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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough

Case No. 2017-CP-10-03099
Appellate Case No. 2022-001479

Elizabeth Heatley, Neil B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariner's Cay Marina Council of Co-Owners, Inc.,……Respondents,

v.

Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, George A. Farmer., Jr., and South Atlantic Bank, Defendants,

Of which Mariner's Cay Marina Condo, LLC, Mariner's Cay Fuel Dock, LLC, and George A. Farmer., Jr. are the……...Appellants.

RECORD ON APPEAL
VOLUME III of XV

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case Number: 2017-CP-10-3099 **THE DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

The Defendants Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A Farmer, Jr., and South Atlantic Bank, (hereinafter the "Defendants") respectfully submit this Memorandum in Support of their Motion for Summary Judgment. For the reasons stated herein, the Defendants' motion should be granted.

STANDARD OF REVIEW

Summary judgment is proper when it is clear that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. SCRCivP 56 (c); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp*., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Moore v. Weinberg*, 733 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007), *aff'd by* 383 S.C. 583, 681 S.E.2d 875 (2009).

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Summary judgment should be granted when plain, palpable, and undisputed facts exist upon which reasonable minds cannot differ. *Trico Surveying, Inc. v. Godley Auction Co., Inc.,* 314 S.C. 542, 544, 431 S.E.2d 565, 555 (1993). Where there is no dispute over the operative facts, summary judgment is proper as a matter of law. *Citizens & Southern Nat'l Bank of S.C. v. Langford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994).

BACKGROUND

Mariner's Cay Marina consists of ninety (90) boat slips located on the Folly River as well as a two-story building containing storage space and a Ship Store (the "Ship Store") as well as a Fuel Dock (the "Fuel Dock")(*Amended Complaint*, July 12, 2017). All parties admit that there are only ninety boat slips at the Mariner's Cay Marina. *Id.*

The Defendant Mariners Cay Marina Condo, LLC, owns the area called the "Ship Store" and the Defendant Mariners Cay Fuel Dock, LLC, owns the Fuel Dock as described herein. The Defendant George A. Farmer, Jr., is the member and manager of both of those limited liability companies. The Defendant South Atlantic Back is the lender for those entities.

The Defendants Mariners Cay Marina Condo, LLC and the Defendant Mariners Cay Fuel Dock, LLC, obtained title to their respective properties as a result of a foreclosure action in which one of the named Plaintiffs in this case appeared. *See First South Bank v. Tiger River Capital, LLC, et. al.,* C/A No. 2013-CP-10-0850. The Honorable Mikell R. Scarborough, Master in Equity for Charleston County, issued his Master's Deed pursuant to that foreclosure. That deed transferred the Ship Store and the Fuel Docks to Emerald Portfolio on October 14, 2015, with the recording of that deed in Book 0510 at Page 674 in the Office of the Register of Deeds for Charleston County. (Deed)

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The Board a Mariner's Cay even had discussions about purchasing these Units, too, as part of the foreclosure. (Jeff Heatley Depo, p. 39)

In that case, the Mariner's Cay Council of Co-Owners, Inc., filed an Answer and did not object to any sale of the property at issue in this case. *See* Answer filed April 3, 2013; Master's Order of Judgment and Foreclosure, March 16, 2015; Master's Report on Sale & Disbursements, July 23, 2015. There was no appeal by any party to that case.

The Defendants Mariners Cay Marina Condo, LLC and the Defendant Mariners Cay Fuel Dock, LLC received title to both units at Mariner's Cay in May, 2016. The Ship Store and the Fuel Dock are owned by the Defendants (the "Property") since that time.

This matter began as a suit to determine ownership of the Ship Store and the Fuel Dock within Mariner's Cay Marina by Alben D. Neighbors, Dan G Nekola, and the Mariner's Cay Marina Council of Co-Owners, Inc (the Plaintiffs). The Plaintiffs allege that the Amended and Restated Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended Master Deed") is invalid and that the Defendants' Property is a common element of the Mariner's Cay Marina Horizontal Property Regime (the "HPR") and should be forfeited to the Plaintiffs. The Defendants counterclaimed alleging that they rightfully and legally purchased the disputed Property, that the Amended Master Deed is valid and enforceable.

The Plaintiffs filed a motion to certify as a class action and to approve Plaintiffs Neighbors and Nekola as the class representatives under Rule 23, SCRCP. That motion was denied by Order of the Honorable D. Craig Brown filed June 19, 2019. (Order, 6/19/2019).

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This dispute centers on the fact that the Defendants purchased units at the Marina that the Plaintiffs wish to own but are unwilling to pay fair market value to obtain, and, instead, are attempting to claim the property as a common area belonging to the HPR.

The Defendants contend that the Mariners Cay Marian Condo, LLC, and Mariners Cay Fuel Dock, LLC, have good title to these Units as the Plaintiffs acquiesced in the changes to the Master Deed that made these Units no longer common elements under the revised and amended Master Deed. The Horizontal Property Act states that for common elements

> [t]he percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the **acquiescence of the co-owners representing all apartments of the property**.

S.C. Code Ann. §27-31-60 (emphasis added).

The General Assembly has not defined "acquiescence" and there is no case interpreting this Code section. The only mention of this Code section is in an unpublished opinion from the Court of Appeals affirming a ruling by this Court in an earlier case. *See Rivers Point Row Horizontal Property Regime v. Palms Properties, LLC.,* Up. Op. No. 2013-UP-458 (Ct. App. 2013). "Acquiescence" has been defined as follows:

> Conduct recognizing the existence of a transaction, and intended, in some extent at least, to carry the transaction, or permit it to be carried into effect.

Black's Law Dictionary (6th ed.)(1990)

The Plaintiffs have acquiesced by not objecting to the sale of the Units by this Court, by accepting dues and payments from the owners, by offering to purchase the Units, by not blocking the Farmers from moving into the Units, and by their course of conduct.

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ARGUMENT

The Plaintiffs have clearly acquiescence to the changes to the Master Deed for Mariner's Cay Marina Horizontal Property Regime, recorded March 19, 2007, in Book X618 at Page 603, in the Office of the Register of Deed for Charleston County. *See* S.C. Code Ann. §§27-31-60, 27-31-70. Those changes were put into effect in 2007, some ten years prior to this lawsuit being filed. No one objected in those ten years. The Plaintiffs recognized the existence of the transaction. Interestingly, the Plaintiffs failed to cite the acquiescence portion of the Horizontal Property Act in their motion and brief. Motion and Memorandum, March 12, 2021. They do not cite that portion of the statute as they know they have acquiesced. The testimony as to acquiescence is clear.

In fact, the Units which are the subject of this action have been assessed dues as separate Units and not as Common elements from 2007 onward. As testified to by Ronald McGuire, a former Board member, they charged these Units monthly assessments.

Q. From 2007 forward, the ship store and dock units were regularly assessed general association dues; is that correct?
A. Yes.

(Ronald McGuire Depo., p. 240)

Tom Bessent, the President of the Board, and the Rule 30(b)(6) representative of the Mariners Cay Marina Council of Co-Owners, testified similarly:

Q. Mr. Bessent, we're back on the record after a break. Do you know if the Mariner's Cay Council of Co-Owners, the marina, has accepted payments from Mr. Farmer's entity for their pro rata share of maintenance? In other words, quarterly dues.

A. Yes.

Q. And do you know if the Mariner's Cay Marina Council of Co-Owners has ever filed a lien against Mr. Farmer's entities for nonpayment?

A. We've either filed a lien or we've sent a notice that a lien is forthcoming. I'm not really sure how far that went.

(30(b)(6) Deposition by Tom Bessent, p. 61)

Even while claiming that the Units are common elements, the Board has no plans to refund the assessments paid by Mr. Farmer on behalf of his entities. Mr. Bessent stated that these funds were not returned and there are not necessarily plans to refund them. (30(b)(6) Depo, p. 41) Again, this is further evidence of acquiescence and acknowledgment of ownership.

At one point, the Board even discussed purchasing the Units, as confirmed in deposition testimony:

Q. And are you aware there were offers made to purchase; correct?

A. Yes.

….

Q. That's Exhibit 21 asking about revising the joint offer, and again, I think your testimony as earlier that the offer was not made because y'all just didn't have the money; correct?

A. The best I can remember, but, yeah, I hope I'm remembering accurately.

(Ronald McGuire Depo, p. 42, p. 97)

One of the former owners and a former named Plaintiff, Danny G. Nekola, even testified that Mr. Farmer was an actual owner of the Units.

Q. Well, it's a yes-or-no question. Is he an owner or is he not?

A. I guess the deed says that he is, yes.

(Nekola Depo, p. 32)

The Board even filed liens against the Units for non-payment of dues, which is further evidence of acquiescence and acknowledgment of ownership by the Defendants Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC. The testimony is as follows:

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Q. You are aware, I'm sure -- maybe you are not aware. You are aware the board did file a lien against these entities at one point for nonpayment?

A. Yes.

Q. And then Mr. Farmer's entities caught those payments up and was the lien released?

A. Yes.

(McGuire Depo., pp.41)

Amanda Barnes is the property manager for the Marina who confirmed that liens were placed on the Unit. (Barnes Depo. P. 59) The Board also authorized the liens to be satisfied as well. *Id*. at 60. She, too, was aware that there were discussions by the Board about a potential sale by Mr. Farmer's entities of the Unit and dock slips. *Id*. at 40.

The Co-owners even had appraisals completed to determine the value of the property in an attempt to purchase the Units. (30(b)(6) Depo., p. 144). The Board had a directive from the membership to pursue purchase of the Units. (30(b)(6) Depo., p. 216) There were discussions with Mr. Farmer about such a purchase. (Heatley Depo, p. 39) They made him an offer of $100,000.00 which was not accepted . (*Id*. at 85-86)

Laurie Hull, a former Board member, remembered being the person who made the offer to purchases to Mr. Farmer. (Laurie Hull Depo., p. 44). She also remembered a counteroffer from Mr. Farmer for $500,000.00 which was not accepted. *Id*. It was she who ordered an appraisal of the Unit in July of 2016. (*Id*. at 82)

Why would they offer to purchase something they already own? Again, this more evidence of their understanding that Mr. Farmer and his entities owned what they indeed own to this day.

According to Ed Geiger, the dockmaster at Mariner's Cay, and contrary to the Plaintiffs' assertions, the Unit on high ground has not been in continuous operation as ship store. (Geiger Deposition, p. 28) It closed in 2011. *Id.* It has not been operational since that time. *Id.* at 29.

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Nobody has operated the ship store from 2011. *Id*. He, too, was aware the Unit and the fuel docks were sold at foreclosure. *Id*. at 59-60. Mr. Geiger even showed Mr. Farmer the Unit and the fuel docks prior to purchase. *Id.* at 60.

This motion is further based upon judicial estoppel arising out of those matters heard by this Court in the case of *Emerald Road Portfolio, LLC v. Tiger River Capital, LLC*, Case No. 2013-CP-10-0850 (the "Foreclosure Case"), in which the Mariner's Cay Marina Council of Co-Owners, Inc., filed an answer and did not object to any sale of the Units subject to this lawsuit and which resulted in a Master's Deed recorded in Book 0510 at Page 674 on October 14, 2015. By bringing this very case, the Mariner's Cay Marina Council of Co-Owners, Inc., is asserting a position inconsistent or in direct conflict with that position it took in the Foreclosure Case and should be judicially estopped form doing so. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004); *Federal Credit Unition v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The purpose of the doctrine of judicial estoppel is to ensure the integrity of the legal system. *Id*. To apply, there must be 1) two inconsistent position taken by the same party or parties in privity with one other 2) the positions must be take in the same or related proceedings involving the same party or parties in privity with each other, 3) the party taking the position must have been successful in maintaining that position and have received some benefit; 4) the inconsistency must be part of an intentional effort to mislead the court and 5) the two positions must be totally inconsistent. *Id*. Here, all the elements are met. By appearing in the Foreclosure Case and allowing the Units to be sold, by being in two matters with parties who are in privity by virtue of actions of this Court, by appearing and saying that it had an interest and now saying it owns the Units, by allowing the sale to go through, by accepting dues, by allowing the Defendants to improve the properties, by placing liens on the property, by not refunding dues, and by now claiming it owns the Units as common

elements, all five elements are met. This is an equitable doctrine best applied by this court sitting in equity. *Id*. Judicial estoppel generally applies to inconsistent statements of fact, such as those before this Court by the Mariners Cay Marina Council of Co-Owners, Inc., *Hayne Federal Credit Unition v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The inconsistency by the Plaintiffs should estop them from proceeding further in this case.

CONCLUSION

For the reasons set forth herein, the Defendants would request that this Court grant their Motion for Summary Judgment.

Respectfully submitted,

Buist, Byars & Taylor, LLC

Mount Pleasant, South Carolina
April 2, 2021

/s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH ATLANTIC BANK,

Defendants.

(Full Caption on Page 2)

DEPOSITION OF: JEFFREY E. HEATLEY

DATE: August 10, 2018

TIME: 10:13 AM

LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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AWR A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
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spring, sometime in the fall of that year the dockmaster was asked to leave? Does that sound about right?

A. As near as I recall. I don't have that date locked in my memory.

Q. You're just basing this on what Mr. Geiger would have told you; correct? Or did you have to help him move out?

A. I guess it was just based on discussions with him.

Q. Okay.

A. I did not help move out.

Q. When you were on the board in 2016, prior -- well, let me ask it this way: Were you -- you were involved as a board member with discussions about potential purchase by the board while the foreclosure was going on; correct?

A. Yes.

Q. Okay. And you were also -- were you also involved with discussions about purchasing from Mr. Farmer?

A. Yes.

Q. Okay. And the foreclosure was filed in 2013. So from 2013 until this lawsuit was filed you were involved with negotiations about the board

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALBEN D. NEIGHBORS AND DAN G. NEKOLA, on behalf of themselves and others similarly situated, and MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. CASE NO. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, AND SOUTH ATLANTIC BANK,

Defendants.

(Caption Continues on Page 2)

DEPOSITION OF: RONALD MCGUIRE

DATE: June 14, 2018

TIME: 10:20 AM

LOCATION: Law Offices of Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Defendant

REPORTED BY: JANE MESSINEO, Registered Professional Reporter, CSR-NJ

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Q. Yes.

A. Yeah, you have to let them know.

Q. From 2007 forward, the ship store and dock units were regularly assessed general association dues; is that correct?

A. Yes.

Q. And that would include -- I think the bank has collectively been referred to in a few different forms, but Sabal Financial, Emerald McDonough, Emerald Portfolio, they would have been assessed association fees during any time that they were involved with the property?

A. I don't know that. I don't know the answer to that. That was before I was on the board.

Q. In the event -- it was mentioned that the council -- there just wasn't enough money to, you know, pursue a legitimate offer to purchase the ship store and the dock units. In the event that the council needs money for something, is there -- is there a general request to the members, to the individual dock owners for perhaps a meeting to vote on a special assessment?

A. Yes. Well, actually, no. We -- we just had an assessment. That was the

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Q. Mr. McGuire, how involved were you in prior negotiations in 2016 and 2017 regarding the attempted purchase of the units that y'all claim Mr. Farmer doesn't own?

A. I wasn't. I mean other than talking about it on the board. I mean --

Q. That's what I'm talking about, those are my questions.

A. Yeah.

Q. As a board member, were you one of the main people spearheading it or were other board members in charge of those?

A. The others.

Q. Who are the others who were more in charge?

A. Tom Bessent and Jeff Heatley.

Q. What about a lady named Laurie Hull?

A. She was present in the association for a while. Yeah, she would have been involved.

Q. And are you aware there were offers made to purchase; correct?

A. Yes.

Q. And do you remember what the amount was?

A. No. You are saying the board made an

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a headache.

(A luncheon recess transpired.)

BY MR. O'KELLEY:

Q. Mr. McGuire, we are back after our lunch break.

My next exhibit, madam reporter, is 21; correct?

THE REPORTER: Yes.

BY MR. O'KELLEY:

Q. That's MC-93 through 95. Well, excuse me, 96.

(McGUIRE EXH. 21, Copy of e-mail Bates stamped MC-93 through 96, was marked for identification.)

BY MR. O'KELLEY:

Q. That's Exhibit 21 asking about revising the joint offer, and again, I think your testimony was earlier that the offer was not made because y'all just didn't have the money; correct?

A. The best I can remember, but, yeah, I hope I'm remembering accurately.

Q. Correct. And did you have any input in revising this joint offer or you were just copied on the e-mail because you are on the board?

A. Yes, because I am on the board.

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A. Yes.

Q. And then Mr. Farmer's entities caught those payments up and was the lien released?

A. Yes.

Q. And your testimony is that all those funds have been refunded to Mr. Farmer.

A. I believe so. I am not a hundred percent sure of that, but I believe they were.

Q. Did the board authorize a refund --

A. Yes.

Q. And was that by board vote or by e-mail --

A. Yes, board vote.

Q. At a regular meeting?

A. Yes.

Q. Okay. And you said in the last year so sometime between --

A. Yes.

Q. -- June of '17 and June of '18?

A. Yes.

Q. Have you seen copies of any checks or payments --

A. No.

Q. Who is the treasurer of the board?

A. Jeff Heatley.

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH ATLANTIC BANK,

Defendants.

(Full Caption on Page 2)

RULE 30(b)(6) DEPOSITION OF:	MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC. BY: THOMAS V. BESSENT
DATE:	June 15, 2018
TIME:	10:04 AM
LOCATION:	Clawson & Staubes, LLC 126 Seven Farms Drive, Suite 200 Charleston, SC
TAKEN BY:	Counsel for the Defendants
REPORTED BY:	SANDRA K. BJERKE, RDR, CRR, CBC

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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A. I don't remember.

MR. O'KELLEY: We've been going an hour. Can we take a five-minute break?

(A recess transpired from 10:57 until 11:06.)

BY MR. O'KELLEY:

Q. Mr. Bessent, we're back on the record after a break.

Do you know if the Mariner's Cay Council of Co-Owners, the marina, has accepted payments from Mr. Farmer's entity for their pro rata share of maintenance? In other words, quarterly dues.

A. Yes.

Q. And do you know if the Mariner's Cay Marina Council of Co-Owners has ever filed a lien against Mr. Farmer's entities for nonpayment?

A. We've either filed a lien or we've sent a notice that a lien is forthcoming. I'm not really sure how far that went.

Q. Okay. How can the council of co-owners do that if he doesn't own the properties?

A. Well, again, that was before -- that was before this lawsuit. We have now discontinued billing him for those assessments.

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Mr. McGuire told us yesterday that there's been no survey taken of the owners at Mariners Cay Marina about this litigation, about whether or not it should have started, whether or not it should proceed or how it should proceed. Is that your understanding as well?

A. There has been no formal survey that I know of, but we were directed to, you know, try to work out the problems after we got evicted from our ship store.

Q. All right. Did you all have a vote of the membership? And I think the answer is no, but I didn't ask Mr. McGuire. Was there ever a formal vote of the members about whether or not to proceed with this litigation?

A. No.

Q. Why not?

A. We felt it was something that we had to do. We didn't notify all the members. We asked for questions, comments, input by form of letters mailed out to the owners. At least two, maybe three letters. We've tried to keep everybody up to date on what was going on.

Q. You sent letters out after the litigation was filed; correct?

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Q. And at the time --
A. -- we owe him money back.
Q. At the time he closed on it, you all were trying to purchase it too; correct?
A. They were discussing it, yes.
Q. You had appraisals done?
A. Well, this is before I got on the board, but there -- the co-owners were looking into buying it and so was the condo --
Q. The co-owners had appraisals done, and I'll show you that.
A. Right.
Q. If you want we can go to that in a minute.
A. Right.
Q. And we will. But you had appraisals done, there were offers being made, you were talking to Mr. Camp. And when I say you I'm talking about the council, not you individually.
A. Correct.
Q. All that was going on about the same time that Mr. Farmer was about to close on the property; correct?
A. Right.
Q. This is Exhibit 88 which is MC-656. It

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opposed to purchasing the ship store, according to his testimony.

A. People have been back and forth. There are lots of opinions out there.

Q. All right. And you don't have any estimate as far as -- there's been no survey done. We don't know how many people are for or against this acquisition; right?

A. You mean if we were to purchase it?

Q. Yes.

A. Again, we had a directive from the membership to go out and pursue this. So our first step was to try to get a -- get a contract and then present that back to the co-owners and say, okay. Vote yes or no. This is what we have on the table.

Q. And you've referred to that directive now a couple times. What was that? Was that a show of hands?

A. It's in the minutes of -- I forgot which meeting it is. It said the membership has asked the board to -- I don't know the exact quote, but it's look into the possibility or to investigate the possibility of acquiring the ship store.

Q. Right. And you don't know if that was

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT Case Number: 2017-CP-10-3099 **THE DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT**

The Defendants Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A Farmer, Jr., and South Atlantic Bank, (hereinafter the "Defendants") respectfully submit this Memorandum in Support of their Motion for Summary Judgment. For the reasons stated herein, the Defendants' motion should be granted.

STANDARD OF REVIEW

Summary judgment is proper when it is clear that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. SCRCivP 56 (c); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp*., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Moore v. Weinberg*, 733 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007), *aff'd by* 383 S.C. 583, 681 S.E.2d 875 (2009).

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Summary judgment should be granted when plain, palpable, and undisputed facts exist upon which reasonable minds cannot differ. *Trico Surveying, Inc. v. Godley Auction Co., Inc.,* 314 S.C. 542, 544, 431 S.E.2d 565, 555 (1993). Where there is no dispute over the operative facts, summary judgment is proper as a matter of law. *Citizens & Southern Nat'l Bank of S.C. v. Langford*, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994).

BACKGROUND

Mariner's Cay Marina consists of ninety (90) boat slips located on the Folly River as well as a two-story building containing storage space and a Ship Store (the "Ship Store") as well as a Fuel Dock (the "Fuel Dock")(*Amended Complaint*, July 12, 2017). All parties admit that there are only ninety boat slips at the Mariner's Cay Marina. *Id.*

The Defendant Mariners Cay Marina Condo, LLC, owns the area called the "Ship Store" and the Defendant Mariners Cay Fuel Dock, LLC, owns the Fuel Dock as described herein. The Defendant George A. Farmer, Jr., is the member and manager of both of those limited liability companies. The Defendant South Atlantic Back is the lender for those entities.

The Defendants Mariners Cay Marina Condo, LLC and the Defendant Mariners Cay Fuel Dock, LLC, obtained title to their respective properties as a result of a foreclosure action in which one of the named Plaintiffs in this case appeared. *See First South Bank v. Tiger River Capital, LLC, et. al.,* C/A No. 2013-CP-10-0850. The Honorable Mikell R. Scarborough, Master in Equity for Charleston County, issued his Master's Deed pursuant to that foreclosure. That deed transferred the Ship Store and the Fuel Docks to Emerald Portfolio on October 14, 2015, with the recording of that deed in Book 0510 at Page 674 in the Office of the Register of Deeds for Charleston County. (Deed)

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The Board a Mariner's Cay even had discussions about purchasing these Units, too, as part of the foreclosure. (Jeff Heatley Depo, p. 39)

In that case, the Mariner's Cay Council of Co-Owners, Inc., filed an Answer and did not object to any sale of the property at issue in this case. *See* Answer filed April 3, 2013; Master's Order of Judgment and Foreclosure, March 16, 2015; Master's Report on Sale & Disbursements, July 23, 2015. There was no appeal by any party to that case.

The Defendants Mariners Cay Marina Condo, LLC and the Defendant Mariners Cay Fuel Dock, LLC received title to both units at Mariner's Cay in May, 2016. The Ship Store and the Fuel Dock are owned by the Defendants (the "Property") since that time.

This matter began as a suit to determine ownership of the Ship Store and the Fuel Dock within Mariner's Cay Marina by Alben D. Neighbors, Dan G Nekola, and the Mariner's Cay Marina Council of Co-Owners, Inc (the Plaintiffs). The Plaintiffs allege that the Amended and Restated Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended Master Deed") is invalid and that the Defendants' Property is a common element of the Mariner's Cay Marina Horizontal Property Regime (the "HPR") and should be forfeited to the Plaintiffs. The Defendants counterclaimed alleging that they rightfully and legally purchased the disputed Property, that the Amended Master Deed is valid and enforceable.

The Plaintiffs filed a motion to certify as a class action and to approve Plaintiffs Neighbors and Nekola as the class representatives under Rule 23, SCRCP. That motion was denied by Order of the Honorable D. Craig Brown filed June 19, 2019. (Order, 6/19/2019).

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This dispute centers on the fact that the Defendants purchased units at the Marina that the Plaintiffs wish to own but are unwilling to pay fair market value to obtain, and, instead, are attempting to claim the property as a common area belonging to the HPR.

The Defendants contend that the Mariners Cay Marian Condo, LLC, and Mariners Cay Fuel Dock, LLC, have good title to these Units as the Plaintiffs acquiesced in the changes to the Master Deed that made these Units no longer common elements under the revised and amended Master Deed. The Horizontal Property Act states that for common elements

> [t]he percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the **acquiescence of the co-owners representing all apartments of the property**.

S.C. Code Ann. §27-31-60 (emphasis added).

The General Assembly has not defined "acquiescence" and there is no case interpreting this Code section. The only mention of this Code section is in an unpublished opinion from the Court of Appeals affirming a ruling by this Court in an earlier case. *See Rivers Point Row Horizontal Property Regime v. Palms Properties, LLC.,* Up. Op. No. 2013-UP-458 (Ct. App. 2013). "Acquiescence" has been defined as follows:

> Conduct recognizing the existence of a transaction, and intended, in some extent at least, to carry the transaction, or permit it to be carried into effect.

Black's Law Dictionary (6th ed.)(1990)

The Plaintiffs have acquiesced by not objecting to the sale of the Units by this Court, by accepting dues and payments from the owners, by offering to purchase the Units, by not blocking the Farmers from moving into the Units, and by their course of conduct.

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ARGUMENT

The Plaintiffs have clearly acquiescence to the changes to the Master Deed for Mariner's Cay Marina Horizontal Property Regime, recorded March 19, 2007, in Book X618 at Page 603, in the Office of the Register of Deed for Charleston County. *See* S.C. Code Ann. §§27-31-60, 27-31-70. Those changes were put into effect in 2007, some ten years prior to this lawsuit being filed. No one objected in those ten years. The Plaintiffs recognized the existence of the transaction. Interestingly, the Plaintiffs failed to cite the acquiescence portion of the Horizontal Property Act in their motion and brief. Motion and Memorandum, March 12, 2021. They do not cite that portion of the statute as they know they have acquiesced. The testimony as to acquiescence is clear.

In fact, the Units which are the subject of this action have been assessed dues as separate Units and not as Common elements from 2007 onward. As testified to by Ronald McGuire, a former Board member, they charged these Units monthly assessments.

Q. From 2007 forward, the ship store and dock units were regularly assessed general association dues; is that correct?
A. Yes.

(Ronald McGuire Depo., p. 240)

Tom Bessent, the President of the Board, and the Rule 30(b)(6) representative of the Mariners Cay Marina Council of Co-Owners, testified similarly:

Q. Mr. Bessent, we're back on the record after a break. Do you know if the Mariner's Cay Council of Co-Owners, the marina, has accepted payments from Mr. Farmer's entity for their pro rata share of maintenance? In other words, quarterly dues.

A. Yes.

Q. And do you know if the Mariner's Cay Marina Council of Co-Owners has ever filed a lien against Mr. Farmer's entities for nonpayment?

A. We've either filed a lien or we've sent a notice that a lien is forthcoming. I'm not really sure how far that went.

(30(b)(6) Deposition by Tom Bessent, p. 61)

Even while claiming that the Units are common elements, the Board has no plans to refund the assessments paid by Mr. Farmer on behalf of his entities. Mr. Bessent stated that these funds were not returned and there are not necessarily plans to refund them. (30(b)(6) Depo, p. 41) Again, this is further evidence of acquiescence and acknowledgment of ownership.

At one point, the Board even discussed purchasing the Units, as confirmed in deposition testimony:

Q. And are you aware there were offers made to purchase; correct?

A. Yes.

….

Q. That's Exhibit 21 asking about revising the joint offer, and again, I think your testimony as earlier that the offer was not made because y'all just didn't have the money; correct?

A. The best I can remember, but, yeah, I hope I'm remembering accurately.

(Ronald McGuire Depo, p. 42, p. 97)

One of the former owners and a former named Plaintiff, Danny G. Nekola, even testified that Mr. Farmer was an actual owner of the Units.

Q. Well, it's a yes-or-no question. Is he an owner or is he not?

A. I guess the deed says that he is, yes.

(Nekola Depo, p. 32)

The Board even filed liens against the Units for non-payment of dues, which is further evidence of acquiescence and acknowledgment of ownership by the Defendants Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC. The testimony is as follows:

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Q. You are aware, I'm sure -- maybe you are not aware. You are aware the board did file a lien against these entities at one point for nonpayment?

A. Yes.

Q. And then Mr. Farmer's entities caught those payments up and was the lien released?

A. Yes.

(McGuire Depo., pp.41)

Amanda Barnes is the property manager for the Marina who confirmed that liens were placed on the Unit. (Barnes Depo. P. 59) The Board also authorized the liens to be satisfied as well. *Id*. at 60. She, too, was aware that there were discussions by the Board about a potential sale by Mr. Farmer's entities of the Unit and dock slips. *Id*. at 40.

The Co-owners even had appraisals completed to determine the value of the property in an attempt to purchase the Units. (30(b)(6) Depo., p. 144). The Board had a directive from the membership to pursue purchase of the Units. (30(b)(6) Depo., p. 216) There were discussions with Mr. Farmer about such a purchase. (Heatley Depo, p. 39) They made him an offer of $100,000.00 which was not accepted . (*Id*. at 85-86)

Laurie Hull, a former Board member, remembered being the person who made the offer to purchases to Mr. Farmer. (Laurie Hull Depo., p. 44). She also remembered a counteroffer from Mr. Farmer for $500,000.00 which was not accepted. *Id*. It was she who ordered an appraisal of the Unit in July of 2016. (*Id*. at 82)

Why would they offer to purchase something they already own? Again, this more evidence of their understanding that Mr. Farmer and his entities owned what they indeed own to this day.

According to Ed Geiger, the dockmaster at Mariner's Cay, and contrary to the Plaintiffs' assertions, the Unit on high ground has not been in continuous operation as ship store. (Geiger Deposition, p. 28) It closed in 2011. *Id.* It has not been operational since that time. *Id.* at 29.

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Nobody has operated the ship store from 2011. *Id*. He, too, was aware the Unit and the fuel docks were sold at foreclosure. *Id*. at 59-60. Mr. Geiger even showed Mr. Farmer the Unit and the fuel docks prior to purchase. *Id.* at 60.

This motion is further based upon judicial estoppel arising out of those matters heard by this Court in the case of *Emerald Road Portfolio, LLC v. Tiger River Capital, LLC*, Case No. 2013-CP-10-0850 (the "Foreclosure Case"), in which the Mariner's Cay Marina Council of Co-Owners, Inc., filed an answer and did not object to any sale of the Units subject to this lawsuit and which resulted in a Master's Deed recorded in Book 0510 at Page 674 on October 14, 2015. By bringing this very case, the Mariner's Cay Marina Council of Co-Owners, Inc., is asserting a position inconsistent or in direct conflict with that position it took in the Foreclosure Case and should be judicially estopped form doing so. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (2004); *Federal Credit Unition v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The purpose of the doctrine of judicial estoppel is to ensure the integrity of the legal system. *Id*. To apply, there must be 1) two inconsistent position taken by the same party or parties in privity with one other 2) the positions must be take in the same or related proceedings involving the same party or parties in privity with each other, 3) the party taking the position must have been successful in maintaining that position and have received some benefit; 4) the inconsistency must be part of an intentional effort to mislead the court and 5) the two positions must be totally inconsistent. *Id*. Here, all the elements are met. By appearing in the Foreclosure Case and allowing the Units to be sold, by being in two matters with parties who are in privity by virtue of actions of this Court, by appearing and saying that it had an interest and now saying it owns the Units, by allowing the sale to go through, by accepting dues, by allowing the Defendants to improve the properties, by placing liens on the property, by not refunding dues, and by now claiming it owns the Units as common

elements, all five elements are met. This is an equitable doctrine best applied by this court sitting in equity. *Id*. Judicial estoppel generally applies to inconsistent statements of fact, such as those before this Court by the Mariners Cay Marina Council of Co-Owners, Inc., *Hayne Federal Credit Unition v. Bailey*, 327 S.C. 242, 489 S.E.2d 472 (1997). The inconsistency by the Plaintiffs should estop them from proceeding further in this case.

CONCLUSION

For the reasons set forth herein, the Defendants would request that this Court grant their Motion for Summary Judgment.

Respectfully submitted,

Buist, Byars & Taylor, LLC

Mount Pleasant, South Carolina
April 2, 2021

/s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III
S.C. Bar No. 15491
652 Coleman Blvd., Suite 200
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH ATLANTIC BANK,

Defendants.

(Full Caption on Page 2)

DEPOSITION OF: DANNY G. NEKOLA

DATE: August 2, 2018

TIME: 10:12 AM

LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

A. WILLIAM ROBERTS, JR. & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC (843) 722-8414
Hilton Head, SC (843) 785-3263
Myrtle Beach, SC (843) 839-3376
Columbia, SC (803) 731-5224
Greenville, SC (864) 234-7030
Charlotte, NC (704) 573-3919

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Q. So do you think that would be an antagonistic position to my client as an owner at Mariners Cay?

A. Yes.

Q. So the statement that you are not antagonistic to other owners is incorrect, is it not?

MR. BARR: Objection.

BY MR. O'KELLEY:

Q. And your lawyer can object, but until he tells you not to answer the question, you have to answer it.

A. Well, I'm not saying he's an owner. I feel he's not an owner.

Q. Well, he's an owner until the court tells us he's not, is he not?

MR. BARR: Objection.

MR. SESSOMS: Join in the objection.

THE WITNESS: I'm not sure how to answer that.

BY MR. O'KELLEY:

Q. Well, it's a yes-or-no question. Is he an owner or is he not?

A. I guess the deed says that he is, yes.

Q. Okay. And again, you have no

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH ATLANTIC BANK,

Defendants.

(Full Caption on Page 2)

DEPOSITION OF: LAURENE A. HULL

DATE: January 30, 2019

TIME: 10:12 AM

LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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	Asheville, NC	
	(828) 785-5699	

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drafted it.

Q. Okay. And without looking at the documents in this notebook that's in front of you, do you know what the amount of that offer was?

A. I think $80,000.

Q. And was that 80,000 for the ship store or 80,000 for the fuel docks; do you recall?

A. I think it was for all of it.

Q. Okay. And that offer was not accepted, was it?

A. No.

Q. And as we sit here today, can you tell me anything you remember specifically about those negotiations with Mr. Farmer?

A. I remember giving him the offer, and he counteroffered in an email, I do believe. It was in the 500 range. 500,000 range. And the board essentially decided not to, you know, try and deal with it or, you know, move forward on it.

Q. So no further response to his counter of 500,000; correct? The board just said that's enough, something of that nature?

A. Yeah.

Q. And I'll represent to you in this document there's an appraisal in here. Do you

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

ALBEN D. NEIGHBORS and DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,

Plaintiffs,

vs. Case No. 2017-CP-10-03099

MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, and SOUTH ATLANTIC BANK,

Defendants.

(Full Caption on Page 2)

DEPOSITION OF: EDWARD M. GEIGER, JR.

DATE: August 6, 2018

TIME: 10:03 AM

LOCATION: Clawson & Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: SANDRA K. BJERKE, RDR, CRR, CBC

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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Charlotte, NC (704) 573-3919

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do it.

Q. Okay. And when you say they came to you --

A. Yes.

Q. -- you're talking about the board --

A. Yes.

Q. -- of the Mariners Cay Marina?

A. Yes.

Q. And how long -- who -- let's do it this way: You ran the ship store 2007 to 2010. Do you know who ran it after that?

A. Well, there was a period from, let's say, early 2010 for about a year when it was run by -- I don't know. It was called Tuna Grill.

Q. They tried to make it a restaurant?

A. They tried to make it a restaurant/store, sell fuel, but the dockmaster function belonged to the dockmaster which was employed by Sentry Management who was the manager for the regime.

Q. And do you know how long the Tuna Grill was in operation?

A. About a year. Didn't last. Then it went --

Q. Did it not last because of its

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)))	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants.	)	**RETURN OF PLAINTIFFS TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

TO: THE DEFENDANTS ABOVE-NAMED, Plaintiffs herewith make their return and reply to Defendants' Memorandum in Support of Their Motion for Summary Judgment, and supporting documentation, as follows:

Defendants' filed their Motion for Summary Judgment in this case on March 9, 2021. The Motion seeks summary judgment in favor of Defendants in this case on the following basis:

1. "Plaintiffs' acquiescence to the changes to the Master Deed".

2. "Further based upon Judicial estoppel arising out of those matters heard by this Court in the case of *Emerald Road Portfolio, LLC v. Tyger River Capital, LLC*, Case No. 2013-CP-10-0850, etc.

3. "Further based upon the acceptance of dues owed on the units from Mariners Cay Condo, LLC and Mariners Cay Fuel Dock, LLC."

4. "Based on the testimony of Board Members and Owners who acquiesced to the changes."

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The initially filed Motion of Defendants for Summary Judgment was unsupported by citations of law, memorandum, or by affidavit or citations to deposition testimony. Plaintiffs thereafter filed their motion for Summary judgment, fully supported by legal memorandum, publically recorded exhibits, and affidavit, on March 12, 2021.

Defendants' Motion for Summary Judgment is scheduled for hearing before this Court on Monday, April 5, 2021 beginning at 10:00 a.m. by Web-Ex. Also scheduled for hearing on the same date, but second-in-turn to Defendants' Motion because it was filed secondly, is Plaintiffs' Motion for Summary Judgment filed March 12, 2021.

On Friday, April 2, 2021 at 11:16 a.m., Defendants filed their Memorandum in Support of Motion for Summary Judgment, together with deposition excerpts. Importantly, Defendants' filing is not styled as a response to Plaintiffs' motion but rather it is filed in support of their own motion.

To be properly supported, a Motion for Summary Judgment must state fully the grounds upon which it is based, and if the motion is to be supported by affidavits, deposition testimony, or other discovery produced, such must be timely noticed to the opposing party. *Rawlinson Road. Homeowners Ass'n. v.* Jackson, 395 S.C. 25, 716 S.E.2d 337 (Ct. App. 2011). Rule 56(c), SCRCP, is clear in stating, "the motion shall be served at least ten (10) days before the time fixed for the hearing." Thus, a properly supported motion must be served at least 10 days before the hearing. The reasoning for this is clear: it is to enable the opposing party to adequately respond with responsive affidavits, deposition excerpts or other, competent evidentiary reply.

Defendants have not complied with the requirement to file and serve a full supported Motion for Summary Judgment at least ten days before the time fixed for hearing. Their supportive filing on a Friday mid-day is not even one business day before the appointed hearing

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date; albeit a full three calendar days before the hearing. Accordingly, the Court should not consider, in hearing arguments on Defendants' Motion for Summary Judgment, the untimely filed deposition excerpts, or the references to them in Defendants' Memorandum or in their arguments. Plaintiffs do not dispute that Defendants may file such materials as deposition excerpts at least two days before hearing in response to Plaintiffs' motion; however, the same materials are improper in support of Defendants' own motion because Plaintiffs have been given insufficient time within which to respond.

The Summary Judgment hearing in this case set for April 5 was fixed in a Status Conference with this Court held on January 25, 2021. In that Status Conference, Plaintiffs informed the Court that they intended to file a Motion for Summary Judgment. Defendants did not express any similar intent at the time; and the Court set March 12, 2021 as the deadline for filing the Motion for Summary Judgment, and April 5th as the Hearing date. The Defendants' filing of their unsupported Motion for Summary Judgment on March 9, 2021, in advance of the required filing deadline, is but a transparent attempt by the Defendants to "go first" in the order of arguments on April 5.

Plaintiffs do not dispute that Defendants are entitled to "go first" on their Motion for Summary Judgment on April 5. However, it would be improper for the Defendants to argue, or for this Court to consider, in support of Defendants' Motion for Summary Judgment, the untimely filed deposition excerpts, or any reference to them or to any other materials that Defendants did not timely notice to Plaintiffs. Plaintiffs would otherwise be denied the opportunity to respond to Defendants' untimely filings.

Accordingly, Defendants' Motion for Summary Judgment must be summarily dismissed as not properly supported.

Respectfully,

BARR, UNGER & McINTOSH, LLC

s/ Capers G. Barr, III_____
Capers G. Barr, III
SC Bar No. 542
Capers G. Barr, IV
SC Bar No. 65075
11 Broad Street
Charleston, SC 29401
843-577-5083
cgb@barrungermcintosh.com
Attorney for Plaintiffs

Charleston, South Carolina

April 2, 2021

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ELECTRONICALLY FILED - 2021 May 24 4:11 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants.	)	**MOTION OF PLAINTIFFS ELIZABETH HEATLEY, NEAL B. McCANN, JR., DAVID NEIL MONK AND THOMAS V. BESSENT TO ALTER, AMEND, OR RECONSIDER THE ORDER GRANTING SUMMARY JUDGMENT**

Pursuant to Rules 52(b) and 59(e) *SCRCP*, Plaintiffs Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, and Thomas V. Bessent (hereafter sometimes collectively referred to as the "Individual Plaintiffs") move for an Order of the Court to alter, amend, or reconsider its Order filed in the within case on May 14, 2021, which granted Summary Judgment to the Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC.

GROUNDS FOR THE MOTION

The grounds for the motion to alter, amend or reconsider are summarized as follows and are discussed in a following section:

I. Defendants' Motion for Summary Judgment was not timely supported by affidavits or deposition excerpts as required by Rule 56(c) and (e) so as to provide the Individual Plaintiffs with the opportunity to reply to the Motion. *(Argued at p.5.)*

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II. The Court's Order granting Summary Judgment to Defendants is based upon multiple disputed material facts, as shown by affidavits of Plaintiffs David Neil Monk and Neal B. McCann, Jr., attached as Exhibits "A" and "B", that Plaintiffs were denied the opportunity to file and argue to the Court because of the untimely filing by Defendants of a fully supported Motion. *(Argued at p.7.)*

III. The principal legal basis for the Court's Order, "acquiescence", is not a cognizable and independent legal defense. Rather, acquiescence is only an element of other recognizable legal defenses such as estoppel or adverse possession. *(Argued at p.8)*

IV. A defense of "acquiescence", even if it is a viable defense, would be an affirmative defense that requires it to be pled. Acquiescence was not pled as an affirmative defense by the Defendants. *(Argued at p.8.)*

V. The Court's Order does not address the Plaintiffs' principal legal position in the case, that Code Section 27-31-70 controls the issue before the Court; that section providing that the common elements of a Horizontal Property Regime "...shall remain undivided and shall not be the subject of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void". The Court's interpretation and application of Section 27-31-60 in its order as dispositive of the dispute joined by the pleadings is in direct conflict with the express provision of 27-31-70. *(Argued at p.11.)*

VI. The Court's Interpretation of Code Section 27-31-60 creates a conflict with the provisions of Section 27-31-70 where no conflict exists. The Court must harmonize the terms of the two statutes, both of which deal with the same subject matter; rather than construing them in conflict with each other. *(Argued at p.13.)*

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VII. The Court's Order operates to divest the individual Plaintiffs of their vested title interests in common elements of the Horizontal Property Regime without citing to any authority of law to support the Court's ruling, contrary to the express terms of Section 27-31-70, and in contravention to Rule 52(a) *SCRCP. (Argued at p.14.)*

VIII. The Court's Order inferentially concludes that the acts or omissions of the Council of Co-Owners are binding upon, and determinative of, the title interests of the individual Plaintiffs. The Court cites no authority for any such conclusion. *(Argued at p.16.)*

IX. The Court's Order improperly concludes that the Amended Master Deed "decondoed" the disputed common elements, consisting of the Ship's Store building and the fuel docks. *(Argued at p.16.)*

X. No evidence was presented to the Court to prove that the Individual Plaintiffs should be judicially estopped. The five elements of judicial estoppel were not shown or met as to the Individual Plaintiffs. *(Argued at p.17.)*

XI. The Case Style of the Order incorrectly names the wrong Plaintiffs in the case. *(Argued at p.18.)*

SUMMARY OF THE CASE

The Mariners Cay Marina Horizontal Property Regime was by formed by Master Deed recorded May 18, 2006, which designated as specific common elements two fuel docks with sewage pump-out connections, and a building known as the "Ship's Store" containing separate restroom facilities for men and women, a dock master's office, and retail area. (All enumerated in the 2006 Master Deed as Commercial Units 1-A, 1-B and 2.) (The "Disputed Property".)

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The Individual Plaintiffs acquired title to their respective boat slips in the Marina between May 18, 2006, and March 19, 2007.

On March 19, 2007, after the Individual Plaintiffs had acquired vested title interests in the common elements, the Master Deed was unilaterally amended by the declarant to convert the Disputed Property from common elements to individual units. The Amended Master Deed was executed and recorded by its declarant, without notice to or with the vote of any individual slip owners.

The Individual Plaintiffs were not aware that the Master Deed had been amended until the Dock Master was ousted from the Ship's Store building after the Defendants acquired Title on May 25, 2016. This action was commenced only months later, on June 16, 2017, and seeks to declare as void the conversion of the former common elements, being the Ship's Store building and the fuel docks, to individual units. The principal basis for Plaintiff's case is Code Section 27-31-70, which provides that common elements of a horizontal property regime may not be divided, and the case of *Reyhani vs. Stone Creek Cove Condo II Horizontal Property Regime,* 329 S.C. 206, 494 S.E.2d 465, (Ct.App.1997), later discussed. The Individual Plaintiffs held vested title interests in the common elements when they acquired their boat slips, that cannot be unilaterally divested from them.

The individual Plaintiffs invested a total $302,250.00 to purchase their four boat slips. The value of their investment is jeopardized by the Court's ruling. The remaining boat slip owners of Mariners Cay will be likewise seriously prejudiced if the Court's Order stands.

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ARGUMENTS.

I. Because the Defendants' Motion was not Timely Supported and Served, Plaintiffs Were Prejudiced in their Ability to Respond. The Court's Order Granting Summary Judgment Should Be Withdrawn..

To be properly supported, a Motion for Summary Judgment must state fully the grounds upon which it is based, and if the motion is to be supported by affidavits, deposition testimony, or other discovery produced, such must be timely noticed to the opposing party. *Rawlinson Road. Homeowners Ass'n. v.* Jackson, 395 S.C. 25, 716 S.E.2d 337 (Ct. App. 2011). Rule 56(c), SCRCP, is clear in stating, "the motion shall be served at least ten (10) days before the time fixed for the hearing." Thus, a properly supported motion must be served at least 10 days before the hearing. The reasoning for the ten-day notice is clear: it is to enable the opposing party to adequately respond with responsive affidavits, deposition excerpts or other competent evidentiary reply, which the Rule provides may be filed two days before hearing.

Defendants' Memorandum with supporting deposition excerpts was filed on Friday, April 2, 2021 at 11:16 A.M., not even one business day before the Monday, April 5, 2021 10:00 hearing date; albeit three calendar days before the hearing.

Defendants' last minute filings included the deposition excerpts of Ron McGuire, Jeff Heatley, Tom Bessent, Dan Nekola, Amanda Barnes, Laurene Hull, and Edward Geiger. The only one of those deponents who is an individual Plaintiff in this case is Tom Bessent. Importantly, none of the last minute filings relate to the knowledge, conduct, or title interests of the individual Plaintiffs in this case.

Neither a single argument made by Defendants, nor a single finding made by the Court in its Order, relate to the individual Plaintiffs Elizabeth Heatley, Neal B. McCann, Jr., or David

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Neil Monk. Although an excerpt from Plaintiff Bessent's deposition was filed with Defendants' Motion, the Court made no findings as to individual Plaintiff Mr. Bessent. Therefore, without any evidentiary support that any of the Individual Plaintiffs had acquiesced to anything, this Court granted summary judgment against them on a legal ground of acquiescence.

Defendants' untimely filing denied Plaintiffs the opportunity to respond, and was prejudicial. Had Plaintiffs been provided with timely notice, they would have filed counter affidavits to show the material disputes of fact relating to Defendants' acquiescence argument. Attached as Exhibit "A" is the Affidavit of Plaintiff Neal B. McCann, Jr. and Exhibit "B", the Affidavit of Plaintiff David Neil Monk. The affidavits clearly demonstrate disputed issues of material fact as to the question of acquiescence. Neither Plaintiffs McCann, nor Monk, nor Heatley, (the latter filed as Ex. "A" to Plaintiffs' Motion for Summary Judgment) had knowledge that the Master Deed was amended in 2007. They were not aware of an adverse title claim to the Disputed Property – the central issue before the Court-- until they were ousted from the common elements by the Defendants in 2016. They could not have acquiesced to a thing they did not know. As to "acquiescence" there exists plain and palpable disputes of material fact.

Therefore, and respectfully, the Court's grant of summary judgment to the Defendants in this case turns Rule 56, *SCRCP*, on its head. At summary judgment, the Court must view the evidence and draw all inferences in the light most favorable to the non-moving party; in this instance the Plaintiffs. *Tom Jenkins Realty, Inc. v. Hilton*, 278 S.C. 624, 300 S.E.2d 594 (1983). To the contrary in this case, and with great respect for this Court, the Court did the opposite and drew inferences in the light most favorable to Defendant/Movants, and adverse to the non-moving Individual Plaintiffs.

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In its Order, the Court adopts the definition of "acquiescence" from Black's Law Dictionary as "conduct recognizing the existence of a transaction, and intended, in some extent at least, to carry the transaction, or permit it to be carried into effect." Thus, by the Court's own definition of "acquiescence", the principle requires evidence that an acquiesced party had knowledge of whatever it was to which it acquiesced before a court can find acquiescence.

The enclosed affidavits of the Plaintiffs McCann and Monk, and the previously filed affidavit of the Plaintiff Beth Heatley, demonstrate unequivocally that none of those parties had knowledge about the 2007 Master Deed or that it changed the former common elements into individual units. The affidavits demonstrate that conditions at the Marina never changed after 2007: The fuel docks remained open for use by all boat slip owners, the sewage pump-out was available to all owners, the Ship's Store building housed the dock master's office, and the restrooms and showers were open to all boat slip owners, until the Defendant parties ousted those activities in 2016, only months before this action was filed.

For this Court to conclude that acquiescence has been proved as an "undisputed issue of material fact", is without any evidentiary support, and thus represents an abuse of discretion.

This Court should accordingly rescind and set aside its Order, and set the case down for trial on the merits.

II. The affidavits of Plaintiffs McCann and Monk clearly present a disputed material fact relating to the grounds of "acquiescence" found by the Court in its Order; as does the previously filed Affidavit of Elizabeth Heatley.

"Acquiescence" if it exists as a viable defense (see Argument III, supra.) is necessarily fact-driven issue. The title interests at issue in this case to the common elements as delineated in the original Master Deed are individual and discrete title interests held by each individual boat

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slip owner. Even if another boat slip owner "acquiesced" to the Master Deed changes (which is not conceded), that is not evidence that the Plaintiffs Heatley, McCann, Monk or Bessent acquiesced. Likewise, if the Council of Co-Owners through its Board acquiesced (which is not conceded), that is not evidence that the individual Plaintiffs likewise acquiesced.

Because "acquiescence" requires knowledge by the acquiescing party of the matters about which he is said to have acquiesced, and because Plaintiffs Heatley, McCann, and Monk by their affidavits show that they did not know that the Master Deed had been amended, a clear and material fact dispute is presented.

The Court should vacate its Order and provide that the case proceed on its merits.

III and IV. "Acquiescence" is not a viable, legal defense; and even if viable, it was not pled.

Defendants cite no case law, and the Court's Order cites none, to support the conclusion that an independent legal doctrine of "acquiescence" can operate to divest the individual Plaintiffs of their vested title interests in the common elements of Mariners Cay Marina, a real property interest.

Defendants and the Court cite only to Code Section 27-31-60, to support their acquiescence theory. However, a careful reading of the statute shows that its concept of "acquiescence" is not as broad as Defendants argue, or as the Court has found.

A copy of Section 27-31-60(a) is attached as Exhibit "C", together with a copy of 27-31-70. Section 27-31-60(a) provides for three things:

(a) First, for the vesting of an individual apartment owner with an ownership interest in the common elements, together with the other co-owners;

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(b) Secondly, that the percentage ownership in the common elements which is assigned to each apartment owner is "equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property.";

(c) Third, and as to the point at issue, in an indented but unnumbered sub-paragraph that begins with the phrase, "The percentage shall be expressed..." the statute provides that the percentage ownership shall have a permanent character and shall not be altered, "without the acquiescence of the co-owners representing **all** the apartments of the property." (emphasis added)

It is this third "prong" of the Section, the indented subparagraph containing the acquiescence language, upon which the Defendants and this Court rely as authority for applying a doctrine of acquiescence as the legal authority to divest Plaintiffs of title to their real property interests in the common elements. The Court's reasoning is flawed in three material respects:

(1) The application of "acquiescence" in the statute relates only to the percentage of ownership assigned to each apartment "in relation to the regime as a whole". No reading of the subsection could justify a conclusion that "acquiescence" is intended in any way to modify an apartment owner's "common right to a share with the other co-owners in the common elements," as a matter of title right. Whereas the percentage value may change if all owners acquiesce, the section provides no authority to divest a vested title right.

(2) Even if the subsection could be said to apply to the divestment of title interest in the common elements, "acquiescence" under the Code Section requires that **all** co-owners have so acquiesced. There is not a scintilla of evidence in this record to support a conclusion that all boat slip owners acquiesced to anything, much less to the unlawfully amended Master Deed.

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(3) For the Court to conclude that the individual Plaintiffs in this case are divested of their title interests by "acquiescence" conflicts directly with the succeeding Code Section, 27-31-70 entitled "Common Elements Shall Not Be Divided", which is next discussed.

Neither the Court nor Defendants cite any case law to support an independent legal theory or principle of "acquiescence" as a ground to divest Plaintiffs of a vested title interest. It is a fundamental principle that an order of a court must cite the legal authority upon which it is based. Rule 52(a), *SCRCP*. Having shown that Code Section 27-31-60 does not support Defendants' ground of "acquiescence", the order of the court must be vacated because it lacks legal support or authority.

Moreover, "acquiescence" is only an element of other recognized legal precepts, including adverse possession and estoppel; neither of which were argued to the court in this instance. For example, in the case of *Kneale v. Bonds*, 317 S.C. 262, 452 S.E.2d 840 (Ct. App. 1994), several property owners challenged the decision of an HPR Board of Directors in approving the construction of an addition to a condominium unit, over a common element of the Horizontal Property Regime. The trial court denied the prayer for injunction filed by other property owners.

The Court of Appeals reversed, and in articulating why the plaintiff property owners were not estopped from seeking an injunction to prevent the usurpation of title interests in the common elements stated the following: "Estoppel arises when a party observes another dealing with his property in a manner inconsistent with his rights and makes no objection while the other changes his position in reliance on the party's silence; the party's silence is acquiescence that estops him from later seeking relief." 317 S.C. at 269, citing *Gibbs v. Kimbrell*, 311 S.C. 261, 428 S.E.2d 725 (Ct. App. 1993).

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Thus, acquiescence is an element of estoppel, but is not an independent legal principle of its own, other than in the narrow statutory context of Section 27-31-60 which has been dismissed in this argument and the arguments above.

V. The Court's Order does not address Plaintiffs' principal legal position: Code Section 27-31-70.

Plaintiffs' strongest legal argument in support of their Motion for Summary Judgment, which also is their strongest argument against Defendants' Motion for Summary Judgment, is Code Section 27-31-70, entitled "Common Elements Shall Not Be Divided". Its operative provisions are clear and unambiguous:

> The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void. (emphasis added.)

In the seminal case of *Reyhani v. Stone Creek Cove Condo II Horizontal Property Regime*, 329 S.C. 206, 494 S.E.2d 465 (Ct. App. 1997), the Court of Appeals held that "once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of their interests in the common elements by the actions of the developer." 329 S.C. at 211, citing Code Section 27-31-70.

Reyhani, just like the Defendants in this case, was the purchaser of HPR land from NCNB after it had been foreclosed. The central issue in the case was whether Mr. Reyhani could develop a 1.076-acre parcel, and whether the parcel was a common element of the HPR. The defendant parties in the case were property owners and the homeowner's association. The trial court ruled in *Reyhani's* favor, holding that he had the right to develop the disputed property.

Just as the Defendants argue in this case that the Plaintiffs' "acquiesced" to the Amended Master Deed, Mr. Reyhani pointed to the fact in his case that the homeowner's association board

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"was aware of the transfer of the property to him and acknowledged the same". In effect, although not using the term, arguing acquiescence.

The Court of Appeals reversed the trial court, holding as stated above that once common elements are vested in co-owners, they may not be unilaterally deprived of their interests by the actions of the developer. Moreover, the Court of Appeals held that, whereas the homeowner's association may have assented to an agreement that *Reyhani* could develop the property, it "was not assented to by the condominium owners". 329 S.C. at 214.

In this case the Amended Master Deed is a "covenant to the contrary", squarely contravening the proscription of Section 27-31-70 that common elements may not be divided, "...any covenant to the contrary shall be void." Just as in *Reyhani*, the statute is controlling here, providing that common elements shall not be divided.

This Court cited *Reyhani* and Code Section 27-31-70 in its decision in the case of *Rivers Point Row, et al. v. Palms Property, et al.*, Case Number 2008-CP-10-2279, affirmed by the Court of Appeals at UP-2013 – UP-458. In its filed Order here at issue, this Court distinguishes its decision in *Rivers Point Row* because in this case the Master Deed was amended by declarant during the time he was able to amend pursuant to the Master Deed. Respectfully, the Court's distinction makes no difference. This Court's decision in *Rivers Point Row* was bottomed in the language of 27-31-70. Whether or not a declarant retained the right to amend a master deed makes no difference because the statute specifically controls, and gives no right to a declarant to unilaterally divest a unit owner of a vested title interest in a common element. Indeed, the statute expressly prohibits such conduct by a declarant: Common elements shall not be divided, "Any covenant to the contrary shall be void."

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In this case, the individual Plaintiffs acquired vested title interest in the common elements. The Amended Master Deed unlawfully deprives them of those vested interests. The individual Plaintiffs received no notice of the Amendment to the Master Deed; there was no vote of members; and the first notice to the individual Plaintiffs of the adverse title claim of Defendants was when they were ousted by the Defendants from the common elements.

In the circumstances, the Court is at least obligated to hear this dispute on its merits.

VI. The Court is Obligated to Harmonize the Provisions of Sections 27-31-60 and 27-31-70, Rather Than to Read a Conflict into the Two Sections Where None Exists.

This Court's construction of Section 27-31-60(a) (hereafter in this argument referred to as "Section 60") as presenting a legal basis of acquiescence to divest property owners of their vested title rights to common elements conflicts directly with Code Section 27-31-70's plain admonition that common elements may not be divided. On the one hand, Section 70's admonition is plain and clear, that common elements may not be divided and "any covenant to the contrary shall be void". On the other hand, the Court in this case holds that "acquiescence" under Section 60 can divest an owner of his vested title rights. "Acquiescence", even if it were a valid and independent legal precept, represents an owner's passive agreement to a thing by not objecting. Section 70, on the other hand, provides that not even a covenant – which would be a form of active expression – can divest an owner of his vested title interest. The Court's application in its Order of Section 27-31-60 cannot be reconciled with the clear proscriptive provisions of Section 27-31-70.

Therefore, the Court's interpretation of Section 27-31- 60 reads a conflict with Section 27-31-70 where none exists. *c.f. Hodges v. Rainey,* 341 S.C. 79, 88, 533 S.E.2d. 578, 583 (2000). Statutes dealing with the same subject matter must be reconciled, if possible, so as to

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render both operative. *Id. at* 341 S.C. 91, 533 S.E.2d 584. The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd. *Charleston County Assessor v. Universal Ventures, LLC,* 427 S.C. 273, 285, 831 S.E.2d. 412 (S. Ct. 2019).

In this case an absurd result would occur, if on the one hand a condominium unit owner could be divested of a title interest in a common element by his mere acquiescence, but on the other hand, the same owner could not be divested of the same vested title interest were it to be accomplished by an express covenant.

Sections 60 and 70 are easily reconciled by the interpretation first offered by Plaintiffs: Sections 60's reference to "acquiescence" applies narrowly, and only to the calculation of a unit owner's percentage interest in relation to the value of the whole property. Section 60's provision for acquiescence requires acquiescence of all the units of the property. Section 70's proscription that common elements may not be divided, and that any covenant to the contrary shall be void, therefore remains as an uncontradicted, unimpeachable statutory standard.

"Acquiescence" therefore presents no justification for the declarant's divestment of the individual Plaintiffs title interests to the common elements.

Because this Court did not address the plain language of section 27-31-70 and because neither did the Court articulate why Section 27-31-60's reference to "acquiescence" should predominate over Section 27-31-70's clear admonition prohibiting the division of common elements, the Court should set aside its Order granting Summary Judgment and order a trial in this case on the merits.

VII. Because the Court's Order Granting Summary Judgment cites to no valid authority, it should be set aside.

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Rule 52(a), *SCRCP*, provides in pertinent part: "(a) In all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specifically and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58.

Because the Plaintiffs' have shown in Arguments III, IV, V and VI, above, that the statutory basis for "acquiescence" cited by the Court, Section 27-31-60, cannot apply in the circumstances of this case, this Court's Order on Summary Judgment is left with no valid conclusions of law to support the result ordered. The Court's Order does not comply with Rule 52(a)'s requirement that the Court set down its conclusions of law supporting its Order.

Although Rule 52 also provides that "Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56", and therefore such findings and conclusions are not required, our Supreme Court has stated, notwithstanding Rule 52's exception language: "We agree it is better practice – and in most cases common practice – as well as beneficial to the judicial process for a trial judge to articulate relevant findings and conclusions of law in an order granting summary judgment." *Woodson v. DLI Props, LLC*, 406 S.C. 517, 753 S.E.2d 428 (S.Ct. 2014).

Whereas the within Motion is filed with the sincere purpose to ask this Court to reconsider its ruling and set this case for trial on the merits, it is a responsibility of the appellant in any case taken to the Court of Appeals and to the Supreme Court to present an adequate record to the Appellate Court for review. Plaintiffs are put in a very difficult position in that regard, because of the absence of an articulable legal basis upon which the Court ruled against them at summary judgment on the theory of "acquiescence" as herein discussed.

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Indeed, Plaintiffs make this argument to the Court because they submit that there is no competent legal authority to justify a ruling in favor of the Defendants on a theory of "acquiescence".

VIII. The Acts or Omissions of the Council of Co-Owners are not Binding Upon the Title Interests of Individual Unit Owners.

In its Order, this Court appears to assign significance to the fact that the Council of Co-Owners appeared through counsel in the 2013 foreclosures proceedings without asserting the title claims now asserted by the individual Plaintiffs. The Court's Order appears to conclude or infer that the acts of the Council constitute evidence that the individual Plaintiffs acquiesced to the Amended Master Deed because the Council did not assert the title claim presented in this case. The individual Plaintiffs were not parties to the foreclosure. The Council of Co-Owners has no such authority to bind individual title interests of the Horizontal Property Regime unit owners. The Council is not the agent of the owners. See, *Roland v. Heritage Litchfield Inc.*, 372 S.C. 161, 641 S.E.2d 465 (Ct. App. 2007); and *Kneale v. Bonds*, supra.

IX. The Court's Finding that the Amended Master Deed "Decondoed" the Common Elements at Issue is erroneous.

On Page 4 of its Order, the Court hold: "The Amended Master Deed 'decondoed' the Ship's Store and fuel dock by making them no longer common elements as defined in the original Master Deed for Marinas Cay Marina Horizontal Property Regime." A word search of the term "decondo" does report the term in any case law or statutory reference in South Carolina. If by "decondo" the Court intends to refer to Code Section 27-31-130, which provides for the waiver of a horizontal property regime and converting it to its former non-HPR status, the

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finding is in error. Code Section 27-31-130 plainly requires that the waiver of a horizontal property regime requires the consent of all co-owners and all recorded mortgagees.

The finding is in error and must be stricken.

X. No evidence was presented to the Court to prove that the individual Plaintiffs should be judicially estopped.

The Court finds in its Order that the Plaintiffs' claims are barred by the doctrine of judicial estoppel, arising from the foreclosure case filed in this Court, *Emerald Road Portfolio, LLC v. Tiger River Capital LLC*, et al., discussed above.

The case for judicial estoppel cannot be sustained. Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceedings. *Cothran v. Brown*, 357 S.C. 210, 592 S.E.2d 629 (S.Ct. 2004). In *Cothran,* the Supreme Court adopted the following elements necessary for the doctrine of judicial estoppel to apply: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the Court; and (5) the two positions must be totally inconsistent. 357 S.C. at 215, 216.

The "position" taken by the Individual Plaintiffs in this case, who are movants here, is that their vested title interests were wrongfully and unlawfully divested of them by the unilateral actions of the declarant in amending the Master Deed, thereby attempting to convert common elements to individual units in contravention of the statutes and the case law.

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Not a single one of the five elements of judicial estoppel as required in *Cothran* can be found in this case. Most fundamentally, none of the four individual Plaintiff/Movants in this case were parties to the first case, the foreclosure case. Therefore, it cannot be found that they took a position in the foreclosure case at all; much less that a so-called inconsistent position in the prior case was successful. Neither can it be suggested that the individual Plaintiffs, Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, or Thomas V. Bessent acted in any way "to mislead the Court". No evidence is presented that they acted in any way to mislead anyone; and certainly not the Court.

The Court's conclusion that the claims of the individual Plaintiffs are barred by judicial estoppel must be stricken.

XI. The Style of the Case in this Court's Order erroneously names former plaintiffs "Elizabeth Heatley and Dan G. Nekola on Behalf of Themselves and Others Similarly Situated, and Mariners Cay Marina Council of Co-Owners, Inc."

This is error. The caption cited in the Court's Order is an earlier caption during the time when the Council of Co-Owners and other plaintiffs sought to certify this case as a class action.

Any subsequent Order issued by the Court must be corrected, accordingly.

CONCLUSION.

To grant Summary Judgment to the Defendants runs directly in conflict with Code Section 27-31-70. It conflicts with the clear precedent of *Reyhani v. Stone Creek Cove, etc.,* supra. Perhaps more significantly, the holding conflicts with this Court's own ruling in the case of *Rivers Point Row, et al. v. Palms Property, et al.,* supra.

Lest the Court be concerned that the Defendants and the individual Defendant Mr. Farmer may suffer some inequity were they to receive an adverse ruling in this case, as the Court

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seems to infer in its finding on Page 4 of the Order that "Plaintiffs wish to own but are unwilling to pay market value to obtain" the Defendants' property, this Court should be informed that, as stated in the introduction to this Motion, the individual Plaintiffs alone in this case have invested a total of $302,250.00 for their boat slips, in 2006/2007 dollars. (See their deeds, to which reference is made in Plaintiffs' motion for summary judgment.) If that sum is multiplied by the number of remaining boat slips in the Horizontal Property Regime, the magnitude of investment loss to the boat slip owners as a whole (and Plaintiffs do not contend that they represent those other slip owners) is enormous. At the very least this case deserves to be heard on its merits.

Respectfully,

BARR, UNGER & McINTOSH, LLC

s/ Capers G. Barr, III
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May 24, 2021

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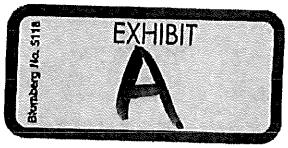
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc.,	)	
Plaintiffs,	)	**AFFIDAVIT OF NEAL B. McCANN, JR.**
vs.	)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank,	)	
Defendants.	)	

PERSONALLY APPEARS before me NEAL B. McCANN, JR. who, being duly sworn, affirms and states:

1. Affiant is a Plaintiff in the within case. Affiant lives at 1105 Bright Court on James Island, and works as a commercial airline pilot.

2. Affiant purchased boat slip number B-8 at the Mariners Cay Marina Horizontal Property Regime by Deed dated March 5, 2007 and recorded March 6, 2007 for a purchase price of $89.250.00, by reference to the "original" Master Deed of Mariners Cay Marina recorded May 18, 2006.

3. I understood when I purchased my boat slip that I also acquired an undivided interest in common with the other slip owners to the Ship's Store building including its restrooms, showers, and Dock Master's Office, as well as the fuel docks.



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4. I did not know that the 2006 Master Deed had been amended until the events relating to this litigation unfolded in 2016 when the Mariners Cay Marina Dock Master was required to leave the Ship's Store building by Mr. Farmer, or by one of his companies.

5. I was not aware that a foreclosure case had involved the Ship's Store building and the fuel docks, much less that those properties were supposedly sold as a result of the foreclosure proceedings. I was not a party to any such case.

6. I have been informed that Mr. Farmer and his companies have alleged that I "acquiesced" to the amendment of the Master Deed and its conversion of the Ship's Store building and fuel docks to individual units. I was not aware that those changes had been attempted. I never acquiesced to anything. Because I had no knowledge that there had been an attempt to convert those properties - the Ship's store and fuel docks - from common elements to individual units, I do not understand how I could have "acquiesced" to such a change. Had I known of it, I would have objected to it.

7. My investment of $89,250.00 in boat slip B-8 will be jeopardized, and will be substantially diminished and depreciated, if it is determined as a matter of Court Order that the Ship's Store building with its restrooms and shower facilities and office for a Dock Master, together with the fuel docks, were determined to be in private ownership. I do not agree that my property can be taken away, without fair notice to me.

8. The Marina's permit with DHEC may be in jeopardy if separate restrooms for men and women, and sewage pump-out facilities are no longer available, or if space for a

full time dock master is not available, in order to comply with the DHEC regulations attached to the Master Deed.

9. The Council of Co-Owners of Mariners Cay does not have, and has never had, my permission or authority to act for me with respect to matters involving my title interests to Boat Slip B-8

NEAL B. McCANN, JR.

Sworn to before me
this 20th day of MAY, 2021

(L.S.)
Notary Public for South Carolina
Print name of Notary: JULIE T. HALL
My commission Expires: 11/3/2021

JULIE T. HALL NOTARY PUBLIC SOUTH CAROLINA My Comm. Expires November 3, 2021

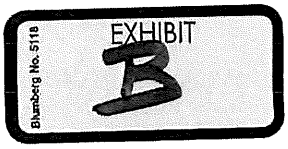
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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants.	)	**AFFIDAVIT OF DAVID NEIL MONK**

PERSONALLY APPEARS before me DAVID NEIL MONK who, being duly sworn, affirms and states:

1. Affiant is a Plaintiff in the within case. Affiant lives at 33 W. Mariners Cay Drive, and works as an electrical engineer.

2. Affiant purchased dock unit D-17 at the Mariners Cay Marina on March 12, 2007. Affiant recalls learning at the closing that as a boat slip owner of the Marina he also acquired an interest in the fuel docks and its sewage pump out facilities, as well as the use of the Ship's Store Building and its restrooms and showers; that a Dock Master was employed by the Marina with an office in the Ship's Store building. It was Affiant's understanding, therefore, that the fuel docks, sewage pump out, Ship's Store building including restrooms, showers, and Dock Master's office, were all component parts of the Mariners Cay Marina, and that those component parts were a part of what he acquired when he purchased his boat slip.



3. Affiant had no knowledge that the Master Deed was amended on March 19, 2007, only seven days after he acquired title to Boat Slip B-17. No notice of amending the Master Deed was given to him, nor to his knowledge was notice given to any other boat slip owner. There was no meeting of slip owners, or notice of meeting, that the Master Deed was being amended. There was never a vote of the membership to amend the Master Deed.

4. More importantly, Affiant had no knowledge that any Amended Master Deed attempted to change the character of the Ship's Store building, the fuel docks and the sewage pump-out system from common elements of the Marina to individual units.

5. Affiant's first knowledge of any change occurred when, one day in 2016, he tied his boat at the fuel dock in order to pump out the bilges using the Marina pump-out system. He was at that time confronted by Mrs. George A. Farmer, Jr., wife of the Defendant George A. Farmer, Jr., who asked what he was doing at their dock. At about that same time period, Affiant also learned that the Dock Master had been ousted from the Ship's Store building, and that security access to the Marina had been disabled.

6. Neither was Affiant aware that the Ship's Store building and fuel docks had been the subject of a foreclosure, or that there had been a sale of the properties as a result of that foreclosure.

7. It is Affiant's understanding that Mr. Farmer suggests that affiant "acquiesced" to the Amended Master Deed's conversion of the Ship's Store building and fuel docks to individual units. Affiant never acquiesced to anything. Moreover, it stands to reason that in order to "acquiesce" to anything, the person acquiescing must first have knowledge that some change was occurring. Affiant never had any such knowledge that the Ship's Store and Fuel Docks were

converted to individual units until he and the other slip owners were ousted by Mr. Farmer in 2016.

8. Affiant is genuinely concerned about the future of the Marina. Under its present DHEC permit, and the DHEC Regulations that are appended to the Master Deed as conditions of the Marina permit, the Marina is required to provide separate mens and womens restroom facilities; it is required to provide bilge pump-outs to empty bilges; and it is required to maintain a Dock Master at all times to manage the Marina. If Affiant's, and other slip owners', title interests to the common elements of the fuel docks, bilge pump out, restroom facilities and the Ship's Store building are removed, then Affiant is concerned that DHEC may revoke the Marina's permit. Furthermore, the value of the boat slip he purchased will be substantially diminished.

9. Affiant purchased boat slip B-17 on March 12, 2007 for a purchase price of $89,250.00, by deed that cites the Original 2006 Master Deed, and in reliance upon its terms granting his right and title to the use of the common elements described in paragraph 8, above. The value of his property interest will be substantially diminished, and he will suffer actual loss, damage, and harm, if the Court were to conclude that Affiant no longer is entitled to his ownership rights in the common elements.

(CONTINUED ON NEXT PAGE)

10. The Council of Co-Owners does not have Affiant's authority to act with respect to the title interests he holds as the owner of Boat Slip B-17.

David Neil Monk
DAVID NEIL MONK

Sworn to before me
this 20th day of May, 2021

Caroline M Bernotski (L.S.)
Notary Public for South Carolina
Caroline M. Bernotski
My commission Expires: January 9, 2027

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S.C. Code Ann. § 27-31-60

This document is current through Act No. 29 of the 2021 Regular Session.

South Carolina Code of Laws Annotated by LexisNexis® > Title 27. Property and Conveyances (Chs. 1 — 50) > Chapter 31. Horizontal Property Act (Arts. 1 — 2) > Article 1. General Provisions (§§ 27-31-10 — 27-31-300)

§ 27-31-60. Property rights of apartment owner.

(a)An apartment owner shall have the exclusive ownership of his apartment and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole.

The percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the property.

The basic value, which shall be fixed for the sole purpose of this chapter and irrespectively of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his apartment in all types of acts and contracts.

(b)The owner of any apartment embraced in the master deed and building plan shall have the right to require specific performance of any proposed common elements for recreational purposes set out in the master deed which are included in the next stage of the development that applies to recreational facilities in the event the additional stages of erection do not develop.

History

1962 Code § 57-499; 1962 (52) 1866; 1967 (55) 449; 1973 (58) 783.

Annotations

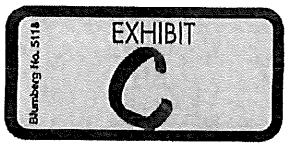
LexisNexis® Notes

Case Notes

Civil Procedure: Parties: Joinder: Misjoinder

Real Property Law: Common Interest Communities: Condominiums: General Overview

Civil Procedure: Parties: Joinder: Misjoinder



Because, under S.C. R. Civ. P. 18(a) and S.C. R. Civ. P. 86, a complaint improperly united causes of action and because the parties' interests were not united, the officers of a condominium association were not entitled to maintain a class action, but, under *S.C. Code § 27-31-60*, two condominium owners had a right to share in the association's common elements with the other co-owners in the condominium association. *Dockside Asso. v. Detyens, Simmons & Carlisle, 285 S.C. 565, 330 S.E.2d 537, 1985 S.C. App. LEXIS 363 (S.C. Ct. App.)*, modified, *287 S.C. 287, 337 S.E.2d 887, 1985 S.C. LEXIS 538 (S.C. 1985)*, overruled, *Queen's Grant Villas Horizontal Property Regimes I-V v. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365, 1985 S.C. LEXIS 497 (S.C. 1985)*, overruled as stated in, *Auto-Owners Ins. Co. v. Madison at Park West Prop. Owners Ass'n, 834 F. Supp. 2d 437, 2011 U.S. Dist. LEXIS 73461 (D.S.C. 2011)*.

Real Property Law: Common Interest Communities: Condominiums: General Overview

"Apartments," for horizontal property purposes, are defined in *S.C. Code Ann. § 27-31-20(a)* as a part of the property intended for any type of independent use including one or more rooms or enclosed spaces. Each co-owner, or owner of an apartment in a horizontal property regime, acquires condominium ownership, and owns his or her individual apartment, and has a common right to share, with other co-owners, in the common areas of the property. *Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 628 S.E.2d 902, 2006 S.C. App. LEXIS 79 (S.C. Ct. App. 2006)*.

Because, under S.C. R. Civ. P. 18(a) and S.C. R. Civ. P. 86, a complaint improperly united causes of action and because the parties' interests were not united, the officers of a condominium association were not entitled to maintain a class action, but, under *S.C. Code § 27-31-60*, two condominium owners had a right to share in the association's common elements with the other co-owners in the condominium association. *Dockside Asso. v. Detyens, Simmons & Carlisle, 285 S.C. 565, 330 S.E.2d 537, 1985 S.C. App. LEXIS 363 (S.C. Ct. App.)*, modified, *287 S.C. 287, 337 S.E.2d 887, 1985 S.C. LEXIS 538 (S.C. 1985)*, overruled, *Queen's Grant Villas Horizontal Property Regimes I-V v. Daniel International Corp., 286 S.C. 555, 335 S.E.2d 365, 1985 S.C. LEXIS 497 (S.C. 1985)*, overruled as stated in, *Auto-Owners Ins. Co. v. Madison at Park West Prop. Owners Ass'n, 834 F. Supp. 2d 437, 2011 U.S. Dist. LEXIS 73461 (D.S.C. 2011)*.

Research References & Practice Aids

CROSS REFERENCES.—

Definitions, see *S.C. Code Ann. § 27-31-20*.

Expenses shall be shared, see *S.C. Code Ann. § 27-31-190*.

Repair or reconstruction; vote of co-owners; application of insurance proceeds, see *S.C. Code Ann. § 27-31-250*.

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S.C. Code Ann. § 27-31-70

This document is current through Act No. 29 of the 2021 Regular Session.

South Carolina Code of Laws Annotated by LexisNexis® > Title 27. Property and Conveyances (Chs. 1 — 50) > Chapter 31. Horizontal Property Act (Arts. 1 — 2) > Article 1. General Provisions (§§ 27-31-10 — 27-31-300)

§ 27-31-70. Common elements shall not be divided.

The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void.

History

1962 Code § 57-500; 1962 (52) 1866; 1967 (55) 449.

Annotations

LexisNexis® Notes

Case Notes

Real Property Law: Common Interest Communities: Condominiums: General Overview

Landowner did not have a fee simple title to a lot of land originally designated in the master deed as condominiums or common elements merely because a paragraph of a later agreement between the bank and the homeowners' association gave the bank the right to further develop the land, because under S.C. Code Ann. § 27-31-70 and S.C. Code Ann. § 27-31-130, once common elements were set aside and vested in the co-owners, such co-owners could not be unilaterally deprived of their interests by the actions of the developer. *Reyhani v. Stone Creek Cove Condo. II Horizontal Prop. Regime, 329 S.C. 206, 494 S.E.2d 465, 1997 S.C. App. LEXIS 168 (S.C. Ct. App. 1997).*

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May 24, 2021

Via E-Mail Only: mscarborough@charlestoncounty.org
kbrunson@charlestoncounty.org

The Honorable Mikell R. Scarborough
Master-In-Equity, Charleston County
100 Broad Street, Suite 266
Charleston, SC 29401-2243

RE: ***Mariner's Cay Marina Council of Co-Owners, Inc. v. Mariners Cay Marina Condo, LLC, et al.***
Case No.: 2017-CP-10-3099
Our File No.: 2017-1152

Dear Judge Scarborough:

Your Honor heard cross-Motion for Summary Judgment in the above case on April 5th; counsel submitted proposed Orders to the Court on May 7th; and on May 14th, the Court signed and filed its Order granting summary Judgment to the Defendants.

Enclosed is the Motion of Plaintiffs for the Court to Alter, Amend or Reconsider its Order. Whereas many motions to alter or amend are filed simply for the purpose of preserving issues for appeal, this Motion is filed with the Court with the sincere hope that Your Honor will take another look at the Court's Ruling. In that respect, we request, and would very much like a hearing on the Motion.

As in every case heard in your Court, this case carries profound consequences for all parties affected. We sincerely believe that a number of issues were overlooked in the Order as filed.

Thank you for your consideration, and we look forward to appearing before you once more. With kind regards,

Sincerely yours,

Capers

Capers G. Barr, III

CGBIII/shg
Enclosure (as stated)
cc: Katie Brunson, Law Clerk (via email only - w/enclosures)
Capers G. Barr, IV, Esq. (via email only - w/enclosures)
G. Hamlin O'Kelley, Esq. (via email only - w/enclosures)
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc.,	)	**THE DEFENDANTS' MEMORANDUM IN OPPOSITION TO THE TO THE PLAINTIFFS' MOTION TO ALTER, AMEMND, OR RECONSIDER THE ORDER GRANTING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
Plaintiffs,	)	
vs.	)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank,	)	
Defendants.	)	

The Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank submit this Memorandum in Opposition to the Plaintiffs' Motion to Alter, Amend, or Reconsider the Order Granting Summary Judgment. For the reasons stated herein, the motion should be denied.

The Plaintiffs' motion should be denied for many reasons.

First, the motion is improper in that it asks the Court to consider the Affidavits of Neal B. McCann, Jr., and David Neil Monk, neither of which were presented to the Court prior to the hearing of this matter on April 5, 2021. A party cannot use Rule 59(e) SCRCP to present to the trial court an issue the party could have raised prior to judgment but did not. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (1990); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1990). The Court should not consider these Affidavits. For that very reason the motion should be denied.

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Secondly, and by way of background, there are important dates for the Court to remember that refute the Plaintiffs' bogus claims that motions were not proper, not supported, were denied the opportunity to respond. The arguments that the Plaintiffs had no time to respond, had no notice, and had no opportunity to respond is patently false. For that very reason, the motion should be denied.

The important dates are as follows:

1. March 9, 2021. The Defendants' Motion for Summary Judgment was filed March 9, 2021. (Motion for Summary Judgment) That Motion cited the grounds being reliance on acquiescence under the terms of S.C. Code Ann. §27-31-60. The Motion further cited judicial estoppel based on the matters heard by this Court in *Emerald Road Portfolio, LLC v. Tiger River Capital, LLC*, Case No. 2013-CP-10-0850. *Id*. The Motion also stated that testimony of Board Members and Owners would be relied upon at the hearing of the matter.
2. March 12, 2021, the Plaintiffs filed their Motion for Summary Judgment and reference the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits, stating they were entitled to judgment as a matter of law. They set forth a list of undisputed facts, too. They cited S.C. Code Ann. §27-31-60 in their motion and underlined and added emphasis to the language that states percentages of common elements shall be permanent and "shall not be altered without the acquiescence of the co-owners representing all the apartments of the property". (Motion, 3/12/21).
3. April 2, 2021. After having almost a month's notice of the pending Motion, the Plaintiffs received the Defendants' Memorandum in Support of their Motion for Summary Judgment. That Memorandum contained excerpts from depositions by Board Members,

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Owners, the Property Manager, and the Dock Master at Mariner's Cay Marina. The Plaintiffs had possession of the deposition transcripts and there is no surprise by using that testimony. The Memorandum contains citations to the following depositions which have been in the Plaintiffs' possession for years.

a. Ronald McGuire, June 14, 2018;

b. Thomas Bessent, June 15, 2018;

c. Danny Nekola, August 2, 2018;

d. Edward Geiger, August 6, 2018;

e. Amanda Barnes, August 9, 2018;

f. Jeffrey Heatley, August 10, 2018;

g. Laurene Hull, January 30, 2019.

The Plaintiffs claim that they had no notice is belied by the fact they have had this testimony in their possession for years.

4. April 5, 2021. Almost a month after the filing of the Motion for Summary Judgment, this Court conducted a lengthy hearing of both the Defendants' and Plaintiffs' Motions for Summary Judgment. The Court heard arguments regarding "acquiescence" under S.C. Code Ann. §27-31-60 and under S.C. Code . §27-31-70. The matters were fully argued. For hours. By both sides.

5. May 7, 2021. Over a month after the hearing, the Plaintiffs and the Defendants submitted proposed Orders. The Plaintiffs could have submitted any deposition excerpt, any exhibit, and any other item for the Court to consider in responding fully to the motion. The Plaintiffs' submitted nothing. The matters were all timely filed and fully argued in the proposed orders.

6. May 14, 2021. The Court entered its Order Granting the Defendants Motion for Summary Judgment. That Order also denied the Plaintiffs' Motion for Summary Judgment.
7. May 20, 2021. Neal B. McCann, Jr., and David Neil Monk swear to Affidavits seeking to inject new arguments and facts into the case which were not raised prior to the Court's ruling, which Affidavits are improper. *Hickman v. Hickman*, 301 S.C. 455, 392 S.E.2d 481 (1990); *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1990).
8. May 24, 2021. The Plaintiffs file the Motion to Alter, Amend or Reconsider.

The Plaintiffs had timely notice, timely ability to argue, timely ability to submit matters in reply, timely possession of all the deposition testimony by witnesses named by the Plaintiffs.

Thirdly, the Court considered the entirety of the arguments based upon the South Carolina Horizontal Property Act's applicable sections. *See* S.C. Code Ann. §27-31-10, -60, -70. The Plaintiffs had full notice that the Court was comparing the provision of the Act regarding the creation of common elements and the alteration of common elements. Code Section 27-31-60 allows for common elements to be altered with the acquiescence of co-owners. Code Section 27-31-70 simply states that common elements shall be not divided. It does not control the removing a common element, which the General Assembly provided for in Code Section 27-31-60. The Court correctly found that there was evidence that the Plaintiffs' acquiesced. Acquiescence is stated in the statute. The Court correctly distinguished its earlier ruling in the case of *Rivers Point Row Horizontal Property Regime v. Palms Properties, LLC*, Up. Op. No. 2013-UP-458 (Ct. App. 2013) which is the only case to mention the applicable Code Section 27-31-60. For that very reason, the Plaintiffs' motion should be denied.

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The Plaintiffs mischaracterize the arguments of the Defendants as trying to couch the statutory construction by the Court into some type of affirmative defense. This case was brought to determine the ownership of condominiums, some of which are dockominiums and the other is the former ship store property. (Summons and Complaint, as amended). The allegations require the interpretation of the applicability of the Horizontal Property Act and the removal of the properties at issue from being common elements by the Amended Master Deed. Recorded March 19, 2007, in Book X618 at Page 603, some ten years prior to this lawsuit being filed. The Court correctly interpreted an applicable Section of the Horizontal Property Act and did not create a new legal theory or affirmative defense. *See* S.C. Code Ann. §27-31-60. That Code section has to be read in concert with S.C. Code Ann. §27-31-70, which does not control the issue, but, in fact, relates only to common elements not being divided, not alterations to common elements as provided for in the prior section. The Court stated specific facts regarding the evidence of the acquiescence found by quoting from specific testimony of the Plaintiffs and their witnesses. (See Order, pp. 6-9). The Plaintiff's assertion that there are no specific findings to support the Court's Order is patently false. For these reasons, the Plaintiffs' motion should be denied.

Fourthly, the Court properly found that the elements of judicial estoppel were met. The Court found each element was complied with since the Mariners Cay Council of Co-Owners, Inc., appeared in *Emerald Road Portfolio, LLC v. Tiger River Capital, LLC*, Case No. 2013-CP-10-0850. The Court set forth each element and how the Mariners Cay Council of Co-Owners, Inc., should be estopped from bringing inconsistent causes of action in this case. The individual Plaintiffs are all members of that Council of Co-Owners, and, subsequently, were estopped by the Court. The Court properly reviewed the pleadings and orders and Master's Deed issued in

the underlying case and made reference to its decision in that case. For those reasons, the motion should be denied.

Fifthly, a scrivener's error in the caption can easily be fixed and is not grounds for altering, amending, or reconsidering the Court's order. For that reason, the motion should be denied and a simple new caption can be submitted in the form of a revised Order Granting the Defendants' Motion for Summary Judgment.

Sixthly, the Plaintiffs now claim that they should be heard on the merits which is also being raised for the first time after they filed their own motion for summary judgment. On March 12, 2021. In their Motion for Summary Judgment, they give a long recitation of undisputed facts, which they are now claiming are in dispute and inject another argument not made on April 5, 2021, regarding the Plaintiffs' alleged investment of funds. Again, this is improper to raise such an argument for the first time by way of a Rule 59(e) Motion. *Hickman v. Hickman*, *supra; Patterson v. Reid*, *supra*. Contrary to their newly raised issues to be heard on the merits, this case ripened into one needing a summary judgment ruling as to the legal issues of interpretation under the Horizontal Property Act. Summary judgment is proper when it is clear that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. SCRCivP 56 (c); *Baird v. Charleston County*, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999); *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp*., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a factfinder." *Moore v. Weinberg*, 733 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007), *aff'd by* 383 S.C. 583, 681 S.E.2d 875 (2009). The facts as submitted to the Court as to the issues ruled upon were not in dispute. For these reasons, the motion should be denied.

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For the reasons stated above and as set forth in the Court's highly reasoned and specific order interpreting the applicable Sections of the South Carolina Horizontal Property Act and applying judicial estoppel to the case, the Plaintiffs' motion should be denied.

Respectfully submitted,

June 2, 2021

BUIST BYARS & TAYLOR, LLC

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June 2, 2021

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ELECTRONICALLY FILED - 2021 Jun 04 4:16 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc.,	)	
Plaintiffs,	)	**REPLY OF THE INDIVIDUAL PLAINTIFFS TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION TO ALTER OR AMEND ORDER GRANTING SUMMARY JUDGMENT**
vs.	)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank,	)	
Defendants.	)	

Reserving all arguments in Plaintiffs' principal Motion to Reconsider, the Defendants do not address at all the most prominent and fundamental flaws in their position, as expressed in the Court's Order granting summary judgment:

1. Defendants' Motion was not timely supported 10 days before the Hearing, as required by Rule 56, *SCRCP*.

   a. Plaintiffs were prejudiced by the untimely filing at 11:16 A.M. on Friday April 2, 2021 of Defendants' supporting factual propositions in the form of deposition excerpts, because Plaintiffs were unable to procure responsive affidavits in time to file them within two days prior to the Monday April 5 10:00 A.M. Hearing, as required by the Rule.

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b. As evidence of prejudice, the Affidavits of Neal McCann and David Neil Monk, which were filed with the principal Motion to Reconsider, show clear disputes of material fact.

c. Neither Mr. McCann nor Mr. Monk had knowledge that the Master Deed had been amended in 2007 until they were ousted from the common elements in 2016, the year before this case was filed. They cannot be held to "acquiesce" to a thing they did not know. Therefore "acquiescence" presents a clearly disputed fact issue.

d. Rule 56 provides, as an element of due process, that a party opposing Summary Judgment be afforded ten days notice in order to respond to factual propositions in time to file opposing positions within two days before the Hearing.

e. The Defendants' untimely filing and service deprived the individual Plaintiffs of their Rule 56 due process rights, an issue that was timely raised and preserved by Plaintiffs in their Return to Defendants' motion for summary judgment.

f. The affidavits of Individual Plaintiffs McCann and Monk present clear disputes of material fact as to acquiescence. They cannot be deemed to have acquiesced to a thing they did not know.

The Memorandum filed by Defendants in opposition to the Motion for Reconsideration does not respond to the due process flaw, at all.

2. Neither Defendants' Motion nor the Court's Order satisfactorily rationalize or distinguish the Court's position from the unequivocal holding of *Reyhani v. Stone Creek Cove*

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Condo II HPR, 329 S.C. 206, 494 S.E.2d.465 (Ct. App. 1997): "*Once common elements are set aside and vested in the co-owners, such co-owners may not be unilaterally deprived of their interests in the common elements by the action of the developer*".

Reyhani is bottomed in the statutory language of Code Section 27-31-70: "*The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void*".

Neither the Memorandum of Defendants nor the Court's order at issue address, discuss, or distinguish the Court's position in this case from the clear precepts of *Reyhani* and Section 27-31-70.

This Court should set side its Order granting Summary Judgment and set the case down for trial on the merits.

Respectfully,

BARR, UNGER & McINTOSH, LLC

s/ Capers G. Barr, III

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June 4, 2021

ELECTRONICALLY FILED - 2022 May 19 9:54 AM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants.	)	**THE DEFENDANTS' MOTION TO RECONSIDER THE ORDER GRANTING DECLARATORY RELIEF**

TO: THE HONORABLE MIKELL R. SCARBOROUGH
CHARLESTON COUNTY MASTER IN EQUITY

YOU WILL PLEASE TAKE NOTICE that pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (SCRCP), the Defendants, Mariners Cay Marine Condo. LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank (the "Defendants"), by and through their undersigned counsel, will move before the Honorable Mikell R. Scarborough, Master in Equity for Charleston County, to have this Court reverse or modify its Order filed on May 16, 2022.

This Motion is based upon errors in law and in fact contained in the Court's Order of May 16, 2022, which cannot have been the Court's intention in ruling as it has now ruled.

Specifically, the Defendants seek to have this Court clarify, modify, or change the following facts and conclusions.

1. The Court states that the Plaintiffs seek to "restore their title interests" in the common elements of the Mariner's Cay Marina Horizontal Property Regime. Those interests were

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not to be restored as a result of the Amended and Restated Master Deed recorded March 19, 2007, in Book X618 at Page 603.

2. There was no testimony at trial or in the record regarding any violation of any OCRM regulation, any notice from OCRM regarding restrooms or pump out systems, or any violation or any problems with the Dock Master operating the marina.
3. From 2007 until 2017, no owner at Mariner's Cay objected in any way to the amendments to the Master Deed and, in fact, the owners knew or should have known of the amendments making the Ship Store and fuel docks units no longer common elements under the Horizontal Property Regime.
4. The four (4) individual Plaintiffs, none of whom were original parties to this case, were aware of the amendment but did nothing to protect their interests until a year after the Defendants Mariner's Cay Marina Condo, LLC, and Mariner's Cay Fuel Dock, LLC, had purchased the Units pursuant to a foreclosure by this Court and a Master's Deed issued by this Court.
5. The Plaintiffs knew of the foreclosure case, *First South Bank v. Tiger River Capital, LLC, et. al.,* C/A No. 2013-CP-10-0850, by and through the Plaintiff Mariner's Cay Marina Council of Co-owners, Inc.'s appearance in that case and by not objecting to the relief granted to the foreclosing Plaintiff First South Bank.
6. This action was commenced thirteen (13) months after the Defendant's Mariner's Cay Marina Condo, LLC, and Mariner's Cay Fuel Dock, LLC, closed on the Units.
7. This action was commenced after the Plaintiff Mariner's Cay Marina Council of Co-owners, Inc., accepted dues from the Defendants Mariner's Cay Marina Condo, LLC, and

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Mariner's Cay Fuel Dock, LLC, and placed liens on the Units for nonpayment of dues as well.

8. This case was commenced after the Plaintiff Mariner's Cay Marina Council of Co-owners, Inc., made offers to purchase the Units from the Defendants, all of which indicate and show acquiescence as to the change to the Master Deed in 2007. *See* S.C. Code Ann. §27-31-60 stating percentages as to common elements shall be permanent and not altered without the **acquiescence of the co-owners representing all apartments of the property**. S.C. Code Ann. §27-31-60 (emphasis added).
9. This Court has made rulings on Orders of the Honorable J.C. Nicholson and the Honorable Jennifer McCoy which were not before the Court as to the use of the pump out station, restrooms, and hours of operating.
10. The Court makes reference to hearsay testimony of the Plaintiff Tom Bessent that was not before the Court as to OCRM's allegedly awaiting on the outcome of this case, which evidence was not presented at trial and is not properly before this Court.
11. The Court cites §27-31-60 in its Order but fails to apply the "acquiescence" of the Plaintiffs in making its determination that the Amended and Restated Master Deed is void.
12. The Unit owners in this case were not "unilaterally deprived" of any interest in common elements as they knew of the Amended and Restated Master Deed as of 2007, took payments from the owners of the Units in question in this case, and did nothing to prevent the mortgaging and selling of those Units. They acquiesced unlike the Unit owners in the case of *Reyhani v. Stone Creek Cove Condo. II HPR*, 329 S.C. 206, 494 S.E2.d 465 (Ct. App. 1997). Mr. Reyhani attempted to develop foreclosed vacant land that had not been subject to any revisions or amendment to the master deed at issue in this case. The facts

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are not on all fours, all threes, or all twos with this case. As the Court's Order acknowledges, the statutory term "acquiescence" as codified by the General Assembly was never used, yet, this Court extrapolates the ruling in *Reyhani* to a tortured conclusion in this matter.

13. There is no case law in South Carolina regarding what may constitute "acquiescence" in the amendment of a master deed under the South Carolina Horizontal Property Act. §27-31-10, -60, -70.

14. This Court also cites its earlier ruling and unpublished Court of Appeals decision in *Rivers Point Row v. Palms Property*, 2013-UP-458, which should be of no precedential value. Further, that case has no interpretation of Section 27-31-60, which is the key to the case at issue before the Court.

15. The Court's analysis of Section 27-31-60 makes no reference to the plain language of the statute, but, instead, goes on to compare and contrast that Section with Section 27-31-70, which is reading both in a vacuum. The Sections must be read together to allow for amendments to common elements in master deeds, which the General Assembly clearly intended or it would not have used the language it used in Section 27-31-60.

16. There is no conflict between these two Sections as urged by the Plaintiffs and as now construed by the Court. They must be read in conjunction with the other as to give them the plain meaning intended by the General Assembly.

17. It is the Plaintiffs who have inserted a conflict where none exists where the plain language of the Sections is not in conflict.

18. The Court formerly determined that judicial estoppel applies in this matter. The Defendants would urge the Court to make that determination again as a result of the underlying foreclosure case.

19. The individual defendants did nothing to enforce their alleged rights in these Units for ten years. They have waived their right to do so and should be estopped from doing so and laches must apply.

20. This Court's Order shall render a family homeless and expose the Plaintiffs, individually, and the Association plaintiff collectively, to significant damages for the betterment of the Units by these Defendants, all of which are inequitable.

21. This Court's Order has declared the Defendant South Atlantic Bank's mortgage to be ineffective and void, which was not a matter this Court was asked to consider or rule upon at trial and goes beyond the scope of reference to this Court.

This Motion is based upon the pleadings filed of record and any and all other matters to be submitted prior to the hearing of this motion.

Pursuant to Rule 11 SCRCP, counsel certifies that there is no duty of consultation connected with the filing of this motion.

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Respectfully submitted,

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May 19, 2022

and

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May 19, 2022

ELECTRONICALLY FILED - 2022 May 26 9:38 AM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariner's Cay Marina Council of Co-Owners, Inc. Plaintiffs, vs. Mariner's Cay Marina Condo, LLC and Mariner's Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099 **PLAINTFFS' RESPONSE TO DEFENDANTS' MOTION TO RECONSIDER THE ORDER GRANTING DECLATORY RELIEF**

INTRODUCTION:

Defendants have filed a twenty-one paragraph motion requesting the Court to reconsider its Order granting Declaratory Relief filed May 16, 2022 pursuant to Rule 59(e), SCRCP. The motion cites no legal authority, and recites only little specific evidence from the trial record.

The motion fails to state with particularity the grounds therefor and the relief sought, as is required by Rule 7(b)(1), SCRCP. Because of the vague and unconnected assertions made in the motion, without any apparent purpose, or requesting a particular result, Plaintiffs cannot comprehend the basis for the motion or the relief that it seeks; and respectfully suggest that this Court is or will be presented with the same quandary. See *Camp vs. Camp*, 386 S.C. 571, 689 S.E.2d 634 (S.Ct. 2010).

Nevertheless, every point described in the twenty-one paragraph motion was encompassed by and properly and correctly decided in the Court's order, and for this reason alone, the motion must be denied.

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For clarification, however, Plaintiffs will respond to four paragraphs of Defendants' motion for reconsideration: Paragraphs 2, 9, 10, and 21.

DISCUSSION:

1. In Paragraph 2 of their motion, the Defendants suggest there was no testimony at trial or in the record regarding any violation of any OCRM regulation, any notice from OCRM regarding restrooms or pump-out systems or any violations or any problems with the Dockmaster operating the marina.

First, although the Court did make findings related to OCRM's marina permit requirements, any jeopardy faced by Mariner's Cay Marina with respect to the OCRM Regulations is far from the central findings of the Court's order. The central findings, as the Court properly held, were the Declarant's attempted unilateral alienations of the common elements in which thirty-nine boatslip owners held vested title interests, in violation of the express terms of the 2006 Master Deed, and in violation of Code Section 27-31-70.

Secondly, Defendants are mistaken. Several witnesses testified to the requirement by OCRM for the marina permit that wastewater pump-out services be available at the marina, and that restroom facilities be available for boat users on the high ground, and to the difficulties encountered by Mr. Farmer's denial of access to the restroom facilities and pump-out, and to the motions filed for restraining orders to re-open the restroom facilities, in particular.

Moreover, OCRM's published Regulations are exhibits to both the 2006 and 2007 Master Deeds that were admitted as exhibits at trial, and clearly provide for and thus prove the OCRM requirements as conditions for the marina permit, that there must be available restrooms on high ground, and that waste water pump-out facilities be available.

2. In Paragraph 9 of their motion, Defendants argue that "This Court has made rulings

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on Orders of the Honorable J.C. Nicholson and the Honorable Jennifer McCoy which were not before the Court as to the use of the pump out station, restrooms, and hours of operating."

The Court made no such "rulings". Rather the Court did include as a finding of fact that Orders have been filed by the Circuit Court in this case relating to the waste water pump out system and the restrooms. However, this Court made no "ruling" thereabout, but only made findings based upon the record of the case that was part and parcel of the factual conflict between the parties.

Moreover, as with Movant's Paragraph 2 discussed above, the fact of the injunction hearings and orders were not central to the Court's ultimate conclusions.

3. In Paragraph 10 of the motion, Defendants argue "The Court makes reference to hearsay testimony of the Plaintiff Tom Bessent that was not before the Court as to OCRM's allegedly awaiting on the outcome of this case, which evidence was not presented at trial and is not properly before this Court."

Defendants are mistaken. Mr. Bessent testified, without objection, that ORCM was aware of the issues in this case relating to the restrooms and the waste water pump out system and that they were awaiting the outcome of the case.

4. In Paragraph 21 of the motion, Defendants argue "This Court's Order has declared the Defendant South Atlantic Bank's mortgage to be ineffective and void, which was not a matter this Court was asked to consider or rule upon at trial and goes beyond the scope of reference to this Court."

Defendants are mistaken, for the following reasons:

a) South Atlantic Bank is a party Defendant in the case.

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b) South Atlantic Bank made an appearance in the case by filed answer, and by counsel at trial.

c) The prayer of Plaintiffs' Fourth Amended Complaint plainly seeks the following relief:

(1) In Paragraph (A) of the Prayer, Plaintiffs asked the Court to declare that they hold a vested indefeasible interest in the subject property; that any provision in the amended (2007) Master Deed is void; "and also declaring such other rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property as may be established by the evidence. (Emphasis added.)

(2) In Paragraph (B) of the Prayer, Plaintiffs seek an Order declaring that the portions of the Amended and Restated Master Deed that violate the Horizontal Property Act, as alleged, be declared invalid, and that the Subject Property, namely the Ship's Store in its entirety and the Fuel Docks, be declared to be common elements, and therefore owned by the Plaintiffs and each of the dock unit owners as tenants in common; "and further declaring that the Defendants have no right, title, estate or interest in the subject property or any portions thereof." (Emphasis added.)

d) Therefore, it is clear that, contrary to Defendants' argument, this Court was asked to declare the rights of the parties, which would include the rights of South Atlantic Bank. The challenged ruling was therefore well within the scope of the Order of Reference to this Court.

For the foregoing reasons the Motion for Reconsideration must be denied.

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BARR, UNGER & McINTOSH, LLC

s/Capers G. Barr, III
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(843) 723-9039 (Facsimile)
cgb@barrungermcintosh.com
ATTORNEY FOR PLAINTIFFS

May 26, 2022

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.)
Plaintiff(s))

vs.)

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC)
Defendant(s))

CIVIL ACTION COVERSHEET

2017-CP-10-3099

Submitted By: Capers G. Barr, IV
Address: 11 Broad Street
Charleston, SC 29401

SC Bar #: 65075
Telephone #: 843-577-5083
Fax #: 843-723-9039
Other:
E-mail: cbarr@barrungermcintosh.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

**If Action is Judgment/Settlement do not complete*

- ☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
- ☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Fraud/Bad Faith (150)
- ☐ Failure to Deliver/ Warranty (160)
- ☐ Employment Discrim (170)
- ☐ Employment (180)
- ☐ Other (199) _____

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-NI-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299) _____

Torts – Personal Injury
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Assault/Battery (370)
- ☐ Slander/Libel (380)
- ☐ Other (399) _____

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499) Declaratory Judgment

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599) _____

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899) _____

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799) _____

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999) _____

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699) _____
- ☐ Sexual Predator (510)
- ☐ Permanent Restraining Order (680)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Pre-Suit Discovery (670)

Submitting Party Signature: _____ **Date:** 6/16/17

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

Pursuant to the ADR Rules, you are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10- 3099 **SUMMONS**

2017 JUN 16 PM 1:15

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint upon the subscribers at their office, 11 Broad Street, Charleston, South Carolina, 29401, within thirty (30) days after service, hereof, exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Complaint.

BARR, UNGER & McINTOSH, LLC

Charleston, South Carolina
June 16, 2017

Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10- 3099 **COMPLAINT** ***(Declaratory Judgment)***

2017 JUN 16 PM 1:13
JULIE J. ARMSTRONG
CLERK OF COURT
CHARLESTON COUNTY

The Plaintiffs above named complaining of the Defendants herein allege and show unto this Honorable Court as follows:

1. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10 through 15-53-140 (1976), to declare that the Amended and Restated Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended and Restated Master Deed") is invalid and that the property which is the subject of this action, which is more fully described herein, is a common element of the Mariner's Cay Marina Horizontal Property Regime; and for an Order declaring that none of the Defendants have any right, title, estate or interest in the subject property described in this Complaint or any part thereof.

2. Mariner's Cay Marina consists of ninety (90) boat slips located on the Folly River as well as a two-story building known as the "Ship Store" (herein referred to as the "Ship Store") located on the high ground adjacent to the marina docks.

3. The Plaintiff, Mariner's Cay Marina Council of Co-Owners, Inc. (herein referred to as the "Marina Council") is the incorporated council of co-owners for Mariner's Cay Marina Horizontal Property Regime (herein the "Regime"), a horizontal property regime located in Charleston County, South Carolina. The Regime was formed by the recording of a Master Deed on May 18, 2006 in the RMC Office for Charleston County in Book V583, Page 584 (herein the "Master Deed"). The Marina Council is vested with the rights, powers, privileges, and duties necessary or incidental to the administration of the Regime, including the care and upkeep of the common elements, as well as the employment of the marina Dockmaster (as herein defined) and for providing the Dockmaster a suitable location and office for him to perform his duties.

4. The Plaintiff Alben D. Neighbors (herein "Neighbors") is the owner of Dock Unit D-3 in the Regime, and the Plaintiff Dan G. Nekola (herein "Nekola") is the owner of Dock Unit A-7 in the Regime.

5. Defendant Mariners Cay Marina Condo, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina, and said Defendant claims an interest in the property which is the subject of this action.

6. Defendant Mariners Cay Fuel Dock, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina and said Defendant claims an interest in the property which is the subject of this action.

7. As used herein, the terms "Unit" and "Dock Unit" in the Regime are the equivalent of the term "apartment" under the S.C. Horizontal Property Act, S.C. Code Ann. §§27-31-10 through 27-31-300 (1976).

8. The property which is the subject of this action (herein the "Subject Property") consists of the following:

a. A two story wood frame structure on timber piles located on the high ground adjacent to the Mariner's Cay Marina docks commonly known as the "Ship Store," which property has been described as follows:

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at page 629.

Charleston County TMS: 328-00-00-544 and 328-00-00-545;

b. The fuel docks of the Mariner's Cay Marina, which have been described as follows:

Dock Unit C21 and C22, Mariners Cay HPR, and HRP established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B" of the aforementioned Master Deed.

Charleston County TMS: 328-00-00-507 and 328-00-00-508; and

c. The fuel tanks, pumps, lines and related fueling equipment located throughout the Regime property.

9. The class of Plaintiffs represented by Alben D. Neighbors and Dan G. Nekola consists of all individuals, trustees, corporations, partnerships, unincorporated associations or other entities that own, in whole or in part, all of the Dock Units in the Regime (hereinafter the "Class").

10. The Class does not include any former owner of a Dock Unit in the Regime.

11. The Class is sufficiently numerous that joinder of all members is impractical.

12. The Plaintiffs Neighbors and Nekola will fairly and adequately represent the interests of the Class as Class representatives. The interests of the Class representatives are not antagonistic to those of the other Class members.

13. There are questions of law and fact common to the Class, and the Plaintiffs' claims are typical of the claims or defenses of the Class. Common questions of law include whether the Amended and Restated Master Deed was validly adopted. The outcome of this common question of law will equally affect all members of the Class. Common questions of fact include the recording of the Amended and Restated Master Deed unilaterally by the Declarant without the consent or acquiescence of the Dock Unit owners.

14. Plaintiffs Neighbors and Nekola, as Class representatives, envision no unusual difficulty in the management of this action as a Class action.

15. Certification of this action as a Class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

16. The Mariner's Cay Marina docks and Ship Store were originally constructed in the late 1970's or early 1980's. Prior to the formation of the Regime, the marina and Ship Store were owned by a common owner, and boat slips in the marina were rented to individual boat owners.

17. Prior to the formation of the Regime, the renters of boat slips in the marina enjoyed the use of the restrooms, laundry room, porches and decks located in and around the Ship Store.

18. The permit issued by the South Carolina Department of Health and Environmental Control for the operation of the marina requires that an experienced operator be in charge of the

marina. Accordingly, since the inception of the marina, a dockmaster (herein the "Dockmaster") has been employed, on site, to oversee the marina operations.

19. Prior to May of 2016, the Dockmaster utilized a portion of the first floor of the Ship Store as his office. The Dockmaster's office included, among other things, a desk, file storage, telephone and telephone line, internet connection, internet router and booster system for the Wi-Fi service for the boat slip owners, controls for the security gate leading to the docks, as well as a VHF radio and antenna for communicating with boaters.

20. The Master Deed provides that "Commercial Unit 1-A" and "Commercial Unit 1-B," located in the building known as the Ship Store, as well as "Commercial Unit 2," consisting of the fuel dock, are common elements of the Regime.

21. The Master Deed, in accordance with the South Carolina Horizontal Property Act, assigned a schedule of basic values and percentage ownership of the common elements to each of the Dock Units. No basic values or percentage ownership of the common elements were assigned under the Master Deed to "Commercial Unit 1-A", "Commercial Unit 1-B" or to "Commercial Unit 2" because they were intended to be common elements of the Regime.

22. Upon the recording of the Master Deed on May 18, 2006, the ownership of the common elements described in the Master Deed as "Commercial Unit 1-A," "Commercial Unit 1-B" and "Commercial Unit 2" (the Subject Property) was vested in the owners of the Dock Units in accordance with the South Carolina Horizontal Property Act and South Carolina caselaw.

23. On March 19, 2007, Marina at Mariners Cay, LLC, the Declarant under the Master Deed, (herein the "Declarant") unilaterally, and without the consent of all Unit owners in the Regime, recorded the Amended and Restated Master Deed, the effect and result of which was to attempt

to convert the former common elements described in Paragraph 20, above, (the Subject Property) in which all of the Unit owners owned an undivided interest, into individual units.

24. Prior to the recording of the Amended and Restated Master Deed, the Declarant sold thirty eight (38) Dock Units to different individuals or entities. On information and belief, none of those individuals or entities were consulted, nor did they consent, or otherwise acquiesce, to the adoption of the Amended and Restated Master Deed.

25. The Amended and Restated Master Deed changed the definition of units and common elements to purportedly create three, additional, separately transferrable condominium units which had previously been common elements under the Master Deed, namely Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

26. The Amended and Restated Master Deed also altered the schedule of basic values and percentage interests in the common elements by reducing each Dock Unit's basic value and percentage interest and assigning basic values and percentage interests to Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

27. After the Amended and Restated Master Deed was recorded, the Subject Property was purportedly conveyed as follows:

(a) By Declarant to Flint River Capital, Inc. by deed recorded May 18, 2007 in the RMC Office for Charleston County in Book A626, Page 624;

(b) Thereafter by Flint River Capital, Inc. to Tiger River Capital, LLC by deed recorded February 27, 2009 in the RMC Office for Charleston County in Book 0037, Page 844;

(c) Thereafter by deed of the Master in Equity for Charleston County to Emerald Portfolio, LLC by deed recorded October 14, 2015 in the RMC Office for Charleston County in Book 0510, Page 674;

(d) Thereafter by Emerald Portfolio, LLC to Emerald McDonough Road Holdings, LLC by deed recorded November 13, 2015 in the RMC Office for Charleston County in Book 0517, Page 162; and

(e) Thereafter by two (2) deeds of Emerald McDonough Road Holdings, LLC: (i) to the Defendant Mariner's Cay Fuel Dock, LLC recorded May 24, 2016 in the RMC Office for Charleston County in Book 0555, Page 946, and (ii) to the Defendant Mariner's Cay Marina Condo, LLC recorded May 25, 2016 in the RMC Office for Charleston County in Book 0556, Page 511.

28. At all times during the time period described in Paragraphs 27(a) through 27(e) (May 18, 2007 through May 25, 2016) the Plaintiffs enjoyed the uninterrupted use of the Ship Store as described hereinabove.

29. After May 2016, the Defendants have prohibited the Plaintiffs (including the Dockmaster employed by the Marina Council) from utilizing any portion of the Ship Store (except for the restrooms located therein) as well as any portion of the space beneath the Ship Store building.

30. The attempt by the Declarant to alter the ownership of the common elements, as set forth in Paragraph 25 above, and to alter the schedule of basic values and percentage interests in the common elements, as set forth in Paragraph 26 above, without the consent or acquiescence of the Dock Unit owners was a direct violation of the South Carolina Horizontal Property Act, namely S.C. Code §27-31-60 and §23-31-70.

31. The unilateral adoption of the Amended and Restated Master Deed by the Declarant, as described above, was invalid.

32. Plaintiffs are informed and believe that the Defendants are without any right to prohibit the Plaintiffs from using any portion of the Subject Property and furthermore that the Defendants have no right, title, estate, or interest in the Subject Property.

WHEREFORE, Plaintiff prays that this Court inquire into the matters and things alleged herein and issue an Order declaring that the Amended and Restated Master Deed, or at least such portions of the Amended and Restated Master Deed which directly violate the South Carolina Horizontal Property Act, as described above, is (or are) invalid and that the Subject Property, namely the Ship Store, in its entirety, as well as the fuel dock and fuel systems are common elements of the Regime and are therefore owned by each of the Dock Unit owners as tenants in common; and further declaring that the Defendants have no right, title, estate or interest in the Subject Property or any portion thereof, and for such other and further relief as the Court may deem just and proper.

BARR, UNGER & McINTOSH, LLC



Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

Charleston, South Carolina
June 16, 2017

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10- 3099 **LIS PENDENS**

2017 JUN 16 PM 1:13
CLERK OF COURT
CHARLESTON COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

NOTICE IS HEREBY GIVEN that an action will be commenced in this Court upon the filing of a Summons and Complaint by the above-named Plaintiffs against the above-named Defendants for declaratory relief to establish that the property which is the subject of this action is a common element of the Mariner's Cay Marina Horizontal Property Regime and that the Defendants have no right, title, estate or interest in said property. The property which is the subject of this action is, at the time of the commencement of this action, and at the time of filing this notice, situate in Charleston County, and described as follows:

a. A two story wood frame structure on timber piles located on the high ground adjacent to the Mariner's Cay Marina docks commonly known as the "Ship Store," which property has been described as follows:

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly

River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at page 629.

Charleston County TMS: 328-00-00-544 and 328-00-00-545;

b. The fuel docks of the Mariner's Cay Marina, which have been described as follows:

Dock Unit C21 and C22, Mariners Cay HPR, and HRP established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B" of the aforementioned Master Deed.

Charleston County TMS: 328-00-00-507 and 328-00-00-508; and

c. The fuel tanks, pumps, lines and related fueling equipment located throughout the Mariner's Cay Marina Horizontal Property Regime property.

BARR, UNGER & McINTOSH, LLC

Capers C. Barr, IV
11 Broad Street
Charleston, SC 29402
(843) 577-5083
Attorney for Plaintiffs

Charleston, South Carolina
June 16, 2017

BARR, UNGER
& MCINTOSH LLC
ATTORNEYS AT LAW

Capers G. Barr, IV
Email: cbarr@barrungermcintosh.com

July 24, 2017

G. Hamlin O'Kelley, III, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464

RE: Mariner's Cay Marina Council of Co-Owners, Inc. v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Hamlin:

Enclosed please find a courtesy copy of the Amended Summons and Complaint filed July 21, 2017 in the above referenced case. We delivered these filed pleadings to our process server on July 21, but I am not certain whether Mr. Farmer has yet been served with the same.

The purpose of this letter is to attempt to resolve a portion of the dispute between our respective clients relating to access to certain elements in and below the Ship Store and also relating to your client's obstruction of the fuel dock. My clients are hopeful that we can resolve these issues and therefore avoid the time and expense of seeking an injunction concerning the same.

As I explained to you previously, the Mariner's Cay Marina Council of Co-Owners, Inc. (the "Marina Council") had requested that Mr. Farmer permit the Dockmaster to access the electrical panel located in the Ship Store in order to program certain key fobs used to access the security gate leading to the docks. There was an electrical component of this security gate installed in the electrical panel in the Ship Store which operated the security gate and which was used for programming key fobs. Unfortunately, rather than permitting such access, Mr. Farmer removed this electrical component of the security gate system and placed it outside of the Ship Store. This caused damage to the security system and also rendered it inoperable. It is also my understanding that Mr. Farmer's actions resulted in the disconnection of the internet wi-fi system for the marina.

The space below the Ship Store is enclosed and locked by your client. The Marina Council needs to access this space in order to store certain property used in connection with the operation of the marina. It is our position that your client has no right to control this space and to exclude the Marina Council or any of the boat slip owners.

Finally, there is the issue of the obstruction of the fuel dock. I have been informed that Mr. Farmer is mooring a boat at the fuel dock on a regular basis. The fuel dock is not meant for

mooring boats for an extended period of time. Moreover, the fuel dock is the only location where the marina's sewer pump out service can be utilized. Therefore, while a boat is moored at the fuel dock, the sewer pump out service is not available to boaters.

On behalf of the Marina Council and the boat slip owners, we are formally requesting the following from Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC and Mr. Farmer:

1. To permit the Marina Council to access the Ship Store in order to reinstall the gate security system and the marina internet wifi, and for Mr. Farmer to agree that he will not prevent the Marina Council from accessing these elements in the future;

2. To permit the Marina Council to access the ground space beneath the Ship Store and for Mr. Farmer to agree that he will not obstruct the Marina Council from accessing this space or from storing property in this space in the future; and

3. That the boat presently moored at the fuel dock be removed and that Mr. Farmer agree that he is not to moor boats at the fuel dock in the future or otherwise obstruct the use of the marina's sewer pump out service.

We are prepared to seek a temporary injunction from the Court to address these issues if your clients will not agree, in writing, to these proposals on or before 5:00 PM on Wednesday, July 26, 2017. If we are unable to resolve these issues to the satisfaction of the Marina Council by 5:00 PM on July 26, 2017, we will have no choice but to file a Motion for a Temporary Injunction to seek the relief that we are requesting as outlined above.

Thank you for your attention to this matter and I look forward to hearing from you soon.

Sincerely yours,

Capers G. Barr, IV

cc: Mariner's Cay Marina Council of Co-Owners, Inc.
Alben D. Neighbors
Dan G. Nekola
CGBiv:seg

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO.: 2017-CP-10-3099
)
Alben D. Neighbors and Dan G. Nekola,)
on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)
)
Plaintiffs,) **AMENDED SUMMONS**
)
v.)
)
Mariners Cay Marina Condo, LLC and)
Mariners Cay Fuel Dock, LLC, and George)
Farmer, Jr.)
)
Defendants.)

FILED
2017 JUL 21 P 2:02
CLERK OF COURT
CHARLESTON COUNTY, SC

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Amended Complaint upon the subscribers at their office, 11 Broad Street, Charleston, South Carolina, 29401, within thirty (30) days after service, hereof, exclusive of the day of such service, and if you fail to answer the amended complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Amended Complaint.

BARR, UNGER & McINTOSH, LLC

Charleston, South Carolina
July 21, 2017

Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-10-3099

AMENDED COMPLAINT

2017 JUL 21 PM 2:02

The Plaintiffs above named complaining of the Defendants herein allege and show unto this Honorable Court as follows:

1. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10 through 15-53-140 (1976), to determine the ownership of the property which is the subject of this action, the rights of the parties in and to the property which is the subject of this action, and to declare that the Amended and Restated Master Deed for Mariner's Cay Marina Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended and Restated Master Deed") is invalid and that the property which is the subject of this action is a common element of the Mariner's Cay Marina Horizontal Property Regime; and for an Order declaring that none of the Defendants have any right, title, estate or interest in the subject property described in this Complaint or any part thereof.

2. Mariner's Cay Marina consists of ninety (90) boat slips located on the Folly River as well as a two-story building known as the "Ship Store" (herein referred to as the "Ship Store") located on the high ground adjacent to the marina docks.

3. The Plaintiff, Mariner's Cay Marina Council of Co-Owners, Inc. (herein referred to as the "Marina Council") is the incorporated council of co-owners for Mariner's Cay Marina Horizontal Property Regime (herein the "Regime"), a horizontal property regime located in Charleston County, South Carolina. The Regime was formed by the recording of a Master Deed on May 18, 2006 in the RMC Office for Charleston County in Book V583, Page 584 (herein the "Master Deed"). The Marina Council is vested with the rights, powers, privileges, and duties necessary or incidental to the administration of the Regime, including the care and upkeep of the common elements, as well as the employment of the marina Dockmaster (as herein defined) and for providing the Dockmaster a suitable location and office for him to perform his duties.

4. The Plaintiff Alben D. Neighbors (herein "Neighbors") is the owner of Dock Unit D-3 in the Regime, and the Plaintiff Dan G. Nekola (herein "Nekola") is the owner of Dock Unit A-7 in the Regime.

5. Defendant Mariners Cay Marina Condo, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina, and said Defendant claims an interest in the property which is the subject of this action.

6. Defendant Mariners Cay Fuel Dock, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina and said Defendant claims an interest in the property which is the subject of this action.

7. The Defendant George A. Farmer, Jr. is, on information and belief, a resident of Charleston County, South Carolina.

8. As used herein, the terms "Unit" and "Dock Unit" in the Regime are the equivalent of the term "apartment" under the S.C. Horizontal Property Act, S.C. Code Ann. §§27-31-10 through 27-31-300 (1976).

9. The property which is the subject of this action (herein the "Subject Property") consists of the following:

a. A two story wood frame structure on timber piles located on the high ground adjacent to the Mariner's Cay Marina docks commonly known as the "Ship Store," (herein the "Ship Store") which property has been described as follows:

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at page 629.

Charleston County TMS: 328-00-00-544 and 328-00-00-545;

b. The fuel docks of the Mariner's Cay Marina (herein the "Fuel Docks"), which have been described as follows:

Dock Unit C21 and C22, Mariners Cay HPR, and HRP established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B" of the aforementioned Master Deed.

Charleston County TMS: 328-00-00-507 and 328-00-00-508; and

c. The fuel tanks, pumps, lines and related fueling equipment located throughout the Regime property.

10. The class of Plaintiffs represented by Alben D. Neighbors and Dan G. Nekola consists of all individuals, trustees, corporations, partnerships, unincorporated associations or other entities that own, in whole or in part, all of the Dock Units in the Regime (hereinafter the "Class").

11. The Class does not include any former owner of a Dock Unit in the Regime.

12. The Class is sufficiently numerous that joinder of all members is impractical.

13. The Plaintiffs Neighbors and Nekola will fairly and adequately represent the interests of the Class as Class representatives. The interests of the Class representatives are not antagonistic to those of the other Class members.

14. There are questions of law and fact common to the Class, and the Plaintiffs' claims are typical of the claims or defenses of the Class. Common questions of law include whether the Amended and Restated Master Deed was validly adopted. The outcome of this common question of law will equally affect all members of the Class. Common questions of fact include the recording of the Amended and Restated Master Deed unilaterally by the Declarant without the consent or acquiescence of the Dock Unit owners.

15. Plaintiffs Neighbors and Nekola, as Class representatives, envision no unusual difficulty in the management of this action as a Class action.

16. Certification of this action as a Class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

17. The Mariner's Cay Marina docks and Ship Store were originally constructed in the late 1970's or early 1980's. Prior to the formation of the Regime, the marina and Ship Store were owned by a common owner, and boat slips in the marina were rented to individual boat owners.

18. Prior to the formation of the Regime, the renters of boat slips in the marina enjoyed the use of the restrooms, laundry room, porches and decks located in and around the Ship Store.

19. The permit issued by the South Carolina Department of Health and Environmental Control for the operation of the marina (the "marina permit") requires that an experienced operator be in charge of the marina. Accordingly, since the inception of the marina, a dockmaster (herein the "Dockmaster") has been employed, on site, to oversee the marina operations.

20. Prior to May of 2016, the Dockmaster utilized a portion of the first floor of the Ship Store as his office. The Dockmaster's office included, among other things, a desk, file storage, telephone and telephone line, internet connection, internet router and booster system for the Wi-Fi service for the boat slip owners, controls for the security gate leading to the docks, as well as a VHF radio and antenna for communicating with boaters.

21. The Master Deed provides that "Commercial Unit 1-A" and "Commercial Unit 1-B," located in the building known as the Ship Store, as well as "Commercial Unit 2," consisting of the Fuel Docks, are common elements of the Regime.

22. The Master Deed, in accordance with the South Carolina Horizontal Property Act, assigned a schedule of basic values and percentage ownership of the common elements to each of the Dock Units. No basic values or percentage ownership of the common elements were assigned under the Master Deed to "Commercial Unit 1-A", "Commercial Unit 1-B" or to "Commercial Unit 2" because they were intended to be common elements of the Regime.

23. Upon the recording of the Master Deed on May 18, 2006, the ownership of the common elements described in the Master Deed as "Commercial Unit 1-A," "Commercial Unit 1-B" and

"Commercial Unit 2" (the Subject Property) was vested in the owners of the Dock Units in accordance with the South Carolina Horizontal Property Act and South Carolina caselaw.

24. On March 19, 2007, Marina at Mariners Cay, LLC, the Declarant under the Master Deed, (herein the "Declarant") unilaterally, and without the consent of all Unit owners in the Regime, recorded the Amended and Restated Master Deed, the effect and result of which was to attempt to convert the former common elements described in Paragraph 21, above, (the Subject Property) in which all of the Unit owners owned an undivided interest, into individual units.

25. Prior to the recording of the Amended and Restated Master Deed, the Declarant sold thirty eight (38) Dock Units to different individuals or entities. On information and belief, none of those individuals or entities were consulted, nor did they consent, or otherwise acquiesce, to the adoption of the Amended and Restated Master Deed.

26. The Amended and Restated Master Deed changed the definition of units and common elements to purportedly create three, additional, separately transferrable condominium units which had previously been common elements under the Master Deed, namely Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

27. The Amended and Restated Master Deed also altered the schedule of basic values and percentage interests in the common elements by reducing each Dock Unit's basic value and percentage interest and assigning basic values and percentage interests to Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

28. After the Amended and Restated Master Deed was recorded, the Subject Property was purportedly conveyed as follows:

(a) By Declarant to Flint River Capital, Inc. by deed recorded May 18, 2007 in the RMC Office for Charleston County in Book A626, Page 624;

(b) Thereafter by Flint River Capital, Inc. to Tiger River Capital, LLC by deed recorded February 27, 2009 in the RMC Office for Charleston County in Book 0037, Page 844;

(c) Thereafter by deed of the Master in Equity for Charleston County to Emerald Portfolio, LLC by deed recorded October 14, 2015 in the RMC Office for Charleston County in Book 0510, Page 674;

(d) Thereafter by Emerald Portfolio, LLC to Emerald McDonough Road Holdings, LLC by deed recorded November 13, 2015 in the RMC Office for Charleston County in Book 0517, Page 162; and

(e) Thereafter by two (2) deeds of Emerald McDonough Road Holdings, LLC: (i) to the Defendant Mariner's Cay Fuel Dock, LLC recorded May 24, 2016 in the RMC Office for Charleston County in Book 0555, Page 946, and (ii) to the Defendant Mariner's Cay Marina Condo, LLC recorded May 25, 2016 in the RMC Office for Charleston County in Book 0556, Page 511.

29. The Defendants are in possession of the Subject Property and contend that they own the same. Plaintiffs contend that the Subject Property is a common element of the Regime and is therefore owned by the Class.

30. At all times during the time period described in Paragraphs 28(a) through 28(e) (May 18, 2007 through May 25, 2016) the Plaintiffs enjoyed the uninterrupted use of the Ship Store as described hereinabove.

31. After May 2016, the Defendants have prohibited the Plaintiffs (including the Dockmaster employed by the Marina Council) from utilizing any portion of the Ship Store (except for the restrooms located therein) as well as any portion of the space beneath the Ship Store building.

32. The attempt by the Declarant to alter the ownership of the common elements, as set forth in Paragraph 25 above, and to alter the schedule of basic values and percentage interests in the common elements, as set forth in Paragraph 26 above, without the consent or acquiescence of the Dock Unit owners was a direct violation of the South Carolina Horizontal Property Act, namely S.C. Code §27-31-60 and §23-31-70.

33. The unilateral adoption of the Amended and Restated Master Deed by the Declarant, as described above, was invalid.

34. Plaintiffs are informed and believe that the Defendants are without any right to prohibit the Plaintiffs from using any portion of the Subject Property and furthermore that the Defendants have no right, title, estate, or interest in the Subject Property.

35. Plaintiffs are informed and believe that they are entitled to an Order of this Court declaring the ownership, rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property

FOR A SECOND CAUSE OF ACTION

36. The Plaintiffs repeat and reiterate the allegations of paragraphs 1 through 35 as if fully repeated herein verbatim.

37. The Defendant, George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a principal of Mariners Cay Marina Condo, LLC and is also a principal of Mariners Cay Fuel Dock, LLC. The Defendant Farmer is presently in possession of the Subject Property.

38. Part of the marina's security system consists of an electronic gate located on the gangway leading to the marina docks (the "Security Gate"). The Security Gate can only be opened with an electronic key fob. Electronic key fobs are provided by the Marina Council to the owners and users of the boat slips in the marina.

39. The marina provides a sewer pump-out service for boaters to discharge the contents of their boats' sewerage holding tanks. The sewer pump-out service is available to be used only at Fuel Docks. The pump which operates the sewer pump-out service (herein the "Sewer Pump") is located beneath the Ship Store.

40. The space beneath the Ship Store is enclosed by lattice and has been locked by the Defendant Farmer.

41. An electrical panel located in the Ship Store includes electrical controls and breakers for the marina's security system, phone system and the sewage pump. Prior to July 17, 2017, and since the formation of the Regime, the electronic controls for the Security Gate were connected to the electrical panel located in the Ship Store.

42. The space beneath the Ship Store, the Electronic Dock Security System, the Sewer Pump and the electrical breakers and controls which operate the Electronic Dock Security System, the marina phone system and the Sewer Pump are all common elements of the Regime. These common elements are owned by the class of Plaintiffs represented by Alben D. Neighbors and Dan G. Nekola, and the Marina Council is responsible for maintaining said common elements. Accordingly, the Plaintiffs are entitled to immediate possession of and access to these common elements.

43. The Defendant Farmer has wrongfully, intentionally and wilfully refused to permit the Plaintiffs to access the common elements described in Paragraph 42, above.

44. Because the Defendant Farmer is in possession of the Ship Store, and in order to avoid a breach of the peace while this action is pending, the Plaintiffs requested, during the week of July 10, 2017, that Farmer permit the Dockmaster to access the Electronic Dock Security System (located in the Ship Store) in order to program additional key fobs for the Security Gate.

45. The Defendant Farmer refused to permit the Plaintiffs to access the Electronic Dock Security System, and instead, the Defendant Farmer, on or about July 16, 2017, intentionally, willfully and maliciously, and without authorization of the Marina Council, removed the Electronic Dock Security System from the Ship Store which caused damage to the same and which also resulted in the complete termination of the security system for the marina docks.

46. The Plaintiffs have suffered damages as a result of the Defendant Farmer's refusal to permit the Plaintiffs access to the common elements described in Paragraph 42, above, and also as a result of the Defendant Farmer's intentional, willful and malicious alteration or destruction of the Electronic Dock Security System.

47. The Plaintiffs are entitled to a judgment against the Defendant Farmer for actual damages, and because Defendant Farmer's actions, described above, were intentional, willful and malicious, or at least reckless, the Plaintiff Marina Council is also entitled to an award of punitive damages.

WHEREFORE, Plaintiff prays as follows:

(A) That this Court inquire into the matters and things alleged herein and issue an Order declaring who owns the Subject Property and also declaring the rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property;

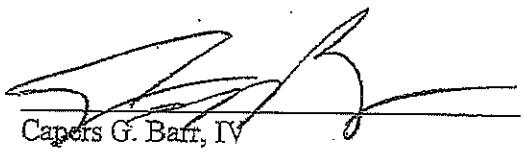
(B) That the Amended and Restated Master Deed, or at least such portions of the Amended and Restated Master Deed which directly violate the South Carolina Horizontal Property Act, as described above, be declared invalid and that the Subject Property, namely the Ship Store, in its entirety, as well as the Fuel Docks and fuel systems be declared common elements of the Regime and therefore owned by each of the Dock Unit owners as tenants in

common; and further declaring that the Defendants have no right, title, estate or interest in the Subject Property or any portion thereof;

(C) For a judgment in favor of the Plaintiffs against the Defendant Farmer for actual and punitive damages in an amount to be determined by the trier of fact; and

(D) For such other and further relief as the Court may deem just and proper.

BARR, UNGER & McINTOSH, LLC



Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

Charleston, South Carolina
July 21, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr.,

Defendants,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Emerald McDongough Road Holdings, LLC,

Third-Party Defendant.

FOURTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: **2017-CP-10-3099**

SUMMONS

FILED
2017 SEP 22 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, JR., ESQ.
BARR UNGER & MCINTOSH, LLC
ATTORNEY FOR THE PLAINTIFFS
AND THIRD-PARTY DEFENDANTS

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim and Third-Party Complaint of the Defendant and Third-Party Plaintiffs, Mariners's Cay Marina

Condo, LLC, and Marine's Cay Fuel Dock, LLC, in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned attorneys at 652 Coleman Boulevard, Suite 200, Mt. Pleasant, South Carolina 29464, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim and Third-Party Complaint within the time aforesaid, judgment by default will be rendered against you, and the Defendant and Third-Party Plaintiff, Mariner's Cay Marina Council of Co-Owners, Inc., in this action will apply to the Court for the relief demanded.

BUIST, BYARS & TAYLOR, LLC

Mt. Pleasant, South Carolina
Sept. 22, 2017

G. Hamlin O'Kelley, III
SC Bar No. 15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
hamlin.okelley@buistbyars.com

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Civil Action No.: **2017-CP-10-3099**

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr.,

Defendants,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendant.

ANSWER OF ALL DEFENDANTS TO THE AMENDED COMPLAINT AND COUNTERCLAIM AND THIRD-PARTY COMPLAINT OF THE DEFENDANTS MARINERS CAY MARINA CONDO, LLC, AND MARINERS CAY FUEL DOCK, LLC

FILED
2017 SEP 22 PM 4:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, JR., ESQ.
BARR UNGER & McINTOSH, LLC
ATTORNEY FOR THE PLAINTIFFS and
THIRD-PARTY DEFENDANT

The Defendants Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr., (sometimes collectively referenced herein as

Defendants), by and through their undersigned counsel, hereby set forth their Answer to the Plaintiffs' Amended Complaint as follows. Additionally, Defendants Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, set forth their Counterclaims and Third-Party Complaint as follows:

1. Each and every allegation of the Plaintiffs' Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.

2. The Defendants are not required to answer the allegations of Paragraph 1 of the Plaintiffs' Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 1 of the Plaintiffs' Amended Complaint, the Defendants deny same and demand strict proof thereof.

3. The Defendants admit the allegations of Paragraph 2 of the Plaintiffs' Amended Complaint.

4. The Defendants admit only so much of Paragraph 3 of the Plaintiffs' Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the RMC for Charleston County. The Defendants are not required to answer the remaining allegations of Paragraph 3 of the Plaintiffs' Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 3 of the Plaintiffs' Amended Complaint, the Defendants deny same and demand strict proof thereof.

5. The Defendants admit, upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Amended Complaint.

6. The Defendants admit the allegations of Paragraphs 5 and 6 of the Plaintiffs' Amended Complaint.

7 The Defendants admit the allegations of Paragraph 7 of the Plaintiffs' Amended Complaint.

8. The Defendants are not required to answer the allegations of Paragraph 8 of the Plaintiffs' Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 8 of the Plaintiffs' Amended Complaint, the Defendants deny same and demand strict proof thereof.

9. In response to Paragraph 9 of the Plaintiffs' Amended Complaint, Defendants crave reference to the recorded deeds describing the subject property and deny all allegations that are inconsistent therewith

10. The Defendants are not required to answer the allegations of Paragraphs, 10, 11, 12, 13, 14, and 15 of the Plaintiffs' Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 10, 11, 12, 13, 14, and 15 of the Plaintiffs' Amended Complaint, the Defendants deny same and demand strict proof thereof.

11. The Defendants deny the allegations of Paragraph 16 of the Plaintiffs' Amended Complaint.

12. The Defendants are without sufficient information as to the allegations of Paragraphs 17, 18, 19, and 20 of the Plaintiffs' Amended Complaint, and, therefore, deny same and demand strict proof thereof.

13. The Defendants admit only so much of Paragraph 21 of the Plaintiffs' Amended Complaint that purports to quote from the Master Deed. As to any remaining allegations

of Paragraph 21 of the Plaintiffs' Amended Complaint, the Defendant denies same and demands strict proof thereof.

14. The Defendants are not required to answer the allegations of Paragraphs 22and 23 of the Plaintiffs' Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 22 and 23 of the Plaintiffs' Amended Complaint, the Defendants deny same and demand strict proof thereof.

15. The Defendants are without sufficient information to form a belief as to the allegations of Paragraphs 24 and 25 of the Plaintiffs' Amended Complaint, and, therefore, the Defendants deny same and demand strict proof thereof.

16. The Defendants admit only so much of Paragraphs 26 and 27 of the Plaintiffs' Amended Complaint as purports to quote from the Amended and Restated Master Deed referenced therein. To the extent the allegations of Paragraphs 26 and 27 of the Plaintiffs' Amended Complaint in any way differ from the Amended and Restated Master Deed, the Defendants deny same and demand strict proof thereof.

17. The Defendants admit only so much of Paragraph 28 of the Plaintiffs' Amended Complaint that purports to quote from the deeds referenced therein. To the extent the allegations of Paragraph 28 of the Plaintiffs' Amended Complaint in any way differ from the deeds referenced therein, the Defendants deny same and demand strict proof thereof.

18. The Defendants admit only so much of Paragraph 29 of the Plaintiffs' Amended Complaint that allege they possess the Subject Property. The Defendants deny the remaining allegations of Paragraph 29 of the Plaintiffs' Amended Complaint, and, therefore, deny same and demand strict proof thereof.

19. The Defendants deny the allegations of Paragraphs 30, 31, 32, 33, 34, and 35 of the Plaintiffs' Amended Complaint and demand strict proof thereof.

20. In response to paragraph 36 of Plaintiffs' Amended Complaint, Defendants adopt their answers as set forth above in paragraphs 1 through 19, inclusive, as if stated herein verbatim.

21. The Defendants deny the material allegations of paragraph 37 of Plaintiffs' Amended Complaint, except Defendants admit that Defendant Farmer is a principal of the LLCs and resides at the property.

22. The Defendants are without sufficient information to form a belief as to the allegations of Paragraphs 38 and 39 of the Plaintiffs' Amended Complaint, and, therefore, the Defendants deny same and demand strict proof thereof.

23. The Defendants deny the material allegations of Paragraph 40 of Plaintiffs' Amended Complaint, except Defendants admit that the area contains lattice.

24. The Defendants deny the material allegations of Paragraphs 41, 42, 43, 44, 45, 46 and 47 of the Plaintiffs' Amended Complaint and demand strict proof thereof.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

25. The Defendants would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

26. The Defendants would allege and show that each owner of any of the Units at Mariners Cay can be identified and it is not impracticable to locate such owners so that this matter may not be treated as a class action pursuant to Rule 23 SCRCivP.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

27. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

28. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

29. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

31. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

32. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

33. Defendants deny that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A TENTHAFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM and THIRD-PARTY COMPLAINT, MARINERS CAY MARINA Condo, LLC, and MARINERS CAY FUEL DOCK, LLC, ("Defendants") ALLEGE AND SHOW AS FOLLOWS

34. The Defendants repeat and reallege the Paragraphs 1 through 33 above as though repeated herein verbatim.

35. The Defendants are South Carolina limited liability companies which own the Subject Property as more fully set forth in the Plaintiffs' Complaint.

36. The Plaintiff Alben D. Neighbors is an owner of property at Mariner's Cay and a resident of Charleston County.

37. The Plaintiff Dan G. Nekola is an owner of property at Mariner's Cay and a resident of Charleston County.

38. The Counterclaim Defendant Mariner's Cay Marina Council of Co-Owners, Inc., is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina, which serves as the owner's association for Mariner's Cay Marina.

39. The Third-Party Defendant Emerald McDonough Road Holdings, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which deeded the Subject Property more fully described in the Plaintiffs' Complaint to the Defendants.

40. On May 19, 2016, the Third-Party Defendant Emerald McDonough Road Holdings, LLC, conveyed the Subject Property in the Mariner's Cay Marina Horizontal Property Regime to the Defendants by those deeds recorded in Book 0555 at Page 946 and in Book 0556 at Page 511 in the Office of the RMC for Charleston County on May 25, 2016.

41. The Defendants paid a total of Two Hundred Fifty Thousand ($250,000.00) Dollars to Emerald McDonough Road Holdings, LLC, as consideration for the purchase of the Subject Property.

42 At the time of the conveyance, Emerald McDonough Road Holdings, LLC, conveyed all right, title, and interest in the Subject Property to the Defendants representing in its deeds, and through the warranties of title, that it had all right, title, and interest in the Subject Property conveyed to the Defendants.

43. Mariner's Cay Marina Council of Co-Owners, Inc., acting by and through its then President, Michael Sutton, held a meeting on May 21, 2016, a day after the Defendants closed on the Subject Property.

44. At that meeting, the Defendants offered Unit 1-A, the lower level of the Ship Store, for sale, along with C-21, C-22, and all associated tanks and pumps.

45. At that same meeting, the members of the Mariner's Cay Marina Council of Co-Owners, Inc., elected Laurie Hull to be their President.

46. The Defendants and the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., including their new President, agreed to meet on June 21, 2016, to discuss the potential sale of Unit 1-A by the Defendants.

47. From the time of the meeting on May 21, 2016, the Defendants and Ms. Hull exchanged numerous telephone calls about the sale of the Unit 1-A and the docks.

48. Acting through its President, the Mariner's Cay Marina Council of Co-Owners, Inc., negotiated with the Defendants, acknowledging that the Defendants owned the Subject Property.

49. At no time did the Mariner's Cay Marina Council of Co-Owners, Inc., dispute the ownership of the Subject Property by the Defendants until this litigation commenced.

50. During negotiations with Mariner's Cay Marina Council of Co-Owners, Inc, and as a show of good faith, the Defendants allowed owners of Units at the Marina to use Unit 1-A from May 21, 2016, through October, 2016.

51. Neither the Mariner's Cay Marina Council of Co-Owners, Inc., nor its members paid any rent or fees to the Defendants for use of Unit 1-A .

52. On June 29, 2016, Ms. Hull, as the President of the Mariner's Cay Marina Council of Co-Owners, Inc., delivered an offer to purchase the following Units and dock slips from the Defendants:

a. Unit 1-A, Charleston County TMS No. 328-00-00-544;

b. Dock Unit C-21, all tanks, and pumps;

c. Dock Unit C-22, all tanks, and pumps.

53. The offer from the Mariner's Cay Marina Council of Co-Owners, Inc., by and through Ms. Hull was for Eighty Thousand and No/100 ($80,000.00) Dollars.

54. The Defendants submitted a counter-offer on June 30, 2016, and negotiations continued thereafter.

55. On August 11, 2016, the Mariner's Cay Marina Council of Co-Owners, Inc., board met to discuss the counteroffers made by the Defendants.

56. From August, 2016, through December, 2016, there were numerous communications by and between the Mariner's Cay Marina Council of Co-Owners, Inc., and the Defendants about purchasing various portions of the Subject Property.

57. During this time, the Defendants made repairs to the Subject Property which had been neglected and should have been maintained by the Mariner's Cay Marina Council of Co-Owners, Inc.

58. The Defendants conferred direct benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., in form of repairs made and in use of the Units owned by the Defendants.

59. The Defendants also restored electrical power and water service to the docks without being paid by the Mariner's Cay Marina Council of Co-Owners, Inc.

60. On November 10, 2016, the Defendants met with the Board of the Mariner's Cay Marina Council of Co-Owners, Inc.

61. At that meeting, the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., advised that Tom Bessett was the new President; Ms. Hull did not attend the meeting.

62. The Board offered the Defendants One Hundred Forty Thousand ($140,000.00) Dollars to purchase Unit 1-A from the Defendants as well as offering Twenty Thousand and No/100 ($20,000.00) Dollars for one dock Unit and asked to trade the other dock Unit for a Unit owned by the Mariner's Cay Marina Council of Co-Owners, Inc.

63. Discussions followed between the Defendants and the Board members after which the Defendant requested that the Board put these offers in writing to the Defendants.

64. On November 13, 2016, the Defendants once again requested that the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., put any offer in writing.

65. On December 6, 2016, the Defendants received another written offer, which they did not accept.

66. From December 2016 until the present litigation was filed, the Defendants attempted to negotiate sales and potential uses of Unit 1-A, all while both the Defendants and the Mariner's Cay Marina Council of Co-Owners, Inc., acknowledged the Defendants' ownership of the Subject Property.

67. On May 21, 2017, the Mariner's Cay Marina Council of Co-Owners, Inc., held its annual meeting.

68. At that meeting, the Defendants, by and through their attorney, offered to sell the dock Units to the Mariner's Cay Marina Council of Co-Owners, Inc., for their appraised value and to donate bathrooms at Unit 1-A to the Mariner's Cay Marina Council of Co-Owners, Inc., for their use.

69. At that meeting, the attorney for the Defendants presented new drawings for an updated design.

70. The Defendants also offered to build, at their own expense, a new access to the bathrooms at Unit 1-A and a new office space for the dock master.

71. Nothing came of those offers, and this lawsuit followed.

FOR A FIRST CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Unjust Enrichment)

72. The Defendants repeats and reallege Paragraphs 1 through 71 above as though repeated herein verbatim.

73. The Defendants supplied benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., as set forth more fully above and for which benefits the Defendants have not been paid.

74. It would be unjust for the Mariner's Cay Marina Council of Co-Owners, Inc., to retain the benefit of the use of the Defendants' property, the benefit of the repairs made in favor of the Mariner's Cay Marina Council of Co-Owners, Inc., and other benefits provided without payment from Mariner's Cay Marina Council of Co-Owners, Inc. This benefit also includes the dock master's use of the Subject Property without paying rent from May 21, 2016, to October, 2016.

75. As a direct result of this unjust enrichment, the Defendants are entitled to actual damages in amounts to be proven at the trial of this case

FOR A SECOND CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc., and Emerald McDonough Road Holdings, LLC)
(Indemnification – Equitable, Legal, and Contractual)

76. The Defendants repeats and reallege Paragraphs 1 through 75 above as though repeated herein verbatim.

77. The Defendants have been made a party to this litigation by Alben D. Neighbors and Dan G. Nekola, allegedly on behalf of themselves and the members of the Mariner's Cay Marina Council of Co-Owners, Inc.

78. The Defendants are subject to this lawsuit having obtained title from the deeds from Emerald McDonough Road Holdings, LLC, conveying all right, title and interest in the Subject Property to the Defendants and by virtue of the inaction of the Mariner's Cay Marina Council of Co-Owners, Inc.

79. As a direct and proximate result of the acts and omissions of the Third-Party Defendants, the Defendants have become subject to this litigation, and, accordingly, Defendants should be indemnified by the Third-Party Defendants, including equitable indemnification, legal indemnification, and contractual indemnification should the Plaintiffs prevail in this action.

FOR A THIRD CAUSE OF ACTION
(As to Emerald McDonough Road Holdings, LLC)
(Breach of Contract)

80. The Defendants repeat and reallege Paragraphs 1 through 79 above as though repeated herein verbatim.

81. The Defendants entered into valid and enforceable contracts with Emerald McDonough Road Holdings, LLC.

82. The Defendants relied upon Emerald McDonough Road Holdings, LLC, to provide good, marketable title to the Subject Property, free and clear of all liens, encumbrances, and claims.

83. The Defendants are subject to the Plaintiffs' claims, none of which are admitted, and, should those claims be successful, Emerald McDonough Road Holdings, LLC, will have violated and breached their deed warranties and contracts, without legal excuse.

84. As a direct and proximate result of the breach of contract by Emerald McDonough Road Holdings, LLC, the Defendants have incurred and will continue to incur damages in amounts to be proven at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Nuisance)

85. The Defendants repeat and reallege Paragraphs 1 through 84 above as though repeated herein verbatim.

86. The Mariner's Cay Marina Council of Co-Owners, Inc., has allowed its members, Unit owners, guests, invitees, and licensees to use the bathrooms located on the Plaintiffs' property at all hours of the day and night.

87. Such usage constitutes a nuisance as it has interfered with the Defendants' quiet enjoyment of their property.

88. As a direct and proximate result of the nuisance created by Mariner's Cay Marina Council of Co-Owners, Inc., the Defendants have suffered damages in amounts to be proven at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
(As to the Plaintiffs Mariner's Cay Marina Council of Co-Owners, Inc., and the Plaintiffs Alben and Nekola)
(Civil Conspiracy)

89. The Defendants repeat and reallege Paragraphs 1 through 88 above as though repeated herein verbatim.

90. The Plaintiffs in a combination of two or more persons, did conspire with each other to case injury to the Defendants in a way which is improper and unjustified, which has resulted in special damages to the Defendants, in attempting to deny the Defendants' ownership of the Subject Property and to stop their use of the Subject Property.

91. These special damages include, but are not limited to, the following:

a. Loss of income for the rental of the docks owned by the Defendants;

b. Loss of potential rentals of the Subject Property;

c. Loss of potential sales of the Subject Property;

d. Loss of rental of the boats owned by the Defendants at the Subject Property

92. As a direct and proximate result of the conspiracy by and between the Plaintiffs, the Defendants have suffered special damages in amounts to be proven at the trial of this case.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendants pray that this Court enter its judgment and order as follows:

a. Dismissing the Plaintiffs' Complaint;

b. Awarding the Defendants' actual damages and attorney fees in amounts to be proven at the trial of this case; and

c. Award the Defendants' special damages in amounts to be proven at the trial of this case; and

d. Granting any and all such further relief as this Court deems just and proper.

Mt. Pleasant, South Carolina
Sept 22 2017

BUIST, BYARS & TAYLOR, LLC

G. Hamlin O'Kelley, III, SC Bar #15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

Attorney for the Defendants and Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

AND

QUALEY LAW FIRM

Joseph K. Qualey, Esq., SC Bar #4603
Robert G. Jones, Esq., SC Bar #74964
23 Broad Street
Charleston, South Carolina 29401
(843)577-3434
RJones@QLawfirm.com
JoeQualey@QLawfirm.com

Attorneys for the Defendant George A. Farmer, Jr.

CERTIFICATE OF MAILING

I hereby certify that on September 22, 2017, I mailed, postage prepaid, to counsel of record in this matter, as follows:

Capers G. Barr, IV
Barr, Unger & McIntosh, LLC
11 Broad Street
Charleston, SC 29401
Attorney for the Plaintiffs

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

FILED
2017 SEP 22 PM 4:19
JULIE A. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr.,

Defendants,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Mariner's Cay Marina Council of Co-Owners, Inc., and Emerald McDongough Road Holdings, LLC, and

Third-Party Defendants.

FOURTEENTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
C/A No.: **2017-CP-10-3099**

AFFIDAVIT OF SERVICE

FILED
2017 OCT 27 AM 11:08
JULIE J. ARMSTRONG
CLERK OF COURT
BY

PERSONALLY appeared before me G. Hamlin O'Kelley, III, who, being duly sworn, on oath deposes and states as follows:

That he mailed via Certified mail, a file-stamped copy of the Summons, Answer, Counterclaim and Third-Party Complaint to Defendant as follows:

Emerald McDonough Road Holdings, LLC
Corporation Service Company, Registered Agent
1703 Laurel Street

Columbia, SC 29201
Return Receipt No.: 7017 0530 0000 7167 8233

A copy of the Proof of Delivery is attached hereto and incorporated by reference herein, and

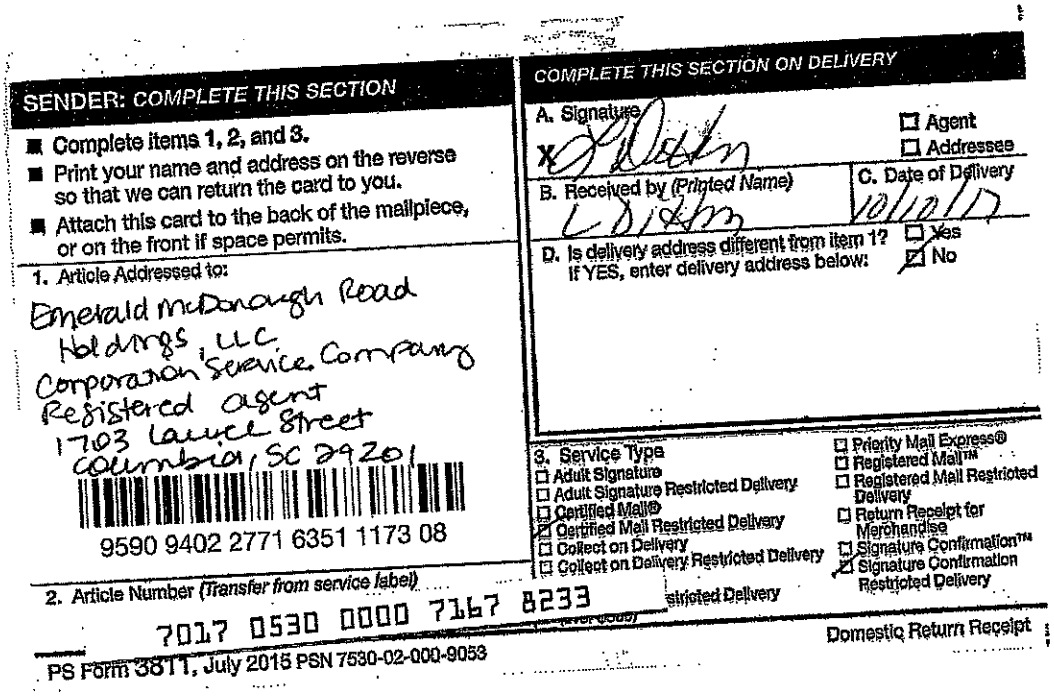
The file-stamped Summons, Answer, Counterclaim and Third-Party Complaint were signed for on October 10, 2017; and

FURTHER THE AFFIANT SAYETH NOT

G. Hamlin O'Kelley, III
S.C. Bar No. 15491
Buist, Byars & Taylor, LLC
652 Coleman Blvd., Suite 200
Mt. Pleasant, South Carolina 29464
(843) 856-4488
hamlin.okelley@buistbyars.com

Sworn to before me this 16
day of October 2017.

Notary Public for South Carolina
My Commission Expires: January 1, 2019



SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Emerald McDonough Road Holdings, LLC
Corporation Service Company
Registered Agent
1703 Laurel Street
Columbia, SC 29201

9590 9402 2771 6351 1173 08

2. Article Number (Transfer from service label)

7017 0530 0000 7167 8233

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/10/17

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☑ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☑ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☑ Signature Confirmation Restricted Delivery

Domestic Return Receipt

CLAWSON AND STAUBES LLC

David C. Cleveland
Licensed in SC
dcleveland@clawsonandstaubes.com

November 21, 2017

File No.: 20172668.000

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St Ste 106
Charleston, SC 29401-2210

Re: Mariner's Cay Marina Counsel of Co-owners, et al v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Enclosed please find an original and one copy of the Plaintiffs' Reply to Counterclaim of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC in the above-referenced case. Please file the original along with the other documents in this case and return the file stamped copy to our office in the enclosed self-addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

David C. Cleveland

DCC/wrb

Enclosure

cc: Capers G. Barr, IV, Esq.
G. Hamlin O'Kelley, Esq.
Matthew E. Tillman, Esq.
Joseph Qualey, Esq.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr., Defendants. And Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Third-Party Plaintiffs, vs. Emerald McDonough Road Holdings, LLC, Third-Party Defendants	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099 **PLAINTIFFS' REPLY TO COUNTERCLAIM OF MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC**

The Plaintiffs reply to the Counterclaim of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (herein after "Defendants"), above named, and respond to the allegations as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer, Counterclaim and Third-Party Complaint which is not hereinafter specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

2. No response is required to Paragraphs 1-34 of the Answer, Counterclaim and Third-Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

3. Plaintiffs deny Paragraph 35 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

4. In response to Paragraph 36 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs admit that the Plaintiff Dan G. Nekola is an owner of property at Mariner's Cay but deny that he is a resident of Charleston County.

5. Plaintiffs admit Paragraph 37 of the Answer, Counterclaim and Third-Party Complaint.

6. Plaintiffs admit Paragraph 38 of the Answer, Counterclaim and Third-Party Complaint.

7. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 39 of the Answer, Counterclaim and Third-Party Complaint and therefore deny the same and demand strict proof thereof.

8. Plaintiffs deny Paragraph 40 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

9. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 41 of the Answer, Counterclaim and Third-Party Complaint and therefore

deny the same and demand strict proof thereof. Further, any attempted transfer of interest as referenced in the Paragraph was invalid since there was no interest to convey.

10. In response to Paragraph 42 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs deny that there was any interest to be convey and therefore deny that Paragraph.

11. In response to Paragraph 43 of the Answer, Counterclaim and Third-Party Complaint, it is admitted that an annual meeting was held on May 21, 2016. The remaining allegations of Paragraph 43 are denied and strict proof is demanded thereof.

12. In response to Paragraph 44 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs admit that Defendants offered to sell some interest in some property. The remaining allegations of Paragraph 44 are denied and strict proof is demanded thereof.

13. Plaintiffs deny Paragraph 45 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

14. Paragraph 46 of the Answer, Counterclaim and Third-Party Complaint is admitted.

15. Plaintiffs lack sufficient information to form a belief as to Paragraph 47 of the Answer, Counterclaim and Third-Party Complaint and therefore deny the same and demand strict proof thereof.

16. Plaintiffs deny Paragraph 48 of the Answer, Counterclaim and Third-Party Complaint.

17. Plaintiffs object and move to strike Paragraph 49 of the Answer, Counterclaim and Third-Party Complaint on the basis that it is vague and ambiguous. Further, Plaintiffs deny Paragraph 49 of the Answer, Counterclaim and Third-Party Complaint.

18. Plaintiffs deny Paragraph 50 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

19. In response to Paragraph 51 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs admit that no rents were due or paid to the Defendants. The remaining allegations of that Paragraph are denied and strict proof is demanded thereof.

20. In response to Paragraph 52 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs admit that an offer was made and crave reference to the referenced documents. Plaintiffs deny any allegations which are inconsistent with the referenced documents.

21. In response to Paragraph 53 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs crave reference to the referenced documents. The remaining allegations are denied and strict proof is demanded thereof.

22. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraphs 54 and 55 of the Answer, Counterclaim and Third-Party Complaint and therefore deny the same and demand strict proof thereof.

23. Plaintiffs object and move to strike Paragraph 56 on the basis that it is vague and ambiguous. Further, that Paragraph is denied.

24. Plaintiffs deny Paragraph 57 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

25. Plaintiffs deny Paragraph 58 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

26. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 59 and therefore deny the same and demand strict proof thereof.

27. Plaintiffs admit Paragraph 60 of the Answer, Counterclaim and Third-Party Complaint.

28. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 61 and therefore deny the same and demand strict proof thereof.

29. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 62 and therefore deny the same and demand strict proof thereof.

30. In response to Paragraphs 63 and 64, Plaintiffs admit requests were made for offers to be made in writing. Plaintiffs deny the remaining allegations and demand strict proof thereof.

31. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 65 and therefore deny the same and demand strict proof thereof.

32. In response to Paragraph 66 of the Answer, Counterclaim and Third-Party Complaint, Plaintiffs admit that the Defendant and the Plaintiff Mariner's Cay Marina Council of Co-Owners, Inc. attempted to negotiate. The remaining allegations of Paragraph 66 are denied and strict proof thereof is demanded.

33. In response to Paragraph 67, Plaintiffs believe the meeting was held on May 20, 2017. The remaining allegations of Paragraph 67 are denied and strict proof is demanded thereof.

34. Plaintiffs deny Paragraph 68.

35. In response to Paragraph 69, Plaintiffs admit drawings were presented at some point. The remaining allegations of Paragraph 69 are denied and strict proof is demanded thereof.

36. In response to Paragraph 70, Plaintiffs admit Plaintiffs offered to make modifications at some point. The remaining allegations of Paragraph 70 are denied and strict proof is demanded thereof.

37. Plaintiffs admit Paragraph 71.

AS TO THE FIRST CAUSE OF ACTION

38. No response is required to Paragraph 72 of the Answer, Counterclaim and Third-Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

39. Plaintiffs deny Paragraphs 73-75 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION

40. No response is required to Paragraph 76 of the Answer, Counterclaim and Third-Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

41. Paragraphs 77-79 of the Answer, Counterclaim and Third-Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent that they

do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

AS TO THE THIRD CAUSE OF ACTION

42. No response is required to Paragraph 80 of the Answer, Counterclaim and Third-Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

43. Paragraphs 81-84 of the Answer, Counterclaim and Third-Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent that they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

AS TO THE FOURTH CAUSE OF ACTION

44. No response is required to Paragraph 85 of the Answer, Counterclaim and Third-Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

45. Plaintiffs deny Paragraphs 86-88 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION

46. No response is required to Paragraph 89 of the Answer, Counterclaim and Third-Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

47. Plaintiffs deny Paragraphs 90-92 of the Answer, Counterclaim and Third-Party Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

48. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

49. The claim of Defendants fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE

50. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

51. That to the extent that any acts or omissions of Plaintiffs caused any injury or damage to Defendants, which is denied, Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of Defendants constitutes a bar and complete defense to any claim for equitable relief.

FOR A FOURTH DEFENSE

52. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

53. Defendants' claim is barred due to Defendants' consent.

FOR A FIFTH DEFENSE

54. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

55. That Defendants by actions, conduct, words or silence which amount to a representation or other concealment of material facts, have caused Plaintiffs to alter their position to their prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to

all claims.

FOR A SIXTH DEFENSE

56. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

57. Defendants' claim is barred by Defendants' own negligence. In the event the alleged negligence of the Plaintiffs operated as a fifty (50%) percent or greater proximate cause of the damages, which is expressly denied and admitted solely for the purpose of this defense, Plaintiffs are entitled to a reduction of any amount awarded to Defendants in an amount equal to that percentage of their negligence, recklessness and carelessness.

FOR A SEVENTH DEFENSE

58. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

59. That the injury or damage sustained by the Defendants, if any, was due to caused by and was the direct and proximate result of the sole negligence, recklessness willfulness and wantonness of Defendants or of others over whom Plaintiffs had no control and such constitutes a complete defense to any claims for negligence

FOR AN EIGHTH DEFENSE

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. The Defendants have not pled, and cannot prove, any acts taken in furtherance of the alleged conspiracy, nor can the Defendants identify or prove

damages which arise solely from the alleged conspiracy. As such, the Defendants' civil conspiracy claim must be dismissed.

WHEREFORE, having fully answered the Answer, Counterclaim and Third-Party Complaint of the Defendants, Plaintiffs pray for:

(a) for the relief requested in their Complaint;

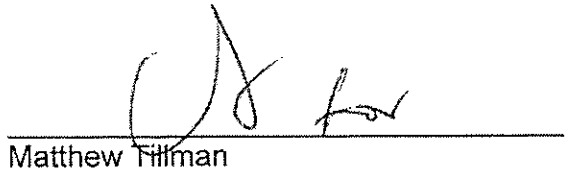
(b) that the Counterclaim be dismissed with prejudice;

(c) for the costs and disbursements of this claim;

(d) for such other and further relief as this Court may deem just and proper.

Capers G. Barr, IV
Bar No.: 13005
Barr, Unger McIntosh, LLC
11 Broad Street
Charleston, South Carolina
Attorney for Plaintiffs

David C. Cleveland
CLAWSON and STAUBES, LLC
Bar No.: 13005
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: dcleveland@clawsonandstaubes.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc. (defending Counterclaim only)



Matthew Tillman
Womble Bond Dickinson (US) LLP
5 Exchange Street
Charleston, SC 29401-0000
Phone: 8437223400
Fax: 8437237398
Email: matthew.tillman@wbd-us.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc. (defending Counterclaim only)

Charleston, South Carolina
November 21, 2017

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Pleading was served upon the following parties on the 21 day of November, 2017, via:

✓	United States Postal Service
	Facsimile
	Electronic Email
	Via Hand Delivery

G. Hamlin O'Kelley, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Blvd Ste 200
Mount Pleasant, SC 29464-4061
Email Address: hamlin.okelley@buistbyars.com
Attorney For: Mariners Cay Fuel Dock, LLC, Mariners Cay Marina Condo, LLC

BARR, UNGER
& MCINTOSH LLC
ATTORNEYS AT LAW

December 20, 2017

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: Alben D .Neighbors, et al. v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Please find enclosed a check made payable to the Clerk of Court in the amount of $5,000.00 per Judge Nicholson's Order dated November 28, 2017 which requires that the Plaintiff to post a Five Thousand ($5,000.00) Dollar cash bond with the Clerk of Court prior to the Order being entered.

Sincerely,

Capers G. Barr, IV

Enclosures (as stated)
cc: Mariner's Cay Marina Council of Co-Owners, Inc.
G. Hamlin O'Kelley, III, Esquire
Joseph K. Qualey, Esquire
Robert G. Jones, Esquire
David C. Cleveland, Esquire
Matthew Tillman, Esquire
Andrew W .Montgomery, Esquire
:sed

FILED
2017 DEC 20 PM 1:37
JULIE J. ARMSTRONG
CLERK OF COURT
BY

11 Broad Street P.O. Box 1037 Charleston, SC 29402
Telephone 843-577-5083 Fax 843-723-9039

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON ALBEN D. NEIGHBORS AND DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC., PLAINTIFFS, vs. MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC, AND GEORGE A. FARMER, JR., DEFENDANTS, and MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC, THIRD-PARTY PLAINTIFFS vs. EMERALD MCDONGOUGH ROAD HOLDINGS, LLC, THIRD-PARTY DEFENDANT.	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099 **NOTICE OF POSTING BOND**

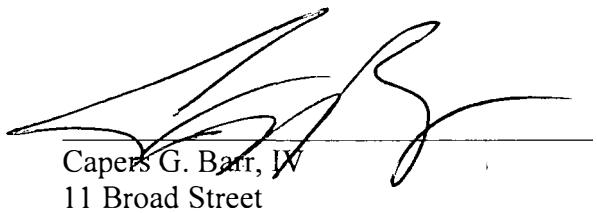
FILED
2017 DEC 27 PM 2:22
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANTS AND THIRD PARTY DEFENDANT ABOVE NAMED:

You will please take notice that the Plaintiffs, by and through their undersigned counsel, have on the 28th day of December, 2017 posted a $5,000.00 cash bond with the Clerk of Court in accordance with the terms of the Order of the Honorable J.C. Nicholson, Jr. granting in part and denying in part Plaintiff's Motion for Temporary Injunction, which Order was filed

with the Clerk of Court December 6, 2017. A copy of the receipt from the Clerk of Court reflecting the deposit of the sum of $5,000.00 by the Plaintiff is attached to this Notice.

BARR, UNGER & McINTOSH, LLC



Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

Charleston, South Carolina
December 20, 2017

Common Pleas

Julie Armstrong

Charleston County Judicial Center

Charleston, SC 29401

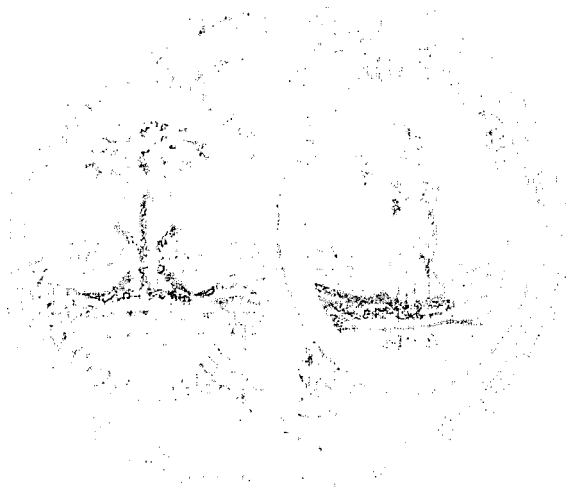
Date: 12/20/2017
Transaction Number: 1
Clerk: Julie Armstrong
Receipted By: COCSLB

Received From: Mariners Cay Marina Council of Co-owners Inc

Paying For: Mariners Cay Marina Council of Co-owners Inc

Payment Type: CK
Payment Amount: $ 5,000.00
Reference Number: 100004

Case #	Caption	Amount Paid
2017CP1003099	Alben D Neighbors , plaintiff, et al VS Mariners Cay Marina Condo LLC , defendant, et al	$ 5,000.00



BARR, UNGER
& MCINTOSH LLC
ATTORNEYS AT LAW

December 20, 2017

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: Alben D .Neighbors, et al. v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Please find enclosed an original and one (1) copy of a Notice of Posting Bond in connection with the above referenced matter.

I would appreciate your filing the original and returning the clocked copy to me in the enclosed envelope.

Sincerely,

Susan E. Deon
Legal Assistant to Capers G. Barr, IV

Enclosures (as stated)
cc: Mariner's Cay Marina Council of Co-Owners, Inc.
G. Hamlin O'Kelley, III, Esquire
Joseph K. Qualey, Esquire
Robert G. Jones, Esquire
David C. Cleveland, Esquire
Matthew Tillman, Esquire
Andrew W .Montgomery, Esquire
:sed

11 Broad Street P.O. Box 1037 Charleston, SC 29402
Telephone 843-577-5083 Fax 843-723-9039

BARR, UNGER & MCINTOSH LLC
ATTORNEYS AT LAW

Capers G. Barr, IV
Email: cbarr@barrungermcintosh.com

February 28, 2018

G. Hamlin O'Kelley, III, Esquire
Buist Byars & Taylor, LLC
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Mt. Pleasant, SC 29464

Joseph K. Qualey, Esq.
Robert G. Jones, Esq.
Qualey Law Firm
23 Broad Street
Charleston, SC 29401

Kevin W. Mims, Esquire
Whidbee S. Perrin, Esquire
Luzuriaga Mims, LLP
50 Immigration St, Ste. 200
Charleston, SC 29403

RE: Alben D. Neighbors, et al. v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Counsel:

Enclosed please find a clocked copy of the Second Amended Complaint in connection with the above referenced matter which is being served on you pursuant to the South Carolina Rules of Civil Procedure. Also enclosed please find a copy of the Consent Order to Amend Complaint signed by Judge Harrington.

Sincerely yours,

Capers G. Barr, IV

Enclosures (as stated)
cc: Andrew W. Montgomery, Esquire
David C. Cleveland, Esquire
CGBiv:sed

11 Broad Street P.O. Box 1037 Charleston, SC 29402
Telephone 843-577-5083 Fax 843-723-9039

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants. and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third Party Plaintiffs vs. Emerald McDonough Road Holdings, LLC Third Party Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10-3099 **SUMMONS**

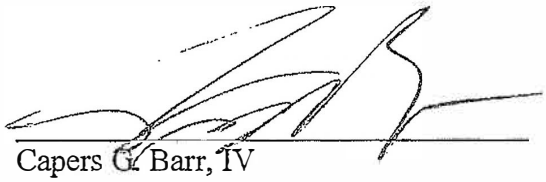
FILED
2018 FEB 28 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Second Amended Complaint, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Second Amended Complaint upon the subscribers at their office, 11 Broad Street, Charleston, South Carolina, 29401, within thirty (30) days after service, hereof, exclusive of the day of such service, and if you fail to Answer the Second Amended Complaint within the time

aforesaid, the Plaintiff will apply to the Court for the relief demanded in the Second Amended Complaint.

BARR, UNGER & McINTOSH, LLC



Charleston, South Carolina
February 28, 2018

Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank

Defendants.

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC

Third Party Plaintiffs

vs.

Emerald McDonough Road Holdings, LLC

Third Party Defendant.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-10-3099

SECOND AMENDED COMPLAINT

FILED
2018 FEB 28 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs above named complaining of the Defendants herein allege and show unto this Honorable Court as follows:

1. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10 through 15-53-140 (1976), to determine the ownership of the property which is the subject of this action, the rights of the parties in and to the property which is the subject of this action, and to declare that the Amended and Restated Master Deed for Mariner's

Cay Marina Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended and Restated Master Deed") is invalid and that the property which is the subject of this action is a common element of the Mariner's Cay Marina Horizontal Property Regime; and for an Order declaring that none of the Defendants have any right, title, estate or interest in the subject property described in this Complaint or any part thereof.

2. Mariner's Cay Marina consists of ninety (90) boat slips located on the Folly River as well as a two-story building known as the "Ship Store" (herein referred to as the "Ship Store") located on the high ground adjacent to the marina docks.

3. The Plaintiff, Mariner's Cay Marina Council of Co-Owners, Inc. (herein referred to as the "Marina Council") is the incorporated council of co-owners for Mariner's Cay Marina Horizontal Property Regime (herein the "Regime"), a horizontal property regime located in Charleston County, South Carolina. The Regime was formed by the recording of a Master Deed on May 18, 2006 in the RMC Office for Charleston County in Book V583, Page 584 (herein the "Master Deed"). The Marina Council is vested with the rights, powers, privileges, and duties necessary or incidental to the administration of the Regime, including the care and upkeep of the common elements, as well as the employment of the marina Dockmaster (as herein defined) and for providing the Dockmaster a suitable location and office for him to perform his duties.

4. The Plaintiff Alben D. Neighbors (herein "Neighbors") is the owner of Dock Unit D-3 in the Regime, and the Plaintiff Dan G. Nekola (herein "Nekola") is the owner of Dock Unit A-7 in the Regime.

5. Defendant Mariners Cay Marina Condo, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina, and said Defendant claims an interest in the property which is the subject of this action.

6. Defendant Mariners Cay Fuel Dock, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina and said Defendant claims an interest in the property which is the subject of this action. The Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC are collectively referred to herein as the "LLC Defendants").

7. The Defendant George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a resident of Charleston County, South Carolina.

8. The Defendant South Atlantic Bank is, on information and belief, a banking institution organized and existing under the laws of the State of South Carolina which claims or may claim an interest in the property which is the subject of this action.

9. As used herein, the terms "Unit" and "Dock Unit" in the Regime are the equivalent of the term "apartment" under the S.C. Horizontal Property Act, S.C. Code Ann. §§27-31-10 through 27-31-300 (1976).

10. The property which is the subject of this action (herein the "Subject Property") consists of the following:

a. A two story wood frame structure on timber piles located on the high ground adjacent to the Mariner's Cay Marina docks commonly known as the "Ship Store," (herein the "Ship Store") which property has been described as follows:

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial

Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at page 629.

Charleston County TMS: 328-00-00-544 and 328-00-00-545;

b. The fuel docks of the Mariner's Cay Marina (herein the "Fuel Docks"), which have been described as follows:

Dock Unit C21 and C22, Mariners Cay HPR, and HRP established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B" of the aforementioned Master Deed.

Charleston County TMS: 328-00-00-507 and 328-00-00-508; and

c. The fuel tanks, pumps, lines and related fueling equipment located throughout the Regime property.

11. The class of Plaintiffs represented by Alben D. Neighbors and Dan G. Nekola consists of all individuals, trustees, corporations, partnerships, unincorporated associations or other entities that own, in whole or in part, all of the Dock Units in the Regime (hereinafter the "Class").

12. The Class does not include any former owner of a Dock Unit in the Regime.

13. The Class is sufficiently numerous that joinder of all members is impractical.

14. The Plaintiffs Neighbors and Nekola will fairly and adequately represent the interests of the Class as Class representatives. The interests of the Class representatives are not antagonistic to those of the other Class members.

15. There are questions of law and fact common to the Class, and the Plaintiffs' claims are typical of the claims or defenses of the Class. Common questions of law include whether the Amended and Restated Master Deed was validly adopted. The outcome of this common question of law will equally affect all members of the Class. Common questions of fact include the recording of the Amended and Restated Master Deed unilaterally by the Declarant without the consent or acquiescence of the Dock Unit owners.

16. Plaintiffs Neighbors and Nekola, as Class representatives, envision no unusual difficulty in the management of this action as a Class action.

17. Certification of this action as a Class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

18. The Mariner's Cay Marina docks and Ship Store were originally constructed in the late 1970's or early 1980's. Prior to the formation of the Regime, the marina and Ship Store were owned by a common owner, and boat slips in the marina were rented to individual boat owners.

19. Prior to the formation of the Regime, the renters of boat slips in the marina enjoyed the use of the restrooms, laundry room, porches and decks located in and around the Ship Store.

20. The permit issued by the South Carolina Department of Health and Environmental Control for the operation of the marina (the "marina permit") requires that an experienced operator be in charge of the marina. Accordingly, since the inception of the marina, a dockmaster (herein the "Dockmaster") has been employed, on site, to oversee the marina operations.

21. Prior to May of 2016, the Dockmaster utilized a portion of the first floor of the Ship Store as his office. The Dockmaster's office included, among other things, a desk, file storage, telephone and telephone line, internet connection, internet router and booster system for the Wi-

Fi service for the boat slip owners, controls for the security gate leading to the docks, as well as a VHF radio and antenna for communicating with boaters.

22. The Master Deed provides that "Commercial Unit 1-A" and "Commercial Unit 1-B," located in the building known as the Ship Store, as well as "Commercial Unit 2," consisting of the Fuel Docks, are common elements of the Regime.

23. The Master Deed, in accordance with the South Carolina Horizontal Property Act, assigned a schedule of basic values and percentage ownership of the common elements to each of the Dock Units. No basic values or percentage ownership of the common elements were assigned under the Master Deed to "Commercial Unit 1-A", "Commercial Unit 1-B" or to "Commercial Unit 2" because they were intended to be common elements of the Regime.

24. Upon the recording of the Master Deed on May 18, 2006, the ownership of the common elements described in the Master Deed as "Commercial Unit 1-A," "Commercial Unit 1-B" and "Commercial Unit 2" (the Subject Property) was vested in the owners of the Dock Units in accordance with the South Carolina Horizontal Property Act and South Carolina caselaw.

25. On March 19, 2007, Marina at Mariners Cay, LLC, the Declarant under the Master Deed, (herein the "Declarant") unilaterally, and without the consent of all Unit owners in the Regime, recorded the Amended and Restated Master Deed, the effect and result of which was to attempt to convert the former common elements described in Paragraph 22, above, (the Subject Property) in which all of the Unit owners owned an undivided interest, into individual units.

26. Prior to the recording of the Amended and Restated Master Deed, the Declarant sold thirty eight (38) Dock Units to different individuals or entities. On information and belief, none of those individuals or entities were consulted, nor did they consent, or otherwise acquiesce, to the adoption of the Amended and Restated Master Deed.

27. The Amended and Restated Master Deed changed the definition of units and common elements to purportedly create three, additional, separately transferrable condominium units which had previously been common elements under the Master Deed, namely Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

28. The Amended and Restated Master Deed also altered the schedule of basic values and percentage interests in the common elements by reducing each Dock Unit's basic value and percentage interest and assigning basic values and percentage interests to Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

29. After the Amended and Restated Master Deed was recorded, the Subject Property was purportedly conveyed as follows:

(a) By Declarant to Flint River Capital, Inc. by deed recorded May 18, 2007 in the RMC Office for Charleston County in Book A626, Page 624;

(b) Thereafter by Flint River Capital, Inc. to Tiger River Capital, LLC by deed recorded February 27, 2009 in the RMC Office for Charleston County in Book 0037, Page 844;

(c) Thereafter by deed of the Master in Equity for Charleston County to Emerald Portfolio, LLC by deed recorded October 14, 2015 in the RMC Office for Charleston County in Book 0510, Page 674;

(d) Thereafter by Emerald Portfolio, LLC to Emerald McDonough Road Holdings, LLC by deed recorded November 13, 2015 in the RMC Office for Charleston County in Book 0517, Page 162; and

(e) Thereafter by two (2) deeds of Emerald McDonough Road Holdings, LLC: (i) to the Defendant Mariner's Cay Fuel Dock, LLC recorded May 24, 2016 in the RMC Office for Charleston County in Book 0555, Page 946, and (ii) to the Defendant Mariner's Cay Marina

Condo, LLC recorded May 25, 2016 in the RMC Office for Charleston County in Book 0556, Page 511.

30. The LLC Defendants and the Defendant Farmer are in possession of the Subject Property and contend that they own the same. Plaintiffs contend that the Subject Property is a common element of the Regime and is therefore owned by the Class.

31. At all times during the time period described in Paragraphs 29(a) through 29(e) (May 18, 2007 through May 25, 2016) the Plaintiffs enjoyed the uninterrupted use of the Ship Store as described hereinabove.

32. After May 2016, the LLC Defendants and the Defendant Farmer have prohibited the Plaintiffs (including the Dockmaster employed by the Marina Council) from utilizing any portion of the Ship Store (except for the restrooms located therein) as well as any portion of the space beneath the Ship Store building.

33. The attempt by the Declarant to alter the ownership of the common elements, as set forth in Paragraph 25 above, and to alter the schedule of basic values and percentage interests in the common elements, as set forth in Paragraph 28 above, without the consent or acquiescence of the Dock Unit owners was a direct violation of the South Carolina Horizontal Property Act, namely S.C. Code §27-31-60 and §23-31-70.

34. The unilateral adoption of the Amended and Restated Master Deed by the Declarant, as described above, was invalid.

35. Plaintiffs are informed and believe that the LLC Defendants and the Defendant Farmer are without any right to prohibit the Plaintiffs from using any portion of the Subject Property and furthermore that said Defendants have no right, title, estate, or interest in the Subject Property.

36. The Defendant South Atlantic Bank claims or may claim some interest in or lien upon the Subject Property, or some portion thereof, by virtue of a mortgage recorded May 25, 2016 in the Office of the Register of Deeds for Charleston County in Book 0556, Page 512. Plaintiffs are informed and believe that the Defendant South Atlantic Bank has no interest in or lien upon the Subject Property, or any portion thereof, because the grantor under said mortgage had no interest in the Subject Property, or any portion thereof, when said mortgage was executed and delivered.

37. Plaintiffs are informed and believe that they are entitled to an Order of this Court declaring the ownership, rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property

FOR A SECOND CAUSE OF ACTION

38. The Plaintiffs repeat and reiterate the allegations of paragraphs 1 through 37 as if fully repeated herein verbatim.

39. The Defendant, George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a principal of Mariners Cay Marina Condo, LLC and is also a principal of Mariners Cay Fuel Dock, LLC. The Defendant Farmer is presently in possession of the Subject Property.

40. Part of the marina's security system consists of an electronic gate located on the gangway leading to the marina docks (the "Security Gate"). The Security Gate can only be opened with an electronic key fob. Electronic key fobs are provided by the Marina Council to the owners and users of the boat slips in the marina.

41. The marina provides a sewer pump-out service for boaters to discharge the contents of their boats' sewerage holding tanks. The sewer pump-out service is available to be used only at Fuel Docks. The pump which operates the sewer pump-out service (herein the "Sewer Pump") is located beneath the Ship Store.

42. The space beneath the Ship Store is enclosed by lattice and has been locked by the Defendant Farmer.

43. An electrical panel located in the Ship Store includes electrical controls and breakers for the marina's security system, phone system and the sewage pump. Prior to July 17, 2017, and since the formation of the Regime, the electronic controls for the Security Gate were connected to the electrical panel located in the Ship Store.

44. The space beneath the Ship Store, the Electronic Dock Security System, the Sewer Pump and the electrical breakers and controls which operate the Electronic Dock Security System, the marina phone system and the Sewer Pump are all common elements of the Regime. These common elements are owned by the class of Plaintiffs represented by Alben D. Neighbors and Dan G. Nekola, and the Marina Council is responsible for maintaining said common elements. Accordingly, the Plaintiffs are entitled to immediate possession of and access to these common elements.

45. The Defendant Farmer has wrongfully, intentionally and wilfully refused to permit the Plaintiffs to access the common elements described in Paragraph 42, above.

46. Because the Defendant Farmer is in possession of the Ship Store, and in order to avoid a breach of the peace while this action is pending, the Plaintiffs requested, during the week of July 10, 2017, that Farmer permit the Dockmaster to access the Electronic Dock Security System (located in the Ship Store) in order to program additional key fobs for the Security Gate.

47. The Defendant Farmer refused to permit the Plaintiffs to access the Electronic Dock Security System, and instead, the Defendant Farmer, on or about July 16, 2017, intentionally, willfully and maliciously, and without authorization of the Marina Council, removed the

Electronic Dock Security System from the Ship Store which caused damage to the same and which also resulted in the complete termination of the security system for the marina docks.

48. The Plaintiffs have suffered damages as a result of the Defendant Farmer's refusal to permit the Plaintiffs access to the common elements described in Paragraph 42, above, and also as a result of the Defendant Farmer's intentional, willful and malicious alteration or destruction of the Electronic Dock Security System.

49. The Plaintiffs are entitled to a judgment against the Defendant Farmer for actual damages, and because Defendant Farmer's actions, described above, were intentional, willful and malicious, or at least reckless, the Plaintiff Marina Council is also entitled to an award of punitive damages.

WHEREFORE, Plaintiff prays as follows:

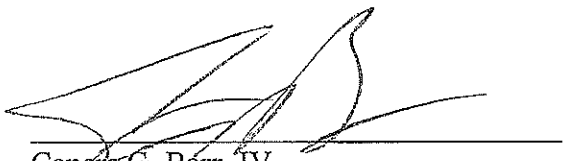
(A) That this Court inquire into the matters and things alleged herein and issue an Order declaring who owns the Subject Property and also declaring the rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property;

(B) That the Amended and Restated Master Deed, or at least such portions of the Amended and Restated Master Deed which directly violate the South Carolina Horizontal Property Act, as described above, be declared invalid and that the Subject Property, namely the Ship Store, in its entirety, as well as the Fuel Docks and fuel systems be declared common elements of the Regime and therefore owned by each of the Dock Unit owners as tenants in common; and further declaring that the Defendants have no right, title, estate or interest in the Subject Property or any portion thereof;

(C) For a judgment in favor of the Plaintiffs against the Defendant Farmer for actual and punitive damages in an amount to be determined by the trier of fact; and

(D) For such other and further relief as the Court may deem just and proper.

BARR, UNGER & McINTOSH, LLC



Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-577-5083
Attorney for the Plaintiffs

Charleston, South Carolina
February 28, 2018

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
)
) CASE NO.: 2017-CP-10-3099
)
Alben D. Neighbors, et al.)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
)
Mariners Cay Marina Condo, LLC, et al.)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Capers G. Barr, IV, Bar No. 65075 Address: 11 Broad St, Charleston, SC 29401 Phone: 843-577-5083Fax 843-723-9039 E-mail: cbarr@barrungermcintosh.comOther:	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ February 14, 2018
Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) THE NINTH JUDICIAL CIRCUIT
)
ALBEN D. NEIGHBORS AND DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,) CASE NO.: 2017-CP-10-3099
)
PLAINTIFFS,) **CONSENT ORDER TO AMEND COMPLAINT**
)
vs.)
)
MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC, AND GEORGE A. FARMER, JR.,)
)
DEFENDANTS,)
)
and)
)
MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC,)
)
THIRD-PARTY PLAINTIFFS)
)
vs.)
)
EMERALD MCDONGOUGH ROAD HOLDINGS, LLC,)
)
THIRD-PARTY DEFENDANT.)

2018 FEB 22 PM 4:15
CHARLES L. CHRISTOPHER
CLERK OF COURT
BY

On Motion of Capers G. Barr, IV, attorney for the Plaintiffs, by and with the consent of the attorneys for the Defendants and Third Party Defendant, it is hereby Ordered that Plaintiffs shall be permitted to amend their Complaint to name South Atlantic Bank as a necessary party Defendant.

AND IT IS SO ORDERED.

Charleston, South Carolina
February 20, 2018

S/ Kristi Harrington
Honorable Kristi Lea Harrington
Chief Administrative Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P.G.S. & F.C.
BY
DEPUTY CLERK

I SO MOVE:

BARR, UNGER & McINTOSH, LLC

Capers G. Barr, IV, Esquire
Attorney for the Plaintiffs

I CONSENT:

CLAWSON & STAUBES, LLC

David C. Cleveland, Esquire
Attorney for Plaintiff Mariner's Cay Marina Council of Co-Owners

I CONSENT:

BUIST, BYARS & TAYLOR, LLC

G. Hamlin O'Kelley, III, Esquire
Attorney for Defendants Mariner's Cay Marina Condo, LLC
and Mariners Cay Fuel Dock, LLC

I CONSENT:

QUALEY LAW FIRM

Joseph K. Qualey, Esquire
Robert G. Jones, Esquire
Attorney for Defendant George A. Farmer, Jr.

I CONSENT:

ROGERS, TOWNSEND & THOMAS, PC

Andrew W. Montgomery, Esquire
Attorney for Third Party Defendant
Emerald McDonough Road Holdings, LLC

BARR, UNGER
& MCINTOSH LLC
ATTORNEYS AT LAW

February 28, 2018

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: Alben D .Neighbors, et al. v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Enclosed please find an original and one copy of a Certificate of Service for Plaintiff's Second Amended Complaint in the above referenced case.

I would appreciate your filing the original and returning the clocked copy to me in the enclosed envelope.

Sincerely yours,

Susan E. Deon
Legal Assistant to Capers G. Barr, IV

Enclosures (as stated)
cc: Mariner's Cay Marina Council of Co-Owners, Inc.
G. Hamlin O'Kelley, III, Esquire
Joseph K. Qualey, Esquire
Robert G. Jones, Esquire
David C. Cleveland, Esquire
Andrew W .Montgomery, Esquire
Kevin W. Mims, Esquire
Whidbee S. Perrin, Esquire
CGBiv:sed

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Alben D. Neighbors and Dan G. Nekola,)
on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)
)
Plaintiffs,)
)
v.)
)
Mariners Cay Marina Condo, LLC,)
Mariners Cay Fuel Dock, LLC,)
George A. Farmer, Jr., and)
South Atlantic Bank)
)
Defendants.)
)
and)
)
Mariners Cay Marina Condo, LLC)
and Mariners Cay Fuel Dock, LLC)
)
Third Party Plaintiffs)
)
vs.)
)
Emerald McDonough Road Holdings, LLC)
)
Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-10-3099

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the Plaintiff's Second Amended Complaint on G. Hamlin O'Kelley, III, Esquire, attorney for the Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Joseph K. Qualey, Esquire and Robert G. Jones, Esquire, attorneys for the Defendant George A. Farmer, Jr., Kevin W. Mims, Esquire and Whidbee S. Perrin, Esquire, attorneys for Defendant George A. Farmer, Jr. and Third Party Plaintiff Mariners Cay Marina Condo, LLC, by placing a copy of same in the United States mail with sufficient postage attached thereto and addressed as follows on the date indicated below:

G. Hamlin O'Kelley, III, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464

Joseph K. Qualey, Esquire
Robert G. Jones, Esquire
Qualey Law Firm
23 Broad Street
Charleston, SC 29401

Kevin W. Mims, Esquire
Whidbee S. Perrin, Esquire
Luzuriaga Mims, LLP
50 Immigration St, Ste. 200
Charleston, SC 29403

Susan E. Deon
Legal Assistant to Capers G. Barr, IV

Charleston, South Carolina
February 28, 2018

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Defendant.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2017-CP-10-03099 **DEFENDANT GEORGE A. FARMER'S ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** **(JURY TRIAL DEMANDED)**
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Third-Party Plaintiffs, v. Emerald McDonough Road Holdings, LLC, Third-Party Defendant.	

FILED
2018 MAR 19 PM 12:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS:

Defendant George A. Farmer (hereinafter "Defendant" or "Farmer"), by and through their undersigned counsel, hereby answers Plaintiffs' Second Amended Complaint as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendant demands strict proof thereof.

2. The Defendant is not required to answer the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the

extent an answer is warranted as to the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demands strict proof thereof.

3. The Defendant admits the allegations of Paragraph 2 of the Plaintiffs' Second Amended Complaint.

4. The Defendant admits only so much of Paragraph 3 of the Plaintiffs' Second Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the RMC for Charleston County. The Defendant is not required to answer the remaining allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demands strict proof thereof.

5. The Defendant admits upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Second Amended Complaint.

6. The Defendant admits the allegations of Paragraphs 5 and 6 of the Plaintiffs' Second Amended Complaint.

7. The Defendant admits the allegations of Paragraph 7 of the Plaintiffs' Second Amended Complaint.

8. Upon information and belief, Paragraph 8 of Plaintiffs' Second Amended Complaint is admitted.

9. The Defendant is not required to answer the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demands strict proof thereof.

10. In response to Paragraph 10 of the Plaintiffs' Second Amended Complaint, Defendant craves reference to the recorded deeds describing the subject property and denies all allegations that are inconsistent therewith.

11. The Defendant is not required to answer the allegations of Paragraphs, 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demands strict proof thereof.

12. The Defendant denies the allegations of Paragraphs 17 through 37 of the Plaintiffs' Second Amended Complaint.

13. In response to paragraph 38 of Plaintiffs' Second Amended Complaint, Defendant adopts his answers as set forth above in paragraphs 1 through 12, inclusive, as if stated herein verbatim.

14. The Defendant denies the material allegations of paragraph 39 of Plaintiffs' Second Amended Complaint, except Defendant admits that Defendant Farmer is a member of the LLCs and resides at the property.

15. The Defendant is without sufficient information to form a belief as to the allegations of Paragraphs 38 and 39 of the Plaintiffs' Second Amended Complaint, and, therefore, the Defendant denies same and demands strict proof thereof.

16. The Defendant denies the material allegations of Paragraphs 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Plaintiffs' Second Amended Complaint and demands strict proof thereof.

17. The Wherefore Paragraph of Plaintiffs' Second Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

18. The Defendant would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

19. The Defendant would allege and show that each owner of any of the Units at Mariners Cay can be identified and it is not impracticable to locate such owners so that this matter may not be treated as a class action pursuant to Rule 23 SCRCivP.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

20. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

21. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

22. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

23. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

24. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

25. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

26. Defendant denies that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A TENTH AFFIRMATIVE DEFENSE

27. One or more causes of action of Plaintiffs' Second Amended Complaint fails to state any claim upon which relief can be granted as to the Defendant, and Plaintiffs' claims should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP.*

FOR A FURTHER ANSWER
AND BY WAY OF AN ELEVENTH AFFIRMATIVE DEFENSE

28. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

WHEREFORE, Defendant, George A. Farmer, having fully answered Plaintiffs' Second Amended Complaint, prays that this Court dismiss all claims against him with prejudice, grant him reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper. Defendant demands a trial by jury.

LUZURIAGA MIMS, LLP

By: _____

Kevin W. Mims, SC Bar No. 69418
Whidbee S. Perrin, SC Bar No. 100396
50 Immigration St, Suite 200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com
wperrin@lmlawllp.com
Attorneys for the Defendant George A. Farmer

Charleston, South Carolina
2/15, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 15th day of March, 2018.

_____

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2017-CP-10-03099 **AMENDED THIRD-PARTY SUMMONS** **(JURY TRIAL DEMANDED)**
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Third-Party Plaintiffs, v. Emerald McDonough Road Holdings, LLC, Third-Party Defendant.	

FILED
2018 MAR 19 PM 1:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third-Party Complaint of the Defendant/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 50 Immigration Street, Suite 200, Charleston, South Carolina 29401, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim and Third-Party

Complaint within the time aforesaid, judgment by default will be rendered against you, and the Defendants/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, in this action, will apply to the Court for the relief demanded.

LUZURIAGA MIMS, LLP

By: _____

Kevin W. Mims, SC Bar No. 69418
Whidbee S. Perrin, SC Bar No. 100396
50 Immigration St, Suite 200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com
wperrin@lmlawllp.com

Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By: G. H. O'Kelley by KWM w/ express permission

G. Hamlin O'Kelley, III, SC Bar #15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
3/15, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 15th day of March, 2018.

_____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Civil Action No.: **2017-CP-10-3099**

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, Jr.,

Defendants,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendant.

ANSWER OF DEFENDANTS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC TO THE PLAINTIFFS' SECOND AMENDED COMPLAINT, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT

(JURY TRIAL DEMANDED)

FILED
2018 MAR 19 PM 2:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, JR., ATTORNEY FOR THE PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

The Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, (sometimes collectively referenced herein as "Defendants" or "MCMC"), by and through their undersigned counsel, hereby set forth their Answer to the Plaintiffs' Second

Amended Complaint as follows. Additionally, Defendants Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, set forth their Counterclaims and Third-Party Complaint as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.

2. The Defendants are not required to answer the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint, the Defendants deny same and demand strict proof thereof.

3. The Defendants admit the allegations of Paragraph 2 of the Plaintiffs' Second Amended Complaint.

4. The Defendants admit only so much of Paragraph 3 of the Plaintiffs' Second Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the RMC for Charleston County. The Defendants are not required to answer the remaining allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint, the Defendants deny same and demand strict proof thereof.

5. The Defendants admit, upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Second Amended Complaint.

6. The Defendants admit the allegations of Paragraphs 5 and 6 of the Plaintiffs' Second Amended Complaint.

7. The Defendants admit the allegations of Paragraph 7 of the Plaintiffs' Second Amended Complaint.

8. Upon information and belief, Paragraph 8 of Plaintiffs' Second Amended Complaint is admitted.

9. The Defendants are not required to answer the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint, the Defendants deny same and demand strict proof thereof.

10. In response to Paragraph 10 of the Plaintiffs' Second Amended Complaint, Defendants crave reference to the recorded deeds describing the subject property and deny all allegations that are inconsistent therewith.

11. The Defendants are not required to answer the allegations of Paragraphs, 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Second Amended Complaint, the Defendants deny same and demand strict proof thereof.

12. The Defendants deny the allegations of Paragraphs 17 through 37 of the Plaintiffs' Second Amended Complaint.

13. In response to paragraph 38 of Plaintiffs' Second Amended Complaint, Defendants adopt their answers as set forth above in paragraphs 1 through 12, inclusive, as if stated herein verbatim.

14. The Defendants deny the material allegations of paragraph 39 of Plaintiffs' Second Amended Complaint, except Defendants admit that Defendant Farmer is a member of the LLCs and resides at the property.

15. The Defendants deny the material allegations of Paragraph 40 of Plaintiffs' Second Amended Complaint, except Defendants admit that the area contains lattice.

16. The Defendants deny the material allegations of Paragraphs 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

17. The Wherefore Paragraph of Plaintiffs' Second Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that each owner of any of the Units at Mariners Cay can be identified and it is not impracticable to locate such owners so that this matter may not be treated as a class action pursuant to Rule 23 SCRCivP.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

20. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

21. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

22. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

23. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

24. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

25. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

26. Defendants deny that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A TENTH AFFIRMATIVE DEFENSE

27. One or more causes of action of Plaintiffs' Second Amended Complaint fails to state any claim upon which relief can be granted as to the Defendants, and Plaintiffs' claims should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP.*

FOR A FURTHER ANSWER
AND BY WAY OF AN ELEVENTH AFFIRMATIVE DEFENSE

28. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

**FOR A FURTHER ANSWER
AND BY WAY OF A TWELFTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM and THIRD-PARTY COMPLAINT,
MARINERS CAY MARINA CONDO, LLC, and MARINERS CAY FUEL DOCK,
LLC, ("Defendants") ALLEGE AND SHOW AS FOLLOWS**

29. The Defendants repeat and reallege the Paragraphs 1 through 28 above as though repeated herein verbatim.

30. The Defendants are South Carolina limited liability companies which own the Subject Property as more fully set forth in the Plaintiffs' Complaint.

31. The Plaintiff Alben D. Neighbors is an owner of property at Mariner's Cay and a resident of Charleston County.

32. The Plaintiff Dan G. Nekola is an owner of property at Mariner's Cay and a resident of Charleston County.

33. The Counterclaim Defendant Mariner's Cay Marina Council of Co-Owners, Inc., is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina, which serves as the owner's association for Mariner's Cay Marina.

34. The Third-Party Defendant Emerald McDonough Road Holdings, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which deeded the Subject Property more fully described in the Plaintiffs' Complaint to the Defendants.

35. On May 19, 2016, the Third-Party Defendant Emerald McDonough Road Holdings, LLC, conveyed the Subject Property in the Mariner's Cay Marina Horizontal Property Regime to the Defendants by those deeds recorded in Book 0555 at Page 946

and in Book 0556 at Page 511 in the Office of the RMC for Charleston County on May 25, 2016.

36. The Defendants paid a total of Two Hundred Fifty Thousand ($250,000.00) Dollars to Emerald McDonough Road Holdings, LLC, as consideration for the purchase of the Subject Property.

37. At the time of the conveyance, Emerald McDonough Road Holdings, LLC, conveyed all right, title, and interest in the Subject Property to the Defendants representing in its deeds, and through the warranties of title, that it had all right, title, and interest in the Subject Property conveyed to the Defendants.

38. Mariner's Cay Marina Council of Co-Owners, Inc., acting by and through its then President, Michael Sutton, held a meeting on May 21, 2016, a day after the Defendants closed on the Subject Property.

39. At that meeting, the Defendants offered Unit 1-A, the lower level of the Ship Store, for sale, along with C-21, C-22, and all associated tanks and pumps.

40. At that same meeting, the members of the Mariner's Cay Marina Council of Co-Owners, Inc., elected Laurie Hull to be their President.

41. The Defendants and the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., including their new President, agreed to meet on June 21, 2016, to discuss the potential sale of Unit 1-A by the Defendants.

42. From the time of the meeting on May 21, 2016, the Defendants and Ms. Hull exchanged numerous telephone calls about the sale of the Unit 1-A and the docks.

43. Acting through its President, the Mariner's Cay Marina Council of Co-Owners, Inc., negotiated with the Defendants, acknowledging that the Defendants owned the Subject Property.

44. At no time did the Mariner's Cay Marina Council of Co-Owners, Inc., dispute the ownership of the Subject Property by the Defendants until this litigation commenced.

45. During negotiations with Mariner's Cay Marina Council of Co-Owners, Inc, and as a show of good faith, the Defendants allowed owners of Units at the Marina to use Unit 1-A from May 21, 2016, through October, 2016.

46. Neither the Mariner's Cay Marina Council of Co-Owners, Inc., nor its members paid any rent or fees to the Defendants for use of Unit 1-A .

47. On June 29, 2016, Ms. Hull, as the President of the Mariner's Cay Marina Council of Co-Owners, Inc., delivered an offer to purchase the following Units and dock slips from the Defendants:

a. Unit 1-A, Charleston County TMS No. 328-00-00-544;

b. Dock Unit C-21, all tanks, and pumps;

c. Dock Unit C-22, all tanks, and pumps.

48. The offer from the Mariner's Cay Marina Council of Co-Owners, Inc., by and through Ms. Hull was for Eighty Thousand and No/100 ($80,000.00) Dollars.

49. The Defendants submitted a counter-offer on June 30, 2016, and negotiations continued thereafter.

50. On August 11, 2016, the Mariner's Cay Marina Council of Co-Owners, Inc., board met to discuss the counteroffers made by the Defendants.

51. From August, 2016, through December, 2016, there were numerous communications by and between the Mariner's Cay Marina Council of Co-Owners, Inc., and the Defendants about purchasing various portions of the Subject Property.

52. During this time, the Defendants made repairs to the Subject Property which had been neglected and should have been maintained by the Mariner's Cay Marina Council of Co-Owners, Inc.

53. The Defendants conferred direct benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., in form of repairs made and in use of the Units owned by the Defendants.

54. The Defendants also restored electrical power and water service to the docks without being paid by the Mariner's Cay Marina Council of Co-Owners, Inc.

55. On November 10, 2016, the Defendants met with the Board of the Mariner's Cay Marina Council of Co-Owners, Inc.

56. At that meeting, the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., advised that Tom Bessett was the new President; Ms. Hull did not attend the meeting.

57. The Board offered the Defendants One Hundred Forty Thousand ($140,000.00) Dollars to purchase Unit 1-A from the Defendants as well as offering Twenty Thousand and No/100 ($20,000.00) Dollars for one dock Unit and asked to trade the other dock Unit for a Unit owned by the Mariner's Cay Marina Council of Co-Owners, Inc.

58. Discussions followed between the Defendants and the Board members after which the Defendant requested that the Board put these offers in writing to the Defendants.

59. On November 13, 2016, the Defendants once again requested that the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., put any offer in writing.

60. On December 6, 2016, the Defendants received another written offer, which they did not accept.

61. From December 2016 until the present litigation was filed, the Defendants attempted to negotiate sales and potential uses of Unit 1-A, all while both the Defendants and the Mariner's Cay Marina Council of Co-Owners, Inc., acknowledged the Defendants' ownership of the Subject Property.

62. On May 21, 2017, the Mariner's Cay Marina Council of Co-Owners, Inc., held its annual meeting.

63. At that meeting, the Defendants, by and through their attorney, offered to sell the dock Units to the Mariner's Cay Marina Council of Co-Owners, Inc., for their appraised value and to donate bathrooms at Unit 1-A to the Mariner's Cay Marina Council of Co-Owners, Inc., for their use.

64. At that meeting, the attorney for the Defendants presented new drawings for an updated design.

65. The Defendants also offered to build, at their own expense, a new access to the bathrooms at Unit 1-A and a new office space for the dock master.

66. Nothing came of those offers, and this lawsuit followed.

FOR A FIRST CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Unjust Enrichment)

67. The Defendants repeats and reallege Paragraphs 1 through 66 above as though repeated herein verbatim.

68. The Defendants supplied benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., as set forth more fully above and for which benefits the Defendants have not been paid.

69. It would be unjust for the Mariner's Cay Marina Council of Co-Owners, Inc., to retain the benefit of the use of the Defendants' property, the benefit of the repairs made in favor of the Mariner's Cay Marina Council of Co-Owners, Inc., and other benefits provided without payment from Mariner's Cay Marina Council of Co-Owners, Inc. This benefit also includes the dock master's use of the Subject Property without paying rent from May 21, 2016, to October, 2016.

70. As a direct result of this unjust enrichment, the Defendants are entitled to actual damages in amounts to be proven at the trial of this case

FOR A SECOND CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc., and Emerald McDonough Road Holdings, LLC)
(Indemnification – Equitable, Legal, and Contractual)

71. The Defendants repeats and reallege Paragraphs 1 through 70 above as though repeated herein verbatim.

72. The Defendants have been made a party to this litigation by Alben D. Neighbors and Dan G. Nekola, allegedly on behalf of themselves and the members of the Mariner's Cay Marina Council of Co-Owners, Inc.

73. The Defendants are subject to this lawsuit having obtained title from the deeds from Emerald McDonough Road Holdings, LLC, conveying all right, title and interest in the Subject Property to the Defendants and by virtue of the inaction of the Mariner's Cay Marina Council of Co-Owners, Inc.

74. As a direct and proximate result of the acts and omissions of the Third-Party Defendants, the Defendants have become subject to this litigation, and, accordingly, Defendants should be indemnified by the Third-Party Defendants, including equitable indemnification, legal indemnification, and contractual indemnification should the Plaintiffs prevail in this action.

FOR A THIRD CAUSE OF ACTION
(As to Emerald McDonough Road Holdings, LLC)
(Breach of Contract)

75. The Defendants repeat and reallege Paragraphs 1 through 74 above as though repeated herein verbatim.

76. The Defendants entered into valid and enforceable contracts with Emerald McDonough Road Holdings, LLC.

77. The Defendants relied upon Emerald McDonough Road Holdings, LLC, to provide good, marketable title to the Subject Property, free and clear of all liens, encumbrances, and claims.

78. The Defendants are subject to the Plaintiffs' claims, none of which are admitted, and, should those claims be successful, Emerald McDonough Road Holdings, LLC, will have violated and breached their deed warranties and contracts, without legal excuse.

79. As a direct and proximate result of the breach of contract by Emerald McDonough Road Holdings, LLC, the Defendants have incurred and will continue to incur damages in amounts to be proven at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Nuisance)

80. The Defendants repeat and reallege Paragraphs 1 through 79 above as though repeated herein verbatim.

81. The Mariner's Cay Marina Council of Co-Owners, Inc., has allowed its members, Unit owners, guests, invitees, and licensees to use the bathrooms located on the Plaintiffs' property at all hours of the day and night.

82. Such usage constitutes a nuisance as it has interfered with the Defendants' quiet enjoyment of their property.

83. As a direct and proximate result of the nuisance created by Mariner's Cay Marina Council of Co-Owners, Inc., the Defendants have suffered damages in amounts to be proven at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
(As to the Plaintiffs Mariner's Cay Marina Council of Co-Owners, Inc., and the Plaintiffs Alben and Nekola)
(Civil Conspiracy)

84. The Defendants repeat and reallege Paragraphs 1 through 83 above as though repeated herein verbatim.

85. The Plaintiffs in a combination of two or more persons, did conspire with each other to case injury to the Defendants in a way which is improper and unjustified, which has resulted in special damages to the Defendants, in attempting to deny the

Defendants' ownership of the Subject Property and to stop their use of the Subject Property.

86. These special damages include, but are not limited to, the following:

a. Loss of income for the rental of the docks owned by the Defendants;

b. Loss of potential rentals of the Subject Property;

c. Loss of potential sales of the Subject Property;

d. Loss of rental of the boats owned by the Defendants at the Subject Property

87. As a direct and proximate result of the conspiracy by and between the Plaintiffs, the Defendants have suffered special damages in amounts to be proven at the trial of this case.

WHEREFORE, having fully answered the Plaintiffs' Second Amended Complaint, the Defendants pray that this Court enter its judgment and order as follows:

a. Dismissing the Plaintiffs' Second Amended Complaint;

b. Awarding the Defendants' actual damages, attorney fees and costs in amounts to be proven at the trial of this case; and

c. Award the Defendants' special damages in amounts to be proven at the trial of this case; and

d. Granting any and all such further relief as this Court deems just and proper.

SIGNATURE PAGE TO FOLLOW

LUZURIAGA MIMS, LLP

By: _____
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Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

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Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
3/15, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 15th day of _____, 2018.

_____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Civil Action No.: **2017-CP-10-3099**

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank

Defendant,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendant.

ANSWER OF THE DEFENDANT SOUTH ATLANTIC BANK TO THE PLAINTIFFS' SECOND AMENDED COMPLAINT

FILED
2018 APR -5 PM 2:31
JULIE J. ARMSTRONG
CLERK OF COURT

TO: CAPERS G. BARR, IV, JR., ESQ.
BARR UNGER & McINTOSH, LLC
ATTORNEY FOR THE PLAINTIFFS and
THIRD-PARTY DEFENDANT

The Defendant South Atlantic Bank, ("Defendant"), by and through its undersigned counsel, hereby sets forth its Answer to the Plaintiffs' Second Amended Complaint as follows:

1. Each and every allegation of the Plaintiffs' Second Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendant demands strict proof thereof.

2. The Defendant is not required to answer the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 1 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demand strict proof thereof.

3. The Defendant admits the allegations of Paragraph 2 of the Plaintiffs' Second Amended Complaint.

4. The Defendant admits only so much of Paragraph 3 of the Plaintiffs' Second Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the RMC for Charleston County. The Defendant is not required to answer the remaining allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 3 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demand strict proof thereof.

5. The Defendant admits, upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Second Amended Complaint.

6. The Defendant admits the allegations of Paragraphs 5 and 6 of the Plaintiffs' Second Amended Complaint.

7 The Defendant admits the allegations of Paragraphs 7 and 8 of the Plaintiffs' Second Amended Complaint.

8. The Defendant is not required to answer the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 9 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demands strict proof thereof.

9. In response to Paragraph 10 of the Plaintiffs' Second Amended Complaint, the Defendant craves reference to the recorded deeds describing the subject property and denies all allegations that are inconsistent therewith

10. The Defendant is not required to answer the allegations of Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Second Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Second Amended Complaint, the Defendant denies same and demands strict proof thereof.

11. The Defendant is without sufficient information to form a belief as to the allegations of Paragraph 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, and 37 of the Plaintiffs' Second Amended Complaint and therefore denies the same and demands strict proof thereof.

12. In response to paragraph 38 of Plaintiffs' Second Amended Complaint, the Defendant adopts its answers as set forth above in Paragraphs 1 through 37, inclusive, as if stated herein verbatim.

13. The Defendant denies the allegations of paragraph 39 of Plaintiffs' Second Amended Complaint, except Defendant admits that Defendant Farmer is a member of the LLCs and resides at the property.

14. The Defendant is without sufficient information to form a belief as to the allegations of Paragraphs 40 and 41 of the Plaintiffs' Second Amended Complaint, and, therefore, the Defendant denies same and demand strict proof thereof.

15. The Defendant denies the allegations of Paragraph 42 of Plaintiffs' Second Amended Complaint, except Defendant admits that the area contains lattice.

16. The Defendant denies the allegations of Paragraphs 43, 44, 45, 46, 47, 48, and 49 of the Plaintiffs' Second Amended Complaint and demand strict proof thereof.

17. The Wherefore Paragraph of Plaintiffs' Second Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

18. The Defendant would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

19. The Defendant would allege and show that each owner of any of the Units at Mariners Cay can be identified and it is not impracticable to locate such owners so that this matter may not be treated as a class action pursuant to Rule 23 SCRCivP.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

20. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

21. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

22. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

23. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

24. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER

AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

25. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

26. The Defendant denies that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A TENTH AFFIRMATIVE DEFENSE

27. One or more causes of action of Plaintiffs' Second Amended Complaint fails to state any claim upon which relief can be granted as to the Defendant, and Plaintiffs' claims should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP.*

FOR A FURTHER ANSWER
AND BY WAY OF AN ELEVENTH AFFIRMATIVE DEFENSE

28. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendant pray that this Court enter its judgment and order as follows:

a. Dismissing the Plaintiffs' Complaint;

b. Awarding the Defendant attorney fees; and

c. Granting any and all such further relief as this Court deems just and proper.

[SIGNATURE PAGE TO FOLLOW]

Mt. Pleasant, South Carolina
4/2, 2017

BUIST, BYARS & TAYLOR, LLC

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alben D. Neighbors and Dan G. Nekola on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

vs.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr. and South Atlantic Bank,,

Defendants.

And

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

vs.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-3099

PLAINTIFFS' REPLY TO COUNTERCLAIM OF MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC ASSERTED IN ITS ANSWER, COUNTNERCLAIM AND THIRD PARTY COMPLAINT FILED ON MARCH 19, 2018

FILED
2018 APR 16 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiffs Reply to the Counterclaim of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (hereinafter "Defendants") and respond to the allegations as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer, Counterclaim and Third Party Complaint which is not hereinafter specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

2. No response is required for Paragraph 1 through 29 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

3. Plaintiffs deny Paragraph 30 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

4. Plaintiffs admit Paragraph 31 of the Answer, Counterclaim and Third Party Complaint.

5. In response to Paragraph 32 of the Answer, Counterclaim and Third Party Complaint, Plaintiff's admit that Dan Nekola is an owner of property at Mariner's Cay but deny that he is a resident of Charleston County. The remaining allegations of Paragraph 32 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

6. Plaintiffs admit Paragraph 33 of the Answer, Counterclaim and Third Party Complaint.

7. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 34 of the Answer, Counterclaim and Third Party Complain and therefore deny the same and demand strict proof thereof.

8. Plaintiffs deny Paragraph 35 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

9. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 36 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

10. In response to Paragraph 37 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs deny that there was any interest to be conveyed and therefore

deny that paragraph.

11. In response to Paragraph 38 of the Answer, Counterclaim and Third Party Complaint, it is admitted that an annual meeting was held on May 21, 2016. The remaining allegations of Paragraph 38 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

12. In response to Paragraph 39 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Defendants offered to sell some interest in some property. The remaining allegations of Paragraph 39 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

13. Plaintiffs deny Paragraph 40 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

14. Paragraph 41 of the Answer, Counterclaim and Third Party Complaint is admitted.

15. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 42 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

16. Plaintiffs deny Paragraph 43 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

17. Plaintiffs object and move to strike Paragraph 44 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, Plaintiffs deny Paragraph 44 of the Answer, Counterclaim and Third Party Complaint.

18. Plaintiffs deny Paragraph 45 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

19. In response to Paragraph 46 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that no rents were due or paid to the Defendants. The remaining allegations of Paragraph 46 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

20. In response to Paragraph 47 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that an offer was made and craves reference to the referenced documents. Plaintiffs deny any allegations which are inconsistent with the referenced documents.

21. In response to Paragraph 48 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs crave reference to the referenced documents. The remaining allegations are denied and strict proof is demanded thereof.

22. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraphs 49 and 50 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

23. Plaintiffs and move to strike Paragraph 51 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, that paragraph is denied.

24. Plaintiffs deny Paragraph 52 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

25. Plaintiffs deny Paragraph 53 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

26. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 54 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

27. Plaintiffs admit Paragraph 55 of the Answer, Counterclaim and Third Party Complaint.

28. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 56 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

29. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 57 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

30. In response to Paragraph 58 and 59 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit requests were made for offers to be made in writing. Plaintiffs deny the remaining allegations and demand strict proof thereof.

31. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 60 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

32. In response to Paragraph 61 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that the Defendants and the Plaintiff Mariners Cay Marina Council of Co-Owners, Inc. attempted to negotiate. The remaining allegations of Paragraph 61 are denied and strict proof is demanded thereof.

33. In response to Paragraph 62 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs believe the meeting was held on May 20, 2017. The remaining allegations of Paragraph 62 are denied and strict proof is demanded thereof.

34. Plaintiffs deny Paragraph 63 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

35. In response to Paragraph 64 of the Answer, Counterclaim and Third Party

Complaint, Plaintiffs admit drawings were presented at some point. The remaining allegations of Paragraph 64 are denied and strict is demanded thereof.

36. In response to Paragraph 65 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Plaintiffs offered to make modifications at some point. The remaining allegations of Paragraph 65 are denied and strict proof is demanded thereof.

37. Plaintiffs admit Paragraph 66 of the Answer, Counterclaim and Third Party Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Unjust Enrichment)

38. No response is required to Paragraph 67 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

39. Plaintiffs deny Paragraph 68 through 70 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Indemnification-Equitable, Legal and Contractual)

40. No response is required to Paragraph 71 o f the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

41. Paragraph 72 through 74 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

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

42. No response is required to Paragraph 75 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

43. Paragraph 76 through 79 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Nuisance)

44. No response is required to Paragraph 80 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

45. Plaintiffs deny Paragraph 81 through 83 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Civil Conspiracy)

46. No response is required to Paragraph 84 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

47. Plaintiffs deny Paragraph 85 through 87 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

48. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

49. The claim of Defendants fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE

50. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

51. That to the extent that any acts or omissions of Plaintiffs caused any injury or damage to Defendants, which is denied, Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of Defendants constitutes a bar and complete defense to any claim for equitable relief.

FOR A FOURTH DEFENSE

52. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

53. Defendants' claim is barred due to Defendants' consent.

FOR A FIFTH DEFENSE

54. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

55. That Defendants by actions, conduct, words or silence which amount to a representation or other concealment of material facts, have caused Plaintiffs to alter their position to their prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

FOR A SIXTH DEFENSE

56. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

57. Defendants' claim is barred by Defendants' own negligence. In the event the alleged negligence of the Plaintiffs operated as a fifty (50%) percent or greater proximate cause of the damages, which is expressly denied and admitted solely for the purpose of this defense, Plaintiffs are entitled to a reduction of any amount awarded to Defendants in an amount equal to that percentage of their negligence, recklessness and carelessness.

FOR A SEVENTH DEFENSE

58. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

59. That the injury or damage sustained by the Defendants, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Defendants or of others over whom Plaintiffs had no control and such constitutes a complete defense to any claims for negligence

FOR AN EIGHTH DEFENSE

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. The Defendants have not pled, and cannot prove, any acts taken in furtherance of the alleged conspiracy, nor can the Defendants identify or prove damages which arise solely from the alleged conspiracy. As such, the Defendants' civil conspiracy claim must be dismissed.

WHEREFORE, having fully answered the Answer, Counterclaim and Third-Party Complaint of the Defendants, Plaintiffs pray for:

(a) for the relief requested in their Complaint;

(b) that the Counterclaim be dismissed with prejudice;

(c) for the costs and disbursements of this claim;

(d) for such other and further relief as this Court may deem just and proper.

Capers G. Barr, IV
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11 Broad Street
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Attorney for Plaintiffs

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CLAWSON and STAUBES, LLC
Bar No.: 13005
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Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: dcleveland@clawsonandstaubes.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc. (defending Counterclaim only)

Charleston, South Carolina
April 12, 2018

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
Plaintiffs,)	
v.)	**AMENDED THIRD-PARTY SUMMONS**
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, and South Atlantic Bank,)	**(JURY TRIAL DEMANDED)**
Defendants.)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
Third-Party Plaintiffs,)	
v.)	
Emerald McDonough Road Holdings, LLC,)	
Third-Party Defendant.)	

FILED
2018 APR 23 PM 3:20
CLERK OF COURT

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third-Party Complaint of the Defendant/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 50 Immigration Street, Suite 200, Charleston, South Carolina 29401, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim and Third-Party

Complaint within the time aforesaid, judgment by default will be rendered against you, and the Defendants/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, in this action, will apply to the Court for the relief demanded.

LUZURIAGA MIMS, LLP

By: _____

Kevin W. Mims, SC Bar No. 69418
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kmims@lmlawllp.com
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Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By: _____ for

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Hamlin.okelley@buistbyars.com

Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
4/17, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 18th day of April, 2018.

_____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
)	
Plaintiffs,)	
)	
v.)	**AMENDED THIRD-PARTY SUMMONS**
)	
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, and South Atlantic Bank,)	**(JURY TRIAL DEMANDED)**
)	
Defendants.)	
)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
Emerald McDonough Road Holdings, LLC,)	
)	
Third-Party Defendant.)	

FILED
2018 APR 23 PM 3:20
CLERK OF COURT

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third-Party Complaint of the Defendant/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 50 Immigration Street, Suite 200, Charleston, South Carolina 29401, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim and Third-Party

Complaint within the time aforesaid, judgment by default will be rendered against you, and the Defendants/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, in this action, will apply to the Court for the relief demanded.

LUZURIAGA MIMS, LLP

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Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By: _____ for

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Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
4/17, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 18th day of April, 2018.

_____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alben D. Neighbors and Dan G. Nekola on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

vs.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr. and South Atlantic Bank,,

Defendants.

And

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

vs.

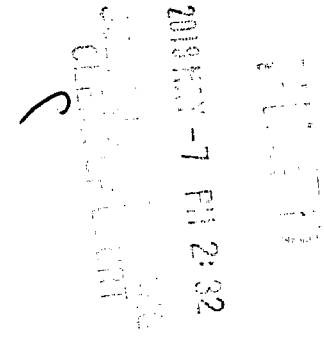
Emerald McDonough Road Holdings, LLC,

Third-Party Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-3099

PLAINTIFFS' REPLY TO COUNTERCLAIM OF MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC ASSERTED IN THEIR ANSWER, COUNTERCLAIM AND THIRD PARTY COMPLAINT FILED ON APRIL 23, 2018



The Plaintiffs Reply to the Counterclaim of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (hereinafter "Defendants") and respond to the allegations as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer, Counterclaim and Third Party Complaint which is not hereinafter specifically admitted, qualified or explained is denied

and strict proof is demanded thereof.

2. No response is required for ParagraphS 1 through 30 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

3. Plaintiffs deny Paragraph 31 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

4. Plaintiffs admit Paragraph 32 of the Answer, Counterclaim and Third Party Complaint.

5. In response to Paragraph 33 of the Answer, Counterclaim and Third Party Complaint, Plaintiff's admit that Dan Nekola is an owner of property at Mariner's Cay but deny that he is a resident of Charleston County. The remaining allegations of Paragraph 33 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

6. Plaintiffs admit Paragraph 34 of the Answer, Counterclaim and Third Party Complaint.

7. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 35 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

8. Plaintiffs deny Paragraph 36 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

9. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 37 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

10. In response to Paragraph 38 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs deny that there was any interest to be conveyed and therefore deny that paragraph.

11. In response to Paragraph 39 of the Answer, Counterclaim and Third Party Complaint, it is admitted that an annual meeting was held on May 21, 2016. The remaining allegations of Paragraph 39 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

12. In response to Paragraph 40 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Defendants offered to sell some interest in some property. The remaining allegations of Paragraph 40 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

13. Plaintiffs deny Paragraph 41 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

14. Paragraph 42 of the Answer, Counterclaim and Third Party Complaint is admitted.

15. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 43 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

16. Plaintiffs deny Paragraph 44 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

17. Plaintiffs object and move to strike Paragraph 45 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, Plaintiffs deny Paragraph 45 of the Answer, Counterclaim and Third Party

Complaint.

18. Plaintiffs deny Paragraph 46 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

19. In response to Paragraph 47 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that no rents were due or paid to the Defendants. The remaining allegations of Paragraph 47 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

20. In response to Paragraph 48 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that an offer was made and crave reference to the referenced documents. Plaintiffs deny any allegations which are inconsistent with the referenced documents.

21. In response to Paragraph 49 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs crave reference to the referenced documents. The remaining allegations are denied and strict proof is demanded thereof.

22. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraphs 50 and 51 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

23. Plaintiffs and move to strike Paragraph 52 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, that paragraph is denied.

24. Plaintiffs deny Paragraph 53 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

25. Plaintiffs deny Paragraph 54 of the Answer, Counterclaim and Third Party

Complaint and demand strict proof thereof.

26. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 55 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

27. Plaintiffs admit Paragraph 56 of the Answer, Counterclaim and Third Party Complaint.

28. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 57 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

29. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 58 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

30. In response to Paragraph 59 and 60 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit requests were made for offers to be made in writing. Plaintiffs deny the remaining allegations and demand strict proof thereof.

31. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 61 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

32. In response to Paragraph 62 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that the Defendants and the Plaintiff Mariners Cay Marina Council of Co-Owners, Inc. attempted to negotiate. The remaining allegations of Paragraph 62 are denied and strict proof is demanded thereof.

33. In response to Paragraph 63 of the Answer, Counterclaim and Third Party

Complaint, Plaintiffs believe the meeting was held on May 20, 2017. The remaining allegations of Paragraph 63 are denied and strict proof is demanded thereof.

34. Plaintiffs deny Paragraph 64 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

35. In response to Paragraph 65 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit drawings were presented at some point. The remaining allegations of Paragraph 65 are denied and strict is demanded thereof.

36. In response to Paragraph 66 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Plaintiffs offered to make modifications at some point. The remaining allegations of Paragraph 66 are denied and strict proof is demanded thereof.

37. Plaintiffs admit Paragraph 67 of the Answer, Counterclaim and Third Party Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Unjust Enrichment)

38. No response is required to Paragraph 68 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

39. Plaintiffs deny Paragraph 69 through 71 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Indemnification-Equitable, Legal and Contractual)

40. No response is required to Paragraph 72 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied

and strict proof is demanded thereof.

41. Paragraph 73 through 75 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

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

42. No response is required to Paragraph 76 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

43. Paragraph 77 through 80 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Nuisance)

44. No response is required to Paragraph 81 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

45. Plaintiffs deny Paragraph 82 through 84 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Civil Conspiracy)

46. No response is required to Paragraph 85 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied

and strict proof is demanded thereof.

47. Plaintiffs deny Paragraph 86 through 88 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

48. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

49. The claim of Defendants fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE

50. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

51. That to the extent that any acts or omissions of Plaintiffs caused any injury or damage to Defendants, which is denied, Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of Defendants constitutes a bar and complete defense to any claim for equitable relief.

FOR A FOURTH DEFENSE

52. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

53. Defendants' claim is barred due to Defendants' consent.

FOR A FIFTH DEFENSE

54. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

55. That Defendants by actions, conduct, words or silence which amount to a

representation or other concealment of material facts, have caused Plaintiffs to alter their position to their prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

FOR A SIXTH DEFENSE

56. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

57. Defendants' claim is barred by Defendants' own negligence. In the event the alleged negligence of the Plaintiffs operated as a fifty (50%) percent or greater proximate cause of the damages, which is expressly denied and admitted solely for the purpose of this defense, Plaintiffs are entitled to a reduction of any amount awarded to Defendants in an amount equal to that percentage of their negligence, recklessness and carelessness.

FOR A SEVENTH DEFENSE

58. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

59. That the injury or damage sustained by the Defendants, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Defendants or of others over whom Plaintiffs had no control and such constitutes a complete defense to any claims for negligence

FOR AN EIGHTH DEFENSE

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. The Defendants have not pled, and cannot prove, any acts taken in furtherance of the alleged conspiracy, nor can the Defendants identify or prove damages which arise solely from the alleged conspiracy. As such, the Defendants' civil conspiracy claim must be dismissed.

WHEREFORE, having fully answered the Answer, Counterclaim and Third-Party Complaint of the Defendants, Plaintiffs pray for:

(a) for the relief requested in their Complaint;

(b) that the Counterclaim be dismissed with prejudice;

(c) for the costs and disbursements of this claim;

(d) for such other and further relief as this Court may deem just and proper.

Capers G. Barr, IV
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Barr, Unger McIntosh, LLC
11 Broad Street
Charleston, South Carolina
Attorney for Plaintiffs

David C. Cleveland
CLAWSON and STAUBES, LLC
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126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: dcleveland@clawsonandstaubes.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc. (defending Counterclaim only)

Charleston, South Carolina
May 3, 2018

2017-CP-10-3099

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Answer was served upon the following parties on the 3 day of May, 2018, via:

X	United States Postal Service
	Facsimile
X	Electronic Email
	Via Hand Delivery

Andrew W. Montgomery, Esq.
Rogers Townsend & Thomas, PC
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Email Address: cgb@barrungermcintosh.com
Attorney For: Alben Neighbors

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Email Address: hamlin.okelley@buistbyars.com
Attorney For: Mariners Cay Fuel Dock, LLC, Mariners Cay Marina Condo, LLC, South Atlantic Bank

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Email Address: kmims@lmlawllp.com
Attorney For: Mariners Cay Marina Condo, LLC

2018 MAY -7 PM 2:33

Sasha Smith

CLAWSON AND STAUBES LLC

David C. Cleveland
Licensed in SC
dcleveland@clawsonandstaubes.com

May 2, 2018

File No.: 20172668.000

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St Ste 106
Charleston, SC 29401-2210

Re: Mariner's Cay Marina Counsel of Co-owners, et al v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Enclosed please find an original and one copy of the Plaintiff's Reply to Counterclaim in the above-referenced case. Please file the original along with the other documents in this case and return the file stamped copy to our office in the enclosed self-addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

David C. Cleveland

DCC/sns
Enclosure
cc: All Counsel of Record (with enclosure)(*via email*)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants. and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third-Party Plaintiffs vs. Emerald McDonough Road Holdings, LLC Third-Party Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10-3099 SUMMONS

2018 JUN 29 PM 1:17
FILED
CLERK
CHARLESTON
OF COURT

TO: G. HAMLIN O'KELLEY, III, ATTORNEY FOR THIRD-PARTY PLAINTIFFS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC AND KEVIN W. MIMS & WHIDBEE S. PERRIN, ATTORNEYS FOR THIRD-PARTY PLAINTIFF MARINERS CAY MARINA CONDO, LLC

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim of the Third Party Defendant Emerald McDonough Road Holdings, LLC, in this action, a copy of

which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 1221 Main Street, 14th Floor, Columbia, South Carolina, 29201, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Third Party Defendant, Emerald McDonough Road Holdings, LLC will apply to the Court for the relief demanded.

Andrew W. Montgomery (SC Bar # 79893)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
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Columbia, South Carolina 29202-3200
(803) 771-7900 Tel
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Andrew.montgomery@rtt-law.com
Attorneys for Third-Party Defendant Emerald McDonough Road Holdings, LLC

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants. and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third-Party Plaintiffs vs. Emerald McDonough Road Holdings, LLC Third-Party Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10-3099 THIRD PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC ANSWER TO THIRD PARTY COMPLAINT FILED APRIL 23, 2018 AND COUNTERCLAIM OF THIRD PARTY DEFENDANT AGAINST MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC

FILED
2018 JUN 29 PM 1:17
CLERK OF COURT

Third-Party Defendant Emerald McDonough Road Holdings, LLC (hereinafter "Emerald"), responds to the Third-Party Complaint of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (hereinafter "MCMC"), and would respectfully show unto the Court as follows:

1. That each and every allegation contained in the Third-Party Complaint that is not specifically admitted or otherwise qualified is denied.

FOR A FIRST DEFENSE

(Responses to Specific Allegations)

2. Paragraphs 1-29 of the Third-Party Complaint pertain to the answer of MCMC to the Plaintiffs' Second Amended Complaint. Paragraphs 1-29 are not directed toward the conduct and/or alleged wrongdoing of Emerald and therefore no response is required. To the extent an answer is warranted, all allegations are denied.

3. In response to paragraph 30, Emerald adopts it answer as set forth above in paragraphs 1-2, inclusive, as if stated herein verbatim.

4. Paragraphs 31-34 are admitted.

5. Paragraph 35 is admitted to the extent Emerald was organized by the filing of Articles of Organization with the State of South Carolina Secretary of State, and Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) [attached hereto as Exhibit A] and Book 0556 at Page 511[attached hereto as Exhibit B] in the Office of the RMC for Charleston County. All other allegations are denied.

6. Paragraph 36 is admitted to the extent Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

7. Paragraph 37 is admitted to the extent $250,000.00 represented the combined purchase price for the Units comprising the subject property under the Purchase and Sale Agreements entered into between Emerald and MCMC. All other allegations are denied.

8. Paragraph 38 is admitted to the extent Emerald conveyed all of Emerald's right, title and interest in and to the Subject Property to MCMC by limited warranty deeds recorded in

Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

9. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 39-67, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

10. In response to Paragraph 68, Emerald adopts it answer as set forth above in paragraphs 1-9, inclusive, as if stated herein verbatim.

11. Paragraphs 68-71 are not directed toward the conduct and/or alleged wrongdoing of Emerald and therefore no response is required.

As to the Second Cause of Action

12. In response to Paragraph 72, Emerald adopts it answer as set forth above in paragraphs 1-11, inclusive, as if stated herein verbatim.

13. Paragraph 73 is admitted.

14. Paragraph 74 is admitted to the extent Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

15. Paragraph 75 is denied.

As to the Third Cause of Action

16. In response to Paragraph 76, Emerald adopts it answer as set forth above in paragraphs 1-15, inclusive, as if stated herein verbatim.

17. Emerald is not required to answer the allegations of Paragraph 77 as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 77, Emerald denies the same and demands strict proof thereof.

18. Paragraph 78 is denied.

19. Paragraph 79 is denied.

20. Paragraph 80 is denied.

As to the remainder of the Pleadings

21. In response to Paragraph 81, Emerald adopts it answer as set forth above in paragraphs 1-20, inclusive, as if stated herein verbatim.

22. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 82-84, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

23. In response to Paragraph 85, Emerald adopts it answer as set forth above in paragraphs 1-22, inclusive, as if stated herein verbatim.

24. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 86-88, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

FOR A SECOND DEFENSE

(Failure to State a Claim)

25. MCMC's Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which the Court can grant relief, and one or more of Third-Party Plaintiff's claims should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

(Estoppel)

26. MCMC as Buyer and Emerald as Seller entered into Purchase and Sale Agreements for the sale of the Subject Property [attached hereto as Exhibits C & D, the phone numbers & emails of those who were not involved as attorneys having been redacted]. In those agreements MCMC specifically acknowledged and expressed understanding that Emerald acquired its interest in the Subject Property by foreclosure, deed in lieu of foreclosure, forfeiture of similar process. It was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald. MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings. MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property. MCMC was represented by an attorney of its choosing in MCMC's purchase of Emerald's interest in the subject property.

MCMC's registered agent, George A. Farmer, Jr. is a defendant in this action and upon information and belief resides at the Subject Property. The Purchase and Sale Agreements identify George A. Farmer, Jr., principal of Buyer, as a real estate licensee under the law of South Carolina. The county records reflect that Mr. Farmer appears to own or has owned numerous additional properties including property or properties purchased from entities subsequent to those entities acquiring title following foreclosure actions, and therefore is aware of the risk associated with purchasing such properties.

MSMC is therefore estopped from asserting any claims as to indemnification or breach of contract resulting from an agreement and conditions MCMC willfully entered into.

FOR A FOURTH DEFENSE

(Ratification and Waiver)

27. MCMC was represented by an attorney during MCMC's closing involving the Subject Property. Emerald is not aware of any communication from MCMC or its attorney raising concerns as to the validity of the title to the property during the closing process. MCMC ratified the investigations of its attorney and waived its claim to bring this action, having failed to raise any issues during the Title Review period associated with the closing.

FOR A FIFTH DEFENSE

(Laches)

28. To Emerald's knowledge, MCMC raised no issues with the validity of the title prior to this litigation. No issues were raised by MCMC or its attorney during the closing process, or during the year subsequent to the conveyances from Emerald to MCMC. MCMC's claims, if any, are barred by the doctrine of laches.

FOR A SIXTH DEFENSE

(Unclean Hands)

29. This action has arisen due to the strained relationship between MCMC and the Council. MCMC has in turn entangled Emerald in this action as a result of its own failure to peacefully co-exist with the Council. Prior to MCMC's taking possession of the subject property, there were no issues between the Council and Emerald and no issues raised by the Council regarding the title to the Subject Property. MCMC's actions in naming Emerald as a party in this action are in direct contradiction to the agreement entered into between MCMC and Emerald, and are the sole result of MCMC's own actions & relationship with the Council.

FOR A SEVENTH DEFENSE

(Failure to Join all Necessary Parties, Lack of Causation)

30. MCMC's claims should be barred as they have not joined all necessary parties to this action, having failed to name the Declarants of the Master Deed or Amended Master Deed or Emerald's predecessors in title. Any issues regarding the validity of the title of the subject property were caused by the actions of Declarant amending the Master Deed or Emerald's predecessors in title.

FOR AN EIGHTH DEFENSE

(Assumption of Risk, Special/Limited Warranty, Complete Performance)

31. MCMC & Emerald entered into an agreement whereby Emerald would convey its interest in the Subject Property by special warranty deed. The two most recent sets of conveyances prior to the conveyances to MCMC were by quit claim deeds and deeds of the Court following the foreclosure of the subject property. The issues raised by Plaintiff in this matter were caused by the actions of the Declarant in amending the Master Deed several years prior to the foreclosure and prior to Emerald receiving and conveying the subject property. Emerald made no warranties as to any issues arising from the actions of the Declarant or other prior owners of the Subject Property. MCMC contracted to purchase the property for less than the high bid at the July 7, 2015 Court sale following the Order of Judgment for Foreclosure and Sale entered in case 2013-CP-10-00850. MCMC assumed the risk of purchasing a property subsequent to a foreclosure. Emerald fully performed its obligations under the purchase and sale agreement.

FOR A NINTH DEFENSE

(Improper Notice of Breach)

32. Emerald denies any breach of contract, and any claims by MCMC as to indemnification. However, to the extent there was any breach by Emerald, MCMC did not properly notify Emerald of said breach prior to naming Emerald as a party in this action.

FOR A TENTH DEFENSE

(Failure to Mitigate Damages)

33. MCMC has failed to mitigate any damages incurred as a result of its relationship with the Council.

FOR AN ELEVENTH DEFENSE

(Right to Raise Additional Defenses)

34. Emerald reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A TWELTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM
AGAINST
MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC

(Breach of Contract)

35. MCMC as Buyer and Emerald as Seller entered into Purchase and Sale Agreements for the sale of the Subject Property. In those agreements MCMC specifically acknowledged and expressed understanding that Emerald acquired its interest in the Subject Property by foreclosure, deed in lieu of foreclosure, forfeiture of similar process. It was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald. MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings. MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses

related to any conditions affecting the Property. MCMC was represented by an attorney of its choosing in MCMC's purchase of Emerald's interest in the subject property.

MCMC's principal and registered agent is a real estate licensee and is familiar with the risks associated with purchasing a property following a foreclosure. This action has arisen due to the strained relationship of MCMC and the Council. MCMC has in turn entangled Emerald in this action as a result of its own failure to peacefully co-exist with the Council.

MCMC's actions in naming Emerald as a party in this action are in direct contradiction to the agreement entered into between MCMC and Emerald, and are the sole result of MCMC's own actions & relationship with the Council. MCMC's actions have directly resulted in Emerald incurring fees and costs associated with being named as a party in this action. Emerald is entitled to recovery of the fees and costs it has incurred in this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Answer to the Third-Party Complaint, Emerald prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss the Third-Party Plaintiff's causes of action;
2. Grant Emerald judgment on its Counterclaim;
3. Award to Emerald reasonable attorney's fees and costs as may be permitted by law or contract; and
4. Award to Emerald such other and further relief as may be just and proper.

Andrew W. Montgomery (SC Bar # 79893)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900 Tel
(803) 343-7017 Fax
Andrew.montgomery@rtt-law.com
Attorneys for Third-Party Defendant Emerald McDonough Road Holdings, LLC

BP0555946

PGS:

EXHIBIT A

tabbies

Recording To add BILL OF SALE AS EXHIBIT B

PREPARED BY JAMES M. ALLISON, PA; P. O. BOX 8633 (109 E. NORTH STREET); GREENVILLE, SC 29604

PGS: 9

BP0648603

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE
(LIMITED WARRANTY)

KNOW ALL MEN BY THESE PRESENTS that **EMERALD McDONOUGH ROAD HOLDINGS, LLC** for and in consideration of **FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS** and no other consideration has/have granted, bargained, sold, and released and by these presents do/does hereby grant, bargain, sell and release, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth below, unto **MARINERS CAY FUEL DOCK LLC:**

SEE EXHIBIT "A" ATTACHED HERETO

TAX MAP NUMBERS: 328-00-00-507 and 328-00-00-508

Grantees' Address: **1440 Battalion Drive, Charleston, SC 29412**

THIS conveyance is made subject to any restrictions, rights-of-way, easements, zoning ordinances or other matters which may appear of public record or which an inspection or more recent survey of the premises would or should reveal.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein, unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) does(do) hereby bind the Grantor(s) and the Grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular the said premises unto the Grantee(s) against only the Grantor(s) and those persons lawfully claiming or seeking to claim the same or any part there through the Grantor(s), subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein.

WITNESS the Grantor's(s') hand(s) and seal(s) this 19 day of MAY, 2016.

SIGNED, sealed and delivered
in the presence of:

(witness #1)

(witness #2/Notary Public)

EMERALD McDONOUGH ROAD HOLDINGS, LLC, a S. C. limited liability company

BY: Sabal Financial Group, L.P., its manager

BY: _____ (SEAL)
NAME: Mark E. Foster
TITLE: Vice President & General Counsel

Weeks & Irvine, LLC
8086 Rivers Avenue
2nd Floor
North Charleston, SC 29406
16-2192TL Mariners Cay 5/16

"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

(STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, Jaclyn Mary Lanning, Notary Public, personally appeared Mark E. Foster, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (SEAL)
Signature of Notary Public

JACLYN MARY LANNING
Commission # 2062208
Notary Public - California
Orange County
My Comm. Expires Mar 23, 2018

EXHIBIT A

LEGAL DESCRIPTION

Dock Unit C21 and C22, Mariners Cay HPR, and HPR established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B: of the aforementioned Master Deed.

THE above described property is the same acquired by Emerald McDonough Road Holdings, LLC by Quit Claim Deed of Emerald Portfolio, LLC dated November 9, 2015 and recorded in the Office of the Register of Deeds for Charleston County on November 13, 2015 in Deed Book 0517 at Page 166.

TAX MAP NUMBERS: 328-00-00-507
328-00-00-508

Exhibit B

BILL OF SALE

THIS BILL OF SALE is executed as of the 25th day of May, 2017, by Emerald McDonough Road Holdings, LLC, a South Carolina limited liability company ("**Seller**"):

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Seller does hereby grant, bargain, sell, convey, assign, transfer, and set over unto MARINERS CAY FUEL DOCK LLC, a _____ ("**Buyer**") all fixtures, furniture, equipment, furnishings, and other personal property (other than computer hardware and software) owned by Seller (the "**Personal Property**") located on that certain real property in the City of Folly Beach, County of Charleston and State of South Carolina, which real property has been sold by Seller to Buyer as of the date hereof and which is more particularly described on Exhibit A attached hereto.

The Personal Property is being transferred in its "as is, where is" condition, and without representation or warranty.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the day and year first above written.

SELLER:

Emerald McDonough Road Holdings, LLC
a South Carolina limited liability company

By: Sabal Financial Group, L.P.,
Its: Manager

By: _____
Name: Kevin R. McKenzie
Title: Vice President of Investments

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CHARLESTON)

Date of Transfer of Title
May 19, 2016

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Emerald McDonough Road Holdings, LLC TO Mariners Cay Fuel Dock LLC on May 19, 2016.

3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $40,000.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   a. $40,000.00 _____ the amount listed in Item No. 4 above
   b. $0.00 _____ the amount listed on Item No. 5 above (no amount, please zero)
   c. $40,000.00 _____ subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

STATE OF SOUTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public for the County of Charleston and State of South Carolina, do hereby certify that Emerald McDonough Road Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ of _____, 2016.

_____
Notary Public
My Commission Expires:
(SEAL)

SEE ATTACHMENT

_____
Grantor, Grantee or Legal Representative
Connected with this Transaction

Emerald McDonough Road Holdings, LLC
Print or Type Name Here

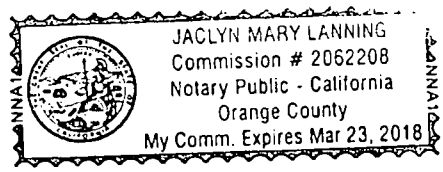
"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

(STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, Jaclyn Mary Lanning, Notary Public, personally appeared Mark E. Foster, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(~~s~~) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature_____(SEAL)
Signature of Notary Public

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
WEEKS & IRVINE LLC

RECORDED

Date:	May 24, 2016
Time:	10:44:26 AM

Book	Page	DocType
0555	946	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
EMERALD MCDONOUGH RD ETC

RECIPIENT:
MARINERS CAY FUEL ETC

Note:

# of Pages: 7

Recording Fee	$	10.00
State Fee	$	104.00
County Fee	$	44.00
Extra Pages	$	2.00
Postage	$	-
Chattel	$	-
TOTAL	$	160.00

DRAWER: Drawer 1
CLERK: KLH

Original Book:

Original Page:

AUDITOR STAMP HERE
RECEIVED From RMC
MAY 25 2016
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MK
DATE 5/26/16
37

0555 Book

946 Page

05/24/2016 Recorded Date

7 # Pgs

Original Book

Original Page

D Doc Type

10:44:26 Recorded Time

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

COUNTER CUSTOMER
DOLPH FARMER
1440 BATTLION DRIVE
CHARLESTON, SC 29412

RECORDED

Date:	June 28, 2017
Time:	3:12:50 PM

Book	*Page*	*DocType*
0648	603	Re-Rec/Con

Charlie Lybrand, Register
Charleston County, SC

MAKER:
EMERALD MCDONOUGH RD ETC

RECIPIENT:
MARINERS CAY FUEL ETC

Original Book: 0555

Original Page: 946

Note:

# of Pages: 9

Recording Fee	$	10.00
State Fee	$	-
County Fee	$	-
Extra Pages	$	2.00
Postage	$	0.50
Chattel	$	-
TOTAL	$	12.50

DRAWER: Drawer 2
CLERK: JBA

AUDITOR STAMP HERE

RECEIVED From RMC
Jun 30, 2017
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MKD
DATE 07/03/2017
14

0648	603	06/28/2017	9
Book	Page	Recorded Date	# Pgs

0555	946	D	15:12:50
Original Book	Original Page	Doc Type	Recorded Time

EXHIBIT
tabbies
B

BP0556511

PGS:
7

PREPARED BY JAMES M. ALLISON, PA; P. O. BOX 8633 (109 E. NORTH STREET); GREENVILLE, SC 29604

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE
(LIMITED WARRANTY)

KNOW ALL MEN BY THESE PRESENTS that **EMERALD McDONOUGH ROAD HOLDINGS, LLC** for and in consideration of **TWO HUNDRED TEN THOUSAND AND NO/100 ($210,000.00) DOLLARS** and no other consideration has/have granted, bargained, sold, and released and by these presents do/does hereby grant, bargain, sell and release, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth below, unto **MARINERS CAY MARINA CONDO LLC:**

SEE EXHIBIT "A" ATTACHED HERETO

TAX MAP NUMBERS: 328-00-00-544 and 328-00-00-545

Grantees' Address: **1440 Battalion Drive, Charleston, SC 29412**

THIS conveyance is made subject to any restrictions, rights-of-way, easements, zoning ordinances or other matters which may appear of public record or which an inspection or more recent survey of the premises would or should reveal.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein, unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) does(do) hereby bind the Grantor(s) and the Grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular the said premises unto the Grantee(s) against only the Grantor(s) and those persons lawfully claiming or seeking to claim the same or any part there through the Grantor(s), subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein.

WITNESS the Grantor's(s') hand(s) and seal(s) this 19th day of May, 20 16.

SIGNED, sealed and delivered
in the presence of:

(witness #1)

(witness #2/Notary Public)

EMERALD McDONOUGH ROAD HOLDINGS, LLC, a S. C. limited liability company

BY: Sabal Financial Group, L.P., its manager

BY: _____ (SEAL)
NAME: R. PATTERSON JACKSON
TITLE: CHIEF EXECUTIVE OFFICER

Weeks & Irvine, LLC
8086 Rivers Ave. 2nd Floor
North Charleston, SC 29406
16-2191 T4/ Mariners
5-16

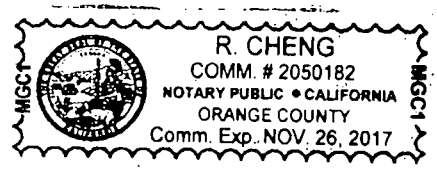
"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, R. Cheng, Notary Public, personally appeared R. Patterson Jackson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature R Cheng (SEAL)
Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at Page 629.

THE above described property is the same acquired by Emerald McDonough Road Holdings, LLC by Quit Claim Deed of Emerald Portfolio, LLC dated November 9, 2015 and recorded in the Office of the Register of Deeds for Charleston County on November 13, 2015 in Deed Book 0517 at Page 162.

TAX MAP NUMBERS: 328-00-00-544
328-00-00-545

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CHARLESTON)

Date of Transfer of Title
May 20, 2016

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Emerald McDonough Road Holdings, LLC TO Mariners Cay Marina Condo LLC on May 20, 2016.

3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $210,000.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   a. $210,000.00 — the amount listed in Item No. 4 above
   b. $0.00 — the amount listed on Item No. 5 above (no amount, please zero)
   c. $210,000.00 — subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Emerald McDonough Road Holdings, LLC,
A South Carolina limited liability company

BY: Sabal Financial Group, L.P.,
Its: Manager

BY: _____
NAME: R. Patterson Jackson
TITLE: Chief Executive Officer

STATE OF SOUTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public for the County of Charleston and State of South Carolina, do hereby certify that _____ as _____ of Emerald McDonough Road Holdings, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ of May, 2016.

SEE ATTACHMENT

_____
Notary Public
My Commission Expires:
(SEAL)

"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

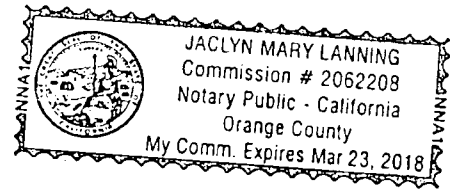
STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, Jaclyn Mary Lanning, Notary Public, personally appeared R. Patterson Jackson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ *(SEAL)*
Signature of Notary Public



RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
WEEKS & IRVINE LLC

RECORDED

Date:	May 25, 2016
Time:	4:33:39 PM

Book	Page	DocType
0556	511	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
EMERALD MCDONOUGH RD ETC

RECIPIENT:
MARINERS CAY MARINA CONDO

Original Book:

Original Page:

Note:

# of Pages: 7

Recording Fee	$	10.00
State Fee	$	546.00
County Fee	$	231.00
Extra Pages	$	2.00
Postage	$	-
Chattel	$	-
TOTAL	$	789.00

DRAWER	Drawer 2
CLERK	JBA

AUDITOR STAMP HERE
RECEIVED From RMC
MAY 27 2016
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MRD
DATE 5/31/16
37

Book	Page	Recorded Date	# Pgs
0556	511	05/25/2016	7

Original Book	Original Page	Doc Type	Recorded Time
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PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is made and entered into this 21 day of March, 2016 (the "**Effective Date**"), by and between Emerald McDonough Road Holdings, LLC, a South Carolina limited liability company ("**Seller**"), and Mariners Cay Fuel Dock LLC ("**Buyer**"), upon the following terms and conditions:

1. **Purchase and Sale**. Pursuant to this Agreement, Buyer shall purchase and Seller shall sell all of Seller's right, title, and interest in and to that certain real property consisting **two boat slips: Unit C-21, parcel number 328-00-00-507 and Unit C-22, parcel number 328-00-00-508 located at 2 McDonough Rd., Folly Beach, SC 29439, County of Charleston** and legally described on **Exhibit A** attached hereto together with all appurtenances thereto and improvements thereon ("**Property**").

2. **Disclaimer; Release of Claims**.

2.1. Buyer acknowledges and understands that Seller acquired the Property by foreclosure, deed in lieu of foreclosure, forfeiture, or similar process, and Seller consequently has little or no direct knowledge concerning the condition of the Property. As a material part of the consideration to be received by Seller under this Agreement as negotiated and agreed to by Buyer and Seller, Buyer acknowledges and agrees to accept the Property in "as-is," "where-is" condition at the time of closing, including, without limitation, zoning, land use or building code requirements or compliance with any law, rules, ordinances or regulations of any government authority; any hidden defects, environmental conditions affecting the Property, or the existence of mold, whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

2.2. THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS PURCHASING THE PROPERTY BASED SOLELY UPON BUYER'S OWN INDEPENDENT INSPECTIONS, INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER OR SELLER'S AGENTS.

2.3 Without limiting the provisions of Paragraph 2.1 and 2.2 above, Buyer releases Seller from any and all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not), whether known or unknown, liquidated or contingent (collectively, "**Claims**") arising from or related to (a) any defects, errors or omissions in the design or construction of the Property, whether the same are a result of negligence or otherwise; or (b) other conditions (including environmental conditions) affecting the Property, whether the same are a result of negligence or otherwise. The release set forth in this Paragraph specifically includes any Claims under any Environmental Laws, under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et

seq., or with respect to any environmental risk. "**Environmental Laws**" includes, but is not limited to, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.), the Clean Air Act (42 U.S.C. §§7401 et seq.), the Clean Water Act (33 U.S.C. §§1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§300f et seq.), as any of the same may be amended from time to time, and any state or local law dealing with environmental matters, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement.

3. **Purchase Price; Deposit and Closing Date**.

3.1. The purchase price for the Property shall be Forty Thousand and 00/100 DOLLARS ($40,000.00)("**Purchase Price**").

3.2 Buyer and Seller hereby agree that the "**Closing Attorney**" shall be:

Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone: (843) 576-0547
Email: mweeks@weekslawfirm.net

Seller shall retain its own closing attorney at Seller's expense.

3.3 Within three (3) days after the Effective Date, Buyer shall deposit with the Closing Attorney, by check or wire transfer, the sum of One Thousand and 00/100 DOLLARS ($1,000.00) (the "**Deposit**").

3.4 The Deposit shall be applicable toward the Purchase Price. The balance of the Purchase Price after application of the Deposit shall be paid upon closing of this sale ("**Closing**") by bank check or wire transfer. The "**Closing Date**" means that date which is five (5) days after the expiration of the Feasibility Period, or any earlier date to which Buyer and Seller mutually agree in writing.

4. **Survey**. Seller is not in possession of a survey of the Property. Buyer, at its expense, may obtain a new or updated survey of the Property (the "**Survey**").

5. **Title Review**. The "**Title Company**" shall be determined by the Closing Attorney. Within ten (10) business days after the Effective Date, Buyer shall cause the Title Company, at Buyer's expense, to provide Buyer with a commitment for a standard form ALTA Standard

Coverage Owner's Title Policy on the Property (the "**Commitment**") issued by the Title Company, and copies of all instruments shown by the Commitment as exceptions. Buyer shall have five (5) days after receipt of the Commitment (the "**Review Period**"), including copies of all documents constituting exceptions to title, to review the Commitment. Within the Review Period, Buyer may either (a) terminate this Agreement and receive a refund of the Deposit if Buyer is not satisfied, in the exercise of its sole judgment, with matters disclosed in the Commitment, or (b) deliver to Seller written objections to any matters disclosed in the Commitment. Within three (3) days of receipt of such written objections, Seller shall notify Buyer whether or not it will cure any such defects ("**Seller Notice**"), which it may elect to do, or not do, in the exercise of Seller's sole and absolute discretion. Seller's failure to send the Seller Notice shall mean that Seller has elected not to cure any such defects. If Seller elects (or is deemed to have elected) not to cure, then Buyer shall have two (2) days after receipt of the Seller Notice (or if there is no Seller Notice then two (2) days from the end of the three (3) day period) to either (i) terminate this Agreement and receive a refund of the Deposit or (ii) waive the defects and proceed with this transaction, in which case such defects shall be deemed approved by Buyer.

6. **Title Insurance and Deed**. At Closing, Seller shall convey title to the Property to Buyer by special warranty deed (the "**Deed**"). At Buyer's expense, shall cause the Title Company to deliver to Buyer at Closing, a standard form ALTA Standard Coverage Owner's Title Insurance Policy (the "**Policy**") issued by the Title Company pursuant to the Commitment, insuring marketable fee simple title to Buyer in the full amount of the Purchase Price; provided that any requirement for the Policy to be issued without Standard Survey Exceptions shall be subject to Buyer's requirement to obtain the Survey and the Title Company's willingness to accept an Owner's Affidavit in form satisfactory to Seller in its sole and absolute discretion. The incremental cost to issue extended ALTA title insurance coverage, title endorsements and/or a lender's title insurance policy, if any, shall be paid by Buyer. The cost to record the Deed shall be paid by Buyer. Any closing fee charged by the Closing Attorney to close the transaction shall be paid by Buyer.

7. **Risk of Loss and Condemnation**. Risk of loss by damage or destruction to the Property after the Effective Date but prior to Closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to Closing, Buyer, at its option, may either cancel this Agreement and receive a refund of the Deposit or elect to close the transaction, in which event Seller's right to all insurance proceeds not yet applied to repair of the damage or destruction shall be assigned in writing by Seller to Buyer at Closing. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of the Deposit, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

8. **Taxes and Assessments**.

8.1 Seller shall pay all valid delinquent real property taxes, water rates, sewer charges, assessments, special and otherwise, and other charges which are a valid lien against the Property as of the Closing Date. Current real estate taxes and current installments of special assessments, if any, shall be prorated on a due date basis to the date of Closing, in accordance with the local custom for the county in which the Property is located. Any federal, state and local documentary

or revenue stamps, transfer, sales and other taxes relating to the sale of the Property shall be paid by Buyer and/or Seller at Closing based on local custom for the county in which the Property is located and both parties agree to execute any tax forms required.

8.2 All net property tax refunds and credits attributable to any period prior to the Closing, if any, shall be the property of Seller. All net property tax refunds and credits attributable to any period subsequent to the Closing, if any, shall be the property of Buyer.

9. **Remedies for Default**.

9.1. In the event of a breach or default hereunder by Buyer, Seller may, after written notice of default to Buyer specifying the nature of such default(s) and the failure of Buyer to cure such default(s) within five (5) days after Buyer's receipt of such notice, declare a forfeiture hereunder and retain the Deposit as liquidated damages, the same to be Seller's sole remedy for any breach or default hereunder by Buyer. Seller waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity. Nothing herein shall limit Buyer's indemnity obligation pursuant to Paragraph 10 of this Agreement, which indemnity obligation shall survive termination of this Agreement or Closing.

9.2 In the event of a breach or default hereunder by Seller, Buyer may after written notice of default to Seller specifying the nature of such default(s) and the failure of Seller to cure such default(s) within five (5) days after Seller's receipt of such notice, terminate this Agreement and be entitled to an immediate refund of the Deposit, as Buyer's sole remedy for any breach or default hereunder by Seller. Buyer waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity.

10. **Right of Entry and Inspection**. At any time prior to the expiration of the Feasibility Period (as hereafter defined), with Seller's prior approval, not to be unreasonably withheld, conditioned or delayed, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property to inspect same. Buyer may select qualified professionals to make "**Inspections**" (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards (including Phase I and Phase II environmental assessments); provided that Buyer shall not conduct any soil borings or other physically invasive tests of the Property without Seller's prior written consent (which shall not be unreasonably withheld or delayed), and provided further that all Inspections shall be performed in a manner that shall not unreasonably interfere with the ongoing use of the Property by the Seller or the tenants. Buyer shall keep the Property free of any liens, and repair any material physical damages caused by Buyer, its agents, employees, contractors or subcontractors and restore the Property to its condition prior to Inspections. Buyer shall indemnify, defend and hold Seller harmless against all losses, damages, claims, demands and liabilities which may be suffered by or asserted against Seller by reason of Buyer's Inspections, which indemnity obligation shall survive termination of this Agreement or Closing.

11. **Brokerage Fees**. Seller and Buyer each represent that no broker is involved in the transaction contemplated under this Agreement and each party indemnifies the other against brokerage or commission claims arising out of the indemnifying party's actions. George A. Farmer Jr. principal of Buyer, is a real estate licensee under the law of South Carolina and is acting solely as a principal in this transaction and will not be due a commission relating to this transaction or this Agreement.

12. **Representations and Warranties**.

12.1 Seller hereby represents and warrants to Buyer that Seller has the power, right and authority to enter into and perform all of the obligations required of Seller under this Agreement and the instruments and documents referenced herein, and to consummate the transaction herein contemplated.

12.2 Buyer hereby represents and warrants to Seller that Buyer has the power, right and authority to enter into and perform all of the obligations required of Buyer under this Agreement and the instruments and documents referenced herein, and to consummate the transaction herein contemplated. Buyer has made and relied upon its own evaluation and decision to purchase the Property, and Buyer has not relied upon any oral or written information or statements from Seller, other than as expressly set forth in this Agreement.

13. **Feasibility Period**.

13.1. Buyer shall have a thirty five (35) day period from and after the Effective Date (the "**Feasibility Period**") to satisfy the Conditions (as hereafter defined). At any time prior to the end of the Feasibility Period, Buyer may, for any reason in its sole and absolute discretion, cancel this Agreement by providing written notice thereof to Seller prior to the end of the Feasibility Period and receive a refund of the Deposit and neither party shall have any further obligation to the other except those that expressly survive termination. The term "**Conditions**" means (a) the Property is suitable to Buyer, in its sole and absolute discretion, for its intended use, and (b) Buyer is satisfied, in its sole and absolute discretion, with the Inspections.

13.2. In the event Buyer shall not provide notice of termination prior to the expiration of the Feasibility Period, then the Deposit shall be deemed nonrefundable and immediately released without further instruction from either Buyer or Seller, except in the case of a default by Seller hereunder, in which case the Deposit may be refunded pursuant to a termination of this Agreement by Buyer pursuant to Paragraph 9.2 hereof.

14. **Notices**. Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by (a) delivering the same in person to the party to be notified, (b) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, (c) sent by reputable overnight delivery services (such as Federal Express or United States Express Mail) or (d) sent by electronic mail (with confirmation sent by any of the means described in subparagraphs (a), (b) or (c) above). Notices given in accordance with any of the foregoing methods shall be effective when received (or service is refused). For the purpose

of notice, the address of the parties shall be, until changed, as set forth below. The parties shall have the right at any time to change their respective addresses and each shall have the right to specify as its address any other address by written notice to the other party.

If to Seller:

Linda Stone
Asset Manager
c/o Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

With a Copy To:

Ralph Carrillo
Escrow Coordinator
Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

If to Buyer:

Mariners Cay Fuel Dock LLC
Attn: George A. Farmer Jr.
Phone:
Email:

With a Copy To:

[Name]
[Company]
Address
Address

email:

15. **No Third Party Beneficiary**. This Agreement shall not confer any rights, benefits or remedies upon any entities or persons other than the Buyer, Seller and their respective executors, heirs, administrators, successors and assigns.

16. **Time of Essence**. Time is of the essence of this Agreement.

17. **Entire Agreement**. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

18. **Headings**. The paragraph headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

19. **Modifications and Waiver**. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

20. **Successors**. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns. Buyer may not assign this Agreement without the prior written consent of Seller. No assignment shall relieve the assigning party from its obligations hereunder.

21. **Governing Law and Attorneys' Fees**. This Agreement shall be governed and enforced by, and construed in accordance with the laws of the state in which the Property is located. In the event either party hereto finds it necessary to employ legal counsel or to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions hereof, the prevailing party in such action or proceeding shall be paid all reasonable attorneys' fees, as determined by the court and not the jury, and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceedings.

22. **Computing Any Time Period**. Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days, provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

23. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

[*signatures on the next page*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

Emerald McDonough Road Holdings, LLC
a South Carolina limited liability company

By: Sabal Financial Group, L.P.,
Its Manager

By: _____

Name: Mark E. Foster
Vice President & General Counsel

Its: _____

BUYER:

Mariners Cay Fuel Dock LLC
a _____

By: _____

Name: George A. Farmer Jr.

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

[TO BE PROVIDED WITH TITLE COMMITMENT]

CONTACT SHEET

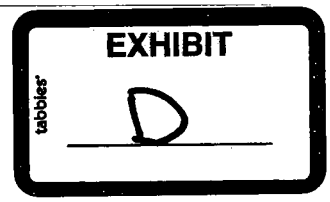
Closing Attorney:
Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone:(843) 576-0547
Email: mweeks@weekslawfirm.net

Seller Attorney:
James M. Allison, P.A.
Attention: Bridget Klebe
109 East North Street
Greenville, SC 29604
Phone: 864-271-2656
Email: bklebe@allisonlaw.biz

Buyer:
Mariners Cay Fuel Dock LLC
Attn: George A. Farmer Jr.
Phone:
Email:

Seller:
Emerald McDonough Road Holdings, LLC
c/o Sabal Financial Group
Attn: Linda Stone
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone
Email:

Seller's Closing Coordinator:
Sabal Financial Group
Attn: Ralph Carrillo
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone
Email:



PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is made and entered into this 21 day of March, 2016 (the "**Effective Date**"), by and between Emerald McDonough Road Holdings, LLC, a South Carolina limited liability company ("**Seller**"), and Mariners Cay Marina Condo LLC ("**Buyer**"), upon the following terms and conditions:

1. **Purchase and Sale**. Pursuant to this Agreement, Buyer shall purchase and Seller shall sell all of Seller's right, title, and interest in and to that certain real property consisting of **two condominium units; Unit 1-A, parcel number 328-00-00-544 and Unit 1-B, parcel number 328-00-00-545 at 2 McDonough Rd., Folly Beach, SC 29439, County of Charleston** and legally described on **Exhibit A** attached hereto together with all appurtenances thereto and improvements thereon ("**Property**").

2. **Disclaimer; Release of Claims**.

2.1. Buyer acknowledges and understands that Seller acquired the Property by foreclosure, deed in lieu of foreclosure, forfeiture, or similar process, and Seller consequently has little or no direct knowledge concerning the condition of the Property. As a material part of the consideration to be received by Seller under this Agreement as negotiated and agreed to by Buyer and Seller, Buyer acknowledges and agrees to accept the Property in "as-is," "where-is" condition at the time of closing, including, without limitation, zoning, land use or building code requirements or compliance with any law, rules, ordinances or regulations of any government authority; any hidden defects, environmental conditions affecting the Property, or the existence of mold, whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

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2.3 Without limiting the provisions of Paragraph 2.1 and 2.2 above, Buyer releases Seller from any and all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not), whether known or unknown, liquidated or contingent (collectively, "**Claims**") arising from or related to (a) any defects, errors or omissions in the design or construction of the Property, whether the same are a result of negligence or otherwise; or (b) other conditions (including environmental conditions) affecting the Property, whether the same are a result of negligence or otherwise. The release set forth in this Paragraph specifically includes any Claims under any Environmental Laws, under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et

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3. **Purchase Price; Deposit and Closing Date**.

3.1. The purchase price for the Property shall be Two Hundred Ten Thousand and 00/100 DOLLARS ($210,000.00)("**Purchase Price**").

3.2 Buyer and Seller hereby agree that the "**Closing Attorney**" shall be:

Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone:(843) 576-0547
Email: mweeks@weekslawfirm.net

Seller shall retain its own closing attorney at Seller's expense.

3.3 Within three (3) days after the Effective Date, Buyer shall deposit with the Closing Attorney, by check or wire transfer, the sum of Five Thousand and 00/100 DOLLARS ($5,000.00) (the "**Deposit**").

3.4 The Deposit shall be applicable toward the Purchase Price. The balance of the Purchase Price after application of the Deposit shall be paid upon closing of this sale ("**Closing**") by bank check or wire transfer. The "**Closing Date**" means that date which is five (5) days after the expiration of the Feasibility Period, or any earlier date to which Buyer and Seller mutually agree in writing.

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5. **Title Review**. The "**Title Company**" shall be determined by the Closing Attorney. Within ten (10) business days after the Effective Date, Buyer shall cause the Title Company, at Buyer's expense, to provide Buyer with a commitment for a standard form ALTA Standard

Coverage Owner's Title Policy on the Property (the "**Commitment**") issued by the Title Company, and copies of all instruments shown by the Commitment as exceptions. Buyer shall have five (5) days after receipt of the Commitment (the "**Review Period**"), including copies of all documents constituting exceptions to title, to review the Commitment. Within the Review Period, Buyer may either (a) terminate this Agreement and receive a refund of the Deposit if Buyer is not satisfied, in the exercise of its sole judgment, with matters disclosed in the Commitment, or (b) deliver to Seller written objections to any matters disclosed in the Commitment. Within three (3) days of receipt of such written objections, Seller shall notify Buyer whether or not it will cure any such defects ("**Seller Notice**"), which it may elect to do, or not do, in the exercise of Seller's sole and absolute discretion. Seller's failure to send the Seller Notice shall mean that Seller has elected not to cure any such defects. If Seller elects (or is deemed to have elected) not to cure, then Buyer shall have two (2) days after receipt of the Seller Notice (or if there is no Seller Notice then two (2) days from the end of the three (3) day period) to either (i) terminate this Agreement and receive a refund of the Deposit or (ii) waive the defects and proceed with this transaction, in which case such defects shall be deemed approved by Buyer.

6. **Title Insurance and Deed**. At Closing, Seller shall convey title to the Property to Buyer by special warranty deed (the "**Deed**"). At Buyer's expense, shall cause the Title Company to deliver to Buyer at Closing, a standard form ALTA Standard Coverage Owner's Title Insurance Policy (the "**Policy**") issued by the Title Company pursuant to the Commitment, insuring marketable fee simple title to Buyer in the full amount of the Purchase Price; provided that any requirement for the Policy to be issued without Standard Survey Exceptions shall be subject to Buyer's requirement to obtain the Survey and the Title Company's willingness to accept an Owner's Affidavit in form satisfactory to Seller in its sole and absolute discretion. The incremental cost to issue extended ALTA title insurance coverage, title endorsements and/or a lender's title insurance policy, if any, shall be paid by Buyer. The cost to record the Deed shall be paid by Buyer. Any closing fee charged by the Closing Attorney to close the transaction shall be paid by Buyer.

7. **Risk of Loss and Condemnation**. Risk of loss by damage or destruction to the Property after the Effective Date but prior to Closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to Closing, Buyer, at its option, may either cancel this Agreement and receive a refund of the Deposit or elect to close the transaction, in which event Seller's right to all insurance proceeds not yet applied to repair of the damage or destruction shall be assigned in writing by Seller to Buyer at Closing. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of the Deposit, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

8. **Taxes and Assessments**.

8.1 Seller shall pay all valid delinquent real property taxes, water rates, sewer charges, assessments, special and otherwise, and other charges which are a valid lien against the Property as of the Closing Date. Current real estate taxes and current installments of special assessments, if any, shall be prorated on a due date basis to the date of Closing, in accordance with the local custom for the county in which the Property is located. Any federal, state and local documentary

or revenue stamps, transfer, sales and other taxes relating to the sale of the Property shall be paid by Buyer and/or Seller at Closing based on local custom for the county in which the Property is located and both parties agree to execute any tax forms required.

8.2 All net property tax refunds and credits attributable to any period prior to the Closing, if any, shall be the property of Seller. All net property tax refunds and credits attributable to any period subsequent to the Closing, if any, shall be the property of Buyer.

9. **Remedies for Default.**

9.1. In the event of a breach or default hereunder by Buyer, Seller may, after written notice of default to Buyer specifying the nature of such default(s) and the failure of Buyer to cure such default(s) within five (5) days after Buyer's receipt of such notice, declare a forfeiture hereunder and retain the Deposit as liquidated damages, the same to be Seller's sole remedy for any breach or default hereunder by Buyer. Seller waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity. Nothing herein shall limit Buyer's indemnity obligation pursuant to Paragraph 10 of this Agreement, which indemnity obligation shall survive termination of this Agreement or Closing.

9.2 In the event of a breach or default hereunder by Seller, Buyer may after written notice of default to Seller specifying the nature of such default(s) and the failure of Seller to cure such default(s) within five (5) days after Seller's receipt of such notice, terminate this Agreement and be entitled to an immediate refund of the Deposit, as Buyer's sole remedy for any breach or default hereunder by Seller. Buyer waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity.

10. **Right of Entry and Inspection.** At any time prior to the expiration of the Feasibility Period (as hereafter defined), with Seller's prior approval, not to be unreasonably withheld, conditioned or delayed, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property to inspect same. Buyer may select qualified professionals to make "**Inspections**" (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards (including Phase I and Phase II environmental assessments); provided that Buyer shall not conduct any soil borings or other physically invasive tests of the Property without Seller's prior written consent (which shall not be unreasonably withheld or delayed), and provided further that all Inspections shall be performed in a manner that shall not unreasonably interfere with the ongoing use of the Property by the Seller or the tenants. Buyer shall keep the Property free of any liens, and repair any material physical damages caused by Buyer, its agents, employees, contractors or subcontractors and restore the Property to its condition prior to Inspections. Buyer shall indemnify, defend and hold Seller harmless against all losses, damages, claims, demands and liabilities which may be suffered by or asserted against Seller by reason of Buyer's Inspections, which indemnity obligation shall survive termination of this Agreement or Closing.

11. **Brokerage Fees**. Seller and Buyer each represent that no broker is involved in the transaction contemplated under this Agreement and each party indemnifies the other against brokerage or commission claims arising out of the indemnifying party's actions. George A. Farmer Jr., principal of Buyer, is a real estate licensee under the law of South Carolina and is acting solely as a principal in this transaction and will not be due a commission relating to this transaction or this Agreement.

12. **Representations and Warranties**.

12.1 Seller hereby represents and warrants to Buyer that Seller has the power, right and authority to enter into and perform all of the obligations required of Seller under this Agreement and the instruments and documents referenced herein, and to consummate the transaction herein contemplated.

12.2 Buyer hereby represents and warrants to Seller that Buyer has the power, right and authority to enter into and perform all of the obligations required of Buyer under this Agreement and the instruments and documents referenced herein, and to consummate the transaction herein contemplated. Buyer has made and relied upon its own evaluation and decision to purchase the Property, and Buyer has not relied upon any oral or written information or statements from Seller, other than as expressly set forth in this Agreement.

13. **Feasibility Period**.

13.1. Buyer shall have a thirty five (35) day period from and after the Effective Date (the "**Feasibility Period**") to satisfy the Conditions (as hereafter defined). At any time prior to the end of the Feasibility Period, Buyer may, for any reason in its sole and absolute discretion, cancel this Agreement by providing written notice thereof to Seller prior to the end of the Feasibility Period and receive a refund of the Deposit and neither party shall have any further obligation to the other except those that expressly survive termination. The term "**Conditions**" means (a) the Property is suitable to Buyer, in its sole and absolute discretion, for its intended use, and (b) Buyer is satisfied, in its sole and absolute discretion, with the Inspections.

13.2. In the event Buyer shall not provide notice of termination prior to the expiration of the Feasibility Period, then the Deposit shall be deemed nonrefundable and immediately released without further instruction from either Buyer or Seller, except in the case of a default by Seller hereunder, in which case the Deposit may be refunded pursuant to a termination of this Agreement by Buyer pursuant to Paragraph 9.2 hereof.

14. **Notices**. Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by (a) delivering the same in person to the party to be notified, (b) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, (c) sent by reputable overnight delivery services (such as Federal Express or United States Express Mail) or (d) sent by electronic mail (with confirmation sent by any of the means described in subparagraphs (a), (b) or (c) above). Notices given in accordance with any of the foregoing methods shall be effective when received (or service is refused). For the purpose

of notice, the address of the parties shall be, until changed, as set forth below. The parties shall have the right at any time to change their respective addresses and each shall have the right to specify as its address any other address by written notice to the other party.

If to Seller:

Linda Stone
Asset Manager
c/o Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

With a Copy To:

Ralph Carrillo
Escrow Coordinator
Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

If to Buyer:

Mariners Cay Marina Condo LLC
Attn: George A. Farmer Jr.
Phone:
Email:

With a Copy To:

[Name]
[Company]
Address
Address

email:

15. **No Third Party Beneficiary**. This Agreement shall not confer any rights, benefits or remedies upon any entities or persons other than the Buyer, Seller and their respective executors, heirs, administrators, successors and assigns.

16. **Time of Essence**. Time is of the essence of this Agreement.

17. **Entire Agreement**. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

18. **Headings**. The paragraph headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

19. **Modifications and Waiver**. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

20. **Successors**. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns. Buyer may not assign this Agreement without the prior written consent of Seller. No assignment shall relieve the assigning party from its obligations hereunder.

21. **Governing Law and Attorneys' Fees**. This Agreement shall be governed and enforced by, and construed in accordance with the laws of the state in which the Property is located. In the event either party hereto finds it necessary to employ legal counsel or to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions hereof, the prevailing party in such action or proceeding shall be paid all reasonable attorneys' fees, as determined by the court and not the jury, and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceedings.

22. **Computing Any Time Period**. Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days, provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

23. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

[*signatures on the next page*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

Emerald McDonough Road Holdings, LLC
a South Carolina limited liability company

By: Sabal Financial Group, L.P.,
Its Manager

By: _____

Name: Mark E. Foster
Vice President & General Counsel

Its: _____

BUYER:

Mariners Cay Marina Condo LLC
a _____

By: _____

Name: George A. Farmer Jr.

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

[TO BE PROVIDED WITH TITLE COMMITMENT]

CONTACT SHEET

Closing Attorney:
Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone:(843) 576-0547
Email: mweeks@weekslawfirm.net

Seller Attorney:
James M. Allison, P.A.
Attention: Bridget Klebe
109 East North Street
Greenville, SC 29604
Phone: 864-271-2656
Email: bklebe@allisonlaw.biz

Seller:
Emerald McDonough Road Holdings, LLC
c/o Sabal Financial Group
Attn: Linda Stone
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phoi
Email:

Buyer:
Mariners Cay Marina Condo LLC
Attn: George A. Farmer Jr.
Phone:
Email:

Seller's Closing Coordinator:
Sabal Financial Group
Attn: Ralph Carrillo
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone:
Email:

CERTIFICATE OF SERVICE BY MAIL
Case # 2017-CP-10-3099

I, the undersigned, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon the Parties by U.S. Mail, postage prepaid, on counsel of record, at the following addresses:

G. Hamlin O'Kelley, III, Esq.
Buist, Byars & Taylor, LLC
652 Coleman Blvd, Ste 200
Mount Pleasant, SC 29464-4061
Email address: Hamlin.okelley@buistbyars.com
Attorney for: Mariners Cay Fuel Dock, LLC, Mariners Cay Marina Condo, LLC and South Atlantic Bank

2018 JUN 29 PM 1:17
JULIE J. ARMSTRONG
CLERK OF COURT

Kevin W. Mims, Esq.
Whidbee S. Perrin, Esq
Luzuriaga Mims, LLP
50 Immigration St., Ste 200
Charleston, SC 29403-3645
Email address: kmims@lmlawllp.com; wperrin@lmlawllp.com
Attorneys for George A. Farmer, Jr. and Mariners Cay Marina Condo, LLC

Capers G. Barr, III, Esq.
Barr, Unger & McIntosh, LLC
PO Box 1037
Charleston, SC 29402-1037
Email address: cgb@barrungermcintosh.com
Attorney for: Alben Neighbors, Dan Nekola, Mariner's Cay Marina Council of Co-Owners, Inc.

David C. Cleveland, Esq.
Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144
Email address: dcleveland@clawsonandstaubes.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc.

Matthew Tillman
Womble Bond Dickinson (US) LLP
5 Exchange Street
Charleston, SC 29401
Email address: matthew.tillman@wbd-us.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc.

Document Served: Third Party Defendant Emerald McDonough Road Holdings LLC Summons, Answer to Third Party Complaint and Counterclaim of Emerald McDonough Road Holdings LLC

Chrystal Compton
Paralegal to Andrew Montgomery

ROGERS TOWNSEND
ATTORNEYS AT LAW

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P 803.744.1822

Kara Bailey Hamilton, Associate
kara.bailey@rtt-law.com
P 803.744.1281

Andrew Montgomery, Associate
andrew.montgomery@rtt-law.com
P 803.744.5331

June 27, 2018

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Alben D. Neighbors, et al. v. Mariners Cay Marina Condo, LLC et al.
Case Number: 2017-CP-10-3099
RTT File Number: 020472-4

Dear Ms. Armstrong:

Enclosed, please find the original and one (1) copy of Third Party Defendant Emerald McDonough Road Holdings, LLC Answer to Third Party Complaint, Counterclaim and Summons in connection with the above-referenced matter. Please file the originals and return a file-stamped copy to me in the envelope provided.

By copy of this correspondence to all counsel of record, they are being served with the aforementioned Answer and Counterclaim.

Sincerely,

Chrystal A. Compton
Paralegal to Andrew W. Montgomery

CAC/AWM
Enclosures
Cc: All Counsel of Record (via email & U.S. mail w/enclosures)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Civil Action No.: **2017-CP-10-3099**

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank,

Defendants,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendant.

THIRD PARTY PLAINTIFFS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC'S REPLY TO THIRD PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC'S COUNTERCLAIM

FILED
2018 JUL 31 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY SD

TO: ANDREW W. MONTGOMERY, ATTORNEY FOR THE THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC

The Third Party Plaintiffs Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, (the "Third Party Plaintiffs" and/or "Mariners Cay"), by and through their undersigned counsel, hereby set forth its Reply to the Third Party Defendant

Emerald McDonough Road Holdings, LLC's (the "Third Party Defendant" and/or "EMRH") Counterclaim as follows:

1. Each and every allegation of the Third Party Plaintiffs not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Third Party Plaintiffs demand strict proof thereof.

2. The Third Party Plaintiffs are not required to answer the allegations of Paragraphs 1 through 34 of the Third Party Defendant's Counterclaim as said allegations are in response to the Third Party Defendant's Answer to The Third Party Plaintiffs' Complaint. To the extent any response is required, the Third Party Plaintiffs denies same and demand strict proof thereof.

AS TO THE FIRST COUNTERCLAIM AGAINST MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC
(Breach of Contract)

3. The Third Party Plaintiffs deny the allegations of Paragraph 35 of the Third Party Defendant's Counterclaim and demand strict proof thereof.

4. The Wherefore Paragraph of the Third-Party Defendant's Counterclaim is denied, including all subparts.

FOR A FIRST AFFIRMATIVE DEFENSE
(Comparative Negligence)

5. EMRH's claims, if any, are barred, or should be reduced, by EMRH's own contributory and comparative negligence and recklessness which combined, contributed, and concurred with any alleged negligence on the part of Mariners Cay, if any, and which is expressly denied.

FOR A SECOND AFFIRMATIVE DEFENSE
(Negligent Acts and Omissions of Others)

6. EMRH's claims, if any, are the result of negligent acts and omissions of other entities or persons over whom Mariners Cay had no control, barring EMRH's claims against Mariners Cay.

FOR A THIRD AFFIRMATIVE DEFENSE
(Unconstitutionality of Punitive Damages)

7. The imposition of punitive or exemplary damages against Mariners Cay would violate its constitutional rights under the Due Process clauses in the Fifth and Fourteenth Amendments to the Constitution of the United States, the Excessive Fines clause in the Eighth Amendment to the Constitution of the United States, the Double Jeopardy clause in the Fifth Amendment to the Constitution of the United States, similar provisions in applicable State Constitutions, and/or the common law and public policies of pertinent States, and/or applicable statutes and court rules, in the circumstances of this litigation, including but not limited to:

a. imposition of such punitive damages by a jury which (1) is not provided standards of sufficient clarity for determining the appropriateness, and the appropriate size, of such a punitive damages award, (2) is not adequately and clearly instructed on the limits on punitive damages imposed by the principles of deterrence and punishment, (3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award thereof, in whole or in part, on the basis of invidiously discriminatory characteristics, including the corporate status, wealth, or state or residence of Mariners Cay, (4) is permitted to award punitive damages under a standard for determining liability for such damages which is vague and arbitrary and

does not define with sufficient clarity the conduct or mental state which makes punitive damages permissible, and (5) is not subject to trial court and appellate judicial review for reasonableness and the furtherance of legitimate purposes on the basis of objective standards;

b. imposition of such punitive damages, and determination of the amount of an award thereof, where applicable state law is impermissibly vague, imprecise, or inconsistent;

c. imposition of such punitive damages, and determination of the amount of an award thereof, employing a burden of proof less than clear and convincing evidence;

d. imposition of such punitive damages, and determination of the amount of an award thereof, without bifurcating the trial and trying all punitive damages issues only if and after the liability of Mariners Cay has been found on the merits;

e. imposition of such punitive damages, and determination of the amount of an award thereof, under any state's law subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount;

f. imposition of such punitive damages, and determination of the amount of any award thereof, based on anything other than Mariners Cay's conduct in connection the incident alleged in this litigation, or in any other way subjecting Defendant to impermissible multiple punishment for the same alleged wrong; and/or

g. imposition of punitive damages by the jury as opposed to the Court, as the issues of the imposition and amount of punitive damages are matters of constitutional fact that must be determined by the Court, not the jury.

FOR A FOURTH AFFIRMATIVE DEFENSE
(Intervening/Superseding Negligence of Others)

8. That the injury or damage suffered by EMRH, if any, was due to, and caused by, and was the direct and proximate result of the intervening and superseding negligence, willfulness, wantonness and recklessness of EMRH/others, and such constitutes a complete defense to the claims of EMRH.

FOR A FIFTH AFFIRMATIVE DEFENSE
(Failure to State a Claim)

9. One or more causes of action of EMRH's Answer and Counterclaim fails to state any claim upon which relief can be granted as to Mariners Cay, and EMRH's claims should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP.*

FOR A SIXTH AFFIRMATIVE DEFENSE
(Laches, Waiver, and Estoppel)

10. EMRH's claims are barred by the doctrines of laches, waiver and/or estoppel.

FOR A SEVENTH AFFIRMATIVE DEFENSE
(Statute of Limitations/Statute of Repose)

11. That all claims asserted against Mariners Cay are barred by the applicable statute of limitations and/or the applicable statute of repose.

FOR AN EIGHTH AFFIRMATIVE DEFENSE
(Mitigation of Damages)

12. EMRH had an obligation to mitigate its damages but has failed to do so.

FOR A NINTH AFFIRMATIVE DEFENSE
(Setoff)

13. Any recovery by EMRH must be reduced or offset by amounts EMRH have received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A TENTH AFFIRMATIVE DEFENSE
(Unclean Hands)

14. That to the extent EMRH was negligent, grossly negligent, willful, wanton and reckless, resulting in damages allegedly sustained, EMRH comes to Court with unclean hands and such inequitable conduct on the part of EMRH constitutes a bar and complete defense to any claim for equitable relief.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE
(Accord and Satisfaction)

15. EMRH's claims are barred by the defense of accord and satisfaction.

FOR TWELFTH AFFIRMATIVE DEFENSE
(First to Breach Contract)

16. "Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." Willms Trucking Co., Inc. v. JW Constr. Co., Inc., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App.1994); *see also* Ellis v. Taylor, 316 S.C. 245, 248, 449 S.E.2d 487, 488 (1994). Silver v. Aabstract Pools & Spas, Inc., 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). EMRH breached the Master Deed and/or other contractual requirements between the parties by their actions, errors, and omissions, or as may otherwise be proven at trial. As a result, EMRH is responsible for all liability from any subsequent nonperformance and Mariners Cay is discharged of any further obligation to perform.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE
(No Contract)

17. One or more Defendants are not a party to any contract with Emerald, and therefore, causes of action for breach of contract and any related causes of action in contract must fail.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Good Faith and Reasonable)

18. Mariners Cay acted in a good faith and in a reasonable manner, which acts as a complete defense to this action.

FOR A FIFTHTEENTH AFFIRMATIVE DEFENSE
(Incorporation of Defenses Raised By Others)

19. Mariners Cay hereby incorporate the defenses raised by any other Defendant to the extent said defenses might be applicable to it.

FOR A SIXTEENTH AFFIRMATIVE DEFENSE
(Additional Defense)

20. Mariners Cay hereby gives notice that they intend to rely upon such other affirmative defenses as may become available or apparent during the course of discovery and thus reserve the right to amend their Answer to assert any such defenses.

WHEREFORE, having fully responded to the Third Party Defendant's counterclaim, the Third Party Plaintiffs pray that this Court enter its judgment and order as follows:

a. Dismissing the Third Party Defendant's counterclaim;

b. Awarding the Third Party Plaintiffs' actual damages, attorney fees and costs in amounts to be proven at the trial of this case; and

c. Award the Third Party Plaintiffs' special damages in amounts to be proven at the trial of this case; and

d. Granting any and all such further relief as this Court deems just and proper.

LUZURIAGA MIMS, LLP

By: _____

Kevin W. Mims, SC Bar No. 69418
Whidbee S. Perrin, SC Bar No. 100396
50 Immigration St, Suite 200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com
wperrin@lmlawllp.com

Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By: _____ w/ express permission

G. Hamlin O'Kelley, III, SC Bar #15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
7/26, 2018

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 27th day of July, 2018.

_____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Elizabeth Heatley and Dan G. Nekola,)
on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)
)
Plaintiffs,)
)
v.)
)
Mariners Cay Marina Condo, LLC,)
Mariners Cay Fuel Dock, LLC,)
George A. Farmer, Jr., and)
South Atlantic Bank)
)
Defendants.)
)
and)
)
Mariners Cay Marina Condo, LLC)
and Mariners Cay Fuel Dock, LLC)
)
Third Party Plaintiffs)
)
vs.)
)
Emerald McDonough Road Holdings, LLC)
)
Third Party Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-10-3099

THIRD AMENDED COMPLAINT

FILED
2019 JAN 31 PM 12:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiffs above named complaining of the Defendants herein allege and show unto this Honorable Court as follows:

1. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, S.C. Code Ann. §§15-53-10 through 15-53-140 (1976), to determine the ownership of the property which is the subject of this action, the rights of the parties in and to the property which is the subject of this action, and to declare that the Amended and Restated Master Deed for Mariner's

Cay Marina Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended and Restated Master Deed") is invalid and that the property which is the subject of this action is a common element of the Mariner's Cay Marina Horizontal Property Regime; and for an Order declaring that none of the Defendants have any right, title, estate or interest in the subject property described in this Complaint or any part thereof.

2. Mariner's Cay Marina consists of ninety (90) boat slips located on the Folly River as well as a two-story building known as the "Ship Store" (herein referred to as the "Ship Store") located on the high ground adjacent to the marina docks.

3. The Plaintiff, Mariner's Cay Marina Council of Co-Owners, Inc. (herein referred to as the "Marina Council") is the incorporated council of co-owners for Mariner's Cay Marina Horizontal Property Regime (herein the "Regime"), a horizontal property regime located in Charleston County, South Carolina. The Regime was formed by the recording of a Master Deed on May 18, 2006 in the RMC Office for Charleston County in Book V583, Page 584 (herein the "Master Deed"). The Marina Council is vested with the rights, powers, privileges, and duties necessary or incidental to the administration of the Regime, including the care and upkeep of the common elements, as well as the employment of the marina Dockmaster (as herein defined) and for providing the Dockmaster a suitable location and office for him to perform his duties.

4. The Plaintiff Elizabeth Heatley (herein "Heatley") is the owner of Dock Unit D-8 in the Regime, and the Plaintiff Dan G. Nekola (herein "Nekola") is the owner of Dock Unit A-7 in the Regime.

5. Defendant Mariners Cay Marina Condo, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina, and said Defendant claims an interest in the property which is the subject of this action.

6. Defendant Mariners Cay Fuel Dock, LLC is, upon information and belief, a limited liability company organized under the laws of the State of South Carolina and said Defendant claims an interest in the property which is the subject of this action. The Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC are collectively referred to herein as the "LLC Defendants").

7. The Defendant George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a resident of Charleston County, South Carolina.

8. The Defendant South Atlantic Bank is, on information and belief, a banking institution organized and existing under the laws of the State of South Carolina which claims or may claim an interest in the property which is the subject of this action.

9. As used herein, the terms "Unit" and "Dock Unit" in the Regime are the equivalent of the term "apartment" under the S.C. Horizontal Property Act, S.C. Code Ann. §§27-31-10 through 27-31-300 (1976).

10. The property which is the subject of this action (herein the "Subject Property") consists of the following:

a. A two story wood frame structure on timber piles located on the high ground adjacent to the Mariner's Cay Marina docks commonly known as the "Ship Store," (herein the "Ship Store") which property has been described as follows:

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial

Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at page 629.

Charleston County TMS: 328-00-00-544 and 328-00-00-545;

b. The fuel docks of the Mariner's Cay Marina (herein the "Fuel Docks"), which have been described as follows:

Dock Unit C21 and C22, Mariners Cay HPR, and HRP established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B" of the aforementioned Master Deed.

Charleston County TMS: 328-00-00-507 and 328-00-00-508; and

c. The fuel tanks, pumps, lines and related fueling equipment located throughout the Regime property.

11. The class of Plaintiffs represented by Elizabeth Heatley and Dan G. Nekola consists of all individuals, trustees, corporations, partnerships, unincorporated associations or other entities that own, in whole or in part, all of the Dock Units in the Regime, with the exception of the Fuel Docks (hereinafter the "Class").

12. The Class does not include any former owner of a Dock Unit in the Regime.

13. The Class is sufficiently numerous that joinder of all members is impractical.

14. The Plaintiffs Heatley and Nekola will fairly and adequately represent the interests of the Class as Class representatives. The interests of the Class representatives are not antagonistic to those of the other Class members.

15. There are questions of law and fact common to the Class, and the Plaintiffs' claims are typical of the claims or defenses of the Class. Common questions of law include whether the Amended and Restated Master Deed was validly adopted. The outcome of this common question of law will equally affect all members of the Class. Common questions of fact include the recording of the Amended and Restated Master Deed unilaterally by the Declarant without the consent or acquiescence of the Dock Unit owners.

16. Plaintiffs Heatley and Nekola, as Class representatives, envision no unusual difficulty in the management of this action as a Class action.

17. Certification of this action as a Class action under Rule 23 of the South Carolina Rules of Civil Procedure is appropriate.

18. The Mariner's Cay Marina docks and Ship Store were originally constructed in the late 1970's or early 1980's. Prior to the formation of the Regime, the marina and Ship Store were owned by a common owner, and boat slips in the marina were rented to individual boat owners.

19. Prior to the formation of the Regime, the renters of boat slips in the marina enjoyed the use of the restrooms, laundry room, porches and decks located in and around the Ship Store.

20. The permit issued by the South Carolina Department of Health and Environmental Control for the operation of the marina (the "marina permit") requires that an experienced operator be in charge of the marina. Accordingly, since the inception of the marina, a dockmaster (herein the "Dockmaster") has been employed, on site, to oversee the marina operations.

21. Prior to May of 2016, the Dockmaster utilized a portion of the first floor of the Ship Store as his office. The Dockmaster's office included, among other things, a desk, file storage, telephone and telephone line, internet connection, internet router and booster system for the Wi-Fi service for the boat slip owners, controls for the security gate leading to the docks, as well as a VHF radio and antenna for communicating with boaters.

22. The Master Deed provides that "Commercial Unit 1-A" and "Commercial Unit 1-B," located in the building known as the Ship Store, as well as "Commercial Unit 2," consisting of the Fuel Docks, are common elements of the Regime.

23. The Master Deed, in accordance with the South Carolina Horizontal Property Act, assigned a schedule of basic values and percentage ownership of the common elements to each of the Dock Units. No basic values or percentage ownership of the common elements were assigned under the Master Deed to "Commercial Unit 1-A", "Commercial Unit 1-B" or to "Commercial Unit 2" because they were intended to be common elements of the Regime.

24. Upon the recording of the Master Deed on May 18, 2006, the ownership of the common elements described in the Master Deed as "Commercial Unit 1-A," "Commercial Unit 1-B" and "Commercial Unit 2" (the Subject Property) was vested in the owners of the Dock Units in accordance with the South Carolina Horizontal Property Act and South Carolina caselaw.

25. On March 19, 2007, Marina at Mariners Cay, LLC, the Declarant under the Master Deed, (herein the "Declarant") unilaterally, and without the consent of all Unit owners in the Regime, recorded the Amended and Restated Master Deed, the effect and result of which was to attempt to convert the former common elements described in Paragraph 22, above, (the Subject Property) in which all of the Unit owners owned an undivided interest, into individual units.

26. Prior to the recording of the Amended and Restated Master Deed, the Declarant sold thirty eight (38) Dock Units to different individuals or entities. On information and belief, none of those individuals or entities were consulted, nor did they consent, or otherwise acquiesce, to the adoption of the Amended and Restated Master Deed.

27. The Amended and Restated Master Deed changed the definition of units and common elements to purportedly create three, additional, separately transferrable condominium units which had previously been common elements under the Master Deed, namely Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

28. The Amended and Restated Master Deed also altered the schedule of basic values and percentage interests in the common elements by reducing each Dock Unit's basic value and percentage interest and assigning basic values and percentage interests to Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

29. After the Amended and Restated Master Deed was recorded, the Subject Property was purportedly conveyed as follows:

(a) By Declarant to Flint River Capital, Inc. by deed recorded May 18, 2007 in the RMC Office for Charleston County in Book A626, Page 624;

(b) Thereafter by Flint River Capital, Inc. to Tiger River Capital, LLC by deed recorded February 27, 2009 in the RMC Office for Charleston County in Book 0037, Page 844;

(c) Thereafter by deed of the Master in Equity for Charleston County to Emerald Portfolio, LLC by deed recorded October 14, 2015 in the RMC Office for Charleston County in Book 0510, Page 674;

(d) Thereafter by Emerald Portfolio, LLC to Emerald McDonough Road Holdings, LLC by deed recorded November 13, 2015 in the RMC Office for Charleston County in Book 0517, Page 162; and

(e) Thereafter by two (2) deeds of Emerald McDonough Road Holdings, LLC: (i) to the Defendant Mariner's Cay Fuel Dock, LLC recorded May 24, 2016 in the RMC Office for Charleston County in Book 0555, Page 946, and (ii) to the Defendant Mariner's Cay Marina Condo, LLC recorded May 25, 2016 in the RMC Office for Charleston County in Book 0556, Page 511.

30. The LLC Defendants and the Defendant Farmer are in possession of the Subject Property and contend that they own the same. Plaintiffs contend that the Subject Property is a common element of the Regime and is therefore owned by the Class.

31. At all times during the time period described in Paragraphs 29(a) through 29(e) (May 18, 2007 through May 25, 2016) the Plaintiffs enjoyed the uninterrupted use of the Ship Store as described hereinabove.

32. After May 2016, the LLC Defendants and the Defendant Farmer have prohibited the Plaintiffs (including the Dockmaster employed by the Marina Council) from utilizing any portion of the Ship Store (except for the restrooms located therein) as well as any portion of the space beneath the Ship Store building.

33. The attempt by the Declarant to alter the ownership of the common elements, as set forth in Paragraph 25 above, and to alter the schedule of basic values and percentage interests in the common elements, as set forth in Paragraph 28 above, without the consent or acquiescence of the Dock Unit owners was a direct violation of the South Carolina Horizontal Property Act, namely S.C. Code §27-31-60 and §23-31-70.

34. The unilateral adoption of the Amended and Restated Master Deed by the Declarant, as described above, was invalid.

35. Plaintiffs are informed and believe that the LLC Defendants and the Defendant Farmer are without any right to prohibit the Plaintiffs from using any portion of the Subject Property and furthermore that said Defendants have no right, title, estate, or interest in the Subject Property.

36. The Defendant South Atlantic Bank claims or may claim some interest in or lien upon the Subject Property, or some portion thereof, by virtue of a mortgage recorded May 25, 2016 in the Office of the Register of Deeds for Charleston County in Book 0556, Page 512. Plaintiffs are informed and believe that the Defendant South Atlantic Bank has no interest in or lien upon the Subject Property, or any portion thereof, because the grantor under said mortgage had no interest in the Subject Property, or any portion thereof, when said mortgage was executed and delivered.

37. Plaintiffs are informed and believe that they are entitled to an Order of this Court declaring the ownership, rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property

FOR A SECOND CAUSE OF ACTION

38. The Plaintiffs repeat and reiterate the allegations of paragraphs 1 through 37 as if fully repeated herein verbatim.

39. The Defendant, George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a principal of Mariners Cay Marina Condo, LLC and is also a principal of Mariners Cay Fuel Dock, LLC. The Defendant Farmer is presently in possession of the Subject Property.

40. Part of the marina's security system consists of an electronic gate located on the gangway leading to the marina docks (the "Security Gate"). The Security Gate can only be opened with an

electronic key fob. Electronic key fobs are provided by the Marina Council to the owners and users of the boat slips in the marina.

41. The marina provides a sewer pump-out service for boaters to discharge the contents of their boats' sewerage holding tanks. The sewer pump-out service is available to be used only at Fuel Docks. The pump which operates the sewer pump-out service (herein the "Sewer Pump") is located beneath the Ship Store.

42. The space beneath the Ship Store is enclosed by lattice and has been locked by the Defendant Farmer.

43. An electrical panel located in the Ship Store includes electrical controls and breakers for the marina's security system, phone system and the sewage pump. Prior to July 17, 2017, and since the formation of the Regime, the electronic controls for the Security Gate were connected to the electrical panel located in the Ship Store.

44. The space beneath the Ship Store, the Electronic Dock Security System, the Sewer Pump and the electrical breakers and controls which operate the Electronic Dock Security System, the marina phone system and the Sewer Pump are all common elements of the Regime. These common elements are owned by the class of Plaintiffs represented by Elizabeth Heatley and Dan G. Nekola, and the Marina Council is responsible for maintaining said common elements. Accordingly, the Plaintiffs are entitled to immediate possession of and access to these common elements.

45. The Defendant Farmer has wrongfully, intentionally and wilfully refused to permit the Plaintiffs to access the common elements described in Paragraph 42, above.

46. Because the Defendant Farmer is in possession of the Ship Store, and in order to avoid a breach of the peace while this action is pending, the Plaintiffs requested, during the week of July

10, 2017, that Farmer permit the Dockmaster to access the Electronic Dock Security System (located in the Ship Store) in order to program additional key fobs for the Security Gate.

47. The Defendant Farmer refused to permit the Plaintiffs to access the Electronic Dock Security System, and instead, the Defendant Farmer, on or about July 16, 2017, intentionally, willfully and maliciously, and without authorization of the Marina Council, removed the Electronic Dock Security System from the Ship Store which caused damage to the same and which also resulted in the complete termination of the security system for the marina docks.

48. The Plaintiffs have suffered damages as a result of the Defendant Farmer's refusal to permit the Plaintiffs access to the common elements described in Paragraph 42, above, and also as a result of the Defendant Farmer's intentional, willful and malicious alteration or destruction of the Electronic Dock Security System.

49. The Plaintiffs are entitled to a judgment against the Defendant Farmer for actual damages, and because Defendant Farmer's actions, described above, were intentional, willful and malicious, or at least reckless, the Plaintiff Marina Council is also entitled to an award of punitive damages.

WHEREFORE, Plaintiff prays as follows:

(A) That this Court inquire into the matters and things alleged herein and issue an Order declaring who owns the Subject Property and also declaring the rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property;

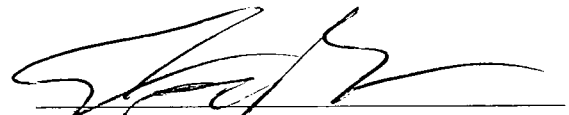
(B) That the Amended and Restated Master Deed, or at least such portions of the Amended and Restated Master Deed which directly violate the South Carolina Horizontal Property Act, as described above, be declared invalid and that the Subject Property, namely the

Ship Store, in its entirety, as well as the Fuel Docks and fuel systems be declared common elements of the Regime and therefore owned by each of the Dock Unit owners as tenants in common; and further declaring that the Defendants have no right, title, estate or interest in the Subject Property or any portion thereof;

(C) For a judgment in favor of the Plaintiffs against the Defendant Farmer for actual and punitive damages in an amount to be determined by the trier of fact; and

(D) For such other and further relief as the Court may deem just and proper.

BARR, UNGER & McINTOSH, LLC



Capers G. Barr, IV
11 Broad Street
Charleston, SC 29401
843-377-1231
Attorney for the Plaintiffs

Charleston, South Carolina
January 31, 2019.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Elizabeth Heatley and Dan G. Nekola,)
on behalf of themselves and others)
similarly situated, and Mariner's Cay)
Marina Council of Co-Owners, Inc.,)
)
Plaintiffs,)
)
v.)
)
Mariners Cay Marina Condo, LLC,)
Mariners Cay Fuel Dock, LLC,)
George A. Farmer, Jr., and)
South Atlantic Bank)
)
Defendants.)
)
and)
)
Mariners Cay Marina Condo, LLC)
and Mariners Cay Fuel Dock, LLC)
)
Third Party Plaintiffs)
)
vs.)
)
Emerald McDonough Road Holdings, LLC)
)
Third Party Defendant.)
)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2017-CP-10-3099

CERTIFICATE OF SERVICE

FILED
2019 JAN 31 PM 12:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I hereby certify that I have served a copy of the Plaintiff's Third Amended Complaint upon all counsel of record by mailing the same as follows::

David C. Cleveland, Esquire
Clawson & Staubes, LLC
126 Seven Farms Dr., Ste. 200
Charleston, SC 29492

G. Hamlin O'Kelley, III, Esquire
Buist Byars & Taylor, LLC
652 Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464

Andrew W, Montgomery, Esquire
Rogers Townsend & Thomas PC
1221 Main Street, 14th Floor
Columbia, SC 29202

Whidbee S. Perrin, Esquire
Kevin W. Mims, Esquire
Luzuriaga Mims, LLP
50 Immigration St, Ste. 200
Charleston, SC 29403

Sherry H. Glover
Legal Assistant to Capers G. Barr, IV

Charleston, South Carolina
January 31, 2019

BARR, UNGER
& MCINTOSH LLC
ATTORNEYS AT LAW

January 31, 2019

VIA HAND DELIVERY

Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

RE: ***Elizabeth Heatley and Dan G. Nekola, et al. v. Mariners Cay Marina Condo, LLC, et al.***
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Please find enclosed the original and one copy of Third Amended Complaint, along with Certificate of Service in the above-referenced matter. I would appreciate your filing the original and returning a clocked copy to me via our courier.

By copy of this letter to counsel of record, I am serving them with a copy of same.

Sincerely,

Capers G. Barr, IV

CGB, IV/shg
Enclosures (as stated)

cc: David C. Cleveland, Esq.
G. ,Hamlin O'Kelley, Esq.
Andrew W. Montgomery, Esq.
Whidbee S. Perrin, Esq.
Kevin W. Mims, Esq.
Mariner's Cay Marina Council of Co-Owners, Inc.

11 Broad Street P.O. Box 1037 Charleston, SC 29402
Telephone 843-577-5083 Fax 843-723-9039

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
	)	CASE NO.: 2017-CP-10-3099
ELIZABETH HEATLEY AND DAN G. NEKOLA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED, AND MARINER'S CAY MARINA COUNCIL OF CO-OWNERS, INC.,	)	**AFFIDAVIT OF ELIZABETH HEATLEY**
PLAINTIFFS,	)	
vs.	)	
MARINERS CAY MARINA CONDO, LLC, MARINERS CAY FUEL DOCK, LLC, GEORGE A. FARMER, JR., AND SOUTH ATLANTIC BANK	)	
DEFENDANTS,	)	
and	)	
MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC,	)	
THIRD-PARTY PLAINTIFFS	)	
vs.	)	
EMERALD MCDONGOUGH ROAD HOLDINGS, LLC,	)	
THIRD-PARTY DEFENDANT.	)	

FILED
2019 FEB -5 PM 1:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The undersigned, Elizabeth Heatley, being first duly sworn, deposes and says:

1. My name is Elizabeth Heatley, and I reside at 108 Mariners Cay Drive, Unit 108, Folly Beach , South Carolina.

2. I am the owner of Dock Unit D-8 in the Mariners Cay Marina Horizontal Property Regime. I have owned this dock unit since August 14, 2006.

3. I understand this case has been filed as a proposed class action, with the class consisting of all individuals, trustees, corporations, partnerships, unincorporated associations or

other entities that own, in whole or in part, all of the dock units in Mariners Cay Marina Horizontal Property Regime, with the exception of the fuel docks.

4. My interests in this case are the same as all of the other proposed class members in that we all desire the Court to decide whether the property, which is the subject of this case (herein the "Subject Property") is a common element of the Regime, in which case the class members all own the Subject Property together.

5. I understand that as a class representative, I have a fiduciary duty to all of the members of the class and that I am therefore prosecuting this action not for myself alone, but for all members of the class.

6. I have no relationship, whether legal or personal, with any of the Defendants or the Third-Party Defendant in this case.

7. I have been, and will continue to be, in regular communication with the Plaintiff's counsel, Capers G. Barr IV.

8. I have no interest in this case that is antagonistic to, or in conflict with, the interests of the members of the class, and I believe that I can fairly and adequately protect the interests of the class.

9. I intend to vigorously prosecute the interests of the class through Mr. Barr's legal representation.

Further affiant sayeth not.

ELIZABETH HEATLEY

Sworn to before me
this 23rd day of January, 2019

(L.S.)
Notary Public
Print name of Notary: Frances Arnold
My commission Expires: 9/28/2021

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, and South Atlantic Bank, Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2017-CP-10-03099 **AMENDED THIRD-PARTY SUMMONS** **(JURY TRIAL DEMANDED)**
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Third-Party Plaintiffs, v. Emerald McDonough Road Holdings, LLC, Third-Party Defendant.	

FILED
2019 FEB 15 AM 10:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third-Party Complaint of the Defendant/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 50 Immigration Street, Suite 200, Charleston, South Carolina 29401, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim and Third-Party

Complaint within the time aforesaid, judgment by default will be rendered against you, and the Defendants/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, in this action, will apply to the Court for the relief demanded.

LUZURIAGA MIMS, LLP

By:_____

Kevin W. Mims, SC Bar No. 69418
Whidbee S. Perrin, SC Bar No. 100396
50 Immigration St, Suite 200
Charleston, SC 29403
(843) 410-4713
kmims@lmlawllp.com
wperrin@lmlawllp.com

Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By:_____ for

G. Hamlin O'Kelley, III, SC Bar #15491
652 Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464
(843) 856-4488
Hamlin.okelley@buistbyars.com

Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
2/14, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 14th day of February, 2019.

_____

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
)	
Plaintiffs,)	**ANSWER OF DEFENDANTS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC TO THE PLAINTIFFS' THIRD AMENDED COMPLAINT, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT**
v.)	
)	
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, and South Atlantic Bank,)	**(JURY TRIAL DEMANDED)**
)	
Defendants.)	
)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
Emerald McDonough Road Holdings, LLC,)	
)	
Third-Party Defendant.)	

FILED
2019 FEB 15 AM 10:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: CAPERS G. BARR, IV, JR., ATTORNEY FOR THE PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

The Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, (sometimes collectively referenced herein as "Defendants" or "MCMC"), by and through their undersigned counsel, hereby set forth their Amended Answer to the Plaintiffs' Third Amended Complaint as follows. Additionally, Defendants Mariners Cay Marina Condo, LLC, and

Mariners Cay Fuel Dock, LLC, set forth their Counterclaims and Third-Party Complaint as follows:

1. Each and every allegation of the Plaintiffs' Third Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.

2. The Defendants are not required to answer the allegations of Paragraph 1 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 1 of the Plaintiffs' Third Amended Complaint, the Defendants deny same and demand strict proof thereof.

3. The Defendants admit the allegations of Paragraph 2 of the Plaintiffs' Third Amended Complaint.

4. The Defendants admit only so much of Paragraph 3 of the Plaintiffs' Third Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the RMC for Charleston County. The Defendants are not required to answer the remaining allegations of Paragraph 3 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 3 of the Plaintiffs' Third Amended Complaint, the Defendants deny same and demand strict proof thereof.

5. The Defendants admit, upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Third Amended Complaint.

6. The Defendants admit the allegations of Paragraphs 5 and 6 of the Plaintiffs' Third Amended Complaint.

7. The Defendants admit the allegations of Paragraph 7 of the Plaintiffs' Third Amended Complaint.

8. Upon information and belief, Paragraph 8 of Plaintiffs' Third Amended Complaint is admitted.

9. The Defendants are not required to answer the allegations of Paragraph 9 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 9 of the Plaintiffs' Third Amended Complaint, the Defendants deny same and demand strict proof thereof.

10. In response to Paragraph 10 of the Plaintiffs' Third Amended Complaint, Defendants crave reference to the recorded deeds describing the subject property and deny all allegations that are inconsistent therewith, including any subparts.

11. The Defendants are not required to answer the allegations of Paragraphs, 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Third Amended Complaint, the Defendants deny same and demand strict proof thereof.

12. The Defendants deny the allegations of Paragraphs 17 through 37 of the Plaintiffs' Third Amended Complaint, including all subparts.

13. In response to paragraph 38 of Plaintiffs' Third Amended Complaint, Defendants adopt their answers as set forth above in paragraphs 1 through 12, inclusive, as if stated herein verbatim.

14. The Defendants deny the material allegations of paragraph 39 of Plaintiffs' Third Amended Complaint, except Defendants admit that Defendant Farmer is a member of the LLCs and resides at the property.

15. The Defendants deny the material allegations of Paragraph 40 of Plaintiffs' Third Amended Complaint, except Defendants admit that the area contains lattice.

16. The Defendants deny the material allegations of Paragraphs 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Plaintiffs' Third Amended Complaint and demand strict proof thereof.

17. The Wherefore Paragraph of Plaintiffs' Third Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

18. The Defendants would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

19. The Defendants would allege and show that each owner of any of the Units at Mariners Cay can be identified and it is not impracticable to locate such owners so that this matter may not be treated as a class action pursuant to *Rule 23 SCRCivP*.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

20. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs'

predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

21. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

22. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

23. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

24. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

25. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

26. Defendants deny that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A TENTH AFFIRMATIVE DEFENSE

27. One or more causes of action of Plaintiffs' Third Amended Complaint fails to state any claim upon which relief can be granted as to the Defendants, and Plaintiffs' claims should, therefore, be dismissed pursuant to *Rule 12(b)(6), SCRCP.*

FOR A FURTHER ANSWER
AND BY WAY OF AN ELEVENTH AFFIRMATIVE DEFENSE

28. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A FURTHER ANSWER
AND BY WAY OF A TWELFTH AFFIRMATIVE DEFENSE

29. Plaintiffs' claims are barred, in whole or in part, by the doctrine of judicial estoppel. In paragraph 2 of its Answer in *2013-CP-10-0850*, a foreclosure case involving the subject property, Plaintiffs admitted the fact that the subject property holds an interest in the common elements. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. *Colleton Reg. Hosp. v. MRS Med. Rev. Systs., 866 F.Supp. 896 (D.S.C. 1994).* "When a party has formally asserted a certain version of facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E. 2d 472 (1997).*

**FOR A FURTHER ANSWER
AND BY WAY OF A THIRTEENTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM and THIRD-PARTY COMPLAINT,
MARINERS CAY MARINA CONDO, LLC, and MARINERS CAY FUEL DOCK, LLC,
("Defendants") ALLEGE AND SHOW AS FOLLOWS**

30. The Defendants repeat and reallege the Paragraphs 1 through 29 above as though repeated herein verbatim.

31. The Defendants are South Carolina limited liability companies which own the Subject Property as more fully set forth in the Plaintiffs' Third Amended Complaint.

32. The Plaintiff Elizabeth Heatley is an owner of property at Mariner's Cay and a resident of Charleston County.

33. The Plaintiff Dan G. Nekola is an owner of property at Mariner's Cay and a resident of Charleston County.

34. The Counterclaim Defendant Mariner's Cay Marina Council of Co-Owners, Inc., is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina, which serves as the owner's association for Mariner's Cay Marina.

35. The Third-Party Defendant Emerald McDonough Road Holdings, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which deeded the Subject Property more fully described in the Plaintiffs' Complaint to the Defendants.

36. On May 19, 2016, the Third-Party Defendant Emerald McDonough Road Holdings, LLC, conveyed the Subject Property in the Mariner's Cay Marina Horizontal Property Regime to the Defendants by those deeds recorded in Book 0555 at Page 946 and in Book 0556 at Page 511 in the Office of the RMC for Charleston County on May 25, 2016.

37. The Defendants paid a total of Two Hundred Fifty Thousand ($250,000.00) Dollars to Emerald McDonough Road Holdings, LLC, as consideration for the purchase of the Subject Property.

38. At the time of the conveyance, Emerald McDonough Road Holdings, LLC, conveyed all right, title, and interest in the Subject Property to the Defendants representing in its deeds, and through the warranties of title, that it had all right, title, and interest in the Subject Property conveyed to the Defendants.

39. Mariner's Cay Marina Council of Co-Owners, Inc., acting by and through its then President, Michael Sutton, held a meeting on May 21, 2016, a day after the Defendants closed on the Subject Property.

40. At that meeting, the Defendants offered Unit 1-A, the lower level of the Ship Store, for sale, along with C-21, C-22, and all associated tanks and pumps.

41. At that same meeting, the members of the Mariner's Cay Marina Council of Co-Owners, Inc., elected Laurie Hull to be their President.

42. The Defendants and the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., including their new President, agreed to meet on June 21, 2016, to discuss the potential sale of Unit 1-A by the Defendants.

43. From the time of the meeting on May 21, 2016, the Defendants and Ms. Hull exchanged numerous telephone calls about the sale of the Unit 1-A and the docks.

44. Acting through its President, the Mariner's Cay Marina Council of Co-Owners, Inc., negotiated with the Defendants, acknowledging that the Defendants owned the Subject Property.

45. At no time did the Mariner's Cay Marina Council of Co-Owners, Inc., dispute the ownership of the Subject Property by the Defendants until this litigation commenced.

46. During negotiations with Mariner's Cay Marina Council of Co-Owners, Inc, and as a show of good faith, the Defendants allowed owners of Units at the Marina to use Unit 1-A from May 21, 2016, through October, 2016.

47. Neither the Mariner's Cay Marina Council of Co-Owners, Inc., nor its members paid any rent or fees to the Defendants for use of Unit 1-A .

48. On June 29, 2016, Ms. Hull, as the President of the Mariner's Cay Marina Council of Co-Owners, Inc., delivered an offer to purchase the following Units and dock slips from the Defendants:

a. Unit 1-A, Charleston County TMS No. 328-00-00-544;

b. Dock Unit C-21, all tanks, and pumps;

c. Dock Unit C-22, all tanks, and pumps.

49. The offer from the Mariner's Cay Marina Council of Co-Owners, Inc., by and through Ms. Hull was for Eighty Thousand and No/100 ($80,000.00) Dollars.

50. The Defendants submitted a counter-offer on June 30, 2016, and negotiations continued thereafter.

51. On August 11, 2016, the Mariner's Cay Marina Council of Co-Owners, Inc., board met to discuss the counteroffers made by the Defendants.

52. From August, 2016, through December, 2016, there were numerous communications by and between the Mariner's Cay Marina Council of Co-Owners, Inc., and the Defendants about purchasing various portions of the Subject Property.

53. During this time, the Defendants made repairs to the Subject Property which had been neglected and should have been maintained by the Mariner's Cay Marina Council of Co-Owners, Inc.

54. The Defendants conferred direct benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., in form of repairs made and in use of the Units owned by the Defendants.

55. The Defendants also restored electrical power and water service to the docks without being paid by the Mariner's Cay Marina Council of Co-Owners, Inc.

56. On November 10, 2016, the Defendants met with the Board of the Mariner's Cay Marina Council of Co-Owners, Inc.

57. At that meeting, the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., advised that Tom Bessett was the new President; Ms. Hull did not attend the meeting.

58. The Board offered the Defendants One Hundred Forty Thousand ($140,000.00) Dollars to purchase Unit 1-A from the Defendants as well as offering Twenty Thousand and No/100 ($20,000.00) Dollars for one dock Unit and asked to trade the other dock Unit for a Unit owned by the Mariner's Cay Marina Council of Co-Owners, Inc.

59. Discussions followed between the Defendants and the Board members after which the Defendant requested that the Board put these offers in writing to the Defendants.

60. On November 13, 2016, the Defendants once again requested that the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., put any offer in writing.

61. On December 6, 2016, the Defendants received another written offer, which they did not accept.

62. From December 2016 until the present litigation was filed, the Defendants attempted to negotiate sales and potential uses of Unit 1-A, all while both the Defendants and the

Mariner's Cay Marina Council of Co-Owners, Inc., acknowledged the Defendants' ownership of the Subject Property.

63. On May 21, 2017, the Mariner's Cay Marina Council of Co-Owners, Inc., held its annual meeting.

64. At that meeting, the Defendants, by and through their attorney, offered to sell the dock Units to the Mariner's Cay Marina Council of Co-Owners, Inc., for their appraised value and to donate bathrooms at Unit 1-A to the Mariner's Cay Marina Council of Co-Owners, Inc., for their use.

65. At that meeting, the attorney for the Defendants presented new drawings for an updated design.

66. The Defendants also offered to build, at their own expense, a new access to the bathrooms at Unit 1-A and a new office space for the dock master.

67. Nothing came of those offers, and this lawsuit followed.

FOR A FIRST CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Unjust Enrichment)

68. The Defendants repeats and reallege Paragraphs 1 through 67 above as though repeated herein verbatim.

69. The Defendants supplied benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., as set forth more fully above and for which benefits the Defendants have not been paid.

70. It would be unjust for the Mariner's Cay Marina Council of Co-Owners, Inc., to retain the benefit of the use of the Defendants' property, the benefit of the repairs made in favor of the Mariner's Cay Marina Council of Co-Owners, Inc., and other benefits provided without

payment from Mariner's Cay Marina Council of Co-Owners, Inc. This benefit also includes the dock master's use of the Subject Property without paying rent from May 21, 2016, to October, 2016.

71. As a direct result of this unjust enrichment, the Defendants are entitled to actual damages in amounts to be proven at the trial of this case

FOR A SECOND CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc., and Emerald McDonough Road Holdings, LLC)
(Indemnification – Equitable, Legal, and Contractual)

72. The Defendants repeats and reallege Paragraphs 1 through 71 above as though repeated herein verbatim.

73. The Defendants have been made a party to this litigation by Elizabeth Heatley and Dan G. Nekola, allegedly on behalf of themselves and the members of the Mariner's Cay Marina Council of Co-Owners, Inc.

74. The Defendants are subject to this lawsuit having obtained title from the deeds from Emerald McDonough Road Holdings, LLC, conveying all right, title and interest in the Subject Property to the Defendants and by virtue of the inaction of the Mariner's Cay Marina Council of Co-Owners, Inc.

75. As a direct and proximate result of the acts and omissions of the Third-Party Defendants, the Defendants have become subject to this litigation, and, accordingly, Defendants should be indemnified by the Third-Party Defendants, including equitable indemnification, legal indemnification, and contractual indemnification should the Plaintiffs prevail in this action.

FOR A THIRD CAUSE OF ACTION
(As to Emerald McDonough Road Holdings, LLC)
(Breach of Contract)

76. The Defendants repeat and reallege Paragraphs 1 through 75 above as though repeated herein verbatim.

77. The Defendants entered into valid and enforceable contracts with Emerald McDonough Road Holdings, LLC.

78. The Defendants relied upon Emerald McDonough Road Holdings, LLC, to provide good, marketable title to the Subject Property, free and clear of all liens, encumbrances, and claims.

79. The Defendants are subject to the Plaintiffs' claims, none of which are admitted, and, should those claims be successful, Emerald McDonough Road Holdings, LLC, will have violated and breached their deed warranties and contracts, without legal excuse.

80. As a direct and proximate result of the breach of contract by Emerald McDonough Road Holdings, LLC, the Defendants have incurred and will continue to incur damages in amounts to be proven at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Nuisance)

81. The Defendants repeat and reallege Paragraphs 1 through 80 above as though repeated herein verbatim.

82. The Mariner's Cay Marina Council of Co-Owners, Inc., has allowed its members, Unit owners, guests, invitees, and licensees to use the bathrooms located on the Plaintiffs' property at all hours of the day and night.

83. Such usage constitutes a nuisance as it has interfered with the Defendants' quiet enjoyment of their property.

84. As a direct and proximate result of the nuisance created by Mariner's Cay Marina Council of Co-Owners, Inc., the Defendants have suffered damages in amounts to be proven at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
(As to the Plaintiffs Mariner's Cay Marina Council of Co-Owners, Inc., and the Plaintiffs Alben and Nekola)
(Civil Conspiracy)

85. The Defendants repeat and reallege Paragraphs 1 through 84 above as though repeated herein verbatim.

86. The Plaintiffs in a combination of two or more persons, did conspire with each other to case injury to the Defendants in a way which is improper and unjustified, which has resulted in special damages to the Defendants, in attempting to deny the Defendants' ownership of the Subject Property and to stop their use of the Subject Property.

87. These special damages include, but are not limited to, the following:

a. Loss of income for the rental of the docks owned by the Defendants;

b. Loss of potential rentals of the Subject Property;

c. Loss of potential sales of the Subject Property;

d. Loss of rental of the boats owned by the Defendants at the Subject Property

88. As a direct and proximate result of the conspiracy by and between the Plaintiffs, the Defendants have suffered special damages in amounts to be proven at the trial of this case.

WHEREFORE, having fully answered the Plaintiffs' Third Amended Complaint, the Defendants pray that this Court enter its judgment and order as follows:

a. Dismissing the Plaintiffs' Third Amended Complaint;

b. Awarding the Defendants' actual damages, attorney fees and costs in amounts to be proven at the trial of this case; and

c. Award the Defendants' special damages in amounts to be proven at the trial of this case; and

d. Granting any and all such further relief as this Court deems just and proper.

SIGNATURE PAGE TO FOLLOW

LUZURIAGA MIMS, LLP

By: _____

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Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By: _____ for

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652 Coleman Blvd., Suite 200
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(843) 856-4488
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Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina

2/14, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 14th day of February, 2019.

_____

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Luzuriaga Mims, LLP
ATTORNEYS AT LAW

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February ~~13~~ 14, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Alben D. Neighbors, et al. v. Mariners Cay Marina Condo, LLC, et al.
Case Number: 2017-CP-10-03099
Claim Number: 300-0339794-2017
LM File Number: 114-20188006

Dear Julie:

Enclosed please find the original and one (1) copy of Defendants/Third-Party Plaintiffs Answer to Plaintiffs' Third Amended Complaint, Counterclaim, and Amended Third-Party Summons and Third-Party Complaint in connection with the above-referenced matter. Please file the originals and return file-stamped copies to me in the envelope provided.

By copy of this correspondence to all counsel of record, they are being served with the aforementioned Answer, Counterclaims, and Third Party Summons and Complaint. With kindest regards, I am

Sincerely,

LUZURIAGA MIMS, LLP

Terri L. James
Paralegal

TLJ/tlj
Enclosures
cc: All Counsel of Record (via email & U.S. mail w/enclosures)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,	)	CASE NO. 2017-CP-10-03099
Plaintiffs,	)	**DEFENDANT GEORGE A. FARMER'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT**
v.	)	
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer,	)	**(JURY TRIAL DEMANDED)**
Defendant.	)	

FILED
2019 FEB 19 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS:

Defendant George A. Farmer (hereinafter "Defendant" or "Farmer"), by and through their undersigned counsel, hereby answers Plaintiffs' Third Amended Complaint as follows:

1. Each and every allegation of the Plaintiffs' Third Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendant demands strict proof thereof.

2. The Defendant is not required to answer the allegations of Paragraph 1 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 1 of the Plaintiffs' Third Amended Complaint, the Defendant denies same and demands strict proof thereof.

3. The Defendant admits the allegations of Paragraph 2 of the Plaintiffs' Third Amended Complaint.

4. The Defendant admits only so much of Paragraph 3 of the Plaintiffs' Third Amended Complaint that purports to quote from that certain Master Deed referenced therein as

recorded in the Office of the RMC for Charleston County. The Defendant is not required to answer the remaining allegations of Paragraph 3 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 3 of the Plaintiffs' Third Amended Complaint, the Defendant denies same and demands strict proof thereof.

5. The Defendant admits upon information and belief, the allegations of Paragraph 4 of the Plaintiffs' Third Amended Complaint.

6. Upon information and belief, Defendant admits the allegations of Paragraphs 5 through 8 of the Plaintiffs' Third Amended Complaint.

7. The Defendant is not required to answer the allegations of Paragraph 9 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 9 of the Plaintiffs' Third Amended Complaint, the Defendant denies same and demands strict proof thereof.

8. In response to Paragraph 10 of the Plaintiffs' Third Amended Complaint, Defendant craves reference to the recorded deeds describing the subject property and denies all allegations that are inconsistent therewith, including all subparts.

9. The Defendant is not required to answer the allegations of Paragraphs, 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Third Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 11, 12, 13, 14, 15, and 16 of the Plaintiffs' Third Amended Complaint, the Defendant denies same and demands strict proof thereof.

10. The Defendant denies the allegations of Paragraphs 17 through 37 of the Plaintiffs' Third Amended Complaint, including all subparts,

11. In response to paragraph 38 of Plaintiffs' Third Amended Complaint, Defendant adopts his answers as set forth above in paragraphs 1 through 10, inclusive, as if stated herein verbatim.

12. The Defendant denies the material allegations of paragraph 39 of Plaintiffs' Third Amended Complaint, except Defendant admits that Defendant Farmer is a member of the LLCs and resides at the property.

13. The Defendant denies the material allegations of Paragraphs 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49 of the Plaintiffs' Third Amended Complaint and demands strict proof thereof.

14. The Wherefore Paragraph of Plaintiffs' Third Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

15. The Defendant would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

16. The Defendant would allege and show that each owner of any of the Units at Mariners Cay can be identified and it is not impracticable to locate such owners so that this matter may not be treated as a class action pursuant to *Rule 23 SCRCivP.*

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

17. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

18. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

19. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

20. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

21. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

22. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

23. Defendant denies that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A TENTH AFFIRMATIVE DEFENSE

24. One or more causes of action of Plaintiffs' Third Amended Complaint fails to state any claim upon which relief can be granted as to the Defendant, and Plaintiffs' claims should, therefore, be dismissed pursuant to *Rule 12(b)(6), SCRCP.*

FOR A FURTHER ANSWER
AND BY WAY OF AN ELEVENTH AFFIRMATIVE DEFENSE

25. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

WHEREFORE, Defendant, George A. Farmer, having fully answered Plaintiffs' Third Amended Complaint, prays that this Court dismiss all claims against him with prejudice, grant him reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper. Defendant demands a trial by jury.

SIGNATURE PAGE TO FOLLOW

LUZURIAGA MIMS, LLP

By: _____

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Attorneys for the Defendant George A. Farmer

Charleston, South Carolina
2/14, 2019

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleading was served on all counsel of record in this proceeding this 14th day of February, 2019.

_____

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Alben D. Neighbors and Dan G. Nekola on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

vs.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr. and South Atlantic Bank,,

Defendants.

And

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

vs.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendants

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-10-3099

PLAINTIFFS' REPLY TO COUNTERCLAIM OF MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC ASSERTED IN THEIR ANSWER, COUNTERCLAIM AND THIRD PARTY COMPLAINT FILED ON FEBRUARY 14, 2019

FILED
2019 FEB 22 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiffs Reply to the Counterclaim of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (hereinafter "Defendants") and respond to the allegations as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer, Counterclaim and Third Party Complaint which is not hereinafter specifically admitted, qualified or explained is denied

and strict proof is demanded thereof.

2. No response is required for Paragraphs 1 through 30 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

3. Plaintiffs deny Paragraph 31 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

4. Plaintiffs admit Paragraph 32 of the Answer, Counterclaim and Third Party Complaint.

5. In response to Paragraph 33 of the Answer, Counterclaim and Third Party Complaint, Plaintiff's admit that Dan Nekola is an owner of property at Mariner's Cay but deny that he is a resident of Charleston County. The remaining allegations of Paragraph 33 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

6. Plaintiffs admit Paragraph 34 of the Answer, Counterclaim and Third Party Complaint.

7. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 35 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

8. Plaintiffs deny Paragraph 36 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

9. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 37 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

10. In response to Paragraph 38 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs deny that there was any interest to be conveyed and therefore deny that paragraph.

11. In response to Paragraph 39 of the Answer, Counterclaim and Third Party Complaint, it is admitted that an annual meeting was held on May 21, 2016. The remaining allegations of Paragraph 39 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

12. In response to Paragraph 40 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Defendants offered to sell some interest in some property. The remaining allegations of Paragraph 40 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

13. Plaintiffs deny Paragraph 41 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

14. Paragraph 42 of the Answer, Counterclaim and Third Party Complaint is admitted.

15. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 43 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

16. Plaintiffs deny Paragraph 44 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

17. Plaintiffs object and move to strike Paragraph 45 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, Plaintiffs deny Paragraph 45 of the Answer, Counterclaim and Third Party

Complaint.

18. Plaintiffs deny Paragraph 46 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

19. In response to Paragraph 47 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that no rents were due or paid to the Defendants. The remaining allegations of Paragraph 47 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

20. In response to Paragraph 48 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that an offer was made and crave reference to the referenced documents. Plaintiffs deny any allegations which are inconsistent with the referenced documents.

21. In response to Paragraph 49 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs crave reference to the referenced documents. The remaining allegations are denied and strict proof is demanded thereof.

22. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraphs 50 and 51 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

23. Plaintiffs and move to strike Paragraph 52 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, that paragraph is denied.

24. Plaintiffs deny Paragraph 53 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

25. Plaintiffs deny Paragraph 54 of the Answer, Counterclaim and Third Party

Complaint and demand strict proof thereof.

26. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 55 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

27. Plaintiffs admit Paragraph 56 of the Answer, Counterclaim and Third Party Complaint.

28. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 57 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

29. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 58 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

30. In response to Paragraph 59 and 60 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit requests were made for offers to be made in writing. Plaintiffs deny the remaining allegations and demand strict proof thereof.

31. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 61 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

32. In response to Paragraph 62 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that the Defendants and the Plaintiff Mariners Cay Marina Council of Co-Owners, Inc. attempted to negotiate. The remaining allegations of Paragraph 62 are denied and strict proof is demanded thereof.

33. In response to Paragraph 63 of the Answer, Counterclaim and Third Party

Complaint, Plaintiffs believe the meeting was held on May 20, 2017. The remaining allegations of Paragraph 63 are denied and strict proof is demanded thereof.

34. Plaintiffs deny Paragraph 64 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

35. In response to Paragraph 65 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit drawings were presented at some point. The remaining allegations of Paragraph 65 are denied and strict is demanded thereof.

36. In response to Paragraph 66 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Plaintiffs offered to make modifications at some point. The remaining allegations of Paragraph 66 are denied and strict proof is demanded thereof.

37. Plaintiffs admit Paragraph 67 of the Answer, Counterclaim and Third Party Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Unjust Enrichment)

38. No response is required to Paragraph 68 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

39. Plaintiffs deny Paragraph 69 through 71 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Indemnification-Equitable, Legal and Contractual)

40. No response is required to Paragraph 72 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied

and strict proof is demanded thereof.

41. Paragraph 73 through 75 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

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

42. No response is required to Paragraph 76 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

43. Paragraph 77 through 80 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Nuisance)

44. No response is required to Paragraph 81 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

45. Plaintiffs deny Paragraph 82 through 84 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Civil Conspiracy)

46. No response is required to Paragraph 85 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied

and strict proof is demanded thereof.

47. Plaintiffs deny Paragraph 86 through 88 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

48. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

49. The claim of Defendants fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE

50. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

51. That to the extent that any acts or omissions of Plaintiffs caused any injury or damage to Defendants, which is denied, Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of Defendants constitutes a bar and complete defense to any claim for equitable relief.

FOR A FOURTH DEFENSE

52. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

53. Defendants' claim is barred due to Defendants' consent.

FOR A FIFTH DEFENSE

54. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

55. That Defendants by actions, conduct, words or silence which amount to a

representation or other concealment of material facts, have caused Plaintiffs to alter their position to their prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

FOR A SIXTH DEFENSE

56. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

57. Defendants' claim is barred by Defendants' own negligence. In the event the alleged negligence of the Plaintiffs operated as a fifty (50%) percent or greater proximate cause of the damages, which is expressly denied and admitted solely for the purpose of this defense, Plaintiffs are entitled to a reduction of any amount awarded to Defendants in an amount equal to that percentage of their negligence, recklessness and carelessness.

FOR A SEVENTH DEFENSE

58. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

59. That the injury or damage sustained by the Defendants, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Defendants or of others over whom Plaintiffs had no control and such constitutes a complete defense to any claims for negligence

FOR AN EIGHTH DEFENSE

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. The Defendants have not pled, and cannot prove, any acts taken in furtherance of the alleged conspiracy, nor can the Defendants identify or prove damages which arise solely from the alleged conspiracy. As such, the Defendants' civil conspiracy claim must be dismissed.

WHEREFORE, having fully answered the Answer, Counterclaim and Third-Party Complaint of the Defendants, Plaintiffs pray for:

(a) for the relief requested in their Complaint;

(b) that the Counterclaim be dismissed with prejudice;

(c) for the costs and disbursements of this claim;

(d) for such other and further relief as this Court may deem just and proper.

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Barr, Unger McIntosh, LLC
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Charleston, South Carolina
Attorney for Plaintiffs

David C. Cleveland
CLAWSON and STAUBES, LLC
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Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: dcleveland@clawsonandstaubes.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc. (Defending Counterclaim only)

Charleston, South Carolina
February 21, 2019

2017-CP-10-3099

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Plaintiffs' Reply to Counterclaim of Mariner's Cay Marina Condo, LLC and Mariner's Cay Fuel Dock, LLC Asserted in its Answer, Counterclaim and Third Party Complaint filed on February 14, 2019, was served upon the following parties on the 21st day of February, 2019, via:

	United States Postal Service
	Facsimile
X	Electronic Email
	Via Hand Delivery

FILED
2019 FEB 22 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

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Rogers Townsend & Thomas, PC
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Columbia, SC 29202-3200
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Attorney For: Alben Neighbors

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Bobbi Myers

Bobbi Myers

CLAWSON AND STAUBES LLC

David C. Cleveland
Licensed in SC
dcleveland@clawsonandstaubes.com

February 21, 2019

File No.: 20172668.000

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad St Ste 106
Charleston, SC 29401-2210

Re: Mariner's Cay Marina Counsel of Co-owners, et al v. Mariners Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099

Dear Ms. Armstrong:

Enclosed please find an original and one copy of the Plaintiff's Reply to Counterclaim in the above-referenced case. Please file the original along with the other documents in this case and return the file stamped copy to our office in the enclosed self-addressed stamped envelope. Should you have any questions, please do not hesitate to contact me.

Thank you very much for your attention to this matter.

Very truly yours,

CLAWSON and STAUBES, LLC

David C. Cleveland

DCC/bjm
Enclosure
cc: All Counsel of Record (with enclosure)(*via email*)

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants. and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third-Party Plaintiffs vs. Emerald McDonough Road Holdings, LLC Third-Party Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10-3099 SUMMONS

FILED
2019 MAR -6 AM 11:45
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: G. HAMLIN O'KELLEY, III, ATTORNEY FOR THIRD-PARTY PLAINTIFFS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC AND KEVIN W. MIMS & WHIDBEE S. PERRIN, ATTORNEYS FOR THIRD-PARTY PLAINTIFF MARINERS CAY MARINA CONDO, LLC

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim of the Third Party Defendant Emerald McDonough Road Holdings, LLC, in this action, a copy of

which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 1221 Main Street, 14th Floor, Columbia, South Carolina, 29201, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Third Party Defendant, Emerald McDonough Road Holdings, LLC will apply to the Court for the relief demanded.

Andrew W. Montgomery (SC Bar # 79893)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
Columbia, South Carolina 29202-3200
(803) 771-7900 Tel
(803) 343-7017 Fax
Andrew.montgomery@rtt-law.com
Attorneys for Third-Party Defendant Emerald McDonough Road Holdings, LLC

March 1, 2019

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants. and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third-Party Plaintiffs vs. Emerald McDonough Road Holdings, LLC Third-Party Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10-3099 THIRD PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC ANSWER TO THIRD PARTY COMPLAINT FILED February 15, 2019 AND COUNTERCLAIM OF THIRD PARTY DEFENDANT AGAINST MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC

FILED
2019 MAR -6 AM 11:45
JANIE L. ARMSTRONG
CLERK OF COURT

Third-Party Defendant Emerald McDonough Road Holdings, LLC (hereinafter "Emerald"), responds to the Third-Party Complaint of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (collectively referred to hereinafter as "MCMC") filed February 15, 2019, and would respectfully show unto the Court as follows:

1. That each and every allegation contained in the Third-Party Complaint that is not specifically admitted or otherwise qualified is denied.

FOR A FIRST DEFENSE

(Responses to Specific Allegations)

2. Paragraphs 1-29 of the Third-Party Complaint pertain to the answer of MCMC to the Plaintiffs' Third Amended Complaint. Paragraphs 1-29 are not directed toward the conduct and/or alleged wrongdoing of Emerald and therefore no response is required. To the extent an answer is warranted, all allegations are denied.

3. In response to paragraph 30, Emerald adopts it answer as set forth above in paragraphs 1-2, inclusive, as if stated herein verbatim.

4. Paragraph 31 is admitted.

5. Paragraphs 32 & 33 are admitted to the extent Elizabeth Heatley and Dan G. Nekola are listed as owners of record of property at Mariner's Cay. Emerald lacks information to confirm Elizabeth Heatley and Dan G. Nekola are residents of Charleston County.

6. Paragraph 34 is admitted.

7. Paragraph 35 is admitted to the extent Emerald was organized by the filing of Articles of Organization with the State of South Carolina Secretary of State, and Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) [attached hereto as Exhibit A] and Book 0556 at Page 511[attached hereto as Exhibit B] in the Office of the RMC for Charleston County. All other allegations are denied.

8. Paragraph 36 is admitted to the extent Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

9. Paragraph 37 is admitted to the extent $250,000.00 represented the combined purchase price for the Units comprising the subject property under the Purchase and Sale Agreements entered into between Emerald and MCMC. All other allegations are denied.

10. Paragraph 38 is admitted to the extent Emerald conveyed all of Emerald's right, title and interest in and to the Subject Property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

11. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 39-67, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

12. In response to Paragraph 68, Emerald adopts it answer as set forth above in paragraphs 1-11, inclusive, as if stated herein verbatim.

13. Paragraphs 68-71 are not directed toward the conduct and/or alleged wrongdoing of Emerald and therefore no response is required.

As to the Second Cause of Action

14. In response to Paragraph 72, Emerald adopts it answer as set forth above in paragraphs 1-13, inclusive, as if stated herein verbatim.

15. Paragraph 73 is admitted.

16. Paragraph 74 is admitted to the extent Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

17. Paragraph 75 is denied.

As to the Third Cause of Action

18. In response to Paragraph 76, Emerald adopts it answer as set forth above in paragraphs 1-16, inclusive, as if stated herein verbatim.

19. Emerald is not required to answer the allegations of Paragraph 77 as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 77, Emerald admits it entered into Purchase and Sale Agreements with MCMC where it was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald, that MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings and that MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property.

20. Paragraph 78 is denied.

21. Paragraph 79 is denied.

22. Paragraph 80 is denied.

As to the remainder of the Pleadings

23. In response to Paragraph 81, Emerald adopts it answer as set forth above in paragraphs 1-21, inclusive, as if stated herein verbatim.

24. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 82-84, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

25. In response to Paragraph 85, Emerald adopts it answer as set forth above in paragraphs 1-24, inclusive, as if stated herein verbatim.

26. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 86-88, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

FOR A SECOND DEFENSE

(Failure to State a Claim)

27. MCMC's Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which the Court can grant relief, and one or more of Third-Party Plaintiff's claims should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

(Estoppel)

28. MCMC as Buyer and Emerald as Seller entered into Purchase and Sale Agreements for the sale of the Subject Property [attached hereto as Exhibits C & D, the phone numbers & emails of those who were not involved as attorneys having been redacted]. In those agreements MCMC specifically acknowledged and expressed understanding that Emerald acquired its interest in the Subject Property by foreclosure, deed in lieu of foreclosure, forfeiture of similar process. It was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald. MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings. MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property. MCMC was represented by an attorney of its choosing in MCMC's purchase of Emerald's interest in the subject property. On or about April 25, 2016 MCMC's

attorney issued an opinion letter to MCMC stating Emerald held marketable title to the Subject Property subject to matters revealed on the premises or of record.

MCMC's registered agent, George A. Farmer, Jr. is a defendant in this action and upon information and belief resides at the Subject Property. The Purchase and Sale Agreements identify George A. Farmer, Jr., principal of Buyer, as a real estate licensee under the law of South Carolina. The county records reflect that Mr. Farmer appears to own or has owned numerous additional properties including property or properties purchased from entities subsequent to those entities acquiring title following foreclosure actions, and therefore is aware of the risk associated with purchasing such properties.

MSMC is therefore estopped from asserting any claims as to indemnification or breach of contract resulting from an agreement and conditions MCMC willfully entered into.

FOR A FOURTH DEFENSE

(Ratification and Waiver)

29. MCMC was represented by an attorney during MCMC's closing involving the Subject Property. Emerald is not aware of any communication from MCMC or its attorney raising concerns as to the validity of the title to the property during the closing process. On or about April 25, 2016 MCMC's attorney issued an opinion letter to MCMC stating Emerald held marketable title to the Subject Property subject to matters revealed on the premises or of record. MCMC ratified the investigations of its attorney and waived its claim to bring this action, having failed to raise any issues during the Title Review period associated with the closing.

FOR A FIFTH DEFENSE

(Laches)

30. To Emerald's knowledge, MCMC raised no issues with the validity of the title prior to this litigation. No issues were raised by MCMC or its attorney during the closing process, or during the year subsequent to the conveyances from Emerald to MCMC. MCMC's claims, if any, are barred by the doctrine of laches.

FOR A SIXTH DEFENSE

(Unclean Hands)

31. This action has arisen due to the strained relationship between MCMC and the Council. MCMC has in turn entangled Emerald in this action as a result of its own failure to peacefully co-exist with the Council. Prior to MCMC's taking possession of the subject property, there were no issues between the Council and Emerald and no issues raised by the Council regarding the title to the Subject Property. MCMC's actions in naming Emerald as a party in this action are in direct contradiction to the agreement entered into between MCMC and Emerald, and are the sole result of MCMC's own actions & relationship with the Council.

FOR A SEVENTH DEFENSE

(Failure to Join all Necessary Parties, Lack of Causation)

32. MCMC's claims should be barred as they have not joined all necessary parties to this action, having failed to name the Declarants of the Master Deed or Amended Master Deed, Emerald's predecessors in title or MCMC's closing attorney. Any issues regarding the validity of the title of the subject property were caused by the actions of Declarant amending the Master Deed or Emerald's predecessors in title. Any failure to properly advise MCMC regarding the

validity of a document of public record such as the Amended Master Deed was an omission of MCMC's closing attorney.

FOR AN EIGHTH DEFENSE

(Assumption of Risk, Special/Limited Warranty, Complete Performance)

33. MCMC & Emerald entered into an agreement whereby Emerald would convey its interest in the Subject Property by special warranty deed. The two most recent sets of conveyances prior to the conveyances to MCMC were by quit claim deeds and deeds of the Court following the foreclosure of the subject property. The issues raised by Plaintiff in this matter were caused by the actions of the Declarant in amending the Master Deed several years prior to the foreclosure and prior to Emerald receiving and conveying the subject property. Emerald made no warranties as to any issues arising from the actions of the Declarant or other prior owners of the Subject Property. MCMC contracted to purchase the property for less than the high bid at the July 7, 2015 Court sale following the Order of Judgment for Foreclosure and Sale entered in case 2013-CP-10-00850. MCMC assumed the risk of purchasing a property subsequent to a foreclosure. Emerald fully performed its obligations under the purchase and sale agreement.

FOR A NINTH DEFENSE

(Improper Notice of Breach)

34. Emerald denies any breach of contract, and any claims by MCMC as to indemnification. However, to the extent there was any breach by Emerald, MCMC did not properly notify Emerald of said breach prior to naming Emerald as a party in this action.

FOR A TENTH DEFENSE

(Failure to Mitigate Damages)

35. MCMC has failed to mitigate any damages incurred as a result of its relationship with the Council.

FOR AN ELEVENTH DEFENSE

(Contrary to Public Policy)

36. MCMC's third party complaint would serve to preclude parties receiving a deed to a property pursuant to a foreclosure, deed in lieu of foreclosure, forfeiture or similar process from subsequently conveying the property without an undue burden being placed on such parties. MCMC's claims undermine the use of limited or special warranty deeds and disregard the assumption of risk by parties purchasing properties subsequent to a foreclosure or similar process. MCMC also seeks to penalize a seller in a real estate transaction based on questions regarding the validity of documents of public record and a buyer's lack of due diligence. The actions of MCMC are contrary to public policy.

FOR A TWELTH DEFENSE

(Right to Raise Additional Defenses)

37. Emerald reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A THIRTEENTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM AGAINST MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC

(Breach of Contract)

38. MCMC as Buyer and Emerald as Seller entered into Purchase and Sale Agreements for the sale of the Subject Property [attached hereto as Exhibits C & D]. In those

agreements MCMC specifically acknowledged and expressed understanding that Emerald acquired its interest in the Subject Property by foreclosure, deed in lieu of foreclosure, forfeiture or similar process. It was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald. MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings. MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property. MCMC was represented by an attorney of its choosing in MCMC's purchase of Emerald's interest in the subject property.

MCMC's principal and registered agent is a real estate licensee and is familiar with the risks associated with purchasing a property following a foreclosure. This action has arisen due to the strained relationship of MCMC and the Council. MCMC has in turn entangled Emerald in this action as a result of its own failure to peacefully co-exist with the Council.

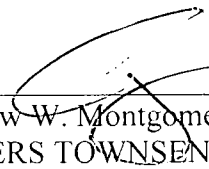
MCMC's actions in naming Emerald as a party in this action are in direct contradiction to the agreement entered into between MCMC and Emerald, and are the sole result of MCMC's own actions & relationship with the Council. MCMC's actions have directly resulted in Emerald incurring fees and costs associated with being named as a party in this action. Emerald is entitled to recovery of the fees and costs it has incurred in this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Answer to the Third-Party Complaint, Emerald prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss the Third-Party Plaintiff's causes of action;
2. Grant Emerald judgment on its Counterclaim;
3. Award to Emerald reasonable attorney's fees and costs as may be permitted by law or contract; and

4. Award to Emerald such other and further relief as may be just and proper.



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(803) 771-7900 Tel
(803) 343-7017 Fax
Andrew.montgomery@rtt-law.com
Attorneys for Third-Party Defendant Emerald McDonough Road Holdings, LLC

3-1-19

BP0555946

PGS:

EXHIBIT A

tabbies

Re recording To add BILL OF SALE AS EXHIBIT B

PREPARED BY JAMES M. ALLISON, PA; P. O. BOX 8633 (109 E. NORTH STREET); GREENVILLE, SC 29604

PGS: 9

BP0648603

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE
(LIMITED WARRANTY)

KNOW ALL MEN BY THESE PRESENTS that EMERALD McDONOUGH ROAD HOLDINGS, LLC for and in consideration of FORTY THOUSAND AND NO/100 ($40,000.00) DOLLARS and no other consideration has/have granted, bargained, sold, and released and by these presents do/does hereby grant, bargain, sell and release, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth below, unto MARINERS CAY FUEL DOCK LLC:

SEE EXHIBIT "A" ATTACHED HERETO

TAX MAP NUMBERS: 328-00-00-507 and 328-00-00-508

Grantees' Address: 1440 Battalion Drive, Charleston, SC 29412

THIS conveyance is made subject to any restrictions, rights-of-way, easements, zoning ordinances or other matters which may appear of public record or which an inspection or more recent survey of the premises would or should reveal.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein, unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) does(do) hereby bind the Grantor(s) and the Grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular the said premises unto the Grantee(s) against only the Grantor(s) and those persons lawfully claiming or seeking to claim the same or any part there through the Grantor(s), subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein.

WITNESS the Grantor's(s') hand(s) and seal(s) this 19 day of May, 2016.

SIGNED, sealed and delivered
in the presence of:

(witness #1)

(witness #2/Notary Public)

EMERALD McDONOUGH ROAD HOLDINGS, LLC, a S. C. limited liability company

BY: Sabal Financial Group, L.P., its manager

BY: _____ (SEAL)
NAME: Mark E. Foster
TITLE: Vice President & General Counsel

Weeks & Irvine, LLC
8086 Rivers Avenue
2nd Floor
North Charleston, SC 29406
16-2192TL Mariners Cay

5/16

"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

(STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, Jaclyn Mary Lanning, Notary Public, personally appeared Mark E. Foster, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____(SEAL)
Signature of Notary Public

JACLYN MARY LANNING
Commission # 2062208
Notary Public - California
Orange County
My Comm. Expires Mar 23, 2018

EXHIBIT A

LEGAL DESCRIPTION

Dock Unit C21 and C22, Mariners Cay HPR, and HPR established pursuant to South Carolina HPR Act, SC Code Section 27-31-10 et seq. and submitted by Master Deed of Mariners Cay HPR dated May 11, 2006, and recorded in the Office of the Register of Deeds for Charleston County in Book V583 at Page 584, as amended by that Master Deed of Mariners Cay HPR, recorded in Book X618 at Page 603, as shown and delineated on that certain plat entitled "Exhibit B" to the Master Deed of Mariners Cay HPR "Survey showing ships store, Easement and Marina Facilities Mariners Cay Marina at Mariners Cay, City of Folly Beach, Charleston County, South Carolina dated December 27, 2005, revised April 28, 2006" and recorded in the Office of the Register of Deeds for Charleston County as Exhibit "B: of the aforementioned Master Deed.

THE above described property is the same acquired by Emerald McDonough Road Holdings, LLC by Quit Claim Deed of Emerald Portfolio, LLC dated November 9, 2015 and recorded in the Office of the Register of Deeds for Charleston County on November 13, 2015 In Deed Book 0517 at Page 166.

TAX MAP NUMBERS: 328-00-00-507
328-00-00-508

Exhibit B

BILL OF SALE

THIS BILL OF SALE is executed as of the 15th day of May, 2017, by Emerald McDonough Road Holdings, LLC, a South Carolina limited liability company ("**Seller**"):

FOR VALUE RECEIVED, receipt of which is hereby acknowledged, Seller does hereby grant, bargain, sell, convey, assign, transfer, and set over unto MARINERS CAY FUEL DOCK LLC, a _____ ("**Buyer**") all fixtures, furniture, equipment, furnishings, and other personal property (other than computer hardware and software) owned by Seller (the "**Personal Property**") located on that certain real property in the City of Folly Beach, County of Charleston and State of South Carolina, which real property has been sold by Seller to Buyer as of the date hereof and which is more particularly described on Exhibit A attached hereto.

The Personal Property is being transferred in its "as is, where is" condition, and without representation or warranty.

IN WITNESS WHEREOF, Seller has executed and delivered this Bill of Sale as of the day and year first above written.

SELLER:

Emerald McDonough Road Holdings, LLC
a South Carolina limited liability company

By: Sabal Financial Group, L.P.,
Its: Manager

By: _____
Name: Kevin R. McKenzie
Title: Vice President of Investments

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CHARLESTON)

Date of Transfer of Title
May 19, 2016

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Emerald McDonough Road Holdings, LLC TO Mariners Cay Fuel Dock LLC on May 19, 2016.

3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

4. Check one of the following if either item 3(a) or Item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $40,000.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   a. $40,000.00 _____ the amount listed in Item No. 4 above
   b. $0.00 _____ the amount listed on Item No. 5 above (no amount, please zero)
   c. $40,000.00 _____ subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

STATE OF SOUTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public for the County of Charleston and State of South Carolina, do hereby certify that Emerald McDonough Road Holdings, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ of _____, 2016.

_____
Notary Public
My Commission Expires:
(SEAL)

SEE ATTACHMENT

_____
Grantor, Grantee or Legal Representative
Connected with this Transaction

Emerald McDonough Road Holdings, LLC
Print or Type Name Here

"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

(STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, Jaclyn Mary Lanning, Notary Public, personally appeared Mark E. Foster, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(~~ies~~), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JACLYN MARY LANNING
Commission # 2062208
Notary Public - California
Orange County
My Comm. Expires Mar 23, 2018

Signature_____(SEAL)
Signature of Notary Public

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
WEEKS & IRVINE LLC

MAKER:
EMERALD MCDONOUGH RD ETC

RECIPIENT:
MARINERS CAY FUEL ETC

Original Book:

Original Page:

Note:

RECORDED

Date:	May 24, 2016
Time:	10:44:26 AM

Book	Page	DocType
0555	946	Deed

Charlie Lybrand, Register
Charleston County, SC

# of Pages: 7

Recording Fee	$	10.00
State Fee	$	104.00
County Fee	$	44.00
Extra Pages	$	2.00
Postage	$	-
Chattel	$	-
TOTAL	$	160.00

DRAWER: Drawer 1
CLERK: KLH

AUDITOR STAMP HERE
RECEIVED From RMC
MAY 25 2016
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MK
DATE 5/26/16
37

0555 Book | 946 Page | 05/24/2016 Recorded Date | 7 # Pgs

Original Book | Original Page | D Doc Type | 10:44:26 Recorded Time

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
COUNTER CUSTOMER
DOLPH FARMER
1440 BATTLION DRIVE
CHARLESTON, SC 29412

RECORDED

Date: June 28, 2017
Time: 3:12:50 PM

Book	Page	DocType
0648	603	Re-Rec/Con

Charlie Lybrand, Register
Charleston County, SC

MAKER:
EMERALD MCDONOUGH RD ETC

RECIPIENT:
MARINERS CAY FUEL ETC

Original Book: 0555

Original Page: 946

Note:

# of Pages: 9

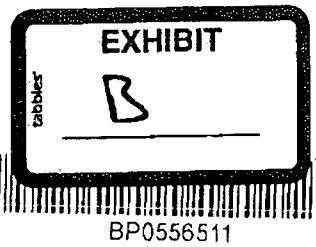
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TOTAL	$	12.50

DRAWER: Drawer 2
CLERK: JBA

AUDITOR STAMP HERE
RECEIVED From RMC
Jun 30, 2017
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MKD
DATE 07/03/2017
14

0648 Book
603 Page
06/28/2017 Recorded Date
9 # Pgs
0555 Original Book
946 Original Page
D Doc Type
15:12:50 Recorded Time



BP0556511

PGS: 7

PREPARED BY JAMES M. ALLISON, PA; P. O. BOX 8633 (109 E. NORTH STREET); GREENVILLE, SC 29604

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE
(LIMITED WARRANTY)

KNOW ALL MEN BY THESE PRESENTS that EMERALD McDONOUGH ROAD HOLDINGS, LLC for and in consideration of TWO HUNDRED TEN THOUSAND AND NO/100 ($210,000.00) DOLLARS and no other consideration has/have granted, bargained, sold, and released and by these presents do/does hereby grant, bargain, sell and release, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth below, unto MARINERS CAY MARINA CONDO LLC:

SEE EXHIBIT "A" ATTACHED HERETO

TAX MAP NUMBERS: 328-00-00-544 and 328-00-00-545

Grantees' Address: 1440 Battalion Drive, Charleston, SC 29412

THIS conveyance is made subject to any restrictions, rights-of-way, easements, zoning ordinances or other matters which may appear of public record or which an inspection or more recent survey of the premises would or should reveal.

together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned, subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein, unto the Grantee(s) and the Grantee's(s') heirs or successors and assigns, forever. And, the Grantor(s) does(do) hereby bind the Grantor(s) and the Grantor's(s') heirs or successors, executors and administrators to warrant and forever defend all and singular the said premises unto the Grantee(s) against only the Grantor(s) and those persons lawfully claiming or seeking to claim the same or any part there through the Grantor(s), subject, however, to all such easements, restrictions, reservations and conditions as may be set forth herein.

WITNESS the Grantor's(s') hand(s) and seal(s) this 19th day of May, 2016.

SIGNED, sealed and delivered
in the presence of:

(witness #1)

(witness #2/Notary Public)

EMERALD McDONOUGH ROAD HOLDINGS, LLC, a S. C. limited liability company

BY: Sabal Financial Group, L.P., its manager

BY: _____ (SEAL)
NAME: R. PATTERSON JACKSON
TITLE: CHIEF EXECUTIVE OFFICER

Weeks & Irvine, LLC
8086 Rivers Ave. 2nd Floor
North Charleston, SC 29406
16-2917 Mariners
5-16

"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, R. Cheng, Notary Public, personally appeared R. Patterson Jackson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity(ies), and that by his/~~her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

R. CHENG
COMM. # 2050182
NOTARY PUBLIC • CALIFORNIA
ORANGE COUNTY
Comm. Exp. NOV. 26, 2017

Signature _____ *(SEAL)*
Signature of Notary Public

EXHIBIT A

LEGAL DESCRIPTION

ALL right, title and interest in and to any and all real property rights, permits, licenses, structures, fixtures, facilities, and other associated items comprising the building consisting of a two story wood frame structure on timber piles commonly known as the Ship Store containing Commercial Unit 1-A on the first floor plus a wood ramp and wooden decking and Commercial Unit 1-B on the second floor, said real estate being located on the northern banks of the Folly River to the west of Folly Road between the said Folly Road and Stono River in the County of Charleston, State of South Carolina, described more fully in that certain title to real estate dated May 16, 2007 and recorded in the Office of the Register of Deeds for Charleston County in Book A626 at Page 629.

THE above described property is the same acquired by Emerald McDonough Road Holdings, LLC by Quit Claim Deed of Emerald Portfollo, LLC dated November 9, 2015 and recorded in the Office of the Register of Deeds for Charleston County on November 13, 2015 in Deed Book 0517 at Page 162.

TAX MAP NUMBERS: 328-00-00-544
328-00-00-545

STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF CHARLESTON)

Date of Transfer of Title
May 20, 2016

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by Emerald McDonough Road Holdings, LLC TO Mariners Cay Marina Condo LLC on May 20, 2016.

3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

4. Check one of the following if either Item 3(a) or Item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $210,000.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.

6. The DEED Recording Fee is computed as follows:
   a. $210,000.00 — the amount listed in Item No. 4 above
   b. $0.00 — the amount listed on Item No. 5 above (no amount, please zero)
   c. $210,000.00 — subtract Line 6(b) from Line 6(a) and place the result here.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantor.

8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Emerald McDonough Road Holdings, LLC,
A South Carolina limited liability company

BY: Sabal Financial Group, L.P.,
Its:Manager

BY: _____
NAME: R. Patterson Jackson
TITLE: Chief Executive Officer

STATE OF SOUTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public for the County of Charleston and State of South Carolina, do hereby certify that

_____ as

_____ of Emerald McDonough Road Holdings, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal, this the ____ of May, 2016.

SEE ATTACHMENT

_____
Notary Public
My Commission Expires:
(SEAL)

"A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document."

STATE OF CALIFORNIA)
COUNTY OF ORANGE)

On May 19, 2016, before me, Jaclyn Mary Lanning, Notary Public, personally appeared R. Patterson Jackson, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity(~~ies~~), and that by his/~~her~~/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

JACLYN MARY LANNING
Commission # 2062208
Notary Public - California
Orange County
My Comm. Expires Mar 23, 2018

Signature _____ *(SEAL)*
Signature of Notary Public

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
WEEKS & IRVINE LLC

RECORDED

Date: May 25, 2016
Time: 4:33:39 PM

Book	Page	DocType
0556	511	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
EMERALD MCDONOUGH RD ETC

RECIPIENT:
MARINERS CAY MARINA CONDO

Note:

# of Pages: 7

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State Fee	$	546.00
County Fee	$	231.00
Extra Pages	$	2.00
Postage	$	-
Chattel	$	-
TOTAL	$	789.00

DRAWER: Drawer 2
CLERK: JBA

Original Book:

Original Page:

AUDITOR STAMP HERE
RECEIVED From RMC
MAY 27 2016
Peter J. Tecklenburg
Charleston County Auditor

PID VERIFIED BY ASSESSOR
REP MKD
DATE 5/31/16
37

0556 Book

511 Page

05/25/2016 Recorded Date

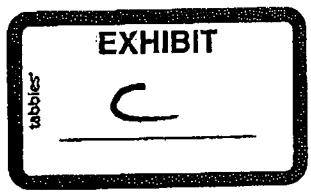
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16:33:39 Recorded Time



PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is made and entered into this 21 day of March, 2016 (the "**Effective Date**"), by and between Emerald McDonough Road Holdings, LLC, a South Carolina limited liability company ("**Seller**"), and Mariners Cay Fuel Dock LLC ("**Buyer**"), upon the following terms and conditions:

1. **Purchase and Sale**. Pursuant to this Agreement, Buyer shall purchase and Seller shall sell all of Seller's right, title, and interest in and to that certain real property consisting **two boat slips: Unit C-21, parcel number 328-00-00-507 and Unit C-22, parcel number 328-00-00-508 located at 2 McDonough Rd., Folly Beach, SC 29439, County of Charleston** and legally described on **Exhibit A** attached hereto together with all appurtenances thereto and improvements thereon ("**Property**").

2. **Disclaimer; Release of Claims**.

2.1. Buyer acknowledges and understands that Seller acquired the Property by foreclosure, deed in lieu of foreclosure, forfeiture, or similar process, and Seller consequently has little or no direct knowledge concerning the condition of the Property. As a material part of the consideration to be received by Seller under this Agreement as negotiated and agreed to by Buyer and Seller, Buyer acknowledges and agrees to accept the Property in "as-is," "where-is" condition at the time of closing, including, without limitation, zoning, land use or building code requirements or compliance with any law, rules, ordinances or regulations of any government authority; any hidden defects, environmental conditions affecting the Property, or the existence of mold, whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

2.2. THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS PURCHASING THE PROPERTY BASED SOLELY UPON BUYER'S OWN INDEPENDENT INSPECTIONS, INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER OR SELLER'S AGENTS.

2.3 Without limiting the provisions of Paragraph 2.1 and 2.2 above, Buyer releases Seller from any and all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not), whether known or unknown, liquidated or contingent (collectively, "**Claims**") arising from or related to (a) any defects, errors or omissions in the design or construction of the Property, whether the same are a result of negligence or otherwise; or (b) other conditions (including environmental conditions) affecting the Property, whether the same are a result of negligence or otherwise. The release set forth in this Paragraph specifically includes any Claims under any Environmental Laws, under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et

seq., or with respect to any environmental risk. "**Environmental Laws**" includes, but is not limited to, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.), the Clean Air Act (42 U.S.C. §§7401 et seq.), the Clean Water Act (33 U.S.C. §§1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§300f et seq.), as any of the same may be amended from time to time, and any state or local law dealing with environmental matters, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement.

3. **Purchase Price; Deposit and Closing Date.**

3.1. The purchase price for the Property shall be Forty Thousand and 00/100 DOLLARS ($40,000.00)("**Purchase Price**").

3.2 Buyer and Seller hereby agree that the "**Closing Attorney**" shall be:

Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone: (843) 576-0547
Email: mweeks@weekslawfirm.net

Seller shall retain its own closing attorney at Seller's expense.

3.3 Within three (3) days after the Effective Date, Buyer shall deposit with the Closing Attorney, by check or wire transfer, the sum of One Thousand and 00/100 DOLLARS ($1,000.00) (the "**Deposit**").

3.4 The Deposit shall be applicable toward the Purchase Price. The balance of the Purchase Price after application of the Deposit shall be paid upon closing of this sale ("**Closing**") by bank check or wire transfer. The "**Closing Date**" means that date which is five (5) days after the expiration of the Feasibility Period, or any earlier date to which Buyer and Seller mutually agree in writing.

4. **Survey**. Seller is not in possession of a survey of the Property. Buyer, at its expense, may obtain a new or updated survey of the Property (the "**Survey**").

5. **Title Review**. The "**Title Company**" shall be determined by the Closing Attorney. Within ten (10) business days after the Effective Date, Buyer shall cause the Title Company, at Buyer's expense, to provide Buyer with a commitment for a standard form ALTA Standard

Coverage Owner's Title Policy on the Property (the "**Commitment**") issued by the Title Company, and copies of all instruments shown by the Commitment as exceptions. Buyer shall have five (5) days after receipt of the Commitment (the "**Review Period**"), including copies of all documents constituting exceptions to title, to review the Commitment. Within the Review Period, Buyer may either (a) terminate this Agreement and receive a refund of the Deposit if Buyer is not satisfied, in the exercise of its sole judgment, with matters disclosed in the Commitment, or (b) deliver to Seller written objections to any matters disclosed in the Commitment. Within three (3) days of receipt of such written objections, Seller shall notify Buyer whether or not it will cure any such defects ("**Seller Notice**"), which it may elect to do, or not do, in the exercise of Seller's sole and absolute discretion. Seller's failure to send the Seller Notice shall mean that Seller has elected not to cure any such defects. If Seller elects (or is deemed to have elected) not to cure, then Buyer shall have two (2) days after receipt of the Seller Notice (or if there is no Seller Notice then two (2) days from the end of the three (3) day period) to either (i) terminate this Agreement and receive a refund of the Deposit or (ii) waive the defects and proceed with this transaction, in which case such defects shall be deemed approved by Buyer.

6. **Title Insurance and Deed**. At Closing, Seller shall convey title to the Property to Buyer by special warranty deed (the "**Deed**"). At Buyer's expense, shall cause the Title Company to deliver to Buyer at Closing, a standard form ALTA Standard Coverage Owner's Title Insurance Policy (the "**Policy**") issued by the Title Company pursuant to the Commitment, insuring marketable fee simple title to Buyer in the full amount of the Purchase Price; provided that any requirement for the Policy to be issued without Standard Survey Exceptions shall be subject to Buyer's requirement to obtain the Survey and the Title Company's willingness to accept an Owner's Affidavit in form satisfactory to Seller in its sole and absolute discretion. The incremental cost to issue extended ALTA title insurance coverage, title endorsements and/or a lender's title insurance policy, if any, shall be paid by Buyer. The cost to record the Deed shall be paid by Buyer. Any closing fee charged by the Closing Attorney to close the transaction shall be paid by Buyer.

7. **Risk of Loss and Condemnation**. Risk of loss by damage or destruction to the Property after the Effective Date but prior to Closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to Closing, Buyer, at its option, may either cancel this Agreement and receive a refund of the Deposit or elect to close the transaction, in which event Seller's right to all insurance proceeds not yet applied to repair of the damage or destruction shall be assigned in writing by Seller to Buyer at Closing. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of the Deposit, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

8. **Taxes and Assessments**.

8.1 Seller shall pay all valid delinquent real property taxes, water rates, sewer charges, assessments, special and otherwise, and other charges which are a valid lien against the Property as of the Closing Date. Current real estate taxes and current installments of special assessments, if any, shall be prorated on a due date basis to the date of Closing, in accordance with the local custom for the county in which the Property is located. Any federal, state and local documentary

or revenue stamps, transfer, sales and other taxes relating to the sale of the Property shall be paid by Buyer and/or Seller at Closing based on local custom for the county in which the Property is located and both parties agree to execute any tax forms required.

8.2 All net property tax refunds and credits attributable to any period prior to the Closing, if any, shall be the property of Seller. All net property tax refunds and credits attributable to any period subsequent to the Closing, if any, shall be the property of Buyer.

9. **Remedies for Default.**

9.1. In the event of a breach or default hereunder by Buyer, Seller may, after written notice of default to Buyer specifying the nature of such default(s) and the failure of Buyer to cure such default(s) within five (5) days after Buyer's receipt of such notice, declare a forfeiture hereunder and retain the Deposit as liquidated damages, the same to be Seller's sole remedy for any breach or default hereunder by Buyer. Seller waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity. Nothing herein shall limit Buyer's indemnity obligation pursuant to Paragraph 10 of this Agreement, which indemnity obligation shall survive termination of this Agreement or Closing.

9.2 In the event of a breach or default hereunder by Seller, Buyer may after written notice of default to Seller specifying the nature of such default(s) and the failure of Seller to cure such default(s) within five (5) days after Seller's receipt of such notice, terminate this Agreement and be entitled to an immediate refund of the Deposit, as Buyer's sole remedy for any breach or default hereunder by Seller. Buyer waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity.

10. **Right of Entry and Inspection.** At any time prior to the expiration of the Feasibility Period (as hereafter defined), with Seller's prior approval, not to be unreasonably withheld, conditioned or delayed, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property to inspect same. Buyer may select qualified professionals to make "**Inspections**" (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards (including Phase I and Phase II environmental assessments); provided that Buyer shall not conduct any soil borings or other physically invasive tests of the Property without Seller's prior written consent (which shall not be unreasonably withheld or delayed), and provided further that all Inspections shall be performed in a manner that shall not unreasonably interfere with the ongoing use of the Property by the Seller or the tenants. Buyer shall keep the Property free of any liens, and repair any material physical damages caused by Buyer, its agents, employees, contractors or subcontractors and restore the Property to its condition prior to Inspections. Buyer shall indemnify, defend and hold Seller harmless against all losses, damages, claims, demands and liabilities which may be suffered by or asserted against Seller by reason of Buyer's Inspections, which indemnity obligation shall survive termination of this Agreement or Closing.

11. **Brokerage Fees**. Seller and Buyer each represent that no broker is involved in the transaction contemplated under this Agreement and each party indemnifies the other against brokerage or commission claims arising out of the indemnifying party's actions. George A. Farmer Jr. principal of Buyer, is a real estate licensee under the law of South Carolina and is acting solely as a principal in this transaction and will not be due a commission relating to this transaction or this Agreement.

12. **Representations and Warranties**.

12.1 Seller hereby represents and warrants to Buyer that Seller has the power, right and authority to enter into and perform all of the obligations required of Seller under this Agreement and the instruments and documents referenced herein, and to consummate the transaction herein contemplated.

12.2 Buyer hereby represents and warrants to Seller that Buyer has the power, right and authority to enter into and perform all of the obligations required of Buyer under this Agreement and the instruments and documents referenced herein, and to consummate the transaction herein contemplated. Buyer has made and relied upon its own evaluation and decision to purchase the Property, and Buyer has not relied upon any oral or written information or statements from Seller, other than as expressly set forth in this Agreement.

13. **Feasibility Period**.

13.1. Buyer shall have a thirty five (35) day period from and after the Effective Date (the "**Feasibility Period**") to satisfy the Conditions (as hereafter defined). At any time prior to the end of the Feasibility Period, Buyer may, for any reason in its sole and absolute discretion, cancel this Agreement by providing written notice thereof to Seller prior to the end of the Feasibility Period and receive a refund of the Deposit and neither party shall have any further obligation to the other except those that expressly survive termination. The term "**Conditions**" means (a) the Property is suitable to Buyer, in its sole and absolute discretion, for its intended use, and (b) Buyer is satisfied, in its sole and absolute discretion, with the Inspections.

13.2. In the event Buyer shall not provide notice of termination prior to the expiration of the Feasibility Period, then the Deposit shall be deemed nonrefundable and immediately released without further instruction from either Buyer or Seller, except in the case of a default by Seller hereunder, in which case the Deposit may be refunded pursuant to a termination of this Agreement by Buyer pursuant to Paragraph 9.2 hereof.

14. **Notices**. Any notice provided for in or permitted under this Agreement shall be made in writing and may be given or served by (a) delivering the same in person to the party to be notified, (b) depositing the same in the United States mail, postage prepaid, registered or certified with return receipt requested, and addressed to the party to be notified at the address herein specified, (c) sent by reputable overnight delivery services (such as Federal Express or United States Express Mail) or (d) sent by electronic mail (with confirmation sent by any of the means described in subparagraphs (a), (b) or (c) above). Notices given in accordance with any of the foregoing methods shall be effective when received (or service is refused). For the purpose

of notice, the address of the parties shall be, until changed, as set forth below. The parties shall have the right at any time to change their respective addresses and each shall have the right to specify as its address any other address by written notice to the other party.

If to Seller:

Linda Stone
Asset Manager
c/o Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

If to Buyer:

Mariners Cay Fuel Dock LLC
Attn: George A. Farmer Jr.
Phone:
Email:

With a Copy To:

Ralph Carrillo
Escrow Coordinator
Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

With a Copy To:

[Name]
[Company]
Address
Address

email:

15. **No Third Party Beneficiary**. This Agreement shall not confer any rights, benefits or remedies upon any entities or persons other than the Buyer, Seller and their respective executors, heirs, administrators, successors and assigns.

16. **Time of Essence**. Time is of the essence of this Agreement.

17. **Entire Agreement**. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

18. **Headings**. The paragraph headings are for convenience of reference only and do not modify or restrict any provisions hereof and shall not be used to construe any provisions.

19. **Modifications and Waiver**. This Agreement may be amended only by an instrument in writing signed by both Seller and Buyer. This Agreement may be terminated only in accordance with the terms of this Agreement or by an instrument in writing signed by both Seller and Buyer. No waiver of any of the provisions of this Agreement shall constitute a waiver of any other provision, nor shall any waiver be a continuing waiver. Except as expressly provided in this Agreement, no waiver shall be binding unless executed in writing by the party making the waiver.

20. **Successors**. This Agreement shall inure to the benefit of and bind the parties hereto and their respective executors, heirs, administrators, successors and assigns. Buyer may not assign this Agreement without the prior written consent of Seller. No assignment shall relieve the assigning party from its obligations hereunder.

21. **Governing Law and Attorneys' Fees**. This Agreement shall be governed and enforced by, and construed in accordance with the laws of the state in which the Property is located. In the event either party hereto finds it necessary to employ legal counsel or to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions hereof, the prevailing party in such action or proceeding shall be paid all reasonable attorneys' fees, as determined by the court and not the jury, and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceedings.

22. **Computing Any Time Period**. Wherever this Agreement requires that something be done within a specified period of days, the period shall (a) not include the day from which the period commences, (b) include the day upon which the period expires, (c) expire at 5:00 p.m. local time on the day upon which the period expires and (d) unless otherwise specified in this Agreement shall be construed to mean calendar days, provided, that if the final day of the period falls on a Saturday or Sunday or legal holiday (limited to the day set aside by statute for observing New Year's Day, Martin Luther King Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day, or Christmas Day), it shall be extended to first business day thereafter.

23. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

[signatures on the next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

Emerald McDonough Road Holdings, LLC
a South Carolina limited liability company

By: Sabal Financial Group, L.P.,
Its Manager

By: _____

Name: Mark E. Foster
Vice President & General Counsel

Its: _____

BUYER:

Mariners Cay Fuel Dock LLC
a _____

By: _____

Name: George A. Farmer Jr.

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

[TO BE PROVIDED WITH TITLE COMMITMENT]

CONTACT SHEET

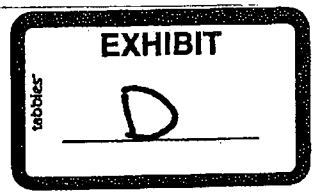
Closing Attorney:
Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone:(843) 576-0547
Email: mweeks@weekslawfirm.net

Seller Attorney:
James M. Allison, P.A.
Attention: Bridget Klebe
109 East North Street
Greenville, SC 29604
Phone: 864-271-2656
Email: bklebe@allisonlaw.biz

Buyer:
Mariners Cay Fuel Dock LLC
Attn: George A. Farmer Jr.
Phone:
Email:

Seller:
Emerald McDonough Road Holdings, LLC
c/o Sabal Financial Group
Attn: Linda Stone
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone
Email:

Seller's Closing Coordinator:
Sabal Financial Group
Attn: Ralph Carrillo
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone
Email:



PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("**Agreement**") is made and entered into this 21 day of March, 2016 (the "**Effective Date**"), by and between Emerald McDonough Road Holdings, LLC, a South Carolina limited liability company ("**Seller**"), and Mariners Cay Marina Condo LLC ("**Buyer**"), upon the following terms and conditions:

1. **Purchase and Sale**. Pursuant to this Agreement, Buyer shall purchase and Seller shall sell all of Seller's right, title, and interest in and to that certain real property consisting of two **condominium units; Unit 1-A, parcel number 328-00-00-544 and Unit 1-B, parcel number 328-00-00-545 at 2 McDonough Rd., Folly Beach, SC 29439, County of Charleston** and legally described on **Exhibit A** attached hereto together with all appurtenances thereto and improvements thereon ("**Property**").

2. **Disclaimer; Release of Claims**.

2.1. Buyer acknowledges and understands that Seller acquired the Property by foreclosure, deed in lieu of foreclosure, forfeiture, or similar process, and Seller consequently has little or no direct knowledge concerning the condition of the Property. As a material part of the consideration to be received by Seller under this Agreement as negotiated and agreed to by Buyer and Seller, Buyer acknowledges and agrees to accept the Property in "as-is," "where-is" condition at the time of closing, including, without limitation, zoning, land use or building code requirements or compliance with any law, rules, ordinances or regulations of any government authority; any hidden defects, environmental conditions affecting the Property, or the existence of mold, whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

2.2. THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY. BUYER ACKNOWLEDGES THAT BUYER IS PURCHASING THE PROPERTY BASED SOLELY UPON BUYER'S OWN INDEPENDENT INSPECTIONS, INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER OR SELLER'S AGENTS.

2.3 Without limiting the provisions of Paragraph 2.1 and 2.2 above, Buyer releases Seller from any and all claims, demands, causes of action, judgments, losses, damages, liabilities, costs and expenses (including without limitation attorney's fees whether suit is instituted or not), whether known or unknown, liquidated or contingent (collectively, "**Claims**") arising from or related to (a) any defects, errors or omissions in the design or construction of the Property, whether the same are a result of negligence or otherwise; or (b) other conditions (including environmental conditions) affecting the Property, whether the same are a result of negligence or otherwise. The release set forth in this Paragraph specifically includes any Claims under any Environmental Laws, under the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 et

seq., or with respect to any environmental risk. "**Environmental Laws**" includes, but is not limited to, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. §§6901 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.), the Emergency Planning and Community Right to Know Act (42 U.S.C. §§11001 et seq.), the Clean Air Act (42 U.S.C. §§7401 et seq.), the Clean Water Act (33 U.S.C. §§1251 et seq.), the Toxic Substances Control Act (15 U.S.C. §§2601 et seq.), the Hazardous Materials Transportation Act (49 U.S.C. §§1801 et seq.), the Occupational Safety and Health Act (29 U.S.C. §§651 et seq.), the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. §§136 et seq.), and the Safe Drinking Water Act (42 U.S.C. §§300f et seq.), as any of the same may be amended from time to time, and any state or local law dealing with environmental matters, and any regulations, orders, rules, procedures, guidelines and the like promulgated in connection therewith, regardless of whether the same are in existence on the date of this Agreement.

3. **Purchase Price; Deposit and Closing Date**.

3.1. The purchase price for the Property shall be Two Hundred Ten Thousand and 00/100 DOLLARS ($210,000.00)("**Purchase Price**").

3.2 Buyer and Seller hereby agree that the "**Closing Attorney**" shall be:

Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone:(843) 576-0547
Email: mweeks@weekslawfirm.net

Seller shall retain its own closing attorney at Seller's expense.

3.3 Within three (3) days after the Effective Date, Buyer shall deposit with the Closing Attorney, by check or wire transfer, the sum of Five Thousand and 00/100 DOLLARS ($5,000.00) (the "**Deposit**").

3.4 The Deposit shall be applicable toward the Purchase Price. The balance of the Purchase Price after application of the Deposit shall be paid upon closing of this sale ("**Closing**") by bank check or wire transfer. The "**Closing Date**" means that date which is five (5) days after the expiration of the Feasibility Period, or any earlier date to which Buyer and Seller mutually agree in writing.

4. **Survey**. Seller is not in possession of a survey of the Property. Buyer, at its expense, may obtain a new or updated survey of the Property (the "**Survey**").

5. **Title Review**. The "**Title Company**" shall be determined by the Closing Attorney. Within ten (10) business days after the Effective Date, Buyer shall cause the Title Company, at Buyer's expense, to provide Buyer with a commitment for a standard form ALTA Standard

Coverage Owner's Title Policy on the Property (the "**Commitment**") issued by the Title Company, and copies of all instruments shown by the Commitment as exceptions. Buyer shall have five (5) days after receipt of the Commitment (the "**Review Period**"), including copies of all documents constituting exceptions to title, to review the Commitment. Within the Review Period, Buyer may either (a) terminate this Agreement and receive a refund of the Deposit if Buyer is not satisfied, in the exercise of its sole judgment, with matters disclosed in the Commitment, or (b) deliver to Seller written objections to any matters disclosed in the Commitment. Within three (3) days of receipt of such written objections, Seller shall notify Buyer whether or not it will cure any such defects ("**Seller Notice**"), which it may elect to do, or not do, in the exercise of Seller's sole and absolute discretion. Seller's failure to send the Seller Notice shall mean that Seller has elected not to cure any such defects. If Seller elects (or is deemed to have elected) not to cure, then Buyer shall have two (2) days after receipt of the Seller Notice (or if there is no Seller Notice then two (2) days from the end of the three (3) day period) to either (i) terminate this Agreement and receive a refund of the Deposit or (ii) waive the defects and proceed with this transaction, in which case such defects shall be deemed approved by Buyer.

6. **Title Insurance and Deed**. At Closing, Seller shall convey title to the Property to Buyer by special warranty deed (the "**Deed**"). At Buyer's expense, shall cause the Title Company to deliver to Buyer at Closing, a standard form ALTA Standard Coverage Owner's Title Insurance Policy (the "**Policy**") issued by the Title Company pursuant to the Commitment, insuring marketable fee simple title to Buyer in the full amount of the Purchase Price; provided that any requirement for the Policy to be issued without Standard Survey Exceptions shall be subject to Buyer's requirement to obtain the Survey and the Title Company's willingness to accept an Owner's Affidavit in form satisfactory to Seller in its sole and absolute discretion. The incremental cost to issue extended ALTA title insurance coverage, title endorsements and/or a lender's title insurance policy, if any, shall be paid by Buyer. The cost to record the Deed shall be paid by Buyer. Any closing fee charged by the Closing Attorney to close the transaction shall be paid by Buyer.

7. **Risk of Loss and Condemnation**. Risk of loss by damage or destruction to the Property after the Effective Date but prior to Closing shall be borne by Seller. In the event any damage or destruction is not fully repaired prior to Closing, Buyer, at its option, may either cancel this Agreement and receive a refund of the Deposit or elect to close the transaction, in which event Seller's right to all insurance proceeds not yet applied to repair of the damage or destruction shall be assigned in writing by Seller to Buyer at Closing. If all or any part of the Property is condemned or any condemnation action or proceeding is commenced prior to Closing, Buyer may, at its option, either (a) cancel this Agreement and receive a refund of the Deposit, or (b) complete the purchase, with all condemnation proceeds and claims being assigned to Buyer.

8. **Taxes and Assessments**.

8.1 Seller shall pay all valid delinquent real property taxes, water rates, sewer charges, assessments, special and otherwise, and other charges which are a valid lien against the Property as of the Closing Date. Current real estate taxes and current installments of special assessments, if any, shall be prorated on a due date basis to the date of Closing, in accordance with the local custom for the county in which the Property is located. Any federal, state and local documentary

or revenue stamps, transfer, sales and other taxes relating to the sale of the Property shall be paid by Buyer and/or Seller at Closing based on local custom for the county in which the Property is located and both parties agree to execute any tax forms required.

8.2 All net property tax refunds and credits attributable to any period prior to the Closing, if any, shall be the property of Seller. All net property tax refunds and credits attributable to any period subsequent to the Closing, if any, shall be the property of Buyer.

9. **Remedies for Default.**

9.1. In the event of a breach or default hereunder by Buyer, Seller may, after written notice of default to Buyer specifying the nature of such default(s) and the failure of Buyer to cure such default(s) within five (5) days after Buyer's receipt of such notice, declare a forfeiture hereunder and retain the Deposit as liquidated damages, the same to be Seller's sole remedy for any breach or default hereunder by Buyer. Seller waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity. Nothing herein shall limit Buyer's indemnity obligation pursuant to Paragraph 10 of this Agreement, which indemnity obligation shall survive termination of this Agreement or Closing.

9.2 In the event of a breach or default hereunder by Seller, Buyer may after written notice of default to Seller specifying the nature of such default(s) and the failure of Seller to cure such default(s) within five (5) days after Seller's receipt of such notice, terminate this Agreement and be entitled to an immediate refund of the Deposit, as Buyer's sole remedy for any breach or default hereunder by Seller. Buyer waives any rights to consequential, special, punitive or other damages with regard to any claims under or related to the Property, this Agreement or the transaction described herein, whether in contract or tort, law or equity.

10. **Right of Entry and Inspection.** At any time prior to the expiration of the Feasibility Period (as hereafter defined), with Seller's prior approval, not to be unreasonably withheld, conditioned or delayed, at Buyer's sole expense, Buyer or its authorized agents may enter upon the Property to inspect same. Buyer may select qualified professionals to make "**Inspections**" (including tests, borings, surveys, studies, inspections, investigations and interviews of persons familiar with the Property) concerning the Property, including but not limited to tests of structures, wells, septic tanks, underground storage tanks, soils, geologic hazards, utility lines and systems and environmental hazards (including Phase I and Phase II environmental assessments); provided that Buyer shall not conduct any soil borings or other physically invasive tests of the Property without Seller's prior written consent (which shall not be unreasonably withheld or delayed), and provided further that all Inspections shall be performed in a manner that shall not unreasonably interfere with the ongoing use of the Property by the Seller or the tenants. Buyer shall keep the Property free of any liens, and repair any material physical damages caused by Buyer, its agents, employees, contractors or subcontractors and restore the Property to its condition prior to Inspections. Buyer shall indemnify, defend and hold Seller harmless against all losses, damages, claims, demands and liabilities which may be suffered by or asserted against Seller by reason of Buyer's Inspections, which indemnity obligation shall survive termination of this Agreement or Closing.

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13.2. In the event Buyer shall not provide notice of termination prior to the expiration of the Feasibility Period, then the Deposit shall be deemed nonrefundable and immediately released without further instruction from either Buyer or Seller, except in the case of a default by Seller hereunder, in which case the Deposit may be refunded pursuant to a termination of this Agreement by Buyer pursuant to Paragraph 9.2 hereof.

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of notice, the address of the parties shall be, until changed, as set forth below. The parties shall have the right at any time to change their respective addresses and each shall have the right to specify as its address any other address by written notice to the other party.

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Linda Stone
Asset Manager
c/o Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

With a Copy To:

Ralph Carrillo
Escrow Coordinator
Sabal Financial Group, L.P.
4675 MacArthur Court, Suite 1550
Newport Beach, CA 92660
email:

If to Buyer:

Mariners Cay Marina Condo LLC
Attn: George A. Farmer Jr.
Phone:
Email:

With a Copy To:

[Name]
[Company]
Address
Address

email:

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17. **Entire Agreement**. This Agreement contains the entire agreement between Seller and Buyer, and there are no other terms, conditions, promises, undertakings, statements or representations, either written or oral or express or implied, concerning the sale contemplated by this Agreement.

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21. **Governing Law and Attorneys' Fees**. This Agreement shall be governed and enforced by, and construed in accordance with the laws of the state in which the Property is located. In the event either party hereto finds it necessary to employ legal counsel or to bring an action at law or other proceedings against the other party to enforce any of the terms, covenants or conditions hereof, the prevailing party in such action or proceeding shall be paid all reasonable attorneys' fees, as determined by the court and not the jury, and in the event any judgment is secured by such prevailing party, all such attorneys' fees shall be included in any such judgment in such action or proceedings.

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23. **Counterparts**. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

[*signatures on the next page*]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

SELLER:

Emerald McDonough Road Holdings, LLC
a South Carolina limited liability company

By: Sabal Financial Group, L.P.,
Its Manager

By: _____

Name: Mark E. Foster
Vice President & General Counsel

Its: _____

BUYER:

Mariners Cay Marina Condo LLC
a _____

By: _____

Name: George A. Farmer Jr.

Its: _____

EXHIBIT A

LEGAL DESCRIPTION

[TO BE PROVIDED WITH TITLE COMMITMENT]

CONTACT SHEET

Closing Attorney:
Mark Weeks
873 Orleans Rd #102
Charleston, SC 29407
Phone:(843) 576-0547
Email: mweeks@weekslawfirm.net

Seller Attorney:
James M. Allison, P.A.
Attention: Bridget Klebe
109 East North Street
Greenville, SC 29604
Phone: 864-271-2656
Email: bklebe@allisonlaw.biz

Seller:
Emerald McDonough Road Holdings, LLC
c/o Sabal Financial Group
Attn: Linda Stone
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone
Email:

Buyer:
Mariners Cay Marina Condo LLC
Attn: George A. Farmer Jr.
Phone:
Email:

Seller's Closing Coordinator:
Sabal Financial Group
Attn: Ralph Carrillo
4675 MacArthur Court, 15th Floor
Newport Beach, CA 92660
Phone:
Email:

CERTIFICATE OF SERVICE BY MAIL
Case # 2017-CP-10-3099

I, the undersigned, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon the Parties by U.S. Mail, postage prepaid, on counsel of record, at the following addresses:

G. Hamlin O'Kelley, III, Esq.
Buist, Byars & Taylor, LLC
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Document Served: Third Party Defendant Emerald McDonough Road Holdings LLC Summons, Answer to Third Party Complaint and Counterclaim of Emerald McDonough Road Holdings LLC

Chrystal Compton
Paralegal to Andrew Montgomery

CERTIFICATE OF SERVICE BY MAIL
Case # 2017-CP-10-3099

I, the undersigned, for the law firm of Rogers Townsend & Thomas, PC, do hereby certify that I have served a copy of the foregoing document upon the Parties by U.S. Mail, postage prepaid, on counsel of record, at the following addresses:

FILED
2019 MAR -6 AM 11:45
JULIE J. ARMSTRONG
CLERK OF COURT

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Document Served: Third Party Defendant Emerald McDonough Road Holdings LLC Summons, Answer to Third Party Complaint and Counterclaim of Emerald McDonough Road Holdings LLC

Chrystal Compton
Paralegal to Andrew Montgomery

March 4th, 2019

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March 1, 2019

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Elizabeth Heatley, et al. v. Mariners Cay Marina Condo, LLC et al.
Case Number: 2017-CP-10-3099
RTT File Number: 020472-4

Dear Ms. Armstrong:

Enclosed, please find the original and one (1) copy of Third Party Defendant Emerald McDonough Road Holdings, LLC Answer to Third Party Complaint, Counterclaim and Summons in connection with the above-referenced matter. Please file the originals and return a file-stamped copy to me in the envelope provided.

By copy of this correspondence to all counsel of record, they are being served with the aforementioned Answer and Counterclaim.

Sincerely,

Chrystal Compton

Chrystal A. Compton
Paralegal to Andrew W. Montgomery

CAC/AWM
Enclosures
Cc: All Counsel of Record (via email & U.S. mail w/enclosures)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Elizabeth Heatley and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
Plaintiffs,)	**REPLY OF THE DEFENDANTS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC TO THE DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC'S ANSWER TO THIRD PARTY COMPLAINT AND COUNTERCLAIM**
v.)	
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, and South Atlantic Bank,)	
Defendants.)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
Third-Party Plaintiffs,)	
v.)	
Emerald McDonough Road Holdings, LLC,)	
Third-Party Defendant.)	

FILED
2019 MAR 25 PM 12:28
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: ANDREW W. MONTGOMERY., ATTORNEY FOR THE THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

The Defendants and Third Party Plaintiffs, Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, ("Third Party Plaintiffs"), by and through their undersigned counsel, hereby set forth their Answer to the Third Party Defendant, Emerald McDonough Road Holdings, LLC's, ("Third Party Defendant"), Counterclaim as follows:

1. Each and every allegation of the Third Party Defendant's Answer and Counterclaim not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Third Party Plaintiffs demand strict proof thereof.

2. The Third Party Plaintiffs are neither required to admit nor deny Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the Defendant's Answer and Counterclaim as said allegations constitute the Answer of the Third Party Defendant. To the extent an answer is required, the Third Party Plaintiffs deny same and demand strict proof thereof.

3. As to the allegations in Paragraph 38 of the Third Party Defendant's Answer Counterclaim, the Third Party Plaintiff admits only that they entered into a valid and enforceable agreement with the Third Party Defendant to provide good, marketable title to the Subject Property, free and clear of all liens, encumbrances, and claims. The Third Party Plaintiffs and Third Party Defendant are subject to the Plaintiffs' claims in this lawsuit, none of which are admitted, and, should those claims be successful, The Third Party Defendant will have violated and breached their deed warranties and contracts, without legal excuse. Any remaining allegations in Paragraph 38, are hereby deemed denied, and the Third Party Plaintiffs demand strict proof thereof.

WHEREFORE, having fully answered the Third Party Defendant's Answer and Counterclaim, the Third Party Plaintiffs pray that this Court enter its judgment and order as follows:

1. Dismissing the Third Party Defendant's Counterclaim;
2. Awarding the Third Party Plaintiffs actual damages, attorneys' fees and costs in amounts to be proven at the trial of this case;

3. Award the Third Party Plaintiffs special damages in amounts to be proven at the trial of this case; and

4. Granting any and all such further relief as the Court deems just and proper.

LUZURIAGA MIMS, LLP

By: Kevin W. Mims by GHO
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Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

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Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina

March 21, 2019

2017-CP-10-3099

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing pleadings have been served upon the following by hand delivery or by depositing a copy in the United States Mail, first class, postage prepaid, addressed to them this, the 21 day of March 2019.

Capers G. Barr, IV Barr, Unger & McIntosh, LLC 11 Broad Street Charleston, SC 29401 *Attorney for the Plaintiffs*	Andrew W. Montgomery, Esq. Rogers Townsend & Thomas PC 1221 Main Street, 14th Floor (29210) PO Box 100200 Columbia, SC 29202 *Attorneys for the Defendant and Third Party Defendant Emerald McDonough Road Holdings, LLC*
David C. Cleveland, Esq. Bobby Sessoms, Jr., Esq. Clawson and Staubes LLC 126 Seven Farms Drive, Suite 200 Charleston, SC 29492-8144 *Attorney for the Plaintiffs*	

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

FILED
2019 MAR 25 PM 12:28
JULIE J. ARMSTRONG
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April 2, 2018

AMANDA C. TAYLOR
PARALEGAL
Amanda.taylor@buistbyars.com

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 100
Charleston, SC 29401

Re: Alben D. Neighbors v Mariners Cay Marina Condo, LLC et al.,
C/A No.: 2017-CP-10-3099
Client File No.: 1219.0019

Dear Ms. Armstrong:

Enclosed please find an original and one (1) copy of the Third Party Plaintiffs Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC's Reply to the Third Party Defendant Emerald McDonough Road Holdings, LLC's Answer and Counterclaim in the above-referenced matter. By copy of this letter, we are serving all counsel of record.

Kindly file the originals and return the file-stamped copies to us in the self-addressed stamped envelope provided. Should you have any questions, please feel free to contact our office at your convenience.

Sincerely,

Amanda C. Taylor
Paralegal to G. Hamlin O'Kelley, III

/act
Enclosures

Cc: (w/ Encl.)

Capers G. Barr, IV, Jr., Esq
Andrew W. Montgomery, Esq.
David C. Cleveland, Esq.
Bobby Sessoms, Jr., Esq.

BARR, UNGER & McINTOSH, LLC
EMAIL CORRESPONDENCE

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Direct Dial: 843-377-1226
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July 7, 2020

Via E-Mail

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andrew.montgomery@rtt-law.com

RE: **Mariners Cay Declaratory Judgment Action;**
Elizbeth Heatley, et al. v. Mariner's Cay Marina Condo, LLC, et al.
Case No.: 2017-CP-10-3099
Our File: 2017-1152

Dear Colleagues:

Attached is the 4th Amended Complaint in the Mariner Cay Marina case which was filed yesterday pursuant to Judge Price's order, also filed yesterday.

With best regards,

Sincerely yours,

s// Capers

Capers G. Barr, III

cc: Capers G. Barr, IV (via e-mail)
Tom Bessent (via e-mail)
Jeff Heatley (via e-mail)
David Nauheim (via e-mail)
Nelson Hagy (via e-mail)
Ronald McGuire (via e-mail)
Elizabeth Heatley (via e-mail)
Dan Nekola (via e-mail)
Neal B. McCann, Jr. (via e-mail)
David Neil Monk (via e-mail)

ELECTRONICALLY FILED - 2020 Jul 06 3:16 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariners Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank, Defendants, and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, Third-Party Plaintiffs, vs. Emerald McDonough Road Holdings, LLC, Third-Party Defendant.	IN THE COURT OF COMMON PLEAS THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-3099 **FOURTH AMENDED COMPLAINT**[1]

Plaintiffs, by this their Complaint, allege:

The Purpose of the Action.

[1] NOTE: This Fourth Amended Complaint replaces the earlier Third Amended Complaint filed January 31, 2019, in which Plaintiffs there sought to join the same issues alleged herein as a class action. The trial court filed its order on June 12, 2019, denying class certification. Accordingly, this Complaint is amended to more succinctly address the same issues, but in the names of four discrete Plaintiffs, who bring this action in their own rights.

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1. Plaintiffs bring this action pursuant to the Uniform Declaratory Judgments Act, SC Code §15-53-10, *et seq*, to determine ownership of the property which is the subject matter of the action, the rights of the parties in and to the property, and to declare that the amended and restated Master Deed for Mariners Cay Horizontal Property Regime recorded March 19, 2007 in the RMC Office for Charleston County in Book X618, Page 603 (the "Amended and Restated Master Deed") is invalid, at least to the extent that the character of the property which is the subject of this action is therein changed from a "common element" of the Mariners Cay Horizontal Property Regime to an individual unit; and for an Order of the Court declaring that none of the Defendants have any right, title, estate or interest in the subject property or any part thereof.

2. Alternatively, Plaintiffs seek an Order of the Court declaring that the Subject Property (as hereafter designated) may be used only for commercial purposes as a Ship's Store, and not for residential use.

The "Subject Property".

3. The property that is the subject matter of this action (the "Subject Property") consists of the two story wood frame structure supported on timber piles on the Horizontal Property Regime Property generally known as the "Ship's Store", together with the fuel docks and the fuel tanks, pumps, lines and related fuel equipment; all of which is more fully described in Exhibit A attached hereto, which by this reference is specifically incorporated herein.

The Parties.

4. The individual Plaintiffs are residents of Charleston County.

5. The Plaintiff Mariners Cay Marina Council of Co-Owners, Inc. (hereafter the "Marina Council"), is the incorporated council of co-owners for Mariners Cay Marina Horizontal Property Regime (hereafter the "Regime"), a horizontal property regime on property located in the

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County of Charleston. The Regime was formed by Marina at Mariner's Cay, LLC, the holder of a long term exclusive easement to use the Property, by the recording of a Master Deed on May 18, 2006 in the RMC Office for Charleston County in Book V583, Page 584 (hereafter the "Master Deed").

6. Under the Master Deed the Marina Council is vested with the rights, powers, privileges, and duties necessary or incidental to the administration of the regime, including the care, maintenance and upkeep of the common elements, as well as for the employment of the marina Dock Master, as hereafter alleged, and for providing the Dock Master with a suitable location for a work area to perform his duties.

7. Defendant Mariners Cay Marina Condo, LLC is, on information and belief, a limited liability company organized under the laws of the State of South Carolina, and said Defendant claims an interest in the Property which is the subject of this action.

8. Defendant Mariners Cay Fuel Dock, LLC is, on information and belief, a limited liability company organized under the laws of the State of South Carolina and said Defendant claims an interest in the Property which is the subject of this action. The Defendants Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC are collectively referred to herein as the "LLC Defendants").

9. The Defendant George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a resident of Charleston County, South Carolina, and on further information and belief he is the single member of both LLC Defendants.

10. The Defendant South Atlantic Bank is, on information and belief, a banking institution organized and existing under the laws of the State of South Carolina which claims or may claim an interest in the property which is the subject of this action.

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Mariners Cay Marina.

11. Mariners Cay Marina (hereafter the "Marina") consists of property on the Folly River in Charleston County, comprising 90 boat slips, a 2-story wood-frame building known as the "Ship's Store", and the associated docks, (including a "fuel dock" and fuel tanks, lines and equipment associated therewith; and a waste pump out system), piers, pilings and walkways.

12. The Marina was originally constructed in the 1980's. Between the dates of approximately 1980 and 2006, the entirety of the Marina was privately owned and its individual boat slips were leased to individual boat users. During the same period of private ownership of the Marina, renters of boat slips and their guests enjoyed the use of the building on the high ground, together with its associated restrooms, showers, and Ship's Store, in common. The Ship's Store also provided supplies and refreshments for sale to Marina users.

13. The operation of a boat marina is a State-regulated activity, requiring a permit from the SC Department of Health and Environmental Control ("DHEC"). A condition of a DHEC permit to operate a marina is, *inter alia*, that there be an experienced operator on-site and in charge of and responsible for marina operations; and that rest rooms be provided to avoid the discharge of sewage into navigable waters and wetlands.

14. Accordingly, from its inception to the present, the Marina has employed a Dock Master on-site (until his ouster by Defendants) to oversee and to be responsible for marina operations.

15. From the date of the Marina's first opening until 2016, the Marina Dock Master utilized and occupied an office in the Ship's Store, as will be more fully alleged hereafter.

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Formation of the Horizontal Property Regime.

16. As alleged in paragraph 5 above, by Master Deed recorded May 18, 2006 in the Office of the Charleston County Register of Deeds in Book V583, Page 584, the property comprising the Marina, including but not limited to the boat slips, piers, decks, pilings, fuel docks, fuel system, the Ship's Store building and its components, was submitted to a Horizontal Property Regime pursuant to the provisions of §27-31-700, *et seq.* of the South Carolina Code of Laws.

17. By the terms of the Master Deed, the provisions of which are specifically incorporated herein by reference, the individual boat slips became the equivalent of "apartments" under the Horizontal Property Act.

18. Also, by the specific and expressed terms of the Master Deed, the Ship's Store including its components: the building and its offices, restrooms, showers, retail spaces, fuel docks and fuel system became "common elements" of the Horizontal Property Regime, so that subsequent grantees of boat slips acquired fractional title interests in the common elements consisting of the ship's store and its components, as a matter of law and pursuant to the Horizontal Property Act.

Plaintiffs Acquired Vested Interests in the Subject Property.

19. After the recording of the Master Deed, as alleged in Paragraph 4, the Plaintiffs in this action acquired title to their respective boat slips, as follows:

a. Elizabeth Heatley and Jeffrey Heatley were conveyed Slip D-08 by Deed recorded August 15, 2006 in Book S594, Page 880.

b. Neal B. McCann, Jr., was conveyed Slip B-08 by Deed recorded March 6, 2007 in Book N617, Page 404.

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c. David Neil Monk was conveyed Slip B-17 by Deed recorded March 12, 2007 in Book C618, Page 028.

d. Thomas V. Bessent was conveyed Slip D-01 by Deed recorded August 18, 2006 in Book D595, Page 101.

20. Each Plaintiff, by virtue of the conveyances alleged in Paragraph 19, thereby acquired vested, undivided title interests in the Subject Property, being the common elements of the Horizontal Property Regime, including but not limited to the Ship's Store building and its component parts, the fuel dock, and the fuel system.

21. Moreover, in the conveyances by grantor Marina at Mariners Cay, LLC to each of the Plaintiffs, the grantor expressly warranted that neither it, nor its successors or assigns "shall at any time hereafter, by any way or means, have, claim or demand any right or title to the aforesaid property, or any interest therein", as will appear by reference to the deeds alleged in paragraph 18 hereof.

22. The LLC Defendants are successors in title to Marina at Mariners Cay, LLC.

23. Since acquiring title, each Plaintiff has paid his or her fair share of the common expenses of maintaining the common elements.

Plaintiffs' Vested Interests in the Common Elements are Fixed by Statute.

24. The property ownership rights of Horizontal Property Regime owners in general, and the rights of Plaintiffs specifically, are set forth in the South Carolina Horizontal Property Act, Sections 27-31-10, *et seq.*, South Carolina Code of Laws.

25. More specifically, Code Section 27-31-60, Section 27-31-70, and Section 27-31-80 provide *inter alia*, as follows:

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a. Section 27-31-60(a): "an apartment owner shall have the exclusive ownership of his apartment, and shall have a common right to a share, with the other co-owners, in the common elements of the property, equivalent to the percentage representing the value of the individual apartment, with relation to the value of the whole property. This percentage shall be computed by taking as a basis the value of the individual apartment in relation to the value of the property as a whole."

"The percentage shall be expressed at the time the horizontal property regime is constituted, shall have a permanent character, and shall not be altered without the acquiescence of the co-owners representing all the apartments of the property."

"The basic value, which shall be fixed for the sole purpose of this chapter and irrespectively of the actual value, shall not prevent each co-owner from fixing a different circumstantial value to his apartment in all types of acts and contracts."

b. Section 27-31-70: "The common elements, both general and limited, shall remain undivided and shall not be the object of an action for partition or division of the co-ownership. Any covenant to the contrary shall be void."

c. Section 27-31-80: "Each co-owner may use the elements held in common in accordance with the purpose for which they are intended, without hindering or encroaching upon the lawful rights of the other co-owners."

FOR A FIRST CAUSE OF ACTION

26. The allegations of paragraphs 1-24 are incorporated herein.

Amendment of the Master Deed: The Actionable Issue in this Case.

27. On March 19, 2007, Marina at Mariner's Cay, LLC, was a successor in title to the original Declarant subject, however, to vested interests theretofore created for the benefit of

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Plaintiffs and other persons. On that date, March 19, 2007, and notwithstanding the constraints of the statutory provisions alleged in paragraphs 21 and 22 hereof, or of the expressed warranties contained in the deeds to Plaintiffs, Marina at Mariner's Cay, LLC unilaterally, and without notice to, or the consent of, unit owners in the Regime, recorded an Amended and Restated Master Deed in the Office of the Charleston County Register of Deeds, in Book X 618, Page 603 (the "Amended Master Deed"), the effect and result of which was an attempt to convert into individual "apartment units", the Subject Property, which had theretofore been common elements of the horizontal property regime; and to which, however, all Plaintiffs, and all then-unit owners, held vested, undivided interests as tenants in common to the common elements.

28. More specifically, the Amended Master Deed purported to effect the following material changes and alterations to the Master Deed:

a. The Amended and Restated Master Deed removed the designations of Commercial Units 1-A, 1-B and 2 as Common Elements, to purportedly create three new and additional, separately transferable condominium units which had previously been common elements under the Master Deed, and by re-designating the said units as "Commercial Unit 1-A", "Commercial Unit 1-B", and "Commercial Unit 2"; and

b. The Amended and Restated Master Deed also purported to alter the schedule of basic values and percentage interests in the common elements, by reducing each dock unit's basic value and percentage interest and by assigning basic values and percentage interests to Commercial Unit 1-A, Commercial Unit 1-B and Commercial Unit 2.

29. After the recording of the Amended and Restated Master Deed, the Subject Property was thereafter conveyed by the Declarant, and its successors, as follows:

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a. By Declarant to Flint River Capital, Inc. by Deed recorded May 18, 2007 in the Office of the Charleston County Register of Deeds, in Book A626, Page 624.

b. Thereafter by Flint River Capital, Inc. to Tyger River Capital, LLC by Deed recorded February 27, 2009 in the Office of the Charleston County Register of Deeds, in Book 0037, Page 844;

c. Thereafter by Deed of the Master-In-Equity for Charleston County to Emerald Portfolio, LLC by Deed recorded October 14, 2015 in the Office of the Charleston County Register of Deeds, in Book 0510, Page 674.

d. Thereafter by Emerald Portfolio, LLC to Emerald McDonough Road Holdings, LLC by Deed recorded November 13, 2015 in the Office of the Charleston County Register of Deeds, in Book 0517, Page 162; and

e. Thereafter by two Deeds from Emerald McDonough Road Holdings as follows:

1) to Defendant Mariner's Cay Fuel Dock, LLC recorded May 24, 2016 in the Office of the Charleston County Register of Deeds, at Book 0555, Page 946; and

2) to Defendant Mariner's Cay Marina Condo, LLC recorded May 25, 2016 in the Office of the Charleston County Register of Deeds, at Book 0556, Page 511.

30. Plaintiffs are informed and believe that Marina Cay Fuel Dock, LLC, and Marina Cay Condo, LLC, the "LLC Defendants", and their principal, Defendant Farmer, are in possession of the Subject Properties and contend that they properly hold title to and own the same. To the contrary, Plaintiffs allege that the Subject Properties are common elements of the horizontal property regime, and are therefore owned by Plaintiffs, and by all Unit Owners of Mariner's Cay, as tenants-in-common.

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31. At all times prior to May 25, 2016, the Plaintiffs and other boat slip owners of Mariner's Cay enjoyed the uninterrupted use of the Ship's Store and the fuel docks, as those Subject Properties are described herein.

32. After May of 2016, the LLC Defendants and the Defendant Farmer have acted to prohibit the Plaintiffs, as well as other boat slip owners and the Dock Master, from utilizing the Subject Properties, that is to say, any portion of the Ship's Store (except for the restrooms), as well as any portion of the space beneath the Ship's Store building (which houses the equipment for the fuel dock), thereby ousting Plaintiffs from their lawful and beneficial use of the Subject Properties as was warranted to them, and as is a protected and vested right under the Horizontal Property Act and the Master Deed.

33. Plaintiffs are entitled to an Order of this Court declaring the ownership, use, and other rights to the Subject Property, as well as the rights and obligations of the Parties under the Master Deed and the Amended Master Deed; including but not limited to a declaration that the Amended Master Deed that purports to convert the Subject Property from common elements of the horizontal property regime to individual units that can be separately titled is void and a nullity.

34. The LLC Defendants and Defendant Farmer must be restrained and enjoined from denying Plaintiffs of their rights to hold, possess, use and to enjoy the Subject Property.

35. This Court must further declare that Defendant South Atlantic Bank holds no interest in the Subject Property.

FOR A SECOND CAUSE OF ACTION

36. The allegations of paragraphs 1-35 are incorporated herein.

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37. The Defendant, George A. Farmer, Jr. (herein "Farmer") is, on information and belief, a principal of Mariners Cay Marina Condo, LLC and is also a principal of Mariners Cay Fuel Dock, LLC. The Defendant Farmer is presently in possession of the Subject Property.

38. Part of the Marina's security system consists of an electronic gate located on the gangway leading to the marina docks (the "Security Gate"). On the date of filing of the original complaint in this action, the Security Gate could only be opened with an electronic key fob. Electronic key fobs were then provided by the Marina Council to the owners and users of the boat slips in the marina.

39. The Marina provides a sewer pump-out service for boaters to discharge the contents of their boats' sewage holding tanks. The sewer pump-out service is available to be used only at Fuel Docks. The pump which operates the sewer pump-out service (herein the "Sewer Pump") is located beneath the Ship Store.

40. The space beneath the Ship Store is enclosed by lattice and has been locked by the Defendant Farmer.

41. An electrical panel located in the Ship Store includes electrical controls and breakers for the Marina's security system, phone system and the sewage pump. Prior to July 17, 2017, and since the formation of the Regime, the electronic controls for the Security Gate were connected to the electrical panel located in the Ship Store.

42. The space beneath the Ship Store, the Electronic Dock Security System, the Sewer Pump and the electrical breakers and controls which operate the Electronic Dock Security System, the marina phone system and the Sewer Pump are all common elements of the Regime. Plaintiffs hold an interest in these common elements, together with all other slip owners in the horizontal property regime, and the Marina Council is responsible for maintaining said common

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elements. Accordingly, Plaintiffs are entitled to immediate possession of and access to these common elements.

43. The Defendant Farmer has wrongfully, intentionally and wilfully refused to permit the Plaintiffs to access the common elements described in Paragraphs 37-41, above.

44. Because the Defendant Farmer is in possession of the Ship Store, and in order to avoid a breach of the peace while this action is pending, the Plaintiffs requested, during the week of July 10, 2017, that Farmer permit the Dockmaster to access the Electronic Dock Security System (located in the Ship Store) in order to program additional key fobs for the Security Gate.

45. The Defendant Farmer refused to permit the Plaintiffs to access the Electronic Dock Security System, and instead Defendant Farmer, on or about July 16, 2017, intentionally, willfully and maliciously, and without authorization of the Marina Council, forcibly removed the Electronic Dock Security System from the Ship Store which caused damage to the same and which also resulted in the complete termination of the security system for the marina docks.

46. The Plaintiffs have suffered damages as a result of the Defendant Farmer's refusal to permit Plaintiff's access to the common elements described in Paragraphs 37-41, above, and also as a result of the Defendant Farmer's intentional, willful and malicious alteration or destruction of the Electronic Dock Security System.

47. The Plaintiffs are entitled to a judgment against the Defendant Farmer for actual damages, and because Defendant Farmer's actions, described above, were intentional, willful and malicious, or at least reckless, the Plaintiff Marina Council is also entitled to an award of punitive damages.

FOR A THIRD CAUSE OF ACTION

48. The allegations for Paragraph 1-47 are incorporated herein.

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49. The Master Deed describes and designates the Subject Property as "common elements" to which every unit holder owns an undivided fee interest pursuant to Code § 27-31-60, and further pursuant to the Master Deed.

50. The Amended Master Deed purports to describe and designate the Subject Property as a class of transferable "units"; that is to say, the Amended Master Deed describes only two classes of units: Boat Slip Units and Commercial Units.

51. Neither the Master Deed nor the Amended Master Deed, however, purport to permit any residential use of either a Boat Slip or a Commercial Unit. Moreover, both the Master Deed and the Amended Master Deed contain multiple references to the Commercial Units as the "Ship's Store", plainly and unequivocally describing and intending a commercial use.

52. Despite the objections and protests of Plaintiffs, and of other members of the Horizontal Property Regime, the Defendants have taken possession of the Subject Property, and they have ejected from the physical space thereof the Mariner's Cay Dock Master's Office, which has been used for that purpose at least since 2006, and even before the formation of the Horizontal Property Regime; and they have undertaken to use as accessories to their residential use of the Commercial Units the restrooms originally constructed for boat slip owners and their guests, as required by DHEC. They have further taken over the possession and control of the fuel docks and access to the sewage disposal system, for their personal use, preventing access thereto by Plaintiffs, as well as by other Members of the Horizontal Property Regime.

53. By the express terms of the Master Deed and of the Amended Master Deed, and by the established custom and practice of operating the Horizontal Property Regime and the Marina before the property was incorporated, the Subject Property was used only for commercial

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purposes; that is to say, for the purpose of operating a Ship's Store, and for the purposes of providing offices for the Marina Dock Master; and for refueling of boats and pumping out of boat sewage systems.

54. Because of the express terms of the Master Deed and the Amended Master Deed, and because of the custom and practice of use of the Subject Property, Plaintiffs are informed and believe that this Court should issue its Order that the Subject Property may not be used for residential purposes, and may only be used for its intended and dedicated purposes of commercial use, including but not limited to a Ship's Store, a Dock Master's Office, fuel docks and fuel system, and sewage pump out system.

WHEREFORE, Plaintiffs pray as follows:

(A) That this Court inquire into the matters and things alleged herein and issue an Order declaring that Plaintiffs hold a vested, indefeasible interest in the Subject Property, and that they and all slip owners of Mariners Cay Marina are the true owners of the Subject Property in accordance with the original Master Deed, and that any provision to the contrary in the Amended and Restated Master Deed is void, a nullity , and of no effect; and also declaring such other rights and obligations of the parties under the Master Deed and the Amended and Restated Master Deed in and to the Subject Property as may be established by the evidence;

(B) That the Amended and Restated Master Deed, or at least such portions of the Amended and Restated Master Deed which directly violate the South Carolina Horizontal Property Act, as alleged herein, be declared invalid and that the Subject Property, namely the Ship Store in its entirety, as well as the Fuel Docks and fuel systems be declared to be common elements of the Regime, and therefore owned by Plaintiffs and each of the Dock Unit owners as

tenants in common; and further declaring that the Defendants have no right, title, estate or interest in the Subject Property or any portion thereof;

(C) For judgment in favor of the Plaintiff Council of Co-Owners against the Defendant Farmer for actual and punitive damages in an amount to be determined by the trier of fact;

(D) Alternatively, for an Order of the Court declaring that the Subject Property may only be used for commercial purposes and not for residential uses, including but not limited to a Ship's Store, a Dock Master's Office, fuel docks, fuel system and sewage pump out system.

(E) For such other and further relief as the Court may deem just and proper.

BARR, UNGER & McINTOSH, LLC

s/ Capers G. Barr, III

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July 6, 2020

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
Plaintiffs,)	
v.)	**THIRD-PARTY SUMMONS**
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, and South Atlantic Bank,)	**(JURY TRIAL DEMANDED)**
Defendants.)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
Third-Party Plaintiffs,)	
v.)	
Emerald McDonough Road Holdings, LLC,)	
Third-Party Defendant.)	

TO: CAPERS G. BARR, IV, ATTORNEY FOR PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and Third-Party Complaint of the Defendant/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 50 Immigration Street, Suite 200, Charleston, South Carolina 29401, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim and Third-Party

Complaint within the time aforesaid, judgment by default will be rendered against you, and the Defendants/Third-Party Plaintiffs, Mariner's Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC, in this action, will apply to the Court for the relief demanded.

LUZURIAGA MIMS, LLP

By: *s/ Kevin W. Mims*
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And

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By: *s/ G. Hamlin O'Kelley, III*
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Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina
July 17, 2020

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
)	
Plaintiffs,)	**ANSWER OF DEFENDANTS AND THIRD PARTY PLAINTIFFS MARINERS CAY MARINA CONDO, LLC and MARINERS CAY FUEL DOCK, LLC TO THE PLAINTIFFS' FOURTH AMENDED COMPLAINT, COUNTERCLAIM, AND THIRD-PARTY COMPLAINT**
v.)	
)	
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, and South Atlantic Bank,)	**(JURY TRIAL DEMANDED)**
)	
Defendants,)	
)	
And)	
)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
Emerald McDonough Road Holdings, LLC,)	
)	
Third-Party Defendant.)	

TO: CAPERS G. BARR, IV, JR., ATTORNEY FOR THE PLAINTIFFS AND ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

The Defendants and Third Party Plaintiffs, Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, (sometimes collectively referenced herein as "Defendants" or "MCMC"), by and through their undersigned counsel, hereby set forth their Amended Answer to the

Plaintiffs' Fourth Amended Complaint as follows. Additionally, Defendants, Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, set forth their Counterclaims and Third-Party Complaint as follows:

1. Each and every allegation of the Plaintiffs' Fourth Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.

2. The Defendants are not required to answer the allegations of Paragraphs 1 and 2 of the Plaintiffs' Fourth Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 1 and 2 of the Plaintiffs' Fourth Amended Complaint, the Defendants deny same and demand strict proof thereof.

3. In response to Paragraph 3 of the Plaintiffs' Fourth Amended Complaint, Defendants crave reference to the recorded deeds describing the subject property and deny all allegations that are inconsistent therewith, including any subparts.

4. The Defendants admit the allegations of Paragraphs 4 of the Plaintiffs' Fourth Amended Complaint.

5. The Defendants admit only so much of Paragraph 5 of the Plaintiffs' Fourth Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the Register of Deeds, cited as the RMC Office, for Charleston County. The Defendants are not required to answer the remaining allegations of Paragraph 5 of the Plaintiffs' Fourth Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 5 of the Plaintiffs' Fourth Amended Complaint, the Defendants deny same and demand strict proof thereof.

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6. The Defendants deny the allegations of Paragraph 6 of the Plaintiffs' Fourth Amended Complaint and demand strict proof thereof.

7. The Defendants admit the allegations of Paragraphs 7, 8, 9, 10, and 11 of the Plaintiffs' Fourth Amended Complaint.

8. The Defendants denies the allegations of Paragraph 12, 13, 14, 15, 16, 17 and 18 of the Plaintiffs' Fourth Amended Complaint.

9. Upon information and belief, Paragraph 19 of Plaintiffs' Fourth Amended Complaint is admitted.

10. The Defendants deny the allegations of Paragraphs 20, 21, 22 and 23 of the Plaintiffs' Fourth Amended Complaint and demands strict proof thereof.

11. The Defendants are not required to answer the allegations of Paragraphs 24 and 25 of the Plaintiffs' Fourth Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 24 and 25 of the Plaintiffs' Fourth Amended Complaint, the Defendants deny same and demand strict proof thereof.

12. In response to paragraph 26 of Plaintiffs' Fourth Amended Complaint, Defendants adopt their answers as set forth above in paragraphs 1 through 12, inclusive, as if stated herein verbatim.

13. The Defendants deny the allegations of Paragraphs 27, 28, 29, 30, 31, 32, 33, 34 and 35 of the Plaintiffs' Fourth Amended Complaint, including all subparts.

14. In response to paragraph 36 of Plaintiffs' Fourth Amended Complaint, Defendants adopt their answers as set forth above in paragraphs 1 through 14, inclusive, as if stated herein verbatim.

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15. The Defendants admit the allegations of Paragraph 37 of the Plaintiffs' Fourth Amended Complaint.

16. The Defendants deny the allegations of paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47 of Plaintiffs' Fourth Amended Complaint and demands strict proof thereof.

17. In response to paragraph 48 of Plaintiffs' Fourth Amended Complaint, Defendants adopt their answers as set forth above in paragraphs 1 through 17, inclusive, as if stated herein verbatim.

18. The Defendants deny the allegations of Paragraphs 49, 50, 51, 52, 53 and 54 of the Plaintiffs' Fourth Amended Complaint and demand strict proof thereof.

19. The Wherefore Paragraph of Plaintiffs' Fourth Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

20. The Defendants would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

21. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

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FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

22. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

23. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

24. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

25. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF A SEVENTH AFFIRMATIVE DEFENSE

26. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

FOR A FURTHER ANSWER
AND BY WAY OF AN EIGHTH AFFIRMATIVE DEFENSE

27. Defendants deny that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

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FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

28. One or more causes of action of Plaintiffs' Fourth Amended Complaint fails to state any claim upon which relief can be granted as to the Defendants, and Plaintiffs' claims should, therefore, be dismissed pursuant to *Rule 12(b)(6)*, *SCRCP.*

FOR A FURTHER ANSWER
AND BY WAY OF A TENTH AFFIRMATIVE DEFENSE

29. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A FURTHER ANSWER
AND BY WAY OF AN EVELENTH AFFIRMATIVE DEFENSE

30. Plaintiffs' claims are barred, in whole or in part, by the doctrine of judicial estoppel. In paragraph 2 of its Answer in *2013-CP-10-0850*, a foreclosure case involving the subject property, Plaintiffs admitted the fact that the subject property holds an interest in the common elements. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. *Colleton Reg. Hosp. v. MRS Med. Rev. Systs., 866 F.Supp. 896 (D.S.C. 1994)*. "When a party has formally asserted a certain version of facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E. 2d 472 (1997)*.

FOR A FURTHER ANSWER
AND BY WAY OF A TWELFTH AFFIRMATIVE DEFENSE
AND BY WAY OF A COUNTERCLAIM and THIRD-PARTY COMPLAINT,
MARINERS CAY MARINA CONDO, LLC, and MARINERS CAY FUEL DOCK, LLC,
("Defendants") ALLEGE AND SHOW AS FOLLOWS

31. The Defendants repeat and reallege the Paragraphs 1 through 30 above as though repeated herein verbatim.

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32. The Defendants are South Carolina limited liability companies which own the Subject Property as more fully set forth in the Plaintiffs' Fourth Amended Complaint.

33. The Plaintiff Elizabeth Heatley is an owner of property at Mariner's Cay and a resident of Charleston County.

34. The Plaintiff Dan G. Nekola is an owner of property at Mariner's Cay and a resident of Charleston County.

35. The Counterclaim Defendant Mariner's Cay Marina Council of Co-Owners, Inc., is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina, which serves as the owner's association for Mariner's Cay Marina.

36. The Third-Party Defendant Emerald McDonough Road Holdings, LLC, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, which deeded the Subject Property more fully described in the Plaintiffs' Complaint to the Defendants.

37. On May 19, 2016, the Third-Party Defendant Emerald McDonough Road Holdings, LLC, conveyed the Subject Property in the Mariner's Cay Marina Horizontal Property Regime to the Defendants by those deeds recorded in Book 0555 at Page 946 and in Book 0556 at Page 511 in the Office of the RMC for Charleston County on May 25, 2016.

38. The Defendants paid a total of Two Hundred Fifty Thousand ($250,000.00) Dollars to Emerald McDonough Road Holdings, LLC, as consideration for the purchase of the Subject Property.

39. At the time of the conveyance, Emerald McDonough Road Holdings, LLC, conveyed all right, title, and interest in the Subject Property to the Defendants representing in its

deeds, and through the warranties of title, that it had all right, title, and interest in the Subject Property conveyed to the Defendants.

40. Mariner's Cay Marina Council of Co-Owners, Inc., acting by and through its then President, Michael Sutton, held a meeting on May 21, 2016, a day after the Defendants closed on the Subject Property.

41. At that meeting, the Defendants offered Unit 1-A, the lower level of the Ship Store, for sale, along with C-21, C-22, and all associated tanks and pumps.

42. At that same meeting, the members of the Mariner's Cay Marina Council of Co-Owners, Inc., elected Laurie Hull to be their President.

43. The Defendants and the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., including their new President, agreed to meet on June 21, 2016, to discuss the potential sale of Unit 1-A by the Defendants.

44. From the time of the meeting on May 21, 2016, the Defendants and Ms. Hull exchanged numerous telephone calls about the sale of the Unit 1-A and the docks.

45. Acting through its President, the Mariner's Cay Marina Council of Co-Owners, Inc., negotiated with the Defendants, acknowledging that the Defendants owned the Subject Property.

46. At no time did the Mariner's Cay Marina Council of Co-Owners, Inc., dispute the ownership of the Subject Property by the Defendants until this litigation commenced.

47. During negotiations with Mariner's Cay Marina Council of Co-Owners, Inc, and as a show of good faith, the Defendants allowed owners of Units at the Marina to use Unit 1-A from May 21, 2016, through October, 2016.

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48. Neither the Mariner's Cay Marina Council of Co-Owners, Inc., nor its members paid any rent or fees to the Defendants for use of Unit 1-A .

49. On June 29, 2016, Ms. Hull, as the President of the Mariner's Cay Marina Council of Co-Owners, Inc., delivered an offer to purchase the following Units and dock slips from the Defendants:

a. Unit 1-A, Charleston County TMS No. 328-00-00-544;

b. Dock Unit C-21, all tanks, and pumps;

c. Dock Unit C-22, all tanks, and pumps.

50. The offer from the Mariner's Cay Marina Council of Co-Owners, Inc., by and through Ms. Hull was for Eighty Thousand and No/100 ($80,000.00) Dollars.

51. The Defendants submitted a counter-offer on June 30, 2016, and negotiations continued thereafter.

52. On August 11, 2016, the Mariner's Cay Marina Council of Co-Owners, Inc., board met to discuss the counteroffers made by the Defendants.

53. From August, 2016, through December, 2016, there were numerous communications by and between the Mariner's Cay Marina Council of Co-Owners, Inc., and the Defendants about purchasing various portions of the Subject Property.

54. During this time, the Defendants made repairs to the Subject Property which had been neglected and should have been maintained by the Mariner's Cay Marina Council of Co-Owners, Inc.

55. The Defendants conferred direct benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., in form of repairs made and in use of the Units owned by the Defendants.

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56. The Defendants also restored electrical power and water service to the docks without being paid by the Mariner's Cay Marina Council of Co-Owners, Inc.

57. On November 10, 2016, the Defendants met with the Board of the Mariner's Cay Marina Council of Co-Owners, Inc.

58. At that meeting, the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., advised that Tom Bessett was the new President; Ms. Hull did not attend the meeting.

59. The Board offered the Defendants One Hundred Forty Thousand ($140,000.00) Dollars to purchase Unit 1-A from the Defendants as well as offering Twenty Thousand and No/100 ($20,000.00) Dollars for one dock Unit and asked to trade the other dock Unit for a Unit owned by the Mariner's Cay Marina Council of Co-Owners, Inc.

60. Discussions followed between the Defendants and the Board members after which the Defendant requested that the Board put these offers in writing to the Defendants.

61. On November 13, 2016, the Defendants once again requested that the Board of the Mariner's Cay Marina Council of Co-Owners, Inc., put any offer in writing.

62. On December 6, 2016, the Defendants received another written offer, which they did not accept.

63. From December 2016 until the present litigation was filed, the Defendants attempted to negotiate sales and potential uses of Unit 1-A, all while both the Defendants and the Mariner's Cay Marina Council of Co-Owners, Inc., acknowledged the Defendants' ownership of the Subject Property.

64. On May 21, 2017, the Mariner's Cay Marina Council of Co-Owners, Inc., held its annual meeting.

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65. At that meeting, the Defendants, by and through their attorney, offered to sell the dock Units to the Mariner's Cay Marina Council of Co-Owners, Inc., for their appraised value and to donate bathrooms at Unit 1-A to the Mariner's Cay Marina Council of Co-Owners, Inc., for their use.

66. At that meeting, the attorney for the Defendants presented new drawings for an updated design.

67. The Defendants also offered to build, at their own expense, a new access to the bathrooms at Unit 1-A and a new office space for the dock master.

68. Nothing came of those offers, and this lawsuit followed.

FOR A FIRST CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Unjust Enrichment)

69. The Defendants repeats and reallege Paragraphs 1 through 68 above as though repeated herein verbatim.

70. The Defendants supplied benefits to the Mariner's Cay Marina Council of Co-Owners, Inc., as set forth more fully above and for which benefits the Defendants have not been paid.

71. It would be unjust for the Mariner's Cay Marina Council of Co-Owners, Inc., to retain the benefit of the use of the Defendants' property, the benefit of the repairs made in favor of the Mariner's Cay Marina Council of Co-Owners, Inc., and other benefits provided without payment from Mariner's Cay Marina Council of Co-Owners, Inc. This benefit also includes the dock master's use of the Subject Property without paying rent from May 21, 2016, to October, 2016.

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72. As a direct result of this unjust enrichment, the Defendants are entitled to actual damages in amounts to be proven at the trial of this case

FOR A SECOND CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc., and Emerald McDonough Road Holdings, LLC)
(Indemnification – Equitable, Legal, and Contractual)

73. The Defendants repeats and reallege Paragraphs 1 through 72 above as though repeated herein verbatim.

74. The Defendants have been made a party to this litigation by the individually named Plaintiffs, allegedly on behalf of themselves and the members of the Mariner's Cay Marina Council of Co-Owners, Inc.

75. The Defendants are subject to this lawsuit having obtained title from the deeds from Emerald McDonough Road Holdings, LLC, conveying all right, title and interest in the Subject Property to the Defendants and by virtue of the inaction of the Mariner's Cay Marina Council of Co-Owners, Inc.

76. As a direct and proximate result of the acts and omissions of the Third-Party Defendants, the Defendants have become subject to this litigation, and, accordingly, Defendants should be indemnified by the Third-Party Defendants, including equitable indemnification, legal indemnification, and contractual indemnification should the Plaintiffs prevail in this action.

FOR A THIRD CAUSE OF ACTION
(As to Emerald McDonough Road Holdings, LLC)
(Breach of Contract)

77. The Defendants repeat and reallege Paragraphs 1 through 76 above as though repeated herein verbatim.

78. The Defendants entered into valid and enforceable contracts with Emerald McDonough Road Holdings, LLC.

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79. The Defendants relied upon Emerald McDonough Road Holdings, LLC, to provide good, marketable title to the Subject Property, free and clear of all liens, encumbrances, and claims.

80. The Defendants are subject to the Plaintiffs' claims, none of which are admitted, and, should those claims be successful, Emerald McDonough Road Holdings, LLC, will have violated and breached their deed warranties and contracts, without legal excuse.

81. As a direct and proximate result of the breach of contract by Emerald McDonough Road Holdings, LLC, the Defendants have incurred and will continue to incur damages in amounts to be proven at the trial of this case.

FOR A FOURTH CAUSE OF ACTION
(As to Mariner's Cay Marina Council of Co-Owners, Inc.)
(Nuisance)

82. The Defendants repeat and reallege Paragraphs 1 through 81 above as though repeated herein verbatim.

83. The Mariner's Cay Marina Council of Co-Owners, Inc., has allowed its members, Unit owners, guests, invitees, and licensees to use the bathrooms located on the Plaintiffs' property at all hours of the day and night.

84. Such usage constitutes a nuisance as it has interfered with the Defendants' quiet enjoyment of their property.

85. As a direct and proximate result of the nuisance created by Mariner's Cay Marina Council of Co-Owners, Inc., the Defendants have suffered damages in amounts to be proven at the trial of this case.

FOR A FIFTH CAUSE OF ACTION
(As to the Plaintiffs Mariner's Cay Marina Council of Co-Owners, Inc., and the Plaintiffs Alben and Nekola)
(Civil Conspiracy)

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86. The Defendants repeat and reallege Paragraphs 1 through 85 above as though repeated herein verbatim.

87. The Plaintiffs in a combination of two or more persons, did conspire with each other to case injury to the Defendants in a way which is improper and unjustified, which has resulted in special damages to the Defendants, in attempting to deny the Defendants' ownership of the Subject Property and to stop their use of the Subject Property.

88. These special damages include, but are not limited to, the following:

a. Loss of income for the rental of the docks owned by the Defendants;

b. Loss of potential rentals of the Subject Property;

c. Loss of potential sales of the Subject Property;

d. Loss of rental of the boats owned by the Defendants at the Subject Property

89. As a direct and proximate result of the conspiracy by and between the Plaintiffs, the Defendants have suffered special damages in amounts to be proven at the trial of this case.

WHEREFORE, having fully answered the Plaintiffs' Fourth Amended Complaint, the Defendants pray that this Court enter its judgment and order as follows:

a. Dismissing the Plaintiffs' Fourth Amended Complaint;

b. Awarding the Defendants' actual damages, attorney fees and costs in amounts to be proven at the trial of this case; and

c. Award the Defendants' special damages in amounts to be proven at the trial of this case; and

d. Granting any and all such further relief as this Court deems just and proper.

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LUZURIAGA MIMS, LLP

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Attorneys for the Defendant/Third-Party Plaintiff Mariners Cay Marina Condo, LLC

And

BUIST BYARS & TAYLOR, LLC

By: *s/G. Hamlin O'Kelley, III*
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Attorneys for the Defendant/Third-Party Plaintiffs Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC

Charleston, South Carolina

July 17, 2020

ELECTRONICALLY FILED - 2020 Jul 17 9:27 AM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

NINTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS
Civil Action No.: **2017-CP-10-3099**

Alben D. Neighbors and Dan G. Nekola, on behalf of themselves and others similarly situated, and Mariner's Cay Marina Council of Co-Owners, Inc.,

Plaintiffs,

v.

Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank

Defendant,

and

Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,

Third-Party Plaintiffs,

v.

Emerald McDonough Road Holdings, LLC,

Third-Party Defendant.

ANSWER OF THE DEFENDANT SOUTH ATLANTIC BANK TO THE PLAINTIFFS' FOURTH AMENDED COMPLAINT

TO: CAPERS G. BARR, IV, JR., ESQ.
BARR UNGER & McINTOSH, LLC
ATTORNEY FOR THE PLAINTIFFS and THIRD-PARTY DEFENDANT

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The Defendant South Atlantic Bank, ("Defendant"), by and through its undersigned counsel, hereby sets forth its Answer to the Plaintiffs' Fourth Amended Complaint as follows:

1. Each and every allegation of the Plaintiffs' Fourth Amended Complaint not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendant demands strict proof thereof.

2. The Defendant is not required to answer the allegations of Paragraphs 1 and 2 of the Plaintiffs' Fourth Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 1 and 2 of the Plaintiffs' Fourth Amended Complaint, the Defendant denies same and demand strict proof thereof.

3. In response to Paragraph 3 of the Plaintiffs' Fourth Amended Complaint, Defendant craves reference to the recorded deeds describing the subject property and deny all allegations that are inconsistent therewith, including any subparts.

4. The Defendant admits the allegations of Paragraphs 4 of the Plaintiffs' Fourth Amended Complaint.

5. The Defendant admits only so much of Paragraph 5 of the Plaintiffs' Fourth Amended Complaint that purports to quote from that certain Master Deed referenced therein as recorded in the Office of the RMC for Charleston County. The Defendant is not required to answer the remaining allegations of Paragraph 5 of the Plaintiffs' Fourth Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the remaining allegations of Paragraph 5 of the Plaintiffs' Fourth Amended Complaint, the Defendant denies same and demand strict proof thereof.

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6. The Defendant denies the allegations of Paragraph 6 of the Plaintiffs' Fourth Amended Complaint and demand strict proof thereof.

7. The Defendant admits the allegations of Paragraphs 7, 8, 9 and 10 of the Plaintiffs' Fourth Amended Complaint.

8. The Defendant admits the allegations of Paragraphs 11 of the Plaintiffs' Fourth Amended Complaint and demands strict proof thereof.

9. The Defendant denies the allegations of Paragraph 12, 13, 14, 15, 16, 17 and 18 of the Plaintiffs' Fourth Amended Complaint.

10. Upon information and belief, Paragraph 19 of Plaintiffs' Fourth Amended Complaint is admitted.

11. The Defendant denies the allegations of Paragraphs 20, 21, 22 and 23 of the Plaintiffs' Fourth Amended Complaint and demands strict proof thereof.

12. The Defendant is not required to answer the allegations of Paragraphs 24 and 25 of the Plaintiffs' Fourth Amended Complaint as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraphs 24 and 25 of the Plaintiffs' Fourth Amended Complaint, the Defendant denies same and demand strict proof thereof.

13. In response to paragraph 26 of Plaintiffs' Fourth Amended Complaint, Defendant adopts its answers as set forth above in paragraphs 1 through 12, inclusive, as if stated herein verbatim.

14. The Defendant denies the allegations of Paragraphs 2 27, 28, 29, 30, 31, 32, 33, 34 and 35 of the Plaintiffs' Fourth Amended Complaint, including all subparts.

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15. In response to paragraph 36 of Plaintiffs' Fourth Amended Complaint, Defendant adopts its answers as set forth above in paragraphs 1 through 14, inclusive, as if stated herein verbatim.

16. The Defendant admits the allegations of Paragraph 37 of the Plaintiffs' Fourth Amended Complaint.

17. The Defendant denies the allegations of paragraphs 38, 39, 40, 41, 42, 43, 44, 45, 46 and 47 of Plaintiffs' Fourth Amended Complaint and demands strict proof thereof.

18. In response to paragraph 48 of Plaintiffs' Fourth Amended Complaint, Defendant adopts its answers as set forth above in paragraphs 1 through 17, inclusive, as if stated herein verbatim.

19. The Defendant denies the allegations of Paragraphs 49, 50, 51, 52, 53 and 54 of the Plaintiffs' Fourth Amended Complaint and demand strict proof thereof.

20. The Wherefore Paragraph of Plaintiffs' Fourth Amended Complaint is denied, including all subparts.

FOR A FURTHER ANSWER
AND BY WAY OF A FIRST AFFIRMATIVE DEFENSE

21. The Defendant would allege and show that the Plaintiffs' claims, if any, are barred by the doctrines of waiver, estoppel, laches and/or unclean hands because, among other things, the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A SECOND AFFIRMATIVE DEFENSE

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22. Plaintiffs have not joined all necessary parties claiming and interesting in the property or named the Declarants of the Master Deed or Amended Master Deed or the Plaintiffs' predecessors in title so that all parties needed for the just adjudication of this matter are not included in this litigation, and, accordingly, the Plaintiffs' claims are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A THIRD AFFIRMATIVE DEFENSE

23. Some or all of Plaintiffs' claims are barred by the doctrine of estoppel by deed and/or because Defendant(s) were bona fide purchasers for value without notice.

FOR A FURTHER ANSWER
AND BY WAY OF A FOURTH AFFIRMATIVE DEFENSE

24. Some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or laches, because, among other things, as the Plaintiffs had actual knowledge of the restated Master Deed from the time it was recorded and attempted to purchase the Plaintiffs' property from May 2016 until this litigation was commenced, so that the Plaintiffs' claims, if any, are barred.

FOR A FURTHER ANSWER
AND BY WAY OF A FIFTH AFFIRMATIVE DEFENSE

25. Plaintiffs' claims are barred because of a lack of justiciable controversy and/or a lack of standing.

FOR A FURTHER ANSWER
AND BY WAY OF A SIXTH AFFIRMATIVE DEFENSE

26. Some or all of Plaintiffs' claims may be barred by the doctrine of ratification.

FOR A FURTHER ANSWER
AND BY WAY OF AN SEVENTH AFFIRMATIVE DEFENSE

27. Some or all of Plaintiffs' claims may be barred by foreclosure, collateral estoppel and/or res judicata.

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FOR A FURTHER ANSWER
AND BY WAY OF A EIGHTH AFFIRMATIVE DEFENSE

28. The Defendant denies that Plaintiffs are entitled to any relief, and assert that any claim for damages is barred by the doctrine of mistake or justification.

FOR A FURTHER ANSWER
AND BY WAY OF A NINTH AFFIRMATIVE DEFENSE

29. One or more causes of action of Plaintiffs' Second Amended Complaint fails to state any claim upon which relief can be granted as to the Defendant, and Plaintiffs' claims should, therefore, be dismissed pursuant to Rule 12(b)(6), *SCRCP*.

FOR A FURTHER ANSWER
AND BY WAY OF AN TENTH AFFIRMATIVE DEFENSE

30. Any recovery by Plaintiffs must be reduced or offset by amounts Plaintiffs have received or will recover from others for the same injuries and/or damages claimed in this suit.

FOR A FURTHER ANSWER
AND BY WAY OF AN ELEVENTH AFFIRMATIVE DEFENSE

31. Plaintiffs' claims are barred, in whole or in part, by the doctrine of judicial estoppel. In paragraph 2 of its Answer in *2013-CP-10-0850*, a foreclosure case involving the subject property, Plaintiffs admitted the fact that the subject property holds an interest in the common elements. "Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation. *Colleton Reg. Hosp. v. MRS Med. Rev. Systs., 866 F.Supp. 896 (D.S.C. 1994)*. "When a party has formally asserted a certain version of facts in litigation, he cannot later change those facts when the initial version no longer suits him." *Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E. 2d 472 (1997)*.

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WHEREFORE, having fully answered the Plaintiffs' Complaint, the Defendant pray that this Court enter its judgment and order as follows:

a. Dismissing the Plaintiffs' Complaint;

b. Awarding the Defendant attorney fees; and

c. Granting any and all such further relief as this Court deems just and proper.

Mt. Pleasant, South Carolina
July 17, 2020

BUIST, BYARS & TAYLOR, LLC

s/ G. Hamlin O'Kelley, III
G. Hamlin O'Kelley, III, SC Bar #15491
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Attorney for the Defendant South Atlantic Bank

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Healtey, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, vs. Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr. and South Atlantic Bank, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2017-CP-10-03099 **PLAINTIFFS' REPLY TO COUNTERCLAIM OF MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC ASSERTED IN THEIR ANSWER TO THE PLAINTIFFS' FOURTH AMENDED COMPLAINT, COUNTERCLAIM AND THIRD-PARTY COMPLAINT FILED JULY 17, 2020** **(Jury Trial Demanded)**
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third-Party Plaintiffs, vs. Emerald McDonough Road Holdings, LLC, Third-Party Defendant.	

The Plaintiffs' Reply to the Counterclaim of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (hereinafter "Defendants") and respond to the allegations as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Answer, Counterclaim and Third Party Complaint which is not hereinafter specifically admitted, qualified or explained is denied and strict proof is demanded thereof.

2. No response is required for Paragraphs 1 through 31 of the Answer,

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Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

3. In response to Paragraph 32 of the Counterclaim, Plaintiff has asserted this suit to establish the ownership rights of the parties. The remaining allegations of Paragraph 32 are denied and strict proof is demanded thereof.

4. Plaintiffs admit Paragraph 33 of the Counterclaim.

5. In response to Paragraph 34 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Dan Nekola is an owner of property at Mariner's Cay but deny that he is a resident of Charleston County. The remaining allegations of Paragraph 34 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

6. Plaintiffs admit Paragraph 35 of the Answer, Counterclaim and Third Party Complaint.

7. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 36 of the Answer, Counterclaim and Third Party Complaint and therefore denies the same and demands strict proof thereof.

8. Plaintiffs deny Paragraph 37 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

9. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 38 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

10. In response to Paragraph 39 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs deny that there was any interest to be conveyed and therefore

deny that paragraph.

11. In response to Paragraph 40 of the Answer, Counterclaim and Third Party Complaint, it is admitted that an annual meeting was held on May 21, 2016. The remaining allegations of Paragraph 40 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

12. In response to Paragraph 41 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Defendants offered to sell some interest in some property. The remaining allegations of Paragraph 41 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

13. Plaintiffs deny Paragraph 42 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

14. Paragraph 43 of the Answer, Counterclaim and Third Party Complaint is admitted.

15. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 44 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

16. Plaintiffs deny Paragraph 45 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

17. Plaintiffs object and move to strike Paragraph 46 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, Plaintiffs deny Paragraph 46 of the Answer, Counterclaim and Third Party Complaint.

18. Plaintiffs deny Paragraph 47 of the Answer, Counterclaim and Third Party

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Complaint and demand strict proof thereof.

19. In response to Paragraph 48 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that no rents were due or paid to the Defendants. The remaining allegations of Paragraph 48 of the Answer, Counterclaim and Third Party Complaint are denied and strict proof is demanded thereof.

20. In response to Paragraph 49 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that an offer was made and crave reference to the referenced documents. Plaintiffs deny any allegations which are inconsistent with the referenced documents.

21. In response to Paragraph 50 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs crave reference to the referenced documents. The remaining allegations are denied and strict proof is demanded thereof.

22. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraphs 51 and 52 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

23. Plaintiffs and move to strike Paragraph 53 of the Answer, Counterclaim and Third Party Complaint on the basis that it is vague and ambiguous. Further, that paragraph is denied.

24. Plaintiffs deny Paragraph 54 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

25. Plaintiffs deny Paragraph 55 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

26. Plaintiffs lack sufficient information to form a belief as to the allegations of

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Paragraph 56 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

27. Plaintiffs admit Paragraph 57 of the Answer, Counterclaim and Third Party Complaint.

28. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 58 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

29. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 59 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

30. In response to Paragraph 60 and 61 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit requests were made for offers to be made in writing. Plaintiffs deny the remaining allegations and demand strict proof thereof.

31. Plaintiffs lack sufficient information to form a belief as to the allegations of Paragraph 62 of the Answer, Counterclaim and Third Party Complaint and therefore deny the same and demand strict proof thereof.

32. In response to Paragraph 63 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that the Defendants and the Plaintiff Mariners Cay Marina Council of Co-Owners, Inc. attempted to negotiate. The remaining allegations of Paragraph 62 are denied and strict proof is demanded thereof.

33. In response to Paragraph 64 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs believe the meeting was held on May 20, 2017. The remaining allegations of Paragraph 63 are denied and strict proof is demanded thereof.

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34. Plaintiffs deny Paragraph 65 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

35. In response to Paragraph 66 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit drawings were presented at some point. The remaining allegations of Paragraph 66 are denied and strict is demanded thereof.

36. In response to Paragraph 67 of the Answer, Counterclaim and Third Party Complaint, Plaintiffs admit that Plaintiffs offered to make modifications at some point. The remaining allegations of Paragraph 67 are denied and strict proof is demanded thereof.

37. Plaintiffs admit Paragraph 68 of the Answer, Counterclaim and Third Party Complaint.

AS TO THE FIRST CAUSE OF ACTION
(Unjust Enrichment)

38. No response is required to Paragraph 69 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

39. Plaintiffs deny Paragraph 70 through 72 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Indemnification-Equitable, Legal and Contractual)

40. No response is required to Paragraph 73 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

41. Paragraph 74 through 76 of the Answer, Counterclaim and Third Party

Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

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

42. No response is required to Paragraph 77 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

43. Paragraph 78 through 81 of the Answer, Counterclaim and Third Party Complaint do not appear to contain any allegations as to these Plaintiffs. To the extent they do include any allegations as to these Plaintiffs, the same are denied and strict proof is demanded thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Nuisance)

44. No response is required to Paragraph 82 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

45. Plaintiffs deny Paragraph 83 through 85 of the Answer, Counterclaim and Third Party Complaint and demand strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Civil Conspiracy)

46. No response is required to Paragraph 86 of the Answer, Counterclaim and Third Party Complaint. To the extent that any response is required, the same is denied and strict proof is demanded thereof.

47. Plaintiffs deny Paragraph 87 through 89 of the Answer, Counterclaim and

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Third Party Complaint and demand strict proof thereof.

FOR A SECOND DEFENSE

48. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

49. The claim of Defendants fail to state facts sufficient to constitute a cause of action and should be dismissed pursuant to the provisions of SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE

50. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

51. That to the extent that any acts or omissions of Plaintiffs caused any injury or damage to Defendants, which is denied, Plaintiffs come to the Court with unclean hands and such inequitable conduct on the part of Defendants constitutes a bar and complete defense to any claim for equitable relief.

FOR A FOURTH DEFENSE

52. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

53. Defendants' claim is barred due to Defendants' consent.

FOR A FIFTH DEFENSE

54. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

55. That Defendants by actions, conduct, words or silence which amount to a representation or other concealment of material facts, have caused Plaintiffs to alter their position to their prejudice or injury and should therefore be estopped from bringing

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the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

FOR A SIXTH DEFENSE

56. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

57. Defendants' claim is barred by Defendants' own negligence. In the event the alleged negligence of the Plaintiffs operated as a fifty (50%) percent or greater proximate cause of the damages, which is expressly denied and admitted solely for the purpose of this defense, Plaintiffs are entitled to a reduction of any amount awarded to Defendants in an amount equal to that percentage of their negligence, recklessness and carelessness.

FOR A SEVENTH DEFENSE

58. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

59. That the injury or damage sustained by the Defendants, if any, was due to, caused by and was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of Defendants or of others over whom Plaintiffs had no control and such constitutes a complete defense to any claims for negligence

FOR AN EIGHTH DEFENSE

60. The allegations contained in the preceding paragraphs are incorporated herein as if fully repeated verbatim.

61. The Defendants have not pled, and cannot prove, any acts taken in furtherance of the alleged conspiracy, nor can the Defendants identify or prove

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damages which arise solely from the alleged conspiracy. As such, the Defendants' civil conspiracy claim must be dismissed.

FOR NINTH DEFENSE
(Violation of Constitutional Guarantees)

62. That the Plaintiffs, to the extent that THEY seeks punitive or exemplary damages, if any, are in violation of the rights of the Defendants under the United States Constitution and the Constitution of the State of South Carolina and, therefore, fails to state a cause of action upon which either punitive or exemplary damages may be awarded.

FOR A TENTH DEFENSE
(Bifurcation/Punitive Damages)

63. To the extent that punitive damages are claimed, this Party reserves its right to request a bifurcated jury trial and to request the Court limit any award of punitive damages which the jury may make in accordance with the provisions and caps on punitive damages provided by SC Code Ann. §15-32-530 and as further limited by the Constitution of the United States.

WHEREFORE, having fully answered the Counterclaim of the Defendant, this Party prays for a trial by jury and that the Defendants' Counterclaim be dismissed, together with the costs and disbursements of this action and for such other and further relief as this Court may deem just and proper.

*****SIGNATURE ON FOLLOWING PAGE*****

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s/ Capers G. Barr, III

_____

Capers G. Barr, III
SC Bar No.: 542
Capers G. Barr, IV
Bar No.: 65075
Barr, Unger McIntosh, LLC
11 Broad Street
Charleston, South Carolina
Attorney for Plaintiffs

s/ David C. Cleveland

_____

David C. Cleveland
CLAWSON and STAUBES, LLC
Bar No.: 13005
126 Seven Farms Drive, Suite 200
Charleston, South Carolina 29492-8144
Phone: (843) 577-2026
Fax: (843) 722-2867
Email: dcleveland@clawsonandstaubes.com
Attorney for Mariner's Cay Marina Council of Co-Owners, Inc. (Defending Counterclaim only)

Charleston, South Carolina
August 5, 2020

ELECTRONICALLY FILED - 2020 Aug 14 2:30 PM - CHARLESTON - COMMON PLEAS - CASE#2017CP1003099

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	CASE NO.: 2017-CP-10-3099
COUNTY OF CHARLESTON)	
)	
Elizabeth Heatley, Neal B. McCann, Jr.,)	
David Neil Monk, Thomas V. Bessent,)	
and Mariner's Cay Marina Council of)	
Co-Owners, Inc.,)	
)	SUMMONS
Plaintiffs,)	
)	
v.)	
)	
Mariners Cay Marina Condo, LLC,)	
and Mariners Cay Fuel Dock, LLC,)	
George A. Farmer, Jr., and)	
South Atlantic Bank)	
)	
Defendants.)	
)	
and)	
)	
Mariners Cay Marina Condo, LLC)	
and Mariners Cay Fuel Dock, LLC)	
)	
Third-Party Plaintiffs)	
)	
vs.)	
)	
Emerald McDonough Road Holdings, LLC)	
)	
Third-Party Defendant.)	
_____)	

TO: G. HAMLIN O'KELLEY, III, ATTORNEY FOR THIRD-PARTY PLAINTIFFS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC AND KEVIN W. MIMS & WHIDBEE S. PERRIN, ATTORNEYS FOR THIRD-PARTY PLAINTIFF MARINERS CAY MARINA CONDO, LLC

YOU ARE HEREBY SUMMONED and required to answer the Counterclaim of the Third Party Defendant Emerald McDonough Road Holdings, LLC, in this action, a copy of

which is herewith served upon you, and to serve a copy of your Answer upon the undersigned counsel at 1221 Main Street, 14th Floor, Columbia, South Carolina, 29201, within thirty (30) days from service hereof, exclusive of the day of such service; and, if you fail to answer the Counterclaim within the time aforesaid, judgment by default will be rendered against you, and the Third Party Defendant, Emerald McDonough Road Holdings, LLC will apply to the Court for the relief demanded.

s/Andrew William Montgomery
Andrew W. Montgomery (SC Bar # 79893)
ROGERS TOWNSEND & THOMAS, PC
1221 Main Street, 14th Floor (29201)
Post Office Box 100200
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(803) 744-5331 Tel
(803) 343-7017 Fax
Andrew.montgomery@rtt-law.com
Attorneys for Third-Party Defendant Emerald McDonough Road Holdings, LLC

August 14, 2020

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STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariner's Cay Marina Council of Co-Owners, Inc., Plaintiffs, v. Mariners Cay Marina Condo, LLC, and Mariners Cay Fuel Dock, LLC, George A. Farmer, Jr., and South Atlantic Bank Defendants. and Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC Third-Party Plaintiffs vs. Emerald McDonough Road Holdings, LLC Third-Party Defendant.	IN THE COURT OF COMMON PLEAS CASE NO.: 2017-CP-10-3099 THIRD PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC ANSWER TO THIRD PARTY COMPLAINT FILED July 20, 2020 AND COUNTERCLAIM OF THIRD PARTY DEFENDANT AGAINST MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC

Third-Party Defendant Emerald McDonough Road Holdings, LLC (hereinafter "Emerald"), responds to the Third-Party Complaint of Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC (collectively referred to hereinafter as "MCMC") filed July 17, 2020, and would respectfully show unto the Court as follows:

1. That each and every allegation contained in the Third-Party Complaint that is not specifically admitted or otherwise qualified is denied.

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FOR A FIRST DEFENSE

(Responses to Specific Allegations)

2. Paragraphs 1-30 of the Third-Party Complaint pertain to the answer of MCMC to the Plaintiffs' Fourth Amended Complaint. Paragraphs 1-30 are not directed toward the conduct and/or alleged wrongdoing of Emerald and therefore no response is required. To the extent an answer is warranted, all allegations are denied.

3. In response to paragraph 31, Emerald adopts it answer as set forth above in paragraphs 1-2, inclusive, as if stated herein verbatim.

4. Paragraph 32 is admitted.

5. Paragraphs 33 & 34 are admitted to the extent Elizabeth Heatley and Dan G. Nekola are listed as owners of record of property at Mariner's Cay. Dan G. Nekola is no longer listed as a Plaintiff in this action. Emerald lacks information to confirm Elizabeth Heatley and Dan G. Nekola are residents of Charleston County.

6. Paragraph 35 is admitted.

7. Paragraph 36 is admitted to the extent Emerald was organized by the filing of Articles of Organization with the State of South Carolina Secretary of State, and Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) [attached hereto as Exhibit A] and Book 0556 at Page 511[attached hereto as Exhibit B] in the Office of the RMC for Charleston County. All other allegations are denied.

8. Paragraph 37 is admitted to the extent Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

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9. Paragraph 38 is admitted to the extent $250,000.00 represented the combined purchase price for the Units comprising the subject property under the Purchase and Sale Agreements entered into between Emerald and MCMC. All other allegations are denied.

10. Paragraph 39 is admitted to the extent Emerald conveyed all of Emerald's right, title and interest in and to the Subject Property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

11. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 40-68, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

12. In response to Paragraph 69, Emerald adopts it answer as set forth above in paragraphs 1-11, inclusive, as if stated herein verbatim.

13. Paragraphs 70-72 are not directed toward the conduct and/or alleged wrongdoing of Emerald and therefore no response is required.

As to the Second Cause of Action

14. In response to Paragraph 73, Emerald adopts it answer as set forth above in paragraphs 1-13, inclusive, as if stated herein verbatim.

15. Paragraph 74 is admitted.

16. Paragraph 75 is admitted to the extent Emerald conveyed its interest in the subject property to MCMC by limited warranty deeds recorded in Book 0555 at Page 946 (subsequently re-recorded in Book 0648 at Page 603) and Book 0556 at Page 511 in the Office of the RMC for Charleston County. All other allegations are denied.

17. Paragraph 76 is denied.

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As to the Third Cause of Action

18. In response to Paragraph 77, Emerald adopts it answer as set forth above in paragraphs 1-17, inclusive, as if stated herein verbatim.

19. Emerald is not required to answer the allegations of Paragraph 78 as said allegations constitute legal conclusions. To the extent an answer is warranted as to the allegations of Paragraph 78, Emerald admits it entered into Purchase and Sale Agreements with MCMC where it was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald, that MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings and that MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property.

20. Paragraph 79 is denied.

21. Paragraph 80 is denied.

22. Paragraph 81 is denied.

As to the remainder of the Pleadings

23. In response to Paragraph 82, Emerald adopts it answer as set forth above in paragraphs 1-22, inclusive, as if stated herein verbatim.

24. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 83-85, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

25. In response to Paragraph 86, Emerald adopts it answer as set forth above in paragraphs 1-24, inclusive, as if stated herein verbatim.

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26. Emerald lacks sufficient information or knowledge enabling it to admit or deny the truthfulness or falsity of Paragraphs 87-89, as they pertain to the interactions between MCMC and the Council; therefore no response is required.

FOR A SECOND DEFENSE

(Failure to State a Claim)

27. MCMC's Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which the Court can grant relief, and one or more of Third-Party Plaintiff's claims should therefore be dismissed pursuant to Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

(Estoppel)

28. MCMC as Buyer and Emerald as Seller entered into Purchase and Sale Agreements for the sale of the Subject Property [attached hereto as Exhibits C & D, the phone numbers & emails of those who were not involved as attorneys having been redacted]. In those agreements MCMC specifically acknowledged and expressed understanding that Emerald acquired its interest in the Subject Property by foreclosure, deed in lieu of foreclosure, forfeiture of similar process. It was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald. MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings. MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property. MCMC was represented by an attorney of its choosing in MCMC's purchase of Emerald's interest in the subject property. On or about April 25, 2016 MCMC's

attorney issued an opinion letter to MCMC stating Emerald held marketable title to the Subject Property subject to matters revealed on the premises or of record.

MCMC's registered agent, George A. Farmer, Jr. is a defendant in this action and upon information and belief resides at the Subject Property. The Purchase and Sale Agreements identify George A. Farmer, Jr., principal of Buyer, as a real estate licensee under the law of South Carolina. The county records reflect that Mr. Farmer appears to own or has owned numerous additional properties including property or properties purchased from entities subsequent to those entities acquiring title following foreclosure actions, and therefore is aware of the risk associated with purchasing such properties.

MSMC is therefore estopped from asserting any claims as to indemnification or breach of contract resulting from an agreement and conditions MCMC willfully entered into.

FOR A FOURTH DEFENSE

(Ratification and Waiver)

29. MCMC was represented by an attorney during MCMC's closing involving the Subject Property. Emerald is not aware of any communication from MCMC or its attorney raising concerns as to the validity of the title to the property during the closing process. On or about April 25, 2016 MCMC's attorney issued an opinion letter to MCMC stating Emerald held marketable title to the Subject Property subject to matters revealed on the premises or of record. MCMC ratified the investigations of its attorney and waived its claim to bring this action, having failed to raise any issues during the Title Review period associated with the closing.

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FOR A FIFTH DEFENSE

(Laches)

30. To Emerald's knowledge, MCMC raised no issues with the validity of the title prior to this litigation. No issues were raised by MCMC or its attorney during the closing process, or during the year subsequent to the conveyances from Emerald to MCMC. MCMC's claims, if any, are barred by the doctrine of laches.

FOR A SIXTH DEFENSE

(Unclean Hands)

31. This action has arisen due to the strained relationship between MCMC and the Council. MCMC has in turn entangled Emerald in this action as a result of its own failure to peacefully co-exist with the Council. Prior to MCMC's taking possession of the subject property, there were no issues between the Council and Emerald and no issues raised by the Council regarding the title to the Subject Property. MCMC's actions in naming Emerald as a party in this action are in direct contradiction to the agreement entered into between MCMC and Emerald, and are the sole result of MCMC's own actions & relationship with the Council.

FOR A SEVENTH DEFENSE

(Failure to Join all Necessary Parties, Lack of Causation)

32. MCMC's claims should be barred as they have not joined all necessary parties to this action, having failed to name the Declarants of the Master Deed or Amended Master Deed, Emerald's predecessors in title or MCMC's closing attorney. Any issues regarding the validity of the title of the subject property were caused by the actions of Declarant amending the Master Deed or Emerald's predecessors in title. Any failure to properly advise MCMC regarding the

validity of a document of public record such as the Amended Master Deed was an omission of MCMC's closing attorney.

FOR AN EIGHTH DEFENSE

(Assumption of Risk, Special/Limited Warranty, Complete Performance)

33. MCMC & Emerald entered into an agreement whereby Emerald would convey its interest in the Subject Property by special warranty deed. The two most recent sets of conveyances prior to the conveyances to MCMC were by quit claim deeds and deeds of the Court following the foreclosure of the subject property. The issues raised by Plaintiff in this matter were caused by the actions of the Declarant in amending the Master Deed several years prior to the foreclosure and prior to Emerald receiving and conveying the subject property. Emerald made no warranties as to any issues arising from the actions of the Declarant or other prior owners of the Subject Property. MCMC contracted to purchase the property for less than the high bid at the July 7, 2015 Court sale following the Order of Judgment for Foreclosure and Sale entered in case 2013-CP-10-00850. MCMC assumed the risk of purchasing a property subsequent to a foreclosure. Emerald fully performed its obligations under the purchase and sale agreement.

FOR A NINTH DEFENSE

(Improper Notice of Breach)

34. Emerald denies any breach of contract, and any claims by MCMC as to indemnification. However, to the extent there was any breach by Emerald, MCMC did not properly notify Emerald of said breach prior to naming Emerald as a party in this action.

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FOR A TENTH DEFENSE

(Failure to Mitigate Damages)

35. MCMC has failed to mitigate any damages incurred as a result of its relationship with the Council.

FOR AN ELEVENTH DEFENSE

(Contrary to Public Policy)

36. MCMC's third party complaint would serve to preclude parties receiving a deed to a property pursuant to a foreclosure, deed in lieu of foreclosure, forfeiture or similar process from subsequently conveying the property without an undue burden being placed on such parties. MCMC's claims undermine the use of limited or special warranty deeds and disregard the assumption of risk by parties purchasing properties subsequent to a foreclosure or similar process. MCMC also seeks to penalize a seller in a real estate transaction based on questions regarding the validity of documents of public record and a buyer's lack of due diligence. The actions of MCMC are contrary to public policy.

FOR A TWELTH DEFENSE

(Right to Raise Additional Defenses)

37. Emerald reserves and does not waive any additional or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A THIRTEENTH DEFENSE AND BY WAY OF A FIRST COUNTERCLAIM AGAINST MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC

(Breach of Contract)

38. MCMC as Buyer and Emerald as Seller entered into Purchase and Sale Agreements for the sale of the Subject Property [attached hereto as Exhibits C & D]. In those

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agreements MCMC specifically acknowledged and expressed understanding that Emerald acquired its interest in the Subject Property by foreclosure, deed in lieu of foreclosure, forfeiture or similar process. It was agreed the Subject Property was being sold "as is", "where is" and without any warranty, guaranty or representation being made by Emerald. MCMC acknowledged the purchase was based solely on MCMC's independent inspections, investigations and findings. MCMC released Emerald from all claims, demands, causes of action, judgment, losses, damages, liabilities, costs and expenses related to any conditions affecting the Property. MCMC was represented by an attorney of its choosing in MCMC's purchase of Emerald's interest in the subject property.

MCMC's principal and registered agent is a real estate licensee and is familiar with the risks associated with purchasing a property following a foreclosure. This action has arisen due to the strained relationship of MCMC and the Council. MCMC has in turn entangled Emerald in this action as a result of its own failure to peacefully co-exist with the Council.

MCMC's actions in naming Emerald as a party in this action are in direct contradiction to the agreement entered into between MCMC and Emerald, and are the sole result of MCMC's own actions & relationship with the Council. MCMC's actions have directly resulted in Emerald incurring fees and costs associated with being named as a party in this action. Emerald is entitled to recovery of the fees and costs it has incurred in this matter.

PRAYER FOR RELIEF

WHEREFORE, having fully set forth its Answer to the Third-Party Complaint, Emerald prays that this Honorable Court inquire into the matters at issue and:

1. Dismiss the Third-Party Plaintiff's causes of action;
2. Grant Emerald judgment on its Counterclaim;
3. Award to Emerald reasonable attorney's fees and costs as may be permitted by law or contract; and

4. Award to Emerald such other and further relief as may be just and proper.

_s/Andrew William Montgomery_____
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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	NINTH JUDICIAL CIRCUIT
)	
Elizabeth Heatley, Neal B. McCann, Jr., David Neil Monk, Thomas V. Bessent, and Mariner's Cay Marina Council of Co-Owners, Inc.,)	CASE NO. 2017-CP-10-03099
)	
Plaintiffs,)	**REPLY OF THE THIRD PARTY PLAINTIFFS MARINERS CAY MARINA CONDO, LLC AND MARINERS CAY FUEL DOCK, LLC TO THE THIRD PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC'S ANSWER TO THIRD PARTY COMPLAINT AND COUNTERCLAIM**
v.)	
)	
Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, and George A. Farmer, and South Atlantic Bank,)	
)	
Defendants,)	
)	
And)	
)	
Mariners Cay Marina Condo, LLC and Mariners Cay Fuel Dock, LLC,)	
)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
Emerald McDonough Road Holdings, LLC,)	
)	
Third-Party Defendant.)	

TO: ANDREW W. MONTGOMERY, ATTORNEY FOR THIRD-PARTY DEFENDANT EMERALD MCDONOUGH ROAD HOLDINGS, LLC:

The Third Party Plaintiffs, Mariners Cay Marina Condo, LLC, Mariners Cay Fuel Dock, LLC, ("Third Party Plaintiffs"), by and through their undersigned counsel, hereby set forth their answer and reply to the Third Party Defendant, Emerald McDonough Road Holdings, LLC's, ("Third Party Defendant"), Counterclaim as follows:

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1. Each and every allegation of the Third Party Plaintiffs' Answer and Counterclaim not admitted, denied, or otherwise qualified herein is hereby deemed denied, and the Defendants demand strict proof thereof.

2. The Third Party Plaintiffs are neither required to admit nor deny Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 of the Third Party Defendant's Answer and Counterclaim as said allegations constitute the Answer of the Third Party Defendant. To the extent an answer is required, the Third Party Plaintiffs deny same and demand strict proof thereof.

3. As to the allegations in Paragraph 38 of the Third Party Defendant's Answer Counterclaim, the Third Party Plaintiffs admit only that they entered into a valid and enforceable agreement with the Third Party Defendant to provide good, marketable title to the Subject Property, free and clear of all liens, encumbrances, and claims. The Third Party Plaintiffs and Third Party Defendant are subject to the Plaintiffs' claims in this lawsuit, none of which are admitted, and, should those claims be successful, The Third Party Defendant will have violated and breached their deed warranties and contracts, without legal excuse. Any remaining allegations in Paragraph 38, are hereby deemed denied, and the Third Party Plaintiffs demand strict proof thereof.

WHEREFORE, having fully answered the Third Party Defendant's Answer and Counterclaim, the Third Party Plaintiffs pray that this Court enter its judgment and order as follows:

1. Dismissing the Third Party Defendant's Counterclaim;
2. Awarding the Third Party Plaintiffs actual damages, attorneys' fees and costs in amounts to be proven at the trial of this case;

3. Award the Third Party Plaintiffs special damages in amounts to be proven at the trial of this case; and

4. Granting any and all such further relief as the Court deems just and proper.

LUZURIAGA MIMS, LLP

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And

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Charleston, South Carolina

August 21, 2020

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