defined herein) AND TENANT. Except for the immediately preceding sentences, the provisions of this paragraph shall not apply to NationsBank. At the request of Landlord or any subsequent owner of the Property, provided Landlord or such successor landlord is not in default under the Lease, Tenant shall enter into a non-disturbance, subordination and attornment agreement in substantially the same form with any subsequent institutional, commercial lender taking a mortgage on the Property. Such agreement will subordinate the Lease to the lien of the lender and shall be binding on their respective legal representatives, successors and assigns and provide, among other provisions, that: (a) Tenant shall not be joined as a Defendant in any proceeding

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which may be instituted to foreclose or enforce the mortgage; and (b) Tenant's possession and use of the Lease Property in accordance with the provisions of this Lease shall not be affected or disturbed by reason of the subordination to or any modification of or default under the mortgage. If the mortgagee or any successor in interest shall succeed to the rights of Landlord under the Lease, whether through possession, surrender, assignment, subletting, judicial or foreclosure action, or delivery of a deed or otherwise, Tenant will attorn to and recognized such successor Landlord as Tenant's Landlord, and the successor Landlord will accept such attornment and recognize Tenant's rights of possession and use of the Property in accordance with the provisions of the Lease. This clause shall be self-operative and no further instrument of attornment or recognition shall be required. Further, if any prospective mortgagee of the Property requires, as a condition precedent to issuing its lien, the modification of this Lease in such manner as it does not materially lessen Tenant's rights or increase Tenant's obligations or risks hereunder, Tenant shall not delay or withhold its consent to such modification and shall execute and deliver such conforming documents therefore as such mortgagee and requires. Notwithstanding anything stated herein to the contrary, Landlord, in its sole unfettered discretion and without any consent from Tenant, can refinance the Property or sell the Property under any and all conditions Landlord desires as long as any subsequent lender or purchaser complies with the terms and conditions of this Lease.

5. Licensing Fees and Other Costs. Tenant shall pay taxes, license fees, insurance, utilities, and all other costs of ownership and possession for the Lease Property. To the extent such items are not separately assessed, charged, or metered, as the case may be, the parties will allocate or prorate them in an equitable manner. If one party pays any such item with respect to a portion of the Property for which it or they are not responsible, the other party shall reimburse the paying party on or before the later of the date upon which such payment is due or ten (10) days after demand for reimbursement, subject to the right of either party to contest the amount of any such tax, assessment, fee or charge.

6. Dock Repair. As it becomes necessary to repair or replace the dock which is a portion of the Lease Property, Landlord shall complete said repairs or replacement and Tenant shall pay to Landlord all costs attributed to its use, said costs to be paid as they are incurred by Landlord. If the dock, while in need of repair or replacement, is reconfigured pursuant to paragraph 10, entitled "Reconfiguration", Tenant shall pay its pro-rata portion of the repair or replacement costs toward reconfiguration costs.

7. Cooperation and Good Faith. The parties will cooperate with each other in obtaining any licenses, permits, or other governmental or regulatory authorizations appropriate for the

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Property and operations of each of them, including obtaining any such authorization in the name of one party, if that is more convenient, and allowing the other to utilize any such authorization subject to the requirements thereof. During the term of the Lease, the parties will cooperate in marketing; coordinating special events; coordinating maintenance, repair and replacement work; obtaining permits and licenses; and in any other manner that is mutually beneficial.

8. Parking. Tenant shall be provided with a minimum of 50 parking spaces, the initial location shall be as shown on Exhibit A-1. These parking spaces may be used by Tenant, Tenant's employees, agents, invitees and guests. Upon notice from Landlord to Tenant, for any reason or no reason whatsoever, the parking can be moved to any location which is on the Property and is appropriate for such use; provided, however, if Landlord desires to place Tenant's parking at any other location, said location must be mutually acceptable to Landlord and Tenant. Also the employees, agents, guests and invitees of Tenant will be allowed to park in designated parking areas of the Property other than the Lease Property at such times and to the extent such parking does not interfere with the parking for the employees, agents, guests and invitees of Landlord. THIS LEASE DOES NOT INCLUDE ON-SITE PARKING FOR BARGE TRAFFIC OR A STAGING AREA FOR THE BARGE SERVICE.

9. Access. Tenant shall have the non-exclusive right to use convenient means of access to and between all the parcels or segments of the Lease Property to the extent they are not contiguous. Tenant shall also have non-exclusive access between the Lease Property and the public roadways. The initial access is shown on Exhibit A-1 and any other access shall be mutually acceptable to Landlord and Tenant. Except as provided for in paragraph 14, Tenant shall conduct its activities in said access areas reasonably so as not to unnecessarily interfere with the conduct of the Landlord's activities.

10. Reconfiguration. Landlord will have the right to reconfigure the uses of the Property including all docks and the Lease Property, at its own expense, except as provided in paragraph 6, entitled "Dock Repair", all subject to the approval of Tenant, which shall not be unreasonably withheld. Any such reconfiguration will take into consideration the size, number and types of vessels that Tenant is then or is likely thereafter to dock at the Lease Property, the convenience of access between and among the parking area, the commercial space, the floating dock areas, and the barge loading and related maneuvering areas. Tenant will have the right to rebuild, replace and reconfigure the Lease Property at its own expense, subject to the approval of Landlord, which shall not be unreasonably withheld.

11. Permits. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith", Tenant shall procure any and

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all permits required from local, state and federal governmental agencies, and/or otherwise, which may be required to run its business. Any and all costs associated with such permits shall be the sole responsibility of Tenant.

12. Use of Property. Tenant agrees to use the Lease Property to operate a commercial ferry; to operate a commercial barge operation; to operate tour services; to rent jet skis, boat rental excursion and fishing boats, and for other similar commercial purposes. The Tenant will not compete with the marina in the leasing, sub-leasing or in any way charging a second party for dockage at the marina and shall not use the Lease Property for any other purposes. It is, however, understood that from time to time Tenant may use its commercial rights at the marina for the purpose of embarkation and debarkation of passengers for business affiliated with Tenant without the constraint of fuel purchases, except when the vessel is docked overnight. The marina is excluded from competing with the Tenant's commercial ferry and barge service. Other operations of the Tenant are non-exclusive. Tenant's portion of the floating store is to function as an office for booking charters, running its operations located at the marina, and selling tourist and novelty items related to its business. The Tenant, affiliated business, and other vessels docked at the marina are barred from selling food, beverages, and items sold in a marina/sports or convenience store, except for novelty and tourist items related to its business. Tenant shall conduct its activities in the jointly utilized embarkation and debarkation area reasonably so as not to unnecessarily interfere with the conduct of Landlord's activities.

13. Default. Notwithstanding any other provision to the contrary, neither party shall be in default under this Lease unless it fails to cure a breach of any of the provisions, covenants and conditions provided for herein within a reasonable time after the non-performing party has received written notice of the same. Landlord shall have no right to eject Tenant or to terminate this Lease. Landlord's sole remedy shall be to obtain a money judgment against Tenant, and if the judgment remains unpaid, Landlord can execute on the same. In the event NationsBank of South Carolina, N.A., its successor entities, or any commercial financial institution that acquires the interest of NationsBank of South Carolina, N.A. under any mortgage on the Lease Property becomes the landlord under this Lease, ("NationsBank"), but not the purchaser of the Lease Property from NationsBank, shall have all rights and remedies available to it at law and in equity.

14. Non-Interference. As stated in paragraph 8 herein, none of the Lease Property shall be used for parking or a staging area for the barge service. All barge traffic shall proceed via the "access" to the barge as provided for in paragraph 9 herein. The barge operations shall be conducted in a manner so as not to interfere with any and all operations of the marina and other

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operations on the Property. All barge operations shall be maintained solely by Tenant, including, but not limited to, maintenance of the barge ramp. Workers, passengers, invitees, employees, guests and all other persons shall not loiter in and around the barge area or on the Property.

15. Fuel Purchases. Tenant agrees to purchase all fuel and oil for boats docked at the Lease Property of any type whatsoever exclusively from Landlord, provided, however, the fuel and oil is supplied at commercially reasonable rates (the "Rate") as defined by the average charged by other Hilton Head Island marinas with commercial fuel rates. Should Landlord charge in excess of the Rate, Tenant shall still be required to purchase fuel from Landlord, but will only be required to pay the Rate.

16. Examination of Property. Tenant has examined the Property and is familiar with its present condition. Tenant, relying on said examination, agrees to accept the Lease Property in its present condition.

17. Liability Insurance. Tenant shall not carry any stock of goods or do anything in or about the Property, including carrying, transporting, or disposing of any hazardous or toxic materials, as such terms are defined under applicable federal, state and local statutes, rules and regulations, which would, in any way, restrict or invalidate any insurance coverage of the Property. Tenant agrees to pay, upon demand, as Additional Rent, any and all premiums of insurance carried by the Landlord on the Property resulting from Tenant's use or occupancy. Tenant shall keep in full force and effect at Tenant's expense, insurance for personal property, trade fixtures and property damage as well as environmental coverage and a public liability policy all in form and substance reasonably satisfactory to Landlord, in which Tenant and Landlord shall be named as the Insured with the following minimum coverage: one million dollars (and to be upwardly adjusted yearly to reflect inflation rates). Said policy or policies shall bear endorsements to the effect that the insurer agrees to notify the Landlord not less than thirty (30) days in advance of any modification or cancellation thereof. Should Tenant fail to carry such public liability insurance, the Landlord may, at its option (but shall not be required to do so) cause public liability insurance as aforementioned, to be issued, and, in such event, the Tenant agrees to pay the premium for said insurance promptly upon Landlord's demand.

18. Maintenance and Repair. Subject to the provisions of paragraph 6, entitled "Dock Repair", Tenant shall, at Tenant's expense, make all repairs necessary to maintain the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Tenant refuses or neglects to commence the necessary repairs and maintenance within a reasonable time, not to exceed fifteen (15)

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days, after demand by Landlord, Landlord may make such repairs without liability to Tenant for any loss or damage that may accrue to Tenant's stock, business or fixtures by reason thereof (except if caused by Landlord's or Landlord's agent's negligence), and if Landlord makes such repairs, Tenant shall pay to Landlord, on demand, as Additional Rent, the cost thereof. Tenant's failure to pay shall constitute a default under this Lease. Landlord shall maintain and repair the Property except the Lease Property in good working condition and repair, neat and clean, and generally in a manner consistent with the operation of a first class marina. If Landlord fails to maintain and repair the Property, except the Lease Property, as contemplated herein, Tenant may make such repairs without liability to Landlord for any loss or damage to the Property, except damage attributable to Tenant's or Tenant's agents' negligence, and Landlord shall pay to Tenant, upon Tenant's demand, the cost of such repair.

19. Regulations and Sanitation. Tenant shall keep the Lease Property in compliance with all laws, ordinances, regulations and requirements of any legally constituted public authority, including all environmental rules and regulations. If Tenant fails to comply with any such laws, ordinances, regulations and requirements, or any aspect thereof, including notice requirements, such failure shall constitute a default by Tenant under this Lease. Landlord, may, without being liable for trespass, immediately re-enter the Lease Property and take whatever steps Landlord deems necessary to protect Landlord's interest. Tenant shall keep clean all areas in the Lease Property and surrounding areas. Cleaning includes removing any trash or refuse deposited upon the Property attributable by Tenant, Tenant's invitees, employees, customers or anyone else. In the event of non-compliance by Tenant, Landlord shall have the right to have said areas cleaned, trash and refuse removed and charge the expense to Tenant as Additional Rent which shall be due and payable upon demand, non-payment of which shall constitute a default of this Lease.

20. Alterations. Tenant shall have the right to make alterations, additions, improvements or rewiring in or to the Lease Property subject to the prior written consent of Landlord, which consent shall not be unreasonably withheld.

21. Assignment or Sub-Lease. Tenant shall have the right to assign, transfer, mortgage, pledge or otherwise encumber or dispose of this Lease, or sublet the Lease Property, or any part thereof; provided, however, all subsequent parties shall be bound by all covenants, obligations and terms herein, including, but not limited to, paragraph 12, entitled "Use of Property" and all subsequent parties shall be financially capable of complying with this Lease. Landlord shall have the right to assign this Lease without any consent from Tenant to a party acquiring title to the Property.

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22. Signs or Awnings. Tenant shall place no signs, notices, pictures or advertising matter upon the Property (except the Lease Property), except those shown on Exhibit A-1 unless consented to by Landlord in writing, such consent not be unreasonably withheld. Landlord shall consent to such directional and informational signs as are reasonably appropriate for the convenient conduct of Tenant's business. Any and all signs placed on the Property by Tenant shall be maintained in compliance with governmental rules and regulations governing such signs. Tenant shall be responsible to Landlord for any damages caused by installation, use, maintenance, or removal of said signs. Any electrical service needed for signs shall be installed at the Tenant's expense or if provided by Landlord, shall be paid for by Tenant.

23. Waiver of Rights. No failure by Landlord to exercise any power given by Landlord hereunder, or to insist upon Tenant's strict compliance with Tenant's obligations hereunder, and no custom or practice of the parties at variance with the terms hereof will constitute a waiver of Landlord's rights to demand exact compliance with the terms of this Lease at a future time. The rights and remedies created by this Lease are cumulative and the use of one remedy shall not be taken to exclude the right to use another.

24. Rules and Regulations. Landlord reserves the right, at any time, to make further reasonable rules and regulations (to be applied uniformly to all users, including Landlord) as in Landlord's judgment may be necessary for the safety, care, appearance and cleanliness of the Property and the preservation of the good order therein, and such other reasonable rules and regulations shall be binding upon the parties hereto with the same force and effect as if they had been contained herein at the time of execution hereof.

25. Liens. Tenant shall not create any liens for labor or material against Landlord's interest in the Property. All persons contracting with the Tenant for the election, installation, alteration, repair or demolition of any building or other improvements on the Property, and all materials, suppliers, contractors, mechanics, and laborers are hereby charged with notice that they must look to the Tenant and to the Tenant's interest only in the Property to secure payment of any bill for work or material furnished during the rental period created by this Lease. In the event that liens are placed on record against the Property by contractors, mechanics, laborers, material suppliers, etc., because of action by Tenant it will constitute a default of this Lease.

26. Damages to or Destruction of Property. Tenant shall give immediate written notice to Landlord of any damage to the Lease Property caused by fire or other casualty. Subject to the provisions of paragraph 7, entitled "Cooperation and Good Faith", Tenant shall apply for all necessary permits and approvals and

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shall repair, restore, rebuild, or replace the damaged Lease Property to the extent that it shall deem necessary or desirable in connection with the requirements of its business. Any and all insurance proceeds from insurance policies carried by Landlord (or in Landlord's name) resulting from damage to the Lease Property, shall be held in trust and dispersed for repairs, restoration, rebuilding or replacement undertaken by Tenant pursuant to this paragraph unless Landlord and Tenant otherwise agree. If the insurance proceeds are insufficient to repair the damage, then Tenant shall pay for the difference.

27. Damage to Personal Property. All personal property, merchandise, fixtures, and equipment placed or moved into the Property shall be at the risk of Tenant or the owners thereof, and Landlord shall not be liable for any damages, loss or theft of said personal property, merchandise, fixtures, or equipment, from any cause whatsoever.

28. Quiet Enjoyment. As long as Tenant is not in default under the covenants of this Lease, Tenant's quiet and peaceable enjoyment of the Lease Property shall not be disturbed or interfered with by Landlord or any person claiming by, through, or under Landlord. So long as Landlord is not in default under the covenants of this Lease, Tenant shall conduct itself in a manner not to disturb Landlord's or other tenants' quiet enjoyment of the Property.

29. Condemnation. If the whole of the Property or such portion thereof as will make said Property unusable for the purpose herein leased, be condemned by any legally constituted authority, then, on the date when possession thereof is taken by public authorities, rental shall be accounted for as between Landlord and Tenant as of that date. This shall be without prejudice to the rights of either Landlord or Tenant to recover from the public authority compensation for damages caused by condemnation. Neither the Tenant nor the Landlord shall have any rights in any award made to the other by any condemnation authority.

30. Indemnity and Liability. Tenant shall indemnify and save Landlord harmless from any and all claims, damages, costs and expenses, including reasonable attorneys' fees arising from the occupancy or use by Tenant of the Property. Landlord shall not be liable, and Tenant waives all claims for damage to person or property sustained by Tenant, its employees or agents, resulting from the condition of the Property or as may result from any accident in or about the Property or which may be the result directly or indirectly from any act or neglect to the Property of which the lease is a part. Landlord shall not be responsible or liable at any time for any loss or damage to Tenant's merchandise, equipment, fixtures or other personal property of Tenant or Tenant's business. Landlord shall not be responsible or liable to Tenant or those claiming by, through or under Tenant for any loss

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or damage to either the person or property of Tenant that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining Property. Landlord shall not be responsible or liable for any defect, latent or otherwise, in any building constituting the Property or any of the equipment, machinery, utilities, appliances or apparatus therein, nor shall it be responsible or liable for any injury, loss or damage to any person or to any property of Tenant or other person caused or resulting from bursting, breakage, or by or from leakage, ice, running, backing up, seepage, or the overflow of water or sewage in any part of the Property or from any injury or damage caused by or resulting from acts of God or the elements or for any injury or damage caused by or resulting from any defect or negligence in the occupancy, building, machinery, apparatus or equipment by any person or by or from the acts or negligence or any occupant of the Property. In the event Landlord transfers this Lease, except as collateral security for a loan, upon such transfer Landlord will be released from all liability and obligations hereunder. The indemnities provided in this Lease shall survive the termination or expiration of this Lease or any renewals; provided, however, Landlord shall be liable for the negligent acts of Landlord and its agents.

31. Hazardous Substances. Except for the materials handled and transported in the ordinary course of Tenant's business which are transported and handled in compliance with all applicable local, state and federal environmental laws, rules, regulations and ordinances, Tenant covenants that it shall not permit any hazardous or toxic wastes or substances or other hazardous materials regulated, controlled or prohibited by any federal, state or local environmental laws, including all materials defined as hazardous or toxic wastes or substances under any local, state or federal environmental statutes, laws, rules, regulations or ordinances, and petroleum, petroleum products, oil and asbestos and other contaminants ("Hazardous Materials") to be brought onto the Leased Property, or if so brought or found located thereon, shall be immediately removed, with proper disposal, and all required environmental cleanup procedures shall be diligently undertaken pursuant to all such laws, ordinances and regulations. Tenant agrees to notify Landlord of any enforcement, cleanup, remediation or other actions regarding the Leased Property and any claims made or threatened by third parties against Tenant relating to losses or injuries resulting from Hazardous Materials. Tenant shall provide to Landlord, in form and substance satisfactory to Landlord, copies of all documentation and data relating to or dealing with any Hazardous Materials used, stored or released in or on the Leased Property and the easements or rights of access to the Leased Property for the purposes of conducting environmental investigations and audits deemed necessary or desirable by Landlord.

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Tenant agrees that it will reimburse Landlord for an hold Landlord harmless from all fines or penalties made or levied against Landlord by any local, state or federal governmental authority or other authority as a result of or in connection with i) the use of the Leased Property, ii) the use of facilities thereon, iii) the use, generation, storage, transportation, discharge, release or handling of any Hazardous Materials, or any other material, the use, generation, storage, transportation, discharge, release or handling of which is regulated by any federal, state or local statute, law, rule, regulation, ordinance or order at any time, or iv) any release of any nature onto the ground or into the water or air from or upon the Leased Property at any time. Tenant also agrees that it will reimburse Landlord for and indemnify and hold Landlord harmless from any and all costs and expenses (including reasonable attorneys' fees), and for all civil judgments or penalties incurred, entered, assessed, or levied against Landlord as a result of Tenant's use of the Leased Property. Such reimbursement or indemnification shall include, but not be limited to, any and all judgments or penalties to recover the cost of cleanup of any such release by Tenant from or upon the Leased Property and all expenses incurred by Landlord as a result of such civil actions, including, but not limited to, reasonable attorneys' fees. In addition, Tenant hereby agrees to indemnify, defend and hold Landlord and its successors and assigns harmless from and against any and all claims, demands, suits, losses, damages, assessments, fines, penalties, costs or other expenses (including attorneys' fees and court costs) arising from or in any way related to actual or threatened damage to the environment, agency costs of investigation, personal injury or death, or property damage due to a release or alleged release of Hazardous Materials in the surface or ground water arising from Tenant's business operations, or gaseous emissions arising from Tenant's business operations or any other condition existing or arising from Tenant's business operations resulting from the use or existence of Hazardous Materials, whether such claim proves to be true or false. Tenant further agrees that its indemnity obligations include, but are not limited to, liability for damages resulting from the personal injury or death of any employee of Tenant, regardless of whether Tenant has paid the employee under the workers' compensation laws of any state or other similar federal or state legislation for the protection of employees. The term "property damage" as used in this paragraph includes, but is not limited to, damage to any real or personal property of Tenant, Landlord and any third parties.

Tenant's obligations under this paragraph shall survive the termination of this Lease by eviction or otherwise.

32. Reversion. Tenant shall surrender to Landlord at the end of the Term of this Lease or upon cancellation of this Lease, the Lease Property in as good condition as the Lease Property was at

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the beginning of the Term of this Lease, normal wear and tear accepted.

33. Effective Date of Lease. This Lease shall become effective as a binding agreement only upon the execution and delivery thereof by both Landlord and Tenant and Landlord's fee simple acquisition of the Property.

34. Notices. All notices, demands, or other written communications required under this Lease shall be made in writing, signed by the parties serving the same and hand delivered or deposited in the registered or certified United States Mail, return receipt requested, postage prepaid, and (i) if intended for Landlord, shall be addressed to:

Hilton Head Island Marina, L.P.
c/o Hilton Head Marina, Inc., General Partner
18 Simmons Road
Hilton Head Island, SC 29925

with a copy to:

Geoffrey M. Smith, Esq.
Geoffrey M. Smith & Associates
Post Office Box 20458
Charleston, SC 29413

(ii) if intended for Tenant, shall be addressed to:

J & W CORPORATION OF GREENWOOD
Post Office Box 21565
Hilton Head Island, SC 29925

with a copy to:

Frederick C. Hack, Jr., Esquire
Ruth, Hack & MacNeille, P.A.
Post Office Drawer 5706
Hilton Head Island, SC 29938

35. Estoppel Certificates. Tenant shall from time to time, within ten days following written notice from Landlord, execute, acknowledge and deliver to the Landlord a written statement certifying that this Lease is in full force and effect. This statement should also state whether or not Landlord is in default in performance of any covenant and shall constitute an acknowledgement by Tenant that this Lease is unmodified and in full force and effect, and shall constitute a waiver of any defaults by Landlord which may have existed prior to the date of such notice and are not revealed therein.

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36. Attorneys' Fees. In the event it is necessary for either party to employ an attorney for the collection of Rent or any other sum due hereunder, or to enforce any covenant of this Lease, or the termination of this Lease, or for the possession of the Lease Property or any part thereof, the non-prevailing party shall pay all costs, including reasonable attorney's fees.

37. Entire Agreement. Except for any executory provisions of the Assignment, this Lease contains the entire agreement between the parties hereto and all previous negotiations leading thereto, and it may be modified only by a dated written agreement signed by both Landlord and Tenant. No surrender of the Property or of the remainder of the Term of this Lease shall be valid unless accepted by Landlord in writing. TIME IS OF THE ESSENCE IN THIS AGREEMENT.

38. Applicable Law. The parties executing this Lease acknowledge that the negotiations and anticipated performance of this Lease occurred or shall occur, and that this Lease is executed in the State of South Carolina, and that, therefore, the parties irrevocably and unconditionally agree that South Carolina law shall govern the interpretation of this Lease and the rights and duties of the parties hereto.

39. Survival of Representations and Warranties. All representations, warranties, covenants and agreements contained in this Lease and in all documents and agreements incorporated herein shall survive the execution and termination of this Lease.

40. Severability. If any provision of this Lease is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, such provision shall be fully severable, and this Lease shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Lease, and the remaining provisions of this Lease shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Lease.

41. Heirs, Successors and Assigns. This Lease shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, successors and assigns.

42. Interpretation Presumption. This Lease has been negotiated by the parties hereto and by the respective attorneys for each party. The parties represent and warrant to one another that each has, by counsel or otherwise, actively participated in the finalization of this Lease. In the event of a dispute concerning the interpretation of this Lease, each party hereby waives the doctrine that an ambiguity should be interpreted against the party which has drafted the Lease.

43. Exhibits. All exhibits referred to herein are hereby incorporated into this Lease.

IN WITNESS WHEREOF, the parties hereto have their duly authorized representative to execute this Lease on the day and year first above written.

WITNESSES:

Sue H. Thomas

LANDLORD:

HILTON HEAD ISLAND MARINA, L.P.,
a South Carolina limited partnership

By: HILTON HEAD MARINA, INC.,
a South Carolina Corporation
Its: General Partner

By: _____
Richard Freedman
Its: President

WITNESSES:

Sue H. Thomas

TENANT:

J & W CORPORATION OF GREENWOOD,
a South Carolina corporation

By: _____

Its: President

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STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

PROBATE

BEFORE ME personally appeared the undersigned witness and made oath that (s)he saw the within-named Hilton Head Island Marina, L.P., a South Carolina limited partnership, by its General Partner, Hilton Head Marina, Inc., a South Carolina corporation, by Richard Freedman, its President, sign, seal and as its act and deed, deliver the within written Lease Agreement; and that (s)he with the other witness subscribed above, witnessed the execution thereof.

(Signature of 1st or 2nd witness)

SWORN to before me this
23rd **day of** SEPTEMBER, **1993.**

Sue H. Thornton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 29, 1993

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

PROBATE

BEFORE ME personally appeared the undersigned witness and made oath that (s)he saw the within-named J & W Corporation of Greenwood, a South Carolina corporation, by William P. Searcy, **its** President **sign, seal and as its act and deed, deliver the within written Lease Agreement; and that (s)he with the other witness subscribed above, witnessed the execution thereof.**

(Signature of 1st or 2nd witness)

SWORN to before me this
23rd **day of** SEPTEMBER, **1993.**

Sue H. Thornton
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: July 29, 1995

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EXHIBIT A

LEASE PROPERTY

The Lease Property shall be the following described areas of the Property, which are located as indicated on the attached Exhibit A-1 as such areas may be reconfigured from time to time:

1. Commercial Space. The southwestern most 300 square feet of the floating store (designated "Floating Store" on Exhibit A-1);

2. Barge Docking, Loading, and Unloading Facilities. The barge docking facility immediately east of the concrete ramp designated as "Concrete Ramp" on Exhibit A-1.

3. Commercial Dock Space. The northeastern most two-hundred and fifty-eight (238') linear feet of floating dock space on the outside (southern side) of the innermost (northern most) finger of floating docks indicated on Exhibit A-1 as "Floating Dock/333'" and the forty-two (62') linear feet of floating dock space on the inside (northern side) of the inner most (northern most) finger of floating docks immediately northeast of and adjacent to the"Floating Store";

4. Embarkation and Debarkation Area. The southwestern most seventy-five (75') linear feet of floating dock on the outside of the inner most finger of floating docks. Tenant will have shared use of this area and its vessels will not occupy this area for purposes of embarkation and debarkation for intervals of longer than fifteen (15) minutes at a time.

5. Parking Area. A designated parking area containing parking area for not less than fifty (50) vehicles located on the Property.

6. Access. The Lease Property includes the access areas described in paragraph 9, entitled "Access" and the loading, unloading and maneuvering area generally to the north of the docking facility and concrete ramp and indicated on Exhibit A-1 as "Conc".

7. Reconfiguration. The Lease Property and the access areas may be reconfigured from time to time pursuant to paragraphs 8, 9 and 10, entitled "Parking", "Access", and "Reconfiguration", respectively.

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EXHIBIT B

ALL that certain piece, parcel or tract of land containing 4.55 acres, more or less, together with all improvements thereon, located on Hilton Head Island, Beaufort County, South Carolina, as reflected on a plat thereof entitled "A Composite Plat of Broad Creek Marina Located on Marshland Road", dated May 29, 1992, and prepared by Jerry L. Richardson S.C.R.L.S. #4784, which said plat has been recorded in the Beaufort County RMC Office in Plat Book 44 at page 47. According to said Plat, said property is bounded on the West, North and East by lands now or formerly of Charles Simmons and on the South by the mean high water mark of Broad Creek.

TOGETHER WITH the concrete ramp, floating dock, wooden walkway, floating store, gas pumps, electrical panel, and other real and personal property as reflected on said Plat.

TOGETHER WITH ingress and egress from Marshland Road along a fifty foot (50') right of way and also along an area designated as Access Easement as reflected on said Plat, and all other applicable easements affecting the property.

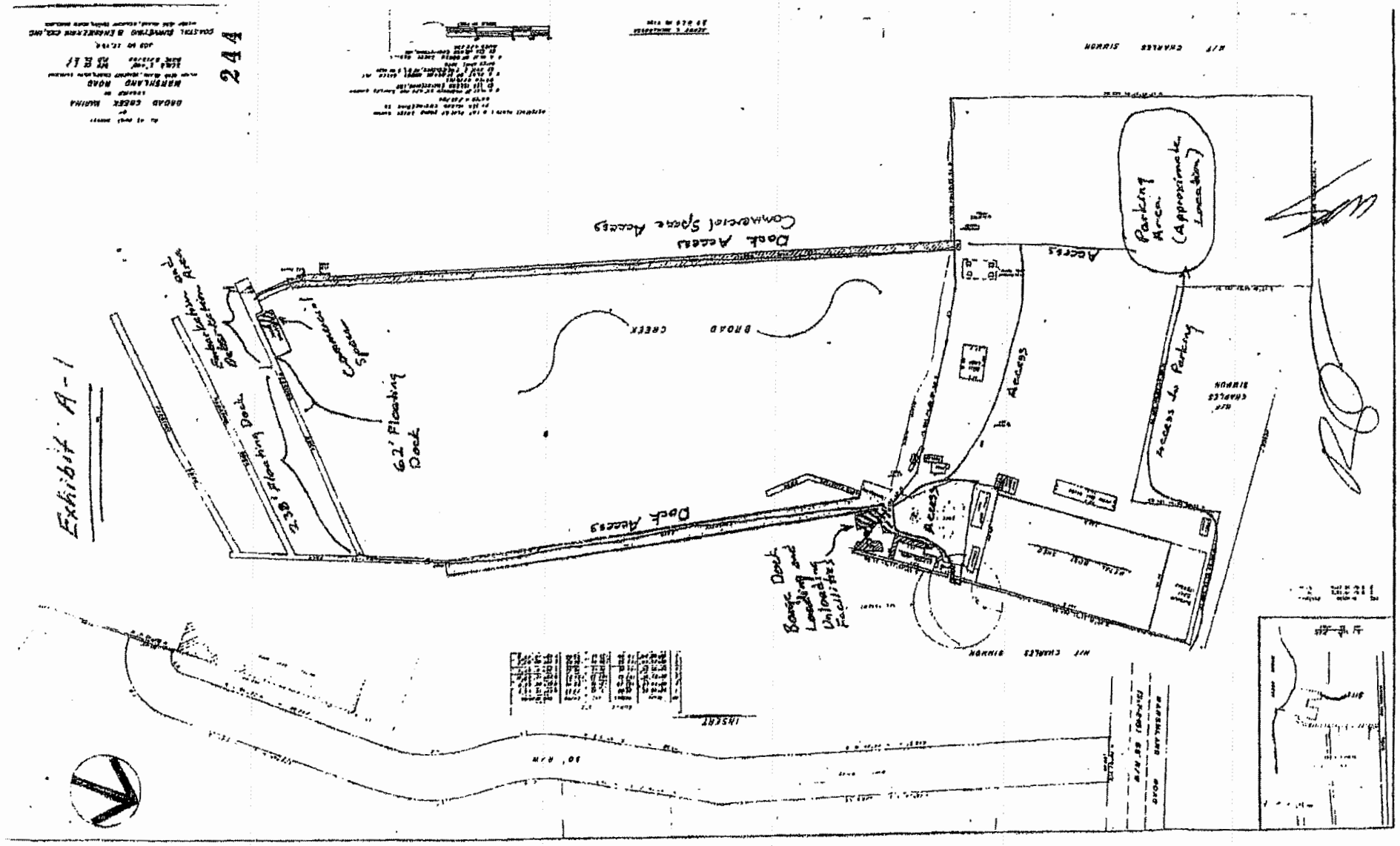
TOGETHER WITH all right, title and interest in and to all property above and below the mean high water mark of Broad Creek and the southern boundary of the property.

BEING the same property conveyed to First Union National Bank of South Carolina by deed of Broad Creek Holdings, A Limited Partnership, dated July 28, 1992, and recorded August 18, 1992, in Book 605 at page 1010, in the Beaufort County RMC Office; and being conveyed by First Union National Bank of South Carolina to Hilton Head Island Marina, L.P. by deed dated September 23, 1993, and recorded in Book ___ at page ___ in aforesaid RMC Office.

TMS #: 510-11-0-7F-0

Grantee's Address:
Hilton Head Island Marina, L.P.
18 Simmons Road
Hilton Head, SC 29925

5287\exhibit.a\bbd\09\21\93


Exhibit A-1
Dock Access
Commercial Space Access
Parking Area (Approximate Location)
Access
Access to Parking
62' Floating Dock
Barge Docking and Unloading Facilities
BROAD CREEK
Commercial Space
Subsection Area
Dock
INSERT

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EXHIBIT B

Expense Records for Temporary Office

BROAD CREEK MARINA OPERATIONS, LLC
Account QuickReport
All Transactions

Date	Num	Name	Memo	Amount
06/28/2019	6893438	Williams Scotsman, Inc.		7,948.42
07/02/2019		Bolden Simoneaux A-Team Electrical	Electrical Service to Temp Office Trailer	1,980.00
07/02/2019		Town of Hilton Head	Permit Fee	100.00
07/28/2019		Williams Scotsman, Inc.		1,586.74
08/13/2019	101076	Fire Tech of the Lowcountry, LLC	Invoice #8341	62.06
08/28/2019		Williams Scotsman, Inc.		1,576.04
09/12/2019		Bolden Simoneaux A-Team Electrical	Electrical Work - J&W Trailer	806.38
09/20/2019	9344	Sure Network Solutions, Inc.	Wire Trailer for Data & Phone	1,167.69
09/26/2019		Williams Scotsman, Inc.		1,576.04
10/26/2019		Williams Scotsman, Inc.		1,576.04
11/27/2019		Williams Scotsman, Inc.		1,576.04
01/07/2020		Williams Scotsman, Inc.		1,576.04
02/02/2020		Williams Scotsman, Inc.		1,978.75
02/27/2020		Williams Scotsman, Inc.		1,941.79
04/16/2020		Williams Scotsman, Inc.		1,941.79
05/08/2020		Williams Scotsman, Inc.		1,941.79
06/08/2020		Williams Scotsman, Inc.		1,941.79
				31,277.40

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INVOICE

Invoice #	Amount Due	Due Date
6893438	$7,948.42	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

WILLIAMS SCOTSMAN®
Corporate Operations
901 S. Bond Street, Suite 600
Baltimore, MD 21231-3357

Do not include correspondence with your remittance. Correspondence should be directed to the Williams Scotsman Branch address indicated below.

Billed To:

BROAD CREEK MARINA OF HILTON HEAD
18 SIMMONS RD.
HILTON HEAD, SC 29926

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WILLIAMS SCOTSMAN, INC.
PO BOX 91975
CHICAGO, IL 60693-1975

▲ Please detach and return top portion with your payment to insure proper credit to your account. Thank you. ▲

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www.willscot.com

Questions regarding your account should be directed to:

Williams Scotsman
2700 Louisville Road
Savannah, GA 31415-1642

888-378-9084

Invoice Date:	06/28/2019	**Unit Location**
Invoice #:	6893438	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	06/26/19 THRU 07/25/19	50X12 MOBILE OFFICE (46X12 BOX	$574.75
		LAST MONTH RENT	$574.75
		DELIVERY - 12' WIDE	$954.93
		BLOCK & LEVEL (M) - 48'-55'	$180.53
		TIEDOWN-DIRT (M)	$133.74
		SKIRTING (M) - VINYL LF	$320.32
		BLOCK & LEVEL (L) - 48'-55'	$142.71
		TIEDOWN-DIRT (L)	$267.42
		SKIRTING (L) - VINYL LF	$480.48
		TIEDOWN-DIRT REMOVAL	$100.26
		KNOCKDOWN - 48'-55'	$293.08
		RETURN - 12' WIDE	$954.93
		PREM OSHA STEP & CANOPY	$90.00
		BASIC CAFE PACKAGE	$66.00
		BASIC WORKSTATION PACKAGE	$72.00
		PREMIUM WORKSTATION PACKAGE	$132.00
		WINDOW/DOOR SECURITY BUNDLE -	$32.00
		ADA/IBC RAMP -W/ SWITCHBACK	$392.00
		RAMP - DELIVERY & INSTALLATION	$812.50
		WINDOW/DOOR SECURITY BUNDLE LM	$32.00
		PREM OSHA STEP & CANOPY LM	$90.00
		ADA/IBC RAMP LM	$392.00
		BASIC CAFE PACKAGE LM	$66.00
		BASIC WORKSTATION PACKAGE LM	$72.00
		PREMIUM WORKSTATION PACKAGE LM	$132.00
		PROP DAMAGE WAIVER (11/12) ALT	$85.00
		GENERAL LIABILITY - ALLEN INSU	$22.00

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INVOICE

Invoice #	Amount Due	Due Date
6893438	$7,948.42	Upon Receipt
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Savannah, GA 31415-1642

888-378-9084

Invoice Date:	06/28/2019	**Unit Location**
Invoice #:	6893438	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		PROPERTY TAX RECOVERY	$3.62
		SALES TAX	$466.40
		CURRENT INVOICE AMOUNT DUE:	**$7,948.42**

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INVOICE

Invoice #	Amount Due	Due Date
6967193	$1,586.74	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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HILTON HEAD, SC 29926

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CHICAGO, IL 60693-1975

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Savannah, GA 31415-1642

888-378-9084

Invoice Date:	07/26/2019	**Unit Location**
Invoice #:	6967193	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	07/26/19 THRU 08/25/19	50X12 MOBILE OFFICE (46X12 BOX	$57[illegible].75
		PREM OSHA STEP & CANOPY	$9[illegible].00
		BASIC CAFE PACKAGE	$6[illegible].00
		BASIC WORKSTATION PACKAGE	$7[illegible].00
		PREMIUM WORKSTATION PACKAGE	$13[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$3[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$39[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$6[illegible].00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$8.62
		PAPER CHECK FEE	$10.00
		CHECK 101046	
		SALES TAX	$102.37
		CURRENT INVOICE AMOUNT DUE:	**$1,586.74**

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INVOICE

Invoice #	Amount Due	Due Date
7057889	$1,576.04	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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HILTON HEAD, SC 29926

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WILLIAMS SCOTSMAN, INC.
PO BOX 91975
CHICAGO, IL 60693-1975

▲ Please detach and return top portion with your payment to insure proper credit to your account. Thank you. ▲

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2700 Louisville Road
Savannah, GA 31415-1642

888-378-9084

Invoice Date:	08/26/2019	**Unit Location**
Invoice #:	7057889	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	08/26/19 THRU 09/25/19	50X12 MOBILE OFFICE (46X12 BOX	$57[illegible].75
		PREM OSHA STEP & CANOPY	$[illegible].00
		BASIC CAFE PACKAGE	$[illegible].00
		BASIC WORKSTATION PACKAGE	$[illegible].00
		PREMIUM WORKSTATION PACKAGE	$13[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$38[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$[illegible].00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$8.62
		SALES TAX	$101.67
		CURRENT INVOICE AMOUNT DUE:	**$1,576.04**

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INVOICE

Invoice #	Amount Due	Due Date
7146449	$1,576.04	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Williams Scotsman
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Savannah, GA 31415-1642

888-378-9084

Invoice Date:	09/26/2019	**Unit Location**
Invoice #:	7146449	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	09/26/19 THRU 10/25/19	50X12 MOBILE OFFICE (46X12 BOX	$52[illegible].75
		PREM OSHA STEP & CANOPY	$[illegible].00
		BASIC CAFE PACKAGE	$[illegible].00
		BASIC WORKSTATION PACKAGE	$[illegible].00
		PREMIUM WORKSTATION PACKAGE	$13[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$3[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$[illegible].00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$8.62
		SALES TAX	$101.67
		CURRENT INVOICE AMOUNT DUE:	**$1,576.04**

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INVOICE

Invoice #	Amount Due	Due Date
7234331	$1,634.68	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Savannah, GA 31415-1642

888-378-9084

Invoice Date:	10/26/2019	**Unit Location**
Invoice #:	7234331	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	10/26/19 THRU 11/25/19	50X12 MOBILE OFFICE (46X12 BOX	$574.75
		PREM OSHA STEP & CANOPY	$90.00
		BASIC CAFE PACKAGE	$60.00
		BASIC WORKSTATION PACKAGE	$70.00
		PREMIUM WORKSTATION PACKAGE	$130.00
		WINDOW/DOOR SECURITY BUNDLE -	$30.00
		ADA/IBC RAMP -W/ SWITCHBACK	$360.00
		PROP DAMAGE WAIVER (11/12) ALT	$85.00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$8.62
		INTEREST CHARGE	$23.64
		LATE PAYMENT FEE	$35.00
		SALES TAX	$101.67
		CURRENT INVOICE AMOUNT DUE:	**$1,634.68**

OPEN INVOICE(S) as of 10/26/2019

Due Date	Invoice #	Open Amount
09/26/2019	7146449	$1,576.04

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277

ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#:[illegible]

INVOICE

Invoice #	Amount Due	Due Date
7321164	$1,611.92	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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888-378-9084

Invoice Date:	11/26/2019	**Unit Location**
Invoice #:	7321164	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Effective with your next invoice, the Rental Rate for your equipment will be increased to reflect prevailing market conditions and costs as defined in your Lease Agreement.	
DS -03420	11/26/19 THRU 12/25/19	50X12 MOBILE OFFICE (46X12 BOX	$57[illegible].75
		PREM OSHA STEP & CANOPY	$[illegible]0.00
		BASIC CAFE PACKAGE	$[illegible]6.00
		BASIC WORKSTATION PACKAGE	$[illegible]2.00
		PREMIUM WORKSTATION PACKAGE	$13[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$[illegible]0.00
		ADA/IBC RAMP -W/ SWITCHBACK	$3[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$[illegible].00
		GENERAL LIABILITY - ALLEN INSU	$[illegible].00
		PROPERTY TAX RECOVERY	$8.62
		INTEREST CHARGE	$0.88
		LATE PAYMENT FEE	$35.00
		SALES TAX	$101.67
		CURRENT INVOICE AMOUNT DUE:	**$1,611.92**

OPEN INVOICE(S) as of 11/26/2019

Due Date	Invoice #	Open Amount
10/26/2019	7234331	$58.64

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INVOICE

Invoice #	Amount Due	Due Date
7404913	$1,612.46	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Invoice Date:	12/26/2019	**Unit Location**
Invoice #:	7404913	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Effective with your next invoice, the Rental Rate for your Equipment will be increased to reflect prevailing market conditions and costs as defined in your Lease Agreement.	
DS -03420	12/26/19 THRU 01/25/20	50X12 MOBILE OFFICE (46X12 BOX	$571.75
		PREM OSHA STEP & CANOPY	$90.00
		BASIC CAFE PACKAGE	$66.00
		BASIC WORKSTATION PACKAGE	$72.00
		PREMIUM WORKSTATION PACKAGE	$132.00
		WINDOW/DOOR SECURITY BUNDLE -	$32.00
		ADA/IBC RAMP -W/ SWITCHBACK	$396.00
		PROP DAMAGE WAIVER (11/12) ALT	$85.00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$8.62
		INTEREST CHARGE	$1.42
		LATE PAYMENT FEE	$35.00
		SALES TAX	$101.67
		CURRENT INVOICE AMOUNT DUE:	**$1,612.46**

OPEN INVOICE(S) as of 12/26/2019

Due Date	Invoice #	Open Amount
10/26/2019	7234331	$58.64
11/26/2019	7321164	$35.88

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INVOICE

Invoice #	Amount Due	Due Date
7487039	$1,978.75	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Savannah, GA 31415-1642

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Invoice Date:	01/26/2020	**Unit Location**
Invoice #:	7487039	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		This invoice reflects the Rental Rate increase that was noted on your last invoice.	
DS -03420	01/26/20 THRU 02/25/20	50X12 MOBILE OFFICE (46X12 BOX	$7[illegible].43
		PREM OSHA STEP & CANOPY	$11[illegible].50
		BASIC CAFE PACKAGE	$8[illegible].50
		BASIC WORKSTATION PACKAGE	$3[illegible].00
		PREMIUM WORKSTATION PACKAGE	$16[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$4[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$490.00
		PROP DAMAGE WAIVER (11/12) ALT	$[illegible].00
		GENERAL LIABILITY - ALLEN INSU	$[illegible].00
		PROPERTY TAX RECOVERY	$10.77
		INTEREST CHARGE	$1.96
		LATE PAYMENT FEE	$35.00
		SALES TAX	$125.59
		CURRENT INVOICE AMOUNT DUE:	**$1,978.75**

OPEN INVOICE(S) as of 01/26/2020

Due Date	Invoice #	Open Amount
10/26/2019	7234331	$58.64
11/26/2019	7321164	$35.88
12/26/2019	7404913	$36.42
01/23/2020	7234331	-$58.64
01/23/2020	7321164	-$35.88
01/23/2020	7404913	-$36.42

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Late fee of 1 1/2% per month on all past due accounts. A $30.00 fee will be charged for any returned checks.

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#[illegible]

INVOICE

Invoice #	Amount Due	Due Date
7570993	$1,941.79	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Invoice Date:	02/26/2020	**Unit Location**
Invoice #:	7570993	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	02/26/20 THRU 03/25/20	50X12 MOBILE OFFICE (46X12 BOX	$7[illegible].43
		PREM OSHA STEP & CANOPY	$11[illegible].50
		BASIC CAFE PACKAGE	$8[illegible].50
		BASIC WORKSTATION PACKAGE	$9[illegible].00
		PREMIUM WORKSTATION PACKAGE	$16[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$4[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$49[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$85.00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$10.77
		SALES TAX	$125.59
		CURRENT INVOICE AMOUNT DUE:	**$1,941.79**

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#[illegible]

INVOICE

Invoice #	Amount Due	Due Date
7653378	$1,941.79	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Invoice Date:	03/26/2020	**Unit Location**
Invoice #:	7653378	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	03/26/20 THRU 04/25/20	50X12 MOBILE OFFICE (46X12 BOX	$7[illegible].43
		PREM OSHA STEP & CANOPY	$1[illegible].50
		BASIC CAFE PACKAGE	$[illegible].50
		BASIC WORKSTATION PACKAGE	$[illegible].00
		PREMIUM WORKSTATION PACKAGE	$16[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$4[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$49[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$8[illegible].00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$10.77
		SALES TAX	$125.59
		CURRENT INVOICE AMOUNT DUE:	**$1,941.79**

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Invoice #	Amount Due	Due Date
7734058	$1,941.79	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

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Invoice Date:	04/26/2020	**Unit Location**
Invoice #:	7734058	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	04/26/20 THRU 05/25/20	50X12 MOBILE OFFICE (46X12 BOX	$71[illegible].43
		PREM OSHA STEP & CANOPY	$11[illegible].50
		BASIC CAFE PACKAGE	$8[illegible].50
		BASIC WORKSTATION PACKAGE	$9[illegible].00
		PREMIUM WORKSTATION PACKAGE	$165.00
		WINDOW/DOOR SECURITY BUNDLE -	$4[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$49[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$85.00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$10.77
		SALES TAX	$125.59
		CURRENT INVOICE AMOUNT DUE:	**$1,941.79**

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#[illegible]

INVOICE

Invoice #	Amount Due	Due Date
7814768	$1,941.79	Upon Receipt
PLEASE REMIT PAYMENT VIA ACH OR GO TO BILLTRUST: http://willscot.billtrust.com	Amount Enclosed	

WILLSCOT

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2020CP0702262

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Invoice Date:	05/26/2020	**Unit Location**
Invoice #:	7814768	Broad Creek Marina of Hilton Head 18 Simmons Rd. HILTON HEAD ISLAND, SC 29926
Due Date:	Upon Receipt	
Customer #:	22027087	**Purchasing Agent**
		Nate Jones

Federal ID NO. 52-0665775 The buyer agrees to pay all applicable state and municipal taxes on this transaction

UNIT NO.	BILLING TERMS	DESCRIPTION	AMOUNT
		Auto-Pay is now available at http://willscot.billtrust.com (USD accounts) and http://willscotca.billtrust.com (CAD accounts), eliminating the need to log into the WillScot payment portal each month to pay new invoices. Set up recurring ACH or credit card payments today; it's fast, simple and free of charge!	
DS -03420	05/26/20 THRU 06/25/20	50X12 MOBILE OFFICE (46X12 BOX	$71[illegible].43
		PREM OSHA STEP & CANOPY	$11[illegible].50
		BASIC CAFE PACKAGE	$8[illegible].50
		BASIC WORKSTATION PACKAGE	$9[illegible].00
		PREMIUM WORKSTATION PACKAGE	$16[illegible].00
		WINDOW/DOOR SECURITY BUNDLE -	$4[illegible].00
		ADA/IBC RAMP -W/ SWITCHBACK	$49[illegible].00
		PROP DAMAGE WAIVER (11/12) ALT	$85.00
		GENERAL LIABILITY - ALLEN INSU	$22.00
		PROPERTY TAX RECOVERY	$10.77
		SALES TAX	$125.59
		CURRENT INVOICE AMOUNT DUE:	**$1,941.79**

Sign up for email billing!
Your invoices are sent once a day as an exact replica of your paper bills.
Contact **CustomerAssistance@willscot.com** and get setup today.

TO VIEW AND PAY ONLINE GO TO:	http://willscot.billtrust.com	USE THIS ENROLLMENT TOKEN:	SKX DMH FKH

Late fee of 1 1/2% per month on all past due accounts. A $30.00 fee will be charged for any returned checks.

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EXHIBIT C

Expense Records for Floating Office

ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

AMERICAN REDI-BILT, INC

Invoice

dba CATAMARAN CRUISERS
4166 DEMASTUS LANE
COLUMBIA, TN 38401

Phone # 931-388-1255 kim@catamarancruiser.com
Fax # 931-388-6234 catamarancruiser.com

Date	Invoice #
6/1/2020	00555

Bill To	Ship To
Broad Creek Marina P.O. Box 21584 Hilton Head Island. SC 29925	Broad Creek Marina 18 Simmons Rd Hilton Head Island. SC 29926

P.O. Number	Due Date	Rep	SERIAL NO.
	6/1/2020	BK	ARB00981L920

QTY	Description	Price Each	Amount
1	12' x 32' AQUA LODGE	58,610.00	58,610.00
1	OPTIONS	0.00	0.00T
1	FREIGHT	4,470.00	4,470.00
	Out-of-state sale, exempt from sales tax	0.00%	0.00

Total	$63,080.00
Payments/Credits	-$63,080.00
Balance Due	$0.00

286

ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622



Catamaran Cruisers
HOUSEBOATS

MANUFACTURER'S STATEMENT OR CERTIFICATE OF ORIGIN

June 5, 2020

Invoice 555

The undersigned manufacturer hereby certifies that the new Unit described below, the property of said manufacturer has been transferred on the above date and under the invoice number indicated above.

Manufactured by
AMERICAN REDI-BILT, INC, dba CATAMARAN CRUISERS
4166 Demastus Lane
Columbia, Tennessee 38401

Transferred to
Broad Creek Marina
18 Simmons Road
Hilton Head Island, SC 29926

Description of Unit

VIN/HIN Number	Trade Name	Model/Series
ARB00981L920	Catamaran Cruisers	Aqua Lodge

Size (Width' x Length')	Shipping Weight
12x32	11500 Lbs Est

Said manufacturer hereby certifies that this written instrument constitutes the first conveyance of said unit after its manufacture and that the manufacturer's serial number set forth above has not been and will not be used by the manufacturer on any other unit manufactured by said manufacturer, and that there are no other manufacturer's certificates issued by the manufacturer for the unit described above.

Signed By

Title/Position

287

BROAD CREEK MARINA OPERATIONS, LLC

101282

SCDNR

6/15/2020

AquaLodge Registration

520.00

PAYMENT RECORD

BB&T Checking Acco

520.00

104141

10414 J148829 (2/17)

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

EXHIBIT D

Lease Invoices from June 2019 through June 2020

BROAD CREEK MARINA OPERATIONS, LLC

P.O. BOX 21584
HILTON HEAD ISLAND, SC 29925

Invoice

Date	Invoice #
12/16/2019	28436

Bill To
J&W Corporation Expense Reimb. Account

Due Date	Ref. Shop Ticket #
12/16/2019	

Item	Description	Quantity	U/M	Rate	Amount
J&W Propert...	J&W Property Taxes Reimbursement 2018 Beaufort County Property Taxes (10% of attached bill for Property ID R510 011 000 007F 0000)			6,032.65	6,032.65
	SC Sales Tax			6.00%	0.00

Total	$6,032.65
Payments/Credits	$0.00
Balance Due	$6,032.65

Phone #
(843) 681-3625

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BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT, SC 29901-0487
ELECTRONIC SERVICE REQUESTED
www.BeaufortCountyTreasurer.com

2018 BEAUFORT COUNTY PROPERTY TAX BILL

Have a question about...

Real property or mobile homes?
Call 843-255-2400 or Assessor@bcgov.net

Business property, Personal property, Homestead or Military exemption?
Call 843-255-2500 or Auditor@bcgov.net

Your payment?
Call 843-255-2600 or www.BeaufortCountyTreasurer.com

**********AUTO**5-DIGIT 29901
6849563 8706-PTN 133 3 4 4

BROAD CREEK MARINA PROPERTIES LLC
PO BOX 21584
HILTON HEAD ISLAND SC 29925-1584

Property ID		AIN
R510 011 000 007F 0000		00347823
Description		**Property Class Code**
18 SIMMONS RD, PARCEL A PB142 PG149 fka PAR I		Recr&CultImp Marina
Acres	**Assessment Ratio**	**Tax Authority Group**
8.39	6.00%	510-HILTON HEAD PSD #1

Values And Prior Year Information	
Appraised Value	5,377,100
Capped Value	4,031,875
Homestead Exemption Value	0
Other Exemption Value	0
Taxable Value	241,910
Prior Year Tax/Fees	55,154.61

Where Your Tax Dollars Go

The tax amount for each fund listed in the description below is calculated by multiplying the taxable value by the millage rate. This does not apply to "fee" amounts.

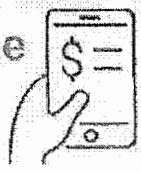
Description	Millage	Taxable Value	Dollars
COUNTY OPERATIONS	0.05240	241,910	12,676.08
COUNTY DEBT	0.00558	241,910	1,349.86
RURAL & CRITICAL LANDS	0.00480	241,910	1,161.17
SCHOOL - OPERATIONS	0.10460	241,910	25,303.79
SCHOOL - DEBT	0.03171	241,910	7,670.97
TOWN OF HILTON HEAD	0.02272	241,910	5,496.20
HHI-DISASTER RELIEF	0.00500	241,910	1,209.55
HILTON HEAD PSD	0.00705	241,910	1,705.47
SW Municipal/ District Fee			3,583.50
SW County Fee			169.94
TOTALS	0.23386	241,910	60,326.53

How Your Taxes Are Calculated

Taxable Value	241,910
x Millage Rate	0.23386
Tax Amount	56,573.09
- School Tax Credit (Primary Residence Only)	0.00
+ Fees	3,753.44
+ Prior Unpaid Taxes/Fees/Penalties	0.00
- Installment Payments	0.00

TOTAL AMOUNT DUE: $60,326.53
DUE BY: January 15, 2019

Save Time, Pay Online
mybeaufortcounty.com



Invoice

BROAD CREEK MARINA OPERATIONS, LLC

P.O. BOX 21584
HILTON HEAD ISLAND, SC 29925

Date	Invoice #
12/16/2019	28437

Bill To
J&W Corporation Expense Reimb. Account

Due Date	Ref. Shop Ticket #
12/16/2019	

Item	Description	Quantity	U/M	Rate	Amount
J&W Propert...	J&W Property Taxes Reimbursement 2019 Beaufort County Property Taxes (10% of attached bill for Property ID R510 011 000 007F 0000)			6,330.33	6,330.33
	SC Sales Tax			6.00%	0.00

Total	$6,330.33
Payments/Credits	$0.00
Balance Due	$6,330.33

Phone #
(843) 681-3625

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BEAUFORT COUNTY TREASURER
PO DRAWER 487
BEAUFORT, SC 29901-0487
ELECTRONIC SERVICE REQUESTED
www.BeaufortCountyTreasurer.com

2019 BEAUFORT COUNTY PROPERTY TAX BILL

Have a question about...
Real property or mobile homes?
Call 843-255-2400 or Assessor@bcgov.net

Business property, Personal property, Homestead or Military exemption?
Call 843-255-2500 or Auditor@bcgov.net

Your payment?
Call 843-255-2600 or www.BeaufortCountyTreasurer.com

**********AUTO**5-DIGIT 29901
B172593 8706-PTN 147 2 4 4

BROAD CREEK MARINA PROPERTIES LLC
PO BOX 21584
HILTON HEAD ISLAND SC 29925-1584

Property ID	AIN
R510 011 000 007F 0000	00347823
Description	**Property Class Code**
18 SIMMONS RD, PARCEL A PB142 PG149 fka PAR I B	Recr&Cultlmp Marina
Acres	**Assessment Ratio** / **Tax Authority Group**
8.39	6.00% / 510-HILTON HEAD PSD #1

Values And Prior Year Information	
Appraised Value	5,377,100
Capped Value	4,031,876
Homestead Exemption Value	0
Other Exemption Value	0
Taxable Value	241,910
Prior Year Tax/Fees	60,326.53

Where Your Tax Dollars Go

The tax amount for each fund listed in the description below is calculated by multiplying the taxable value by the millage rate. This does not apply to "fee" amounts.

Description	Millage	Taxable Value	Tax/Fee
COUNTY OPERATIONS	0.05430	241,910	13,135.71
COUNTY DEBT	0.00550	241,910	1,330.51
RURAL & CRITICAL LANDS	0.00550	241,910	1,330.51
SCHOOL - OPERATIONS	0.11400	241,910	27,577.74
SCHOOL - DEBT	0.03170	241,910	7,668.55
TOWN OF HILTON HEAD	0.02300	241,910	5,563.93
HHI-DISASTER RELIEF	0.00500	241,910	1,209.55
HILTON HEAD PSD	0.00710	241,910	1,717.56
SW Municipal/ District Fee			3,583.50
SW County Fee			185.73
TOTALS	0.24610	241,910	63,303.29

How Your Taxes Are Calculated

Taxable Value	241,910
x Millage Rate	0.24610
Tax Amount	59,534.06
- School Tax Credit (Primary Residence Only)	0.00
+ Fees	3,769.23
+ Prior Unpaid Taxes/Fees/Penalties	0.00
- Installment Payments	0.00

TOTAL AMOUNT DUE: $63,303.29
DUE BY: January 15, 2020

Pay with no extra fee when paying by check!
Online: www.myBeaufortCounty.com
Phone: 888-970-0624

8706PTN 11/1/19 2935.199 k per 3.5

2019 BEAUFORT COUNTY PROPERTY TAX BILL

Tax Year	AIN	RevObjID	Property ID	Property Address	Total Amount Due
2019	00347823	0000347823	R510 011 000 007F 0000	18 SIMMONS RD, Hilton Head Island	$63,303.29

Owner as of January 1, 2019 BROAD CREEK MARINA PROPERTIES LLC

Include on your check your Phone Number, RevObjID and make payable to Beaufort County Treasurer.

PAYABLE NOW THRU 01/15/2020		$63,303.29
THEN PENALTIES APPLY..		
IF RECEIVED AFTER 01/15/2020	(3%)	$65,202.39
IF RECEIVED AFTER 02/03/2020	(10%)	$69,633.62
IF RECEIVED AFTER 03/16/2020	(15%)	$72,798.78
IF RECEIVED AFTER 03/31/2020	($75)	$72,873.78
IF RECEIVED AFTER 08/31/2020	($25)	$72,898.78

Beaufort County RPA
PO BOX 105176
ATLANTA GA 30348-5176

BROAD CREEK MARINA PROPERTIES LLC
PO BOX 21584
HILTON HEAD ISLAND SC 29925-1584

00003478230006330329000652023900069633620007279878007 48

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Statement

BROAD CREEK MARINA OPERATIONS, LLC
P.O. BOX 21584
HILTON HEAD ISLAND, SC 29925

Date
6/15/2020

To:

J&W Corporation
Expense Reimb. Account
50 Bushs Branch Rd
Bluffton, SC 29909

Amount Due	Amount Enc.
$70,615.45	

Date	Transaction	Amount	Balance
05/01/2019	Balance forward		56,371.27
05/30/2019	PMT #26543.	-188.12	56,183.15
06/01/2019	INV #26192.	55.00	56,238.15
	--- J&W Electric $55.00		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
06/01/2019	INV #26193.	133.12	56,371.27
	--- J&W Lot Maintenance $133.12		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
06/15/2019	PMT #27262.	-188.12	56,183.15
07/01/2019	INV #26607.	55.00	56,238.15
	--- J&W Electric $55.00		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
07/01/2019	INV #26608.	133.12	56,371.27
	--- J&W Lot Maintenance $133.12		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
07/25/2019	PMT #27551.	-133.12	56,238.15
07/25/2019	PMT #27550.	-55.00	56,183.15
08/01/2019	INV #27080.	55.00	56,238.15
	--- J&W Electric $55.00		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
08/01/2019	INV #27081.	133.12	56,371.27
	--- J&W Lot Maintenance $133.12		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
09/01/2019	INV #27263.	55.00	56,426.27
	--- J&W Electric $55.00		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
09/01/2019	INV #27264.	133.12	56,559.39
	--- J&W Lot Maintenance $133.12		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		
10/01/2019	INV #27598.	55.00	56,614.39
	--- J&W Electric $55.00		
	--- Tax: SC Sales Tax @ 6.0% = 0.00		

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	188.12	188.12	188.12	70,051.09	$70,615.45

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Statement

BROAD CREEK MARINA OPERATIONS, LLC
P.O. BOX 21584
HILTON HEAD ISLAND, SC 29925

Date
6/15/2020

To:
J&W Corporation Expense Reimb. Account 50 Bushs Branch Rd Bluffton, SC 29909

Amount Due	Amount Enc.
$70,615.45	

Date	Transaction	Amount	Balance
10/01/2019	INV #27599. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	56,747.57
11/01/2019	INV #28114. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	56,802.57
11/01/2019	INV #28115. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	56,935.69
12/01/2019	INV #28387. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	56,990.69
12/01/2019	INV #28388. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	57,123.81
12/16/2019	INV #28436. --- J&W Property Taxes $6,032.65 --- Tax: SC Sales Tax @ 6.0% = 0.00	6,032.65	63,156.46
12/16/2019	INV #28437. --- J&W Property Taxes $6,330.33 --- Tax: SC Sales Tax @ 6.0% = 0.00	6,330.33	69,486.79
01/01/2020	INV #28958. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	69,541.73
01/01/2020	INV #28959. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	69,674.85
02/01/2020	INV #28960. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	69,729.85
02/01/2020	INV #28961. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	69,862.97

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	188.12	188.12	188.12	70,051.09	$70,615.45

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

Statement

BROAD CREEK MARINA OPERATIONS, LLC
P.O. BOX 21584
HILTON HEAD ISLAND, SC 29925

Date
6/15/2020

To:
J&W Corporation Expense Reimb. Account 50 Bushs Branch Rd Bluffton, SC 29909

Amount Due	Amount Enc.
$70,615.45	

Date	Transaction	Amount	Balance
03/01/2020	INV #29207. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	69,917.97
03/01/2020	INV #29208. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	70,051.09
04/01/2020	INV #29817. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	70,106.09
04/01/2020	INV #29818. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	70,239.21
05/01/2020	INV #29846. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	70,294.21
05/01/2020	INV #29847. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	70,427.33
06/02/2020	INV #29969. --- J&W Electric $55.00 --- Tax: SC Sales Tax @ 6.0% = 0.00	55.00	70,482.33
06/02/2020	INV #29970. --- J&W Lot Maintenance $133.12 --- Tax: SC Sales Tax @ 6.0% = 0.00	133.12	70,615.45

CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	188.12	188.12	188.12	70,051.09	$70,615.45

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ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP0701622

EXHIBIT E

Tenant's Negligible Short Payments

ELECTRONICALLY FILED - 2020 Jun 17 10:22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP07

iii] Bank

2 205

ON OF GREE NWOO0

10/22/2019

PAY TO THE ORDER OF Broad Creek Marina

**119.79

One hundred nineteen and 79/100********** $

DOLLARS

Broad Creek Marina
P.O. Box 21584
Hilton Head Island, SC 29923

MEMO

AUTHORIZED SIGNATURE

[redacted]

J & W CORPORATION OF GREENWOOD
BLUFFTON, SC 29909-4109

10/22/2019 **Broad Creek Marina** 28805

Common Area Charge - October	119.79
Invoice No.__,	
TD Bank	119.79

296

J & W CORPORATION OF GREENWOOD
50 BUSHS BRANCH RD
BLUFFTON, SC 29909-4109

67-219/539

11/13/2019

PAY TO THE ORDER OF Broad Creek Marina

**119.79

One hundred nineteen and 79/100********** $

DOLLARS

Broad Creek Marina
P.O. Box 21584
Hilton Head Island, SC 29923

MEMO

J & W CORPORATION OF GREENWOOD Broad Creek Marina

28 28

Common Area Charge - November 2019 119.79

TD Bank

119.79

ELECTRONICALLY FILED - 2020 Jun 17 22 AM - BEAUFORT - COMMON PLEAS - CASE#2018CP07

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

FINAL HEARING
VOLUME 1 of 2
MAY 15, 2019

J&W CORPORATION OF GREENWOOD,

Plaintiff,

vs. CASE NO. 2018-CP-07-1622

BROAD CREEK MARINA OF HILTON HEAD, LLC, f/k/a HILTON HEAD MARINA, LLC; ROGER M. FREEDMAN, AND BROAD CREEK MARINA, INC.,

Defendants.

BEFORE: THE HONORABLE MARVIN DUKES
TIME: 9:05 A.M.
LOCATION: BEAUFORT COUNTY COURT HOUSE
BEAUFORT, SOUTH CAROLINA

REPORTED BY: RONDA K. BLANTON, RPR
NCRA REGISTERED PROFESSIONAL REPORTER
CLARK & ASSOCIATES, INC.
P.O. BOX 12198
CHARLESTON, SC 29422
843-762-6294
office@clark-associates.com
WWW.CLARK-ASSOCIATES.COM

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:

THOMAS C. TAYLOR, LLC
BY: THOMAS C. TAYLOR, ESQ.
22 Bow Circle, Suite A
Hilton Head Island, SC 29928

ON BEHALF OF THE DEFENDANTS:

LESEMANN & ASSOCIATES LLC
BY: ELLIS R. LESEMANN, ESQ.
J. TAYLOR POWELL, ESQ.
418 King Street, Suite 301
Charleston, SC 29403

- - -

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* * *

DEFENDANT'S EVIDENCE

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* * *

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Wednesday Morning Session

May 15, 2019

9:05 a.m.

(Present are the Court, Counsel, and the Parties.)

THE COURT: Good morning. We're here in 2018-CP-07-01622. This is J&W Corporation of Greenwood versus Broad Creek Marina, et al.; and we're here today for a final hearing in this matter.

Anything that we need to take up before we begin? I see that the defendant has filed a Motion to Exclude Lost Profits. I guess we need to hear that first.

MR. LESEMANN: Your Honor, certainly. Ellis Lesemann on behalf of the defendants. And, Your Honor, if I might, I'll just, sort of, let you know who all is in the courtroom so far.

I've got Mr. Roger Freedman here with me, who is the owner of the defendant entities, ultimately; Mr. Taylor Powell, who is my co-counsel; Robbin Rachels, who is basically the controller for the marina entities; Nate Jones, who is the general manager; and, of

course, you know Mr. Taylor and Mr. Scurry. And we also have Trent Shaw from OCRM as well as OCRM's lead counsel, Sallie Phalen; and this one person I don't know.

UNIDENTIFIED VOICE: I'm Katherine. I'm just here to watch.

MR. LESEMANN: So, Your Honor, I thought it might be of help just so you know who all is here; and we'll have some other subpoenaed witnesses who will be coming in over the course of the day.

One item, Your Honor, that I just wanted to bring up first -- and we mentioned this to you when we were out in January at the site.

Through some corporate reorganization, the entity structure is a little different now than what it was when this lawsuit was first filed. So I've worked with Mr. Taylor; and we have a stipulation, essentially, to add some parties so that full relief can be granted on the claims and/or counterclaims based on Your Honor's rulings.

And so what that would involve, Your Honor, the existing defendant is Broad Creek Marina of Hilton Head, LLC. It was the owner of

the property at one time but no longer owns the property. It's probably fine just for purposes of some aspects of this case to go back in time so we would just leave them in the case.

But, Your Honor, there would be two parties would be added. One would be Broad Creek Marina Operations, LLC, which is, essentially, the operating company. It administers the lease. It pays the lease charges and issues invoices to the tenant and operates the business activities on the site. It would be added as a defendant but also as a counter claimant, as applicable.

Your Honor, additionally, Broad Creek Marina Properties, LLC, is the current fee-simple owner of the marina site. So it would have assignee -- it would be the current owner and technical landlord, and so it would also be added as a defendant for that purpose. So that those parties can be included, again, for the benefit of the plaintiff and for the collective defendants.

THE COURT: And by consent, I assume, and further I assume that you represent all the entities, all defendant entities; is that accurate?

MR. LESEMANN: Yes, sir.

THE COURT: All right. Granted.

MR. LESEMANN: Okay. Your Honor, there was one clarification, I think, that we may have.

There was a claim for declaratory judgment and injunctive relief relating to the potential operation of a ferry terminal on an adjoining tract of property known as the Lucas Tract. That would involve yet another entity; but with my conversation with Mr. Taylor this morning that we can confirm, that claim is not being pursued by the plaintiff in this action.

So it would not be necessary to add that entity, which would have been Broad Creek Marina Development, LLC; and I just would ask for Mr. Taylor to confirm that that cause of action, which is in the -- it's the eighth and ninth causes of action as stated in the amended complaint filed March 28, 2016, that those claims would be withdrawn by the plaintiff so that further realignment of the parties would not be needed.

MR. TAYLOR: Your Honor, to that point, the plaintiff agrees with that recitation

by Ellis because in the 30(b)(6) deposition of Broad Creek Marina taken in January of this year, Mr. Freedman specifically testified that he was no longer pursuing the ferry business from the Lucas Tract; and based upon that, we have decided that that can be an issue left for another time should Mr. Freedman pursue the moving of a ferry from that tract. We will waive no claims or our ability in the future to fight that; but at this point in time, there's no reason to fight.

MR. LESEMANN: Well, Your Honor, again, that's, you know. He's not immediately pursuing it, but he has an OCRM permit to do it; and he has an Army Corps permit to do it.

And so for purposes of that, we do not stipulate that there are no plans to ever pursue this; but it isn't happening at this immediate moment, in part, because Mr. Freedman, ultimately, did not exercise an option to purchase certain tracts of land on Daufuskie. So then this could be a disagreement.

So as they're stated, then it may be necessary for us to just go ahead and go forward with it and have you resolve it based on the merits because we're not -- we're not

agreeing that that -- that that is -- that use is never going to be pursued.

Mr. Freedman never would have achieved, you know, never would have sought an OCRM permit for it, never would have sought an Army Corps permit for it if he had no plans whatsoever to ever pursue it.

THE COURT: So is this a part of defendant's counterclaim?

MR. LESEMANN: No. It's an affirmative claim by the plaintiff.

THE COURT: By the plaintiff. And so the plaintiff seeks to withdraw it.

MR. LESEMANN: Well, perhaps not.

THE COURT: Or perhaps not.

MR. TAYLOR: Not now, Your Honor. We'll go ahead and get it resolved.

THE COURT: All right.

MR. TAYLOR: I think we can resolve it.

THE COURT: Okay. Got it.

MR. LESEMANN: Very good. So, Your Honor, I think that's where that would be as that goes; and we'd agreed that that entity, Broad Creek Marina Development, would be a party

to the case.

THE COURT: And same stipulation and agreement that they may be a party to the case, and also you will be representing them; is that accurate?

MR. LESEMANN: Yes, yes.

THE COURT: Same as the other extra parties. All right. Also granted.

All right. Then --

MR. LESEMANN: Your Honor, and you mentioned -- which we can proceed when you're prepared. There was the Motion in Limine relating to lost profits.

THE COURT: All right. And I'm ready when you are.

MR. LESEMANN: All right. Thank you, Your Honor.

Your Honor, you'll recall this was a portion of the summary judgment motion that you had heard and resolved in December. At that time, the 30(b)(6) deposition of Mr. Scurry, of J&W Corporation, the plaintiff, had not been taken.

Approximately two weeks, three weeks after that time, it was taken; and that, in

part, was the basis for your ruling was, "Well, that deposition hasn't been taken. I need to allow for the party to state what they believe that their damages claim is. And until such time as that had happened, summary judgment could be viewed as premature in terms of the incomplete status of discovery at that time."

So, Your Honor, we did take that deposition; and in that deposition, J&W Corporation as plaintiff -- and, again, these lost profits relate to allegations that their office space on the property caused them to lose profits.

The plaintiff cannot state an actual amount of the profits that they had lost. Under the binding testimony of the corporation, it was stated that somewhere between 100- and $300,000 had been lost and that that range goes from 2004 to 2018.

However, Mr. Scurry cannot state -- although he can't state damages at all and that damages in the range itself is too broad, too speculative, and much too inexact. The corporation cannot state which damages would have resulted in any given year. If asked to quantify

the damages in 2011, the corporation was simply unable to do it.

So this presents a couple of issues, Your Honor. One is certain portions of that time frame lie outside of the statute of limitations in this case.

Furthermore, when I sought discovery as to 2005, 2006, 2007 and earlier years, Mr. Taylor objected on the grounds that that was too broad; and we met with you, Your Honor. We resolved a Motion to Compel at which you allowed me to pursue discovery that was in the years 2009 and after.

So after having limited discovery successfully, then the plaintiff sought to make an unspecified damages claim that would include that time frame within a 14 -- within this 14-year period.

Your Honor, the plaintiff concedes that he's not alleging any damages relating from his barging operation, although the barging and the ferry operation both occur from the same site. So how the office issue would affect the one and not the other is unknown.

He did allege that there was

damages to his ferry business; however, the plaintiff does not track the specific number of ferry tickets that it sells. So it can't make any showing to this Court relating to any number of tickets and any number of years that it wasn't able to make.

And to that point, Mr. Scurry, as the designee, stated that he couldn't identify any customer that did not buy a ferry ticket as a result of the office space that yourself saw. And, Your Honor, I was on the site Friday; and a bus came in. The folks came in. They were able to buy tickets, and they were able to get on the ferry.

This claim has no basis. The plaintiff admits there's no documentation for it. There's been no calculation presented. It was just that I think it's somewhere between 100 to 300. There's no independent witness. There's no expert witness. The only person that the plaintiff consulted with about this damages claim, by their admission, was their attorney.

And I asked, "Have you made a calculation of lost profits with any specific amount -- of any specific amount to a reasonable

degree of certainty?" And the plaintiff answered, "The degree of certainty is the problem." "Do you agree that there's uncertainty inherent in this damages range of 100- to 300,000?" "Yes."

So the flaw, Your Honor, is that any time that you're going to come forward with a damages -- and particularly a lost profits analysis, there has to be a methodology. It has to take into account other factors, whether it be seasonality, competition. Did it prevent you from operating a ferry on a certain day? Did it prevent any customer? Did it affect supply or demand? Did it affect your ability to operate? Did it affect the ability of consumers to come and find you?

There's been no factoring of that. There's been no analysis of that. So this damages analysis is prejudicial and improper. It is the kind of thing, as the gatekeeper of evidence, you shouldn't allow into the trial on any basis at all.

The plaintiff doesn't track the different types and different prices of tickets that it sells. It hasn't made any accounting for

the impact of fuel costs or of its boats being in or out of service or maintenance costs as it would affect profits and, again, was made without outside consultation.

They can't, again, state any amount that was -- that occurred or that was in -- that was incurred in any given year. So, Your Honor, on that basis, we came to you in December to say there's been no calculation given. There's been no evidence given.

We had the deposition in January; and the result was an inexact extremely broad range with no basis, no documentation, no independent consultation, and no methodology because he can't even tell you the number of tickets for his ferry that he sold or didn't sell.

So, Your Honor, on that basis, we believe that you should exercise your discretion in the benefit and the protection of all the parties to exclude that lost profits damage calculation or speculation as I should properly refer to it.

Thank you.

THE COURT: Thank you so much.

Yes, sir.

MR. TAYLOR: Your Honor, if this was a jury trial, I would understand the motion; and I would probably even not argue strenuously against it.

But Your Honor is sitting as the finder of fact; and as the Court in this matter that is being tried before you, this is, from my perspective, an argument at this point before the testimony has been solicited as to whether or not it is sufficient to render a damages verdict on.

I think it would be highly inappropriate for the Court to rule as a Motion in Limine, even though everything that Ellis quoted out of the deposition was correct.

There certainly is some issue of speculation and some issue of nonspecific backup to prove it, but this Court and Your Honor are certainly in the position to better evaluate that after the testimony is given than to block any of the testimony about it beforehand.

THE COURT: And I read the motion and the backup last night. So I'm familiar with it; and I see where, Mr. Taylor, you said if it was a jury trial, you would probably just agree

with the motion.

But I don't necessarily disagree that it's nonjury. It's important to build a record. Of course, what I fear always is a remand, is you should have listened to this and then -- and so I want to make sure we have a complete record.

And if I need to unhear it, I have the luxury of doing that because it is nonjury and -- but it is a strong motion, I'll grant you, as you correctly point out. But I think we'll let the -- let you make a record on it, and then I may take the motion up at the conclusion of that again.

MR. LESEMANN: Thank you, Your Honor.

THE COURT: Any other pretrial matters we need to take up?

MR. TAYLOR: No, Your Honor.

MR. LESEMANN: Not from the defendants, Your Honor.

THE COURT: Give me one second. Because of e-filing, I guess this is originally Case 15-1704, and then it was 40(j)'d and came back as 18-1622. So e-filing is only showing me

the 18-1622 part. So I'm going to have to go off the record for just a second and see if someone can bring me the old-fashioned blue folder because I can't access it through e-filing.

MR. TAYLOR: And, Your Honor, you may also want to ask for 2010-5068, because that also is a related case, which was consolidated into this, ultimately. I don't think we're going to be going into those pleadings, but you may want to have it here in case something comes up.

THE COURT: So that one's 2010, which isn't on Depot Road somewhere in a warehouse. 5068; right?

MR. TAYLOR: Yes, sir.

THE COURT: And the other is 2015-1704?

MR. TAYLOR: That's right.

THE COURT: Y'all give me a second, please. We'll be off the record.

(Recess taken 9:23 a.m. to 9:25 a.m.)

THE COURT: We'll be back on the record then.

And did the parties want to give brief openings, sort of bring the three cases and the history of it together in a brief summary so

we can figure it all out? Mr. Taylor did y'all want to do that, Mr. Lesemann, or not?

MR. LESEMANN: The defendants would appreciate the opportunity, Your Honor.

THE COURT: Okay. All right. Mr. Taylor, if you would give us your version, that would be great.

OPENING STATEMENT ON BEHALF OF THE PLAINTIFF

MR. TAYLOR: Your Honor, thank you very much. Pleasure to be here. As was earlier introduced, this is Wick Scurry. Mr. Scurry is the president of J&W Corporation of Greenwood, is a longtime resident of Hilton Head and a longtime landowner and developer of property on Daufuskie Island.

This case is about a continuing breach of contract of a 99-year lease agreement that began in -- excuse me. In 1993, when Mr. Freedman originally, through a Broad Creek Marina entity, purchased what is known as Broad Creek Marina.

The testimony will show, Your Honor, that Mr. Scurry had originally developed Broad Creek Marina himself in the years before 1993 and had, in fact, sold the entire property

to another gentleman who ended up losing it to the bank. Mr. Scurry had sold it for $2.6 million. Testimony will show the bank, ultimately, came in, foreclosed upon Mr. Ferrari, I believe was his name. Wick is testify as to that.

When the bank took it over, the bank began to try to market it; and when they did, they discovered that Mr. Scurry and the J&W Corporation owned a right of first refusal on any contract to sell.

When Mr. Freedman, who was making a bid on it from the bank, learned of that, he went to Mr. Scurry; and they worked out a deal whereby Mr. Scurry would exercise his right of first refusal, assign that right to Mr. Freedman so that he could purchase the property in exchange for the 99-year lease agreement at $1 a year where under Mr. Scurry continued to operate major portions of the marina, being barge operations and the ferry operations with an office and with a designated amount of dockage space at the marina.

That was in 1993. The 99-year lease agreement was executed at that point in

time, and the parties began to immediately have difficulties under that. For the next few years after it, disputes arose.

One of the interesting points, Your Honor, is that it was Richard Freedman who had originally signed the 99-year lease agreement, as the testimony will show, Mr. Freedman's brother, the Freedman that's with us today, his brother.

And the disputes that arose under the 99-year lease agreement in the late 1990s were about insurance, who was supposed to pay what kind of insurance, and who was going to keep insurance, the usage of the docks. Particularly, as the testimony will show, Broad Creek Marina tried to stop J&W from using the docks in a number of ways that it has a right to do.

They, ultimately, ended up in court. Judge Kemmerlin, ultimately, referred it to an arbitrator. An arbitration ruling was issued. That did not stop the discussions about problems that were arising.

So in early 2000, approximately 2004, the parties with new lawyers hammered out a -- what is known as a Release and Confidential Settlement Agreement. This specifically

addresses the key points that have become points of controversy at this time.

One, the office. Mr. Scurry's problem and J&W's problem with the office has been continual and incessant since 1993. They've never been provided with an appropriate office, as is required under the terms of the lease, and certainly under the terms of the settlement agreement.

Secondly, there was an issue of parking. That issue of parking is specifically resolved in the confidential settlement agreement also.

Thirdly, the issue of insurance. The most important thing from the plaintiff's perspective, Your Honor, is that this issue of insurance has raised its ugly head because of damages that were incurred in Hurricane Matthew to the docks, the leasehold docks, and because of other reasons, mainly being, that in 19 -- excuse me.

In 2008 when Mr. Scurry had been moved three times into temporary quarters for his office, each one of which was unacceptable, Mr. Scurry told Mr. Freedman that he was no

longer going to pay any of the common area charges until the office issue was resolved.

And from that point in time forward, J&W has refused to pay under a theory of either recoupment or setoff for the common area expenses that are set forth in terms of the confidential settlement agreement because he has never been given the office space which he is entitled to.

His testimony will be he felt it was the only way to force Mr. Freedman to do something that he had promised to do and that he has never done.

Your Honor, that is what the genesis of the case is basically about; and I believe the evidence will properly flow through that breakdown and, I think, kind of, show you where we're at today.

Thank you.

THE COURT: Thank you so much.

Yes, sir.

OPENING STATEMENT ON BEHALF OF THE DEFENDANT

MR. LESEMANN: Thank you, Your Honor. Ellis Lesemann on behalf of the defendants.

And it is a matter that goes back to 1993 when the lease agreement was originally signed. It is a 99-year lease agreement, Your Honor. So saying that we're, roughly, 26 years in, which would already be a pretty long time, we got 73 years left.

So Your Honor's rulings on these matters will have an impact beyond the current ownership, beyond the current representation, and beyond several generations.

THE COURT: That's probably what Judge Kemmerlin thought, but anyway.

MR. TAYLOR: And said.

MR. LESEMANN: Yes.

And so it's interesting in that any document, no matter how much attention might get put into it, any legal document, can still be an exact or can be argued to be an exact when there's a will on the behalf of one party or the other to make it so.

But, Your Honor, it is a landlord-tenant dispute, which we are going to ask that you resolve based upon the lease agreement. There was a prior litigation resolved in 2004 ending in a Release and Confidential Settlement

Agreement. That's something that you'll need to take into account as well.

There are a number of exhibits that will be presented into evidence; but, ultimately, these two are going to be important. And the manner in which you rule is also very important because when you've got a dollar-a-year lease that grants as wide of use and burden on the property as this lease does on behalf of this tenant, it's important that when we do look at what the tenant's obligations are, that they uphold them.

I'll agree with Mr. Taylor that it's a case of continuing breach; and I'll show you and the evidence will show you how a lot of those breaches on the part of the tenant go back to September 23, 1993, on the part of the tenant.

So, Taylor, if you could pull up exhibit -- should be Defendant's Exhibit No. 01, the lease agreement. And could you highlight Section 1.

MR. POWELL: (Complies with request.)

MR. LESEMANN: Your Honor, the first thing -- and I'm just going to go through

because I feel like it's important, while we've got this opportunity to speak with you directly, to talk about this lease and this settlement agreement, what the evidence is going to show about it and to keep that in the top of your mind as you hear and you sit through this testimony and you make your ruling.

Again, recognizing that your ruling's going to be important to the behavior of these parties going forward so that they can have a working relationship and not be on your docket, hopefully, next year or the year after and the year after.

So, Your Honor, Section 1 discusses the property. It's the lease property described on Exhibit A, which is part of the Broad Creek Marina, which is described on Exhibit B.

I wasn't sure whether we'd, ultimately, be trying this particular claim. You'll recall the issue about the ferry terminal, Your Honor. The ferry terminal is on what's known as the Lucas Tract, a separate parcel under a separate TMS number. It was not part of this property at the time of lease; therefore, it's not within the contemplation of this lease.

There is a provision later on that's in the form of a noncompete on the part of the landlord. The landlord is the entity that the landlord -- that it is. At this time it was Hilton Head Island Marina Limited Partnership. Now, as we discussed, it's Broad Creek Marina Properties, LLC.

Broad Creek Marina Development, LLC, is a separate entity that owns the Lucas Tract. Did not own it at the time. In 1993 it was owned by separate ownership.

So the first thing that we'll bring to your attention, it's impossible for the provisions in the lease to relate to that tract because it isn't part of the lease property. It isn't part of the property, and it isn't part of the legal description that's discussed as Exhibit A.

So by the very nature of covenants, lease rights, property records, they can't burden -- as the evidence and the applicable law will show, they cannot burden property that isn't a portion of the lease itself.

So, Your Honor, moving on from that, again, the term of the lease is 99 years.

But, Taylor, if you could show Section 3.

MR. POWELL: (Complies with request.)

MR. LESEMANN: So, Your Honor, again, it's a dollar a year for 99 years. It involves several hundred feet of linear dock space. It involves a barge operation. It involves 50 parking spots. It involves some office space. All those things for a dollar a year.

And as you look at the way that the parties papered this, Your Honor, you'll see that, because of that arrangement, because the tenant wasn't paying 5-, 10-, $15,000 a month in exchange for all of these rights, a lot of the obligations are pushed toward the tenant in this document, as they should have been.

One of those obligations are the payment of these items. That the tenant agrees to pay all utilities, including but not limited to water, sewer, and electricity. There's no right to setoff and there's no right to refusal, although the plaintiff is going to tell you, Your Honor --

THE COURT: Apologize. Go ahead.

MR. LESEMANN: No. No problem, of course.

The tenant has used utilities consistently since 1993. Electricity, water, although they're dissatisfied with the office, we'd like to move them as well, as the evidence will show, Your Honor. And the ability to complete the movement of the office has been delayed because we will, ultimately, seek your ruling on that.

And this matter has been in litigation, in one form or another, since 2010 in the current iteration. Your Honor has been gracious to us in allowing various continuances and a 40(j) and things like that, but we're now here; and we can allow for you to resolve that office issue, really, once and for all.

Section 3 requires a payment of property taxes. Section 3 requires the payment of insurance. The tenant has not upheld these obligations.

In this current iteration, it goes back to 2007 or 2008. You'll see that we have accumulated charges of approximately $134,000

that have been unpaid.

This isn't some claim of lost profits on the part of the landlord, Your Honor. These are out-of-pocket expenses that the landlord dutifully pays so that operations can continue. The tenant continues to take the benefit of these utilities, the property taxes, and all the additional charges and to not pay them stubbornly and systematically, as the evidence will show.

So, Your Honor, when we talk about how it's a matter of continuing breach, I agree; but it's a matter of continuing breach on the part of the tenant.

Taylor, if you could go to Section 5.

MR. POWELL: (Complies with request.)

MR. LESEMANN: So, Your Honor, I began to discuss the matters in terms of saying how the rights in this -- and the obligations in this matter, this lease, go to the tenant.

Under Section 5 since 1993, it's been agreed tenant shall pay taxes, license fees, insurance, utilities, and all other costs of

ownership and possession for the lease property. The lease property includes the dock. The lease property includes the barge side. The lease property includes office space.

When you see words like "all other costs and ownership of possession," that has to have legal significance. So, Your Honor, we're not obligated as the landlord to continue to fund things on behalf of the tenant, to upfit office space, to pay for office space, and to do all these different things that the tenant is saying are the one basis why it's refused to pay anything of the amounts that it's owed.

Your Honor, that'll go on to say that if certain items are not separately assessed, charged, or metered, as the case may be, the parties will allocate them or prorate them in an equitable manner.

All right. That was probably a mistake to agree that they would do this in an equitable matter. Ultimately, in hindsight, it was a mistake because they weren't able to agree to an equitable manner on allocating these amounts. That's what the prior case was about. That's what the 2004 Release and Confidential

Settlement Agreement was to do.

The evidence will show that that document provided that equitable manner of allocation. The obligations were there all along, but the parties couldn't agree to an equitable division. So, ultimately, they did through a litigation and through a release, they agreed as to how that would be done; but it wasn't creating a brand new obligation that didn't exist.

Your Honor, a second -- and another important provision, if you could go to paragraph 6, Your Honor, since there's a dollar a year in lease payments and, of course, all the utilities and taxes have been paid intermittently or not at all, the expenses for repairing the docks are, ultimately, attributable to the tenant.

In Section 6, "As it becomes necessary to repair or replace the dock," which is a portion of lease property, "landlord shall complete said repairs or replacement, and tenant shall pay to landlord all costs attributed to its use. Said costs to be paid as they are incurred by landlord."

So we have an example of where, as a result of Hurricane Matthew, there was approximately $45,00 in damage. This is only one of the provisions that would speak to that. The landlord expended the amounts. Representatives of the landlord will testify that members of -- the general manager of the plaintiff and even Mr. Scurry himself confirmed that they would pay those repairs that were necessary, and then they have refused to pay them.

You'll note, Your Honor, that Section 6 has no reference about insurance. It has no limitations to say that, provided that the tenant can get insurance, it will pay these costs. The tenant is to pay those costs; but, again, the tenant refuses to do so.

Your Honor, in Section 7 it goes on. It talks about cooperation in good faith saying that the parties will cooperate with each other relating to licenses, permits, and other governmental or regulatory authorization.

This will become part of the case before you because, again, we've been trying to move the tenant into a spot that is in conformance with the Release and Confidential

Settlement Agreement, a floating office within the marina, but cannot get cooperation.

Your Honor, Section 11.

Taylor, if you could show that.

MR. POWELL: (Complies with request.)

MR. LESEMANN: Section 11, Your Honor, requires that the tenant procure any and all permits required from local, state, and governmental agencies and/or otherwise which may be required to run his business.

You're going to hear evidence, Your Honor, about permitting of the shed where the current office is located. You saw it. Again, Your Honor, when you look at the -- when you allow the terms of the lease to govern this lease dispute, which I believe respectfully you should do, you'll see that all of the expenses, the obligation to get the permits, the obligation to maintain and repair, and the obligation to keep the lease property compliance with law are all obligations of the tenant.

It's set forward in black and white words of this document, but we can't get the tenant to follow those terms.

Taylor, if you could go to Section 17.

MR. POWELL: (Complies with request.)

MR. LESEMANN: Your Honor, this is an important section. It relates to insurance. These are some of the specific performance items that we're asking for, and the importance of them is only heightened by the nature of Mr. Scurry's business. It involves ferries and barges. There have been examples of dock damage, some of which have been resolved, some of which haven't.

Currently there's a situation, the evidence will show, that a barge has been pushed up into the mud; and it's been left and has been used as a -- as, essentially, a working pier by Mr. Scurry's operation. And so that'll be something that will be discussed.

The danger and the risk inherent in those operations are something that my client has significant concern about. These liability insurance provisions, Your Honor, in paragraph 17 have not been followed since September 23, 1993, the day that this lease was signed. The tenant has been in continual breach of its obligations

to name the landlord as additional named insured in these policies.

Also the evidence will show that the tenant has failed to adjust the amounts of these policies to reflect inflation rates. Rather, they're still at a million dollars, rather than the amounts that they should be to compensate for inflation that's occurred from 1993 to the present.

That's an important aspect. It's a breach that goes back, again, to 1993 that we haven't been able to repair.

Taylor, if you could show the Court paragraph 18.

MR. POWELL: (Complies with request.)

MR. LESEMANN: Your Honor, paragraph 18's important because there's going to be allegations about the office and the condition of the office; but the lease addresses it.

Subject to the provisions of paragraph 6 entitled "dock repair," "tenant shall at tenant's expense make all repairs necessary to maintain the lease property in a good and working condition and repair, neat and clean, and

generally in a manner consistent with the operation of a first-class marina." If the tenant neglects to do so, the landlord could step in and do that for them.

But, again, when you're looking at how does this lease allocate those responsibilities? It would be that expense and that obligation to make any repairs that are necessary is on the tenant under this dollar-a-year arrangement.

Section 19, Taylor.

MR. POWELL: (Complies with request.)

MR. LESEMANN: Under Section 19, Your Honor, it's the tenant that shall keep the lease property in compliance with all laws, ordinances, regulations, and requirements of any legally-constituted public authority, including all environmental rules and regulations.

Your Honor, the dock, the barge, the office, the parking area, all of those are the lease property as defined in the lease; and if there's an issue of compliance, again, the lease tells us exactly who's going to be responsible. It's the tenant.

Again, it's an issue; and so the tenant is using its own -- the evidence will show, it's using its own lack of compliance with this section and the other sections of the lease as its apparent excuse for breaching all of its other obligations to make payment.

In paragraph 20, Your Honor, the tenant has the right to make alterations, additions, improvements, or rewiring to the lease property, subject just to the prior written consent of the landlord.

So, again, if there's a need or a desire to make improvements to an office space that's been provided, that obligation is on the part of the tenant.

Your Honor, it goes on; and there are other sections that are going to come up in the course of the proceeding. But there's ones about indemnity and liability. There's sections about hazardous substances, and there's other violations of this lease on the part of the tenant that we need your assistance in dealing with because we can't have this situation continue in terms of the nonpayment.

We can't have it continue in terms

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of the lack of appropriate insurance. We can't have it continue in terms of the tenant's refusal to pay for damages that are attributable to its operations, but all of those things have happened.

All of those things have happened, apparently, because the tenant believes until it gets an office that it likes, it's entitled to do nothing under the lease. It can do what it wants. It can use what power it wants and what space it wants and pay nothing.

But, Your Honor, we're here before you to allow us to resolve that situation; but an important point, Your Honor, is that we have been trying to move the tenant into an office space that is particularly contemplated under the settlement agreement. We've had permits for it since 2005. Those permits won't expire until 2020.

Mr. Shaw is here from OCRM to provide some testimony about that. The evidence will show that the location where the floating office was going to be put -- and, Taylor, this is in the settlement agreement in Section 1.

That -- Your Honor, and I think we

walked down onto the dock and saw the area where the kayaks were in an area where the -- the finger of the dock that's closest to the high marsh has now got pluff mud such that at low tide or even at mid tide, you wouldn't be able to have a floating office there because there's insufficient water, if that meets with your recollection at all.

In any event, as you look through the documents, you'll see that that was the originally-intended location for the --

THE COURT: This is as you came down the ramp to the right?

MR. LESEMANN: Exactly right, Your Honor. Exactly right.

THE COURT: Okay.

MR. LESEMANN: So, Your Honor, we are here before you to help us resolve the issue about where that floating office can be put. Again, as Mr. Shaw is likely to testify, it is subject to an amendment of that permit but that it is an amendment that OCRM would administer at such time that it is submitted.

Your Honor, until we get clarity from you as to where that floating office should

go, we're not really in an appropriate position to submit an amendment because we don't know how to amend the existing permit.

But, again, the evidence will show that both from the standpoint of OCRM and from the Town of Hilton Head, such an office space is permitable subject to criteria and subject to an amendment that would be submitted by the landlord. So we'd ask for your resolution of that matter.

Your Honor, and with that said, the lease is, obviously, going to be important. There are some aspects of the arrangement that were discussed in the Release and Confidential Settlement Agreement, but it didn't affect the tenant's obligation to pay its charges. It didn't affect the tenant's insurance obligations.

What it did do is it fixed the specific amounts by agreement that the tenant would pay because, up to that point, the tenant and the landlord couldn't agree to what was equitable. Well, once they agreed to what was equitable, tenant refused to pay that.

These breaches go back, again, not just to 2004; but they go back to 1993. So, Your

Honor, if you're interested in that, you'll see that the tenant has been in breach continually since the day that the lease was signed.

So, Your Honor, you've got these things to work out. We've got to work out these charges of about $134,000 with interest.

We've got to work out the issue of the dock damage; but we need some clarifications on this lease language, not because the provisions are unclear, but because we need an order that's going to compel the tenant to follow them. We need some guidance and on the issue of the office, and you'll hear a great bit of testimony about that.

But I will close with this: In order for this situation to work in going forward in the next 73 years, stubbornness, recalcitrance, and breach can't be rewarded; and they can't be condoned.

So I'd ask, Your Honor, as I know you will, you're going to give this matter careful consideration and come up with a resolution, recognizing that the landlord is seeking to honor all these obligations under the lease and to live in a situation so that my

client, Mr. Freedman, can continue to administer this asset and own it for himself and also for the benefit of his children.

So, Your Honor, I appreciate the time that you gave me; and we look forward to presenting the evidence to you.

THE COURT: Thank you so much.

Have y'all discussed order of witnesses? Is there any reason to take anybody out of order or --

MR. TAYLOR: Your Honor, we are basically taking someone out of order at the beginning, Mr. Shaw, who has appeared with OCRM's attorney; and he has a conflict this afternoon, but it works well with my presentation of evidence. And I'm calling him first and so call Mr. Shaw.

THE COURT: Thanks.

PLAINTIFF'S CASE

The Plaintiff, in order to maintain the issues upon its part, presented the following testimony:

TRENT SHAW,

having been first duly sworn, was examined and testified as follows:

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THE COURT: Have a seat, please. Please state your full name for the record.

THE WITNESS: Trent Shaw.

THE COURT: Thank you so much. Please answer any questions Mr. Taylor may have of you.

THE WITNESS: Yes, sir.

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. Mr. Shaw, good morning.

A. Good morning.

Q. Will you state your name for the record.

A. Trent Shaw.

Q. And, Mr. Shaw, what are your duties?

A. I am currently a critical area permitting project manager for the Office of Ocean Coastal Resource Management, State agency.

Q. Where do you live?

A. I live in Beaufort, South Carolina, currently.

Q. How old are you?

A. I am 26.

Q. What's your educational background briefly?

A. Briefly. I have a Bachelor of Science

in environmental science with a focus on weapons.

Q. And you are, again, the permit coordinator for OCRM?

A. Critical area project manager.

Q. Critical area project manager?

A. Yes, sir.

Q. How long have you been employed with OCRM?

A. Just under two-and-a-half years now.

Q. What does a critical area project manager do?

A. Critical area project manager evaluates all permit applications submitted for any activities that may alter the critical area.

Q. Are you familiar with South Carolina code requirements regarding permitting for structures in the tidelands?

A. Yes, sir.

Q. Are you familiar specifically with Section 48-39-130, which I hand you a copy of.

MR. TAYLOR: Your Honor, if the Court would like one, I can hand one up.

THE COURT: Yes. Thank you.

Q. Are you familiar with this code section?

A. Yes, sir.

Q. Does it apply in your day-to-day job responsibilities?

A. Yes, sir.

Q. And would you, for the benefit of the Court and the record, looking at Subsection C explain or just, literally, read into the record the portion of the South Carolina law that pertains to who must get a permit and for what.

A. "90 days after July 1, 1977, no person shall fill, remove, dredge, drain, or wreck any structure or in any way alter any critical area without first obtaining a permit from the department."

Q. Is that permit that it talks about there in 48-39-130 the permits that you oversee?

A. Yes, sir.

Q. Trent, I asked you last week when I sent you a subpoena to go by Broad Creek Marina if you could before trial.

Have you had an opportunity to do that?

A. Yes, sir.

Q. Okay.

THE COURT: To the best of counsel's knowledge, have all potential exhibits already been shared over the multiple years this

was going on?

MR. LESEMANN: Your Honor, at some level or another, the documents have been transmitted, maybe not particularly as intended exhibits; but I think Tom and I will be able to work through.

THE COURT: Great. Okay.

MR. TAYLOR: Ellis and I have worked well together. I don't think there will be any problems with the documents, Your Honor.

THE COURT: I figured as much. I just wanted to ask. Thank you so much.

(Plaintiff's Exhibits No. 01, No. 02, No. 03, No. 04, and No. 05 were marked for identification.)

Q. I'm about to bring you up some pictures that I have marked for identification purposes Plaintiff's No. 01 through No. 05, and I want you to assume -- and, hopefully, you can acknowledge that these photographs that were taken at Broad Creek Marina within the last ten days represent and depict the conditions that exist at Broad Creek Marina at the present time.

So I'm going to hand you them and ask you as to Plaintiff's Exhibit No. 01, does that

appear to you to be a portion of the Broad Creek Marina docks that you observed while you were there?

A. Yes, sir.

Q. And I hand you Plaintiff's Exhibit No. 02. Does that also appear to be a section of the Broad Creek Marina that you observed?

A. Yes, sir.

Q. And Plaintiff's Exhibit No. 03?

A. Yes, sir.

Q. Plaintiff's Exhibit No. 04?

A. Yes, sir.

Q. And Plaintiff's Exhibit No. 05?

A. Yes, sir.

Q. Mr. Shaw, if I could hold those for a minute. I'm going to ask you some questions specifically.

A. (Complies with request.)

Q. Mr. Shaw, as to Plaintiff's Exhibit No. 01, the floating floats that are shown here in the foreground and in the aft portion that have kayaks, are those structures which would require a permit by OCRM to be erected under the provision that you read about earlier?

A. Yes, sir.

Q. No. 02 shows the exact same things. And those two -- that's the exact same ones you just spoke of.

A. Okay.

Q. The separate floating ice maker and kayak shown on Plaintiff's Exhibit No. 03, would that require a permit as an erected structure in South Carolina?

A. Yes, sir.

Q. Plaintiff's Exhibit No. 04 indicates that there is some type of parasailing house on a floating platform.

Do you recall seeing that?

A. Yes, sir.

Q. Mr. Shaw, would that require a permit from OCRM?

A. Yes, it would.

Q. Plaintiff's Exhibit No. 05 shows a number of items that have been brought in for floating of these boats that are shown in the foreground and in the background.

Would those structures require a permit from OCRM?

A. From what I can tell on that picture, yes.

Q. Mr. Shaw, did I ask you, pursuant to a subpoena, to research whether or not there are any pending or current permits that are applicable to the Broad Creek Marina?

A. Yes, sir.

Q. And did you do that?

A. Yes, sir.

Q. And what did you find?

A. I found that there is an active permit. I do not recall the permit number off the top of my head; but there is an active permit for a floating office, which expires in February of 2020, that's currently active for Broad Creek Marina.

Q. Do you have that with you?

A. I do. It is in the back.

Q. Mr. Shaw, let me, before I mark them, hand you the documents that Sallie Phalen, attorney for OCRM, who is present just handed me and ask you, what are those documents?

A. The larger file is the permit I just spoke of, which I now have Permit Number 2005-1W-384-P, which is the current permit. And there's also a Permit CC87-210, which is not an active or pending permit; but is a permit that

discusses a floating office in some capacity at Broad Creek Marina.

Q. Okay.

MR. LESEMANN: Yeah, I haven't ever seen these.

MR. TAYLOR: Nor I. But I was sent much smaller versions.

MS. PHALEN: Your Honor, is this the duplicate of that?

THE WITNESS: Uh-huh.

MS. PHALEN: I have another copy.

MR. LESEMANN: Thank you, Sallie.

(Plaintiff's Exhibit No. 06 was marked for identification.)

Q. Mr. Shaw, I hand you first what I've marked for identification as Plaintiff's Exhibit No. 06. It's one of the documents which you identified a moment ago.

Can you, for the record, identify what that is?

A. Yes, sir. This is a Coastal Council permit. It's a critical area permit from -- the application was submitted in 1987. So that permit number is CC87-210.

Q. And what does that permit, and who was

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permitted to do something under it?

A. The name of the applicant is J&W Corporation. The description of the project as identified on the critical area permit is floating office, as amended.

Q. And where, Mr. Shaw, is that floating office permit geographically located?

A. If this is indicative of what is the current layout of the Broad Creek Marina, the drawings show that the floating office is permitted on the left side of the walkway as you go out to the main section of Broad Creek Marina.

Q. Will you mark the page with your initials that you are referring to on Plaintiff's Exhibit No. 06.

A. (Complies with request.)

Q. Mr. Shaw, based upon what you observed at your personal viewing of Broad Creek Marina, does the structure authorized by CC87-210 exist at the present time?

A. Not to my knowledge.

Q. And based upon what you viewed while you were there, would it be possible to put such a structure in the place that the permit authorizes it?

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A. That I do not have a defined answer to until an application is submitted.

Q. I show you what has been marked for identification as Plaintiff's Exhibit No. 01, again.

A. Yes.

Q. Is this the area where your reading of Plaintiff's Exhibit No. 06 would allow for that erection of the --

A. The best that I can tell, the permit from '87 actually looks like it has it on the opposite side.

MR. LESEMANN: Your Honor, I don't mean to interrupt. It may be an appropriate time.

We would not object to Plaintiff's Exhibits No. 01 through No. 05 being used for demonstrative purposes; but I don't believe that Mr. Shaw took those pictures, and there's been no evidence as to who did take them or anything else.

So, again, as demonstratives and keeping in mind, Your Honor, I think that you can unhear -- I guess you can unsee things like you can unhear them. But, again, just for that

purpose, we would -- I don't believe they've been moved in, but we would not object to them being used for demonstrative purposes but would object to them being admitted for lack of foundation.

THE COURT: And, of course, they haven't actually -- I think you correctly pointed out, they haven't been offered yet; but I appreciate that.

MR. LESEMANN: Thank you.

MR. TAYLOR: Your Honor, move the Admission of Plaintiff's Exhibits No. 01 through No. 05 based upon the fact that Mr. Shaw has testified under oath that he observed these conditions at Broad Creek Marina within the last ten days and has identified them as being representative of the conditions that exist at Broad Creek Marina.

THE COURT: Okay. Now.

MR. LESEMANN: Yeah. Okay. Your Honor, that's fine. So, again, I think that for a demonstrative purpose, that's fine; but he's not the witness that took the pictures, and so we don't know who took them.

We don't really know when they were taken, and we don't know really anything else

about them; but Mr. Shaw has said I've been in the marina, and that's like what I see. That's fine for demonstrative purposes, but there's no foundation or purpose for those photos.

Again, I'd be fine with them being demonstrative. I want Your Honor to see whatever Your Honor wants to see; but, again, I don't believe that that's appropriate, that pictures can come out of anywhere and be admitted as evidence with no understanding as to where they came from.

THE COURT: Anything else on that?

MR. TAYLOR: Yes, sir, Your Honor.

Our evidentiary rules do not require that the photographer be present to attest to them. They merely require that the document be identified by a witness with knowledge as depicting what it represents it is. It certainly does that.

THE COURT: And I appreciate the objection, but this one's a little weird because y'all took me to the marina to see all of these things and so --

MR. LESEMANN: Oh, I understand, Your Honor. It's just, again, you know, that the

keeping -- the evidence through these witnesses that, you know, that they can competently testify. But that's, Your Honor, that's fine. I can withdraw the objection.

THE COURT: No. No. You don't have to withdraw it. I want you to have made it for the record. I appreciate that. I'm going to overrule it and allow them; but, in part, it's because I, too, have seen what's on those pictures.

MR. LESEMANN: Yes.

THE COURT: And -- but I'll allow them, but I appreciate it. Thank you so much.

(Plaintiff's Exhibits No. 01 through No. 05 were admitted into evidence.)

Q. Mr. Shaw, are any of the structures that you identified in Plaintiff's Exhibits No. 01 through No. 05 as being necessary to have an OCRM permit, are any of them permitted under Plaintiff's Exhibit No. 06, the permit which you called out earlier to us?

A. Plaintiff's Exhibit No. 06 is the CC87-210, no, those structures are not.

(Plaintiff's Exhibit No. 07 was marked for identification.)

Q. Very well. Mr. Shaw, I hand you what I've marked as Plaintiff's Exhibit No. 07, it purports to be a document that you researched and brought today. What is it?

A. This is the active permit for -- issued to Broad Creek Marina, Permit Number 2005-1W-384-P.

Q. And what does it permit?

A. Bear with me just a minute.

Q. Yes, sir.

A. The description of the authorized project for this permit is -- reads: "This permit has been issued authorizing the requested dockmaster office as well as the floating office associated with the barge and ferry service. The structures authorized will be 40-feet by 75-feet pier with the 24-foot by 40-foot dockmaster's office located on the pier. The floating office will be 28 feet by 55 feet and will house the business operations associated with a transport business that transport materials and equipment to and from Daufuskie Island."

Q. Now, the dockmaster office that you talked about, according to Plaintiff's Exhibit No. 07, is an elevated structure to be built at

the end of the walkway going out; correct?

A. The first mentioned dockmaster's office, yes.

Q. Yes. And that, again, is an active permit and could be acted upon today or tomorrow if the owner wanted to.

A. Yes, sir.

Q. Who is the holder of that permit?

A. Broad Creek Marina.

Q. Now, the floating -- what did you call it? The second thing?

A. The floating office.

Q. Floating office.

A. Yes, sir.

Q. Where is it to be located?

A. On the right side as facing the creek from the dockmaster's office at the end of the pier.

Q. Looking at Plaintiff's Exhibit No. 04, can you see where that would be -- supposedly to be placed?

A. In looking at the picture, it appears, best I can tell from these drawings, that the floating office would be closer to the top right-hand corner of this picture. Again, just from

what I can tell in that picture.

Q. And tell me, again, the width of the permitted floating structure, the width and the depth.

A. The dimensions of the floating office are permitted to be 28 feet by 55 feet.

Q. Mr. Shaw, do you believe, based upon what you saw when you were at Broad Creek and looking at Plaintiff's Exhibit No. 04, that that floating office could today be put in that water?

A. Again, without a permit application in front of me, it's tough to say yes or no, you know, whether something in that location or in any location within the marina could be permitted just based on the limited knowledge that I currently have.

Q. Assuming that I can produce testimony from the 30(b)(6) deposition of Broad Creek Marina that the area that was formerly -- or that is permitted, as you've talked about today, has accreted such that a floating office will not go there, would you agree that that is probably correct?

MR. LESEMANN: Object to the form. Leading.

THE COURT: Sustained. You can rephrase.

MR. TAYLOR: Will do.

Q. Do you believe a 28-foot wide floating platform could be properly placed under OCRM standards in the creek that is shown in Plaintiff's Exhibit No. 04?

A. Again, I'm in the spot of, with limited knowledge, you know. I can't say yes or no at the current time.

Q. Are there -- aside from what I have marked for identification as Plaintiff's Exhibit No. 06 and No. 07, are there any other current active permits that would allow the erection of structures at Broad Creek Marina as we sit here today?

A. Not that I'm aware of.

Q. And did you endeavor to look for them?

A. Yes, sir.

Q. And, Mr. Shaw, are the two exhibits marked Plaintiff's Exhibit No. 06 and Plaintiff's Exhibit No. 07 taken from the official records of OCRM?

A. Yes, sir.

Q. Are those records that are kept in the

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normal course of business?

A. Yes, sir.

Q. And did you find them as a part of your request via the subpoena?

A. Yes, sir.

Q. And have you copied them fully?

A. Yes, sir.

MR. TAYLOR: Your Honor, move the admission of Plaintiff's Exhibit No. 06 and No. 07.

MR. LESEMANN: Is it this entire stack? (Indicating.)

THE WITNESS: That entire stack is 2005-1W-384-P. There's only one copy of the CC87-210.

MR. LESEMANN: Which was the J&W Corporation --

THE WITNESS: Right. Yes, sir.

MR. LESEMANN: Okay. Yes, sir, Your Honor, we don't object to the admission of those documents.

THE COURT: All right. They'll be admitted without objection.

(Plaintiff's Exhibits No. 06 and No. 07 were admitted into evidence.)

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(Plaintiff's Exhibit No. 08 was marked for identification.)

MR. TAYLOR: Your Honor, I've skipped a number. I'm handing him what I've marked for identification as No. 08. It's an aerial photo, which Mr. Shaw will represent to you will be authenticated later upon motion for moving it as an aerial photograph of Broad Creek Marina taken in 2019.

Q. Can you review that and see if you recognize that as being what you would believe to be an aerial photograph of Broad Creek Marina as you observed it recently?

A. Yes, sir. It appears to be.

Q. And, Mr. Shaw, again, for the record, to make clear, I have circled five items on that and numbered them 1, 2, 3, 4, and 5. I had asked you earlier about those items in closeup photographs shown Plaintiff's Exhibits No. 01 through No. 05.

Do you recognize and correlate those together?

A. Yes, sir.

Q. Based upon the research that you did pursuant to my subpoena, are there OCRM current permits in effect for any of the structures

numbered 1, 2, 3, 4, or 5 shown on Plaintiff's Exhibit No. 08?

A. It doesn't appear in the active permit that these structures were contemplated or permitted in their current locations.

Q. Mr. Shaw, I'm handing you a demonstrative piece of paper that has portions of the South Carolina code on it; and I want to ask you a couple of questions about it.

First, are you familiar with South Carolina Code Section 48-39-20?

A. Yes, sir.

Q. And it's also on the poster that is there beside you; correct?

A. Yes, sir.

Q. And would you read for us, please, the section -- Subsection E that was stated by the General Assembly in 48-39-20.

A. 48-39-20, Section E, states, "Important ecological, cultural, natural, geological, and scenic characteristics, industrial, economic, and historical values in coastal zone are being irretrievably damaged or lost by ill-planned development that threatens to destroy these values."

Q. Mr. Shaw, are you familiar with the South Carolina Code of State Regulations, particularly Volume 30, regarding the OCRM policies?

A. Yes, sir.

Q. And do you use those in conjunction with your work?

A. Yes, sir.

Q. And I have quoted their Regulation 30.1; and I have the full code, if you would like to see it.

Can you tell us what the code of state regulations provides concerning definitions of nonwater-dependent and tidelands areas?

A. Yes, sir. "Nonwater-dependent is defined as a facility which cannot demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

"Tidelands" are defined as all areas which are at or below mean high tide and coastal wetlands, mud flats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuary systems involved.

Q. And I assume that in the course of your

work for OCRM, you have come into contact with permits and applications for permits that involve nonwater-dependent structures; is that correct?

A. Yes, sir.

Q. And would you read and confirm for me that the regulation, Subsection M of 30.1, is quoted as a nonwater-dependent structure and what OCRM's directions are with that, according to the regulations?

A. Read Section 1 and 2?

Q. Yes, sir.

A. Section 1 states, "nonwater-dependent structures as defined in Section R-30-1(b) have not been built in the past -- have been built in past on pilings moored or in other ways situated over coastal waters and/or tideland critical areas. These structures are a serious threat to the values set forth in Section 48-39-20(e)."

Two states, "Nonwater-dependent structures, including buildings, houses, or offices that float, shall be prohibited from being constructed, moored, or otherwise placed in or over tidelands and coastal water critical areas, unless there is no significant environmental impact and overriding public need

can be demonstrated and no feasible alternatives exist."

Q. Mr. Shaw, you have, I am sure, reviewed that section of the state Code of Regulations before; correct?

A. Yes, sir.

Q. And is that, in fact, the specific code of state regulations provision that you would look at should a new permit come in to OCRM to permit a floating office of some type?

A. It may be one that would be used. We would also use 30-12(e), which are the project standards specific to marinas.

Q. Is there anything, to your knowledge, that directly impacts or in any way changes the specific prohibition that is set forth in M2 that says they shall be prohibited from being constructed, moored, or otherwise placed in tidelands or coastal water critical areas unless there is no significant environmental impact and overriding public need can be demonstrated and no feasible alternatives exist?

MR. LESEMANN: I'm just going to object at this point. I'm not sure of the propriety of the testimony. We're only looking

at excerpts of the law.

We're talking with someone who is an OCRM permitting manager; but he's not the General Assembly and not a law professor, not some expert in the law.

Mr. Shaw was actually never identified as a witness in this case, by the way; but I'm trying to do the best I can to facilitate the presentation of the full amount of the evidence to you.

I found out about him last week when I received a subpoena; and I was able to speak to him, thanks to Miss Phalen's helping me speak to him on Monday. But as we go forward here and we start picking out bits of the law and presenting it to them, I don't believe that's appropriate analysis.

If Mr. Taylor wants to present items of law to you in the form of an order or a brief or something like that, I think that's appropriate; but I don't know why questioning this witness -- this lay witness about aspects of the Code of Laws is an appropriate form of inquiry in this case.

THE COURT: Mr. Taylor.

MR. TAYLOR: Your Honor, all of that was said in response to the question, which I asked Mr. Shaw was, to his knowledge as an OCRM permit manager, was he aware of any other regulation or law in the State of South Carolina that directly impacts the prohibition on Number 2 of putting any floating offices, unless those three things can be shown.

MR. LESEMANN: Well, Your Honor, and, again, then I'll object to the characterization because term "floating office" does not appear here. This is nonwater-dependent, and I think we can look at the fact that a marina is a water-dependent use by its definition. So I think if we just open this can of worms, I don't really have any idea where it's going to go.

The law is the law. You have the constitutional authority to apply the law. So asking this witness whether he's aware of some other aspect of the law is, again, an inappropriate analysis.

The law is what it is. They receive permit applications and amendments. They administer them; and so I just don't have any

idea why quizzing this person about legal trivia, about what the code and every aspect of it might include, would be an appropriate inquiry for an undisclosed witness.

THE COURT: Mr. Taylor, how much further are you going with this witness on --

MR. TAYLOR: I'm probably down to the last question, Your Honor.

THE COURT I'm going to let him ask the last question.

MR. LESEMANN: Thank you, Your Honor.

THE COURT: Then we'll see what we can figure out.

MR. LESEMANN: Okay. So he was designated, apparently, April 26, 2019, but I -- okay.

MR. TAYLOR: Your Honor, because of the record that was just set forth, I have marked as Plaintiff's Exhibit No. 08, would ask that the Court make a trial exhibit of it. Perhaps that is a better one.

It is Plaintiff's Supplemental Responses to Defendant's Interrogatories and it says that -- and this is dated April 26, 2019.

In addition to those earlier identified potential witnesses in this case, number D, Trent D. Shaw, project manager, critical area permitting section, again, April 26; and clearly Mr. Shaw was identified earlier. Would you mark that as a --

THE COURT: Don't you have something else as 8, didn't you?

MR. POWELL: Eight was the aerial photo.

THE COURT: Yeah. You had No. 8 marked as an aerial photo.

MR. TAYLOR: I'm sorry, Your Honor. I skipped a number. This is either 7 or the Court make it as a Court's exhibit. I just -- with the transcript, I want to make sure the record is clear.

THE COURT: I'll just let it be yours as seven, I guess.

THE REPORTER: Can I search that? I think that we have a seven.

(Off-the-record discussion.)

MR. TAYLOR: It should be No. 09.

(Plaintiff's Exhibit No. 09 was marked for identification.)

Q. So the question as pending, Your Honor, is he aware of any other recollections or code sections that in any way void that or contradict the direct prohibition of the section that was just read in.

A. I would have to refer back into the details of the regulations for what are applicable to that permit that is submitted based on site conditions and what type of activity that is.

Q. Very good.

Is the water at Broad Creek Marina a tideland and coastal water critical area?

A. Yes, sir.

Q. And would you agree with me that the regulation that we've just read, 30.1, statement of policy M, is directly applicable to requests for permits for floating offices?

A. A request for a floating office inside of a marina would fall to -- to 30-12(e). And, again, this goes pack to -- if we're referring back to the regulations, 30-12(e) specifically to marinas, and then you jump to other sections, possibly M could come into play upon review.

Q. And what does 30-12(e) provide?

A. 30-12(e) are the specific project standards for marinas.

Q. And so it is your testimony, as I understand it, that you do not believe the code section that is quoted here as 30-1(m) is applicable in a marina?

A. I did not say that it was not applicable. I'm just saying it could be one of many sections that would be reviewed.

MR. TAYLOR: Judge, move the admission of Plaintiff's Exhibit No. 06, No. 07, No. 08, and No. 09.

THE COURT: Let's see. Plaintiff's Exhibit No. 06 and No. 07 are what again?

MR. TAYLOR: The permits he testified to.

THE COURT: I thought those were admitted earlier without objection; is that right, Mr. Lesemann?

MR. LESEMANN: Yes, Your Honor.

THE COURT: Plaintiff's Exhibit No. 8 was the photograph, the aerial photograph. I don't think we talked a whole lot about that, and then Plaintiff's Exhibit No. 09 is the witness list. Is that accurate?

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MR. TAYLOR: Yes, sir.

THE COURT: So, Mr. Lesemann, any thoughts on Plaintiff's Exhibit No. 08 and No. 09?

MR. LESEMANN: Your Honor, again, the aerial photographs -- and I don't know that Mr. Shaw took an aerial view of it, but it's -- actually I didn't see the photographs real quick, if I could just --

THE COURT: Is that a drone? Satellite? Actual aircraft? What do they use these days to do such a thing?

MR. TAYLOR: Beaufort County's GIS, Your Honor.

THE COURT: Satellite, I think.

MR. LESEMANN: Your Honor, I think it's -- I think it's fine for purposes of the nonjury proceeding.

THE COURT: All right. General layout of the place. Okay.

(Plaintiff's Exhibits No. 08 and No. 09 were admitted into evidence.)

MR. TAYLOR: Nothing further from Mr. Shaw for the plaintiff, Judge.

THE COURT: Thank you so much.

Please answer any questions Mr. Lesemann may have.

CROSS-EXAMINATION

BY MR. LESEMANN:

Q. Thank you.

Now, Mr. Shaw, we had a discussion with Mr. Taylor about nonwater-dependent. As an OCRM critical area permitting department manager, is it the department's view that a marina is water-dependent or nonwater-dependent?

A. There are aspects of a marina that are water-dependent.

Q. And the -- is a ferry operation that operates over water, would you consider that to be a water-dependent use?

A. Yes, sir.

Q. A barging operation that moves cargo over water, would you consider that to be a water-dependent use?

A. Yes, sir.

Q. In fact, as a -- from your review of the OCRM file, has a floating office, upon consideration of the excerpts that you have here plus 30-12(e) and the other things you mentioned, has the -- has OCRM, upon review of all

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applicable law, approved a floating office in this specific marina on more than one occasion in the past?

A. Under the current permit that's active, the regulations were reviewed; and a floating office was -- was permitted. The CC87-210 permit, you know, in '87, different regulations, different -- different specifications. I can't speak to whether or not the same regulations were reviewed, you know, that were reviewed at the time of the 2005 permit.

Q. And just so that it's clear, from the standpoint of OCRM, is it correct that there is a current active permit allowing the placement of a floating office of the approximate dimensions of 28 feet by 55 feet at the Broad Creek Marina?

A. Yes, sir.

Q. Which gives a vested right to the owner of that marina to, after having gone through that process, to place a floating office there at the marina?

A. Yes, sir. They have a permit to do so.

Q. Now, if they -- if for circumstances -- from rising mud or whatever might happen or just a change in the owner's belief about where the

ideal placement might be -- is there a protocol in place for -- at OCRM for an existing permit to be amended to modify the location of the approved floating office?

A. Yes, sir. An amendment process could be followed on an active permit.

Q. In order to submit an amendment that would facilitate that type of change, would the amendment need to specify the specific new location where the floating office was intended to be put?

A. Yes, sir. Through computer-generated drawings that were completed by a professional engineer, a registered land surveyor, or a registered landscape architect.

Q. Are you aware from your work as to some of the different types of functions that occur in the floating offices that have been approved at various marinas within your jurisdiction?

A. I know of, you know, floating office like in this permit here. As far as the operations within them, I'm not -- can't speak to the specifics of those.

Q. And does OCRM from time to time also issue permits approving the construction of fixed

office locations like dockmaster's houses on -- on piers?

A. Yes, sir. Yes, sir.

Q. And so those are also approved upon -- have been approved, to your knowledge, upon full consideration of all of the various laws and regulations that would apply?

A. Upon consideration of all applicable regulations, yes.

Q. I'm going to hand you an exhibit book. If you could turn, Mr. Shaw, to Defendant's Exhibit No. 03.

A. (Complies with request.) Yes, sir.

Q. Do you recognize that document?

A. Yes, sir.

Q. Could you describe it?

A. This is the Critical Area Permit 2005-1W-384-P issued to Broad Creek Marina, which I also brought with me today through my research.

Q. And so was it already admitted as a standalone exhibit, to your knowledge, Mr. Shaw? Or was it part of that larger file?

A. It appears to be part of the larger file.

MR. LESEMANN: Your Honor, just for

purposes of that larger file was the 150-200 pages or so, I'd like to move for the admission of just the permit proper, so to speak, with the adjoining documentation.

THE COURT: All right.

MR. LESEMANN: And where the first -- so this would -- we would --

Q. So to lay the foundation, Mr. Shaw, you can confirm that the document that I've handed to you is a true and accurate copy of the approved permit that was issued by OCRM to Broad Creek Marina, Permit Number 2005-1W-384-P?

A. Yes, sir.

Q. And specifically upon consideration of all applicable law and regulations, does this document indicate that the owner of the marina is allowed to put a floating office of approximately 28 x 55 feet in the specific location stated?

A. Yes, sir.

Q. And, again, with regard to this specific permit, if it were necessary for the owner to submit a request to amend this permit in order to put the floating office in a different location, that's a process that exists?

A. Yes, sir.

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Q. And then would the criteria that you used by OCRM to review that amendment, essentially, be the same criterion that were used to place the floating office in the existing permit at that location?

A. Yes, sir.

Q. And are these things that are provided that the criteria are met, are approved?

A. I'm sorry. Could you repeat that?

Q. Are these the types of permit applications that require -- that, provided the criteria are met, they are approved?

A. Should all applicable laws, regulations be met, we would move forward with permit issuance.

MR. LESEMANN: So, Your Honor, I would move for the admission of Defendant's Exhibit No. 03.

THE COURT: And three is, basically, the summary portion or the permit portion of either Plaintiff's Exhibit No. 06 or No. 07 that was already admitted; is that correct?

MR. LESEMANN: Yes, Your Honor.

THE COURT: Okay. Mr. Taylor, any

objection?

MR. TAYLOR: None.

THE COURT: Okay. That'll be defendant's three.

(Defendant's Exhibit No. 03 is admitted into evidence.)

THE COURT: Let me ask so we don't get too far off. I assume that Defendant's No. 01 and No. 02 would be without objection. We don't have those in yet, which are the lease that was referred to. Just to keep it nice and clean, and the agreement that was referred to. And I'm referring to the trial notebook.

Is there any reason not to go ahead just to keep us in order and have those in? If not, we can talk about them later, if there's some reason that can come up.

MR. LESEMANN: Your Honor, obviously, we would want those documents to be in evidence on behalf of defendants. So we'd agree with that. We may end up skipping around and not using every single exhibit --

THE COURT: Okay.

MR. LESEMANN: -- if that's okay with the Court. There could potentially be some

gaps; but as far as resolving this gap, we would agree.

THE COURT: Okay.

MR. LESEMANN: And would request that Defendant's Exhibit No. 01 and No. 02 be entered into evidence.

MR. TAYLOR: No objection.

THE COURT: So Defendant's Exhibits No. 01 and No. 02, which are the original lease and then the settlement agreement, are in without objection and, of course, No. 03 that we just discussed.

(Defendant's Exhibits No. 01 and No. 02 were admitted into evidence.)

THE COURT: Thank you so much. Go ahead, please.

BY MR. LESEMANN:

Q. Mr. Shaw, could you move in the book there to Defendant's Exhibit No. 12.

A. (Complies with request.) All right. I'm there.

Q. And has -- is that letter dated May 3, 2016, is that a document that you were able to observe that exists in the file for the Permit 2005-1W-384-P?

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A. Yes, sir.

Q. And 'cause I think you mentioned, perhaps, when you -- in the questions that were posed to you by Mr. Taylor what the expiration date of the current permit would be.

A. Yes, sir. February 8, 2020.

Q. So are there protocols in place, as needed, for that expiration date to be extended by request?

A. The only extension that the department currently offers is under 30-4(d) under our completion of work clause. Essentially work must be -- significant work progress must be demonstrated, and there must be a completion date in sight.

And, generally, a one-year extension is granted in order to finish that construction. But just a simple extension request for one, two, three, any period of years, is no longer something that can be contemplated.

Q. But as it stands, there are approximately -- without any requests for extensions, there are approximately 22 months or -- well, excuse me. There's approximately about ten months left on this existing permit?

A. Yes, sir.

Q. If the permit is amended to change the location, how would that affect the expiration date, if you know?

A. The expiration date would remain the same. The amendment would change, possibly, the description of work but would maintain that same expiration date.

Q. Is there a protocol for the extension of a permit that might be under some form of legal dispute?

A. I do not know the answer to that question.

MR. LESEMANN: Your Honor, I would move for admission of Defendant's Exhibit No. 12.

MR. TAYLOR: No objection.

THE COURT: That'll be Defendant's Exhibit No. 12. No objection.

(WHEREUPON, Defendant's Exhibit No. 12 is admitted into evidence.)

MR. LESEMANN: So let me do this. I will --

THE COURT: Why don't we go off the record for a second.

(Off-the-record discussion.)

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THE COURT: Please proceed.

MR. LESEMANN: Thank you.

BY MR. LESEMANN:

Q. Mr. Shaw, are you aware of the permitting activity on the adjoining property relating to a ferry terminal?

A. I'm not.

Q. And so when Mr. Taylor -- when he sent you a subpoena and asked -- spoke with you, didn't ask for you to review anything related to the status of that project or that approval?

A. Not to my knowledge.

MR. LESEMANN: Taylor, if you could show the photograph of the --

MR. POWELL: (Complies with request.)

Q. So, Mr. Shaw, when Mr. Taylor was showing you the photograph of the kayaks and of the ice machine, do you know if that has anything to do with this case?

A. No, sir. I'm not aware.

Q. Do you know if this lawsuit's about where the ice machine is?

A. No, sir.

Q. Do you know if it's about where the

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kayaks are?

A. No, sir.

Q. Do marinas have ice machines in the vicinity of gas/fuel docks or floating offices from time to time, in your experience?

A. I'm not sure.

Q. Okay.

A. Just from the broad range of marinas across.

Q. Have you seen kayaking operations exist -- operating off of docks in your review?

A. I've seen it, yes.

Q. And just to be sure, the Broad Creek Marina, as a whole, is a permitted facility; correct?

A. The marina itself, yes, sir.

Q. With several hundred feet of permitted linear feet of dock; correct?

A. Yes, sir.

Q. Before Mr. Taylor brought you that aerial photo to ask you about the ice machine or the kayaks or anything like that, had you ever -- had the department undertaken review of any of those types of issues?

A. Not to my knowledge.

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Q. I'm showing you a photograph. Again, it reflects the current conditions of the Broad Creek Marina.

Did you have an opportunity to see the configuration of this ramp and barge and next to the concrete pier? (Indicating.)

A. Yes, sir.

Q. Now, do you know anything about the Jake Washington? The barge that's reflected in this photograph?

A. Very little.

Q. If a -- I'll ask you a hypothetical situation.

If a barge has been pushed up into the pluff mud to where it becomes immobile and it's being used as a staging area for other barges to come here and to pick up items, is that something -- is the use of a structure of that type, is that something that OCRM would want to review and permit in terms of an, essentially, the creation of a pier?

A. Just by looking at the picture, it looks like an alteration to the critical area, which would require a critical area permit.

Q. Are you aware of any -- now, is Broad

Creek Marina within your personal area of jurisdiction?

A. Currently, yes, for the next brief -- about a month.

Q. And, again, would your answer to that question be particularly true if this barge is actually not moving? It's just being used, essentially, as a cargo pier?

A. If it was stationary, yes, sir.

Q. So have -- are you aware of any permits from J&W Corporation to utilize a barge in the critical area in this fashion?

A. Permits, no, sir.

Q. And are there any approvals from DHEC that would allow for the J&W Corporation to utilize a barge in the critical area in this manner?

A. No, sir.

Q. So would the use of a facility like this without an application and without a permit from DHEC be a violation of DHEC regulations and OCRM regulations?

A. It could be subject to a -- to a compliance and enforcement review.

MR. LESEMANN: Okay. What number

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was this?

MR. POWELL: This isn't a number. This was just added to the trial pad.

MR. LESEMANN: Your Honor, we would, based on --

Q. And, Mr. Shaw, again, was this photograph that was taken within the last ten days or so at the facility, would this comport with your personal inspection of the site when you visited it recently?

A. Yes, sir.

MR. LESEMANN: Your Honor, we would move for the admission of this photograph as Defendant's Exhibit No. 76.

THE COURT: All right. Any objection, Mr. Taylor?

MR. TAYLOR: No, sir.

THE COURT: All right.

MR. LESEMANN: And I have no further questions, Your Honor, and Mr. Shaw, thank you.

MR. TAYLOR: Your Honor, very briefly.

REDIRECT EXAMINATION

BY MR. TAYLOR:

Q. Mr. Shaw, all of your answers were premised a moment ago. I want to make sure I understand.

On Defendant's Exhibit No. 76, which is being shown, all of your answers about a potential permit being necessary were premised on the hypothetical that Mr. Lesemann gave you that that is now a stationary fixed object; correct?

A. In the hypothetical situation, yes.

Q. Correct. If what is shown in Exhibit No. 76 is actually a barge that is actually capable and able and can be used from there as a floating barge, none of that would apply; correct?

A. That would change the circumstances. It would be viewed differently if it was a mobile barge being in use.

Q. Well, it would be viewed as being a boat or a vessel that is not subject to regulation under OCRM's regulatory authority; correct?

A. It would be more in line with that definition, yes.

MR. TAYLOR: Your Honor, this is

all going to be very brief.

Q. Mr. Shaw, I hand you what I've marked for identification as Plaintiff's Exhibit No. 10.

(Plaintiff's Exhibit No. 10 was marked for identification.)

MR. TAYLOR: Ellis, this is the Newkirk application for the original 2005 permit. You want to see it?

MR. LESEMANN: Sure.

MR. TAYLOR: (Complies with request.) I had sent you this. It's what he gave me and what I sent to him to have.

THE COURT: By the way, before I forget, my No. 76 is actually a different photograph. It is of a golf cart.

MR. LESEMANN: Oh, okay.

THE COURT: Just so we're all on the same page.

MR. LESEMANN: Oh, excuse me. Thank you, Your Honor. I meant for that to be Defendant's Exhibit No. 84.

THE COURT: 84?

MR. LESEMANN: I apologize.

THE COURT: So No. 84, I assume, without objection, again, and I've got a

different -- I don't have a No. 84. Okay. But it's that picture of a barge is No. 84 without objection, not No. 76.

(Defendant's Exhibit No. 84 is admitted into evidence.)

BY MR. TAYLOR:

Q. Mr. Shaw, I hand you what I've marked for identification as Plaintiff's Exhibit No. 10 and ask if you can identify that.

A. Yes, sir. Appears to be a modification request from Newkirk Environmental requesting a modification to -- appears to be Permit Number 99IP459.

Q. Is that the official request that came to OCRM, which then led to the issuance of the 2005 permit that you've testified to that would allow the placement of a floating office at the base of the ramp?

A. I'd have to go back and look through to confirm that this was the actual modification request but it -- it's in line with -- with what the permit reads.

Q. Is that what you sent me the other day as far as being the documentation that led to the permit?

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A. Yes, sir.

Q. And to the best of your knowledge and based on your research, is that the application that led to the 2005 permit?

A. Yes, sir.

MR. TAYLOR: Your Honor, move Plaintiff's Exhibit No. 10.

THE COURT: All right.

MR. LESEMANN: So I just would -- has the witness ever seen this document before, and was this included in the file that he provided?

THE WITNESS: Yes, sir.

MR. LESEMANN: Okay. All right. Then no objection.

THE COURT: All right. No objection.

(Plaintiff's Exhibit No. 10 is admitted into evidence.)

Q. Mr. Shaw, as a final matter, you testified earlier as to what you thought was the work that had been performed by DHEC in 2005 and 2006 before this permit was issued.

You specifically testified, according to my notes, that there was a review of the

regulations. What were you doing in 2005?

A. 2005 I was in middle school. Elementary school.

Q. Have you spoken to anyone at DHEC or at OCRM who you believe was involved in the actual analysis of the permit application that resulted in the 2005 permit?

A. I've spoken to the -- the manager who did the issuance of it. Not on this subject but --

Q. Do you know whether or not regulation 30-1(m)(2) was considered when that permit was issued?

A. I do not, no.

Q. Do you know whether or not there was an analysis made as to whether an administrative office that operates as a ticketing and scheduling office is and represents an overriding public need to be on the water?

A. I can't say for certain.

Q. Do you know whether or not an analysis was made as to whether or not there were any feasible alternatives for placement of such an office that existed at the time?

A. I do not know.

MR. TAYLOR: Nothing further, Judge.

RECROSS-EXAMINATION

BY MR. LESEMANN:

Q. Again, the application of that thing that Mr. Taylor keeps pointing to, that's if it's a nonwater-dependent use; correct?

A. M, specifically the first two nonwater-dependent structures.

Q. So if we're talking about a water-dependent use, is it your understanding that someone who operates in this area, that that goes out the window?

A. I can't say for certain.

Q. But it applies to nonwater-dependent uses; correct?

A. Yes, sir.

Q. And what is your understanding of what a "marina" is?

A. A "marina" is a facility that operates over the water as various uses, but it is -- has water-dependent components.

Q. Are there any marinas that you're aware of, Mr. Shaw, that are detached from water or that are aren't on the water?

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A. Not the marinas themselves. Dry stores would be on land, but they do have a water component.

Q. But, you know, all the marinas located in the critical area are certainly on the water; right?

A. Yes, sir.

Q. Looking, again, at the picture that's been marked as Defendant's Exhibit No. 84 -- and I'll ask you again, do you have any reason to believe that have -- in your review of the file, have you seen anything that suggests that OCRM's review of the original permit application was defective?

A. Not to my knowledge.

Q. Did Mr. Taylor or J&W Corporation oppose the -- did you notice anything where they had opposed the floating office application that was approved in that 2005 permit?

A. Large file. I'd have to go back through. But nothing ringing an immediate bell.

Q. So, Mr. Shaw, looking at Defendant's Exhibit No. 84 again, do you see this metal structure here, this ramp? (Indicating.)

A. Yes, sir.

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Q. If a ramp is being used in the critical area in order to load a barge, whether it's mobile or immobile, is that ramp the type of structure that OCRM would want to have a permit application and a permit approval on file before it would be used?

A. If it poses any alteration to critical area, it would require some type of authorization.

Q. And if something is sitting on the critical area and lying on the physical earth, would that cause alteration?

A. Yes, sir, it could.

Q. Are you aware of any application or approval on the part of OCRM relating to this ramp?

A. No, sir.

MR. LESEMANN: Nothing further, Mr. Shaw. Thank you again.

THE COURT: Anything else for Mr. Shaw?

Thank you so much. You can go back to your seat. I appreciate it.

(The witness was excused.)

MS. FALIN: Your Honor, may we be

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excused?

THE COURT: Any objection to them being excused?

MR. LESEMANN: None, Your Honor.

THE COURT: No objection. Thank you so much.

And why don't we take a five-minute break before we start with the next witness.

MR. LESEMANN: Yes, sir.

(Recess taken 10:56 a.m. to 11:05 a.m.)

THE COURT: All right. Back on the record then. Mr. Taylor, please call your next witness.

MR. TAYLOR: Call Mr. Scurry.

THE COURT: Come on around, please, sir. Please raise your right hand for me.

THE WITNESS: (Complies with request.)

WILLIAM P. SCURRY,

having been first duly sworn, was examined and testified as follows:

THE COURT: All right. Have a seat. Please answer any questions Mr. Taylor has of you.

Give your full name first while

we're waiting on Mr. Taylor.

THE WITNESS: William Porter Scurry.

THE COURT: Thank you, sir.

DIRECT EXAMINATION

BY MR. TAYLOR:

Q. Wick, good morning.

A. Good morning.

Q. Wick, tell us. You've already stated your full name. Where do you live, sir?

A. 50 Bushs Branch Road, Bluffton.

Q. How old are you, Wick?

A. 68.

Q. And, Wick, will you tell me what your basic job is as far as what do you do for a living?

A. Well, I own a marina on Daufuskie Island called Freeport where we have a restaurant and a general store and a gas station; and we rent golf carts over there. We do historical tours with Daufuskie Island.

We have a lighthouse on Daufuskie that is a museum; and we have a winery that we started on Daufuskie, the old Silver Dew Winery, and all that that revolves around the old lighthouse out

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there as well.

We do all -- we do -- we were doing barge and transportation to Daufuskie Island. We have another barge that we're getting ready to bring up here that was put together by MOBRO brothers down in Jacksonville, and it may be here as early as next week.

Q. Very good.

And all of this, Wick, is run under the guise of the J&W Corporation of Greenwood; correct?

A. Yes, it is.

Q. And do you own that company 100 percent?

A. I do.

Q. Wick, will you tell the Court about your history with Broad Creek Marina. How have you had a relationship with it from the get-go to where we stand today?

A. I bought -- my dad and I bought Broad Creek Marina from Rob Matthews and another partner that he had, and I think that was '81 or '82. Something like that.

And at the time it was just a trailer on the hill, and the concrete dock was not there. The wooden pier going out was not there. It was

on 1 acre of land, I think; but over the years, it was successful. I built it up and it -- we had boat -- several different boat dealerships there.

Q. Yes, sir.

A. And I sold it to a guy named Frank Ferrari.

Q. Yes, sir. About what time period was that?

A. Tom, honestly, I don't remember the exact year.

Q. Okay.

A. I wish I did. I wish I could tell you.

Q. You sold it to Mr. Ferrari?

A. Yeah. I sold it to Ferrari and --

Q. How did you become back involved with it, then, after that?

A. He ended up going broke; and his financing was with, I believe, South Carolina National Bank. They came to me about managing the marina. I said, "Well, I'll manage it; but I want a right of first refusal on -- if somebody makes an offer on it."

Q. And did they agree with that?

A. Yes.

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Q. And then Wick managed it for a while; and then, I believe, a gentleman named Richard Freedman eventually came to you and acquired that in the name of a corporate entity. Is that correct?

A. Yeah. They had come to the bank; and, again, this has been a long time ago. But they -- they came to the bank and offered -- if I remember correctly, $1.3 million. And I had sold it for 2.6 million.

And the bank, because they wanted to get it off the books, I guess, was considering taking that offer. So I stepped up and said, "I'll buy it for that price." And in the meantime, Richard Freedman came to me and said, you know, "We really want this." And it was a heck of a buy, even at that time; and, you know, what will you sell it to us for if you buy -- or whatever it was. They wanted it.

So anyway, what we structured was a -- you get it for what you offered, the 1.3; but in exchange for that, I can still operate my barge landing, which I'll show you a picture of in a few minutes ago. That's been there for 30 years, the barge has.

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And I will -- I need to operate ferries. So I needed 300 feet of dock space, and I needed an office building; and at the time that was going to be the floating office that was in the water down at Broad Creek Marina.

And I said parking, the office, the barge landing, and that was really the profit really of -- of what I was making, you know. And that was -- so, you know, we looked at different ways of doing the purchase, and we ended up with a long-term lease because the only way you could deed dock space would be to condo the space; and so I really could not get a fee simple deed. So we settled for a 100-year lease for a dollar a year.

Q. Mr. Scurry, the lease agreement has been marked and entered as Defendant's Exhibit No. 01. Let me hand it to you and ask you, is that the lease agreement that you entered into with Richard Freedman?

A. Yes, it is.

Q. Is that your signature on the third from the back page?

A. Yes, it is.

Q. And when you entered into that lease

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agreement, did you intend to abide by it the best you could on behalf of J&W?

A. Yes, I did.

Q. That was signed in 1993; correct?

A. Yes.

Q. And will you tell the Court, then -- basically we can, in a summary chronological form, how did the next ten years go with working with the entity at that point in time that was identified as Broad Creek Marina, which I understand was represented by Richard Freedman at that time?

A. Well, as most things do, it started off okay; but then we just started having problems, you know. I can't get into the specifics because, honestly, when you talk about a ten-year period, it was a -- basically, a situation that just got more and more -- I guess "disagreeable" would be the word.

Q. And, Mr. Scurry, during that time period, who was your interface or your contact with on behalf of the Broad Creek Marina entity?

A. It was Richard Freedman. I had never met Roger for quite a while.

Q. Wick, when you signed the long-term

lease in '93, where was J&W's office at at that time?

A. In the floating store that was in -- in the water.

Q. And that was located where? Literally, from the descriptions that have been made today as you walk out the dock and go down the gangplank, where was it?

A. It was right to the left as you walk down the gangplank, although that's a little miss -- misgiving, I guess, because it -- the docks themselves have completely changed since then.

Q. Was it on the inside of the finger?

A. It was on the inside of the first finger. At the time there were three fingers that went out into the river.

Q. Yes, sir.

A. And the first finger was probably 30, 20 feet further out than the finger is now, than the dock is now; and it was on that piece of -- piece of the dock.

Q. What happened with that floating -- with that store?

A. Well, when I think back on that whole

situation, I -- I think that the bigger -- the biggest problem that I had is when I, kind of, became an absentee tenant for a while. I ended up getting into other businesses, and things on Daufuskie hadn't worked quite the way I did.

So I kept my business going down there, but in a small way. I wasn't down there very much; and the store just, you know, was not kept up at all. And, I mean, the flotation part of the store especially; and it eventually sunk.

Q. Who owned the store? What --

A. Well, I would assume the store was owned by the marina because I was leasing it.

Q. Now, when the store sunk, what happened to J&W as a business operation? Where did it move to?

A. Well, let me see. From that point from when the store sunk, that was before we went to court; and I ended up in their -- what is now the restaurant. I honestly cannot remember where they put our office at that point.

Q. Did there come a time in the relationship with Broad Creek Marina that you and your attorneys at that time, Mr. Fuge and Broad Creek Marina's attorneys negotiated a Release and

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Confidential Settlement Agreement as to all outstanding issues that were going on in December of 2004?

A. Yes.

Q. And did this agreement, which has been marked and entered into evidence as Defendant's Exhibit No. 02, did that address the issues that had arisen between you and Broad Creek Marina insofar as the parking, the office, and the insurance issue?

A. Yes, it did.

Q. And how, Wick, did this resolve the office issue?

A. We had -- we first said that, well, we would be moved back to a floating store; and if they couldn't move the floating store, that they would build an office at the end of the long wooden pier -- and this is from memory here -- from the end of the long wooden pier.

And then in -- and if they couldn't do that, for whatever reason, that they would build us an office in the -- in the heavy traffic area, one of the better -- the best area that you could find for traffic and attracting people.

Q. Okay.

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MR. LESEMANN: Your Honor, would just like the opportunity to make a general objection.

I think that the conversation and discussion can flow okay; but to the extent that Mr. Scurry's testimony is not consistent with the terms of the written settlement agreement, I just would want to make a running objection.

I don't want to interfere with the process any; but, again, all of these items are specifically worded within the settlement agreement. And any testimony that would vary that in any way, I think, would be barred by the four corners of the document, the parol evidence rule, et cetera.

THE COURT: Mr. Taylor, is there any claim of ambiguity within the agreements or the agreements are the agreements. Is that --

MR. TAYLOR: No, sir. There is specific claim as to ambiguity in the agreements insofar as the insurance provision, both in the original 1993 lease and the 2004 settlement agreement. We have distinctly different interpretations as to what the agreements say and what they require.

And I understand Ellis' objection; but that is my response, Your Honor, is that there -- we believe there are ambiguities; and we believe the Court will, after hearing the testimony, find that there are ambiguities.

THE COURT: His testimony right now doesn't appear to have to do with the insurance part, but maybe it's building up to that.

MR. TAYLOR: Yes, sir, it is.

THE COURT: Is there some sort of foundation for the insurance part? Is there any response to that?

MR. LESEMANN: Well, Your Honor, I think the point is very well taken. They're actually distinctive.

If Mr. Scurry is going to testify that the insurance provision specifically, which would be, again, paragraph 17 of the original lease; and then there's a portion of the settlement agreement that discusses an equitable allocation of insurance, then based on that and based on your permission to allow parol evidence on that issue, I think that may be one thing.

But, again, this was about -- specifically about the offices and, sort of, the

hierarchy of the different options; and so that's what prompted my objection, which I don't think that has anything to do with the insurance provisions.

MR. TAYLOR: Your Honor, it will be helpful, perhaps, for me to acknowledge that we do not believe there is any ambiguity whatsoever concerning the office proviso that is in the agreement at page 2; and we certainly are not intending to contend that that is in any way ambiguous. We believe it says what it's supposed to say.

THE COURT: So the line of questioning with regard to the office, then, was that in furtherance, somehow, of the insurance issue; or were you just trying to, sort of, paint the picture?

MR. TAYLOR: Trying to paint the picture, Your Honor. Nothing about insurance yet. I'm trying to get to where we are with the office to try to, kind of, stay focused on that right now.

THE COURT: I'll allow a little bit of it. Mr. Lesemann, I understand. Sounds like there's no ambiguity anyway. So it sounds like

the parties are aligned in the fact that the four corners of the agreement as, perhaps, modified in the -- I'm sorry.

The lease as modified in the agreement is the controlling law of the case, particularly with regard to the office, and maybe there's a question on that.

MR. LESEMANN: I understand, Your Honor; and, again, I -- when Mr. Scurry mentioned, you know, quote unquote, that they would build me a building, that's something that we believe is quite inconsistent from what the wording of the agreement says. So at that point that prompted me to stand as opposed to just holding, you know, forever holding my peace.

THE COURT: No. No. You're a good boy.

MR. LESEMANN: And so -- but, thank you, Your Honor. I appreciate your attention to it.

THE COURT: Yeah. Just to fill in the gaps, I'll let him continue; but I understand the parties agree on all but, perhaps, the insurance issue and these -- and the lease agreement so, Defendant's Exhibit No. 01 and

No. 2. Please continue.

MR. TAYLOR: Let me see if I can, kind of, help with focusing my questions better.

Q. If you'll turn to page 2 of the document, Wick; and we're looking at the wording says, "agreement" at the top. Then it says "office space."

A. Uh-huh.

Q. The settlement agreement says that J&W previously occupied office space identified in the lease as part of lease property. As a result of a total casualty loss to the floating store, J&W's office operations are currently located in the marina office.

Is that your recollection of what was happening at the time --

A. I knew that we moved into the marina office. I could not remember if there was something in between because we've moved all over the property.

Q. Tell us, Wick, about what the marina office is when it talks about this. You'd mentioned the restaurant. I want to make sure Judge Dukes understands.

A. Well, they have a restaurant there now.

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And the -- what I now think is the kitchen of the restaurant --

Q. Yes, sir.

A. -- was our office. And we operated out of that office for several years, until they decided to build a restaurant.

Q. At the time that the settlement agreement was signed in 2004, you acknowledge that you all were -- J&W was operating in what was then called the marina office and what we now know is the restaurant today; correct?

A. That is correct. In the kitchen part of the restaurant.

Q. I understand. All right. So the agreement is signed. You all continue to move along under the terms of the settlement agreement.

Wick, how -- what happened next as far as -- well, first, let me ask you this:

When you were in the marina office, Wick, what basically occurs with J&W's operation in the administrative office? In other words, what do people do in that office?

A. What do people do in the office, or what is the office used for?

Q. Both.

A. Okay. Well, basically I have bookkeeping in there; and that's where we took reservations, and I don't remember that we sold tickets out of the office. I think maybe we sold tickets on the boat.

Because it was not really -- it was a good location as far as getting orders or something, but it was a bad location as far as the traffic flow because the traffic flowed down the wooden pier down at the end of the dock.

Q. Wick, by 2004 when the settlement agreement was signed, had Mr. Roger Freedman, who is sitting here in the court, made an appearance on the scene?

A. I believe so, yes.

Q. And did Mr. Roger Freedman, then, become the person with Broad Creek Marina under which you interfaced or worked with from 2004 forward?

A. Yeah. I think Richard was around every now and then, but primarily Roger.

Q. Wick, what next occurred with the J&W office? Were you moved from the marina store?

A. They came to me and said that they were going to -- wanted to make a restaurant out of

that, and they were -- wanted to move me to a boat. Right. Temporarily --

Q. Yes, sir.

A. -- until they could do one of these other options that they had in the agreement.

MR. LESEMANN: Your Honor, just would ask if the -- make it the form of an objection, but use of the term "they" is difficult in terms who he might be referring to. Who made the statement? Who came to him? And so on that basis, we think that the testimony's not proper until it specifies who he's speaking about.

A. Let's put it this way --

MR. TAYLOR: May I rephrase, Your Honor?

THE COURT: Go ahead, please.

Q. Did someone on behalf of Broad Creek come to you and request that you move out of the marina store? And if so, who? And what did they tell you?

A. They had a different manager there at the time, and he came to me and said they were talking about making a restaurant there; and they needed me to move. They had nowhere for me to

move. So they actually drove me up to Atlanta and showed me a boat up there that they wanted me to move into temporarily, a houseboat.

And I agreed to do that temporarily, and the houseboat sunk. We lost all of our computers and everything. Were never reimbursed by anyone for anything. It sunk, and we were without an office again.

Q. And what, then, happened as far as J&W's office at Broad Creek Marina when the houseboat sank?

A. Well, I guess that's when they took the -- the building I had built for a customer of mine, Jack White, to keep a 25-foot Boston Whaler in but was a ground level building with T-111 on the outside and, you know, with no anything on the inside. And they had a -- an Hispanic guy that went in there and worked a short time, and we moved into that office.

Q. And --

A. We had no choice, honestly.

Q. I was going to say, why did you agree to move in there?

A. Well, we had nowhere to work.

Q. And, Wick, when you talked about the

building, is this first -- jumping forward, is this the same structure that you are still in today?

A. Yes.

Q. And was the move in time around 2008, to the best of your memory?

A. I'm going to have to use that. I honestly don't know. I really don't know the exact day.

Q. Wick, tell me what -- first, the building had originally been built for what?

A. It was built basically to house a rich guy's boat, you know. He didn't want it in normal boat storage. He wanted his own little place. So he paid his bills. He was a nice guy. He was a friend; and so anyway, we built the building over there. Or actually he built the building, I think.

And -- but it was just a -- a poured concrete slab and built the building on it with a tin roof.

Q. What did the building literally consist of as far as walls, building --

A. It was T-111 on the outside. On the inside, it was nothing but 2 x 4s.

Q. And a tin roof.

A. And a tin roof.

Q. Was it at that point in time when it was constructed ever intended to be used by any type of habitation by people, to your knowledge?

A. Prior to us going in there, I don't -- it wasn't -- it was still an open building that, I guess, the marina was using for storage or something.

Q. And, Wick, will you tell the Court what, quote unquote, improvements were made that you observed before J&W moved into it?

A. Well, they put some kind of ceiling in there held together with metal bars that -- I'd never quite seen that type of construction before, you know. Something like out of a Third World country or something. I don't know.

You know, it's got, I guess, compressed board is what you would call it. No insulation. The roof was held, again, up with these steel bars that ran across it. I'd never seen anything quite like it before.

Q. Wick, did it have any type of HVAC in it?

A. No.

Q. Did it have any type of insulation in it?

A. No.

Q. Did it have any type of particular other accoutrements for a business office to run out of?

A. Absolutely not.

Q. Wick, did you tell Mr. Freedman that that building was acceptable to you as far as long-term office placement?

A. I said it was illegal.

Q. And why did you think that?

A. Because it was on the ground. I mean, it was like a -- it was, obviously, an illegal building.

Q. And did you relay that opinion to Mr. Freedman?

A. Many times.

Q. What did he tell you in return?

A. He just didn't comment that I can remember.

Q. Did you ask him for placement in any other type of building?

A. Of course. Absolutely. I mean, I was really referring back to what we had agreed to

do. Right.

Q. Yes, sir.

A. So -- so basically none of that ever happened, which is exactly why in '08 or '09, we just quit paying fees because he would not do what he said he was going to do. He just refused to do it.

Q. And by refusing to do it, do you mean put you in a building which you felt like would have been in compliance with the settlement agreement?

A. Yeah. And how could you possibly move three times, one to a building that sunk -- well, first your original building sinks on their watch.

Q. Yes, sir.

A. Because it didn't have to do with what I was doing on the inside of it. The bottom rotted out of the thing. They did absolutely nothing to it, and it sunk. Right.

So I'm in two boats. Two -- two buildings that sunk completely on me. Then up to the -- what is now the kitchen of the restaurant and then from there to a shed and that -- and that supposedly does not affect my business.

That's the most ridiculous thing I've ever heard.

Q. Wick, tell me what exactly J&W was doing inside the shed; and by that I mean, were you doing ticketing, reservations, phone?

A. We did everything.

Q. What did that entail in the 2009 to the present period?

A. Well, we had -- had phones put in there. We answered telephones to make reservations. We made barge reservations. We actually did all of the bookkeeping out of that office. There was nothing -- all of my main business is on Daufuskie.

You have to do your -- your other business on Hilton Head because they're all hooked together, you know. You got to -- you know, you have to do the bookkeeping because all the deposits have to go through Hilton Head, all that stuff.

So you're in a situation where you -- you basically running the -- the Daufuskie business out of the office at Broad Creek Marina.

Q. Wick, did you ever agree with Mr. Freedman that the provision of the shed building was a final office space for J&W under

the settlement agreement proviso?

A. Absolutely not.

Q. Is that why you ceased making payments?

A. Absolutely.

Q. To your knowledge, has the Town of Hilton Head prior to January 2019, this year, ever inspected the shed or otherwise looked at it?

A. Well, you know, I don't know, you know. I could not believe that, you know. I was -- I was sitting there on a daily basis trying to figure out where I was wanting to go when the Town of Hilton Head came down there and said, "You can't be in this building." Because I, you know, if I had built that building, if I had moved people in that building, they would have run them out the next day.

Q. Wick, I hand you what I have marked for identification as Plaintiff's Exhibit No. 11. I believe they are as set pictures that were taken in January 2019 while you were present.

Do you recognize those pictures as having been photographs taken while you were present in January of 2019 of your office space?

A. Yeah. I would like to point out that

the first picture looks so nice because we made it look that way. Right. It didn't -- I mean, what -- it had a hole in it to sell tickets through, you know. It had a little -- but, you know, what you're looking at is a revamp that we did to the building, along with probably an illegal deck on the front of it so people didn't have to stand in the mud to buy tickets.

Q. And, Wick, do those pictures fairly represent what the inside and outside of the shed office that you're currently housed in looked like?

A. Yes, it does.

Q. And do you see those conditions on a daily basis?

A. I do.

Q. Wick, do you have an office in the J&W office complex there?

A. Me personally?

Q. Yes, sir.

A. Well, yes, I do.

Q. And it consists of a desk and a chair in the back; right?

A. Uh-huh. It wouldn't be overly impressive, I don't think.

Q. Wick, let me ask you about some specific things about the office shed today. First, how does the HVAC work?

A. Well, let's say the air conditioning doesn't work at all in my office.

Q. Yes, sir. And I --

A. Last winter, we got -- Eddie Haverty, who is a friend of mine that runs a gas company, put gas heaters in for us because you -- the winters were just treacherous.

Q. There was no heat until last winter?

A. Absolutely. And no insulation, you know. When the wind blew and it was 45 or 50 degrees, you felt like you were standing outside.

Q. Is the roof watertight?

A. No. Well, it, you know, it -- it's a -- constantly a leak here, a leak there, you know.

Q. Wick, is there any type of humidity control of any type through HVAC or anything else?

A. None whatsoever.

Q. How do your electronics hold up in the office?

A. I would bet you that we go through more laptop computers than any place on earth. I

mean, within a year or two, we're replacing them.

Q. Wick, do you have any situation or any presence of insects in the office shed?

A. Oh, yeah. You know, it -- it's roaches and -- I even -- I even found a copperhead about three -- three years ago in my office.

Q. Are there any other type of animals, vermin, that you have observed in the office space itself?

A. Spiders, bugs, that kind of thing.

Q. Have you ever had examples of marsh rats in the office?

A. I have seen a rat or two, absolutely, especially in the office next door. You can hear them running back and forth because it's, like, a -- well, really nothing has been done to that, I guess. But you can hear activity over there all the time by -- with -- by animals, not people.

Q. Wick, have you articulated these concerns to Mr. Freedman over the years?

A. Absolutely, we have.

Q. Have you demanded that he provide a -- other office space?

A. Yes, we have.

Q. Has he ever led you to believe that he is going to do that?

A. It's always, "We'll get to it," you know, that kind of attitude.

Q. To your knowledge, Wick, has there ever been an actual floating office that has been permitted and made ready for you at any point in time until we sit here today?

A. Absolutely not. Can I say one other thing about the floating office?

Q. Yes, sir.

A. One of the agreements that, at least, I understood the lease to say was that I would either be in the floating office, which was in the perfect location if you're operating the marina because you would walk down the ramp; and the first thing you would see is our office.

And -- and our agreement, you know, since day one in the lease was that we would be in a situation of being able to -- to have access to the tours that are coming and going.

Q. Wick, are you familiar with -- I'm looking for the photographs 1 through 5.

MR. TAYLOR: Your Honor, if you'll give me just one second, please.

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THE COURT: Take your time.

Q. Wick, I hand you photographs Plaintiff's Exhibit No. 01 and No. 04 that have earlier been entered into evidence and ask you if you recognize that as being the area of water where the former floating store was that you were located in years ago.

A. That is the inside of the new dock that the Freedman -- Freedman built. Okay. But the floating store was on the opposite side of the ramp.

Q. Understood.

A. Would have been on the opposite side of the ramp.

Q. Wick, you heard Mr. Shaw's testimony earlier that there is an active permit in place for the location of a floating store or office at the bottom of that ramp that would measure 28 feet deep and 58 feet wide.

Did you hear that testimony?

A. I did. Yeah.

Q. Is it possible to put such a floating structure there at that point inside where it originally -- or where it is permitted?

A. Well, you'd have to have a really strong

metal bottom on the floats because they would be sitting in oysters; and the building would be at about this level at low tide. (Indicating.)

Q. Wick, if you were -- if you would have been provided the office space that you believe was guaranteed to J&W under the terms of Defendant's Exhibit No. 02, would you have been willing to pay the common area charges that you were supposed to pay?

A. Absolutely.

Q. Why did you stop paying them?

A. Because I got really, really tired -- especially when the floating boat they put me inside, nobody reimbursed me for anything I had at all. I just got -- I felt like I needed to do something to get him off the base, I guess you'd say.

Q. I understand.

MR. TAYLOR: Your Honor, move the admission of the photographs identified in Plaintiff's Exhibit No. 11.

THE COURT: Mr. Lesemann.

MR. LESEMANN: Again, Your Honor, with -- Mr. Scurry didn't take those pictures. They were taken by a professional inspector that

they had come in. He's testified that they seem consistent with that. They've got annotations and things on them.

I object for that reason, but I respect Your Honor's ruling from before in terms of we're going to move things in. So I just want to make that point, again, that these weren't his pictures; but that's just my objection for the record.

THE COURT: Thank you so much. I appreciate the objection. I'm going to allow the pictures. Thank you.

(Plaintiff's Exhibit No. 11 is admitted into evidence.)

MR. TAYLOR: Your Honor, thank you.

BY MR. TAYLOR:

Q. Mr. Scurry, let's talk about the insurance issue and the question of who was to insure the docks at Broad Creek Marina.

Were there disputes between you and Richard Freedman prior to 2004 about who should be providing and paying for that insurance?

A. There were disputes about everything, and I'm sure there were disputes about that.

Q. In the settlement agreement that is

marked as Defendant's Exhibit No. 02, is there a provision within that marked Exhibit F in which the issue of insurance is addressed?

A. You say marked Exhibit F?

Q. It's in the last page of Defendant's Exhibit No. 02, Wick. It's the common area charges.

A. I'm sorry.

Q. You got it?

A. Yeah.

Q. Wick, did the settlement agreement address the issue of who was to insure the docks?

A. Yes, it did; and the marina was to insure the docks.

Q. And were you to contribute on an annual basis toward the cost of that insurance?

A. On a pro rata share, yes.

Q. And what does the document, Defendant's Exhibit No. 02, Exhibit F on the back of it -- the one you're looking at -- show was to be your contribution for the docks and piers? What percentage?

A. The way I'm looking at it -- let's see. Dry dock, docks and piers, 7.5 percent.

Q. Yes, sir. And is that what you had

agreed to pay on an annual basis as far as when Mr. Freedman obtained the insurance, you would contribute 7.5 percent of that --

A. That's correct.

Q. -- is that correct?

And what did you ask for in return to verify that those insurance payments were actually made for insurance purchased?

A. Just proof of insurance.

Q. Were you given that?

A. I -- to my knowledge, I was not.

Q. Once again, Mr. Scurry, if the office situation is resolved, are you willing to begin paying for what you would owe on a percentage basis of the insurance on an annual basis?

A. If -- if he lives up to the original agreement, I'd be happy to continue to pay.

Q. Wick, do you believe that your business operations have been damaged by virtue of the office space that you've been relegated to from 2008 until today?

A. I just think -- first of all, we went through a rigamarole of trying to prove it; and their lawyer says, "Well, you don't have tickets." But, you know, our business as far as

the ferry and the barge -- but the ferry, especially -- has gone down a heck of a lot. But just by general principal, think about it.

Anybody think about just, you know, what happens when your main office for what you do is, you know, moved around like musical chairs from a floating store that sinks to a floating boat that sinks to the -- to the back room of what's now the restaurant to a shed. I mean, how -- how could you not think that would affect your business? I mean, that's beyond me. I don't see how that's even an argument.

Q. Mr. Scurry, did there come a time in 2010 when J&W was named in a lawsuit as far as a foreclosure by the bank against Mr. Freedman?

A. Yes, I believe so.

Q. And at that point in time, did you have to hire good counsel to represent you and expend legal fees in order to defend yourself from the foreclosure lawsuit?

A. I did.

Q. Who did you hire?

A. You.

Q. Thank you.

Mr. Scurry, do you recall in 2012 that

J&W received a letter from Mr. Freedman's then lawyer, Mark Berglind, demanding certain actions be taken by J&W such as not use the restroom facilities anymore?

A. I do remember that, yeah.

Q. And do you remember that that letter also demanded that we not use our golf cart on the wooden walkway?

A. I did.

Q. And do you remember that they attempted to prohibit deliveries after 7 a.m.?

A. I do.

Q. And in response to that, you hired me to go in to seek relief from that; correct?

A. Yes.

Q. Did you have to pay me in order to do that?

A. I certainly did.

Q. Mr. Scurry, was the shed, from your perspective as the person in it, ever in good working condition and repair since you have been in it for J&W?

A. You mean my office?

Q. Yes, sir.

A. No, sir.

MR. TAYLOR: Your Honor, if I could have just a moment.

(Pause in proceedings.)

BY MR. TAYLOR:

Q. Mr. Scurry, since you entered into the original lease agreement in 1993 and the settlement agreement in 2004, have you attempted in good faith to work with Mr. Freedman when you could?

A. Yes, I have.

Q. Do you believe that both of those documents contain either an explicit or implied provision that both parties shall work in good faith together?

A. Yes, I do.

Q. Has Mr. Freedman ever consulted J&W about one thing that he has attempted to do at the dock?

A. Never. I mean, as a matter of fact, I found out about his expansion of the marina in the paper; and, you know, that's when we, you know, tried to get involved because I thought we had a dog in the fight.

Q. Yes, sir.

A. And that was the same thing -- maybe I'm

talking too much; but while I'm thinking about it, it's the same thing with the zip line that Mr. Freedman did.

Q. All right.

A. The parking that he was basically using before his zip line was partially our parking, at least the way I looked at it; and I think I got you to look into it, and I just have never been told about anything whatsoever that's been done down there.

Q. I understand.

Mr. Scurry, do you believe that the lease agreement and the settlement agreement contain a proviso which gives you the exclusive right to run a ferry from the marina?

A. Absolutely.

Q. And did you become aware that Mr. Freedman purchased land next door to the marina with an eye toward building a competing ferry service?

A. I did.

Q. Do you believe that is in keeping with the good faith and fair dealing implicit in the agreement?

A. I do not.

Q. Do you object to Mr. Freedman launching a competing ferry service from the parcel next door?

A. I certainly do. I really would have negotiated that in the original agreement if I thought he was going to run ferries out of that area.

Q. Understood.

MR. TAYLOR: Your Honor, that's all I have at this point in time.

THE COURT: It's exactly noon. I'm guessing your cross will take an hour or so?

MR. LESEMANN: Your Honor, I think that, yeah, this would probably be the appropriate time to break now, if that's your thought. But we can probably hour, hour-and-a-half.

THE COURT: Yeah. Why don't we do that. Why don't we try to take an hour, hour and 15 minutes, and try to -- let's call it, you know, 1:15, something like that. If that works for everybody, then we'll come back.

Let's see. Mr. Scurry, don't discuss your testimony with anyone during the break. You understand?

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THE WITNESS: Okay. I will not.
THE COURT: All right. Thank you.
THE WITNESS: Not only my -- not my attorney either?
THE COURT: No.
MR. TAYLOR: Your Honor, may we go to lunch though as long as we don't talk about his testimony?
THE COURT: You can go to lunch and talk about anything under the sun except for the testimony.
MR. TAYLOR: Thanks, Judge.
THE COURT: All right. We'll be in recess till 1:15.
(Proceedings adjourned at 11:59 a.m. for lunch recess.)

Wednesday Afternoon Session

May 15, 2019

1:19 p.m.

THE COURT: Back on in 18-1622. Mr. Scurry, come back up for me, please. And you are still under oath, sir.

THE WITNESS: (Complies with request.)

CROSS-EXAMINATION

BY MR. LESEMANN:

Q. Mr. Scurry, hello again. My name is Ellis Lesemann, as you know. We've met before, and I represent the defendants in the action.

When you were talking with Mr. Taylor and responding to his questions, you mentioned, I believe, that you had asked for some documentation to indicate that various insurance policies on the part of the landlord had, in fact, been obtained and had been paid for?

A. That's correct.

Q. And that you were seeking some documentation of that?

A. Yes, sir.

Q. I'll show you what's been marked as Defendant's Exhibit No. 31. It has not been

entered yet; but I'll let you know, this is information that we provided to your attorney going from 2009 up to the present for information documenting the insurance policies and the payments.

Has any of that information been shared with you?

A. Actually, no. I have just been communicating with my attorney on whether or not he's got the information he needed.

Q. So upon seeing that there's documentation relating to the insurance policies in place, are you willing to start paying the insurance in accordance with the terms of the lease?

A. I'm not willing to start paying the insurance until this matter is settled and I have an office and I'm moving on with life.

Also according to my attorney, this is still not adequate as far as the -- the policies themselves. So that's as much as I know on that; and, you know, I'm just basically leaving that to him.

Q. But you've -- have you looked at it yourself?

A. I have not looked at the whole thing myself. It would take quite a while.

Q. And so I just was trying to figure out when the record will reflect the reasons why J&W Corporation is not paying any of the charges that are called out under the lease, is it, again, your belief that the office situation excuses you from making any forms of payment whatsoever?

A. I think the whole agreement needs to be lived up to, and I will move forward and make my payments.

Q. The conversations you mentioned with Mr. Freedman where you say that you discussed the office with him, when did those conversations specifically occur?

A. I don't know exactly. I've had several conversations with him about that.

Q. Where did those conversations occur? He doesn't recall them.

A. I don't know exactly. Around Broad Creek Marina, I'm sure. That's the only place I ever see him.

Q. Can you tell me when the most recent one was?

A. I haven't seen Roger in quite a while.

The last time was at a deposition.

Q. Can you tell me when the first conversation about the office space was?

A. Well, probably within a year of us being moved into that place or less than that. We were having conversations about where the office was going to move. This was going to be a temporary situation, and so on.

Q. And are you asking the Court to refuse to allow a floating office to be located in the marina for purposes of J&W Corporation's office space?

A. I'm not. But I -- I am asking the Court to make sure that the location of that store lives up to the obligation of the lease, which is to put me in the area of activity at the marina and so on.

Q. Now --

A. So the location of that floating store would be the main thing for me, and the location really would be where it was originally.

MR. LESEMANN: Taylor, could you -- are you able to call up Google Earth?

MR. POWELL: (Complies with request.)

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Q. But just to confirm, Mr. Scurry, you're not asking Judge Dukes to preclude the provision of a floating office for purposes of the lease and the settlement agreement at Broad Creek Marina?

A. I'm not as long -- again, as long as it lives up to the criteria based in the lease, which is in the active area of the marina. Obviously, there are areas you could put me on that dock that I certainly would not want to be.

Q. So using this aerial, this area here, can you see what I'm indicating? (Indicating.)

A. Yes.

Q. And so that would be -- what would you refer to that area as? That middle -- that middle dock or pier, what would you call that? (Indicating.)

A. I would call it my dock space on my --

Q. Well, no. This area here is -- your dock space runs in this location and in this location; correct? (Indicating.)

A. Yes, sir. But take your finger, if you would, and point to the corner of that piece, the dock you just --

Q. There or there? (Indicating.)

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A. Right. Yeah. Okay. Right there. Just hold your finger right there.

Q. All right.

A. Let's say I got a boat that has got a 20-foot beam; right?

Q. Right.

A. And a boat on the other side of the dock with a 20-foot beam, would that not take up that dock space?

Q. Oh, it could take up a portion of that; but then there's more space here in the middle. But at any rate --

A. There might be 5 feet in the middle if you put large boats in there.

Q. So where my finger is right now --

MR. LESEMANN: And Judge -- Taylor, is that as far as it can go?

MR. POWELL: It can go in further.

MR. LESEMANN: Power of technology. I can almost see Wick on there right now.

Q. So this area here is -- is it true, Mr. Scurry, that your floating office or houseboat that was used as an office by your operation was at one time located in that spot?

A. The -- the boat that they bought that --

that I was going to use for a short amount of time that sunk was there.

Q. Okay.

A. But if you'll follow the ramp down. Okay.

Q. Here? (Indicating.)

A. No. The big ramp.

Q. Here? Oh, here. (Indicating.)

A. Yeah. There you go.

Q. Okay.

A. Right to the right there, that's -- that is where the original floating store is. And if somebody walks out of the marina and they walk down, they're going to take a left; and they're going to go by there.

Now, that's the area that the floating store was originally. That's the area I was happy with, and I would be happy with that again.

Q. This area here? (Indicating.)

A. Yes, sir.

Q. Now, that area -- is it subject to the same condition as the area here where the kayaks are where there's been -- I don't know if you call it accretian, but there's been buildup of pluff mud there or --

A. It's not a buildup of pluff mud. The docks were moved. That's the problem. You see, they were moved inland.

Q. Right.

A. And when they did, it -- it caused that situation so --

Q. All right.

A. You're looking at a high tide as you can see the water there. At low tide, I don't think there's any way to put -- put it there. If there is, I don't have a problem.

Q. So this location, provided the OCRM approves the amendment, that location would be acceptable to you as a floating store, just J&W Corporation?

A. That's correct.

Q. And this is the location where, I believe, that when -- with the photographs, you indicated -- and Judge Dukes has been to the site -- that the current -- the current topographical conditions, let's call them, unless you had a -- I think you said a strong metal bottom --

A. Well, it's the same thing, though, with the other, I'm afraid.

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Q. Yeah.

A. You know, it certainly looks like it at low tide. It's like right now, when you have a spring low tide when it's a full moon or new moon, the tide goes down an extra 2 feet. I just want a level building.

Q. Right. And then -- but you agree that this general area, this is -- and I don't know that -- we'll get to this in a minute. I don't know that the hub of activity language carries forward on the floating store.

Again, was it -- does it meet your recollection that the location of the floating store in that 2004 document was going to be here? (Indicating.)

A. I don't know.

Q. And that's -- do you know if that's where the permit that exists with OCRM indicates that the floating store would go?

A. I really don't know one way or the other on that.

Q. But the important purpose here is, depending on the location -- and do we agree that we're here in court with Judge Dukes and that Judge Dukes might, ultimately, decide what the

location is?

A. That is fine with me. Absolutely. Sure.

Q. But that a floating office is not something that you're asking him to refuse or outright prohibit; is that right?

A. I am not, no, sir.

Q. Do you admit that Mr. Freedman and Nate and the others associated with the marina are willing to place you into a floating office?

A. Do I admit that?

Q. Yeah. Do you recognize that that has -- that they have been willing to do that?

A. Well, I know for long before this litigation, they didn't build me a floating store. They moved me in the back of their restaurant; and then after that, they moved me into a boat that they purchased somewhere and didn't build a floating store then. So I -- I guess the answer to that is I -- I didn't really realize that, no.

Q. Okay. And --

A. And I -- I've never understood where they would put it either.

Q. Right. And so has that been at one

point a subject of disagreement between the landlord and the tenant as to the specific location of where the floating store should go, seeing that the location it was intended in 2004 may not be completely feasible at the moment?

A. Yeah, I guess so, yes.

Q. Well, that's -- and that's a dispute that, ultimately, we need for Judge Dukes to help us resolve; is that right?

A. I would think so, yes.

Q. And I know that there's been litigation before I was involved and even maybe before Tom was. But this particular litigation that we're resolving here with Judge Dukes, it goes back at some level to the 2010 time frame; is that correct?

A. I believe so, yes, sir.

Q. So we'll get the answers that we've all been waiting for for a while. Is that fair?

A. That's fair enough.

MR. LESEMANN: Taylor, could you show the demonstrative that has the bar chart?

MR. POWELL: Which chart? I'm sorry.

MR. LESEMANN: It's the revenue

chart.

MR. POWELL: Yeah. (Complies with request.)

Q. Mr. Scurry, I'm just going to hand you that document. It's Defendant's Exhibit No. 34. That's an assemblage of material that we've received from you and from Mr. Taylor over the course of the case.

Can you look through those documents and see, are these tax returns that were prepared and filed on behalf of J&W Corporation?

A. I believe so. It says Dawn Dempsy. They're the normal ones that do it, yes, sir.

Q. Are those documents that you provided to your attorney or that were received from your accounting firm in connection with this litigation?

A. I don't understand the question.

Q. Is it your understanding that these were obtained either from you or from your contracting firm?

A. Yes, I do.

Q. Do you -- do these appear to be true and accurate copies of the federal tax returns from 2010 to 2017 for J&W Corporation?

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A. I believe so, yes, sir.

MR. LESEMANN: So, Your Honor, unless there is an objection, we would ask for the admission of Defendant's Exhibit No. 34, the J&W tax returns.

MR. TAYLOR: Your Honor, these were produced subject to a confidentiality order; and I am reluctant to have them admitted into the public domain, in essence, of this.

Is there any way -- I don't have any objection to the authenticity of them; but, again, as being part of a public record that might, ultimately, be made. I don't want to see that. Is there any way that they can be sealed?

THE COURT: Let me think. The sealing rules, I guess, we have to follow. But, yeah, these are -- these have personal information that ordinarily would be redacted.

MR. TAYLOR: Yes, sir.

THE COURT: But it is far too voluminous to redact the entire thing. So I think it's probably appropriate to seal the one that will be filed. Any objection?

MR. LESEMANN: No, Your Honor. Provided that you're allowed to consider them and

would ask that you be able to, if you see fit, to consider them in your ruling in terms of looking at what they reflect.

THE COURT: These are in defense of the matters that we discussed earlier on the revenue loss. Is that accurate?

MR. LESEMANN: That's only part -- yes, Your Honor. That's part of it. But, secondly, if I may elaborate just very briefly.

THE COURT: Yes.

MR. LESEMANN: There is a tremendous amount of value that's been derived from the use of the lease -- leasehold property. These tax returns reflect, in part, that value.

So, Your Honor, the argument's been made by the plaintiff that, "Well, I'm not paying what I owe because I haven't gotten an office space that's according to what I believe I should get."

And what the intention would be here, Your Honor, would be, ultimately, there was a specific -- we've covered the lost profit claim. What I want to show is the value of the docks, the barge operation, the parking spaces, and the office that's been provided and what the

economic yields have been from that to allow Your Honor in your discretion to decide whether this office issue provides -- the plaintiff and based on the term of the lease, provides them with an actual excuse to refuse to pay the charges that they are owed. That they owe.

THE COURT: Are the particulars of Defendant's No. 34 what's important; or is, essentially, that bar graph what's important?

MR. LESEMANN: The bar graph is, I think, in large part, what would be important. It could be admissible as a summary. I don't know that we have -- do we have paper copies of this?

MR. POWELL: We can print it, yeah.

MR. LESEMANN: So, Your Honor, I see your point. Might be that could be admitted in lieu of the entirety of the documents.

THE COURT: That's what I'm thinking. I mean, if there's something about the minutia of Defendant's Exhibit No. 34, you know, the percentage from the parking versus something else, I mean, maybe Defendant's Exhibit No. 34 has to come in if you think it's important.

If the theory -- again, this is all

subject -- I haven't heard from Mr. Taylor on that particular issue; but if that is an exhibit, what we're looking at on the screen right now, and there's no objection to that just coming in as a regular exhibit and it is -- the information that you're trying to have put in the record, maybe that solves the problem. I don't know.

MR. TAYLOR: It does from the plaintiffs, Your Honor; and I would agree with that coming in as an appropriate summary under the Rules of Evidence.

MR. LESEMANN: Your Honor, if we could do that, I appreciate your suggestion. I think it's a good one. We would -- I don't know, for example, that the minutia of what was parking versus what was barge is actually even detailed in the tax returns. Maybe that would be more of a P&L type thing.

THE COURT: Okay.

MR. LESEMANN: So if I could basically move to -- I could withdraw the request to move Defendant's Exhibit No. 34 at this time into evidence, but I wouldn't want to necessarily do that permanently just --

THE COURT: Oh, no, no, no. It

wouldn't be permanent. I understand Mr. Taylor may come back up and ask questions that necessitate Defendant's No. 34 coming back in.

But for purposes of right now without prejudice of you offering Defendant's Exhibit No. 34 again, my understanding is -- I don't know what number that would be or if it even exists in paper format.

MR. LESEMANN: We would move this, Your Honor, as Defendant's Exhibit No. 85.

THE COURT: Okay. That would be Defendant's Exhibit No. 85. Is there a paper copy somewhere?

MR. LESEMANN: We can make one.

THE COURT: Madam Court Reporter, if you could make a sticky somewhere that Defendant's Exhibit No. 85 is on its way. At some point during a break, we can figure it out.

MR. TAYLOR: No objection, Your Honor.

THE COURT: All right. And that will be without objection. Thank you, sir.

(Defendant's Exhibit No. 85 is admitted into evidence.)

Q. Mr. Scurry, would you have any reason to

object, or, if you'd like to, you can confirm these are the documents that have been marked for identification purposes as Defendant's Exhibit No. 34, were the approximate revenues of J&W Corporation in the year 2010, 1,914,620?

A. Are you asking me if that was the revenue of J&W for that year?

Q. Yes. Yes.

A. If that's what the tax returns say, I would guess so, yes, sir.

Q. And then as of December 31, 2017, on an annual basis, were the revenues of J&W Corporation $3,631,392?

A. I would assume so, sir.

Q. And so that would be an increase of approximately 1.72 million over that seven -- over that eight-year period?

A. Yes, sir.

Q. Okay.

A. There is a caveat to that. Do you mind me saying it?

Q. No. I appreciate you saying it.

A. The caveat to all of that, those numbers, is that the increase in business with J&W Corporation was when I finally had the sense

to add more dock space at Freeport Marina under Daufuskie and expand our restaurant and our general store and -- for an example. And, again, I know I'm under oath but this is round numbers.

But I believe about 80 percent of our revenue is generated from our store and our restaurant on Daufuskie, and people get out there in their own boats; and they don't really have anything to do with the revenue at Broad Creek Marina at all.

Q. I understand.

Now, I believe that when you testified also under oath with Mr. Taylor, you indicated that your office function for this entire enterprise that you do rely on the Hilton Head -- the Broad Creek Marina location to office this enterprise. Is that correct, or are there other offices?

A. No. That -- that's correct. That is our bookkeeping office, but that bookkeeping office could be at my house.

Q. It could be. Okay. And do you do any business related to J&W Corporation at your house?

A. Very little.

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Q. And is there some administration of the J&W Corporation's business that occurs on Daufuskie?

A. A little bit, yes.

Q. But, yeah. So for whatever role that the Broad Creek Marina office space holds, it has overseen in the time frame that -- you know, generally speaking, that you've been in that office and for which we have your tax returns, there has been a 1.72 million increase in the gross revenues.

A. But it has nothing to do with -- well, let me just put it this way: Could you say Broad Creek Marina's income -- all the income from Broad Creek Marina is generated from the upstairs area above the store where the bookkeeping office is?

Q. Would I say that again -- I'm going on your testimony, Mr. Scurry, that you mentioned that you office -- you administer your operation from Broad Creek Marina. So I just was looking at how that operation has faired while you've been administering it from Broad Creek. That's what I'm trying to ask you about.

A. It's been administered from the manager

of the restaurant and the boats that come in and the general store on Daufuskie that really -- and the people I am moving, which I've said many times, out of Broad Creek, has dropped quite a bit.

This year it's up a little bit, which I'm thrilled about; but overall, most of my business, probably 80 percent of it, comes from other people that I don't take to Daufuskie at all. And they come in their own boat; whereas, ten years ago, I would say it was the opposite. You know, maybe 20 percent came from another area.

Q. Fair enough.

So one thing that you do at the Broad Creek Marina office is you sell tickets for the ferry operation; correct?

A. We take reservations. Tickets are bought online.

Q. So the reservation function is online?

A. It is now, yes.

Q. So that now -- that basically is dependent upon the availability of your website.

A. Yes, sir.

Q. And the availability of your website is

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not dependent upon anything with the Broad Creek Marina office space.

A. I don't think so, no.

Q. And do you take phone reservations?

A. We do take some phone reservations, yeah. The phones are -- and phones certainly are answered there at our --

Q. And you've been able to install phone lines there and answer phones there --

A. Yes, we have.

Q. -- on a continual basis since you first installed phones?

A. Well, it's continual as far as the telephone company is --

Q. Right. Which would be a hard grade issue. Fair enough?

A. Yes, yeah.

Q. So I think you stated that you've, essentially, been in the current -- the building on high ground there, you've been there since approximately when?

A. Honestly, I could not tell you.

Q. Whatever that time is, since that point to now, is it correct to say that you have -- that J&W Corporation has successfully ferried

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hundreds of thousands of people to Daufuskie or back from that location?

A. Last year I believe that we moved about 20,000 people out of that location --

Q. Okay.

A. -- that went to Daufuskie.

Q. Was -- is that number higher or does that include the county contract? Would that ridership including the county contract you used to have?

A. The county contract was -- I don't mind saying it. It's public record. I think it was like 250,000 a year.

Q. Riders?

A. No. Dollars.

Q. Dollars. Okay.

Why -- well, approximately how many riders did that involve on an annual basis? The county contract?

A. Very little because very few people ride the county -- the county contract. It's kind of a farce, you know. Probably, you know, 8 to 12 people will ride it.

Q. Like the public bus.

A. Yeah, and that -- yeah, yeah.

Q. So you mentioned, Mr. Scurry, 20,000. Would that have been in 2018 that you think approximately 20,000 passengers rode the ferry either in one direction or the other?

A. Yeah. 15- to 20,000.

Q. How would that -- is that a high watermark in terms of the number of people, or is that just -- that's last year. So how does that compare to prior other years?

A. Well, let's do the numbers. 150 -- let's say 15 or 20. That would be -- but that would be 200. So that would be $600,000 in gross business. But of that gross business, yeah, so you're talking about -- no. Probably an average of $22 a head, whatever the -- what's the number on that? You've got -- let's say -- let's call it 20,000 at $10 a head is 200,000. $20 a head is 400,000; right?

Q. Sure.

A. So, you know, so probably have an average of, maybe, $400,000 a year that was generated from the ferry itself.

Q. That might -- amount might have been less in 1993 than it is now, based on ticket prices; is that fair?

A. That's fair. But I think probably it was higher. I mean, I know we moved more people then.

Q. Okay.

A. And they -- and they have to know that because we used to argue about parking and, you know. I had hundreds of cars coming in and, you know, now my parking lot's never full.

Q. Right. And those people do create a burden on the property; correct? That number of passengers. Isn't that fair?

A. What type of burden?

Q. Well, just there's 20- to 30,000 people or 20,000 people that come through to ride a ferry, that places a burden in use upon the property.

A. The property.

Q. Sure. No. I get that.

A. Yeah.

Q. But this all started, Mr. Scurry, I just asked you to admit that you, essentially, moved hundreds of thousands of people using the Broad Creek Marina on your ferries.

A. Well, over a period of time, yes.

Q. And you've moved -- how much would you

say you move in cargo a year from the barge?

A. Not much these days.

Q. But you have over 26 years. You've moved a lot of cargo out of the Broad Creek Marina.

A. Yes, we have.

Q. And the parking spaces, you've got 50 parking spaces; correct?

A. Uh-huh, that's correct.

Q. And you've had use of 50 parking spaces since 1993; right?

A. That's correct, yes.

Q. Now, do you rent those parking spaces out; or do you charge a ferry passenger who's going to be gone for three days on Daufuskie, do they pay you a parking fee?

A. We were charging a $5 parking fee. We're not anymore.

Q. But for a time, you were able to take those 50 spaces that the landlord was providing to you and to charge your passengers amounts for those -- for the use of those parking spaces?

A. Yes. That is correct.

Q. So you've earned revenue from the parking spaces; correct?

A. Yes, yes, sir.

Q. You've earned revenue from the ferry operations; right?

A. Yes, sir.

Q. And you've earned money from the barging operations as well?

A. That's correct.

Q. Okay.

A. I guess we're talking gross money, not necessarily net.

Q. Oh, I just am trying to have you confirm that you've been able to use the lease property for the intended purpose; and you've been able to make money doing it.

A. Yes, sir.

Q. Okay. So the -- do you know what the marina charges per linear foot for dock space for wet slips?

A. I have no idea.

Q. If it was $18 presently, would you have any reason to disagree with that?

A. I would say good for Roger.

Q. Uh-huh. So if it is $18 and the witnesses are able to confirm that, you have 300 linear feet of space?

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A. Uh-huh.

Q. So just at a retail monthly value, if I said that 18 times 300 was $5,400, would you have any reason to disagree with my math?

A. No. But how you get it, I would disagree with.

Q. In terms of 300 times 18? A linear foot times the rate per linear foot?

A. Uh-huh.

Q. How would you say that --

A. Well, you could use about 70 percent of your dock space. Because you have to have room between the boats so just -- just multiply it by that number by point 70.

Q. So if I do that, 178 times 300 equals 5,400 times .7 equals 3,780. So that's, I think, a -- the amount that you're able to, essentially, use of the 300 on an $18 per linear foot basis?

A. Probably so.

Q. And so that monthly -- that adjusted monthly figure of 3,780, if I multiply that by 12, would you have any reason to dispute that the mathematical product of that is $45,360?

A. If I used all the space, yes.

Q. Now, again, we did an adjustment for the

70 percent.

A. I'm just saying I don't constantly use that space.

But another thing I don't quite get about your line of questioning is when I, basically, made an agreement to not buy Broad Creek Marina and let the Freedmans' buy it, this was, in my mind, and still is, should have been given to me as a fee simple deed.

As I said, it couldn't -- couldn't have -- it -- the reason it wasn't is because you couldn't -- you couldn't -- you would have to condo the docks to get a deed. So we did it in a lease.

So you're referring to it as something that Mr. Freedman is giving me, but I paid for it to begin with. I paid for it up-front.

Q. I appreciate your testimony, but what I'm also just trying to establish is that there is a certain economic value to what you're receiving and that using the rate of the per linear foot times that, and then we mentioned the figure was 45,360.

And are there approximately 70 -- 73 years left on the lease -- on the 99-year lease.

From 1993 to now is about 26 years. So that would be a balance of about 73 years left?

A. Right. Yes.

Q. So then the figure that I just mentioned to you times 73 is 3,311,280. Do you have a reason to argue that that's the mathematical product of the two numbers that we just multiplied?

A. Of the two numbers you just did, I do not disagree with that.

Q. And you've had use of that dock space from 1993 till now?

A. If that's the year, yes, sir.

Q. You'll continue to have that dock space for some -- essentially, for the remaining term of the lease agreement, barring some other arrangements that you or your successors might make with the owner of the marina.

A. Repeat that question.

Q. Basically you're going to continue to this have that dock space.

A. Yes, I am.

Q. You'll continue to have use of the parking?

A. Yes, I will.

Q. And you will continue to have use of the barge space.

A. Right.

Q. And each of those items results in substantial economic value for J&W Corporation; correct?

A. Economic gross value.

Q. Yeah. And the economic gross value of those has been managed from an office in one location or another on Broad Creek from 1993 to the present?

A. That's correct.

Q. Now, we talked about a little bit before. But there's -- you've been in a floating office or in a houseboat on two different occasions; is that correct?

A. That's right.

Q. And I think you mentioned previously that the origin of the office where you are now was actually that you oversaw that being built on behalf of a client who wanted to have an enclosed storage space for his 25-foot Whaler; is that correct?

A. That's correct.

Q. So that building was on-site before

Mr. Freedman and his brother ever bought that property?

A. That's correct.

Q. And you knew about the providence of that building or the origin of it, I should say, because you were there when it got built; correct?

A. Sure.

Q. And did you oversee or hire the man that built it? I think you said he was an Hispanic gentleman but -- or did Mr. White hire him?

A. Well, let me explain.

When the building was built by Mr. White --

Q. Yes.

A. -- to put his boat in, he put up the money; and we had a guy build it. But what I was referring to later as far as the Hispanic fellow is when they converted the garage into a -- an office, and I assume that was somebody that they paid.

Q. So when you and Mr. White had the building built, now, approximately when was that?

A. I don't know. You know, I would say mid '80s. Something like that. I don't know.

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Q. Did anyone -- did you or Mr. White contact the Town of Hilton Head to ask whether there were any applicable permitting requirements or what rules you needed to follow, what permits you needed to pull in order to do that?

A. I believe we did, yeah.

Q. And can you tell me what the -- you recall what the Town of Hilton Head told you?

A. I don't remember. I mean, I -- I do remember we built it in plain sight.

Q. And it's been there in plain sight since --

A. About '85.

Q. And you've been in that office location in plain sight since approximately -- well, you can't remember exactly but at some point in 2009 or so?

A. I would say so.

Q. Now, do you know if your attorney contacted the Town of Hilton Head in January of 2019 to discuss the office location with them?

A. I don't know the date that he did. I do think he did contact the Town of Hilton Head.

Q. So before the Town of Hilton Head was contacted in January of 2019 by your attorney,

had anyone from the Town of Hilton Head come to talk to you about that office location or whether it was permitted or what have you?

A. No. As a matter of fact, no. The answer's no.

Q. Let's talk about the lease for a bit.

A. Which one? The --

Q. The -- well, the lease. There's one lease, and there's one settlement agreement.

A. Okay.

Q. And, yes. Mr. Scurry, that would be Defendant's Exhibit No. 01. That would be a copy. Section 1 is called "property."

Do you know what the "Lucas Tract" is?

A. I'm not sure what -- I'm not sure. The name sounds familiar; but I'm not sure what tract it is, no.

Q. So the property on which the ferry terminal has been permitted to be built by OCRM and approved by the Army Corps, is that property included within the property description that's attached to this lease?

A. I don't believe so. I think it's right beside it.

Q. So it's a separate parcel?

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A. Yes, I believe so.

Q. And it was not part of the marina at the time. It wasn't owned by you at the time of this 1993 lease?

A. It was not.

Q. And it was not owned by Hilton Head Marina Limited Partnership at that time either?

A. I don't know. They did not own it either.

Q. Do you have a recollection that the county might have owned that property at that time frame?

A. If they did, I didn't know it.

Q. Okay. All right.

MR. LESEMANN: Taylor, could we go to Section 3?

MR. POWELL: (Complies with request.)

Q. So, Mr. Scurry, you've indicated your reason for doing so; but can you agree under this Section 3, rental with utilities, "Tenant agrees to pay all utilities, including but not limited to water, sewer, and electricity that is attributable to tenant's use of the lease property."

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Can you admit that you have not done that since approximately 2008?

A. I thought it was 2010. But somewhere in there.

Q. But you admit that you've not made those payments?

A. I do.

Q. On county -- on municipal, state, county, and federal taxes, now, J&W Corporation has made some payments in the 2008 to 2012 time frame of some property tax allocations; is that correct?

A. I believe so, yes.

Q. So can you explain why you made that payment but not others?

A. I told the girls in my office that -- that we needed to go ahead and start paying some of the property -- the property taxes that they were giving us.

Q. And then in Subsection 3, insurance, "Tenant shall pay annually, commencing with the execution of this lease, any and all amounts expended by landlord for liability, property, and casualty insurance pursuant to paragraph 17 entitled liability insurance or to be allocated

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pursuant to paragraph 5 entitled licensing fees and other costs."

Did I read that correctly?

A. Yes, sir.

Q. This relates specifically to amounts expended by landlord; is that right?

A. It seems to be -- say that, yes, sir.

Q. And so that means that the tenant was agreeing that it would pay some portion of the insurance costs incurred by the landlord for the insurance that was obtained by the landlord. True?

A. Yes.

Q. And do you admit that J&W Corporation has not paid those amounts going back for a number of years?

A. That is correct, but I've explained why.

Q. Yeah. And then Section C, additional charges, talks about damage to the property, legal fees, costs to default remedies and past due charges, et cetera.

Do you admit that there are outstanding amounts relating to damage to the property and, specifically, arising from Hurricane Matthew that the tenant has refused to pay?

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A. Do I admit that the tenant, being me, has refused to pay; is that correct?

Q. Yes.

A. Yes.

Q. But Section 3(c) of the lease says that that tenant will pay those; correct? In addition to the rent, "Tenant shall pay additional rent as follows." It includes such things as utilities, property taxes, an allocation of insurance, and additional charges, such as damage to the property.

You do agree that the lease says that you shall pay those amounts?

A. It does say that. May I say something, or do you want to just keep asking questions?

Q. Well, normally that's the purpose of it; but I think out of respect to you, please tell me what you wanted to say.

A. Well, are we referring to insurance here or other things?

Q. Well, the section itself does refer to other things. Insurance is one of them.

A. Okay. Go ahead. I'll just let you keep doing what you're doing. Thank you. Sorry about that.

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Q. And, Mr. Scurry, this also -- going back to Section 3(b)(2), the one that talks about municipal, state, county, and federal taxes, is there an indication as to the timing when tenant should pay those amounts?

A. Is it in B? I'm having a hard time --

Q. I'm sorry. I'm not meaning to make that difficult.

Is it true that Section 3(b)(2) indicates that the taxes that are attributable to the tenant's use should be paid before delinquency?

A. Yes.

Q. And so would you understand as a tenant that delinquency would mean the date by which, Beaufort County, by example, would say that taxes need to be paid?

A. I would understand that.

Q. And that you would understand that the tenant's obligation was to pay those amounts in full before that delinquency date?

A. I would think so, yes.

Q. Now, the lease, you considered the lease to be a valid document; correct?

A. Yes.

Q. And were you represented by an attorney when the lease was negotiated?

A. I was, but I also think that the lease moves on to the settlement agreement because --

Q. Well, yes, sir.

A. And I think the reason for that is there's so many, kind of, ambiguous sayings in the original lease.

Q. Understood.

Did you consider any of those items to be ambiguous when you signed the lease in 1993?

A. Apparently not.

Q. Now, do you believe that -- now, we could talk about specific ambiguities but -- well, we could talk about them now.

Are there any that you're able to identify about what you feel is ambiguous?

A. When I read the whole thing, I just get confused. That's all.

Q. Would there be anything in particular that you could identify that you think is ambiguous?

A. Just as a whole, I just have the -- I believe that to be true.

Q. But if we read a given sentence from the

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lease, is it fair to say that those words speak for themselves? That you can read them and understand what the lease says?

A. I do. But I think in other areas of the lease, some of the things that are said are basically, kind of, askew. That's all.

Q. But you agreed to them.

A. I did, sir.

Q. So I think, if I understand your position, you would say that, based on the issue of the office, that that issue excused you from doing anything that you were supposed to do under the lease.

A. The way I looked at it, we had a -- an agreement that they would do certain things, and I would do certain things. They didn't do what they -- for years -- for several years, you know, it was okay. They moved me around to different spots, but they never lived up to their side of the agreement.

So I decided I shouldn't live up to my side of the agreement to try to get them to move on and give me what I needed.

Q. I just want to understand that, in your logic, the converse is true. If, for example,

the tenant is supposed to name the landlord as an additional named insured on its insurance policies and if the tenant has failed to do that since 1993, if you have -- and this is a -- I'll call this a hypothetical question for the moment.

If you failed to uphold one of your obligations as tenant under the lease, is the landlord free to, then, take your same approach and say that they're no longer bound to do anything that they're supposed to do?

A. Well, I'm talking about, right now, the settlement agreement. I'm not talking about the original lease.

Q. No. I -- well, I understand that.

But if you violated a provision of the lease and you believe that a single violation by the other party excuses you from performance --

A. Well, first of all, not naming one additional insured on an insurance policy is -- is not even in the same category as not giving somebody an office.

Q. But you have an office.

A. If you call it that.

Q. Sure. Well -- and we'll get into the provisions in a minute that talk about who's

responsible for keeping up that office and fixing it up.

But what I want to ask is just, generally speaking, by your logic, if the judge were to decide that you have failed to do something that you were supposed to do, would you agree that that discharges the landlord from anything that they had to do just based on how you've acted under this lease? I'm just trying to ask if what's good for the goose is good for the gander, Mr. Scurry.

A. I have no comment on that at all.

Q. So are you -- you decline to say that the landlord would have the same right to, basically, back away and refuse to -- as soon as you did something, for example, that they believed was significant to them, would they have the right to take away your 300 feet of dock space?

A. The promise to the Freedmans or anyone else to do something as major as build them an office or to give them an office to operate out of, I would think they have every right not to do what they wanted to not to fill up their side of the agreement.

Q. And so if they believe that your not increasing insurance amounts, not naming them as an additional named insured, causing damage to the dock and not paying for it, never paying for your share of utilities, not paying for your share of the insurance, and not paying for all of your share of the taxes, not seeking their permission for changes to the building or changes to the exterior, if they consider those things to be major in their mind, you believe they have a right to not do what they might be obligated to do under the lease?

A. I guess so.

MR. LESEMANN: Taylor, could you take us to Section 5.

MR. POWELL: (Complies with request.)

Q. Mr. Scurry, have you ever taken occasion to read the first sentence of this Section 5?

A. Licensing fees and other costs?

Q. Yes, sir. 'Cause you made some testimony about who, perhaps, ought to pay for this, that, or the other thing; and I just wondered if you -- have you ever referred to this section of the lease?

A. Actually I am referring to the last ten years, more of the settlement agreement than the lease.

Q. What does that first sentence of Section 5 say?

A. "Tenant shall pay taxes, licenses, fees, insurance, utilities, and all other costs of ownership and possession for the lease property."

Q. Do you understand that the lease property includes your 300 feet of dock space?

A. I do.

Q. Do you understand that it includes the barge site?

A. I do.

Q. Do you understand that it includes your 50 parking spaces?

A. I do.

Q. And do you understand that it includes your office, wherever it might be located at the time?

A. I disagree with that.

Q. But here under this document, this would say -- the lease that goes back to '93, is there any kind of costs that's left out of that sentence?

A. I -- I'm not sure that I understand the question, but I guess no.

Q. When it says "all other costs of ownership and possession for the lease property," is there anything that you can think of that that doesn't include?

A. No.

MR. LESEMANN: Taylor, could you take us to Section 6.

MR. POWELL: (Complies with request.)

Q. Mr. Scurry, on that last section, you know, if the -- if there needs to be pest control done or needs to be rewiring done at the office, if all other costs of ownership and possession of the lease property is all-inclusive, aren't those costs within that term?

A. Not if they weren't there to begin with.

Q. So your obligation -- your statement, then, is that the land -- that the tenants' not obligated to pay for any improvements or changes it wants to make to the lease property? Is that your understanding?

A. It's my understanding that I should -- again, back to the office -- have been provided a

normal office with heating and air and all of that. I don't expect furniture or anything like that; but, you know, the things that a normal office would normally -- you would expect in an office is what I would expect.

Q. The settlement agreement does say "floating office"; correct?

A. Yes, it does.

Q. And you were in a houseboat. So I guess when you were in a floating office or a houseboat before, what were the level of those types of amenities that were present?

A. Well, you know, it's been so long, I don't know. But it -- it was heated, and it had air conditioning.

Q. And, again, I think it's worth emphasizing. In 1993 when this all began, you -- J&W was in a floating office; correct?

A. That is correct.

Q. And a floating office basically that the prior ownership had put on the property; is that right?

A. That is correct.

Q. And did the prior ownership seek any permission from the Town of Hilton Head or from

OCRM when it placed that floating office on the site?

A. It did not.

Q. So Section 6 is dock repair. I'll read this to you, Mr. Scurry.

"As it becomes necessary to repair or replace the dock, which is a portion of the lease property, landlord shall complete said repairs and replacement; and tenant shall pay the landlord all costs attributed to its use. Said costs to be paid as they are incurred by landlord."

Do you feel like that sentence is capable of being understood from its plain meaning?

A. I do. I do. Yes.

Q. Okay.

A. Although -- although some of the things that have been -- over the years have not been replaced that needed to be replaced.

Q. Now, and, again -- and it's your belief that the cost of those repairs is on the landlord to bear?

A. The cost of the repairs, in my understanding, was for the landlord to make and

bill me.

Q. Okay.

A. Like the electrical, for an example, on the docks. I don't think they want me bringing in an electrician to work on those kinds of things. I don't know how they -- it was put in or anything like that.

Q. So after Hurricane Matthew, was it necessary to repair or replace a portion of the dock?

A. Yes.

Q. And did the landlord pay to complete the repairs?

A. Apparently he did.

Q. Did the tenant pay to the landlord the costs that were attributed to tenant's use?

A. I did not.

MR. LESEMANN: So could we go to Section 11, Taylor?

MR. POWELL: (Complies with request.)

MR. LESEMANN: Well, let's go to seven first.

MR. POWELL: (Complies with request.)

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A. Okay.

Q. Mr. Scurry, that's the section that talks about cooperation in good faith.

Do you intend to cooperate with any further efforts on the part of the landlord to attain an amendment to the permit for the floating office so that it could be approved and constructed?

A. Yeah. But I would assume this goes both ways, does it not? Is it just for me, or is it for him too?

Q. Oh, I think you're reading it right. It says the parties will cooperate with each other --

A. Okay.

Q. -- in obtaining any licenses, permits, or other governmental or regulatory authorization.

A. Okay.

Q. All right.

A. Yeah. I would agree with that. I would also say that I have never been notified about anything whatsoever the landlord has done.

Q. And so if you believe that permits were necessary for the current building location in

order for it to be modified or altered, did you ever go to the landlord and ask for them to cooperate with you in going to the Town of Hilton Head to seek those permits?

A. No. Because I was told by the landlord that this was temporary, and he planned on putting a restaurant there.

Q. And so, again, the indication has been that, ultimately, you'd be in a floating office location?

A. Somewhere else was the indication.

Q. And then if you --

MR. LESEMANN: Now, Taylor, go to 11.

MR. POWELL: (Complies with request.)

Q. Now, did you -- were you consulted and did you approve of the reconfiguration of the marina?

A. No. I saw it in the paper. That was part of our settlement agreement.

Q. Oh, well, the reconfiguration was?

A. Yes, it was.

Q. So you agreed to it at that time?

A. That's correct.

Q. So then on Section 11, did Section 11 indicate that, subject to the provisions of Section 7 -- entitled "cooperation in good faith" -- that the tenant shall procure any and all permits required from local, state, federal governmental agencies and/or otherwise which may be required to run its business.

Did I read that correctly?

A. I believe so, yes.

Q. So do you need the office on the Broad Creek Marina site in order to be able to run your business?

A. Yes, I do.

Q. And if permits are required from local, state, federal, governmental agencies and otherwise in order to run your business, do you agree that it's the tenant that shall procure them based on the terms of paragraph 11?

A. Paragraph 11, I believe, is referring to after I have the office and building.

Q. Okay.

A. Not before.

Q. So you have the office and building. Have you ever thought it needed to have additional permitting or additional changes made

to it, would paragraph 11 point to you, that you should go procure those permits?

A. On a property that I don't own? No, it never occurred to me.

Q. Well, it basically says that anything that's required to run your business; but we'll get on to another provision in a moment. Because, again, when we look at the repair and maintenance section -- all right.

Now, we talked about this section briefly. You did with Mr. Taylor. Section 12 where it says the marina is excluded from competing with the tenant's commercial ferry and barge service; is that right?

A. That's right.

Q. And "marina" as used in this 1993 lease refers to the Broad Creek Marina; correct?

A. Yeah. And where are you, please?

Q. Sorry. You see here? (Indicating.) In the middle of that section.

A. Okay. Thank you.

Q. And so at the time of this lease, "the marina" was the Broad Creek Marina; correct?

A. That's right.

Q. That was your understanding?

A. Yeah.

MR. LESEMANN: Taylor, let's move to Section 17.

MR. POWELL: (Complies with request.)

A. Okay.

Q. So this is the section about liability insurance. What's your understanding of the tenant's obligations under that section? Well, I'll move that along. It could have been a broad question.

Do you agree that Section 17 includes a statement that tenant will agree to pay, upon demand as additional rent, any and all premiums of insurance carried by the landlord on the property resulting from tenant's use or occupancy?

A. I do agree with that.

Q. And then the next sentence, does it indicate that you shall keep in full force and effect, at your own expense, insurance for personal property, trade, fixtures, and property damage as well as environmental coverage and a public liability policy, all informed and subject to reasonable satisfaction of the landlord?

A. Yeah.

Q. And so does this provision not make clear that both the landlord's going to have insurance, and the tenant's going to have insurance? Is that fair?

A. But not on the same things.

Q. But they'll both have policies; right?

A. They would both have policies, yes.

Q. And that you're going to pay a portion of the landlord's policy that's attributable to you?

A. That would be correct.

Q. And you'll pay all of your own policies.

A. That's right.

Q. And you're obligated to name the landlord as an additional named insured?

A. Yes.

Q. And you've failed to do that since 1993; is that correct?

A. Apparently.

Q. And the minimum coverage amount should be what?

A. It says $1 million, doesn't it?

Q. And is there language indicating that it should be upwardly adjusted yearly to reflect

inflation rates?

A. It does say that, yes.

Q. Have you upwardly adjusted the amounts of your coverage to reflect inflation rates as they have accumulated from 1993 to the present?

A. I've never even thought about it.

Q. So you haven't done it from 1993 to the present; is that correct?

A. Well, I don't know.

Q. But the policies would indicate whether they are for a million dollars or some amount adjusted up from that; correct?

A. That's right.

MR. LESEMANN: Taylor, if you'd go to the next section. 18.

MR. POWELL: (Complies with request.)

Q. So, Mr. Scurry, you see the section called "maintenance and repair"?

A. I'm sorry?

Q. Section 18, maintenance and repair?

A. Okay. Got it. Thank you.

Q. Is the tenant obligated to make all repairs necessary to maintain the lease property in a good working condition and repair?

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A. Yeah.

Q. And so, again, does that section place any obligation on the landlord to make repairs?

A. Well, that's a great example of the ambiguity that I was speaking of. You've got -- basically it says that -- that I will do the repairs, yet I can't do the repairs to their docks or other things. I can't just simply go in there and bring an electrician and start putting different things out on the docks or anywhere else.

Q. This section says that, at your expense, you'll make all repairs necessary to maintain the lease property.

A. But how do I make all the repairs when the lease property, like the docks, for an example, would -- could not be done by me because they would be very upset.

Q. Well, isn't that covered in Section 20? That you'll have the right to make alterations, additions, improvements, or rewiring, in order to the lease property subject to the prior written consent of the landlord, which shall not be unreasonably withheld?

A. It's always been very clear to me,

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especially since they built the new docks down there, that we should not do that. That it was -- it would be their responsibility to do it, and they could bill us for it.

Q. But tenant has the right to do it under the lease.

A. Okay. Good.

Q. Has tenant made any alterations, additions, or improvements or rewiring to the office?

A. To the office?

Q. Yes.

A. Oh, no. I wouldn't get near that wiring.

Q. But you have the right to do so, if you believe it's necessary; correct?

A. Not if I think it's dangerous.

Q. Not if what?

A. I think it is dangerous.

Q. Oh, okay.

MR. LESEMANN: So, Taylor, if you could call out Section 19.

MR. POWELL: (Complies with request.)

Q. Mr. Scurry, I'd just like you to look at

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Section 19 and see if you can confirm who has the obligations for keeping the lease property in compliance with all laws, ordinances, regulations, and requirements of any legally-constituted public authority, including all environmental rules and regulations.

A. I'm sure this says me.

Q. And when you say "this," you mean the lease that you signed?

A. The lease I'm holding right now and that I signed, yes.

Q. Yes, sir. And so is the Town of Hilton Head, do you -- does the tenant consider that to be a legally-constituted public authority?

A. I would think so, yes.

Q. Beaufort County, for example?

A. Uh-huh.

Q. OCRM?

A. Right.

Q. Coast Guard?

A. Yeah.

Q. So all those are examples of legally-constituted public authorities that -- and it's the tenant that has the obligation to keep the property in compliance with all of their laws,

ordinances, and regulations; correct?

A. That's what it says.

Q. And what it says is what you and the landlord agreed to; correct?

A. Well, I'll say it one more time.

It seems that different areas of this document contradict each other; but for the short term, I'm -- I'll be led to say, yes, you're correct.

Q. With regard to dock repair, do you feel confused about who's responsible for the dock repair that arose from Hurricane Matthew?

A. Yes.

MR. LESEMANN: Could you call up 16. Exhibit No. 16.

MR. POWELL: (Complies with request.)

Q. Mr. Scurry, could you turn to Defendant's Exhibit No. 16 in your book?

A. 16 in what?

Q. Defendant's Exhibit No. 16 that's in the book in front of you.

A. Exhibit 34?

Q. I'm sorry. Defendant's Exhibit No. 16, sir. The big -- I'm sorry. The big notebook.

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