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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-000666

R. Paul Benik, Jr., Rudolph Paul Benik, III, Paula W. Benik, Anton F.B.R. Poster, Sr. and Teresa L. Poster, Johann M. Mccrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Sandra Pridgen, Ronald K. Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia Mccall Speares, Trustees of The Speares Revocable Trust u/a/d September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of The Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of The Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of The Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, and Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert Henry Lawrence Sanderson, III, Trustee of The Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghil Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette, and Arcadian Shores Single-Family Residential Homeowners Association, Inc..... Appellants,

v.

Arcadian Incorporated of Myrtle Beach,..... Respondent,

RECORD ON APPEAL VOL 1

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

s/Howell V. Bellamy, III

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Myrtle Beach, SC

October 13, 2026

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

61

Julia S. Haile,)
Plaintiff,)
v.)
The Arcadian Incorporated of)
Myrtle Beach,)
Defendant.)

FINAL JUDGMENT AND
PERMANENT INJUNCTION

Civil Action No. 81-CP-26-18

FILED
HORRY COUNTY
APR 19 PM 2:04
CLERK OF COURT
BILLY G. RICHARDSON

This matter came for hearing before me on April 7, 1982, in open court in the Horry County Courthouse, Conway, South Carolina upon Order of Reference consented to by the attorneys for Plaintiff and Defendant herein. Both parties have stipulated in writing that this Court may enter a final judgment pursuant to the terms of S. C. Code Ann. § 15-31-10 (1981 Supp.), and have further advised the Court that they waive preparation of the transcript of the hearing pursuant to S. C. Ann. § 15-31-80 (1980 Supp.). At the hearing the Plaintiff was represented by Otis Allen Jeffcoat, III, Esquire of the law firm of Sherrill, Townsend, Moses & Jeffcoat, and the Defendant was represented by William W. DesChamps, Esquire.

This action was commenced by the Plaintiff, Julia S. Haile, on October 26, 1981 by service of a Summons and Complaint upon the Defendant. The Complaint seeks the order of this Court enjoining the Defendant from interfering with or encroaching upon the streets and roadways described in the Complaint, and further requiring the Defendant to remove so much of a split rail fence, catamaran, and other obstructions as described in the Complaint. Most of the evidence in testimony presented at the hearing before me is not disputed. After deliberation, I have concluded that the Plaintiff is entitled to the relief sought in her Complaint. From the testimony and evidence introduced at the hearing before me, I find and conclude as set forth below.

The Plaintiff is the owner of and resides upon Lot 51 in Arcadian Shores subdivision as shown on various recorded maps of that

subdivision. The Defendant, The Arcadian Incorporated of Myrtle Beach, is a non-profit South Carolina corporation established for the purpose of managing the Arcadian I condominium located within the same subdivision, within the block bounded by Arcadian Drive, Beach Club Drive, and Ocean Lake Road and the Atlantic Ocean as shown on the subdivision maps. In May of 1981 the Defendant erected a split rail fence twenty-five (25) feet into Arcadian Drive and Beach Club Drive from the property line of the parcel of land upon which Arcadian I Horizontal Property Regime is situate, and thus obstructed the roadway. Within several days thereafter, the Plaintiff, by and through her attorneys, notified the Defendant of her objection to the obstruction and demanded the immediate removal of the fence. After several months of exchanging correspondence, the Plaintiff ultimately commenced suit against the Defendant requesting the relief set forth above.

It is not disputed that the Plaintiff is the owner of her lot, that she purchased the lot in reliance upon the subdivision plat, which shows beach access and other access for all lot owners along Beach Club Drive and Arcadian Drive, and that the Plaintiff and numerous other lot owners in the subdivision have regularly and continuously used the streets and roads of the subdivision (including Arcadian Drive and Beach Club Drive) to gain access to the beach of the Atlantic Ocean, which is a major attraction and value to lot owners in the subdivision. It is also not disputed that the erection and maintenance of the fence obstruction is a major inconvenience to the Plaintiff and other lot owners, and on occasion completely blocks vehicular access to the beach and makes pedestrian traffic substantially less convenient.

The two witnesses appearing on behalf of the Defendant did not dispute the testimony of the Plaintiff, but instead offered various excuses and reasons for the erection and maintenance of the fence and indicated that the fence was not intended to be permanent. Some of the reasons advanced were the obstruction of construction traffic from property across Arcadian Drive from the Arcadian I condominium, the policing of trash in the area, the maintenance of a safe roadway, and the ease of landscaping in the area surrounding the Arcadian I condominium.

I find that none of these reasons, even if proved, are legally sufficient to justify the obstruction of the private roadways by a volunteer such as the Defendant. The Defendant has advanced no legally sufficient reason for carrying on any activities outside the property lines of the condominium Regime it is required by its charter and by-laws, and by applicable law, to administer.

Upon reflection, I find that the facts of this case come squarely within the facts and law outlined in the controlling case of Blue Ridge Realty Company, Inc. v Williamson, 145 S.E.2d 922 (1965), to the effect that the Plaintiff, as an owner of a lot sold and conveyed with reference to recorded plats of the Arcadian Shores subdivision, has private easements in all streets shown on the plats, and is entitled to an order enjoining owners of other lots or tracts in the subdivision from obstructing or encroaching upon such streets and requiring them to remove such obstructions that they have heretofore erected. Accordingly,

IT IS ORDERED ADJUDGED AND DECREED that the Defendant (1) remove the split rail fence, the catamaran described in the complaint, and any and other encroachments erected or maintained by the Defendant or those under its control, and (2) restore any remaining or resulting fence post holes to a safe condition, within fifteen days of the date of this Order; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Defendant, its agents, servants and employees be, and they hereby are, permanently enjoined from interfering with or encroaching upon the streets and roadways shown on the subdivision maps; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Plaintiff have judgment against the Defendant for the taxable costs and disbursements of this action.


John L. Breeden, Jr.
Horry County Master in Equity

Conway, South Carolina

April 19th 1982

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP2605366

R Paul Benik, Jr et al
PLAINTIFF(S)

Arcadian Incorporated Of Myrtle Beach
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:

Plaintiff's Motion for Expedited Emergency Hearing TRO is Under Advisement.

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 09/17/2025 .

Dana Pridgen Wilson
Jerry Steven Wilson
Brian J Martin Trustee
Rebecca A Harrington Trustee
Timothy G Martin Trustee
Brian J Martin
Rebecca A Harrington
Timothy G Martin
Henry Lawrence Sanderson III Revocable Trust
Speares Revocable Trust
Sonia Heydt Living Trust
Maxine Williams Living Trust

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.



Horry Common Pleas

Case Caption: R Paul Benik Jr , plaintiff, et al VS Arcadian Incorporated Of Myrtle Beach
Case Number: 2025CP2605366
Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP2605366

R Paul Benik, Jr et al
PLAINTIFF(S)

Arcadian Incorporated Of Myrtle Beach
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:

After careful consideration and review, Plaintiff's Motion for an Emergency Temporary Restraining Order is respectfully DENIED.

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 10/13/2025 .

Dana Pridgen Wilson
Jerry Steven Wilson
Brian J Martin Trustee
Rebecca A Harrington Trustee
Timothy G Martin Trustee
Brian J Martin
Rebecca A Harrington
Timothy G Martin
Henry Lawrence Sanderson III Revocable Trust
Speares Revocable Trust
Sonia Heydt Living Trust
Maxine Williams Living Trust

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.



Horry Common Pleas

Case Caption: R Paul Benik Jr , plaintiff, et al VS Arcadian Incorporated Of Myrtle Beach
Case Number: 2025CP2605366
Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2025-10-13 17:05:47 page 3 of 3

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STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

R. PAUL BENIK, JR., RUDOLPH PAUL
BENIK, III., PAULA W. BENIK, ANTON
F. B. R. POSTER, SR. AND TERESA L.
POSTER, JOHANN M. MCCRACKIN,
TIMOTHY J. WENTZEL AND LISA D.
ABRAMS, SHERRY S. WEATHERLY,
JOHN D. DIEHL AND LISA R. DIEHL,
PAUL H. ERRICKSON AND LINDA M.
ERRICKSON, SAUNDRA PRIDGEN,
RONALD K. REYNOLDS AND
RASARIO REYNOLDS, V. SCOTT
MILES, VERNON G. MILES, SHARON
E. MILES, DEBORAH FLOYD, BROOKS
M. SAFRIT, WOODROW S. SAFRIT,
STEVEN ALAN SPEARES AND SYLVIA
MCCALL SPEARES, TRUSTEES OF
THE SPEARES REVOCABLE TRUST
U/A/D SEPTEMBER 24, 2019, STEVEN
P. LOMBARDI AND LISA A.
LOMBARDI, CHARLES B. HALL,
VIRGINIA G. HALL, SONIA HEYDT,
TRUSTEE OF THE SONIA HEYDT
LIVING TRUST, DATED DECEMBER
10, 2024, WENDY PIVARNIK, JOYE S.
BULL, TUMPIE B. BULL, MAXINE
WILLIAMS, TRUSTEE OF THE
MAXINE WILLIAMS LIVING TRUST
DATED OCTOBER 31, 2017, KIM
RITCHIE, VAN RAYE RITCHIE,
WILLIAM B. BURCH, SHARON K.
BURCH, TIMOTHY G. MARTIN,
REBECCA A. HARRINGTON AND
BRIAN J. MARTIN, AS TRUSTEES OF
THE GUY E. MARTIN AND ANN M.
DOZIER IRREVOCABLE TRUST
DATED JANUARY 25, 2017, MIRIAM R.
CROMER, NORWOOD NICHOLSON
COX AND JANET HARRINGTON COX,
THOMAS P. COLLINS AND SUSAN
LEE COLLINS, SHAWN KELLEY AND
KAREN ALBERT, JERRY STEVEN

Civil Action No. 2025CP2605366

**ORDER DENYING PLAINTIFFS'
MOTION FOR TEMPORARY
RESTRAINING ORDER**

WILSON AND DANA PRIDGEN	)
WILSON, PAMA C. FREE, GIOVANNI	)
CARAPELLI, JULIE A. BROOKS,	)
JENNIFER RAE MORRIS, CRAIG L.	)
LAMBERT AND LISA M. LAMBERT,	)
HENRY LAWRENCE SANDERSON III,	)
TRUSTEE OF THE HENRY LAWRENCE	)
SANDERSON, III REVOCABLE TRUST	)
DATED JANUARY 9, 2020, RONALD G.	)
BROOKS AND ROBIN D. BROOKS,	)
ROBERT CHRISTOPHER JONES AND	)
MELISSA COGHILL JONES, DARRYL	)
C. WILLIAMS AND MARY TORRENCE	)
WILLIAMS, DAVID T. TAYLOR AND	)
CATHERINE T. TAYLOR, SAMUEL	)
DEEP AND DIANNE DEE O, NATALI D.	)
AMARADASA,	)
ROSEMARY LONG JENRETTE AND	)
ARCADIAN	)
SHORES SINGLE-FAMILY	)
RESIDENTIAL	)
HOMEOWNERS ASSOCIATION, INC.,,	)
	)
Plaintiffs,	)
	)
v.	)
	)
THE ARCADIAN INCORPORATED OF	)
MYRTLE BEACH,	)
	)
Defendant.	)

This matter comes before the Court on Plaintiffs’ Motion for Temporary Restraining Order pursuant to Rule 65(b), S.C. R. Civ. Pro. The Court has reviewed the pleadings, affidavits, exhibits, and memoranda submitted by the parties, and has fully considered the arguments presented at the hearing on September 15, 2025. Based upon the record before the Court, Plaintiffs’ Motion is Denied. The Court issued a Form 4 Order denying Plaintiff’s relief on October 14, 2025, and now sets forth the following findings of fact and conclusions of law.

I. FINDINGS OF FACT

Plaintiffs are owners of property within the Arcadian Shores Single Family Residence Homeowners Association (“ASSFR”). Defendant owns in fee simple the southeastern terminus of Arcadian Drive, including the portion of a roadway at issue in Plaintiffs’ motion.

Plaintiffs contend they possess an easement permitting parking along this portion of Arcadian Drive, and seek emergency injunctive relief compelling Defendant to allow unrestricted parking.

The evidence before the Court is insufficient to show that Defendant has unlawfully blocked access to Arcadian Drive or denied ingress or egress to Plaintiffs.

Defendant has presented evidence that it implemented neutral and generally applicable parking procedures governing the disputed parcel, including the following: (a) issuance of parking decals to authorized users, (b) submission of a short application and execution of a waiver of liability, and (c) designation of a no-parking zone on the south side of Arcadian Drive due to the presence of a vulnerable underground drainage pipe. These procedures are applied uniformly and are not directed at Plaintiffs based on their membership in ASSFR.

The Court finds that Plaintiffs have not supported their contention that they are denied access to their properties or to the beachfront, or that parking on Arcadian Drive is the sole means of beach access available to Plaintiffs.

With respect to Plaintiffs’ claimed property interest, the evidence presented to the Court demonstrates the following:

- (a) The portion of Arcadian Drive at issue was conveyed out of Ocean Lakes Investment Company (“OLIC”) on January 11, 1982, prior to the first appearance of express easement language relied upon by Plaintiffs.

- (b) The June 14, 1982 quit-claim deed containing easement language upon which Plaintiffs rely was executed after OLIC conveyed the property.
- (c) No deed, plat, or recorded instrument expressly grants parking rights over the disputed portion of Arcadian Drive.
- (d) The weight of evidence presented to the Court does not establish that the owner of the subject property ever consented to, or accepted, any easement burdening that parcel.
- (e) Defendant and its predecessors posted signage identifying Arcadian Drive as private, negating any claim of prescriptive rights.

II. CONCLUSIONS OF LAW

A Temporary Restraining Order is an extraordinary remedy. *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005) (overruled in part on other grounds). To prevail, a Plaintiff must clearly show (a) likelihood of success on the merits, (b) irreparable harm absent injunctive relief, and (c) inadequacy of a remedy at law. *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).

Plaintiffs have not met their burden of establishing a likelihood of success on the merits. Even assuming for the sake of argument the existence of an easement for access, the law requires an easement holder to exercise rights in a manner that does not unreasonably burden the servient estate. *Smith v. Comm'rs of Pub. Works*, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994). The record reflects that Defendant's procedures are reasonable, nondiscriminatory, and narrowly tailored to protect property and infrastructure.

Plaintiffs have not established irreparable harm. Mere inconvenience, administrative burden, or preference for unrestricted parking does not constitute irreparable injury. The record contains no evidence that Plaintiffs are unable to access their properties or the beachfront absent the requested relief.

Further, Plaintiffs have an adequate remedy at law. The dispute centers on the existence and scope of alleged property rights and may be addressed through declaratory judgment and damages. Injunctive relief is therefore inappropriate. *See, e.g., Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312 (Ct. App. 2010).

The relief sought by Plaintiffs would alter, rather than preserve, the status quo by compelling Defendant to abandon existing, neutrally applied procedures.

Finally, the balance of equities favors Defendant, who seeks to regulate use of its property in a reasonable manner to prevent overburden and physical damage.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion for Temporary Restraining Order is DENIED.

AND IT IS SO ORDERED.

The Honorable B. Alex Hyman
Presiding

January____, 2026



Horry Common Pleas

Case Caption: R Paul Benik Jr , plaintiff, et al VS Arcadian Incorporated Of Myrtle Beach
Case Number: 2025CP2605366
Type: Order/Temporary Restraining Order

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2026-01-21 14:17:33 page 6 of 6

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP2605366

R Paul Benik, Jr et al
PLAINTIFF(S)

Arcadian Incorporated Of Myrtle Beach
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:

After careful consideration and review, Plaintiffs' Motion to Reconsider the Court's January 22, 2026, order denying Plaintiffs' Motion for a TRO/Temporary Injunction is respectfully Denied.

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 02/12/2026 .

Dana Pridgen Wilson
Jerry Steven Wilson
Brian J Martin Trustee
Rebecca A Harrington Trustee
Timothy G Martin Trustee
Brian J Martin
Rebecca A Harrington
Timothy G Martin
Henry Lawrence Sanderson III Revocable Trust
Speares Revocable Trust
Sonia Heydt Living Trust
Maxine Williams Living Trust

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.



Horry Common Pleas

Case Caption: R Paul Benik Jr , plaintiff, et al VS Arcadian Incorporated Of Myrtle Beach
Case Number: 2025CP2605366
Type: Order/Electronic Form 4

15th Circuit Resident Judge

s/ B. Alex Hyman

Electronically signed on 2026-02-12 12:24:14 page 3 of 3



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

April 16, 2026

The Honorable Renee Elvis
PO Box 677
Conway SC 29528-0677

REMITTITUR

Re: R. Paul Benik, Jr. v. The Arcadian Incorporated of Myrtle Beach
Lower Court Case No. 2025CP2605366
Appellate Case No. 2026-000666

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

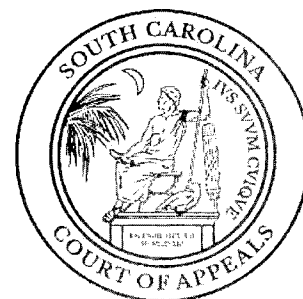
Very truly yours,

A handwritten signature in black ink that reads "Jasmine D. Smith, Deputy". The signature is written in a cursive, flowing style.

CLERK

Enclosure

cc: Howell Vaught Bellamy, III, Esquire
James Christopher Clark, Esquire
Dominic Allen Starr, Esquire



The South Carolina Court of Appeals

R. Paul Benik, Jr., Rudolph Paul Benik, III, Paula W. Benik, Anton F.B.R. Poster, Sr. and Teresa L. Poster, Johann M. Mccrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Saundra Pridgen, Ronald K. Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia Mccall Speares, Trustees of The Speares Revocable Trust u/a/d September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of The Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of The Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of The Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, and Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert Henry Lawrence Sanderson, III, Trustee of The Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette, and Arcadian Shores Single-Family Residential Homeowners Association, Inc., Appellants,

v.

The Arcadian Incorporated of Myrtle Beach, Respondent.

Appellate Case No. 2026-000666

The Honorable B. Alex Hyman
Horry County
Trial Court Case No. 2025CP2605366

ORDER

Appellants have failed to provide proof of filing the notice of appeal with the Horry County Clerk of Court and to include a full title/caption for the notice of appeal that identifies all the appellants, as required by Rules 203 and 267(a) of the South Carolina Appellate Court Rules, and this Court's letter dated March 17, 2026. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT
BY Jasmine D. Smith, Deputy
CLERK

Columbia, South Carolina

FILED
Mar 31 2026

cc:

Howell Vaught Bellamy, III, Esquire
James Christopher Clark, Esquire
Dominic Allen Starr, Esquire

The South Carolina Court of Appeals

R. Paul Benik, Jr., Rudolph Paul Benik, III, Paula W. Benik, Anton F.B.R. Poster, Sr. and Teresa L. Poster, Johann M. Mccrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Saundra Pridgen, Ronald K. Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia Mccall Speares, Trustees of The Speares Revocable Trust u/a/d September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of The Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of The Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of The Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, and Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert Henry Lawrence Sanderson, III, Trustee of The Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette, and Arcadian Shores Single-Family Residential Homeowners Association, Inc., Appellants,

v.

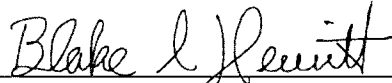
The Arcadian Incorporated of Myrtle Beach, Respondent.

Appellate Case No. 2026-000666

ORDER

On March 31, 2026, this court dismissed this appeal and sent remittitur on April 16, 2026. On April 22, 2026, Appellants filed a motion to recall remittitur, citing counsel's health and a change in personnel to support their motion. According to Appellants, Respondent consents to recalling remittitur. After careful consideration, we grant the motion to recall remittitur and reinstate the appeal.

On April 27, 2026, Appellants filed a motion to extend the time to serve and file their initial brief and designation of matter. According to the motion, Respondent consents to the request. After careful consideration, we grant Appellants' motion for an extension of time to serve and file their initial brief and designation of matter until May 27, 2026.



J.

FOR THE COURT

Columbia, South Carolina

FILED
May 19 2026

cc:

Howell Vaught Bellamy, III, Esquire
James Christopher Clark, Esquire
Dominic Allen Starr, Esquire

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr., Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, Paula W. Benik, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda D. Errickson, Sandra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds, Rasario Reynolds, Gene W. Euchler and Cecelia L. Euchler, Sara F. Miles, V. Scott Miles, Deanna VanNostrand, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Douglas M. Mason, Barbara A. Mason, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Spears, Sylvia McCall Spears, Natalie D. Amaradasa, Darryl C. Williams, Mary Williams, Steven P. Lombardi, Lisa A. Lombardi, Davud G. Laureles, Tracey N. Laureles, Austin Whitesell, Jessica Whitesell, Jaqueline Ann Petrisko, Robert Palmer, Linda Palmer, Charles B. Hall, Virginia G. Hall, Paige Bird, Michael C. Smith, Edwina Sekhri, Vinod Sekhri, Sonia Heydt, Vicky Jackson, Douglas R. Keefe, Ashton Lackey, William Lackey, Timothy Beauford Hudson, Victoria Ester Hudson, Matthew G. Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Willliams, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon Burch, Ann M. Dozier, T. Guy Martin, Joshua Damon, Miriam R. Cromer and Arcadian Shores Single-Family Homeowners Association, Inc.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26-05366

**PLAINTIFFS' MOTION FOR AN
EXPEDITED EMERGENCY
TEMPORARY RESTRAINING ORDER**

**TO ATTORNEY HENRIETTA U. GOLDING AND THE DEFENDANT, THE
ARCADIAN INCORPORATED OF MYRTLE BEACH:**

YOU WILL PLEASE TAKE NOTICE that Plaintiffs, by and through their undersigned attorneys, move this Honorable Court, pursuant to Rule 65(b) of the *South Carolina Rules of Civil Procedure*, under emergency circumstances for a Temporary Restraining Order (“TRO”) granting immediate relief enjoining and prohibiting Defendant, and any and individuals, entities, contractors, and/or others acting in concert with Defendant, from *inter alia*, restricting Plaintiffs from parking in and along the beach access portion of Arcadian Drive. The grounds for this Motion, as set forth in Plaintiff’s Verified Complaint, are that Defendant is illegally restricting Plaintiffs from parking in and along the beach access portion of Arcadian Drive, which Plaintiffs have historically been entitled to do by private easement. Plaintiffs argue that the continued actions of the Defendant in blocking and/or preventing Plaintiffs from being able to temporarily park their cars in and along the beach access point and termination of Arcadian Drive, in order to reach their beach front property abutting the Atlantic Ocean, constitutes irreparable harm to the Plaintiffs. As a result, Plaintiffs now move to enjoin the Defendant from changing the previous status quo during the pendency of this Action.

“For a preliminary injunction and/or TRO to be granted, the plaintiff must establish that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. Scratch Golf Co. V. Dunes W. Residential Golf Props. Inc., 361 S.C. 117, 121 (2004). Affidavits may be submitted to the Court to show that the three prior mandatory elements required to obtain a preliminary injunction are met. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). The quintessential hallmark of an injunction is the preservation of the property rights at issue until the matter has been adjudicated. Grossheusch v. Cramer, 367 S.C. 1 (2005).

The Plaintiffs clearly stand to be further irreparably harmed by Defendant’s continued restriction of Plaintiffs ability to temporarily park along the beach access on Arcadian Drive.

Despite Plaintiffs' historical use of the beach access on Arcadian Drive for temporary parking, the Defendant is preventing Plaintiffs from enjoying the beach as property owners in Arcadian Shores.

Furthermore, Plaintiffs are likely to succeed on the merits of the case. Both the Plaintiffs' and Defendant's properties were derived from a common grantor, Ocean Lakes Investment Company, and were platted by the common grantor into lots and blocks. The acts of the common grantor in platting the Arcadian Shores Subdivision's tract of land in the manner as show by **Exhibits 40-A and 40-B** of Plaintiffs' Verified Complaint and the conveyance of the properties by deeds referring to and adopting Robert L. Bellamy, C.E.'s Maps constitute express and implied private dedications of the areas contained therein and grant right of ways over all of the areas contained in the forty (40) foot wide, seventy (70) foot wide, and seventy-five (75) foot wide strips denominated as streets or roads on the Maps. When the Defendant purchased "that portion of Arcadian Drive lying southeast of the intersection of Arcadian Drive and Lake Shore Drive," the Defendant took title subject to the Plaintiffs' private driveway easement. See Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975) (Landowner was charged with constructive notice of appurtenant easement for road purposes which was reflected in subdivision plat recorded by predecessor in title.) It is unambiguous that the purpose of the seventy-five (75) foot wide Arcadian Drive at its beach access point and termination is to allow the Plaintiffs to temporarily park their cars in part of the private easement of way area in light of what is convenient and necessary to the full enjoyment of the Plaintiffs' properties. See also, Smith v. Commissioners of Pub. Works of City of Charleston, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994) ("In determining the extent of the easement ([including parking]), consideration must be given to what is essentially necessary to the [full] enjoyment of the propert[ies]."). The Arcadian Shores' general plan of development, as set out in the Affidavit of Anton Poster, **Exhibit 47** to Plaintiffs' Verified Complain, confirms that the common grantor intended for the beach access roads to have extra

width to add value for all owners within the Subdivision, including the Plaintiffs and their predecessors in title, by providing for temporary parking at the beach access roads. This was also acknowledged in the Affidavit of William Bellamy, C.E., **Exhibit 48** to Plaintiffs' Verified Complaint. Plaintiffs have made a prima facie showing of an entitlement to the relief sought in their Verified Complaint. *See Levine v. Spartanburg Reg. Serv. Dist.*, 367 S.C. 458, 465-466, 626 S.E.2d 38, 42 (Ct. App. 2005).

Lastly, Plaintiffs have no adequate remedy at law. The true standard of whether an injunction should be issued is whether a legal remedy is somehow ineffective or impractical because threatened injury may continue or be magnified during the progress of the litigation. *Kirk v. Clark*, 191 S.C. 205, 4 S.E.2d 13 (1939).

Therefore, Plaintiff respectfully request that this Honorable Court issue an Order restraining Defendant, and any and all individuals, entities, contractors or others acting in concert with Defendant or otherwise affecting the Plaintiffs' access to the termination of Arcadian Drive at the Atlantic Ocean, from blocking or otherwise restricting Plaintiffs' access to temporarily park in and along the beach access portion of Arcadian Drive until such time the Court can address and hear Plaintiffs' Motion for a Temporary Injunction, to be scheduled at the Court's convenience.

(SIGNATURE PAGE TO FOLLOW)

Respectfully submitted,

Bellamy, Rutenberg, Copeland Epps,
Gravely & Bowers, P.A.

/s/ Howell V. Bellamy, III

Howell V. Bellamy, III (S.C. Bar #66575)

hbellaamyiii@bellamylaw.com

1000 29th Ave., N.

Myrtle Beach, SC 29577

(843)-448-2400 Telephone

(843)-448-3022 Facsimile

Attorney for Plaintiffs

Myrtle Beach, South Carolina
August 14, 2025

EXHIBIT 40-A

This map supercedes map of ARCADEM SHORES dated September 1986 and recorded in Plat Book 41, page 12, Clerk's Office, Jersey County, S. C., and shows the location of Lot 1 at Block 1 according to actual survey and placing of corners. As to all other areas this is a tentative plan and subject to right to revise same and in rearranging and relocating lines in the area, extend from Lake Shore Drive and to lay out and/or subdivide the property lying between Lake Shore Drive and the Atlantic Ocean.

Secrecy is not dedicated to the public by the filing of this map.

Robert R. Bellamy, C. E.

OCEAN LAKES INVESTMENT COMPANY

OCEAN LAKES INVESTMENT COMPANY

By: *Charmaine*

As I was about

MAP
OF
Arcadian Shores

Horry County South Carolina

A Residential and Commercial Subdivision. John A McLeod, Inc.

Scale : 1" = 100'

Nov. 1961

Robert L. Bellamy, C.E.

Recorded in Plot Book 42, at Page 42.

10 OCEAN LAKE ROAD AND U. S. HIGHWAY 10

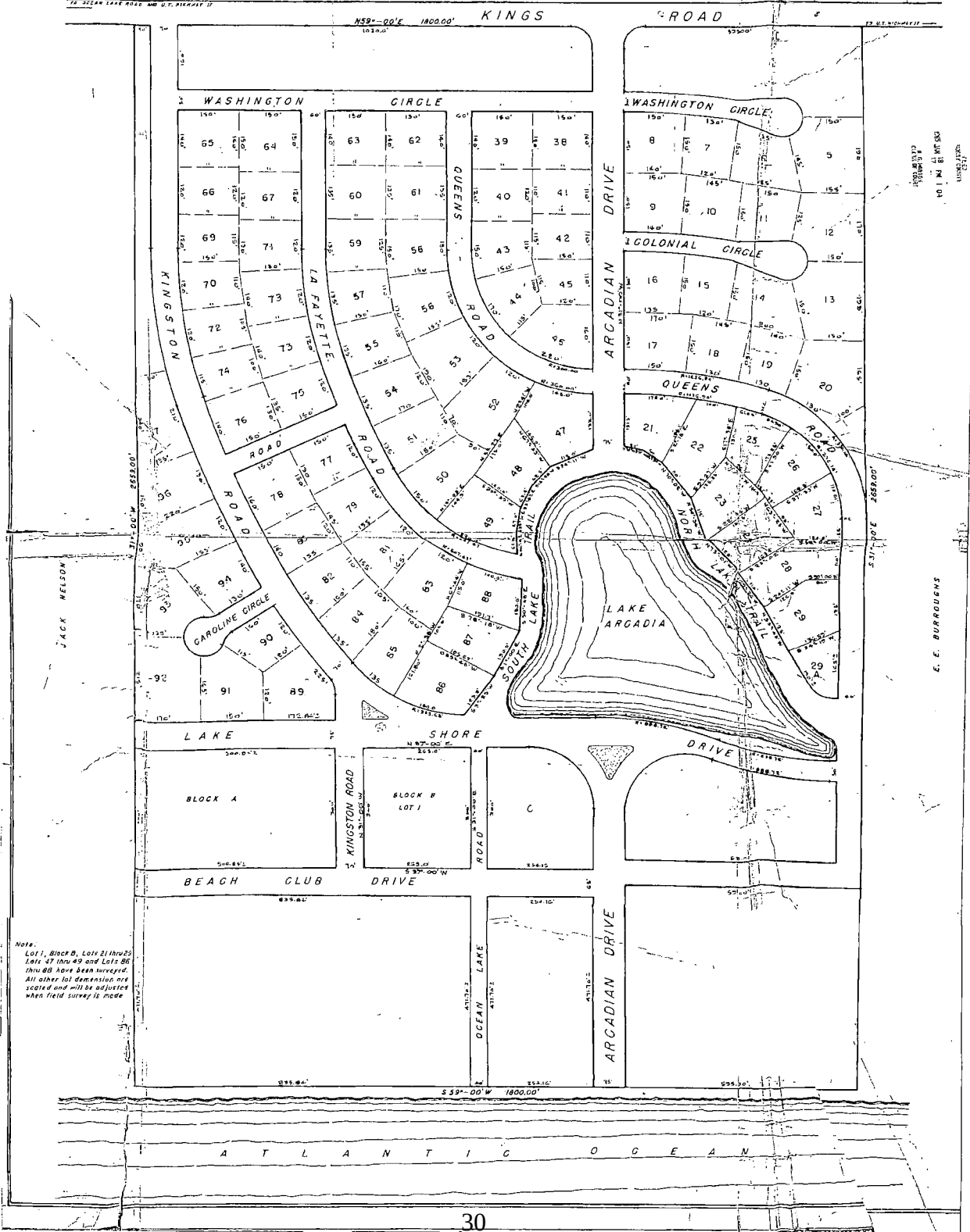


EXHIBIT 40-B

135.54 pg 135

NOTE BY DEVELOPER AND ENGINEER

This is a second revision of map of ARCADIAN SHORES and supersedes the map of November 1964 filed in Clerk's office, Horry County in Plat Book 52 at page 42. It is the intention of the map of ARCADIAN SHORES that the portion of Block C's Drive lying to the northeast of Arcadian Drive, which will now and will then be the northern boundary of Block C, be shown as a continuation of the map of November 1964.

Shall not be construed to be a part of the filing of this map.

Robert L. Bellamy, Civil Engineer

Recorded in Plat Book

at page

OCEAN LAKES INVESTMENT COMPANY

By: [Signature] President

Recorded in Plat Book 52 at Page 42.

135.54 pg 135 and 136

MAP OF

ARCADIAN SHORES

Horry County South Carolina

A Residential and Commercial Subdivision. JOHN A. McLEOD, INC.

Nov. 1964 - Revised Feb 1965

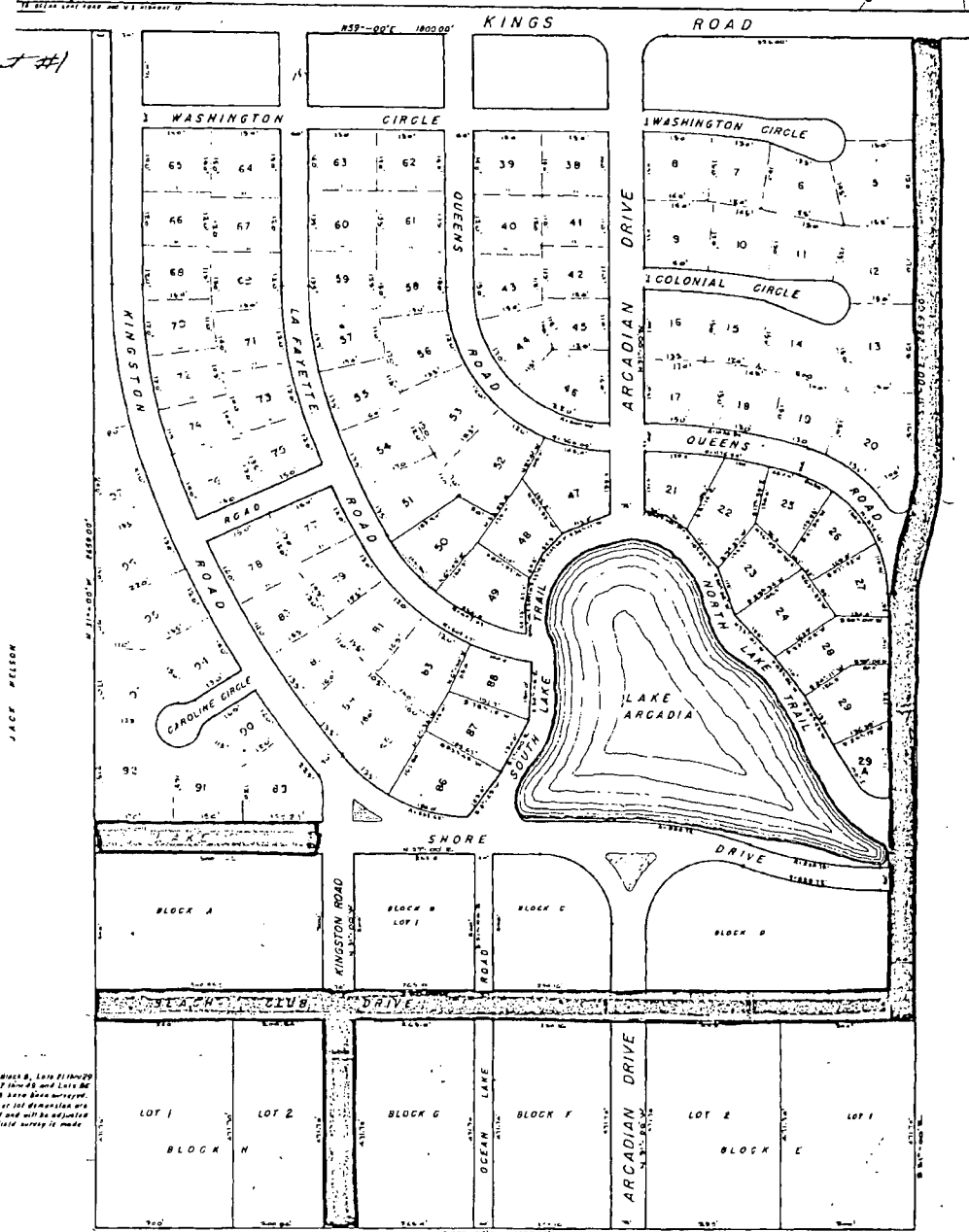
Revised Oct 1967

Robert L. Bellamy, C.E.

Exhibit #1

SECTION 3.7

SECTION 3.7



Note: Block B, Lots 1 through 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

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NOV 31 1967

HORRY COUNTY

EXHIBIT 48

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.
	)	
R. Paul Benik, Jr., Anton F.B.R. Poster, Sr.,	)	
et al.,	)	
	)	
Plaintiffs,	)	
vs.	)	AFFIDAVIT OF WILLIAM BELLAMY
	)	
The Arcadian Incorporated of Myrtle	)	
Beach,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE me, the undersigned, who being duly sworn, deposes and states:

1. My name is William George Bellamy. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge, experience and training, and expertise in the field of civil engineering.
2. I graduated from Myrtle Beach High School in 1960.
3. I attended Clemson University from September 1961 to December 1962 and majored in civil engineering.
4. I was registered and licensed with the State Board of Engineering for the State of South Carolina. Also, I was licensed with the State Board of surveying for the State of South Carolina.
5. I was employed by Robert L. Bellamy Associates, Inc., beginning in 1964 until I retired in 2019. I later became an owner and/or shareholder in the company and later became President.

6. I am not a party to the above-entitled action.
7. This Affidavit is submitted in support of the allegations contained in the Plaintiffs verified complaint.

RELEVANT FACTUAL HISTORY

8. The Subdivision known as Arcadian Shores (“the Subdivision”) is located in the unincorporated portion of Horry County, South Carolina. The Subdivision was planned, developed, and created by Ocean Lakes Investment Company, Inc. (“the Developer”) in the 1960s.

9. The Developer and Common Grantor, Ocean Lakes Investment Company, Inc. (“OLIC”) acquired the 109.8-acre land that became the Subdivision by deed dated March 17, 1967, recorded in Deed Book 303 at page 408, later corrected by deed dated May 5, 1965, recorded in Deed Book 326 at page 137.

10. I had an opportunity to personally work on the initial Maps of Arcadian Shores Subdivision while assisting my father Robert L. Bellamy, C.E. The first map of Arcadian Shores Subdivision was dated November of 1964, and revised in February of 1965, and was originally recorded on March 1, 1965 in the office of the Clerk of Court for Horry County in Plat Book 42 at page 62, and further revised and re-recorded on March 17, 1967 in the office of the Clerk of Court for Horry County Plat Book 54 at Page 135 records of Horry County, South Carolina.

11. The widths of Arcadian Drive (75’), Ocean Lakes Road (40’), and Kinston Road (70’) in Arcadian Shores Ocean Front Development Subdivision (“Arcadian Shores”) were specifically designed for ingress and egress and gaining access to the beachfront area, including parking in and along their beach access points and termination by homeowners who resided in Arcadian Shores Subdivision. These multiple beach access roads were considered to be acceptable

for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots.

I affirm that the foregoing is true to the best of my personal knowledge or on information and belief. I understand that the penalty for intentionally providing false information involves prosecution for perjury and the penalties associated with doing the same.

FURTHER AFFIANT SAYETH NOT.

William George Bellamy
William George Bellamy

SWORN to and subscribed before me this
24 day of July, 2025.

Vicki M CARROLL
Notary Public for the State of South Carolina

Vicki M CARROLL
Printed Name of Notary Public

My Commission Expires: 8/31/2026

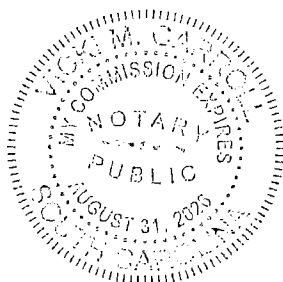


EXHIBIT 47

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.
	)	
R. Paul Benik, Jr., Anton F.B.R. Poster, Sr.,	)	
et al.,	)	
	)	
Plaintiffs,	)	AFFIDAVIT OF ANTON F.B.R. POSTER, SR.
vs.	)	
	)	
The Arcadian Incorporated of Myrtle	)	
Beach,	)	
	)	
Defendant.	)	
	)	

PERSONALLY APPEARED BEFORE me, the undersigned, who being duly sworn, deposes and states:

1. My name is Anton F. B. R. Poster, Sr. I am over the age of eighteen (18) years and competent to make this Affidavit based on my personal knowledge as a Homeowner in Arcadian Shores.
2. I attended the University of South Carolina (mostly the Coastal Carolina branch in Horry County) and majored in business administration.
3. I graduated from Coastal Carolina in 1975.
4. I worked for the law firm of Dusenbury, Hendrix and Little for 5 years, Coastal Federal Savings and Loan for 13 years, and have been self-employed for 36 years as a residential and commercial real estate appraiser in the Myrtle Beach, Horry County, South Carolina area.
5. I am a party to the above-entitled action.

6. A copy of my Deed, marked Exhibit "A", is attached hereto and incorporated by reference as part of this Affidavit. Also attached hereto and incorporated by reference as part of this Affidavit is Deed dated June 13, 2023, Recorded in Book 4690 at Page 2672 in the Horry County Register of Deeds as my wife transferred a Life Estate into my name.

7. This Affidavit is submitted in support of the allegations contained in the Plaintiffs' Verified Complaint.

**FACTUAL HISTORY OF PERSONAL OWNERSHIP AND
USE OF CONDOMINIUM UNIT**

8. My mother and father moved from New York to Myrtle Beach in 1950 and built a house next door to my mother's parents to the North of, but in the school district of, Myrtle Beach in 1950, in an ocean/beach front subdivision. My father, Gerbrand Poster, Jr., founded Coastal Federal Savings and Loan. He was the manager but felt that it was good idea to have someone else as the President. From the Board of Directors Mr. Robert E.L. Brown was chosen to be President. From the time that I was roughly twelve, once both my brother and sister were college bound, and on their ways to being adults, my father had me learning the ins and outs of elements of the business world. One summer he had me going downtown with him and spending the days with the surveying firm of Robert L. Bellamy so I could learn mapping aspects of real estate. Later, once I had graduated high school and was starting to attend the Coastal Carolina branch of U.S.C., he arranged for the real state law firm of Dusenbury, Hendrix and Little to hire me for the summer, although I ended staying with them for many years, so that I could learn real estate laws. Again, before and through the early and later 1960s I learned from my father that in those early days of the Savings and Loan its primary thrust was for residential real estate development. As I would

learn, in my youth and in business school and later as a “banker” myself, deposits are necessary for banking, but they sit on the liability side of the lending institution's balance sheet – the assets are loans. Thus, real estate development was of paramount importance in his mind, and Savings and Loans and their officers were originally created to assist with residential ownership in various types of subdivisions.

9. While going back and forth to work and while looking at properties which were to be funded my father loved detouring around and looking at the many properties he would find. Sometime in early 1964 I remember his once taking the family to the end of a street that stopped at the ocean and proudly declaring that the mostly bare knoll of land on which we sat would one day extend itself along the coast and likely become heavily developed - that land is now known as Shore Drive. Another time he drove my sister and me to school (on his way to his office) and took a rutted dirt path he had found which went from the Dunes Club to 38th Avenue North and talked about it possibly being a “real road” one day – that path is now Highway 17 Bypass. It was during one of his trips downtown that he came across another find lying between our subdivision and downtown. I remember his bringing me to show me what he declared should be a new Subdivision. He envisioned that it should be an ocean front subdivision, similar to where we lived, with its own beachfront area. What I remember was the view from where we parked from the Atlantic Ocean and a large lake. We were parked at what is now the entrance into Arcadian Drive from Kings Road and I was looking at Lake Arcadia.

10. My father contacted two members of his S&L Board, Bob Brown (mentioned above) and John McLeod. Mr. Brown had a wealthy wife and it was his job to find ways in which to invest her money. Mr. McLeod was a well-established and respected realtor. They bought the

ocean front acreage which would become Arcadian Shores, roughly 1/3 mile wide and one-half mile from Kings Road to the Ocean, from the Burroughs family (as in Burroughs and Collins Company and Burroughs and Chapin) and my father's "finding" the property bought him an ownership interest as a finder's fee. The developers became Ocean Lakes Investment Co. (OLIC, for short). Then, over the next year or so while driving to or from downtown Myrtle Beach, where I attended school and his work, we would sometimes come and park on the street becoming Arcadian Drive to enjoy the view and discuss the plans. On occasion Mr. Brown or Mr. McLeod would accompany us and they would park by the side of the paths to brainstorm.

11. Messrs. Brown, Mcleod and Poster began to form their ideas for the new subdivision. In 1954, before Coastal Federal was founded in December of that year, Myrtle Beach was hit by Hurricane Hazel. One of the things that came to light from that occasion was that residential-style construction did not stand up very well against the force of a massive hurricane. Thus, it was determined that the residential portion of Arcadian Shores would sit "back" from the ocean by two blocks, and the first two blocks located on the ocean would be reserved for commercial grade/type improvements, such as high-rise hotels and also low-rise motels. Condominiums were a new concept, although the Kingston Arcadian H.P.R. was one of the first condominium projects in the area.

12. My grandfather (who, again, lived next door to us in our ocean front subdivision) had chronic back problems since becoming an adult (he would have been born in circa 1880 and thus been 68 when they built in 1948). This condition started to present itself in my mother in her 40's, and she eventually had severe back problems and limited mobility by the early mid 1960's, leading to surgery in the mid-60s. Therefore, as a member of the development firm OLIC, my

father was sensitive to the needs of various people, including those with children or infirm and/or disabled individuals who may have a need to drive to and park at the beach.

13. The parking widths of the roads in Arcadian Shores could and would allow for ingress and egress to the beachfront along with an access ability with parking for residents including disabled members of the proposed beachfront community. These multiple beach roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots. Whereas the Arcadian Shores Subdivision's plats were recorded at the Court House, the developers (again, Messrs. Brown, McLeod and Poster) were always careful to ensure that the roads would not be dedicated to the public but would remain available for the private use of owners and residents of the Subdivision for beach access and parking. Just as Mr. Robert Bellamy had and would plan and plat many of the ocean front neighborhoods owned and developed by the Burroughs family within the City Limits of Myrtle Beach the decision was made in Mr. Bellamy's platting the Arcadian Shores subdivision to have wide streets which would go all the way to the ocean and beach placed between blocks in order to allow for beach access for property that was not directly on the beach. These ideas together meant for Arcadian Shores, which had a large swath of available beachfront, to connect this beachfront to the residential area, and so a (75') wide road (Arcadian Drive) and a narrow (40') road (Ocean Lake Road), and eventually another wide (70') road (Kingston Road) were all planned and platted.

14. As stated, this was the procedure that was also used in Myrtle Beach proper, where "avenues" which ran perpendicular to the Ocean would continue going eastward/oceanward from Ocean Boulevard to the Atlantic itself and thus provide access and parking, at each avenue's end,

for residents of the city. The typical width of each of these avenues (in the City of Myrtle Beach) was sixty feet (60') and this width was adequate for parking as well as access, with a typical street/avenue allowing for 20' width of paving and an additional 20' "length" on each road's sides for car parking purposes. As such even a 40' wide road would be able to hold at least one car's length of parking spaces as well as the road itself. As in the City of Myrtle Beach, the Arcadian Shores' development plan meant for the roads, themselves, as well as their extra width of the roads, to be an asset and a value enhancement for all owners within the Subdivision by providing parking for all residents, as opposed to selling the maximum front footage to and for ocean front development with a few narrow walking paths to the ocean front left and allowed for the residents. If instead of the roadways there had been two or three 5' to 10' wide walkways placed going to the beach, to allow for foot traffic from the residential area of the Subdivision to the ocean frontage, and said frontage was clearly the most valuable portion of the tract, the amount of ocean frontage available for sale could have been increased by roughly 10%. It was felt that access and parking rights being available to all the properties within the neighborhood would produce a greater value impact for OLIC than this 10% increase in available ocean frontage, especially since OLIC itself was retaining the ownership of the actual ocean frontage.

15. My father had an aneurism in February 1972 and Mr. John McLeod passed away in October of that same year. My father then passed away in 1979. In between that time the new manager for Coastal Federal hired me (at the beginning of 1976) from Dusenbury, Hendrix and Little and I had become a loan officer. By the early 1980's various residential lots and ocean front and second row blocks within Arcadian Shores had been leased and/or sold, but OLIC had ownership of unsold lots and small parcels and all common elements, including all roads and the

beachfront. In 1980 Mr. Bob Brown, as then President of OLIC asked me to come in and take over as its operating officer, specifically charged with the duty to attempt to liquidate OLIC once and for all.

16. I negotiated the sale of the land leased to the Hilton Hotel to the Hilton itself. I had the unsold lots divided amongst the shareholders. By this time, I had been named the Chief Appraiser for Coastal Federal and had undergone extensive classes in appraisal theory and practice from the American Institute of Real Estate Appraisers. In order to be impartial, I allowed the McLeod Real Estate firm to assign a uniform value for all the remaining lots. Nonetheless, I was trained in real estate evaluation, especially for residential purposes. I was anxious, therefore, to maximize the possibilities of ownership for my mother, who was to receive several lots. Accordingly, I suggested that three of the four lots she was to receive be located on Kingston Road, since it was a road with direct access and parking to the beach. OLIC needed to continue paying for maintenance of the common areas or take a chance at losing property values for each and all of the lots which had been sold and/or divested from the corporation to the individual shareholders. Mr. Ralph Haile, an insurance agent who owned a house in the Arcadian Shores Subdivision, and who knew me from my loan officer days with Coastal Federal, contacted me; he was wondering if OLIC was preparing to give the common elements, including the beach access roads, to the county. I acknowledged to Mr. Haile that taking care of the paved roads in the neighborhood could be expensive to a small community. I let Mr. Haile know I would look into various ideas and get back to him. I persuaded the Hilton Hotel to take possession of the paved roads within the Subdivision - including the paved portions of Arcadian Drive, Ocean Lake Road, and the privately owned portion of Kingston Road, which led from the residential area of the Subdivision to the ocean and

beachfront along with the existing access rights over same. I was working with the local attorney Howell V. ("Skeets") Bellamy, Jr. in order to close out OLIC. I contacted Mr. Haile with information about the paved roads, and he assured me that he had enough people who were willing to band together and form an "after-the-fact" Homeowner's Association that could and would incorporate and be willing to take possession of the remaining elements of the lake and unpaved roads, paths and abutting tract. This was what Mr. Bellamy, and I had been waiting for and he had his firm do the paperwork so the Ocean Lakes Investment Corporation could be dissolved, which included a deed signed by me in January of 1982. In this process Mr. Bellamy and I wanted to protect the rights of the residential homeowners. This was essential to me since my disabled mother, who had to have hip surgery in 1970, had received the four mentioned lots within the Subdivision in 1981 and might choose to build within the neighborhood, and I had purchased one of those lots, on Kingston Road, from her in that same year. Having been raised in an ocean front subdivision and being familiar as an appraiser with the effects of these subdivision types, I knew that parking and access to a beach provided a valuable enhancement to ocean front communities/subdivisions. The rights to full access to the beach, including parking, was meant and intended to be transferred by deeds conveying both the beach, and access to the beach, including that deed which I signed in 1982, recorded in Deed Book 734, Page 196 (RMC for Horry County).

(SIGNATURE PAGE TO FOLLOW)

FURTHER AFFIANT SAYETH NOT.

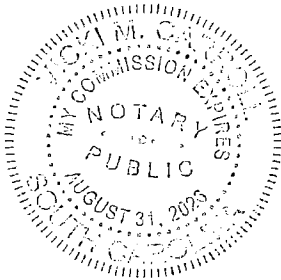
Anton F. B. R. Poster, Sr.
Anton F. B. R. Poster, Sr.

SWORN to and subscribed before me this
200 day of July, 2025.

Vicki M CARROLL
Notary Public for the State of South Carolina

Vicki M CARROLL
Printed Name of Notary Public

My Commission Expires: 8/31/2026



STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

R. PAUL BENIK, JR., RUDOLPH PAUL
 BENIK, III., PAULA W. BENIK, ANTON
 F. B. R. POSTER, SR. AND TERESA L.
 POSTER, JOHANN M. MCCRACKIN,
 TIMOTHY J. WENTZEL AND LISA D.
 ABRAMS, SHERRY S. WEATHERLY,
 JOHN D. DIEHL AND LISA R. DIEHL,
 PAUL H. ERRICKSON AND LINDA M.
 ERRICKSON, SAUNDRA PRIDGEN,
 RONALD K. REYNOLDS AND
 RASARIO REYNOLDS, V. SCOTT
 MILES, VERNON G. MILES, SHARON
 E. MILES, DEBORAH FLOYD, BROOKS
 M. SAFRIT, WOODROW S. SAFRIT,
 STEVEN ALAN SPEARES AND SYLVIA
 MCCALL SPEARES, TRUSTEES OF
 THE SPEARES REVOCABLE TRUST
 U/A/D SEPTEMBER 24, 2019, STEVEN
 P. LOMBARDI AND LISA A.
 LOMBARDI, CHARLES B. HALL,
 VIRGINIA G. HALL, SONIA HEYDT,
 TRUSTEE OF THE SONIA HEYDT
 LIVING TRUST, DATED DECEMBER
 10, 2024, WENDY PIVARNIK, JOYE S.
 BULL, TUMPIE B. BULL, MAXINE
 WILLIAMS, TRUSTEE OF THE
 MAXINE WILLIAMS LIVING TRUST
 DATED OCTOBER 31, 2017, KIM
 RITCHIE, VAN RAYE RITCHIE,
 WILLIAM B. BURCH, SHARON K.
 BURCH, TIMOTHY G. MARTIN,
 REBECCA A. HARRINGTON AND
 BRIAN J. MARTIN, AS TRUSTEES OF
 THE GUY E. MARTIN AND ANN M.
 DOZIER IRREVOCABLE TRUST
 DATED JANUARY 25, 2017, MIRIAM R.
 CROMER, NORWOOD NICHOLSON
 COX AND JANET HARRINGTON COX,
 THOMAS P. COLLINS AND SUSAN
 LEE COLLINS, SHAWN KELLEY AND
 KAREN ALBERT, JERRY STEVEN

Civil Action No. 2025CP2605366

**MEMORANDUM IN OPPOSITION TO
 PLAINTIFFS' MOTION FOR
 TEMPORARY RESTRAINING ORDER**

WILSON AND DANA PRIDGEN)
WILSON, PAMA C. FREE, GIOVANNI)
CARAPELLI, JULIE A. BROOKS,)
JENNIFER RAE MORRIS, CRAIG L.)
LAMBERT AND LISA M. LAMBERT,)
HENRY LAWRENCE SANDERSON III,)
TRUSTEE OF THE HENRY LAWRENCE)
SANDERSON, III REVOCABLE TRUST)
DATED JANUARY 9, 2020, RONALD G.)
BROOKS AND ROBIN D. BROOKS,)
ROBERT CHRISTOPHER JONES AND)
MELISSA COGHILL JONES, DARRYL)
C. WILLIAMS AND MARY TORRENCE)
WILLIAMS, DAVID T. TAYLOR AND)
CATHERINE T. TAYLOR, SAMUEL)
DEEP AND DIANNE DEE O, NATALI D.)
AMARADASA,)
ROSEMARY LONG JENRETTE AND)
ARCADIAN)
SHORES SINGLE-FAMILY)
RESIDENTIAL)
HOMEOWNERS ASSOCIATION, INC.,,)
Plaintiffs,)
v.)
THE ARCADIAN INCORPORATED OF)
MYRTLE BEACH,)
Defendant.)

I. INTRODUCTION

Plaintiffs seek emergency injunctive relief to require the Defendant to abandon existing parking procedures neutrally applied to individuals parking along the southeastern terminus of Arcadian Drive. Plaintiffs claim their right to park is guaranteed by an easement. However, Plaintiffs mischaracterize both the legal standard for temporary injunctive relief and the facts of this case. Defendant does not block access to Arcadian Drive for owners in the Arcadian Shores Single Family Residence HOA (“ASSFR”). Rather, Defendant seeks only to regulate the manner

of use in a reasonable and nondiscriminatory way, so as to prevent damage and overburden to the land.

Because Plaintiffs have not met the required burden under South Carolina law for the extraordinary remedy of a Temporary Restraining Order, the Court should deny Plaintiffs' motion.

II. LEGAL STANDARD

To obtain a Temporary Restraining Order under Rule 65(b), S.C. R. Civ. Pro., a movant must satisfy three mandatory elements:

1. Likelihood of success on the merits;
2. Irreparable harm absent the injunction; and
3. Inadequacy of a legal remedy.

Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004); *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009). "A temporary injunction is a drastic remedy issued with caution and only when clearly warranted by the circumstances." *Peek v. Spartanburg Reg'l Healthcare Sys.*, 367 S.C. 450, 454, 626 S.E.2d 34, 36 (Ct. App. 2005) (overruled in part on other grounds).

III. LEGAL ARGUMENT.

A. PLAINTIFFS ARE NOT LIKELY TO SUCCEED ON THE MERITS

1. Defendant Has Not Unreasonably Restricted Use of the Alleged Servient Estate

Assuming for the sake of argument that Plaintiffs possess an easement for parking, ingress and egress over Arcadian Drive, South Carolina law requires an easement holder to exercise their rights in a manner that does not unreasonably burden the servient estate. *Smith v. Comm'rs of Pub. Works*, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994). The rights of

an easement holder are generally limited to what is reasonably necessary while placing as little burden on the servient estate as possible for the use contemplated. *Id.*

Plaintiffs seek unregulated and open-ended temporary parking on the purported servient estate to access the beach and properties on the Atlantic Ocean. However, this Defendant has not sought to bar the Plaintiffs from using Arcadian Drive for temporary parking. *See Exhibit A.* Defendant merely administers parking through commonplace procedures that preserve access to authorized users. These procedures include the following: (1) the use of parking decals to track authorized users, (2) submission of a short application and waiver of liability, and (3) compliance with a no-parking zone on the south side of the drive due to the location of a vulnerable underground pipe, which drains the lake owned by the Plaintiffs. These are neutral, narrowly tailored, and reasonable conditions that safeguard infrastructure and property without materially interfering with access.

2. Plaintiffs Mischaracterize the Alleged Easement

Plaintiffs rely heavily on maps and dedications made by a common grantor, Ocean Lakes Investment Company, to support express or implied easement rights for parking on Arcadian Drive. Plaintiffs assert these alleged rights have “historically been . . . by private easement.” Pl. Motion TRO at 2. However, the portion of Arcadian Drive at issue in this case was conveyed to the Defendant’s predecessor *before* the alleged dedication and filing of any of the easements or conveyances upon which Plaintiffs rely.

The following timeline of the relevant property transactions illustrates this point, revealing that the Plaintiffs do *not* have a property interest for parking on Arcadian Shores Drive:

1964 – Original Acquisition

- **March 17, 1964:** Ocean Lakes Investment Company, Inc. (“OLIC”) acquired approximately 110 acres shown on plats of Arcadian Shores (Exhibits 40A & 40B). At this stage, OLIC retained unified ownership of all subdivision roads. There was no separate easement grant, only the common right of use arising from unified title.

1972 – Conveyance to Arcadian Shores, Inc.

- **April 15, 1972:** OLIC sold Blocks A and H (site of Hilton and Royal Palms Towers) to Arcadian Shores, Inc.
- OLIC retained ownership of roads, but began splitting off parcels for development. No easement language was included granting subdivision owners, such as ASSFR, parking rights.

1982 – Dissolution of OLIC and Series of Quit-Claims

- **January 11, 1982:** OLIC, in dissolution, recorded five quit-claim deeds:
 1. Book 734, pp. 193-195 (“**Page 193 Conveyance**”): Conveyed to Arcadian Shores, Inc. streets/roads including *Arcadian Drive southeast of Lake Shore Drive*, Beach Club Drive (eastern portion), Kingston Road, Lake Shore Drive, and Ocean Lake Road.

This conveyance transferred ownership of the contested portion of Arcadian Drive to Arcadian Shores, Inc. Any subsequent easement language cannot burden this property because OLIC no longer owned it.

2. Book 734, pp. 196-198: Purported to convey roads/common areas to Arcadian Shores Single-Family Residential HOA (ASSFR). This deed was never accepted, and later declared ineffective in Book 750, p. 345 (June 14, 1982).

Even if accepted, this deed was recorded **after** the Page 193 Conveyance and thus could not affect rights in Arcadian Drive that were already conveyed.

3. Book 734, pp. 199-200: Conveyed portions of beachfront between oceanfront blocks and mean high water mark, with “access rights.”

Again, this conveyance could not affect the Page 193 Conveyance parcels, as OLIC no longer owned them.

4. Book 734, pp. 201-202: Conveyed portion of Beach Club Drive between Blocks A and H.
5. Book 734, pp. 203-205: Conveyed remaining assets to Edward Bowers, Trustee for dissolved OLIC.

- **June 14, 1982:** Edward Bowers, Trustee, recorded a quit-claim in Book 750, pp. 345-347, conveying to ASSFR certain subdivision roads, lake, and common areas.

This was the *first* appearance of express easement language:

“A non-exclusive right and easement ... for access, ingress, and egress ... to and from the Atlantic Ocean ... across the various streets, roads, and common areas ...”

No Parking. “Parking” rights are not mentioned in this easement. Further, OLIC no longer owned the parcels subject to the Page 193 Conveyance (including southeastern Arcadian Drive). Thus, the easement language could not and did not burden that parcel. No evidence exists that Arcadian Shores, Inc. (the owner of Page 193 lands) consented to this transaction.

2002 – Conveyances to Arcadian Entities

- **March 20, 2002:** Patriot American Hospitality Partnership, LP (then Hilton owner) quit-claimed a 2.8-acre parcel (including Page 193 Conveyance property) to Arcadian Properties, Inc. (Book 2484, p. 1454).

No easement rights are referenced or accepted in this conveyance. The parcel remained free of the June 14, 1982 easement language.

- **July 24, 2002:** Arcadian Properties, Inc. quit-claimed a 0.81-acre parcel (Arcadian Drive southeast of Beach Club Drive to its terminus) to Arcadian I, Inc. (Book 2502, p. 589). Later corrected to grantee name “The Arcadian of Myrtle Beach.”

Again, there was no reference to, or acceptance of, the June 14, 1982 easement language. Defendant took title without encumbrance.

- **Post-2002:** Arcadian I posted signage marking Arcadian Drive as private, thereby defeating any prescriptive easement claims as asserted by Plaintiffs.

Summary:

Defendant’s property derives from the **Page 193 Conveyance (Jan. 11, 1982)**, well before any recorded easement language in favor of ASSFR. Easement Language first appeared in the June 14, 1982 quit-claim, but by then OLIC no longer owned the subject parcel. Therefore, the alleged estate in land cannot apply to the disputed portion of Arcadian Drive. Further, no deed, plat, or quit-claim ever granted parking rights.

Pursuant to this timeline, Plaintiffs may not claim parking rights based on a deed, easement, or other estate in land. Ocean Lakes Investment Company could not convey greater access rights to ASSFR than it possessed at the time of conveyance. Accordingly, and at the very best, Plaintiffs’ likelihood of success on the merits of its underlying claim is highly

doubtful. Nonetheless, Defendant has voluntarily permitted temporary (i.e. no overnight) parking by ASSFR residents along Arcadian Drive, subject to simple administrative procedures applicable to others with access.

On these facts, there is simply no “status quo” to restore by virtue of a Temporary Restraining Order in favor of the Plaintiffs. To the contrary, Plaintiffs’ motion seeks to *disrupt* the status quo.

IV. PLAINTIFFS HAVE NOT SHOWN IRREPARABLE HARM

Plaintiffs contend that denial of unrestricted parking temporarily interferes with beach access, but they have offered no cognizable evidence of this fact. For example, there are no competent evidentiary facts of record which show any of the following:

- Access to Plaintiffs’ lots is being denied because of Plaintiffs’ status as ASSFR owners;
- The permit requirement is unduly burdensome (it is a simple decal, and Defendant charges the same price for everyone; some ASSFR owners have already acquired the sticker and are parking along Arcadian Drive); or
- The no-parking zone on the South side of Arcadian Drive creates a hardship other than mere inconvenience.
- Plaintiffs’ use and enjoyment of their parcels or the beachfront is impossible without parking rights on Arcadian Drive. Arcadian Drive is not the only access point for ASSFR owners; ample beach access exists, including along nearby Kingston Road.

The Defendant has not blocked roads, erected barriers, or implemented enforcement targeting particular individuals. Mere inconvenience in complying with administrative measures, even if recurring, does not rise to the level of *irreparable harm* sufficient to support injunctive relief.

V. THERE IS AN ADEQUATE REMEDY AT LAW

Plaintiffs seek declaratory relief and damages in the underlying action. The dispute between the parties is purely legal and fact-based—whether the parking regulations violate the scope of any easement or dedication in favor of Plaintiffs. Courts have consistently held that when legal remedies are available, injunctive relief is inappropriate. *See, e.g., Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312 (Ct. App. 2010).

Here, there is no showing that a legal remedy is unavailable or inadequate. Plaintiffs seek monetary damages and a jury trial in the underlying action arising from the alleged infringement of their right to park on Arcadian Drive. Pl. Comp. at pg. 52 et. seq. A substantial factual and legal controversy exists between the parties that is not suitable for an injunctive remedy.

VI. DEFENDANT'S ACTIONS ARE REASONABLE AND NECESSARY TO PROTECT THE ALLEGED SERVIENT ESTATE

The no-parking zone on the south side of Arcadian Drive is not arbitrary. Arcadian owns this property in fee simple. The no-parking zone is required to protect a buried utility pipe that could suffer damage from the weight of parked vehicles. The restriction is applied uniformly and does not single out members of ASSFR.

The application and waiver process represents standard risk management methods intended to allow Defendant to determine who may legitimately use the alleged servient estate, while also managing liability for use within the purported easement's scope.

The parking permit decal is administrative and unobtrusive, and is specifically designed to ensure that parking permits are not transferred to non-eligible users.

Defendant's procedures are reasonably calculated to administer the purported servient property in a manner consistent with its right to prevent overburden. It has long been recognized that the owner of a servient estate may impose reasonable conditions on use, as long as the

restrictions do not frustrate the purpose of the easement. *See, e.g.*, RESTATEMENT (THIRD) OF PROPERTY: SERVITUDES § 4.8(3) (Duty to Avoid Interference with Easement) (holding that the owner may make changes as long as they do not (a) significantly lessen the utility of the easement; (b) increase the burdens on the easement holder in its use and enjoyment; or (c) frustrate the purpose for which the easement was created.).

VII. CONCLUSION

Plaintiffs have not carried the heavy burden necessary for issuance of a Temporary Restraining Order. The balance of equities favors the Defendant, who merely seeks to administer parking in a controlled, reasonable, and minimally restrictive manner. Therefore, Plaintiffs' motion must be denied.

Respectfully Submitted,

MCANGUS GOUDELOCK & COURIE, LLC

s/ Dominic A. Starr

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INCORPORATED OF MYRTLE BEACH

September 12, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
R. PAUL BENIK, JR. et al.,	)	Civil Action No. 2025-CP-26-05366
	)	
Plaintiffs,	)	PLAINTIFFS' MOTION TO
vs.	)	RECONSIDER
	)	
ARCADIAN INCORPORATED OF	)	
MYRTLE BEACH,	)	
	)	
Defendant.	)	
	)	

TO: DOMINIC A. STARR, ESQ. AND J. CHRISTOPHER CLARK, ESQ.

PLEASE TAKE NOTICE THAT Plaintiffs respectfully move the Court to alter or amend its January 22, 2026 order denying Plaintiffs' Motion for a TRO/Temporary Injunction pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure for the following reasons set forth below:

INTRODUCTION

The Court's January 22, 2026 order denying the Plaintiffs' Motion for a TRO/ Temporary Injunction overlooked, misapprehended, or failed to consider several core arguments advanced in support of Plaintiffs' Motion.

First, the Court erred in finding that Plaintiffs will not suffer irreparable harm. The Court failed to consider that Plaintiffs have property rights through an implied easement on the property and that those property rights are at risk if an injunction is not granted.

Second, the Court erred in finding that Plaintiffs have not established a likelihood of success on the merits. The Court overlooked the fact that Plaintiffs need not prove their entire case, but instead must make a prima facie showing of entitlement to the relief sought in the Amended Complaint. See Levine v. Spartanburg Reg'l Servs. Dist., Inc., 367 S.C. 458, 626 S.E.2d 38 (Ct.

App. 2005), holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010)

Third, the Court erred in finding Plaintiffs have an adequate remedy at law. Even if Plaintiffs injuries may be redressed by money damages, injunctive relief is not improper. See Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005), holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010). The true standard of whether injunction should issue is whether a legal remedy is somehow ineffective or impractical because threatened injury may continue or be magnified during the progress of litigation. In this case, there are no adequate remedies at law. An award of money damages is not an adequate remedy for the potential loss of the Plaintiffs.

Fourth, the Court failed to consider that the Defendant's "parking regulations" and placement of obstructions or limitations on use in the easement right of way violate the terms and conditions of the "Final Judgment and permanent Injunction Order" ("Breedon Order") issued by Master-In-Equity Breedon and recorded on April 19, 1982.¹

Finally, the Court erred in considering and relying upon an incorrect statement of law put forth by Defendant. Defendant stated, "It has long been recognized that the owner of a servient estate may impose reasonable conditions on use, as long as the restrictions do not frustrate the purpose of the easement." Defendant incorrectly cited as authority Restatement (Third) of Property (Servitudes) § 4.8(3), (a), (b), and (c) (2000). However, § 4.8(3), (a), (b), and (c) of Restatement (Third) of Property (Servitudes) only contemplates that "the owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement, at the servient owner's expense . . ." Its language does not authorize "owner of a servient estate may impose reasonable

¹ Attached hereto as Exhibit 46 and incorporated herein by reference.

conditions on use of the easement” such as parking permits or waiver of liability requirement on the Plaintiffs.

For these reasons, reconsideration is not only warranted but required. The Court therefore should amend its order to grant the Plaintiffs’ request for a TRO/Temporary Injunction.

FACTUAL BACKGROUND

The Subdivision known as Arcadian Shores (“the Subdivision”) is located in the unincorporated portion of Horry County, South Carolina. The Subdivision was planned, developed, and created by Ocean Lakes Investment Company, Inc. (“the Developer”) in the 1960s. The Developer acquired the 109.8-acre land that became the Subdivision by deed dated March 17, 1967, recorded in Deed Book 303 at page 408, later corrected by deed dated May 5, 1965, recorded in Deed Book 326 at page 137.

The Subdivision was created by the filing of record of a “Map of Arcadian Shores” dated November 1964 (revised February 1965), recorded on March 1, 1965, in Plat Book 43 at page 8, Horry County records (the “Subdivision Map”). At that time, the Subdivision was not governed by significant restrictions or governmental regulations.

In November of 1964, the common grantor OLIC had Robert L. Bellamy, C.E. prepare the first survey of the Arcadian Shores Subdivision (“Map”), which was revised February 1965, further revised October 1967, and first recorded in the Office of the Clerk of Court for Horry County, in Plat Book 42 at Page 62, and re-recorded in the Office of the Clerk of Court for Horry County in Plat Book 54 at Page 135. A copy of Robert L. Bellamy, C.E.’s Maps are attached to the Amended Complaint as **Exhibits 40-A and 40-B**. Additionally, the widths of Arcadian Drive (75’), Ocean Lakes Road (40’), and Kingston Road (70’) in Arcadian Shores Ocean Front Development Subdivision (“Arcadian Shores”) were specifically designed for ingress and egress

and gaining access to the beachfront area, including parking in and along their beach access points and termination by homeowners who resided in Arcadian Shores Subdivision. These multiple beach access roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots.

After the creation of the Subdivision, the Developer sold numerous lots in the Subdivision, beginning in 1965 until 1982, by which time all of the numbered 78 residential lots had been sold.

Each and every deed from the Developer to a lot purchaser, and each subsequent deed for such lot conveying title to the lot to a subsequent owner (including the Plaintiffs) refers to the Subdivision Map, which Subdivision Map is incorporated into the deed by applicable law.

In 1974 the Developer conveyed a parcel containing 2.7 acres (shown on Plat Book 54 at page 123) to Arcadian Properties, Inc. which parcel was later acquired by The Arcadian, Ltd. by deed dated December 4, 1972. The Arcadian, Ltd. then established The Arcadian Horizontal Regime (“the Arcadian I HPR”) on the property by Master Deed dated June 3, 1974, recorded on June 4, 1974, in Deed Book 513 at page 139. None of the deeds in the chain of title for the Arcadian HPR refer to the Subdivision Map or any similar map or plat of the Subdivision.

Dissolution of the Developer

The Developer began the process of dissolution in 1982, in which process the Developer conveyed certain property in the Subdivision to the Plaintiff Arcadian Shores Single-Family Residential Homeowners Association, Inc. by deed dated January 8, 1982, recorded in Deed Book 734 at page 199, Horry County records. This property is described as a strip of land between the mean high water mark of the Atlantic Ocean and various parcels near the beach, including Arcadian Drive. The deed recites that the property “...can be used for recreational purposes only

for the use and benefit of the lot owners, unit owners, and parties having a right to utilize the whole or any part of any property in Arcadian Shores.”

In its process of dissolution, the Developer also conveyed to the Plaintiff Arcadian Shores Single-Family Residential Homeowners Association, Inc. certain property and rights more fully described in Corrective Quitclaim Deed to Real Estate dated June 8, 1982, recorded on June 14, 1982, in Deed Book 750 at page 345, Horry County records. The deed conveyed title to all streets and roads shown on the Subdivision Map (including Arcadian Drive), Lake Arcadia, a Common Area, a right and easement described as:

A non-exclusive right and easement, in common with such others as may be entitled thereto, for access, ingress and egress to and from the Atlantic Ocean and the property abutting on the Atlantic Ocean, across the various streets, roads and common areas shown on the Subdivision Map southwest of Kingston Road and Northeast of Arcadian Drive.

The deed also conveys:

All of the Grantor’s rights under recorded restrictions applicable to the numbered lots shown on the Subdivision Map to enforce any and all such restrictions, to modify lot lines and/or building lines, to approve lot re-subdivisions, to install or permit the installation of utilities, to make regulations permitted by the Subdivision restrictions and to enforce same, to regulate the use of Lake Arcadia, to grant to others the right to use Lake Arcadia and/or the water contained therein, and to bring actions at law or in equity to further enforce the Subdivision restrictions and/or to enforce and protect the rights herein assigned, transferred and conveyed.

In general, courts nationally seem to hold that while neither the individual lot owners nor the owners of the roads has any absolute right to park vehicles on the easement and right of way area, each of them has a right to park thereon at such times and in such a manner as not to interfere with its use by others entitled to such easement and right of way. See Right to Park Vehicles on Property Way, 37 A.L.R.2d 944 (1954). In this case, the right to park vehicles on and in Arcadian Drive is implied by the circumstances surrounding the creation and use of the easements.

Between 2000 through 2023, the members of ASSFR HOA implemented a decal system to identify cars/golf carts of the numbered residential lot owners of the Arcadian Shores Single-Family Residential Homeowner's Association, Inc. Subdivision, including their guests. The decals were to monitor who parked at the beach access points of Arcadian Drive, Ocean Lakes Road, and Kingston Road, as shown on Robert L. Bellamy, C.E.'s Maps, designated **Exhibits 40-A and 40-B**.

On March 13, 2023, Arcadian Properties, Inc., pursuant to a "Corrective Title² to Real Estate," conveyed to The Arcadian Incorporated of Myrtle Beach, ("Arcadian I HOA") its successors and assigns, in fee simple, the following described property, to wit:

All and singular, that piece, parcel or lot of land situate, lying and being in Horry County and State aforesaid, more particularly described as Parcel B containing 0.81 acres more or less, and more particularly shown on Plat entitled "SUBDIVISION PLAT OF PARCEL A & PARCEL B," prepared for Arcadian Properties, Inc. [sic] by Robert L. Bellamy & Associates, Inc. dated June 3, 2002 revised June 18, 2002 and recorded on July 29, 2002, in Plat Book 189 at Page 186, in the Office of the R.M.C. for Horry County, South Carolina.

The identification system worked basically without major issue until July of 2023, when Arcadian I HOA started issuing parking violations to property owners of the ASSFR HOA as shown on **Exhibits 40-A and 40-B**, with the threat to tow cars. Arcadian I HOA also started insisting that the Plaintiffs and other property owners of the ASSFR HOA sign a liability waiver to purchase an Arcadian I HOA decal. Furthermore, there was no provision to sign for guests of members of the ASSFR HOA for parking their cars.

Since 2024, Defendant Arcadian I HOA has sold annual parking privileges to property owners outside the Arcadian Shores Subdivision and has encroached into the right-of-way of

² A copy of the "Corrective Title Deed" is attached to the Amended Complaint as **Exhibit 44**.

Arcadian Drive by installing tow-away signs, as well as a fence across the beach access part of Arcadian Drive as depicted by the photographs attached to the Amended Complaint as Exhibit 45. And, recently, Defendant, Arcadian I HOA, towed a Plaintiff's golfcart, with ASSFR HOA identification system displayed, from the beach access point of Arcadian Drive at its termination.

On July 24, 2024, Plaintiffs' attorney mailed a letter by Certified Mail/Return Receipt Requested to the Defendant's registered agent specifically requesting that it cease and desist from interfering with the Plaintiffs' implied right to temporarily park in and along the beach access portion of Arcadian Drive for the purpose of gaining access to Atlantic Ocean and the abutting beach front property for the recreational use and enjoyment of their properties.

The Defendant, Arcadian I HOA, has failed and refused to cease and desist from interfering with the implied rights of the Plaintiffs to temporarily park in and along the beach access portion of Arcadian Drive to gain access to the Atlantic Ocean and the abutting beach front property for their recreational use and enjoyment.

The Defendant Arcadian I HOA has recently placed other obstructions in and along the beach access portion of Arcadian Drive and continues to interfere with Plaintiffs' use of same.

The Plaintiffs at no time abandoned their implied rights to temporarily park their cars at the beach access portion of Arcadian Drive for the purpose of gaining access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment of their properties.³

ARGUMENT

A temporary restraining order or preliminary injunction may be sought upon filing of the summons and complaint by submitting an affidavit or verified complaint showing, with specific

³ The factual findings set forth herein state the full accurate facts of the matter at hand. Plaintiffs note that the factual findings set forth in the January 22, 2026 Order are incomplete, not wholly accurate, are not binding on subsequent proceedings, and are not the law of the case. See Loyola Fed. Sav. Bank v. Thomasson Props., 318 S.C. 92, 456 S.E.2d 423 (Ct. App. 1995)

facts, that the applicant will sustain immediate and irreparable injury, loss, or damage if relief is not granted. S.C. R. CIV. PRO. 65(b). A verified complaint is the equivalent of an affidavit. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433, 437-38 (2003); Carmichael v. Oden, 2009 WL 9524614, *5 (S.C. Ct. App. 2009). Stated differently, “[a] plaintiff’s entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation.” FOC Lawshe v. International Paper, 352 S.C. 408, 416, 574 S.E.2d 228, 232 (Ct. App. 2002).

The purpose of an injunction is to preserve the *status quo* during litigation in order to prevent irreparable injury to the requesting party and to preserve the ability of the court to render complete relief. County Council of Charleston v. Felkel, 244 S.C. 480, 137 S.E.2d 577, 578 (1964) (“The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.”); see also JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 511 (2nd ed., 1996) (“A temporary injunction preserves the *status quo* pending the completion of the case.”). An injunction is appropriate to preserve the *status quo* so that a party can enforce a disputed legal right. Seaboard Air Line Ry. v. Atlantic Coast Line R., 71 S.E. 39 (S.C. 1911).

Under South Carolina law, a party seeking to obtain injunctive relief generally must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. FOC Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002). Our state Supreme Court has clarified that there is no additional requirement that the trial judge

must “balance the equities” before issuing an injunction. Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15, 17 (2010).

I. Plaintiffs will suffer irreparable harm.

Under South Carolina law, “[i]rreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation.” FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 508. *South Carolina law has long recognized that a temporary injunction is an appropriate remedy to protect a plaintiff’s property rights, including those acquired under an easement.* Transcon. Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 480-81, 167 S.E.2d 313, 314-15 (1969) (Temporary injunction prohibited construction over an easement.)(citing Darlington Oil Company v. Pee Dee Oil & Ice Company, 62 S.C. 196, 40 S.E. 169 (1901); Alderman & Sons Co. v. Wilson, supra, 69 S.C. 156, 48 S.E. 85 (1904); Marion County Lumber Co. v. Tilghman Lumber Co., 75 S.C. 220, 55 S.E. 337 (1906)); AJG Holdings, et al. v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)(Injunction issued to preserve rights where the ability to call police or money damages would not protect easement rights); Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Enjoining unilateral change to easement as depicted on publicly recorded plat).

In this action, as more fully set forth below, Plaintiffs made a prima facie showing for a nonexclusive implied easement for a private way of ingress and egress, and access to the beach front property and Atlantic Ocean including parking on and along Arcadian Drive, entitling them to injunctive relief. An implied private easement of way for ingress and egress and access to the beach, which was specific in its width, length, and location, cannot be constricted to any degree by placement of parking spaces and other obstructions thereon by Defendants. “It is well established that the owner of a right of way for ingress and egress has the right to use the full width of the area or strip having definite boundaries unhampered by obstructions placed thereon.”

Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 172, 410 S.E.2d 580, 581–82 (Ct. App. 1991) (citations omitted).

II. Plaintiffs are likely to succeed on the merits.

As for the requirement of showing a likelihood of success on the merits, a party seeking an injunction is “not required to prove an absolute legal right when seeking a preliminary injunction, but [she] must present a reasonable question as to the existence of such a right.” AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505, 509 (Ct. App. 2009); see also Williams v. Jones & Amerman, 92 S.C. 342, 75 S.E. 705 (1912) (“This does not mean an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of such a right.”). *Courts have broadly construed this element and a litigant is required to do little more than state a cause of action or make a prima facie showing.* County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002); Childs v. Columbia, 87 S.C. 566, 70 S.E. 296 (1911).

A. Plaintiffs made a prima facie showing of the existence of an implied easement for parking, ingress, and egress in and along Arcadian Drive to access the beach and Atlantic Ocean for their recreational use and enjoyment of their properties.

Under South Carolina law, “[t]he creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristics demonstrate that the objective intention of the parties was to create an easement.” Inlet Harbour v. S.C. Dep’t of Parks, Recreation & Tourism, 377 S.C. 86, 92, 659 S.E.2d 151, 154 (2008) (25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62). Stated differently, “[t]he intent of the parties, as shown by all the facts and circumstances under which a conveyance was made, may give rise to an easement by implication.” Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 416–17, 633 S.E.2d 136, 139 (2006)(quoting from Hamilton v. CCM, Inc., 274 S.C. 152, 158,

263 S.E.2d 378, 381 (1980)). South Carolina Courts “have, over time, developed various presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets.” *Id.* South Carolina Supreme Court “has recognized the general rule that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an implied easement over the streets appearing in the plat.” *Id.* *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 120, 145 S.E.2d 922, 925 (1965)(“[A]ccording to the great weight of judicial opinion, the lot purchaser is entitled to the use of all the streets and ways, near or remote, as laid down on the plat by which he purchases.”) (quoting *Billings v. McDaniel*, 217 S.C. 261, 265, 60 S.E.2d 592, 593–94 (1950)).

In this Action, the Plaintiffs’ Verified Amended Complaint alleges that the Plaintiffs and other lot owners purchased their residential lots in reliance upon the subdivision plat, which shows beach access and other access for all lot owners along Beach Club Drive and Arcadian Drive, and that the Plaintiff and numerous other lot owners in the subdivision have regularly and continuously used the streets and roads of the subdivision (including Arcadian Drive and Beach Club Drive) to gain access to the beach of the Atlantic Ocean, which is a major attraction and value to lot owners in the subdivision. Additionally, the Verified Amended Complaint alleges facts of this case that come squarely within the facts and law outlined in the controlling case of *Blue Ridge Realty Company, Inc. v. Williamson*, 145 S.E. 2d 922 (1965), to the effect that the Plaintiffs, as owners of lots sold and conveyed with reference to recorded plats of the Arcadian Shores subdivision, have private easements in all streets shown on the plats, and are entitled to an order enjoining the Defendant from obstructing or encroaching upon Arcadian Drive, and requiring the HOA to

remove such obstructions that it has heretofore erected, including but not limited to the following particulars, to wit:

- a. Installing a barrier fence in the right of way of Arcadian Drive;
- b. Posting tow-a-way signage in the right of way of Arcadian Drive;
- c. Issuing warning tickets with the threat to tow if one does not purchase an Arcadian I decal;
- d. Signing a liability waiver;
- e. Recently choosing not to recognize the HOA and associated decals; while, at the same time;
- f. Allowing Ocean Ridge development property owners and others outside the Arcadian Shores Subdivision to park for an annual fee;
- g. Allowing its staff, cleaning crews and subcontractors the right to park in the right of way of Arcadian Drive;
- h. Allowing overflow parking for its rental guest to park in the right of way of Arcadian Drive; and
- i. Refusing to issue Arcadian I decals to certain property owners of Arcadian Shores Subdivision.

Furthermore, the court erred as a matter of law in failing to consider the submitted Affidavits of Allen Jeffcoat, Esquire; Paul Benik, Jr., William Bellamy, P.E.; and Anton Postner, Sr.⁴ and determining that the allegations of Plaintiffs' Verified Amended Complaint *do not present a reasonable question as to the existence of* an implied easement for parking in and along Arcadian Drive based upon the following evidence:

1. "The widths of Arcadian Drive (75'), Ocean Lakes Road (40'), and Kingston Road (70') in Arcadian Shores Ocean Front Development Subdivision ("Arcadian Shores") ***were specifically designed for ingress and egress and gaining access to the beachfront area, including parking in and along their beach access points and termination by homeowners who resided in Arcadian Shores Subdivision.***

⁴ Affidavits may be submitted to the Court to show that the prior three mandatory elements required to obtain a preliminary injunction are met. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).

These multiple beach access roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots.” (Affidavit of William Bellamy, pp. 2-3 ¶11, attached as Exhibit 48 to Plaintiffs’ Verified Amended Complaint) (Emphasis added);

2. “The parking widths of the roads in Arcadian Shores could and would allow for ingress and egress to the beachfront along with an access ability with parking for residents including disabled members of the proposed beachfront community. These multiple beach roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots. *Whereas the Arcadian Shores Subdivision's plats were recorded at the Court House, the developers (again, Messrs. Brown, McLeod and Poster) were always careful to ensure that the roads would not be dedicated to the public but would remain available for the private use of owners and residents of the Subdivision for beach access and parking. Just as Mr. Robert Bellamy had and would plan and plat many of the ocean front neighborhoods owned and developed by the Burroughs family within the City Limits of Myrtle Beach the decision was made in Mr. Bellamy's platting the Arcadian Shores subdivision to have wide streets which would go all the way to the ocean and beach placed between blocks in order to allow for beach access for property that was not directly on the beach.* These ideas together meant for Arcadian Shores, which had a large swath of available beachfront, to connect this beachfront to the residential area, and so a (75') wide road (Arcadian Drive) and a narrow (40') road (Ocean Lake Road), and eventually another wide (70') road (Kingston Road) were all planned and platted.” (Affidavit of Anton F. B. R. Poster, Sr., p.5, ¶ 13, attached as Exhibit 47 to Plaintiffs’ Verified Amended Complaint) (Emphasis added);
3. The typical width of each of these avenues (in the City of Myrtle Beach) was sixty feet (60') and this width was adequate for parking as well as access, with a typical street/avenue allowing for 20' width of paving and an additional 20' “length” on each road's sides for car parking purposes. As such even a 40' wide road would be able to hold at least one car's length of parking spaces as well as the road itself. As in the City of Myrtle Beach, the Arcadian Shores' development plan meant for the roads, themselves, as well as their extra width of the roads, to be an asset and a value enhancement for all owners within the Subdivision by providing parking for all residents, as opposed to selling the maximum front footage to and for ocean front development with a few narrow walking paths to the ocean front left and allowed for the residents. If instead of the roadways there had been two or three 5' to 10' wide walkways placed going to the beach, to allow for foot traffic from the residential area of the Subdivision to the ocean frontage, and said frontage was clearly the most valuable portion of the tract, the amount of ocean frontage available for sale could have been increased by roughly 10%. It was felt that access and parking rights being available to all the properties within the neighborhood would produce a greater value impact for OLIC than this 10% increase in available ocean frontage, especially since OLIC itself was retaining the ownership of the

actual ocean frontage. (Affidavit of Anton F. B. R. Poster, Sr., pp.5-6, ¶ 14, attached as **Exhibit 47** to Plaintiffs' Verified Amended Complaint) (Emphasis added);

4. I knew that parking and access to a beach provided a valuable enhancement to ocean front communities/subdivisions. The rights to full access to the beach, including parking, was meant and intended to be transferred by deeds conveying both the beach, and access to the beach, including that deed which I signed in 1982, recorded in Deed Book 734, Page 196 (RMC for Horry County). (Affidavit of Anton F. B. R. Poster, Sr., p.8, ¶ 16, attached as **Exhibit 47** to Plaintiffs' Verified Amended Complaint) (Emphasis added);
5. In 1974, when Arcadian I was ready for occupancy, 28 residences were already built on the single-family restricted lots of the subdivision. The subdivision was designed as a beachfront community with multifamily resort development oceanward of Lake Shore Drive and restricted single-family lots west of Lake Shore Drive. It was ongoing, frequent and customary for residential homeowners of subdivision to park their cars at the beach access points of Arcadian Drive, Ocean Lake Road and Kingston Road to enjoy the beach, as the subdivision layout was designed, in order for all property owners of the subdivision to fully and conveniently enjoy the Atlantic Ocean and the beach fronting thereon. (Affidavit of R. Paul Benik, Jr., pp. 2-3, ¶ 11, attached as **Exhibit 41** to Plaintiffs' Verified Amended Complaint) (Emphasis added);
6. Although neither the Subdivision Map nor the deeds described above specifically mention the uses that the Plaintiffs may make of such easement and property interest by implication, such uses necessarily and impliedly include the right for pedestrian and vehicular access and to park vehicles in and on Arcadian Drive in a reasonable way in common with the rights of others entitled to make use of Arcadian Drive. Neither the Subdivision Map nor the deeds described above restrict in any way the Plaintiffs' use of their easements and other rights in Arcadian Drive.
7. The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. The right to use such land and the space overhead remains in the owner of the fee so far as such right is consistent with the purpose and character of the easement. The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. A grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated. 17 Am. Jur., Section 96, Page 993. Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1943).
8. "It is obvious to me (as a professional) that the purpose of the design of the Subdivision (a high-end, substantial oceanfront community) as revealed by the layout of the Subdivision Map is to provide an unrestricted access across all of Arcadian Drive to the Atlantic Ocean and the Atlantic Ocean beachfront to all of the owners of numbered lots in the Subdivision Map. By "access," I mean at least

the right and easement for pedestrian and vehicular access to and from the beachfront across all of Arcadian Drive, all in furtherance of such owners' right to use such easement, and the right to park vehicles on Arcadian Drive. Although there is no question that the Subdivision Map and deeds to lots in the Subdivision grant easements and other rights in all of Arcadian Drive to all lot owners, the exact scope of the easements contained in the applicable documents is ambiguous." (Affidavit of Plaintiffs' Expert Allen Jeffcoat, Esquire, p.12, ¶ 22(a)(3), attached as **Exhibit 49** to Plaintiffs' Verified Amended Complaint) (Emphasis added).

Based upon the foregoing record in this matter, the Court incorrectly determined that the Plaintiffs have failed to establish *prima facie* causes of action for injunctive relief against the Defendant and are unlikely to succeed on the merits.

III. Plaintiffs Have No Adequate Remedy at Law.

"Whether there is an adequate remedy at law for a wrong, [is a] question[] that [is] not decided by narrow and artificial rules." Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13, 15 (1939). "The adequacy of a legal remedy is a pragmatic determination based upon the certainty of fixing damages, the practicality of obtaining relief, and the efficiency of the legal remedy in the particular circumstances." FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 508. "[I]f the available legal remedy in a given case reduces itself to a matter of words, rather than to a matter of efficacy, because of its impracticability, or because the threatened acts may continue during the progress of an action at law, or because successive actions at law would be necessary to protect the plaintiff's rights, equity will hold that the existence of the legal remedy is not an obstacle to the exertion of the equitable power." Columbia Broadcasting Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 189 S.E.2d 305, 312 (1972). The mere uncertainty of fixing the measure of monetary damages may be sufficient to justify injunction. Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939).

Stated differently, the ability to redress injury by money damages does not make injunctive relief improper. Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939). The true standard of whether injunctions should issue is whether a legal remedy is somehow ineffective or impractical because

threatened injury may continue or be magnified during the progress of the litigation. The mere uncertainty of fixing the measure of monetary damages may be sufficient to justify injunction. Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939).

In this case, there are no adequate remedies at law for the Plaintiffs. An award of money damages is not an adequate remedy for the potential loss of the Plaintiffs. When a legal remedy is impracticable or when “successive actions at law would be necessary to protect the plaintiff’s rights, equity will hold that the existence of the legal remedy is not an obstacle to the exertion of the equitable power.” Columbia Broad. Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 478, 189 S.E.2d 305, 311-12 (1972) (citing Kirk v. Clark, 4 S.E.2d 13 (S.C. 1939)).

IV. The Court failed to consider that Defendant’s actions violate the terms and conditions of the Breeden Order.

The Defendant’s parking regulations and placement of obstructions or limitations on use in the easement right of way violate the terms and conditions of the Final Judgment and Permanent Injunction Order” issued by Master-In-Equity Breeden, recorded on April 19, 1982. In 1981 and 1982, Plaintiffs’ expert witness, Allean Jeffcoat, Esquire was counsel for the Plaintiff Julia S. Haile in a case captioned Julia S. Haile v. The Arcadian Incorporated of Myrtle Beach, bearing Horry County Civil Action No. 81-CP-26-1816. In that case, the successful Plaintiff was the owner of lot 51 in the Subdivision, and the Defendant was the manager of the condominium regime known as Arcadian I Horizontal Property Regime. The Court found that the manager of the Arcadian condominium regime was wrongfully encroaching upon and obstructing the streets and roads shown on the Subdivision Map, including Arcadian Drive. In that case, the main issue in dispute was over the extent and scope of the lot owner’s easement and property interests in Arcadian Drive, *the same road and issue in dispute in this case.*

The Court held:

...the Plaintiff and numerous other lot owners in the subdivision have regularly and continuously used the streets and roads of the subdivision (including Arcadian Drive and Beach Club Drive) to gain access to the beach of the Atlantic Ocean, which is a major attraction and value to lot owners in the subdivision. It is also not disputed that the erection and maintenance of the fence obstruction is a major inconvenience to the Plaintiff and other lot owners, and on occasion completely blocks vehicular access to the beach and makes pedestrian traffic substantially less convenient.

The Court also held:

I find that the facts of this case come squarely within the facts and law outlined in the controlling case of Blue Ridge Realty Company, Inc. v. Williamson, 145 S.E.2d 922 (1965), to the effect that the Plaintiff, as an owner of a lot sold and conveyed with reference to recorded plats of the Arcadian Shores subdivision, has private easements in all streets shown on the plats, and is entitled to an order enjoining owners of other lots or tracts in the subdivision from obstructing or encroaching upon such streets and requiring them to remove such obstructions that they have heretofore erected.

V. The Court's reliance upon Defendant's citation to the Restatement (Third) of Property: Servitudes is misplaced.

In its Memorandum in Opposition to Plaintiff's Motion for Temporary Restraining Order, Defendant states: "It has long been recognized that the owner of a servient estate may impose reasonable conditions on use, as long as the restrictions do not frustrate the purpose of the easement." This statement is false and should not be relied upon by the Court.

Defendant cites the Restatement (Third) of Property: Servitudes § 4.8(3) as support for its statement. However, the principle found in the Restatement does not support Defendant's position. Instead, the Restatement states:

the owner of the servient estate is entitled to make reasonable changes **in the location or dimensions of an easement, at the servient owner's expense**, to permit normal use or development of the servient estate, but only if the changes do not (a) significantly lessen the utility of the easement, (b) increase the burdens on

the owner of the easement in its use and enjoyment, or (c) frustrate the purpose for which the easement was created.

Restatement (Third) of Property: Servitudes § 4.8 (2000).

This cited section of the Restatement has nothing to do with the servient estate imposing conditions on use. Rather, contrary to Defendant's statement, the general rule is that the servient estate cannot unilaterally modify the easement without the other party's consent. Even if the servient estate could impose reasonable conditions on use pursuant to this section of the Restatement, which it cannot, the conditions which Defendant has imposed (a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, and (c) frustrate the purpose for which the easement was created. Defendant's actions are in complete contradiction to the Restatement principle which Defendant cites for support. Plaintiff has searched South Carolina law, the Restatement (Third) of Property: Servitudes, American Jurisprudence, and Corpus Juris Secundum among other legal authorities and has not found any law to support Plaintiff's position that a successor owner can unilaterally regulate an easement to impose conditions like payment on the use of the easement or no-parking zones.

The law in South Carolina and around the nation reveals that Defendant cannot interfere with Plaintiff's easement. In Howorka v. Harbor Island Owners' Ass'n, Inc., the South Carolina Court of Appeals held that the grantor of an easement retains dominion and use of servient land only to the extent his actions do not interfere with grantee's reasonable enjoyment of the easement. Howorka v. Harbor Island Owners' Ass'n, Inc., 292 S.C. 381, 385, 356 S.E.2d 433, 436 (Ct. App. 1987). Then in Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, the Court of Appeals explained that when the width, length, and location of an easement for ingress and egress have been set forth in a plat or other instrument, then the rights under the

easement exist as to all of the land within the easement, and no party may occupy or obstruct any portion of it. Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 172, 410 S.E.2d 580, 581-82 (Ct. App. 1991). These holdings and conclusions in South Carolina are consistent with courts nationwide. See Bloomfield v. Weakland, 224 Or. App. 433, 199 P.3d 318 (2008) (Servient owner enjoined from interfering with use and maintenance of pathway easement to beach); Savannah Jaycees Found., Inc. v. Gottlieb, 273 Ga. App. 374, 615 S.E.2d 226 (2005) (Landowner ordered to remove fence which restricted access to recreational easement); Snead v. C & S Props. Holding Co., 279 Va. 607, 692 S.E.2d 212 (2010) (Landowner directed to remove fence and other obstructions from roadway easement).

Although the servient owner is entitled to use the servient land, the owner may not unreasonably interfere with the easement holder's enjoyment of the servitude. § 8:21. Use of easement area by servient owner—Servient owner's interference with enjoyment of easement, The Law of Easements & Licenses in Land § 8:21. The prevailing view is that the owner of a servient estate may not erect any structures that encroach on a right of way. § 8:22. Use of easement area by servient owner—Servient owner's interference with enjoyment of easement—Structures and other objects, The Law of Easements & Licenses in Land § 8:22. An easement holder is entitled to equitable relief against a servient owner's unlawful interference with the easement holder's enjoyment of the servitude, particularly when the obstruction is of a permanent character. Courts frequently enjoin the obstruction of an easement and order the removal of encroaching structures at the servient owner's expense. § 8:32. Use of easement area by servient owner—Easement holder's remedies for interference by servient owner, The Law of Easements & Licenses in Land § 8:32.

The Court's reliance on Plaintiff's misstatement of law is misplaced. The law does not permit Plaintiff to unilaterally regulate the easement and impose conditions on its use. Rather, the law in South Carolina and nationwide is that Plaintiff cannot interfere with Defendant's enjoyment of the easement or obstruct any portion of it. Plaintiff must be enjoined from placing obstructions or limitations on Defendant's use of the easement.

CONCLUSION

Based upon the foregoing, the Court's January 22, 2026 order denying Plaintiffs' Motion for a TRO/Temporary Injunction overlooked, misapprehended, or failed to consider core arguments advanced in support of Plaintiffs' Motion. Therefore, the Court should alter or amend its January 22, 2026 order and grant Plaintiffs' Motion for a TRO/Temporary Injunction.

Respectfully Submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V. Bellamy, III

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Myrtle Beach, SC
January 30, 2026

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FIFTEENTH JUDICIAL CIRCUIT
	)	
R. PAUL BENIK, JR. et al.,	)	Civil Action No. 2025-CP-26-05366
	)	
Plaintiffs,	)	PLAINTIFFS' AMENDED MOTION
vs.	)	TO RECONSIDER
	)	
ARCADIAN INCORPORATED OF	)	
MYRTLE BEACH,	)	
	)	
Defendant.	)	
	)	

TO: DOMINIC A. STARR, ESQ. AND J. CHRISTOPHER CLARK, ESQ.

PLEASE TAKE NOTICE THAT Plaintiffs respectfully move the Court to alter or amend its January 22, 2026, order denying Plaintiffs' Motion for a TRO/Temporary Injunction pursuant to Rules 52 and 59 of the South Carolina Rules of Civil Procedure for the following reasons set forth below:

INTRODUCTION

The Court's January 22, 2026, order denying the Plaintiffs' Motion for a TRO/ Temporary Injunction overlooked, misapprehended, or failed to consider several core arguments advanced in support of Plaintiffs' Motion.

First, the Court erred in finding that Plaintiffs will not suffer irreparable harm. The Court failed to consider that Plaintiffs have property rights through an implied easement on the property and that those property rights are at risk if an injunction is not granted.

Second, the Court erred in finding that Plaintiffs have not established a likelihood of success on the merits. The Court overlooked the fact that Plaintiffs need not prove their entire case, but instead must make a prima facie showing of entitlement to the relief sought in the Amended Complaint. See Levine v. Spartanburg Reg'l Servs. Dist., Inc., 367 S.C. 458, 626 S.E.2d 38 (Ct.

App. 2005), holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010)

Third, the Court erred in finding Plaintiffs have an adequate remedy at law. Even if Plaintiffs' injuries may be redressed by money damages, injunctive relief is not improper. See Peek v. Spartanburg Reg'l Healthcare Sys., 367 S.C. 450, 626 S.E.2d 34 (Ct. App. 2005), holding modified by Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15 (2010). The true standard of whether injunction should issue is whether a legal remedy is somehow ineffective or impractical because threatened injury may continue or be magnified during the progress of litigation. In this case, there are no adequate remedies at law. An award of money damages is not an adequate remedy for the potential loss of the Plaintiffs.

Fourth, the Court failed to consider that the Defendant's "parking regulations" and placement of obstructions or limitations on use in the easement right of way violate the terms and conditions of the "Final Judgment and permanent Injunction Order" ("Breedon Order") issued by Master-In-Equity Breedon and recorded on April 19, 1982.¹

Finally, the Court erred in considering and relying upon an incorrect statement of law put forth by Defendant. Defendant stated, "It has long been recognized that the owner of a servient estate may impose reasonable conditions on use, as long as the restrictions do not frustrate the purpose of the easement." Defendant incorrectly cited as authority Restatement (Third) of Property (Servitudes) § 4.8(3), (a),(b), and (c) (2000). However, § 4.8(3), (a),(b), and (c) of Restatement (Third) of Property (Servitudes) only contemplates that "the owner of the servient estate is entitled to make reasonable changes in the location or dimensions of an easement, at the servient owner's expense . . ." Its language does not authorize "owner of a servient estate may impose reasonable

¹ Attached hereto as **Exhibit 46** and incorporated herein by reference.

conditions on use of the easement” such as parking permits or waiver of liability requirement on the Plaintiffs.

For these reasons, reconsideration is not only warranted but required. The Court therefore should amend its order to grant the Plaintiffs’ request for a TRO/Temporary Injunction.

FACTUAL BACKGROUND

The Subdivision known as Arcadian Shores (“the Subdivision”) is located in the unincorporated portion of Horry County, South Carolina. The Subdivision was planned, developed, and created by Ocean Lakes Investment Company, Inc. (“the Developer”) in the 1960s. The Developer acquired the 109.8-acre land that became the Subdivision by deed dated March 17, 1967, recorded in Deed Book 303 at page 408, later corrected by deed dated May 5, 1965, recorded in Deed Book 326 at page 137.

The Subdivision was created by the filing of record of a “Map of Arcadian Shores” dated November 1964 (revised February 1965), recorded on March 1, 1965, in Plat Book 43 at page 8, Horry County records (the “Subdivision Map”). At that time, the Subdivision was not governed by significant restrictions or governmental regulations.

In November of 1964, the common grantor OLIC had Robert L. Bellamy, C.E. prepare the first survey of the Arcadian Shores Subdivision (“Map”), which was revised February 1965, further revised October 1967, and first recorded in the Office of the Clerk of Court for Horry County, in Plat Book 42 at Page 62, and re-recorded in the Office of the Clerk of Court for Horry County in Plat Book 54 at Page 135. A copy of Robert L. Bellamy, C.E.’s Maps are attached to the Amended Complaint as **Exhibits 40-A and 40-B**. Additionally, the widths of Arcadian Drive (75’), Ocean Lakes Road (40’), and Kingston Road (70’) in Arcadian Shores Ocean Front Development Subdivision (“Arcadian Shores”) were specifically designed for ingress and egress

and gaining access to the beachfront area, including parking in and along their beach access points and termination by homeowners who resided in Arcadian Shores Subdivision. These multiple beach access roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off ocean lots.

After the creation of the Subdivision, the Developer sold numerous lots in the Subdivision, beginning in 1965 until 1982, by which time all of the numbered 78 residential lots had been sold.

Each and every deed from the Developer to a lot purchaser, and each subsequent deed for such lot conveying title to the lot to a subsequent owner (including the Plaintiffs) refers to the Subdivision Map, which Subdivision Map is incorporated into the deed by applicable law.

In 1974 the Developer conveyed a parcel containing 2.7 acres (shown on Plat Book 54 at page 123) to Arcadian Properties, Inc. which parcel was later acquired by The Arcadian, Ltd. by deed dated December 4, 1972. The Arcadian, Ltd. then established The Arcadian Horizontal Regime (“the Arcadian I HPR”) on the property by Master Deed dated June 3, 1974, recorded on June 4, 1974, in Deed Book 513 at page 139. None of the deeds in the chain of title for the Arcadian HPR refer to the Subdivision Map or any similar map or plat of the Subdivision.

Dissolution of the Developer

The Developer began the process of dissolution in 1982, in which process the Developer conveyed certain property in the Subdivision to the Plaintiff Arcadian Shores Single-Family Residential Homeowners Association, Inc. by deed dated January 8, 1982, recorded in Deed Book 734 at page 199, Horry County records. This property is described as a strip of land between the mean high-water mark of the Atlantic Ocean and various parcels near the beach, including Arcadian Drive. The deed recites that the property “...can be used for recreational purposes only

for the use and benefit of the lot owners, unit owners, and parties having a right to utilize the whole or any part of any property in Arcadian Shores.”

In its process of dissolution, the Developer also conveyed to the Plaintiff Arcadian Shores Single-Family Residential Homeowners Association, Inc. certain property and rights more fully described in Corrective Quitclaim Deed to Real Estate dated June 8, 1982, recorded on June 14, 1982, in Deed Book 750 at page 345, Horry County records. The deed conveyed title to all streets and roads shown on the Subdivision Map (including Arcadian Drive), Lake Arcadia, a Common Area, a right and easement described as:

A non-exclusive right and easement, in common with such others as may be entitled thereto, for access, ingress and egress to and from the Atlantic Ocean and the property abutting on the Atlantic Ocean, across the various streets, roads and common areas shown on the Subdivision Map southwest of Kingston Road and Northeast of Arcadian Drive.

The deed also conveys:

All of the Grantor’s rights under recorded restrictions applicable to the numbered lots shown on the Subdivision Map to enforce any and all such restrictions, to modify lot lines and/or building lines, to approve lot re-subdivisions, to install or permit the installation of utilities, to make regulations permitted by the Subdivision restrictions and to enforce same, to regulate the use of Lake Arcadia, to grant to others the right to use Lake Arcadia and/or the water contained therein, and to bring actions at law or in equity to further enforce the Subdivision restrictions and/or to enforce and protect the rights herein assigned, transferred and conveyed.

In general, courts nationally seem to hold that while neither the individual lot owners nor the owners of the roads has any absolute right to park vehicles on the easement and right of way area, each of them has a right to park thereon at such times and in such a manner as not to interfere with its use by others entitled to such easement and right of way. See Right to Park Vehicles on Property Way, 37 A.L.R.2d 944 (1954). In this case, the right to park vehicles on and in Arcadian Drive is implied by the circumstances surrounding the creation and use of the easements.

Between 2000 through 2023, the members of ASSFR HOA implemented a decal system to identify cars/golf carts of the numbered residential lot owners of the Arcadian Shores Single-Family Residential Homeowner's Association, Inc. Subdivision, including their guests. The decals were to monitor who parked at the beach access points of Arcadian Drive, Ocean Lakes Road, and Kingston Road, as shown on Robert L. Bellamy, C.E.'s Maps, designated **Exhibits 40-A and 40-B**.

On March 13, 2023, Arcadian Properties, Inc., pursuant to a "Corrective Title² to Real Estate," conveyed to The Arcadian Incorporated of Myrtle Beach, ("Arcadian I HOA") its successors and assigns, in fee simple, the following described property, to wit:

All and singular, that piece, parcel or lot of land situate, lying and being in Horry County and State aforesaid, more particularly described as Parcel B containing 0.81 acres more or less, and more particularly shown on Plat entitled "SUBDIVISION PLAT OF PARCEL A & PARCEL B," prepared for Arcadian Properties, Inc. [sic] by Robert L. Bellamy & Associates, Inc. dated June 3, 2002 revised June 18, 2002 and recorded on July 29, 2002, in Plat Book 189 at Page 186, in the Office of the R.M.C. for Horry County, South Carolina.

The identification system worked basically without major issue until July of 2023, when Arcadian I HOA started issuing parking violations to property owners of the ASSFR HOA as shown on **Exhibits 40-A and 40-B**, with the threat to tow cars. Arcadian I HOA also started insisting that the Plaintiffs and other property owners of the ASSFR HOA sign a liability waiver to purchase an Arcadian I HOA decal. Furthermore, there was no provision to sign for guests of members of the ASSFR HOA for parking their cars.

Since 2024, Defendant Arcadian I HOA has sold annual parking privileges to property owners outside the Arcadian Shores Subdivision and has encroached into the right-of-way of

² A copy of the "Corrective Title Deed" is attached to the Amended Complaint as **Exhibit 44**.

Arcadian Drive by installing tow-away signs, as well as a fence across the beach access part of Arcadian Drive as depicted by the photographs attached to the Amended Complaint as Exhibit 45. And, recently, Defendant, Arcadian I HOA, towed a Plaintiff's golfcart, with ASSFR HOA identification system displayed, from the beach access point of Arcadian Drive at its termination.

On July 24, 2024, Plaintiffs' attorney mailed a letter by Certified Mail/Return Receipt Requested to the Defendant's registered agent specifically requesting that it cease and desist from interfering with the Plaintiffs' implied right to temporarily park in and along the beach access portion of Arcadian Drive for the purpose of gaining access to Atlantic Ocean and the abutting beach front property for the recreational use and enjoyment of their properties.

The Defendant, Arcadian I HOA, has failed and refused to cease and desist from interfering with the implied rights of the Plaintiffs to temporarily park in and along the beach access portion of Arcadian Drive to gain access to the Atlantic Ocean and the abutting beach front property for their recreational use and enjoyment.

The Defendant Arcadian I HOA has recently placed other obstructions in and along the beach access portion of Arcadian Drive and continues to interfere with Plaintiffs' use of same.

The Plaintiffs at no time abandoned their implied rights to temporarily park their cars at the beach access portion of Arcadian Drive for the purpose of gaining access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment of their properties.³

ARGUMENT

A temporary restraining order or preliminary injunction may be sought upon filing of the summons and complaint by submitting an affidavit or verified complaint showing, with specific

³ The factual findings set forth herein state the full accurate facts of the matter at hand. Plaintiffs note that the factual findings set forth in the January 22, 2026 Order are incomplete, not wholly accurate, are not binding on subsequent proceedings, and are not the law of the case. See Loyola Fed. Sav. Bank v. Thomasson Props., 318 S.C. 92, 456 S.E.2d 423 (Ct. App. 1995)

facts, that the applicant will sustain immediate and irreparable injury, loss, or damage if relief is not granted. S.C. R. CIV. PRO. 65(b). A verified complaint is the equivalent of an affidavit. Dawkins v. Fields, 354 S.C. 58, 580 S.E.2d 433, 437-38 (2003); Carmichael v. Oden, 2009 WL 9524614, *5 (S.C. Ct. App. 2009). Stated differently, “[a] plaintiff’s entitlement to an injunction requires the complaint to allege facts sufficient to constitute a cause of action for an injunction while establishing that an injunction is reasonably necessary to protect the legal rights of the plaintiff during the litigation.” FOC Lawshe v. International Paper, 352 S.C. 408, 574 S.E.2d 228, 232 (Ct. App. 2002).

The purpose of an injunction is to preserve the *status quo* during litigation in order to prevent irreparable injury to the requesting party and to preserve the ability of the court to render complete relief. County Council of Charleston v. Felkel, 244 S.C. 480, 137 S.E.2d 577, 578 (1964) (“The sole object of a temporary injunction is to preserve the subject of controversy in the condition which it is at the time of the Order until opportunity is offered for full and deliberate investigation and to preserve the existing status during litigation.”); see also JAMES F. FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE 511 (2nd ed., 1996) (“A temporary injunction preserves the *status quo* pending the completion of the case.”). An injunction is appropriate to preserve the *status quo* so that a party can enforce a disputed legal right. Seaboard Air Line Ry. v. Atlantic Coast Line R., 71 S.E. 39 (S.C. 1911).

Under South Carolina law, a party seeking to obtain injunctive relief generally must demonstrate that (1) it would suffer irreparable harm if the injunction is not granted; (2) it will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. FOC Lawshe Ltd. Partnership v. International Paper Co., 352 S.C. 408, 574 S.E.2d 228 (Ct. App. 2002). Our state Supreme Court has clarified that there is no additional requirement that the trial judge

must “balance the equities” before issuing an injunction. Poynter Investments, Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 694 S.E.2d 15, 17 (2010).

I. Plaintiffs will suffer irreparable harm.

Under South Carolina law, “[i]rreparable injury means that the injunction is reasonably necessary to protect the rights of the plaintiff pending the litigation.” FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 508. *South Carolina law has long recognized that a temporary injunction is an appropriate remedy to protect a plaintiff’s property rights, including those acquired under an easement.* Transcon. Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 480-81, 167 S.E.2d 313, 314-15 (1969) (Temporary injunction prohibited construction over an easement.)(citing Darlington Oil Company v. Pee Dee Oil & Ice Company, 62 S.C. 196, 40 S.E. 169 (1901); Alderman & Sons Co. v. Wilson, supra, 69 S.C. 156, 48 S.E. 85 (1904); Marion County Lumber Co. v. Tilghman Lumber Co., 75 S.C. 220, 55 S.E. 337 (1906)); AJG Holdings, et al. v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009)(Injunction issued to preserve rights where the ability to call police or money damages would not protect easement rights); Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 410 S.E.2d 580 (Ct. App. 1991)(Enjoining unilateral change to easement as depicted on publicly recorded plat).

In this action, as more fully set forth below, Plaintiffs made a prima facie showing for a nonexclusive implied easement for a private way of ingress and egress, and access to the beach front property and Atlantic Ocean including parking on and along Arcadian Drive, entitling them to injunctive relief. An implied private easement of way for ingress and egress and access to the beach, which was specific in its width, length, and location, cannot be constricted to any degree by placement of parking spaces and other obstructions thereon by Defendant. “It is well established that the owner of a right of way for ingress and egress has the right to use the full width of the area or strip having definite boundaries unhampered by obstructions placed thereon.” Xanadu

Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 172, 410 S.E.2d 580, 581–82 (Ct. App. 1991) (citations omitted).

II. Plaintiffs are likely to succeed on the merits.

As for the requirement of showing a likelihood of success on the merits, a party seeking an injunction is “not required to prove an absolute legal right when seeking a preliminary injunction, but [she] must present a reasonable question as to the existence of such a right.” AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505, 509 (Ct. App. 2009); see also Williams v. Jones & Amerman, 92 S.C. 342, 75 S.E. 705 (1912) (“This does not mean an absolute legal right or certainty of success but rather that he has a fair question to raise as to the existence of such a right.”). *Courts have broadly construed this element and a litigant is required to do little more than state a cause of action or make a prima facie showing.* County of Richland v. Simpkins, 348 S.C. 664, 560 S.E.2d 902 (Ct. App. 2002); Childs v. Columbia, 87 S.C. 566, 70 S.E. 296 (1911).

- A. Plaintiffs made a prima facie showing of the existence of an implied easement for parking, ingress, and egress in and along Arcadian Drive to access the beach and Atlantic Ocean for their recreational use and enjoyment of their properties.

Under South Carolina law, “[t]he creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristics demonstrate that the objective intention of the parties was to create an easement.” Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 92, 659 S.E.2d 151, 154 (2008) (25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62). Stated differently, “[t]he intent of the parties, as shown by all the facts and circumstances under which a conveyance was made, may give rise to an easement by implication.” Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 416–17, 633 S.E.2d 136, 139 (2006)(quoting from Hamilton v. CCM, Inc., 274 S.C. 152, 158,

263 S.E.2d 378, 381 (1980)). South Carolina Courts “have, over time, developed various presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets.” *Id.* South Carolina Supreme Court “has recognized the general rule that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an implied easement over the streets appearing in the plat.” *Id.* *See, e.g., Blue Ridge Realty Co. v. Williamson*, 247 S.C. 112, 120, 145 S.E.2d 922, 925 (1965)(“[A]ccording to the great weight of judicial opinion, the lot purchaser is entitled to the use of all the streets and ways, near or remote, as laid down on the plat by which he purchases.”) (quoting *Billings v. McDaniel*, 217 S.C. 261, 265, 60 S.E.2d 592, 593–94 (1950)).

In this Action, the Plaintiffs’ Verified Amended Complaint alleges that the Plaintiffs and other lot owners purchased their residential lots in reliance upon the subdivision plat, which shows beach access and other access for all lot owners along Beach Club Drive and Arcadian Drive, and that the Plaintiffs and numerous other lot owners in the subdivision have regularly and continuously used the streets and roads of the subdivision (including Arcadian Drive and Beach Club Drive) to gain access to the beach of the Atlantic Ocean, which is a major attraction and value to lot owners in the subdivision. Additionally, the Verified Amended Complaint alleges facts of this case that come squarely within the facts and law outlined in the controlling case of *Blue Ridge Realty Company, Inc. v. Williamson*, 145 S.E. 2d 922 (1965), to the effect that the Plaintiffs, as owners of lots sold and conveyed with reference to recorded plats of the Arcadian Shores subdivision, have private easements in all streets shown on the plats, and are entitled to an order enjoining the Defendant from obstructing or encroaching upon Arcadian Drive, and requiring the

HOA to remove such obstructions that it has heretofore erected, including but not limited to the following particulars, to wit:

- a. Installing a barrier fence in the right of way of Arcadian Drive;
- b. Posting tow-a-way signage in the right of way of Arcadian Drive;
- c. Issuing warning tickets with the threat to tow if one does not purchase an Arcadian I decal;
- d. Signing a liability waiver;
- e. Recently choosing not to recognize the HOA and associated decals; while, at the same time;
- f. Allowing Ocean Ridge development property owners and others outside the Arcadian Shores Subdivision to park for an annual fee;
- g. Allowing its staff, cleaning crews and subcontractors the right to park in the right of way of Arcadian Drive;
- h. Allowing overflow parking for its rental guest to park in the right of way of Arcadian Drive; and
- i. Refusing to issue Arcadian I decals to certain property owners of Arcadian Shores Subdivision.

Furthermore, the court erred as a matter of law in failing to consider the submitted Affidavits of Allen Jeffcoat, Esquire; Paul Benik, Jr., William Bellamy, P.E.; and Anton Postner, Sr.⁴ and determining that the allegations of Plaintiffs' Verified Amended Complaint *do not present a reasonable question as to the existence of* an implied easement for parking in and along Arcadian Drive based upon the following evidence:

1. "The widths of Arcadian Drive (75'), Ocean Lakes Road (40'), and Kingston Road (70') in Arcadian Shores Ocean Front Development Subdivision ("Arcadian Shores") ***were specifically designed for ingress and egress and gaining access to the beachfront area, including parking in and along their beach access points and termination by homeowners who resided in Arcadian Shores Subdivision.***

⁴ Affidavits may be submitted to the Court to show that the prior three mandatory elements required to obtain a preliminary injunction are met. AJG Holdings, LLC v. Dunn, 382 S.C. 43, 674 S.E.2d 505 (Ct. App. 2009).

These multiple beach access roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots.” (Affidavit of William Bellamy, pp. 2-3 ¶11, attached as Exhibit 48 to Plaintiffs’ Verified Amended Complaint) (Emphasis added);

2. “The parking widths of the roads in Arcadian Shores could and would allow for ingress and egress to the beachfront along with an access ability with parking for residents including disabled members of the proposed beachfront community. These multiple beach roads were considered to be acceptable for the new Subdivision since, in the case of Arcadian Shores, the ocean front roads were supporting a residential neighborhood with roughly 110 acres and 90 planned off-ocean lots. *Whereas the Arcadian Shores Subdivision's plats were recorded at the Court House, the developers (again, Messrs. Brown, McLeod and Poster) were always careful to ensure that the roads would not be dedicated to the public but would remain available for the private use of owners and residents of the Subdivision for beach access and parking. Just as Mr. Robert Bellamy had and would plan and plat many of the ocean front neighborhoods owned and developed by the Burroughs family within the City Limits of Myrtle Beach the decision was made in Mr. Bellamy's platting the Arcadian Shores subdivision to have wide streets which would go all the way to the ocean and beach placed between blocks in order to allow for beach access for property that was not directly on the beach.* These ideas together meant for Arcadian Shores, which had a large swath of available beachfront, to connect this beachfront to the residential area, and so a (75') wide road (Arcadian Drive) and a narrow (40') road (Ocean Lake Road), and eventually another wide (70') road (Kingston Road) were all planned and platted.” (Affidavit of Anton F. B. R. Poster, Sr., p.5, ¶ 13, attached as Exhibit 47 to Plaintiffs’ Verified Amended Complaint) (Emphasis added);
3. The typical width of each of these avenues (in the City of Myrtle Beach) was sixty feet (60') and this width was adequate for parking as well as access, with a typical street/avenue allowing for 20' width of paving and an additional 20' “length” on each road's sides for car parking purposes. As such even a 40' wide road would be able to hold at least one car's length of parking spaces as well as the road itself. As in the City of Myrtle Beach, the Arcadian Shores' development plan meant for the roads, themselves, as well as their extra width of the roads, to be an asset and a value enhancement for all owners within the Subdivision by providing parking for all residents, as opposed to selling the maximum front footage to and for ocean front development with a few narrow walking paths to the ocean front left and allowed for the residents. If instead of the roadways there had been two or three 5' to 10' wide walkways placed going to the beach, to allow for foot traffic from the residential area of the Subdivision to the ocean frontage, and said frontage was clearly the most valuable portion of the tract, the amount of ocean frontage available for sale could have been increased by roughly 10%. It was felt that access and parking rights being available to all the properties within the neighborhood would produce a greater value impact for OLIC than this 10% increase in available ocean frontage, especially since OLIC itself was retaining the ownership of the

actual ocean frontage. (Affidavit of Anton F. B. R. Poster, Sr., pp.5-6, ¶ 14, attached as Exhibit 47 to Plaintiffs' Verified Amended Complaint) (Emphasis added);

4. I knew that parking and access to a beach provided a valuable enhancement to ocean front communities/subdivisions. The rights to full access to the beach, including parking, was meant and intended to be transferred by deeds conveying both the beach, and access to the beach, including that deed which I signed in 1982, recorded in Deed Book 734, Page 196 (RMC for Horry County). (Affidavit of Anton F. B. R. Poster, Sr., p.8, ¶ 16, attached as Exhibit 47 to Plaintiffs' Verified Amended Complaint) (Emphasis added);
5. In 1974, when Arcadian I was ready for occupancy, 28 residences were already built on the single-family restricted lots of the subdivision. The subdivision was designed as a beachfront community with multifamily resort development oceanward of Lake Shore Drive and restricted single-family lots west of Lake Shore Drive. It was ongoing, frequent and customary for residential homeowners of subdivision to park their cars at the beach access points of Arcadian Drive, Ocean Lake Road and Kingston Road to enjoy the beach, as the subdivision layout was designed, in order for all property owners of the subdivision to fully and conveniently enjoy the Atlantic Ocean and the beach fronting thereon. (Affidavit of R. Paul Benik, Jr., pp. 2-3, ¶ 11, attached as Exhibit 41 to Plaintiffs' Verified Amended Complaint) (Emphasis added);
6. Although neither the Subdivision Map nor the deeds described above specifically mention the uses that the Plaintiffs may make of such easement and property interest by implication, such uses necessarily and impliedly include the right for pedestrian and vehicular access and to park vehicles in and on Arcadian Drive in a reasonable way in common with the rights of others entitled to make use of Arcadian Drive. Neither the Subdivision Map nor the deeds described above restrict in any way the Plaintiffs' use of their easements and other rights in Arcadian Drive.
7. The unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. The right to use such land and the space overhead remains in the owner of the fee so far as such right is consistent with the purpose and character of the easement. The right of the easement owner and the right of the landowner are not absolute, irrelative and uncontrolled, but are so limited, each by the other, that there may be a due and reasonable enjoyment of both. A grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated. 17 Am. Jur., Section 96, Page 993. Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545 (1943).
8. "It is obvious to me (as a professional) that the purpose of the design of the Subdivision (a high-end, substantial oceanfront community) as revealed by the layout of the Subdivision Map is to provide an unrestricted access across all of Arcadian Drive to the Atlantic Ocean and the Atlantic Ocean beachfront to all of the owners of numbered lots in the Subdivision Map. By "access," I mean at least

the right and easement for pedestrian and vehicular access to and from the beachfront across all of Arcadian Drive, all in furtherance of such owners' right to use such easement, and the right to park vehicles on Arcadian Drive. Although there is no question that the Subdivision Map and deeds to lots in the Subdivision grant easements and other rights in all of Arcadian Drive to all lot owners, the exact scope of the easements contained in the applicable documents is ambiguous." (Affidavit of Plaintiffs' Expert Allen Jeffcoat, Esquire, p.12, ¶ 22(a)(3), attached as **Exhibit 49** to Plaintiffs' Verified Amended Complaint) (Emphasis added).

Based upon the foregoing record in this matter, the Court incorrectly determined that the Plaintiffs have failed to establish *prima facie* causes of action for injunctive relief against the Defendant and are unlikely to succeed on the merits.

III. Plaintiffs Have No Adequate Remedy at Law.

"Whether there is an adequate remedy at law for a wrong, [is a] question[] that [is] not decided by narrow and artificial rules." Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13, 15 (1939). "The adequacy of a legal remedy is a pragmatic determination based upon the certainty of fixing damages, the practicality of obtaining relief, and the efficiency of the legal remedy in the particular circumstances." FLANAGAN, SOUTH CAROLINA CIVIL PROCEDURE at 508. "[I]f the available legal remedy in a given case reduces itself to a matter of words, rather than to a matter of efficacy, because of its impracticability, or because the threatened acts may continue during the progress of an action at law, or because successive actions at law would be necessary to protect the plaintiff's rights, equity will hold that the existence of the legal remedy is not an obstacle to the exertion of the equitable power." Columbia Broadcasting Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 189 S.E.2d 305, 312 (1972). The mere uncertainty of fixing the measure of monetary damages may be sufficient to justify injunction. Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939).

Stated differently, the ability to redress injury by money damages does not make injunctive relief improper. Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939). The true standard of whether injunctions should issue is whether a legal remedy is somehow ineffective or impractical because

threatened injury may continue or be magnified during the progress of the litigation. The mere uncertainty of fixing the measure of monetary damages may be sufficient to justify injunction. Kirk v. Clark, 191 S.C. 205, 4 S.E.2d 13 (1939).

In this case, there are no adequate remedies at law for the Plaintiffs. An award of money damages is not an adequate remedy for the potential loss of the Plaintiffs. When a legal remedy is impracticable or when “successive actions at law would be necessary to protect the Plaintiffs’ rights, equity will hold that the existence of the legal remedy is not an obstacle to the exertion of the equitable power.” Columbia Broad. Sys., Inc. v. Custom Recording Co., 258 S.C. 465, 478, 189 S.E.2d 305, 311-12 (1972) (citing Kirk v. Clark, 4 S.E.2d 13 (S.C. 1939)).

IV. The Court failed to consider that Defendant’s actions violate the terms and conditions of the Breeden Order.

The Defendant’s parking regulations and placement of obstructions or limitations on use in the easement right of way violate the terms and conditions of the Final Judgment and Permanent Injunction Order” issued by Master-In-Equity Breeden, recorded on April 19, 1982. In 1981 and 1982, Plaintiffs’ expert witness, Allean Jeffcoat, Esquire was counsel for the Plaintiff Julia S. Haile in a case captioned Julia S. Haile v. The Arcadian Incorporated of Myrtle Beach, bearing Horry County Civil Action No. 81-CP-26-1816. In that case, the successful Plaintiff was the owner of lot 51 in the Subdivision, and the Defendant was the manager of the condominium regime known as Arcadian I Horizontal Property Regime. The Court found that the manager of the Arcadian condominium regime was wrongfully encroaching upon and obstructing the streets and roads shown on the Subdivision Map, including Arcadian Drive. In that case, the main issue in dispute was over the extent and scope of the lot owner’s easement and property interests in Arcadian Drive, *the same road and issue in dispute in this case.*

The Court held:

...the Plaintiff and numerous other lot owners in the subdivision have regularly and continuously used the streets and roads of the subdivision (including Arcadian Drive and Beach Club Drive) to gain access to the beach of the Atlantic Ocean, which is a major attraction and value to lot owners in the subdivision. It is also not disputed that the erection and maintenance of the fence obstruction is a major inconvenience to the Plaintiff and other lot owners, and on occasion completely blocks vehicular access to the beach and makes pedestrian traffic substantially less convenient.

The Court also held:

I find that the facts of this case come squarely within the facts and law outlined in the controlling case of Blue Ridge Realty Company, Inc. v. Williamson, 145 S.E.2d 922 (1965), to the effect that the Plaintiff, as an owner of a lot sold and conveyed with reference to recorded plats of the Arcadian Shores subdivision, has private easements in all streets shown on the plats, and is entitled to an order enjoining owners of other lots or tracts in the subdivision from obstructing or encroaching upon such streets and requiring them to remove such obstructions that they have heretofore erected.

V. The Court's reliance upon Defendant's citation to the Restatement (Third) of Property: Servitudes is misplaced.

In its Memorandum in Opposition to Plaintiffs' Motion for Temporary Restraining Order, Defendant states: "It has long been recognized that the owner of a servient estate may impose reasonable conditions on use, as long as the restrictions do not frustrate the purpose of the easement." This statement is false and should not be relied upon by the Court.

Defendant cites the Restatement (Third) of Property: Servitudes § 4.8(3) as support for its statement. However, the principle found in the Restatement does not support Defendant's position. Instead, the Restatement states:

the owner of the servient estate is entitled to make reasonable changes **in the location or dimensions of an easement, at the servient owner's expense**, to permit normal use or development of the servient estate, but only if the changes do not (a) significantly lessen the utility of the easement, (b) increase the burdens on

the owner of the easement in its use and enjoyment, or (c) frustrate the purpose for which the easement was created.

Restatement (Third) of Property: Servitudes § 4.8 (2000).

This cited section of the Restatement has nothing to do with the servient estate imposing conditions on use. Rather, contrary to Defendant's statement, the general rule is that the servient estate cannot unilaterally modify the easement without the other party's consent. Even if the servient estate could impose reasonable conditions on use pursuant to this section of the Restatement, which it cannot, the conditions which Defendant has imposed (a) significantly lessen the utility of the easement, (b) increase the burdens on the owner of the easement in its use and enjoyment, and (c) frustrate the purpose for which the easement was created. Defendant's actions are in complete contradiction to the Restatement principle which Defendant cites for support. Plaintiffs have searched South Carolina law, the Restatement (Third) of Property: Servitudes, American Jurisprudence, and Corpus Juris Secundum among other legal authorities and has not found any law to support Plaintiffs' position that a successor owner can unilaterally regulate an easement to impose conditions like payment on the use of the easement or no-parking zones.

The law in South Carolina and around the nation reveals that Defendant cannot interfere with Plaintiff's easement. In Howorka v. Harbor Island Owners' Ass'n, Inc., the South Carolina Court of Appeals held that the grantor of an easement retains dominion and use of servient land only to the extent his actions do not interfere with grantee's reasonable enjoyment of the easement. Howorka v. Harbor Island Owners' Ass'n, Inc., 292 S.C. 381, 385, 356 S.E.2d 433, 436 (Ct. App. 1987). Then in Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, the Court of Appeals explained that when the width, length, and location of an easement for ingress and egress have been set forth in a plat or other instrument, then the rights under the easement exist as to all of the land within the easement, and no party may occupy or obstruct any portion of it.

Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 172, 410 S.E.2d 580, 581-82 (Ct. App. 1991). These holdings and conclusions in South Carolina are consistent with courts nationwide. See Bloomfield v. Weakland, 224 Or. App. 433, 199 P.3d 318 (2008) (Servient owner enjoined from interfering with use and maintenance of pathway easement to beach); Savannah Jaycees Found., Inc. v. Gottlieb, 273 Ga. App. 374, 615 S.E.2d 226 (2005) (Landowner ordered to remove fence which restricted access to recreational easement); Snead v. C & S Props. Holding Co., 279 Va. 607, 692 S.E.2d 212 (2010) (Landowner directed to remove fence and other obstructions from roadway easement).

Although the servient owner is entitled to use the servient land, the owner may not unreasonably interfere with the easement holder's enjoyment of the servitude. § 8:21. Use of easement area by servient owner—Servient owner's interference with enjoyment of easement, The Law of Easements & Licenses in Land § 8:21. The prevailing view is that the owner of a servient estate may not erect any structures that encroach on a right of way. § 8:22. Use of easement area by servient owner—Servient owner's interference with enjoyment of easement—Structures and other objects, The Law of Easements & Licenses in Land § 8:22. An easement holder is entitled to equitable relief against a servient owner's unlawful interference with the easement holder's enjoyment of the servitude, particularly when the obstruction is of a permanent character. Courts frequently enjoin the obstruction of an easement and order the removal of encroaching structures at the servient owner's expense. § 8:32. Use of easement area by servient owner—Easement holder's remedies for interference by servient owner, The Law of Easements & Licenses in Land § 8:32.

The Court's reliance on Defendant's misstatement of law is misplaced. The law does not permit Defendant to unilaterally regulate the easement and impose new conditions on its use.

Rather, the law in South Carolina and nationwide is that Defendant cannot interfere with Plaintiffs' enjoyment of the easement or obstruct any portion of it. Defendant must be enjoined from placing obstructions and/or new limitations on Plaintiffs' use of the easement. The Defendant's conduct is in direct violation of the holdings of Blue Ridge Realty Company, Inc. v. Williamson, 145 S.E. 2d 922 (1965) and Xanadu Horizontal Prop. Regime v. Ocean Walk Horizontal Prop. Regime, 306 S.C. 170, 172, 410 S.E.2d 580, 581–82 (Ct. App. 1991) ("It is well established that the owner of a right of way for ingress and egress has the right to use the full width of the area or strip having definite boundaries unhampered by obstructions placed thereon.")(citations omitted).

CONCLUSION

Based upon the foregoing, the Court's January 22, 2026 order denying Plaintiffs' Motion for a TRO/Temporary Injunction overlooked, misapprehended, or failed to consider the core arguments advanced in support of Plaintiffs' Motion. Therefore, the Court should alter or amend its January 22, 2026 order and grant Plaintiffs' Motion for a TRO/Temporary Injunction.

Respectfully Submitted,

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V. Bellamy, III

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Myrtle Beach, SC
February 1, 2026

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Mar 11 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Case No. 2025-CP-26-05366

The Arcadian Incorporated of Myrtle Beach,

Respondent,

v.

R. Paul Benik, Jr. et al.,

Appellants.

NOTICE OF APPEAL

R. Paul Benik, Jr. et al., appeal the Order of the Honorable B. Alex Hyman filed on January 22, 2026. Appellants received written notice of the entry of this Order on January 22, 2026. The Appellants next filed a Motion to Reconsider pursuant to Rules 52 and 59(e), SCRPC and was denied by circuit court without a hearing on February 12, 2026.

March 11, 2026

s/ Howell V. Bellamy, III
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Dominic A. Starr, Esq.
J. Christopher Clark, Esq.
McAngus Goudelock & Courie, LLC
2411 North Oak Street, Suite 401
Myrtle Beach, SC 29577
(843) 848-6000 Telephone
(843) 449-2306 Facsimile
Attorneys for the Respondent

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Mar 11 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
In The Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Case No. 2025-CP-26-05366

The Arcadian Incorporated of Myrtle Beach, Respondent,

v.

R. Paul Benik, Jr. et al., Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Arcadian Incorporated of Myrtle Beach by depositing a copy of it in the United States Mail, Postage Prepaid, on March 11, 2026, addressed to its attorneys of record, Dominic A. Starr and J. Christopher Clark, at 2411 North Oak Street, Suite 401, Myrtle Beach, South Carolina 29577.

March 11, 2026

s/ Howell V. Bellamy, III
Howell V. Bellamy, III, Esq.
1000 29th Ave., North
Myrtle Beach, SC 29577
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M. EDWIN HINDS, JR.
DAVID B. MILLER⁺
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON⁺
HOWELL V. BELLAMY, III
GEORGE W. REDMAN, III⁺ ** **
BENJAMIN A. BAROODY⁺ ***
PHILLIP H. ALBERGOTTI* **
HAYES K. STANTON⁺ **
KARA J. KEITH **
LAUREN B. BENTON

* LLM TAXATION
** LICENSED IN SC & NC
+ CERTIFIED MEDIATOR
++ CERTIFIED ARBITRATOR



THE BELLAMY
LAW FIRM

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HOLLY M. LUSK
JON CRAIG HOWELL, JR.
ZACHARY J. CROWL**
BRICE A. BERTSCHIN
ALLIE BARTH TILLER
W. PIERCE HAAR
MACKENZIE PEARSON ADAMS

RETIRED:
HOWELL V. BELLAMY, JR.
JOHN K. RUTENBERG (1939-2012)
JOHN E. COPELAND
CLAUDE M. EPPS, JR.
DAVID R. GRAVELY
EDWARD B. BOWERS, JR.*
BRADLEY D. KING
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TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

March 11, 2026

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: R. Paul Benik, Jr. et al. Appellant, Case No. 2025-CP-26-05366

Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above-captioned case. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal on the Respondent.
- (2) A copy of the orders which are to be challenged on appeal.
- (3) Transcript Request Form and attachments.
- (4) A filing fee of \$250.00.

(SIGNATURE PAGE TO FOLLOW)

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Mar 11 2026

SC Court of Appeals

March 11, 2026
Page 2

Sincerely,

s/ Howell V. Bellamy, III
Howell V. Bellamy, III, Esq.
Bellamy, Rutenberg, Copeland, Epps,
Gravely & Bowers, P.A.
1000 29th Ave., North
Myrtle Beach, SC 29577
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Attorney for Appellants

Counsel of Record:
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Attorneys for the Respondent



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 17, 2026

Mr. Howell Vaught Bellamy, III, Esquire
PO Box 357
Myrtle Beach SC 29578

Re: R. Paul Benik, Jr. v. The Arcadian Incorporated of Myrtle Beach
Appellate Case No. 2026-000666

Dear Counsel:

Upon reviewing your notice of appeal the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the notice of appeal must include a full caption that identifies all the appellants.
- You must provide proof of filing the notice of appeal with the Horry County Clerk of Court.

Very truly yours,


CLERK

cc: James Christopher Clark, Esquire
Dominic Allen Starr, Esquire

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Apr 22 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Appellate Case Number: 2026-000666
Lower Court Case No.: 2025-CP-26-05366

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr., Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Nellie B. Poster, Sherry S. Weatherly, Paula W. Benik, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda D. Errickson, Sandra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds, Rasario Reynolds, Gene W. Euchler and Cecelia L. Euchler, Sara F. Miles, V. Scott Miles, Deanna VanNostrand, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Douglas M. Mason, Barbara A. Mason, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Spears, Sylvia McCall Spears, Natalie D. Amaradasa, Darryl C. Williams, Mary Williams, Steven P. Lombardi, Lisa A. Lombardi, Davud G. Laureles, Tracey N. Laureles, Austin Whitesell, Jessica Whitesell, Jaqueline Ann Petrisko, Robert Palmer, Linda Palmer, Charles B. Hall, Virginia G. Hall, Paige Bird, Michael C. Smith, Edwina Sekhri, Vinod Sekhri, Sonia Heydt, Vicky Jackson, Douglas R. Keefe, Ashton Lackey, William Lackey, Timothy Beauford Hudson, Victoria Ester Hudson, Matthew G. Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon Burch, Ann M. Dozier, T. Guy Martin, Joshua Damon, Miriam R. Cromer and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,Appellant.

v.

The Arcadian Incorporated of Myrtle Beach,Respondent.

MOTION TO RECALL REMITTITUR AND SET ASIDE DISMISSAL OF APPEAL

I. BACKGROUND FOR MOTION TO RECALL REMITTITUR AND SET ASIDE DISMISSAL OF APPEAL

Between March 16 and March 20, 2026, Howell V. Bellamy, III, Esquire, was undergoing a transition of paralegal support. During this same period, and in the months leading up to it, Mr. Bellamy was dealing with significant medical issues, including: serious heart-related issues that have the possibility of resulting in a heart attack and stroke. Due to this, multiple visits to specialists at MUSC Health have been required, in addition to repeated laboratory testing, and the implantation of a heart monitor at Grand Strand Medical Center. His treatment was overseen by Dr. Rosenblum (cardiologist), Dr. Silbiger (internalist), Dr. Goebel (cardiovascular surgeon), Dr. Koroneous (neurologist) and Dr. Mary Hegedus (neurologist), among other providers, and the volume of medical care required and blood work/testing, resulted in scheduling burdens on the newly hired paralegals behalf and substantial stress.

Concurrently, Mr. Bellamy's previous paralegal departed the firm on March 16, 2026, and his newly hired paralegal did not immediately receive access to prior case communications, including email accounts, until granted by the firm's IT department. As a result, the new paralegal was required to manage both current and inherited communications while simultaneously attempting to address outstanding tasks left incomplete during the transition, including the March 17, 2026, Notice of Deficiencies with the Notice of Appeal sent by the Deputy Clerk of the Court of Appeals, Catherine Jasmine. These combined circumstances—Mr. Bellamy's medical condition, the transition of paralegal support, and the administrative transition—caused delays in receiving and responding to critical correspondence from the Court. We have already received the copy of the transcript and are currently working on the brief. These facts collectively explain the reason for the lack of timely response to the procedural deficiencies as cited by the letter from The South Carolina Court of Appeals dated March 17, 2026, which we respectfully apologize to the Court.

This matter has been discussed with the opposing counsel and they do not oppose the relief requested in our motion.

II. RELIEF REQUESTED

Appellants respectfully request this Court:

1. Recall the remittitur currently filed and/or held by the Horry County Clerk of Court; and
2. Set aside the Dismissal of Appeal filed on March 31, 2026, by Jasmine D. Smith, Deputy Clerk of The South Carolina Court of Appeals.

Respectfully Submitted,

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S. C. Bar
#66575)
hbellamyiii@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile
Attorneys for Plaintiffs

Myrtle Beach, South Carolina
April 21, 2026

Cc: James Christopher Clark, Esquire
Dominic Allen Starr, Esquire

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Apr 22 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Appellate Case Number: 2026-000666
Lower Court Case No.: 2025-CP-26-05366

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr., Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Nellie B. Poster, Sherry S. Weatherly, Paula W. Benik, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda D. Errickson, Saundra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds, Rasario Reynolds, Gene W. Euchler and Cecelia L. Euchler, Sara F. Miles, V. Scott Miles, Deanna VanNostrand, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Douglas M. Mason, Barbara A. Mason, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Spears, Sylvia McCall Spears, Natalie D. Amaradasa, Darryl C. Williams, Mary Williams, Steven P. Lombardi, Lisa A. Lombardi, Davud G. Laureles, Tracey N. Laureles, Austin Whitesell, Jessica Whitesell, Jaqueline Ann Petrisko, Robert Palmer, Linda Palmer, Charles B. Hall, Virginia G. Hall, Paige Bird, Michael C. Smith, Edwina Sekhri, Vinod Sekhri, Sonia Heydt, Vicky Jackson, Douglas R. Keefe, Ashton Lackey, William Lackey, Timothy Beauford Hudson, Victoria Ester Hudson, Matthew G. Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon Burch, Ann M. Dozier, T. Guy Martin, Joshua Damon, Miriam R. Cromer and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,Appellant.

v.

The Arcadian Incorporated of Myrtle Beach,Respondent.

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This matter has been discussed with the opposing counsel and they do not oppose the relief requested in our motion.

II. RELIEF REQUESTED

Appellants respectfully request this Court:

1. Recall the remittitur currently filed and/or held by the Horry County Clerk of Court; and
2. Set aside the Dismissal of Appeal filed on March 31, 2026, by Jasmine D. Smith, Deputy Clerk of The South Carolina Court of Appeals.

Respectfully Submitted,

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S. C. Bar
#66575)
hbellamyiii@bellamylaw.com
1000 29th Ave. N.
Myrtle Beach, S. C. 29577
(843)-448-2400 Phone
(843)-448-3022 Facsimile
Attorneys for Plaintiffs

Myrtle Beach, South Carolina
April 21, 2026

Cc: James Christopher Clark, Esquire
Dominic Allen Starr, Esquire

M. EDWIN HINDS, JR.
DAVID B. MILLER⁺
C. WINFIELD JOHNSON, III
DOUGLAS M. ZAYICEK
MARTIN C. DAWSEY*
ROBERT S. SHELTON⁺
HOWELL V. BELLAMY, III
GEORGE W. REDMAN, III⁺ ** ++
BENJAMIN A. BARODY⁺ ***
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RETIRED:
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TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

April 13, 2026

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Apr 22 2026

SC Court of Appeals

VIA EMAIL ONLY: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Appellate Case No: 2026-000666
Case No: 2025-CP-26-05366

Dear Mrs. Kitchings:

Please find attached and served upon you, the Motion to Recall Remittitur and Set aside Dismissal of Appeal filed on March 31, 2026. Also, we will be forwarding the payment in the amount of \$50.00 and the Affidavit of Kayleigh Rhodes.

If you have any questions or concerns in the meantime, please do not hesitate to reach out to me.

Kindest regards,

April 13, 2026

/s/ Kayleigh E. Rhodes
Kayleigh E. Rhodes, Paralegal
to Howell V. Bellamy, III, Esquire

/tba
Attachments
cc: Dominic Starr, Esquire
Christopher Clark, Esquire

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Apr 24 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2025-CP-26-05366

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr., Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Nellie B. Poster, Sherry S. Weatherly, Paula W. Benik, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda D. Errickson, Saundra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds, Rasario Reynolds, Gene W. Euchler and Cecelia L. Euchler, Sara F. Miles, V. Scott Miles, Deanna VanNostrand, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Douglas M. Mason, Barbara A. Mason, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Spears, Sylvia McCall Spears, Natalie D. Amaradasa, Darryl C. Williams, Mary Williams, Steven P. Lombardi, Lisa A. Lombardi, Davud G. Laureles, Tracey N. Laureles, Austin Whitesell, Jessica Whitesell, Jaqueline Ann Petrisko, Robert Palmer, Linda Palmer, Charles B. Hall, Virginia G. Hall, Paige Bird, Michael C. Smith, Edwina Sekhri, Vinod Sekhri, Sonia Heydt, Vicky Jackson, Douglas R. Keefe, Ashton Lackey, William Lackey, Timothy Beauford Hudson, Victoria Ester Hudson, Matthew G. Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon Burch, Ann M. Dozier, T. Guy Martin, Joshua Damon, Miriam R. Cromer and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,..... Appellants,

v.

Arcadian Incorporated of Myrtle Beach,..... Respondent,

NOTICE OF APPEAL

R. Paul Benij, Jr. et al., appeal the Order of the Honorable B. Alex Hyman filed on January 22, 2026. Appellants received written notice of the entry of this Order January 22, 2026. The Appellants next filed a Motion to Reconsider pursuant to Rules 52 and 59(e), SCRCP and was denied by the circuit court without a hearing on February 12, 2026.

March 11, 2026

BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.

/s/ Howell V. Bellamy, III

Howell V. Bellamy, III (SC Bar # 66575)

hbellamyiii@bellamylaw.com

1000 29th Ave. N.

Myrtle Beach, SC 29577

(843)-448-2400 Phone

(843)-448-3022 Facsimile

Attorney for Appellants

Myrtle Beach, SC

March 11, 2026

Other Counsel of Record:

Dominic A. Starr, Esq.

J. Christopher Clark, Esq.

McAngus Coudelock & Courie, LLC

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Attorneys for the Respondent

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Apr 24 2026

SC Court of Appeals

APPEAL FROM HORRY COUNTY
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B. Alex Hyman, Circuit Court Judge

Case No. 2025-CP-26-05366

The Arcadian Incorporated of Myrtle Beach,

Respondent,

v.

R. Paul Benik, Jr. et al.,

Appellants.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on The Arcadian Incorporated of Myrtle Beach by depositing a copy of it in the United States Mail, Postage Prepaid, on March 11, 2026, addressed to its attorneys of record, Dominic A. Starr and J. Christopher Clark, at 2411 North Oak Street, Suite 401, Myrtle Beach, South Carolina 29577.

March 11, 2026

s/ Howell V. Bellamy, III
Howell V. Bellamy, III, Esq.
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Myrtle Beach, SC 29577
(843)-448-2400 Telephone
(843)-448-3022 Facsimile
Attorney for Appellants

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Apr 29 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2025-CP-26-05366

Appellate Case No.: 2026-000666

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr., Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Nellie B. Poster, Sherry S. Weatherly, Paula W. Benik, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda D. Errickson, Sandra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds, Rasario Reynolds, Gene W. Euchler and Cecelia L. Euchler, Sara F. Miles, V. Scott Miles, Deanna VanNostrand, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Douglas M. Mason, Barbara A. Mason, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Spears, Sylvia McCall Spears, Natalie D. Amaradasa, Darryl C. Williams, Mary Williams, Steven P. Lombardi, Lisa A. Lombardi, Davud G. Laureles, Tracey N. Laureles, Austin Whitesell, Jessica Whitesell, Jaqueline Ann Petrisko, Robert Palmer, Linda Palmer, Charles B. Hall, Virginia G. Hall, Paige Bird, Michael C. Smith, Edwina Sekhri, Vinod Sekhri, Sonia Heydt, Vicky Jackson, Douglas R. Keefe, Ashton Lackey, William Lackey, Timothy Beauford Hudson, Victoria Ester Hudson, Matthew G. Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon Burch, Ann M. Dozier, T. Guy Martin, Joshua Damon, Miriam R. Cromer and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,
..... Appellants,

v.

The Arcadian Incorporated of Myrtle BeachRespondent.

APPELLANTS' NOTICE OF MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF

Appellants hereby request a thirty (30) extension of time until May 27, 2026, or until such time the Court deems appropriate, to file the Appellants' Initial Brief. The basis for this request is

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Apr 27 2026

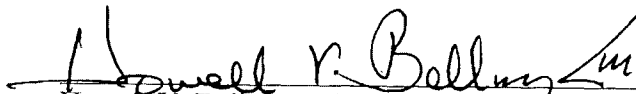
SC Court of Appeals

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based upon the undersigned Counsel's workload, ongoing health issues, and further, Appellants' Counsel has an upcoming day certain trial on May 12, 2026.

The Initial Brief is due May 27, 2026, and if this Motion is granted, the Initial Brief will be due on May 27, 2026, or until such time as the Court designates. Appellants' Counsel submits that this Motion is not intended for purposes of delay. Upon information and belief, Counsel for the Respondent has consented to this request for an extension of time.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Howell V. Bellamy, III", is written over a horizontal line.

Howell V. Bellamy, III (S.C. Bar #66575)
BELLAMY, RUTENBERG, COPELAND,
EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
Myrtle Beach, SC 29578
(843) 448-2400
Counsel for Appellants

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In the Court of Appeals

APPEAL FROM HORRY COUNTY
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Honorable Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2025-CP-26-05366

Appellate Case No.: 2026-000666

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..... Appellants,

v.

The Arcadian Incorporated of Myrtle Beach Respondent.

PROOF OF SERVICE

The undersigned, an attorney in this matter for the Appellants, certifies that I have this 27th day of April, 2026, served copies of Appellants' Motion for Extension of time to file Appellants' Initial Brief, upon counsel for the Respondent by *electronic transmission* and U.S. Mail, with sufficient postage attached, addressed to:

RECEIVED

Apr 27 2026

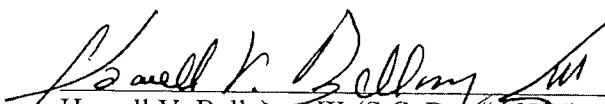
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Chris.clark@mgclaw.com

Attorneys for Respondent



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EPPS, GRAVELY & BOWERS, P.A.
P.O. Box 357
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(843) 448-2400
Counsel for Appellants

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* LLM TAXATION
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ZACHARY J. CROWL**
BRICE A. BERTSCHIN
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RETIRED:
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Apr 29 2026

SC Court of Appeals

1000 29TH AVENUE NORTH • P.O. BOX 357 • MYRTLE BEACH, SC 29578
TELEPHONE (843) 448-2400 • FACSIMILE (843) 448-3022

April 27, 2026

VIA FEDEX

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: R. Paul Benik, Jr. et al. Appellant, Case No. 2025-CP-26-05366
Notice of Proposed Order of Continuance

Dear Ms. Kitchings:

Enclosed please find the Appellants' Notice of Motion for Extension of Time to File Initial Brief to allow the undersigned counsel thirty (30) days as of today's date to respond as preparations are underway for date certain trial taking place the week of May 12, 2026. Additionally, please find enclosed a check for \$50.00 to cover filing fees.

Should you have any questions or require any additional information, please do not hesitate to contact our office.

With kindest regards, I am

**BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P.A.**

s/ Howell V. Bellamy, III
Howell V. Bellamy, III (SC Bar # 66575)
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HVBiii/tba
Enclosures

cc: Dominick A. Starr, Esquire
J. Christopher Clark, Esquire

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Apr 30 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Trial Court Case No. 2025-CP-26-05366
Appellate Case No. 2026-000666

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr., Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Nellie B. Poster, Sherry S. Weatherly, Paula W. Benik, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda D. Errickson, Saundra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds, Rasario Reynolds, Gene W. Euchler and Cecelia L. Euchler, Sara F. Miles, V. Scott Miles, Deanna VanNostrand, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Douglas M. Mason, Barbara A. Mason, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Spears, Sylvia McCall Spears, Natalie D. Amaradasa, Darryl C. Williams, Mary Williams, Steven P. Lombardi, Lisa A. Lombardi, Davud G. Laureles, Tracey N. Laureles, Austin Whitesell, Jessica Whitesell, Jaqueline Ann Petrisko, Robert Palmer, Linda Palmer, Charles B. Hall, Virginia G. Hall, Paige Bird, Michael C. Smith, Edwina Sekhri, Vinod Sekhri, Sonia Heydt, Vicky Jackson, Douglas R. Keefe, Ashton Lackey, William Lackey, Timothy Beauford Hudson, Victoria Ester Hudson, Matthew G. Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon Burch, Ann M. Dozier, T. Guy Martin, Joshua Damon, Miriam R. Cromer and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,..... Appellants,

v.

Arcadian Incorporated of Myrtle Beach, Respondent,

PROOF OF SERVICE

I certify that I have served the Motion to Recall Remittitur and Set Aside Dismissal of Appeal on the Arcadian Incorporated of Myrtle Beach by first including the Respondent's Counsel on the email addressed to the South Carolina Court of Appeals with a copy of the Appellants' Motion on April 22, 2026, and by depositing a copy of it in the United States Mail, Postage Prepaid, on April 30, 2026, addressed to its attorneys of record, Dominic A. Starr and J. Christopher Clark, at 2411 North Oak Street, Suite 401, Myrtle Beach, South Carolina 29577.

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Jul 31 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry County
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2026-000666

R. Paul Benik, Jr., Rudolph Paul Benik, III., Paula W. Benik, Anton F. B. R. Poster, Sr. and Teresa L. Poster, Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Sandra Pridgen, Ronald K. Reynolds and Rasario Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia McCall Speares, Trustees of the Speares Revocable Trust U/A/D September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of the Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of the Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of the Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert, Henry Lawrence Sanderson III, Trustee of the Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Dee o, Natali D. Amaradasa,, Rosemary Long Jenrette and Arcadian Shores Single-Family Residential Homeowners Association, Inc.,

Appellants

v.

The Arcadian Incorporated of Myrtle Beach,

Respondent

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE ISSUES ON APPEAL

Did the circuit court act within its discretion in denying a temporary restraining order, where the preliminary record supported a finding that Appellants failed to establish a likelihood of success on the merits, immediate irreparable harm, or the absence of an adequate remedy, and the requested relief would have displaced neutrally-applied parking procedures prior to a resolution of the case on the merits?

STATEMENT OF THE CASE

Appellants commenced this action in July 2025, seeking declaratory, injunctive, and monetary relief concerning claimed easement rights over property owned by Respondent at the southeastern terminus of Arcadian Drive. (Am. Compl. pp. 1-3.) Respondent answered and disputed both the existence and the asserted scope of the claimed easement, including Appellants' contention that any easement carried an unrestricted right to park on Respondent's parcel. (Answer pp. 1-6; Order pp. 2-4.)

On August 14, 2025, Appellants separately moved for an expedited emergency temporary restraining order under Rule 65(b), SCRCF. Their requested order would have compelled Respondent to cease enforcing its existing parking procedures and to permit Appellants to park on the disputed portion of Arcadian Drive until a later hearing on temporary injunctive relief. (Pls.' Mot. for TRO pp. 1-4.) Respondent opposed the motion with evidence concerning title, the disputed scope of any easement, the availability of access, and the reasons for its parking procedures. (Curtis Aff. pp. 1-4.)

The circuit court heard the motion on September 15, 2025, and reviewed the pleadings, affidavits, exhibits, memoranda, and arguments of counsel. (Order p. 2.) The court initially denied relief by Form 4 order on October 14, 2025, and entered a written order with findings and conclusions on January 22, 2026. (Order pp. 2-5.) The court denied Appellants' motion to reconsider, and Appellants filed their notice of appeal on March 11, 2026. (Mot. to Reconsider; Order Denying Reconsideration; Notice of Appeal.) After an administrative dismissal and issuance of the remittitur, the Court granted Appellants' motions to recall the remittitur and proceed under an amended notice of appeal. (Mots. to Recall Remittitur and Set Aside Dismissal; Am. Notice of Appeal; Orders dated May 19, 2026.)

No monetary judgment is involved in this interlocutory appeal. The declaratory-judgment, permanent-injunction, and damages claims remain pending in the circuit court. The only ruling presented for review is the denial of provisional relief prior to an adjudication on the merits.

STATEMENT OF FACTS RELEVANT TO REVIEW

Respondent owns in fee simple the southeastern terminus of Arcadian Drive, including the parcel on which Appellants have demanded unrestricted parking. (Order p. 3.) Appellants contended that references to the recorded subdivision plat and evidence of historical use created an easement which includes parking near the beach-access point. Respondent disputed that proposition and submitted evidence that the parcel left the developer's ownership before creation of the first express easement upon which Appellants relied. (Order pp. 3-4.)

The preliminary record did not identify a deed, plat, or recorded instrument expressly granting parking rights over Respondent's parcel. The circuit court found the evidence insufficient, at this preliminary stage, to show that Respondent or its predecessors consented to or accepted the particular easement burden Appellants asserted. (Order p. 4.) The record also included evidence of private-road signage inconsistent with a claim of prescriptive rights. (*Id.*)

Respondent did not bar Appellants from entering Arcadian Drive or reaching the beachfront. Its procedures required authorized users to obtain a decal, submit a short application, execute a liability waiver, and observe a no-parking area on the south side of the roadway because of an underground drainage pipe. (Order p. 3; Curtis Aff. pp. 2-4.) The court found those procedures neutral, generally applicable, and uniformly administered. (Order p. 3.) It also found no evidence that parking on Respondent's parcel was Appellants' sole means of beach access. (*Id.*)

Appellants nevertheless asked the court to compel Respondent to abandon those procedures immediately and permit unrestricted parking until the court could decide the merits of Appellant's easement claim. The circuit court declined, finding that Appellants had not shown a likelihood of success on the merits, irreparable harm, or the absence of an adequate remedy at law; and that the requested order would alter rather than preserve existing conditions. (Order pp. 4-5.)

STANDARD OF REVIEW

The grant or denial of temporary injunctive relief is reviewed under an abuse of discretion standard. *Strategic Resources Co. v. BCS Life Insurance Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). A decision constitutes an abuse of discretion only when it is unsupported by the evidence or controlled by an error of law. *MailSource, LLC v. M.A. Bailey & Associates*, 356 S.C. 363, 367, 588 S.E.2d 635, 637-38 (Ct. App. 2003).

The circuit court's order did not finally resolve any issues between the parties. It denied only Appellants' Rule 65(b) request for emergency relief, while their claims for declaratory judgment, permanent injunctive relief, negligence, and damages remain pending. It is therefore interlocutory in the ordinary sense: further judicial action is necessary before the parties' rights are determined.

South Carolina makes this category of interlocutory ruling immediately appealable. Section 14-3-330(4) directs appellate review of:

An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver." S.C. Code Ann. § 14-3-330(4).

The Court of Appeals has applied that language directly to a request for a restraining order. The underlying case ordinarily continues during an appeal under Section 14-3-330(4):

[T]he proceedings in other respects in the court below shall not be stayed during the pendency of such appeal unless otherwise ordered by the court below.” S.C. Code Ann. § 14-3-450 (2017).

An interlocutory appeal under Rule 65 does not authorize a *de novo* determination of the merits of the underlying case. The circuit court considers the merits only to the extent necessary to determine whether the moving party made a sufficient prima facie showing for provisional relief. *Compton v. S.C. Department of Corrections*, 392 S.C. 361, 367, 709 S.E.2d 639, 642 (2011).

SUMMARY OF THE ARGUMENT

The appealed order is interlocutory, but is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(4) (2017). However, because Rule 65 relief is provisional, the appeal of a TRO denial does not finally adjudicate the merits nor supply a vehicle for obtaining a final declaration of the rights between the parties. The proper question on appeal is whether the circuit court abused its discretion in declining to issue temporary relief before discovery and trial.

Appellants failed to demonstrate to the trial court that they were entitled to temporary relief. Appellants bore the burden of establishing immediate irreparable harm, a likelihood of success on the merits, and the inadequacy of any remedy at law. *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 587, 694 S.E.2d at 17 (2010). The court found each element lacking. Those findings were supported by evidence that the asserted parking right was not expressed in any recorded instrument; the parcel had been conveyed before the express easement language on which Appellants relied; Respondent had not denied ingress, egress, or beach access; neutral parking procedures were applied over the servient estate; and the

underlying property dispute could be adjudicated through declaratory relief, permanent equitable relief if warranted, and damages.

Appellants' seven issue statements largely ask this Court to accept their evidence as true, characterize disputed property rights as already established, and order unrestricted parking prior to a trial on the merits. Because these issues are already before the circuit court in the underlying proceeding, the circuit court's order should be affirmed, and the parties should return to the circuit court for the full adjudication on the merits.

ARGUMENT

I. THE CIRCUIT COURT ACTED WITHIN ITS DISCRETION IN DENYING EXTRAORDINARY PROVISIONAL RELIEF.

A. Appellants failed to carry their burden in the court below of establishing each prerequisite for temporary injunctive relief.

An injunction is a drastic remedy committed to the circuit court's sound discretion. *Scratch Golf Co. v. Dunes West Residential Golf Properties, Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 907 (2004). The movant must establish three elements: immediate irreparable harm without relief, a likelihood of success on the merits, and no adequate remedy at law. *Poynter*, 387 S.C. at 586-87, 694 S.E.2d at 17. *Compton*, 392 S.C. at 366, 709 S.E.2d at 642.

The burden is cumulative. Failure to establish any required element warrants denial. Moreover, the injunction must be reasonably necessary to protect the claimed rights during the litigation, not merely useful or preferable to the movant. *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969). The circuit court addressed every element and found the showing insufficient. (Order pp. 4-5.)

Appellants' brief attempts to convert appellate review to a series of questions on the merits: did Appellant's deeds create an easement; whether historical parking proves its scope; and whether Respondent may impose conditions upon Appellant's easement rights. These questions bear upon the final adjudication of Appellant's claims, not whether the circuit court abused its discretion in denying temporary relief pending a decision on the merits.

B. The preliminary record supported the finding that Appellants failed to show a likelihood of success.

The preliminary record reviewed by the circuit court did not support temporary relief. The court found Appellant's evidence insufficient to establish a right to unrestricted parking on Respondent's fee-owned parcel. It then held that, even assuming an access easement existed, the servient owner could impose reasonable procedures that do not defeat the purpose of the easement. (Order pp. 3-4.)

The circuit court's order identifies four defects in Appellant's asserted parking right: (1) the disputed parcel was conveyed out of the developer's ownership before the express easement language on which Appellants rely; (2) the later quitclaim deed could not, without more, burden property already conveyed; (3) no deed, plat, or recorded instrument expressly grants "parking" rights over the parcel; and (4) the preliminary evidence did not establish the parcel owner's consent to or acceptance of that burden. (Order pp. 3-4.) Evidence of private-road signage also undermined any claim based on prescription. (Order p. 4.)

Appellants supported their motion for temporary restraining order with affidavits describing the subdivision's design, historical use, and their bespoke interpretation of the developer's intent. That evidence may create factual and legal questions for the declaratory-judgment claim, but the circuit court was not required to credit Appellants' inferences over Respondent's evidence. Temporary relief rests within the trial judge's sound discretion, and an

order denying a TRO may be reversed only if clearly erroneous. *Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 884 (2007).

The authorities asserted by the Appellant's do not compel a different result. Decisions such as *Xanadu Horizontal Property Regime v. Ocean Walk Horizontal Property Regime*, 306 S.C. 170, 172, 410 S.E.2d 580, 581 (Ct. App. 1991), address obstruction after the width, length, and location of an easement have been established. Here, the burden on Respondent's parcel and the inclusion of parking remain disputed. Likewise, cases discussing references to recorded plats do not resolve many of the central questions in this case: whether Appellants have an unrestricted right to park on Arcadian Drive in light of the history of use, reasonable restrictions imposed by the fee owner to reduce burden on the servient estate, and the express language of the conveying instruments.

There is no merit to the contention that the circuit court erred by treating the absence of express "parking" language as categorically dispositive. The court considered this evidence together with the conveyance chronology, the ownership of the parcel, the lack of proven acceptance of a burden, and the distinction between access and parking. (Order pp. 3-4.)

Finally, even if Appellants ultimately establish an access easement, an easement holder must use the easement in a manner that does not unreasonably burden the servient estate. *Smith v. Commissioners of Public Works*, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994). The preliminary evidence showed that Respondents implemented uniform processes to lessen burden on the servient parcel: a decal process, an application, a waiver of liability, and a limited no-parking area protecting an underground drainage pipe. The record did not reveal that the road was closed to the Appellants. (Order p. 3.) The circuit court acted within its discretion in

concluding that the question of the burden on the servient estate should be reserved for a trial on the merits.

C. The record supported the finding that Appellants did not face immediate, irreparable harm.

The order found no evidence that Respondent blocked Arcadian Drive, denied ingress or egress, prevented Appellants from reaching the beachfront, or eliminated their only means of beach access. (Order pp. 3-4.) Appellants could walk or drive on Arcadian Drive and could park if they complied with the generally applicable procedures. (Order p. 3; Curtis Aff. pp. 2-4.) Thus, Appellant's motion for TRO was not aimed at preventing irreparable harm by forestalling the destruction of unique property or removal of the only access route. It sought relief from applications, decals, a waiver, parking restrictions, and associated charges. Even assuming those requirements are later found unauthorized, the temporary burdens are measurable, reversible, or remediable. The circuit court properly distinguished Appellant's claimed inconvenience and disputed administrative conditions from immediate irreparable harm.

Appellants' brief characterizes any alleged interference with Appellants' purported property right as essentially irreparable *per se*. That formulation assumes the very right in dispute and ignores the absence of an actual denial of access. The moving party still bears the burden of showing immediate harm and necessity on the record before the court.

D. The circuit court correctly concluded that the Appellants have adequate remedies at law.

Appellants chose the correct vehicle for determining the parties' property rights: a declaratory-judgment claim. That claim permits a complete adjudication of the chain of title, plat references, deed language, implied-easement theories, scope, and the reasonableness of any

conditions. If Appellants prevail, the court may then fashion permanent equitable relief directed to the rights actually proven at trial.

The circuit court also recognized that monetary relief is available for charges, towing, or other quantifiable losses shown to have resulted from wrongful interference with Appellant's easement rights. (Order p. 5.) While equity may intervene when legal remedies cannot adequately protect the moving party, the availability of monetary relief counsels strongly in favor of denying the extraordinary remedy of a TRO.

E. The requested order would have altered existing conditions rather than preserved them.

The function of temporary relief is to preserve the status quo pending a deliberate adjudication. *Poynter*, 387 S.C. at 586-87, 694 S.E.2d at 17. Respondent's decal, application, waiver, and restricted-parking procedures were in operation before Appellants filed this action and before they sought emergency relief. Appellants asked the court to compel Respondent to abandon those procedures and permit unrestricted parking on property it owns. (Pls.' Mot. for TRO pp. 2-4; Order p. 5.)

Appellants thus seek to alter the status quo by obtaining the benefit of its requested relief before any adjudication on the merits. The circuit court therefore had ample basis to find that the requested order would alter existing conditions. (Order p. 5.) *MailSource* affirmed denial of temporary relief on materially similar reasoning where the proposed injunction would change, rather than preserve, the operative status quo. *MailSource*, 356 S.C. at 370, 588 S.E.2d at 639.

F. The circuit court's additional reference to the equities supplies no basis for reversal.

Appellants correctly observe that *Poynter* eliminated a separate, fourth requirement that the movant establish a favorable balance of equities. 387 S.C. at 587, 694 S.E.2d at 17. However, the circuit court did not deny relief because Appellants failed this extra element. The court made independent findings that Appellants had not established likelihood of success, irreparable harm, or the inadequacy of ordinary remedies. (Order pp. 4-5.) Those findings fully support the result.

The court's final observation—that Respondent sought to regulate its property to prevent overburden and physical damage—was cumulative. *Poynter* states that a separate balancing step is not required; it does not forbid a court from recognizing the practical consequences of the requested order when evaluating irreparable harm, adequate remedies, necessity, or preservation of the status quo. Indeed, *Poynter* explained that equitable considerations are subsumed within the established test. 387 S.C. at 587, 694 S.E.2d at 17.

CONCLUSION

The circuit court correctly applied the governing Rule 65 principles and its findings were supported by the preliminary evidence. Therefore, Respondent respectfully requests that the Court affirm the order and remand the matter for further proceedings in the circuit court.

MCANGUS GOUDELOCK & COURIE, LLC

s/ Dominic A. Starr

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STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF HORRY

Case No. 2025-CP-26-05366

AMENDED SUMMONS

R. Paul Benik, Jr., Rudolph Paul Benik, III., Paula W. Benik, Anton F. B. R. Poster, Sr. and Teresa L. Poster, Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Saundra Pridgen, Ronald K. Reynolds and Rasario Reynolds. V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia McCall Speares, Trustees of the Speares Revocable Trust U/A/D September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of the Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of the Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of the Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert, Henry Lawrence Sanderson III, Trustee of the Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa,

Rosemary Long Jenrette and Arcadian
Shores Single-Family Residential
Homeowners Association, Inc.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

YOU ARE HEREBY SUMMONED and required to answer the Amended Summons and Amended Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscribers at their office at 1000 29th Avenue North, Myrtle Beach, South Carolina 29577 and to file your Answer with the Clerk of Court for Horry County (30) days after the service thereof; exclusive of the day of such service; and if you fail to answer the Amended Complaint with in the time aforesaid, the Plaintiffs in this action will apply to the Court for judgement by default for the relief demanded in the Amended Complaint and a judgment will be rendered against you.

Respectfully submitted,

BELLAMY, RUTENBERG, COPELAND
EPPS, GRAVELY & BOWERS, P. A.

s/ Howell V. Bellamy, III

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August 1, 2025

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Rudolph Paul Benik, III., Paula W. Benik, Anton F. B. R. Poster, Sr. and Teresa L. Poster, Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl and Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Sandra Pridgen, Ronald K. Reynolds and Rasario Reynolds, V. Scott Miles, Vernon G. Miles, Sharon E. Miles, Deborah Floyd, Brooks M. Safrit, Woodrow S. Safrit, Steven Alan Speares and Sylvia McCall Speares, Trustees of the Speares Revocable Trust U/A/D September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall, Virginia G. Hall, Sonia Heydt, Trustee of the Sonia Heydt Living Trust, dated December 10, 2024, Wendy Pivarnik, Joye S. Bull, Tumpie B. Bull, Maxine Williams, Trustee of the Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie, Van Raye Ritchie, William B. Burch, Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of the Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collins, Shawn Kelley and Karen Albert, Jerry Steven Wilson and Dana Pridgen Wilson, Pama C. Free, Giovanni Carapelli, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert, Henry Lawrence Sanderson III, Trustee of the Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa Coghill Jones, Darryl C. Williams and Mary Torrence Williams, David T. Taylor and Catherine T. Taylor, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette and Arcadian

COURT OF COMMON PLEAS

Case No. 2025-CP-26-05366

**VERIFIED AMENDED COMPLAINT
OF THE PLAINTIFFS ARCADIAN
SHORES SINGLE- FAMILY
RESIDENTIAL HOMEOWNERS'
ASSOCIATION, INC.,**

(JURY TRIAL REQUESTED)

Shores Single-Family Residential
Homeowners Association, Inc.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

TO THE DEFENDANT THE ARCADIAN INCORPORATED OF MYRTLE BEACH

NOW COMES the Plaintiffs, R. Paul Benik, Jr., Rudolph Paul Benik, III., Paula W. Benik, Anton F. B. R. Poster, Sr. and Teresa L. Poster, Johann M. McCrackin, Timothy J. Wentzel and Lisa D. Abrams, Sherry S. Weatherly, John D. Diehl, Lisa R. Diehl, Paul H. Errickson and Linda M. Errickson, Sandra Pridgen, Jerry Steven Wilson and Dana Pridgen Wilson, Ronald K. Reynolds and Rasario Reynolds, V. Scott Miles, Vernon G. Miles and Sharon E. Miles, Deborah Floyd, Brooks M. Safrit and Woodrow S. Safrit, Steven Alan Speares and Sylvia McCall Speares, Trustees of the Speares Revocable Trust U/A/D September 24, 2019, Steven P. Lombardi and Lisa A. Lombardi, Charles B. Hall and Virginia G. Hall, Sonia Heydt, Trustee of the Sonia Heydt Living Trust, dated December 10, 2024, Giovanni Carapelli, Joye S. Bull and Tumpie B. Bull, Maxine Williams, Trustee of the Maxine Williams Living Trust dated October 31, 2017, Kim Ritchie and Van Raye Ritchie, William B. Burch and Sharon K. Burch, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of the Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017, Lawrence Henry Lawrence Sanderson III, Trustee of the Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020, Miriam R. Cromer, Norwood Nicholson Cox and Janet Harrington Cox, Thomas P. Collins and Susan Lee Collinas, Karen Albert and Shawn Kelley, Pama C. Free, Julie A. Brooks, Jennifer Rae Morris, Craig L. Lambert and Lisa M. Lambert, Ronald G. Brooks and Robin D. Brooks, Robert Christopher Jones and Melissa

Coghill Jones, David T. Taylor and Catherine T. Taylor, Wendy Pivarnik, Darryle C. Williams and Mary Torrence Williams, Samuel Deep and Dianne Deep, Natali D. Amaradasa, Rosemary Long Jenrette and Arcadian Shores Single-Family Residential Homeowners Association, Inc., by and through their undersigned counsel, and file the following Verified Complaint against the above-named Defendants:

PARTIES, VENUE, AND JURISDICTION

1. Plaintiff, R. Paul Benik, III. (“Benik”) is now, and at all times relevant was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 61 of Arcadian Shores Subdivision by deed dated July 7, 2000, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 2279, Page 0005. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 1** and is incorporated here by reference. Upon information and belief, Mr. Benik will testify that “[he] grew up at 414 Queens Road (Lot 39) . . . [and] accessed the Subdivision’s beach area and the Atlantic Ocean roughly 30 times per year, on average . . . via parking on either Kingston Road or Arcadian Drive, and sometimes at the crosswalk at the end of Ocean Lake Road.”

2. Plaintiff, R. Paul Benik, Jr. (“Benik, Jr.”) is now, and at all times relevant was a resident of Horry County, South Carolina. The Plaintiff acquired title in fee simple to Lot 79 of Arcadian Shores Subdivision by deed dated February 9, 2007, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3220, Page 2765. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 2** and is incorporated here by reference. Upon information and belief, Mr. Benik will testify that “he purchased Lot 79 in 1979 and transferred ownership in 1988 to [his] spouse, Paula Benik. Since 1980, [he] has resided at 414 Queens Road (Lot 39). [He] ha[s] accessed the Subdivision’s beach area and the Atlantic Ocean roughly 30 times per year

from 1980 through the early 2000s on average . . . via parking on the side of either Kingston Road or Arcadian Drive, and at times parked at the crosswalk at the end of Ocean Lake Road.”

3. Plaintiff, Anton F. B. R. Poster, Sr. and Teresa L. Poster (“Poster”) are now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 76 of Arcadian Shores Subdivision by deed dated June 13, 2023, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 4690, Page 2668. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 3** and is incorporated here by reference. Upon information and belief, Mr. Poster and his family members have accessed Arcadian Shores Subdivisions’ beachfront property and the Atlantic Ocean more than thirty (30) times a year by parking on the side of either Kingston Road or Arcadian Drive.

4. Plaintiff Johann M. McCrackin (“McCrackin”) is now, and at all times relevant was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 88 of Arcadian Shores Subdivision by deed dated September 11, 2013, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3683 Page 2159. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 4** and is incorporated here by reference. Upon information and belief, Mrs. McCrackin will testify that “[o]ver the past forty (40) years . . . [she] has gone to and accessed the Subdivision’s beach area and the Atlantic Ocean roughly 30 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

5. Plaintiffs, Timothy J. Wentzel and Lisa D. Abrams (“Wentzel and Abrams”) are now, and at all times relevant were residents of the Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 20 of Arcadian Shores Subdivision by deed dated March 18, 2005, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 2878 Page 0661. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 5** and is incorporated here by reference. Upon information and belief, Mr. Wentzel and Mrs. Abrams will

testify that “[o]ver the past twenty (20) years . . . [they] have gone to and accessed the Subdivision’s beach area and the Atlantic Ocean roughly 210 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

6. Plaintiff, Sherry S. Weatherly (“Weatherly”) is now, and at all times relevant was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 29-A of the Arcadian Shores Subdivision by deed dated June 30, 1998, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 1229 Page 692. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 6** and is incorporated here by reference. Upon information and belief, Ms. Weatherly will testify that “since [she] purchased her residence, [she]and/or her husband, Clark, have accessed the Subdivision’s beach area and the Atlantic Ocean more than 30 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

7. Plaintiff, Paula W. Benik (“Paula Benik”) is now, and at all times relevant was a resident of Horry County, South Carolina. The plaintiff acquired title in fee simple to Lot 39 of the Arcadian Shores Subdivision, by deed dated January 25, 1988, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 1199 Page 629. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 7** and is incorporated here by reference. Upon information and belief, Mrs. Benik will testify that she has accessed “Arcadian Shores subdivision’s beachfront area along the Atlantic Ocean roughly thirty (30) times per year from 1980 through the early 2000s on the average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

8. Plaintiffs, John D. Diehl and Lisa R. Diehl, (“Diehl”) are now, and at all times relevant were residents of the Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 43 of Arcadian Shores Subdivision **by deed dated December 14, 2012**, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3626 Page 1706. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 8** and is incorporated here by

reference. Upon information and belief, Mr. and Mrs. Diehl will testify that they have accessed the Subdivision's Atlantic Ocean's beach roughly 200 times per year, on average. They often access the beach via parking on the side of either Kingston Road or Arcadian Drive.

9. Plaintiffs, Paul H. Errickson and Linda M. Errickson, ("Errickson") are now, and at all times relevant were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 71 of Arcadian Shores Subdivision by deed dated December 1, 2014, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3782 Page 704. A copy of Plaintiffs' deed is attached to this verified complaint as **Exhibit 9** and is incorporated here by reference. Upon information and belief, Mr. and Ms. Errickson will testify that they "have accessed Arcadian Shores Subdivision's beach area and the Atlantic Ocean many times each year . . . by parking [their] vehicle or golf cart on the side of either Kingston Road or Arcadian Drive."

10. Plaintiff, Sandra Pridgen ("Pridgen") is now, and at all times relevant was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 40 of Arcadian Shores Subdivision by deed dated April 29, 2015, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3816 Page 2485. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 10** and is incorporated here by reference. Upon information and belief, Ms. Pridgen will testify that she has accessed Arcadian Shores Subdivision's beach area and the Atlantic Ocean roughly 200 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive."

11. Plaintiffs, Jerry Steven Wilson and Dana Pridgen Wilson ("Wilson") are now, and at all times relevant were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 48 of Arcadian Shores Subdivision by deed dated June 6, 2017, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 4015 Page 2944. A copy of Plaintiffs' deed is attached to this verified complaint as **Exhibit 11** and is incorporated here by

reference. Upon information and belief, Mr. and Ms. Wilson will testify they “have accessed Arcadian Shores Subdivision’s beachfront area along the Atlantic Ocean roughly 250 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

12. Plaintiffs, Ronald K. Reynolds and Rasario Reynolds (“Reynolds”) are now, and at all times relevant were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 49 of Arcadian Shores Subdivision by deed dated April 12, 1990, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 1384 Page 61. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 12** and is incorporated here by reference. Upon information and belief, Mr. and Ms. Reynolds will testify that they “have accessed Arcadian Shores Subdivision’s beachfront area along the Atlantic Ocean roughly 50 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

13. Plaintiff, V. Scott Miles (“Miles”) is now, and at all times relevant a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 44 of Arcadian Shores Subdivision by deed dated August 27, 2010, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3478 Page 80. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 13** and is incorporated here by reference. Upon information and belief, Mr. Miles will testify that he and his family have accessed Arcadian Shores Subdivision’s beachfront area along the Atlantic Ocean “roughly 200 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive.”

14. Plaintiffs, Vernon G. Miles and Sharon E. Miles (“Miles”) are now, and at all times relevant were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 25 of Arcadian Shores Subdivision by deed dated April 6, 2015, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 3810 Page 2438. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 14** and is incorporated here by reference. Upon

information and belief, Mr. and Mrs. Miles will testify that they have accessed Arcadian Shores Subdivision's beachfront area along the Atlantic Ocean "roughly 200 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive."

15. Plaintiff, Deborah Floyd ("Floyd") is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 14 of the Arcadian Shores Subdivision, by deed dated November 22, 1983, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 684 Page 483. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 15** and is incorporated here by reference. Upon information and belief, Ms. Floyd will testify that they have accessed Arcadian Shores Subdivision's beachfront area along the Atlantic Ocean "roughly 100 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive."

16. Plaintiffs, Brooks M. Safrit and Woodrow S. Safrit ("Safrit") are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 28 of the Arcadian Shores Subdivision, by deed dated June 8, 2021, which deed is recorded in the Horry County Registry of Deeds, in Deed Book 4428 Page 1639. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 16** and is incorporated here by reference. Upon information and belief, Mr. and Mrs. Safrit will testify that "[s]ince 2004, [they] have accessed Arcadian Shores Subdivision's beachfront area along the Atlantic Ocean's beach many times each year . . . by parking my vehicle or golf cart on the side of Kingston Road or Arcadian Drive."

17. Plaintiff, Sonia Heydt, Trustee of the Sonia Heydt Living Trust, dated December 10, 2024 ("Hedyt") is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 45 of the Arcadian Shores Subdivision, by deed dated December 19, 2024, which deed was recorded in the Horry County Registry of Deeds,

in Deed Book 4892 Page 209. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 17** and is incorporated here by reference.

18. Plaintiff, Govianni Carapelli ("Carapelli") is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 56 of the Arcadian Shores Subdivision, by deed dated April 1, 2021, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4405 Page 768. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 18** and is incorporated here by reference.

19. Plaintiffs, Tumpie B. Bull and Joye S. Bull ("Bull") are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 63 of the Arcadian Shores Subdivision, by deed dated July 2, 1987, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 1145 Page 108. A copy of Plaintiffs' deed is attached to this complaint as **Exhibit 19** and is incorporated here by reference. Upon information and belief, Mr. and Mrs. Bull will testify that they have accessed Arcadian Shores Subdivision's beachfront area along the Atlantic Ocean "roughly 20 times per year, on average . . . via parking on the side of either Kingston Road or Arcadian Drive."

20. Plaintiff, Maxine Williams, Trustee of the Maxine Willliams Living Trust dated October 31, 2017 ("Williams") is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 67 of the Arcadian Shores Subdivision, by deed dated November 2, 2017, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4055 Page 2569. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit 20** and is incorporated here by reference.

21. Plaintiffs, Van Raye Ritchie and Kim Ritchie ("Ritchie") are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 69 of the Arcadian Shores Subdivision, **by deed dated September 9, 1992**, which deed was

recorded in the Horry County Registry of Deeds, in Deed Book 1576 Page 326. A copy of Plaintiffs' deed is attached to this verified complaint as **Exhibit 21** and is incorporated here by reference.

22. Plaintiffs, Timothy G. Martin, Rebecca A. Harrington and Brian J. Martin, as Trustees of the Guy E. Martin and Ann M. Dozier Irrevocable Trust dated January 25, 2017 ("Dozier and Martin") are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 83 of the Arcadian Shores Subdivision, by deed dated February 7, 2019, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4182 Page 840. A copy of Plaintiffs' deed is attached to this verified complaint as **Exhibit 22** and is incorporated here by reference.

23. Plaintiffs, Steven Alan Speares and Sylvia McCall Speares, Trustees of the Speares Revocable Trust U/A/D September 24, 2019 ("Speares") are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 5 of the Arcadian Shores Subdivision, by deed dated June 27, 2024, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4826 Page 1228. A copy of Plaintiffs' deed is attached to this verified complaint as **Exhibit 23** and is incorporated here by reference.

24. Plaintiffs, Steven P. Lombardi and Lisa A. Lombardi ("Lombardi") are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 12 of the Arcadian Shores Subdivision, by deed dated April 8, 2021, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4407 Page 839. A copy of Plaintiffs' deed is attached to this verified complaint as **Exhibit 24** and is incorporated here by reference. Upon information and belief, Mr. and Mrs. Lombardi will testify that they have accessed Arcadian Shores Subdivisions' beachfront property and the Atlantic Ocean roughly fifty (50) times per year, on average by parking on either Kingston Road or Arcadian Drive.

25. Plaintiff, Pama C. Free (“Free”) is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 53 of the Arcadian Shores Subdivision, by deed dated May 6, 2011, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 3518 Page 1094. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 25** and is incorporated here by reference.

26. Plaintiff, Julie A. Brooks (“Brooks”) is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 57 of the Arcadian Shores Subdivision, by deed dated July 25, 2018, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4128 Page 2655. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 26** and is incorporated here by reference.

27. Plaintiffs, Charles B. Hall, Virginia G. Hall and Janice Lee Waine (“Hall”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 22 of the Arcadian Shores Subdivision, by deed dated September 8, 2015, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 3852 Page 420. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 27** and is incorporated here by reference.

28. Plaintiff, Jennifer Rae Morris (“Morris”) is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 60 of the Arcadian Shores Subdivision, by deed dated October 25, 2022, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4606 Page 2921. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 28** and is incorporated here by reference.

29. Plaintiff, Wendy Pivarnik (“Pivarnik”) is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 62 of the Arcadian Shores Subdivision, by deed dated May 16, 2025, which deed recorded in the Horry County Registry of Deeds, in Deed Book 4945 Page 1057. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 29** and is incorporated here by reference.

30. Plaintiffs, William B. Burch and Sharon K. Burch (“Burch”) are now, and at all times mentioned, **were** residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 72 of the Arcadian Shores Subdivision, by deed dated September 3, 2021, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4460 Page 1500. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 30** and is incorporated here by reference. Upon information and belief, Mr. and Mrs. Burch will testify that they have accessed Arcadian Shores Subdivisions’ beachfront property and the Atlantic Ocean roughly twenty-five (25) times per year, on average by parking on either Kingston Road or Arcadian Drive.

31. Plaintiff, Henry Lawrence Sanderson III, Trustee of the Henry Lawrence Sanderson, III Revocable Trust dated January 9, 2020 (“Sanderson”) is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 85 of the Arcadian Shores Subdivision, by deed dated January 13, 2020, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4278 Page 38. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 31** and is incorporated here by reference. Upon information and belief, Mr. Sanderson will testify that they have accessed Arcadian Shores Subdivisions’ beachfront property and the Atlantic Ocean roughly twenty (20) times per year, on average, by parking on either Kingston Road or Arcadian Drive.

32. Plaintiff, Miriam R. Cromer (“Cromer”) is now, and at all times mentioned, was a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 96 of the Arcadian Shores Subdivision, by deed dated July 2, 2003, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 2614 Page 0029. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 32** and is incorporated here by reference

33. Plaintiffs, Ronald G. Brooks and Robin D. Brooks (“Brooks”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 87 of the Arcadian Shores Subdivision, by deed dated September 14, 2011, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 3541 Page 1303. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 33** and is incorporated here by reference.

34. Plaintiffs, Robert Christopher Jones and Melissa Coghill Jones (“Jones”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 89 of the Arcadian Shores Subdivision, by deed dated September 16, 2014, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 3763 Page 2035. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 34** and is incorporated here by reference.

35. Plaintiffs, Craig L. Lambert and Lisa M. Lambert (“Lambert”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 64 of the Arcadian Shores Subdivision, by deed dated May 15, 2024, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4407 Page 839. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 35** and is incorporated here by reference.

36. Plaintiffs, Darryl C. Williams and Mary Torrence Williams (“Williams”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 41 of the Arcadian Shores Subdivision, by deed dated September 2, 2021, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4459 Page 2643. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 36** and is incorporated here by reference.

37. Plaintiffs, David T. Taylor and Catherine T. Taylor (“Taylor”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 86 of the Arcadian Shores Subdivision, by deed dated August 20, 2024, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4845 Page 1415. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 37** and is incorporated here by reference.

38. Plaintiff, Natali D. Amaradasa (“Amaradasa”) is now, and at all times mentioned, a resident of Horry County, South Carolina. Plaintiff acquired title in fee simple to Lot 9 of the Arcadian Shores Subdivision, by deed dated October 30, 2013, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 3695 Page 185. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit 38** and is incorporated here by reference.

39. Plaintiffs, Shawn S. Kelley and Karen Albert (“Kelly and Albert”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 21 of the Arcadian Shores Subdivision, by deed dated May 29, 2024, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4815 Page 784. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit 39** and is incorporated here by reference. Upon information and belief, Plaintiffs will testify that “over the past years, while they have lived here, they have accessed the Subdivision’s Atlantic Ocean’s beach roughly 75 times per

year, on average by parking on the side of either Kingston Road or Arcadian Drive.” The family has owned a home at Arcadian Shores since 1990. Seagate since 1973.

40. Plaintiffs, Samuel Deep and Dianne Deep (“Deep”) are now, and at all times mentioned, were residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 8 of the Arcadian Shores Subdivision, by deed dated November 20, 2014, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 3780 Page 158. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit AA** and is incorporated here by reference.

41. Plaintiff, Rosemary Long Jenrette (“Jenrette”) is now, and at all times mentioned, a resident of Horry County, South Carolina. Plaintiff acquired the title in fee simple to Lot 11 of the Arcadian Shores Subdivision, by deed dated July 21, 2025, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4969 Page 368. A copy of Plaintiff’s deed is attached to this verified complaint as **Exhibit BB** and is incorporated here by reference.

42. Plaintiffs Norwood Nicholson Cox and Janet Harrington Cox (“Cox”) are now, and at all times mentioned, residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 6 of the Arcadian Shores Subdivision, by deed dated October 31, 2023, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 4740 Page 1954. A copy of Plaintiffs’ deed is attached to this verified complaint as **Exhibit CC** and is incorporated here by reference.

43. Plaintiffs Thomas P. Collins and Susan Lee Collins (“Collins”) are now, and at all times mentioned, residents of Horry County, South Carolina. Plaintiffs acquired title in fee simple to Lot 13 of the Arcadian Shores Subdivision, by deed dated March 13, 1998, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 2020 Page 326. A copy of

Plaintiffs' deed is attached to this verified complaint as **Exhibit DD** and is incorporated here by reference.

44. Plaintiff, Rudolph Paul Benik, III ("Benik, III") is now, and at all times mentioned, a resident of Horry County, South Carolina. Plaintiff acquired the title in fee simple to Lot 61 of the Arcadian Shores Subdivision, by deed dated July 7, 2000, which deed was recorded in the Horry County Registry of Deeds, in Deed Book 2279 Page 5. A copy of Plaintiff's deed is attached to this verified complaint as **Exhibit EE** and is incorporated here by reference.

45. Plaintiff Arcadian Shores Single-Family Residential Homeowners Association, Inc. (ASSR HOA"), is a nonprofit corporation organized and existing under the laws of the State of South Carolina and conducts business in Horry County, South Carolina.

46. Defendant The Arcadian Incorporated of Myrtle Beach ("Association" or "Arcadian I HOA") is a nonprofit corporation organized and existing under the laws of the State of South Carolina, and its principal Offices are located in Horry County, South Carolina and whose duties include managing the operation of The Arcadian Shores Horizontal Property Regime located in the Arcadian Shores section of Horry County, South Carolina.

47. Venue is proper in this court since the events and injuries complained of occurred in Horry County, South Carolina; the easement at issue in this action was executed and was to be performed in Horry County, South Carolina; and the real property at issue is located in Horry County, South Carolina.

48. The real property which is the subject matter of this lawsuit is located in Horry County.

49. This Court has subject matter and personal jurisdiction over the above-named parties hereto.

GENERAL ALLEGATIONS

50. On March 17, 1964, Ocean Lakes Investment Company, Inc., (“OLIC”) the common grantor of Plaintiffs and their predecessors-in-title and Defendant and its predecessors-in-title, became the legal owner and developer of the tract of land known as the Arcadian Shores Subdivision located in Horry County, South Carolina, and more fully described as follows:

All and singular that certain piece, parcel or tract of land in Dogwood Neck Township, High School District no. 8, Horry County, South Carolina, containing one hundred nine and eight-tenths (109.8) acres, more or less, shown and represented on map prepared for E.E. Burroughs by J. F. Thomas, R.L.S. dated February 20, 1964 being more particularly described as follow:

Beginning at a concrete marker N no. 892 on the southerly margin of road and at the corner common to this property and the Jack Nelson lands, and running thence along said margin of the road North 59° East 1800 feet to another concrete marker N no. 890; thence South 31° East 2300 feet to concrete marker N no. 893, and continuing in same course 359 feet to a corner on the high water mark of the Atlantic Ocean; thence along the high water mark of the Atlantic Ocean South 59° West 1800 feet to another corner; thence North 31° West 200 feet to concrete marker N no. 891, same course 1188 feet to pine OM, and same course 1271 feet to the concrete marker N no. 892 which is the point of beginning.

51. In November of 1964, the common grantor OLIC had Robert L. Bellamy, C.E. prepare the first survey of the Arcadian Shores Subdivision (“Map”), which was revised February 1965, further revised October 1967, and first recorded in the Office of the Clerk of Court for Horry County, in Plat Book 42 at Page 62, and re-recorded in the Office of the Clerk of Court for Horry County in Plat Book 54 at Page 135. A copy of Robert L. Bellamy, C.E.’s Maps are attached hereto as **Exhibits 40-A and 40-B** and incorporated by reference.

52. On November 14, 1964, OLIC recorded the original Declaration of Restrictions for Arcadian Shores Subdivision (“Subdivision Restrictions”) in the Office of the Clerk of Court for Horry County, in Deed Book 42 at Page 62. The subdivision restrictions do not restrict or limit in any way the Arcadian Shores Subdivision’s residential homeowners’ right of access, ingress and

egress, including parking, in and along the beach access points and terminations of Arcadian Drive, Ocean Lakes Road, and Kingston Road as shown on **Exhibits 40-A and 40-B**, for their recreational use and enjoyment of their aforementioned lots.

53. Upon information and belief, between April 14, 1965 through January 11, 1982, OLIC, the common grantor and developer of Arcadian Shores Subdivision, deeded to the Plaintiffs and their predecessors-in-title, the following residential lots numbered 05, 06, 8, 9, 11, 12, 13, 14, 20, 21, 22, 25, 28, 29-A, 39, 40, 41, 43, 44, 45, 48, 49, 53, 56, 57, 60, 61, 62, 63, 64, 67, 69, 71, 72, 76, 79, 83, 85, 86, 87, 88, 89 and 96 in the Arcadian Shores Subdivision as shown on **Exhibits 40-A and 40-B**.

54. Since the first residential lots were sold in the Arcadian Shores Subdivision starting in 1965, the Plaintiffs and their predecessors-in-title, have been continuously utilizing the beach access portions of Arcadian Drive, Ocean Lakes Road, and Kingston Road, as shown on **Exhibits 40-A and 40-B** for ingress and egress, including parking, to gain access to the Atlantic Ocean and the abutting beach front property on the Atlantic Ocean for their recreational use and enjoyment of their properties.

55. On December 4, 1972, OLIC conveyed to The Arcadian, LTD., a part of the Arcadian Shores Subdivision property more fully described as follows:

All that certain piece, parcel and tract of land situate, lying and being in Horry County, South Carolina, together with the improvements thereon, containing approximately 2.7 acres, and being more particularly shown, designated and delineated, and having the shape, courses, metes and bounds shown, on that certain plat dated the 10th day of November, 1972, prepared by Robert L. Bellamy, C.E., for the Arcadian, Ltd., which plat is recorded in the Office of the Clerk of Court for Horry County, South Carolina, in Plat Book 54 at page 123, and which plat is, by reference, incorporated herein.

56. On May 30, 1974, the Defendant, The Arcadian Shores Incorporated of Myrtle Beach, was formed as a South Carolina Non-Profit Corporation by The Arcadian, LTD, for the purpose of administering and/or managing the affairs of The Arcadian Shores Horizontal Property Regime.

57. On June 4, 1974, The Arcadian, LTD., recorded the Master Deed for “The Arcadian Shores Horizontal Property Regime” in Deed Book 513 at Page 139 in the Office of the R.M.C. for Horry County, South Carolina, in compliance with the South Carolina Horizontal Property Act, as amended, S.C. Code Ann. §§ 57-471 and 523 *et seq.* (1962) (“Act”).

58. In 1974, when Arcadian I HPR was ready for occupancy, twenty-eight (28) single family residences had already been built on the single-family restricted lots of the Arcadian Shores Subdivision. The subdivision was designed as a beachfront community with multifamily resort development oceanward Lake Shore Drive and restricted to single-family lots west of Lake Shore Drive.¹ It was usual, frequent and customary for residential homeowners to temporarily park their cars at the beach access points of Arcadian Drive, Ocean Lake Road and Kingston Road to gain access to beach front property abutting the Atlantic Ocean for their recreational use and enjoyment, as the subdivision layout was designed, in order for all residential property owners of the subdivision to fully and conveniently enjoy their properties for which temporary parking was necessary and essential.

59. On January 11, 1982, the common grantor, OLIC, who was in the process of dissolving, conveyed to Arcadian Shores Single-Family Residential Homeowners’ Association,

¹ A copy of the Affidavit of R. Paul Benik, Jr. is attached to this verified complaint as **Exhibit 41** and incorporated herein by reference.

Inc. (“ASSFR HOA”), its respective successors and assigns, “certain common property and rights of access, for use and benefit of its members,” as more fully described in pertinent part:

All that certain piece, parcel or tract of land, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, being *the property shown on the Subdivision Map between the mean high water mark of the Atlantic Ocean and the southeastern most boundary line common to Blocks E, F, G, and H, and the terminuses of Kingston Road, Arcadian Drive and Ocean Lake Road.* (Emphasis added).

The deed also conveys:

The area above conveyed *can be used for recreational purposes only for the use and benefit of the lot owners, unit owners, and parties having a right to utilize the whole or any part of any property in Arcadian Shores.* Furthermore, the area to be conveyed shall be maintained in its natural state at all times. (Emphasis added).

This conveyance is made expressly subject to all easements and restrictions of record, including those shown on any recorded map or plat.

TOGETHER with *all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining.* (Emphasis added).

A copy of express grant deed dated January 11, 1982, is attached to this verified complaint as **Exhibit 42** and incorporated herein by reference.

60. Originally on June 11, 1982, and pursuant to corrective deed recorded on June 14, 1982, the common grantor, OLIC conveyed to ASSFR HOA, its respective successors and assigns, “*certain roads, a lake, and other common property and rights of access . . . for use and benefit of its members,*” (Emphasis added) as more fully described in pertinent part:

ROADS:

All those certain pieces, parcels or tracts of land, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, being the following-named roads shown on the Subdivision Map:

Lafayette Road from Kings Road to South Lake Trail;

Queens Road (all);
 Washington Circle from Kingston Road to its end;
 Colonial Circle (all);
 Arcadian Drive from Kings Road to the intersection of South Lake Trail and North Lake Trail;
 South Lake Trail (all);
 North Lake Trail (all);
 Caroline Circle (all); and
 Unnamed "Road" connecting Kingston Road and Lafayette Road and separating Lots 75 and 76 from Lots 77 and 78 on the Subdivision Map.

EASEMENT RIGHTS

A non-exclusive right and easement, in common with such others as may be entitled thereto, **for access, ingress and egress to and from the numbered lots shown on said map to and from the Atlantic Ocean and property abutting on the Atlantic Ocean**, across the various streets, roads and common areas shown on the Subdivision Map (except for those portions of Beach Club Drive southwest of Kingston Road and Northeast of Arcadian Drive) (Emphasis added).

This conveyance is made expressly subject to all easements and restrictions of record, including those shown on any recorded map or plat.

TOGETHER with *all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining*. (Emphasis added).

A copy of the express grant deed dated June 14, 1982, is attached to this verified complaint as **Exhibit 43** and incorporated herein by reference.

61. Since the January 11, 1982 conveyance to ASSFR HOA, including all successors-in-title of Kingston Road, Ocean Lake Road, and that portion of Arcadian Drive lying southeast of the intersection of Arcadian Drive and Lake Shore Drive, as shown on Robert L. Bellamy, C.E.'s Maps, the Plaintiffs and their predecessors-in-title have continuously utilized the beach access points of Arcadian Drive, Ocean Lakes Road, and Kingston Road at their terminations for ingress and egress, including temporary parking, to gain access to the Atlantic Ocean and the abutting beach front property for their recreational use and enjoyment of their properties.

62. Between 2000 through 2023, the members of ASSFR HOA implemented a decal system to identify cars/golf carts of the numbered residential lot owners of the Arcadian Shores Single-Family Residential Homeowner's Association, Inc. Subdivision, including their guests. The decals were to monitor who parked at the beach access points of Arcadian Drive, Ocean Lakes Road, and Kingston Road, as shown on Robert L. Bellamy, C.E.'s Maps, designated **Exhibits 40-A and 40-B**.

63. On March 13, 2023, Arcadian Properties, Inc., pursuant to a "Corrective Title² to Real Estate," conveyed to The Arcadian Incorporated of Myrtle Beach, ("Arcadian I HOA") its successors and assigns, in fee simple, the following described property, to wit:

All and singular, that piece, parcel or lot of land situate, lying and being in Horry County and State aforesaid, more particularly described as Parcel B containing 0.81 acres more or less, and more particularly shown on Plat entitled "SUBDIVISION PLAT OF PARCEL A & PARCEL B," prepared for Arcadian Properties, Inc. [sic] by Robert L. Bellamy & Associates, Inc. dated June 3, 2002 revised June 18, 2002 and recorded on July 29, 2002, in Plat Book 189 at Page 186, in the Office of the R.M.C. for Horry County, South Carolina.

64. The identification system worked basically without major issue until July of 2023, when Arcadian I HOA started issuing parking violations to property owners of the ASSFR HOA as shown on **Exhibits 40-A and 40-B**, with the threat to tow cars. Arcadian I HOA also started insisting that the Plaintiffs and other property owners of the ASSFR HOA sign a liability waiver to purchase an Arcadian I HOA decal. Furthermore, there was no provision to sign for guests of members of the ASSFR HOA for parking their cars.

65. Since 2024, Defendant Arcadian I HOA has sold annual parking privileges to property owners outside the Arcadian Shores Subdivision and has encroached into the right-of-

² A copy of the "Corrective Title Deed" is attached to this Verified Complaint as **Exhibit 44** and incorporated herein by reference.

way of Arcadian Drive by installing tow-away signs, as well as a fence across the beach access part of Arcadian Drive as depicted by the photographs attached to this verified complaint as **Exhibit 45** and incorporated by reference. And, recently, Defendant, Arcadian I HOA, towed a Plaintiff's golfcart, with ASSFR HOA identification system displayed, from the beach access point of Arcadian Drive at its termination.

66. On July 24, 2024, Plaintiffs' attorney mailed a letter by Certified Mail/Return Receipt Requested to the Defendant's registered agent specifically requesting that it cease and desist from interfering with the Plaintiffs' implied right to temporarily park in and along the beach access portion of Arcadian Drive for the purpose of gaining access to Atlantic Ocean and the abutting beach front property for the recreational use and enjoyment of their properties.

67. The Defendant, Arcadian I HOA, has failed and refused to cease and desist from interfering with the implied rights of the Plaintiffs to temporarily park in and along the beach access portion of Arcadian Drive to gain access to the Atlantic Ocean and the abutting beach front property for their recreational use and enjoyment.

68. The Defendant Arcadian I HOA has recently placed other obstructions in and along the beach access portion of Arcadian Drive and continues to interfere with Plaintiffs' use of same.

69. The Plaintiffs at no time abandoned their implied rights to temporarily park their cars at the beach access portion of Arcadian Drive for the purpose of gaining access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment of their properties.

70. A real and present controversy exists between the parties because the Defendant, Arcadian I HOA, refuses to recognize and honor the claimed right of the Plaintiffs to temporarily park their cars at the beach access point of Arcadian Drive to gain access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment. Their implied rights

to temporarily park their cars in and along the beach access point of Arcadian Drive are incidental and necessary and proper for the Plaintiffs' continued recreational use and enjoyment of their properties in and about the Arcadian Shores Subdivision.

71. Unless the Defendant, Arcadian I HOA and its agents, employees, representatives, and/or security services are enjoined by this Court from doing so, the Plaintiffs will be irreparably harmed and damaged and will continue to be harmed and damaged by the diminishing fair market value of their properties based upon their inability to temporarily park their cars in and along the beach access point and termination of Arcadian Drive to gain access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment.

72. In the alternative, as permitted by South Carolina Rules of Civil Procedure, in the event the Plaintiffs have no implied easements of way to temporarily park their cars in and along the beach access point of Arcadian Drive as shown on the Robert L. Bellamy C. E.'s Maps, which allegations are expressly denied, the Plaintiffs will assert they have prescriptive easements to temporarily park their cars in and along the beach access point and termination of Arcadian Drive to gain access to their beach front property abutting the Atlantic Ocean for their recreational use and enjoyment.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)
(Private Easements for Temporary Parking By Recording A Subdivision Plat and by
Implication)

73. The allegations contained in Paragraphs 1 through 72 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this First Cause of Action.

74. Both the Plaintiffs and the Defendant's properties were derived from the common grantor OLIC and were platted by the common grantor into lots and blocks. The Robert L. Bellamy, C.E.'s Maps of Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B** contain roads and streets providing ingress, egress, and access to parties numbered lots as shown above.

75. The acts of the common grantor, OLIC, in platting the Arcadian Shores Subdivision's tract of land in the manner as shown by **Exhibits 40-A and 40-B** and the conveyance of the lands by deeds referring to, adopting the Robert L. Bellamy, C.E.'s Maps, and describing the lands conveyed in terms of the Maps, constitute express and implied private dedications of the areas contained and grant of right-of ways over all of the areas contained in the forty (40) foot wide, seventy (70) foot wide and seventy-five (75) foot wide strips denominated as streets or roads on the Maps.

76. Plaintiffs and their predecessors-in-title relied on the acts of the common grantor, OLIC, in so dedicating the forty (40) foot wide, seventy (70) foot wide and seventy-five (75) foot wide strips of land as streets and roads in their purchase of the residential lots numbered 05, 06, 8, 9, 11, 12, 13, 14, 20, 21, 22, 25, 28, 29-A, 39, 40, 41, 43, 44, 45, 48, 49, 53, 56, 57, 60, 61, 62, 63, 64, 67, 69, 71, 72, 76, 79, 83, 85, 86, 87, 88, 89 and 96 in the Arcadian Shores Subdivision as shown on Robert L. Bellamy, C.E.'s Maps.

77. Plaintiffs and their predecessors-in-title, by purchasing the residential Lots numbered 05, 06, 8, 9, 11, 12, 13, 14, 20, 21, 22, 25, 28, 29-A, 39, 40, 41, 43, 44, 45, 48, 49, 53, 56, 57, 60, 61, 62, 63, 64, 67, 69, 71, 72, 76, 79, 83, 85, 86, 87, 88, 89 and 96 from the common grantor, OLIC, obtained express and implied private easements of way, running with the land, over and across all streets and roads, including the seventy-five (75) foot wide strip of land designated Arcadian Drive on the Robert L. Bellamy, C.E.'s Maps, for access, ingress and egress

to and from their numbered lots shown on the Maps to and from the Atlantic Ocean and their beach front property for their recreational use and enjoyment.

78. All streets and roads, including the seventy-five (75) foot wide strip of land delineated as Arcadian Drive on the Robert L. Bellamy, C.E.'s Maps attached hereto as **Exhibits 40-A and 40-B**, were intended to be granted appurtenant to the conveyances from the common grantor OLIC to the Plaintiffs and their predecessors-in-title in keeping with Maps made by the common grantor and incorporated by reference in the recorded deeds delivered to Plaintiffs and their predecessors-in-title in their conveyances. These determinations were later confirmed by findings and conclusions set forth in the Order of the Master-In-Equity attached hereto as **Exhibit 46** and incorporated herein by reference. Specifically, in 1981, Arcadian I [HOA] encroached into the adjacent road right-of-way of Arcadian Drive and Beach Club Drive by installing a split-rail fence approximately fifteen (15) feet in the roads' right-of-way. Judy Haile, owner of Lot 51, sued and won a Judgement against Arcadian I HOA (the Haile Order). The judgement stated:

- a. All property owners of the subdivision have the same private easement rights because their deeds reference the recorded plats; and
- b. Arcadian I, its employees, agents and servants are permanently enjoined from encroaching upon and interfering with another property owner's private easement rights.

79. Since purchasing their residential lots numbered 05, 06, 8, 9, 11, 12, 13, 14, 20, 21, 22, 25, 28, 29-A, 39, 40, 41, 43, 44, 45, 48, 49, 53, 56, 57, 60, 61, 62, 63, 64, 67, 69, 71, 72, 76, 79, 83, 85, 86, 87, 88, 89 and 96 in the Arcadian Shores Subdivision from the common grantor OLIC, the Plaintiffs and their predecessors-in-title have continuously utilized the seventy-five (75) foot wide Arcadian Drive for temporary parking at its beach access point and termination to gain access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment.

80. Under South Carolina law, “[t]he creation of an implied easement generally requires that the facts and circumstances surrounding the conveyance, the property, the parties, or some other characteristics demonstrate that the objective intention of the parties was to create an easement.” Inlet Harbour v. S.C. Dep't of Parks, Recreation & Tourism, 377 S.C. 86, 92, 659 S.E.2d 151, 154 (2008)(25 Am.Jur.2d *Easements and Licenses* § 19 (2004); 28A C.J.S. § 62) (Emphasis added). Stated differently, “[t]he intent of the parties, as shown by all the facts and circumstances under which a conveyance was made, may give rise to an easement by implication.” Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 416–17, 633 S.E.2d 136, 139 (2006)(quoting from Hamilton v. CCM, Inc., 274 S.C. 152, 158, 263 S.E.2d 378, 381 (1980)). South Carolina Courts “have, over time, developed various presumptions regarding the creation of implied easements in certain circumstances. One such presumption arises when an owner subdivides his land and has the land platted into lots and streets.” Id. South Carolina Supreme Court “has recognized the general rule that when an owner conveys subdivided lots and references the plat in the deed, the owner grants the lot owners an implied easement over the streets appearing in the plat.” Id. See, e.g., Blue Ridge Realty Co. v. Williamson, 247 S.C. 112, 120, 145 S.E.2d 922, 925 (1965)(“[A]ccording to the great weight of judicial opinion, the lot purchaser is entitled to the use of all the streets and ways, near or remote, as laid down on the plat by which he purchases.”) (quoting Billings v. McDaniel, 217 S.C. 261, 265, 60 S.E.2d 592, 593–94 (1950)).

81. Here, the location of the seventy-five (75) foot wide private beach access easement of way for ingress and egress, and to gain access to the Atlantic Ocean and the beach front property abutting on the ocean in favor of the Plaintiffs is expressly delineated in the Robert L. Bellamy, C.E.’s Maps of Arcadian Shores Subdivision, referenced in the recorded deeds of the Plaintiffs’ and Defendant’s chain of title originating from the common grantor, OLIC. See Lynch v. Lynch, 236 S.C. 612, 115 S.E.2d 301 (1960) (“Where a deed describes land as is shown on a certain plat,

such plat becomes a part of the deed.”). When Defendant Arcadian I HOA purchased “that portion of Arcadian Drive lying southeast of the intersection of Arcadian Drive and Lake Shore Drive,” the Defendant took title subject to the Plaintiffs’ private driveway easement. See Carolina Land Co. v. Bland, 265 S.C. 98, 217 S.E.2d 16 (1975) (Landowner was charged with constructive notice of appurtenant easement for road purposes which was reflected in subdivision plat recorded by predecessor in title.); Borders v. Yarbrough, 237 N.C. 540, 542, 75 S.E.2d 541, 543 (1953) (“Grantees take title to lands subject to duly recorded easements which have been granted by their predecessors in title.”).

82. Robert L. Bellamy, C.E.’s Maps referenced in the common grantor/developers’ deeds to the Plaintiffs and their predecessors-in-title unambiguously marks *the specific location* of the seventy-five (75) foot wide private driveway easement. Upon information and belief, neither party makes any argument that the location of the seventy-five (75) foot wide private easement of way is not as described on Robert L. Bellamy, C.E.’s Maps or has been relocated.

83. It is unambiguous that the purpose of the seventy-five (75) foot wide Arcadian Drive at its beach access point and termination is to allow the Plaintiffs to temporarily park their cars in part of the private easement of way area in light of what is convenient and necessary to the full enjoyment of the Plaintiffs’ properties. See also, Smith v. Commissioners of Pub. Works of City of Charleston, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994) (“In determining the extent of the easement ([including parking]), consideration must be given to what is essentially necessary to the [full] enjoyment of the propert[ies].”). Also, our Supreme Court has instructed that an easement extends to “***all such rights as are incident or necessary to its reasonable and proper enjoyment.***” Hill v. Carolina Power & Light Co., supra, 204 S.C. at 28 S.E.2d at 549. (citations omitted) (Emphasis added). There is ***no express language*** which restricts the use of the

seventy-five (75) foot wide private easement of way at its beach access point for only “ingress and egress.” (Emphasis added).

84. Looking at Robert L. Bellamy, C.E.’s Maps as a whole, the scope of Plaintiffs’ rights includes an implied easement to temporarily park their cars in parts of the seventy-five (75) foot wide Arcadian Drive, which can be gleaned from the recorded Robert L. Bellamy, C.E.’s Maps of Arcadian Shores Subdivision. The Plaintiffs are persuaded in large part by the fact that the private easement of way area, *as defined on the Maps*, is seventy-five (75) foot wide at the beach access point, which would suggest an intent by the common grantor for temporary parking to occur within the easement area as an implied easement. A narrower width of the private beach access easement would suggest an intent by the common grantor to limit its scope to ingress and egress. But the creation of private easement of way that is approximately seventy-five (75) foot wide at its beach access point to be specifically used by the Plaintiffs to gain access to their beach front properties **(Exhibit 42)** and the Atlantic Ocean, especially where the private easement of way is very close to the Plaintiffs’ residential homes in the subdivision, suggests an intent by the common grantor, OLIC, that “Arcadian Drive’s” use also includes the right to park cars. Plaintiffs acknowledge that this incidental and necessary right does not extend to the parking of cars in a way that obstructs the entire width of the private easement of way as shown on Robert L. Bellamy, C. E.’s Maps, as such use would deprive the Defendant as the owner of the servient tenement of the opportunity to make reasonable use of that part of its property.

85. It is unambiguous that there is plenty of room within the seventy-five (75) foot wide Arcadian Drive as depicted on Robert L. Bellamy, C. E.’s Maps for Plaintiffs to park their cars in and along the beach access point and termination of Arcadian Drive and still leave room for Defendant, Arcadian I HOA, to make reasonable use of that part of its servient tenement for ingress and egress and access to its adjacent regime property.

86. Moreover, the Plaintiffs and their predecessors-in-title's deeds from the common grantor, OLIC, were granted with following pertinent language, "***with all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining.***" Such language evidences the intent of the common grantor "***to grant [to the Plaintiffs and their predecessors-in-title] all rights essential to the enjoyment of the premises conveyed.***" See Smith v. Commissioners of Pub. Works of City of Charleston, 312 S.C. 460, 468, 441 S.E.2d 331, 336 (Ct. App. 1994) (quoting from Brasington v. Williams, 143 S.C. 223, 141 S.E. 375 (1927)).

87. In general, courts nationally seem to hold that while neither the individual lot owners nor the owners of the roads has any absolute right to park vehicles on the easement and right of way area, each of them has a right to park thereon at such times and in such a manner as not to interfere with its use by others entitled to such easement and right of way. See Right to Park Vehicles on Property Way, 37 A.L.R.2d 944 (1954) (citing Benson v. Prevost, 277 N.C. App. 405, 413, 861 S. E. 2d 343, 349 (2021)(Scope of dominant tenement owners' rights to use driveway easement over neighboring property included the right to park vehicles within easement area, but did not include the right to park vehicles in a way that obstructed entire width of easement)). In this case, the right to park vehicles on and in the Arcadian Drive is implied by the circumstances surrounding the creation and use of the private easement of way as shown on Robert L. Bellamy, C.E.'s Maps attached hereto as **Exhibits 40-A and 40-B.**

88. Lastly, the Arcadian Shores' general plan of development for the ocean front subdivision as set out in the attached Affidavit of Anton Poster marked as **(Exhibit 47)** confirms that the common grantor OLIC purposely intended for the beach access roads to have extra width, such as the seventy-five (75) foot wide Arcadian Drive as depicted on Robert L. Bellamy, C. E.'s Maps, to add value enhancement for all owners within the Arcadian Shores Subdivision, including

the Plaintiffs and their predecessors-in-title, by providing for temporary parking for all residents at the private beach access roads in the Arcadian Shores Subdivision, as opposed to selling maximum front footage to and for ocean front development with a few narrow walking paths to the Atlantic Ocean front left and allowed for the residents. This was also acknowledged and confirmed in the Affidavit of William Bellamy, C.E.³ who helped prepare the Robert L. Bellamy C.E.'s Maps of Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B** See also, 25 Am. Jur. 2d Easements and Licenses § 64 *et seq.* (*The scope of an implied easement is controlled by the apparent intent of the landowner who effected a severance of the dominant and servient estates. Because an implied easement obviously has no express language, external evidence of intent becomes much more important.*) (citations omitted) (Emphasis added).

89. An actual controversy has arisen and now exists between the parties because of the Defendant Arcadian I HOA's refusal to recognize and honor the Plaintiffs' claimed right to temporarily park their cars at the beach access point and termination of Arcadian Drive pursuant to an implied easement created by recording of the Robert L. Bellamy C.E.'s Maps of Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B** in conjunction with the Plaintiffs' and Defendant's prior use as incidental or necessary to their reasonable use and proper enjoyment of their properties.

90. Specifically, § 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.

³ A copy of the Affidavit of William Bellamy. is attached to this verified complaint as **Exhibit 48** and incorporated herein by reference.

91. Plaintiffs do not have an adequate and speedy remedy at law and will suffer irreparable harm if they are not permitted to temporarily park their cars at the beach access and termination of Arcadian Drive as shown on Robert L. Bellamy, C.E.'s Maps for Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**.

92. Based upon the foregoing, the Plaintiffs seek declaratory judgment relief from the Court as follows:

- a. Declaring that the Plaintiffs, their heirs, successors and assigns have implied parking rights by implication to use the seventy-five (75) foot wide Arcadian Drive for temporary parking in and along the beach access point and termination of Arcadian Drive in order to gain access to beach front property abutting the Atlantic Ocean, as shown on the Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**, that said implied parking rights are appurtenant to the Plaintiffs' properties and said rights run with the land for the benefit of the Plaintiffs, their heirs, successors and assigns.
- b. Declaring that the Plaintiffs, their heirs, successors and assigns have implied easements to temporarily park their cars in and along the beach access point and termination of Arcadian Drive based upon the recording of the Robert L. Bellamy, C.E.'s Maps attached hereto as **Exhibits 40-A and 40-B** in conjunction with their prior continual use of the beach access point and termination of Arcadian Drive for temporary parking, which is incidental or necessary to their reasonable and proper enjoyment of their beach front property abutting the Atlantic Ocean;
- c. Declaring that the Plaintiffs, their heirs, successors and assigns have implied easement rights and property interest which are superior to any rights held by the Defendant by virtue of any deed, master deed, or other instruments recorded subsequent to the date of recording of the Robert L. Bellamy, C.E.'s Maps for the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**;
- d. Declaring that Arcadian Drive at its beach access point and termination can be used simultaneously by the parties for both temporary parking and for access, ingress and egress, to and from the beach front property abutting the Atlantic Ocean without interfering with each other's rights of access, ingress and egress in and along the above beach access road;

- e. Declaring that the Defendant Arcadian I HOA is without justification and/or authority to assign temporary parking rights in and along Arcadian Drive to public and/or third parties who do not reside and/or own any property in the Arcadian Shores Subdivision; and
- f. Declaring that the Defendant Arcadian I HOA is estopped to assert that the Plaintiffs have obstructed or otherwise interfered with the Defendant and any other easement holders' access, ingress and egress, including temporary parking, in and along Arcadian Drive to and from Arcadian Shores Subdivision's beach front property abutting the Atlantic Ocean.

93. Plaintiffs also request that the Court grant a temporary restraining order, and a preliminary and permanent injunction, restraining and enjoining Defendant Arcadian I HOA and its agents and employees, representatives, and/or security services from:

- a. Interfering with the Plaintiffs' implied easements for temporarily parking their cars in and along the beach access point and termination of Arcadian Drive based upon the recording of Robert L. Bellamy, C.E.'s Maps attached hereto as **Exhibits 40-A and 40-B** in conjunction with the Plaintiffs' prior use of the beach access terminus of Arcadian Drive for temporary parking for their incidental or necessary recreational use and enjoyment of the their beach front properties and Atlantic Ocean;
- b. Obstructing the traveled surface of Arcadian Drive in any manner, including the maintenance or installation of any traffic control measures, or damaging the Arcadian Drive;
- c. Blocking Arcadian Drive;
- d. Towing their parked cars from Arcadian Drive;
- e. Threatening or harassing Plaintiffs and their guests, visitors and invitees in any manner, including personal confrontation; and
- f. Such other and further restraint as may appear necessary on application.

FOR SECOND CAUSE OF ACTION
(DECLARATORY JUDGMENT)
(Private Easements For Temporary Parking By Express Grant and Implication)

94. The allegations contained in Paragraphs 1 through 93 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Second Cause of Action.

95. On January 11, 1982, the common grantor, OLIC, conveyed to ASSFR HOA, its respective successors and assigns, “*certain common property and rights of access, for use and benefit of its members,*” as more fully described in pertinent part as follows:

All that certain piece, parcel or tract of land, situate, lying and being in Dogwood Neck Township, Horry County, South Carolina, being *the property shown on the Subdivision Map between the mean high-water mark of the Atlantic Ocean and the southeastern most boundary line common to Blocks E, F, G, and H, and the terminuses of Kingston Road, Arcadian Drive and Ocean Lake Road.* (Emphasis added).

The deed also conveyed:

The area above conveyed *can be used for recreational purposes only for the use and benefit of the lot owners, unit owners, and parties having a right to utilize the whole or any part of any property in Arcadian Shores.* Furthermore, the area to be conveyed shall be maintained in its natural state at all times. (Emphasis added).

This conveyance is made expressly subject to all easements and restrictions of record, including those shown on any recorded map or plat.

TOGETHER with *all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining.* (Emphasis added).

96. On June 11, 1982, common grantor, OLIC, pursuant to a corrective quit-claim deed, conveyed to ASSFR HOA, its respective successors and assigns, “*certain . . . common property and rights of access for use and benefit of its members,*” as more fully described in pertinent part as follows:

A non-exclusive right and easement, in common with such others as may be entitled thereto, ***for access, ingress and egress to and from the numbered lots shown on said map to and from the Atlantic Ocean and property abutting on the Atlantic Ocean***, across the various streets, roads and common areas shown on the Subdivision Map (except for those portions of Beach Club Drive southwest of Kingston Road and Northeast of Arcadian Drive) (Emphasis added).

The deed also conveyed:

All of the Grantor's rights under recorded restrictions applicable to the numbered lots shown on the Subdivision Map to enforce any and all such restrictions, to modify lot lines and/or building lines, to approve lot re-subdivisions, to install or permit the installation of utilities, to make regulations permitted by the Subdivision restrictions and to enforce same, to regulate the use of Lake Arcadia, to grant to others the right to use Lake Arcadia and/or the water contained therein, and to bring actions at law or in equity to further enforce the Subdivision restrictions and/or to enforce and protect the rights herein assigned, transferred and conveyed.

...
This conveyance is made expressly subject to all easements and restrictions of record, including those shown on any recorded map or plat.

...
TOGETHER with ***all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining***. (Emphasis added).

97. Under South Carolina law, “[t]he unrestricted grant of an easement conveys all such rights as are incident or necessary to its reasonable and proper enjoyment. . . . ***In other words, a grant or reservation of an easement in general terms is limited to a use which is reasonably necessary and convenient and as little burdensome to the servient estate as possible for the use contemplated.*** Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.E.2d 545, 549 (1943)(citing 17 Am. Jur., Section 96, Page 993) (Emphasis added). “Whether a grant in a written instrument creates an easement and the type of easement created are to be determined by ascertaining the intention of the parties as gathered from the language of the instrument; the grant should be construed so as to carry out that intention.” Id. at 181, 683 S.E.2d at 513 (quoting Smith v. Comm'rs of Pub. Works of City of Charleston, 312 S.C. 460, 466, 441 S.E.2d 331, 335 (Ct. App. 1994)). “If

the language is uncertain or ambiguous in any respect, all the surrounding circumstances, including the construction [that] the parties have placed on the language, may be considered by the court, to the end that the intention of the parties may be ascertained and given effect.” *Id.* (quoting 25 Am. Jur. 2d *Easements* § 18 at 516 (2004)).

98. It is unambiguous that the purpose of common grantor’s two separate 1982 conveyances to ASSFR HOA, their respective successors and assigns, was to ensure and preserve the ingress and egress, and access rights of the members of ASSFR HOA to and from their numbered lots as *shown on Robert L. Bellamy, C. E. ’s Maps* to and from the Atlantic Ocean and their properties abutting on the Atlantic Ocean, including the incidental or reasonable necessary right to temporarily park their cars in and along the beach access portion of Arcadian Drive to gain access to utilize the beach front property abutting the Atlantic Ocean for their recreational use and enjoyment. Specifically, the right of the Plaintiffs and their predecessor-in-title to temporarily park their cars in and along the beach access portion of Arcadian Drive can be gleaned from the aforementioned recorded documents as follows:

- a. Arcadian Drive, *as defined on the Robert L. Bellamy, C.E. ’s Maps*, is seventy-five (75) foot wide at the beach access point and termination, which would suggest an intent by the common grantor OLIC for temporary parking to occur within the private easement of way area. A narrower width of the private beach access easement would suggest an intent by the common grantor that its scope be limited to ingress and egress;
- b. There is no express language in the 1982 express grant deeds and the *Robert L. Bellamy, C.E. ’s Maps* which limits or restricts the use of the seventy-five (75) foot wide private easement of way for only “ingress and egress, which would suggest an intent by the common grantor OLIC for temporary parking to occur within the private easement of way area as shown on Robert L. Bellamy, C.E. ’s Maps attached hereto as **Exhibits 40-A and 40-B**;
- c. The dimensions of Arcadian Drive (width: seventy-five (75) feet and length: eight hundred (800) feet) and its close proximity to dominant tenement owners’ and/or the Plaintiffs’ residential homes suggests that the common grantor OLIC intended for the private easement of way to include right to

temporarily park in and along its beach access point and termination for purpose of gaining access to the Atlantic Ocean and the beach fronting thereon, at least on occasion, and right to use was not limited strictly to ingress and egress, but use could not deprive servient tenement and/or Defendant Arcadian I HOA's opportunity to make reasonable use of that part of its property;

- d. The language of 1982 express grant **(Exhibit 42)** provides: "A non-exclusive right and easement, in common with such others as may be entitled thereto, ***for access, ingress and egress to and from the numbered lots shown on said map to and from the Atlantic Ocean and property abutting on the Atlantic Ocean***, across the various streets, roads and common areas shown on the Subdivision Map . . . , would suggest an intent by the common grantor OLIC for temporary parking to occur within the private easement of way area;
- e. Looking at the Robert L. Bellamy Maps as a whole, there is a general plan of development for an ocean front subdivision that consists of eighty-six (86) numbered residential lots with their only access, ingress and egress to and from the Atlantic Ocean and the beach fronting thereon, over and across the forty (40) foot wide Ocean Lakes Road, the seventy (70) foot wide Kingston Road, and the seventy-five (75) foot wide Arcadian Drive which terminate at the southeastern most boundary line common to Blocks E, F, G, and H, would suggest an intent by the common grantor OLIC for temporary parking to occur within these private driveway easement areas; and
- f. There is plenty of room within the seventy-five (75) feet wide Arcadian Drive as depicted on Robert L. Bellamy, C. E.'s Maps for Plaintiffs to park their cars in and along its beach access point and termination and still leave room for Defendant Arcadian I HOA to make reasonable use of that part of its property for ingress and egress and access to its adjacent property.

99. Moreover, the 1982 express grant deeds issued from the common grantor, OLIC, also granted the ASSFR HOA, their respective successors and assigns "with *all and singular, the rights, members, hereditament and appurtenances to the said premises belonging, or in anywise incident or appertaining*." Such language evidences an intent by the common grantor OLIC "to grant [to the Plaintiffs and their predecessors-in-title] all rights essential to the enjoyment of the properties conveyed," including the right to park their cars in and along beach access portion of Arcadian Drive. See Smith v. Commissioners of Pub. Works of City of Charleston, 312 S.C. 460,

468, 441 S.E.2d 331, 336 (Ct. App. 1994)(quoting from Brasington v. Williams, 143 S.C. 223, 141 S.E. 375 (1927); See also, Benson v. Prevost, 277 N.C. App. 405, 413, 861 S. E. 2d 343, 349 (2021) (If the conveyance does not state the scope of the easement, then a reasonable use scope is implied).

100. In the alternative, the express language of **(Exhibit 43)**: “*rights of access, together with the right to promulgate reasonable rules and regulations in connection with the use thereof*” when read together with the express language of **(Exhibit 42)**: “*the property shown on the Subdivision Map between the mean high water mark of the Atlantic Ocean and the southeastern most boundary line common to Blocks E, F, G, and H, and the terminuses of Kingston Road, Arcadian Drive and Ocean Lake Road . . . can be used for recreational purposes only for the use and benefit of the lot owners, unit owners, and parties having a right to utilize the whole or any part of any property in Arcadian Shores,*” creates an ambiguity to the extent that combined language can be read to suggest an intent by the common grantor OLIC not to allow parking at the beach access point and termination of Arcadian Drive.

101. Due to the ambiguous language of the 1982 express grant deeds **(Exhibits 42 and 43)** when read together concerning the rights of the Plaintiffs to temporarily park at the termination of Arcadian Drive for the purpose of accessing their adjacent beach front property, one may consider all the surrounding circumstances, including the construction which the parties have placed on the language and terms of **(Exhibits 42 and 43)**. Martin v. Bay, 400 S.C. 140, 149–50, 732 S.E.2d 667, 673 (Ct. App. 2012) (“If the language in the grant or reservation is uncertain or ambiguous in any respect, the court may inquire into and consider all surrounding circumstances, including the construction which the parties have placed on the language.” (quoting Smith v. Comm'rs of Pub. Works of Charleston, 312 S.C. 460, 467, 441 S.E.2d 331, at 336 (Ct.App.1994)). Id. (also citing 25 Am.Jur.2d Easements and Licenses § 18 (2004) (stating if language is uncertain

or *ambiguous in any respect*, all surrounding circumstances, including construction which parties have placed on language, may be inquired into and taken into consideration by court, to end that intention of parties may be ascertained and given effect). “An ambiguous agreement is one capable of being understood in more ways than one, an agreement obscure in meaning, through indefiniteness of expression, or containing words having a double meaning.” Smith, 312 S.C. 460, 465, 441 S.E.2d 331, 335 (Ct.App.1994) (citing Carolina Ceramics, Inc. v. Carolina Pipeline Co., 251 S.C. 151, 155–56, 161 S.E.2d 179, 181 (1968); Proffitt v. Sitton, 244 S.C. 206, 136 S.E.2d 257 (1964)). The ambiguity “must be interpreted, however, in light of good faith, reasonableness and what was necessarily the intent of the parties” to the express grants in the 1982 deeds from OLIC to SSFR HOA and its members. Id. at 468, 441 S.E.2d at 336.

102. In this case, the dominant tenement consists of the private easements and property interests owned by the Plaintiffs and other lot owners. In order to make proper use of such private easements of way and/or property interests in the Arcadian Shores Subdivision, including their rights as members of the ASSFR HOA, Plaintiffs have and/or entitled to continual rights to temporarily park⁴ their cars in and along the beach access easement area of Arcadian Drive, which rights are essential and necessary for reasonable use and enjoyment of their properties. See Affidavit of Allen Jeffcoat, Esquire (Attorney Jeffcoat opined that “Appurtenant easements are essentially necessary to the use of the dominant tenant (in this case, the Plaintiffs). The necessity of the access does not have to be absolute, but it “must be actual, real, and reasonable, as distinguished from being merely convenient. Proctor v. Steedly, 398 S.C. 561, 730 S.E.2d 356 (Ct. App. 2012). In this

⁴⁴ A copy of the Affidavit of Allen Jeffcoat, Esquire, is attached to this verified complaint as Exhibit 49 and incorporated herein by reference.

case, the easements and other rights to park held by lot owners is necessary for the utilization of the lot owners' easements.'"). (Emphasis added).

103. An actual controversy has arisen and now exists between the parties because the Defendant Arcadian I HOA refuses to recognize and honor the claimed right of the Plaintiffs to temporarily park their cars at the beach access point and termination of Arcadian Drive pursuant to the common grantor's 1982 express grants by deeds to ASSFR HOA, its respective successors and assigns, which temporary parking rights are incidental or necessary to reasonable use and proper enjoyment of the Plaintiffs for accessing their beach front property abutting the Atlantic Ocean.

104. Plaintiffs bring this action for declaratory relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 *et seq.*, of the South Carolina Code of Laws, 1976, as amended, to determine their rights, status, and privileges arising from the common grantor OLIC's 1982 conveyances to ASSFR HOA, its respective successors and assigns, pertaining to their rights to temporarily park their cars in and along the beach access points of Arcadian Drive for their recreational use and enjoyment of their beach front property and Atlantic Ocean.

105. Monetary compensation will not provide Plaintiffs with adequate relief.

106. Plaintiffs do not have an adequate and speedy remedy at law and will suffer irreparable harm if they are not permitted to temporarily park their cars at the beach access point (routes) and/or termination of Arcadian Drive as shown on the Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**.

107. Based upon the foregoing, the Plaintiffs seek declaratory judgment relief from the Court as follows:

- a. Declaring that the Plaintiffs, their heirs, successors and assigns have temporary parking rights by express grant to use the seventy-five (75) foot wide Arcadian Drive for temporary parking in and along their beach access point and termination in order to gain access to beach area abutting the Atlantic Ocean, as shown on the Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**, that said temporary parking rights are appurtenant to the Plaintiffs' properties and said rights run with the land for the benefit of the Plaintiffs, their heirs, successors and assigns;
- b. Declaring that the Plaintiffs, their heirs, successors and assigns have temporary parking rights by express grants and by implication for temporary parking in and along the beach access point and termination of seventy-five (75) foot wide Arcadian Drive, which temporary parking rights are incidental or necessary to their reasonable and proper enjoyment of the Atlantic Ocean and their abutting beach front property;
- c. Declaring that the Plaintiffs, their heirs, successors and assigns have implied easement rights and property interests which are superior to any rights held by the Defendant by virtue of any deed, master deed, or other instruments recorded subsequent to the date of recording of the Robert L. Bellamy, C.E.'s Maps for the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**;
- d. Declaring that Arcadian Drive at its beach access point and termination can be used simultaneously by the parties for both temporary parking and access, ingress and egress, to and from the beach front property abutting the Atlantic Ocean without interfering with each other's rights of access, ingress and egress in and along the above beach access road;
- e. Declaring that the Defendant Arcadian I HOA is without justification and/or authority to assign temporary parking rights in and along Arcadian Drive to public and/or third parties who do not reside and/or own any property in the Arcadian Shores Subdivision; and
- f. Declaring that the Defendant Arcadian I HOA is estopped to assert that the Plaintiffs have obstructed other or otherwise interfered with the Defendant and any other easement holders' access, ingress and egress, including temporary parking, in and along Arcadian Drive to and from Arcadian Shores Subdivision's beach front property abutting the Atlantic Ocean.

108. Plaintiffs also request that the Court grant a temporary restraining order, and a preliminary and permanent injunction, restraining and enjoining the Defendant, Arcadian I HOA, and its agents and employees, representatives, and/or security services from:

- a. Interfering with their implied easement to temporarily park their cars at the beach access point and termination of Arcadian Drive for their recreational use and enjoyment of the beach front area abutting the Atlantic Ocean;
- b. Obstructing the traveled surface of Arcadian Drive in any manner, including the maintenance or installation of any traffic control measures, or damaging the Arcadian Drive;
- c. Blocking Arcadian Drive;
- d. Towing parked cars from Arcadian Drive;
- e. Threatening or harassing Plaintiffs and their guests, visitors and invitees in any manner, including personal confrontation; and
- f. Such other and further restraint as may appear necessary on application.

109. Plaintiffs request that the Court assess the costs and award legal fees of this action against Defendant.

FOR A THIRD CAUSE OF ACTION
(DECLARATORY JUDGMENT)

(Private Easements for Temporary Parking by Implication from Prior Use)

110. The allegations contained in Paragraphs 1 through 109 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Third Cause of Action.

111. Under South Carolina law, the party asserting the right to an easement implied by prior use must establish the following: (1) unity of title; (2) severance of title; (2) the prior use was in existence at the time of unity of title; (3) the prior use was not merely temporary or casual; (4) the prior use was apparent or known to the parties; (5) the prior use was necessary in that there

could be no other reasonable mode of enjoying the dominant tenement without the prior use; and (6) the common grantor indicated an intent to continue the prior use after severance of title. Boyd v. Bellsouth Tel. Tel. Co., 369 S.C. 410, 417, 633 S.E.2d 136, 139 (2006).

112. Both the Plaintiffs' dominant tracts and the Defendant's servient tract originated from the common grantor OLIC. Stated differently, Arcadian Drive was part of a unitary tract of land previously owned and developed by the common grantor OLIC and now the private easement of way is partly owned by the Defendant Arcadian I HOA who is the successor-interest to the common grantor OLIC.

113. Prior to conveying Arcadian Drive to the Defendant's predecessor-in-title in January of 1982, the common grantor OLIC set up a real estate sales and rental office in a trailer on the north-east side of Arcadian Drive towards the Atlantic Ocean in the spring of 1975 and instructed its employees and customers to use the private easement of way for parking at its beach access point and termination.

114. The common grantor's use of Arcadian Drive for temporary parking for its employees and customers was open and continuous without any attempt at concealment from 1975 until 1982 when OLIC was voluntarily dissolved by its shareholders.

115. The Plaintiffs and their predecessors-in-title also used Arcadian Drive for temporary parking for the purpose of gaining access to the Atlantic Ocean and the beach fronting thereon in which their use was open and continuous without any attempt at concealment.

116. Prior use of Arcadian Drive at its beach access point and termination for temporary parking was necessary because the Plaintiffs and their predecessors-in-title had no other reasonable mode of enjoying their dominant tenements without the ability to park their cars for the sole purpose of gaining access to the Atlantic Ocean and the beach fronting thereon.

117. The language in the express grant deeds (Exhibits 42 and 43) indicated an intent by common grantor OLIC for the Plaintiffs to continue with their prior use of Arcadian Drive for temporary parking after OLIC had sold Arcadian Drive in January of 1982 by stating relevant part: “[OLIC] and [ASSFR HOA] wish to preserve the rights of [ASSFR HOA] and various owners of lots in the Arcadian Shores Subdivision to maintain access rights from said lots across roads in the subdivision to and from the Atlantic Ocean and the beach fronting thereon.”

118. A real and present controversy exists between the parties because the Defendant, Arcadian I HOA, refuses to recognize and honor the claimed right of the Plaintiffs to temporarily park their cars in and along the beach access point and termination of Arcadian Drive pursuant to their implied easements of prior use, which temporary parking rights are incidental or reasonably necessary for the Plaintiffs’ recreational use and enjoyment of their beach front property abutting the Atlantic Ocean.

119. Plaintiffs bring this action for declaratory relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 *et seq.*, of the South Carolina Code of Laws, 1976, as amended.

120. The Plaintiffs are informed and believe that they are entitled to a judgment declaring that they have an implied easement by prior use for temporary parking in and along Arcadian Drive.

121. Plaintiffs also request that the Court grant a temporary restraining order, and a preliminary and permanent injunction, restraining and enjoining the Defendant, Arcadian I HOA, and its agents and employees, representatives, and/or security services from:

- a. Interfering with their implied easement to temporarily park their cars at the beach access point and termination of Arcadian Drive for their recreational use and enjoyment of the beach front area abutting the Atlantic Ocean;

- b. Obstructing the traveled surface of Arcadian Drive in any manner, including the maintenance or installation of any traffic control measures, or damaging the Arcadian Drive;
- c. Blocking Arcadian Drive;
- d. Towing parked cars from Arcadian Drive;
- e. Threatening or harassing Plaintiffs and their guests, visitors and invitees in any manner, including personal confrontation; and
- f. Such other and further restraint as may appear necessary on application.

122. Plaintiffs request that the Court assess the costs and award legal fees of this action against Defendant Arcadian I HOA.

FOR A FOURTH CAUSE OF ACTION
(DECLARATORY JUDGMENT)
(Private Easements for Temporary Parking by Prescription in the Alternative)

123. The allegations contained in Paragraphs 1 through 122 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fourth Cause of Action.

124. Under South Carolina law “[t]o establish a prescriptive easement; the claimant must prove by clear and convincing evidence: (1) the continued and uninterrupted use or enjoyment of the right for a period of 20 years; (2) the identity of the thing enjoyed; and (3) the use [was] adverse under claim of right.” Simmons v. Berkeley Elec. Coop., Inc., 419 S.C. 223, 229, 797 S.E.2d 387, 390 (2016) (quoting from Darlington Cnty. v. Perkins, 269 S.C. 572, 576, 239 S.E.2d 69, 71 (1977)). “[W]hen it appears that claimant has enjoyed an easement openly, notoriously, continuously, and uninterruptedly, in derogation of another's rights, for the full period of 20 years, the use will be presumed to have been adverse.” Williamson v. Abbott, 107 S.C. 397, 400, 93 S.E. 15, 16 (1917).

125. The use of Arcadian Drive by the Plaintiffs and their predecessors-in-title for temporary parking in and along its beach access point and termination has been in an open and notorious manner without any attempt at concealment.

126. The use of Arcadian Drive by the Plaintiffs and their predecessors-in-title for temporary parking in and along its beach access point and termination has been adverse and under a claim of right.

127. The use of Arcadian Drive by the Plaintiffs and their predecessors-in-title for temporary parking in and along its beach access point and termination was continuous and uninterrupted for at least twenty (20) years, until such time as the Defendant, Arcadian I HOA, took actions to prevent temporary parking of the Plaintiffs' cars as described herein, which was the impetus for this lawsuit.

128. Upon information and belief, the Plaintiffs' prescriptive rights to temporarily park their cars at the beach access point and termination of Arcadian Drive was clearly documented by their and their predecessors-in-title's prior use before the Defendant, Arcadian I HOA, acquired title to a part of Arcadian Drive in March of 2023. Furthermore, it is important to note that neither Defendant Arcadian I HOA, nor any of its predecessors-in-interest have ever posted the roads under South Carolina law to give Plaintiffs and their predecessors-in-title notice of its position that Plaintiffs, or their visitors and guests do not have any right to temporarily park their cars at the beach access point and termination of Arcadian Drive in order to gain access to the Atlantic Ocean and their abutting beach front property for their recreational use and enjoyment.

129. A real and present controversy exists between the parties because the Defendant, Arcadian I HOA, refuses to recognize and honor the claimed right of the Plaintiffs to temporarily park their cars in and along the beach access point and termination of Arcadian Drive pursuant to their prescriptive easements, which temporary parking rights are incidental or reasonably

necessary for the Plaintiffs' recreational use and enjoyment of their beach front property abutting the Atlantic Ocean.

130. Plaintiffs bring this action for declaratory relief pursuant to the Uniform Declaratory Judgment Act of South Carolina, as set forth in §15-53-10 *et seq.*, of the South Carolina Code of Laws, 1976, as amended.

131. Therefore the Plaintiffs seek, and are entitled to, a declaratory judgment from this Court establishing their prescriptive rights to use the seventy-five (75) foot wide Arcadian Drive for temporary parking in and along its beach access point and termination in order to gain access to their beach front property abutting the Atlantic Ocean as shown on Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**, and that said prescriptive easements are appurtenant to the Plaintiffs' properties with said benefits to run with the lands now owned by the Plaintiffs.

132. Furthermore, the Plaintiffs seek, and are entitled to, a declaration that the Defendant, Arcadian I HOA, has no right to take any actions to block, or disturb in any fashion, the Plaintiffs' prescriptive rights to temporarily park in and along the seventy-five (75) foot wide Arcadian Drive at its beach access point and termination in order to gain access to their beach front property abutting the Atlantic Ocean, which temporary parking rights are incidental or necessary to their reasonable and proper enjoyment of their properties in Arcadian Shore Subdivision.

133. Plaintiffs also request that the Court grant a temporary restraining order, and preliminary and permanent injunction, restraining and enjoining the Defendant, Arcadian I HOA, and its agents and employees, representatives, and/or security services from:

- a. Interfering with their prescriptive easements to temporarily park their cars at the beach access point and termination of Arcadian Drive for their recreational use and enjoyment of their beach front property abutting Atlantic Ocean;

- b. Obstructing the traveled surface of Arcadian Drive in any manner, including the maintenance or installation of any traffic control measures, or damaging the Arcadian Drive;
- c. Blocking Arcadian Drive;
- d. Towing temporary parked cars from Arcadian Drive;
- e. Threatening or harassing Plaintiffs and their guests, visitors and invitees in any manner, including personal confrontation; and
- f. Such other and further restraint as may appear necessary on application.

134. Plaintiffs request that the Court assess the costs and award legal fees of this action against Defendant Arcadian I HOA.

FOR A FIFTH CAUSE OF ACTION
(Estoppel - Temporary and Permanent Injunctive Relief)

135. The allegations contained in Paragraphs 1 through 134 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fifth Cause of Action.

136. The Plaintiffs are informed and believe that the Defendant, Arcadian I HOA, should be estopped from taking any actions to block, or disturb in any fashion, the Plaintiffs' rights to temporarily park in and along the beach access point and termination of Arcadian Drive for the purpose of gaining access to their beach front property abutting the Atlantic Ocean until the Court has determined the merits of this case.

137. The Plaintiffs will suffer irreparable harm if the Defendant, Arcadian I HOA, is allowed to continue with its actions of blocking and/or preventing the Plaintiffs from being able to temporarily park their cars in and along the beach access point and termination of Arcadian Drive in order to reach their beach front property area abutting the Atlantic Ocean while this case is pending.

138. The likelihood of harm to the Defendant Arcadian I HOA for allowing the Plaintiffs to temporarily park their cars in and along the beach access point and termination of Arcadian Drive to gain access to their beach front property area abutting the Atlantic Ocean, is small.

139. The likelihood that the Plaintiffs will succeed on the merits is great in light of the overwhelming evidence establishing their implied easements for temporary parking for the reasons described above, the fact that the private easements for temporary parking are clearly implied on Robert L. Bellamy, C.E.'s Maps, the fact that the implied easement for temporary parking were in use for ingress and egress and access to the Plaintiffs' and their predecessors-in-title's beach front properties for more than twenty (20) years.

140. Furthermore, based on the above facts and the allegations stated herein, the Plaintiffs seek, and are entitled to a permanent injunction against the Defendant Arcadian I HOA, instructing the Defendant not to take any actions to block or interfere with the Plaintiffs' rights to temporarily park their cars in and along the beach access point and termination of the seventy-five (75) foot wide Arcadian Drive, as shown on Robert L. Bellamy, C.E.'s Maps attached hereto as **Exhibits 40-A and 40-B**, for the purpose of gaining access to their beach front property area abutting the Atlantic Ocean, which temporary parking rights are incidental or necessary to the Plaintiffs' reasonable and proper enjoyment of their properties.

FOR A SIXTH CAUSE OF ACTION
(Negligence / Gross Negligence / Intentional Act)
(Denial of Property Rights including the right to Temporarily Park their Cars)

141. The allegations contained in Paragraphs 1 through 140 are reasserted and realleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Sixth Cause of Action.

142. The Defendant Arcadian I HOA owes the Plaintiffs a duty based on the servient nature of the portion of Arcadian Drive it had purchased in March of 2023, and the Defendant had actual knowledge of Plaintiffs' private easement of way, not to take any actions or authorize any actions that would in any way block, or disturb in any fashion, the Plaintiffs' rights to temporarily park in and along the beach access point and termination of Arcadian Drive for the purpose of gaining access to and from their beach front property abutting Atlantic Ocean until the Court has determined the merits of this case.

143. The Defendant Arcadian I HOA owes the Plaintiff a duty based upon Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**, giving it actual and/or constructive notice of the Plaintiffs' access, ingress and egress, including the right to temporarily park their cars, in and along the beach access point and termination of the seventy-five (75) foot wide Arcadian Drive for the purpose of utilizing the beach area abutting the Atlantic Ocean, which temporary parking rights are incidental or necessary to their reasonable and proper enjoyment of the Plaintiffs' properties.

144. The Defendant Arcadian I HOA by and through its agents and employees, representatives, and/or security services breached its duties by being negligent, grossly negligent and/or intentionally taking or authorizing the following improper actions, including, but not limited, to:

- a. In failing and refusing to allow the Plaintiffs to temporarily park their cars in and along the beach access point of Arcadian Drive for the purpose of gaining access to their beach front properties abutting the Atlantic Ocean for their recreation use and enjoyment;
- b. In improperly installing a barrier fence in and along Arcadian Drive in violation of the Order of the Master-In-Equity attached hereto as **Exhibit 46** and incorporated herein by reference;

- c. In improperly posting tow-a-way signage in and along Arcadian Drive in violation of the Order of the Master-In-Equity attached hereto as Exhibit 46 and incorporated herein by reference;
- d. In improperly issuing warning tickets with the threat to tow Plaintiffs' cars if they do not purchase an Arcadian I decal and sign a liability waiver;
- e. In improperly allowing Ocean Ridge development property owners and others outside the Arcadian Shores Subdivision to park in and along Arcadian Drive for an annual fee;
- f. Failing to use the same degree of care and concern that it should have exercised under the circumstances; and
- g. Any such acts and omissions that may be revealed during the discovery of this lawsuit.

145. Said actions by the Defendant Arcadian I HOA and its agents and employees, representatives, and/or security services were negligent, reckless, willful, wanton, intentional and in total disregard of access, ingress and egress, including the temporary parking rights of the Plaintiffs for the purpose of utilizing their beach front property area abutting the Atlantic Ocean, which temporary parking rights are incidental or necessary to the reasonable and proper enjoyment of the Plaintiffs' properties, and therefore the Plaintiffs seek a judgment against the Defendant, Arcadian I HOA, for actual and punitive damages proximately caused by its improper conduct as well as attorneys' fees and costs of this action.

WHEREFORE, Plaintiffs pray for the following relief:

- (a) An Order of this Court declaring that the Plaintiffs, their heirs, successors and assigns have parking rights by implication and/or prescription to use the seventy-five (75) foot wide Arcadian Drive for temporary parking in and along its beach access point and termination for the purpose of gaining access to their beach front property area abutting the Atlantic Ocean, as shown on Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as Exhibits 40-A and 40-B, that said parking rights are appurtenant to the Plaintiffs' properties and said rights run with the land for the benefit of the Plaintiffs, their heirs, successors and assigns;

- (b) Under the First Cause of Action, an order of the Court granting the declaratory judgment requested under subparagraphs (a), (b), (c), (d), (e), and (f) of Paragraph 87 of the Complaint as well as injunctive relief requested under subparagraphs (a), (b), (c), (d), (e) and (f) of Paragraph 88 of the Verified Complaint;
- (c) Under the Second Cause of Action, an order of the Court granting the declaratory judgment relief requested under subparagraphs (a),(b), (c), and (d), (e), and (f) of Paragraph 102 of the Complaint as well as injunctive relief requested under subparagraphs (a), (b), (c), (d), (e), and (f) of Paragraph 103 of the Verified Complaint;
- (d) Under the Third Cause of Action, an order from this Court declaring that Plaintiffs have an implied easement by prior use for temporary parking of their cars in and along Arcadian Drive, and injunctive relief both *pendente lite* and permanently enjoining the Defendant Arcadian I HOA, its subsidiaries, from interfering with the Plaintiffs' implied easements for temporary parking;
- (e) Under the Fourth Cause of Action, an order from this Court declaring that the Plaintiffs have prescriptive easement rights to use the seventy-five (75) foot wide Arcadian Drive for temporary parking in and along its beach access point and termination in order to gain access to their beach front property abutting the Atlantic Ocean as shown on Robert L. Bellamy, C.E.'s Maps of the Arcadian Shores Subdivision attached hereto as **Exhibits 40-A and 40-B**, and that said prescriptive easement rights are appurtenant to the Plaintiffs' properties with said benefits to run with the lands now owned by the Plaintiffs;
- (e) Under the Fifth Cause of Action, an Order from this Court requiring the Defendant and its agents and employees, representatives, and/or security services to cease and desist from all actions interfering with the Plaintiffs' implied rights to temporarily park their cars in and along the beach access point and termination of the seventy-five (75) foot wide Arcadian Drive, as shown on the Robert L. Bellamy, C.E.'s Maps attached hereto as **Exhibits 40-A and 40-B**, for the purpose of gaining access to their beach front property abutting the Atlantic Ocean, which parking rights are incidental or necessary to the reasonable and proper enjoyment of the Plaintiffs' properties;

- (f) Under the Fifth Cause of Action, an Order from this Court requiring the Defendant and its agents and employees, representatives, and/or security services to immediately remove from the easement area any obstructions placed there, including signs and fencing, and that Defendant does so within five (5) days after entry of the order;
- (g) Under the Sixth Cause of Action, a judgment against the Defendant Arcadian I HOA for a sum sufficient to adequately compensate the Plaintiffs for actual damages, punitive damages, attorneys' fees and costs of this action to be proven at the trial of this case;
- (h) Request a Jury Trial as permitted by law; and
- (i) Such other and further relief as the court may deem proper.

Respectfully submitted,

Bellamy, Rutenberg, Copeland Epps,
Gravely & Bowers, P.A.
/s/ Howell V. Bellamy, III
Howell V. Bellamy, III (S.C. Bar #66575)
hbellamyiii@bellamylaw.com
1000 29th Ave., N.
Myrtle Beach, SC 29577
(843)-448-2400 Telephone
(843)-448-3022 Facsimile
Attorney for Plaintiffs

Myrtle Beach, South Carolina
August 1, 2025

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

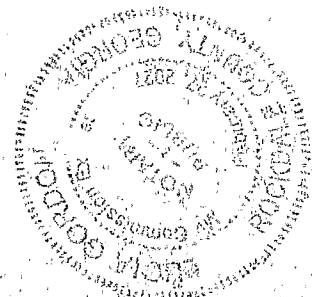
I, Darryl C Williams, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Darryl C Williams

Sworn to and subscribed before me
this 30th day of June, 2025

Lucia Gordon
Notary Public for South Carolina GA 15

Lucia Gordon
Print Name of Notary Public
My Commission Expires: 02 27 2027



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

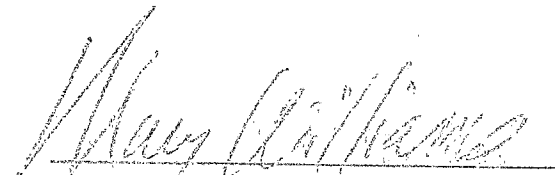
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05 366

VERIFICATION

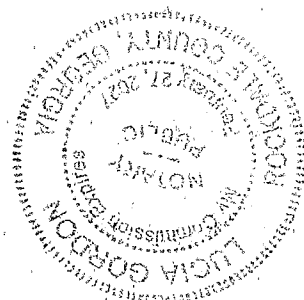
I, Mary Williams, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Mary Williams

Sworn to and subscribed before me
this 30th day of June, 2025


Notary Public for South Carolina GA 4

Lucia Gordon
Print Name of Notary Public
My Commission Expires: 02-27-2027



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Brooks M Safrit, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

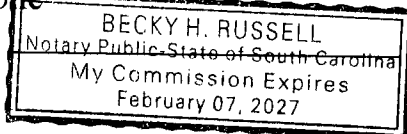
Brooks M Safrit
Brooks M Safrit

Sworn to and subscribed before me
this 31 day of July, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public

My Commission Expires:



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

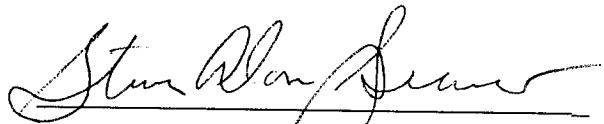
Defendant.

COURT OF COMMON PLEAS

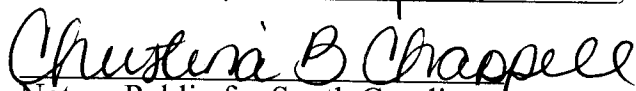
Case No. 2025-CP-26- 05366

VERIFICATION

I, Steven Allen Spears TR, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

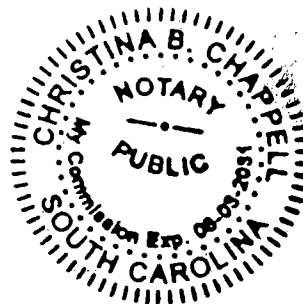

Steven Alan Spears TR

Sworn to and subscribed before me
this 15th day of July, 2025


Notary Public for South Carolina

Christina B. Chappell
Print Name of Notary Public

My Commission Expires: 8-03-2031



7

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

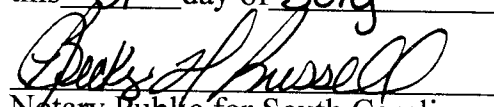
Case No. 2025-CP-26- 05366

VERIFICATION

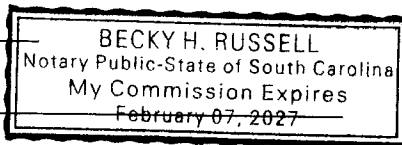
I, Robin D Brooks, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Robin D Brooks

Sworn to and subscribed before me
this 31 day of July, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Pama C Free, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Pama C Free

Sworn to and subscribed before me
this _____ day of _____, 2025

Notary Public for California

Print Name of Notary Public

My Commission Expires: _____

See Attached CA Compliant Certificate

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

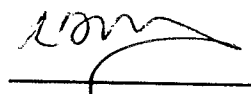
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

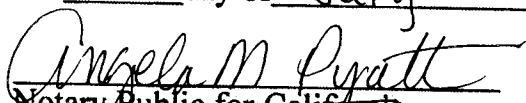
VERIFICATION

I, Natali D Amaradasa , hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



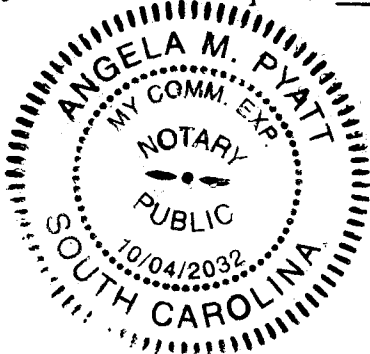
Natali D Amaradasa

Sworn to and subscribed before me
this 23 day of July, 2025


Notary Public for ~~California~~
South Carolina

Angela M. Pyatt
Print Name of Notary Public

My Commission Expires: 10/04/2032



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

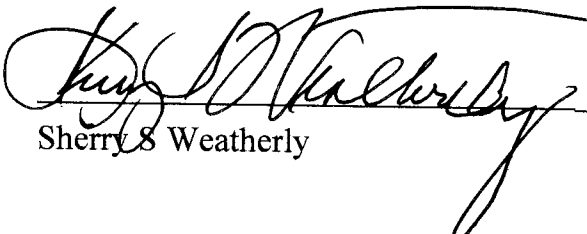
Defendant.

COURT OF COMMON PLEAS

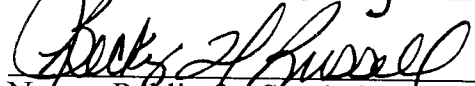
Case No. 2025-CP-26- 05366

VERIFICATION

I, Sherry S Weatherly, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

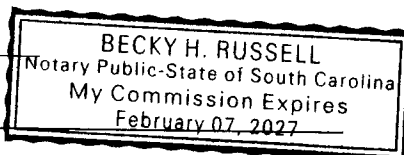

Sherry S Weatherly

Sworn to and subscribed before me
this 7 day of July, 2025


Notary Public for South Carolina

Becky H Russell
Print Name of Notary Public

My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Steven P Lombardi, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Steven P. Lombardi

Steven P Lombardi

Sworn to and subscribed before me
this 3rd day of July, 2025

Courtney E. Ravenelle
Notary Public [REDACTED]

Courtney E. Ravenelle
Print Name of Notary Public

My Commission Expires: 4/30/2027

COURTNEY E RAVENELLE
Notary Public
Connecticut
My Commission Expires Apr 30, 2027

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

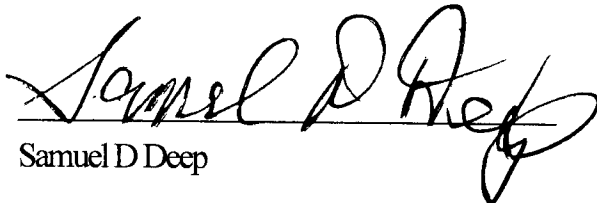
Defendant.

COURT OF COMMON PLEAS

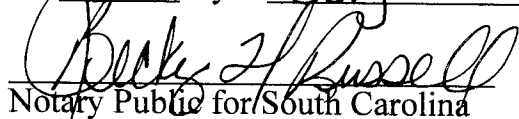
Case No. 2025-CP-26- 05366

VERIFICATION

I, Samuel D Deep, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Samuel D Deep

Sworn to and subscribed before me
this 10 day of July, 2025


Notary Public for South Carolina

Becky H Russell
Print Name of Notary Public

My Commission Expires: _____

BECKY H. RUSSELL
Notary Public-State of South Carolina
My Commission Expires
February 07, 2027

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

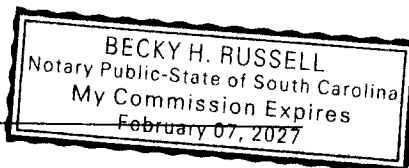
I, Dianne Deep, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Dianne Deep
Dianne Deep

Sworn to and subscribed before me
this 19 day of July, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

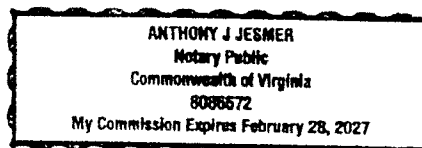
I, Catherine T Taylor (TR), hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Catherine T Taylor
Catherine T Taylor (TR)

Sworn to and subscribed before me
this 30th day of JUNE, 2025

[Signature]
Notary Public for Virginia

ANTHONY JESMER
Print Name of Notary Public
My Commission Expires: 02-28-2027



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

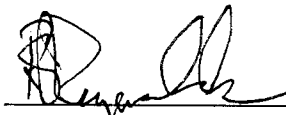
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05306

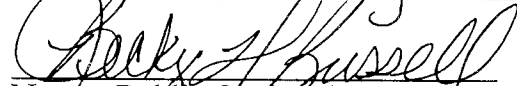
VERIFICATION

I, Rasario Reynolds, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



Rasario Reynolds

Sworn to and subscribed before me
this 7 day of July, 2025



Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr. Anton F. B.R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

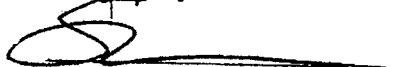
Case No. 2025-CP-26- 05366

VERIFICATION

I, Ann M. Dozier, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Ann M. Dozier

Sworn to and subscribed before me
This 27 day of June 2025


Notary Public

Samantha Easter Brown
Print Name of Notary Public

My Commission Expires: 09/06/2026

SAMANTHA EASTER BROWN
Notary Public, State of New York
No. 01EA6440429
Qualified in Monroe County
Commission Expires 09/06/20 26

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Sandra Pridgen, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

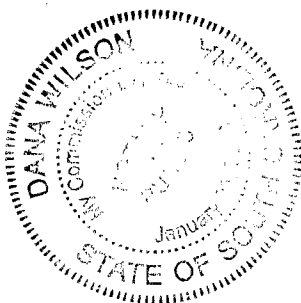
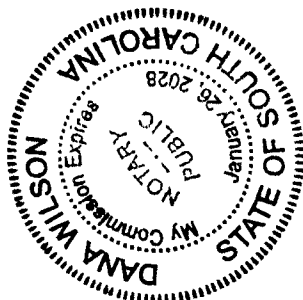
Sandra Pridgen
Sandra Pridgen

Sworn to and subscribed before me
this 30th day of June, 2025

Dana Wilson
Notary Public for South Carolina

Dana Wilson
Print Name of Notary Public

My Commission Expires: 1/26/28



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

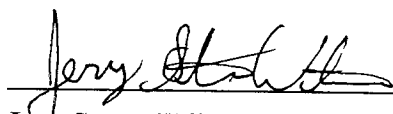
Defendant.

COURT OF COMMON PLEAS

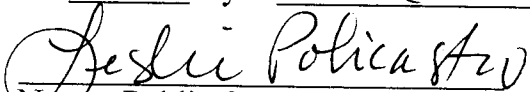
Case No. 2025-CP-26- 05366

VERIFICATION

I, Jerry Steven Wilson, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Jerry Steven Wilson

Sworn to and subscribed before me
this 30th day of June, 2025


Notary Public for South Carolina

Leslie Policastro
Print Name of Notary Public

My Commission Expires: _____

Leslie R Policastro
Notary Public, State of South Carolina
My Commission Expires September 10, 2030

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

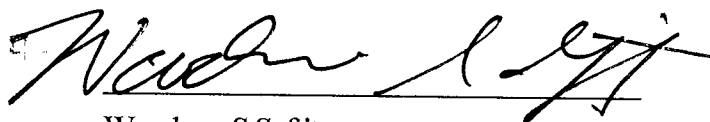
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

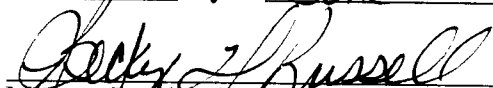
VERIFICATION

I, Woodrow S Safrit, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

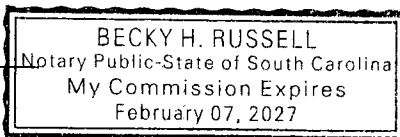


Woodrow S Safrit

Sworn to and subscribed before me
this 30 day of JUNE, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

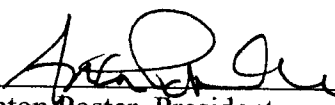
Case No. 2025-CP-26- 05366

VERIFICATION

I, Anton Poster, representative for The Arcadian Shores Single-Family Homeowners Association, Inc., hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

The Arcadian Shores Single-Family
Homeowners Association, Inc.

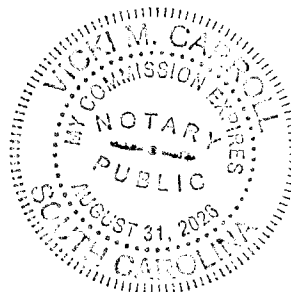
By:


Anton Poster, President

Sworn to and subscribed before me
this 24th day of June, 2025

Vicki M Carroll
Notary Public for South Carolina

Vicki M Carroll
Print Name of Notary Public
My Commission Expires: 8/31/2026



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

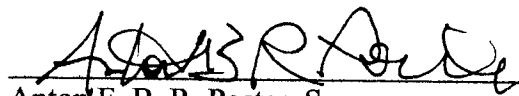
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

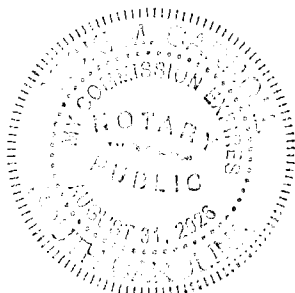
I, Anton F. B. R. Poster, Sr., hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Anton F. B. R. Poster, Sr.

Sworn to and subscribed before me
this 24th day of June, 2025

Vicki M Carroll
Notary Public for South Carolina

Vicki M Carroll
Print Name of Notary Public
My Commission Expires: 8/31/2026



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

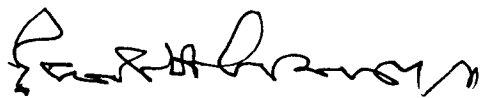
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

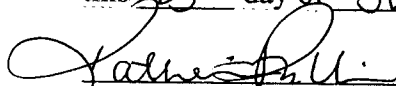
VERIFICATION

I, Paul H. Errickson, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



Paul H. Errickson

Sworn to and subscribed before me
this 23 day of June, 2025

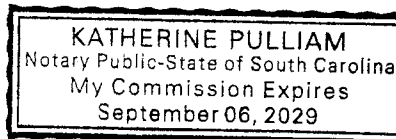


Notary Public for South Carolina

Katherine Pulliam

Print Name of Notary Public

My Commission Expires: 09-06-2029



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

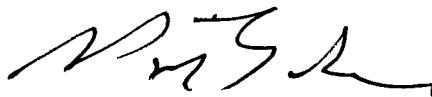
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

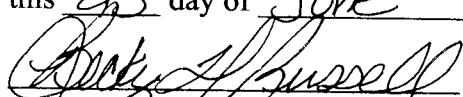
VERIFICATION

I, R. Paul Benik, Jr., hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



R. Paul Benik, Jr.

Sworn to and subscribed before me
this 23 day of June, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public

My Commission Expires: _____

BECKY H. RUSSELL Notary Public-State of South Carolina My Commission Expires February 07, 2027

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Paula W. Benik, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

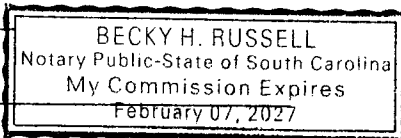


Paula W. Benik

Sworn to and subscribed before me
this 23 day of June, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

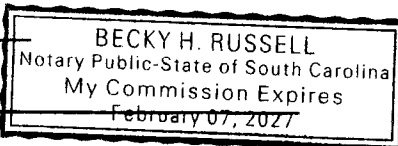
LISA ABRAMS ^{CA}
I, ~~Paul Benik, Jr.~~, hereby verify that the facts and allegations in the Complaint of Plaintiffs
are made upon personal knowledge with regard to my own acts and, upon information and belief,
as to all other matters.

Lisa Abrams ^{CA}
~~Paul Benik, Jr.~~ LISA ABRAMS ^{CA}

Sworn to and subscribed before me
this 23 day of June, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

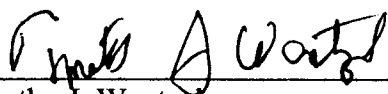
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

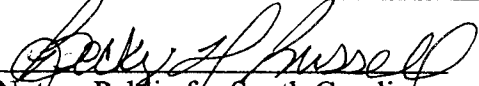
VERIFICATION

I, Timothy J. Wentzel, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



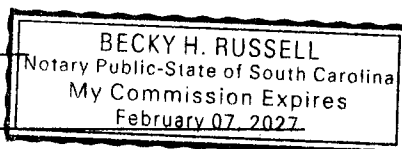
Timothy J. Wentzel

Sworn to and subscribed before me
this 24 day of June, 2025



Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

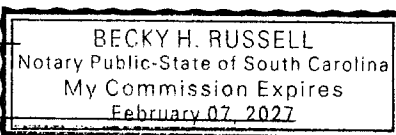
I, Johann M. McCrackin, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Johann M. McCrackin
Johann M. McCrackin

Sworn to and subscribed before me
this 23 day of June, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

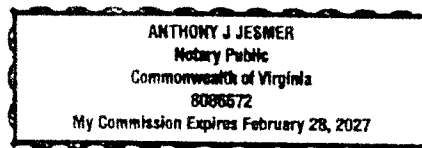
I, Catherine T Taylor (TR), hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Catherine T Taylor
Catherine T Taylor (TR)

Sworn to and subscribed before me
this 30th day of JUNE, 2025

[Signature]
Notary Public for Virginia

ANTHONY JESMER
Print Name of Notary Public
My Commission Expires: 02-28-2027



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

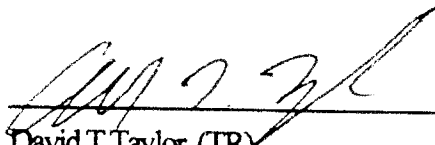
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

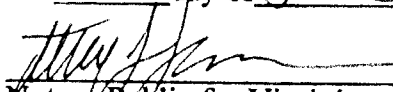
VERIFICATION

I, David T Taylor (TR), hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



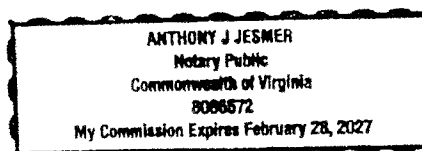
David T Taylor (TR)

Sworn to and subscribed before me
this 30th day of JUNE, 2025



Notary Public for Virginia

ANTHONY J JESMER
Print Name of Notary Public
My Commission Expires: 02-28-2027



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

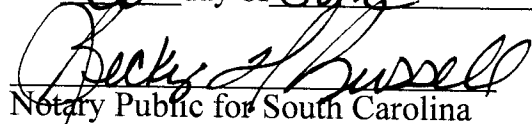
VERIFICATION

I, Karen Albert (TR), hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

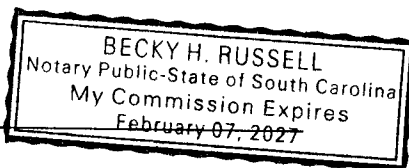


Karen Albert (TR) *KA*

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

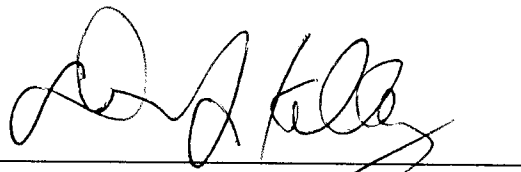
Defendant.

COURT OF COMMON PLEAS

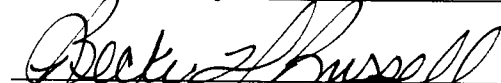
Case No. 2025-CP-26- 05366

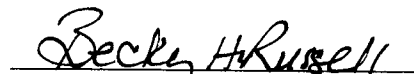
VERIFICATION

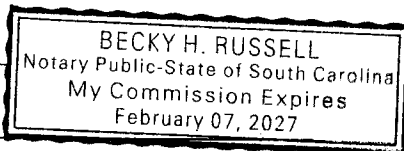
I, Shawn S Kelley ^{SSK} (TR), hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Shawn S Kelley (TR)
^{SSK}

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

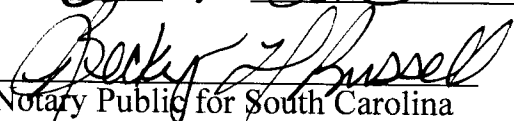
Case No. 2025-CP-26- 05366

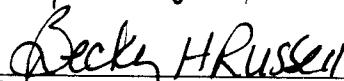
VERIFICATION

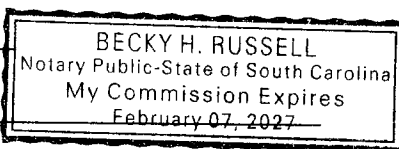
I, Kim Ritchie, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Kim Ritchie

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05 366

VERIFICATION

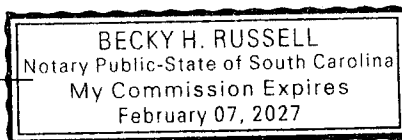
I, Van Raye Ritchie, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Van Raye Ritchie
Van Raye Ritchie

Sworn to and subscribed before me
this 30 day of June, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

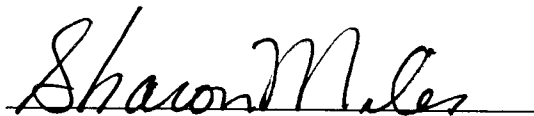
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05 366

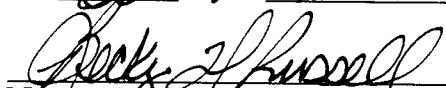
VERIFICATION

I, Sharon Miles, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

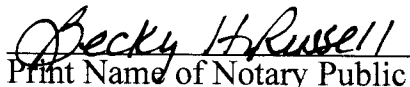


Sharon Miles

Sworn to and subscribed before me
this 30 day of June, 2025

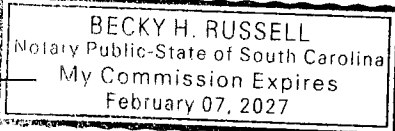


Notary Public for South Carolina



Print Name of Notary Public

My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

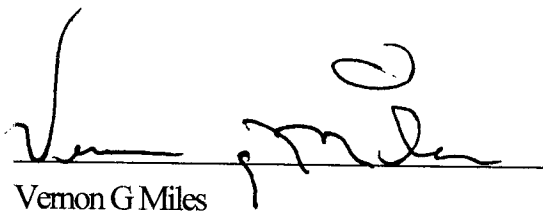
Defendant.

COURT OF COMMON PLEAS

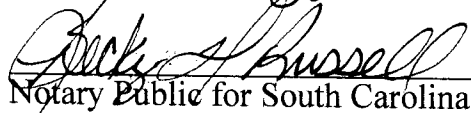
Case No. 2025-CP-26- 05366

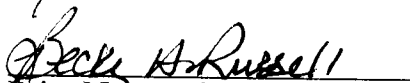
VERIFICATION

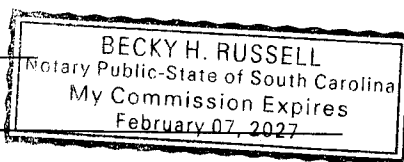
I, Vernon G Miles, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Vernon G Miles

Sworn to and subscribed before me
this 3 day of June, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

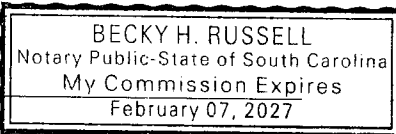
I, Teresa Poster, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Teresa Poster
Teresa Poster

Sworn to and subscribed before me
this 25 day of JUNE, 2025

Becky H Russell
Notary Public for South Carolina

Becky H Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

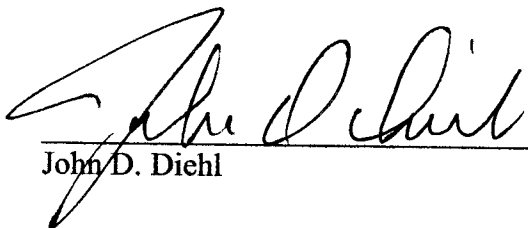
Defendant.

COURT OF COMMON PLEAS

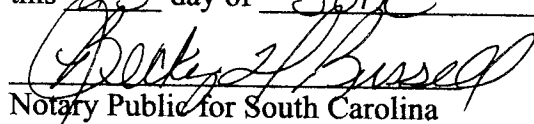
Case No. 2025-CP-26- 05366

VERIFICATION

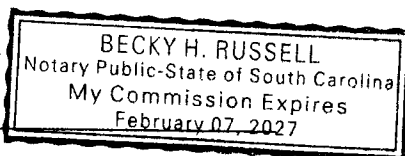
I, John D. Diehl, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


John D. Diehl

Sworn to and subscribed before me
this 25 day of June, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

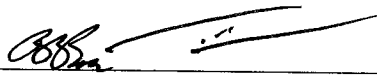
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

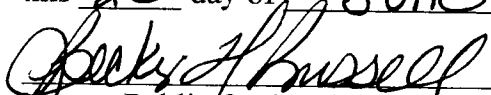
VERIFICATION

I, Rudolph Paul Benik, III, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.



Rudolph Paul Benik, III

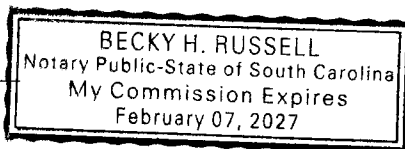
Sworn to and subscribed before me
this 25 day of JUNE, 2025



Notary Public for South Carolina

Becky H. Russell

Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

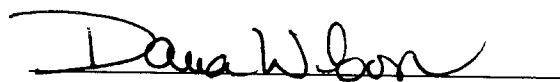
Defendant.

COURT OF COMMON PLEAS

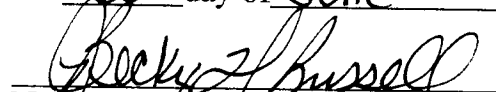
Case No. 2025-CP-26- 05 366

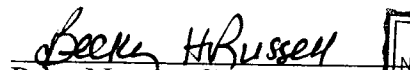
VERIFICATION

I, Dana Wilson, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Dana Wilson

Sworn to and subscribed before me
this 30 day of JUNE, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires:



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

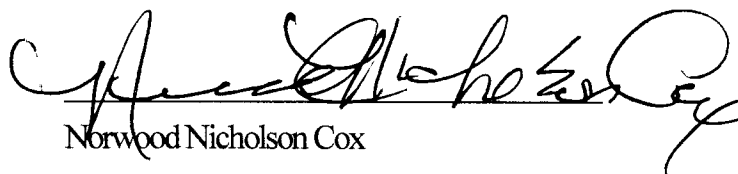
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Norwood Nicholson Cox, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Norwood Nicholson Cox

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05 366

VERIFICATION

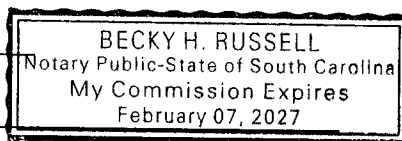
I, Janet Harrington Cox, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Janet Harrington Cox
Janet Harrington Cox

Sworn to and subscribed before me
this 30 day of June, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

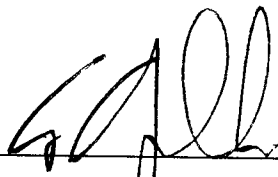
Defendant.

COURT OF COMMON PLEAS

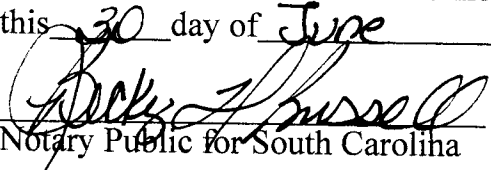
Case No. 2025-CP-26- 05 366

VERIFICATION

I, Giovanni Carapelli, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

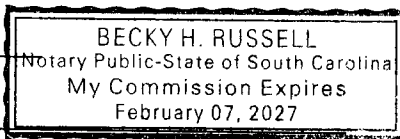

Giovanni Carapelli

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public

My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

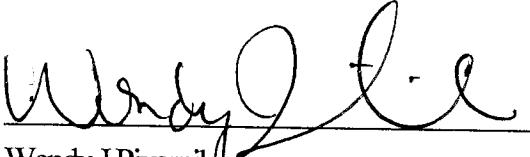
Defendant.

COURT OF COMMON PLEAS

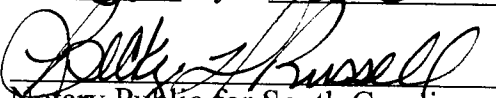
Case No. 2025-CP-26- 05366

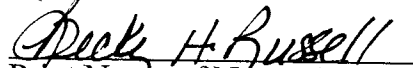
VERIFICATION

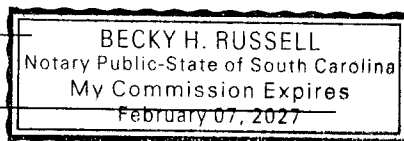
I, Wendy J Pivarnik, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Wendy J Pivarnik

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

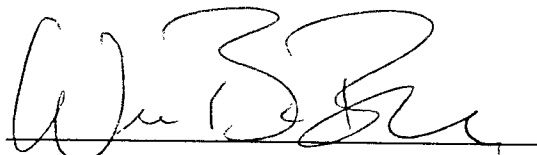
Defendant.

COURT OF COMMON PLEAS

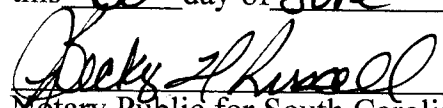
Case No. 2025-CP-26- 05 366

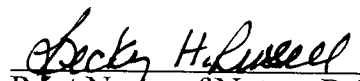
VERIFICATION

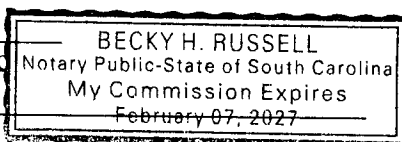
I, William B Burch, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


William B Burch

Sworn to and subscribed before me
this 30 day of JUNE, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires:



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

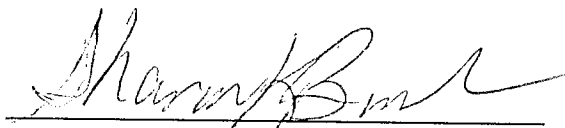
Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

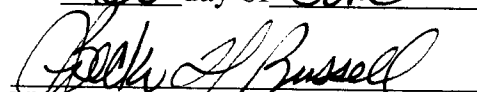
VERIFICATION

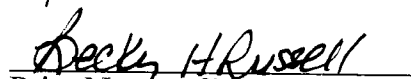
I, Sharon Burch, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

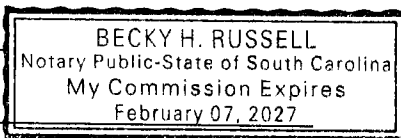


Sharon Burch

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina


Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

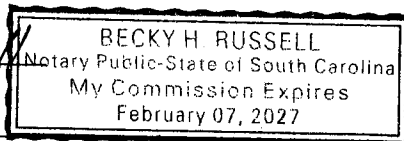
I, Julie A Brooks, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Julie A. Brooks
Julie A Brooks

Sworn to and subscribed before me
this 30 day of June, 2025

Becky H. Russell
Notary Public for South Carolina

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

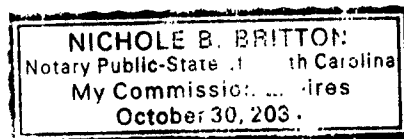
I, Joy S Bull, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Joy S. Bull
Joy S Bull

Sworn to and subscribed before me
this 29 day of June, 2025

Notary Public for South Carolina

Nichole B. Britton
Print Name of Notary Public
My Commission Expires: October 30, 2034



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

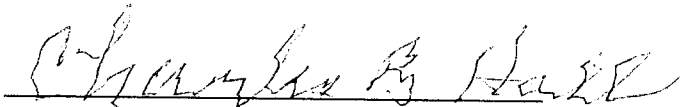
Defendant.

COURT OF COMMON PLEAS

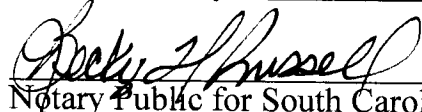
Case No. 2025-CP-26- 05306

VERIFICATION

I, Charles B Hall, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.


Charles B Hall

Sworn to and subscribed before me
this 30 day of June, 2025


Notary Public for South Carolina

Becky H Russell
Print Name of Notary Public
My Commission Expires: _____

BECKY H. RUSSELL
Notary Public-State of South Carolina
My Commission Expires
February 07, 2027

Becky H. Russell
Print Name of Notary Public
My Commission Expires: _____

BECKY H. RUSSELL
Notary Public-State of South Carolina
My Commission Expires
February 07, 2027

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

R. Paul Benik, Jr., Anton F. B. R. Poster, Sr.,
et al.,

Plaintiffs,

v.

The Arcadian Incorporated of Myrtle Beach,

Defendant.

COURT OF COMMON PLEAS

Case No. 2025-CP-26- 05366

VERIFICATION

I, Deborah Floyd, hereby verify that the facts and allegations in the Complaint of Plaintiffs are made upon personal knowledge with regard to my own acts and, upon information and belief, as to all other matters.

Deborah Floyd
~~Deborah Floyd~~ Deborah Floyd (D.F.)

Sworn to and subscribed before me
this 30th day of June

Sonja Hensley

Notary Public for South Carolina

Sonja Hensley

Print Name of Notary Public

My Commission Expires: May 5, 2027



EXHIBIT 1

343837

ELECTRONICALLY FILED - 2025 Jul 03 5:28 PM - HORRY - COMMON PLEAS - CASE#2025CP2605366
ELECTRONICALLY FILED - 2025 Aug 01 2:44 PM - HORRY - COMMON PLEAS - CASE#2025CP2605366

DEED TO REAL ESTATE

FILED
HORRY COUNTY, S.C.
2000 JUL -7 PM 4:21
REGISTER OF DEEDS

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS,

That I, Haley Damron Benik, in the State aforesaid for and in consideration of the sum of Forty Two Thousand Five Hundred Dollars (\$42,500.00) to me paid by R. Paul Benik, Jr., whose address is 628 Chestnut Road, Myrtle Beach, South Carolina 29572, in the State aforesaid, (Receipt whereof is hereby acknowledged) have granted, bargained, sold and released; and by these presents do grant, bargain, sell and release unto the said R. Paul Benik, Jr., his Heirs and Assigns all of my right, title and interest in and to the following described property:

See attached "Exhibit A" for legal description.

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 of my right, title and interest in and to the premises before mentioned unto the said R. Paul Benik, Jr., his Heirs and Assigns forever.

And I do hereby bind myself and my Heirs and Executors and Administrators, to warrant and forever defend all of my right, title and interest in and to the said premises unto the said R. Paul Benik, Jr., his Heirs and Assigns, against me and my Heirs, and all persons whomsoever lawfully claiming, or to claim the same or any part thereof.

WITNESS the execution hereof by grantor(s) this 6th day of July, in the year of our Lord Two Thousand and in the two hundred and twenty-fifth year of the Sovereignty and Independence of the United States of America.

Patrick F. O'Shea
Witness

P. J. Veltman
Notary

Haley Damron Benik
Haley Damron Benik

DEED
2279 0005

STATE 110.50 COUNTY 46.75

EXEMPT

YES

NO

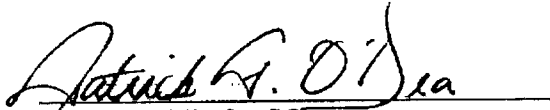
ASSESSOR

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PERSONALLY appeared before me the undersigned witness who after being duly sworn says that (s)he saw the within named grantor(s) execute the foregoing instrument and that (s)he with the other signed witness witnessed the execution thereof.

SWORN to before me this
6th day of July, 2000.


Notary Public for SC
My Commission Expires: 7/11/2003

(SEAL)


Same witness sign again

EXHIBIT "A"

ALL AND SINGULAR, that certain piece, parcel or lot of land, situate, lying and being in Dogwood Neck Township, School District No. 8, Horry County, South Carolina, and being designated as Lot Sixty-one (61) represented on map of Arcadian Shores prepared by Robert L. Bellamy, C.E. in November of 1964, and revised February 1965, which said map was recorded March 1, 1965, in Plat Book 43 at Page 8, Clerk's Office, Horry County, South Carolina.

Derivation: Deed of Distribution dated February 28, 2000 and recorded February 29, 2000 in Horry County Probate Court for the Estate of Julia L. Benik; also being the identical property conveyed unto Julia L. Benik by Deed of Ocean Lakes Investment Company, Inc., a South Carolina Corporation, recorded January 11, 1982 in the Office of the Clerk of Court for Horry County, South Carolina in Deed Book 734 at Page 175.

HORRY COUNTY CLERK'S OFFICE

TMS: 166-03-41-011

FILE

FILE

7/14/00 go

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

AFFIDAVIT

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

1. That Haley Damron Benik transferred all of her right, title and interest in and to the property located at 414 Queens Road in Myrtle Beach, South Carolina, bearing Horry County Tax Map Number 166-03-41-011 to R. Paul Benik, Jr. on July 6, 2000.

The transaction was (Check One):

☒ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was \$42,500.00

☐ not an arm's length real property transaction and the fair market value of the property is \$ _____

The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10 et.seq. because the deed is _____.

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

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


Haley Damron Benik

SWORN to before me this 6th
day of July, 2000.

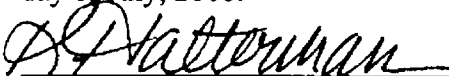

NOTARY PUBLIC for SC
My Commission Expires: 02/15/10

EXHIBIT 2

TMS Number correct
1660337011

STATE OF SOUTH CAROLINA)
) **DEED**
COUNTY OF HORRY)

KNOW ALL MEN BY THESE PRESENTS, That **Glen A. Rowinski, Craig Rowinski, and Sandra R. Alevizos, Trustees of the Rowinski 1999 Realty Trust, under declaration of trust dated May 25, 1999** (hereinafter called "Grantor"), for and in consideration of the sum of **Two Hundred Seventy Five Thousand and 00/100-(\$275,000.00) DOLLARS** to the Grantor in hand paid at or before the sealing of these presents, by **R. Paul Benik, Jr.** (hereinafter called "Grantee"), whose address is **628 Chestnut Road Myrtle Beach, SC 29572**, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these Presents does grant, bargain, sell and release, unto the said **R. Paul Benik, Jr.** his, heirs and assigns, forever the following described property, to-wit:

In Horry County, South Carolina, Dogwood Neck Township, School District No. 8, all and singular that certain, piece, parcel or lot of land shown and represented on Map of **ARCADIAN SHORES** prepared by Robert L. Bellamy, C. E. in November of 1964, and revised February 1965, which said map was recorded March 1, 1965 in Plat Book 43 at page 8, Clerk's office, Horry County, South Carolina as being lot or lots number:

Lot Seventy Nine (79)

This property is deed subject to that certain declaration of restrictions dated March 11, 1965 and recorded in Deed Book 325 at page 212, Clerk's Office of Horry County South Carolina.

This being the identical property conveyed to Glen A. Rowinski, Craig Rowinski, and Sandra R. Alevizos, Trustees of the Rowinski 1999 Realty Trust, under declaration of Trust dated May 25, 1999 by Deed of Lenora B. Rowinski recorded May 5th, 2000 in the Office of the Register of Deeds for Horry County, South Carolina in Deed Book 2257, at Page 1400.

TMS # 166-03-37-011

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

TO HAVE AND TO HOLD, all and singular the property before mentioned unto the Grantee, his heirs and assigns, forever.

And the Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the property unto the Grantee, his heirs and assigns, against itself and its successors and assigns, against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

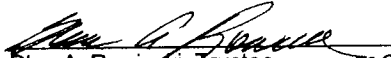
Any reference in this instrument to the singular shall include the plural, and vice versa. Any reference to one gender shall include the others, including the neuter. Such

words of inheritance shall be applicable as are required by the gender of the Grantee.

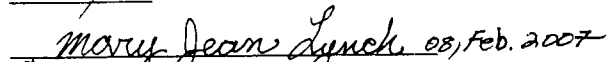
IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this ____ day of February, in the year of our Lord Two Thousand Seven, in the Two Hundred and Thirty First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Glen A. Rowinski, Craig Rowinski, and Sandra R. Alevizos, Trustees of the Rowinski 1999 Realty Trust, under declaration of trust dated May 25, 1999


Glen A. Rowinski, Trustee *02/08/2007*

WITNESSES:


1st Witness signs here *08 Feb. 2007*

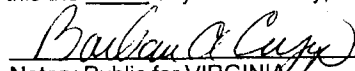

2nd Witness signs here NOTARY *Reyna M. VaneGAS*

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA }
 }
COUNTY OF *Fairfax* }

I, the undersigned Notary Public, do hereby certify that Glen A. Rowinski, Trustee of the Rowinski 1999 Realty Trust, under declaration of trust dated May 25, 1999 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 8 day of February, 2007.

 (LS)
Notary Public for VIRGINIA
My Commission Expires: *4-30-10*

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this 8 day of February, in the year of our Lord Two Thousand Seven, in the Two Hundred and Thirty First year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Glen A. Rowinski, Craig Rowinski, and Sandra R. Alevizos, Trustees of the Rowinski 1999 Realty Trust, under declaration of trust dated May 25, 1999

Alan Craig Rowinski
Craig Rowinski, Trustee
a/k/a Alan Craig Rowinski

WITNESSES:

Margaret J. Harrison - Queen
1st Witness signs here

Jane Harrison
2nd Witness signs here NOTARY

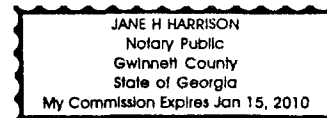
ACKNOWLEDGMENT

STATE OF GEORGIA }
COUNTY OF Guinnett }

I, the undersigned Notary Public, do hereby certify that Craig Rowinski, Trustee of the Rowinski 1999 Realty Trust, under declaration of trust dated May 25, 1999 personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and seal this the 8 day of February, 2007.

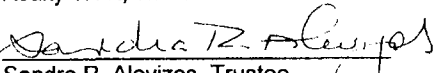
Jane Harrison (LS)
Notary Public for Georgia
My Commission Expires: _____



IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal this
§ day of February, in the year of our Lord Two Thousand Seven, in the Two Hundred
and Thirty First year of the Sovereignty and Independence of the United States of America.

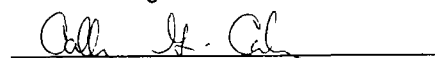
SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Glen A. Rowinski, Craig Rowinski, and Sandra R. Alevizos, Trustees of the Rowinski 1999
Realty Trust, under declaration of trust dated May 25, 1999


Sandra R. Alevizos, Trustee

WITNESSES:


1st Witness signs here

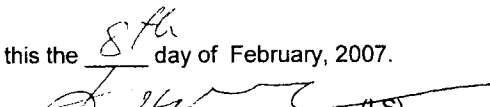

2nd Witness signs here NOTARY

ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS }
COUNTY OF Norfolk }

I, the undersigned Notary Public, do hereby certify that Sandra R. Alevizos, Trustee
of the Rowinski 1999 Realty Trust, under declaration of trust dated May 25, 1999 personally
appeared before me this day and acknowledged the due execution of the foregoing
instrument.

Witness my hand and seal this the 8th day of February, 2007.

 (LS)
Notary Public for MASSACHUSETTS
My Commission Expires: _____

