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**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Ninth Judicial Circuit

Honorable Mikell R. Scarborough  
Master-in-Equity

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Civil Action No.: 2022-CP-10-04952

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Spartina Bay Plantation Property Owners' Association, Inc..... Appellant.

v.

Stephen C. Wells and Randi P. Wells. .... Respondents.

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**RECORD ON APPEAL - VOLUME I OF IV**

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 STEPHEN C. WELLS and RANDI P. )  
 WELLS, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 SPARTINA BAY PLANTATION )  
 PROPERTY OWNERS' ASSOCIATION, )  
 INC., )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO.: 2022-CP-10-04952

**CONSENT ORDER OF  
 REFERENCE TO THE  
 CHARLESTON COUNTY  
 MASTER-IN-EQUITY**

Upon the motion of counsel for Plaintiffs Stephen C. Wells and Randi P. Wells (“Plaintiffs”), and with the consent of Defendant Spartina Bay Plantation Property Owners’ Association, Inc. (“Defendant”), the Parties jointly seek to re-refer the above-captioned action to the Master-in-Equity for Charleston County, South Carolina pursuant to Rule 53 of the South Carolina Rules of Civil Procedure.

IT IS ORDERED, ADJUDGED AND DECREED that this action is re-referred to the Master-in-Equity for Charleston County, South Carolina, to make all findings of fact and conclusions of law, hear all motions, conduct a trial and direct entry of final judgment to the action as to all claims of all parties in accordance with the South Carolina Rules of Civil Procedure.

IT IS FURTHER ORDERED that said Master shall render a final decision, and any appeal should be directly to the South Carolina Court of Appeals or South Carolina Supreme Court in accordance with the provisions of S.C. Code Ann. § 14-11-85 and Rule 53(e), SCRCF.

AND IT IS SO ORDERED.

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The Honorable Roger M. Young, Sr.  
Chief Administrative Judge

WE SO MOVE:

*s/ Timothy J.W. Muller*

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*Attorneys for Plaintiffs*

WE SO CONSENT

*s/ Steven K. Kropski*

---

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*Attorney for Defendant*



Charleston Common Pleas

**Case Caption:** Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc  
**Case Number:** 2022CP1004952  
**Type:** Order/Referred to Master or Special Referee

So Ordered

s/Julie J. Armstrong, Charleston County Clerk of Court, by BLC

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Stephen C Wells et al  
PLAINTIFF(S)

Spartina Bay Plantation Property Owners Association Inc  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  
 Other

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

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

This matter came before the court on February 22, 2024 by Plaintiff's Motion for Judgment on the Pleadings in Whole or in Part filed December 19, 2023. The motion is respectfully DENIED.

Additionally, the parties informed the court that the Plaintiff's Motion to Compel Discovery Responses filed April 25, 2023 has been RESOLVED.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 02/22/2024 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

**Court Reporter:**

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

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Charleston Common Pleas

**Case Caption:** Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc  
**Case Number:** 2022CP1004952  
**Type:** Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Stephen C. Wells and Randi P. Wells,

Plaintiffs,

vs.

Spartina Bay Plantation Property  
Owners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04952

**AMENDED CONSENT SCHEDULING  
ORDER**

This matter comes before the Court pursuant to the South Carolina Rules of Civil Procedure and upon the consent of all counsel of record. For good cause shown, the following Amended Consent Scheduling Order is hereby established to govern discovery in the above-captioned matter:

1. Discovery shall be completed by October 22, 2024. Discovery requests shall be served in time for the responses thereto to be served by this date.
2. A mediation of this matter shall occur on or before October 22, 2024 with Joseph K. Qualey, Esquire.
3. All dispositive motions shall be filed no later than November 21, 2024.

**WE SO MOVE AND CONSENT:**

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*s/ Timothy J.W. Muller*

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Charleston Common Pleas

**Case Caption:** Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc  
**Case Number:** 2022CP1004952  
**Type:** Order/Scheduling Order

So Ordered

s/Mikell R. Scarborough 3062

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## 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 any officer 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 substitution 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.<sup>1</sup> Notably, despite

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<sup>1</sup> 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.<sup>2</sup>

**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.

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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.

<sup>2</sup> 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 hereby reserve the right, for itself and its tenants, invitees, permittees, agents, representatives, successor and assigns, to use the Access Easement in common with Grantee for any purposes 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 reasonable 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

Electronically signed on 2025-04-16 12:41:32 page 29 of 29

Stephen C Wells et al  
PLAINTIFF(S)

Spartina Bay Plantation Property Owners Association Inc  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  
 Other

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

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

Upon consideration of the Defendant's Motion to Alter/Amend the Judgment, filed April 28, 2025, the Court's Order finds that the Property Owners' Association members have a legal right of pedestrian access across Plaintiff's property to, from, and for the use of the community dock. This Court respectfully denies the remainder of the Motion.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 05/01/2025 .

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

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

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Charleston Common Pleas

**Case Caption:** Stephen C Wells , plaintiff, et al VS Spartina Bay Plantation Property Owners Association Inc  
**Case Number:** 2022CP1004952  
**Type:** Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2025-05-01 13:12:04 page 3 of 3

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT  
CASE NO. 2022-CP-10-\_\_\_\_\_

STEPHEN C. WELLS and )  
RANDI P. WELLS, )  
 )  
 )  
Plaintiffs, )

**SUMMONS**

-vs-

SPARTINA BAY PLANTATION )  
PROPERTY OWNERS' ASSOCIATION, )  
INC., )  
 )  
 )  
Defendant. )

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, Rosen Hagood, at their offices at 40 Calhoun Street, Suite 450, Charleston, South Carolina 29401, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN FURTHER NOTICE that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

[SIGNATURE ON FOLLOWING PAGE]

ROSEN & HAGOOD, LLC

By: /s/ Timothy J.W. Muller  
Timothy James Wood Muller  
(SC Bar No. 74601)  
Mary Harriet Moore  
(SC Bar No. 105312)  
40 Calhoun Street, Suite 450  
Charleston, SC 29401  
(843) 577-6726

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina  
October 26, 2022



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 (identified hereinafter as “**Declaration**” and attached as **Exhibit B**).

4. Defendant is the property owners’ association created for the residential community where the subject Property is located and the purported beneficiary on behalf of certain of its members for use of a community dock and ingress/access easement located on Plaintiffs’ Property as further described in the Declaration and the recorded property records identified herein.

5. This action seeks this Court’s judgment as to the validity and enforcement of the terms of a duly recorded access easement on Plaintiffs’ Property executed by and between James L. Cox and Catherine T. Cox, as grantors and previous owners of the Property, and Defendant Spartina Bay Plantation Property Owners’ Association, Inc., as grantee, effective January 25, 2012, and recorded with the Charleston County ROD on February 22, 2012 in Book 0234, Page 897 (identified hereinafter as “**Easement**” or “**Easement Agreement**” and attached hereto as **Exhibit C**).

6. Jurisdiction and venue are proper in this Court pursuant to South Carolina law as this action involves a dispute concerning real property located in Charleston County, South Carolina, and both Plaintiff and Defendant are domiciled or located in Charleston County, South Carolina.

#### **BACKGROUND OF EASEMENT AGREEMENT AND STANDING**

7. In 2001, Article VI of the Declaration originally identified 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, which contained reference to a plat absent any recording information. The same Article 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 the sale of the first lot within the subdivision subject to the Declaration.

8. N.C. Boykin as Substitute Trustee of Peters Point Trust, on October 12, 2001, the same day as being the recipient of a general warranty deed for the Property as grantee, entered into a ninety-nine (99) year lease as landlord with the Defendant, also executed by N.C. Boykin, as then president of Defendant, recorded with the Charleston County ROD in Book G390, Page 257 on December 7, 2001 (hereinafter identified as “**Lease**” and attached hereto as **Exhibit D**) 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, identified as Tract 1 and Tract 2 respectively in Exhibit A to the Lease, and as further depicted on a referenced plat recorded with the Charleston County ROD in Plat Book DD at Page 27.

9. The Lease required Defendant to comply with certain covenants, terms and conditions, including, without limitation, Defendant’s payment of annual rent to the landlord of the Property, payment of a portion of the annual tax bill for the Property, Defendant’s indemnification obligations to the landlord of the Property, Defendant’s procurement and maintenance of certain property insurance, and requirements that Defendant not engage in any unlawful or illegal activity, nor allow or suffer any activity upon the leased premises tending to cause a breach of the peace or a default may occur, whereby landlord shall have the right at its option to terminate the Lease and all rights of Defendant thereunder shall cease, and the landlord

shall take actual, full and exclusive possession of the leased premises and every part of landlord's original estate.

10. The Lease provides 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. No assignment of the Lease has been recorded since the date of the Lease.

11. On March 28, 2005, Defendant recorded a First Amendment to the Declaration, serving, in pertinent part, to amend Exhibit B to the Declaration that comprised the property description for the strip of land designated by plat as the dock easement, recorded with the Charleston County ROD in Book R530, Page 876 (hereinafter identified as "**First Amendment**") and attached hereto as **Exhibit E**),

12. The First Amendment and amended Exhibit B to the Declaration incorporated by reference a plat by Robert L. Frank entitled "A Boundary Survey, Cul de Sac Abandonment, and Dock Easement Adjustment of Lot B Located on Edisto Island, Charleston County, South Carolina," dated April 2, 2003, and recorded with the Charleston County ROD in Plat Book EG at Page 457.

13. Following several conveyances of the subject Property as evidenced by duly recorded deeds in the chain of title with the Charleston County ROD, 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. Hammett 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 (attached hereto as **Exhibit F**).

14. Thereafter, 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, 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.

15. 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.

16. Paragraph 2 of the Easement Agreement specifically limits the easement to **pedestrian ingress and egress** in the same geographical area and plat incorporated by reference in the First Amendment to the Declaration, providing 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 hereby reserve the right, for itself and its tenants, invitees, permittees, agents, representatives, successors and assigns, to use the Access Easement in common with Grantee for any proposes not inconsistent with Grantee's rights under this Agreement.

Easement at ¶ 2, eff. Jan. 25, 2012 (emphasis added).

17. Paragraph 6 of the Easement Agreement provides that as consideration and just compensation for the easement rights contained therein, Defendant agrees to pay twenty-five

(25%) of the real estate tax assessed for the Property on an annual basis unless agreed otherwise in writing by both parties.

18. Paragraph 8 of the Easement Agreement further provides that in the event that any party brings an action to enforce the terms of the Easement Agreement or to declare the rights thereunder, the prevailing party in any such action shall be entitled to its court costs and reasonable 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.

19. Paragraph 13 of the Easement Agreement further provides that it is an integrated agreement and expressed the complete agreement and understanding between the Coxes and Defendant, stating that all prior or contemporaneous oral agreement and prior written agreement regarding the Easement were merged therein.

20. The existence of the integration clause and Defendant's execution and recording of the Easement Agreement by operation of law served to merge and extinguish any prior rights held by Defendant specifically in the ingress/egress easement area, including, without limitation, the Lease, Declaration, any amendments thereto, and any prior reservation by plat.

21. Paragraph 15 of the Easement Agreement further provides that the terms, conditions, and requirements of the Easement are binding on and inure to the benefit of the parties and their respective heirs, successors, and assigns.

22. Plaintiffs, by virtue of their current ownership of the Property 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 and have standing to seek Defendant's compliance with the terms, conditions, and requirements of the Easement Agreement.

23. Plaintiffs, as subsequent purchasers of the Property through the Wells Deed, are bonafide purchasers for value, and by virtue of their current ownership of the Property, are entitled to rely on duly recorded instruments affecting the Property, including, without limitation, the Easement Agreement, by operation of law.

24. Defendant, as a party to the Easement Agreement that negotiated, prepared, executed, and recorded the subject Easement, is estopped from now disputing its intentions at the time of entering into the Easement Agreement over ten years ago by operation of law.

#### **NON-COMPLIANCE WITH EASEMENT AGREEMENT BY DEFENDANT**

25. Shortly after Plaintiffs' purchase of the Property, Plaintiffs observed that numerous vehicles were driving and parking both within and outside the easement area identified in the Easement Agreement and on Plaintiffs' Property in contravention to the terms of the Easement Agreement, including, but not limited to, the limitation of pedestrian use in the easement area. Following discussions between Plaintiffs and Defendant's apparent board members, Plaintiffs became aware that such vehicular use and parking were performed with the express or implied consent of Defendant.

26. During the same year, Defendant further acquiesced to a commercial fishing charter boat operation on the community dock located on Plaintiffs' Property, operated by one of Defendant's apparent board members, that resulted in numerous instances of fishing charter boat customers driving and parking vehicles both within and outside the easement area on Plaintiffs' Property and further causing a breach of the peace, noise, and litter though early morning and

late night utilization of the community dock and easement area by Defendant's members and non-member customers of the commercial fishing charter boat operation.

27. Thereafter, Plaintiffs, on multiple occasions, requested to Defendant's apparent board president, Lawrence E. Evans, II, that Defendant direct its members and others to comply with the terms and conditions of the Easement, including the cessation of its member's commercial fishing charter boat operation and vehicular use and parking both within and outside the easement area on Plaintiffs' Property, and in each instance Defendant refused to comply with the Easement or otherwise make any effort to control the use of the easement area by its members, non-members, or customers of the commercial fishing charter boat operation.

28. Defendant then permitted or acquiesced to its members and non-members to use a vacant wooded lot located west of the Plaintiffs' Property and not owned by Defendant, identified as Charleston County TMS Number 025-00-00-166 (hereinafter "**Adjacent Parcel**"), for the use of additional vehicle parking for individuals utilizing the easement area and community dock, resulting in individuals accessing the easement area from the Adjacent Parcel and through the woods from the side rather than from the easement area's intended terminus on Marsh Bluff Court.

29. Individuals driving vehicles and parking on the Adjacent Parcel accessing the easement area, including, upon information and belief, customers of the commercial fishing charter boat operation, often park their vehicles facing the Easement and Plaintiffs' Property resulting in a continuous nuisance of vehicle headlights shining into Plaintiffs' residence during late night and early morning hours of darkness.

30. In April 2022, Plaintiffs sought permission from Defendant's board of architectural review committee, as set forth in the Declaration, to rebuild an existing fence

located on the western edge of Plaintiffs' Property bordering the Adjacent Parcel that would not impede or hinder ingress/egress through the easement area for the purposes of guiding entrance to the access easement from Marsh Bluff Court at its intended terminus instead of from the Adjacent Parcel and to shield vehicle headlights from shining into Plaintiffs' residence during hours of darkness.

31. On May 4, 2022, in response, Defendant's apparent board president, Lawrence E. Evans, II, summarily informed Plaintiffs that they could not reconstruct the fence on the Property's western property line without offering any explanation or input from the architectural review committee other than it was a unanimous decision and that any impediment in the area utilized for ingress/egress of the dock was undesirable at such time.

32. Upon information and belief, Defendant took no action to restrict individuals from driving and parking on the privately-owned Adjacent Parcel or otherwise parking with headlights facing Plaintiffs' residence during hours of darkness or entering the access easement from the Adjacent Parcel to access the community dock.

33. Following Defendant's continued refusal to acknowledge any of the terms and conditions of the Easement Agreement, Plaintiffs, through legal counsel, issued letters dated April 29, 2022, and May 26, 2022, to Lawrence E. Evans, II, Defendant's registered agent and apparent current board president, seeking compliance with the Easement.

34. Defendant, through its legal counsel, issued a response letter dated June 17, 2022, claiming that the Easement is now invalid based on an alleged lack of board formalities in 2012 and likewise refusing to acknowledge Defendant's obligations arising from the Easement, including, but not limited to, the limitation of pedestrian ingress and egress.

35. Since June 17, 2022, vehicular use and parking both within and outside the easement area on Plaintiffs' Property and on the Adjacent Parcel has continued.

36. Since June 17, 2022, numerous instances of late night and early morning uses of the easement area by members, non-members, and commercial fishing charter boat customers has continued causing a breach of the peace, nuisances, noise, and litter on Plaintiffs' Property.

37. Since June 17, 2022, Defendant has permitted further commercial fishing charter boat operations on the community dock and within the easement area, only presently paused, upon information and belief, as a result of a correspondence issued by the South Carolina Department of Environmental Health and Control to both Defendant and Plaintiffs, on or about July 14, 2022, requiring that commercial fishing charter operations cease on the community dock due to non-compliance with state law (hereinafter identified as "**DHEC Notice**" and attached hereto as **Exhibit G**).

38. The DHEC Notice, further identified as DHEC Notice to Comply AI-0004400, informed Defendant and Plaintiffs of two violations of the South Carolina Coastal Zone Management Act (the "**Act**") existing on Plaintiffs' Property, and more specifically, that, 1) the commercial fishing charters operating from the community dock was unauthorized under the existing DHEC permit and must cease, and that, 2) an existing deck approximately 12 feet by 24 feet in size was located partially within the tidelands critical area without required authorization from DHEC and must be removed from the critical area.

39. The existing deck referenced in the DHEC Notice was a wooden detached deck platform approximately one foot tall that was not connected to any portion of the community dock and primarily located on the highland portion of Plaintiffs' Property and within the access easement area.

40. The DHEC Notice informed Defendant and Plaintiffs that failure to cease the fishing charter operations and/or remove the existing deck within thirty days as directed may result in an enforcement action being initiated by DHEC and the assessment of civil penalties for failure to comply with the DHEC directives and the Act.

41. Plaintiffs contacted a DHEC representative who confirmed that civil penalties would be assessed against Plaintiffs specifically should the deck not be removed from Plaintiffs' Property as directed in the DHEC Notice.

42. In response, Plaintiffs sought Defendants' removal of the wooden deck to comply with the DHEC Notice. Plaintiffs' request was denied by Defendant.

43. Plaintiffs further sought any documentary evidence from Defendant that the deck located on Plaintiff's Property was in fact owned or constructed by Defendant since the deck was not depicted or otherwise approved as part of the community dock permit documents. Defendant failed or refused to provide any such information to Plaintiffs.

44. Thereafter, Plaintiffs paid for the cost of removal of the existing deck from Plaintiffs' Property to comply with the DHEC Notice. During removal of the portion of the deck that was in the critical area, it was discovered that the wooden structure was rotten and unsalvageable and was therefore removed in its entirety from Plaintiffs' Property.

45. Plaintiffs informed Defendant of the deck's removal through communication to Defendant's board president.

46. On or about September 24, 2022, Defendant issued a letter to Plaintiffs claiming that Defendant's board disputed the DHEC Notice and that it had elected to impose an individual assessment against Plaintiffs in the amount of \$2,500.00 for removal of the deck from Plaintiffs'

Property, describing the deck as a common area or facility located within the access easement area (hereinafter identified as “**Deck Assessment Notice**” and attached hereto as **Exhibit H**).

47. Defendant’s Deck Assessment Notice asserted that Plaintiffs’ failure to pay the individual assessment within thirty days would result in Defendant’s imposition of additional late charges against Plaintiffs and the loss of Plaintiffs’ status as members in good standing of the Spartina Bay Property Owners Association, which under the Declaration would amount to Plaintiffs’ complete loss of all membership rights and benefits in the Association.

48. Upon information and belief, no documentation exists as to the permitted construction of a deck by Defendant within the ingress/egress easement area or Defendants’ ownership thereof.

49. Furthermore, the removed deck and Defendant’s noticed intent to construct a new deck located entirely within the easement area on Plaintiffs’ Property is inconsistent with Defendant’s limited rights in the Easement, including the limitations of pedestrian ingress/egress only to the community dock and that Defendant shall have no other rights in and to any other portion of Plaintiffs’ Property.

50. Because Plaintiffs had no other option under Defendant’s Deck Assessment Notice to remain members in good standing of the Association and to retain their membership rights and privileges, Plaintiffs paid the individual assessment amount of \$2,500.00 under protest to Defendant’s Board President on October 20, 2022, specifically advising Defendant that Plaintiffs did not consent to or approve of the assessment and underlying determination of the violation or Defendant’s right to construct a new deck platform within the access easement area on Plaintiffs’ Property. Plaintiffs further advised Defendant that they would seek the recovery of the paid assessment amount if necessary.

51. Defendant wrongfully deposited and retained Plaintiffs' funds in the amount of \$2,500.00 paid under protest.

52. Plaintiffs have endured ongoing nuisances, a breach of the peace, and have been deprived of the enjoyment and use of the benefits derived from their Property directly as a result of Defendant's actions and/or inactions and have incurred costs and expenses associated with seeking Defendant's compliance with the Easement Agreement that Defendant negotiated, prepared, executed and recorded for the easement rights on Plaintiffs' Property.

53. As a result of the foregoing, Plaintiffs have no alternative remedy but to seek this Court's judgment to enforce the terms, conditions, and covenants of Easement against Defendant.

### **CAUSES OF ACTION**

#### **FOR A FIRST CAUSE OF ACTION (Declaratory Judgment Pursuant to S.C. Code Ann. § 15-53-30 and SCRPC 57)**

54. Plaintiffs repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim herein.

55. S.C. CODE ANN. § 15-53-30 provides: "Any 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."

56. SCRPC 57 further provides, *inter alia*, that the existence of another adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate and

that the Court may order a speedy hearing of an action for a declaratory judgment and may advance it on the calendar.

57. By virtue of the facts alleged herein-above, Plaintiffs and Defendant have rights or interests under the above-referenced Easement Agreement that will be affected by a judicial determination or declaration of Defendant's obligations under said Easement Agreement.

58. Plaintiffs bring this action pursuant to S.C. CODE ANN. § 15-53-30 for the purpose of obtaining a declaratory judgment with respect to the parties' rights and obligations under the above-referenced Easement involving the Property, specifically relating to: (a) Plaintiffs' standing as successors-in-interest concerning the Easement as current owners of the Property and servient estate as evidenced by the Wells Deed and prior duly recorded deeds and based on the applicability of paragraph 15 of the Easement Agreement providing 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; (b) Defendant's obligation to comply with the terms, conditions, and requirements of the Easement Agreement; (c) Defendant's limitation of use under the Easement Agreement for pedestrian and non-vehicular ingress and egress only on, over and across the easement area and that Defendant shall have no other rights in and to any other portion of the Property except the easement area; (d) 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; (e) the obligation of any non-prevailing party to this action for enforcement of the terms and to declare the rights under the Easement Agreement to pay the prevailing party's court costs and reasonable attorney fees associated with this action, including any appeal; (f) that the Easement Agreement's integration clause serves to merge and extinguish any prior rights held by Defendant in the

ingress/egress easement area identified as the Existing Dock Ingress/Egress Easement on the plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003, and recorded in the Charleston County ROD in Book EG, Page 457, including, without limitation, any rights of Defendant in such easement area or as previously delineated as the dock easement or dock ingress/egress on the Property in the Lease, Declaration, any amendments thereto, and any prior easement reservation by plat; (g) that Plaintiffs may reconstruct a fence on the western edge of their property line so long as it does not impede or hinder movement through the easement area and subject to any required architectural review established in the Declaration and applicable governmental setback requirements; and (h) that in accordance with the DHEC Notice and the Easement Agreement, Plaintiffs were within their rights to remove the non-compliant deck located on Plaintiffs' Property and that Defendant may not construct a new deck within the easement area or otherwise impose the individual assessment levied against Plaintiffs in the Deck Assessment Notice for Plaintiffs' compliance with the DHEC Notice.

59. Due to the facts, conditions, and circumstances set forth herein-above, an actual and justiciable controversy has arisen and now exists between the Plaintiff and Defendants.

60. Declaratory relief is necessary to adjudicate the rights of the parties.

61. Plaintiffs are entitled to a declaratory judgment declaring the rights of the parties and, more specifically, declaring that: (a) Plaintiffs' have standing as successors-in-interest concerning the Easement as current owners of the Property and servient estate as evidenced by the Wells Deed and prior duly recorded deeds and based on the applicability of paragraph 15 of the Easement Agreement providing 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; (b) Defendant is obligated to comply with the terms, conditions, and requirements of the Easement

Agreement; (c) under the Easement Agreement Defendant's use is limited to pedestrian and non-vehicular ingress and egress only on, over and across the easement area and that Defendant has no other rights in and to any other portion of the Property except the easement area; (d) 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; (e) that Defendant shall pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' enforcement of the terms and to declare the rights under the Easement Agreement; (f) that the Easement Agreement's integration clause serves to merge and extinguish any prior rights held by Defendant in the ingress/egress easement area identified as the Existing Dock Ingress/Egress Easement on the plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003, and recorded in the Charleston County ROD in Book EG, Page 457, including, without limitation, any rights of Defendant in such easement area or as previously delineated as the dock easement or dock ingress/egress on the Property in the Lease, Declaration, any amendments thereto, and any prior easement reservation by plat; (g) that Plaintiffs may reconstruct a fence on the western edge of their property line so long as it does not impede or hinder movement through the easement area and subject to any required architectural review established in the Declaration and applicable governmental setback requirements; (h) that in accordance with the DHEC Notice and the Easement Agreement, Plaintiffs were within their rights to remove the non-compliant deck located on Plaintiffs' Property and that Defendant may not construct a new deck within the easement area or otherwise impose the individual assessment levied against Plaintiffs in the Deck Assessment Notice for Plaintiffs' compliance with the DHEC Notice; and (i) that

Defendant shall refund the individual assessment paid by Plaintiffs under protest in the amount of \$2,500.00 and any applicable interest accrued thereon.

62. Plaintiffs have no adequate remedy at law.

63. Plaintiffs further request that the Court order a speedy hearing of this action and advance it on the calendar pursuant to SCRCP 57.

**FOR A SECOND CAUSE OF ACTION  
(Breach of Easement Agreement/Breach of Covenant of Good Faith and Fair Dealing)**

64. Plaintiffs repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim.

65. Plaintiffs are successors-in-interest to the Coxes concerning the Easement as current owners of the Property and servient estate as evidenced by the Wells Deed and prior duly recorded deeds and based on Plaintiffs' continuing obligations and rights arising out of the Easement Agreement, and the applicability of paragraph 15 of the Easement Agreement providing 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.

66. Based on the foregoing, Plaintiffs have standing to enforce the terms, conditions, and covenants of the Easement Agreement.

67. The Easement Agreement included an implied covenant of good faith and fair dealing which required that Defendant act in all respects in good faith toward the Coxes and their successors-in-interest, including Plaintiffs, and to do nothing to deprive Plaintiffs of the benefits of the contractual relationship, and to give the Plaintiffs full cooperation in the performance of the obligations under the agreement.

68. Plaintiffs have duly performed all of their obligations under the terms of the Easement Agreement with Defendant.

69. Defendant has breached the terms of the Easement Agreement with Plaintiffs as follows. Defendant notified Plaintiffs that it does not acknowledge the validity of the Easement Agreement; Defendant has refused to comply with and/or seek compliance with the required limitation of pedestrian use of the dock ingress/egress easement area, permitting members and non-members of Defendant to utilize the dock ingress/egress easement area by vehicle, permitting members and non-members of Defendant to utilize the dock ingress/egress easement area for vehicle parking, permitting commercial fishing charter boat operation customers to utilize the dock ingress/egress easement area by vehicle, permitting and/or failing to stop its members or non-members from entering Plaintiffs' Property outside the easement area; Defendant's summary denial of Plaintiffs' plan to rebuild a fence on the western edge of Plaintiffs' Property that would not impede or hinder the free flow of traffic through the easement area or be otherwise contrary to the terms of the Easement Agreement; Defendant's failure to comply with the DHEC Notice by refusing to remove or granting permission to remove an existing deck located primarily in the easement area; Defendant's imposition and collection of an individual assessment in the amount of \$2,500.00 from Plaintiffs paid under protest for removal of the deck and for Defendant's anticipated costs to improperly construct a new deck in the access easement area; and Defendant's notification to Plaintiffs that it intends to construct a new deck within the easement area that is unauthorized under the Easement Agreement.

70. As a natural, direct, and proximate result of Defendant's breach of the Easement Agreement and its breach of the implied covenant of good faith and fair dealing as alleged herein-above, Plaintiffs have suffered and will continue to suffer in the future actual, consequential, general, and special damages, including, but not limited to, nuisances arising from the permitted conduct described herein; impairment of the marketability of the Property;

diminution or loss of value of the Property; inability to reconstruct a property line fence that would guide entry into the access easement from its intended terminus on Marsh Bluff Court and alleviate continuous nuisances to Plaintiffs arising out of the Adjacent Parcel's use for vehicle parking and entry into the access easement; costs associated with removing the existing deck to comply with the DHEC Notice; Defendant's construction of a new deck within the easement area that is unauthorized under the Easement Agreement; the cost of the individual assessment paid by Plaintiffs under protest in the amount of \$2,500.00, including any interest accrued thereon; the loss and expenditure of significant time and labor, professional or consultant fees, attorneys' fees, and transactional costs associated with seeking Defendant's compliance with the Easement Agreement; and such other actual, consequential, general, and special damages as the evidence may show.

**FOR A THIRD CAUSE OF ACTION  
(Temporary, Preliminary, and Permanent Injunction)**

71. Plaintiffs repeat and re-allege each and every preceding paragraph as if each were fully repeated verbatim.

72. Defendant has failed and refused and has advised Plaintiffs that it will continue to fail and refuse to honor or perform Defendant's obligations under the Easement Agreement involving Plaintiffs' Property.

73. The actions and inactions of Defendant have caused and will continue to cause ongoing nuisances to Plaintiffs and have deprived and continue to deprive Plaintiffs of the enjoyment and use of the benefits derived from their Property.

74. Plaintiffs will suffer substantial harm if Defendant does not immediately honor and perform its obligations under the Easement Agreement affecting Plaintiffs' Property.

75. Plaintiffs will suffer irreparable harm, damage, and injury unless the acts and conduct of Defendant summarized above are immediately enjoined and restrained. Unless a temporary, preliminary and permanent mandatory injunction is granted, Plaintiff will suffer irreparable harm, including but not limited to, vehicular and non-pedestrian use and parking in the easement area by members and non-members of Defendant, their guests, and others where the Easement Agreement confines use to such easement area as ingress and egress access by pedestrian use only; vehicular, non-pedestrian, and pedestrian use and parking on Plaintiffs' Property outside of the easement area by members and non-members of Defendant, guests, and others where the Easement Agreement specifically provides that Defendant shall have no rights in Plaintiffs' Property other than the easement area defined in the Easement Agreement; continued and/or renewed use of the easement area by customers or guests of a commercial fishing charter boat operation improperly operating from the community dock; Plaintiffs' inability to rebuild their fence on the western edge of their Property that would not impede or hinder the free flow of traffic through the easement area or be otherwise contrary to the terms of the Easement Agreement; ongoing nuisances to Plaintiffs arising from Defendant's permitted conduct described herein; impairment of the marketability of Plaintiffs' Property; diminution or loss of value of Plaintiffs' Property; the cost of removing the existing deck to comply with the DHEC Notice; the anticipated unauthorized construction by Defendant of a new deck located within the easement area; Plaintiffs' loss of \$2,500.00 paid under protest to remain members in good standing of the Association based on Defendant's improper Deck Assessment Notice, including any applicable interest accrued thereon; the loss and expenditure of significant time and labor, professional or consultant fees, attorneys' fees, and transactional costs associated with

seeking Defendant's compliance with the Easement Agreement; and such other actual, consequential, general, and special damages as the evidence may show.

76. The acts and inaction of Defendant as summarized above entitle Plaintiffs to a temporary, preliminary, and permanent injunction as follows:

- a. An order restraining and enjoining the Defendant *pendente lite* from failing and refusing to honor and perform its obligations under the Easement Agreement involving Plaintiffs' Property, including, but not limited to, Defendant's obligation to limit use of the easement area by pedestrian ingress/egress access use only to the community dock, restricting all use of Plaintiffs' Property outside the easement area, and enjoining Defendant's construction of a new deck within the easement area; and
- b. A permanent order restraining and enjoining the Defendant from failing and refusing to honor and perform its obligations under the Easement Agreement involving Plaintiffs' Property, including, but not limited to, Defendant's obligation to limit use of the easement area by pedestrian ingress/egress access use only to the community dock; restricting all use of Plaintiffs' Property outside the easement area; directing Defendant to permit Plaintiffs' rebuilding of the fence on the western edge of their property line so long as it does not impede or hinder movement through the easement area and subject to any required architectural review established in the Declaration and applicable governmental setback requirements; confirming Defendant's obligation to pay twenty-five (25%) of the real estate tax assessed for the Property on an annual basis to Plaintiffs as consideration and just compensation for the easement rights granted to Defendant in the Easement; enjoining Defendant's construction of a new deck within the easement area; enjoining Defendant's individual assessment for Plaintiffs' removal of the deck and compliance with the DHEC Notice in the amount of \$2,500.00; directing Defendant's refund of the individual assessment paid by Plaintiffs under protest in the amount of \$2,500.00 and any applicable interest accrued thereon; obligating Defendant to pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' necessary enforcement of the terms of the Easement Agreement.

77. Plaintiffs have no adequate remedy at law or otherwise for the harm or damage done or threatened to be done by the Defendant.

WHEREFORE, Plaintiffs pray for judgment as follows:

(i.) On their first cause of action, awarding judgment in favor of Plaintiffs and against the Defendant and declaring that that: (a) Plaintiffs' have standing as successors-in-interest concerning the Easement as current owners of the Property and servient estate as evidenced by the Wells Deed and prior duly recorded deeds and based on the applicability of paragraph 15 of the Easement Agreement providing 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; (b) Defendant is obligated to comply with the terms, conditions, and requirements of the Easement Agreement; (c) under the Easement Agreement Defendant's use is limited to pedestrian and non-vehicular ingress and egress only on, over and across the easement area and that Defendant has no other rights in and to any other portion of the Property except the easement area; (d) 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; (e) that Defendant shall pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' enforcement of the terms and to declare the rights under the Easement Agreement; (f) that the Easement Agreement's integration clause serves to merge and extinguish any prior rights held by Defendant in the ingress/egress easement area identified as the Existing Dock Ingress/Egress Easement on the plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003, and recorded in the Charleston County ROD in Book EG, Page 457, including, without limitation, any rights of Defendant in such easement area or as previously delineated as the dock easement or dock ingress/egress on the Property in the Lease, Declaration, any amendments thereto, and any prior easement reservation by plat; (g) that Plaintiffs may reconstruct a fence on the western edge of their property line so long as it does not impede or hinder movement through the easement area and subject to any required architectural review established in the Declaration and applicable governmental setback requirements; (h) that in accordance with the DHEC Notice and the Easement Agreement, Plaintiffs were within their rights to remove the non-compliant deck located on Plaintiffs' Property and that Defendant may not construct a new deck within the easement area or otherwise impose the individual assessment levied against Plaintiffs in the Deck Assessment Notice for Plaintiffs' compliance with the DHEC Notice; and (i) that Defendant shall refund the individual assessment paid by Plaintiffs under protest in the amount of \$2,500.00 and any applicable interest accrued thereon.

(ii.) On their second cause of action, for for an order requiring Defendant to comply with the terms and conditions of the Easement Agreement, including, but not limited to, Defendant's limitation of use by pedestrian and non-vehicular ingress and egress only on, over and across the easement area and that Defendant has no other rights in and to any other portion of Plaintiffs' Property except the easement area; 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; Defendant's obligation under the Easement Agreement to pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal, for enforcement of the terms and to declare the rights under the Easement Agreement; permitting Plaintiffs' rebuilding of the fence on the western edge of their property line so long as it does not impede or hinder movement through the easement area and subject to any required architectural review established in the

Declaration and applicable governmental setback requirements; Plaintiffs' recovery of the cost of removing the existing deck to comply with the DHEC Notice; prohibiting Defendant's construction of a new deck within the easement area that is unauthorized under the Easement Agreement; recovery of the individual assessment paid by Plaintiffs to Defendant under protest, in the amount of \$2,500.00, and any applicable interest accrued thereon, for removal of the deck and Defendant's anticipated costs in constructing a new deck in the access easement area; Plaintiffs' recovery of the loss and expenditure of significant time and labor, professional or consultant fees, attorneys' fees, and transactional costs associated with seeking Defendant's compliance with the Easement Agreement, and such other actual, consequential, general, and special damages as the evidence may show.

(iii.) On their third cause of action, (a) an order restraining and enjoining the Defendant *pendente lite* from failing and refusing to honor and perform its obligations under the Easement Agreement involving Plaintiffs' Property, including, but not limited to, Defendant's obligation to limit use of the easement area by pedestrian ingress/egress access use only to the community dock, restricting all use of Plaintiffs' Property outside the easement area, and enjoining Defendant's construction of a new deck within the easement area; and (b) a permanent order restraining and enjoining the Defendant from failing and refusing to honor and perform its obligations under the Easement Agreement involving Plaintiffs' Property, including, but not limited to, Defendant's obligation to limit use of the easement area by pedestrian ingress/egress access use only to the community dock; restricting all use of Plaintiffs' Property outside the easement area; directing Defendant to permit Plaintiffs' rebuilding of the fence on the western edge of their property line so long as it does not impede or hinder movement through the easement area and subject to any required architectural review established in the Declaration and applicable governmental setback requirements; confirming Defendant's obligation to pay twenty-five (25%) of the real estate tax assessed for the Property on an annual basis to Plaintiffs as consideration and just compensation for the easement rights granted to Defendant in the Easement; enjoining Defendant's construction of a new deck within the easement area; enjoining Defendant's individual assessment for Plaintiffs' removal of the deck and compliance with the DHEC Notice in the amount of \$2,500.00; directing Defendant's refund of the individual assessment paid by Plaintiffs under protest in the amount of \$2,500.00 and any applicable interest accrued thereon; obligating Defendant to pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' necessary enforcement of the terms of the Easement Agreement.

(iv.) for an order awarding costs, disbursements, and expenses of this action to Plaintiffs;

(v.) for an order setting a speedy hearing in this matter pursuant to SCRCP 57;

(vi.) for an award of pre-judgment interest; and

(vii.) for an order awarding such other and further legal and equitable relief as to the Court seems just and proper.

ROSEN HAGOOD, LLC

/s/ Timothy J.W. Muller

Timothy James Wood Muller (SC Bar No. 74601)

Mary Harriet Moore (SC Bar 105312)

tmuller@rosenhagood.com

mhmoore@rosenhagood.com

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Charleston, SC 29403

(843) 577-6726 telephone

(843) 724-8036 facsimile

Charleston, South Carolina  
October 26, 2022

ATTORNEYS FOR PLAINTIFFS



BP0865916

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201-107

ELECTRONICALLY FILED - 2022 Oct 26 3:53 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004952

STATE OF SOUTH CAROLINA )  
 ) TITLE TO REAL ESTATE  
 COUNTY OF CHARLESTON )



KNOW ALL MEN BY THESE PRESENTS, THAT WE, **JAMES W. DORN & JAN V. DORN F/K/A JAN V. HIPP**, in the State aforesaid, for and in consideration of the sum of **SEVEN HUNDRED NINETY THOUSAND AND 00/100 (\$790,000.00) DOLLARS**, to us in hand paid at and before the sealing of these presents by **STEPHEN C. WELLS & RANDI POPP WELLS**, in the State aforesaid and the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do hereby grant, bargain, sell and release unto the said **STEPHEN C. WELLS & RANDI POPP WELLS, AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON**, their heirs and assigns forever, the following described real property, to wit:

*SEE EXHIBIT "A" HERETO.*

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

*TO HAVE AND TO HOLD*, all and singular, the said Premises before mentioned unto the said **STEPHEN C. WELLS & RANDI POPP WELLS, AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON**, their heirs and assigns forever.

And we do hereby bind ourselves, our heirs and assigns to warrant and forever defend, all and singular, the said Premises unto the said **STEPHEN C. WELLS & RANDI POPP WELLS, AS JOINT TENANTS WITH RIGHTS OF SURVIVORSHIP AND NOT AS TENANTS IN COMMON**, their heirs and assigns, against us and our heirs and assigns, and all persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

**Wyckoff Law Firm, P.A.**  
 810 Travelers Blvd., Suite K  
 Summerville, SC 29485



**Exhibit "A"**

All that certain lot, piece, or parcel of land, with improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, containing 1.3578 acres, more or less, of highland, and 2.7036 acres, more or less, of marsh, and being shown and designated as Lot B-Highland and Lot B-Marsh on a plat prepared by Robert L. Frank, RLS #4177, entitled, "A BOUNDARY SURVEY CUL DE SAC ABANDONMENT, AND DOCK EASEMENT ADJUSTMENT OF LOT B LOCATED ON EDISTO ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA," dated April 2, 2003, revised June 19, 2003, and recorded in the RMC Office for Charleston County in Plat Book EG, at Page 457.

Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Subject to easements, restrictions, covenants, and conditions of record.

This being the same property conveyed to grantors by deed of Jan V. Hipp n/k/a Jan V. Dorn dated April 15, 2015, and recorded April 29, 2015, in the ROD Office for Charleston County in Book 0472, Page 585.

This being the identical property conveyed to Jan V. Hipp n/k/a Jan V. Dorn by deed of James L. Cox, Trustee and Catherine T. Waddell Cox, Trustee of the Trust Agreement dated May 25, 2011, dated November 13, 2012, and recorded November 14, 2012, in the ROD Office for Charleston County in Book 0291, Page 173; and by quit claim deed of Jan V. Hipp n/k/a Jan V. Dorn to James W. Dorn & Jan V. Dorn dated April 15, 2015, and recorded April 29, 2015, in the ROD Office aforesaid in Book 0472, Page 585.

TMS #: 025-00-00-038

Grantee's Address: 1499 Marsh Bluff Court  
Edisto Island, SC 29438

CONSIDERATION AFFIDAVIT

County of Charleston

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- 1. I have read the information on this Affidavit and understand such information.
- 2. The property being transferred is located at 1499 Marsh Bluff Court, Edisto Island, South Carolina 29438 bearing Charleston County Tax Map Number 025-00-00-038, was transferred by James W. Dorn and Jan V. Dorn f/k/a Jan V. Hipp to Stephen C. Wells and Randi Popp Wells on March 10, 2020.

- 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) \_\_\_\_\_ is exempt from the deed recording fee because EXEMPTION# \_\_\_\_\_ AND EXPLANATION FOR EXEMPTION \_\_\_\_\_ (If exempt, please skip item 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) above has been checked:
  - (a)  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$790,000.00.
  - (b) \_\_\_\_\_ The fee is computed on the fair market value of the realty which is \$ \_\_\_\_\_.
  - (c) \_\_\_\_\_ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ \_\_\_\_\_.

5. Check Yes \_\_\_ or No \_\_\_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "Yes" the amount of the outstanding balance of this lien or encumbrance is: \_\_\_\_\_.

- 6. The deed recording fee if computed as follows:
  - (a) Place the amount listed in Item 4 above here: \$790,000.00
  - (b) Place the amount listed in Item 5 above here: \$ 0  
(if no amount is listed, place zero here)
  - (c) Subtract Line 6(b) from 6(a) and place result here \$790,000.00

7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$2923.00.

8. As required by code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as the purchaser.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Stephen C. Wells - Buyer  
Randi Popp Wells - Buyer

Sworn to and subscribed before me this  
 March 10, 2020  
 \_\_\_\_\_  
 Notary Public  
 State of South Carolina  
 My Commission Expires: 4-11-28



# RECORDER'S PAGE



**NOTE:** This page **MUST** remain with the original document

**Filed By:**

WYCKOFF LAW FIRM PA  
810 TRAVELERS BLVD  
STE K  
SUMMERVILLE SC 29485 (BULLET)

RECORDED		
Date:	March 11, 2020	
Time:	3:18:10 PM	
<u>Book</u>	<u>Page</u>	<u>DocType</u>
0865	916	Deed
Michael Miller, Register Charleston County, SC		

**MAKER:**

DORN JAMES W AL

**RECIPIENT:**

WELLS STEPHEN C AL

**Original Book:**

**Original Page:**

Note:

# of Pages:

Recording Fee	\$ 15.00
State Fee	\$ 2,054.00
County Fee	\$ 869.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
<b>TOTAL</b>	<b>\$ 2,938.00</b>

**DRAWER**   
**CLERK**

AUDITOR STAMP HERE  
RECEIVED From ROD  
Mar 18, 2020  
Peter J. Tecklenburg  
Charleston County Auditor

PID VERIFIED BY ASSESSOR  
REP RJB  
DATE 03/18/2020  
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0865  
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Section 5. "Lot" shall mean and refer to each of the lots (lots 1, 3, 4, 5, 6, 7, 8, 10, 11 and 12) shown on the plat by Jerry L. Fowler dated April 16, 1999 and last revised September 17, 2001 and recorded in the RMC Office for Charleston County, titled "FINAL PLAT SUBDIVISION, SPARTINA BAY PLANTATION SUBDIVISION" recorded in the RMC Office for Charleston County in Plat Book EF at Page 115 and the adjacent lot shown and designated as 4.31 Acres (TMS# 025-00-00-038) (hereinafter referred to as Lot B) on 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" dated September 17, 2001 and recorded in the RMC Office for Charleston County in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ to include the present configurations or any subdivision of these lots or any additions added to these lots of surrounding properties upon any future conveyances therein to include the surrounding marsh.

Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 7. "Members in good standing" shall mean and refer to a Member in good standing of the Spartina Bay Plantation Property Owners Association, Inc. as defined in the Bylaws of the Spartina Bay Plantation Property Owners Association, Inc.

Section 8. "Property" shall mean and refer to that certain real property located on Edisto Island, County of Charleston, State of South Carolina, known as Spartina Bay Plantation Subdivision which is composed of ten (10) lots as is more particularly described in detail in Exhibit "A" and one (1) additional lot with a dock access easement as is more particularly described in detail on Exhibit "B" and a dock as is more particularly described in detail in Exhibit "C", each Exhibit is attached hereto and incorporated herein as a part of this definition.

Section 9. "Property Owners Association" shall mean the Spartina Bay Plantation Property Owners Association, Inc.

Section 10. "Restrictive Covenants" shall mean and refer to this document, specifically; the Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision.

Section 11. "Single-Family Dwelling" shall mean and refer to a building containing one, and only one, living unit.

Section 12. "Architectural Review Board" (ARB) shall mean the ARB created and defined in Article VII hereinafter.

**ARTICLE II**

**DURATION OF RESTRICTION**

These covenants, conditions and restrictions are to run with the land and shall be binding on all parties and all persons claiming under them until January 1, 2031 at which time said covenants shall be automatically extended for successive periods of ten (10) years unless amended or revoked as set forth hereinafter.

### ARTICLE III

#### PROPERTY OWNERS ASSOCIATION

The Declarants have created a property owners association known as Spartina Bay Plantation Property Owners Association, Inc., by filing of the Articles of Incorporation with the Secretary of State on July 30, 1999. A Member of said Property Owners Association shall be the Owner and holder of legal title of record of a Lot in Spartina Bay Plantation Subdivision as defined above. The Property Owners Association has adopted its Bylaws, a copy of which is attached hereto and incorporated herein as Exhibit "D". The Property Owners Association shall set forth the necessary rules and regulations which shall also be restrictions, covenants and agreements on the property known as Spartina Bay Plantation Subdivision as it now exists, or is hereafter configured in accordance with these Restrictive Covenants. The Bylaws to the Property Owners Association specifies membership classification, voting, officers, and other matters for the Property Owners.

### ARTICLE IV

#### ASSESSMENTS

Section 1. The Right to Create Assessments. The Property Owners Association may levy, at any time or times assessments for the purpose of defraying, in whole or in part, the cost on any maintenance or repair of any common areas, roads, easements, community docks, community bulkhead, community floating docks, cost of enforcing restrictive covenants, and any other authorized activities or maintenance authorized by the Property Owners Association to include but not limited to insurance and other administrative costs. The Property Owners Association shall be responsible for maintenance of: (1) roads designated as Marsh Bluff Court as defined in Exhibit "A" and any additional roads approved by the Property Owners Association; (2) the erosion control devices to prevent the loss of any Common Area and Facilities; (3) the fixed walkway and dock for the community as is shown on Exhibit "C"; and (4) the floating docks as is shown on Exhibit "C". The Property Owners Association shall have no responsibility for erosion control other than Common Area and Facilities.

Section 2. Class of Membership. The amount of such assessments shall be prorated among the Lot Owners based upon their class of membership. There shall be two (2) classes of memberships:

a. Class "A" Members shall be the owners of Lots 1, 3, 4, 5, 6, 7, 8, 10 and Lot B and any additional lots created from the subdivision of existing lots of the Spartina Bay Plantation Subdivision, provided, however, if and when the owner of Lot 10 in the Spartina Bay Plantation Subdivision completes construction of a private dock running from his Lot 10 to Store Creek, the owner of Lot 10 shall no longer be a Class "A" Member of the Property Owners Association but shall become a Class "B" Member of the Property Owners Association. The Class "A" Members shall be entitled to full use of Marsh Bluff Court roadway, for ingress and egress to their individual lots, the dock easement as shown on a plat of Lot "B", and the Common Dock as shown on the Master Dock Permit attached hereto as Exhibit "C". The assessments are for the purpose of defraying such Members prorated share of the cost of any maintenance or any repairs of these Common Areas and Facilities and shall be prorated among the Lot Owners (Class A Members) equally, share and share alike, regardless of which items need repair; provided,

however, that any assessments for enforcement of restrictive covenants shall apply to that Lot Owner only for which a special assessment is made. The costs of any maintenance or repairs of the Common Area and Facilities shared with Class "B" members shall be prorated among all members of both classes. Class "A" members can vote on any issues affecting their memberships rights and responsibilities.

b. Class "B" Members shall be the owner of Lots 11 or 12 and possibly Lot 10 as provided above. The amount of such assessment for Class "B" Members shall be the pro-rata share of the costs of any maintenance of the roadway known as Marsh Bluff Court and any other Common Area and Facilities added at a later date excluding the Docks, as set forth above. This cost shall be shared equally for all of the lots, which the restrictions are imposed herewith which include the ten (10) lots in Spartina Bay Plantation Subdivision and Lot B (presently a total of eleven (11) lots). If Class "B" members secure Common Areas and Facilities which can be used exclusively for Class "B" members then the cost of same shall be prorated equally among the members of Class "B" only. Class "B" members can vote only on items affecting Common Area and Facilities which the Class "B" members has a right to use or responsible for.

Section 3. Creation of the Lien and Personal Obligation of Assessment. The Declarants for each Lot owned within the Property, hereby covenant, and each Owner of any Lot by acceptance of a deed, is deemed thereby, whether or not it shall be so expressed in such deed, to covenant and agree to pay to the Property Owners Association the aforesaid repair and maintenance assessments. Such assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Notice of such lien may be filed with the RMC Office in the county where said Lot is located at any time after an assessment becomes part past due, although the filing of such Notice shall not be necessary in order to perfect such lien. Said lien may be sold to a third party who shall become a holder in due course along with all rights of enforcement herein and each assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due. There will be a late charge of five (5%) percent of any assessment due but not paid within fifteen (15) days of the due date.

Section 4. Interest and Foreclosure. Any assessment not paid within thirty (30) days after the due date shall bear interest at the rate of eighteen (18%) per annum. The Property Owners Association or holder in due course may bring an action at law or equity against the Owner personally obligated to pay the same, and/or foreclose the lien against the Lot as if said lien was the same as a mortgage lien in the names of the Property Owners Association as provided by South Carolina Code of Laws. Any Member delinquent in payment of any assessments or dues due hereunder shall not be a member in good standing and shall not have a right to utilize any of the privileges of membership within the Members Class.

## ARTICLE V

### USE RESTRICTIONS

The following restrictions shall apply to all Property to which the Restrictive Covenants, or amendments hereto apply:

Section 1. Residential Use. All Lots are designated "residential, single family" and shall be restricted as to use for residential single family dwellings.

Section 2. Setbacks. All setbacks shall be as set by Charleston County Zoning Ordinances and other related ordinances as well as the setbacks that are shown on the plat of the Spartina Bay Plantation Subdivision referred to in Exhibit "A" hereto.

Section 3. Boats, Motor Homes and Campers. Boats, motor homes and travel trailers (also known as "R/V's") stored or parked on any Lot shall be located in an area to minimize its visibility from roads, common areas, and subdivision neighbors to the greatest extent possible.

Section 4. Signs. No sign or billboard of any kind shall be erected or allowed on any Lot other than one "For Sale" or one "For Rent" sign not larger than two (2) feet by two (2) feet. This provision shall not be deemed to exclude use by Declarant, or its assigns, of advertising signs which shall advertise the entire project. "For Sale" and "For Rent" signs shall be removed upon completion of sale or rent transaction.

Section 5. Re-subdivision of Lots. No lot or lots shall be divided or re-subdivided unless such division or re-subdivision yields buildable lots of at least one (1) acre in size. Also a lot may be divided into two parcels if each parcel is attached to an adjacent lot for purposes of making the adjacent lot larger, provided that once a lot is so subdivided it must remain as a part of adjacent lots.

Section 6. Easements. Declarant hereby reserves an easement or right of way for purposes of installation of water lines, sewer lines, telephone lines, electric lines, poles, wires, cables and all other equipment necessary for the installation, use and maintenance of utilities, including but not limited to water, sewer, electricity, telephone, or drainage. Said easement shall be fifteen (15) feet in width along the property lines as shown on the Subdivision Plat of Spartina Bay Plantation Subdivision referred to in Exhibit "A".

Section 7. Temporary Structures and Trailers. No trailer, mobile home (specifically including "double wide mobile home"), nor any shed, tent, shack, or barn shall be erected or placed on any Lot except that a trailer for construction office or outbuilding used in conjunction with construction may be used during construction on a limited, temporary basis.

Section 8. Animals. No animals or poultry of kind other than house pets shall be kept or maintained on any part of said property. All allowed pets shall be under the control and responsibility of their owner.

Section 9. Waste Matter and Water Wells. The disposal of waste matter, including garbage, refuse, etc., shall be in compliance with the regulations of the South Carolina Department of Health and Environmental Control (SCDHEC) or its successors and all other governing authorities which have jurisdiction thereover. All exterior garbage or other waste receptacles shall be placed and/or screened in such a manner so as not to be visible from subdivision roads, Common Areas, and Facilities or other subdivision Lots. Each Lot Owner is responsible for its own sewage waste disposal system (septic tank) as well as its own water system (water system/private wells). The Declarants will not furnish waste disposal or water for the Property or Lots therein.

Section 10. Tanks. Fuel tanks shall be enclosed in such a manner that it will not be visible from the road, Common Area and Facilities or adjacent Docks and such that a harmonious blending of the tanks with the Dwelling House shall be effectuated.

Section 11. "Vehicles, Antennas, etc. No wrecked or junked motor vehicles or vehicle without current license plates or truck larger than one ton shall be permitted to remain on a lot. No satellite or other receiving disc or antennas shall be permitted unless expressly approved by the Architectural Review Board (ARB).

Section 12. Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot or area within the property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the neighborhood. There shall not be maintained any plants or animals, or device or thing of any sort, the normal activity of which is in anyway noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood by the owners thereof. There shall be no discharging of firearms, guns, pistols, of any kind, caliber, or of any method of propulsion. There shall be no discharging of fireworks of any kind whatsoever.

## **ARTICLE VI**

### **THE DOCKS**

Section 1. The Ownership and Use of the Dock. The Property Owners Association shall own or lease the dock as shown on the permit attached hereto as Exhibit "C" as well as the strip of land designated as Dock Easement on a Plat referred to in Exhibit "B". The use of these portions of the Common Property and Facilities (Dock) shall belong to Class "A" Members of the Association and Declarants, only. The rights to use the walkway, fixed dock area, and the floating docks shall belong to the Class "A" Members only. The Property Owners Association shall receive a deed or a lease for the strip of land designated as Dock Easement and a Bill of Sale for the Dock prior to the sale of the first lot within the subdivision. The rights of the Class "A" Membership herein shall run with the ownership of Lots within the Class "A" and shall not be assigned or sold separately by any Lot Owner except as provided in Section 4 of this Article.

Section 2. Insurance. To the extent insurance can be reasonably obtained, the Property Owners Association shall maintain liability and casualty insurance on the dock, including walkway, fixed dock, floating dock, and any appurtenances for replacement value with an inflation guard endorsement adjusted annually.

Section 3. Repair and Maintenance of Dock. If the walkway and/or dock, as defined in Section 1 of Article VI above, are destroyed (in part or in whole), the Property Owners Association shall repair or rebuild said walkway and/or dock to their original size and configuration. The cost or expense of said repair or rebuild shall be an assessment against the Class "A" Membership of the Property Owners Association only and shall be assessed in accordance with the provisions of Article IV above. Provided, however, ONE HUNDRED (100%) PERCENT OF THE CLASS "A" MEMBERS OF THE PROPERTY OWNERS ASSOCIATION MAY VOTE, IN WRITING, NOT TO REPAIR OR REBUILD SAID DOCK FACILITY. Upon the unanimous vote, in writing, then the mandatory provision for rebuilding or repair shall be null and void.

**Section 4. Abandonment of Dock.** If one hundred (100%) percent of all of the Class "A" Membership of the Property Owners Association vote in writing to abandon any repair, rebuilding or use of said walkway and dock pursuant to Article VI, Section 3 above, then the Dock Easement as is shown on Exhibit "B" attached hereto, shall (at the option of the owner) be conveyed by the Property Owners Association to the Owner of Lot "B" (said Lot being defined above and said owner shall be that as is designated on the records in the RMC Office in the County where said property is located). Said Owner shall pay, in full, all of the costs of the Property Owners Association to Deed said parcel, and when deeded, shall become a part of Lot "B" with the provision that said Lot cannot be further subdivided without the unanimous consent of all Lot Owners. The Owner of Lot B shall have all rights to the Dock thereafter.

**Section 5. Permit Restrictions.** The Dock Permit attached as Exhibit "C" is subject to certain restrictions and limitations as well as certain rules and regulations, which are attached.

## ARTICLE VII

### ARCHITECTURAL REVIEW BOARD

**Section 1. General.** There is hereby created an Architectural Review Board (ARB) for Spartina Bay Plantation Subdivision. Said ARB shall consists of three (3) members. Until such time as Declarants own less than three (3) Lots in Spartina Bay Plantation Subdivision, the members of the ARB shall be appointed by Declarants, and need not be members of the Property Owners Association. After Declarants no longer owns three (3) Lots, as aforesaid, all members of the Committee shall be appointed by the Board of Directors of the Property Owners Association from its membership. A majority of the ARB shall be deemed a quorum and decisions of the ARB shall be by simple majority vote.

**Section 2. Submission of Plans.** No person shall commence construction of any fence, building, outbuilding, mailbox or other structure, until plans for same shall have been approved by the ARB as provided herein. All plans and specifications must be submitted to the ARB at least thirty (30) days prior to application for a building permit. The submissions shall show by plot plans, elevations, and perspective sketches, all proposed improvements including locations, architectural features and landscaping. In the event said ARB fails to act on a submission within thirty (30) days after the required plans have been submitted to it, this Article will be deemed to have been fully complied with. All plans shall be prepared in a professional manner. Construction must be done in a prompt and professional manner, as defined by the ARB.

**Section 3. Approval.** The ARB will review and shall approve the plans and specifications if the proposed improvements meet all of the requirements of these covenants and, if in its opinion, the exterior appearance of the improvements will be compatible with other development in the Subdivision or, at a minimum, will not be detrimental to future property sales or surrounding property values. No architectural "style" or materials will be excluded; however, all materials, features, and styles must be, in the opinion of the ARB, professionally and esthetically acceptable.

By acceptance of a Deed, purchasers agree that the actions of the ARB are in the best interests of all Owners within the subdivision and that they will abide by the decisions of the

ARB. Declarants, the ARB, or other Owners may seek injunctions to compel compliance with ARB decisions, or damages resulting from failure to act in accordance with directions of the ARB.

Section 4. Architectural Standards. Lot Owners and all subsequent owners agree that the desired level of architectural quality of the entire property shall be consistently maintained and each building or structural element shall be compatible with its natural surroundings, adjacent existing structures and with future adjacent structures. Structures should reflect an influence of traditional architectural forms for residential buildings. Avant-garde, highly-stylized, or thematic architecture is strongly discouraged. Building materials should be natural in character, color and the use of stained wood is strongly encouraged. Roof planes should not be less than 5 in 12 slopes as a general rule, with variations used for avoidance of monotony. Buildings should incorporate all energy-saving features as are possible within a reasonable architectural content. Orientation of windows, overhangs, porches and solar equipment should not however, be the total controlling factor in the layout and design of the structure.

Section 5. Site Standards. Lot owners and all subsequent owners agree to leave all vegetation and trees, in as near their natural state as is compatible with good building and land use practices. All hardwood trees over four (4) inches DBH (diameter breast height) shall be preserved when possible. The Architectural Review Board must approve the removal of all hardwood trees six (6) inches DBH or greater. Natural drainage and the project drainage systems shall be utilized to the fullest extent possible so as to minimize site disturbance to accommodate drainage. All site plans must show existing elevations and tree covers so that the ARB may determine if this provision has been adequately considered.

Section 6. Completion of Construction. Construction of any dwelling or other structure on property to which these restrictions, or amendments hereto, apply must be completed within twelve (12) months after commencement of construction. For purposes of this section, commencement of construction shall be deemed to be the first day on which materials are delivered to the site or labor commences with respect to said construction, whichever date shall occur first.

Section 7. Guidelines. The ARB may issue future guidelines as are needed

## ARTICLE VIII

### RESTRICTIONS ON MEMBERS RIGHTS OF USE

Section 1. General. Every Member in good standing shall have a right and easement of enjoyment in and to the Common Areas and Facilities afforded his/her or its class of membership set forth herein, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following restrictions:

a. The right of the Property Owners Association to suspend the voting rights and right to use of the Common Areas and Facilities by a Member:

i. For any period during which any assessment against his Lot remains unpaid, or the Member has not complied with other violations of the Restrictive Covenants, and for a period not to exceed 60 days for any infraction of its published rules and regulations.

b. The right of the Property Owners Association to dedicate or transfer all or any part of the Common Areas and Facilities to any agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by Members representing three-fourths (3/4ths) of all eligible votes agreeing to such dedication or transfer, has been recorded.

c. The Class "A" Membership and the Declarants shall have use of the described community floating dock on a first come, first served basis. In no event shall a Class "A" Member or Declarants be assigned or shall a Class "A" Member or Declarants assume a specific location on the dock for his or her exclusive use.

Section 2. Delegation of Use. Any Member in good standing may delegate, but not transfer, within reason his right or enjoyment to the Common Areas and Facilities of his Class Membership provided however, if OCRM grants permission for a boat lift, said users of the lift shall be exclusive to the owners of Lot B.

## ARTICLE IX

### MAINTENANCE AND IMPROVEMENTS

Section 1. Maintenance by Association. The Association shall provide for the maintenance, repair and replacement of the roads, common areas and community dock.

Section 2. Maintenance by Members. Lots and improvements, including any privately owned individual docks, shall be maintained in a good, clean condition and repair by their respective owners and members herein.

Section 3. Improvements. The membership shall provide for the making of such improvements to the roads, common areas community docks as may be approved from time to time by the members. The cost of such improvements shall be common expenses.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Property Owners Association, any Member, or Declarants shall have the right to enforce, by any proceeding at law or in equity, the Restrictions, Conditions, Covenants, Reservations, now or hereafter imposed by the provisions of this Declaration or amendments thereto. Failure to enforce any provisions of these Restrictive Covenants herein contained shall in no event be deemed a waiver of the right to do so thereafter. If the parties hereto, or any of them or their heirs or assigns, shall violate or attempt to violate any of the covenants herein, it shall be lawful for any other person or persons owning any real property subject to these Restrictive Covenants to prosecute any proceedings at law or equity against the person or persons violating or attempting to violate any such covenants and either to prevent him or them from committing or continuing such violations to include but not limited to court costs and reasonable attorney's fees.

Section 2. Severability. Invalidation of any one of these Restrictive Covenants or by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section 3. Amendment.

a. These Restrictive Covenants may be amended, [except for Article IV, Article VI and Article VIII,] by the Property Owner's Association by an instrument signed by no less than two-thirds (2/3) of the Members. Article IV, Article VI and Article VIII shall be amended by an unanimous vote of members by class affected. So long as Declarants own any Lot, any amendment to these Restrictive Covenants shall require Declarants' approval. Any amendment must be recorded.

b. Further, Declarants shall have the authority to amend these restrictions at any time to comply with the requirements of any governing body such as the Veteran's Administration, Federal Housing Administration, Department of Housing and Urban Development, Charleston County or the Federal National Mortgage Association or to correct typographical or scrivener's errors. Declarants shall not, by reason of the power herein reserved, have the right to alter the amount or method of making annual or special assessments unless a governmental body having jurisdiction over such matter requires a change.



Section 4. Annexation. The Declarants reserve the right to subject to these Restrictive Covenants, additional properties and to dedicate or deed additional common area to the Property Owners Association, provided at the time such dedication or deeding, said additional common area shall be free and clear of all liens and encumbrances other than reasonable and normal restrictions or easements.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, has hereunto set its hand and seal this 13th day of October, 2001.

N. C. BOYKIN as TRUSTEE FOR  
THE STORE CREEK LAND TRUST

Signed, Sealed and Delivered  
in the presence of::


BY:  (SEAL)  
N.C. Boykin as Trustee

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

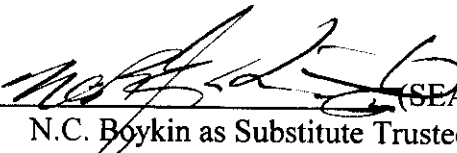
ACKNOWLEDGMENT

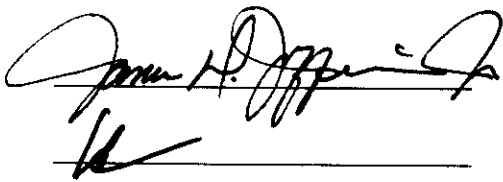
The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of October, 2001 by N. C. Boykin as Trustee for The Store Creek Land Trust.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires: 8-11-10

N. C. BOYKIN as SUBSTITUTE TRUSTEE  
FOR PETERS POINT TRUST

Signed, Sealed and Delivered  
in the presence of::


BY:  (SEAL)  
N.C. Boykin as Substitute Trustee

  
\_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF Charleston )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 13<sup>th</sup> day of October, 2001 by N. C. Boykin as Substitute Trustee for Peters Point Trust.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires: 8-11-10

BKD 385PG271

**EXHIBIT "A**

PARCEL 1: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 1 containing 2.270 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing 50' ingress/egress easement on TMS #025-00-00-009; on the Southeast and Northeast by TMS #025-00-00-049, lands of Howard Bailey; on the Southeast by Peters Point Road 50' R/W; on the Southeast by Marsh Bluff Ct. (Private Road) 50' R/W; and on the Northwest by Lot 3.

PARCEL 2: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 3 containing 1.284 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing 50' ingress/egress easement on TMS #025-00-00-009; on the Southeast by Lot 1; on the Southwest by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Northwest by Lot 4.

PARCEL 3: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 4 containing 1.262 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing 50' ingress/egress easement on TMS #025-00-00-009; on the Southeast by Lot 3; on the Southwest by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Northwest by Lot 5.

PARCEL 4: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated

as Lot 5 containing 1.257 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing 50' ingress/egress easement on TMS #025-00-00-009; on the Southeast by Lot 4; on the Southwest by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Northwest by Lot 6.

PARCEL 5: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 6 containing 1.251 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing 50' ingress/egress easement on TMS #025-00-00-009; on the Southeast by Lot 5; on the Southwest by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Northwest by Lot 7.

PARCEL 6: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 7 containing 1.152 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing 50' ingress/egress easement on TMS #025-00-00-009; on the Southeast by Lot 6; on the Southwest by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Northwest by Lot 8.

PARCEL 7: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 8 containing 2.551 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the Northeast by an existing

50' ingress/egress easement on TMS #025-00-00-009; on the Southeast by Lot 7; and on the Southwest and Northwest by Marsh Bluff Ct. (Private Rd.) 50' R/W.

PARCEL 8: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 10 containing 1.515 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the North by marsh; on the Northeast by Lot 11; on the South by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Southwest by TMS #025-00-00-011, lands of Brian L. West.

PARCEL 9: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 11 containing 1.392 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lot being bounded now or formerly as follows: On the North by marsh; on the Northeast by Lot 12; on the South by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Southwest by Lot 10.

PARCEL 10: All that certain piece, parcel or lot of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as Lot 12 containing 1.308 acres, more or less, on a plat entitled "FINAL SUUBDIVISION PLAT TMS 025-00-00- SEE TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" prepared by Jerry L. Fowler, RLS #15178, dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said plat being incorporated herein as a part of this description and said lots being bounded now or formerly as follows: On the North by marsh; on the Northeast by TMS #025-00-00-038, lands of Peters Point Trust; on the Southeast by Marsh Bluff Ct. (Private Rd.) 50' R/W; and on the Southwest by Lot 11.

PARCEL 11: All that certain piece, parcel or strip of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as "MARSH BLUFF CT. (PRIVATE RD.) 50' R/W" on a plat prepared by Jerry L. Fowler, RLS #15178, entitled "FINAL PLAT SUUBDIVISION TMS 025-00-00-00 SEE

BKD 385PG274

TAX LETTER NUMBER A SUBDIVISION OF 16.666 ACRES SPARTINA BAY PLANTATION SUBDIVISION CURRENT OWNER STORE CREEK TRUST" dated April 16, 1999, last revised September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book EF at Page 115, said strip having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully and at large appear.

Parcels 1 - 11 being the same property conveyed to N. C. Boykin, as Trustee of the Store Creek Land Trust, by deed of Howard D. Bailey dated April 22, 1999, and recorded in the RMC Office for Charleston County in Book U326 at Page 017.

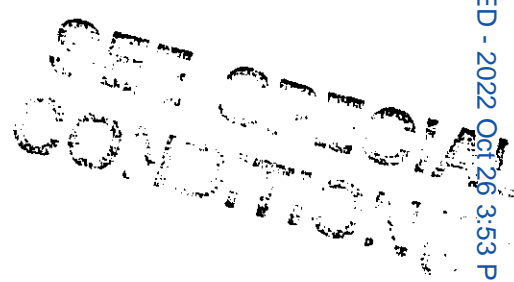
EXHIBIT "B"

JKD 385PG275

All that certain piece, parcel or tract of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, containing 1.36 acres, more or less, of highland, and 2.95 acres, more or less, of marsh, as shown and delineated on 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" dated September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_, said plat being incorporated herein as a part of this description and said tract being bounded now or formerly and measuring more or less as follows: On the Northeast by Store Creek and measuring thereon Four Hundred Five and Sixty-Three Hundredths (405.63') feet; on the East and Northeast by highland and marsh belonging to Steve R. and Helen P. Rowland and measuring thereon Five Hundred Forty-Six and Ninety-Six Hundredths (546.96') feet and Three Hundred Sixty and Five Hundredths (360.05') feet, respectively; on the Southeast by a 50' R/W Easement and measuring thereon One Hundred Thirty-Five and Seven Hundredths (135.07') feet; and on the Southwest by highland and marsh belonging to N. C. Boykin, as Trustee of the Store Creek Land Trust, and measuring thereon One Thousand Two Hundred Twenty-Five and Twenty-Two Hundredths (1,225.22') feet.

South Carolina Department of Health and Environmental Control  
Office of Ocean and Coastal Resource Management  
CRITICAL AREA PERMIT/WATER QUALITY CERTIFICATION

Permittee: Store Creek Trust  
Permit Number: 99-1E-382-P  
Date of Issuance: October 31, 2000  
Expiration Date: October 31, 2005  
Location: On and adjacent to Store Creek at 8764 Peters Point Road, Edisto Island, Charleston County, South Carolina.



This permit/certification is issued under the provisions of S. C. Code Ann. Section 48-39-10, *et. seq.*, and R.30-1 through R.30-20. Additionally, as required by R.61-101, Department staff have reviewed plans for this project and determined there is a reasonable assurance the project will be conducted in a manner consistent with Certification requirements of Section 401 of the Clean Water Act. We also certify that this project, subject to the indicated conditions, is consistent with applicable provisions of Section 303 of the Federal Clean Water Act, as amended, that there are no applicable effluent limitations under Sections 301(b) and 302, and that there are no applicable standards under Sections 306 and 307.

Please carefully read the project description and any Special Conditions, which may appear on this permit/certification, as they will affect the work which is allowed. If there are no Special Conditions, then the work is authorized as described in the project description. The general conditions are also a part of this permit/certification and should be read in their entirety.

**DESCRIPTION OF THE PROJECT**

The plans submitted by you, attached hereto, show the work consists of constructing a timber pier with a 10' by 20' covered pierhead attached to highland by a 5' by 638' walkway. In addition, floating docks, each 10' by 45' are to be installed on each side of the fixed pierhead and attached to the fixed pierhead by ramps. The purpose of this work is for the private, recreational use of the future inland property owners (9 lots) of Spartina Bay Subdivision. The applicant has revised this project to delete the proposed 10' by 99' floating dock and install two (2) 10' by 45' floating docks, decreasing the length of the walkway, and reducing the fixed pierhead from 20' by 20' to 10' by 20'.

**SPECIAL CONDITIONS**

1. Provided an Operations and Maintenance Manual for the community dock facility is submitted to and approved by OCRM staff prior to construction. The Operation and Maintenance Manual will be made a part of this permit and must be followed in the operation of this community dock facility unless otherwise amended in writing by OCRM. The Operations and Maintenance Manual must be reviewed and revised to keep up-to-date with the community dock facility operations. This manual must be in accordance with R.30-12 (E)(6) the Rules and Regulations for Permitting in the critical area of the Coastal Zone and with OCRM's Marina Operations and Maintenance Manual requirements.

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SEE NEXT PAGE

2. Provided the permittee understands that the operation of the community dock facility shall be reviewed by the Department as deemed appropriate, but at least every five years. Based on this review, the Department may require, among other things, changes or additions to the Operations and Maintenance Manual to address any water quality or other environmental problems, and a reduction in the size of, or a change in the configuration of this community dock facility. Such action may be taken at any time the Department determines that significant state water quality compliance problems exist, at the time SCDHEC enlarges the closure area, or at the time of a review.
3. Provided a complete copy of the permit and the OCRM approved Operations and Maintenance Manual are made readily available at this community dock facility.
4. Provided the proposed community floating dock is reduced to 40' and the private floating dock is reduced to 10' by 30'.
5. Provided the community dock is constructed at least 20' from the extended property lines.
6. Provided anti-fouling paints are not used below mean high water or on any structure such as bulkheads, piling, docks, or dock supports around the community dock facilities.
7. Provided any sanding, scraping, painting, major engine repair, or other maintenance which may result in a discharge to the water must be performed in a designated upland site.
8. Provided the walkways and pierheads are constructed at least 4' above mean high water.
9. Provided the permittee implements best management practices during construction to minimize erosion and sediment run off. Any disturbed marsh areas adjacent to the construction site must be restored to original contours and conditions upon project completion. Once project construction is initiated, it must be carried to completion in an expeditious manner in order to minimize the period of disturbance to the environment.
10. Provided the dock shall not be any further channelward than other docks in the area and under no circumstances more than 60 feet from the edge of marsh vegetation.
11. Provided that no leasing of space for permanent boat moorage takes place at the proposed community dock facility. No more than ten (10) boats may be moored at this facility at any given time. These community dock facilities are to be used only by the residents of Spartina Bay Subdivision and their guests.
12. Provided that this community dock facility is used for water dependent uses only. No food service, vending machines, T-shirt sales or concessions are allowed on these docks.
13. Provided the community docks are located in such a manner so as to minimize disturbance to shellfish resources. Direct encroachment on any shellfish beds should be avoided.
14. Provided litter receptacles must be located near all docks and walkways.

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SEE NEXT PAGE

15. Provided that all necessary measures are taken to prevent oil, tar, trash, debris and other pollutants from entering the adjacent waters or wetlands.

16. Provided signs must be posted on all docks, piers and areas adjacent to the facility stating the following: "It is against both Federal and State Laws to discharge raw, untreated sewage from any description of watercraft into the waters of South Carolina." Signs should be at least 14" by 18" in size so they can be read clearly.

17. Provided that if archaeological or paleontological remains are encountered prior to or during construction, we request that work stop and the State Historic Preservation Office be notified at 803-734-8615. If these materials include any underwater archaeological or paleontological remains the permittee should also notify the SC Institute of Archaeology and Anthropology at 803-777-8170 pursuant to SC Code of Laws 54-7-400, et seq. Archaeological remains consist of any materials made or altered by man which remain from past historic or prehistoric times (i.e., older than 50 years). Examples include old pottery fragments, metal, wood, arrowheads, stone implements or tools, human burials, historic docks, structures or nonrecent (i.e., older than 100 years) vessels ruins. Paleontological remains consist of old animal's remains, original or fossilized, such as teeth, tusks, bone or entire skeletons.

**THE PERMITTEE'S ATTENTION IS DIRECTED TO GENERAL CONDITIONS NUMBERS FOUR (4) AND (5), BY ACCEPTANCE OF THIS PERMIT, PERMITTEE IS PLACED ON NOTICE THAT THE STATE OF SOUTH CAROLINA, BY ISSUING THIS PERMIT, DOES NOT WAIVE ITS RIGHTS TO REQUIRE PAYMENT OF A REASONABLE FEE FOR USE OF STATE LANDS AT A FUTURE DATE IF SO DIRECTED BY STATUTE.**

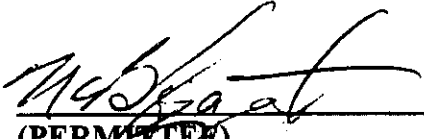
**CAUTION:** Section 48-39-150(D) allows any person adversely affected by the issuance of this permit to appeal the decision by filing a written Notice of Intent to Appeal within 15 days after notification of the permit's issuance. In the event of an appeal, the Department reserves the right to order a stay of any use or activity authorized herein pending a final decision, when, in the judgment of the Department, the interests of the public would be best served.

**THE PERMITTEE, BY ACCEPTANCE OF THIS PERMIT AGREES TO ABIDE BY THE TERMS AND CONDITIONS CONTAINED HEREIN AND TO PERFORM THE WORK IN STRICT ACCORDANCE WITH THE PLANS AND SPECIFICATIONS ATTACHED HERETO AND MADE A PART HEREOF. ANY DEVIATION FROM THESE CONDITIONS, TERMS, PLANS AND SPECIFICATIONS SHALL BE GROUNDS FOR REVOCATION, SUSPENSION OR MODIFICATION OF THIS PERMIT AND THE INSTITUTION OF SUCH LEGAL PROCEEDINGS AS THE DEPARTMENT MAY CONSIDER APPROPRIATE,**

3 Of 9  
SEE NEXT PAGE

P/N# 099-1E-382-P

**Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.**

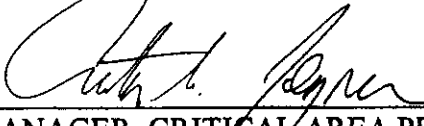


11-6-2000

(PERMITTEE)  
Store Creek Trust

(Date)

**This permit becomes effective when the State official, designated to act for the Office of Ocean and Coastal Resource Management, has signed below.**



11/8/00

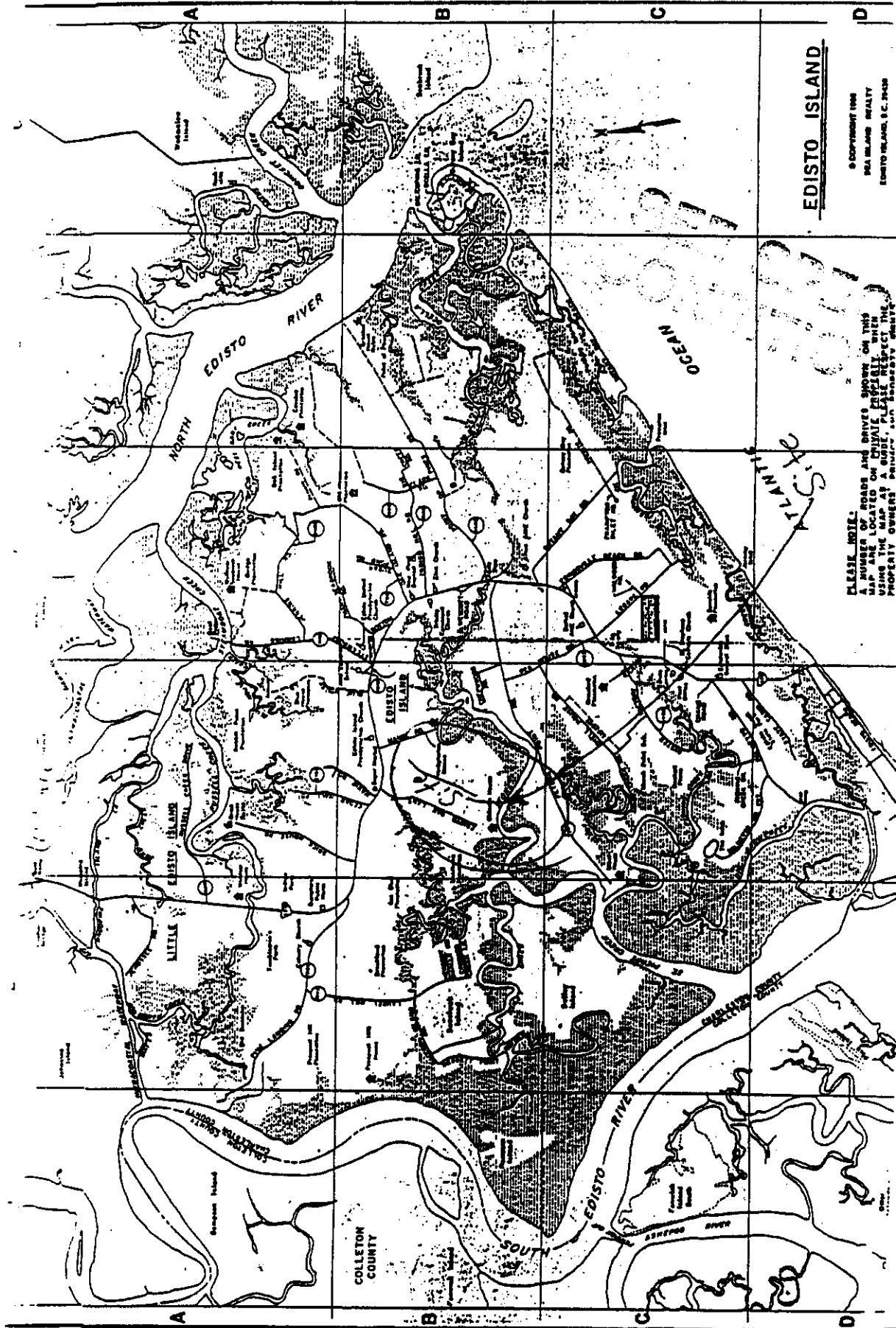
(MANAGER, CRITICAL AREA PERMITTING) (DATE)  
Curtis Joyner, or his Designee  
Authorized State Official

GENERAL CONDITIONS

This permit is expressly contingent upon the following conditions which are binding on the permittee:

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Department of Health and Environmental Control, OCRM, and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.
2. That if the activity authorized herein is not constructed or completed within FIVE YEARS of the date of issuance, this permit shall automatically expire. A request, in writing, for an extension of time shall be made not less than sixty days prior to the expiration date.
3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.
4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject, further to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.
5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.
6. That the permittee shall permit the Department or its authorized agents or representatives to make periodic inspections at any time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit.
7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by the Department.
8. That this permit may not be transferred to a third party without prior written notice to the Department, either by the transferee's written agreement to comply with all terms and conditions of this permit or by the transferred subscribing to this permit and thereby agreeing to comply.
9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.
10. That SCDHEC-OCRM shall be notified in writing upon commencement of work and that a permit placed or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.
11. That the structure or work authorized herein shall be in accordance with the plans and drawing attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintained the structure in good condition shall result in the revocation of this permit.
12. That the authorization for activities or structures herein constitutes a revocable license. The Department may require the permittee to modify activities or remove structures authorized herein if it is determined by the OCRM that such activity or structures violates the public's health, safety, or welfare, or if any activity is inconsistent with the public trust doctrine. Modification or removal under this condition shall be ordered only after reasonable notice stating the reasons therefore and provision to the permittee of the opportunity to respond in writing. When the permittee is notified that SCDHEC-OCRM intends to revoke the permit, permittee agrees to immediately stop work pending resolution of the revocation.
13. That the Department shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety and welfare, and/or is violation of Section 48-39-150, (2) adversely impacts public rights, (3) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (4) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of the Department's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, the Department shall provide written notification of intent to revoke to the permittee, and permittee can respond with a written explanation to the Department. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation; suspension or modification herein described).
14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against the Department or the State of South Carolina or any employee, agent, or representative of the Department the State of South Carolina.
15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.
16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of other. This permit authorizes no invasion of adjacent of private property, and SCDHEC-OCRM assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to this permit.

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**ADJACENT PROPERTY OWNERS:**  
 1. Brian West

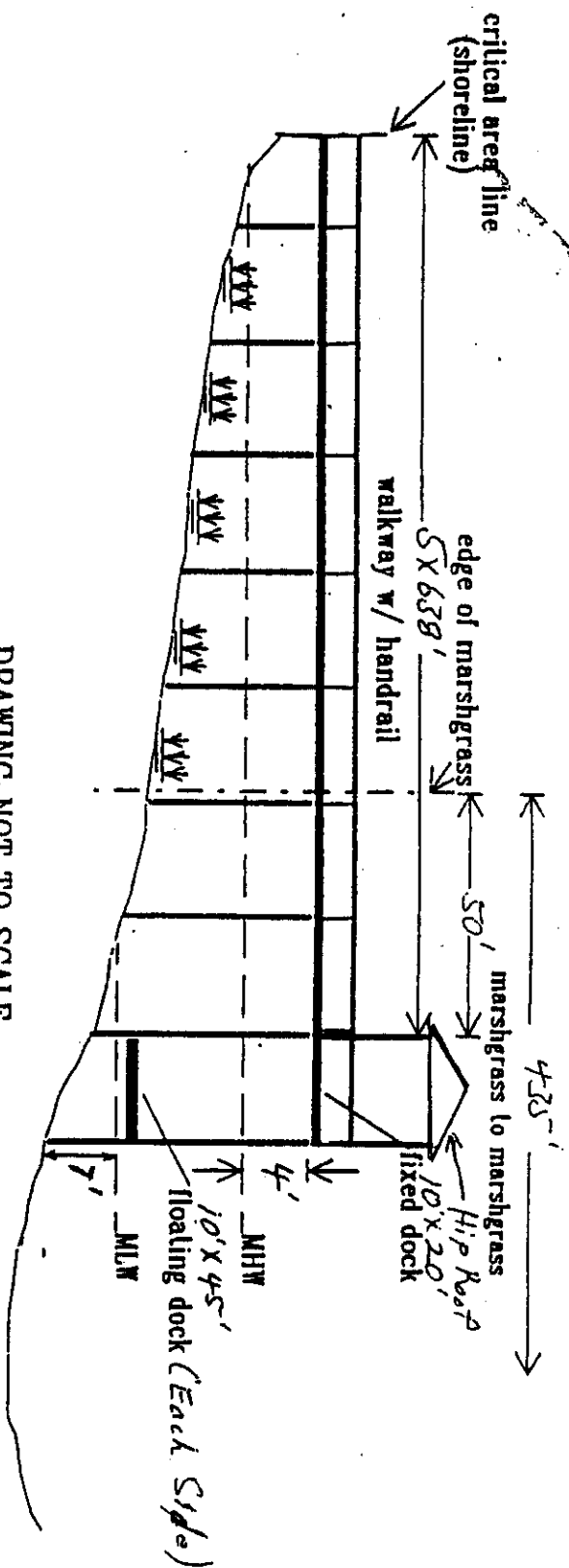
**LOCATION:** 8764 Peters Point Road  
 Edisto Island, SC 29438  
 Charleston

**APPLICANT:** Store Creek Trust  
**ACTIVITY:** Community dock Spartina Bay

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 5 of 10 sheets  
 ALN1103

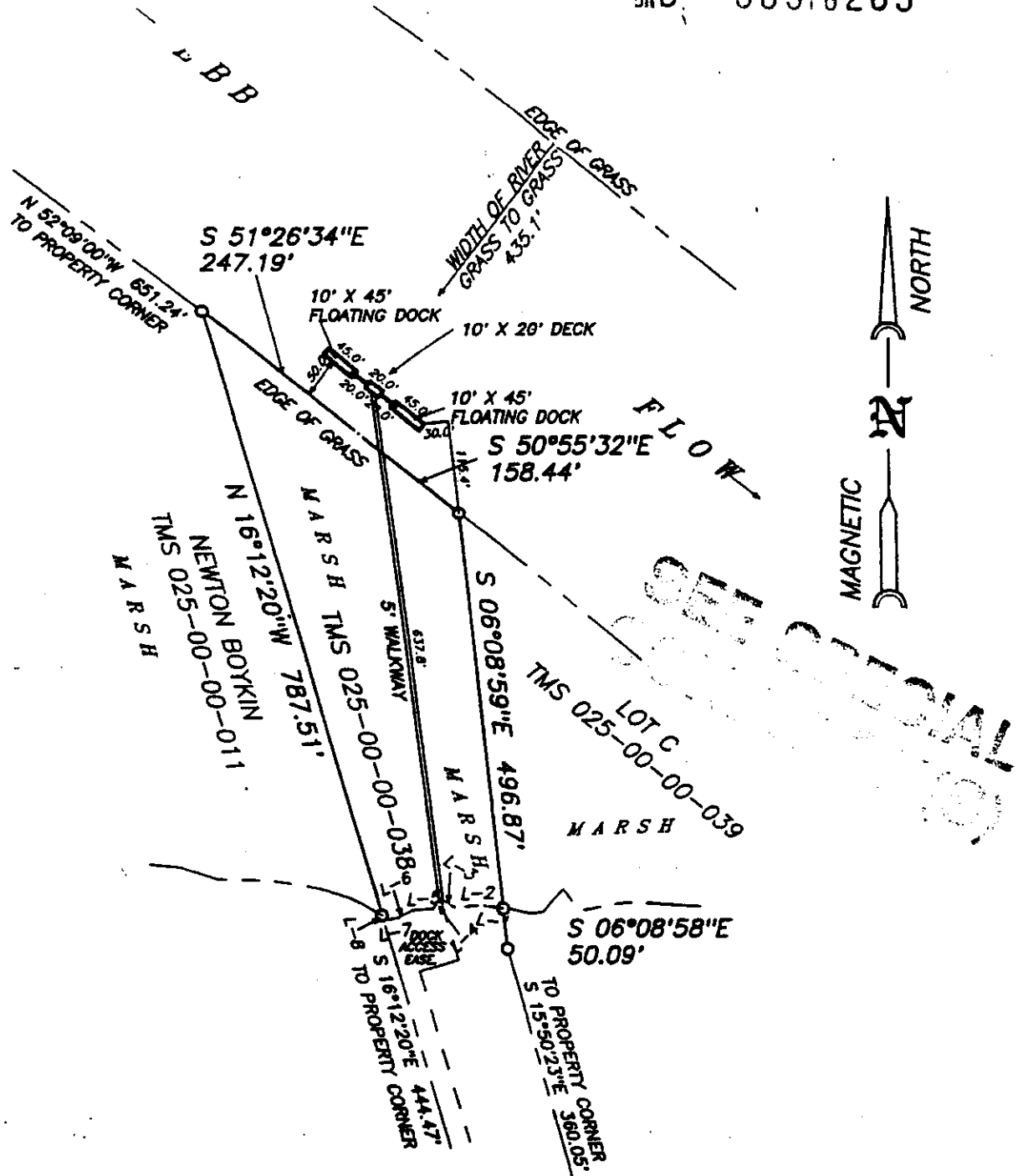
P/N : 99-1E-382

BKD 385PG282



DRAWING NOT TO SCALE

<p>APPLICANT: <i>Stone Creek Trust</i></p> <p>ACTIVITY: <i>Spartina Bay</i></p> <p>P/N # <i>99-1E-382</i></p>	<p>LOCATION: <i>8764 Peters Point Road</i></p> <p>COUNTY: <i>Edisto Island, S.C. 29438</i></p> <p>DATE: <i>4/30/2000</i> <i>Sheet 5 of 5</i></p>	<p>ADJACENT PROPERTY OWNERS:</p> <p>① <i>Brian West</i></p> <p>② <i>Steve Rowland</i></p>
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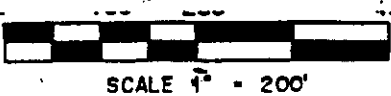


FOWLER LAND SURVEYING  
 769-B JEFFERIES BLVD.  
 WALTERBORO, S. C. 29488  
 (843)549-2854

**PROPOSED WALKWAY & DOCK**  
**SURVEYED FOR :**  
**STORE CREEK TRUST**  
 APRIL 17, 2000  
 EDISTO ISLAND  
 CHARLESTON COUNTY - SOUTH CAROLINA

APPLICANT: <i>Store Creek Trust</i> ACTIVITY: <i>Spartina Bay</i> P/N # 99-1E-382	LOCATION: <i>8764 Peters Point Road Edisto Island, S.C 29438</i> COUNTY: <i>Charleston</i> DATE: <i>4/30/2000</i>
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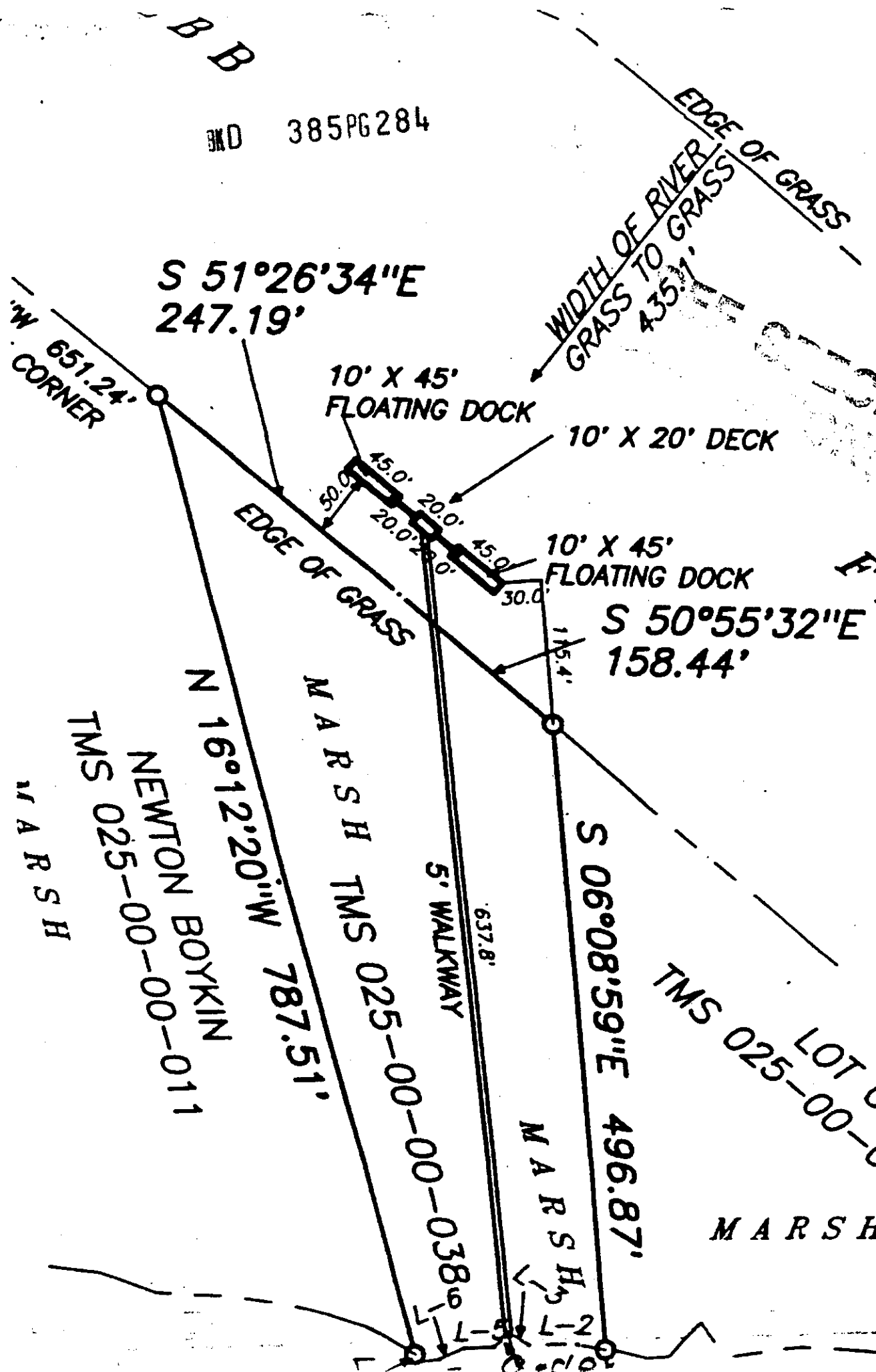
Sheet 3 of 5



JERRY L. FOWLER  
 RLS NO. 15178

INS NO. 00013-D

385PG284



ADJACENT PROPERTY OWNERS: ① Brainer West ② Steve Rowland	LOCATION: 8764 Peters Point Road Edisto Island, S.C. 29438 COUNTY: Charleston	APPLICANT: Stone Creek Trast ACTIVITY: Spartina Bay P/N/ 282-31-66 # N/
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**BKD 385PG285**

**Operations and Maintenance Manual  
for  
Community Dock Facilities  
Located on Store Creek  
Edisto Island  
Charleston County,  
South Carolina**

**for  
Store Creek Trust  
8764 Peters Point Road  
Edisto Island, South Carolina 29438**

**November 15, 2000  
PN# 99-IE-382-P**

**Table of Contents**

**Part I OPERATIONS**

- A. General Facility Description
- B. Regulatory Permits
- C. Operations

**Part II WATER QUALITY MANAGEMENT AND POLLUTION PREVENTION**

- A. Water Quality Monitoring
- B. Stormwater Management

**Attachments:**

- A. South Carolina Department of Health Ocean and Coastal Resource Management (SC DHEC OCRM) PN 99-1E-382-P

BKD 385PG287

## Part I

## OPERATIONS

## A. General Facility Description:

The Store Creek Trust Community Dock consists of constructing a timber pier with a 10' by 20' covered pierhead attached to highland by a 5' by 638' walkway. In addition, a 10 by 40' community floating dock and a 10 by 30' private floating dock are to be installed on each side of the fixed pierhead and attached to the fixed pierhead by ramps. The purpose of this work is for the private, recreational use of the future inland property owners (9 lots) of Spartina Bay Subdivision.

1. All Community Dock Facilities are privately owned, operated and maintained by Store Creek Trust.
2. The Community Dock Facility is located on Store Creek at 8764 Peters Point Road, Edisto Island, Charleston County, South Carolina.
3. Given the total linear footage of mooring space on each side of the two (2) floating docks, no more than ten (10) boats will be allowed to be moored at the two (2) floating docks at one time.
4. All boats at the floating docks are owned and operated by property owners in Spartina Bay Subdivision. Use of the Community Dock facilities is restricted solely to property owners and their invited guests.
5. Trash receptacles will be provided on the Community Dock and on the pierhead.

## B. Regulatory Permits:

1. SC DHEC OCRM PN 99-1E-382-P (See Attachment A).

## C. Operations:

- A. Store Creek Trust is responsible for the operation and maintenance of the community dock. The owner of the private floating dock will be responsible for its maintenance.
- B. Overnight occupancy of temporarily moored boats and "Live Boards" are prohibited at the Community Dock facilities.

Part II

WATER QUALITY MANAGEMENT AND  
POLLUTION PREVENTION MEASURES

A. Water Quality Monitoring:

Neither of the regulatory permits currently require water quality monitoring programs.

B. Stormwater Management:

Stormwater will be managed in compliance with the requirements of Store Creek Trust's United States Army Corps of Engineers permit as issued for said project.

BY - LAWS

BKD

385PG289

OF

**SPARTINA BAY PLANTATION PROPERTY OWNERS ASSOCIATION, INC.**

**ARTICLE I - DEFINITIONS**

1. The terms "Restrictive Covenants" and "Restrictions" as used in the Bylaws shall refer to the Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Property Owners Association, Inc. governing and controlling certain lots, roads, common areas and community docks dated 13 October 2001 and a copy of these Bylaws shall be attached thereto.

2. All other definitions set forth in the Restrictive Covenants are adopted herein as if totally re-written.

**ARTICLE II - PURPOSES AND OBJECTIVES**

In amplification of the purposes for which the corporation has been formed as set forth in the Articles of Incorporation, the purposes and objectives of the Association are as follows:

1. To develop a community designed for safe, healthful, and harmonious living.

2. To promote the collective and individual property and civic interests and rights of all persons, firms, and corporations owning property within Property and which is located on Edisto Island in the County of Charleston, and State of South Carolina.

3. To care for the improvements and maintenance of the facilities of any kind dedicated to the community use and open spaces and other ornamental features of the Property, which now exist or which may hereafter be installed or constructed therein with the consent of this Association.

4. To the extent insurance can be reasonably obtained, to acquire and maintain liability and casualty insurance on all common areas, docks, and easements and any appurtenances for replacement value with an inflation guard endorsement adjusted annually.

5. To cooperate with the owners of all vacant and unimproved Lots now existing or that hereafter shall exist within the perimeters of Property in keeping them in good order and condition, in preventing them from becoming a nuisance and detriment to the beauty of the Property and to the value of the improved property therein, and to take any action with reference to such vacant and unimproved Lots as may be necessary or desirable to keep them from becoming such nuisance and detriment.

6. To aid and cooperate with the members of this Association and all property owners within the Property in the enforcement of such conditions, covenants, and restrictions on and appurtenant to their property as are now in existence, as well as any other conditions, covenants, and restrictions as shall hereafter be approved by the Association and to counsel with the

Planning Commission of Charleston County having jurisdiction in relation to any zoning that may affect any portion of the Property.

7. To make rules and regulations for property owners in the Property to maintain and assure the quality of life in the Property which the property owners desire and which the Restrictive Covenants and Rules of the Association have been ordained to protect.

8. In general, but in connection with the foregoing, to do any and all things necessary to promote the general rules and quality of life of the residents and owners of any portions of the Property and their property interests therein.

9. To acquire, own, or lease such real and personal property as may be necessary or convenient for the transaction of its business and fulfillment of its purposes and objects, and to exercise all rights, powers, and privileges of ownership to the extent as natural persons might or could do.

10. To exercise any and all powers that may be delegated to it from time to time by the owners of real property in the tract.

11. The Association shall not engage in political activity or pursue political purposes of any kind or character.

**ARTICLE III – OFFICES**

The initial office of Association, shall be located at the offices of N. C. Boykin, 2410 Highway 174, Edisto Island, SC. The membership of the Association is authorized and empowered to change the exact address of the Association from time to time as it deems fit and proper.

**ARTICLE IV – MEMBERS**

(1) **Membership.** The qualifications and rights of members of the Association shall be as follows:

(a). The owner of legal title of record in the Office of the Clerk of Court for Charleston County, South Carolina, of a Lot in the Property on Edisto Island, County of Charleston, State of South Carolina, shall be a member and agrees by his ownership to the undertaking in (b) below.

(b). Membership shall include an undertaking to comply with and be bound by the Articles of Incorporation, these Bylaws, Restrictive Covenants and amendments thereto, and the policies, rules, and regulations or guidelines at any time adopted by the Association and/or the Architectural Review Board in accordance with these Bylaws including payment of all dues and assessments.

(c). Membership in this Association shall terminate on such member’s ceasing to be the legal owner of record of a Lot in the Property.

(2) **Member in Good Standing.** A member current in payment of the assessments and in compliance with these Bylaws, Restrictive Covenants and amendments thereto, and the policies,

rules, and regulations or guidelines of the Association and/or Architectural Review Board shall be considered a member in good standing.

(3) Voting Rights. Each member in good standing shall be entitled to vote on each matter submitted to a vote of the members by Class. The Association shall have two (2) classes of voting membership.

(a). Class A. A Class "A" members shall be the owner of record of Lots 1, 3, 4 5, 6, 7, 8, 10, and Lot B (9 Lots) of the Property. A Class "A" member shall have one (1) vote for each Lot of which he is the legal owner of record for all matters before the Association.

(b). Class B. The Class "B" Members shall be the owner of record of Lots 11 or 12 (2 Lots) of the Property initially and possibly hereafter Lot 10 (1 Lot) for a total of three (3) Lots maximum under the present configuration. The Class "B" member shall have one (1) vote for each Lot of which he is the legal owner of record.

(c). At membership meetings all votes shall be cast in person or by proxy registered with the Secretary.

(d). The membership is authorized to establish procedures providing for voting by mail, telephone, or other form of communication.

(e). A Class "A" member may vote on any issue, which comes up before the Association dealing with its rights of use or assessments against same. A Class "B" member may not vote on any issue dealing with the Dock or the Dock Easement as defined in Exhibit "B" & "C" of the Restrictive Covenants but may vote on any issue dealing with its rights of use or assessments against same.

(f). Where two or more owners or a partnership or corporation or other legal entity own a Lot, only one vote on each Lot owned shall be allowed and such joint owners, partnership, corporation or other legal entity shall designate and register with the Secretary of the Association in writing the name of that person entitled to cast such single vote or the vote will not be allowed.

#### ARTICLE V – MEETING OF MEMBERS

(1) Annual Meeting. An annual meeting of the members for the purpose of hearing reports from all officers and standing committees shall be held in October of each year, beginning with the year 2001. The time and place shall be fixed by the Board of Directors.

(2) Regular Meetings. In addition to the annual meetings, regular meetings of the members may be held at such time and place as shall be determined by the Board of Directors.

(3) Special Meetings. A special meeting of the members must be called by the President of the Association or, if requested, by any three (3) members in good standing within twenty (20) days.

(4) Notice of Meetings. Written notice stating the place, day, and hour of any meeting of members shall be delivered either personally or by mail to each member entitled to vote at such meeting, not less than twenty (20) days before the date of such meeting or at the direction of the Secretary.

(5) Quorum. The members holding fifty-one (51%) percent of the votes that may be cast at any meeting shall constitute a quorum at any meeting of the members. In the absence of a quorum, a majority of the members present may adjourn the meeting from time to time without further notice.

(6) Proxies. At any meeting of the members, a member entitled to vote may vote by proxy executed in writing by the member. No proxy shall be valid after six (6) months from the date of its execution, unless otherwise provided in the proxy.

(7) Voting by Mail, Telephone, or Other Form of Communication. Where there is an act requiring the vote of the members, such election or vote on such proposed action may be conducted by mail, telephone, or other form of communication in such manner as the Board of Directors shall determine.

#### ARTICLE VI - BOARD OF DIRECTORS

(1). General Powers. The business and affairs of the Association shall be managed by its Board of Directors, to include the right to establish dues and assessments as set forth hereinafter. The directors shall in all cases act as a board, and they may adopt such rules and regulations for the conduct of their meetings and the management of the Association, as they may deem proper, not inconsistent with these by-laws and the laws of this State.

(2). Number Tenure and Qualifications. The Board of Directors shall consist of three (3) members initially. The Declarants shall have the right to appoint or remove any member or members of the Board of Directors until Declarants sell three-fourths (3/4) of the lots within the Subdivision. Beginning with the first annual or special meeting of the Association following the expiration of the Declarants rights, the members (including the Declarants if Declarants then own one or more Lots) shall elect one (1) Director for a term of one (1) year, one (1) Director for a term of two (2) years and one (1) Director for a term of three (3) years; and at each annual meeting thereafter, the members shall elect, upon majority vote, one (1) Director for a term of three (3) years. Each Director shall hold office until his successor is elected, or until his death, or until he shall resign or be removed from office. A Director must be a member of the Association to hold office, except for the Directors appointed by the Declarants.

(3). Regular Meetings. A regular meeting of the directors, shall be held without other notice immediately after, and at the same place as, the annual meeting of Members. The directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice.

(4). Special Meetings. Special meetings of the directors may be called by or at the request of the president or any two directors. The person or persons authorized to call special meetings of the directors may fix the place for holding any special meeting of the directors called by them.

(5). Notice. Notice of any special meeting shall be given at least five (5) days previously thereto by written notice delivered personally, or by telegram to each director at his

business address. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail so addressed, with postage thereon prepaid. If notice be given by telegram, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

(6). Quorum. At any meeting of the directors two (2) shall constitute a quorum for the transaction of business.

(7) Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the directors.

(8). Newly Created Directorships And Vacancies. Newly created directorships resulting from an increase in the number of directors and vacancies occurring in the board for any reason except the removal of directors with cause may be filled by a vote of a majority of the directors then in office, although less than a quorum exists. Vacancies occurring by reason of the removal of directors with cause shall be filled by vote of the Members. A director elected to fill a vacancy caused by resignation, death or removal shall be elected to hold office for the unexpired term of his predecessor.

(9). Removal of Directors. Any or all of the directors may be removed for cause by vote of the Members only.

(10). Resignation. A director may resign at any time by giving written notice to the board, the president or the secretary of the corporation. Unless otherwise specified in the notice, the resignation shall take effect upon receipt thereof by the board or such officer, and the acceptance of the resignation shall not be necessary to make it effective.

(11). Compensation. No compensation shall be paid to directors, as such, for their services, but by resolution of the board a fixed sum and expenses for actual attendance at each regular or special meeting of the board may be authorized. Nothing herein contained shall be construed to preclude any director from serving the Association in any other capacity and receiving compensation therefor.

(12). Presumption of Assent. A director of the Association who is present at a meeting of the directors at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless his dissent shall be entered in the minutes of the meeting or unless he shall file his written dissent to such action with the person acting as the secretary of the meeting before the adjournment thereof or shall forward such dissent by registered mail to the secretary of the Association immediately after the adjournment of the meeting. Such right to dissent shall not apply to a director who voted in favor of such action.

**ARTICLE VII - OFFICERS**

(1). Number. The officers of the Association shall be a president, vice-president, a secretary and a treasurer, each of whom shall be elected by the directors. Such other officers and assistant officers as may be deemed necessary may be elected or appointed by the directors. The Board of Directors at any time, may decide to eliminate or not fill the office of Vice President and/or consolidate the offices of Secretary and Treasurer.

(2). Election And Term Of Office. The officers of the Association to be elected by the directors shall be elected annually at the first meeting of the directors held after each annual meeting of the Members. Each officer shall hold office until his successor shall have been duly elected and shall have qualified or until his death or until he shall resign or shall have been removed in the manner hereinafter provided.

(3). Removal. Any officer or agent elected or appointed by the directors may be removed by the directors whenever in their judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

(4). Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the directors for the unexpired portion of the term.

(5). President. 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. He shall, when present, preside at all meetings of the Members and of the directors. He may sign, with the secretary or, any other proper officer of the Association thereunto authorized by the directors, certificates for membership of the Association, any deeds, mortgages, bonds, contracts, or other instruments which the directors have authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the directors or by these by-laws to some other officer or agent of the Association, or shall be required by law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the directors from time to time.

(6). Vice-President. In the absence of the president or in event of his death, inability or refusal to act, the vice-president shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-president shall perform such other duties as from time to time may be assigned to him by the President or by the directors.

(7). Secretary. The secretary shall keep the minutes of the Members' and of the Directors' Meetings in one or more books provided for that purpose, see that all notices are duly given in accordance with the provisions of these by-laws or as required, be custodian of the Association's records and of the seal of the Association and keep a register of the post office

address of each member which shall be furnished to the secretary by such member, have general charge of the membership transfer books of the Association and in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him by the president or by the directors.

(8). Treasurer. If required by the directors, the treasurer shall give a bond for the faithful discharge of his duties in such sum and with such surety or sureties as the directors shall determine. He shall have charge and custody of and be responsible for all funds and securities of the Association; receive and give receipts for moneys due and payable to the Association from any source whatsoever, and deposit all such moneys in the name of the Association in such banks, trust companies or other depositories as shall be selected in accordance with these by-laws and in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him by the president or by the directors.

(9). Salaries. The salaries of the officers shall be fixed from time to time by the directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the Association.

#### ARTICLE VIII - DUES AND ASSESSMENTS

(1). Dues.

a. Purpose. Dues may be established for the purpose of paying for the administrative functions of the Association to include any management fees, salaries, accounting, or other related administrative fees, property taxes and insurance. This shall hereafter be referred to as assessments.

b. Imposition. The annual dues as established by the Board of Directors shall be the same for each member of both Classes.

(2). Annual Assessments.

a. Purpose. Annual assessments shall be levied for the purpose of repairing and maintaining roads, lighting, the common areas, easements, community docks, community floating dock, and erosion control devices of the common property or other areas of common usage in and adjacent to the Property as designated by the members of this corporation from time to time and shall be established by class of memberships. There shall be two assessments; one for each class.

b. Imposition. The annual assessments proposed by the Board of Directors shall be submitted for approval by two-thirds (2/3) of the votes of members of the Association entitled to vote by class of membership. In the absence of approval by members, the assessments shall be set at the prior year's amount plus five percent (5%) until such time as the membership shall approve a different amount.

(3). Special Assessments.

a. Purpose. Special assessments may be levied for the purpose of improving or constructing improvements such as additions to the community docks, erosion control devices or

further improvement of common areas or amenities for the Property. Special assessment may also be levied to cover correction, repair or replacement of existing roads, common areas or community docks suffering unforeseen damage not covered by insurance or annual assessment. There shall be two special assessments; one for each class.

b. Imposition. Special assessments proposed by the Board of Directors shall state specific purpose, annual amount, and the term of years over which it will be assessed. Approval must be by two-thirds (2/3) of the votes of members of the corporation entitled to vote by class of membership. Once approved, no further vote must be taken as long as the purpose, amount, and term of the special assessment remains as originally voted upon. Any other need arising and requiring a special assessment vote shall be treated as separate and shall not be cause to require a vote on already approved special assessments.

(4). Uniform Rate Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots by class of membership and may be collected on an annual, monthly or other basis as determined by the membership. Initial amounts shall be annually. Class "B" members shall not pay any costs or assessments for the Dock Easement or Dock.

(5). Individual Assessment. Individual assessments shall be levied on members of the Association where the provisions of the Bylaws or the Restrictive Covenants have been violated.

(6). Date of Commencement of Dues and Annual Assessments and Initial Due Date. The dues and annual assessments provided for herein shall commence as to all Lots upon the first day of the month following the sale of the first Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year and due upon thirty (30) day written notice.

(7). Due Date of Annual Dues and Assessments. The annual due date of dues and assessments shall be January 1 of each calendar year. Notwithstanding, the Board of Directors may propose alternative dates for approval by a majority vote of the membership. Once established the due dates shall remain the same from year to year unless and until a new due date or dates is approved by the membership. Written notice of the dues, assessment amount and due date shall be sent to each member at least thirty (30) days in advance of each annual dues and assessment period.

(8). Certificate Of Standing. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on the Lot is binding upon the Association as to the date of its issuance.

(9). Default in Payment of Dues or Assessments.

a. When any member shall be in default in the payment of fees or assessments for a period of thirty (30) days from the date on which such fees or assessments become payable, he shall, for purposes of voting, not be considered as a member in good standing. In addition, such member shall be dropped from active membership and placed on the inactive list. Such member shall not be reinstated until he has paid his dues and assessments in full, and until such time as such member is reinstated, he shall have no rights of any kind arising out of membership in the Association.

b. There will be a late charge of five (5%) percent of any assessment due but not paid within fifteen (15) days of the due date.

c. If any member shall fail to pay his dues or assessments on or before the date on which the same becomes due, the amount of the unpaid dues or assessment shall become a lien on such member's Lot, with or without improvements thereon, in favor of the Association, and the Association shall have the right to record a notice of claim of lien, as a mortgage lien, and to proceed thereon in accordance with the laws of South Carolina for the foreclosure and enforcement of the lien; provided however, that the failure by the Association to record a notice of lien shall not affect the validity of its lien; or, in the event the Association shall not record a lien, it shall have the right to commence an in personam action against such member for the collection of the assessment in any court of competent jurisdiction; provided that in the event that the Association brings legal proceedings to foreclose the lien or brings an in personam action against such member there shall be added to the amount of the dues or assessments due, the costs for preparing and filing the complaint in such action, and in the event that the money judgment or judgment of foreclosure is obtained, such judgment shall include interest at the highest legal rate on the dues or assessments due as provided in the assessment and a reasonable attorney's fee together with the cost of the action. Said lien or judgment may be sold to a third party along with all rights of enforcement herein and under South Carolina law.

(10). Assignment of Dues and Assessments. In the event that any member whose dues and assessments are paid in full, shall, during the year in which such dues or assessments are paid, terminate his or her membership by the sale of his or her Lot in the Property, he or she shall be entitled to assign to the buyer of such Lot the benefit of the paid up dues and assessments.

(11). Option of the Declarants Concerning Assessments. Until such time as the Declarants have sold more than seventy-five (75%) percent of the total number of lots, the Declarants shall have the option, with respect of the lots owned by the Declarants of either paying the Association the annual and special assessments set forth herein or paying to the Association in lieu of all annual and special assessments, an assessment in an amount equal to the amount by which annual costs and expenses of the Association exceed the amount of money collected from all Class "A" and "B" Members. Said assessments shall be due and payable on the same day as the other annual assessments, and shall be a lien on the lot of the Declarants, and the Association shall be entitled to collect said assessments in the same manner as provided herein for the enforcement of annual and special assessments.

(12). Receipt of Membership Dues and Assessments. Any funds received from the Membership by the Association shall be applied as follows: 1) Any late fees due, 2) to any other fees or costs of collection due, 3) to the interest due, and 4) the remainder to the dues and assessments past due.

### **ARTICLE IX - MANAGING AGENT**

(1) Employment. The Board of Directors may appoint a Managing Agent entirely of its own choosing.

(2) Qualification. The Managing Agent may be a natural person or a corporation or other legal entity.

(3) Authorities and Duties. The Managing Agent shall, on behalf of and as directed by the Board of Directors, provide the following:

(a). Surveillance of the property, the maintenance repair and replacement of the roads, common areas and community docks, and the designation and dismissal of the personnel necessary to accomplish the same;

(b). The collection of dues and assessments from the members;

(c). The procuring and keeping in force of insurance on the property and the adjusting (including the execution and delivery of releases upon payment) of claim against such policies as are obtained;

(d). The enactment of reasonable regulations governing the operation and use of the roads, common areas and community docks;

(e). The enforcement of the terms of the Deeds, these Bylaws, the Restrictive Covenants and any Regulations promulgated pursuant to the Bylaws;

(f). To otherwise administer the Association on behalf of and for the benefit of the members;

(g). To provide such other services and perform such other duties as authorized and directed from time to time by the Board of Directors;

(h). The Managing Agent shall confer fully and freely with the membership and shall attend meetings of the corporation.

#### **ARTICLE X - CONTRACTS, LOANS, CHECKS AND DEPOSITS**

(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 and on behalf of the Association, and such authority may be general or confined to specific instances.

(2). Loans. No loans shall be contracted on behalf of the Association and no evidences of indebtedness shall be issued in its name unless authorized by a resolution of the directors. Such authority may be general or confined to specific instances.

(3). Checks, Drafts, etc. All checks, drafts or other orders for the payment of money, notes or other evidences of indebtedness issued in the name of the Association, shall be signed by such officer or officers, agent or agents of the Association and in such manner as shall from time to time be determined by resolution of the directors.

(4). Deposits. All funds of the Association not otherwise employed shall be deposited from time to time to the credit of the Association in such banks, trust companies or other depositories as the directors may select.

**ARTICLE XI- FISCAL YEAR**

The fiscal year of the Association shall begin on the 1<sup>st</sup> day of January in each year.

**ARTICLE XII - SEAL**

The directors shall provide an Associations Seal which shall be circular in form and shall have inscribed thereon the name of the Association, the state of incorporation, year of incorporation and the words, "Corporate Seal".

**ARTICLE XIII - WAIVER OF NOTICE**

Unless otherwise provided by law, whenever any notice is required to be given to any member or director of the Association under the provisions of these by-laws or under the provisions of the articles of incorporation, a waiver thereof in writing, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

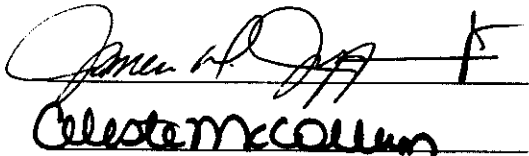
**ARTICLE XIV - AMENDMENTS**

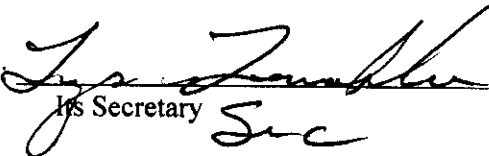
These by-laws may be altered, amended or repealed and new by-laws may be adopted by a two-thirds (2/3) vote of the Members representing a majority of all the memberships issued and outstanding, at any annual Members' meeting or at any special Members' meeting when the proposed amendment has been set out in the notice of such meeting. If an amendment of these Bylaws or any provision of these Bylaws are in conflict with the Restrictive Covenants the Restrictive Covenants shall control and be binding on the Membership.

IN WITNESS WHEREOF, the undersigned has hereunto authorized his name and affixed the seal of the corporation this 12<sup>th</sup> day of October, 2001.

ATTEST:

**SPARTINA BAY PLANTATION PROPERTY OWNERS ASSOCIATION, INC.**

  
Celeste McCollum

BY:  (SEAL)  
Its Secretary

**BARR, UNGER & McINTOSH, L.L.C.**

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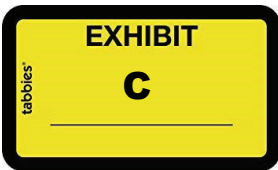
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COUNTY OF CHARLESTON )  
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**EASEMENT AGREEMENT**

This Easement Agreement (the "Agreement") is made, entered into, and effective this 25<sup>th</sup> day of January, 2012, by and between James L. Cox and Catherine T. Cox ("the Grantors") and Spartina Bay Plantation Property Owners Association, Inc. (the "Grantee").

WITNESSETH

WHEREAS, the Grantors are the owners of the real property situated in Charleston County, South Carolina, and more fully described in Deed from Internal Revenue Service, Jeannine A. Hammett Special Agent in Charge, Criminal Investigation, Internal Revenue Service, Charlotte Field Office to James L. Cox and Catherine T. Cox dated March 29, 2010 and recorded on April 2, 2010 in the Charleston County RMC Office in Book 0115, Page 404;

WHEREAS, the Grantee is the owner of property located near the Grantors' property; and

WHEREAS, the parties hereto desire to enter into the within agreement with regard to an easement;

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, along with the mutual covenants and agreements contained herein, the Parties covenant and agree as follows:

1. Incorporation of Recitals: The Parties acknowledge that the foregoing recitals are true and correct and are incorporated into this Agreement as if fully set forth herein.

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2. 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 hereby reserve the right, for itself and its tenants, invitees, permittees, agents, representatives, successors and assigns, to use the Access Easement in common with Grantee for any purposes not inconsistent with Grantee's rights under this Agreement.

3. Easement Appurtenant. The Access Easement shall not be an easement in gross but shall be an easement appurtenant to the Grantee Property and shall be enforceable by the Grantee and its' successors, heirs, and assigns. The Access Easement shall run with the land and title to the Grantee Property as a burden on the Grantor property and a benefit to the Grantee Property.

4. No Impediments. No barriers, impediments or obstructions of any kind shall be erected, built or placed within the Easement Area which may impede or hinder the free flow of traffic through the Easement Area, except with the prior written consent of the Grantee, or except for temporary interruptions or relocations relating to routine maintenance or repairs which do not materially impair the rights of ingress and egress granted hereby. Any trees or other impediments currently within the easement area at the



action shall be entitled to its court costs and reasonable 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.

9. Amendment. This Agreement may be modified or amended, in whole or in part, only by the written consent of all the parties involved in this Agreement.

10. Severability. If any term, covenant or condition of this Agreement or the application thereof to any person or circumstance shall, to the extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each such term, covenant or condition of this Agreement shall be valid and enforceable to the full extent permitted by law.

11. Construction. As used in this Agreement, the masculine, feminine or neuter gender and the singular or plural number shall each include the others whenever the context so indicates. This Agreement shall be construed as a whole and in accordance with its fair meaning and without regard to any presumptions or other rule regarding and construction against the person or entity preparing the Agreement or any part thereof.

12. Governing Law. The terms of this Agreement shall be construed in accordance with and governed by the laws of the State of South Carolina.

13. Integration. 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.

14. Notice. Any notices given pursuant to this Agreement shall be in writing, and shall be personally delivered or deposited in the United States certified mail, postage prepaid, return receipt requested, at the following addresses:

***Grantors: James and Catherine Cox***

*1499 Marsh Bluff Court*

*Edisto Island, SC 29438*

***Grantee: Spartina Bay Plantation Property Owners Association, Inc.***

*2410 Highway 174*

*Edisto Island, SC 29438*

15. Successors and Assigns. The terms, conditions and requirements of this Agreement shall be binding on and inure to the benefit of the Parties and their respective heirs, successors and assigns.

16. Counterparts. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one Agreement.

17. Time of Essence. Time is of the essence of this Agreement. However, if the final date of any period which is set out in any provision of this Agreement falls on a Saturday, Sunday or legal holiday under the laws of the United States or the State of South Carolina, then, in such event, the time of such period shall be extended to the next day which is not a Saturday, Sunday or legal holiday. As used herein, the term “business day” shall mean any day which is not a Saturday, Sunday or legal holiday.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

WITNESSES:

Jaqueline Burns  
Jaqueline Burns  
Molly E. McKelvey

GRANTORS:

James L. Cox  
Catherine T. Cox

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of January, 2012, by James L. Cox and Catherine T. Cox.

Molly E. McKelvey  
Notary Public of South Carolina  
My Commission Expires: 3/30/2019



# RECORDER'S PAGE



**NOTE:** This page **MUST** remain with the original document

*Handwritten initials*

**Filed By:**

DEJONG LAW FIRM, LLC  
 940 JOHNNIE DODDS BLVD.  
 SUITE 203  
 MT. PLEASANT SC 29464

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**RECIPIENT:**

SPARTINA BAY PLTN POA

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Extra Pages	\$ 3.00
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

LEASE



THIS LEASE is made and executed on the 12<sup>th</sup> day of October, 2001, by and between PETERS POINT TRUST (hereinafter referred to as "Landlord"), and the SPARTINA BAY PLANTATION PROPERTY OWNERS ASSOCIATION, INC., (hereinafter referred to as "Tenant").

**SECTION ONE**

**DEMISE**

Landlord leases to Tenant the property more particularly described on Exhibit "A" attached hereto and incorporated herein, located on Edisto Island, County of Charleston, State of South Carolina.

**SECTION TWO**

**TERM**

The term of this Lease shall be ninety nine (99) years and shall commence as of the 1<sup>st</sup> day of October, 2001, and shall continue through the last day of September, 2100. The Tenant may have this Lease recorded if it so desires.

**SECTION THREE**

**TRIPLE NET LEASE**

Tenant shall pay all utilities, maintenance, taxes, insurance, liability insurance, and any and all expenses incurred on behalf of the property. This is a triple net lease.

**SECTION FOUR**

**RENT**

a. Tenant shall pay to Landlord for the demised premises a rent in the amount of Ten and 00/100 (\$10.00) Dollars per year, which rent shall be due and payable on the first day of January each year.

b. As additional rent the Tenant shall pay for all property taxes, and special assessments against the property for both the real and personal property located thereon. This includes the common dock attached to the property. The leased property is presently taxed as a part of a larger tract of land. The Tenant shall pay to the Landlord a sum of 25% of the total tax bill for said parcel. If the Landlord or its successors or assigns construct improvements on the larger parcel the percentages shall be adjusted based upon values of the property.

#### **SECTION FIVE**

#### **USE OF PREMISES**

The demised premises may be used by the Tenant for the purpose of access to the common dock for the Class "A" members. The dock is attached to subject property and owned by the Trust. The Tenant may make improvements as needed to support the common dock. Tenant further agrees that it will not engage in any unlawful or illegal activity, nor allow or suffer any activity upon the premises, creating a hazard to subject property or tending to cause a breach of the peace. Tenant shall at all times keep the premises in a neat and orderly maintained manner, free of trash, debris, rubbish and the emission of odors or gases. Landlord shall have the right, upon giving Tenant reasonable notice, to inspect the premises for such purpose.

#### **SECTION FIVE**

#### **UTILITIES**

Tenant shall pay all cost of utilities, to include electricity, gas, water and telephone, for the adjacent dock during the period of the lease or any improvements added to the property.

#### **SECTION SIX**

#### **DEFAULT**

If Tenant shall fail or neglect to observe, keep or perform any of the covenants, terms or conditions herein contained on its part to be observed, kept, or performed, and such default shall

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continue for a period of thirty (30) days after written notice from Landlord setting forth the nature of Tenant's default, then and in any such event, Landlord shall have the right at its option without forthwith to terminate this Lease and all rights of the Tenant thereunder shall cease, and the Landlord shall have the right immediately to enter the demised premises and take possession thereof with or without process of law and to remove all personal property from the premises and all persons occupying the premises and to use all necessary force therefor and in all respects to take the actual, full and exclusive possession of the premises and every part thereof as of Landlord's original estate, without incurring any liability to Tenant or to any person occupying or using the premises for any damage caused or sustained by reason of such entry on the premises or such removal of such persons or property therefrom.

#### **SECTION SEVEN**

#### **QUIET ENJOYMENT**

Landlord covenants that Tenant upon performing the covenants aforesaid, shall and may peacefully and quietly have, hold and enjoy the said leased premises for the terms aforesaid subject to revisions thereof.

#### **SECTION EIGHT**

#### **MAINTENANCE AND UPKEEP**

Tenant hereby accepts the dock on the demised property "as it exists" without any warranties, obligation, or commitments on behalf of Landlord. Tenant further agrees to be fully responsible for all maintenance, upkeep, and improvements of the dock and grounds. Landlord shall not be responsible for any maintenance, cosmetically or structurally.

#### **SECTION NINE**

#### **INDEMNIFICATION & INSURANCE**

(a) Tenant agrees to indemnify and save harmless the Landlord from any claim or loss by reason of an accident or **damage** to any person or property happening on or about the demised premises.

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(b) Tenant further agrees to carry, and will furnish to the Landlord a certificate of insurance prior to occupancy on the demised premises, at its expense, providing public liability insurance coverage, with a contractual liability endorsement on the policy, in a company qualified to transact business in the State of South Carolina, in which the demised premises are located, stipulating limits of liability of not less than One Million and 00/100 (\$1,000,000.00) Dollars for an accident affecting any one or more persons and Fifty Thousand and No/100 (\$50,000.00) Dollars property damage. The certificate of such coverage from the insurer must provide for thirty (30) days' notice to Landlord prior to cancellation or termination.

**SECTION TEN**

**GENERAL PROVISIONS**

(a) All signs placed on said premises shall be subject to the approval of the Landlord.

(b) This Lease and all the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of both parties hereto in like manner as if each had been enumerated in every instance in which said parties are mentioned herein.

(c) If the said premises shall be destroyed by fire, elements of unavoidable casualty, totally or partially, either party may terminate this Lease by notice in writing to the other.

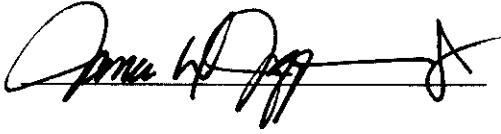
(d) If the Tenant dissolves, becomes inactive, or is no longer an operative property owners association, the lease shall be automatically null and void and occupancy of the property shall revert back to the Landlord. If the Tenant votes to abandon the dock as provided in the Restrictive Covenants, then this lease shall be null and void.

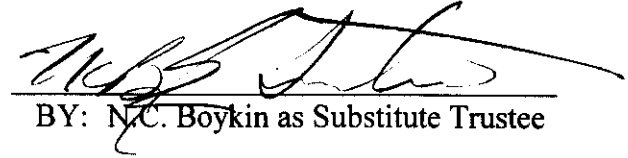
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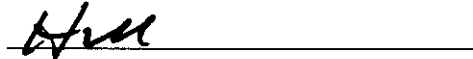
IN WITNESS WHEREOF, the parties have executed this Lease at Edisto Island, South Carolina.

Signed, Sealed and Delivered  
in the Presence of:

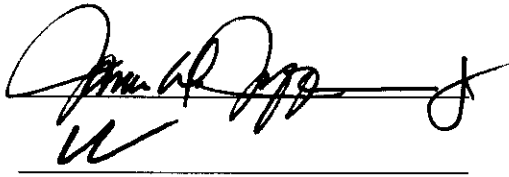
N.C. BOYKIN as SUBSTITUTE TRUSTEE  
PETERS POINT TRUST  
"LANDLORD"

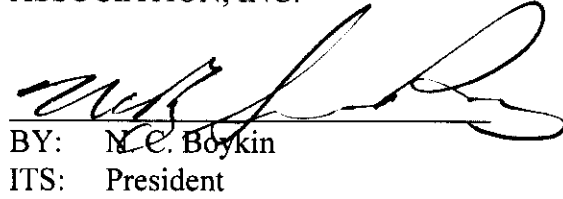
  
\_\_\_\_\_

  
BY: N.C. Boykin as Substitute Trustee

  
\_\_\_\_\_

SPARTINA BAY PLANTATION  
PROPERTY OWNERS  
ASSOCIATION, INC.

  
\_\_\_\_\_

  
BY: N.C. Boykin  
ITS: President

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON ) ACKNOWLEDGMENT

The foregoing instrument was acknowledged by me this 12<sup>th</sup> day of October by N. C. Boykin as Substitute Trustee Peters Point Trust and N. C. Boykin as President of the Spartina Bay Plantation Property Owners Association, Inc.

Charlotte D. Noh (SEAL)  
Notary Public for South Carolina

My Commission Expires: 5/21/02

**EXHIBIT "A"**

TRACT 1: All that certain piece, parcel or strip of land situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as "25' DOCK INGRESS/EGRESS EASEMENT" on 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" dated September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book DD at Page 27, said strip having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully, and at large appear.

TRACT 2: All that certain piece, parcel or tract of marshland situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, being shown and designated as "2.95 ACRES MARSH" on 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" dated September 17, 2001, and recorded in the RMC Office for Charleston County in Plat Book DD at Page 27, said tract of marshland having such size, shape, dimensions, buttings and boundings as by reference to said plat will more fully and at large appear.

BKG 390PG264

**BARR, UNGER & McINTOSH, L.L.C.**



FILED

G 390-257

2001 DEC -7 PM 12:43

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

13.00  
C

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

FIRST AMENDMENT TO  
DECLARATION OF RESTRICTIVE  
COVENANTS, CONDITIONS AND  
RESTRICTIONS OF SPARTINA BAY  
PLANTATION SUBDIVISION



ELECTRONICALLY FILED - 2022 Oct 26 3:53 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1004952

This FIRST AMENDMENT TO DECLARATION OF RESTRICTIVE COVENANTS, CONDITIONS AND RESTRICTIONS OF SPARTINA BAY PLANTATION SUBDIVISION is made this 17 day of March, 2005, by N. C. Boykin as Trustee of the Store Creek Land Trust and N. C. Boykin as Substitute Trustee of the Peters Point Trust, Barry McRoy, Mark McRoy and Keith McRoy as owners of Lot 3 of Spartina Bay Plantation Subdivision, and Ronald F. Farrell as owner of Lot 4 of Spartina Bay Plantation Subdivision, hereinafter collectively referred to as "Declarant."

**RECITALS**

**WHEREAS**, N. C. Boykin as Trustee of the Store Creek Land Trust, and N. C. Boykin as Substitute Trustee of the Peters Point Trust subjected certain real property situate on Edisto Island in Charleston County to a Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision, dated October 13, 2001 and recorded in the RMC Office for Charleston County in Book D 385 at Page 260 (hereinafter referred to as the Original Declaration), and

**WHEREAS**, certain lots within the Property have been conveyed to certain individuals, and said individual Lot Owners, N. C. Boykin as Trustee of the Store Creek Land Trust and N. C. Boykin as Substitute Trustee of the Peters Point Trust , representing One Hundred (100%) percent of the owners of said Property, are desirous of executing and recording this Amendment of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision to provide for the allocation and conveyance of dock spaces on the Property community dock;

**DECLARATIONS**

**NOW, THEREFORE**, the Declarant, representing One Hundred (100%) percent of the Property Owners, hereby declare that the Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision, dated October 13, 2001 and recorded in the RMC Office for Charleston County in Book D 385 at Page 260 are hereby amended as follows:

1. Amend Article VI, Section 1 as stated in the Original Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision, dated October 13, 2001 and recorded in the RMC Office for Charleston County in Book D 385 at Page 260 to read as follows:

Section 1. The Ownership and Use of the Dock. The Property Owners Association shall own or lease the dock as shown on the permit attached to the Original Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision, dated October 13, 2001 and recorded in the RMC Office for Charleston County in Book D 385 at Page 260 as Exhibit "C" as well as the strip of land designated as Dock Easement on a plat referred to in Exhibit "B". The use of these portions of the Common Property and Facilities (Dock) shall

AMENDMENT OF RESTRICTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS  
OF SPARTINA BAY PLANTATION SUBDIVISION  
Page 1 of 5

belong to Class "A" Members of the Association and the Declarant only. The rights to use the walkway, fixed dock area, and the floating docks shall belong to the Class "A" Members only. The Property Owners Association shall receive a deed or lease for the strip of land designated as Dock Easement and a Bill of Sale for the Dock prior to the first sale of the first lot within the subdivision. The rights of the Class "A" Membership herein shall run with the ownership of Lots within the Class "A" and shall not be assigned or sold separately by any Lot Owner except as provided in Section 4 of this Article. Dock slips shall be assigned to the Lots within the subdivision as follows:

Dock Slip A is assigned to Lot 8  
 Dock Slip B and the boat lift are assigned to Lot B  
 Dock Slip C is assigned to Lot 4  
 Dock Slip D is assigned to Lot 1  
 Dock Slip E is assigned to Lot 6  
 Dock Slip F is assigned to Lot 7  
 Dock Slip G is assigned to Lot 3  
 Dock Slip H is assigned to Lot 5

2. Amend "Exhibit B" as referred to in the Original Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision, dated October 13, 2001 and recorded in the RMC Office for Charleston County in Book D 385 at Page 260 to delete the existing property description and replace it with the following:

**EXHIBIT "B"**

All that certain piece, parcel or tract of land, situate, lying and being in Edisto Island in the County of Charleston, State of South Carolina, containing 1.3578 acres, more or less, of highland, and 2.7038 acres, more or less, of marsh, and being designated as Lot B – Highland and Lot B- Marsh, as shown on a plat prepared by Robert L. Frank, RLS #4177, entitled "A BOUNDARY SURVEY, CUL DE SAC ABANDONMENT, AND DOCK EASEMENT ADJUSTMENT OF LOT B LOCATED ON EDISTO ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA" dated April 2, 2003, and recorded in the RMC Office for Charleston County in Plat Book EG at Page 457, said plat being incorporated herein as part of this description and said tract being bounded now or formerly and measuring more or less as follows: On the Northeast by Store Creek, and measuring thereon Three Hundred Seventy-nine and eighteen one-hundredths (379.18') feet; on the East and Northeast by highland and marsh belonging to Helen P. Rowland and Steve R. Rowland and measuring thereon Three Hundred Sixty (360.00') feet and Four Hundred Eighty Five and forty-two one hundredths (485.42') feet, respectively; on the Southeast by an existing Private Right of Way Easement and measuring thereon One Hundred Thirty-Four and ninety-eight one hundredths (134.98') feet, and on the Southwest by lands of John R. Hamrick and Meredith Family, LLC and measuring thereon Seven Hundred Thirty and eighty-three one hundredths (730.83') feet and Four Hundred Forty-Four and twenty-seven hundredths (444.27') feet; respectively.

IN WITNESS WHEREOF, the undersigned, being One Hundred (100%) percent of the Property Owners hereunto set their hands and seals as of the date first above written.

AMENDMENT OF RESTRICTIVE COVENANTS,  
 CONDITIONS AND RESTRICTIONS  
 OF SPARTINA BAY PLANTATION SUBDIVISION  
 Page 2 of 5



OWNERS OF LOT 3

Signed, Sealed and Delivered  
in the presence of:

BY: Barry McRoy (SEAL)  
BARRY McROY

BY: Mark McRoy (SEAL)  
MARK McROY

BY: Keith McRoy (SEAL)  
KEITH McROY

Audrey S. Crosby

James P. [Signature]

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON     )

ACKNOWLEDGMENT

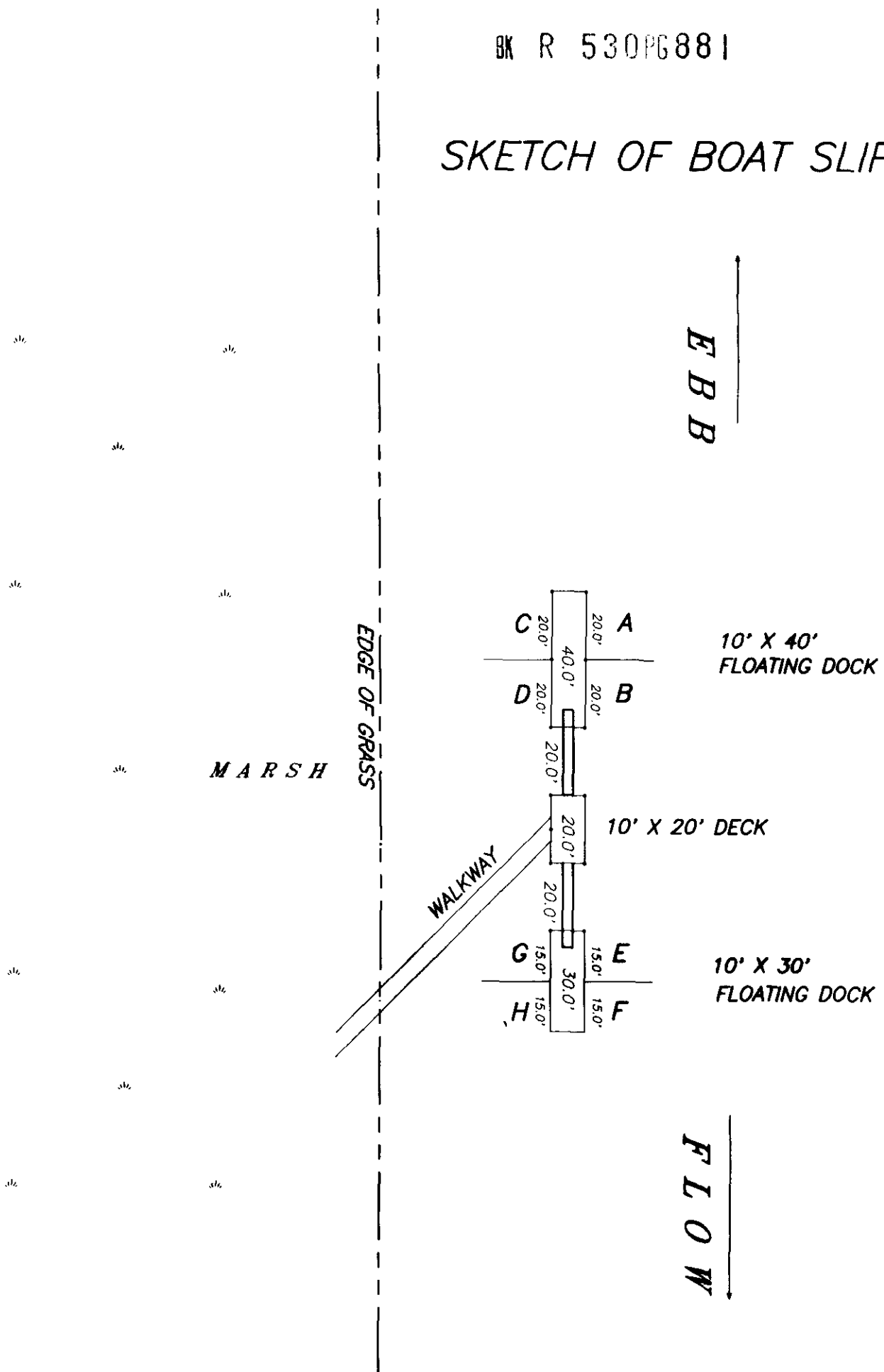
The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of March, 2005 by Barry McRoy, Mark McRoy, and Keith McRoy, owners of Lot 3, Spartina Bay Plantation Subdivision..

Audrey S. Crosby (SEAL)  
Notary Public for South Carolina  
My commission expires: 4-16-08



BK R 530PG881

# SKETCH OF BOAT SLIPS



17.00  
B

BK R 530PG882

FILED

R 530-876

2005 MAR 28 PM 12: 16

CHARLIE LYBRAND  
REGISTER  
CHARLESTON COUNTY SC

Barr, Unger +  
McIntosh, LLC  
111-A E. Washington St  
Walterboro, SC  
29488-  
3915

Wmfl-~



BP0115404



PREPARED BY:

**Weeks Foti & Irvine, LLC**  
106 W. 7th North Street  
Summerville, SC 29483

MAIL TAX STATEMENTS TO:

**INTERNAL REVENUE SERVICE DEED**

**KNOW ALL MEN BY THESE PRESENTS:**

That **THE UNITED STATES OF AMERICA**, acting by and through the Internal Revenue Service, as grantor, Jeannine A. Hammett Special Agent in Charge, Criminal Investigation, Internal Revenue Service, Charlotte Field Office, in consideration of the bid of **FOUR HUNDRED FIFTY THOUSAND AND NO/100 (\$450,000.00)** to the Grantor in hand paid at and before the sealing of these presents by James L. Cox and Catherine T. Cox, the Grantees whose address is set forth herein below, has granted, bargained, sold and transferred and by these presents does grant, bargain sell and transfer unto grantee all right, title and interest in and to the following property:

**SEE EXHIBIT "A" FOR LEGAL DESCRIPTION OF PROPERTY**

Grantees' Address: P.O. Box 1986 Summerville, SC 29484

No warranties, expressed or implied, with reference to marketability, salability, transferability or insurability of title are included herein and the grantee expressly agrees to accept whatever quality of title the United States may possess at this time.

**TO HAVE AND TO HOLD THE SAME** together with all singular the appurtenances thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim whatsoever in the said property either in law or equity, to the use, benefit and behoove of the Grantee, its successors and assigns forever. Said property has been in custody and control of the United States of America, and pursuant to the order of this Court in Criminal No. 3:07-929, in the District Court of the United States for the District of South Carolina, the **SPECIAL AGENT IN CHARGE, Criminal Investigation, Internal Revenue Service**, has been directed to dispose of said property.

*SV10-01510W Cox*  
**Weeks Foti & Irvine, LLC**  
106 W. 7th North Street  
Summerville, SC 29483

This deed is executed to consummate the sale made by the SPECIAL AGENT IN CHARGE, Criminal Investigation, Internal Revenue Service, Charlotte Field Office, in accordance with the terms of the Final Order of Forfeiture entered by the United States District Court for the District of South Carolina, in the case of the United States of America v. Charlene Corley, C&D Distributors, LLC, with all appurtenances and improvements thereon, et al, which the Grantee was the successful bidder for the property herein described.

IN WITNESS WHEREOF, I have signed and sealed these presents

this 29<sup>th</sup> day of March, 2010.

Kathy G. Hout  
WITNESS

Kathy G. Hout  
PRINTED NAME

Elliott Cone  
WITNESS

ELLIOTT CONE  
PRINTED NAME

THE UNITED STATES OF AMERICA,  
ACTING BY AND THROUGH THE  
INTERNAL REVENUE SERVICE

[Signature]  
Jeannine A. Hammett  
Special Agent in Charge  
Criminal Investigation  
Internal Revenue Service  
Charlotte Field Office

STATE OF )  
COUNTY OF )

Before the undersigned authority, this day, personally appeared Jeannine A. Hammett, SPECIAL AGENT IN CHARGE, who acknowledged to me that he/she executed the foregoing instrument for the purpose and consideration therein expressed and who is personally known to me or who produced a driver's license or \_\_\_\_\_ as identification.

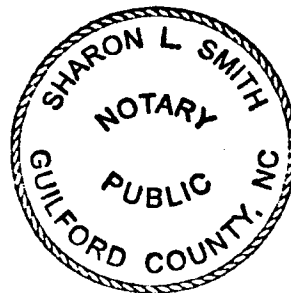
WITNESS my hand official seal at Guilford County,

this 29 day of March, 2010.

Sharon Smith  
Notary Public

Sharon Smith  
Printed Name

My commission expires: April 29<sup>th</sup>, 2013



**EXHIBIT "A"**  
**Legal Description**

All that certain piece, parcel or tract of land, with buildings and improvements thereon, situate, lying and being on Edisto Island in the County of Charleston, State of South Carolina, containing 1.3578 acres, more or less, of highland, and 2.7036 acres, more or less, of marsh, and being shown and designated as "LOT B-HIGHLAND" and "LOT B-MARSH" on a plat prepared by Robert L. Frank, RLS #4177, entitled "A BOUNDARY SURVEY, CUL DE SAC ABANDONMENT, AND DOCK EASEMENT ADJUSTMENT OF LOT B LOCATED ON EDISTO ISLAND CHARLESTON COUNTY, SOUTH CAROLINA" dated April 2, 2003, revised June 19, 2003, and recorded in the RMC Office for Charleston County in Plat Book EG at Page 457, said plat being incorporated herein as a part of this description and said tract being bounded now or formerly and measuring more or less as follows: On the Northeast by Store Creek and measuring thereon Three Hundred Seventy-nine and Eighteen Hundredths (379.18') feet; on the East and Northeast by marsh and by highland belonging to Steve R. and Helen P. Rowland and measuring thereon Four Hundred Sixty-five and Forty-two Hundredths (465.42') feet and Four Hundred Thirteen and Seventy-seven Hundredths (413.77') feet, respectively; on the Southeast by a 50' R/W Easement and measuring thereon One Hundred Thirty-four and Ninety-six Hundredths (134.96') feet; and on the Southwest by highland and by marsh belonging to Meredith Family, LLC, and measuring thereon Four Hundred Forty-four and Thirty-seven Hundredths (444.37') feet and Seven Hundred Thirty and Eighty-three Hundredths (730.83') feet, respectively.

AND BEING the same property conveyed to C&D Distributors, LLC from Newton Cooke Boykin by Title to Real Estate (General Warranty Deed) dated August 21, 2006 and recorded August 23, 2006 in Deed Book R595, Page 555; AND FURTHER CONVEYED to United States of America by Amended Final Order of Forfeiture recorded June 19, 2009 in Deed Book ~~63~~, Page 669.

0062

Tax Parcel No. 025-00-00-038

STATE OF SOUTH CAROLINA )

Date of Transfer of Title

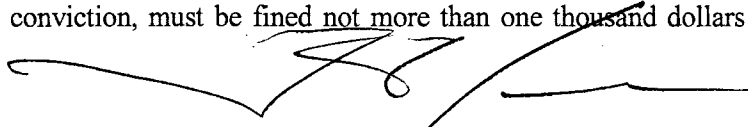
) AFFIDAVIT

March 25, 2010

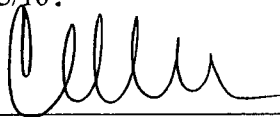
COUNTY OF Charleston )

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 Unites States of American, acting by and through the Internal Revenue Service TO James L. Cox and Catherine T. Cox ON 03/25/10.
3. Check one of the following: The deed is:
  - (a)  x  subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
  - (b)   subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
  - (c)   EXEMPT from the deed recording fee because (Exemption n/a ) (Explanation, if required: n/a If exempt please skip items 4-6 and go to Item #7 of this affidavit.
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
  - (a)  x  The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$450,000.00
  - (b)   The fee is computed on the fair market value of the realty, which is n/a
  - (c)   The fee is computed on the fair market value of the realty as established for property tax purposes which is n/a
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 n/a.
6. The DEED Recording Fee is computed as follows:
  - (a)  \$450,000.00  the amount listed in Item #4 above
  - (b)  0.00  the amount listed on Item #5 above (no amount, please zero)
  - (c)  \$450,000.00  subtract Line 6(b) from Line 6(a) and place the result here.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as closing attorney.
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

  
 \_\_\_\_\_  
 Grantor, Grantee or Legal Representative  
 Connected with this Transaction

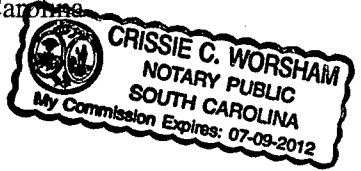
SWORN to before me this 03/25/10.

  
 \_\_\_\_\_

Notary Public for South Carolina  
My Commission expires:

JOSEPH F. HAND JR.

Print or Type Name Here



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# RECORDER'S PAGE

NOTE: This page MUST remain with the original document



Filed By:

WEEKS, FOTI & IRVINE

## RECORDED

Date: April 2, 2010

Time: 2:42:13 PM

Book	Page	DocType
0115	404	Deed

Charlie Lybrand, Register  
Charleston County, SC

MAKER:

US OF AMERICA

RECIPIENT:

COX JAMES L AL

Note:

# of Pages: 5

Recording Fee \$ 10.00

State Fee \$ 1,170.00

County Fee \$ 495.00

Extra Pages \$ -

Postage \$ -

Chattel \$ -

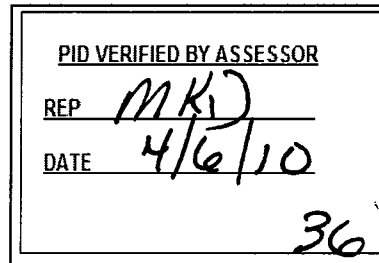
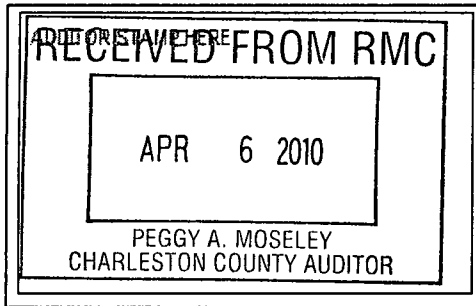
TOTAL \$ 1,675.00

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0115  
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5  
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14:42:13  
Recorded Time



July 14, 2022

**CERTIFIED MAIL**  
**ARTICLE NO.:**

91 7199 9991 7030 0131 3239

Re: NOTICE TO COMPLY AI-0004400  
Unauthorized Structure and Unauthorized Change in Use of Dock

Stephen C. and Randi Popp Wells  
1499 Marsh Bluff Court  
Edisto Island, SC 29438

Dear Stephen C. and Randi Popp Wells,

On June 20, 2022, an inspection was conducted by staff of the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management (Department) at your property located on and adjacent to the tidelands and coastal waters critical areas of Store Creek at 1499 Marsh Bluff Court, Edisto Island, Charleston County, SC (PID 0250000038) (Site). Department staff observed the following in the tidelands critical area without authorization from the Department:

- 12' by 24' deck on upland extending over critical area

Additionally, Department staff has been made aware of an advertisement, via the website "Missin' Link Outdoors", for commercial fishing charters operating from the existing community dock at the Site, which was authorized by Critical Area Permit #99-1E-382 (Permit). This advertisement demonstrates a change in use from a community dock to a commercial dock.<sup>1</sup> This change in use is unauthorized and requires a permit from the Department.

The South Carolina Coastal Zone Management Act (Act) and Coastal Division Regulations (Regulations) require that any utilization/alteration of the critical area be permitted or otherwise legally authorized by the Department prior to performing the activity.<sup>2</sup> By way of this notice, the Department is asserting a violation of the Act. In order to be in compliance with the Act, Regulations and Permit, you must remove the portion of the 12' by 24' deck extending over critical area and cease all commercial activities associated with the dock.


Please contact me at (803) 667-1314 or [woodruck@dhec.sc.gov](mailto:woodruck@dhec.sc.gov) so that we can work to resolve this matter through the compliance assistance process. Failure to comply with this directive within 30 days of your receipt of this letter may result in an enforcement action being initiated by the Department which can include the assessment of civil penalties.<sup>3</sup> Thank you for your cooperation and I look forward to hearing from you regarding the resolution of this matter.

<sup>1</sup> S.C. Code Ann. Regs. 30-12(A)(1)(r)

<sup>2</sup> S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

<sup>3</sup> S.C. Code Ann. §48-39-170

Respectfully,



Chelsea Woodruff  
Enforcement Project Manager  
Office of Ocean and Coastal Resource Management

cc: Glen Dill, President, SBPPOA Inc.  
Bobby "Link" Crapps, Owner, Missin' Link Outdoors



July 14, 2022

**CERTIFIED MAIL**

**ARTICLE NO.:** 91 7199 9991 7030 0131 3222

Re: NOTICE TO COMPLY AI-0004400  
Unauthorized Structure and Unauthorized Change in Use of Dock

Glen Dill  
1424 Marsh Bluff Court  
Edisto Island, SC 29438

Dear Glen Dill,

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<sup>1</sup> S.C. Code Ann. Regs. 30-12(A)(1)(r)

<sup>2</sup> S.C. Code Ann. §48-39-130(A) & S.C. Code Ann. Regs. 30-2(B)

<sup>3</sup> S.C. Code Ann. §48-39-170

Respectfully,

A handwritten signature in black ink that reads "Chelsea Woodruff". The signature is written in a cursive, flowing style.

Chelsea Woodruff  
Enforcement Project Manager  
Office of Ocean and Coastal Resource Management

cc: Bobby "Link" Crapps, Owner, Missin' Link Outdoors.  
Stephen C. and Randi Popp Wells



**Spartina Bay Plantation Property Owners Association, Inc  
1487 Marsh Bluff Ct  
Edisto Island, SC 29438**

2022 Officers  
Eddie Evans, President  
Janet Phillips, Secretary  
Jamie Crapps, Treasurer

2022 Board Members  
Eddie Evans, Chairman  
Keith Phillips  
Tyree Moore  
Bobby Crapps  
Teresa Roof

September 24, 2022

**SENT VIA REGISTERED MAIL**

Steve & Rondi Wells  
1499 Marsh Bluff Ct  
Edisto Island, SC 29438

Steve/Rondi,

As a follow up to our letter of July 22, 2022 regarding the position of the Spartina Bay Board of Directors, a special meeting of the SBPPOA, INC Board of Directors was held on September 19, 2022 and unanimously decided upon the following action:

**Background**

While it was understood by all parties that DHEC conducted an inspection of the SBPPOA Community Dock and found non-compliance issues, the resolution to these items were disputed. As outlined below, the Board has determined that your unilateral act to remove all of the Deck constitutes a violation of the Declaration of Restrictive Covenants, Conditions and Restrictions of Spartina Bay Plantation Subdivision. Accordingly, the POA Board of Directors has determined through a special meeting that an Individual Assessment will be levied on the offending member.

**Violation**

The Covenants set forth the definition of "Common Area and Facilities" as "areas and structures designated for the common use of member by Class of Spartina Bay Property Owners Association, Inc. initially including the right of way for Marsh Bluff Court..., the community docks access easement..., and the community docks as described in the Dock Permit."

The deck was within the community ingress/egress access area and has at all times prior been for common use by members, the deck was a "Common Area and Facility" as defined in the Covenants.

**Article VI** clearly provides that the POA "shall own or lease the dock ... as well as the strip of land designated as Dock Easement..."

**Article VIII** provides that “Every Member in good standing shall have the right and easement of enjoyment in and to the Common Areas and Facilities afforded his/her or its class of membership.”

Additionally, **Article IX** of the Covenants states that “the Association shall provide for the maintenance, repair and replacement of roads, common areas and community dock.” Your actions in the destruction of a common element, without prior approval by the Association is a direct and willful violation of the Covenants.

### **POA Assessment**

**The Bylaws (Art. III)** allow the POA to “set forth the necessary rules and regulations...” which govern the members’ use of the subdivision.

Article V, Section 13

**Article IV, Section 1** of the Covenants gives authority to the POA to “levy ... for the purpose of defraying ... the cost on any maintenance or repair of any common areas...”

**Article V, Section 13(Second Amendment)** of the Covenants state “No action of any type will be unilaterally taken by any Spartina Bay Plantation Subdivision Property Owner which will, in the judgement of the SBPPOA, INC Board of Directors, increase or have the potential to increase the costs of the SBPPOA, Inc.”

**The Bylaws (Art. VIII)** – Dues and Assessments, Section 5 (“Individual Assessment”), provide those individual assessments “shall be levied on members of the Association where the provisions of the Bylaws or Restrictive Covenants have been violated.”

**The initial Assessment shall be equal to the cost of deck replacement approximately 10’ x 24’ determined to be \$2500.**

You are hereby given notice that you have thirty (30) days from the date of this notice on which to pay the assessment, after which time you may “not be considered as a member in good standing” unless reinstated pursuant to Bylaws Art. VIII, Section 9.

**Bylaws Art. VIII, Section 9.** “Such member shall not be reinstated until he has paid his dues and assessments in full, and until such time as such member is reinstated, he shall have no rights of any kind arising out of membership in the Association.”

The Covenants provide for assessment of interest at a rate of 18% per annum on any assessment not paid within thirty (30) days of the due date (**Covenants, Art. IV, Section 4**), and the **Bylaws** provide for assessment of a 5% late charge for any assessment due but not paid within fifteen (15) days.

Finally, a member of the POA who is not a "member in good standing" may have his or her voting rights and rights of use of the common areas, including the dock, suspended.

**(Covenants, Art. VIII, Section 1(a)(i))**

Sincerely,



Eddie Evans

President, SBPPOA, Inc

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

Stephen C. Wells and Randi P. Wells,  
  
Plaintiffs,

vs.

Spartina Bay Plantation Property  
Owners' Association, Inc.,  
  
Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04952

**ANSWER TO COMPLAINT AND  
COUNTERCLAIM**

Defendant Spartina Bay Plantation Property Owners' Association, Inc., (hereinafter "Defendant"), hereby answers Plaintiffs' Complaint in the above-captioned action. Defendant denies each and every allegation not specifically admitted herein.

1. Paragraph 1 is a narrative recitation of the subject matter of this action, to which no response is required. To the extent a response is required, Defendant denies the allegations.
2. Defendant lacks information and knowledge to form a belief as to the veracity of the allegations in Paragraph 2, and therefore denies the same.
3. Defendant admits the allegations of Paragraph 3.
4. Responding to Paragraph 4 of the Plaintiffs' Complaint, Defendant admits that it is the property owners' association for the residential community where the subject Property is located and denies the remainder of Paragraph 4.
5. Paragraph 5 is a narrative recitation of the subject matter of this action, to which no response is required. To the extent a response is required, Defendant denies the allegations.
6. Defendant admits the allegations in Paragraph 6.

7. Paragraphs 7 through 13 refer to certain documents, to which Defendant refers the parties and the Court for a true and accurate reading. To the extent a response is required, Defendant denies, as stated, the allegations in Paragraphs 7 through 13.

8. Defendant denies Paragraphs 14 and 15.

9. Paragraphs 15 through 19 refer to certain documents, to which Defendant refers the parties and the Court for a true and accurate reading. To the extent a response is required, Defendant denies, as stated, the allegations in Paragraphs 15 through 19.

10. Defendant denies Paragraph 20.

11. Paragraph 21 refer to certain documents, to which Defendant refers the parties and the Court for a true and accurate reading. To the extent a response is required, Defendant denies, as stated, the allegations in Paragraph 21.

12. Defendant denies Paragraphs 22 through 29

13. Defendant lacks knowledge and information to form a belief as to the veracity of the allegations in Paragraph 30, and therefore, denies the same.

14. Responding to Paragraph 31, Defendant admits only that the ARB did not approve Plaintiffs' proposed fence, and denies the remainder of Paragraph 31.

15. Defendant denies paragraphs 32 through 34.

16. Defendant lacks knowledge and information to form a belief as to the veracity of the allegations in Paragraph 35, and therefore, denies the same.

17. Defendant denies Paragraphs 36 and 37.

18. Paragraph 38 refers to certain documents, to which Defendant refers the parties and the Court for a true and accurate reading. To the extent a response is required, Defendant denies, as stated, Paragraph 38.

19. Paragraph 39 refers to the dimensions and location of a deck. Defendant refers the parties and the Court to any professional survey and the correct physical description of the deck and its location. To the extent a response is required, Defendant denies paragraph 39.

20. Defendant denies, as stated, Paragraphs 40 through 43.

21. Defendant lacks knowledge and information to form a belief as to the veracity of Paragraph 44, and therefore, denies the same.

22. Defendant denies, as stated, Paragraph 45.

23. Paragraphs 46 and 47 refer to a certain document, to which Defendant refers the parties and the Court for a true and correct reading. To the extent a response is required, Defendant denies Paragraphs 46 and 47.

24. Defendant denies Paragraphs 48 through 53.

25. Responding to Paragraph 54, Defendant repeats and realleges its answers to the preceding paragraphs as if fully stated herein.

26. Paragraphs 55 through 57 state legal conclusions to which no response is required. To the extent a response is required, Paragraphs 55 through 57 are denied.

27. Paragraph 58 is a narrative summary of the action brought by Plaintiffs, to which no response is required. To the extent a response is required, Defendant denies paragraph 58.

28. Paragraphs 59 and 60 states a legal conclusion to which no response is required. To the extent a response is required, Defendant denies Paragraphs 59 and 60.

29. Defendant denies paragraphs 61 through 63.

30. Responding to Paragraph 64, Defendant repeats and realleges its answers to the preceding paragraphs as if fully stated herein.

31. Defendant denies Paragraphs 65 through 70.

32. Responding to Paragraph 71, Defendant repeats and realleges its answers to the preceding paragraphs as if fully stated herein.

33. Defendant denies Paragraphs 72 through 77.

34. Defendant denies that Plaintiffs are entitled to any relief requested in the Wherefore Paragraph.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

35. Plaintiffs' Complaint fails to state facts sufficient to constitute a cause of action for which relief may be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

36. Plaintiffs' claims are or may be barred by the doctrines of waiver, estoppel, and/or laches.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

37. Defendant is or may be entitled to such offsets that may be revealed by information obtained during the course of investigation and discovery as consistent with applicable law.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

38. Plaintiffs' claims are or may be barred due to Plaintiffs' failure to mitigate damages as required by law.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

39. Plaintiffs' claims against Defendant are or may be barred because none of their acts proximately caused Plaintiffs' alleged damages.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

40. Plaintiffs' claims are or may be barred by the doctrines of consent, condonation, and/or ratification.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

41. Plaintiffs' claims are barred, in whole or in part, by the terms of the relative agreements between the parties including but not limited to all restrictive covenants and leases that were approved by the Defendants' board of directors and accepted by Plaintiffs upon their purchase of their subject real property.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

42. Plaintiffs' Complaint fails to state a claim upon which attorney's fees can be awarded and/or allege facts which, if proven, would entitle Plaintiffs to an award of attorney's fees.

**FURTHER RESPONDING TO THE COMPLAINT  
AND AS AN AFFIRMATIVE DEFENSE THERETO:**

43. This Defendant reserves the right to raise any additional and further defenses that may be revealed by information obtained during the course of investigation and discovery as consistent with the South Carolina Rules of Civil Procedure.

**FOR A FIRST COUNTERCLAIM**

44. Defendant restates and realleges the preceding paragraphs as if fully stated herein.

45. Plaintiffs are property owners within the Spartina Bay Plantation on Edisto Island, South Carolina, more particularly described as the real property located at 1499 Marsh Bluff Court ("Property").

46. Upon purchase of their Property, Plaintiffs agreed to be bound by the restrictive covenants and declarations applicable to the Property, and any agreements and declarations validly approved by the Defendant's board of directors, including a lease agreement running through the Property for ingress/egress access to a community dock ("Lease").

47. In or about 2012, a prior owner of the Property and a former President of Defendant's board of directors entered into an unlawful and legally void purported "easement agreement" (Exhibit C to Plaintiffs' Complaint) ("Easement Agreement") that attempted to place unapproved limitations on member access to the community dock, and unapproved financial obligations on the Defendant.

48. The alleged "Easement Agreement" was at no point approved by the Defendant's board of directors and is an invalid instrument.

49. Notwithstanding the Easement Agreement's illegality, even by its own terms, the Easement Agreement did not terminate the subject ingress/egress lease.

50. Accordingly, Defendant is entitled to declaratory judgment declaring the Easement Agreement void and invalid, and affirming the enforceability of the Lease.

WHEREFORE, having fully answered the allegations of Plaintiffs' Complaint, Defendant prays that Plaintiffs' Complaint be dismissed with prejudice, for all costs of the action to be cast upon Plaintiffs, including reasonable attorney's fees, for a declaration that the Easement Agreement is invalid and the Lease remains enforceable, and for such other and further relief as this Court may deem just and proper.

This 30<sup>th</sup> day of December, 2022.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/ Steven R. Kropski  
STEVEN R. KOPSKI  
State Bar No.: 101441

Attorney for Defendant

PO Box 22528  
Charleston, SC 29413  
843-972-9400

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2022-CP-10-04952
STEPHEN C. WELLS and	)	
RANDI P. WELLS,	)	
	)	<b>REPLY TO COUNTERCLAIM</b>
	)	
Plaintiffs,	)	
	)	
-vs-	)	
	)	
SPARTINA BAY PLANTATION	)	
PROPERTY OWNERS’ ASSOCIATION,	)	
INC.,	)	
	)	
	)	
Defendant.	)	
_____	)	

Plaintiffs Stephen C. Wells and Randi P. Wells (“Plaintiffs”), replying to the Counterclaim of Defendant Spartina Bay Plantation Property Owners’ Association, Inc. (“Defendant”), allege and state the following:

**FOR A FIRST DEFENSE**  
**(General Denial)**

1. Plaintiffs deny each and every allegation of Defendants Answer and Counterclaim that is not specifically and unconditionally admitted herein.
2. Paragraphs 1 through 43 constitute Defendant’s Answer to the Complaint, and, therefore, no response is required from Plaintiffs. However, to the extent any allegations contained within Paragraphs 1 through 43 can be construed against Plaintiffs, such allegations are denied and strict proof is demanded thereof.
3. Answering Paragraph 44, Plaintiffs repeat the foregoing answers above as if fully repeated verbatim herein.
4. Plaintiffs admit the allegations of Paragraph 45.

5. Paragraph 46 states a conclusion of law to which no response is required. To the extent a response is required, Plaintiffs deny Paragraph 46 and crave reference to the allegations asserted in the Complaint as to the applicability of the referenced restrictive covenants and lease agreement and to the documents themselves for a true and correct reading.

6. Plaintiffs deny the allegations of Paragraphs 47 and 48 and strict proof is demanded thereof.

7. Paragraphs 49 and 50 state conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny Paragraphs 49 and 50 and strict proof is demanded thereof.

8. The remaining paragraph of Defendant's Answer and Counterclaim, including all subparts, consists of Defendant's prayer for relief that requires no response from Plaintiffs. To the extent a response is required, Plaintiffs deny that Defendant is entitled to the relief sought.

WHEREFORE, Plaintiffs pray that this Court dismiss all claims against them with prejudice, grant Plaintiffs reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper.

ROSEN HAGOOD, LLC

/s/ Timothy J.W. Muller

Timothy James Wood Muller (SC Bar No. 74601)

Mary Harriet Moore (SC Bar 105312)

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Charleston, South Carolina  
January 30, 2023

ATTORNEYS FOR PLAINTIFFS



5. Paragraph 46 states a conclusion of law to which no response is required. To the extent a response is required, Plaintiffs deny Paragraph 46 and crave reference to the allegations asserted in the Complaint as to the applicability of the referenced restrictive covenants and lease agreement and to the documents themselves for a true and correct reading.

6. Plaintiffs deny the allegations of Paragraphs 47 and 48 and strict proof is demanded thereof.

7. Paragraphs 49 and 50 state conclusions of law to which no response is required. To the extent a response is required, Plaintiffs deny Paragraphs 49 and 50 and strict proof is demanded thereof.

8. The remaining paragraph of Defendant's Answer and Counterclaim, including all subparts, consists of Defendant's prayer for relief that requires no response from Plaintiffs. To the extent a response is required, Plaintiffs deny that Defendant is entitled to the relief sought.

**FOR A SECOND DEFENSE**  
(Failure to State a Claim)

9. Further answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, the Counterclaim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for failure to state facts sufficient to constitute a claim against Plaintiffs.

**FOR A THIRD DEFENSE**  
(Statute of Limitations)

10. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant's counterclaim is barred in whole or in part by the applicable statute of limitations.

**FOR A FOURTH DEFENSE**  
(Failure to Mitigate Damages)

11. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant has failed to mitigate its damages by failing to timely assert the allegations contained in its counterclaim so as to avoid any alleged damage and/or obtain the relief sought, and, therefore, its recovery, if any is barred in whole or part.

**FOR A FIFTH DEFENSE**  
(Waiver)

12. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant's Answer and Counterclaim are barred in whole or part by the doctrine of waiver based on the Defendant's actions and conduct as alleged in the Complaint and in this Reply.

**FOR A SIXTH DEFENSE**  
(Equitable and/or Promissory Estoppel)

13. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant's Answer and Counterclaim are barred in whole or part by the doctrines of equitable estoppel and/or promissory estoppel based on the Defendant's actions and conduct as alleged in the Complaint and in this Reply.

**FOR A SEVENTH DEFENSE**  
(Unclean Hands)

14. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant's Answer and Counterclaim are barred in whole or part by the doctrine of unclean hands based on the Defendant's actions and conduct as alleged in the Complaint and in this Reply.

**FOR AN EIGHTH DEFENSE**

(Laches)

15. Defendant's Answer and Counterclaim are barred under the doctrine of laches because of Defendant's neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Defendant unreasonably delayed its assertion of its alleged rights or claims, resulting in prejudice to the Plaintiffs.

**FOR A NINTH DEFENSE**

(Consent)

16. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant's Answer and Counterclaim are barred in whole or part by the doctrine of consent.

**FOR A TENTH DEFENSE**

(Ratification/Adoption)

17. The Easement Agreement was accepted and ratified by the Defendant. Defendant has further retained and/or failed to return or restore the consideration and benefits which it received under the Easement Agreement; therefore, it has ratified and adopted the Easement Agreement and cannot now seek to have it set aside on the grounds that it is null, void, illegal, or otherwise unenforceable.

**FOR AN ELEVENTH DEFENSE**

(Parol Evidence Rule)

18. To the extent Defendant's claims are based on oral or verbal statements or representations allegedly made prior to, contemporaneous with, or subsequent to the Defendant's execution of the Easement Agreement, such statements or representations cannot vary the terms and conditions of the Easement Agreement pursuant to the parol evidence rule.

**FOR A TWELFTH DEFENSE**

(Merger)

19. Defendant's counterclaim is barred in whole or part based on the doctrine of merger. The existence of the integration clause in the Easement Agreement and Defendant's execution and recording of the Easement Agreement by operation of law served to merge and extinguish any prior rights held by Defendant specifically in the ingress/egress easement area, including, without limitation, the Lease, the subject Declaration, any amendments thereto, and any prior reservation by plat

**FOR A THIRTEENTH DEFENSE**

(Unlawful Penalty or Forfeiture)

20. Further and affirmatively answering Defendant's Answer and Counterclaim and as an additional and complete defense thereto, Defendant's sought relief is barred because it would work an unlawful, illegal, and unreasonable penalty or forfeiture upon the Plaintiff.

**FOR A FOURTEENTH DEFENSE**

(Attorney's Fees)

21. Further and affirmatively answering Defendant's Answer and Counterclaim and as a partial defense thereto, Defendant's counterclaim fails to state a claim upon which attorney's fees can be awarded or allege facts which, if proven, would entitle Defendant to an award of attorney's fees in this matter.

**FOR A FIFTEENTH DEFENSE**

(Reservation of Additional and Further Defenses)

22. Plaintiffs reserve any additional and further defenses as may be revealed by additional information through the course of discovery and investigation in a manner that is consistent with the South Carolina Rules of Civil Procedure,

WHEREFORE, Plaintiffs pray that this Court dismiss all claims against them with prejudice, grant Plaintiffs reasonable attorney's fees and costs, and for any such other and further relief this Court may deem just and proper.

ROSEN HAGOOD, LLC

/s/ Timothy J.W. Muller

Timothy James Wood Muller (SC Bar No. 74601)

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Charleston, South Carolina  
February 28, 2023

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 STEPHEN C. WELLS AND RANDI P. )  
 WELLS, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 SPARTINA BAY PLANTATION )  
 PROPERTY OWNERS' ASSOCIATION, )  
 INC. )  
 )  
 Defendant. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT  
 CASE NO. 2022-CP-10-04952

**PLAINTIFFS' MOTION FOR  
 JUDGMENT ON THE PLEADINGS  
 IN WHOLE OR IN PART**

TO THE ABOVE-NAMED DEFENDANT:

PLEASE TAKE NOTICE THAT, pursuant to S.C. R. Civ. Pro. 12(c), Plaintiffs Stephen and Randi Wells (hereinafter "Plaintiffs"), by and through their undersigned counsel, hereby move the Court for judgment on the pleadings in their favor and against Defendant Spartina Bay Plantation Property Owners' Association, Inc. (hereinafter "Defendant") in whole or in part as to Plaintiffs' cause of action for declaratory judgment and Defendant's counterclaim for declaratory judgment pursuant to S.C. CODE ANN. § 15-53-30 and SCRPC 57. The grounds for this motion are as follows:

1. As a matter of law, the Plaintiffs have standing in this dispute as successors-in-interest and as current owners of the subject property and servient estate as evidenced by that certain 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 and prior duly recorded deeds and based on the applicability of paragraph 15 of the duly recorded

- access easement on Plaintiffs' property executed by and between James L. Cox and Catherine T. Cox, as grantors and previous owners of the Plaintiffs' property, and Defendant, as grantee, effective January 25, 2012, and recorded with the Charleston County ROD on February 22, 2012 in Book 0234, Page 897 ("Easement Agreement").
2. As a matter of law, the Easement Agreement is legal, valid, binding, and enforceable obligations of the Defendant.
  3. As a matter of law, Defendant's counterclaim seeking to retroactively invalidate the Easement Agreement executed and recorded by Defendant with the Charleston County ROD on February 22, 2012 fails, and, therefore, Defendant's counterclaim for declaratory judgment must be dismissed.
  4. As a matter of law, Defendant is obligated to comply with the terms, conditions, and requirements of the Easement Agreement, including, without limitation, that 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.
  5. As a matter of law, under the unambiguous language of the Easement Agreement, Defendant's use is limited to pedestrian and non-vehicular ingress and egress only on, over and across the easement area identified therein.
  6. As a matter of law, the Easement Agreement's integration clause serves to merge and extinguish any prior rights held by Defendant in the ingress/egress easement area identified as the Existing Dock Ingres/Egress Easement on the plat by Robert Frank Surveying, dated April 2, 2003, revised on June 19, 2003, and recorded in the Charleston County ROD in Book EG, Page 457, including, without limitation, any

rights of Defendant in such easement area or as previously delineated as the dock easement or dock ingress/egress on the Property in the Lease between N.C. Boykin as Substitute Trustee of Peters Point Trust as landlord and Defendant, also executed by N.C. Boykin as then president of Defendant, recorded with the Charleston County ROD in Book G390, Page 257 on December 7, 2001; the 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; any amendments thereto; and any prior easement reservation by plat recorded with the Charleston County ROD. The execution, delivery, and recording of the Easement Agreement extinguished any antecedent contracts or agreements between the Defendant and any prior owners involving the easement area by operation of law.

7. As a matter of law, under the terms of the valid, binding, and enforceable Easement Agreement, Defendant shall pay Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiffs' enforcement of the terms and to declare the rights under the Easement Agreement.

This motion will be supported by the pleadings and responsive pleadings filed in this action; a memorandum of law to be filed with the Court prior to a hearing on this motion; any matters of public record of which the Court may take judicial notice; and arguments of counsel at the hearing.

WHEREFORE, Plaintiffs Stephen C. Wells and Randi P. Wells hereby move the Court for judgment on the pleadings in their favor and against Defendant in whole or in part as to Plaintiffs' cause of action for declaratory judgment and dismissal of Defendant's counterclaim for declaratory

judgment pursuant to S.C. CODE ANN. § 15-53-30 and SCRCP 57, an order against Defendant for the recovery of Plaintiffs' court costs and reasonable attorney's fees associated with this action, including any appeal for Plaintiff's enforcement of the terms and to declare the rights under the Easement Agreement, and for such other and further relief as the Court may deem just and proper.

ROSEN HAGOOD, LLC

/s/ Timothy J.W. Muller

Timothy James Wood Muller (SC Bar No. 74601)

Mary Harriet Moore (SC Bar 105312)

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Charleston, South Carolina  
December 19, 2023.

ATTORNEYS FOR PLAINTIFFS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Stephen C. Wells and Randi P. Wells,

Plaintiffs,

vs.

Spartina Bay Plantation Property  
Owners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2022-CP-10-04952

**DEFENDANT'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR JUDGMENT ON THE PLEADINGS  
AND PLAINTIFFS' CAUSE OF ACTION  
FOR A TEMPORARY, PRELIMINARY,  
AND PERMANENT INJUNCTION**

Defendant, Spartina Bay Plantation Property Owners' Association, Inc. ("Defendant" or "the POA"), by and through the undersigned counsel, submits this memorandum of law in opposition to the motion for judgment on the pleadings filed by Plaintiffs Stephen C. Wells and Randi P. Wells ("Plaintiffs").

**INTRODUCTION**

This case arises out of a private personal dispute between Plaintiffs and several neighbors, which has now spread to the POA. Plaintiffs ask this Court to limit the rights of their neighbors with respect to use and access to a community dock that has been consistent since the creation of the neighborhood.

Defendant is a property owners' association located in Edisto Island. Plaintiffs are homeowners in the Spartina Bay subdivision and members of the POA. Their property abuts a path which leads to a community dock that is owned, controlled, and maintained by the POA for the benefit of all members of the POA.

On October 12, 2001, the POA entered into a lease with Plaintiffs' predecessors in interest, recorded with the Charleston County Register of Deeds in Book 390, Page 257 on December 7,

2001 for the ingress/egress area to the community dock (“the Lease”). *See* Exhibit D to Plaintiffs’ Complaint. Pursuant to the Lease, the members of the community have ingress/egress rights to a pathway leading to the community dock which allows for vehicular use of access the community dock. The parties do not dispute that the Lease was properly ratified. The Lease does not expire until the year 2100.

On January 25, 2012, Bruce Matrisciani, the POA’s then-president, unilaterally signed a document entitled “EASEMENT AGREEMENT,” purportedly on behalf of the POA (“the Invalid Easement Agreement”). *See* Exhibit C to Plaintiffs’ Complaint. In direct contravention of the POA’s governing documents, Mr. Matrisciani had no authority from the POA’s Board of Directors (“the Board”) or the members of the POA to enter such a transaction, nor does any evidence suggest the Board subsequently voted to ratify Mr. Matrisciani’s rogue actions.

The terms of the Invalid Easement Agreement purport to provide only “pedestrian ingress and egress.” At all times prior to this dispute, POA members accessed the dock through vehicles such as golf carts, as has been the custom since the inception of the community.

Nevertheless, Plaintiffs now ask this Court to enforce a document against the POA that no one in the POA ever authorized or voted to authorize. For the reasons described herein, this Court should deny Plaintiffs’ motion.

### **LEGAL STANDARD**

Under South Carolina law, a motion for judgment on the pleadings pursuant to Rule 12(c), SCRCP is considered a “drastic procedure.” *Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 446 (Ct. App. 2019) (quoting *Falk v. Sadler*, 341 S.C. 281, 287, 533 S.E.2d 350, 353 (Ct. App. 2000)). A party’s motion for judgment on the pleadings is improper “if there is an issue of fact raised by the complaint which, if resolved in favor of the [opposing party],

would entitle him to judgment.” *Russell v. Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991) (citing *Brown v. United Ins. Co. of Am.*, 268 S.C. 254, 233 S.E.2d 298 (1997)). Therefore, if *any* issue of fact raised by the complaint would entitle the non-moving party to a judgment if resolved in the non-moving party’s favor, then granting a motion for judgment on the pleadings is improper. *See Home Builders Ass’n of S.C. v. Sch. Dist. No. 2*, 405 S.C. 458, 460, 748 S.E.2d 230, 232 (2013) (quoting *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009)).

Additionally, South Carolina considers a responding party’s motion for judgment on the pleadings under Rule 12(c), SCRPC as a Rule 12(b)(6), SCRPC motion. *See generally Russell*, at 89, 406 S.E.2d at 339. Accordingly, a court must deem all of the non-moving party’s well-pleaded factual allegations as admitted. *Fields v. Melrose P’ship*, 312 S.C. 102, 103, 439 S.E.2d 283, 284 (Ct. App. 1993) (citing *Russell*, at 89, 406 S.E.2d at 339); *see also Hotel & Motel Holdings, LLC v. BJC Enters., LLC*, 414 S.C. 635, 650, 780 S.E.2d 263, 272 (Ct. App. 2015) (quoting *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009) (“this court must ‘construe the complaint in a light most favorable to the nonmovant and determine if [] the facts alleged and the inferences reasonably deducible from the pleadings would entitle the [non-moving party] to relief on any theory of the case’”).

## **ARGUMENT**

### **1. The Invalid Easement Agreement is unenforceable and not binding on Defendant.**

The POA’s CCRs and Bylaws were duly recorded and referenced in the Plaintiffs’ deed, and thus are binding on Plaintiffs. *See Exhibits A and B to Plaintiffs’ Complaint; see also Harbison Community Assn., Inc. v. Mueller*, 319 S.C. 99, 103, 459 S.E.2d 860, 863 (Ct. App. 1999) (citing 20 Am. Jur. 2d *Covenants, Conditions, and Restrictions* § 26 (1965)) (“[a] covenant is enforceable

against a subsequent grantee, even if not in the grantee's deed, if the grantee has actual or constructive notice of the covenant"); *see also Id.* (citing *Carolina Land Co. v. Bland*, 265 S.C. 98, 217 S.E.2d 16 (1975) (“[a] homeowner is charged with constructive notice of any restriction properly recorded within the chain of title”). Moreover, in becoming a member of the POA, Plaintiff agreed to be bound by the CCRs and Bylaws, as well as the “policies, rules and regulations...at any time adopted by [the POA].” *See* Article IV, Section (1)(a) of the Bylaws.

Pursuant to the Bylaws, the POA is managed by its Board of Directors, not its president. *See* Article VI, Section 1 of the Bylaws. Rather, the president is elected by the Board and is expressly subject to the Board's control. *See* Article VII, Sections 2 and 5 of the Bylaws. In turn, the Board acts through majority votes at meetings in which a quorum is present, not through the POA president. *See* Article VI, Section 7 of the Bylaws.

Furthermore, the Bylaws directly address the scope of a POA president's authority to sign an easement agreement on behalf of the POA. Pursuant to the clear and unambiguous terms of the Bylaws, a POA president may only sign easements “which the directors have authorized to be executed.” *See* Article VII, Section 5 of the Bylaws (emphasis added). Because of the Plaintiffs' actual and constructive notice of the POA's Bylaws, they were on notice that they could not reasonably rely on a document signed purportedly on behalf of the Board but which lacked the proper formalities.

Plaintiffs' Complaint does not allege, nor can it, that the Board authorized the POA's former president, Mr. Matrisciani, to sign the Purported Easement Agreement on its behalf, just as

Plaintiffs' Complaint does not and cannot allege that following Mr. Matrisciani's unauthorized actions, the Board took any action to ratify the Invalid Easement Agreement.<sup>1</sup>

Accordingly, there is an issue of fact – namely the enforceability of the Invalid Easement Agreement – which, if resolved in Defendant's favor, would entitle it to judgment. *See Russell* at 89, 406 S.E.2d at 339. Therefore, this Court should deny Plaintiff's motion for judgment on the pleadings.

**2. By its own terms, the Invalid Easement Agreement does not merge or extinguish the Binding Lease.**

A merger clause is a contractual provision that “expresses the intention of the parties to treat the writing as a complete integration of their agreement.” *Wilson v. Landstrom*, 281 S.C. 260, 315 S.E.2d 130, 134 (Ct. App. 1984). A merger clause indicates that the contract “supersedes all *informal understandings and oral agreements.*” *Beasenburg v. Ultragenyx Pharm. Inc.*, Case No. 2:22-cv-04022-BHH-JDA, 2023 U.S. Dist. LEXIS 166504, at \*18-19 (D.S.C. 2023) (citing Black's Law Dictionary (10th ed. 2014)) (emphasis added).

By its own terms, the Invalid Easement Agreement does not integrate the Lease, nor does it serve to extinguish or supplant the Lease. The Invalid Easement Agreement's merger clause states that “[t]his Agreement is an integrated agreement and expresses the complete agreement and understanding of the Parties. Any and all prior contemporaneous oral agreement or prior written agreement **regarding the Agreement** will be merged herein.” *See* Section 13 of the Invalid Easement Agreement (emphasis added). In turn, the Invalid Easement Agreement defines “Agreement” as “[t]his Easement Agreement.” *See* preamble to the Invalid Easement Agreement.

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<sup>1</sup> Rather, Plaintiffs' Complaint conspicuously ignores the dubious circumstances under which the Invalid Easement Agreement was signed.

Thus, only prior agreements that pertain to the Invalid Easement Agreement itself would merge into it, and not the Lease from nearly a decade prior.

Accordingly, there is an issue of fact – namely whether the subsequent Easement Agreement, to the extent it can be considered valid, supplants the Binding Lease – which, if resolved in Defendant’s favor, would entitle it to judgment. *See Russell* at 89, 406 S.E.2d at 339. Therefore, this Court should deny Plaintiff’s motion for judgment on the pleadings.

**3. Plaintiffs have failed to demonstrate any substantial or irreparable harm they may suffer by preserving the status quo of vehicular access to the ingress/egress area.**

An injunction is a “drastic” remedy that is within the court’s discretion to deny. *Scratch Golf Co. v. Dunes W. Residential Golf Props*, 361 S.C. 117, 121, 603 S.E.2d 905, 907-08 (2004) (citing Flanagan, *S.C. Civil Procedure*, 507 (2d ed. 1996)). The remedy of injunction “should be cautiously applied only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected.” *Seabrook Island Prop. Owners Ass’n v. Marshland Trust, Inc.*, 358 S.C. 655, 666, 596 S.E.2d 380 (Ct. App. 2004) (quoting *LeFurgy v. Long Cove Club Owners Ass’n, Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App. 1994)).

A temporary injunction can only be granted if the moving party alleges facts sufficient to show a temporary injunction is necessary to protect the moving party’s rights. *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007) (citing *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E.2d 313 (1969)). Likewise, a court should only issue a preliminary injunction upon a showing by the moving party that without a preliminary injunction, it (1) will suffer immediate, irreparable harm, (2) has a likelihood of success on the merits, and (3) that it has no adequate remedy at law. *Compton v. S.C. Dep’t of Corr.*, 392 S.C. 361, 366, 709 S.E.2d 639, 642 (2011) (quoting *Scratch Golf Co.* at 121, 603 S.E.2d at 908).

As to a permanent injunction, a moving party must generally show that (1) it has suffered an irreparable injury, (2) remedies available at law are inadequate to compensate for that injury, (3) considering the balance of hardships between the parties, an equitable remedy is warranted, and (4) the public interest would not be disserved by a permanent injunction. *See Uhlig LLC v. Shirley*, Case No. 6:08-cv-01208-JMC, 2012 U.S. Dist. LEXIS 88632, at \*7 (D.S.C. 2012) quoting *eBay Inc. v. MercExchange, L.L.C.*, 547 U.S. 388, 391, 126 S. Ct. 1837, 164 L. Ed. 2d 641 (2006). Lastly, the party seeking the injunction has the burden of demonstrating that the facts and circumstances warrant an injunction. *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006) (citing *Calcutt v. Calcutt*, 282 S.C. 565, 320 S.E.2d 55 (Ct. App. 1984)).

Here, Plaintiffs have failed to establish what “immediate, irreparable” harm they would suffer by continuing the longstanding status quo of POA members using vehicles such as golf carts to access the community dock. *See AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51m 674 S.E.2d 505, 509 (Ct. App. 2009) (noting that “[t]he purpose of an injunction is to preserve the status quo”). Rather, Plaintiffs alleged harms appear to be nuisances such as noise, litter, and shining lights into the Plaintiffs’ home, all of which are easily reparable by simply ceasing the complained-of actions. *See* ¶ 26-29 of Plaintiffs’ Complaint. By contrast, Plaintiffs created a list of alleged harms they feel that the POA has caused them, and each appear to be minor disputes with various neighbors. *See* Exhibit A.

As to a likelihood of success on the merits, the overwhelming evidence produced in discovery demonstrates that the Board never authorized their former president to sign the Invalid Easement Agreement, nor did they ever subsequently ratify it. In the two years prior to the Invalid Easement Agreement’s signing, the Board never held any meeting. *See* Exhibit B. Moreover,

despite being advised by an attorney to seek approval of the easement at a special meeting, no record of a vote actually taking place exists. *See* Exhibit C. On the contrary, the meeting minutes following the Invalid Easement Agreement’s signing indicate that no vote to ratify it occurred. *See* Exhibit D.

Moreover, Plaintiffs have not demonstrated that they have no other adequate remedy at law. In fact, many of the alleged harms against which Plaintiffs seek injunctive relief are monetary in nature, and thus injunctive relief is inappropriate. *See* ¶ 75 of Plaintiffs’ Complaint (“[u]nless a temporary, preliminary, and permanent mandatory injunction is granted, Plaintiff[s] will suffer irreparable harm, including... diminution or loss of value of Plaintiffs’ Property; the cost of removing the existing deck to comply with the DHEC Notice...Plaintiffs’ loss of \$2,500.00 paid under protest to remain members in good standing of the [POA] based on Defendant’s improper Deck Assessment Notice...professional or consultant fees, attorneys’ fees, and transactional costs.”). Plaintiffs also have the available remedy at law of pursuing private nuisance claims directly against the persons they believe are responsible for any alleged breaches of the peace.

For the reasons discussed herein, Plaintiffs have failed to demonstrate any basis by which this Court should grant its claim for an injunction.

### CONCLUSION

For the reasons described herein, Defendant respectfully requests that this Court deny Plaintiffs’ Motion for Judgment on the Pleadings and Plaintiffs’ request for an injunction.

[SIGNATURE ON FOLLOWING PAGE]

This 2<sup>nd</sup> day of February, 2024.

Respectfully submitted,

EARHART OVERSTREET LLC

By: s/ Steven R. Kropski

STEVEN R. KROPSKI

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EXHIBIT A

Date	Approximate Time	Event	Evidence
4/28/2022	10:00pm	Between 8:30PM and 10:00PM numerous trips by ATV or UTV driving on Chuck's property. I could hear the vehicles and see the lights shining in my living room windows. At 10:00PM while setting on my back porch; I asked the folks who drove up and were talking and walking down the easement to please be quiet and wrap things up since it was after 10:00pm at night. Link's dog was outside of the easement area on my property.	Video
4/28/2022	10:33pm	A group drove another small vehicle to the same area and parked on Chuck's property. They shined the lights into my living room window. I stepped on to my back porch and asked them if they could please be quiet and wrap things up for the evening and that the vehicles were shining lights in my windows. Link responded that nothing was going to change. I had better not start with him or he would sue my ass for harassment. He was standing in the easement area on my property during this.	
4/21/2022	3:44pm	Barry Roof drove down the easement, crossed the easement into my driveway and parked for about an hour.	Video
4/29/2022	4:33am	A truck from Link's fishing group drove down the easement and parked for about 1.5 hours	Video
4/30/2022	8:34pm	Link's dog is outside of the easement area in my yard.	Video
4/30/2022	2:45pm	Barry Roof drove down the easement and parked for about 30 minutes. He hauled someone out on his tailgate. Two individuals from Link's fishing group pulled an ATV onto the easement area from Chuck's property, hooked up a cart and hauled it away.	Video
4/30/2022	12:49pm	Link's dog is outside of the easement area in my yard.	Video
4/30/2022	10:24am	Link's dog is outside of the easement area in my yard.	Video
5/3/2022	11:03pm	Link's dog is outside of the easement area in my yard.	Video
5/4/2022	7:25pm	Link's dog is outside of the easement area in my yard.	Video
5/4/2022	6:54pm	Storing the guest stuff on my deck.	Video
5/4/2022	7:00pm	Storing the guest stuff on my deck.	Video
5/21/2022	6:19pm	Link's dog is outside of the easement area in my yard.	Video
5/22/2022	6:59pm	Link's dog is outside of the easement area in my yard.	Video
5/22/2022	8:02pm	Link's dog is outside of the easement area in my yard.	Video
5/22/2022	8:08pm	Link's dog is outside of the easement area in my yard.	Video
5/23/2022	5:27pm	Link's dog is outside of the easement area in my yard.	Video
5/24/2022	7:06pm	One of the crew members driving Link's golf cart pulling a wagon in the easement area.	Video
5/25/2022	3:11am	Link's dog is outside of the easement area in my yard.	Video
5/25/2022	7:59pm	Link's dog is outside of the easement area in my yard.	Video
5/26/2022	7:50pm	Link driving into the easement area on his golf cart with a passenger	Video
5/26/2022	8:52pm	Link's dog is outside of the easement area in my yard.	Video
5/27/2022	5:18pm	Link's dog is outside of the easement area in my yard.	Video
5/28/2022	11:04am	Storing of the cart and cooler in the easement area.	Video
5/28/2022	2:15am	Barry Roof driving and parking in the easement area.	Video
6/3/2022	8:21am	Link's dog is outside of the easement area in my yard.	Video
6/3/2022	2:09pm	Link's dog is outside of the easement area in my yard.	Video
6/4/2023	8:13pm	Link in the access area not properly clothed.	Video
6/27/2022	6:38pm	Link driving into the easement area to pull a cart.	Video
7/2/2022	8:55pm	UTV shining headlights into my living room and back porch. Ran over one of my fence post markers as it drove onto the easement.	Video & pictures
7/3/2022	5:48pm	The Roofs and Phillips driving on an parking on the easement area.	Video
7/3/2022	6:05pm	The board president, board member and Secretary telling me I am wrong and they disagree about the ability to park in the easement.	Video

7/3/2022 6:53pm	Loitering in the easement area by the Roofs.	Video
7/3/2022 9:58pm	The Roofs and Phillips driving on the easement area.	Video
7/4/2022 7:05pm	The Roofs and Phillips driving on and parking on the easement area.	Video
7/4/2022 8:10pm	The Roofs and Phillips driving on the easement area.	Video
7/7/2022 10:39am	The Roofs driving on and parking on the easement area.	Video
7/7/2022 1:00pm	The Roofs driving on the easement area.	Video
7/7/2022 7:39pm	The Roofs and Phillips driving on and parking on the easement area.	Video
7/7/2022 8:22pm	The Roofs and Phillips driving on the easement area.	Video
7/8/2022 9:41am	The Roofs driving on and parking on the easement area.	Video
7/8/2022 10:44am	The Roofs driving on the easement area.	Video
8/12/2022 1:30pm	The Moores driving and parking in the easement area.	Video
8/12/2022 1:35pm	The Moores driving and parking in the easement area.	Video
8/12/2022 3:18pm	The Moores driving and parking in the easement area.	Video
8/12/2022 3:42pm	The Moores driving and parking in the easement area.	Video
9/17/2022 1:20pm	The Roofs driving on and parking on the easement area.	Video
9/17/2022 1:54pm	The Roofs driving on and parking on the easement area.	Video
9/17/2022 6:39pm	The Roofs driving on and parking on the easement area.	Video
9/17/2022 8:21pm	The Roofs driving on and parking on the easement area.	Video
9/18/2022 9:25am	The Roofs driving on and parking on the easement area.	Video
9/18/2022 11:16am	The Roofs driving on and parking on the easement area.	Video
9/18/2022 11:21am	The Roofs driving on and parking on the easement area.	Video
9/18/2022 12:31pm	The Roofs driving on and parking on the easement area.	Video
9/18/2022 4:09pm	Friends of the Roofs driving on and parking on the easement area.	Video
9/18/2022 8:06pm	Friends of the Roofs driving on and parking on the easement area and shining headlights into our living room.	Video
9/19/2022 9:08am	Friends of the Roofs driving on and parking on the easement area.	Video
9/19/2022 11:52am	Friends of the Roofs driving on and parking on the easement area. Not fully clothed.	Video
9/19/2022 12:03pm	Friends of the Roofs driving on and parking on the easement area. Not fully clothed.	Video
9/19/2022 3:26pm	Friends of the Roofs driving on and parking on the easement area.	Video
9/20/2022 7:55am	Friends of the Roofs driving on and parking on the easement area.	Video
9/20/2022 2:39pm	Friends of the Roofs driving on and parking on the easement area.	Video
9/21/2022 9:12am	Friends of the Roofs driving on and parking on the easement area.	Video
9/21/2022 5:49pm	Friends of the Roofs driving on and parking on the easement area.	Video
9/22/2022 11:30am	The Roofs driving on and parking on the easement area.	Video
9/22/2022 1:36pm	The Roofs driving on and parking on the easement area.	Video
9/22/2022 8:19pm	The Roofs driving on and parking on the easement area.	Video
9/22/2022 8:54pm	The Roofs driving on and parking on the easement area.	Video
9/23/2022 10:57am	The Roofs driving on and parking on the easement area.	Video
9/23/2022 12:11pm	The Roofs driving on and parking on the easement area.	Video
9/24/2022 8:51am	Friends of the Roofs driving on and parking on the easement area.	Video
9/24/2022 9:02am	Friends of the Roofs driving on and parking on the easement area.	Video
10/22/2022 5:48pm	Link and charter help driving and parking on the easement area.	Video
10/22/2022 6:13pm	Link and charter help with the Roofs loitering in the easement area.	Video
10/22/2022 6:15pm	Link and charter help driving and parking on the easement area.	Video
11/5/2022 11:12am	Barry Roof and guest driving and parking on the easement area.	Video
11/5/2022 1:43pm	Barry Roof and guest driving and parking on the easement area.	Video

11/5/2022 5:08pm	Barry Roof and guest driving and parking on the easement area.	Video
11/5/2022 6:55pm	Barry Roof and guest driving and parking on the easement area.	Video
1/21/2023 4:42pm	Link driving and parking on the easement area.	Video
4/14/2023 10:18pm	Two individuals from Link's driving the black golf cart on my property, running over a stake and leaving trash on the dock.	Video & pictures
4/20/2023 8:25pm	Link and three individuals driving and parking the black golf cart on my property.	Video & pictures
4/21/2023 7:50am	Link's golf cart driving and parking in the easement and leaving trash on the dock.	Pictures
4/21/2023 6:20pm	Link driving and parking on the easement area.	Video
4/21/2023 6:57pm	Link driving and parking on the easement area.	Video
4/21/2023 8:07pm	Link driving and parking on the easement area.	Video
4/22/2023 4:52pm	Link driving and parking on the easement area.	Video
4/22/2023 7:50pm	Link driving and parking on the easement area.	Video
4/23/2023 4.43pm	A person from Links driving and parking on the easement area.	Video
4/23/2023 4:57pm	A person from Links driving and parking on the easement area. This person claimed to be a minor and that videoing a minor was illegal. He appeared to be videoing the back of my house which I told him he needed to get off my property.	Video
4/28/2023 6:07pm	Link driving and parking on the easement area.	Video
4/29/2023 5:08am	Someone shining a spotlight on to my house from the dock area.	Video
4/30/2023 12:06pm	A person from Links driving and parking on the easement area.	Video
4/30/2023 12:24pm	A person from Links driving and parking on the easement area.	Video
4/30/2023 4:30pm	A person from Links driving and parking on the easement area.	Video
4/30/2023 4:42pm	A person from Links driving and parking on the easement area.	Video
5/3/2023 7:20pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/3/2023 7:35pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/3/2023 7:39pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/3/2023 7:56pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/4/2023 6:06pm	A group walking to the dock past the parked golf cart in the easement area.	Video
5/4/2023 7:00pm	A second vehicle from Links driving and parking on the easement area.	Video
5/4/2023 7:25pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/4/2023 7:27pm	A second vehicle from Links driving and parking on the easement area. Hauling coolers.	Video
5/4/2023 7:53pm	A person from Links driving and parking on the easement area.	Video
5/4/2023 8:05pm	A person from Links driving and parking on the easement area.	Video
5/5/2023 4:36am	A person from Links driving and parking on the easement area.	Video
5/5/2023 6:39pm	Link driving and parking on the easement area.	Video
5/5/2023 7:03pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/5/2023 7:44pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/6/2023 7:23pm	A group from Links driving and parking on the easement area.	Video
5/6/2023 7:39pm	A group from Links driving and parking on the easement area.	Video
5/6/2023 7:47pm	Link driving and parking on the easement area.	Video
5/6/2023 8:11pm	Link driving and parking on the easement area.	Video
5/6/2023 8:19pm	A group from Links driving and parking on the easement area.	Video
5/7/2023 6:52pm	A person from Links driving and parking on the easement area. Crossing over the easement area onto my property	Video
5/12/2023 7:34pm	Link walking in the easement area giving my 85 year mother what appears to be "the bird" hand gesture.	Video
5/12/2023 7:42pm	A group from Links driving and parking on the easement area.	Video
5/12/2023 7:45pm	A group from Links driving and parking on the easement area.	Video

5/12/2023 7:57pm	A group from Links driving and parking on the easement area.	Video
5/12/2023 7:58pm	A group from Links driving and parking on the easement area.	Video
5/12/2023 8:44pm	A group from Links driving and parking on the easement area.	Video
5/12/2023 10:28pm	A group from Links driving and parking on the easement area.	Video
5/12/2023 10:41pm	A group from Links driving and parking on the easement area. Shining headlight on the back of my house.	Video
5/13/2023 12:08pm	A group from Links driving and parking on the easement area.	Video
5/13/2023 12:18pm	A group from Links loitering in the easement area.	Video
5/13/2023 12:20pm	A group from Links driving and parking on the easement area.	Video
5/13/2023 6:11pm	Link driving and parking on the easement area.	Video
5/13/2023 6:23pm	A group from Links driving and parking on the easement area. Hauling cart and coolers.	Video
5/13/2023 6:27pm	Link driving and parking on the easement area.	Video
5/13/2023 6:41pm	Link driving and parking on the easement area.	Video
5/13/2023 6:53pm	A group from Links loitering in the easement area.	Video
5/13/2023 7:08pm	A group from Links driving and parking on the easement area.	Video
5/13/2023 7:14pm	A group from Links driving and parking on the easement area.	Video
5/13/2023 7:45pm	A group from Links driving and parking on the easement area. Hauling cart and coolers. Loitering.	Video
5/13/2023 8:15pm	A group from Links loitering in the easement area.	Video
5/14/2023 10:50am	A group from Links driving and parking on the easement area. Link accessing the easement area from Chuck's	Video
5/14/2023 4:44pm	A group from Links driving and parking on the easement area with a truck pulling a waggon and loitering.	Video
5/14/2023 4:47pm	A group from Links driving and parking on the easement area with a truck.	Video
5/14/2023 4:51pm	A person from Links driving and parking on the easement area and loitering.	Video
5/14/2023 5:02pm	A group from Links driving and parking on the easement area.	Video
5/14/2023 5:38pm	A group from Links loitering in the easement area.	Video
5/14/2023 5:41pm	A group from Links driving and parking on the easement area.	Video
5/14/2023 5:59pm	A group from Links driving and parking on the easement area. Link loitering in the easement area.	Video
5/14/2023 6:01pm	A group from Links driving and parking on the easement area.	Video
5/14/2023 7:28pm	A group from Links driving and parking on the easement area. Link loitering in the easement area.	Video
5/14/2023 8:04pm	A group from Links driving and parking on the easement area.	Video
5/14/2023 8:05pm	A group from Links driving and parking on the easement area.	Video
5/20/2023 5:02am	Spotlight being shined on the back of my house from the dock area	Video
6/9/2023 4:44pm	Philips driving and parking in easement area	Video
6/10/2023 5:13pm	Philips driving and parking in easement area	Video
7/1/2023 7:00pm	A group from Links driving and parking on the easement area.	Video
7/1/2023 7:02pm	A group from Links driving and parking on the easement area.	Video
7/1/2023 9:58pm	A group from Links driving and parking on the easement area.	Video
7/2/2023 11:52am	A group from Links driving and parking on the easement area. Leaving cart and cooler in the easement area.	Video
7/2/2023 12:00pm	A group from Links driving and parking on the easement area. Leaving more items in the easement area.	Video
7/2/2023 12:05pm	A group from Links driving and parking on the easement area. Loitering.	Video
7/2/2023 5:26pm	A group from Links driving and parking on the easement area.	Video
7/2/2023 5:56pm	A group from Links driving and parking on the easement area.	Video
7/2/2023 6:02pm	A group from Links driving and parking on the easement area.	Video
7/2/2023 6:05pm	Link cussing and threatening me. Loitering in the easement area.	Video
7/3/2023 12:05pm	A person from Links driving and parking on the easement area.	Video
7/3/2023 12:17pm	A person from Links driving and parking on the easement area.	Video
7/3/2023 8:04pm	A group from Links driving and parking on the easement area.	Video

7/4/2023 12:15pm	A group from Links driving and parking on the easement area.	Video
7/4/2023 12:16pm	A group from Links driving and parking on the easement area.	Video
7/4/2023 12:26pm	A group from Links driving and parking on the easement area.	Video
7/4/2023 4:34pm	A group from Links driving and parking on the easement area.	Video
7/4/2023 8:00pm	A person from Links driving and parking on the easement area.	Video
7/4/2023 8:08pm	A person from Links driving and parking on the easement area.	Video
7/5/2023 3:56pm	A group from Links driving and parking on the easement area. Loitering.	Video
7/5/2023 8:01pm	A group from Links driving and parking on the easement area. Loitering.	Video
7/6/2023 9:50am	Unknown group driving and extending beyond the easement area to turn around.	Video
7/8/2023 1:07pm	A person from Links driving and parking on the easement area.	Video
7/8/2023 1:20pm	A group from Links driving and parking on the easement area.	Video
7/8/2023 1:35pm	A group from Links driving and parking on the easement area.	Video
7/8/2023 2:06pm	A group from Links driving and parking on the easement area.	Video
7/8/2023 7:01pm	Link driving and parking on the easement area.	Video
7/8/2023 7:57pm	Link driving and parking on the easement area.	Video
7/13/2023 4:47pm	White truck from Links driving, parking and extending outside of the easement area. ARP sticker on back glass.	Video
7/15/2023 1:14pm	A person driving and parking in the easement area picking up a group from Links boat.	Video
7/15/2023 1:17pm	A person driving and parking in the easement area picking up a group from Links boat.	Video
7/19/2023 7:52pm	A person driving and parking in the easement.	Video
7/19/2023 7:59pm	A person driving and parking in the easement.	Video
7/21/2023 11:14am	A group from Links driving and parking on the easement area.	Video
7/21/2023 7:08am	White truck from Links driving and parking on the easement area.	Video
7/21/2023 7:09am	White truck from Links driving and parking on the easement area.	Video
7/29/2023 2:19pm	Unknown vehicle driving on the easement area.	Video
10/7/2023 6:55pm	White SUV from Links driving and parking in the easement area.	Video
10/7/2023 7:31pm	White SUV from Links driving and parking in the easement area. Backing outside of the easement area on my property.	Video
10/27/2023 6:21pm	White Truck from the Roofs driving and parking in the easement area.	Video
10/27/2023 8:12pm	White Truck from the Roofs driving and parking in the easement area.	Video
10/28/2023 8:23am	White Truck from the Roofs driving and parking in the easement area.	Video
10/28/2023 3:16pm	White Truck from the Roofs driving and parking in the easement area.	Video
10/28/2023 5:51pm	White Truck from the Roofs driving and parking in the easement area.	Video
10/29/2023 11:10am	White Truck from the Roofs driving and parking in the easement area.	Video
10/29/2023 1:36pm	Black SUV from the Moores driving and stopping in the easement area.	Video

EXHIBIT B

# Spartina Bay Plantation

April 10, 2012

To: Spartina Bay POA Members

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. Attached is a copy for your information and records. *THE AGREEMENT IS DIGITIZED, PLEASE ASK RON FARRELL IF YOU WOULD LIKE TO RECEIVE A COPY BY EMAIL,*

We have not had a meeting for two years and in order to keep the Association legal and functioning, we must have one. One of the members has requested that we improve the roads by laying gravel and there are other items that need to be discussed. Accordingly, our President, Bruce is calling a meeting on May 12, 2012 at his home, 1440 Marsh Bluff Court. The agenda will be:

*1:00 PM*

1. Call to order
2. Approval of the Nov 6, 2010 minutes
3. Dock easement
4. Usage of dock by non owners
5. Financial Report
6. Road improvement.
7. Common property maintenance
8. New Business
9. Adjournment

If you are unable to attend please indicate your proxy by returning this to:

Spartina Bay POA  
c/o Ron Farrell  
42 Eel Island  
Edisto Island, SC 29438  
Or email to: [ronfarrell@bellsouth.net](mailto:ronfarrell@bellsouth.net)

Voting Proxy for Spartina Bay May 12, 2012

I hereby authorize \_\_\_\_\_ to vote for lot \_\_\_\_\_ as she/he sees fit, without limitation or exception, on any business calling for a vote at the above meeting.

Signed: \_\_\_\_\_ Printed name \_\_\_\_\_ lot# \_\_\_\_\_

EXHIBIT C

BARR, UNGER AND MCINTOSH, L.L.C.

ATTORNEYS AT LAW  
806 OYSTER PARK, SUITE B  
EDISTO ISLAND, SOUTH CAROLINA 29438

CAPERS G. BARR, III  
H. WAYNE UNGER, JR.  
WILLIAM S. BARR  
H. THOMAS MCINTOSH, JR.  
ADAM E. BARR  
W. SIAU BARR, JR.

-----  
TELEPHONE 843-869-2389  
FAX 843-869-0110

CHARLESTON OFFICE  
11 BROAD STREET  
P. O. BOX 1037  
CHARLESTON, SC 29402-1037  
TELEPHONE 843-577-5083  
FAX 843-723-9039

June 24, 2010

Mr. Bruce Matrisciani ([wmatrisciani@yahoo.com](mailto:wmatrisciani@yahoo.com))  
1440 Marsh Bluff Court  
Edisto Island, SC 29438

RE: Spartina Bay POA (Easement and Lease)  
Our File No: 2009-3215

Dear Bruce:

I have reviewed my letter dated May 17<sup>th</sup>. After we get the plat completed from Lee Frank then there are a good many instruments we need to prepare and get implemented. Also, I think it would be a good idea to have a Special Meeting (get Proxies where possible) to confirm this action. I have no idea of knowing how long it will take but I suspect it will not cost over \$1,500.00 to get everything completed from this point forward. There is an outstanding balance from before. I will look to hear from you.

With kind regards, I am

Sincerely,  
BARR, UNGER AND McINTOSH, LLC

*H. Wayne Unger, Jr.*

H. Wayne Unger, Jr.

HWUjr/jdj

Cc: Mr. Ron Farrell (Via E-mail only)

EXHIBIT D

## Spartina Bay Plantation

### Minutes of the POA meeting – May 12, 2012

President Bruce Matriscini called the meeting to order at 1:03 PM. In attendance were Bruce, Ron & Sandy Farrell, Glen Dill, Pat & Garland McWhirter, Ginger & Gary Lee. The Hills and the Coxs were not in attendance but submitted their proxies to Bruce. There being 6 votes represented, a quorum was established.

Ginger and Gary Lee introduced themselves as prospective purchasers of Lot 6 and indicated that closing should occur no later than early June.

Garland moved that the minutes of the Nov. 6, 2010 minutes be approved as written. Bruce seconded the motion and it was approved unanimously.

#### Dock Easement

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.

#### Usage of dock by non owners

The policy that dock usage was limited to owners and guests with non owners prohibited from leaving a boat at the dock when they were not a guest of the owner or for any unreasonable time was reviewed.

#### Financial Report

The following reports were reviewed:

2011 P&L and balance sheet

2012 YTD P&L

At the time of this report we had \$5,196.43 in the bank with \$1,300 dues outstanding. In the day subsequent to the report being written, \$1000 of the outstanding dues was collected. We now have \$6196.43 in the bank and \$300 outstanding.

A motion was made by Glen Dill to accept the report, seconded by Garland and approved.

#### Road Improvement

There is a request to pour gravel on the roadway to improve on the dust situation. A proposal for approx. \$6,000 was reviewed. A question relative to whether we could pay any of this out of general funds was answered by indicating that we budget frugally and normally spend most of the fund in the year on normal upkeep. Any significant new expenditure would require an

## **Spartina Bay Plantation**

assessment. Gary Lee asked if we have considered carrying an emergency fund for such expenditures. It was stated that if we plan to do so, a dues increase would be required. Another way to handle it would be through the BOD's right to make special assessments.

After a good deal of discussion, it was suggested that we get additional estimates and recommendations for alternate approaches. Ginger Lee said that she would look in to options and get additional estimates and report back to the BOD.

### Common Property maintenance

Bruce voiced dissatisfaction with the job that George Dossett was doing, primarily that he was not blowing off the common area by the dock. He asked if there was a written contract with George. The answer was no. Ron Farrell indicated that he would talk to George. There was a brief discussion of alternatives but no action was taken.

### New Business

Ron Farrell indicated that after seven years as Secretary/Treasurer he was retiring. He also suggested that we reform the BOD so it could become more active.

Ginger Lee expressed interest in serving on the BOD in that position. The fact that they have not yet closed had become official owners makes that currently impossible. When they close in June she will be appointed to the BOD and assume the responsibility of Secretary/ Treasurer. Glen Dill has agreed to sit on the BOD as Vice President. Bruce has agreed to continue as President. As of the Lee closing the old BOD members Ron Farrell and Tyree Moore will be replaced as above.

There was discussion of a work day to do dock repair. It was suggested that we delay this until after the summer heat.

There being no further business, the meeting was adjourned at 3:20 PM.

Submitted by Ron Farrell, Sec/ Treas.