STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-04952
	)	
STEPHEN C. WELLS AND RANDI P. WELLS,	)	
Plaintiffs,	)	**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
v.	)	
SPARTINA BAY PLANTATION PROPERTY OWNERS' ASSOCIATION, INC.,	)	
Defendant.	)	

This matter came before the Court on February 10, 2025, for a hearing involving Plaintiffs Stephen C. Wells and Randi P. Wells' ("Plaintiffs" or "Wells") Motion for Summary Judgment and Defendant Spartina Bay Plantation Property Owners' Association, Inc.'s (hereinafter "Defendant" or "SBPOA") Motion for Summary Judgment. Participating at the hearing were Timothy J.W. Muller, Esquire and Mary Harriet Moore, Esquire of Rosen Hagood, LLC, as counsel for Plaintiff, and Steven R. Kropski, Esquire and Max Seferian, Esquire of Earhart Overstreet, LLC, as counsel for Defendant.

Notice of the hearing was duly given to all interested persons. After careful consideration of the motions, pleadings, exhibits, affidavits, deposition testimony, documentary evidence, memoranda of the parties, the arguments of counsel, and the other matters of record, the Court hereby finds that Plaintiffs' motion for summary judgment is GRANTED and Defendant's motion for summary judgment is DENIED for the reasons stated herein.

STANDARD OF REVIEW

Summary judgment is appropriate where no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Fender & Latham, Inc. v. First Union Nat'l Bank of S.C.*, 316 S.C. 48, 446 S.E.2d 448 (Ct. App. 1994); *The Kitchen Planners, LLC v. Freidman*, 440 S.C. 456, 892 S.E.2d 297 (2023). "The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). Summary judgment is properly regarded not as a procedural shortcut, but as an integral part of the rules of civil procedure which are designed to secure the just, speedy, and most inexpensive determination of every action. *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. *Bradley v. Doe*, 374 S.C. 622, 649 S.E.2d 153 (Ct. App. 2007); *McCall v. State Farm Mut. Auto. Ins. Co.*, 359 S.C. 372, 597 S.E.2d 181 (Ct. App. 2004). Summary judgment is appropriate where further inquiry into the facts of the case is not necessary to clarify the application of the law. *See Carolina Chloride, Inc. v. S.C. Dep't of Transp.*, 391 S.C. 429, 434, 706 S.E.2d 501, 504 (2011). Thus, it is appropriate "when the evidence is susceptible of only one reasonable interpretation[.]" *Holmes v. E. Cooper Cnty. Hosp., Inc.*, 408 S.C. 138, 154, 758 S.E.2d 483, 492 (2014) (internal quotations omitted). This occurs when "plain, palpable, and undisputable facts exist on which reasonable minds cannot differ." *ABB, Inc. v. Integrated Recycling Grp. of SC, LLC*, 432 S.C. 545, 551, 854 S.E.2d 11, 174 (Ct. App. 2021), *reh'g denied* (Feb 12, 2021) (internal quotations omitted).

Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E.2d 432 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. *Rife v. Hitachi Constr. Mach. Co., Ltd.*, 363 S.C. 209, 214, 609 S.E.2d 565, 568 (Ct. App. 2005).

FINDINGS OF FACT & PROCEDURAL HISTORY

Plaintiffs are the owners of the real property situated at 1499 Marsh Bluff Court, Edisto Island, South Carolina (hereinafter "Property") based on the Deed of James W. Dorn & Jan V. Dorn f/k/a Jan V. Hipp to Stephen C. Wells & Randi Popp Wells, dated March 9, 2020, and recorded with the Charleston County Register of Deeds ("ROD") on March 11, 2020, in Book 0865, Page 916 (hereinafter "Wells Deed"). Defendant Spartina Bay Plantation Property Owners' Association, Inc. ("Defendant" or "SBPOA") is the property owners' association created for the residential community where Plaintiffs' Property is located and was created by virtue of a Declaration of Restrictive Covenants, Conditions, and Restrictions of Spartina Bay Plantation Subdivision dated October 13, 2001, and recorded with the Charleston County ROD on October 16, 2001, in Book D385, Page 260 (hereinafter "Declaration"). Defendant is the purported beneficiary on behalf of certain of its members for use of a community dock and a separate ingress/access easement located on the Plaintiffs' Property. *See* Declaration, at pp. 1; 6.

i. Background of Easement Agreement

In 2001, Article VI of the Declaration originally attempted to identify certain portions of the subject Property as intended to be owned or leased to Defendant, including a community dock, referenced as Exhibit C to the Declaration, and a strip of land designated as a dock easement for

access to the community dock, referenced as Exhibit B to the Declaration. Declaration at p. 6; Ex. B & C. The Declaration references a plat prepared by Jerry L Fowler RLS #15178, entitled "A BOUNDARY SURVEY OF 4.31 ACRES TMS 025-00-00-038 SURVEYED FOR: STORE CREEK TRUST." *Id.* Absent from the Declaration is any recording information for such plat. Article VI memorializes that Defendant intended to receive a deed or lease for the strip of land designated as a dock easement and a bill of sale for the dock prior to sale of the first lot within the subdivision. *Id*. No bill of sale was ever known to be issued or recorded for the dock and no deed was issued for the land designated as the dock easement. Dep. of Def.'s Rule 30(b)(6) deponent, Lawrence Evans ("hereinafter "Evans"), P's Memo in Supp. of Sum. J., Ex. I, at 223:15-224:16. On October 12, 2001, N.C. Boykin as Substitute Trustee of Peters Point Trust, entered into a ninety-nine (99) year lease as landlord with the Defendant in an attempt to benefit Class A members of Defendant with the ability to use a 25-foot dock ingress/egress area and 2.95 acres of marshland located on the subject Property, recorded in the Charleston County Register of Deeds in Book 390, Page 257 (hereinafter identified as "Lease"). *See* Lease, at ¶¶ 1-2; Ex. A. The Lease provided that all the terms, covenants and conditions shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of both parties. *Id*. at ¶ 10(b).

Following several conveyances of the subject Property, James S. Cox and Catherine T. Cox became owners of the Property more fully described in a deed from the Internal Revenue Service, Jeannine A. Hammet Special Agent in Charge, Criminal Investigations, Internal Revenue Service, Charlotte Field Office to James L. Cox and Catherine T. Cox (hereinafter identified as "Coxes") dated March 29, 2010, and recorded on April 2, 2010, with the Charleston County ROD in Book 0115, Page 404. The Defendant and the Coxes negotiated the terms of an easement agreement to replace the Lease and prior plat references of the dock ingress/egress on the Property, ultimately

culminating in the execution of the subject Easement Agreement by Defendant's board president at the time, Bruce Matrisciani ("Matrisciani"), and the Coxes, with an effective date of January 25, 2012, and recorded with the Charleston County ROD on February 22, 2012, in Book 0234, Page 897 (hereinafter "Easement Agreement"). Am. Aff. of Bruce Matrisciani at ¶¶ 4 – 7. Defendant and/or its agents, participated in the drafting and negotiation of the Easement Agreement and further directed its filing with the Charleston County ROD through Defendant's legal counsel. *Id.* No evidence was submitted contradicting the material facts that former SBPOA President Matrisciani executed the Easement Agreement, that the SBPOA's attorney recorded the Easement Agreement, or that the purpose of the Easement Agreement was to replace the Lease for Defendant's access on the subject Property.

ii. Non-compliance

Plaintiffs submitted evidence as to numerous violations of the Easement Agreement, including the violation of the limitation on pedestrian use of the easement area. *See* Stephen Wells Dep. 35:12-25; 36:1-24; 69:17-25: 70:1-25; 71:24-25; 72:1-13; 73:1-25. Plaintiffs testified as to multiple vehicles driving and parking both within and outside of the easement area identified by the Easement Agreement and on the Plaintiffs' Property; access by unknown individuals on Plaintiffs' Property; a fishing charter boat on the community dock located on Plaintiffs' Property; and individuals using a vacant lot next to Plaintiffs' Property and not owned by Defendant as a parking lot, resulting in access to the easement area through the neighboring property rather than from the entrance on Marsh Bluff Court. *Id*. Plaintiff Stephen Wells testified that Defendant took no action to restrict individuals from operating vehicles in the easement area, but instead Defendant contested the validity of the Easement Agreement. *See* Stephen Wells Dep. 67:1-25; 68:1-12. Defendant thereafter filed a counterclaim against Plaintiffs challenging the validity of the

Easement Agreement in response to Plaintiffs' Complaint seeking this Court's declaratory judgment and enforcement of the Easement Agreement. *See* Answer and Counterclaim of Defendant.

iii. Procedural History

Plaintiffs filed this lawsuit on October 26, 2022, seeking: (1) declaratory judgment with respect to the parties' rights and obligations under the Easement Agreement, (2) Breach of Easement Agreement, and (3) Temporary, Preliminary, and Permanent Injunction for Defendant's compliance with the Easement Agreement. Defendant filed an Answer and Counterclaim challenging the validity of the Easement Agreement on December 30, 2022. On December 19, 2023, Plaintiffs filed a Motion for Judgment on the Pleadings. This motion was heard on February 22, 2024, and denied so the parties could conduct discovery. Pursuant to the scheduling order in this case, the parties conducted discovery and several depositions occurred. On November 21, 2024, both the Plaintiffs and Defendant filed Motions for Summary Judgment and the parties' respective motions were heard on February 10, 2025.

ANALYSIS

I. This Court Grants Summary Judgment as to Plaintiffs' Claim for Declaratory Judgment and Denies Defendants' Counterclaim for Declaratory Judgment on the Following Issues.

Pursuant to S.C. CODE ANN. § 15-53-30, "[a]ny person interested under a deed, will, written contract or other writings constituting a contract or whose rights, status, or other legal relations are affected by a statute, municipal ordinance, contract or franchise may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." Plaintiffs have rights

or interests under the above-referenced Easement Agreement for which they seek a declaration of rights. This Court grants declaratory judgment upon the following issues raised in this action.

A. Plaintiffs Have Standing as Successors-In-Interest Concerning the Easement Agreement.

Plaintiffs, by virtue of their current ownership of the Property and servient estate, are successors-in-interest concerning the Easement Agreement and have standing to seek Defendant's compliance with the terms, conditions, and requirements of the Easement Agreement. Plaintiffs are the owners of the subject Property and servient estate as evidenced by the Wells Deed and prior duly recorded deeds. *See* Wells Deed. As such, Plaintiffs have standing to seek Defendant's compliance with the Easement Agreement as owners of the subject Property. Further, Plaintiffs have standing in this dispute as successors-in-interest based on the applicability of paragraph 15 of the Easement Agreement affecting Plaintiffs' property executed by and between the Coxes, as grantors and previous owners of the Plaintiffs' property, and Defendant, as grantee. The Easement Agreement provides that the terms, conditions, and requirements shall be binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns. *See* Easement Agreement at § 15. Plaintiffs, through the Wells Deed and previously duly recorded property instruments within the chain of title, are successors-in-interest concerning the Easement Agreement as the current owners of the Property and servient estate. Therefore, as a threshold matter, this Court finds that Plaintiffs are entitled to declaratory judgment that Plaintiffs have standing to seek Defendant's compliance with the terms, conditions, and requirements of the Easement Agreement as successors-in-interest to the grantors of the Easement Agreement and the subject Property.

B. The Easement Agreement is Legal, Valid, Binding, and Enforceable Obligations of the Defendant.

The evidence submitted provides that Defendant and the Coxes negotiated the terms of an easement agreement to replace the Lease and prior plat references of the dock ingress/egress on the Property, ultimately culminating in the execution of the subject Easement Agreement by Defendant's board president at the time and the Coxes, with an effective date of January 25, 2012. *See* Matrisciani Am. Aff. ¶¶ 4 – 10. Defendant and its agents, participated in the preparation and recording of the Easement Agreement as evidenced by the signature of Defendant's then Board president and the recording of the document with the Charleston County ROD by Defendant's legal counsel. *See* Matrisciani Am. Aff. ¶¶ 4 – 10; Easement Agreement. Notably, Defendant and its current board members challenge the validity of the Easement Agreement in response to this action but admit that it contains the signature of Defendant's former Board President. *See* Answer and Counterclaim at ¶ 47.

"'A grant of an easement is to be construed in accordance with the rules applied to deeds and other written instruments.'" *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 71, 558 S.E.2d 902, 909 (Ct. App. 2001) (quoting 28A C.J.S. Easements § 57 (1996)). As such, Plaintiffs are "entitled to rely on recorded deeds and plats to determine their rights in respect to property." *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 236, 662 S.E.2d 452, 457 (Ct. App. 2008). Specifically, "[t]he purpose of the recording statute is to protect a subsequent buyer without notice; therefore, once recorded, deeds and easements are valid to subsequent purchasers without notice." *Ward v. Evans*, 387 S.C. 401, 409-10, 693 S.E.2d 7, 11 (Ct. App. 2010); *see also O'Neal v. Pearson*, 2007 WL 8327921 at *3 (Ct. App. July 6, 2007) (citing *Davis v. Monteith*, 289 S.C.

176, 182, 345 S.E.2d 724, 727 (1986) ("When a deed is valid and regular on its face, it is presumed to be valid in all respects.").

Moreover, the burden of proof is "upon the party asserting the invalidity of the easement contract." *Wilson v. South Carolina State Highway Dep't.*, 264 S.C. 22, 212 S.E.2d 61 (1975); *see also Hudson v. Leopold*, 288 S.C. 194, 196, 341 S.E.2d 137, 138 (1986) (citing *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330 (1920) ("Generally, the party attacking the deed has the burden of proof."); *Wilson v. Wilson*, 117 S.C. 454, 112 S.E. 330, 332 (1920) ("A deed ordinarily, when properly executed, is presumed to be what it purports to be. And the party assailing it is charged with the burden of rebutting this presumption and proving his case. He who avers and charges must ordinarily prove. The burden of proof is on him."). Here, the SBPOA has offered no evidence to prove its assertion that Mr. Matrisciani, the president of the SBPOA at the time, did not have the authorization of the board to sign the Easement Agreement. All evidence submitted points to the contrary.

i. SBPOA President Matrisciani had the Capacity and Authority to Execute the Easement Agreement.

The SBPOA bylaws provide that the President shall be the principal executive officer of the Association, and subject to the control of the directors, shall in general supervise and control all of the business and affairs of the Association, and may sign with the secretary or any other proper officer of the Association, deeds, mortgages, bonds, contracts, or other instruments which the directors have authorized to be executed. Declaration, at Book D385, pg. 294. However, relevant to signing agreements, Article X, Section 1, "Contracts" more specifically provides that the President may be authorized to sign agreements without additional officers: "[t]he directors may authorize <u>any officer</u> or officers, agent or agents to enter into any contract or execute and

deliver any instrument in the name of and on behalf of the association, and such authority may be general or confined to specific instances." *Id.*, at Book D385, pg. 298 (emphasis added).

Mr. Matrisciani testified both by affidavit and in his deposition that he had authorization from the SBPOA members and its directors to sign the Easement Agreement over ten years ago. *See* Matrisciani Am. Aff. ¶¶ 6-10 ("The members of SBPOA at the time of my presidency were aware of and approved the Easement Agreement with the Coxes in order to replace the 99-year lease."); *see also* Matrisciani Dep. 48:1-5, 18-22 ("But every single board member agreed to this agreement. We voted on it."). Defendant has offered no evidence contradicting Mr. Matrisciani's testimony regarding his authorization to enter into the Easement Agreement. Furthermore, nowhere do the bylaws provide that such authorization must be in writing or otherwise memorialized in meeting minutes. Mr. Evans, the corporate representative of the SBPOA, acknowledged and agreed to this fact:

> Q: We're just about done with this document. Let's look at Section 1, "Contracts. The directors may authorize any officer or officers, agent or agents to enter into any contract or execute and deliver any instrument in the name of an on behalf of the association, and such authority may be general or confined to specific instances." Do you see that?
> A: I do.
> Q: Do you disagree with that?
> A: No.
> Q: Do you agree with me that this contemplates that the directors may authorize one or more officers to execute and deliver any contract or instrument in the name of an on behalf of Spartina Bay POA?
> A: That's the way it reads.
> Q: Does it say anywhere in this provision that this authorization has to be in writing?
> A: No, it does not.

Evans Dep. 288:13-25, 289:1-7. Mr. Matrisciani is clear that he was authorized by the SBPOA to enter into the Easement Agreement, discussed the Easement Agreement with all SBPOA members at the time, and that the members of SBPOA agreed to and approved the agreement. *See*

Matrisciani Dep. 60: 1-4. His testimony was further corroborated by Glenn Dill, another member and former President of SBPOA. *See* Dill Dep. 103:4-8.

There is also no support in the SBPOA bylaws that all member and director actions are confined to in-person meetings. Article IV and Article V of the SBPOA bylaws permit procedures for member votes by mail, telephone or other form of communication. Declaration, at Book D385, pg. 290-292. Former SBPOA President Matrisciani testified that such bylaws enabled voting by means other than annual in-person meeting. *See* Matrisciani Dep. 136: 10-12 ("[Q:] Do you think that this contemplates that members may vote by mail, telephone, or other form of communication? [A:] Yes."). President Matrisciani also testified that he had spoken in-person and over the phone with the board of directors about the Easement Agreement and received their approval. *Id.* at 136: 25-138:22.

SBPOA offers no evidence to prove that the SBPOA did not authorize Mr. Matrisciani to execute the easement, that the Easement Agreement was not distributed to SBPOA members, and that the SBPOA members at the time did not approve the Easement Agreement. The corporate representative of SBPOA, Mr. Evans, testified to this fact:

> Q: So here we have the POA confirming, at least in a meeting, that the dock easement had been finalized and was available for anyone who wanted a copy; is that right?
> A: Yes.
> Q: Are you aware of anyone that disputed the fact that the Easement Agreement had been finalized?
> A: I cannot speak to that.
> Q: Okay. You can't speak to that; you're here for the POA?
> A: Right. And we don't have any records saying that anybody spoke out against it or anything else. We also don't have any records that – there's a document out there; the specifics of the documents weren't discussed at any time.
> Q: I understand from the minutes. But sitting here today, as the POA representative, are you aware of any proof that the updates were not provided to POA members about the Easement Agreement during this time?

> A: Only what – the only updates that we have are what we have. There was the – there was the – there was only the one reported concession of paying for 25 percent of the taxes.
> Q: So sitting here today, do you have any proof that the POA members were not updated in terms of the specifics of the Easement Agreement during this time period?
> A: I don't have any proof that they were not any more than I have any proof that they were.

Evans Dep. 100:11-25, 101:1-25, 102:1-4; *see also* Evans Dep. 126:8-15 ("Q: . . .you don't have any proof, sitting here today, that the Easement Agreement was not distributed by POA members when it was negotiated back around 2011 or 2012, correct? A: I don't have evidence in either direction."). SBPOA's representative also did not dispute SBPOA meeting minutes disclosing the existence and recording of the Easement Agreement to SBPOA members for the purpose of replacing the Lease, the provision that SBPOA obligation of paying twenty-five percent of the Property's taxes in exchange for a permanent easement, and an acknowledgement that all SBPOA members were aware of this information after the Easement Agreement was recorded. Evans Dep. 106:22-25, 107:1-25, 108:1-6.

There is also significant evidence in SBPOA's documents demonstrating that its members were aware of and approved the Easement Agreement both before and after the Easement Agreement was signed and recorded. For example, there is an April 10, 2012, letter to SBPOA members that states:

> As you know we have been working on obtaining a perpetual easement to the Dock area to replace the 99 year term that has been in effect. The agreement has been agreed to and recorded. . . . The agreement is digitized, please advise Ron Farrell if you would like to receive a copy by email.

Plaintiff's Memo in Supp. of Sum. J., Ex. K (hereinafter "April 10, 2012, Letter – Plaintiffs_0094"). In fact, before the execution of the Easement Agreement by Defendant, there were no less than three sets of SBPOA meeting minutes evidencing member discussion and

decisions to replace the 99-year lease with the permanent ingress/egress rights ultimately acquired by Defendant through the Easement Agreement, two of which included unanimously approved motions to resolve this precise issue. Plaintiff's Memo in Supp. of Sum. J., Ex. L, SBPOA_0163-0164; 0169 (SBPOA Meeting Minutes for Minutes of Nov. 6, 2010, Oct. 17, 2009, & Mar. 28, 2009) ("hereinafter SBPOA Meeting Minutes"). In a unanimous vote at the SBPOA meeting on October 17, 2009, SBPOA members adopted a motion specifically to have President Matrisciani work with SBPOA's legal counsel "**to attain either a dock easement or lease in perpetuity**." SBPOA Meeting Minutes, at SBPOA_0167 (emphasis added).

Alternatively, Defendant argues that the Easement Agreement required unanimous consent of Class A Members to be enforceable. Mr. Matrisciani testified that he received consent of all current owners, which would necessarily include Class A Members, to enter the Easement Agreement. Defendant has not offered evidence establishing that the Easement Agreement was not unanimously approved by Class A Members. Defendant has not presented any testimony, whether by affidavit or deposition from Class A Members from such time, to support that the Easement Agreement was not unanimously approved nor has it presented any evidentiary support for this argument.

Defendant's claim of an alleged insufficiency of documentary evidence from thirteen or more years ago for authorization of the recorded Easement Agreement, despite the existence of evidence to the contrary, does not meet the SBPOA's burden to prove invalidity of the Easement Agreement. Therefore, this Court holds that SBPOA has failed to show that Mr. Matrisciani lacked authority to enter into the Easement Agreement on behalf of SBPOA. Accordingly, there is no genuine issue of material fact that SBPOA President Matrisciani had the capacity and authority to execute the Easement Agreement.

ii. The Easement Agreement was Approved and has Been Ratified by Defendant.

Under South Carolina law, "[r]atification, as it relates to the law of agency, means the express or implied adoption and confirmation by [a principal] of an act or contract performed or entered into in his behalf by another who at the time assumed to act as his agent." *Lincoln v. Aetna Cas. & Sur. Co.*, 300 S.C. 188, 191, 386 S.E.2d 801, 803 (Ct. App. 1989) (citing *Barber v. Carolina Auto Sales*, 236 S.C. 584, 115 S.E.2d 291 (1960)). "Ratification exists upon the concurrence of three elements; (1) acceptance by the principal of the benefits of the agent's acts, (2) full knowledge of the facts, and (3) circumstances or an affirmative election indicating an intention to adopt the unauthorized arrangements." *Id.* (citing 2A C.J.S. Agency § 71 (1972)). Here, the Easement Agreement was written and entered into in 2012. Since that time, the SBPOA has repeatedly ratified the Easement Agreement, despite its assertion otherwise in this action.

After the Easement Agreement was executed by the Coxes and Mr. Matrisciani on behalf of the SBPOA, the Easement Agreement was recorded in the Charleston County ROD on February 22, 2012. On April 10, 2012, the SBPOA board issued a letter to all members of SBPOA informing them that the Easement Agreement had been recorded, and a digitized version was available for their review. Matrisciani Am. Aff. ¶ 8; *see also* April 10, 2012, Letter – Plaintiffs_0094. Further, at a SBPOA meeting held on May 12, 2012, then President Mr. Matrisciani confirmed the Easement Agreement was finalized and available for review. Matrisciani Am. Aff. ¶ 9; SBPOA Meeting Minutes at SBPOA_0161 ("The fact that the perpetual dock easement was finalized was announced and it was stated that it was available in digitized form for anyone who wanted a copy."). Thus, from April 2012 until present, the SBPOA and its members have been on notice of the Easement Agreement and its pedestrian requirement. Even further, SBPOA produced documents including dock operating rules, which provided: "Dock access across Lot B is a

pedestrian access only by easement agreement." P's Memo. in Supp. of Sum. J., Ex. M (hereinafter "Dock Rules SBPOA_902 – SBPOA_903") (emphasis in the original). It was not until recently that the SBPOA Board rescinded the dock rules that contained the pedestrian limitation. *See* Dill Dep. 109:25, 110:1-14.

Defendant has provided no evidence disputing that SBPOA members were informed of the Easement Agreement prior to and following its recording. The evidence submitted indicates that not only was the Easement Agreement approved by SBPOA members, but also that SBPOA members were aware of and ratified the Easement Agreement following its recording. Accordingly, this Court finds, irrespective of any claimed procedural defects in the approval of the Easement Agreement before its recording, of which this Court finds none, Defendant also ratified the Easement Agreement based on the evidence submitted by the parties.

iii. The Easement Agreement was Recorded More Than Ten Years Prior To This Action Under S.C. CODE ANN. § 15-3-340 And No Action Was Taken By Defendant To Dispossess Plaintiffs Or Their Predecessors-In-Interests With The Rights Acquired In The Real Property Identified In The Easement Agreement.

Pursuant to S.C. CODE ANN. § 15-3-340, "[n]o action for the recovery of real property or for the recovery of the possession of real property may be maintained unless it appears that the plaintiff, his ancestor, predecessor, or grantor was seized or possessed of the premises within ten years before the commencement of the action." This action was filed on October 26, 2022, two years after Plaintiffs purchased the property. In contrast, despite the existence of this filed property instrument, Defendant failed to challenge the validity of the Easement Agreement until Defendant filed its on counterclaim on December 30, 2022, nearly eleven years after the Easement Agreement was recorded on February 22, 2012, and over ten years after this Court finds Defendant further ratified the Easement Agreement. Accordingly, this Court declares that the Easement Agreement

was approved and ratified since 2012, and Defendant's counterclaim falls outside the ten-year limitation for Defendant to be able to sustain any claim under S.C. CODE ANN. § 15-3-340 to recover real property rights allegedly seized or limited as a result of the Easement Agreement.

Defendant's counterclaim seeks this Court's determination of the validity of an easement which is an issue of law while the determination of the scope of an easement is an action in equity. *See Gooldy v. Storage Center-Platt Springs, LLC,* 422 S.C. 332, 338, 811 S.E.2d 779, 782 (2018) ("The question of whether an easement exists is a factual question in an action at law."); *Inlet Harbour v. South Carolina Dep't of Parks, Recreation, and Tourism*, 377 S.C. 86, 91, 659 S.E.2d 151, 154 (2008) (citing *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487 S.E.2d 187, 190 (1997) ("Apart from the issue of an easement's creation, however, the determination of the scope of an easement is an action in equity."); *Tupper v. Dorchester County*, 326 S.C. 318, 323, 487, S.E.2d 187, 190 (1997) ("The determination of the existence of an easement is a question of fact in a law action and subject to any evidence standard of review when tried by a judge without a jury.").

Defendant is attempting to affirm its rights to the possession of the easement area and divest Plaintiffs of the property rights contained within the Easement Agreement and granted to Plaintiffs as successor-in-interest to the Property and Easement Agreement. Defendant failed to attempt to seize the property rights granted to Plaintiffs and their predecessors-in-interest in the Easement Agreement or otherwise challenge the Easement Agreement within ten years from its approval and ratification. Therefore, this Court finds that Defendant may not sustain any action arising under § 15-3-340 nearly eleven years after the Easement Agreement was recorded on February 22, 2012, and over ten years after this Court finds Defendant further ratified the Easement Agreement.

C. The Lease and All Prior Rights Held By Defendant In The Ingress/Egress Easement Area On Plaintiffs' Property Were Replaced and Merged Into The Easement Agreement.

This Court finds that the Easement Agreement extinguished or merged any prior property rights held by the SBPOA in the same dock access easement depicted in previously prepared plats, such as those referenced in the Declaration, any amendments thereto, and the Lease. South Carolina has long recognized the merger doctrine since the case of *St. Philip's Church v. Zion Presbyterian Church*, 23 S.C. 297 (1885), which provides that a deed is absolute on its face and in its terms and any and all negotiations are merged into the deed. *See Hughes v. Greenville Country Club*, 283 S.C. 448, 450, 322 S.E.2d 827, 828 (Ct. App. 1984) (prior written agreements are merged into a subsequently recorded conveyance covering the same property). A party claiming that merger was not intended must prove so by clear and convincing evidence under South Carolina law. *Shoney's Inc. v. Cooke*, 291 S.C. 307, 353 S.E.2d 300 (Ct. App. 1987).

Furthermore, the Easement, executed by Defendant and consistent with an intended merger, also contains an integration clause, which provides: This Agreement is an integrated agreement and expresses the complete agreement and understanding of the Parties. **Any and all prior or contemporaneous oral agreement or prior written agreement regarding the Agreement will be merged herein**. *See* Easement Agreement at ¶ 13 (emphasis added). The Declaration, First Amendment to the Declaration, the Lease, and all referenced plats identified as the dock access easement pertain to the same easement area as the Easement Agreement. Because of this fact and since the Easement Agreement specifically includes an integration clause, there are no grounds to assert that the Defendant has any property rights in the easement area other than those expressly granted to the Defendant in the Easement Agreement. *See Wilson v. Landstrom*, 281 S.C. 260, 266, 315 S.E.2d 130, 134 (Ct. App. 1984) ("A merger clause expresses the intention

of the parties to treat the writing as a complete integration of their agreement."); 30 S.C. JUR. CONTRACTS § 38, *Integration and Merger* (Feb. 2024) ("A merger clause expresses the intention of the parties to treat the writing as a complete integration of their agreement."); *see also Rye v. Tahoe Truckee Sierra Disposal Co., Inc.*, 222 Cal. App. 4th 84 (2103) (where access easement identified the same area as 99-year lease, court found that the lease was abandoned).

Defendant argues that the integration clause does not merge the Lease because the Easement Agreement defines "the Agreement" as "this Easement Agreement" and therefore it only integrates prior or contemporaneous agreements regarding the document itself and apparently not the identical subject matter of the agreement, the underlying easement. SBPOA has presented no evidence that the integration clause was intended to have such a non-sensical interpretation, particularly since the Easement Agreement and Lease grant inconsistent property rights to Defendant in the same identical geographic area of the ingress/egress dock easement.

This Court finds that no further evidence is necessary to determine that the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs' Property were replaced and merged into the Easement Agreement. Nevertheless, a review of materials submitted by the parties shows that SBPOA intended for the Easement Agreement to replace the Lease. SBPOA's communications and meeting minutes demonstrate this intent. For example, the letter dated April 10, 2012, to SBPOA members from Ron Farrell, SBPOA's then secretary, provides: "[a]s you know, we have been working on obtaining a perpetual easement to replace the 99-year term that has been in effect." April 10, 2012, Letter – Plaintiffs_0094. Another example is the November 6, 2014, SBPOA meeting minutes, which memorialize:

> It was then reported that initially, when the lots were purchased, that there was a 99-year lease on the access to the dock for the Property Owners. A lawyer was hired to correct this and an agreement was reached with Lot B property owners

> that changed the agreement, as of December 2012, to a permanent access to the Spartina Bay Plantation dock and common area.

SBPOA Meeting Minutes at SBPOA_0146-47. Yet another example is the SBPOA annual meeting minutes of March 28, 2009:

> The other issue is that this property owns the piece of common property along side which serves as access to the docks. Spartina Bay has a 99 year lease on that property. . . . In addition we will be pursuing a termination of that lease and deeding of the property to the POA.

SBPOA Meeting Minutes, at SBPOA_0169.

The corporate representative of SBPOA also testified to this fact.

> Evans Dep. 231:4-7 ("Q: So the idea was, whether it was a deed, lease or an easement, something perpetual rather than a lease that has a hard stop date? A: Correct."); Evans Dep. 108:19-24 ("Q: All right. But this information was presented, and this is the fourth set of minutes where we're talking about replacing the 99-year lease agreement with respect to the dock access area with some permanent access, correct? A: Correct.")

Former SBPOA President Matrisciani also testified to this intended effect. Matrisciani Dep. 48:1-5, 18-22.

Based on the submitted SBPOA documentation, it is evident that SBPOA's intent and purpose of the Easement Agreement was to replace the lease, and it did so through the integration clause. However, even if the integration clause were not deemed to merge such prior property rights into the more recent Easement Agreement, the merger doctrine does the same by operation of law. Therefore, this Court finds that the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs' Property were replaced and merged into the Easement Agreement.

D. Defendant's Change in Attorneys is Not Sufficient to Affect the Validity of the Easement Agreement.

Defendant's 30(b)(6) deponent and Defendant's counsel have also disputed the validity of the Easement Agreement on the grounds that the SBPOA ultimately utilized a different attorney than the attorney initially hired to complete the task of replacing the Lease with the Easement Agreement. *See* Evans Dep. 95:25-97:10. However, Defendant has cited no support for the assertion that the substation of legal counsel to complete the SBPOA's directive of replacing the 99-year Lease with the Easement Agreement somehow invalidated such authorization approved by motion and a documented vote of the SBPOA membership. Rather, substitution of legal counsel for this task was addressed and adopted through unanimous motion at SBPOA's Nov. 6, 2010, meeting. SBPOA Meeting Minutes, at SBPOA_0163. Further, former President Matrisciani testified that the SBPOA Board hired Karen DeJong, Esq. to replace the prior legal counsel then working on obtaining the perpetual easement rights and that the members were pleased with the substitution of legal counsel. Matrisciani Dep. 43: 4-12; 21-24; 97:19- 98:11. The Easement Agreement was recorded by the DeJong Law Firm, LLC, on behalf of the SBPOA, as shown on the Recorder's Page of the Easement Agreement. Easement Agreement, at Plaintiffs_062.

The fact that all evidence received in this case, including SBPOA meeting minutes, show that multiple attorneys were retained by SBPOA and its members for the task of obtaining an easement or lease in perpetuity to replace the 99-year Lease is highly indicative that such actions were approved. Further, without any evidence to the contrary, it can be presumed that SBPOA's attorney would not have recorded the Easement Agreement had it been invalid.[1] Notably, despite

[1] Former SBPOA President Mr. Dill testified to the thoroughness of Ms. DeJong as an attorney stating: "And I have subsequently dealt with that attorney and required an amendment to our covenants. And that attorney was so thorough, I thought I was going to throw up with everything that she wanted as evidence of what was going - - what supported the change to those covenants. In fact, when I said, look, I have all the votes here, I will scan and send these votes to you from all the people; she said, I want the originals . . . And I hand carried the originals to her. And she - - so I know

this case having been filed since 2022, Defendant has not spoken with Ms. DeJong, nor presented any testimony of Ms. DeJong via affidavit or deposition to support its allegations that the Easement Agreement was invalid or lacked any necessary authorization before it was signed and recorded.[2]

E. Defendant Is Obligated To Comply With The Terms, Conditions, And Requirements Of The Easement Agreement.

Defendant is a party to the Easement Agreement which it negotiated, prepared, executed, and recorded and therefore must comply with the terms, conditions, and requirements of the Easement Agreement. Under South Carolina law, "[t]he language of an easement determines its extent." *Plott v. Justin Enters.*, 374 S.C. 504, 513, 649 S.E.2d 92, 96 (Ct. App. 2007) (quoting *Binkley v. Rabon Creek Watershed Conservation Dist.*, 348 S.C. 58, 67, 558 S.E.2d 902, 906-07 (Ct. App. 2001)). "Clear and unambiguous language in grants of easement must be construed according to terms which parties have used, taken, and understood in plain, ordinary, and popular sense." *S.C. Pub. Serv. Auth. v. Ocean Forest, Inc.*, 275 S.C. 552, 554, 273 S.E.2d 773, 774 (1981). "'The general rule is that the character of an express easement is determined by the nature of the right and the intention of the parties creating it.'" *Plott*, 374 S.C. at 514, 649 S.E.2d at 96 (quoting *Smith v. Comm'rs of Pub. Works of Charleston*, 312 S.C. 460, 467, 441 S.E.2d 331, 336 (Ct. App. 1994)). "The intention of the parties must be determined by a fair interpretation of the grant or reserve creating the easement." *Springob v. Farrar*, 334 S.C. 585, 595, 514 S.E.2d 135, 141 (Ct.

her activity then was probably - - I say probably, the way she always conducted her business, and she would have been very thorough with Mr. Matrisciani before she would have taken this and filed it. That's all I got to say on that." Dill Dep. 68:8-25.

[2] SBPOA's testimony from Mr. Evans stated: "Q: As the POA's counsel during the time of recording – preparation and recording of the Easement Agreement – the 2012 Easement Agreement – you would agree with that, correct, that she was legal counsel related to the 2012 Easement? A: Yes. Q: Do you agree that Ms. DeJong potentially could have information with respect to the validity of the Easement Agreement? A: Yes. Q: And has anyone from the board spoken to her? A: No. I would have loved to talk to her about it." Evans Dep. 170:24-25, 171:1-13.

App. 1999) (citing *Sandy Island Corp. v. Ragsdale*, 246 S.C. 414, 420, 143 S.E.2d 803, 807 (1965)).

i. Defendant Is Obligated to Pay Twenty-Five (25%) Of The Real Estate Tax Assessed For the Property on An Annual Basis As Consideration And Just Compensation For The Easement Rights Granted to Defendant in the Easement.

The Easement Agreement provides: "[a]s consideration and just compensation for this Easement, the Property Owners Association agrees to pay twenty-five (25%) of the real estate tax assessed for Lot B on an annual basis unless agreed otherwise in writing by both parties." Easement Agreement, at ¶ 6. Taken in its plain and ordinary meaning, paragraph 6 of the Easement Agreement requires Defendant to pay twenty-five (25%) percent of the real estate tax assessed for Plaintiffs' Property. No amendments were submitted by the parties to demonstrate that Defendant and the Plaintiffs, or their predecessors in interest, have ever agreed otherwise in writing. Additionally, Defendant has paid this property tax payment in the past to Plaintiffs, which is admitted by Defendant's corporate representative, Mr. Evans. Evans Dep. at 164:17-19 ("Q: Since being on the board, has the POA paid the 25 percent tax bill of the entire Lot B? A: Yes."). Defendant may not now ignore the terms, conditions, and requirements of the Easement Agreement because it disputes commitments made by its prior directors, officers, and members. As further intent of this long-term obligation of Defendant, the 99-year Lease likewise contained a similar requirement for the ingress/egress rights on Plaintiffs' Property. Lease, at Book 390, pg. 258 ("The Tenant shall pay to the Landlord the sum of 25% of the total tax bill for said parcel"). However, because this Court finds that the Easement Agreement integrated the terms of the Lease with respect to the subject easement, Defendant is obligated to pay twenty-five percent (25%) of the real estate tax on Plaintiffs' lot annually as specifically provided in the Easement Agreement.

ii. Defendant's Use of The Easement Area is Limited to Pedestrian and Non-Vehicular Ingress and Egress On, Over and Across the Easement Area.

The Easement Agreement details that use of the easement area is limited to pedestrian and non-vehicular use. Paragraph 2 of the Easement Agreement provides as follows:

> Access Easement: Grantors hereby grant, bargain, sell and release unto Grantee, its successors and assigns, for the benefit of the Grantee Property, a perpetual, exclusive, appendant, appurtenant, transferable easement (the "Access Easement") on, over and across the Grantor Property **for pedestrian ingress and egress on, over and across the Easement Area**. This Easement Area is more fully shown as "Existing Dock Ingress/Egress Easement" on Plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003 and recorded in the Charleston County RMC Office on June 26, 2003 in Book EG, Page 457. **Grantee shall have no other rights in and to any other portion of the Grantor Property except the Easement Area**. Grantors herby reserve the right, for itself and its tenants, invitees, permitees, agents, representatives, successor and assigns, to use the Access Easement in common with Grantee for any proposes not inconsistent with Grantee's rights under this Agreement.

Easement Agreement at ¶ 2 (emphasis added). The language of the Easement Agreement taken in its plain, ordinary, and popular meaning determines the rights created by the easement. Here, the easement is dedicated as an "Access Easement." *Id*. Courts may take judicial notice of the meaning of words or phrases. *See Brown v. Piper*, 91 U.S. 37, 42 (1875) ("Among the things of which judicial notice is taken are the laws of nations; the general customs and usages of merchants; the notary's seal; ***vernacular language***; the customary abbreviations of Christian names; the accession of the Chief Magistrate to office; and his leaving it." (emphasis added)); 29 AM. JUR.2D EVIDENCE § 91, *Judicial Notice of Meanings of Words and Phrases; Signs and Symbols* (Feb. 2024) ("In general, courts take judicial notice of the meaning of English words and phrases by consulting dictionaries or encyclopedias.").

The Merriam-Webster Dictionary defines access as "permission, liberty, or ability to enter, approach, or pass to and from a place" and "a way or means of entering or approaching." *See* P's Memo in Supp. of Sum. J. Ex. N, "Access." *Merriam-Webster.com Dictionary*, Merriam-Webster,

https://www.merriam-webster.com/dictionary/access. Last accessed Mar. 10, 2025. "Access" clearly limits the use of the easement area to coming and going to and from a place. *See Snow v. Smith*, 416 S.C. 72, 784 S.E.2d 242 (Ct. App. 2016) ("[a]ccess is defined in Black's Law Dictionary as '[a] right, opportunity, or ability to enter, approach, [or] pass to and from."). The Easement Agreement also provides that the easement area is for pedestrian *ingress* and *egress*. Ingress is defined in Black's Law Dictionary as "the act of entering [;] the right or ability to enter; access." *See Ingress*, Black's Law Dictionary (12th ed. 2024). Egress is defined as "the act of going out or leaving [;] the right or ability to leave; a way of exit." *See Egress*, Black's Law Dictionary (12th ed. 2024). Additionally, an ingress and egress easement is defined as "the right to use land to enter and leave another's property." *See Easement*, Black's Law Dictionary (12th ed. 2024). Therefore, this Court holds that the Easement Agreement is unambiguous in that Defendant's use of the easement area is limited to ingress and egress across the easement area.

Finally, any access, ingress, or egress on the easement area by Defendant, its members and individuals using the easement area through Defendant's right of access is limited to pedestrian use. The Merriam-Webster Dictionary defines pedestrian as "going or performed on foot," "of, relating to, or designed for walking," and "a person going on foot." *See Pedestrian*, https://www.merriam-webster.com/dictionary/pedestrian. Last accessed Mar. 10, 2025. Therefore, taken in its plain, ordinary, and popular meaning, "pedestrian" means by foot or person on foot. Access utilized by other means, such as vehicular access, including golf carts, all-terrain vehicles and all other forms of non-pedestrian access, is violative of the terms of the Easement Agreement. By extension, uses inconsistent with the act of coming and going across the easement area by pedestrian means, such as parking, loitering, or the placement of any structures or items in the easement area, are not permitted under the Easement Agreement. Based on the clear and

unambiguous language of the Easement Agreement, this Court finds that Defendant's use of the easement area is limited to pedestrian and non-vehicular use for access across the easement area.

F. Defendant Shall Pay Plaintiffs' Court Costs And Reasonable Attorney's Fees Associated With This Action, Including Any Appeal for Plaintiffs' Enforcement Of The Terms Under The Easement Agreement.

Plaintiffs are entitled to court costs and attorneys' fees under the unambiguous terms of the Easement Agreement. "The law is clear in South Carolina that attorney fees are recoverable when authorized by contract or statute." *Charleston Lumber Co., Inc. v. Miller Housing Corp.*, 318 S.C. 471, 483, 458 S.E.2d 431, 438 (Ct. App. 1995) (citing *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 427 S.E.2d 659 (1993)). "When the contract provides for 'reasonable attorney's fees' without specifying a rate or amount, the amount of fees to be awarded is left to the discretion of the court." *Id.* (citing *Dedes v. Strickland*, 307 S.C. 155, 414 S.E.2d 134 (1992)).

The Easement Agreement provides:

> In the event that any party hereto shall bring an action to enforce the terms hereof or to declare rights hereunder, the prevailing party in any such action shall be entitled to its court costs and reasonably attorney fees to be paid by the non-prevailing party as fixed by the court of appropriate jurisdiction, including, but not limited to, attorney fees and court costs incurred in courts of original jurisdiction, bankruptcy courts, or appellate courts.

Easement Agreement, at ¶ 8. Plaintiffs have brought an action against Defendant to enforce the terms of and declare rights under the Easement Agreement. As this Court finds that Plaintiffs are the prevailing party with respect to their claims seeking enforcement of the terms and obligations of Defendant under the Easement Agreement, this Court finds that Plaintiffs are entitled to payment by Defendant of all court costs and reasonable attorney fees in this action and directs Plaintiffs' counsel to submit an affidavit of all court costs and attorney's fees incurred by Plaintiffs in this action to this Court for the rendering of a judgment of court costs and attorney's fees against Defendant.

II. This Court Finds That Plaintiffs' Requested Reimbursement of an Individual Assessment in the Amount of $2,500.00 Paid to Defendant Arising out of Plaintiffs' Removal of a Deck on Plaintiffs' Property Shall be Subject to a Damages Hearing by This Court Unless Otherwise Resolved By the Parties.

In their Complaint, Plaintiffs have alleged breach of the Easement Agreement by Defendant in seeking reimbursement of a payment made associated with an individual assessment levied by Defendant against Plaintiffs for removal of a deck that was previously located on Plaintiffs' Property. *See* Complaint, at ¶¶ 64-70. As previously confirmed, Defendant's rights to the easement area are limited to ingress and egress only. Under the Easement Agreement, Defendant does not have any property right to construct or maintain any structures within the easement area under the Easement Agreement and Defendant has not cited any evidence providing Defendant with such rights.

Defendant has provided no evidence of proof of ownership of the removed deck from Plaintiffs' Property in response to Plaintiffs' claims involving the deck. SBPOA concedes this fact through its corporate representative and Board President.

> Evans Dep. 202:15-19 ("Q: Did you represent to Ms. Woodruff that this was - - this deck was owned by the property owners association? A: I did not. I couldn't say that with any - - I couldn't say who it was owned by."). Additionally, two former board presidents testified accordingly. Matrisciani Dep. 125:17- 24 ("Q: Yeah. And you were not aware of the POA ever paying for construction of the deck platform located on the Wells' property? A: No. Q: And you're not aware of any bill, sale, deed, or any other document that transferred ownership of the deck platform to the POA? A: No."); Dill Dep. 113:13-17 ("Q: And you're not aware of any bill of sale, deed, or any document that would convey ownership of that deck that used to exist on the Wells' property that was removed to the property owners' association? A: I'm not.")

Moreover, Plaintiffs submitted testimony concerning Defendant's imposition of the individual assessment for removal of the deck and Defendants' receipt of such payment in the amount of $2,500.00. *See* Evans Dep. 206:22-208:18.; P's Memo in Supp. of Sum. J. at pp. 41-

42. Mr. Evans admitted that SBPOA imposed and deposited an individual assessment against Plaintiffs for the deck removal despite having no proof of SBPOA's ownership. *Id.*

Nevertheless, based on the fact Plaintiffs are seeking monetary damages under their cause of action for breach of contract for reimbursement of the individual assessment, this Court finds that a damages hearing is necessary to determine any damages Plaintiffs are entitled to recover from Defendants for the levied individual assessment. Accordingly, if a resolution of Plaintiffs' claim for reimbursement of costs cannot be resolved between the parties, this Court will hold a damages hearing limited to this singular issue.

IT IS ORDERED that the Motion for Summary Judgment filed by Plaintiffs on November 21, 2024 is hereby GRANTED and that the Motion for Summary Judgment filed by Defendant on November 21, 2024 is hereby DENIED; and

FURTHER ORDERED that: (1) Plaintiffs have standing as successors-in-interest concerning the Easement Agreement; (2) the Easement Agreement is legal, valid, binding, and enforceable obligations of the Defendant; (3) the Lease and all prior rights held by Defendant in the ingress/egress easement area on Plaintiffs' Property were replaced and merged into The Easement Agreement; (4) Defendant is obligated to comply with the terms, conditions, and requirements of the Easement Agreement, including Defendant's obligation to pay twenty-five (25%) of the real estate tax assessed for the Property on an annual basis as consideration and just compensation for the easement rights granted to Defendant in the easement and Defendant's use of the easement area is limited to pedestrian and non-vehicular ingress and egress on, over and across the easement area; (5) Defendant shall pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' enforcement of the terms under the Easement Agreement; and (6) Plaintiffs' requested reimbursement of an individual assessment

in the amount of $2,500.00 paid to Defendant arising out of Plaintiffs' removal of a deck on Plaintiffs' Property shall be subject to a damages hearing by this Court unless otherwise resolved by the parties; and

FURTHER ORDERED that Defendant's counterclaim is dismissed with prejudice.

AND IT IS SO ORDERED!

Mikell R. Scarborough
Master in Equity for Charleston County

Charleston, South Carolina

Dated: _____

Charleston Common Pleas

Case Caption: Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc

Case Number: 2022CP1004952

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062