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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BERKELEY COUNTY
Court of Common Pleas

Roger M. Young, Circuit Court Judge

Appellate Case No. 2022-001385
Case No. 2017-CP-08-02238

Matthew Zetz,

Appellant,

v.

Daniel Island Company, Inc.,

Respondent.

RECORD ON APPEAL – VOLUME 2

POULIN | WILLEY | ANASTOPOULO, LLC

Angeline M. Larrivee (SC #105466)
Roy T. Willey, IV (SC #101010)
Eric Poulin (SC #100209)
Lane Jefferies (SC #101764)
32 Ann Street
Charleston, SC 29403
(803) 222-2222

Attorneys for the Appellant

BARNWELL WHALEY
PATTERSON & HELMS, LLC

Kenneth Michael Barfield (SC #69400)
Diane Summers Clarke, II (SC #74829)
211 King Street, Suite 300
Charleston, SC 29401
(843)577-7700

Attorneys for the Respondent

COPY

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14-1-10

**SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR DANIEL ISLAND TOWN CENTER ZONE
(Book 1587, Page 220)**

COPY

THIS Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in the Berkeley County Register of Deeds Office in Book 1587, Page 220 (the "Restrictions") is made as of the 9th day of December, 2003 by The Daniel Island Company, Inc., a South Carolina corporation (the "Declarant").

WHEREAS, Section 7.1 of the Restrictions permits the Declarant to add additional property to the Restrictions which is a portion of the property described on Exhibit B to the Restrictions;

WHEREAS, the Declarant desires to add the certain property known as Parcel J3, Block A, Daniel Island, which is more fully described on the attached Exhibit A (the "Property") to Restrictions;

WHEREAS the Property is a portion of the property described on Exhibit B to the Restrictions;

WHEREAS, simultaneously herewith the Declarant is conveying the Property to First-Citizens Bank and Trust Company of South Carolina, a South Carolina banking corporation ("Grantee") and Grantee consents to Property being made subject to the Declaration as evidenced by its signature hereon.

NOW, THEREFORE, the Declarant with the consent of the Grantee hereby supplements the Restrictions to provide that the property more fully described on the attached Exhibit A shall be subject to the Restrictions.

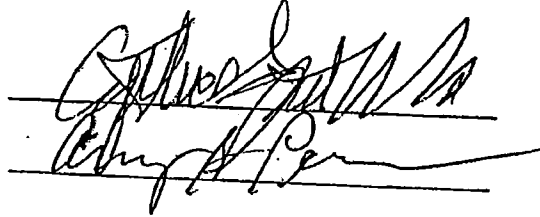
IN WITNESS WHEREOF, the Declarant and Grantee have executed this Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone as of the date set forth above and agree that hereafter the Property will subject to the Restrictions.

FILED, RECORDED, INDEXED
12/15/2003 02:28:54PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 4
Issued to: SHERRILL & ROOF
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

{00544735.}

SD DELIVERY

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



THE DANIEL ISLAND COMPANY, INC.

By: 
Matthew R. Sloan
Its: Executive Vice President

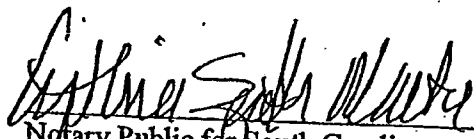
STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, Cynthia Smith Morton (Notary Public for the State of South Carolina) do hereby certify that The Daniel Island Company, Inc., by Matthew R. Sloan, Its Executive Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 9th day of December, 2003.


Notary Public for South Carolina
My Commission Expires: 10 28 2008

ELECTRONICALLY FILED - 2020 Oct 12 3:40 PM - BERKELEY - COMMON PLEAS - CASE#2017CP0802238

{00544735.}

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

SIGNED, SEALED AND DELIVERED

SIGNED, SEALED

First-Citizens Bank and Trust Company of South
Carolina, a South Carolina banking corporation

Julie K. Furb
Chl E An

By: Michael Parker
Print Name: F. Michael Parker
Print Title: Senior Vice President
and Corporate Real Estate Director

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ACKNOWLEDGMENT

I, Sandra Johnson (Notary Public for the State of South Carolina) do
hereby certify that First-Citizens Bank and Trust Company of South Carolina, by
F. Michael Parker, Its Sr. Vice President and
Corp. Real Est. Dir., personally appeared before me this
day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 9th day of December, 2003.

Sandra Johnson
Notary Public for South Carolina
My Commission Expires: 12-16-12

1.639

EXHIBIT "A"

All that certain piece, parcel or tract of land situate, lying and being in Daniel Island Park in the City of Charleston, Berkeley County, South Carolina, being shown and designated as PARCEL J3, BLOCK A and containing 3.10 ACRES / 135,161 SQ. FT. on a plat prepared of PARCEL J3, BLOCK A & A NEW 15' DRAINAGE EASEMENT OWNED BY THE DANIEL ISLAND COMPANY, INC., by Thomas & Hutton Engineering Co., dated May 28, 2003, signed July 10, 2003, and recorded in the Office of the Register of Deeds for Berkeley County on September 10, 2003, in PLAT CABINET "Q" AT PAGE 80-E. The property has the following metes, bounds, courses, and distances, to-wit: Beginning at the northernmost point of the property at the intersection of Island Park Drive and Seven Farms Drive and running along the right-of-way of Seven Farms Drive S53°15'46"E for a distance of 21.88 feet to a point; thence continuing along Seven Farms Drive S13°34'54"E in a curved line, the chord length of which is 575.94 feet, to a point; thence turning and running along the right-of-way of Mark Clark Expressway (I-526) N53°15'47"W for a distance of 478.13 feet to a point; thence turning and running along the right-of-way of Island Park Drive N36°44'14"E for a distance of 354.75 feet to a point; thence turning and running N81°44'14"E for a distance of 18.38 feet to the point of beginning. The property is bounded on the **NORTHEAST** by the right-of-way of Seven Farms Drive; **SOUTHWEST** by the right-of-way of Mark Clark Expressway (I-526); and **NORTHWEST** by the right-of-way of Island Park Drive. All as shown on the plat, be all measurements a little more or less.

TMS #271-00-00-002

Property Address: Seven Farms Drive & Island Park Drive

Upon recording, please return to:

Constance P. Haywood, Esq.
Epstein Becker & Green, P.C.
Resurgens Plaza, Suite 2700
945 East Paces Ferry Road
Atlanta, Georgia 30326

FILED, RECORDED, INDEXED
01/13/2004 11:24:07AM
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Issued to: BUIST LAW FIRM
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

STATE OF SOUTH CAROLINA

Reference: Book 1587, Page 220

COUNTY OF BERKELEY

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR DANIEL ISLAND TOWN CENTER ZONE**

THIS AMENDMENT is made this 8 day of January, 2004, by The Daniel Island Company, Inc., a South Carolina corporation (hereinafter referred to as the "Declarant");

WITNESSETH

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions, and Restrictions for Daniel Island Town Center Zone on March 24, 1999, in Book 1587, Page 220, *et seq.*, in the Office of the Register of Deeds of Berkeley County, South Carolina (such instrument as amended and supplemented is hereinafter referred to as the "Declaration"); and

WHEREAS, Article XVI, Section 16.2(a) of the Declaration provides that the Declarant may unilaterally amend the Declaration by instrument in writing filed and recorded in the Office of Register of Deeds of Berkeley County, South Carolina, without the approval of any Owner or Mortgagee; and

WHEREAS, the Declarant deems it appropriate to amend the Declaration for the purposes of clarifying provisions relating to the architectural review process;

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration of Covenants, Conditions, and Restrictions for Daniel Island Town Center Zone as follows:

1.

Article IX, Section 9.2 of the Declaration shall be amended by deleting the last two sentences of the first paragraph and substituting the following:

The ARB or the MC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. In addition, the ARB or the MC may require the posting of deposits or bonds while construction is pending on any Unit, to ensure completion of all work in compliance with plans approved by the ARB or the MC, in conformance with all Design Guidelines, and without damage to the Properties.

2.

The definitions provided in Article I of the Declaration are incorporated herein by reference. Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, The Daniel Island Company, Inc., as Declarant, hereby executes this Amendment by and through its authorized representative on the date and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Judith E. Beattie
Witness
David S. Li
Witness

DECLARANT:

THE DANIEL ISLAND COMPANY, INC., a
South Carolina corporation

By:

Matthew R. Sloan
Vice President

[Corporate Seal]

STATE OF SOUTH CAROLINA)
COUNTY OF BERKLEY)

ACKNOWLEDGMENT

I, Janine Johnson, (Notary Public for the State of South Carolina), do hereby certify that The Daniel Island Company, Inc., a South Carolina corporation, by and through Matthew R. Sloan, its Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said company.

Witness my hand and official seal, this the 8 day of January, 2004.

Janine Johnson
Notary Public
My Commission Expires: 9/29/07

[Notary Seal]

Prepared by and upon recording return to:
 Constance P. Haywood, Esq.
 Epstein Becker & Green P.C.
 Resurgens Plaza, Suite 2700
 945 East Paces Ferry Road
 Atlanta, Georgia 30326

Cross Reference to:
 Deed Book 1587, Page 220,
 Register of Deeds for Berkeley
 County, South Carolina

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS,
 AND RESTRICTIONS FOR DANIEL ISLAND TOWN CENTER ZONE**

THIS SUPPLEMENTAL DECLARATION is made this 27 day of February, 2004, by The Daniel Island Company, Inc., a South Carolina corporation (hereinafter referred to as "Declarant").

WITNESSETH:

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions, and Restrictions for Daniel Island Town Center Zone on March 24, 1999, in Book 1587, Page 220, *et seq.*, in the Office of the Register of Deeds of Berkeley County, South Carolina (such instrument as amended and supplemented is hereinafter referred to as the "Declaration");

WHEREAS, pursuant to the terms of Article III, Section 3.3 of the Declaration, the Declarant may designate Districts by filing an addendum to the Declaration;

WHEREAS, the Declarant desires to designate the property described on Exhibit "A", attached hereto and incorporated herein by this reference, as the Daniel's Landing District;

WHEREAS, this Supplemental Declaration shall serve as the addendum to the Declaration and shall designate the property described on Exhibit "A" as a District pursuant to Section 3.3 of the Declaration;

WHEREAS, Article VII, Section 7.4 of the Declaration provides that the Declarant may subject any portion of the Properties to additional covenants and easements by virtue of a supplemental declaration and that any such supplemental declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property for such purposes as deemed appropriate in the Declarant's sole discretion; and

WHEREAS, the Daniel's Landing Homeowners' Association, a South Carolina nonprofit corporation, has been established to govern the property described on Exhibit "A" and has consented hereto.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit "A" hereof to the provisions of this Supplemental Declaration, which shall apply to such property in addition to the provisions of the Declaration. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration, which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon Daniel Island Town Center Owners Association, Inc. and Daniel's Landing Homeowners' Association in accordance with the terms of the Declaration.

AT:109054v2

-1-

FILED, RECORDED, INDEXED
 03/04/2004 11:26:02AM
 Rec Fee: 11.00 St Fee: 0.00
 Co Fee: 0.00 Pages: 5
 Issued to: BUIST LAW FIRM
 Register of Deeds Berkeley Co., SC
 Cynthia B. Forte

ARTICLE 1.
Definitions

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference.

ARTICLE 2.
District Designation

Pursuant to Article 3, Section 3.3 of the Declaration, the Declarant hereby establishes and designates the real property described on Exhibit "A" attached hereto as the "Daniel's Landing District".

ARTICLE 3.
Provisions Applicable to the District

3.1 **Voting.** Each Owner of a Unit located within the property described on Exhibit "A" acknowledges and agrees that the president of the Daniel's Landing Homeowners' Association, Inc. (hereinafter referred to as the "District Association") shall serve as the Voting Delegate (hereinafter defined) for the District Association. A "Voting Delegate" is any representative selected by the Class "A" Members within each District to be responsible for casting all Class "A" votes attributable to Units in the District on matters requiring a vote of the membership of the Association. The term "Voting Delegate" shall also refer to any alternate Voting Delegate acting in the absence of a Voting Delegate. Each Owner hereby further acknowledges and agrees that the secretary of the District Association shall serve as the alternate Voting Delegate of the District Association. Prior to taking a vote on any issue requiring membership approval, the District Association shall distribute proxies to all Members represented by the Voting Delegate allowing each Member to direct in writing how such Member's vote is to be cast with respect to such issue. The Voting Delegate shall be required to cast all votes for which specific proxies are returned in the manner directed in such proxies. All other votes may be cast as the Voting Delegate deems appropriate in its sole discretion. The Board and/or the District Association may adopt resolutions establishing additional procedures for polling Members.

3.2 **Assessments.** The District Association, on behalf of the Association, shall be responsible for collecting all assessments and charges levied against the property described in Exhibit "A" by the Association. The District Association shall disburse the full amount of such charges collected on behalf of the Association to the Association. Each Owner of a Unit within the property described in Exhibit "A" acknowledges that the assessments and other charges levied by the District Association, if any, are in addition to, and not in lieu of, the assessments and other charges provided for in the Governing Documents.

ARTICLE 4.
Amendment to Supplemental Declaration

This Supplemental Declaration may be amended in accordance with Article 16, Section 16.2 of the Declaration.

ARTICLE 5.
Declaration

Except as specifically amended and supplemented hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, The Daniel Island Company, Inc., as Declarant, hereby executes this Supplemental Declaration by and through its authorized representative on the date and year first above written.

Signed, sealed and delivered in the presence of:

Cheryl Wicks
Witness

Michael P. McNamee
Witness

DECLARANT:

THE DANIEL ISLAND COMPANY, INC.,
a South Carolina corporation

By:

Matthew R. Sloan
Vice President

(SEAL)

STATE OF SOUTH CAROLINA)

COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Jamie Johnson, the undersigned Notary Public for the State of South Carolina, do hereby certify that The Daniel Island Company, Inc., by Matthew R. Sloan, its Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 27 day of February, 2007.

Jamie Johnson (SEAL)
Notary Public

My Commission Expires: 9/29/07

000005796 Bk:03862 PG:00253

CONSENTED TO BY:

Signed, sealed and delivered in the presence of:



Witness

Carlotta Frank

Witness

DANIEL'S LANDING HOMEOWNERS' ASSOCIATION, a South Carolina nonprofit corporation

By:



(SEAL)

Name:

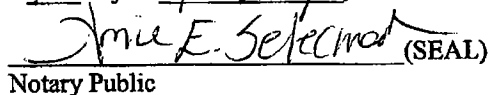
Mark A. Kline

Title:

President
STATE OF New Mexico ~~SOUTH CAROLINA~~)COUNTY OF Santa Fe)

ACKNOWLEDGMENT

I, Amie Selesman, the undersigned Notary Public for the State of New Mexico ~~South Carolina~~, do hereby certify that Daniel's Landing Homeowners' Association, by Mark A. Kline, its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 18th day of February, 2003.


Notary Public

My Commission Expires:

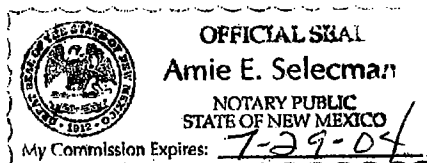


EXHIBIT "A"Legal Description of the District

ALL of that certain tract, parcel and piece of land, situate lying and being on Daniel Island, City of Charleston, Berkeley County, South Carolina, measuring and containing approximately 19.03 acres known and designated as Parcel R, Block I on that certain plat entitled "Final Plat of Parcel R, Block I, Daniel Island, Owned by: the Daniel Island Company, Inc., City of Charleston, Berkeley County, S.C." prepared by Thomas & Hutton Engineering Co. dated August 12, 1999 and recorded in Plat Cabinet O, Page 100A in the Berkeley County Register of Deeds Office (the "Plat"), having such measurements, metes, buttings and boundings as set forth on the Plat, which Plat is incorporated herein by reference.

BEING a portion of the property conveyed to The Daniel Island Company, Inc. by deed of Daniel Island Investments L.L.C. dated November 9, 1998 and recorded in the Register of Deeds Office for Berkeley County in Book 1478, Page 16 on November 9, 1998.

000009015 Bk:03917 PG:00070

**SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR DANIEL ISLAND TOWN CENTER ZONE
(Book 1587, Page 220)**

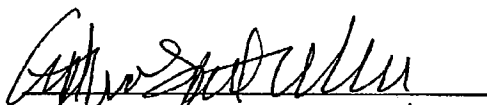
THIS Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in the Berkeley County Register of Deeds Office in Book 1587, Page 220 (the "Restrictions") is made as of the 31 day of March, 2004 by The Daniel Island Company, Inc., a South Carolina corporation (the "Declarant").

WHEREAS, Section 7.1 of the Restrictions permits the Declarant to add additional property to the Restrictions which is a portion of the property described on Exhibit B to the Restrictions;

NOW, THEREFORE, the Declarant hereby supplements the Restrictions to provide that the property known as Parcel R, Block H, Lots 2, 3, 7 and 8 as more fully described on the attached **Exhibit A** shall be made subject to the Restrictions.

IN WITNESS WHEREOF, the Declarant has executed this Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone as of the date set forth above and agree that hereafter the Property will subject to the Restrictions as hereby amended.

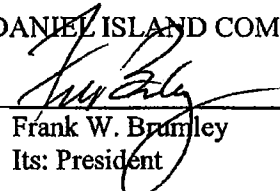
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Magda K. Shelton

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

THE DANIEL ISLAND COMPANY, INC.

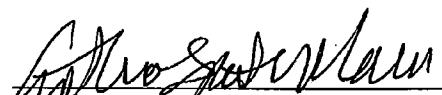
By: 

Frank W. Brumley
Its: President

ACKNOWLEDGMENT

I, Cynthia B. Forte (Notary Public for the State of South Carolina) do hereby certify that The Daniel Island Company, Inc., by Frank W. Brumley, Its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 31st day of March, 2004.


Notary Public for South Carolina
My Commission Expires: 10-28-2008

FILED, RECORDED, INDEXED
04/02/2004 02:18:45PM
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Issued to: BUIST LAW FIRM
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

{00586496.}

EXHIBIT A
PROPERTY DESCRIPTION
Parcel R, Block H, Lots 2, 3, 7 and 8

ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "Parcel R, Block H, Lot 3, 75,110 sq. ft., 1.72 acres", as shown on that certain plat entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BEWTEEN LOTS 3, 4, 5, & 6, PARCEL R, BLOCK H, OWNED BY THE DANIEL ISLAND COMPANY, INC., DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliotte Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on March 23, 2004 in the Register of Deeds Office for Berkeley County in Plat Cabinet Q, Page 186-A and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat.

TMS Parcel No: 275-00-00-192(Lot 3)

ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "Parcel R, Block H, Lot 2, 154,261 sq. ft., 3.54 acres"; "Parcel R, Block H, Lot 7, 14,612 sq. ft., 0.34 acres"; and "Parcel R, Block H, Lot 8, 42,162 sq. ft., 0.97 acres" on the plat by F. Elliotte Quinn, III, RLS No. 10292 of Thomas & Hutton Engineering, Co. entitled "Plat of the Subdivision of a 12.01 ac. Portion of Parcel R Creating Parcel R, Block H, Lots 2 through 8 Owned by The Daniel Island Company, Inc." recorded in the Register of Deeds Office for Berkeley County in Plat Book Q at Page 115A on November 4, 2003 and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat

TMS Parcel Nos: 275-00-00-191 (Lot 2); 275-00-00-196 (Lot 7); and 275-00-00-197 (Lot 8)

**SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR DANIEL ISLAND TOWN CENTER ZONE
(Book 1587, Page 220)**

THIS Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in the Berkeley County Register of Deeds Office in Book 1587, Page 220 (the "Restrictions") is made as of the 21 day of March, 2004 by The Daniel Island Company, Inc., a South Carolina corporation (the "Declarant").

WHEREAS, Section 7.1 of the Restrictions permits the Declarant to add additional property to the Restrictions which is a portion of the property described on Exhibit B to the Restrictions;

WHEREAS, the Declarant desires to add the certain property known as Parcel R, Block H, Lots 4, 5, and 6, Daniel Island, which is more fully described on the attached **Exhibit A** (the "Property") to Restrictions;

WHEREAS the Property is a portion of the property described on Exhibit B to the Restrictions;

WHEREAS, simultaneously herewith the Declarant is conveying the Property to **200 River Landing Drive L.P.**, a Delaware limited partnership ("Grantee") and Grantee consents to Property being made subject to the Declaration as evidenced by its signature hereon.

NOW, THEREFORE, the Declarant with the consent of the Grantee hereby supplements the Restrictions to provide that the property more fully described on the attached **Exhibit A** shall be subject to the Restrictions.

FURTHERMORE, the Declarant, on behalf of itself, its successors and assigns, hereby waives its right of first refusal contained in Section 15.1 of the Restrictions with respect to the transfer of the Property to Grantee and any subsequent transfers of all or any portion of the Property by Grantee or its successors or assigns; and

FURTHERMORE, the Declarant hereby agrees that, with respect to the Property, the Option to Repurchase contained in Section 15.2(b) of the Restrictions shall be modified to provide that the Declarant shall have the right to repurchase any Unit in the event the Grantee fails to obtain the final certificate of occupancy within twenty-four (24) months after commencement of construction in accordance with plans approved by the Daniel Island Town Center Architectural Review Board.

If there is a conflict between the provisions of the Restrictions and this Supplement, the provisions of this Supplement will control.

IN WITNESS WHEREOF, the Declarant and Grantee have executed this Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone as of the date set forth above and agree that hereafter the Property will subject to the Restrictions as hereby amended.

{00581688.}

000009016 Bk:03917 PG:00073

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Cynthia Spivey Morton
Magda K. Shelton

THE DANIEL ISLAND COMPANY, INC.

By: Frank W. Brumley

Frank W. Brumley
Its: President

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, Cynthia Spivey Morton (Notary Public for the State of South Carolina) do hereby certify that The Daniel Island Company, Inc., by Frank W. Brumley, Its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 31 day of March, 2004.

Cynthia Spivey Morton
Notary Public for South Carolina
My Commission Expires: 10-28-2008

FILED, RECORDED, INDEXED
04/02/2004 02:20:24PM
Rec Fee: 10.00 St Fee: 0.00
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Issued to: BUIST LAW FIRM
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

000009016 Bk:03917 PG:00074

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

200 River Landing Drive L.P., a Delaware limited
partnership,

By: TCR RLD Limited Partnership, a Texas
limited partnership, its general partner,

By: TCR RLD Condominiums, Inc., a Texas
corporation, its general partner

By: Thomas R. Barker
Print Name: Thomas R. Barker
Print Title: Vice President

[Signature]
[Signature]

STATE OF North Carolina)
)
COUNTY OF Wake)

ACKNOWLEDGMENT

I, Robin L. Miller (Notary Public for the State of ^{North} ~~South~~ Carolina) do
hereby certify that 200 River Landing Drive L.P., a Delaware limited partnership, by TCR RLD
Limited Partnership, a Texas limited partnership, its general partner, by TCR RLD
Condominiums, Inc., a Texas corporation, its general partner, By Thomas R. Barker, Its
Vice President, personally appeared before me this day and acknowledged the due
execution of the foregoing instrument.

Witness my hand and official seal this the 30th day of March, 2004.

Robin L. Miller
Notary Public, North Carolina
My Commission Expires: 10-20-2008



{00581688.}

**EXHIBIT A
PROPERTY DESCRIPTION**

The Daniel Island Company, Inc. and 200 River Landing Drive L.P.
Parcel R, Block H, Lots 4, 5 and 6
(2.77 acres, 1.51 acres, and 1.17 acres)

ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "Parcel R, Block H, Lot 4, 120,471 sq. ft., 2.77 acres", "Parcel R, Block H, Lot 5, 65,697 sq. ft., 1.51 acres" and "Parcel R, Block H, Lot 6, 50,974 sq. ft., 1.17 acres (Total)" as shown on that certain plat entitled "PLAT OF THE ADJUSTMENT OF PROPERTY LINES BETWEEN LOTS 3, 4, 5, & 6, PARCEL R, BLOCK H, OWNED BY THE DANIEL ISLAND COMPANY, INC., DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliotte Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on March 23, 2004 in the Register of Deeds Office for Berkeley County in Plat Cabinet Q, Page 186-A (the "Plat") and having such size, shape, dimensions, buttings and boundings as will appear by reference to said Plat.

TMS Parcel Nos: 275-00-00-193 (Lot 4), 275-00-00-194 (Lot 5), and 275-00-00-195 (Lot 6)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY) Supplement to the Declaration, Covenants, and
Restrictions for Daniel Island Town Center Zone
to Create Parcel R, Block H District

WHEREAS, 200 River Landing Drive L.P., a Delaware limited partnership, ("200 RLD") is the owner of certain lots of land located in Berkeley County, State of South Carolina, known as Parcel R, Block H, Lot 4, 120,471 sq. ft., 2.77 acres ("Lot 4"); Parcel R, Block H, Lot 5, 65,697 sq. ft., 1.51 acres ("Lot 5"); and Parcel R, Block H, Lot 6, 50,974 sq. ft. acres ("Lot 6"), all as shown on the plat by F. Elliotte Quinn, III, RLS No. 10292 of Thomas & Hutton Engineering, Co. entitled "PLAT OF ADJUSTMENT OF PROPERTY LINES BETWEEN LOTS 3, 4, 5, & 6 PARCEL R, BLOCK H, OWNED BY THE DANIEL ISLAND COMPANY, INC." recorded in the Register of Deeds Office for Berkeley County on March 23, 2004 in Plat Cabinet Q, Page 186A (the "2004 Plat");

WHEREAS, The Daniel Island Company, Inc., a South Carolina corporation, ("DIC") is the owner of a certain lot of land located in Berkeley County, State of South Carolina, known as Parcel R, Block H, Lot 3, 75,110 sq. ft., 1.72 acres ("Lot 3") as shown on the 2004 Plat;

WHEREAS DIC is also the owner of certain lots of land located in Berkeley County, State of South Carolina, known as Parcel R, Block H, Lot 2, 154,261 sq. ft., 3.54 acres ("Lot 2"), Parcel R, Block H, Lot 7, 14,612 sq. ft., 0.34 acres ("Lot 7"), and Parcel R, Block H, Lot 8, 42,162 sq. ft., 0.97 acres ("Lot 8") all as shown on the plat by F. Elliotte Quinn, III, RLS No. 10292 of Thomas & Hutton Engineering, Co. entitled "Plat of the Subdivision of a 12.01 ac. Portion of Parcel R Creating Parcel R, Block H, Lots 2 through 8 Owned by The Daniel Island Company, Inc." recorded in the Register of Deeds Office for Berkeley County in Plat Book Q at Page 115A on November 4, 2003 (the "2003 Plat");

WHEREAS, Lots 2, 3, 4, 5, 6, 7, and 8 (collectively the "Lots") have been made subject to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in Book 1587, Page 220 with Berkeley County Register of Deeds on March 24, 1999, as amended and supplemented ("Town Center Declaration");

WHEREAS Section 3.3 of the Town Center Declaration provides for the creation of a District within the Town Center Properties subject to the Town Center Declaration with the consent of the Declarant;

WHEREAS, DIC as the Declarant under the terms of the Town Center Declaration hereby agrees to the creation of the Parcel R, Block H District; and

WHEREAS, the Lots shall jointly benefit from certain improvements and DIC and 200 RLD wish to establish a District to address the common interests of the Lots in such improvements.

FILED, RECORDED, INDEXED
04/13/2004 10:23:43AM
Rec Fee: 11.00 St Fee: 0.00
Co Fee: 0.00 Pages: 5
Issued to: CYNTHIA MORTON
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

KNOW ALL MEN BY THESE PRESENTS that for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned do hereby covenant and agree as follows:

FIRST: A District to be known as the "Parcel R, Block H District" is hereby established within the Town Center Properties pursuant to Section 3.3 of the Town Center Declaration and shall include the Lots described above.

SECOND: The Lots described above are all hereby members of the District subject to the terms and conditions stated herein, as well as the terms and conditions of the Town Center Declaration. Decisions relating to the District, including decisions as to the expenditures for costs recoverable under Paragraph Sixth below, shall be made by a Majority Vote, as defined below in Paragraph Sixth.

THIRD: An ingress and egress easement over the Easement Area (as defined in Paragraph Fifth below) and Lot 2 is granted to the owner of Lot 8 for the purpose of maintenance, repair and replacement of the detention pond and its infrastructure located on Lot 8. The owner of Lot 8 shall be responsible for the maintenance, repair and replacement of the detention pond located on Lot 8.

FOURTH: Lots 2 through 7 are granted an easement to discharge storm water and other water drainage run off from such lots through drainage pipes and related facilities installed by the owner of such lot directly onto Lot 8. Nothing in this Paragraph Fourth creates any right for the owner of a lot to cross another lot (other than Lot 8) with drainage pipes or related facilities.

FIFTH: An easement for utilities, ingress and egress for vehicles and pedestrian traffic over and across the "Ingress/Egress Easement Within Lot 2" as shown on the 2003 Plat and the "New Ingress/Egress Easement Within Lot 4" as shown on the 2004 Plat is hereby created for the use and benefit of all the Lots (collectively, the "Easement Areas").

SIXTH The owners of Lots 2 through 7 shall share in the cost of the maintenance, upkeep and repair of the Easement Areas based on the following percentages: Lot 2 – 32%; Lot 3 – 15.5%; Lot 4 – 25.1%; Lot 5 – 13.7%; Lot 6 – 10.6%; and Lot 7 – 3.1% ("Maintenance Percentages"). A Majority Vote of the owners of the Lot shall mean the written consent or vote of equal to or more than 51% of the Maintenance Percentages.

SEVENTH A Lot owner shall have thirty (30) days after written request to deliver its portion of the costs for the maintenance, upkeep and repair of the Easement Areas. In the event that a Lot owner fails to deliver the requested funds then any other owner of a Lot may request that the Town Center Association exercise its powers pursuant to Section 8 of the Town Center Declaration to collect such funds from the non-contributing Lot owner through a Specific Assessment against such Lot owner.

EIGHTH: The terms of this Parcel R, Block H District shall run with the title to the land and shall be for the use, benefit and burden of Lots 2 through 8, their successors and assigns.

NINTH: In the event of the subdivision of one of the Lots defined above, then the Maintenance Percentage allocated to such a Lot as stated in Paragraph Sixth above shall be allocated to each of the newly created lots based on the entire acreage of the Lot prior to the Lot being subdivided and the acreage contained in the each of the lots created by such subdivision. The total Maintenance Percentage for all of the lots created by the subdivision of a Lot shall equal the Maintenance Percentage for such Lot prior to such Lot being subdivided.

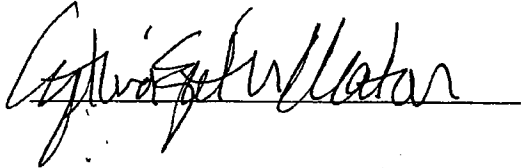
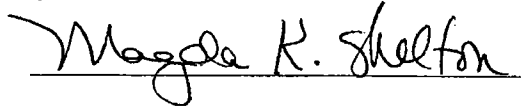
TENTH: Terms which are not otherwise defined in this Supplement shall have the meaning given to them in the Town Center Declaration.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

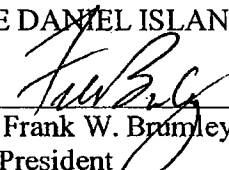
WITNESS the Hands and Seals of the undersigned to the Supplement to the Declaration, Covenants, and Restrictions for Daniel Island Town Center Zone to Create Parcel R, Block H District as of this 31st day of March, 2004.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

As the Owner of Parcel R, Block H. Lots 2, 3, and 7
and the Declarant under the Town Center
Declaration

THE DANIEL ISLAND COMPANY, INC.


By: Frank W. Brumley
Its: President

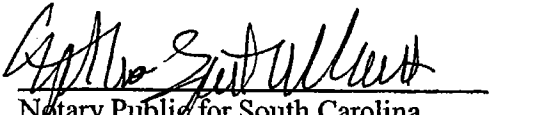
STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, the undersigned Notary Public for South Carolina, do hereby certify that The Daniel Island Company, Inc. by Frank W. Brumley, its President personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 31st day of March, 2004.


Notary Public for South Carolina
My Commission Expires: 10-28-2008

WITNESS the Hands and Seals of the undersigned to the Supplement to the Declaration, Covenants, and Restrictions for Daniel Island Town Center Zone to Create Parcel R, Block H District as of this 31st day of March, 2004.

As the Owner of Parcel R, Block H, Lots 4, 5 and 6

200 River Landing Drive L.P., a Delaware limited partnership,

By: TCR RLD Limited Partnership, a Texas limited partnership, its general partner,

By: TCR RLD Condominiums, Inc., a Texas corporation, its general partner

By: Donna C. Kruger
Donna C. Kruger
Vice President

Debra M. Dawson
Junlin Zhang

STATE OF Georgia)

COUNTY OF Paulding)

ACKNOWLEDGMENT

I, Kelly B. Johnson (Notary Public for the State of Georgia) do hereby certify that 200 River Landing Drive L.P., a Delaware limited partnership, by TCR RLD Limited Partnership, a Texas limited partnership, its general partner, by TCR RLD Condominiums, Inc., a Texas corporation, its general partner, By Donna C. Kruger, Its Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 7th day of April, 2004.

Kelly B. Johnson
Notary Public for Paulding Co.
My Commission Expires: _____

Notary Public, Paulding County, Georgia
My Commission Expires October 7, 2007.

Prepared by and upon recording return to:

Constance P. Haywood, Esq.
Epstein Becker & Green P.C.
Resurgens Plaza, Suite 2700
945 East Paces Ferry Road
Atlanta, Georgia 30326

000012816 Bk:03981 Pg:00261

FILED, RECORDED, INDEXED
05/07/2004 10:22:50AM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 2
Issued to: BUIST, MOORE, SMYTHE & MCGEE
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cross Reference to:

Book 1587, Page 220,

Register of Deeds for Berkeley
County, South Carolina

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR DANIEL ISLAND TOWN CENTER ZONE**

THIS AMENDMENT is made this 3rd day of May 2004, by The Daniel Island Company, Inc., a South Carolina corporation (hereinafter referred to as the "Declarant").

WITNESSETH

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions, and Restrictions for Daniel Island Town Center Zone on March 24, 1999, in Book 1587, Page 220, *et seq.*, in the Office of the Register of Deeds of Berkeley County, South Carolina (such instrument as amended and supplemented is hereinafter referred to as the "Declaration");

WHEREAS, Article XVI, Section 16.2(a) of the Declaration provides that the Declarant may unilaterally amend the Declaration by instrument in writing filed and recorded in the Office of Register of Deeds of Berkeley County, South Carolina, without the approval of any Owner or Mortgagee; and

WHEREAS, the Declarant deems it appropriate to amend the Declaration for the purposes of amending provisions as more specifically set forth herein.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration as follows:

The first paragraph of Section 8.14 of the Declaration, as amended, shall be deleted in its entirety and shall be replaced by the following paragraph:

8.14 Transfer Fee. Except for the "Excluded Transactions" (as defined below), upon the sale or transfer of title to any Unit, or any portion thereof, a transfer fee shall be due and payable at the time of closing for such sale or transfer. The transfer fee shall equal either (i) one-half of one percent (0.50%) of the total purchase price for a Residential Unit (defined below), or portion thereof; or (ii) one-fourth of one percent (0.25%) of the total purchase price of any other Unit, or portion thereof (the applicable fee hereinafter referred to as the "Transfer Fee"). The Transfer Fee shall be paid to

Daniel Island Community Fund, Inc., a South Carolina tax-exempt community service organization ("DICF"), and such funds may be used by DICF in its sole discretion in accordance with its articles of incorporation and by-laws. By way of example only, if a Residential Unit, or any portion thereof, is sold for a purchase price of \$100,000.00, the Transfer Fee due and payable would be \$500.00 (\$100,000.00 x .0050 = \$500.00). DICF may require the purchasing and/or selling Owner to provide reasonable proof of the applicable sales price, such as executed closing statements, contracts of sale, copies of deeds or other such evidence. For the purposes of this Section 8.14 only, the term "Residential Unit" shall mean any Unit which is intended for or is being used for residential purposes by one single family. A Unit that contains a building comprised of multiple separate dwelling spaces which are used for single family residential purposes is not included in this definition. For example, an individual condominium Unit, an individual townhome Unit or a detached single family home on a separately platted lot would each constitute a Residential Unit. Neither an apartment building nor a hotel would be a Residential Unit.

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference. Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, The Daniel Island Company, Inc., as Declarant, hereby executes this Amendment by and through its authorized representative on the date and year first above written.

Signed, sealed and delivered in the presence of:

Cheryl Wick
Witness

Janalie Brattie
Witness

DECLARANT:

THE DANIEL ISLAND COMPANY, INC., a
South Carolina corporation

By: *Matthew R. Sloan*
Matthew R. Sloan
Executive Vice President

[CORPORATE SEAL]

STATE OF SOUTH CAROLINA)

COUNTY OF Berkeley)

ACKNOWLEDGMENT

I, Janine Malloy, the undersigned Notary Public for the State of South Carolina, do hereby certify that The Daniel Island Company, Inc., by Matthew R. Sloan, its Executive Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 3rd day of May, 2004.

Janine Malloy
Notary Public

My Commission Expires: 9/29/07
[NOTARY SEAL]

000029794 BK=04261 PG=00270

**SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR DANIEL ISLAND TOWN CENTER ZONE
(Book 1587, Page 220)**

THIS Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in the Berkeley County Register of Deeds Office in Book 1587, Page 220 (the "Restrictions") is made as of the 21 day of September, 2004 by The Daniel Island Company, Inc., a South Carolina corporation (the "Declarant").

WHEREAS, Section 7.1 of the Restrictions permits the Declarant to add additional property to the Restrictions which is a portion of the property described on Exhibit B to the Restrictions;

WHEREAS, the Declarant desires to add the certain property known as Parcel R, Block G, Lot 3, Daniel Island, which is more fully described on the attached Exhibit A (the "Property") to Restrictions;

WHEREAS the Property is a portion of the property described on Exhibit B to the Restrictions;

WHEREAS, simultaneously herewith the Declarant is conveying the Property to Atlantic First Group, LLC, a South Carolina limited liability company ("Grantee") and Grantee consents to Property being made subject to the Declaration as evidenced by its signature hereon.

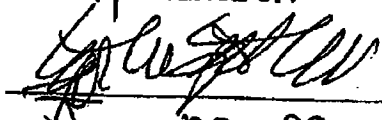
NOW, THEREFORE, the Declarant with the consent of the Grantee hereby supplements the Restrictions to provide that the property more fully described on the attached Exhibit A shall be subject to the Restrictions.

IN WITNESS WHEREOF, the Declarant and Grantee have executed this Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone as of the date set forth above and agree that hereafter the Property will subject to the Restrictions.

FILED, RECORDED, INDEXED
09/29/2004 03:59:08PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 4
Issued to: 00008 & HENNESSY
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

000029794 Bk:04261 PG:00271

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:


Jan Malloy

THE DANIEL ISLAND COMPANY, INC.

By: 
Matthew R. Sloan
Its: Executive Vice President

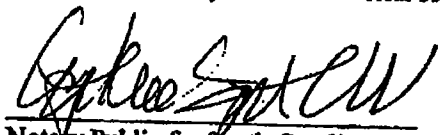
STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ACKNOWLEDGMENT

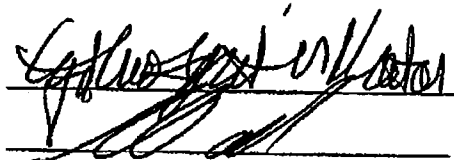
I, Cynthia Spivey Martin (Notary Public for the State of South Carolina) do hereby certify that The Daniel Island Company, Inc., by Matthew R. Sloan, Its Executive Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 23 day of September, 2004.


Notary Public for South Carolina
My Commission Expires: 10-28-2006

000029794 Bk:04261 PG:00272

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



Atlantic First Group, LLC

By: Ann L. Allen
Print Name: ANN L. ALLEN
Print Title: President - J+A Custom Homes, Inc.
ITS' manager

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

I, Lawrence A. Scott (Notary Public for the State of South Carolina) do hereby certify that Atlantic First Group, LLC, by Ann L. Allen, its President of J+A Custom Homes, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 29 day of Sept, 2004.


Notary Public for SC
My Commission Expires: 1-19-06

000029794 Bk:04261 PG:00273

**EXHIBIT A
PROPERTY DESCRIPTION**

**The Daniel Island Company, Inc. to Atlantic First Group, LLC
Parcel R, Block G, Lot 3
(0.59 acres)**

ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, known as Parcel R, Block G, Lot 3, measuring and containing 0.59 acres, 25,521 sq. ft., more or less and being identified as "Parcel R, Block G, Lot 3" on that certain plat entitled "FINAL SUBDIVISION PLAT OF Parcel R-9 To Create Parcel R, Block G, Lot 3, Owned By The Daniel Island Company, Inc., DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliotte Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on July 21, 2004 in the Register of Deeds Office for Berkeley County in Plat Cabinet Q, Page 241-A (the "Plat") and having such size, shape, dimensions, buttings and boundings as will appear by reference to said Plat.

TMS No. 275-00-00-205 (formerly a portion of 275-00-00-114)

000039323 Bk:04428 PG:00344

**SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS FOR DANIEL ISLAND TOWN CENTER ZONE
(Book 1587, Page 220)**

This Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in the Berkeley County Register of Deeds Office in Book 1587, Page 220, as amended (the "Restrictions") is made as of November 19th, 2004 by The Daniel Island Company, Inc., a South Carolina corporation (the "Declarant").

WHEREAS, the Declarant conveyed to ITCR Residential Limited Partnership, a Texas limited partnership (the "Partnership"), the property described on Exhibit A attached hereto (the "Property") pursuant to the terms of that certain Limited Warranty Deed, dated August 18, 2003, and recorded in the Berkeley County Register of Deeds Office in Book 3544, Page 86 (the "Partnership Deed"); and

WHEREAS, the Property was transferred to the Partnership subject to the terms of the Restrictions, which included a right of first refusal in favor of the Declarant, as more particularly described in Section 15.1 of the Restrictions, as modified by the terms of the Partnership Deed; and

WHEREAS, the Partnership now desires to convey the Property to 254 Seven Farms Drive, Inc., a Texas corporation (the "Corporation"), and has requested the Declarant to waive its right of first refusal with respect to the transfer of the Property to the Corporation and any subsequent transfers of all or any portion of the Property.

NOW, THEREFORE, the Declarant, on behalf of itself, its successor and assigns, hereby waives its right of first refusal contained in Section 15.1 of the Restrictions (as modified by the terms of the Partnership Deed) with respect to the transfer of the Property by the Partnership to the Corporation and any subsequent transfers of all or any portion of the Property by the Corporation or its successors or assigns.

If there is a conflict between the provisions of the Restrictions and this Supplement, the provisions of this Supplement will control.

FILED, RECORDED, INDEXED
12/29/2004 02:18:47PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 3
Issued to: ~~VARIOUS ADJUSTMENTS~~
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

Calloway Title

Cross Reference;
Book 3544, Page 86 and
Book 1587, Page 220

000039323 Bk:04428 Pg:00345

IN WITNESS WHEREOF, the Declarant has executed this Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone as of the date set forth above.

SIGNED, SEALED AND
DELIVERED IN THE PRESENCE OF: THE DANIEL ISLAND COMPANY, INC.,

[Signature]

By: AM
Name: Matthew Sloan
Its: V.P.

Edith Witherspoon

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, Janine Malloy (Notary Public for South Carolina)
do hereby certify that The Daniel Island Company, Inc. by Matthew Sloan its
Executive V.P. personally appeared before me this day and
acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 19th day of November, 2004.

Janine Malloy
Notary Public for South Carolina
My Commission Expires: 9/29/07

000039323 Bk=04428 Pg=00346

EXHIBIT AProperty

All that tract or parcel of land lying and being in the County of Berkeley, South Carolina, being Parcel R, Block E, Lot 3, containing 9.43 acres, as more particularly depicted on a plat recorded in Plat Book Q, Page 31-B in the Register of Deeds for Berkeley County, South Carolina BEING ALSO KNOWN AS:

All that certain piece or parcel of land lying and being in the City of Charleston, Berkeley County, South Carolina and being more fully described as follows.

Commencing at the intersection of the western right-of-way of River Landing Drive (R/W varies) and the northern right-of-way of Seven Farms Drive (R/W varies). Thence traveling S 65°56'00" W along the northern right-of-way line of Seven Farms Drive a distance of 360.80' to the Point of Beginning; thence S 65°56'00" W, a distance of 360.50 feet to a point; being the point of curvature of a tangent curve to the right, having a radius of 12,677.64 feet, a central angle of 1°19'46", and a chord length of 294.18 feet bearing S 66°35'53" W; thence proceed along the arc of said curve 294.18 feet to a point; thence leaving said R/W N 22°44'14" W, a distance of 52.26 feet to a point; thence N 44°18'42" W, a distance of 150.32 feet to a point; thence S 86°45'29" W, a distance of 105.92 feet to a point; thence N 65°55'02" W, a distance of 67.70 feet to a point, thence N 10°17'20" E, a distance of 90.03 feet to a point; thence N 30°23'51" W, a distance of 84.39 feet to a point; thence N 01°05'15" E, a distance of 55.30 feet to a point; thence N 22°41'00" E, a distance of 180.02 feet to a point; thence N 06°18'24" E, a distance of 30.74 feet to a point; thence N 83°43'22" E, a distance of 37.32 feet to a point; thence N 74°34'52" E, a distance of 29.92 feet to a point; thence N 75°22'41" E, a distance of 38.06 feet to a point; thence S 76°06'04" E, a distance of 35.13 feet to a point; thence N 56°08'16" E, a distance of 30.56 feet to a point; thence S 84°00'01" E, a distance of 34.47 feet to a point; thence N 74°50'49" E, a distance of 47.78 feet to a point; thence N 71°14'34" E, a distance of 40.48 feet to a point; thence N 56°28'11" E, a distance of 42.97 feet to a point; thence S 85°59'53" E, a distance of 50.59 feet to a point; thence S 59°46'11" E, a distance of 36.46 feet to a point; thence S 57°34'00" E, a distance of 32.59 feet to a point; thence S 10°44'20" E, a distance of 29.90 feet to a point; thence S 76°08'26" E, a distance of 40.82 feet to a point; thence N 50°58'05" E, a distance of 38.75 feet to a point; thence S 77°14'29" E, a distance of 33.33 feet to a point; thence N 83°23'38" E, a distance of 40.78 feet to a point; thence N 75°24'33" E, a distance of 44.11 feet to a point; thence S 77°38'24" E, a distance of 47.92 feet to a point; thence S 66°37'09" E, a distance of 50.47 feet to a point; thence N 54°27'52" E, a distance of 54.34 feet to a point; thence N 20°47'48" W, a distance of 49.93 feet to a point; thence N 10°44'38" E, a distance of 18.00 feet to a point; thence N 38°37'51" E, a distance of 28.08 feet to a point; thence S 51°12'07" E, a distance of 33.72 to a point; thence S 48°18'10" W, a distance of 22.12 feet to a point; thence S 20°47'48" E, a distance of 65.72 feet to a point; thence S 54°27'52" W, a distance of 94.42 feet to a point; thence 24°04'00" E, a distance of 320.34 feet to a point; said point being the true Point Of Beginning; said tract or parcel of land containing 9.43 acres more or less.

000004763 BK:04517 PG:00031

**SUPPLEMENT TO
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR DANIEL ISLAND TOWN CENTER ZONE
(Book 1587, Page 220)**

THIS Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone recorded in the Berkeley County Register of Deeds Office in Book 1587, Page 220 (the "Restrictions") is made as of the 11 day of February, 2005 by The Daniel Island Company, Inc., a South Carolina corporation (the "Declarant").

WHEREAS, Section 7.1 of the Restrictions permits the Declarant to add additional property to the Restrictions which is a portion of the property described on Exhibit B to the Restrictions; and

WHEREAS, the Declarant desires to add the property more fully described on the attached Exhibit A (the "Property") which is a portion of the property described on Exhibit B to the Restrictions.

WHEREAS, simultaneously herewith the Declarant is conveying the Property to Seven Farms Apartments, LP ("Grantee") and the Grantee consents to Property being made subject to the Declaration as evidenced by its signature hereon.

NOW, THEREFORE, the Declarant with the consent of the Grantee hereby supplements the Restrictions to provide that the property more fully described on the attached Exhibit A shall be subject to the Restrictions.

FILED, RECORDED, INDEXED
02/14/2005 04:12:06PM
Rec Fee: 10.00 St Fee: 0.00
Co Fee: 0.00 Pages: 4
Issued to: MCNAIR LAW FIRM
Register of Deeds Berkeley Co., SC
Cynthia B. Forte

000004763 Bk:04517 PG:00032

IN WITNESS WHEREOF, the Declarant and Grantee have executed this Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone as of the date set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Cheryl L. Wicks
Jane Carpenter

THE DANIEL ISLAND COMPANY, INC.

By: Matthew R. Sloan
Its: Executive Vice President

STATE OF SOUTH CAROLINA)

COUNTY OF BERKELEY)

ACKNOWLEDGMENT

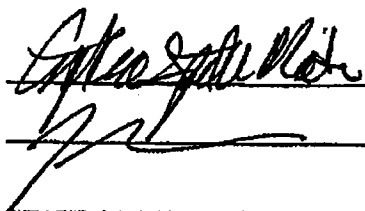
I, the undersigned Notary Public, do hereby certify that The Daniel Island Company, Inc., by Matthew R. Sloan, Its Executive Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 11th day of Feb., 2005.

Jamie Malloy
Notary Public for South Carolina
My Commission Expires: 9/30/07

000004763 Bk#04517 PG:00033

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Seven Farms Apartments, LP

By: HF Seven Farms, LLC
Its: Managing General Partner
By Humanities Foundation, Inc
Its: Sole Member
By: Bonnie Lester
Its: Executive Director
ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Seven Farms Apartments, LP, by Bonnie Lester, its Executive Director, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 11 day of Feb, 2005.



Notary Public for South Carolina

My Commission Expires: 1-17-2013

000004763 Bk=04517 PG=00034

EXHIBIT "A"
PROPERTY DESCRIPTION

**The Daniel Island Company, Inc. To Seven Farms Apartments, LP
Parcel U, Phase 3, Lot 2 (3.26 acres)**

ALL that lot, piece or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "Parcel U, Phase 3, Lot 2, 3.26 acres" on that certain plat entitled "FINAL SUBDIVISION AND PROPERTY LINE ADJUSTMENT PLAT BETWEEN THE DANIEL ISLAND COMMUNITY ASSOCIATION OPEN SPACE AND THE DANIEL ISLAND COMPANY, INC. - PARCEL U, PHASE 3, CREATING PARCEL U, PHASE 3, LOTS 1 & 2", prepared by F. Elliott Quinn, III S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. dated October 15, 2003 and recorded on January 28, 2004 in the Register of Deeds Office for Berkeley County in Plat Cabinet Q, Page 155A and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat.

Being a portion of the property conveyed to The Daniel Island Company, Inc. by deed of Daniel Island Residential Investments, L.L.C. dated November 9, 1998 and recorded November 9, 1998 in Book 1478, Page 286 of the Register of Deeds Office for Berkeley County, and a portion of the property conveyed to The Daniel Island Company, Inc. by Deed of Daniel Island Community Association, Inc. dated February 23, 2004 and recorded in the Office of the Register of Deeds for Berkeley County on February 25, 2004 in Book 3847, Page 347.

TMS No. 275-00-00-068



53 2006 00069780

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00069780 Vol: 5808 Pg: 148

Instrument Number: 2006- 00069780

As

Recorded On: July 24, 2006

Restrictive Covenants

Parties: DANIEL ISLAND COMPANY INC

To

DANIEL ISLAND TOWN ZONE

Recorded By: BUIST LAW FIRM

Num Of Pages:

4

Comment: BK 1587 P 220

**** Examined and Charged as Follows: ****

Restrictive Covenants	10.00
Recording Charge:	10.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006- 00069780
Receipt Number: 65557
Recorded Date/Time: July 24, 2006 12:34:55P
Book-Vol/Pg: Bk-R VI-5808 Pg-148
Cashier / Station: H Sexton / Cash Station 2

Record and Return To:

BUIST LAW FIRM
P.O. BOX 999
CHARLESTON SC 29402



0285

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

ELECTRONICALLY FILED - 2020 Oct 12 3:40 PM - BERKELEY - COMMON PLEAS - CASE#2017CP0802238

Upon recording, please return to:

Constance P. Haywood, Esq.
Epstein Becker & Green, P.C.
Resurgens Plaza, Suite 2700
945 East Paces Ferry Road
Atlanta, Georgia 30326

STATE OF SOUTH CAROLINA

Cross Reference: Deed Book 1587, Page 220

COUNTY OF BERKELEY

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR DANIEL ISLAND TOWN ZONE**

THIS AMENDMENT is made this 7th day of July, 2006, by The Daniel Island Company, Inc., a South Carolina corporation (hereinafter referred to as the "Declarant");

WITNESSETH

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Zone on March 24, 1999, in Deed Book 1587, Page 220, *et seq.*, in the Office of the Register of Deeds of Berkeley County, South Carolina (such instrument as amended and supplemented is hereinafter referred to as the "Declaration"); and

WHEREAS, Article X, Section 10.2 of the Declaration provides that the Declarant may modify in whole or in part, repeal or expand the Initial Use Restrictions and Rules stated in Exhibit "C" to the Declaration so long as Declarant owns any property described on Exhibit "A" or "B" of the Declaration or has a right to annex property pursuant to Section 7.1 of the Declaration; and

WHEREAS, Article XVI, Section 16.2(a) of the Declaration provides that Declarant may unilaterally amend the Declaration by instrument in writing filed and recorded in the Register of Deeds Office for Berkeley County, South Carolina for any purpose without the vote or consent of any Owner; and

WHEREAS, the Declarant owns a portion of the property described on Exhibit "A" and "B" of the Declaration as of the date of this Amendment; and

WHEREAS, the Declarant deems it appropriate to amend the Declaration for the purposes set forth herein;

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Zone as follows:

ARTICLE I
Definitions

The definitions provided in Article I of the Declaration are incorporated herein by reference. Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

ARTICLE II
Initial Use Restrictions and Rules

The Initial Use Restrictions and Rules as stated in Exhibit "C", Section 8 to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Zone shall be amended by deleting that Section in its entirety and substituting therefore the following:

8. Signs. No signs, advertisements, billboards, solicitation or advertising structures of any kind shall be erected, modified or maintained on a Unit or within the Properties unless in conformance within the Design Guidelines and unless prior written approval of the ARB is obtained. The restrictions of this section shall not apply to the Declarant.

Specifically with respect to, but not necessarily limited to, Residential Units, as such term is defined in Section 8.14 of the Declaration, unless specifically approved in writing by the ARB, no "for sale" or "for lease" signs shall be permitted within any portion of the Properties. In addition, no brochure racks, information tubes, boxes or any other item or object may be placed on or erected within the Properties or attached to or placed on or adjacent to any permitted sign, either permanently or temporarily, without the prior written consent of the appropriate reviewing body. The Declarant and the ARB reserve the right to prohibit other types of signs and/or displays, and may also restrict the size, content, color, lettering, design and placement of any approved signs. Any approved sign must be in conformance with the Design Guidelines. In addition to all other rights and remedies set forth in the Declaration, the ARB, Declarant and the Board shall have the right to enter property and to remove any sign, display, or advertising structure erected in violation of this provision, and such entry shall not constitute a trespass.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, The Daniel Island Company, Inc., as Declarant, hereby executes this Amendment by and through its authorized representative on the date and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Matthew R. Sloan
Witness

Cheryl W. Sloan
Witness

DECLARANT:

THE DANIEL ISLAND COMPANY, INC.,
a South Carolina corporation

By: Matthew R. Sloan
Matthew R. Sloan, Executive Vice President

[CORPORATE SEAL]

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, Janine Malloy (Notary Public for the State of South Carolina), do hereby certify that The Daniel Island Company, Inc., a South Carolina corporation, by and through Matthew R. Sloan, its Executive Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said company.

Witness my hand and official seal, this the 7th day of July, 2006.

Janine Malloy
Notary Public
My Commission Expires: 9/29/07

[Notary Seal]



53 2006 00069779

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00069779 Vol: 5808 Pg: 144

Instrument Number: 2006- 00069779

As

Recorded On: July 24, 2006

Restrictive Covenants

Parties: DANIEL ISLAND ASSOCIATES LLC

To

DANIEL ISLAND RESIDENTIAL ZONE

Recorded By: BUIST LAW FIRM

Num Of Pages:

4

Comment: BK 734 P 147

**** Examined and Charged as Follows: ****

Restrictive Covenants	10.00
Recording Charge:	10.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Clerk's Office For: Berkeley County, SC

File Information:

Document Number: 2006- 00069779
Receipt Number: 65557
Recorded Date/Time: July 24, 2006 12:33:29P
Book-Vol/Pg: Bk-R VI-5808 Pg-144
Cashier / Station: H Sexton / Cash Station 2

Record and Return To:

BUIST LAW FIRM
P.O. BOX 999
CHARLESTON SC 29402



0289

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

ELECTRONICALLY FILED - 2020 Oct 12 3:40 PM - BERKELEY - COMMON PLEAS - CASE#2017CP0802238

Doc # 000697779
000697779 Vol: 5808 Pg: 145

Upon recording, please return to:

Constance P. Haywood, Esq.
Epstein Becker & Green, P.C.
Resurgens Plaza, Suite 2700
945 East Paces Ferry Road
Atlanta, Georgia 30326

STATE OF SOUTH CAROLINA

Cross Reference: Deed Book 734, Page 147

COUNTY OF BERKELEY

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR DANIEL ISLAND RESIDENTIAL ZONE**

THIS AMENDMENT is made this 7th day of July, 2006, by Daniel Island Associates L.L.C., a Delaware limited liability company (hereinafter referred to as the "Declarant");

WITNESSETH

WHEREAS, that certain Declaration of Covenants, Conditions, and Restrictions for Daniel Island Residential Zone was recorded on September 21, 1995, in Deed Book 734, Page 147, *et seq.*, in the Office of the Register of Deeds of Berkeley County, South Carolina (such instrument as amended and supplemented is hereinafter referred to as the "Declaration"); and

WHEREAS, pursuant to the terms of that certain Assignment and Assumption of Rights and Easements between Daniel Island Development Company, Inc. and The Daniel Island Company, Inc. filed of record in Book 1093, Page 298, of the aforesaid records, all Declarant's right, title and interest in, to and under the Declaration were assigned to The Daniel Island Company, Inc.; and

WHEREAS, pursuant to the terms of that certain Assignment and Assumption Agreement between The Daniel Island Company, Inc. and Daniel Island Associates L.L.C. filed of record in Book 1478, Page 307, of the aforesaid records, all Declarant's right, title and interest in, to and under the Declaration were assigned to Daniel Island Associates L.L.C.; and

WHEREAS, Article XVI, Section 16.2(a) of the Declaration provides that the Declarant may unilaterally amend the Declaration by an instrument in writing filed and recorded in the Register of Deeds Office for Berkeley County, South Carolina for any purpose, without the approval of any Owner or Mortgagee, provided that such instrument has no material adverse effect upon any right of any Owner; and

WHEREAS, this amendment is for the purpose of clarification only and does not have any material adverse effect upon any right of any Owner; and

WHEREAS, the Declarant deems it appropriate to amend the Declaration for the purpose of clarifying the Use Restrictions and Rules in Exhibit "C";

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration of Covenants, Conditions, and Restrictions for Daniel Island Residential Zone as follows:

ARTICLE I
Definitions

The definitions provided in Article I of the Declaration are incorporated herein by reference. Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

ARTICLE II
Initial Use Restrictions and Rules

The Initial Use Restrictions and Rules as stated in Exhibit "C", Section 2(f) to the Declaration of Covenants, Conditions, and Restrictions for Daniel Island Residential Zone shall be amended by deleting that Section in its entirety and substituting therefor the following:

(f) The display of signs, objects or items of any kind by or on behalf of an Owner or occupant of a Unit without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size deemed reasonable by the ARB in its sole discretion. Unless in compliance with Article IX, no signs, objects or other displays shall be posted or erected by or on behalf of any Owner or occupant within any portion of the Properties, including the Common Area, any Unit or any structure or dwelling located on the Common Area or any Unit (if such sign would be visible from the exterior of such structure or dwelling as determined in the reviewing body's sole discretion).

Unless specifically approved in writing by the ARB, no "for sale" or "for lease" signs shall be permitted within any portion of the Properties. In addition, no brochure racks, information tubes, boxes or any other item or object may be placed on or erected within the Properties or attached to or placed on or adjacent to any permitted sign, either permanently or temporarily, without the prior written consent of the ARB. The Declarant and the ARB reserve the right to prohibit other types of signs and/or displays, and may also restrict the size, content, color, lettering, design and placement of any approved signs. Any approved signs must be professionally prepared. This provision shall not apply to entry, directional, marketing, or other signs installed by the Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties. In addition to all other rights and remedies set forth in the Declaration, the ARB, Declarant and the Board shall have the right to enter property and to remove any sign or display posted in violation of this provision, and such entry shall not constitute a trespass.

[SIGNATURE APPEARS ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Daniel Island Associates L.L.C., as Declarant, hereby executes this Amendment by and through its authorized representative on the date and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

[Signature]
Witness

[Signature]
Witness

DECLARANT:

DANIEL ISLAND ASSOCIATES L.L.C.,
a Delaware limited liability company

By: [Signature] (SEAL)
Matthew R. Sloan, Executive Vice President

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, Janine Malloy (Notary Public for the State of South Carolina), do hereby certify that Daniel Island Associates L.L.C., a Delaware limited liability company, by and through Matthew R. Sloan, its Executive Vice President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said company.

Witness my hand and official seal, this the 7th day of July, 2006.

Janine Malloy
Notary Public
My Commission Expires: 9/29/07

[Notary Seal]



53 2010 00023393

Berkeley County
Cynthia B. Forte
Register of Deeds
Moncks Corner 294616120

00023393 Vol: 8706 Pg: 182

ELECTRONICALLY FILED - 2020 Oct 12 3:40 PM - BERKELEY - COMMON PLEAS - CASE#2017CP0802238

Instrument Number: 2010- 00023393

As

Recorded On: November 17, 2010

Restrictive Covenants

Parties: DANIEL ISLAND COMPANY INC

To

DANIEL ISLAND TOWN ZONE

Recorded By: BUIST LAW FIRM

Num Of Pages: 3

Comment:

**** Examined and Charged as Follows: ****

Restrictive Covenants	10.00
Recording Charge:	10.00

**** THIS PAGE IS PART OF THE INSTRUMENT ****

I hereby certify that the within and foregoing was recorded in the Register of Deeds Office For: Berkeley County, SC

File Information:

Record and Return To:

Document Number: 2010- 00023393

BUIST LAW FIRM

Receipt Number: 302178

P.O. BOX 999

Recorded Date/Time: November 17, 2010 10:43:06A CHARLESTON SC 29402

Book-Vol/Pg: Bk-R VI-8706 Pg-182

Cashier / Station: H Sexton / Cash Station 2



0293

Cynthia B. Forte

Cynthia B Forte - Register of Deeds

Prepared by and upon recording return to:

Constance P. Haywood, Esq.
Epstein Becker & Green P.C.
Resurgens Plaza, Suite 2700
945 East Paces Ferry Road
Atlanta, Georgia 30326

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Cross Reference to:

Book 1587, Page 220,
Register of Deeds for Berkeley
County, South Carolina

**AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR DANIEL ISLAND TOWN ZONE**

THIS AMENDMENT is made this 10th day of November, 2010, by The Daniel Island Company, Inc., a South Carolina corporation (hereinafter referred to as "Declarant");

WITNESSETH

WHEREAS, Declarant recorded that certain Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone on March 24, 1999, in Deed Book 1587, Page 220, *et seq.*, in the Office of the Register of Deeds of Berkeley County, South Carolina (such instrument as amended and supplemented is hereinafter referred to as the "Declaration"); and

WHEREAS, Article XVI, Section 16.2(a) of the Declaration provides that Declarant may unilaterally amend the Declaration for any purpose without the vote or consent of any Owner so long as Declarant owns any property described on Exhibit "A" or "B" of the Declaration or has the right to annex property pursuant to Section 7.1 of the Declaration; and

WHEREAS, the Declarant owns a portion of the property described on Exhibit "A" and "B" of the Declaration as of the date of this Amendment; and

WHEREAS, the Declarant deems it appropriate to amend the Declaration for the purposes set forth herein;

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby amends the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Zone as follows:

1. Article XVI, Section 16.6 of the Declaration shall be deleted in its entirety and shall be replaced by the following Section:

16.6 Use of the Words "Daniel Island". No Person or entity engaged in any form of business involving real estate and/or real property, including but not limited to sales, rental, management, development or appraisal of property, shall use the words "Daniel Island" or any derivative or the logo for "Daniel Island" in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the term "Daniel Island" in printed or promotional matter where such term is used solely to specify that particular property is located within Daniel Island and/or Daniel Island Town. The Association and any other community association located on Daniel Island and the Declarant shall each be entitled to use the words "Daniel Island" in their names.

2. The definitions set forth in Article I of the Declaration are incorporated herein by reference. Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, The Daniel Island Company, Inc., as Declarant, hereby executes this Amendment by and through its authorized representative on the date and year first above written.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Cheryl W. Wicks
Witness

Spencer Bradford
Witness

DECLARANT:

THE DANIEL ISLAND COMPANY, INC.,
a South Carolina corporation

By: Matthew R. Sloan
Matthew R. Sloan, President

[CORPORATE SEAL]

STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

ACKNOWLEDGMENT

I, Carole L. Bashley (Notary Public for the State of South Carolina), do hereby certify that The Daniel Island Company, Inc., a South Carolina corporation, by and through Matthew R. Sloan, its President, personally appeared before me this day and acknowledged the due execution of the foregoing instrument as the act and deed of said company.

Witness my hand and official seal, this the 10th day of November, 2010.

Carole L. Bashley
Notary Public
My Commission Expires: 8-28-2019

[Notary Seal]

EXTERNAL EMAIL

Do not open attachments or click links in emails from unexpected or unknown senders.

No contracts

Sent from my iPhone

On Dec 5, 2019, at 2:54 PM, Amy Moyer
<Amy.Moyer@didevco.net> wrote:

Matt and Jane,
Are either of you aware of any contracts between DIC and DITA or DDCF? I am not. I have already explained to the insurance carrier that DIC controls the DITA board.

From: Muckenfuss, Shawn <Shawn_Muckenfuss@cinfin.com>
Sent: Thursday, December 5, 2019 2:41 PM
To: Amy Moyer <amy.moyer@didevco.net>
Subject: 3463379- DANIEL ISLAND COMPANY INC-

Hey Amy,

I am reaching out regarding the Matthew Zetz claim.

We are still reviewing coverage at this time, but we need any contracts you may have had with any of the entities.

Please provide us with that as quickly as possible. If you have any questions or concerns, please call me at 980-275-1517

Shawn Muckenfuss
The Cincinnati Insurance Company
Senior Claims Specialist
PO Box 1054 Indian Trail, NC 28079
Mobile : 980-275-1517
Fax: 877-371-8521

***Confidentiality notice:** The information included in this email,, including any attachments, is for the sole use of the intended recipient and may contain confidential and privileged information. Any unauthorized review, use, disclosure, distribution or similar action is prohibited. If you are not the intended recipient, please contact the sender and delete all copies of the original message immediately*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A No. 2017-CP-08-02238
Matthew Zetz,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DANIEL ISLAND COMPANY, INC.'S
	)	ANSWERS TO PLAINTIFF'S
Daniel Island Company, Inc., Daniel Island	)	STANDARD AND FIRST
Community Foundation, Inc., Daniel Island	)	SUPPLEMENTAL INTERROGATORIES
Town Association, Inc., Daniel Island	)	
Community Association, Inc., and MGR	)	
Resources, Inc. d/b/a Moonlighting	)	
Landscape Lighting Systems,	)	
	)	
Defendants.	)	

TO: PLAINTIFF AND HIS COUNSEL OF RECORD

Defendant Daniel Island Company, Inc. ("Defendant"), by and through the undersigned counsel, answers Plaintiff's Standard and First Supplemental Interrogatories as follows:

Defendant states that these answers are complete and responsive in accordance with its understanding of the Interrogatories, as drafted, and are based upon records or other information in its possession or reasonably available to it at the time they were made, and that if additional or different information is subsequently discovered or brought to Defendant's attention during the pendency of this case which renders any initial answer incomplete, incorrect or otherwise subject to supplementation, it will do so as required by the South Carolina Rules of Civil Procedure.

Defendant further states that in preparing and making these answers, it has not accepted or acquiesced in the purported directions, conditions or definitions imposed at the time the Interrogatories were propounded by Plaintiff, except and to the extent that the same may have been consistent or in conformity with its understanding of the applicable discovery rules.

While Defendant has answered the Interrogatories propounded, such answers do not constitute a waiver of any objections made thereto. Defendant reserves the right to object to the introduction of these answers into evidence and further reserves the right to supplement or amend these answers at any time during the course of discovery. Defendant answers as follows:

ANSWERS TO STANDARD INTERROGATORIES

1. Give the names, addresses and telephone numbers of persons who may be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

ANSWER:

- a. Matthew Zetz, Plaintiff**
c/o Roy T. Willey, IV
Eric M. Poulin
Lane D. Jefferies
Ivey Blaire Franklin
Anastopoulo Law Firm, Inc.
32 Ann Street
Charleston, SC 29403

Matthew Zetz was deposed on October 25, 2018. Defendant's counsel is in possession of Mr. Zetz's deposition transcript.

- b. Michael Zetz, Plaintiff's brother**
4223 Weepoolow Trail
Charleston, SC 29407

Michael Zetz was deposed on August 14, 2018. Defendant's counsel is in possession of Mr. Zetz's deposition transcript.

- c. Amy Moyer**
Matthew R. Sloan or other representative of
Daniel Island Company, Inc.
c/o K. Michael Barfield, Esquire
D. Summers Clarke, II, Esquire
Barnwell Whaley Patterson & Helms, LLC
P. O. Drawer H

Charleston, SC 29402

These witnesses are expected to testify that this Defendant neither owned nor had any control over the subject property at the time of the incident and may testify about his or her knowledge, if any, of the allegations of the Plaintiff's Second Amended Complaint.

- d. A Representative of Daniel Island Community Foundation, Inc.
c/o Bonum S. Wilson, III
Wilson & Heyward, LLC
230 Seven Farms Drive, Suite 201
Charleston, SC 29492**

A representative of Daniel Island Community Foundation, Inc. may testify about his or her knowledge of the allegations of the Plaintiff's Second Amended Complaint.

- e. A Representative of Daniel Island Town Association, Inc.
c/o Jennifer F. Nutter
Evan Michael Sobocinski
The Hood Law Firm
P.O. Box 1508
Charleston, SC 29401-1408**

A representative of Daniel Island Town Association, Inc. may testify about his or her knowledge of the allegations of the Plaintiff's Second Amended Complaint.

- f. A representative of Daniel Island Community Association, Inc.
c/o Christian Stegmaier
Laura Ruth Baer
Collins & Lacy, PC
P.O. Box 12487
Columbia, SC 29211**

A representative of Daniel Island Community Association, Inc. may testify about his or her knowledge of the allegations of the Plaintiff's Second Amended Complaint.

- g. A Representative of MGR Resources, Inc. d/b/a Moonlighting Landscape Lighting Systems
c/o Morgan S. Templeton
David A. Nasrollahi
Wall Templeton & Haldrup, P.A.
P.O. Box 1200
Charleston, SC 29402**

A representative of MGR Resources, Inc. d/b/a Moonlighting Landscape Lighting Systems may testify about his or her knowledge of the allegations of the Plaintiff's Second Amended Complaint.

- h. Any and all emergency personnel, medical providers or healthcare workers that provided medical care and treatment to Plaintiff**
- i. Any and all fact and expert witnesses identified by any other party to this litigation**

This Defendant is not in possession of any statements from the above witnesses other than the deposition transcripts of Mathew Zetz and Michael Zetz. Defendant reserves the right to supplement this answer.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant, or counsel, that relates to the claim or defense in this case.

ANSWER:

- a) Documents produced by Plaintiff;**
- b) Documents produced by Daniel Island Town Association, Inc., numbered 0001-0408;**
- c) Documents produced by MGR Resources, Inc. d/b/a Moonlighting Landscape Lighting Systems, numbered 001-270;**
- d) Documents produced by Daniel Island Community Foundation (not numbered);**
- e) Cincinnati and Evanston Insurance Policies and Reservation of Rights letters, numbered 0169 to 0282;**
- f) Emails produced by Daniel Island Company, numbered 0283 to 0325; and**
- g) Deed numbered 0326 to 0331.**

Defendant reserves the right to supplement this answer.

3. Set forth the names and addresses of *all* insurance companies which have or may have liability insurance coverage or property damage coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy. This interrogatory includes but is not limited to umbrella policies.

ANSWER:

The following policies may provide coverage:

The Cincinnati Specialty Underwriters Insurance Co.

P. O. Box 145496
Cincinnati, Ohio 45250-5496
Policy No.: CSU0085777
Policy Period: 6/15/2016-6/15/2017
Liability Limits: \$1,000,000 each occurrence
\$2,000,000 general aggregate

Evanston Insurance Company
10 Parkway North
Deerfield, IL 60015
Commercial Excess Liability Policy No.: MKLV2EUL100080
Policy Period: June 15, 2016 to June 15, 2017
Liability Limits: \$10,000,000 each occurrence
\$10,000,000 aggregate

Defendant makes no representations as to the availability or applicability of coverage under any policy that is identified or produced by Defendant.

4. If Defendant is claiming any damages, set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER:

Defendant is not claiming any damages at this time. Discovery is ongoing and Defendant reserves the right to supplement this answer.

5. List the names, addresses, and telephone numbers of any individual whom you propose to use as an expert witness at the trial of this action and for each state in detail their qualifications to testify and the substance of his or her opinions and the basis for his or her opinion.

ANSWER:

Defendant has not yet retained or specially employed an expert for the purposes of testifying at the trial of this case. Defendant reserves the right to elicit expert testimony from any witness, who, by reason of training, education or experience, is qualified to render an expert opinion, including any lay or expert witness named or called by any party to this action. Defendant explicitly reserves the right to supplement this answer.

6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

See answer to Interrogatory No. 1.

7. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended Summons and Pleading reflecting the correct information.

ANSWER:

Defendant is properly identified.

ANSWERS TO SUPPLEMENTAL INTERROGATORIES

1. As to each expert witness listed in response to Standard Interrogatories, please state:
 - a. A complete statement of all opinions the witness will express and the basis and reasons for them;
 - b. The data and other information considered by the witness in forming the opinions;
 - c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided in response to Requests for Production);
 - d. The witness's qualifications, including a list of all publications authored in the previous ten years;
 - e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;
 - f. A statement of the compensation to be paid for the study and testimony in the

case.

ANSWER:

See answer to Standard Interrogatory No. 5. This Defendant specifically reserves the right to supplement this answer.

2. For each affirmative defense that is raised in your answer, please state with particularity each and every fact or basis in law upon which you allege to have “good grounds,” as defined in Rule 11 SCRCP, to assert such a defense. A full and complete response should include, for each defense all witnesses, writings, court cases, and statutes that support this contention.

ANSWER:

Defendant objects to this request on the grounds that it is unduly burdensome and overly broad. Defendant further objects to this request as it seeks to discover the mental impressions, thoughts, legal theories, and/or strategies of Defendant and its counsel or other information protected by the work product doctrine, attorney-client privilege and/or other applicable privilege or doctrine.

Without waiving and specifically reserving all rights under objection, Defendant has asserted the affirmative defense of comparative negligence because the Plaintiff was walking in an allegedly poorly lit area with which he was unfamiliar. Rather than taking the same route as his companions, who were familiar with the park, the plaintiff took a different path, which resulted in him falling into the lazy river feature of the park. Further, the plaintiff chose to walk in a dark area without the aid of a flashlight.

Defendant has asserted the affirmative defense of failure to mitigate damages because it may be revealed through discovery that the Plaintiff's own conduct subsequent to his accident may have exacerbated his injuries and/or impeded his recovery.

Defendant has asserted the affirmative defense that the Plaintiff's injuries may have been caused by the negligence of third parties. The Plaintiff has alleged that the park in which he fell was poorly lit and/or maintained. This Defendant had had neither ownership nor control of that park for 17 years prior to the incident. As such, if the park was not properly lit or maintained at the time of the incident, it was not due to any acts or omissions of this defendant.

Defendant has invoked the statutory cap on punitive damages as an affirmative defense, which speaks for itself.

Defendant has pled that it owed no legal duty to the Plaintiff. This Defendant had no ownership or control over the park in which the Plaintiff fell for 17 years prior to the incident. A past owner of property owed no legal duties to visitors to that property after legal title has been conveyed to a new owner, much less a series of new owners.

Defendant has asserted the affirmative defenses of the statute of limitations and statute of repose. To the extent that the Plaintiff is attempting to frame this case as a design and/or construction defect case, the instant suit was filed much too late, specifically 17 years after the design and construction of the park. The three year statute of limitations expired 14 years prior to the filing of this matter. Further, the 13 year statute of repose expired four years prior to the filing of this matter.

Defendant is still investigating the Plaintiff's claim and reserves the right to supplement this answer.

3. For all photographs relating to this case which are in the possession of the Defendant or the Defendant's counsel, please provide a brief description of the content of the photograph, the date the photograph was taken, and the name, address and employer of the person who took the photograph.

ANSWER:

None other than photographs produced by other parties to this litigation. Information responsive to this Interrogatory should be requested from the parties who produced such photographs.

4. Identify each and every premises liability personal injury lawsuit in which Defendant has been involved in South Carolina during the past 20 years by stating as to each such lawsuit, the date and county of filing, the name of the other party or parties, the names of all attorneys involved, a brief description of the underlying facts, and the result of the lawsuit.

ANSWER:

None.

5. State separately each fact of which the Defendant or the Defendant's attorney, has knowledge, or plans to use as evidence against the Plaintiff. For each separate fact identify the following:

- a. The individual's name, address, and telephone number who will testify to this fact;
- b. The source of the fact to which this individual will testify; and
- c. Any documents which support the allegations.

ANSWER:

Defendant objects to this request as it seeks to discover the mental impressions, thoughts, legal theories, and/or trial strategies of Defendant and its counsel or other information protected by the work product doctrine, attorney-client privilege and/or other applicable privilege or doctrine. Further responding, discovery is ongoing and this request is premature as Defendant is still investigating the Plaintiff's claims. Defendant reserves the right to use as evidence any testimony given in this matter, any documents produced in this matter, and any other evidence that may become known as discovery progresses. Defendant reserves the right to supplement to this answer closer to the date of trial. See also response to Supplemental Interrogatory No. 2.

6. Has the Defendant or anyone on the Defendant's behalf obtained any statement in any form from any potential witness or party in the case that concerns the events described in the complaint? If so, please state from whom those statements were taken and who has possession of those statements.

ANSWER:

Defendant's counsel is in possession of the deposition transcripts of Mathew Zetz and Michael Zetz.

7. Has the area which is the subject of this action ever been repaired and/or replaced and/or altered in any manner since creation / construction? Please provide the names and addresses of any contractors, sub-contractors, employees, or anyone else who worked on either, the dates of the work, the reason for the work, and the nature of the work.

ANSWER:

Defendant has neither owned nor controlled the property in 17 years and does not have knowledge of information responsive to this Interrogatory.

8. Please identify all video cameras on Defendant's premises at the time of the fall and within how many feet of the fall they captured film. If no cameras, so state.

ANSWER:

Defendant does not own or control the subject property and does not have knowledge of information responsive to this Interrogatory.

9. Describe with particularity exactly what occurred in the ten minutes prior to the incident which is the subject of the above action (hereinafter referred to as "the incident"), what occurred during the incident, and what occurred in the ten minutes after the incident, including anything said by or to you or one of your agents or employees.

ANSWER:

This Defendant has no such knowledge of the information requested.

10. State what you, or any of your agents or employees saw happen with respect to the incident and what you or any one of your agents or employees did to assist Plaintiff after the incident.

ANSWER:

No employee of this Defendant witnessed the alleged incident. Defendant has no such knowledge of what happened with respect to the incident.

11. Other than this incident, has any person reported slipping and/or tripping and/or falling in the area where this incident occurred during the five-year period prior to the date of this incident, up to present day? If so, as to each such reported slip and/or trip and/or fall incident, please provide the date of each such incident; a brief description of each such incident, including the type of surface on which the person involved in each such incident slipped and/or tripped and/or fell; a brief description of the injuries suffered by any person involved in each

such incident; and state whether any of the incidents referred to above resulted in a claim and/or lawsuit, and if so, the name of each claimant, date of the filing of each such claim and/or lawsuit, the civil number, and a summary of the disposition of each such claim or lawsuit.

ANSWER:

Defendant has neither owned nor controlled the property in 17 years and does not have information responsive to this Interrogatory.

12. As to each and every report and/or complaints with regard to a condition of the area where this incident occurred during the five-year period before this incident please state the date of such complaint and/or report; whether or not you have or maintained any documentary material of any kind or nature relating or referring to such complaints and/or reports; and what action, if any, was taken by you with respect to such complaint and/or report.

ANSWER:

Defendant has neither owned nor controlled the property in 17 years and does not have information responsive to this Interrogatory.

13. If anyone investigated this matter for you, state their name(s) and address(es), and state whether such investigation was reduced to writing, and the substance of their investigation and findings. If said investigators obtained any signed, recorded, transcribed or oral statement from any individual, identify the person who gave the statement and the present custodian of such statement. "Investigators" is deemed to include, but is not limited to, medical experts, private investigators, and/or insurance adjusters.

ANSWER:

This Defendant has not performed any such investigation and is not aware of anyone investigating this matter on its behalf. Defendant reserves the right to supplement this answer.

14. If you believe or have any information tending to show that the injuries to the

Plaintiff were due to any cause other than the cause referred to in the complaint, please state each fact on which the defendant bases this claim and all information within the Defendant's knowledge that tends to show alleged negligence on the part of the Plaintiff, including the name, address, and telephone number of each person having personal knowledge of the facts and information set forth in the answer to this interrogatory.

ANSWER:

Defendant craves reference to its affirmative defense of comparative negligence. Beyond that, this Defendant is unsure of any such facts because it had neither ownership nor control of the park in question for the 17 years preceding the incident.

15. If you believe or have information tending to show that the injuries claimed to have been sustained by Plaintiff were caused or contributed to by any negligent act or omission on the part of any person not named as a defendant in this action please state the name, address, and telephone number of each person; the nature of each negligent act or omission and the manner in which it was allegedly committed or omitted; and the name and address of each person who has personal knowledge of any information concerning each negligent act or omission on the part of such person.

ANSWER:

See answer to Interrogatory No. 14.

16. State your net worth.

ANSWER:

Defendant objects to this interrogatory on the grounds that it is outside the scope of discovery and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, this request seeks confidential financial information that is not relevant to the case itself. Defendant further objects to this Interrogatory on the grounds that it is premature at this stage of the case. Without waiving and specifically reserving all rights under objection, it would be more appropriate to disclose this information only after a jury

has awarded compensatory or nominal damages at trial and only when Plaintiff puts forth clear and convincing evidence of entitlement to punitive damages.

17. With respect to each of Plaintiff's Requests to Admit to which you responded with anything other than an unqualified admission, state the full legal and factual basis for failing to admit.

ANSWER:

Not applicable. Plaintiff has not served requests to admit on this Defendant.

18. Identify by name, address, and phone number your current president, vice-president, secretary, treasurer, LLC manager(s), and LLC managing member(s) as well as the identity of those holding the same positions on November 11, 2016.

ANSWER:

Current officers:

**Frank W. Brumley, President
67 Broad Street, Suite 102
Charleston, SC 29401
(843) 696-0991**

**Galen L. Oelkers, Executive Vice President
3715 Northside Parkway, Bldg. 300
Atlanta, GA 30327
(404) 949-3160**

**Amy S. Moyer, Vice President of Finance
230 Seven Farms Drive, Suite 201
Daniel Island, SC 29492
(843) 971-3529**

**William J. McKenzie, Vice President of Development
230 Seven Farms Drive, Suite 201
Daniel Island, SC 29492
(843) 971-3527**

Past officers:

Frank W. Brumley, Chairman of the Board and Chief Executive Officer

**67 Broad Street, Suite 102
Charleston, SC 29401
(843) 696-0991**

**Matthew R. Sloan, President and Chief Operating Officer
14 Johnson Road
Charleston, SC 29407
(843) 971-3533**

**R. Brad Foster, Treasurer
3715 Northside Parkway, Bldg. 300
Atlanta, GA 30327
(404) 949-3160**

**Janine Malloy, Secretary
Battery Weed
James Island, SC
(843) 270-3526**

These witnesses may be contacted through counsel for Defendant.

19. Identify by title and applicable time period each and every position within your organization that is or was held by Matthew R. Sloan at any time.

ANSWER:

Position	Time period
Vice President	2000-June 2006
President and Chief Operating Officer	June 2006 – May 29, 2020

20. Identify the architect, designer, and/or engineers who designed the park which is the subject of this litigation, and in particular the concrete trench into which Plaintiff fell.

ANSWER:

**Designed by Lee Skolnick Architecture and Design Partnership
Landscape Design by Design Works, LC
Lighting and electrical by Defendant Moonlighting
Constructed by The Greenery**

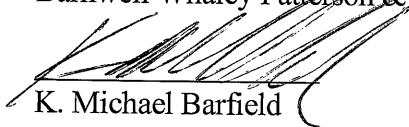
21. Identify all statutes, codes, regulations, standards, or customs which you content were applicable to the design and construction of the park which is the subject of this litigation,

and in particular the concrete trench into which Plaintiff fell.

ANSWER:

Defendant has no such knowledge, as the project in question was designed and built over 20 years ago. Further, the Defendant would have deferred to the design and construction of the park to design and build the project in accordance with all applicable codes.

Barnwell Whaley Patterson & Helms, LLC



K. Michael Barfield

D Summers Clarke

P.O. Drawer H

Charleston, SC 29402

mbarfield@barnwell-whaley.com

Counsel for The Daniel Island Company, Inc.

August 19, 2020
Charleston, South Carolina

Matthew Zetz v. Daniel Island Community Foundation, et al.
C/A No. 2017-CP-08-02238

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of Daniel Island Company, Inc.'s Answers to Plaintiff's Standard and First Supplemental Interrogatories on the following counsel/parties, in accordance with applicable Rules of Civil Procedure, on August 19, 2020 via e-mail as indicated below:

Roy T. Willey, IV Eric M. Poulin Lane D. Jefferies Ivey Blaire Franklin Anastopoulos Law Firm, Inc. 32 Ann Street Charleston, SC 29403 roy@akimlawfirm.com eric@akimlawfirm.com lane@akimlawfirm.com ivey@akimlawfirm.com <i>Counsel for Plaintiff</i>	Bonum S. Wilson, III Wilson & Heyward, LLC 230 Seven Farms Drive, Suite 201 Charleston, SC 29492 bwilson@wilsonheyward.com <i>Counsel for Daniel Island Community Foundation</i>
Jennifer F. Nutter Evan Michael Sobocinski The Hood Law Firm P.O. Box 1508 Charleston, SC 29401-1408 Jennifer.nutter@hoodlaw.com Evan.sobocinski@hoodlaw.com <i>Counsel for Daniel Island Town Association and Daniel Island Town Center Owners Association</i>	Morgan S. Templeton David A. Nasrollahi Wall Templeton & Haldrup, P.A. P.O. Box 1200 Charleston, SC 29402 Morgan.Templeton@WallTempleton.com David.Nasrollahi@WallTempleton.com <i>Counsel for MGR Resources dba Moonlighting Landscape Lighting Systems</i>
Christian Stegmaier Laura Ruth Baer Collins & Lacy, PC P.O. Box 12487 Columbia, SC 29211 cstegmaier@collinsandlacy.com lbaer@collinsandlacy.com <i>Counsel for Daniel Island Community Association</i>	



Susan Hatch, Paralegal

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BERKELEY	)	
Matthew Zetz,	)	C/A No. 2017-CP-08-02238
	)	
<i>Plaintiff,</i>	)	DEFENDANT DANIEL ISLAND TOWN
	)	ASSOCIATION, INC.'S ANSWERS TO
Versus	)	PLAINTIFF'S STANDARD AND
	)	SUPPLEMENTAL
	)	INTERROGATORIES
Daniel Island Company, Inc.; Daniel Island	)	
Community Foundation, Inc.; Daniel Island	)	
Town Association, Inc.; Daniel Island	)	
Community Association, Inc.; and MGR	)	
Resources, Inc. d/b/a Moonlighting Landscape	)	
Lighting Systems,	)	
	)	
<i>Defendants.</i>	)	

TO: LANE JEFFERIES, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rules 26 and 33 of the South Carolina Rules of Civil Procedure, the Defendant Daniel Island Town Association, Inc. (hereinafter "This Defendant") responds to the Plaintiff's Standard and Supplemental Interrogatories, as follows:

ANSWERS TO STANDARD INTERROGATORIES

1. Give the names, addresses and telephone numbers of persons who may be witnesses concerning the facts of this action or who have knowledge of relevant facts concerning this incident, and indicate whether or not written or recorded statements have been taken from the witnesses, and indicate who has possession of such statements.

ANSWER:

Matthew Zetz
c/o Roy T. Willey IV (101010) / Eric M. Poulin (100209)
Lane D. Jefferies (101764) / Ivey B. Franklin (104131)
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Michael Zetz

c/o Roy T. Willey IV (101010) / Eric M. Poulin (100209)
 Lane D. Jefferies (101764) / Ivey B. Franklin (104131)
 Anastopoulos Law Firm, LLC
 32 Ann Street
 Charleston, SC 29403
 (843) 614-8888

Stephanie Borzendowski

1890 Milford Street
 Charleston, SC 29405

Any and all physicians or medical providers listed in the Plaintiff's medical records

Any and all emergency/police personnel responding on the scene of the alleged incident

This Defendant reserves the right to call as a witness at trial any of the healthcare providers, including physicians and/or nurses, whose names appear in the medical records of the Plaintiff and who treated him for injuries alleged to have been sustained from or connected to the incident in question.

This Defendant incorporates herein any and all witnesses deposed in connection with this case or identified in discovery by any other party to this lawsuit, and reserves the right to supplement this answer. To the extent one or more documents produced herewith may constitute a statement, this Defendant refers Plaintiff thereto and states that it is unaware of any other written or recorded statements taken from any of the foregoing witnesses.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Defendant, or counsel, that relates to the claim or defense in this case.

ANSWER:

- Declaration of Covenants – DITA 0001-0194
- Articles of Incorporation – DITA 0195-0199
- Express Flooring Invoice- DITA 0200-0202
- Children's Park Repair Invoice- DITA 0203-0205

- Moonlighting email- DITA 0206-0208
- Liquid Renovations Proposal- DITA 0209-0210
- Feral Creative W-9- DITA 0211
- Pond estimation- DITA 0212-0213
- Park Day- DITA 0214-0267
- 2016 DITA Meeting Minutes- DITA 0268-0270
- Moonlighting Invoices- DITA 0271-0277
- 2012 DITA Meeting Minutes- DITA 0278
- Amended Declaration of Covenants- DITA 0279-0361
- Name Change Amendment- DITA 0362-0363
- Children's Park Colors- DITA 0364-0365
- Children's Park repair- DITA 0366-0367
- DITA Bylaws- DITA 0368-0390
- 2013 DITA Meeting Minutes- DITA 0391
- 2014 DITA Meeting Minutes- DITA 0392
- SCE&G Billing- DITA 0393-0394
- Policy Declarations- DITA 0395-0408

3. Set forth the names and addresses of ***all*** insurance companies which have or may have liability insurance coverage or property damage coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy. This interrogatory includes but is not limited to umbrella policies.

ANSWER: This Defendant refers to ***DITA 0395-0408***.

4. If Defendant is claiming any damages, set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: None at this time. This Defendant reserves the right to supplement.

5. List the names, addresses, and telephone numbers of any individual whom you propose to use as an expert witness at the trial of this action and for each state in detail their qualifications to testify and the substance of his or her opinions and the basis for his or her opinion.

ANSWER: This Defendant has not yet retained or specially employed an expert for the purposes of testifying at the trial of this case. Further responding, this Defendant reserves the right to elicit expert testimony from any witness who, by reason of training, education, or experience, is qualified to render an expert opinion including any lay or expert witness named or called by any party to this action. This Defendant explicitly reserves the right to supplement this answer.

6. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

ANSWER:

Matthew Zetz is the Plaintiff and will testify as to the facts and damages

Stephanie Borzendowski is the Plaintiff's designated expert and will testify as to her expert opinion in the field of human factors.

The physicians and medical providers will testify as to their treatment and care, as well as potential damages incurred by the Plaintiff.

The emergency/police personnel will testify as to their knowledge of the incident.

7. If the Defendant is improperly identified, give the proper identification and state whether counsel will accept service of an amended Summons and Pleading reflecting the correct information.

ANSWER: This Defendant is properly identified.

ANSWERS TO SUPPLEMENTAL INTERROGATORIES

1. As to each expert witness listed in response to Standard Interrogatories, please state:
 - a. A complete statement of all opinions the witness will express and the basis and reasons for them;
 - b. The data and other information considered by the witness in forming the opinions;
 - c. A description of any exhibits the witness or counsel intends to introduce to summarize or support these opinions (to be provided in response to Requests for Production);
 - d. The witness's qualifications, including a list of all publications authored in the previous ten years;
 - e. A list of all other cases in which, during the previous 5 years, the witness testified as an expert at trial or by deposition;
 - f. A statement of the compensation to be paid for the study and testimony in the case.

ANSWER: This Defendant has not yet retained or specially employed an expert for the purposes of testifying at the trial of this case. Further responding, this Defendant reserves the right to elicit expert testimony from any witness who, by reason of training, education, or experience, is qualified to render an expert opinion including any lay or expert witness named or called by any party to this action. This Defendant explicitly reserves the right to supplement this answer.

2. For each affirmative defense that is raised in your answer, please state with particularity each and every fact or basis in law upon which you allege to have "good grounds,"

as defined in Rule 11 SCRCF, to assert such a defense. A full and complete response should include, for each defense all witnesses, writings, court cases, and statutes that support this contention.

ANSWER: This Defendant objects to this interrogatory on the grounds that it seeks information protected by the attorney/client privilege and/or attorney work product doctrine. This information will be provided at the appropriate time prior to trial pursuant to South Carolina law and Rules of Civil Procedure.

3. For all photographs relating to this case which are in the possession of the Defendant or the Defendant's counsel, please provide a brief description of the content of the photograph, the date the photograph was taken, and the name, address and employer of the person who took the photograph.

ANSWER: This Defendant objects to this request on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving such objections, this Defendant is not currently in possession of any photographs that have not been already produced by another party in this case. This Defendant was not on notice of any incident regarding this case until the case was filed.

4. Identify each and every premises liability personal injury lawsuit in which Defendant has been involved in South Carolina during the past 20 years by stating as to each such lawsuit, the date and county of filing, the name of the other party or parties, the names of all attorneys involved, a brief description of the underlying facts, and the result of the lawsuit.

ANSWER: This Defendant objects to this interrogatory on the grounds that it is public information equally available to the Plaintiff, it is overly broad, vague, and is not reasonably calculated to the discovery of relevant information in this case. Subject to and

without waiving such objections, no lawsuits similar to the allegations alleged in this case were ever filed.

5. State separately each fact of which the Defendant or the Defendant's attorney, has knowledge, or plans to use as evidence against the Plaintiff. For each separate fact identify the following:

- a. The individual's name, address, and telephone number who will testify to this fact;
- b. The source of the fact to which this individual will testify; and
- c. Any documents which support the allegations.

ANSWER: This Defendant objects to this interrogatory on the grounds that it is overly broad, vague, unduly burdensome, and seeks information protected under the attorney/client privilege and/or work product doctrine. Subject to and without waiving such objections this information will be produced at the appropriate time prior to trial pursuant to South Carolina law and Rules of Civil Procedure.

6. Has the Defendant or anyone on the Defendant's behalf obtained any statement in any form from any potential witness or party in the case that concerns the events described in the complaint? If so, please state from whom those statements were taken and who has possession of those statements.

ANSWER: None at this time.

7. Has the area which is the subject of this action ever been repaired and/or replaced and/or altered in any manner since creation / construction? Please provide the names and addresses of any contractors, sub-contractors, employees, or anyone else who worked on either, the dates of the work, the reason for the work, and the nature of the work.

ANSWER: This Defendant objects to this interrogatory on the grounds that it is overly broad, vague, and unduly burdensome. Subject to and without waiving such objections, the only such actions performed are that the channels and compass in the park were painted. Further responding please see DITA 0364-0367.

8. Please identify all video cameras on Defendant's premises at the time of the fall and within how many feet of the fall they captured film. If no cameras, so state.

ANSWER: No cameras in that location.

9. Describe with particularity exactly what occurred in the ten minutes prior to the incident which is the subject of the above action (hereinafter referred to as "the incident"), what occurred during the incident, and what occurred in the ten minutes after the incident, including anything said by or to you or one of your agents or employees.

ANSWER: This Defendant has no such knowledge. Further responding, this Defendant was not aware of the alleged incident until the filing of this lawsuit.

10. State what you, or any of your agents or employees saw happen with respect to the incident and what you or any one of your agents or employees did to assist Plaintiff after the incident.

ANSWER: This Defendant has no such knowledge. Further responding, this Defendant was not aware of the alleged incident until the filing of this lawsuit.

11. Other than this incident, has any person reported slipping and/or tripping and/or falling in the area where this incident occurred during the five-year period prior to the date of this incident, up to present day? If so, as to each such reported slip and/or trip and/or fall incident, please provide the date of each such incident; a brief description of each such incident, including the type of surface on which the person involved in each such incident slipped and/or

tripped and/or fell; a brief description of the injuries suffered by any person involved in each such incident; and state whether any of the incidents referred to above resulted in a claim and/or lawsuit, and if so, the name of each claimant, date of the filing of each such claim and/or lawsuit, the civil number, and a summary of the disposition of each such claim or lawsuit.

ANSWER: This Defendant objects to this interrogatory on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to the discovery of relevant information. Subject to and without waiving such objections, this Defendant offers that no incidents have been reported that are similar to facts alleged in this case.

12. As to each and every report and/or complaints with regard to a condition of the area where this incident occurred during the five-year period before this incident please state the date of such complaint and/or report; whether or not you have or maintained any documentary material of any kind or nature relating or referring to such complaints and/or reports; and what action, if any, was taken by you with respect to such complaint and/or report.

ANSWER: This Defendant objects to this interrogatory on the grounds that it is overly broad, vague, unduly burdensome, and not reasonably calculated to the discovery of relevant information. Subject to and without waiving such objections, this Defendant offers that it is not aware of any incidents.

13. If anyone investigated this matter for you, state their name(s) and address(es), and state whether such investigation was reduced to writing, and the substance of their investigation and findings. If said investigators obtained any signed, recorded, transcribed or oral statement from any individual, identify the person who gave the statement and the present custodian of such statement. "Investigators" is deemed to include, but is not limited to, medical experts, private investigators, and/or insurance adjusters.

ANSWER: This Defendant has performed no such investigation at this time. This Defendant reserves the right to supplement.

14. If you believe or have any information tending to show that the injuries to the Plaintiff were due to any cause other than the cause referred to in the complaint, please state each fact on which the defendant bases this claim and all information within the Defendant's knowledge that tends to show alleged negligence on the part of the Plaintiff, including the name, address, and telephone number of each person having personal knowledge of the facts and information set forth in the answer to this interrogatory.

ANSWER: This Defendant has no such information at this time. This Defendant reserves the right to supplement.

15. If you believe or have information tending to show that the injuries claimed to have been sustained by Plaintiff were caused or contributed to by any negligent act or omission on the part of any person not named as a defendant in this action please state the name, address, and telephone number of each person; the nature of each negligent act or omission and the manner in which it was allegedly committed or omitted; and the name and address of each person who has personal knowledge of any information concerning each negligent act or omission on the part of such person.

ANSWER: This Defendant has no such information at this time. This Defendant reserves the right to supplement.

16. State your net worth.

ANSWER: Objection, these Defendants object to this request as it is unduly burdensome, irrelevant and not reasonably calculated to lead to the discovery of admissible evidence. Further responding, this is premature as there is no evidence of punitive damages.

17. With respect to each of Plaintiff's Requests to Admit to which you responded with anything other than an unqualified admission, state the full legal and factual basis for failing to admit.

ANSWER: No requests to admit have been served in this case.

18. Identify by name, address, and phone number your current president, vice-president, secretary, treasurer, LLC manager(s), and LLC managing member(s) as well as the identity of those holding the same positions on November 11, 2016.

ANSWER: This Defendant objects to this interrogatory as it is not relevant and not reasonably calculated to the discovery of any relevant information. Subject to and with waiving such objections:

Current

Jane Baker- President

Frank Brumley – Vice President

David Crawford- Secretary/Treasurer

2016

Matthew Sloan- President

Frank Brumley- Vice President

David Crawford – Secretary/treasurer

19. Identify by title and applicable time period each and every position within your organization that is or was held by Matthew R. Sloan at any time.

ANSWER: This Defendant objects to this interrogatory as it is not relevant and not reasonably calculated to the discovery of any relevant information. Subject to and without waiving such objections, Matthew Sloan was the President of this Defendant at the time of creation through June 2020.

20. Identify the architect, designer, and/or engineers who designed the park which is the subject of this litigation, and in particular the concrete trench into which Plaintiff fell.

ANSWER: This Defendant has no such information as it did not have a part in the construction of the park. Further responding, the park contains a marking with the following:

Dedicated 2001

Designed by Lee Skolnick Architecture and Design Partnership

Landscape Design by Design Works, LC

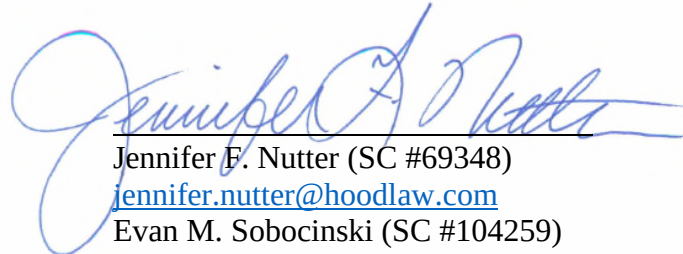
Lighting by Moonlighting

Built by The Greenery

21. Identify all statutes, codes, regulations, standards, or customs which you content were applicable to the design and construction of the park which is the subject of this litigation, and in particular the concrete trench into which Plaintiff fell.

ANSWER: This Defendant objects to this interrogatory on the grounds that it is overly broad, vague, and seeks information protected by the attorney/client privilege and/or work product doctrine. Subject to and without waiving such objections, this Defendant identifies all applicable construction codes, standards, customs, statutes applicable. This Defendant reserves the right to supplement.

HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630



Jennifer F. Nutter (SC #69348)
jennifer.nutter@hoodlaw.com
Evan M. Sobocinski (SC #104259)
evan.sobocinski@hoodlaw.com

*Attorneys for the Defendant
Daniel Island Town Association, Inc.*

July 24, 2020

Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of **DEFENDANT DANIEL ISLAND TOWN ASSOCIATION, INC.'S ANSWERS TO PLAINTIFF'S STANDARD AND SUPPLEMENTAL INTERROGATORIES** was served on each party or counsel of record by ☐ mailing, ☒ e-mailing, ☐ facsimile, or ☐ hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 24th day of July, 2020.

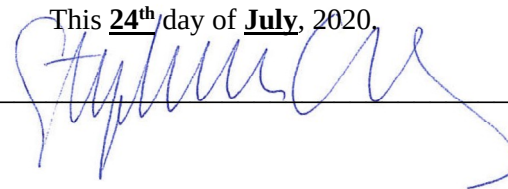


EXHIBIT E

RECEIVED

12/29/2000

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BERKELEY)

ASSESSOR
 BERKELEY COUNTY SC
 TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS that **DIBS - SALES CENTER, L.L.C.**, a South Carolina limited liability company ("Grantor"), in the State aforesaid, for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars, to it in hand paid at and before the sealing of these presents by **DANIEL ISLAND TOWN CENTER OWNERS ASSOCIATION, INC.**, a South Carolina non-profit corporation ("Grantee"), in the state aforesaid, for which the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, unto the said Daniel Island Town Center Owners Association, Inc. its successor and assigns, the following described Premises, to wit:

ALL those lots, pieces or parcels of highlands, lakes, wetlands and wetland buffers situated, lying and being in Parcel R on Daniel Island, City of Charleston, County of Berkeley, South Carolina (the "Premises") and subject to a Reservation of Easement, both the Premises and the Easement being more fully described on **Exhibit A** attached hereto and incorporated herein by reference.

BEING a portion of the property conveyed to Grantor herein by Deed of The Daniel Island Company, Inc. dated March 24, 1999 and recorded in the ROD Office for Berkeley County on March 24, 1999 in Book 1587, at Page 283.

Grantee's Address: 1183 Daniel Island Drive
 Charleston, South Carolina, 29405

12/29/2000

ASSESSOR
BERKELEY COUNTY SC

THIS CONVEYANCE, is made subject to all encumbrances, covenants, restrictions, conditions and easements of record, including the easements, assessments, liens, restrictions, conditions, and limitations contained in the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone by The Daniel Island Company, Inc. (the "Declarant") dated March 24, 1999 and recorded in the Register of Deeds Office for Berkeley County in Book 1587, Page 220, as amended and supplemented from time to time, including the Eighth Supplement to the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Zone dated November __, 2000; and the Declaration of Covenants, Conditions and Restrictions for Daniel Island Town Center Shared Parking Facilities by the Declarant dated August 19, 1999 and recorded in the Register of Deeds for Berkeley County in Book 1723, Page 278 (collectively, the "Declarations").

This conveyance is made subject to further restriction that in the event the Grantee shall elect to transfer all or any part of the Premises, the Declarant under the terms of the Declarations will have the right of first refusal to re-acquire such part of the Premises for Ten and no/100 (\$10.00) Dollars from the Grantee.

00382213.

1

Doc # 000026089 EXEMPT
 FILED, RECORDED, INDEXED
 12/29/2000 11:28:33AM
 Rec Fee: 12.00 Pages: 6
 Register of Deeds Berkeley Co. SC
 Cynthia B. Forte
 Issued to: BUIST LAW FIRM

This conveyance is made subject to the further restriction that no structure may be placed on the Premises unless the prior written consent of the Declarant under the terms of the Declarations is first obtained, such consent may be withheld for any reason.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining, subject to the Reservation of Easement.

TO HAVE AND TO HOLD, subject to the matters set forth herein, all and singular, the said Premises subject to the Reservation of Easement, before mentioned unto the said Grantee, its successors and assigns, forever.

AND, subject to the matters set forth herein, including the Reservation of Easement, the Grantor does hereby bind its successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against Grantor and Grantor's successors, lawfully claiming, or to claim the same or any part thereof, by, through and under the Grantor, its successors and assigns, but no others.

The remainder of this page is intentionally left blank

IN WITNESS WHEREOF, Grantor has caused these presents to be executed by Grantor this 20 day of December, 2000.

DIBS-SALES CENTER, L.L.C., a South Carolina
limited liability company

By: FB/MS L.L.C, its Member

Jamie Johnson

Lisa M. Owens

By: 

Matthew R. Sloan

Its: Member

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BERKELEY)

I, Janine Johnson, Notary Public for the State of South Carolina, do hereby certify that DIBS-Sales Center, L.L.C., a South Carolina limited liability company, by FB/MS L.L.C., its Member, by Matthew R. Sloan, its Member, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 20 day of December, 2000.

Janine Johnson
Notary Public, State of South Carolina
My commission expires: 9/29/2007

Exhibit A
Description of Premises
DIBS - SALES CENTER, L.L.C. TO DANIEL ISLAND TOWN CENTER OWNERS
ASSOCIATION, INC.

ALL those lots, pieces or parcels of land of highlands, lakes, wetlands and wetland buffers situated, lying and being on Daniel Island, in the City of Charleston, County of Berkeley, State of South Carolina, located in Parcel R having the following buttings, boundings, metes and bounds:

SIMMONS PARK 0.40 ACRES, 17,495 sq.ft.. ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "SIMMONS PARK 17,495 sq. ft., 0.40 acres" as shown on Sheet 2 of that certain plat entitled "FINAL PLAT OF RIVER LANDING DRIVE & PORTIONS OF PARCEL R, BLOCKS G, I, K, L & O, DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliotte Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on August 4, 2000 in the Register of Deeds Office for Berkeley County in Plat Cabinet O, Pages 271-B, 272-A & B, 273A & B and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat.

TMS No. Portion of 275-00-00-120

ALSO, TOGETHER WITH:

OPEN SPACE 1.09 ACRES, 47,476 sq. ft.. ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "OPEN SPACE 47,476 sq. ft., 1.09 acres" as shown on Sheet 3 of that certain plat entitled "FINAL PLAT OF RIVER LANDING DRIVE & PORTIONS OF PARCEL R, BLOCKS G, I, K, L & O, DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliotte Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on August 4, 2000 in the Register of Deeds Office for Berkeley County in Plat Cabinet O, Pages 271-B, 272-A & B, 273A & B and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat.

TMS No. Portion of 275-00-00-120

ALSO, TOGETHER WITH:

OPEN SPACE 0.46 ACRES, 19,953 sq. ft.. ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "OPEN SPACE 19,953 sq. ft., 0.46 acres" as shown on Sheets 3 and 4 of that certain plat entitled "FINAL PLAT OF RIVER LANDING DRIVE & PORTIONS OF PARCEL R, BLOCKS G, I,

00382213.

K, L & O, DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliott Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on August 4, 2000 in the Register of Deeds Office for Berkeley County in Plat Cabinet O, Pages 271-B, 272-A & B, 273A & B and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat.

TMS No. Portion of 275-00-00-120

ALSO, TOGETHER WITH:

OPEN SPACE 0.77 ACRES, 33,533 sq. ft. ALL that lot, piece, or parcel of land situate, lying and being on Daniel Island, Berkeley County, South Carolina, and being shown as "OPEN SPACE 33,533 sq. ft., 0.77 acres" as shown on Sheet 4 of that certain plat entitled "FINAL PLAT OF RIVER LANDING DRIVE & PORTIONS OF PARCEL R, BLOCKS G, I, K, L & O, DANIEL ISLAND, CITY OF CHARLESTON, BERKELEY COUNTY, S.C.", prepared by F. Elliott Quinn, III, S.C. Reg. No. 10292 of Thomas & Hutton Engineering Co. and recorded on August 4, 2000 in the Register of Deeds Office for Berkeley County in Plat Cabinet O, Pages 271-B, 272-A & B, 273A & B and having such size, shape, dimensions, buttings and boundings as will appear by reference to said plat.

TMS No. Portion of 275-00-00-120

SUBJECT TO THE FOLLOWING RESERVATION OF EASEMENT:

Grantor hereby reserves, creates, establishes, promulgates and declares a non-exclusive perpetual, reciprocal, and appurtenant easement, for itself and for the existing and future members of Daniel Island Community Association, Inc., Daniel Island Park Association, Inc., Daniel Island Town Center Owners Association, Inc., Daniel Island Office Park Association, Inc., and any other property owners associations governing all or any portion of Daniel Island, and the invitees of each, subject to the restrictions contained in the Declarations and any amendments or supplements thereto and any rules and regulations of Grantee which effect the use and enjoyment of the Premises.

No person exercising easement rights shall have a claim or cause of action against Grantor, Grantee, or their successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder.

STATE OF SOUTH CAROLINA)
) AFFIDAVIT
COUNTY OF BERKELEY)

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 DIBS-Sales Center, a South Carolina limited liability company, to Daniel Island Town Center Owners Association, Inc., a South Carolina non-profit corporation in Berkeley County, SC on December , 2000.
3. Check one of the following: The DEED is:
 - (a) 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) x EXEMPT from the deed recording fee because Exemption No. 1 . (If exempt, please skip items 4-7, and go to item 8 of this affidavit).
4. Check one of the following if either item 3(a) or item 3(b) has been checked.
 - (a) The fee is computed on the consideration paid or to be paid in money or moneys worth in the amount of \$.
 - (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 x 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) \$ the amount listed in item 4 above.
 - (b) \$ the amount listed in Item 5 above (no amount place zero).
 - (c) \$ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with this transaction as: Legal representative
8. I understand that a person required to furnish this affidavit who wilfully 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.

Cynthia Marie Smith
Purchaser, purchaser's attorney or other
responsible person connected with the transaction

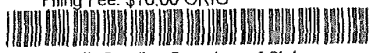
SWORN to before me this 28 day
of December, 2000.

Magda K. Morley (SEAL)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/20/03

ARTICLES OF AMENDMENT TO THE ARTICLES OF INCORPORATION OF
DANIEL ISLAND TOWN CENTER OWNERS ASSOCIATION, INC.

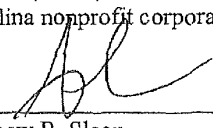
(A South Carolina Nonprofit Corporation)

1. The name of the corporation is Daniel Island Town Center Association, Inc., incorporated pursuant to the Articles of Incorporation of Daniel Island Town Center Owners Association, Inc. (the "Association") filed with the South Carolina Secretary of State on May 5, 1999 (the "Articles").
2. Article 1 of the Articles of Incorporation of Daniel Island Town Center Owners Association, Inc. (the "Association") filed with the South Carolina Secretary of State on May 5, 1999 (the "Articles"), is hereby amended to read as follows:
 1. The name of the corporation is Daniel Island Town Association, Inc.
3. The change made by these Articles of Amendment shall be effective on January 1, 2005.
4. Article 15 of the Articles provides that the Articles may be amended by the Board of Directors without a vote of the Class "A" Members for those specific purposes permitted under South Carolina law, and Section 33-31-1002(4) of the Code of Laws of South Carolina provides that a corporation's board of directors may change the corporate name by "adding, deleting, or changing a geographical attribution to the name." Members of the Association are now located in areas extending beyond the "Town Center" area of the Daniel Island community. The Board of Directors desires to change the name of the Association to more accurately reflect the geographical diversity of its members. Since the phrase "Town Center" is a geographical designation describing a particular area located in the Daniel Island community, the deletion "Center" does not require the approval of the members of the Association.
5. These Articles of Amendment were duly adopted by the Board of Directors on September 10, 2004.

041122-0050 FILED: 11/17/2004
DANIEL ISLAND TOWN CENTER OWNERS ASSOCIATION, INC.
Filing Fee: \$10.00 ORIG

Mark Hammond South Carolina Secretary of State

IN WITNESS WHEREOF, the Association has caused these Articles of Amendment to be executed by its duly authorized officer on this 10th day of September, 2004.

DANIEL ISLAND TOWN CENTER OWNERS
ASSOCIATION, INC.,
a South Carolina nonprofit corporation

By: 
Name: Matthew R. Sloan
Its: Vice President

[CORPORATE SEAL]

From: **Jane Baker** <jane.baker@dicommunity.org>

Date: Mon, Sep 18, 2017 at 2:31 PM

Subject: Re: POA Mgmt

To: Matt Sloan <matt.sloan@danielisland.com>

Cc: Carolyn Lancaster <carolyn.lancaster@danielisland.com>, Amy Moyer <amy.moyer@danielisland.net>

EXHIBIT G

ELECTRONICALLY FILED - 2020 Oct 12 3:40 PM - BERKELEY - COMMON PLEAS - CASE#2017CP0802238

I made some revisions to the google doc. Below includes some changes I made to the 1st page after reading Matt's comments. Am I heading closer to the message you want to deliver?

DRAFT 3

September 18, 2017

Memorandum Regarding Daniel Island POA

As Daniel Island is in the last 3-5 years of development, part of the transition process of the developer turning over the community to resident boards is to evaluate the management, finances, reserves, and governing documents of the Property Owners' Association. Research indicates that often times when communities transition from developer control to resident control, there is an increasing likelihood for disparate visions in terms of community standards, lifestyle/quality of life programming, policies, and inconsistency in common area, park and playground maintenance, all of which can negatively impact property values. There will be increased responsibilities as there will be 3 separate boards and newly formed committees that will require more attention, time and resources from management. Daniel Island is the size of a small town, approximately 10,000 residents, and consistency in maintenance, code enforcement and architectural and landscaping standards is one of our hallmarks that must be preserved.

The purpose of this memo is to provide an overview of where we are in the transition process and propose a new management structure for the Property Owners' Association.

The Daniel Island Town Association is the legal entity charged with the management of the Daniel Island Town, Park and Community Associations as well as the Daniel Island Community Fund and Foundation. The Property Owners Association is the common name that is used as the umbrella entity for all

associations. Currently the Daniel Island Town Association employs 11 full time and 2 part time employees. These employees are responsible for managing the Daniel Island Town Association, Carnes Crossroads Town Association and Cainhoy Town Association, as well as 3 nonprofit entities, Daniel Island Community Fund, Daniel Island Community Foundation and the Carnes Crossroads Community Fund. The Carnes Crossroads Town Association, Cainhoy Town Association and Carnes Crossroads Community Fund pay a management fee each month to the Daniel Island Town Association.

<https://mail.google.com/mail/u/0?ik=abb3f02c65&view=pt&search=all&permthid=thread-f%3A1674113941192199501&simpl=msg-f%3A167411394119...> 1/3

The Daniel Island Town Association benefits greatly from having access to staffing resources shared by 2 other communities. It needs the ability to leverage its staff, without increasing it, in order to meet the needs and expectations of both residential and commercial property owners. Having a larger staff pool also enables greater flexibility in human resource allocation in times like disaster preparation/ recovery, special events, and peak seasons, for example, when pools open and when assessments are collected. This management model is a mainstay of our management success, considering the level of services, and programs provided to property owners, while keeping assessments relatively low.

Continued successful management of the active philanthropy on Daniel Island is a critical part of the community's mission. The Daniel Island Community Fund and Foundation have grown to be part of the fabric of this community and what sets Daniel Island apart from so many other master planned communities nationwide. The time and skill required to effectively manage a nonprofit of this scale is considerable.

In 2018, the Daniel Island Town Association will no longer be able to collect management fees from other communities or entities due to accounting controls our auditors are recommending to keep the Daniel Island Town Association from being in a taxable position. In order to keep our current, beneficial, management and staffing protocols in place, it is necessary for a new, independent management company to be formed that will contract with each respective association. If one company is responsible for managing the community assets, like one town, the opportunity to retain the character, quality open spaces, quality of life and property values is more likely. The vision of the community residents initially bought into will be recognized, respected and realized.

The timing of Daniel Island transitioning to an independent management model is critical to its continued success. The turnover provisions for Daniel Island are outlined below and illustrate why now is the time to make a change.

On Mon, Sep 18, 2017 at 11:45 AM, Matt Sloan <matt.sloan@danielisland.com> wrote:
Jane - my only specific comments were on the first page (attached).

The larger issue is the document did not make and defend the case that this was a better solution for DI residents....

Why is this in their interests. It reads like we are buying something that is very important to residents so that we can manage other projects. That's true of course, but we need to decipher how to present that in a way that gets to the desired conclusions.

Sincerely,

Matt Sloan | President

Daniel Island Company

danielisland.com | carnescharleston.com | charlestonpreferredproperties.com

DI Development Company

Manager:

Daniel Island, Carnes Crossroads, Cainhoy Development

230 Seven Farms Drive | Charleston SC 29492 | 843.971.3533 | 843.437.8707 (c)

----- Forwarded message -----

From: <admin@danielisland.com>

Date: Mon, Sep 18, 2017 at 10:17 AM

Subject: Scanned Document

To: "Sloan, Matt" <matt.sloan@danielisland.com>

0335

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A No. 2017-CP-08-02238
Matthew Zetz,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DANIEL ISLAND COMPANY, INC.’S
	)	MEMORANDUM IN SUPPORT OF ITS
Daniel Island Company, Inc., Daniel Island	)	MOTION FOR SUMMARY JUDGMENT
Community Foundation, Inc., Daniel Island	)	
Town Association, Inc., Daniel Island	)	
Community Association, Inc., and MGR	)	
Resources, Inc. d/b/a Moonlighting	)	
Landscape Lighting Systems,	)	
	)	
Defendants.	)	

The Daniel Island Company, Inc. (“DIC”), by and through the undersigned counsel, hereby submits this Memorandum in Support of Its Motion for Summary Judgment.

DIC seeks the following relief from the Court:

1. A finding that the Plaintiff’s claims against DIC for negligence are barred because DIC owed no legal duties to the plaintiff at the time he was injured on the property of another party.
2. A finding that the Plaintiff has not properly pled a claim for corporate amalgamation or, in the alternative, that a claim for corporate amalgamation must be bifurcated from the underlying tort case and heard non-jury

Background Facts

This is a personal injury action arising out of an incident that occurred in what was known as the Children’s Park on Daniel Island on the night of November 11, 2016. The Plaintiff, William Zetz, accompanied his brother to inspect a vendor’s booth that had been set up to promote his brother’s orthodontics practice during Daniel Island Park Day, which was to take

place the following day. Mr. Zetz's brother walked into the park with the guidance of a police officer with a flashlight. Mr. Zetz, who was unfamiliar with the park, walked some distance behind them without the aid of a flashlight.

The Children's Park, which was recently razed to allow for the construction of a new park and public marina, was built to resemble a map of the Charleston area. Some of the local waterways depicted on the hardscape surface of the children's play area were built as an actual water feature, consisting of a fountain that filled shallow concrete trenches with water. The night of the incident, the fountain had been turned off and, by all accounts, there was no water in the trenches. Unfortunately, Mr. Zetz took the proverbial "step in the dark" and stepped into one of the water feature trenches, fracturing his left ankle.

At the time of the Plaintiff's fall, the Children's Park was owned by the Daniel Island Town Association (DITA), a non-profit property owners' association. DITA took title to the park in December 2001 and still owns the property today. Prior to DITA, the park was owned by an entity called DIBS-Sales Center, LLC (DIBS-SC), which had taken title to 8.33 acres, including the property on which the park was built, from The Daniel Island Company, Inc. on March 24, 1999. In addition to the park property, the 8.33 acre conveyance included land on which a real estate sales office was to be constructed. Of the 8.33 acres, only the park was later conveyed to DITA. However, other park areas on the island were conveyed to DITA at the same time. Despite the Plaintiff's unfounded and unsupported contention that the conveyance of the park was somehow a fraudulent transaction for purposes of shielding DIC from tort liability, the conveyance of numerous parks to DITA in 2000 was the fulfillment of the Developer's obligations to the City of Charleston under the June 1, 1995 Development Agreement for Daniel Island. That document stated:

All parks and other similar features shall be dedicated to the City upon completion by a Developer in accordance with the Land Development Regulations with the exception of those tracts of land with the improvements located thereon which an Owner Party **or Developer may elect to convey to a non-profit property owners' association.** All roads shall be built in accordance with road standards of the City of Charleston, except where deviation therefrom may be permitted by permit in connection with the project shall be subject to all city-imposed application processing and permit fees and charges with respect to applications for development and construction within the property which are in effect on the date on which each application is filed so long as such fees and charges are in force and effect on a citywide basis. (emphasis added)

Given that over twenty years have passed since the Children's Park project began, exact dates and details are difficult to discern. However, certain facts are known and undisputed. For example, in late 1998 or early 1999, either DIC or DIBS-SC hired Lee Skolnick Architecture and Design Partnership to design the Children's Park. Subsequently, either DIC or DIBS-SC hired The Greenery, a landscape contractor, to build the park as designed by Skolnick. The Greenery then sub-contracted the landscape lighting design and installation component of the project to MGR Resources, Inc., d/b/a Moonlighting Landscape Lighting Systems. MGR, Inc. is a named defendant in this action, but Skolnick and The Greenery are not. Construction of the park was completed in 2002, after DITA took title to the property.

The Plaintiff's Allegations

The Plaintiff has sued four different "Daniel Island entities": DIC, DITA, Daniel Island Community Foundation, Inc., and Daniel Island Community Association. The Plaintiff's Second Amended Complaint alleges:

The fall and resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, negligent *per se*, grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

- a. In negligently designing the Public Park;
- b. In negligently constructing the Public Park;
- c. In negligently lighting the Public Park;
- d. In negligently maintaining the Public Park;
- e. In negligently managing the Public Park;
- f. In negligently repairing the Public Park repair;
- g. In negligently renovating the Public Park;
- h. In negligently securing the Public Park;
- i. In failing to observe the dangerous condition presented by the trench;
- j. In failing to properly keep the Public Park clear of dangerous unlighted and unmarked concrete trenches;
- k. In failing to appreciate the gravity of the dangers associated with dangerous unlighted and unmarked concrete trenches in the Public Park;
- l. In failing to enact policies that would ensure the safety of licensees and invitees in the Public Park;
- m. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the Public Park on the occasion that the Plaintiff was using the same;
[and]
- n. In failing to adequately warn the Plaintiff as to any dangers that may be present in the Public Park.

Additionally, the Plaintiff's Second Amended Complaint contains copious allegations "upon information and belief" for which there is no evidence whatsoever. The focus of the majority of those allegations is a gentleman named Matt Sloan. Mr. Sloan has been involved with development of Daniel Island for many years. Despite the Plaintiff's numerous assertions about Mr. Sloan, he is not a party to this case. While it is never stated anywhere in the Plaintiff's pleadings, these allegations appear to be an attempt to build a claim for corporate amalgamation among the Daniel Island entity defendants, arguing that Matt Sloan is some kind of puppet master behind everything that happens on the island. Nevertheless, the Plaintiff's only stated cause of action is negligence.

Legal Arguments

Plaintiff's negligence claim against DIC can be divided into two general categories: 1) negligent design/construction of the park; and 2) failure to properly maintain the park. Neither of these theories is viable as to DIC. First, our courts have never held that a prior owner/developer of real estate can be held liable for bodily injuries to lessee or invitee of a subsequent owner for design or construction defects. As such, the law of construction defects is inapplicable to the facts of this case. Rather, the law of premises liability controls completely. However, to the extent that the pleadings imply the existence of liability for design and construction defects, the statute of repose would bar the Plaintiff from any recovery under construction law principals.

The park was completed in 2002. The Plaintiff's injuries were sustained in 2016. This action was filed in 2017. Given that the project was completed prior to 2005, the old thirteen year statute of repose applies. Thus, the statute of repose expired roughly two years before this action was commenced.

More importantly, if the facts of this case are viewed through the proper lens of premises liability law, it becomes crystal clear that DIC is entitled to summary judgment based on the complete absence of a legal duty to the Plaintiff. At the time of the Plaintiff's injury, DIC had not owned the property for approximately seventeen years. Further, it was not even the most recent prior owner at the time of the incident. DIC passed title to DIBS-SC, which then conveyed the park property to DITA, as mandated by the City of Charleston. The notion that a past owner of real property cannot be held liable for bodily injury to a subsequent owner's licensee or invitee is so fundamental to the principles of premises liability law that no SC case has ever had to articulate it. However, other authorities do so very clearly.

Once the landowner sells the land or leases it to a tenant, his duties to make conditions on the land reasonably safe are limited or nonexistent. The reasons for and effects of the limitation are not like those in landowner cases already covered.

In other landowner cases, the question was whether anyone owed a duty of any kind. In cases of vendors and landlords, however, the question is not so much whether a duty is owed but who owes it. It is not the existence of responsibility but the allocation of it. Subject to some qualifications, the traditional common law regarded the transfer of land title as a shift of responsibility for conditions that might cause physical harm to others on the land.

Once the purchaser of land takes title and possession, he becomes responsible for dangers to himself or others on the land; and correspondingly the vendor is freed from responsibility.

Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, *The Law of Torts, Vendors of land*, § 280 (2d ed.); *accord Jackson v. Scheible*, 902 N.E.2d 807 (Ind. 2009) (vendor owes no duty to protect from dangerous condition, because vendor no longer controls condition of property); *Brady v. 5644 Ave. U Assocs., L.P.*, 291 A.D.2d 523, 524, 737 N.Y.S.2d 640, 642 (2002) ("Where an owner of property is no longer in possession and control of the property, and retains no right to re-enter for purposes of inspection and repair, the owner cannot be held liable for defects in the property."); *Occidental Chemical Corporation v. Jenkins*, 478 S.W.3d 640, 649 (Tex. 2016) (previous owner owes no duty under premises liability law for injuries caused to entrant by dangerous condition on land, even where previous owner had role in creating condition; "liability ends with the property's sale"); *Brenner v. Amerisure Mutual Insurance Company*, 2017 WI 38, 374 Wis. 2d 578, 893 N.W.2d 193 (2017) (former property owner owes no duty with respect to hazardous condition on property, even if former owner created condition).

The Restatement has taken a similar approach. It provides that “[e]xcept as stated in [section] 353, a vendor of land is not subject to liability for physical harm caused to his vendee or others while upon the land after the vendee has taken possession by any dangerous condition, whether natural or artificial, which existed at the time that the vendee took possession.” See Restatement (Second) of Torts § 352. In short, while the Plaintiff may have viable claims against DITA, the owner of the park at the time of the incident, there is no legal theory that supports claims directly against DIC.

As noted above, the Plaintiff will likely argue that DIC should be liable for the negligence of DITA because he intends to prove that those entities and others are part of a single enterprise that should be amalgamated. First, while that may be the Plaintiff’s intent, corporate amalgamation has not been pled. As such, DIC is entitled to summary judgment as to the entirety of the Plaintiff’s allegations. That said, if the Court finds that the Plaintiff has sufficiently stated a claim for amalgamation or, in the alternative allows the Plaintiff to amend his pleadings to do so, the Plaintiff will certainly argue that more time and discovery are needed to develop that portion of his case. If that is the case, DIC will happily cooperate with the Plaintiff’s reasonable discovery requests. However, if a claim for corporate amalgamation is the sole basis of the Plaintiff’s liability case against DIC, the mode of trial against DIC must change.

To the extent that corporate veil piercing, which provides a way for plaintiffs to execute judgments against the directors or shareholders of a corporation, can be viewed as remedy on a vertical axis, corporate amalgamation is the horizontal axis equivalent. Our courts have adopted the same analysis as to both.

In *Pertuis*, the court formally recognized the amalgamation of interests theory for the first time and indicated a preference for the term "single business enterprise theory." *Id.* at 655, 817 S.E.2d at 280. Notably, the court held, "the single business enterprise theory requires a showing of more than the various entities'

operations are intertwined," as the theory had previously been applied by our courts. *Id.* Rather, "[c]ombining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions." *Id.* at 655, 817 S.E.2d at 281. In comparison, the Sturkie requirements for holding a corporation's principals personally liable for the corporation's wrongdoing are (1) the failure to observe corporate formalities and (2) "an element of injustice or fundamental unfairness if the" corporation's acts are "not regarded as the acts of" its principals. See *Mid-S. Mgt. Co. v. Sherwood Dev. Corp.*, 374 S.C. 588, 597–98, 649 S.E.2d 135, 140–41 (Ct. App. 2007) (explaining Sturkie's "two-prong[ed] test to determine whether a corporate veil should be pierced").

Walbeck v. I'on Co., 426 S.C. 494, 528, 827 S.E.2d 348365-66 (Ct. App. 2018)

Like corporate veil piercing, corporate amalgamation sounds in equity, not law. "The single business enterprise theory ("SBE theory") "is an equitable doctrine applied to reflect partnership-type liability principles when corporations integrate their resources and operation to achieve a common business purpose." (William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Corporations* §43 (perm. ed., rev. vol. 2015). As such, amalgamation claims must be decided by the court, not juries. What's more, our Supreme Court, in holding that a claim to pierce the corporate veil may be litigated in the same case as the underlying dispute, the veil piercing component of the case *must* be bifurcated.

While it is undoubtedly true that the corporate veil is often pierced post-judgment, it is also true that South Carolina courts frequently consider these issues in one bifurcated action. See, e.g., *Carolina Marine Handling v. Lasch et al.*, 363 S.C. 169, 176, 609 S.E.2d 548, 553 n. 6 (recognizing that "an attempt to pierce the corporate veil often occurs post-judgment"); see also *Mid-South Mgmt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 649 S.E.2d 135 (Ct.App.2007) (in which the trial court allowed claims against a corporation and its parent companies to proceed to a bifurcated trial on issues of corporate liability and veil-piercing theories); *Hunting v. Elders*, 359 S.C. 217, 597 S.E.2d 803 (Ct.App.2004) (in which the trial court allowed claims against a corporation and its shareholder to proceed to a bifurcated trial on issues of corporate liability and veil-piercing). In our view, a trial court need not dismiss an alleged alter ego defendant from a case on the grounds that the issue of corporate liability has not yet been resolved. See *Chase Manhattan Bank v. 264 Water St. Assoc.*, 174 A.D.2d 504, 505, 571 N.Y.S.2d 281 (1991) (holding that it is not necessary "that an unsatisfied judgment first be obtained to pierce the corporate veil.").

Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 102–03, 668 S.E.2d 798, 801 (2008).

Logic dictates that the rule that veil piercing cases must be bifurcated applies equally to amalgamation claims. Therefore, to the extent that the Court deems it appropriate to grant DIC summary judgment as to any direct claims of negligence against it, any allegations of corporate amalgamation against DIC should be bifurcated and heard non-jury, only after the jury has decided in the Plaintiff's favor against one or more of the other "Daniel Island entities."

For the foregoing reasons, Defendant DIC asks that the Court grant it summary judgment as to the entirety of the Plaintiff's claims. However, should the Court find that the Plaintiff has sufficiently pled a claim of corporate amalgamation, Defendant DIC requests a finding that such a claim must be bifurcated and heard by the Court without a jury only after a judgment has been rendered against one of the other defendants with whom the Plaintiff claims DIC should amalgamated.

Barnwell Whaley Patterson & Helms, LLC

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Counsel for The Daniel Island Company, Inc.

October 12, 2020
Charleston, South Carolina

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-08-022038

MATTHEW ZETZ,

Plaintiff,

v.

DANIEL ISLAND COMPANY, INC.;
DANIEL ISLAND COMMUNITY
FOUNDATION, INC.; DANIEL ISLAND
TOWN ASSOCIATION, INC.; DANIEL
ISLAND COMMUNITY ASSOCIATION,
INC.; and MGR RESOURCES, INC. d/b/a
MOONLIGHTING LANDSCAPE
LIGHTING SYSTEMS,

Defendants.

**PLAINTIFF’S SUPPLEMENTAL
MEMORANDUM IN OPPOSITION TO
DEFENDANT DANIEL ISLAND
COMPANY, INC.’S MOTION FOR
SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, Matthew Zetz, by and through undersigned counsel, and does submit this supplemental memorandum in opposition to Defendant Daniel Island Company, Inc.’s (herein “Defendant”) Motion for Summary Judgment.

INTRODUCTION

On September 14, 2020, Defendant Daniel Island Company Inc. filed a bare-bones motion for summary judgment without any explanation as to its legal or factual basis. On October 1, 2020, Plaintiff filed a Motion for More Definite Statement after requests for an explanation went unheeded. On October 12, 2020, Plaintiff filed an initial Memorandum in Opposition to summary judgment based on what Plaintiff thought the Defendant’s undisclosed basis might be. Less than an hour later, Defendant Daniel Island Company Inc. revealed the basis for its motion by filing a Memorandum in Support of summary judgment. This Supplemental Memorandum in opposition is in response thereto.

LEGAL ANALYSIS

Plaintiff incorporates his October 12, 2020 Memorandum in Opposition herein by reference. Defendant Daniel Island Company, Inc. raised several new arguments in its October 12, 2020 Memorandum in Support of Summary Judgment filed shortly after Plaintiff's Memorandum in Opposition. None of Defendant's new arguments change the outcome – summary judgment must still be denied. Following is why.

Former Owner Liability. This is a red herring. Defendant's "former owner" argument (see pages five through seven of Defendant's memorandum) sets up a straw man and then knocks him down. Plaintiff has not alleged that Defendant Daniel Island Company, Inc. is liable because of its status as a *former* owner of the park back in 2001. Instead, Plaintiff alleges that liability flows from either or both of (a) Defendant's control of the park *in 2016 when the injury occurred*, or (b) Defendant's status as part of the single business enterprise that controlled Daniel Island including the park *in 2016 when the injury occurred*. That Defendant once built and owned the quarter-acre waterfront park and "sold" it for a dollar to an entity that it created and controlled, which then "sold" it for \$10 to another entity that Defendant also created and controlled (including on the date of injury), is relevant to these theories of liability. However, Plaintiff has never claimed that Defendant is liable based solely on the fact that it once owned the park almost twenty years ago.

Liability based on 2016 control. Defendant controlled the park at the time Plaintiff was injured on November 11, 2016. Facts showing Defendant's control of the park are set forth in detail in Plaintiff's first Memorandum in Opposition to summary judgment filed October 12, 2020. The evidence cited therein shows that Defendant Daniel Island Company controlled

Defendant Daniel Island Town Association during November 2016, and that Defendant Daniel Island Town Association had record ownership and control of the park during November 2016.

There is no question that more than one person or entity can have control of property, or that one can control property without owning it.¹ Defendant completely ignores the evidence of its control of the park during 2016 in both its motion and in its memorandum. In addition, Defendant has thus far refused to answer discovery focused on precisely this issue, resulting in a currently pending motion to compel. Because there is evidence of Defendant's control of the park during November 2016 when the injury occurred, summary judgment must be denied.

Single Business Enterprise Liability. In addition to being exposed to liability because of its current control of the park, Defendant Daniel Island Company is also exposed to liability as part of the single business enterprise (a/k/a “corporate amalgamation”) that controls Daniel Island. On this issue, Defendant makes two arguments. The first argument is that “corporate amalgamation has not been pled.” However, “corporate amalgamation” is not a tort in itself – i.e. it is not a cause of action that must be pled. Defendant does not cite any authority for the

¹ See, e.g., *Laing v. Truist Bank*, No. 3:20-CV-01134-JMC, 2020 WL 4462977, at *4 (D.S.C. Aug. 4, 2020) (“The South Carolina Supreme Court has recognized that a landowner's duty to invitees may also extend to one who oversees, but does not own, property.”); *Patterson v. Wal-Mart Stores E. LP*, No. 9:20-CV-1445-DCN, 2020 WL 3056084, at *3 (D.S.C. June 9, 2020) (“In 1954, the South Carolina Supreme Court first recognized that the duty an owner of land owes to invitees may also extend to one who oversees, but does not own, property.”); *Paetzold v. Walgreen Co.*, No. 2:17-CV-02883-DCN, 2018 WL 718962, at *3 (D.S.C. Feb. 6, 2018) (““In South Carolina, a party who operates a premises but is neither an owner nor a lessee may also have a duty of reasonable care with respect to an allegedly dangerous condition.” *Benjamin v. Wal-Mart Stores, Inc.*, 413 F. Supp. 2d 652, 656 (D.S.C. 2006) (citing *Dunbar v. Charleston & W.C. Ry. Co.*, 44 S.E.2d 314, 317 (S.C. 1947)). This district has found that potential liability hinges on how much “control” a party had over the premises, not simply whether they own it. *Id.* “In considering whether an individual has exercised such control of the premises so as to impose a duty to reasonably inspect the premises, a court will generally consider the individual’s power or authority to manage, direct, superintend, restrict, regulate, govern, administer, or oversee the management of the property.” *Id.*, citing CJS Negligence § 388.”).

proposition that “corporate amalgamation” is a tort. Indeed, the Supreme Court describes not as a tort, but as a remedy. *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 281 (2018), reh'g denied (Aug. 16, 2018).

Plaintiff has pled facts which, if proven, entitle Plaintiff to the requested remedy. Some of these alleged facts have already been shown to be true by the limited amount of evidence produced by Defendants thus far (for example, various Defendants sharing the same senior officers, waterfront real estate being sold for a fraction of market value, etc.). Plaintiff expects to gather more evidence as Defendants finish responding to discovery. That is all that is necessary under South Carolina’s liberal pleading standards. *Andrews v. Amisub of S.C., Inc.*, 302 S.C. 122, 124, 394 S.E.2d 22, 23 (Ct. App. 1990) (holding that “In considering [a] motion for summary judgment, we must liberally construe the pleadings and other documents on file in favor of [] the nonmoving party, and give [him] the benefit of all favorable inferences that might reasonably be drawn therefrom.”).

Bifurcation. This is a question for the trial judge. The second argument that Defendant Daniel Island Company makes is that the trial must be bifurcated as to single business enterprise liability. However, the question of bifurcation is not properly before the court.

As an initial matter, Defendant did not raise bifurcation by motion – not only does the motion for summary judgment not overtly request bifurcation, it does not even hint that Defendant might request such relief. This is not sufficient to bring the matter before the court. Rule 7(b)(1), SCRCF (“An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, *shall be made in writing*, shall state with particularity the grounds therefor, and *shall set forth the relief or order sought*.”) (emphasis added).

Nor did Defendant plead for bifurcation in its answer. In order to secure a ruling on bifurcation, Defendant must bring the issue before the court properly by motion – it cannot just slip a request for bifurcation into a memorandum in support of another issue. Rule 7(b)(1), SCRCP. Especially not when, as here, the memorandum is submitted just eight days before the matter is to be heard – too late even for a motion. Rule 6(d), SCRCP (“A written motion other than one which may be heard *ex parte*, and notice of the hearing thereof, ***shall be served not later than ten days before the time specified for the hearing***, unless a different period is fixed by these rules or by an order of the court.”) (emphasis added).

Even if a request for bifurcation of the trial had been properly raised by motion and sufficiently before the hearing, such mode-of-trial issues are more properly resolved by the trial judge closer to trial. *See, e.g., Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 362, 618 S.E.2d 299, 300 (2005) (Affirming then Judge, now Justice, John C. Few’s order that “Questions related to the mode of trial, such as whether to bifurcate the takings and compensation phases, are left for the trial judge.”); *Wright v. Hiester Const. Co.*, 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010) (“***Trial judges*** have discretion as to whether to bifurcate a trial.”) (emphasis added). *Durham v. Vinson*, 360 S.C. 639, 645, 602 S.E.2d 760, 763 (2004) (“***Trial judges*** have discretion as to whether to bifurcate a trial.”) (emphasis added).

Moreover, Defendant’s selective citations to *Pertuis* notwithstanding, it is not at all clear that bifurcation would be appropriate even if the issue is eventually raised by motion before the trial judge. Indeed, it appears that the cases establishing the single business enterprise theory (a/k/a “corporate amalgamation”) – *Kincaid*, *Magnolia*, and *Pope* – were ***not*** bifurcated, but instead tried entirely before a jury. *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 91, 344 S.E.2d 869, 871 (Ct. App. 1986) (“Appellants The Landing Development Corporation (LDC), Resort

Management Group, Inc. (RMG), and Resort Construction Corporation (RCC) appeal from a jury verdict awarding respondents Juanita Kincaid and Beverly K. Davidson \$19,800.00 actual damages and \$13,500.00 punitive damages. We affirm.”); *Magnolia N. Prop. Owners' Ass'n, Inc. v. Heritage Communities, Inc.*, 397 S.C. 348, 357, 725 S.E.2d 112, 117 (Ct. App. 2012) (“The case went to trial on May 11, 2009.³ After the close of the POA's evidence, the trial court directed a verdict for HCI on the express warranty cause of action. At the close of all evidence, the trial court granted the POA's motions for a directed verdict as to liability on the causes of action for negligence and breach of the warranty of workmanlike services. The jury returned a verdict in favor of the POA for \$6.5 million in actual damages and \$2 million in punitive damages.”); *Pope v. Heritage Communities, Inc.*, 395 S.C. 404, 411, 717 S.E.2d 765, 769 (Ct. App. 2011) (“The case went to trial on January 5, 2009, before the Honorable Clifton Newman. After the close of Respondents' evidence, the trial court directed a verdict for HCI on the express warranty cause of action and for BuildStar on the warranty of workmanlike service cause of action. At the close of all evidence, the trial court granted Respondents' motions for directed verdicts on the negligence claims. The jury returned a verdict in favor of the POA for \$4.25 million in actual damages and \$250,000 in punitive damages. The jury awarded the Class \$250,000 in actual damages and \$750,000 in punitive damages. This appeal followed.”). It appears that only *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, which occurred four years before *Magnolia*, was bifurcated as requested by this Defendant. *Mid-S. Mgt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 595, 649 S.E.2d 135, 139 (Ct. App. 2007).

Moreover, *Pertuis* did not explicitly or even impliedly overrule *Kincaid*, *Magnolia*, and *Pope*, all of which affirmed verdicts that were reached in un-bifurcated jury trials. *Pertuis v. Front Roe Restaurants, Inc.*, 423 S.C. 640, 651-55, 817 S.E.2d 273, 278-80 (2018), reh'g denied

(Aug. 16, 2018) (“The amalgamation of interests theory was first recognized in South Carolina by the court of appeals in *Kincaid* . . . Most recently, the amalgamation theory was addressed by the court of appeals in a pair of construction defect cases – *Magnolia* [and *Pope*] . . . We formally recognize today this single business enterprise theory . . .”).

If the Supreme Court had meant to hold that the mode of trial in all three of the seminal cases was wrong and should not continue in future cases, it is likely that the Court would have said something specific to that effect. *JP Morgan Chase Bank, Nat'l Ass'n v. Acheson*, No. 2016-000028, 2018 WL 776629, at *2 (S.C. Ct. App. Feb. 7, 2018) (“[We] doubt our Supreme Court would overrule decades of equity jurisprudence by implication.”). It did not. Accordingly, it is not at all clear that bifurcation is even proper, let alone necessary.

In any event, it would certainly be inadvisable to order bifurcation at this early stage of the case, when the issue has neither been properly raised nor adequately briefed.

CONCLUSION

A mere scintilla of evidence is all that is needed to defeat summary judgment. Plaintiff has at least that. Plaintiff has evidence that Defendant controlled the park at the time of injury. Plaintiff has evidence that Defendant is part of a single business enterprise that owned the park at the time of injury. Either is enough to defeat summary judgment, and Plaintiff has evidence of both. Accordingly, summary judgment must be denied. As to bifurcation, that is an issue for another day, after it has been properly raised by motion to the trial judge.

WHEREFORE Plaintiff respectfully requests that this Court DENY Defendant Daniel Island Company, Inc.’s Motion for Summary Judgment in its entirety.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

s/ Lane D. Jefferies

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ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina
October 19, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	C/A No. 2017-CP-08-02238
Matthew Zetz,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DANIEL ISLAND COMPANY, INC.’S
	)	MEMORANDUM IN SUPPORT OF ITS
Daniel Island Company, Inc., Daniel Island	)	MOTION FOR SUMMARY JUDGMENT
Community Foundation, Inc., Daniel Island	)	
Town Association, Inc., Daniel Island	)	
Community Association, Inc., and MGR	)	
Resources, Inc. d/b/a Moonlighting	)	
Landscape Lighting Systems,	)	
	)	
Defendants.	)	

The Daniel Island Company, Inc. (“DIC”), by and through the undersigned counsel, hereby submits this Memorandum in Support of Its Motion for Summary Judgment.

DIC seeks the following relief from the Court:

1. A finding that the Plaintiff’s claims against DIC for negligence are barred because DIC owed no legal duties to the Plaintiff at the time he was injured on the property of another party.
2. A finding that the Plaintiff has not properly pled a claim for corporate amalgamation or, in the alternative, that the Plaintiff has failed to produce sufficient evidence to support a claim against DIC based on a corporate amalgamation or single enterprise theory.
3. A finding that a claim for corporate amalgamation must be bifurcated from the underlying tort case and heard non-jury.

Background Facts

This is a personal injury action arising out of an incident that occurred in what was known as the Children’s Park on Daniel Island on the night of November 11, 2016. The Plaintiff, Matthew

Zetz, accompanied his brother to inspect a vendor's booth that had been set up to promote his brother's orthodontics practice during Daniel Island Park Day, which was to take place the following day. Mr. Zetz's brother walked into the park with the guidance of a police officer with a flashlight. Mr. Zetz, who was unfamiliar with the park, walked some distance behind them without the aid of a flashlight.

The Children's Park, which was recently razed to allow for the construction of a new park and public marina, was built to resemble a map of the Charleston area. Some of the local waterways depicted on the hardscape surface of the children's play area were built as an actual water feature, consisting of a fountain that filled shallow concrete trenches with water. On the night of the incident, the fountain had been turned off and, by all accounts, there was no water in the trenches. Unfortunately, Mr. Zetz took the proverbial "step in the dark" and stepped into one of the water feature trenches, fracturing his left ankle.

At the time of the Plaintiff's fall, the Children's Park was owned by the Daniel Island Town Association (DITA), a non-profit property owners' association. DITA took title to the park in December 2001 and still owns the property today. Prior to DITA, the park was owned by an entity called DIBS-Sales Center, LLC (DIBS-SC), which had taken title to 8.33 acres, including the property on which the park was built, from The Daniel Island Company, Inc. on March 24, 1999. In addition to the park property, the 8.33-acre conveyance included land on which a real estate sales office was to be constructed. Of the 8.33 acres, only the park was later conveyed to DITA. However, other park areas on the island were conveyed to DITA at the same time. Despite the Plaintiff's unfounded and unsupported contention that the conveyance of the park was somehow a fraudulent transaction for purposes of shielding DIC from tort liability, the conveyance of numerous parks to DITA in 2000 was the fulfillment of the Developer's obligations to the City of

Charleston under the June 1, 1995 Development Agreement for Daniel Island. That document stated:

All parks and other similar features shall be dedicated to the City upon completion by a Developer in accordance with the Land Development Regulations with the exception of those tracts of land with the improvements located thereon which an Owner Party **or Developer may elect to convey to a non-profit property owners' association.** All roads shall be built in accordance with road standards of the City of Charleston, except where deviation therefrom may be permitted by permit in connection with the project shall be subject to all city-imposed application processing and permit fees and charges with respect to applications for development and construction within the property which are in effect on the date on which each application is filed so long as such fees and charges are in force and effect on a citywide basis. (emphasis added).

Given that over twenty years have passed since the Children's Park project began, exact dates and details are difficult to discern. However, certain facts are known and undisputed. For example, in late 1998 or early 1999, either DIC or DIBS-SC hired Lee Skolnick Architecture and Design Partnership to design the Children's Park. Subsequently, either DIC or DIBS-SC hired The Greenery, a landscape contractor, to build the park as designed by Skolnick. The Greenery then sub-contracted the landscape lighting design and installation component of the project to MGR Resources, Inc., d/b/a Moonlighting Landscape Lighting Systems. MGR, Inc. is a named defendant in this action, but Skolnick and The Greenery are not. Construction of the park was completed in 2002, after DITA took title to the property.

The Plaintiff's Allegations

The Plaintiff has sued four different "Daniel Island entities": DIC, DITA, Daniel Island Community Foundation, Inc., and Daniel Island Community Association. The Plaintiff's Second Amended Complaint alleges:

The fall and resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, negligent *per se*, grossly

negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

- a. In negligently designing the Public Park;
 - b. In negligently constructing the Public Park;
 - c. In negligently lighting the Public Park;
 - d. In negligently maintaining the Public Park;
 - e. In negligently managing the Public Park;
 - f. In negligently repairing the Public Park repair;
 - g. In negligently renovating the Public Park;
 - h. In negligently securing the Public Park;
 - i. In failing to observe the dangerous condition presented by the trench;
 - j. In failing to properly keep the Public Park clear of dangerous unlighted and unmarked concrete trenches;
 - k. In failing to appreciate the gravity of the dangers associated with dangerous unlighted and unmarked concrete trenches in the Public Park;
 - l. In failing to enact policies that would ensure the safety of licensees and invitees in the Public Park;
 - m. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers of the Public Park on the occasion that the Plaintiff was using the same;
- [and]

- n. In failing to adequately warn the Plaintiff as to any dangers that may be present in the Public Park.

Additionally, the Plaintiff's Second Amended Complaint contains copious allegations "upon information and belief" for which there is no evidence whatsoever. The focus of the majority of those allegations is a gentleman named Matt Sloan. Mr. Sloan has been involved with development of Daniel Island for many years. Despite the Plaintiff's numerous assertions about Mr. Sloan, he is not a party to this case. While it is never stated anywhere in the Plaintiff's pleadings, these allegations appear to be an attempt to build a claim for corporate amalgamation among the Daniel Island entity defendants, arguing that Matt Sloan is some kind of puppet master behind everything that happens on the island. Nevertheless, the Plaintiff's only stated cause of action is negligence.

Legal Arguments

I. DIC is not liable to the Plaintiff because DIC owed no legal duties to the Plaintiff at the time he was injured on the property of another party.

Plaintiff's negligence claim against DIC can be divided into two general categories: 1) negligent design/construction of the park; and 2) failure to properly maintain the park. Neither of these theories is viable as to DIC. First, our courts have never held that a prior owner/developer of real estate can be held liable for bodily injuries to lessee or invitee of a subsequent owner for design or construction defects. As such, the law of construction defects is inapplicable to the facts of this case. Rather, the law of premises liability controls completely. However, to the extent that the pleadings imply the existence of liability for design and construction defects, the statute of repose would bar the Plaintiff from any recovery under construction law principles.

The park was completed in 2002. The Plaintiff's injuries were sustained in 2016. This action was filed in 2017. Given that the project was completed prior to 2005, the old thirteen year

statute of repose applies. Thus, the statute of repose expired roughly two years before this action was commenced.

More importantly, if the facts of this case are viewed through the proper lens of premises liability law, it becomes crystal clear that DIC is entitled to summary judgment based on the complete absence of a legal duty to the Plaintiff. At the time of the Plaintiff's injury, DIC had not owned the property for approximately seventeen years. Further, it was not even the most recent prior owner at the time of the incident. DIC passed title to DIBS-SC, which then conveyed the park property to DITA, as mandated by the City of Charleston. The notion that a past owner of real property cannot be held liable for bodily injury to a subsequent owner's licensee or invitee is so fundamental to the principles of premises liability law that no SC case has ever had to articulate it. However, other authorities do so very clearly.

Once the landowner sells the land or leases it to a tenant, his duties to make conditions on the land reasonably safe are limited or nonexistent. The reasons for and effects of the limitation are not like those in landowner cases already covered. In other landowner cases, the question was whether anyone owed a duty of any kind. In cases of vendors and landlords, however, the question is not so much whether a duty is owed but who owes it. It is not the existence of responsibility but the allocation of it. Subject to some qualifications, the traditional common law regarded the transfer of land title as a shift of responsibility for conditions that might cause physical harm to others on the land.

Once the purchaser of land takes title and possession, he becomes responsible for dangers to himself or others on the land; and correspondingly the vendor is freed from responsibility.

Dan B. Dobbs, Paul T. Hayden and Ellen M. Bublick, *The Law of Torts, Vendors of land*, § 280 (2d ed.); *accord Jackson v. Scheible*, 902 N.E.2d 807 (Ind. 2009) (vendor owes no duty to protect from dangerous condition, because vendor no longer controls condition of property); *Brady v. 5644 Ave. U Assocs., L.P.*, 291 A.D.2d 523, 524, 737 N.Y.S.2d 640, 642 (2002) ("Where an owner of property is no longer in possession and control of the property, and retains no right to re-enter for purposes of inspection and repair, the owner cannot be held liable for defects in the property."); *Occidental Chemical Corporation v. Jenkins*, 478 S.W.3d 640, 649 (Tex. 2016) (previous owner owes no duty under premises liability law for injuries

caused to entrant by dangerous condition on land, even where previous owner had role in creating condition; “liability ends with the property's sale”); *Brenner v. Amerisure Mutual Insurance Company*, 2017 WI 38, 374 Wis. 2d 578, 893 N.W.2d 193 (2017) (former property owner owes no duty with respect to hazardous condition on property, even if former owner created condition).

The Restatement has taken a similar approach. It provides that “[e]xcept as stated in [section] 353, a vendor of land is not subject to liability for physical harm caused to his vendee or others while upon the land after the vendee has taken possession by any dangerous condition, whether natural or artificial, which existed at the time that the vendee took possession.” *See* Restatement (Second) of Torts § 352. In short, while the Plaintiff may have viable claims against DITA, the owner of the park at the time of the incident, there is no legal theory that supports claims directly against DIC.

II. DIC is not liable for the negligence of another Daniel Island Defendant based on a single enterprise or corporate amalgamation theory.

As noted above, the Plaintiff is apparently attempting to argue that DIC should be liable for the negligence of DITA or another Daniel Island Defendant because he intends to prove that those entities are part of a single enterprise that should be amalgamated. First, while that may be the Plaintiff’s intent, corporate amalgamation has not been pled, and DIC is therefore entitled to judgment as to the entirety of the Plaintiff’s allegations against it. However, even if the Court finds that the Plaintiff has sufficiently stated a claim for amalgamation, the Plaintiff’s claim must fail as a matter of law. Either way, DIC is entitled to summary judgment on all of the Plaintiff’s claims.

Our Supreme Court formally recognized the amalgamation of interests, or single business enterprise theory, in *Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 655, 817 S.E.2d 273, 280. In doing so, the Court emphasized that “corporations are often formed for the purpose of shielding shareholders from individual liability; there is nothing remotely nefarious in doing that.” *Id.* Notably, the Court held that “the single business enterprise theory requires a showing of more than

the various entities' operations are intertwined.” *Id.* Rather, “[c]ombining multiple corporate entities into a single business enterprise requires further evidence of bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities' legal distinctions.” *Id.* at 655, 817 S.E.2d at 281.

In this case, the Plaintiff was given ample time to gather and present evidence to support an amalgamation claim. In fact, on October 20, 2020, after hearing oral arguments on DIC’s Motion for Summary Judgment, this Court indicated that it was inclined to grant the Motion but continued it to allow the Plaintiff more time to conduct discovery into the issue of corporate ownership and control. Specifically, Plaintiff’s counsel explained the need for further discovery into its corporate amalgamation theory, or DIC’s alleged control over the other Daniel Island associations:

MR. JEFFERIES: Specifically this, Your Honor. There are three other defendant entities that are controlled by this defendant. We would like e-mails that are to and from those defendant entities that relate to the control of those entities.

And, specifically, one is called the Daniel Island Town Association that this defendant controls the board of. So if there are e-mails back and forth that show that level of control, how much control it has, we would want those e-mails related to the Daniel Island Town Association.

THE COURT: Well, I'm trying to think out loud here as to what an e-mail under that category would include, when you say it relates to the control of them, I understand your theory as you've brought it under the single business entity theory the supreme court has, but it's not just, yeah, these people all own the same companies.

You have to show some kind of abuse or injustice somewhere. It's not just, yeah, these people all own or control. What's the injustice inequity theory you're going for here? I mean,

it's okay that one company owns other companies.
That's not a problem.

MR. JEFFERIES: We agree with that,
Your Honor. Our theories are actually two-fold and
the single business enterprise theory is probably
the weaker of the two.

The primary theory is simply this.
There is an entity called the Daniel Island Town
Association that admits that it owns that park.
And there is evidence that the Daniel Island Town
Association is controlled by this defendant, Daniel
Island Company.

In response to this argument, the Court continued the Motion in order to allow the
Plaintiff more time to conduct discovery into this issue:

THE COURT: It's not ripe. It's not
ripe. You've got to finish discovery at least on
this issue of this corporate ownership before I can
entertain a summary judgment motion on it. So
you're entitled to some discovery on that,
Mr. Jefferies. I'll let them renew that summary
judgment motion after discovery is done on that
issue.

At this time, the discovery phase has ended, and the Defendant's Motion is ripe. Because
there is absolutely no evidence to support the Plaintiff's claims, DIC is entitled to summary
judgment on all of the Plaintiff's allegations.

- 1. As with all planned communities, Daniel Island Company maintained control of the boards of the property owners' associations that it created until control was automatically and completely turned over to the individual property owners.**

As previously stated, it seems the Plaintiff has been attempting to build a claim for
corporate amalgamation among the Daniel Island entity Defendants, based primarily on his
allegations that Matt Sloan, a minority owner of DIC, somehow owns or controls all of the Daniel
Island entities. Mr. Sloan was deposed on May 9, 2022. His testimony clearly establishes that DIC

is a completely separate entity from the other Daniel Island defendants and that there is nothing nefarious about his involvement with the boards of the various Daniel Island associations.

Prior to developing the island, and in compliance with the South Carolina Horizontal Property Act, DIC executed a master deed setting forth the necessary details of the development. That master deed expressly states that DIC, as the developer of the property, would retain control over the boards of the property owners' associations until control was automatically and completely turned over to the members of the association. In his deposition, Mr. Sloan explained DIC's role as developer and its level of control over the various associations:

Q We -- you know, we kind of talk -- talked about control and, you know, developer control and board control and all of these terms. I want to -- I want to dial down on this, to clarify. So Daniel Island Company is the developer, right?

A Yes, sir.

Q Three property owners' associations were created on Daniel Island, right?

A Yes, sir.

Q Including Daniel Island Town Association, that's one of them, correct?

A Yes, sir.

Q Okay. Daniel Island Company had the right to appoint the board members of those associations, right?

A Yes, sir.

Q Okay. But that -- but -- and this is -- this is kind of splitting hairs, but it's important because *the boards control those associations, right?*

A *Yes, sir.*

Q *Okay. Not -- not Daniel Island Company directly?*

A *Yes, sir.*

Q Okay. And so Daniel Island Company, we know, appointed you and Frank and David Crawford to those boards, right?

A Yes.

Q Okay. But it could have appointed anybody?

A It could have.

...

Q That's right. That's right. So, again, the Daniel Island Company, just to kind of close the loop, has the ability to appoint the people that have authority over those associations, but ***Daniel Island Company does not have direct control over those associations?***

A ***No. The associations are turned over, and direct control is turned over*** to the manager, and sometimes the manager's a third-party.

See Exhibit A, Deposition of Matthew Sloan, at 63:7-65:11 (emphasis added). Mr. Sloan further explained the reason for having a developer-control period when developing a property:

Q Okay. Now, we've heard some -- we had some testimony in the record of this case about the fact that the Daniel Island Company, as part of the master deed or development plan, what have you, would have control of the boards of the various property owners' association for a given period of time or up till some triggering event. Can you tell me -- tell us why that is, why -- why the developer would keep control or the right to control those boards?

A Well, that's just how it is -- ***that's industry standard in my world. The developer always controls up to a certain point.*** Sometimes it's tied to you sold a certain percentage of your property, or sometimes there's an end date. So as an example, the Daniel Island Town Association, which this gentleman represents, has a turnover date of 2025, regardless of how many people own what, but as the developer, you're putting all of your assets into -- and all of your energy into building a community, and you want to be able to control what is built and how it is managed and add value to the community that way.

Id. at 18:24-19:19 (emphasis added).

Mr. Sloan's testimony clearly establishes that there is nothing unusual or nefarious about a developer maintaining control of the property owners' association's board for some period of time. There is nothing unusual or nefarious about Mr. Sloan, as an owner of DIC, acting as President on the property owners' association boards for a set period of time. Accordingly, despite

the Plaintiff's attempts to establish that Mr. Sloan somehow owns or controls all of the Daniel Island entities such that they should be legally classified as a single business venture, the evidence clearly proves that the opposite is true: DIC is completely separate from the other Daniel Island entities. DIC has always been a for-profit company, while the Daniel Island associations are non-profit entities. *See* Deposition of Matthew Sloan, at 15:5-15; 16:16-18. As a closely-held private company, DIC operates behind closed doors, while the board meetings for the Daniel Island associations are open to the public. *See id.*, at 19:22-21:4. DIC operates from a different office than the Daniel Island associations. *See id.*, at 18:5-23. DIC's financials are kept completely separate from each of the other Daniel Island entities. *See id.*, at 21:15-24. Given these key distinctions, it seems the Plaintiff's entire theory behind its apparent amalgamation or joint venture claims is the sole fact that Mr. Sloan has served on the boards of the various property owners' associations. However, as set forth in more detail above, Mr. Sloan's involvement in the development in Daniel Island is standard in the industry. His membership on the boards of the various Daniel Island associations does not even remotely suggest that either he or DIC controlled the associations in such a way that the entities should be considered a joint venture or a single business enterprise. In fact, there is no evidence whatsoever to support the Plaintiff's theory that DIC is liable to the Plaintiff for the negligence of any of the other Daniel Island Defendants.

As previously mentioned, our Supreme Court has recognized that corporations exist to shield its directors, officers, and shareholders from individual liability. In this case, there is nothing remotely nefarious about the formation or structure of the Daniel Island entities. Indeed, the Plaintiff conceded as much during the deposition of Kay Fabrizio, the finance manager for the Daniel Island Property Owners Association:

Q Right. So Daniel Island Company that, as Mr. Barfield said, conceived of the plan of Daniel Island and

built it and sold the lots and created these -- these associations and hired the management and put its own people on the board of every single one. ***Nothing wrong with that; right? That's the way it's done?***

A Yes.

See Exhibit B, Deposition of Kay Fabrizio, at 66:19-25 (emphasis added). Under South Carolina law, to establish a claim for amalgamation, the Plaintiff is required to produce evidence of “bad faith, abuse, fraud, wrongdoing, or injustice resulting from the blurring of the entities’ legal distinctions.” *Pertuis*, 423 S.C. at 655, 817 S.E.2d at 281. However, as the Plaintiff has conceded, there is absolutely no evidence of nefariousness in this case.

Moreover, while expressly and repeatedly recognizing that there is nothing wrong with the way the Daniel Island entities are structured, the Plaintiff also seemed to inherently concede this fact by shifting his theory of liability from a single enterprise theory to a basic *respondeat superior* theory.

Q And you told me the property owners association is all of these five entities?

A Yes.

Q So regardless of who issues you your paycheck, you do work for all five entities out of one office, just like everybody else who works there?

A Yes.

Q Okay. And, ***again, nothing wrong with that; right?*** But there are consequences of things; right?

...

Q ***Even if there's nothing wrong with it?*** I'll give you an example. Nothing wrong with me loaning you my car; right? If you need a car, I could loan it to you. There's nothing wrong with that; right?

A No.

Q But if you get in a wreck with it, I might come back on you; right? So there's nothing wrong with me loaning the car, but there's consequences of me loaning the car; right?

Id. at 69:1-20 (emphasis added). Here, the Plaintiff apparently attempted to demonstrate the existence of liability in this case by comparing the entities’ structures to simple vicarious liability

scenarios such as borrowing another's car. In doing so, it seems the Plaintiff is trying to prove that DIC is liable for the actions of the Daniel Island associations solely because DIC appointed members to the boards of the different associations. This argument completely conflates two separate areas of law. The right to appoint board members of another corporate entity simply does not equate to a master-servant relationship.

Whether the Plaintiff alleges that DIC is liable to him based on a *respondeat superior* theory or a single business enterprise theory, the Plaintiff's claim must fail as a matter of law. Therefore, DIC is entitled to summary judgment on all of the Plaintiff's allegations.

III. If the Plaintiff has sufficiently pled a claim of corporate amalgamation, that claim must be bifurcated from the underlying tort case.

If the Court finds that the Plaintiff has sufficiently stated a claim for amalgamation or, in the alternative allows the Plaintiff to amend his pleadings to do so, and if a claim for corporate amalgamation is the sole basis of the Plaintiff's liability case against DIC, the mode of trial against DIC must change.

Like corporate veil piercing, corporate amalgamation sounds in equity, not law. "The single business enterprise theory ("SBE theory") "is an equitable doctrine applied to reflect *partnership-type liability principles* when corporations integrate their resources and operation to achieve a common business purpose." (William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of Corporations* §43 (perm. ed., rev. vol. 2015). As such, amalgamation claims must be decided by the court, not juries. What's more, our Supreme Court, in holding that a claim to pierce the corporate veil may be litigated in the same case as the underlying dispute, the veil piercing component of the case *must* be bifurcated.

While it is undoubtedly true that the corporate veil is often pierced post-judgment, it is also true that South Carolina courts frequently consider these issues in one bifurcated action. *See, e.g., Carolina Marine Handling v. Lasch et al.*, 363 S.C.

169, 176, 609 S.E.2d 548, 553 n. 6 (recognizing that “an attempt to pierce the corporate veil often occurs post-judgment”); *see also Mid-South Mgmt. Co. Inc. v. Sherwood Dev. Corp.*, 374 S.C. 588, 649 S.E.2d 135 (Ct.App.2007) (in which the trial court allowed claims against a corporation and its parent companies to proceed to a bifurcated trial on issues of corporate liability and veil-piercing theories); *Hunting v. Elders*, 359 S.C. 217, 597 S.E.2d 803 (Ct.App.2004) (in which the trial court allowed claims against a corporation and its shareholder to proceed to a bifurcated trial on issues of corporate liability and veil-piercing). In our view, a trial court need not dismiss an alleged alter ego defendant from a case on the grounds that the issue of corporate liability has not yet been resolved. *See Chase Manhattan Bank v. 264 Water St. Assoc.*, 174 A.D.2d 504, 505, 571 N.Y.S.2d 281 (1991) (holding that it is not necessary “that an unsatisfied judgment first be obtained to pierce the corporate veil.”).

Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 102–03, 668 S.E.2d 798, 801 (2008).

Logic dictates that the rule that veil piercing cases must be bifurcated applies equally to amalgamation claims. Therefore, to the extent that the Court deems it appropriate to grant DIC summary judgment as to any direct claims of negligence against it, any allegations of corporate amalgamation against DIC should be bifurcated and heard non-jury, only after the jury has decided in the Plaintiff’s favor against one or more of the other Daniel Island entities.

For the foregoing reasons, Defendant DIC asks that the Court grant it summary judgment as to the entirety of the Plaintiff’s claims. However, should the Court find that the Plaintiff has sufficiently pled a claim of corporate amalgamation, Defendant DIC requests a finding that such a claim must be bifurcated and heard by the Court without a jury only after a judgment has been rendered against one of the other defendants with whom the Plaintiff claims DIC should amalgamated.

Barnwell Whaley Patterson & Helms, LLC

s/K. Michael Barfield

K. Michael Barfield

P.O. Drawer H

Charleston, SC 29402

mbarfield@barnwell-whaley.com

Counsel for The Daniel Island Company, Inc.

August 16, 2022
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

MATTHEW ZETZ,

PLAINTIFF,

-VS-

DANIEL ISLAND COMPANY, INC., DANIEL
ISLAND COMMUNITY FOUNDATION, INC.,
DANIEL ISLAND TOWN ASSOCIATION, INC.,
DANIEL ISLAND COMMUNITY ASSOCIATION,
INC., and MGR RESOURCES, INC. d/b/a
MOONLIGHTING LANDSCAPE LIGHTING
SYSTEMS,

DEFENDANTS.

) COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2017-CP-08-02238

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VIDEOTAPED

DEPOSITION OF:

MATTHEW R. SLOAN

MAY 9, 2022

11:57 a.m.

1 -- somebody can look up that transfer date.

2 Q Okay.

3 A I'm sure it was turned over quickly.

4 Q All right.

5 A And so our company, we -- we -- you know,
6 we're a for-profit developer. We come up with ideas,
7 we design them, we build them, we implement them, but
8 we don't maintain. All -- they're dedicated off to
9 POAs. They're open to -- property owners'
10 associations, excuse me. They're open to all, but the
11 property owners' association has to maintain them.

12 Q Okay. And -- and so as a for-profit
13 developer, Daniel Island Company derives its income
14 from, what, the development and sale of real estate?

15 A Yeah. Yeah. What we do -- I'm not there
16 anymore --

17 Q Okay.

18 A -- but what we have done and very
19 successfully is we put in infrastructure, and we
20 create either home sites for residential or commercial
21 sites for office and retail and whatnot, and we
22 enhance the values of those places by buildings parks.

23 Q Okay. And the -- do you recall about how
24 many property owners' associations there are on Daniel
25 Island?

1 A There are three.

2 Q Okay. And so what -- what distinguishes one
3 from the other; is it geography?

4 A It's geography. So there are three: One is
5 the Daniel Island Community Association, which is all
6 of the residential on the south side of Daniel Island.
7 One is the Daniel Island Park Association, which is
8 all the residential on the north side of Daniel
9 Island. And then one is the Daniel Island Town
10 Association, which is all of the commercial, and
11 commercial is a bit of a misnomer because it also
12 includes condominiums and apartment complexes and
13 things like that, so --

14 Q Got you.

15 A -- it's our mixed-use district.

16 Q So how -- and are all of those associations
17 non-profit companies?

18 A Yeah, of course.

19 Q Okay.

20 A That's -- that's the case with every property
21 owners' association that I've ever heard of.

22 Q Okay. And so how -- how do these non-profit
23 associations, how are they funded?

24 A There -- there's dues formulas on each of
25 them. Some are very simple. It's like okay, if you

1 a complaint or, you know, the streetlight's out and
2 they don't know where to go, all that, so she would
3 have had staff. I don't know what their names may
4 have been at that time or how many there were.

5 Q Okay. And what -- what -- out of what
6 facility did Jane Baker and her staff work?

7 A She had -- at that time, I believe she had
8 moved into an office on River Landing Drive, and I
9 apologize, but I can't remember the exact street
10 address.

11 Q Perfectly fine. Perfectly fine.

12 A I think you could Google it right now and
13 find it. It's the same -- I believe she's -- she and
14 her staff are at the same office now as she was in
15 2016.

16 Q Okay. And what about your office, where did
17 you physically work when you were out there?

18 A At that time, in 2016, I was at a building on
19 230, two three zero, Seven Farms Drive above a Synovus
20 Bank branch, and that's where we ran our development
21 office. So we had departments there, development,
22 finance, marketing, and myself, and that's where we
23 were.

24 Q Okay. Now, we've heard some -- we had some
25 testimony in the record of this case about the fact

1 that the Daniel Island Company, as part of the master
2 deed or development plan, what have you, would have
3 control of the boards of the various property owners'
4 association for a given period of time or up till some
5 triggering event. Can you tell me -- tell us why that
6 is, why -- why the developer would keep control or the
7 right to control those boards?

8 A Well, that's just how it is -- that's
9 industry standard in my world. The developer always
10 controls up to a certain point. Sometimes it's tied
11 to you sold a certain percentage of your property, or
12 sometimes there's an end date. So as an example, the
13 Daniel Island Town Association, which this gentleman
14 represents, has a turnover date of 2025, regardless of
15 how many people own what, but as the developer, you're
16 putting all of your assets into -- and all of your
17 energy into building a community, and you want to be
18 able to control what is built and how it is managed
19 and add value to the community that way.

20 Q Okay.

21 A So that's what people in my job do.

22 Q Got you. So if there was a -- well, let me
23 ask you this: Did the various POAs, including town
24 association, have annual meetings?

25 A Yeah. Yeah. Yeah, those were a big thing

1 A We're a closely-held private company.

2 Q All right.

3 A The difference between Daniel Island Company
4 meetings and association meetings is night and day.

5 Q Got it. Now, were -- for association
6 meetings, I'm assuming some notice was sent out to the
7 community?

8 A You should ask Ms. Baker but, yes. There's a
9 -- she was earnest in making sure that those protocols
10 were followed and that proxy votes were tallied and
11 things like that. I think it was a 30-day notice.
12 I'm not knowledgeable about that.

13 Q Got you. Were meeting minutes maintained?

14 A Yes.

15 Q And were separate accounting books maintained
16 for all of those associations?

17 A Oh, of course.

18 Q Okay. And --

19 A And I think each association had their own.
20 Well, actually I know that to be true. Each
21 association had their own, and those are completely
22 independent from the Daniel Island Company, the
23 financial records, and done by different firms, and I
24 don't know anything about those.

25 Q Okay. And did the various associations

1 MR. BARFIELD: Just one clarification, I want
2 to kind of --

3 THE WITNESS: I've never done this before, so
4 bear with me. It's all new.

5 RE-EXAMINATION

6 BY MR. BARFIELD:

7 Q We -- you know, we kind of talk -- talked
8 about control and, you know, developer control and
9 board control and all of these terms. I want to -- I
10 want to dial down on this, to clarify. So Daniel
11 Island Company is the developer, right?

12 A Yes, sir.

13 Q Three property owners' associations were
14 created on Daniel Island, right?

15 A Yes, sir.

16 Q Including Daniel Island Town Association,
17 that's one of them, correct?

18 A Yes, sir.

19 Q Okay. Daniel Island Company had the right to
20 appoint the board members of those associations,
21 right?

22 A Yes, sir.

23 Q Okay. But that -- but -- and this is -- this
24 is kind of splitting hairs, but it's important because
25 the boards control those associations, right?

1 A Yes, sir.

2 Q Okay. Not -- not Daniel Island Company
3 directly?

4 A Yes, sir.

5 Q Okay. And so Daniel Island Company, we know,
6 appointed you and Frank and David Crawford to those
7 boards, right?

8 A Yes.

9 Q Okay. But it could have appointed anybody?

10 A It could have.

11 Q Right?

12 A (Nods head up and down.)

13 Q Okay. And so had it -- had they appointed,
14 you know, Tom, Dick, and Harry instead of you guys
15 then Tom, Dick, and Harry would have management or --
16 or oversight of those associations, right?

17 A Yes, sir.

18 Q And then you guys would be up here at Daniel
19 Island Company, and Daniel Island Company would have
20 fulfilled its obligation by appointing Tom, Dick, and
21 Harry, right?

22 A (Nods head up and down.) I like that you
23 chose Tom, Dick, and Harry but --

24 Q Well, I was going to say Larry, Moe, and
25 Curly, but I didn't want to -- didn't want to --

1 A People would be thinking like what are these
2 three stooges doing?

3 Q That's right. That's right. So, again, the
4 Daniel Island Company, just to kind of close the loop,
5 has the ability to appoint the people that have
6 authority over those associations, but Daniel Island
7 Company does not have direct control over those
8 associations?

9 A No. The associations are turned over, and
10 direct control is turned over to the manager, and
11 sometimes the manager's a third-party. So as an
12 example, at our project on Cainhoy at Clements Ferry
13 Road, we use a third-party firm. There is no Jane.
14 We use this firm and, you know, I -- the only
15 influence that I would have there is "do we still want
16 to use this firm? Are we happy with this firm or not
17 happy with this firm?" It's completely delegated out.

18 Q Got you.

19 A The only difference with Daniel Island is
20 Jane and I are friends, and everybody needs somebody
21 to talk to, like I need somebody to talk to after this
22 experience. So I would be that -- and Jane would talk
23 to people in our company about "I'm having a good day.
24 I'm having a bad day. My car has a flat tire. The
25 traffic was terrible," that kind of thing, so I served

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
2 COUNTY OF BERKELEY) PLEAS
3) NINTH JUDICIAL CIRCUIT
4) CASE NO. 2017-CP-08-02238
5 MATTHEW ZETZ,)
6)
7 PLAINTIFF,)
8 VS.)
9) DEPOSITION OF:
10 DANIEL ISLAND COMPANY, INC.;) KAY FABRIZIO
11 DANIEL ISLAND COMMUNITY)
12 FOUNDATION, INC.; DANIEL)
13 ISLAND TOWN ASSOCIATION, INC.;)
14 DANIEL ISLAND COMMUNITY)
15 ASSOCIATION, INC.,)
16 _____ DEFENDANTS)

17 DATE: Tuesday, September 14, 2021
18 TIME: 9:26 a.m.
19 LOCATION: Anastopoulo Law Firm, LLC
20 23 Ann Street
21 Charleston, South Carolina 29403
22 REPORTER: Michele Darling Neville, RPR
23 VIDEOGRAPHER: Ashley Bowler

24 Michele Darling Neville, RPR
25 Independent Contractor working in
association with Milligan Court Reporting
Telephone: (843) 224-5211
Email: schedule@courtreportingsc.com

1 all I have. Thank you.

2 THE WITNESS: Thank you.

3 MR. SOBOCINSKI: I don't have any questions at
4 this time.

5 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

6 BY MR JEFFERIES:

7 Q So I just have a few follow-ups. And first of
8 all, I want to thank Michael for kind of explaining that --
9 that process of how boards work. Because a lot of folks who
10 don't live in a planned community have no idea about that.
11 And that might be folks on the jury, as well. So that was
12 kind of a -- kind of a cogent explanation of what happened
13 and what is likely to happen in the future.

14 Back in 2016, turn over of control from the
15 developer to the residents hadn't happened yet, had it?

16 A Had not, no.

17 Q For any of these--

18 A No.

19 Q Right. So Daniel Island Company that, as Mr.
20 Barfield said, conceived of the plan of Daniel Island and
21 built it and sold the lots and created these -- these
22 associations and hired the management and put its own people
23 on the board of every single one. Nothing wrong with that;
24 right? That's the way it's done?

25 A Yes.

1 Q And you told me the property owners association is
2 all of these five entities?

3 A Yes.

4 Q So regardless of who issues you your paycheck, you
5 do work for all five entities out of one office, just like
6 everybody else who works there?

7 A Yes.

8 Q Okay. And, again, nothing wrong with that; right?
9 But there are consequences of things; right?

10 MR. SOBOCINSKI: Object to the form.

11 BY MR JEFFERIES:

12 Q Even if there's nothing wrong with it? I'll give
13 you an example. Nothing wrong with me loaning you my car;
14 right? If you need a car, I could loan it to you. There's
15 nothing wrong with that; right?

16 A No.

17 Q But if you get in a wreck with it, I might come
18 back on you; right? So there's nothing wrong with me
19 loaning the car, but there's consequences of me loaning the
20 car; right?

21 MR. SOBOCINSKI: Object to the form.

22 BY MR JEFFERIES:

23 Q You're not a lawyer. Maybe you don't know. But
24 just in real life; right?

25 MR. JEFFERIES: You know, I think I'm good. I

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

IN THE COURT OF COMMON PLEAS
FOR THE 9TH JUDICIAL CIRCUIT
CASE NO: 2017-CP-08-02238

Matthew Zetz,

Plaintiff,

v.

Daniel Island Company, Inc.; Daniel Island
Community Foundation, Inc.; Daniel Island
Town Association, Inc.; Daniel Island
Community Association, Inc.; and MGR
Resources, Inc. d/b/a Moonlighting
Landscape Lighting Systems,

Defendants.

**PLAINTIFF’S MEMORANDUM IN
OPPOSITION TO DEFENDANT
DANIEL ISLAND COMPANY, INC.’S
MOTION FOR SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, Matthew Zetz, by and through undersigned counsel, and does submit this Memorandum in Opposition to Defendant Daniel Island Company, Inc.’s (herein “Defendant”) Motion for Summary Judgment.

INTRODUCTION

On September 14, 2020, Defendant filed its first motion for summary judgment. On October 22, 2020, this Court denied the motion, holding that due to ongoing discovery, the motion was not yet ripe.

On August 16, 2022, after discovery was complete, Defendant filed its second motion for summary judgment. This Memorandum in Opposition is in response thereto.

- I. This Court must deny summary judgment because information disclosed during discovery creates a jury question as to whether the Daniel Island defendants constituted a single entity.**

Plaintiff opposed Defendant’s previous motion for summary judgment on the grounds that further discovery would show that the Daniel Island defendants (that is, Defendant; Daniel Island

Community Foundation, Inc. (“the Foundation”); Daniel Island Town Association, Inc. (“DITA”); and Daniel Island Community Association, Inc. (“DICA”)) constituted a single entity. If they constituted a single entity, each of them – including Defendant – would be liable for Plaintiff’s injury, even though only DITA held the deed to the “Children’s Park” on Daniel Island (herein “the Premises”). *See* Def. DITA’s Answer to Pl.’s Sec. Am. Compl., ¶ 9.

As demonstrated below, further discovery *did* uncover evidence proving that the Daniel Island defendants constituted a single entity. At the very least, this new evidence creates a question of fact regarding the defendants’ relationship. Therefore, this Court should deny Defendant’s motion for summary judgment.

A. DITA, DICA, and the Foundation were so intertwined that they were almost indistinguishable.

Several witnesses testified that DITA, DICA, and the Foundation operated out of the same office and used the same phone number, the same office equipment, and the same signage. Therefore, the labels “DITA,” “DICA,” and “the Foundation” clearly referred not to different organizations, but to different aspects of the same organization.

- According to Kay Fabrizio, finance manager for the Daniel Island Property Owners’ Association (“DIPOA”), *see* Deposition of Kay Fabrizio, at 8:8–11,¹ DITA, DICA, and the Foundation shared the same office, *see id.* at 20:2–18, 40:11–19, phone number, *see id.* at 19:14–21, 40:11–21 and office equipment, *see id.* at 21:3–10, 40:11–24. (**Exhibit A**)

¹ DIPOA is not an organization, but rather a collective name for various entities including DITA, DICA, and the Foundation. *See* Deposition of Kay Fabrizio, 11:6–11; Deposition of Sara Cuthbert, 14:1–17; Deposition of G. Chris Hamil, 35:21–36:2, 51:2–18 (DITA and DICA); Deposition of Mary Stuart Sutton, 23:5–11 (DITA and DICA); and Deposition of Barbara McLaughlin, 10:5–13 (DITA and DICA).

- According to Lisa Avant, special projects manager for DIPOA, *see* Deposition of Lisa Avant, at 7:9–12, DITA, DICA, and the Foundation shared the same office, *see id.* at 13:3–17, 21:14–22:8, phone number, *see id.* at 13:18–19, and sign (which used DIPOA’s name), *see id.* at 13:3–17. **(Exhibit B)**
- According to Sara Cuthbert, general assistant for DIPOA, *see* Deposition of Sara Cuthbert, at 9:19–10:5, DITA, DICA, and the Foundation shared the same office, *see id.* at 21:13–19, 25:20–26:4, 54:12–55:6, phone number, *see id.* at 22:13–19, 54:12–55:6, 55:21–56:4, office equipment, *see id.* at 40:18–41:14, 54:12–55:20, and sign (which used DIPOA’s name), *see id.* at 53:1–24, 54:12–20, 55:8–12. **(Exhibit C)**
- According to Danielle Hermann, recreation and communications manager for DIPOA, *see* Deposition of Danielle Hermann, at 11:3–19, DITA and DICA share the same office, *see id.* at 16:15–25, 30:1–13, phone number, *see id.* at 22:17–21, printer, *see id.* at 16:2–14, 25:8–10, and website, 15:19–23. **(Exhibit D)**
- According to Mary Stuart Sutton, Architectural Review Board administrator for DIPOA, *see* Deposition of Mary Stuart Sutton at 9:1–10, 10:5–6, DICA and DITA shared the same office, *see id.* at 23:19–24:1, phone number, *see id.* at 24:6–10, office equipment (including one copier), *see id.* at 24:2–7, website, *see id.* at 25:6–9, and sign (which uses DIPOA’s name), *see id.* at 21:24–22:7. **(Exhibit E)**
- According to Barbara McLaughlin, event planner for DIPOA, *see* Deposition of Barbara McLaughlin, at 9:1–6, 51:18–20, DICA and DITA shared the same office, *see id.* at 128:6–13, 137:19–138:1, signage, *see id.* at 128:6–8, 137:19–138:1, phone number(s), and equipment, *see id.* at 137:19–138:1. **(Exhibit F)**

- Finally, according to G. Chris Hamil, field-operations manager for DITA, *see* Deposition of G. Chris Hamil, at 9:20–23, in 2016 (the year of the accident), DITA and DICA shared the same office, *see id.* at 44:13–45:7, and sign (which used DIPOA’s name), *see id.* at 47:9–16. (**Exhibit G**)

These admissions, taken from seven different individuals, create a jury question as to whether DITA, DICA, and the Foundation were different labels for the same organization.

B. Because Defendant controlled DITA, DICA, and the Foundation, the four entities constituted one larger entity.

Numerous witnesses also testified that Defendant controlled DITA, DICA, and the Foundation. Most importantly, Matthew Sloan, Defendant’s president in 2016, *see* Deposition of Matthew Sloan (**Exhibit H**), at 35:25–17, admitted that in 2016, Defendant controlled the boards of DITA, DICA, and the Foundation, *see id.* at 42:6–12.

Furthermore, Frank Brumley, chairman of Defendant’s board in 2016, *see* Deposition of Frank Brumley (**Exhibit I**), at 24:20–23, admitted that in 2016, DIC controlled DITA and DICA, *see id.* at 20:23–21:2.

According to Mary Stuart Sutton, DIC controlled DITA, DICA, and the Foundation both in 2016 and at the time of the deposition. *See* Deposition of Mary Stuart Sutton, 20:1–5. And according to Kay Fabrizio and Barbara McLaughlin, DIC controlled the boards of DITA and DICA in 2016. *See* Deposition of Kay Fabrizio at 11:23–13:1, 66:14–18; Deposition of Barbara McLaughlin, at 131:7–14. Finally, “to the best of [G. Chris Hamil’s] knowledge,” DIC controlled DITA and DICA in 2016. *See* Deposition of G. Chris Hamil, at 45:8–11.

These admissions, which include admissions from Defendant’s highest-ranking officers, create a jury question as to the relationship between DIC and its subordinate conglomerate.

In sum, the evidence as to whether the Daniel Island defendants constituted one larger entity exceeds the “mere scintilla of evidence” required “to withstand a motion for summary judgment” “[i]n a negligence case.” *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 912 (2011) (citing *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009)). Therefore, this Court should deny Defendant’s motion for summary judgment on this ground.

II. This Court must deny summary judgment because, even if the Daniel Island defendants did not constitute a single entity, Defendant controlled the Premises and is therefore liable for Plaintiff’s injury.

Even if the Daniel Island defendants did not constitute a single entity, Defendant is liable for plaintiff’s injury because it controlled the Premises.

Although a landowner is generally the party liable in a premises-liability case, *see Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992), premises liability “depends on control, rather than ownership, of the premises.” *Dunbar v. Charleston & W. C. Ry. Co.*, 211 S.C. 209, 216, 44 S.E.2d 314, 317 (1947) (quoting 38 Am.Jur., page 753 (Negligence, Sec. 94)). *See Byerly*, 307 S.C. at 443, 415 S.E.2d at 798 (holding that a landowner is generally not liable for injury caused by conditions on leased property, because the leaseholder, not the landowner, “control[s]” the property).

As discussed in Section I, *supra*, Defendant controlled DITA. If Defendant controlled DITA, it necessarily controlled any property that DITA controlled. DITA indisputably controlled the Premises; therefore, Defendant controlled the Premises.

The evidence that Defendant controlled the Premises exceeds the required “mere scintilla of evidence.” Therefore, this Court should deny Defendant’s motion for summary judgment on this ground.

CONCLUSION

WHEREFORE, for the reasons set forth above – to wit, that there is evidence that Defendant is the controlling member of the conglomerate that owns and controls the Premises, or that, at the very least, Defendant itself controls the Premises – Plaintiff respectfully requests that Defendant’s motion for summary judgment be denied.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

BY: s/ Lane D. Jefferies

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Charleston, South Carolina
August 23, 2022

In The Matter Of:
Matthew Zetz, v.
Daniel Island Company, Inc. et al

Kay Fabrizio
September 14, 2021

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Original File 9-14-21(1).txt

Min-U-Script® with Word Index

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
2 COUNTY OF BERKELEY) PLEAS
3) NINTH JUDICIAL CIRCUIT
4) CASE NO. 2017-CP-08-02238
5 MATTHEW ZETZ,)
6)
7 PLAINTIFF,)
8 VS.)
9) DEPOSITION OF:
10 DANIEL ISLAND COMPANY, INC.;) KAY FABRIZIO
11 DANIEL ISLAND COMMUNITY)
12 FOUNDATION, INC.; DANIEL)
13 ISLAND TOWN ASSOCIATION, INC.;)
14 DANIEL ISLAND COMMUNITY)
15 ASSOCIATION, INC.,)
16 _____ DEFENDANTS)

17 DATE: Tuesday, September 14, 2021
18 TIME: 9:26 a.m.
19 LOCATION: Anastopoulo Law Firm, LLC
20 23 Ann Street
21 Charleston, South Carolina 29403
22 REPORTER: Michele Darling Neville, RPR
23 VIDEOGRAPHER: Ashley Bowler

24 Michele Darling Neville, RPR
25 Independent Contractor working in
association with Milligan Court Reporting
Telephone: (843) 224-5211
Email: schedule@courtreportingsc.com

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I N D E X

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E X H I B I T S

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[None were proffered.]

1 THE VIDEOGRAPHER: We are now on the record.
2 Today's date is September 14th, 2021. The time is
3 approximately 9:26 a.m. This is the video deposition of Kay
4 Fabrizio, taken by counsel for the plaintiff. The location
5 is Anastopoulo Law Firm, 32 Ann Street, Charleston, South
6 Carolina 29403.

7 My name is Ashley Bowler, legal videographer
8 representing Vidsouth Production. I am familiar with the
9 provisions of Rule 30(h) pertaining to videotaped
10 depositions.

11 This deposition is taken in the matter of Matthew
12 Zetz versus Daniel Island Company, Inc. et al, case number
13 2017-CP-08-02238.

14 Counsel please introduce yourselves for the
15 record.

16 MR JEFFERIES: Good morning. Lane Jefferies with
17 the Anastopoulo Law Firm for the plaintiff, Matthew Zetz.

18 MR. SOBOCINSKI: Evan Sobocinski for Daniel Island
19 Town Association.

20 MR. BARFIELD: This is Michael Barfield for Daniel
21 Island Company.

22 MS. BAER: Laura Baer for Daniel Island Community
23 Association.

24 MR. WILSON: Beau Wilson for Daniel Island
25 Foundation. Community Foundation.

1 THE VIDEOGRAPHER: In accordance with Rule
2 30(h)(3), the witness has the right to be shown the
3 videotaped deposition unless waived by the witness and the
4 parties.

5 The court reporter today is Michele Neville.
6 Would the court reporter please swear in the witness and we
7 may begin.

8 P R O C E E D I N G S

9 Thereupon, KAY FABRIZIO, the Deponent, called for
10 examination by Counsel for Plaintiff and, after having
11 been duly sworn by the notary, was examined and
12 testified as follows:

13 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

14 BY MR JEFFERIES:

15 Q Good morning Ms. Fabrizio. Again, my name is Lane
16 Jefferies; I represent the plaintiff in this matter.
17 Appreciate you being here for this deposition this morning.
18 I'm going to try to make this as quick and painless as we
19 can.

20 So to get started, just a handful of ground rules
21 and a question to lead off with. Have you ever had your
22 deposition taken before?

23 A Yes.

24 Q Can you tell me how many times or how long ago
25 that would of been?

1 A Fifteen years ago.

2 Q Okay. Well, I'll refresh you just on a few rules
3 since that was kind of a long time ago. The basic thing is
4 this. Obviously you're sworn in. You're under oath.
5 You're going to -- you've sworn to tell the truth and the
6 whole truth and nothing but the truth, all right? And you
7 understand what that means?

8 A Uh-huh.

9 Q Okay. I'm going to ask you a series of questions.
10 You're going to answer them. I hope that my questions will
11 be well worded and intelligible. But if they're not, look
12 to me for clarification. Not to -- not to Mr. Sobocinski.
13 Not to anybody else. But just--

14 A Okay.

15 Q -- to me. And I will clarify or explain or
16 rephrase as many times as I need to until you understand the
17 questions, okay?

18 A Okay.

19 Q When you answer a question, because of what I just
20 said and your agreement, when you answer a question, I'm
21 going to conclude two things from that. The first thing I'm
22 going to conclude is that you understood the question.
23 Fair?

24 A Yes.

25 Q And the second thing I'm going to conclude is that

1 you gave us a truthful answer and you gave us the whole
2 truth.

3 A Yes.

4 Q Okay. And you're doing great so far. And it's
5 something I mention to everybody else, which is thank you
6 for giving a good yes or no, oral answer. Because it's very
7 hard for the court reporter to take down head shakes and
8 uh-huhs and huh-uhs.

9 A Yes.

10 Q So please just keep that up, yes, no. If I remind
11 you on that, I'm not trying to be picky.

12 A I understand.

13 Q Just getting it on the record. There's a jillion
14 other rules I could tell you about, but I'm not going to
15 waste a bunch of time doing that. If they come up, I'll
16 mention it. So with that in mind, we'll -- we'll get
17 started, all right?

18 A Okay.

19 Q Cool. All right. So tell me again your full
20 name.

21 A Stephanie Kay Padget Fabrizio.

22 Q All right. And you go by Kay?

23 A I go by Kay.

24 Q All right. Is that Kay with an E on the end or
25 Kay--

1 A K-A-Y.

2 Q K-A-Y. All right. I'm just looking -- and I'm
3 sure you're familiar with this. I'm just looking at the
4 Daniel Island POA staff web page, which I think you've
5 probably seen before in your life--

6 A Correct.

7 Q -- at some point. And it shows a number of people
8 on there. And you're one of them, Kay Fabrizio. And what
9 it says is that you are the finance manager for the Daniel
10 Island Property Owners Association. Is that right?

11 A Correct.

12 Q Okay. How long have you had that position as --
13 and instead of saying Daniel Island Property Owners
14 Association, I'm just going to say POA. We all know what
15 POA is; right?

16 A Yes.

17 Q Okay. How long have you had the position of
18 finance manager for the Daniel Island POA?

19 A Since 2016.

20 Q Okay. Whenabouts in 2016? Early 2016 or late?

21 A February.

22 Q February of 2016. All right.

23 A February 1st.

24 Q So you were finance manager of Daniel Island POA
25 at the time of the events that are the subject of this

1 lawsuit occurred?

2 A Yes.

3 Q Okay. Tell me what -- let me ask you this. Is
4 there any significant difference between your job as finance
5 manager of Daniel Island POA today versus back in 2016?

6 A No.

7 Q Okay. So when I ask you about the job, what
8 you're describing as your job, as it is today and as it was
9 back in 2016?

10 A Correct.

11 Q Okay. So tell me about your job. What does --
12 what do you do as finance manager of the Daniel Island
13 Property Owners Association?

14 A I produce the budgets for Daniel Island Town
15 Association, Daniel Island Park Association, Daniel Island
16 Community Association, Daniel Island Community Fund. I
17 process financial statements. Monthly, quarterly, annually.

18 I work with auditors, once a year, to audit the
19 associations. I bill annual assessments to all of the
20 property owners for each association. I help collect the
21 money from the property owners. I approve invoices after
22 they've gone through our various departments for payment. I
23 do bank reconciliations. That's pretty much it.

24 Q That's a lot. You're modest when you say that's
25 pretty much it. All right. So let -- walk me through that

1 a little bit. So the first thing you indicated that you did
2 is to produce budgets. Is that correct?

3 A Correct.

4 Q All right. And you produce budgets, I think you
5 said, for Daniel Island Town Association?

6 A Correct.

7 Q Daniel Island--

8 A Park.

9 Q -- Park Association. Daniel Island Community
10 Association?

11 A Correct.

12 Q And Daniel Island Community--

13 A Fund.

14 Q Fund. Okay. And I know we have, I believe, Bo
15 Wilson here for Daniel Island Community Foundation. Is that
16 related to community funds somehow or are those different
17 things?

18 A No, but the foundation really doesn't have an
19 annual budget.

20 Q Okay. I gotcha. Do you have anything to do with
21 community foundation?

22 A I do. I produce their finance statements.

23 Q Okay.

24 A And reconcile their bank accounts.

25 Q So you do that for the foundation, but they don't

1 have a budget and that's why -- why you don't produce a
2 budget for them?

3 A Correct.

4 Q Okay. Now, is there a budget for Daniel Island
5 Property Owners Association?

6 A Property owners association is basically just a
7 title to -- so that every time we answer the phone, we don't
8 have to say: You're calling Daniel Island Town Association,
9 Daniel Island Community Association, Daniel Island Park
10 Association, Daniel Island Community Fund. Property owners
11 is not actually an entity.

12 Q Okay. Okay. And that makes sense. So there's
13 one phone number. If somebody on Daniel Island calls, they
14 call that one phone number to get you?

15 A Correct.

16 Q And instead of rattling off, Hi, you've reached
17 the offices of Daniel Island Town Association, Daniel Island
18 Community Association, park association, Daniel Island Fund;
19 you just say property owners association?

20 A Correct.

21 Q That's the umbrella name?

22 A Yes.

23 Q Okay. Gotcha. All right. So you produce those
24 budgets for Daniel Island Town Association, Daniel Island
25 Park Association, Daniel Island Community Association, and

1 Daniel Island Community Fund. What do you then do with
2 those? Is that something that gets approved by somebody
3 else or?

4 A They're approved by the board.

5 Q Okay. And is that -- is that, what, four separate
6 boards?

7 A Yes.

8 Q Okay. And are those boards -- are all four of
9 those boards still developer controlled or have some gone
10 over to the homeowners?

11 A Daniel Island Community Association has two
12 resident board members currently. But they're not
13 controlled by the residents.

14 Q Okay. So community association has two resident
15 members, but the control hasn't gone over yet?

16 A Correct.

17 Q What about the others, town association, park
18 association and fund?

19 A I -- the declarant still is the developer. Or
20 Daniel Island Company.

21 Q Okay. And that's as of now; right?

22 A Correct.

23 Q Okay. So back in 2016, it was -- it was the same
24 way, Daniel Island Company, the developer, still controlled
25 those four boards?

1 A Correct.

2 Q Okay. So you would of submitted the budgets --
3 you would of produced the budgets for these four entities
4 and submitted them to the boards of those four entities?

5 A Correct.

6 Q And each of those boards was controlled by the
7 developer, which is Daniel Island Company?

8 A Well, the board was basically officers of Daniel
9 Island Company.

10 Q Okay.

11 A Except for one.

12 Q Do you remember back in 2016 who the officers of
13 the Daniel Island Company were?

14 A Daniel Island Company? Or associations?

15 Q The various associations, I should say. Let's go
16 through that first.

17 A Matt Sloan, Frank Brumley, and David Crawford.

18 Q All right. Matt Sloan, Frank Brumley, and David
19 Crawford?

20 A Correct.

21 Q And so each of those boards was controlled by some
22 combination of Matt Sloan, Frank Brumley, and David
23 Crawford?

24 A Correct.

25 Q Okay. Do you remember what the relationship was

1 between Matt Sloan, Frank Brumley and David Crawford, like
2 who worked for whom? Who reported to whom?

3 A David Crawford is an attorney.

4 Q Okay.

5 A He has nothing to do with Daniel Island Company.

6 Q Okay. He's an outside attorney, David Crawford?

7 A I think he's done work for Daniel Island Company,
8 Daniel Island Real Estate. I mean, he's--

9 Q Okay.

10 A He's been doing legal work for -- he used to do a
11 lot of closings.

12 Q Okay. Matt Sloan and Frank Brumley, what's their
13 relationship? Is one--

14 A President -- one was president, one was vice
15 president. And Dave Crawford was the secretary/treasurer.

16 Q Do you remember which one was president, which was
17 vice president?

18 A Matt Sloan, president, Frank Brumley, vice
19 president.

20 Q So Frank reported -- as vice president, Frank
21 Brumley reported to Matt Sloan, who was president?

22 A I assume, yes. I mean...

23 Q That's the way it usually works.

24 A They just, like, basically looked at budgets and
25 all agreed or disagreed or changed something.

1 Q All right. So to recap that, you, in your -- in
2 your role as finance manager of the Daniel Island Property
3 Owners Association, you didn't really create a budget for
4 the property owners association, because that's not actually
5 a thing; you created a budget for four other entities?

6 A Correct.

7 Q Okay. And those four entities, Daniel Island Town
8 Association, Daniel Island Park Association, Daniel Island
9 Community Association, and Daniel Island Community Fund,
10 were all controlled by a board; right?

11 A Correct.

12 Q Okay. And that board consisted of -- for each of
13 those, Matt Sloan, Frank Brumley, and David Crawford?

14 A Correct.

15 Q Okay. And within the Daniel Island Company, Matt
16 Sloan was president, Frank Brumley was the vice president.

17 A Daniel Island Company, Mr. Brumley was the
18 chairman of the board, I think.

19 Q Okay. And Matt Sloan was president; is that
20 right?

21 A In '16, I--

22 Q You don't know?

23 A I can't say.

24 Q But on each of those boards then, Matt Sloan was
25 the president of the board--

1 A Right.

2 Q -- and Frank Brumley was the vice president?

3 A Correct.

4 Q So every single one of those boards was controlled
5 by the same president and vice president; right? They're
6 the same officers?

7 A Correct.

8 Q Okay. And every single one of those budgets came
9 off of your desk?

10 A Yes.

11 Q For approval by those same guys on those -- on
12 those same boards?

13 A Yes.

14 Q Okay. Now, who paid to have all of that work
15 done? I mean, obviously you get paid. Who pays you?

16 A Daniel Island Town Association.

17 Q Okay. So Daniel Island Town Association pays you,
18 but you actually do work for Daniel Island Town Association,
19 Daniel Island Park Association, Daniel Island Community
20 Association, and Daniel Island Community Fund?

21 A Correct.

22 Q Okay. At least with respects to budgets. In
23 respect to other things, y'all do some -- also do some work
24 for Daniel Island Community Foundation?

25 A Yes.

1 Q Okay. All right. So tell me about the -- you
2 mentioned you also do financial statements. Tell me about
3 that work. What does that consist of?

4 A Doing -- processing the monthly general ledgers,
5 making sure everything's in balance. Making sure we're
6 staying within our budgets that are set for the year.

7 Q And when you say our budgets, is that, again, four
8 or five separate budgets?

9 A Yes.

10 Q For the--

11 A Yes.

12 Q And with respect to financial statements, you do
13 that work for not only the four we already discussed, the
14 town association, park association, community association,
15 and community fund, but also for community foundation?

16 A Yes.

17 Q Okay. So all five. All right. So you do the
18 financial statements for all five of those Daniel Island
19 entities?

20 A Yes.

21 Q Okay. Who controlled Daniel Island Community
22 Foundation? Is it like the others where it's got a board
23 and there's -- Matt Sloan and Frank Brumley ran the board?

24 A There are other -- they're all considered board
25 members, but they are various residents of Daniel Island.

1 Q Okay. Who controlled -- back in 2016, who
2 controlled community foundation? Was it residents or was
3 it -- or was it developer controlled? If you know.

4 A I don't know.

5 Q Okay. When you dealt with financial statements
6 for Daniel Island Community Foundation, who did you interact
7 with on the community foundation to tell them, hey, y'all
8 are doing great or y'all have a problem; who did you
9 actually report to?

10 A To Jane Baker.

11 Q To Jane Baker. And what was Jane Baker's role at
12 community foundation?

13 A She basically -- she -- Jane managed all five of
14 the entities.

15 Q Okay. So the five entities -- and to make life
16 simple, I think, I'm going to say when either you or I say
17 the five entities, what we mean are the five entities Daniel
18 Island Town Association, Daniel Island Park Association,
19 Daniel Island Community Association, Daniel Island Community
20 Fund, and Daniel Island Community Foundation.

21 A Yes.

22 Q Okay. And if we say four entities, it's the first
23 four of those.

24 A Okay.

25 Q All right? All right. So with respect to the

1 financial statements, you would deal with the financial
2 statements and you would interact with Jane Baker?

3 A Yes.

4 Q And her role was to run all of those five
5 entities?

6 A Yes.

7 Q Okay. And she reported, I would assume, to the
8 boards of those five entities?

9 A Yes.

10 Q And the boards of those five entities were -- the
11 president and vice president, were Matt Sloan and Frank
12 Brumley?

13 A Yes.

14 Q Okay. So all of these five entities had the same
15 person doing their financial statements, the same person
16 running them, and the same two people as president and vice
17 president of the boards?

18 A Yes.

19 Q All right. And you mentioned they all shared the
20 same phone number; is that right?

21 A Yes.

22 Q Like -- okay. And that's why you answer property
23 owners association?

24 A Yes.

25 Q All right. Were there separate offices?

1 A No.

2 Q Where is your office?

3 A 130 River Landing Drive.

4 Q Okay. 130 River Landing. And so that is the
5 office -- 130 River Landing Drive is the office for all of
6 the five entities?

7 A Yes.

8 Q Okay. Do they have five separate leases?

9 A No.

10 Q That you know of?

11 A You're talking about leases of office?

12 Q Like of the office space.

13 A No.

14 Q Or does somebody own that office space?

15 A Daniel Island Town Association owns that office.

16 Q Town association owns the office. Okay. But all
17 five of the entities use the office?

18 A Correct.

19 Q The entities that are not town association, do
20 they pay any kind of rent to use the office?

21 A All administrative costs for all of the
22 associations are split by shared costs. So not foundation.
23 The foundation pays nothing in to Daniel Island town.
24 Daniel Island Community and Daniel Island Park pay shared
25 costs. They -- it's an annual number that's come up -- we

1 come up with it by a formula, based on the acreage and the
2 number of residents that live in each section.

3 So they pay monthly and to -- they write a check
4 monthly to DITA to pay for their share of the administrative
5 costs.

6 Q Okay. And that is just a -- it's not like
7 individually billed, it's just pro rata? It's not like
8 there's a copier for community association, a copier for
9 town association--

10 A No. All administrative costs are paid by DITA and
11 then DICA and DIP A in turn write a monthly check to DITA to
12 pay their share of the costs.

13 Q To pay their share. Okay. All right. So tell me
14 about -- the next thing you mentioned, the third thing, was
15 auditing the finance statements; is that right?

16 A Uh-huh.

17 Q Tell me about that.

18 A An independent CPA firm is hired to come in; and
19 they're usually there in our office for a week. They do
20 fieldwork for about a month before they come in. They go
21 over all of our financial records to make sure that what I
22 say I'm doing, that I'm actually doing.

23 Q Well, you've been there for a good while; so it
24 sounds like you must be. You must be doing it well.

25 A And then they -- they produce an audit that goes

1 to the residents.

2 Q Okay. Now, is that five separate auditing firms
3 for -- one for each of the five entities?

4 A The foundation and the fund have not been audited.

5 Q Okay.

6 A Since I've been there. They have a CPA that does
7 the tax returns; but they don't do an audit.

8 Q They don't do an audit.

9 A Huh-uh.

10 Q Okay. Do you know why they don't and the other
11 do?

12 A CCNRs call for an audit for both.

13 Q Okay.

14 A For the community, park and the town.

15 Q All right. So the town association, park
16 association and community association, those are all audited
17 by an outside auditor?

18 A Correct.

19 Q And is it the same outside auditor for all three?

20 A Yes.

21 Q And what is the name of that company?

22 A Vance Flouhouse & Garges

23 Q And I'm just going to call them Vance for
24 shorthand.

25 A VHG is what -- VFG is what I call them.

1 Q VFG. Okay. VFG is the outside auditor and VFG
2 audits Daniel Island Town Association, Daniel Island Park
3 Association, Daniel Island Community Association?

4 A Correct.

5 Q And those three are audited because that's a
6 requirement?

7 A Correct.

8 Q And there is no requirement to audit Daniel Island
9 Community Fund or Daniel Island Community Foundation?

10 A Correct.

11 Q And so those are not audited?

12 A No.

13 Q All right. So everybody that's required to be
14 audited gets audited, and they're all audited by the same
15 entity, VFG?

16 A Correct.

17 Q Okay. And when that audit gets done, what happens
18 with it? When VFG does their work, do they give it to you
19 or does it go straight to the homeowners or how does that
20 work?

21 A They typically send it to Jane Baker.

22 Q And that would be all three of the audits?

23 A Yes.

24 Q Would go to Jane Baker. And then Jane -- and I
25 can ask Jane when we take her deposition. But then Jane

1 does something with it and it goes out to people eventually?

2 A Jane looks at it, then I look at it to make sure
3 that we agree with everything that they've produced, and
4 then it's sent back and then they do a formal letter to the
5 board and residents -- or members, I think, is what they
6 call them.

7 Q Okay. The fourth thing you mentioned was doing
8 annual assessments to property owners. Tell me -- I think I
9 understand that process, but just tell us a little bit about
10 it.

11 A Once the budgets are produced every year, we come
12 up with a assessment that each resident will be charged.
13 It's different for each association. And then I send it in
14 to a third party, they produce statements, they send them
15 out to all the residents, and then they start paying their
16 annual assessments.

17 Q And that -- that assessment, is that for all five
18 of the entities or just those first three, town, park and
19 community?

20 A First three.

21 Q The first three. Okay. So you generate the --
22 the numbers, but you send it off to an outside company to
23 actually send the paper bills?

24 A Correct.

25 Q Okay. And the company that sends the paper bills

1 out for the assessments for Daniel Island Town Association,
2 Daniel Island Park Association and Daniel Island Community
3 Association, is that just one company?

4 A Yes.

5 Q Okay. And it handles all three?

6 A Yes.

7 Q Okay. Now, where did the people -- they get their
8 bill, where do they send the money?

9 A That actually -- it goes to a third party lockbox.

10 Q Okay.

11 A That's in -- they can pay online or they can mail
12 it to -- it's an Arizona address.

13 Q All right. Is that a different company than the
14 one that actually sends the bills out?

15 A Yes.

16 Q Okay. So a different company collects the money?

17 A Correct.

18 Q All right. An Arizona lockbox, and is that one
19 company to collect the money that collects for all three;
20 town association, park association and community
21 association?

22 A There are separate lockboxes, but it all is the
23 same bank that does them.

24 Q Okay. So it comes into three separate boxes
25 within that bank, but it's one bank?

1 A Yes. Yes.

2 Q That collects the money?

3 And then do these five -- five entities we talked
4 about, do they have separate bank accounts themselves?

5 A Yes.

6 Q Okay. Five different banks or all in one bank?

7 A I have 28 bank accounts, so. With six different
8 banks, so.

9 Q Okay. So you don't really know whether they're
10 all at -- well, I guess there are six different banks. Who
11 knows how they're divided; right?

12 A Well, I have operating accounts--

13 Q Okay.

14 A -- for each association with two different banks.
15 And then I have money markets and escrow and...

16 Q Are there -- in terms of the signers on these
17 accounts, when you pay bills, et cetera, are there a bunch
18 of folks who are signers, or is it just you? Are you a
19 signer at all?

20 A No.

21 Q Okay. Somebody up the chain from you is the
22 signer?

23 A It depends on if you're talking about now or then.

24 Q Let's think about now. Who's a signer now?

25 A Jane Baker.

1 Q Okay. Back in 2016, who would of been a signer?

2 A Jane Baker would have been the first, and then she
3 had to have a second that was usually Matt Sloan.

4 Q Okay.

5 A For any -- anything over -- I think at that time
6 it was \$5,000.

7 Q Okay.

8 A She couldn't sign for anything--

9 Q Over five?

10 A -- without--

11 Q Anything under five, she could -- Jane Baker could
12 sign, if it was over five, it needed to be Jane and Matt
13 Sloan could sign?

14 A Yes.

15 Q And that's how it was back in 2016?

16 A Yes.

17 Q Okay. And was that true of all of the five
18 entities? Jane Baker could sign any check under five, but
19 Matt had to sign for anything over five?

20 A Yes.

21 Q Okay. As far as you know, back in 2016, were
22 there any other -- any difference between the signers on any
23 of the accounts or it was all Jane Baker and/or Matt Sloan?

24 A In 2016, Jan Malloy was also authorized to sign.

25 Q Okay. On all the accounts?

1 A On the three associations.

2 Q Okay. Town association, park association,
3 community association?

4 A Correct.

5 Q Okay. Tell me about approving invoices for
6 payment. What sort of invoices are we talking about there?

7 A Any invoices that come in for maintenance.
8 Grounds maintenance.

9 Q Okay.

10 A Our monthly copier. Our utilities.

11 Q So if I understand it right -- and you can -- you
12 could tell me better than this, town -- there are certain
13 properties that town association had direct responsibility
14 for, and the same for park association, same for community
15 association?

16 A Certain buildings?

17 Q Yeah. Like so what's the difference among those,
18 aside from the name? Like do they have different parts of
19 the island that they took care of?

20 A Yes.

21 Q Okay.

22 A Yes.

23 Q So you would get, potentially, a bill from a
24 landscaping company, it might be for some park that
25 community association was in charge of taking care of?

1 A Correct.

2 Q Or it might be for some park that town association
3 was in charge of taking care of?

4 A Yes.

5 Q Did each of these -- and you were responsible for
6 authorizing those invoices to get paid?

7 A After the department head that was responsible for
8 the invoice--

9 Q Said it was okay?

10 A Yes.

11 Q Okay. And if that department head said, hey, I
12 paid this invoice, did that check come out of -- what
13 account? Did it come out of--

14 A Whichever association the invoice was made out to.

15 Q Okay. That makes sense. All right. Did these
16 different associations -- as far as you know, did they all
17 hire different subcontractors? Like did one -- did
18 community association hire one company to cut the grass and
19 town association hired some other company and park
20 association hired a third company? Or they all pretty much
21 hire the same contractors?

22 A Pretty much the same. Yeah. They -- they bid --
23 we bid things out and then -- it's typically the same
24 contractor who would bid for all three.

25 Q Okay. Tell me about that bidding out process.

1 How would that go? Is that something that, like, the -- let
2 me back up. I'll ask that a different way. You mentioned
3 that you actually authorize the invoice for payment after
4 the relevant person at the association says it's okay to
5 pay?

6 A Correct.

7 Q And what is -- would that person have a particular
8 title at the association? Like field manager or operations
9 manager or something?

10 A The field operations manager, yes, he--

11 Q Okay. He's the guy?

12 A He approved the majority of the invoices, because
13 that's was--

14 Q Okay.

15 A -- where most of the invoices were coming from.

16 Q Makes sense. All right. So in the bidding
17 process, when you bid out some particular job, is that
18 something that each field operations manager would do
19 independently? Like, you know, each -- one for DICA would
20 bid out cutting our grass, town association would bid out
21 cutting their grass, et cetera? Or--

22 A Yeah. They bid them -- they bid each one
23 separately.

24 Q Okay.

25 A Each association separately.

1 Q All right. When you authorize invoices for
2 payment, how does the check actually get generated? Is that
3 something that, like, comes out of the bank or is it
4 something that you, like, literally print there in the
5 office?

6 A Are you talking about now or then?

7 Q Well, let's do both. How about now?

8 A Now it's a third party.

9 Q Okay. So a third party -- you get an invoice, you
10 authorize the invoice, that sum gets communicated
11 electrically somewhere, in some far off city, a paper check
12 comes out of a machine?

13 A Yes.

14 Q Okay. Back in 2016, how did that work?

15 A Sara Cuthbert wrote all the checks.

16 Q Okay.

17 A Or printed all the checks. She didn't actually
18 write them.

19 Q Sara Cuthbert. And is she still with y'all?

20 A Yes.

21 Q Okay. What was her job title back in 2016?

22 A Accounting assistant.

23 Q Okay. So did she report to you?

24 A Yes.

25 Q Okay. And back in 2016, did you have 28 accounts

1 at six banks or was it fewer?

2 A Fewer.

3 Q Fewer. Okay. Do you remember roughly how many it
4 would of been?

5 A Probably close to 20.

6 Q Okay. So Sara -- presumably, she didn't leave
7 these checks just laying around the office; she probably had
8 them locked up somewhere?

9 A Yes.

10 Q Okay. And so depending on which invoice was
11 getting paid, she'd unlock that cabinet, pull out a check
12 from the appropriate bin, and shove it in the printer and
13 hit the button?

14 A Yes.

15 Q Okay. And so as I look at what we've talked
16 about -- we've talked about these seven different things
17 that you've described to me that you do, now and back then,
18 in 2016, produced budgets, deal with financial statements,
19 deal with the outside auditor, do the annual assessments to
20 owners, collect money from owners, approve invoices for
21 payment, handle bank reconciliations. Those seven things
22 you did across the board for the first three of the
23 entities, Daniel Island Town Association, Daniel Island Park
24 Association, Daniel Island Community Association?

25 A Yes.

1 Q As to the last of those five, Daniel Island
2 Community Fund and Daniel Island Community Foundation, you
3 did some of these things, but not all. You didn't collect
4 assessments?

5 A Correct.

6 Q And you didn't produce budgets?

7 A Correct.

8 Q But you did the other stuff? If they had a bill,
9 you wrote the check?

10 A Yes.

11 Q That sort of thing. All right. So that was all
12 you? If something got done financially for any one of these
13 five entities, that was something that you did?

14 A Yes.

15 Q Okay. And I'm assuming all this stuff was
16 necessary. Like y'all weren't doing it just for fun, you
17 were doing it because it had to be done?

18 A No.

19 Q Okay. So if -- even if one of these five entities
20 didn't exist, you would of still had to do all this stuff
21 for the other four?

22 A Yes.

23 Q Or if there were only three entities, you'd have
24 to do it for the three?

25 A Yes.

1 Q And if Daniel Island Town Association didn't
2 exist, then these others would still have to hire somebody
3 just like you to do all the same stuff for them?

4 A Yes.

5 Q Okay. You mentioned your paycheck comes from
6 Daniel Island Town Association; is that right?

7 A Yes.

8 Q All right. But you actually do work for all five
9 of the entities?

10 A Yes.

11 Q Necessary work; right?

12 A Yes.

13 Q Yeah, not optional.

14 Okay. Can we talk just for a little bit about an
15 organizational structure? I want to make sure I've got all
16 of the people in the right place. I have you. I'm just
17 going to kind of draw you in the middle. Kay Fabrizio. And
18 I'm thinking back in 2016, okay?

19 A Okay.

20 Q Reporting to you was Sara Cuthbert?

21 A Yes.

22 Q Did anyone else report to you?

23 A No.

24 Q Sara Cuthbert was the accounting assistant?

25 A Yes.

1 Q You were the finance manager?

2 A Finance.

3 Q All right. And you reported to who? Who was your
4 boss?

5 A Jane Baker.

6 Q Jane Baker. Were there other people that also
7 reported to Jane Baker?

8 A Yes.

9 Q And do you know who they would have been?

10 A Chris Hamil.

11 Q All right.

12 A Was the field operations manager.

13 Q Okay.

14 A Barbara McLaughlin.

15 Q All right.

16 A And Mary Stuart Sutton.

17 Q Mary Stuart Sutton. And what was Barbara
18 McLaughlin's--

19 A Manager of community services.

20 Q All right. And that was her title back in 2016
21 and it's the same now?

22 A Yes.

23 Q All right. And what about Mary Stuart Sutton,
24 what was her--

25 A ARB administrator.

1 Q ARB administrator. All right. So those folks, in
2 addition to you, reported to Jane Baker. So Mary Stuart
3 Sutton, you, Kay Fabrizio, Chris Hamil, and Barbara
4 McLaughlin, all reported to Jane Baker?

5 A Yes.

6 Q Okay. And we just discussed how your work was for
7 all five of these entities. Was that same thing true of
8 Mary Stuart Sutton, Chris Hamil and Barbara McLaughlin? Did
9 they also do work for all five of the entities? Or did they
10 deal with just specific ones?

11 A Mary Stuart wouldn't -- she only did ARB, which
12 had nothing to do with the fund or the foundation.

13 Q Okay. It only has to deal with town association,
14 property--

15 A Yes.

16 Q Park association and community association?

17 A Yes.

18 Q All right. And she did work for all three of
19 those?

20 A Yes.

21 Q Okay. And what about Chris Hamil; would he of
22 done work -- I'm guessing again, not for the fund or the
23 foundation?

24 A The only thing he did for the fund or foundation
25 is if we were having a special event; then he would help

1 with the setup.

2 Q Okay. Special event for fund and foundation. But
3 that's it with respect to those two?

4 A Yes.

5 Q And then he did work across the board for town
6 association, park association, and community association?

7 A Yes.

8 Q All right. Just like you did?

9 A Yes.

10 Q And I'm guessing his work was also necessary, just
11 like yours?

12 A Yes.

13 Q So that if one of these three associations didn't
14 exist, the other two would of still had to hire somebody
15 just like Chris?

16 A Correct.

17 Q Okay. And the same thing with Mary Stuart Sutton.
18 If one of these three associations didn't exist, the other
19 two would have to hire somebody just like Mary Stuart
20 Sutton?

21 A Yes.

22 Q And what about Barbara McLaughlin, manager of the
23 community services; did she work for all five or did she
24 work for just the three associations?

25 A She really worked for all five; because she

1 handled events that were funded by the community fund or the
2 community foundation.

3 Q Okay. And just like you and Chris Hamil and Mary
4 Stuart Sutton, her work was necessary work?

5 A Yes.

6 Q That if any of those five didn't exist, the other
7 remaining ones would of still had to hire somebody just like
8 Barbara McLaughlin--

9 A Yes.

10 Q -- to do that work?

11 And so those four folks, Mary Stuart Sutton, Kay
12 Fabrizio, Chris Hamil and Barbara McLaughlin, all reported
13 to Jane Baker in her role as well. What was her title?

14 A VP of community services.

15 Q VP of community services. All right. And then do
16 you know -- and it's okay if you don't. Do you know who
17 Jane Baker reported to back in 2016?

18 A To the board.

19 Q The board of each of the--

20 A Yes.

21 Q -- five? Okay.

22 And the board of each of the five entities -- the
23 board of each of the five entities, each one had this in
24 common, the president was Matt Sloan and the vice president
25 was Frank Brumley?

1 A Yes.

2 Q And your understanding is, back in 2016, each of
3 those boards were still what they called developer
4 controlled?

5 A Yes.

6 Q Okay. And the developer that controlled each of
7 those five boards that had the same president and vice
8 president, Matt Sloan and Frank Brumley, respectively, that
9 developer was Daniel Island Company?

10 A Yes.

11 Q So when I drew -- when I drew an organizational
12 chart here of the developer, Daniel Island Company,
13 controlling the boards of five entities, and each of those
14 five entities having the same president and vice president,
15 Matt Sloan and Frank Brumley, respectively, and reporting to
16 each of those boards was the same person, Jane Baker, vice
17 president of community services; right?

18 A Yes.

19 Q All right. And then there's Mary Stuart Sutton,
20 Kay Fabrizio, Chris Hamil and Barbara McLaughlin also doing
21 work across the board for either three of the five entities
22 or all five of the five entities, depending on the type of
23 the work?

24 A Yes.

25 Q All right. And it looks like only really -- well,

1 let's see. Mary Stuart Sutton and Chris Hamil did work only
2 for the associations town, park and community associations?

3 A Yes.

4 Q You and McLaughlin handle all five?

5 A Yes.

6 Q All right. So really with respect to each of
7 these five entities, it's all the same people doing all the
8 same jobs reporting to all the same bosses all the way up
9 the line; isn't it?

10 A Yes.

11 Q Okay. So there's no one of these entities, back
12 in 2016, that had a different management structure,
13 different control; they're all controlled by the same
14 people?

15 A Yes.

16 Q Working out of the same space?

17 A Yes.

18 Q And at 130 River Landing?

19 A Yes.

20 Q The same telephone number?

21 A Yes.

22 Q The same copiers, printers, desks and everything
23 else; right?

24 A Yes.

25 Q If I walked into 130 River Landing, would I be

1 able to tell, you know, where community association was
2 versus town association versus park association?

3 A No.

4 Q No. Because it's all just one -- the same group
5 of people, one big thing going on?

6 A Yes.

7 MR. JEFFERIES: You know what, we've been at this
8 for almost an hour now.

9 MR. BARFIELD: Object to the form.

10 MR JEFFERIES: There's an objection to form by
11 everybody. You know, we made it an hour without an
12 objection. That's pretty solid work. Why don't we just
13 take a very brief break and people can use the bathroom,
14 have a drink, whatever. I don't have a whole lot more left;
15 and then I'll turn it over while we still have plenty of
16 time to these guys and then we'll get you out of here.

17 THE WITNESS: Okay.

18 MR. JEFFERIES: Cool.

19 THE VIDEOGRAPHER: We are going off record. The
20 time is 10:08 a.m.

21 [Off the record at 10:08 a.m.]

22 [On the record at 10:19 a.m.]

23 THE VIDEOGRAPHER: We are back on record. The
24 time is approximately 10:19 a.m.

25 BY MR JEFFERIES:

1 Q All righty. Back on the record after a brief
2 break. I have a few more questions for you and then I'm
3 going to turn it over to the rest of these folks.

4 So we've talked about these five entities and
5 we've talked about the employee and the management
6 structure. And it's the same across all five entities.

7 A Yes.

8 Q Did the five entities have, to the best of your
9 knowledge, any contracts between themselves? You know, did
10 they -- is their business governed by something that's in
11 writing?

12 A I don't understand the question.

13 Q All right. So -- yeah, so let me say that another
14 way. So, like, for instance, you -- one of the things that
15 you do is you, you know, create assessments.

16 A Okay.

17 Q For the three associations.

18 A Yes.

19 Q Town, park and community. And, of course, your
20 paycheck is coming from town association?

21 A Yes.

22 Q But you're doing this work for the other two, as
23 well. Is there some kind of contract from -- between town
24 association and let's say park association or community
25 association, that says, hey, we're going to have your

1 employee do this work for us and this is how we're going to
2 pay you for it? Is there anything--

3 A It was all written in the original CCRs.

4 Q Okay. And that's that sharing of overhead thing?

5 A Yes.

6 Q Okay. I got you. So aside from that, no other,
7 like, separate contracts?

8 A No.

9 Q All right. Now, you would have, I'm guessing,
10 contractual relationships with these outside companies?
11 Like the company that collects the money, you have some kind
12 of contract with them to actually do that; right?

13 A Yes.

14 Q Okay. And I'm assuming they get paid to do it?

15 A Yes.

16 Q They don't just do it for free?

17 A Nobody does it for free.

18 Q And the same thing with the annual assessments,
19 the company that actually prints those and mails them, you
20 have some kind of contract with them?

21 A Yes.

22 Q All right. So there are written contracts with
23 the outside entities, but as among the five entities, it's
24 just -- to the extent there's any agreement, it's covered by
25 the original sharing of expense thing?

1 A Yes.

2 Q Okay. Do you have -- well, let me ask that a
3 different way. My understanding -- and you tell me if yours
4 is -- yours is the same or whether you know anything about
5 this at all. My understanding is among the three
6 associations, that community association -- and this is
7 according to the website -- maintains common property in
8 residential areas west of Daniel Island Drive and south of
9 Seven Farms Drive?

10 A Since I'm--

11 Q Sounds about--

12 A -- directionally challenged, I -- I know where it
13 is.

14 Q And park association handles common property in
15 Daniel Island Park except for the Daniel Island Club
16 amenities?

17 A Correct.

18 Q And town association oversees business areas east
19 of Daniel Island Drive along Seven Farms Drive, River
20 Landing Drive and Island Park Drive?

21 A Yes.

22 Q All right. In light of what we've just talked
23 about for the past hour, that each of these three
24 associations has exactly the same people doing exactly the
25 same jobs, reporting to the same folks all the way up to the

1 top, do you have any idea why there are three of them
2 instead of just one of them? And I know you didn't set them
3 up. It's okay if you don't.

4 A I don't know.

5 Q Okay. Do you know anyone who would know why there
6 are three instead of just one?

7 A No.

8 Q In preparation for this deposition today, was
9 there anything in particular that you did, anything you
10 read, anybody you talked to? And let me -- let me just say
11 this. If you talked to any lawyers, I don't want to know
12 what you talked about. But did you read over anything?
13 Look at anything? Study anything?

14 A No.

15 Q All right. Without telling me what you talked
16 about, did you talk to any lawyers?

17 A Yes.

18 Q And which lawyers did you talk to?

19 A [Pointing.]

20 Q Evan? Okay. Mr. Sobocinski, who's sitting right
21 here?

22 A Thank you for pronouncing the last name.

23 Q Had you spoken with Evan before?

24 A No.

25 Q And I'm guessing in terms of preparation, it would

1 of been yesterday, day before, something like that?

2 A Yes.

3 Q Okay. And you had not spoken to Evan prior to
4 that?

5 A No.

6 Q All right. What about other lawyers? And, again,
7 I don't want to know what you talked about. What about
8 other lawyers with respect to this -- this lawsuit?

9 A No.

10 Q Okay. So the first time a lawyer talked to you
11 regarding this lawsuit was Mr. Sobocinski a day or so ago?

12 A Yes.

13 Q And you never talked to Cordes Ford over at Womble
14 Bond & Dickinson?

15 A I've talked to them, but not about this.

16 Q Not about this. Or Jennifer Nutter?

17 A I don't know her.

18 Q Okay. You haven't talked to her at all?

19 A Huh-uh.

20 Q All right. When was the last time you think you
21 might of spoke with Cordes Ford about anything?

22 A Several months ago.

23 Q But unrelated to this?

24 A Correct.

25 Q I'm guessing that within your office there at 130

1 River Landing, you have some various office policies about
2 any number of things. Probably pets and smoking. I
3 understand you might have a mask policy.

4 A Yes.

5 Q You might have a travel policy, these sorts of
6 things. Are there any policies at that office that apply to
7 one or two or three or four of the five entities, rather
8 than all five of the entities?

9 A No, they're all--

10 Q So they're all the same?

11 A They're all the same.

12 Q If anyone can bring their dogs, it's the same
13 policy?

14 A Yes.

15 Q Okay. Are there any -- what's y'all's mask policy
16 related to COVID?

17 A We're required to wear masks in the office.

18 Q Okay.

19 A Unless you're in your own space.

20 Q So within your own private office, you can take it
21 off?

22 A Yes.

23 Q But elsewhere, you've gotta have a mask on?

24 A Yes.

25 Q How long have y'all had that?

1 A Well, we worked remotely for a year.

2 Q Okay.

3 A And once--

4 Q So when they came back--

5 A I think we came back February or March. I'm not
6 sure.

7 Q All right. And that's when you started with the
8 mask policy?

9 A Yes.

10 Q Okay. Any kind of vaccine policy?

11 A No. Well, we do. If you're not vaccinated, you
12 have to be tested.

13 Q Okay.

14 A Monthly.

15 Q Monthly. All right. So you're not required to be
16 vaccinated, but you are required to be tested if you're not
17 vaccinated?

18 A Correct.

19 Q Does y'all's work require travel from any of
20 y'all? Is there any kind of travel policy? Any
21 restrictions on getting on an airplane?

22 A No.

23 Q And do y'all need to travel or you just work there
24 in the office?

25 A We just work in the office.

1 Q All right. With respect to park day, generally,
2 do you have any -- personally have any involvement with park
3 day, aside from paying the bills?

4 A No.

5 Q Okay.

6 A Well, I did -- I volunteered at one park day to
7 work.

8 Q Okay. As a volunteer?

9 A Yes.

10 Q Not as part of your job, but as a volunteer?

11 A Yes.

12 Q With respect to the 2016 park day specifically,
13 any involvement with that?

14 A No.

15 Q Other than just paying the bills?

16 A Aside from paying the bills.

17 Q With respect to Matthew Zetz and his fall, the
18 setup evening of the 2016 park day, do you have any personal
19 knowledge as to that?

20 A No.

21 Q Okay. Now, you mentioned that approval of
22 invoices for payment is one of the things on your list that
23 someone with one of the associations will say, okay, this
24 invoice is good, then you actually approve it for payment.
25 Back in 2016, that would of meant Sara Cuthbert actually

1 creating a check--

2 A Correct.

3 Q -- and mailing it?

4 A Yes.

5 Q In 2021, as we sit here today, it involves an
6 electronic transmission from some third party?

7 A Yes.

8 Q And would that -- were there any checks that would
9 of been written back in 2016 that would not have come out of
10 your office?

11 A For -- no.

12 Q Okay. And what I'm thinking of, I'm thinking
13 specifically with respect to various insurance policies. If
14 there were insurance policies for any of these entities and
15 y'all got a bill for that policy, that check would have--

16 A Yes.

17 Q -- come out of your office?

18 A Yes.

19 Q All right. Authorized by you?

20 A Yes.

21 Q And printed by Sara Cuthbert?

22 A Yes.

23 Q And signed by Jane Baker and maybe also Matt
24 Sloan, depending on how big the check was?

25 A Yes.

1 Q Okay. In the past -- let's back up to a year and
2 a half in the past since, let's say November of 2019. Has
3 anyone come to you and said, hey, Kay, what all insurance
4 policies do we have for these various entities? Because
5 you'd know? You wrote the checks for them?

6 A Yes.

7 Q Okay. Has anyone come to you and asked you, hey,
8 you know, how many policies do we have? Who are they with?
9 What are they for?

10 A I was asked to send copies of our insurance
11 policies.

12 Q Okay. In what context would that of been?

13 A I would assume for this case.

14 Q Okay.

15 A I was asked to get copies of our insurance
16 policies for 2016 and send.

17 Q And who asked you to do that?

18 A I had -- I sent them to Jane Baker--

19 Q Okay. So Jane -- Jane said--

20 A -- and she forwards them--

21 Q -- what policies do you have?

22 A Yes.

23 Q Do you remember what policies you would of found?
24 I mean, do you remember how many there were or what they
25 were or who they were with--

1 A She was asking me for our liability policies and
2 our umbrella policies.

3 Q And did you have liability and umbrella policies
4 that you found?

5 A Yes.

6 Q How many altogether?

7 A Each association has their own insurance policy.

8 Q So each association has a liability policy?

9 A Yes.

10 Q Okay. And so that would be the Daniel Island Town
11 Association, Daniel Island Park Association, Daniel Island
12 Community Association?

13 A Yes.

14 Q All right. And does each of those associations
15 also have an umbrella policy?

16 A Yes.

17 Q Okay. So altogether, between those three
18 associations, there would be six policies?

19 A Yes.

20 Q Okay. When did Jane Baker ask you for that
21 information on those six policies?

22 A I don't -- I don't know the exact date.

23 Q Even -- I mean, was it last month or was it a year
24 ago?

25 A Oh, no, it's been probably more than a year ago

1 that she asked me.

2 Q More than a year. Okay. And was that request in
3 person? Over the phone? By e-mail?

4 A Probably by e-mail, I would assume.

5 Q And do you recall when you gathered up those
6 policies -- and do you remember what -- I mean, was it six
7 of them, two for each association?

8 A Yes.

9 Q Okay. Do you remember how it was that you
10 delivered those policies to Jane Baker?

11 A I would of e-mailed them.

12 Q You would of e-mailed them. Okay. So somewhere
13 sitting on an e-mail server, there is going to be certainly
14 an e-mail from you to Jane Baker with six insurance
15 policies?

16 A Yes.

17 Q And probably an e-mail from Jane to you just
18 before that saying, hey, get me all the policies on these
19 entities?

20 A Yes.

21 Q Okay. And you were -- what is your e-mail
22 address, Kay?

23 A It's K-A-Y.Fabrizio@dicommunity.org.

24 Q And do you know Jane Baker's e-mail address?

25 A It would be just like mine but Jane.Baker--

1 Q .Baker@dicommunity.org?

2 A Yes.

3 Q Okay. And after you sent those policies, that
4 would be two each for the town association, park association
5 and community association. After you sent those six
6 policies, roughly a year ago, was there any other follow-up
7 or correspondence about those insurance policies with you?

8 A Not that I recall.

9 Q Okay. And do you know what Jane Baker did with
10 those six policies--

11 A I do not.

12 Q -- that you sent to her?

13 Okay. Is there anyone else in your organization
14 that would be more knowledgable than you are about the
15 insurance policies? I mean, I'm assuming -- obviously
16 you've got a high level of knowledge, because you're the
17 person who writes the checks, pays the bills and does the
18 audits and all that other financial stuff. Probably have
19 better knowledge than a field operations guy would have.
20 But is there anybody else who's involved in that that we
21 should be talking to?

22 A I don't think so.

23 Q Okay. When Ms. Baker asked you to gather up those
24 policies, did you delegate any of that work to Sara
25 Cuthbert?

1 A No.

2 Q Or you just did that yourself?

3 So specifically with respect to town association,
4 do you remember the size of the umbrella policy?

5 A No.

6 Q All right. Were you involved at all in the
7 decision making to purchase an umbrella policy?

8 A I mean, they've been in place since I've went to
9 work there.

10 Q Okay. So it just gets renewed--

11 A Yes.

12 Q -- every year you renew it. All right.

13 So you don't know who would of decided, hey, we
14 need to buy an umbrella?

15 A I don't.

16 Q Somebody up the chain from you?

17 A Yes.

18 Q Okay. And I think up that chain, at least back in
19 2016, would of been Jane Baker, Matt Sloan, Frank Brumley
20 and Daniel Island Company?

21 A Yes.

22 Q Okay. We'll just have to ask them.

23 You know, I think that's got it for me. I'll ask
24 you a few wrap-up questions and then I'm going to turn it
25 over to these folks. I might have some follow-ups if they

1 have -- if they say something interesting.

2 A Okay.

3 Q Have you understood everything I've asked you
4 today?

5 A Yes.

6 Q Okay. And you've answered it truthfully?

7 A Yes.

8 Q And you've told me the whole truth?

9 A Yes.

10 Q And there's nothing that would cause you to be
11 unable to tell the truth like, you know, being under the
12 influence of medication--

13 A No.

14 Q -- or stress or anything like that? All right.
15 Is there anything you can think of that would
16 cause you to change your answers when these other attorneys
17 ask you essentially the same questions?

18 A No.

19 Q Okay. And if something comes to you that would
20 cause you to change your answers to anything we've asked
21 you, would you let Mr. Sobocinski know so he can let me
22 know?

23 A Yes.

24 MR. JEFFERIES: I appreciate that. Listen, I
25 appreciate your time very much. I know you had other things

1 you'd probably much rather do today. Thank you for coming
2 in to do this. I'm going to turn it over to them. If I
3 have any follow-ups, we'll deal with it. Otherwise, you're
4 done.

5 THE WITNESS: Okay.

6 MR. SOBOCINSKI: I'll let the colleagues on Zoom
7 go first if they have any.

8 MR. WILSON: I can't see the rest of the room.
9 This is Bo Wilson. Do you want me to go ahead?

10 MR. SOBOCINSKI: Go ahead.

11 MR. JEFFERIES: Bo, stand by just a second now.
12 How about that? All right, Bo, go ahead.

13 MR. WILSON: Great. Thank you.

14 EXAMINATION BY COUNSEL FOR DEFENDANT DANIEL ISLAND
15 COMMUNITY FOUNDATION

16 BY MR. WILSON:

17 Q This is Bo Wilson; I represent Daniel Island
18 Community Foundation. I have very, very few questions. And
19 luckily, they are all going to be related to Daniel Island
20 Community Foundation.

21 First -- and I apologize, there will be a little
22 bit of repeat, because sometimes the vocal quality, when you
23 were answering with a mask on, would get cut off--

24 A Okay.

25 Q -- or be a little choppy. So I didn't catch

1 everything that you've said. But I know you answered this
2 question already. Could you describe again the things you
3 did for Daniel Island Community Foundation back in 2016?

4 A Approved checks for processing and financial
5 statements. Deposits as well.

6 Q Okay. Approve checks, make deposits and create
7 financial statements?

8 A Yes. Yes.

9 Q Okay. Did you have -- I'm sorry?
10 Did you have a formal position or a job title with
11 Daniel Island Community Foundation?

12 A No.

13 Q Do you -- you -- or can you recollect
14 approximately how much of your time, as a percentage of your
15 workday, would be devoted to Daniel Island Community
16 Foundation work?

17 A About two hours per week.

18 Q And do you know if any part of your salary is paid
19 by Daniel Island Community Foundation?

20 A It is not.

21 Q All right. There were some questions about
22 controlling interests. And at one point I thought you said
23 you did not know who had controlling interests in Daniel
24 Island Community Foundation. I thought you said maybe
25 various residents, and then another time I thought you said

1 that Mr. Sloan or Mr. Brumley did. Or the developer. I
2 couldn't quite make out what you said. Do you recall who
3 had the, quote, controlling interest in Daniel Island
4 Community Foundation in 2016?

5 A The board was Frank Brumley, Matt Sloan and David
6 Crawford.

7 Q Okay. And were there any other residents who were
8 part of that board that you can recall?

9 A I don't think so.

10 Q Okay. And did that board -- what was their
11 relationship with Daniel Island Company, if you know?

12 A I don't know.

13 Q Okay. Did you state that Daniel Island Community
14 Foundation was not part of the overhead expense sharing
15 agreement?

16 A It is not.

17 Q Okay. And for park day, I think you were -- you
18 testified you only prepared -- or I guess responded to
19 invoices by sending checks that were associated with that.
20 But, nonetheless, you volunteered on your personal time to
21 work on park day?

22 A Yes.

23 Q All right. What kind of work did you do for park
24 day?

25 A We had a tent. It's like a welcome tent.

1 Q I see.

2 MR. WILSON: Okay. That's -- that's all the
3 questions I have. Thank you.

4 THE WITNESS: Thank you.

5 MR JEFFERIES: I'm going to have some follow-up to
6 Bo -- Bo's questions. But if the rest of y'all who are here
7 remotely, Mike, or Laura, if you want to -- want to go ahead
8 before we get to Evan and then finally back to me.

9 MS. BAER: That's fine. This is Lauren Bear for
10 Daniel Island Community Association. I don't have any
11 questions, but I thank you for your time.

12 THE WITNESS: Thank you.

13 EXAMINATION BY COUNSEL FOR DEFENDANT DANIEL ISLAND COMPANY
14 BY MR. BARFIELD:

15 Q This is -- this is Michael Barfield. Can you hear
16 me okay?

17 A In the car. Yes.

18 Q Okay. Unfortunately I'm not on video right now;
19 I'm actually in my car on the phone. But I represent Daniel
20 Island Company; and I've just got a few questions for you.

21 A Okay.

22 Q Will not take long at all. Am I correct that the
23 five entities that have been discussed extensively here this
24 morning, are all not-for-profit entities?

25 A Yes.

1 Q Okay. And, again, I think you've touched on this,
2 but who -- who funds the budgets?

3 A The three community associations are funded by
4 resident assessments. The foundation at that--

5 Q Okay.

6 A The foundation was funded by donations and
7 fundraisers. And the community fund is funded by community
8 enhancement fees.

9 Q Okay. So let's talk about the three associations
10 that are funded by residents and assessments. Is it safe to
11 assume that based on your years of experience and your job,
12 that you know sort of basically how homeowners or property
13 associations -- associations work?

14 A Yes.

15 Q So what -- so is there anything unusual about
16 different homeowners or property owners associations paying
17 money into a common fund to maintain the -- what's called
18 common elements around their respective communities?

19 A No.

20 Q All right. Somebody's got to pay for it and the
21 people that enjoy it are typically the ones that do that;
22 right?

23 A Yes.

24 Q Okay. And, you know, we're talking about common
25 elements. I used to work on Daniel Island. So there's a

1 lot of landscaping. There's a lot of pretty flowerbeds.
2 There's parks. It's a beautiful island. And so is it safe
3 to assume that the money that goes -- that comes from those
4 residents into those associations is then paid out to keep
5 those things looking beautiful?

6 A Yes.

7 Q Okay. So, you know, the guys like -- that are on
8 the boards, like Mr. Brumley or Mr. Sloan, they don't make a
9 penny from that; do they?

10 A No, they don't.

11 Q Okay. And we were talking a little bit about
12 Daniel Island Company as the developer entity. You know,
13 people who may not have lived in planned communities or been
14 part of homeowners associations might -- might not
15 understand what that means. So I want to talk a little bit
16 about that. First off, do you know what a master deed is?

17 A Yes.

18 Q Okay. Just -- I don't want to put words in your
19 mouth. So can you just sort of briefly -- and this is not a
20 test. So I'm not holding you to a legal definition. I just
21 want to know in your words, based on your experience, what
22 is a master deed and why -- and what purpose does it serve
23 in a -- in a planned community?

24 A Okay, I don't know. I've read our master deed,
25 but I don't know what purpose it serves. Little too thick

1 for me.

2 Q It is a -- it's a thick document. Okay. Well,
3 I'll sort of -- again, not -- not going to be a test. But
4 I'll -- I'll -- I'll give you sort of my understanding of it
5 and you tell me if that comports with your -- with your
6 understanding or experience, okay?

7 A Okay.

8 Q So under the law -- under the law in South
9 Carolina, there's a statute called the South Carolina
10 Horizontal Property Act. And it's a very old statute. But
11 it talks about how you -- how you create a planned
12 community. And sort of the documents that gets it off the
13 ground is called the master deed. And it's kind of a
14 roadmap to how it's going to work. How a board is formed.
15 How budgets are created. You know, everything that you need
16 to plant the seed to grow a community. Is that -- is that
17 kind of -- does that track with what you understand a master
18 deed does generically?

19 MR JEFFERIES: Object to the form of the question.

20 BY MR. BARFIELD:

21 Q You can answer.

22 MR JEFFERIES: Yeah, you go ahead and answer.

23 THE WITNESS: Yes.

24 BY MR. BARFIELD:

25 Q Okay. So, you know, that all presupposes -- when

1 I say a planned community, somebody's got to plan it; right?

2 A Yes.

3 Q Okay. And usually that's a developer. Or
4 sometimes, in those documents, a developer is referred to as
5 a declarant. Are you familiar with that term?

6 A Yes.

7 Q Okay. And for Daniel Island, the developer or the
8 declarant, was the Daniel Island Company; right?

9 A Yes.

10 Q Okay. And in the beginning of a property
11 association's life, you've got the developer or the -- that
12 has a vision for a planned community and the--

13 [Audio disruption.]

14 MR. SOBOCINSKI: Michael, you're breaking up a
15 little too much.

16 MR JEFFERIES: We can't hear your testimony, Mike.

17 MR. BARFIELD: Okay.

18 THE WITNESS: Pull over.

19 MR. BARFIELD: Funny guy.

20 BY MR. BARFIELD:

21 Q It stands to reason -- I'll back up. That when
22 you've got a planned community that's got a developer with a
23 vision for how that community is going to be, that developer
24 is alone until they start selling lots or homes to
25 residents; right?

1 A Yes.

2 Q Okay. So that developer is in control of the
3 operation for a period of time, according to the master
4 deed. Is that -- is that your understanding of how things
5 work, generically?

6 A Yes.

7 Q Okay. And is that how Daniel Island was set up
8 originally by the Daniel Island Company?

9 A Yes.

10 Q Okay. So we talked a lot about how the Daniel
11 Island Company, through representatives like Mr. Sloan and
12 Mr. Brumley, controlled the boards of the various
13 sub-associations on Daniel Island, like Daniel Island Town
14 Association or Daniel Island Community Association; right?

15 A Yes.

16 Q Okay. Now, am I correct that that is not always
17 going to be the case?

18 A Yes.

19 Q That at some point all of the -- okay. And at
20 some point, all of those boards, once the certain number of
21 homes or lots are sold or whatever the threshold is, that
22 automatically control of those boards get in turn -- get
23 turned over completely to residents of Daniel Island?

24 A Yes.

25 MR. BARFIELD: Okay. All right. I think that's

1 all I have. Thank you.

2 THE WITNESS: Thank you.

3 MR. SOBOCINSKI: I don't have any questions at
4 this time.

5 EXAMINATION BY COUNSEL FOR THE PLAINTIFF

6 BY MR JEFFERIES:

7 Q So I just have a few follow-ups. And first of
8 all, I want to thank Michael for kind of explaining that --
9 that process of how boards work. Because a lot of folks who
10 don't live in a planned community have no idea about that.
11 And that might be folks on the jury, as well. So that was
12 kind of a -- kind of a cogent explanation of what happened
13 and what is likely to happen in the future.

14 Back in 2016, turn over of control from the
15 developer to the residents hadn't happened yet, had it?

16 A Had not, no.

17 Q For any of these--

18 A No.

19 Q Right. So Daniel Island Company that, as Mr.
20 Barfield said, conceived of the plan of Daniel Island and
21 built it and sold the lots and created these -- these
22 associations and hired the management and put its own people
23 on the board of every single one. Nothing wrong with that;
24 right? That's the way it's done?

25 A Yes.

1 Q Okay. And in 2016, Daniel Island Company still
2 had control of all of these?

3 A Yes.

4 Q Across the board?

5 A Yes.

6 Q And nothing wrong with that, but some
7 responsibility goes with that; right?

8 A Yes.

9 Q When you're in control?

10 A Yes.

11 Q Yep. When y'all had your welcome tent at park
12 day, do you remember what it said? Like did it say welcome?

13 A I don't know.

14 Q Did it say anything? I mean, how did people know
15 who you were versus you being a dog grooming outfit or a
16 Subway sandwich shop?

17 A I don't remember.

18 Q Did you have a sign that would of said--

19 A We had tickets for sale.

20 Q Tickets for sale. And anywhere on that tent did
21 it say welcome by Daniel Island Town Association, Daniel
22 Island Park Association, Daniel Island Community
23 Association, Daniel Island Community Fund, Daniel Island
24 Community Foundation?

25 A I don't remember.

1 Q Or did it just say property owners association?

2 A I don't -- I don't remember.

3 Q Your title is -- is what? Tell me again.

4 A Finance manager.

5 Q Finance manager.

6 A Uh-huh.

7 Q And we see that on the website, right? Daniel
8 Island property Owner Association staff?

9 A Yes.

10 Q Kay Fabrizio, finance manager?

11 A Yes.

12 Q So your title is with the property owners
13 association?

14 A Yes.

15 Q Okay. So when Mr. Wilson asked you do you have a
16 formal position or job title with community foundation, you
17 said no, I don't. That's right?

18 A No.

19 Q And you don't have a formal title with any of
20 these other entities? You have a title with the property
21 owners association; right?

22 A I'm employed by the town association but, yes.

23 Q And your title is with property owners
24 association?

25 A Yes.

1 Q And you told me the property owners association is
2 all of these five entities?

3 A Yes.

4 Q So regardless of who issues you your paycheck, you
5 do work for all five entities out of one office, just like
6 everybody else who works there?

7 A Yes.

8 Q Okay. And, again, nothing wrong with that; right?
9 But there are consequences of things; right?

10 MR. SOBOCINSKI: Object to the form.

11 BY MR JEFFERIES:

12 Q Even if there's nothing wrong with it? I'll give
13 you an example. Nothing wrong with me loaning you my car;
14 right? If you need a car, I could loan it to you. There's
15 nothing wrong with that; right?

16 A No.

17 Q But if you get in a wreck with it, I might come
18 back on you; right? So there's nothing wrong with me
19 loaning the car, but there's consequences of me loaning the
20 car; right?

21 MR. SOBOCINSKI: Object to the form.

22 BY MR JEFFERIES:

23 Q You're not a lawyer. Maybe you don't know. But
24 just in real life; right?

25 MR. JEFFERIES: You know, I think I'm good. I

1 think we can wind up and let you go to lunch.

2 THE WITNESS: Go to work.

3 MR JEFFERIES: Go to work. Yeah. Fair enough.

4 Thank you for your time. I really appreciate it.

5 THE WITNESS: Thank you.

6 THE VIDEOGRAPHER: We are off the record. The
7 time is approximately 10:53 a.m. This concludes the video
8 recorded testimony of Kay Fabrizio.

9

10 [Deposition concluded at 10:52 a.m. and the deponent
11 waived her right to read and sign her deposition
12 testimony.]

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) C E R T I F I C A T E

3
4 I, Michele Darling Neville, RPR, Registered
5 Professional Reporter and Notary Public for the State of
6 South Carolina, certify that I did have Kay Fabrizio to
7 appear before me at 9:26 a.m. on Tuesday, September 14,
8 2021, in the Offices of Anastopoulo Law Firm, 23 Ann Street,
9 Charleston, South Carolina; that the witness was duly sworn
10 and cautioned to tell the truth, the whole truth and nothing
11 but the truth; that the foregoing pages constitute a true
12 and accurate transcript of testimony given at the time and
13 place.

14 I do further certify that I am not of counsel or
15 kin to any of the parties to this cause of action, nor am I
16 interested in any manner of its outcome.

17 IN THE WITNESS WHEREOF I have hereunto set my hand
18 and seal this the 19th day of September, 2021.

19
20
21
22 
23

24 Notary Public for South Carolina
25 My Commission Expires April 29th, 2024

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4, 19
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board (23) 12:4,12;13:8;15:10, 12,18;17:22,23,24; 24:5;32:22;37:5; 38:18,19,22,23;39:21; 59:5,8,10;63:14; 66:23;67:4	buy (1) 55:14	Charleston (1) 4:5	32:24;33:2,2;35:19; 36:16;37:6,23;38:1,2, 14,15;39:17;40:2; 41:1;42:19,24;44:6; 52:12;54:5;57:15,18, 20;58:3,11,15,19,24; 59:4,13;60:10;61:3,7, 7;62:23;63:12,16; 64:1,12,22,23;65:14; 66:10;67:22,23,24; 68:16	18:1,2,3;39:4,6; 40:13;65:12
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In The Matter Of:

*Matthew Zetz v.
Daniel Island et al.*

*Lisa Avant
September 14, 2021*

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1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
 2 COUNTY OF BERKELEY) PLEAS
 3) NINTH JUDICIAL CIRCUIT
 4) CASE NO. 2017-CP-08-02238
 5 MATTHEW ZETZ,)
 6)
 7 PLAINTIFF,)
 8 VS.)
 9) DEPOSITION OF:
 10 DANIEL ISLAND COMPANY, INC.;) LISA AVANT
 11 DANIEL ISLAND COMMUNITY)
 12 FOUNDATION, INC.; DANIEL)
 13 ISLAND TOWN ASSOCIATION, INC.;)
 14 DANIEL ISLAND COMMUNITY)
 15 ASSOCIATION, INC.,)
 16 _____ DEFENDANTS)

12 DATE: Tuesday, September 14, 2021
 13 TIME: 1:47 p.m.
 14 LOCATION: Anastopoulo Law Firm, LLC
 15 23 Ann Street
 16 Charleston, South Carolina 29403
 17 REPORTER: Michele Darling Neville, RPR
 18 VIDEOGRAPHER: Ashley Bowler

23 Michele Darling Neville, RPR
 24 Independent Contractor working in
 25 association with Milligan Court Reporting
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I N D E X

WITNESS	PAGE
Lisa Avant	
Examination by Mr. Jefferies.....	5

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
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[None were proffered.]

1 THE VIDEOGRAPHER: We are now on the record.
2 Today's date is September 14th, 2021. The time is
3 approximately 1:47 p.m. This is the video deposition of
4 Lisa Avant taken by counsel for the plaintiff. The location
5 is Anastopoulo Law Firm, 32 Ann Street, Charleston, South
6 Carolina 29403.

7 My name is Ashley Bowler, legal videographer
8 representing Vidsouth Production. I am familiar with the
9 provisions of Rule 30(h) pertaining to videotaped
10 depositions.

11 This deposition is taken in the matter of Matthew
12 Zetz versus Daniel Island Company Inc., et al., case number
13 2017-CP-08-02238.

14 Counsel, please introduce yourselves for the
15 record.

16 MR. JEFFERIES: Good afternoon. Lane Jefferies
17 with the Anastoupolo Law Firm for the plaintiff, Matthew
18 Zetz.

19 MR. SOBOCINSKI: This is Evan Sobocinski for
20 defendant Daniel Island Town Association, Inc.

21 MR. WILSON: Bo Wilson for defendant Daniel Island
22 Community Foundation.

23 MR. BARFIELD: Michael Barfield for Daniel Island
24 Company.

25 MS. BAER: Sorry, Michael. Laura Baer for Daniel

1 Island Community Association.

2 THE VIDEOGRAPHER: In accordance with Rule
3 30(h)(3), the witness has the right to be shown the
4 videotaped deposition unless waived by the witness and the
5 parties.

6 The court reporter today is Michele Neville.
7 Would the court reporter please swear in the witness and we
8 may begin.

9 P R O C E E D I N G S

10 Thereupon, LISA AVANT, the Deponent, called for
11 examination by Counsel for Plaintiff and, after having
12 been duly sworn by the notary, was examined and
13 testified as follows:

14 EXAMINATION BY COUNSEL FOR PLAINTIFF

15 BY MR JEFFERIES:

16 Q Ms. Avant, my name, again, is Lane Jefferies, I'm
17 with the Anastoupolo Law Firm; we represent the plaintiff,
18 Matthew Zetz. Going to see if we can get this deposition
19 done as expeditiously as possible and return you to your
20 day.

21 So I don't know, have you had a deposition taken
22 before?

23 A No.

24 Q Okay. It's really simple. A few ground rules. I
25 mean, it's a question and answer session. I'm going to ask

1 questions, you're going to answer them. You've been sworn
2 in. So you know you're going to answer the questions
3 truthfully and by telling us the whole truth and nothing but
4 the truth; right?

5 A Correct.

6 Q Excellent. I hope that my questions will be well
7 worded and intelligible; but I can't promise that. So if I
8 ask something and you don't understand it, just look to me,
9 and only to me, to clarify it. And I will restate it,
10 explain, rephrase as much as you need me to until you
11 understand it, okay?

12 A Gotcha.

13 Q All right. You're doing a great job of giving me
14 yes, no, oral answers, as opposed to head shakes and uh-huhs
15 and huh-uhs. So please continue to do that. It makes the
16 court reporter's job a lot easier.

17 When you answer a question, I'm going to conclude
18 two things from the fact that you answered. I'm going to
19 conclude, first, that you understood the question. Fair?

20 A Yes.

21 Q And I'm also going to conclude that you gave us a
22 truthful answer and told us the whole truth and nothing but
23 the truth, all right?

24 A Good. Yes.

25 Q Excellent. Well, then let's get started. If any

1 of -- you know, there's a ton of rules that people talk
2 about in depositions. And 99 percent of the time, none of
3 that stuff comes up. If it comes up, I'll mention it to
4 you. But, otherwise, let's just dive right in and get
5 going, okay?

6 A Okay.

7 Q All right. So while we were waiting for some
8 defense counsels to come on, I was browsing around your
9 LinkedIn page. And according to that, you've been special
10 projects manager at the Daniel Island Property Owners
11 Association since 2012. Does that sound about right?

12 A Yes, I've been there -- yes.

13 Q Excellent. Nine years. So that's a nice long
14 run.

15 A Yes.

16 Q Congrats. You were then, of course, special
17 projects manager at the Daniel Island Property Owners
18 Association back in 2016 as well?

19 A Yes.

20 Q Okay. For the sake of ease, I'm sometimes not
21 going to say Property Owners Association, I'm just going to
22 say POA. Can we agree that that's what we mean by POA?

23 A Yes.

24 Q Okay. I'm going to ask you some questions about
25 what you do now, about what you did then, about certain

1 facts now, certain facts then. If there's any difference
2 between how things are now and how they were then, draw that
3 to my attention. But, otherwise, I'm going to try not to
4 ask you everything twice, you know what I mean?

5 A Okay.

6 Q So let's start with -- let's start with this. It
7 looks like, on the Daniel Island Property Owners Association
8 web page, that you are listed as having a title of resident
9 services and special projects manager. Is that your
10 official--

11 A Correct.

12 Q -- title?

13 A Yes.

14 Q Okay. Tell me what that is. What do you -- what
15 do you do?

16 A Resident services, that part, is to assist the
17 owners with all the many, many questions that come into our
18 office.

19 Q And what sort of things would -- what sort of
20 things would the property owners be asking you about?

21 A Well, this morning, street trees. Who -- how do I
22 have my tree -- street tree trimmed? Which that's a city of
23 Charleston.

24 Q Uh-huh.

25 A So I refer them to the city. Trash. When trash

1 isn't picked up. Barking dog. Complaints about one
2 neighbor to another neighbor. The many, many various
3 things. Pool fobs. Their -- you know, their pool fob's not
4 working. That was something else this morning. So yeah.

5 Q Gotcha. All right. So really it sounds like
6 everything under the sun that a property owner might--

7 A Yes.

8 Q -- be wondering about.

9 A Yes.

10 Q And is that for everybody within the Daniel Island
11 development? Or is it only for certain portions of the
12 development.

13 A It's for everyone within the -- on Daniel Island.

14 Q Okay. And so regardless of whether they're in the
15 part of the Daniel Island development that might fall under
16 the town association or the park association or the
17 community association, if any of those folks in the whole
18 place have questions, they're asking--

19 A Correct.

20 Q -- you? Okay.

21 A Correct.

22 Q All right. So that's the resident services part.
23 What is the special projects manager part?

24 A Well, various special projects that do occur in
25 our office. A few years back we had a commemorative park.

1 So it was collecting the money and the words for bricks for
2 individuals for a commemorative park. So that's just one
3 example. But my role is ever evolving. I'm very
4 cooperative and willing to learn new duties and titles and
5 so -- or challenges. Take on fun challenges that come.

6 So I've worked with the ARB department. That's
7 how I started. I also work with events. I work with
8 financial -- with Kay with financial parts, with the
9 move-in -- what we call move-ins, move-outs, with the new
10 homeowners.

11 I assist Danny with the website. The information
12 that goes on the website. The newsletters. Proofing of the
13 newsletters. So I -- I pretty much am a jack-of-all-trades
14 in the office. I do almost every -- a little bit of
15 everything.

16 Q A little bit of everything.

17 A Yes.

18 Q Okay. Who do you -- in your role as -- as
19 resident services and special projects manager, who do you
20 actually report to? Who is your boss?

21 A Kay Fabrizio.

22 Q Okay. So you report to Kay. Okay. And that's
23 true now, obviously?

24 A Yes.

25 Q Was that also true back in 2016?

1 A No.

2 Q Okay. Who did you report to then?

3 A Jane Baker.

4 Q Okay. And when you reported to Jane Baker back in
5 2016, what was -- do you remember what her job title was?

6 A VP of community services.

7 Q Okay. And that's the same thing that everyone
8 else has told me, so that -- that sounds right. My
9 understanding from Kay Fabrizio earlier today is that Jane
10 Baker, as VP of community services, then reported up to the
11 boards of five different entities. Does that sound right to
12 you? I can tell you what she told me and you--

13 A Well, Kay's the expert on that.

14 Q Okay.

15 A But -- so I can't answer that for certain.

16 Q Okay. All right. Do you have any knowledge of
17 who -- any independent knowledge of who Jane Baker would
18 have reported to?

19 A Matt Sloan.

20 Q Okay. And who is Matt Sloan?

21 A I don't know his exact title. President. But
22 he -- the development. He's head of the development.

23 Q Okay. Does Matt -- as far as you know, does Matt
24 Sloan have a boss?

25 A Have a?

1 Q A boss. Is there somebody he reports to?

2 A I'm not -- no, I'm not aware.

3 Q He's the big dog?

4 A Yes.

5 Q All right. So now I know where you kind of fit in
6 the -- fit in the organizational chart. Tell me where do
7 you actually -- where do you work? Where do you -- like,
8 when you go to work, where do you--

9 A I'm the front desk. I'm the front desk. But
10 my role -- I've had my own individual offices, but currently
11 I'm at the front desk.

12 Q Okay. And front desk at 130 Riverland--

13 A Yes.

14 Q -- River Landing. I'm sorry. 130 River Landing?

15 A Yes.

16 Q All right. So same office space that Kay works in
17 and--

18 A Yes.

19 Q Kay Fabrizio works in. Okay.

20 At one point you said you had a private office
21 there; is that right?

22 A As rules have changed throughout the years, yes.

23 Q And now you're at the front desk?

24 A Yes.

25 Q And your role will probably change again--

1 A I started -- I started there and I'm back there.
2 But, yeah.

3 Q When somebody comes to your -- y'all's offices
4 there at 130 River Landing, my understanding is the sign
5 that greets them is Daniel Island Property Owners
6 Association; is that accurate?

7 A Correct.

8 Q Is there any distinction, once they got in there,
9 between dealing with Daniel Island Town Association or
10 Daniel Island Community Association or Daniel Island Park
11 Association or Daniel Island Community Fund or Daniel Island
12 Community Foundation?

13 A No.

14 Q Is there separate areas for those?

15 A No.

16 Q No separate signs?

17 A No.

18 Q No separate phone numbers?

19 A No.

20 Q No separate business cards?

21 A No.

22 Q Any kind of separate stationary?

23 A That -- I can't answer that for certain, but I --
24 maybe.

25 Q Maybe. Okay. Not that you're aware of?

1 A Not that I'm aware of.

2 Q Fair enough. Fair enough. And do you answer the
3 phone?

4 A Most of the time. When I'm there. But there are
5 others that--

6 Q That also assist--

7 A That also assist with that.

8 Q When you answer the phone, what do you say?
9 What's the greeting?

10 A Thank you for -- good afternoon. Thank you for
11 calling the POA office. Property owners -- I say property
12 owners association.

13 Q You say property--

14 A Yes.

15 Q You mentioned you get questions -- in your
16 resident services role, you get questions from people all
17 through the development?

18 A Yes.

19 Q All right. Do you log your time in any particular
20 way to distinguish between questions you're answering for
21 people in the park association portion versus the community
22 association portion versus the town association portion?

23 A No.

24 Q Okay. Do you have any awareness of what those
25 different portions of the development are?

1 A Well, the physical break lines, yes.

2 Q Okay. And how does that influence your work, if
3 at all?

4 A It doesn't.

5 Q Okay. I mean, so you know where they are, but it
6 doesn't really change what you do?

7 A Yes. No, it's just a matter of asking the probing
8 questions. What's your address, to know which association.

9 Q Fair enough. Do you know why there are -- not
10 that you know need to. You might not. Do you know why
11 there are three different associations?

12 A No, I don't.

13 Q Okay. No one's ever told you?

14 A No.

15 Q When you were preparing to come to this deposition
16 today, is there anything in particular you did? Is there
17 anything you read over or discussed -- and I don't -- I
18 don't want you to tell me -- if you talked to lawyers, I
19 don't want you to tell me what you talked about. But was
20 there anybody you discussed this deposition with?

21 A Yes.

22 Q And who would that be?

23 A Evan.

24 Q Evan Sobocinski?

25 A Yes.

1 Q Okay. He's the attorney that's--

2 A Yes.

3 Q He's not on the video, so that's why I say that.
4 Did you talk at all to any other attorneys besides
5 Mr. Sobocinski?

6 A No.

7 Q Didn't talk to Jennifer Nutter?

8 A No.

9 Q With respect to this case, did you talk at all to
10 the corporate attorney, Cordes Ford?

11 A No.

12 Q Have you talked to Mr. Ford on other occasions
13 about other things?

14 A No.

15 Q Okay. The first time that you talked to Mr.
16 Sobocinski was roughly when?

17 A Last Friday.

18 Q Last Friday. Okay. So if I understand you right,
19 the only attorney you've talked to about this case is Evan
20 Sobocinski, and you talked to him for the very first time
21 last Friday?

22 A Yes.

23 Q Okay. I want to ask you a little bit about the
24 park day event. Daniel Island park day. Are you familiar
25 with Daniel Island park day in general? Like what it is?

1 A Yes.

2 Q Okay. Do you have any involvement with Daniel
3 Island park day, either in planning or executing the park
4 day?

5 A Yes.

6 Q Tell me what your involvement is. Generally
7 speaking.

8 A Well, I've always assisted Barbara McLaughlin with
9 -- my role has mainly been organizing the food vendors. And
10 then working day of, selling tickets or T-shirts. Whatever
11 we might have in the tent.

12 Q The -- you reference having a -- having a tent at
13 park day. What -- what is that? If that's -- are there,
14 like, multiple entities that have tents out there?

15 A Yes.

16 Q Okay. And your tent is, what, the Property Owners
17 Association tent?

18 A No. It wouldn't be labeled -- I don't--

19 Q Or does it even have a label?

20 A It may of not. It probably was more just a
21 information tent.

22 Q Okay. Gotcha. Gotcha. Gotcha.

23 A Information tent.

24 Q Not five separate tents, though, right? Not a
25 Daniel Island Town Association, Daniel Island Park

1 Association, community--

2 A No.

3 Q Nothing like that?

4 A No.

5 Q As far as you know, does -- who really -- who
6 cares about these distinctions between park association,
7 town association, community association? I mean -- because,
8 like, I don't see it on any of the signs. And I don't see
9 it at park day or anything like that. Does it matter to you
10 or anyone else?

11 MR. SOBOCINSKI: Object to the form. You can
12 answer.

13 BY MR JEFFERIES:

14 Q Yeah, you can go ahead and answer.

15 A Does it matter to me, is that the question?

16 Q Yeah. Does it have any effect on your work? Does
17 it matter in any particular way?

18 A No, because it's all encompassed -- it's all --
19 it's all under the same -- it's all the same. It's how the
20 development company set up our office. How it was
21 originally set up.

22 Q Fair enough.

23 A To have different associations.

24 Q All right. Regarding the particular park day back
25 in 2016, do you remember what your role was during that park

1 day event? Was it the same as -- you know, in terms of
2 planning and organizing the food vendors--

3 A Yes.

4 Q -- working at the tent?

5 A Yeah. It's always just mainly day-of, other than
6 the e-mailing of the -- coordinating of the food trucks.
7 The food vendors.

8 Q When do the food vendors come in? They come in
9 the night before or the morning of?

10 A No. Never the night before.

11 Q Never the night before. Always--

12 A Because they are -- you know, it's a truck.

13 Q Right.

14 A Or a cart. So they come in the morning of the
15 event.

16 Q Do you know -- back in 2016, were you present at
17 all the night before during the setup?

18 A No.

19 Q Okay. Are you aware -- personally aware of any --
20 anything with respect to Matthew Zetz and the injury he
21 suffered? I mean, I know you might of heard about it from
22 others.

23 A Right.

24 Q But do you have any personal direct knowledge of
25 it?

1 A No.

2 Q Okay. Not one way or another? Don't know
3 anything?

4 A Other than hearsay, no. I just -- no.

5 Q Okay. I'd asked you earlier about, you know,
6 taking phone calls and logging time, whether it was a phone
7 call from somebody in the park association portion or the
8 community association portion, and you said, no, you don't
9 really do that.

10 Is there any other -- is there any other way that
11 your work might be separated as to work for the town
12 association or work for the park association or work for
13 community association or the foundation or the fund? Is
14 there any--

15 A I don't really have anything to do with fund and
16 foundation. I don't -- I'm more residents and the ARB and
17 so -- what was the question?

18 Q Is there any separation? In the work that you do,
19 is there any delineation between work you're doing for one
20 association versus another association?

21 A Spreadsheets we'll keep separately. But just--

22 Q Tell me about that.

23 A Just to separate, again, a physical knowing DICA
24 community association versus DIPA Park Association, just to
25 help with organization of locations.

1 Q Okay. Any kind of records you keep like if you --
2 if you were to -- I don't know, make a photocopy or
3 something, would you make a note that this photocopy was for
4 somebody related to DICA versus DIPA or DITA? Boy, these
5 all sound alike now, don't they?

6 Is there any sort of different sets of records
7 that you keep in your work with respect to Daniel Island
8 Park Association, Daniel Island Town Association or Daniel
9 Island Community Association?

10 A Again, it's more just based primarily on location.

11 Q Okay.

12 A Or the amenities that are within one that are not
13 within another.

14 Q Okay. Is there any division within the -- within
15 the physical office as between those associations or the
16 foundation or the fund? Like does the foundation have a
17 corner of the office that's its?

18 A No.

19 Q And the community association have a corner that's
20 theirs?

21 A No.

22 Q Everybody is everywhere?

23 A Correct.

24 Q Okay. So if I went to the office at 130 River
25 Landing and I said, I want to see the Daniel Island

1 Community Association part of the office, there's no such
2 thing as that?

3 A Other than looking at a map.

4 Q Okay. But in the office, y'all -- you're just
5 together? You're doing work--

6 A Correct.

7 Q -- for whatever it is?

8 A Correct.

9 Q All right. And back in the day, 2016, reporting
10 to Jane Baker, now reporting to Kay Fabrizio, who reports to
11 Jane Baker?

12 A Yes.

13 Q Okay. Within the office, do y'all have any -- I
14 mean, I'm sure you have office policies. Every place has an
15 office policy. Probably you can't smoke, right? And you
16 might have a policy about whether you can bring a dog to
17 work.

18 Do you have policies that differ for people in the
19 office with the different associations? I mean, is it like
20 one office policy for Daniel Island Community Association
21 workers can't bring their dogs to work, but town association
22 can?

23 A No.

24 Q Are there any policies that differ among the
25 associations in terms of that office or is it just office

1 policy for the office?

2 A It's all the same.

3 Q Okay. Who does your paycheck actually come from?
4 Like what's the name of the--

5 A The town association.

6 Q Town association. All right. So town association
7 issues a paycheck to you. And you answer the phone and you
8 give advice to people who are in the town association part
9 of the development. But you also answer the phone and give
10 advice to people in the park association part and the
11 community association part; right?

12 A Yes.

13 Q All right. Do you have any idea how those
14 associations, like, carry their end of the load in terms of
15 DITA's paying you to work all day and yet probably two
16 thirds of your day is answering questions for those other
17 folks?

18 A Right. I have an idea, but I don't -- I can't
19 answer that.

20 Q Which -- understanding that it's just an idea, you
21 might not know for sure, what's your idea of how it works?

22 A That the other associations pay to DITA.

23 Q They chip in somehow?

24 A Yes.

25 Q Okay. Fair enough. Are you aware of any sort of

1 contracts between the associations to say we'll pay for this
2 or we'll pay for that?

3 A No.

4 Q Okay. Are you aware of who might know about such
5 contracts?

6 A Kay Fabrizio or Jane.

7 Q Okay. When I ask you about office policies, do
8 y'all have an office policy around COVID policy?

9 A Yes.

10 Q Tell me generally about that. What is -- what's
11 your--

12 A Masks are currently required to enter the office.

13 Q How long has that been the case? Roughly.

14 A When did -- March 16th. Well, we closed the
15 office. We were -- we had a -- we've had a hybrid schedule.
16 It's been ever-evolving.

17 Q Okay. Fair enough.

18 A So as the -- as the cases rise, as the cases went
19 down, we would discuss and do research and see what the
20 recommendations are with the CDC.

21 Q Gotcha.

22 A And with local officials.

23 Q All right. And then you've had a mask policy in
24 place for some time now then, like a lot of people do?

25 A Yes.

1 Q Any sort of vaccination policy?

2 A No. There's not a policy. If you're not, then
3 it's current that those that aren't be checked for -- have
4 COVID tests periodically.

5 Q Any sort of travel restrictions?

6 A And that is for employees that you're referring
7 to, not--

8 Q For employees. Yeah. Yeah.

9 A Okay. Yes.

10 Q Employees, if they're not vaccinated, they have to
11 be tested?

12 A Right.

13 Q Every so often?

14 A Right.

15 Q Any sort of travel restrictions on employees based
16 on COVID?

17 A Not that -- no, I'm not aware of.

18 Q And do you travel in your job?

19 A No.

20 Q Okay. But as far as you know, no travel
21 restrictions?

22 A Correct; as far as I know.

23 Q Okay. You know, I have taken three depositions
24 today, counting yours, so sometimes I don't always remember
25 what I've asked one person versus another.

1 I think I might of asked you if you have any idea
2 why there are three separate associations versus just --
3 just one.

4 A You did ask me.

5 Q Did I ask you that?

6 A And I don't--

7 Q Okay.

8 A Don't know.

9 Q When you do ARB work with -- with Mary Stuart
10 Sutton, is there any differentiation among that ARB work as
11 between town association, community association, park
12 association?

13 A Other than what I mentioned with the spreadsheets,
14 just, again, for location.

15 Q Right.

16 A And tracking.

17 Q Because different guidelines apply? Like ARB
18 guidelines apply differently, those three?

19 A Yes. There's different designs--

20 Q Okay.

21 A Design guidelines that are different.

22 Q What about with -- I know you work on events. And
23 one of the events you mentioned was park day. What other

24 A Holiday market.

25 Q And what is the holiday market?

1 A It's a market--

2 Q Well, I guess I could have figured that out,
3 couldn't I?

4 A It used to be at the Volvo Center, which is now a
5 new name.

6 Q Right. Okay.

7 A But, yeah.

8 Q And does that relate to any one in particular of
9 the various associations? Or is that just a property
10 association kind of thing?

11 A I don't know. It's more -- most of the -- I can't
12 answer that.

13 Q Okay.

14 A Because it's -- the foundation is -- it's more
15 about the foundation.

16 Q It's more about the foundation. I gotcha.

17 A Especially with park day, because that's with the
18 raising money and all that.

19 Q Is that how you think about park day, as being
20 more of a foundation event, because it's designed to raise
21 money?

22 A Yes.

23 Q Okay. Are there any events that you've worked on
24 at Daniel Island Property Owners Association that are
25 restrictive just to one group or another? For instance, are

1 there any Daniel Island Community Foundation events that
2 other people can't come to? Or community association events
3 that, you know, you said, well, you can't come to that
4 because you live on the other side of the town?

5 A We've sold tickets for certain events. No, no, it
6 was open to everyone. It was just at one location. So I
7 don't recall any specific -- any difference, no.

8 Q Okay.

9 A Usually open to all.

10 Q Open to all. Okay. Tell me about your
11 involvement with the Daniel Island Property Owners
12 Association website.

13 A I -- Danny Herman, Danielle Herman, is the main
14 administrator for the website. And I assist her.

15 Q Okay.

16 A The AR--

17 Q Do you know who Danny Herman -- I'm sorry.

18 A I'm sorry.

19 Q I just interrupted you. I apologize. Go ahead.

20 A Just with the ARB, like with the -- Carson, who
21 works for Mary Stuart, will send me information to pose,
22 such as agendas. So just updates. I'm a good proofer; so I
23 find things and tweak things so, yes.

24 Q I gotcha. Do you know who -- Danny Herman, do you
25 know who she reports to?

1 A Barbara McLaughlin.

2 Q She reports to Barbara. Okay. And you also
3 worked some on -- on newsletters; is that right?

4 A Yes.

5 Q Are there separate newsletters for Daniel
6 Island -- pardon me, Daniel Island Park Association, Daniel
7 Island Town Association, Daniel Island Community
8 Association?

9 A No.

10 Q Are there -- are there separate newsletters at all
11 or is there just one?

12 A Just one newsletter.

13 Q And it's the -- what is it, the Daniel Island
14 property owners newsletter?

15 A I don't recall at the moment. I can't -- visually
16 to see it. It probably does say that.

17 Q Okay. Or I don't know, it's probably not the
18 Daniel Island Company's letter but it's the Daniel Island--

19 A Correct. We never we use that. Yeah, it would be
20 -- yes.

21 Q Why do y'all not ever use the Daniel Island
22 Company?

23 A Because that's not part of us.

24 Q Okay. It's the developer?

25 A It's the developer, yes.

1 Q I think I asked you if you were aware of the
2 makeup of the boards of the five different entities, town
3 association, park association, community association,
4 community foundation, community fund. Did you tell me you
5 knew anything about that or no?

6 A What was the question?

7 Q Do you know who was on those boards that control
8 those associations?

9 A No. No.

10 Q Okay.

11 A I don't recall.

12 Q All right. You don't know either way?

13 A Who's on the boards for those?

14 Q Yeah.

15 A No.

16 Q Okay. You mentioned doing some work with Kay
17 Fabrizio, move-in, move-out information.

18 A Yes.

19 Q Tell me what that is.

20 A Well, Sara Cuthbert is her assistant. And I would
21 assist Sara, especially in their busy time. Just as
22 closings would come in. We move out the past owner, move in
23 in our system. In our homeowner database.

24 Q Oh, okay. Gotcha.

25 A Our system. And just save -- scan and save the --