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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2014-CP-07-1402

THOMAS J. O'BRIEN,

Appellant,

vs.

HENRY JAMES VAN DAM, THERESA D. VAN DAM, CLYDE A. SANDERS, JANET S. SANDERS, TIMOTHY D. BROUILLETTE, JULIE LYNN BROUILLETTE, ROBB R. ALEXANDER BONNIE M. ALEXANDER, FLORIEN DAVADI, MARIA OUTEIRAL, CATHERINE A. DAVIS, ANTHONY R. GOMEZ, III, MARY E. GOMEZ, TRAVIS HUTCHINGS, AMY J. HUTCHINGS, BRUCE K. PARKER, SR., MARY E. PARKER, ALBERT L. KEETON, DONNA S. KEETON, GREG BRANTLEY, KENISAH D. BRANTLEY, EMERSON G. DICKSON, EVELYN DICKSON, WILLIAM H. WALKER, JR., DEBORAH L. WALKER, LINDA J. GOMEZ, CHARLES J. BRACE, MEREDITH N. BRACE, CHARLES E. HORTON, SHARON J. HORTON, EDWARD CANALES, CAROLINE M. CANALES, MICHAEL L. SAPP, MARJORIE H. SAPP, WILLIAM J. DRAINS, SYMATHA DRAINS, GARY W. TAYLOR, JOHN W. WESTMORELAND, PHYLLIS WESTMORELAND, MIDWEST CONCEPTS CORPORATION, BARRY L. REESE, GREGORY C. POOK, JUDITH A. ATHEY, RICHARD A. GALGANO, RAYMOND F. MATHIS, MAXINE L. MATHIS, BERNARD MCINTYRE, RALPH RAY KEARNS, JR., CHERYL LYNN J. KEARNS, GUY SIDNEY RICHARDSON, LINDA SUE RICHARDSON, DIANNA HUSTON, DANIEL B. MORGAN, MICHELLE J. MORGAN, LARRY G. MERRIFIELD, EILEEN MERRIFIELD, JAMES FARMER, CATHERINE B. FARMER, BRENDA O'SHIELDS, WARREN J. DISBROW, JOHN F. DYKEMAN, CAROL W. DYKEMAN, EVERETT R. LENNEX, ROSITA C. LENNEX, RAUL DENISE DOMINGUEZ, PAULA CHRISTINE WRIGHT, SHIRLEY A. SNYDER, BENJAMIN J. KILEY, JAMES F. BAUER, REVOCABLE TRUST, BENJAMIN KOLB, WILLIAM MARK FRY, ELIZABETH ANN FRY, MARK A. COOK, ROSE M. COOK AND

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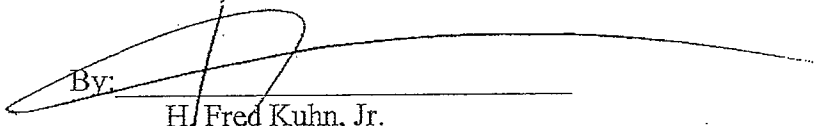
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AMENDED
NOTICE OF APPEAL

The Appellant, Thomas J. O'Brien, hereby appeals the Orders of the Honorable Marvin H. Dukes, III entitled Order and Decree dated May 27, 2016 and the Judgment in a Civil Case (Form 4) dated August 15, 2016 copies of which are attached hereto. Appellant received written notice of the entry of the Judgment in a Civil Case (Form 4) on August 24, 2015.

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HENRY JAMES VAN DAM, THERESA D. VAN DAM, CLYDE A. SANDERS, JANET S. SANDERS, TIMOTHY D. BROUILLETTE, JULIE LYNN BROUILLETTE, ROBB R. ALEXANDER BONNIE M. ALEXANDER, FLORIEN DAVADI, MARIA OUTEIRAL, CATHERINE A. DAVIS, ANTHONY R. GOMEZ, III, MARY E. GOMEZ, TRAVIS HUTCHINGS, AMY J. HUTCHINGS, BRUCE K. PARKER, SR., MARY E. PARKER, ALBERT L. KEETON, DONNA S. KEETON, GREG BRANTLEY, KENISH D. BRANTLEY, EMERSON G. DICKSON, EVELYN DICKSON, WILLIAM H. WALKER, JR., DEBORAH L. WALKER, LINDA J. GOMEZ, CHARLES J. BRACE, CHARLES E. HORTON, SHARON J. HORTON, EDWARD CANALES, CAROLINE M. CANALES, MICHAEL L. SAPP, MARJORIE H. SAPP, WILLIAM J. DRAINS, SYMATHA DRAINS, GARY W. TAYLOR, JOHN W. WESTMORELAND, PHYLLIS WESTMORELAND, MIDWEST CONCEPTS CORPORATION, BARRY L. REESE, GREGORY C. POOK, JUDITH A. ATHEY, RICHARD A. GALGANO, RAYMOND F. MATHIS, MAXINE L. MATHIS, BERNARD MCINTYRE, RALPH RAY KEARNS, JR., CHERYL LYNN J. KEARNS, GUY SIDNEY RICHARDSON, LINDA SUE RICHARDSON, DIANNA HUSTON, DANIEL B. MORGAN, MICHELLE J. MORGAN, LARRY G. MERRIFIELD, EILEEN MERRIFIELD, JAMES FARMER, CATHERINE B. FARMER, BRENDA O'SHIELDS, WARREN J. DISBROW, JOHN F. DYKEMAN, EVERETT R. LENNEX, ROSITA C. LENNEX, RAUL DENISE DOMINGUEZ, PAULA CHRISTINE WRIGHT,

000008

SHIRLEY A. SNYDER, BENJAMIN J. KILEY, JAMES F. BAUER,
REVOCABLE TRUST, BENJAMIN KOLB, WILLIAM MARK
FRY, ELIZABETH ANN FRY, MARK A. COOK, ROSE M. COOK
AND SHAKY POND, LLC

Respondents

CERTIFICATE OF SERVICE

Undersigned certifies that the Amended Notice of Appeal, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

The Honorable Jerri Ann Roseneau
Clerk of Court for Beaufort County
102 Ribaut Road
Post Office Drawer 1228
Beaufort, South Carolina 29901

Kenneth L. Tootle, Esquire
Attorney at Law
Post Office Box 1321
Beaufort, South Carolina 29901

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Mrs. Symatha Drains
Post Office Box 771
Beaufort, South Carolina 29906

Mr. Gary W. Taylor
6805 Oakmont Drive
Beaufort, South Carolina 29906

Mr. Henry James Van Dam
Mrs. Theresa D. Van Dam
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Mr. John W. Westmoreland
Mrs. Phyllis B. Westmoreland
105 Waters View Road
Hampton, South Carolina 29924

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6817 Oakmont Drive
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Mrs. Maxine L. Mathis
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Mr. Bernard McIntyre
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Mrs. Linda Sue Richardson
6817 Elderberry Drive
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Ms. Dianna P. Huston
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Mrs. Michelle J. Morgan
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Beaufort, South Carolina 29906

Shaky Pond, LLC
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Beaufort, South Carolina 29906

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Mr. Benjamin Kolb
6808 Oakmont Drive
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Mrs. Rose M. Cook
6812 Oakmont Drive
Beaufort, South Carolina 29906

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Mrs. Eileen M. Merrifield
6814 Elderberry Drive
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Ms. Maria Outeiral
6802 Oakmont Drive
Beaufort, South Carolina 29906

Catherine A. Davis
800 Broad River Boulevard
Beaufort, South Carolina 29902

Mr. Anthony Gomez, III
Mrs. Mary E. Gomez
806 Broad River Boulevard
Beaufort, South Carolina 29902

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Mrs. Amy J. Hutchings
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Beaufort, South Carolina 29906

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Mrs. Kenisah D. Brantley
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Mrs. Evelyn Dickson
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Mrs. Deborah L. Walker
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Mrs. Meredith N. Brace
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Mrs. Sharon J. Horton
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Mrs. Marjorie H. Sapp
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Mrs. Elizabeth Ann Fry
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James F. Bauer Revocable Trust
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Ms. Paula Christine Wright
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Mr. Raul Dominguez
Mrs. Denise Dominguez
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Mrs. Rosita Lennex
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Mrs. Carol F. Dykeman
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Mrs. Brenda O'Shields
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Beaufort, South Carolina 29906

Mr. James F. Farmer
Mrs. Catherine B. Farmer
6812 Elderberry Drive
Beaufort, South Carolina 29906

Mr. Edward Canales
Mrs. Caroline M. Canales
696 Paige Drive
Beaufort, South Carolina 29902

000013

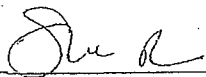
Mr. Clyde A. Sanders
Mrs. Janet S. Sanders
682 Royal Drive
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Mr. Timothy D. Brouillette
Mrs. Julie Lynn Brouillette
681 Royal Drive
Beaufort, South Carolina 29906

Mr. Robb B. Alexander
Mrs. Bonnie M. Alexander
6806 Elderberry Drive
Beaufort, South Carolina 29906

in a post office or official depository under the exclusive care and custody of the United States

Postal Service, on September 28, 2016.

By: 
Sue Radford

000014

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-01402

THOMAS J. O'BRIEN,

HENRY JAMES VAN DAM ET AL,

PLAINTIFF(S)

2016 MAY 27 PM 2:15
DEFENDANT(S)

Submitted by: KENNETH L. TOOTLE, ESQ.

JENNIFER ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Attorney for : ☐ Plaintiff ☒ Defendant
or
☐ Self-Represented Litigant

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(c), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Defendants	Plaintiff	\$0
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
TERMINATING HOA COVENANTS OF OAKMONT SUBDIVISION, BEAUFORT COUNTY, SC.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069
Judge Code

5/27/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 27 day of 14, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 6 day of Jan, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

H. Fred Kuhn
MOSS, KUHN & FLEMING, P.A.
P.O. Drawer 507
Beaufort, SC 29901-0507

KENNETH L. TOOTLE
P.O. BOX 1321
BEAUFORT, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO: 2014-CP-07-01402

THOMAS J. O'BRIEN,

Plaintiff,

Vs.

ORDER AND DECREE

HENRY JAMES VAN DAM, THERESA
D. VAN DAM, CLYDE A. SANDERS,
JANET S. SANDERS, TIMOTHY D.
BROUILLETTE, JULIE LYNN
BROUILLETTE, ROBB R. ALEXANDER,
BONNIE M. ALEXANDER, FLORIEN
DAVADI, MARIA OUTEIRAL,
CATHERINE A. DAVIS, ANTHONY
R.GOMEZ, III, MARY E. GOMEZ,
TRAVIS HUTCHINGS, AMY J.
HUTCHINGS, BRUCK K. PARKER, SR.,
MARY E. PARKER, ALBERT L. KEETON,
DONNA S. KEETON, GREG BRANTLEY,
KENISH D. BRANTLEY, EMERSON
G. DICKSON, EVELYN DICKSON,
WILLIAM H. WALKER, JR., DEBORAH
L. WALKER, LINDA J. GOMEZ,
CHARLES J. BRACE, MEREDITH N.
BRACE, CHARLES E. HORTON,
SHARON J. HORTON, EDWARD
CANALES, CAROLINE M. CANALES,
MICHAEL L. SAPP, MARJORIE H. SAPP,
WILLIAM J. DRAINS, SYMATHA DRAINS,
GARY W. TAYLOR, JOHN W.
WESTMORELAND, PHYLLIS
WESTMORELAND, MIDWEST
CONCEPTS CORPORATION, BARRY L.
REESE, GREGORY C. POOK, JUDITH A.
ATHEY, RICHARD A. GALGANO,
RAYMOND F. MATHIS, MAXINE L.
MATHIS, BERNARD MCINTYRE,
RALPH RAY KEARNS, JR., CHERYL
LYNN J. KEARNS, GUY SIDNEY
RICHARDSON, LINDA SUE
RICHARDSON, DIANNA HUSTON,

2016 MAY 27 PM 2:15
JEROME ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

DANIEL R. MORGAN, MICHELLE J.	)
MORGAN, LARRY G. MARRIFIELD,	)
EILEEN MERRIFIELD, JAMES FARMER,	)
CATHERINE B. FARMER, BRENDA	)
O'SHIELDS, WARREN J. DISBROW,	)
JOHN F. DYKEMAN, CAROL W.	)
DYKEMAN, EVERETT R. LENNEX,	)
RÓSITA C. LENNEX, RAUL DENISE	)
DOMINGUEZ, PAULA CHRISTINE,	)
WRIGHT, SHIRLEY A. SNYDER,	)
BENJAMIN J. KILEY, JAMES F. BAUER,	)
REVOCABLE TRUST, BENJAMIN KOLB,	)
WILLIAM MARK FRY, ELIZABETH	)
ANN FRY, MARK A. COOK, ROSE M.	)
COOK AND SHAKY POND, LLC.	)
	)
Defendants.	)

The Plaintiff and each of the Defendants hereto are the owners of the lots of Oakmont Subdivision, a subdivision of real property located in Beaufort County, South Carolina. Each of the lots in Oakmont Subdivision are covered by certain "Covenants and Lot Restrictions for Oakmont Subdivision", duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 14, 1978 in Record Book 259 at Page 200, and thereafter amended pursuant to a document recorded on May 12, 1978 in the Register of Deeds for Beaufort County, South Carolina in Record Book 263 at Page 923. A document entitled "Assignment of Interest" regarding these Covenants and Lot Restrictions was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 8, 1980 in Record Book 227 at Page 799

The Covenants and Lot Restrictions for Oakmont Subdivision provide in pertinent part as follows:

19. All covenants and restrictions contained in this declaration shall run with the land and shall be binding on all parties and persons until January 1, 1985; after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same.

On April 16, 2014 a document entitled "Agreement To Terminate Covenants" was recorded in the Register of Deeds for Beaufort County, South Carolina in Record Book 3315 at Page 1529.

On June 11, 2014 the Plaintiff filed this action in the Office of the Clerk of Court for Beaufort County, South Carolina. Through this action the Plaintiff seeks an Order from this Court declaring that the "Agreement To Terminate Covenants" is null and void. Plaintiff's Complaint alleges two causes of action: Improper Execution and Fraud In The Inducement. The Defendants were all duly served. Defendants Ralph Ray Kearns, Jr. and Cheryl Lynn J. Kearns subsequently filed and served an Answer, on their behalf and on behalf of all other Defendants like situated, in opposition to Plaintiff's Complaint.

The case came to trial before me on August 4, 2015. Testimony was taken from which I make the following Findings of Fact and Conclusions of Law:

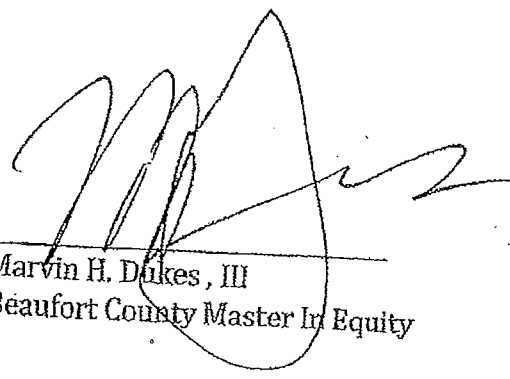
1. This action involves a subdivision of real estate located in Beaufort County, South Carolina and the owners of the individual lots within the subdivision. This Court has personal jurisdiction of all the parties to this action and subject matter jurisdiction over this action.
2. Although the "Agreement To Terminate Covenants" contain some irregularities, I do not believe it is fraudulent and specifically find the "Agreement To Terminate Covenants" not to be fraudulent.

3. I further find that the "Agreement To Terminate Covenants" contain an adequate number of signatures of the then lot owners of Oakmont Subdivision, as set forth in Paragraph 19 of the "Covenants and Lot Restrictions for Oakmont Subdivision", to accomplish its intended purpose of terminating the "Covenants and Lot Restrictions of Oakmont Subdivision".

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the "Agreement To Terminate Covenants" was neither entered into fraudulently nor under fraudulent inducement; and it does contain an adequate number of signatures of the then lot owners of Oakmont Subdivision, i.e. a majority of the then lot owners, to accomplish its intended purpose of terminating the "Covenants and Lot Restrictions of Oakmont Subdivision". The "Agreement To Terminate Covenants" filed in the Register of Deeds for Beaufort County, South Carolina on April 16, 2014 in Record Book 3315 at Page 1529 is hereby confirmed and upheld. The ~~Plaintiff's Complaint is dismissed.~~ I And for the Defendants. 

AND IT IS SO ORDERED.

Beaufort, South Carolina
May, 27 2016.


Marvin H. Dukes, III
Beaufort County Master In Equity

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-01402

THOMAS J. O'BRIEN

JAMES VAN DAM, ET AL.

2016 AUG 15 AM 10:17

PLAINTIFF(S)

JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT
Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

DEFENDANT(S)

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

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), SCRCPP; ☐ Rule 41(a), SCRCPP (Vol. Nonsuit); ☐ Rule 43(k), SCRCPP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON): ☐ Rule 40(j), SCRCPP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

THIS CAME BEFORE ME 8/10/2016 ON PLAINTIFF'S MOTION TO ALTER, AMEND OR RECONSIDER, FILED 6/6/2016. AFTER HEARING FROM PARTIES, I HEREBY DENY THE MOTION.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

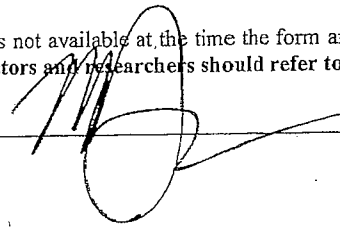
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$N/A
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.


Circuit Court Judge

3069

Judge Code

8/15/16
Date

For Clerk of Court Office Use Only

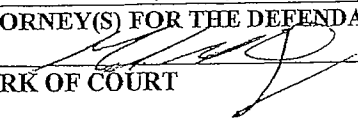
This judgment was entered on the 15 day of 8, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 22 day of 8, 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

H. FRED KUHN

ATTORNEY(S) FOR THE PLAINTIFF(S)

KENNETH L. TOOTLE, BERNARD MCINTYRE (PRO-SE),
GARY W. TAYLOR (PRO-SE), PAULA C. WRIGHT (PRO-SE),
MICHAEL L. SAPP (PRO-SE), MARJORIE H. SAPP (PRO-SE),
WARREN J. DISBROW (PRO-SE)

ATTORNEY(S) FOR THE DEFENDANT(S)


CLERK OF COURT

☒ Court Reporter: N/A

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-07-01402

THOMAS J. O'BRIEN,

HENRY JAMES VAN DAM ET AL,

2016 MAY 27 PM 2:15

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: KENNETH L. TOOTLE, ESQ. CLERK OF COURT	Attorney for: ☐ Plaintiff ☒ Defendant or ☐ Self-Represented Litigant
--	--

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. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
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IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court.

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Defendants	Plaintiff	\$0
		\$
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If applicable, describe the property, including tax map information and address, referenced in the order: TERMINATING HOA COVENANTS OF OAKMONT SUBDIVISION, BEAUFORT COUNTY, SC.		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069
Judge Code5/27/16
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

H. Fred Kuhn
MOSS, KUHN & FLEMING, P.A.
P.O. Drawer 507
Beaufort, SC 29901-0507

KENNETH L. TOOTLE
P.O. BOX 1321
BEAUFORT, SC 29901

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
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CASE NO: 2014-CP-07-01402

THOMAS J. O'BRIEN,

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Vs.

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BONNIE M. ALEXANDER, FLORIEN
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WILLIAM J. DRAINS, SYMATHA DRAINS,
GARY W. TAYLOR, JOHN W.
WESTMORELAND, PHYLLIS
WESTMORELAND, MIDWEST
CONCEPTS CORPORATION, BARRY L.
REESE, GREGORY C. POOK, JUDITH A.
ATHEY, RICHARD A. GALGANO,
RAYMOND F. MATHIS, MAXINE L.
MATHIS, BERNARD MCINTYRE,
RALPH RAY KEARNS, JR., CHERYL
LYNN J. KEARNS, GUY SIDNEY
RICHARDSON, LINDA SUE
RICHARDSON, DIANNA HUSTON,

2016 MAY 27 PM 2:15
CLERK OF COURT
JUDICIAL CIRCUIT
S.C.

DANIEL R. MORGAN, MICHELLE J.	)
MORGAN, LARRY G. MARRIFIELD,	)
EILEEN MERRIFIELD, JAMES FARMER,	)
CATHERINE B. FARMER, BRENDA	)
O'SHIELDS, WARREN J. DISBROW,	)
JOHN F. DYKEMAN, CAROL W.	)
DYKEMAN, EVERETT R. LENNEX,	)
ROSITA C. LENNEX, RAUL DENISE	)
DOMINGUEZ, PAULA CHRISTINE	)
WRIGHT, SHIRLEY A. SNYDER,	)
BENJAMIN J. KILEY, JAMES F. BAUER,	)
REVOCABLE TRUST, BENJAMIN KOLB,	)
WILLIAM MARK FRY, ELIZABETH	)
ANN FRY, MARK A. COOK, ROSE M.	)
COOK AND SHAKY POND, LLC.	)
	)
Defendants.	)

The Plaintiff and each of the Defendants hereto are the owners of the lots of Oakmont Subdivision, a subdivision of real property located in Beaufort County, South Carolina. Each of the lots in Oakmont Subdivision are covered by certain "Covenants and Lot Restrictions for Oakmont Subdivision", duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 14, 1978 in Record Book 259 at Page 200, and thereafter amended pursuant to a document recorded on May 12, 1978 in the Register of Deeds for Beaufort County, South Carolina in Record Book 263 at Page 923. A document entitled "Assignment of Interest" regarding these Covenants and Lot Restrictions was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 8, 1980 in Record Book 227 at Page 799

The Covenants and Lot Restrictions for Oakmont Subdivision provide in pertinent part as follows:

19. All covenants and restrictions contained in this declaration shall run with the land and shall be binding on all parties and persons until January 1, 1985; after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same.

On April 16, 2014 a document entitled "Agreement To Terminate Covenants" was recorded in the Register of Deeds for Beaufort County, South Carolina in Record Book 3315 at Page 1529.

On June 11, 2014 the Plaintiff filed this action in the Office of the Clerk of Court for Beaufort County, South Carolina. Through this action the Plaintiff seeks an Order from this Court declaring that the "Agreement To Terminate Covenants" is null and void. Plaintiff's Complaint alleges two causes of action: Improper Execution and Fraud In The Inducement. The Defendants were all duly served. Defendants Ralph Ray Kearns, Jr. and Cheryl Lynn J. Kearns subsequently filed and served an Answer, on their behalf and on behalf of all other Defendants like situated, in opposition to Plaintiff's Complaint.

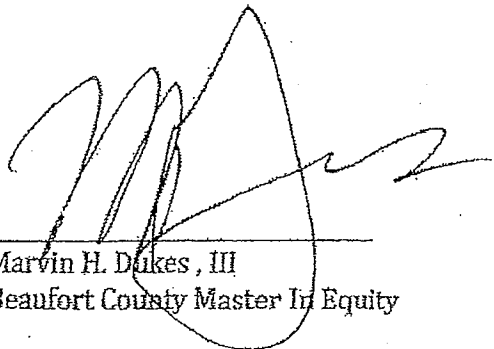
The case came to trial before me on August 4, 2015. Testimony was taken from which I make the following Findings of Fact and Conclusions of Law:

1. This action involves a subdivision of real estate located in Beaufort County, South Carolina and the owners of the individual lots within the subdivision. This Court has personal jurisdiction of all the parties to this action and subject matter jurisdiction over this action.
2. Although the "Agreement To Terminate Covenants" contain some irregularities, I do not believe it is fraudulent and specifically find the "Agreement To Terminate Covenants" not to be fraudulent.

3. I further find that the "Agreement To Terminate Covenants" contain an adequate number of signatures of the then lot owners of Oakmont Subdivision, as set forth in Paragraph 19 of the "Covenants and Lot Restrictions for Oakmont Subdivision", to accomplish its intended purpose of terminating the "Covenants and Lot Restrictions of Oakmont Subdivision".

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the "Agreement To Terminate Covenants" was neither entered into fraudulently nor under fraudulent inducement; and it does contain an adequate number of signatures of the then lot owners of Oakmont Subdivision, i.e. a majority of the then lot owners, to accomplish its intended purpose of terminating the "Covenants and Lot Restrictions of Oakmont Subdivision". The "Agreement To Terminate Covenants" filed in the Register of Deeds for Beaufort County, South Carolina on April 16, 2014 in Record Book 3315 at Page 1529 is hereby confirmed and upheld. ~~The Plaintiff's Complaint is dismissed.~~ I And for the Defendants, a

AND IT IS SO ORDERED.



Marvin H. Dukes, III
Beaufort County Master In Equity

Beaufort, South Carolina
May, 27 2016.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
2014-CP-07-01402

THOMAS J. O'BRIEN,

Plaintiff,

vs.

HENRY JAMES VAN DAM, THERESA
D. VAN DAM, CLYDE A. SANDERS,
JANET S. SANDERS, TIMOTHY D.
BROUILLETTE, JULIE LYNN
BROUILLETTE, ROBB R. ALEXANDER,
BONNIE M. ALEXANDER, FLORIAN
DAVADI, MARIA OUTEIRAL,
CATHERINE A. DAVIS, ANTHONY
R. GOMEZ, III, MARY E. GOMEZ,
TRAVIS HUTCHINGS, AMY J.
HUTCHINGS, BRUCK K. PARKER, SR.,
MARY E. PARKER, ALBERT L. KEETON
DONNA S. KEETON, GREG BRANTLEY,
KENISHA D. BRANTLEY, EMERSON
G. DICKSON, EVELYN DICKSON,
WILLIAM H. WALKER, JR. DEBORAH
L. WALKER, LINDA J. GOMEZ,
CHARLES J. BRACE, MEREDITH N.
BRACE, CHARLES E. HORTON,
SHARON J. HORTON, EDWARD
CANALES, CAROLINE M. CANALES,
MICHAEL L. SAPP, MARJORIE H. SAPP,
WILLIE J. DRAINS, SYMATHA DRAINS,
GARY W. TAYLOR, JOHN W.
WESTMORELAND, PHYLLIS,
WESTMORELAND, MIDWEST
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RALPH RAY KEARNS, JR., CHERYL
LYNN J. KEARNS, GUY SIDNEY
RICHARDSON, LINDA SUE
RICHARDSON, DIANNA HUSTON,

MOTION TO ALTER, AMEND OR
RECONSIDER (RULE 59, SCRCP)

2016 JUN - 6 PM 3:47
JENNIFER A. ROSE
CLERK OF COURT
BEAUFORT COUNTY, S.C.

DANIEL R. MORGAN, MICHELLE J.)
MORGAN, LARRY G. MERRIFIELD,)
EILEEN MERRIFIELD, JAMES FARMER)
CATHERINE B. FARMER, BRENDA)
O'SHIELDS, WARREN J. DISBROW,)
JOHN F. DYKEMAN, CAROL W.)
DYKEMAN, EVERETT R. LENNEX,)
ROSITA C. LENNEX, RAUL DENISE)
DOMINGUEZ, PAULA CHRISTINE)
WRIGHT, SHIRLEY A. SNYDER,)
BENJAMIN J. KILEY, JAMES F. BAUER,)
REVOCABLE TRUST, BENJAMIN KOLB)
WILLIAM MARK FRY, ELIZABETH)
ANN FRY, MARKA. COOK, ROSE M.)
COOK AND SHAKY POND, LLC,)
Defendants.)

TO: KENNETH L. TOOTLE, ESQUIRE AND THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE that the Plaintiff, through his undersigned attorney, hereby moves before the Honorable Marvin H. Dukes, III, Special Circuit Court Judge and Beaufort County Master In Equity, pursuant to Rule 59 of the South Carolina Rules of Procedure for an Order altering, amending, and reconsidering that Order and Decree filed on May 27, 2016 and received on June 3, 2016 on the following grounds:

1. It is respectfully submitted that the Master In Equity erred in failing to find as a matter of fact, and conclude as a matter of law, that the document entitled "Agreement to Terminate Covenants" was not properly recorded or executed, inasmuch as the signers of this document were not "grantors, mortgagors, vendors or lessors."

Covenants and Lot Restrictions for Oakmont Subdivision were duly recorded in the Office of the Register of Deeds for Beaufort County on February 14, 1978, and amended pursuant to a document recorded on May 12, 1978. These Covenants provide in pertinent part as follows:

"All covenants and restrictions contained in this declaration shall run with the land

and shall be binding on all parties and persons until January 1, 1985; after which time said Covenants and Restrictions shall be automatically extended for a successive period of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been **recorded** agreeing to change these covenants in whole or in part or to terminate the same."

Covenants, ¶19 (emphasis added).

Section 19 of the Covenants, quoted above, expressly mandates that an instrument purporting to terminate the Covenants must be recorded. In order to be properly recorded, a document must comply with S.C. Code Ann. §30-5-30 (2014), which is aptly entitled "Prerequisites to Recording." This statute directs that "before any . . . instrument in writing can be recorded in this State, it must be acknowledged or proved" by one of two methods described in subsections (A) or (B) of the statute. By use of the word "must" compliance with the prerequisites set forth in this statute is mandatory.

Accordingly, in order for a document to be properly recorded in this State, it must be "acknowledged or proved" by one of the two methods set forth in subsections (A) or (B) of §30-5-30. Both subsection (A) and subsection (B) reference the execution of a "deed or other instrument," and the phrase "other instrument" clearly includes a document such as the subject Agreement to Terminate Covenants. Subsection (A), however, has a broader scope of coverage than subsection (B). Subsection (A) is universal in scope, encompassing all types of individuals who execute an instrument. Subsection (B), on the other hand, is limited to a document signed by a "grantor, mortgagor, vendor, or lessor."

An examination of the Agreement to Terminate Covenants reveals that it was drafted in an attempt to comply with subsection (B). The Agreement to Terminate Covenants has a signature

line for the lot owner, adjacent to signature lines for two (2) witnesses and then a separate page for one of the witnesses to acknowledge before a notary public that the witness observed the lot owner sign the agreement. This is the format established by subsection (B) of §30-5-30.

Accordingly, a fatal flaw in the Agreement to Terminate Covenants is that, on its face, it was drafted and executed in an attempt to comply with subsection (B), but subsection (B) only applies if the document is being signed by a "grantor, mortgagor, vendor, or lessor." Since the Agreement to Terminate Covenants was signed by lot owners, and not by grantors, mortgagors, vendors, or lessors, subsection (B) does not apply to the Agreement to Terminate Covenants. Proper execution of the Agreement to Terminate Covenants should have been in accordance with subsection (A), under which the instrument may be proved by the affidavit of a subscribing witness to the instrument, taken before some officer within the State competent to administer an oath, such as a notary public.

2. It is respectfully submitted that the Master In Equity erred in failing to find as a matter of fact and conclude as a matter of law that the document entitled "Agreement to Terminate Covenants" was not properly recorded or executed, inasmuch as it is evident from the face of the document that it was falsely and fraudulently executed.

Even if subsection (B) of §30-5-30 were applicable, is that it is evident from the face of the Agreement to Terminate Covenants that this document does not comply with the requirements of subsection (B).

Subsection (B) requires that the signing of the document must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two (2) witnesses, taken before some officer within this State competent to administer an oath (such as a notary public). An examination of the signature pages of the Agreement to Terminate Covenants shows that each lot owner's

signature is witnessed by the same two (2) witnesses. The signature of witness number one (1) is not legible, and he is accordingly referred to herein as John Doe. Witness number two (2) appears to be the notary public.

One batch of lot owners signed the Agreement on March 29, 2014. A second batch of lot owners signed the Agreement on April 1, 2014. A third and final batch of lot owners signed the Agreement on April 9, 2014. Each of these dates is attested to by the lot owner, witness John Doe, and the notary public.

On March 29, 2014 witness John Doe swore under oath before the notary public that he witnessed the lot owners who are listed on page 12 of the Agreement sign the Agreement.

Subsequently, on April 1, 2014, witness John Doe swore under oath before the notary public that he witnessed the lot owners listed on page 13 of the Agreement sign the Agreement. These lot owners include Brenda S. O'Shields, Catherine B. Farmer, Kim D. Garcia, and Cesar A. Garcia. This however is impossible, inasmuch as these individuals did not sign the Agreement until eight (8) days later, on April 9, 2014, as shown on page 9 of the Agreement. (Mysteriously, pages 10 and 11 of the Agreement were never recorded and pages 12 and 13 were switched.

Accordingly, it is incontrovertible that witness John Doe falsely and fraudulently gave his oath to the notary on April 1, 2014 that he personally witnessed the lot owners listed on page 13 of the Agreement execute the Agreement, inasmuch as many of these lot owners had not yet done so.¹ This document, accordingly, fails to satisfy the "prerequisites to recording" set forth in §30-5-30 and was wrongfully recorded. Since under the Covenants recording is a prerequisite to terminating covenants, the Agreement to Terminate Covenants should be stricken and those lot owners desiring to terminate the Covenants should be required to begin again, without committing

¹ It is also possible that someone "doctored" this document after the fact by adding names, but either way, this document is tainted by fraud.

fraud.

Additionally, although no case involving an Agreement to Terminate Covenants can be located, there are several analogous cases involving deeds. For example, in *Faison v. Lewis*, 25 N.Y.3d 220, 32 N.E.3d 400 (2015) a deed that contained a fraudulent signature was held to be void, and not simply voidable. In so holding, the Court noted that "the fraudulent making of a writing to the prejudice of another's rights" is the same thing as a forgery. In the instant case, the fraudulent oath of witness John Doe in an attempt to comply with §30-5-30 was clearly false and impossible, and has prejudiced the rights of the other lot owners. *Id.*, 25 N.Y.3d at 224, 32 N.E.3d at 402-403.

3. It is respectfully submitted that the Master In Equity erred in failing to find as a matter of fact and conclude as a matter of law that signatures to the document entitled "Agreement to Terminate Covenants" were fraudulently obtained.

One of the proponents for terminating the Covenants anonymously left flyers in the mailboxes of all lot owners falsely stating that if the Covenants were retained, the lot owners would be forced to begin paying dues and assessments to a home owners association. This, of course, is false. "The elements of fraudulently obtaining a signature are: (1) obtaining a written signature (2) by knowingly misrepresenting a fact (3) with intent to defraud." As the Court may recall, one of the lot owners testified that after signing the Agreement to Terminate he learned the truth and almost immediately wished to revoke his consent, but was not allowed to do so.

4. It is respectfully submitted that the Master In Equity erred in failing to find as matter of law that all but five (5) of the lot owners who signed the document entitled "Agreement to Terminate Covenants" by virtue of their default, had admitted as a matter of law both that the agreement was fraudulently recorded and that they were fraudulently induced into executing the

agreement.

Of the lot owners who (purportedly) signed the Agreement to Terminate, only five (5) (Kearns, Disbrow, Dykeman, Wright, and Taylor) filed an Answer denying the material allegations of the Complaint. The other lot owners who filed Answers (Athey, Mathis, Shakey Pond, LLC, Reese, Pook, and McIntyre) answered that they either voted to retain the Covenants or affirmatively requested that the Covenants be reinstated. All the remaining lot owners are in default. The entry of default "is an admission by the defaulting party of the well-pleaded allegations of the Complaint. . . . The Defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the Plaintiff's declaration or complaint *State Ex Rel Medlock v. Love Shop Limited*, 286 S.C. 486, 488-89, 334 S.E.2d 528, 530 (Ct.App. 1985).

5. It is respectfully submitted that the Master In Equity erred in failing to find as a matter of fact and conclude as a matter of law that the attempt to terminate the Restrictive Covenants during the term of the automatic extension was ineffective.

Section 19 of the Covenants expressly states that the Covenants "shall be binding on all parties and persons until January 1, 1985; after which time said Covenants and Restrictions shall be automatically extended for successive periods of five (5) years" Accordingly, on January 1, 2010, the Covenants and Restrictions were automatically extended for five (5) more years, or until December 31, 2014. The Agreement in this case, filed April 26, 2014, wrongfully attempts to prematurely terminate the Restrictive Covenants prior to the expiration of the automatic extension.

"Restrictive Covenants are contractual in nature. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 36, 365 (1974). "The language of a Restrictive Covenant is to be construed according to

the plain and ordinary meaning attributed to it at the time of execution.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

In the instant case, the Agreement attempts to terminate the Restrictive Covenants prior to the expiration of the automatic renewal term. This cannot be done. In *Brown v. Martin*, 288 Mich. App. 727, 794 N.W.2d 857 (2010) the subdivision’s Restrictive Covenants provided for automatic ten (10) year renewals unless an instrument signed by a majority of the then owners of the lots had been recorded. The Court held that an attempt by a majority of the lot owners to terminate the Covenants during the automatic renewal period had no effect. The Court noted that the “automatic extension language would be rendered meaningless if the Covenant could be amended by a majority vote (less than unanimous) at any time” during the extension period. *Id.*, 288 Mich. App. at 732, 794 N.W.2d at 860-61. Numerous other Courts have reached the same conclusion. In *Scholten v. Black Hawk Partners*, 184 Ariz. 326, 909 P.2d 393 (AZ App. 1995) the Arizona Supreme Court held that an amendment passed two (2) years into a ten (10) year automatic extension period was not effective, stating that to hold otherwise would render the extension provision meaningless. The same conclusion was reached in *Illini Federal Savings and Loan Assoc. v. Elsay Hills Corporation*, 12 Ill. App.3d 356, 445 N.E.2d 1193 (1983); *In re Wallace's Fourth Southmoor Addition to the City of Enid, Propps, Inc v. Rogers*, 874 P.2d 818 (Okla App 1994), and in *Mauldin v. Panella*, 17 P.3d 837 (Colo App. 2000).

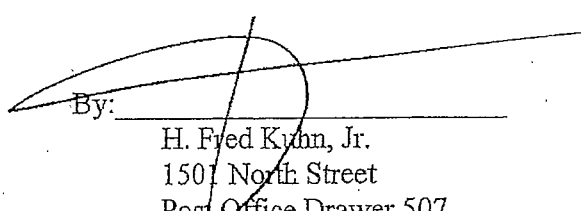
Accordingly, as a matter of law, the attempt to terminate the Restrictive Covenants during the term of the automatic extension was ineffective. Admittedly, if the vote had been not to renew the Restrictive Covenants, or to terminate the Restrictive Covenants effective midnight of December 31, 2014, the vote would have been valid. As it stands, however, the vote was to terminate the Restrictive Covenants during the term of the automatic renewal, which is

impermissible.

The Plaintiff accordingly respectfully requests that the Court alter, amend, and reconsider its Order and Decree filed May 27, 2016 and grant to the Plaintiff the relief requested in his Complaint, and declare that the "Agreement to Terminate Covenants" is of no force or effect, and that the Restrictive Covenants remain in full force and effect, together with such other and further relief as is consistent with this request.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 – facsimile

Beaufort, South Carolina
June 6, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2014-CP-07-01402

THOMAS J. O'BRIEN,)
)
Plaintiff,)

vs.)

HENRY JAMES VAN DAM, THERESA)
D. VAN DAM, CLYDE A. SANDERS,)
JANET S. SANDERS, TIMOTHY D.)
BROUILLETTE, JULIE LYNN)
BROUILLETTE, ROBB R. ALEXANDER,)
BONNIE M. ALEXANDER, FLORIAN)
DAVADI, MARIA OUTEIRAL,)
CATHERINE A. DAVIS, ANTHONY)
R. GOMEZ, III, MARY E. GOMEZ,)
TRAVIS HUTCHINGS, AMY J.)
HUTCHINGS, BRUCK K. PARKER, SR.,)
MARY E. PARKER, ALBERT L. KEETON)
DONNA S. KEETON, GREG BRANTLEY,)
KENISHA D. BRANTLEY, EMERSON)
G. DICKSON, EVELYN DICKSON,)
WILLIAM H. WALKER, JR. DEBORAH)
L. WALKER, LINDA J. GOMEZ,)
CHARLES J. BRACE, MEREDITH N.)
BRACE, CHARLES E. HORTON,)
SHARON J. HORTON, EDWARD)
CANALES, CAROLINE M. CANALES,)
MICHAEL L. SAPP, MARJORIE H. SAPP,)
WILLIE J. DRAINS, SYMATHA DRAINS,)
GARY W. TAYLOR, JOHN W.)
WESTMORELAND, PHYLLIS,)
WESTMORELAND, MIDWEST)
CONCEPTS CORPORATION, BARRY L.)
REESE, GREGORY C. POOK, JUDITH A.)
ATHEY, RICHARD A. GALGANO,)
RAYMOND F. MATHIS, MAXINE L.)
MATHIS, BERNARD MCINTYRE,)
RALPH RAY KEARNS, JR., CHERYL)
LYNN J. KEARNS, GUY SIDNEY)
RICHARDSON, LINDA SUE)
RICHARDSON, DIANNA HUSTON,)

PLAINTIFF'S POST-TRIAL
MEMORANDUM

2016 SEP 25 PM 1:55
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

DANIEL R. MORGAN, MICHELLE J.)
MORGAN, LARRY G. MERRIFIELD,)
EILEEN MERRIFIELD, JAMES FARMER)
CATHERINE B. FARMER, BRENDA)
O'SHIELDS, WARREN J. DISBROW,)
JOHN F. DYKEMAN, CAROL W.)
DYKEMAN, EVERETT R. LENNEX,)
ROSITA C. LENNEX, RAUL DENISE)
DOMINGUEZ, PAULA CHRISTINE)
WRIGHT, SHIRLEY A. SNYDER,)
BENJAMIN J. KILEY, JAMES F. BAUER,)
REVOCABLE TRUST, BENJAMIN KOLB)
WILLIAM MARK FRY, ELIZABETH)
ANN FRY, MARKA. COOK, ROSE M.)
COOK AND SHAKY POND, LLC,)
))
Defendants.)

This action was tried before the Honorable Marvin H. Dukes, III in the Beaufort County Court of Common Pleas on August 4, 2015. At the conclusion of the trial, the case was taken under advisement and the parties were invited to submit post-trial memorandums in support of their respective positions, focusing on the issue as to whether alleged defects in the document entitled "Agreement to Terminate Covenants" were material or a mere "scrivener's error." This Memorandum is respectfully submitted on behalf of the Plaintiff, Thomas J. O'Brien.

This is an action to rescind the termination of restrictive covenants for Oakmont Subdivision, a residential subdivision located in Beaufort County, South Carolina. The parties are the owners of the lots in Oakmont Subdivision.

Covenants and Lot Restrictions for Oakmont Subdivision were duly recorded in the Office of the Register of Deeds for Beaufort County on February 14, 1978, and amended pursuant to a document recorded on May 12, 1978. These Covenants provide in pertinent part as follows:

"All covenants and restrictions contained in this declaration shall run with the

land and shall be binding on all parties and persons until January 1, 1985; after which time said Covenants and Restrictions shall be automatically extended for a successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same."

Covenants, ¶19 (emphasis added).

When the Covenants were originally recorded, there were 49 lots in Oakmont Subdivision. Two (2) lots (Lots 28 and 29) were subsequently consolidated, resulting in a total of 48 lots. A majority vote, accordingly, would require the support of 25 lot owners.

On April 26, 2014 a document entitled "Agreement to Terminate Covenants" was recorded in the Office of the Register of Deeds for Beaufort County. This document purports to terminate in whole the aforesaid Covenants. For ease of reference, a copy of this document is attached hereto as Exhibit A.

I. AGREEMENT NOT PROPERLY RECORDED OR EXECUTED

Section 19 of the Covenants, quoted above, expressly mandates that an instrument purporting to terminate the Covenants must be recorded. In order to be properly recorded, a document must comply with S.C. Code Ann. §30-5-30 (2014), which is aptly entitled "Prerequisites to Recording." This statute directs that "before any . . . instrument in writing can be recorded in this State, it must be acknowledged or proved" by one of two methods described in subsections (A) or (B) of the statute. By use of the word "must" compliance with the prerequisites set forth in this statute is mandatory.

Accordingly, in order for a document to be properly recorded in this State, it must be "acknowledged or proved" by one of the two methods set forth in subsections (A) or (B) of §30-

5-30. Both subsection (A) and subsection (B) reference the execution of a "deed or other instrument," and the phrase "other instrument" clearly includes a document such as the subject Agreement to Terminate Covenants. Subsection (A), however, has a broader scope of coverage than subsection (B). Subsection (A) is universal in scope, encompassing all types of individuals who execute an instrument. Subsection (B), on the other hand, is limited to a document signed by a "grantor, mortgagor, vendor, or lessor."

An examination of the Agreement to Terminate Covenants reveals that it was drafted in an attempt to comply with subsection (B). The Agreement to Terminate Covenants has a signature line for the lot owner, adjacent to signature lines for two (2) witnesses and then a separate page for one of the witnesses to acknowledge before a notary public that the witness observed the lot owner sign the agreement. This is the format established by subsection (B) of §30-5-30.

A. SIGNERS NOT "GRANTORS, MORTGAGORS, VENDORS OR LESSORS"

Accordingly, the first fatal flaw in the Agreement to Terminate Covenants is that, on its face, it was drafted and executed in an attempt to comply with subsection (B), and subsection (B) only applies if the document is being signed by a "grantor, mortgagor, vendor, or lessor." Since the Agreement to Terminate Covenants was signed by lot owners, and not by grantors, mortgagors, vendors, or lessors, subsection (B) does not apply to the Agreement to Terminate Covenants. Proper execution of the Agreement to Terminate Covenants should have been in accordance with subsection (A), under which the instrument may be proved by the affidavit of a subscribing witness to the instrument, taken before some officer within the State competent to administer an oath, such as a notary public.

B. FALSE/FRAUDULENT EXECUTION

The second fatal flaw in the Agreement to Terminate Covenants, even if subsection (B) of §30-5-30 were applicable, is that it is evident from the face of the document that the document does not comply with the requirements of subsection (B).

Subsection (B) requires that the signing of the document must be acknowledged by the grantor, mortgagor, vendor, or lessor in the presence of two (2) witnesses, taken before some officer within this State competent to administer an oath (such as a notary public). An examination of the signature pages of the Agreement to Terminate Covenants shows that each lot owner's signature is witnessed by the same two (2) witnesses. The signature of witness number one (1) is not legible, and he is accordingly referred to herein as John Doe. Witness number two (2) appears to be the notary public.

One batch of lot owners signed the Agreement on March 29, 2014. A second batch of lot owners signed the Agreement on April 1, 2014. A third and final batch of lot owners signed the Agreement on April 9, 2014. Each of these dates is attested to by the lot owner, witness John Doe, and the notary public.

On March 29, 2014 witness John Doe swore under oath before the notary public that he witnessed the lot owners who are listed on page 12 of the Agreement sign the Agreement.

Subsequently, on April 1, 2014, witness John Doe swore under oath before the notary public that he witnessed the lot owners listed on page 13 of the Agreement sign the Agreement. These lot owners include Brenda S. O'Shields, Catherine B. Farmer, Kim D. Garcia, and Cesar A. Garcia. This however is impossible, inasmuch as these individuals did not sign the Agreement until eight (8) days later, on April 9, 2014, as shown on page 9 of the Agreement. (Mysteriously, pages 10 and 11 of the Agreement were never recorded and pages 12 and 13

were switched.

Accordingly, it is incontrovertible that witness John Doe falsely and fraudulently gave his oath to the notary on April 1, 2014 that he personally witnessed the lot owners listed on page 13 of the Agreement execute the Agreement, inasmuch as many of these lot owners had not yet done so.¹ This document, accordingly, fails to satisfy the “prerequisites to recording” set forth in §30-5-30 and was wrongfully recorded. Since under the Covenants recording is a prerequisite to terminating covenants, the Agreement to Terminate Covenants should be stricken and those lot owners desiring to terminate the Covenants should be required to begin again, without committing fraud.

Additionally, although no case involving an Agreement to Terminate Covenants can be located, there are several analogous cases involving deeds. For example, in *Faison v. Lewis*, 25 N.Y.3d 220, 32 N.E.3d 400 (2015) a deed that contained a fraudulent signature was held to be void, and not simply voidable. In so holding, the Court noted that “the fraudulent making of a writing to the prejudice of another’s rights” is the same thing as a forgery. In the instant case, the fraudulent oath of witness John Doe in an attempt to comply with §30-5-30 was clearly false and impossible, and has prejudiced the rights of the other lot owners. *Id.*, 25 N.Y.3d at 224, 32 N.E.3d at 402-403.

II. FRAUDULENTLY OBTAINED SIGNATURES

Additionally, although it is not necessary for the Court to inquire any further, three other points raised during the trial are worth repeating.

First, one of the proponents for terminating the Covenants anonymously left flyers in the mailboxes of all lot owners falsely stating that if the Covenants were retained, the lot owners

¹ It is also possible that someone “doctored” this document after the fact by adding names, but either way, this document is tainted by fraud.

would be forced to begin paying dues and assessments to a home owners association. "The elements of fraudulently obtaining a signature are: (1) obtaining a written signature (2) by knowingly misrepresenting a fact (3) with intent to defraud." As the Court may recall, one of the lot owners testified that after signing the Agreement to Terminate he learned the truth and almost immediately wished to revoke his consent, but was not allowed to do so.

III. DEFAULT

Of the lot owners who (purportedly) signed the Agreement to Terminate, only five (5) (Kearns, Disbrow, Dykeman, Wright, and Taylor) filed an Answer denying the material allegations of the Complaint. The other lot owners who filed Answers (Athey, Mathis, Shakey Pond, LLC, Reese, Pook, and McIntyre) answered that they either voted to retain the Covenants or affirmatively requested that the Covenants be reinstated. All the remaining lot owners are in default. The entry of default "is an admission by the defaulting party of the well-pleaded allegations of the Complaint. . . . The Defendant, by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the Plaintiff's declaration or complaint *State Ex Rel Medlock v. Love Shop Limited*, 286 S.C. 486, 488-89, 334 S.E.2d 528, 530 (Ct.App. 1985).

In short, as a **matter of law**, the vast majority of those who signed the Agreement to Terminate Covenants have admitted **both** that the Agreement was fraudulently recorded and that they were fraudulently induced into executing the Agreement.

IV. IMPROPER TIMING

Section 19 of the Covenants expressly states that the Covenants "shall be binding on all parties and persons until January 1, 1985; after which time said Covenants and Restrictions shall be automatically extended for successive periods of five (5) years" Accordingly, on

January 1, 2010, the Covenants and Restrictions were automatically extended for five (5) more years, or until December 31, 2014. The Agreement in this case, filed April 26, 2014, wrongfully attempts to prematurely terminate the Restrictive Covenants prior to the expiration of the automatic extension.

“Restrictive Covenants are contractual in nature. *Hoffman v. Cohen*, 262 S.C. 71, 75, 202 S.E.2d 36, 365 (1974). “The language of a Restrictive Covenant is to be construed according to the plain and ordinary meaning attributed to it at the time of execution.” *Taylor v. Lindsey*, 332 S.C. 1, 4, 498 S.E.2d 862, 864 (1998).

In the instant case, the Agreement attempts to terminate the Restrictive Covenants prior to the expiration of the automatic renewal term. This cannot be done. In *Brown v. Martin*, 288 Mich. App. 727, 794 N.W.2d 857 (2010) the subdivision’s Restrictive Covenants provided for automatic ten (10) year renewals unless an instrument signed by a majority of the then owners of the lots had been recorded. The Court held that an attempt by a majority of the lot owners to terminate the Covenants during the automatic renewal period had no effect. The Court noted that the “automatic extension language would be rendered meaningless if the Covenant could be amended by a majority vote (less than unanimous) at any time” during the extension period. *Id.*, 288 Mich. App. at 732, 794 N.W.2d at 860-61. Numerous other Courts have reached the same conclusion. In *Scholten v. Black Hawk Partners*, 184 Ariz. 326, 909 P.2d 393 (AZ App. 1995) the Arizona Supreme Court held that an amendment passed two (2) years into a ten (10) year automatic extension period was not effective, stating that to hold otherwise would render the extension provision meaningless. The same conclusion was reached in *Illini Federal Savings and Loan Assoc. v. Elsay Hills Corporation*, 12 Ill. App.3d 356, 445 N.E.2d 1193 (1983); *In re Wallace's Fourth Southmoor Addition to the City of Enid, Propps, Inc v. Rogers*, 874 P.2d 818

(Okla App 1994), and in *Mauldin v. Panella*, 17 P.3d 837 (Colo App. 2000).

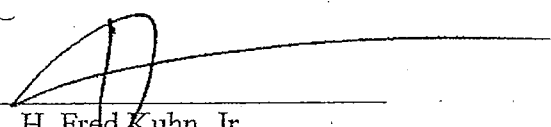
Accordingly, as a matter of law, the attempt to terminate the Restrictive Covenants during the term of the automatic extension was ineffective. Admittedly, if the vote had been not to renew the Restrictive Covenants, or to terminate the Restrictive Covenants effective midnight of December 31, 2014, the vote would have been valid. As it stands, however, the vote was to terminate the Restrictive Covenants during the term of the automatic renewal, which is impermissible.

CONCLUSION

It is, accordingly respectfully requested that the Court enter judgment in favor of the Plaintiff and direct that the Agreement to Terminate Covenants recorded on April 16, 2014 in Beaufort County Record Book 3315 at Page 1529 be stricken.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
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(843)524-3373
(843)524-1302 -- facsimile

Beaufort, South Carolina
September 18, 2015

Attorneys for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THOMAS J. O'BRIEN

Plaintiff(s)

VS.

HENRY JAMES VAN DAM, ET AL.

Defendant(s)

Submitted By: H. Fred Kuhn, Jr., Esquire
Address: PO Drawer 507
Beaufort, SC 29901-0507

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 07- 0140

SC Bar #: 3576
Telephone #: 843-524-3373
Fax #: 843-524-1302
Other:
E-mail: fred@mossandkuhn.com

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20-CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399)

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

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

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

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)

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

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

- ☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799)

Submitting Party Signature:

Date: 6-10-2014

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

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

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

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

2014-CP-07- 01402

THOMAS J. O'BRIEN,

Plaintiff,

vs.

HENRY JAMES VAN DAM, THERESA
D. VAN DAM, CLYDE A. SANDERS,
JANET S. SANDERS, TIMOTHY D.
BROUILLETTE, JULIE LYNN
BROUILLETTE, ROBB R. ALEXANDER,
BONNIE M. ALEXANDER, FLORIAN
DAVADI, MARIA OUTEJRAL,
CATHERINE A. DAVIS, ANTHONY
R. GOMEZ, III, MARY E. GOMEZ,
TRAVIS HUTCHINGS, AMY J.
HUTCHINGS, BRUCK K. PARKER, SR.,
MARY E. PARKER, ALBERT L. KEETON,
DONNA S. KEETON, GREG BRANTLEY,
KENISHA D. BRANTLEY, EMERSON
G. DICKSON, EVELYN DICKSON,
WILLIAM H. WALKER, JR. DEBORAH
L. WALKER, LINDA J. GOMEZ,
CHARLES J. BRACE, MEREDITH N.
BRACE, CHARLES E. HORTON,
SHARON J. HORTON, EDWARD
CANALES, CAROLINE M. CANALES,
MICHAEL L. SAPP, MARJORIE H. SAPP,
WILLIE J. DRAINS, SYMATHA DRAINS,
GARY W. TAYLOR, JOHN W.
WESTMORELAND, PHYLLIS,
WESTMORELAND, MIDWEST
CONCEPTS CORPORATION, BARRY L.
REESE, GREGORY C. POOK, JUDITH A.
ATHEY, RICHARD A. GALGANO,
RAYMOND F. MATHIS, MAXINE L.
MATHIS, BERNARD MCINTYRE,
RALPH RAY KEARNS, JR., CHERYL
LYNN J. KEARNS, GUY SIDNEY
RICHARDSON, LINDA SUE
RICHARDSON, DIANNA HUSTON,

SUMMONS

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CLERK OF COURT
SOUTH CAROLINA

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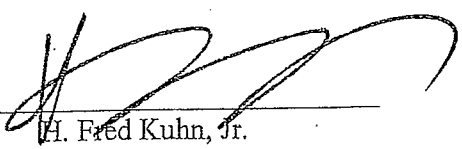
DANIEL R. MORGAN, MICHELLE J.)
MORGAN, LARRY G. MERRIFIELD,)
EILEEN MERRIFIELD, JAMES FARMER)
CATHERINE B. FARMER, BRENDA)
O'SHIELDS, WARREN J. DISBROW,)
JOHN F. DYKEMAN, CAROL W.)
DYKEMAN, EVERETT R. LENNEX,)
ROSITA C. LENNEX, RAUL DENISE)
DOMINGUEZ, PAULA CHRISTINE)
WRIGHT, SHIRLEY A. SNYDER,)
BENJAMIN J. KILEY, JAMES F. BAUER,)
REVOCABLE TRUST, BENJAMIN KOLB)
WILLIAM MARK FRY, ELIZABETH)
ANN FRY, MARKA. COOK, ROSE M.)
COOK AND SHAKY POND, LLC,)

Defendants.)

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer upon the subscribed at his office, Post Office Drawer 507/1501 North Street, Beaufort, South Carolina 29901, within thirty (30) days from the service hereof, exclusive of the day of such service; and if you fail to Answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(843)524-1302 – facsimile

Beaufort, South Carolina
June 10, 2014

Attorneys for the Plaintiff

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

2014-CP-07- 01402

THOMAS J. O'BRIEN,)
)
Plaintiff,)

vs.)

HENRY JAMES VAN DAM, THERESA)
D. VAN DAM, CLYDE A. SANDERS,)
JANET S. SANDERS, TIMOTHY D.)
BROUILLETTE, JULIE LYNN)
BROUILLETTE, ROBB R. ALEXANDER,)
BONNIE M. ALEXANDER, FLORIAN)
DAVADI, MARIA OUTEIRAL,)
CATHERINE A. DAVIS, ANTHONY)
R. GOMEZ, III, MARY E. GOMEZ,)
TRAVIS HUTCHINGS, AMY J.)
HUTCHINGS, BRUCK K. PARKER, SR.,)
MARY E. PARKER, ALBERT L. KEETON)
DONNA S. KEETON, GREG BRANTLEY,)
KENISHA D. BRANTLEY, EMERSON)
G. DICKSON, EVELYN DICKSON,)
WILLIAM H. WALKER, JR. DEBORAH)
L. WALKER, LINDA J. GOMEZ,)
CHARLES J. BRACE, MEREDITH N.)
BRACE, CHARLES E. HORTON,)
SHARON J. HORTON, EDWARD)
CANALES, CAROLINE M. CANALES,)
MICHAEL L. SAPP, MARJORIE H. SAPP,)
WILLIE J. DRAINS, SYMATHA DRAINS,)
GARY W. TAYLOR, JOHN W.)
WESTMORELAND, PHYLLIS,)
WESTMORELAND, MIDWEST)
CONCEPTS CORPORATION, BARRY L.)
REESE, GREGORY C. POOK, JUDITH A.)
ATHEY, RICHARD A. GALGANO,)
RAYMOND F. MATHIS, MAXINE L.)
MATHIS, BERNARD MCINTYRE,)
RALPH RAY KEARNS, JR., CHERYL)
LYNN J. KEARNS, GUY SIDNEY)
RICHARDSON, LINDA SUE)
RICHARDSON, DIANNA HUSTON,)

COMPLAINT
(NON-JURY)

2014 JUN 11 PM 3:56
CLERK OF COURT
JULIE LYNN BROUILLETTE

DANIEL R. MORGAN, MICHELLE J.)
MORGAN, LARRY G. MERRIFIELD,)
EILEEN MERRIFIELD, JAMES FARMER)
CATHERINE B. FARMER, BRENDA)
O'SHIELDS, WARREN J. DISBROW,)
JOHN F. DYKEMAN, CAROL W.)
DYKEMAN, EVERETT R. LENNEX,)
ROSITA C. LENNEX, RAUL DENISE)
DOMINGUEZ, PAULA CHRISTINE)
WRIGHT, SHIRLEY A. SNYDER,)
BENJAMIN J. KILEY, JAMES F. BAUER,)
REVOCABLE TRUST, BENJAMIN KOLB)
WILLIAM MARK FRY, ELIZABETH)
ANN FRY, MARKA. COOK, ROSE M.)
COOK AND SHAKY POND, LLC,)
Defendants.)

The Plaintiff would respectfully show unto this Honorable Court as follows:

1. This is an action to rescind the termination of Restrictive Covenants for real property located in Beaufort County, South Carolina.
2. This Court has jurisdiction of this matter and venue properly lies in the Beaufort County Court of Common Pleas.
3. This action is filed pursuant to the South Carolina Declaratory Judgments Act for the purpose of declaring the validity or invalidity of a document entitled "Agreement to Terminate Covenants" which was recorded on April 16, 2014 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3315 at Page 1529.
4. Oakmont Subdivision is a subdivision of real property located in Beaufort County, South Carolina.
5. The Plaintiff and each of the Defendants are the owners of a parcel or lot of real property located within Oakmont Subdivision.

6. Each of the individuals or entities named herein as Defendants solely because he, she, or it is the owner of a lot in Oakmont Subdivision and accordingly may have an interest in the outcome of this declaratory judgment action. The Plaintiff is not seeking any affirmative relief against any of the named Defendants. Simply by naming any particular individual or entity as a Defendant, the Plaintiff is not implying or asserting that said Defendant engaged in any improper or wrongful conduct. To the contrary, since each Defendant owns property affected by the "Agreement to Terminate Covenants" which is sought to be rescinded in this lawsuit, each Defendant has been made a party so that if he, she or it wishes, said Defendant may either join in or oppose the requested relief, or simply take no action and leave it up to the Court to decide if the subject document should be rescinded.

7. Covenants and Lot Restrictions for Oakmont Subdivision were duly recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 14, 1978 in Record Book 259 at Page 2000. A true and accurate copy of these Covenants and Lot Restrictions is attached hereto as Exhibit A.

8. The Covenants and Lot Restrictions for Oakmont Subdivision were amended pursuant to a document recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on May 12, 1978 in Record Book 263 at Page 923. A true and accurate copy of this amendment is attached hereto as Exhibit B.

9. A document entitled "Assignment of Interest" regarding the aforesaid Covenants and Lot Restrictions were recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 8, 1980 in Record Book 227 at Page 799. A true and accurate copy of this Assignment of Interest is attached hereto as Exhibit C.

10. The aforesaid Covenants and Lot Restrictions for Oakmont Subdivision provide in pertinent part as follows:

19. All covenants and restrictions contained in this declaration shall run with the land and shall be binding on all parties and persons until January 1, 1985; after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same.

11. On April 16, 2014 a document entitled "Agreement to Terminate Covenants" was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 3315 at Page 1529. A true and accurate copy of this document is attached hereto as Exhibit D.

FOR A FIRST CAUSE OF ACTION
(IMPROPER EXECUTION)

12. The document entitled "Agreement to Terminate Covenants" was improperly executed and recorded for a number of reasons, to-wit:

a. On page 13 of this document a witness swore in front of a notary public on April 1, 2014 that the witness saw certain specifically listed individuals sign the Agreement to Terminate Covenants, such as, for example, Brenda S. O'Shields, James C. Farmer and Kathryn B. Farmer, yet is apparent but from page 9 of the Agreement to Terminate Covenants that these individuals did not sign until April 9, 2014;

b. The signatures of some signatories to the Agreement to Terminate Covenants, such as, for example, Maria Outeiral, are not notarized;

c. The Agreement to Terminate Covenants is executed by some individuals, such as, for example, Cesar Garcia and Kim D. Garcia, who are no longer owners of property in Oakmont Subdivision;

d. Upon information and belief, page 13 of the Agreement to Terminate Covenants was tampered with after having been signed and notarized by adding names to the list of lot owners.

13. As a direct and proximate result of the foregoing defects the Agreement to Terminate Covenants is fatally defective and should not have been recorded.

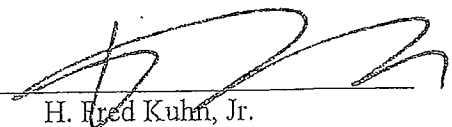
FOR A SECOND CAUSE OF ACTION
(FRAUD IN THE INDUCEMENT)

14. Upon information and belief, several of the signatories to the Agreement to Terminate Covenants were fraudulently induced and/or coerced into executing the agreement by falsely informing them that if the covenants were not terminated, i.e., if the covenants were retained or were only modified, then a home owners association would have to be created and that this would require monthly and/or annual fees and expenses which would have to be paid by each lot owner.

15. The aforesaid representation, which was false in material, was made to the lot owners who executed the Agreement to Terminate Covenants for the purpose of intimidating or coercing them into to executing the Agreement to Terminate Covenants, by representing to them that they would have to start paying assessments or fees to a homeowners association unless the covenants were terminated.

WHEREFORE, the Plaintiff prays that the Court inquire into the matters set forth herein and declare that the Agreement to Terminate Covenants is null and void, *ab initio*, together with such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1501 North Street (29902)
Post Office Drawer 507
Beaufort, South Carolina 29901-0507
843-524-3373
843-524-1302 – facsimile

Beaufort, South Carolina
June 10, 2014

Attorneys for the Plaintiff

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COVENANTS AND LOT RESTRICTIONS

OAKMONT SUBDIVISION

WHEREAS, ERVIN H. BERRY, does hereby publish, set forth and declare the following protective covenants and restrictions, to-wit:

1. Property subject to these restrictions shall be used for dwelling houses only, and no commercial enterprises shall be conducted thereon.

2. No building shall be located on said property nearer than fifteen (15') feet to any rear line, nor nearer than ten (10') feet from any side line. The location for buildings shall be submitted to Ervin H. Berry, his heirs or assigns for approval, and approval or rejection must be given to the owner within thirty (30) days. The location of buildings shall be in keeping with the best interest of aesthetic values and Ervin H. Berry, his heirs or assigns shall be the final authority as to location upon the lots.

3. No more than one (1) dwelling house may be erected on each lot.

4. Ervin H. Berry, has established a Plans Approval Board for the purpose of examining and passing upon all proposed plans for any structure or structures whatsoever and any additions thereto and remodelings thereof intended to be placed upon its lands. The approval of this Board shall be required on the designs of all residential buildings, club buildings, multiple-occupancy dwellings, fences, signs or any other structure of structures however large or small which may be placed upon the property subject to those restrictions. No construction of any structure whatsoever may be commenced until the Board has issued its approval thereof. If construction has not commenced within ninety (90) days of date of the Board's approval notifications, the plans shall be resubmitted to the Board for full consideration, as if it were a new application. The total enclosed space exclusive of screen porches and garages for residence shall be 1,100 square feet minimum.

5. All lots shall be used for single family residential purposes only. Any detached structures shall be constructed only upon the specific written approval of the Plans Approval Board and in no case shall be constructed prior to the construction of the main building on the residential lot.

6. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment or discomfort or annoyance or a nuisance to the neighborhood. There shall not be maintained any plant, device, animal or any other thing whose normal activity or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood.

7. The said Ervin H. Berry reserves unto himself, his heirs or assigns alienable and releaseable easements and rights on, over and under the ground to erect, maintain, and use utility and drainage service and equipment in and over the ten (10') feet of land adjacent to each side of each property line of such property sold subject to these restrictions.

EXHIBIT A

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COVENANTS AND LOT RESTRICTIONS

OAKMONT SUBDIVISION

8. No sign shall be erected on any lot except with the written permission of the Plans Approval Board.

9. Ervin H. Berry retains the right to cut bushes, shrubs, trees, and make gradings of soil or cut drainways for surface water whenever and wherever such action is necessary to provide economical and safe installation of utilities and drainage systems and to maintain reasonable standards of health, safety and appearance.

10. Temporary structures may be placed upon the lots during construction of buildings thereon with the written consent of the Board provided, however, that said temporary structures shall be removed prior to the occupancy of the residence on said lot. Said temporary structures shall at no time be used for living quarters. No house trailer except for construction trailers shall be permitted on the property at any time.

11. Each residential lot shall include parking space for at least one (1) automobile.

12. No live trees measuring six (6") inches or more in diameter at a height of four and one-half (4-1/2) feet above ground level may be removed without the approval of the Board.

13. No lot shall be subdivided nor its boundary line changed except with the written consent of the Board. However, Ervin H. Berry hereby expressly reserves to himself, his heirs and assigns, the right to replat any two or more lots shown on the plat of this property so as to create a new building plot or building plots. When such a building plot is created, the restrictions and covenants herein apply to a part of the new lot shall apply to the entire new plot, the work lot as used herein shall be construed to mean building plot.

14. If an owner of property within Oakmont Subdivision should receive an offer to purchase his property, it shall be offered for sale to Ervin H. Berry, his heirs or assigns, at the same price and terms at which the highest bonafide offer has been made for the property and with full disclosure of the intended purchases; and the said Ervin H. Berry shall have ten (10) days within which to exercise his option to purchase said property at this price; and should he fail to refuse, within ten days after receipt of written notice of the price and upon the offered terms, then the owners of said property shall have the right to sell said property subject, however, to all covenants and conditions and restrictions at the price and terms submitted to Ervin H. Berry.

15. Boats, boat trailers, campers or like over-the-road non-motorized equipment may not be stored on the lot unless in the garage, carport or at the rear of the house so as not to be visible from any roadway.

16. All lots shall be kept free of underbrush, weeds, or other unsightly vegetation and in the event that the owner of any lot permits any underbrush, weeds, or other unsightly vegetation to grow upon any lot to a height of two feet or more Ervin H. Berry may enter upon said land to remove the same at the expense of the owner, provided, however, that such expense shall not exceed \$50.00 annually. Ervin H. Berry may likewise enter upon said land to remove the trash which has collected on said lots without such entrance for such purpose being deemed a trespass, all at the expense of the owner, provided, however, that such expense shall not exceed \$60.00 annually. The provisions shall not be construed as an obligation on the part of the said Ervin H. Berry to provide garbage or trash removal service.

000058

COVENANTS AND LOT RESTRICTIONS

OAKMONT SUBDIVISION

2002

17. No wells for the purpose of obtaining water may be drilled on any lot without the express written consent of Ervin H. Berry.

18. All recreation, open-space land or designated "buffer-space" land qualifying as open space under the Beaufort Joint Planning Commission guidelines, shall be maintained by the said Ervin H. Berry, his heirs or assigns, until such times the control of the developments restrictive covenants and deed restrictions are granted to a homeowner's association of property owners, Beaufort County, or such designee as may be approved by the Beaufort Joint Planning Commission.

19. All covenants and restrictions contained in this declaration shall run with the land and shall be binding on all parties and persons until January 1, 1985; after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same.

20. In the event of a violation or a breach of any of these restrictions or covenants to any property owner, or agent, of such owner, the owners of lots in the neighborhood or the property or any of them jointly or severally or Ervin H. Berry shall have the right to proceed at law or in equity to compel a compliance of the terms and conditions hereof and to prevent the violation or breach of said restrictions or protective covenants upon land subject to such restrictions. In addition to the foregoing, Ervin H. Berry shall have the right whenever there shall have been built on any lot subject to these restrictions, any structure which is in violation of these restrictions, to enter upon the said property when such violation exists and summarily remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not be deemed a trespass. The failure of Ervin H. Berry to enforce any right, reservation, restrictions or conditions contained in this instrument however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to breach occurring prior or subsequent thereto and shall not bar nor affect its enforcement. These restrictions incorporate all existing state and federal laws where applicable; and the invalidation by any court of any restriction in this instrument contained, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

21. Ervin H. Berry, his successors or assigns, may include in any contract or deed hereinafter made or entered into, such modification and/or additions to these protective covenants and restrictions, any additional covenants and restrictions which will not, in the opinion of the Board, lower the standards of the property.

IN WITNESS WHEREOF, ERVIN H. Berry has hereunto set his Hand and Seal this the 17th day of January, 1978.

SIGNED, SEALED & DELIVERED
IN THE PRESENCE OF:

Pamela P. Stockham
Pamela P. Stockham

Ervin H. Berry
ERVIN H. BERRY

000059

2003

THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

PERSONALLY appeared before me Julian S. Levin,
and made oath that he saw the within named ERVIN H. BERRY,
sign, seal, and as his act and deed, deliver the within written
Covenants and Lot Restrictions, and that he with Pamela P.
Stockham witnessed the execution thereof.

SWORN to before me, this 17th
day of January, A.D. 1978.

Pamela P. Stockham

Julian S. Levin
Notary Public of South Carolina
My Commission Expires: 1/9/81

265

FILED	BEAUFORT	RECORDED
11:30	14 1978	IN BOOK 259 PAGE 2000
A. H. [Signature] CLERK OF COURT OF BEAUFORT COUNTY		

000060

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

923

AMENDMENT TO
RESTRICTIVE COVENANTS
OAKMONT SUBDIVISION

WHEREAS, by instrument dated January 17, 1978, and recorded on February 14, 1978 in Book 259 of Deeds, at Page 2000, I imposed certain Restrictive Covenants in Oakmont Subdivision, and

WHEREAS, I now desire to amend Paragraph 4 of such Restrictive Covenants and to delete entirely Paragraph 14, now therefore,

I hereby declare that Paragraph 4 of such Restrictive Covenants is amended to provide as follows:

4. Ervin H. Berry, has established a Plans Approval Board for the purpose of examining and passing upon all proposed plans for any structure of structures whatsoever and any additions thereto and remodeling thereof intended to be placed upon its lands. The approval of this Board shall be required on the designs of all residential buildings, club buildings, multiple-occupancy dwellings, fences, signs or any other structure of structures however large or small which may be placed upon the property subject to those restrictions. No construction of any structure whatsoever may be commenced until the Board has issued its approval thereof. If construction has not commenced within ninety (90) days of date of the Board's approval notifications, the plans shall be resubmitted to the Board for full consideration, as if it were a new application. The total enclosed space exclusive of screen porches and garages for residence shall be 1,350 square feet minimum.

I further amend such Restrictive Covenants to provide that Paragraph 14 is deleted therefrom.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 11th day of May, 1978.

Ervin H. Berry
ERVIN H. BERRY

SIGNED, SEALED & DELIVERED
IN THE PRESENCE OF:

Pamela P. Stockham

Lucian O. Lewis

EXHIBIT B

000061

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

924

PERSONALLY appeared before me Pamela P. Stockham
and made oath that s/he saw the within named ERVIN H. BERRY,
sign, seal, and as his act and deed, deliver the within written
Amendment to Restrictive Covenants of Oakmont Subdivision, and
that s/he with Julian S. Levin witnessed the execution
thereof.

Pamela P. Stockham

SWORN TO before me this

11th day of May, 1978.

Julian S. Levin
Notary Public for South Carolina
My Commission Expires: 1-8-81

FILED	BEAUFORT	RECORDED
AT	COUNTY	IN
10:00	S. C.	BOOK
CLOCK	MAY 12 1978	PAGE
A. M.		923
Marian H. Fender, Jr. CLERK OF COURT OF COMMON PLEAS		

000062

11/17/14
yoc

BEAUFORT COUNTY SC - ROD
BK 3315 Pgs 1529-1539
FILE NUM 2014017449
04/16/2014 02:27:17 PM
REC'D BY rwebb RCPT# 740344
RECORDING FEES \$17.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AGREEMENT TO
TERMINATE COVENANTS

WHEREAS, certain Covenants and Lot Restrictions were imposed upon property known as Oakmont Subdivision, located in Beaufort County, South Carolina, as shown on that certain plat recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Plat Book 26 at Page 206, said Covenants being recorded in the Beaufort County Records in Deed Book 259 at Page 2000, as amended in Deed Book 263 at Page 923, as assigned in Deed Book 227 at Page 799, those Covenants running with the land; and

WHEREAS, said Covenants were to run with the land until January 1, 1985, after which time they were to be automatically extended for successive periods of five (5) years; and

WHEREAS, said Covenants provided for the ability to change or terminate the covenants by recording an instrument signed by a majority of the then property owners within Oakmont Subdivision; and

WHEREAS, the undersigned, being a majority of the current property owners within Oakmont Subdivision, desire to terminate those Covenants;

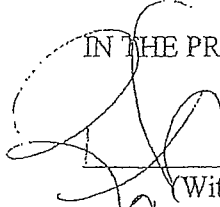
NOW THEREFORE, as set forth in the Covenants and Lot Restrictions of Oakmont Subdivision, the undersigned, being a majority of the current property owners within Oakmont Subdivision, do hereby agree that the Covenants referenced above (as amended and assigned) be and are hereby terminated.

[Handwritten signatures and initials]
D.H. Emmon MEX JB THB JAW
RRB BMM MMB LS RRB
Page 1 of 13 ARE CUL RAB
CAS SGT CETH RB YOW HAW JR
EXHIBIT C
000063
Book 2245 / Page 1529 GEN# 2014017449

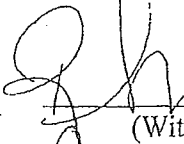
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29 day of March, 2014.

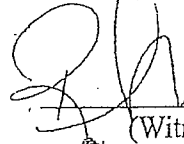
IN THE PRESENCE OF:


(Witness #1)

Cynthia E. Jaramin
(Witness #2)


(Witness #1)

Cynthia E. Jaramin
(Witness #2)


(Witness #1)

Cynthia E. Jaramin
(Witness #2)


(Witness #1)

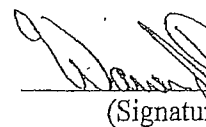
Cynthia E. Jaramin
(Witness #2)


(Witness #1)

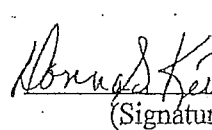
Cynthia E. Jaramin
(Witness #2)

Evelyn Dickson Emerson Dickson
(Signature of Owner)

EVELYN DICKSON EMERSON DICKSON
(Printed Name and Lot Number)


(Signature of Owner)

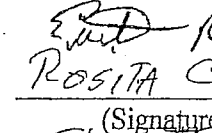
Lisa L. Disbrow Lot 38
(Printed Name and Lot Number)


(Signature of Owner)

Donna Keeton Lot 9
(Printed Name and Lot Number)

G.W. Taylor
(Signature of Owner)

GARY W. TAYLOR Lot # 19
(Printed Name and Lot Number)


(Signature of Owner)

EVERETT R. LENNOX
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29 day of March, 2014.

IN THE PRESENCE OF:

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Signature of Owner)

Willie J. Davis Smith Drains (18)
(Printed Name and Lot Number)

James F. Davis Kathleen V. Bauer
(Signature of Owner) Kathleen Bauer
JAMES F. BAUER 45
(Printed Name and Lot Number)

Paula Christine Wright (Brown) 42
(Signature of Owner)

Paula Christine Wright (Brown) 42
(Printed Name and Lot Number)

Cheryl Kearns Ralph R. Kearns
(Signature of Owner)

Cheryl Kearns Ralph Ray Kearns, Jr
(Printed Name and Lot Number) Lot #31

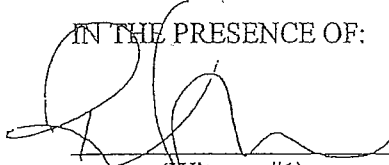
Jose Gomez [Signature]
(Signature of Owner)

Jose & Linda Gomez #13
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

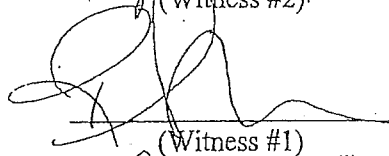
IN THE PRESENCE OF:


(Witness #1)

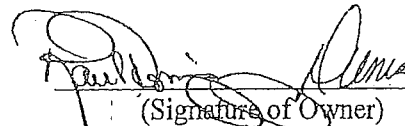
Cynthia J. Jaramin
(Witness #2)

Catherine A. Smith (Davis)
(Signature of Owner)

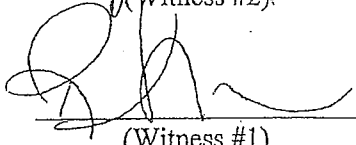
Catherine A. Smith (Davis) #5
(Printed Name and Lot Number)


(Witness #1)

Cynthia J. Jaramin
(Witness #2)

 Denise L. Dominguez #41
(Signature of Owner)

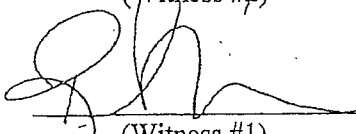
Raul Dominguez DENISE L. Dominguez
(Printed Name and Lot Number)


(Witness #1)

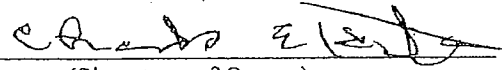
Cynthia J. Jaramin
(Witness #2)

Sharon J. Horton
(Signature of Owner)

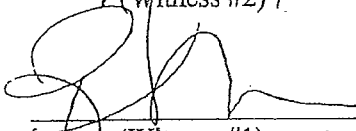
SHARON J. HORTON #15
(Printed Name and Lot Number)


(Witness #1)

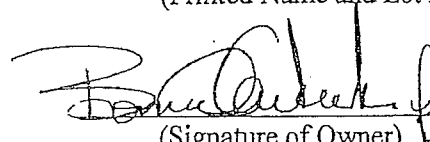
Cynthia J. Jaramin
(Witness #2)


(Signature of Owner)

SHARON J. HORTON #15
(Printed Name and Lot Number)


(Witness #1)

Cynthia J. Jaramin
(Witness #2)

 In Estate of #27
(Signature of Owner) Richard Galgano

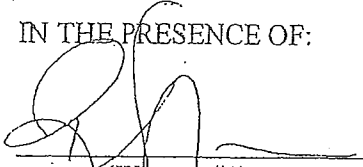
Bonnie Grabenbauer for Estate
(Printed Name and Lot Number)

Richard Galgano

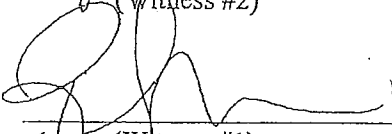
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

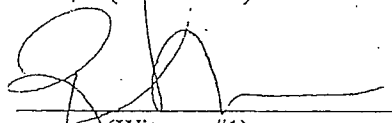
IN THE PRESENCE OF:


(Witness #1)

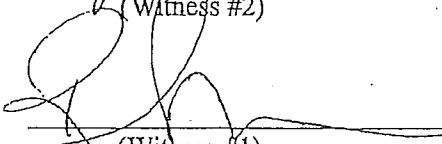
Cynthia J. Jaramin
(Witness #2)


(Witness #1)

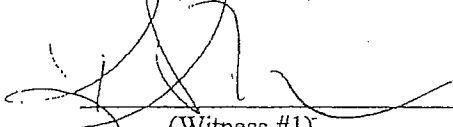
Cynthia J. Jaramin
(Witness #2)


(Witness #1)

Cynthia J. Jaramin
(Witness #2)


(Witness #1)

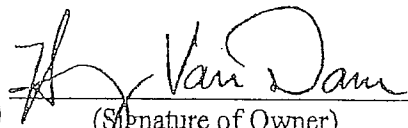
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(Witness #2)


(Witness #1)

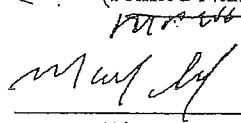
Cynthia Jaramin
(Witness #2)

Theresa D. Van Dam Lot #20
(Signature of Owner)

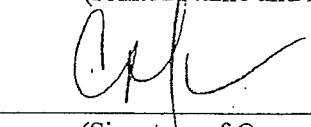
Theresa D. Van Dam
(Printed Name and Lot Number)


(Signature of Owner)

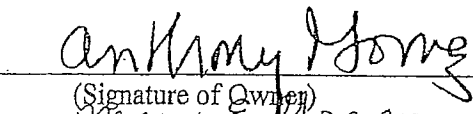
Henry Van Dam Lot #20
(Printed Name and Lot Number)

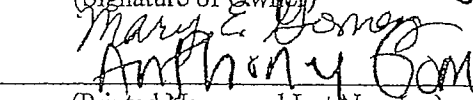
 Rose M. Cook
(Signature of Owner) Coxed 48

MARKACOOK ROSE M. COOK Lot 48
(Printed Name and Lot Number)

 Lot 39
(Signature of Owner)

Carol Dykeman
(Printed Name and Lot Number)

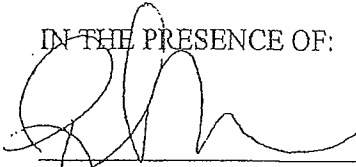

(Signature of Owner)

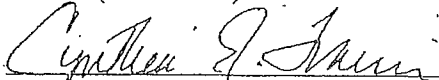

(Printed Name and Lot Number) Anthony Gomez Lot 6
Mary E. Gomez

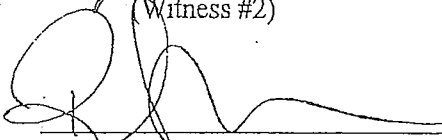
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

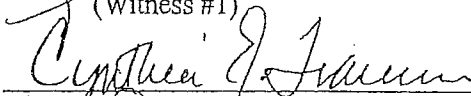
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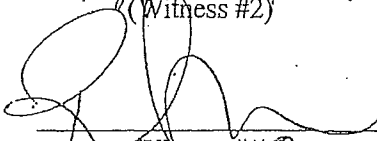
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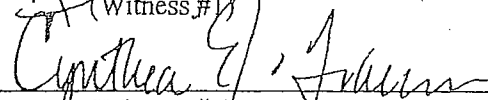

(Witness #1)


(Witness #2)


(Witness #1)


(Witness #2)


(Witness #1)

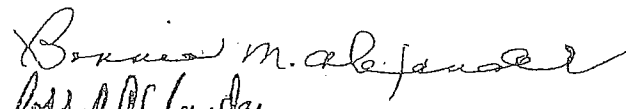

(Witness #2)

(Witness #1)

(Witness #2)

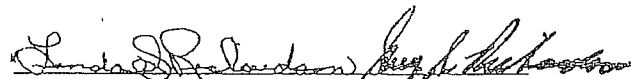
(Witness #1)

(Witness #2)


(Signature of Owner)

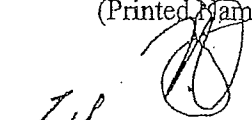
ROBB R ALEXANDER
(Printed Name and Lot Number)

#3


(Signature of Owner)

Linda S. Richardson GVS 5. Richardson
(Printed Name and Lot Number)

Lot #32


(Signature of Owner)

Maria Catedral
(Printed Name and Lot Number)

Lot #4

(Signature of Owner)

(Printed Name and Lot Number)

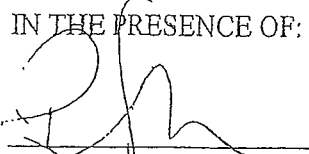
(Signature of Owner)

(Printed Name and Lot Number)

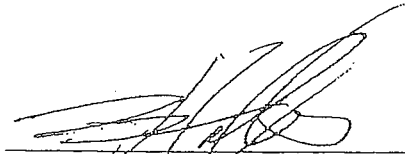
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

1st day of April, 2014.

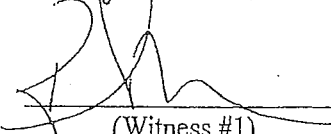
IN THE PRESENCE OF:


(Witness #1)

Cynthia Trauman
(Witness #2)


(Signature of Owner)

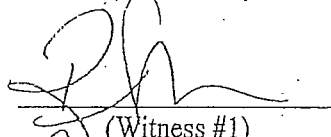
HUTCHINGS TRAVIS J. LOT 7
(Printed Name and Lot Number)


(Witness #1)

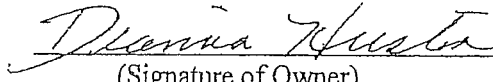
Cynthia Trauman
(Witness #2)


(Signature of Owner)

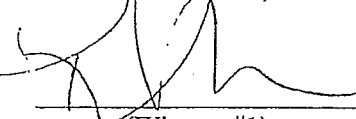
Amy Hutchings Lot 7
(Printed Name and Lot Number)


(Witness #1)

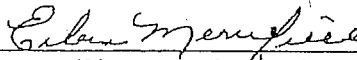
Cynthia Trauman
(Witness #2)


(Signature of Owner)

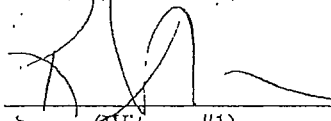
DIANNA HUSTON lot 33
(Printed Name and Lot Number)


(Witness #1)

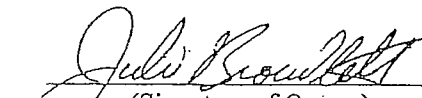
Cynthia Trauman
(Witness #2)


(Signature of Owner)

Eileen Merrifield #35
(Printed Name and Lot Number)


(Witness #1)

Cynthia J. Trauman
(Witness #2)

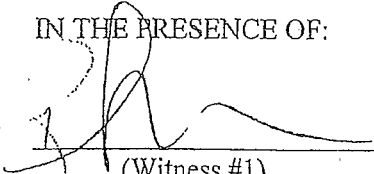

(Signature of Owner)

Julie Brouillette #2
(Printed Name and Lot Number)

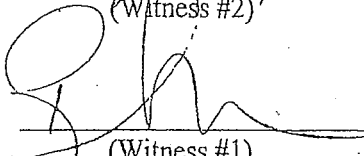
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

1st day of April, 2014.

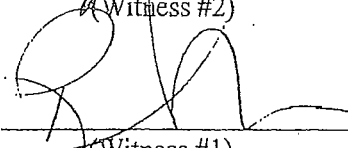
IN THE PRESENCE OF:


(Witness #1)

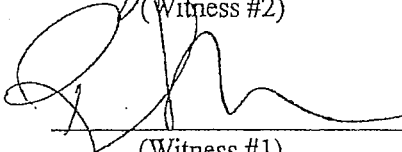
Cynthia J. Traumm
(Witness #2)


(Witness #1)

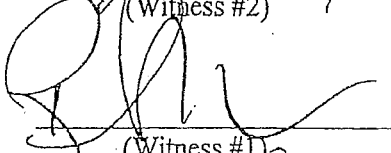
Cynthia J. Traumm
(Witness #2)


(Witness #1)

Cynthia J. Traumm
(Witness #2)


(Witness #1)

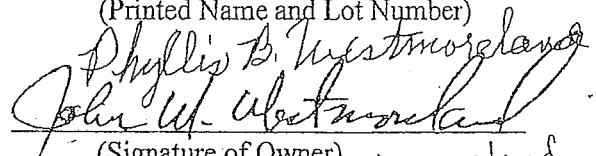
Cynthia J. Traumm
(Witness #2)


(Witness #1)

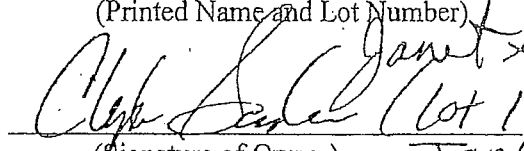
Cynthia J. Traumm
(Witness #2)

Tom D. Brouillette
(Signature of Owner)

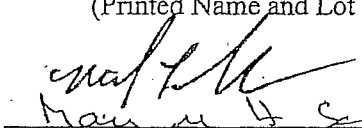
Tim D. Brouillette 2
(Printed Name and Lot Number)


(Signature of Owner)

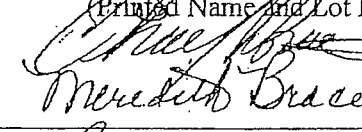
Phyllis B. Westmoreland
John W. Westmoreland (21)
(Printed Name and Lot Number)


(Signature of Owner)

Janet Sanders
Clyde Sanders (1)
(Printed Name and Lot Number)


(Signature of Owner)

Michael L. Sapp
Margaret H. Sapp
(Printed Name and Lot Number)


(Signature of Owner)

Meredith Brace
Charles S. V. Brace #14
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

9th day of April, 2014.

IN THE PRESENCE OF:

[Signature]
(Witness #1)

Cynthia J. Iman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Iman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Iman
(Witness #2)

(Witness #1)

(Witness #2)

(Witness #1)

(Witness #2)

Brenda J. Shields 37
(Signature of Owner)

Brenda S. Shields
(Printed Name and Lot Number)

[Signature]
(Signature of Owner) 36

Catherine B. Farmer
(Printed Name and Lot Number)

[Signature]
(Signature of Owner) #21

KIM D. SANCIA
CESAR SANCIA
(Printed Name and Lot Number)

(Signature of Owner)

(Printed Name and Lot Number)

(Signature of Owner)

(Printed Name and Lot Number)

000071

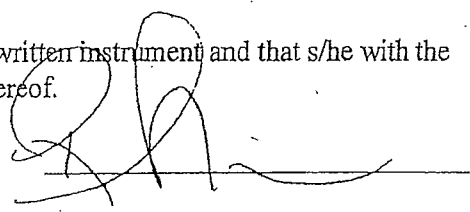
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the first witness named above and made oath that s/he saw the within

named Emerson & Evelyn Dickson	Catherine Ann Smith (Davis)
Warren Disbrow	Raul S. Dominguez
Lisa Disbrow	Sharon J. Horton
Albert Lee Keeton	Charles E. Horton
Donna Westfall Keeton	Bonnie H. Grabenbauer
Gary W. Taylor	Theresa Dee Van Dam
Rosita C. Lenny	Henry J. VanDam
Everett R. Lenny	Mark A. Cook
Willie J. Drains, III	Rose Mary Cook
Samatha Drains	Carol W. Dykeman
James F. Bauer	Anthony R. Gomez, III
Kathleen V. Bauer	Robb R. Alexander
Paula Wright Brown	Bonnie M. Alexander
Cheryl C. Kearns	Linda S. Richardson
Ralph R. Kearns, Jr.	Florian E. Davadi
Jose Gomez Lino	Denise Dominguez
Linda J. Gomez	Mary Gomez

sign, seal and as their act and deed, deliver the within written instrument and that s/he with the other witness named above witnessed the execution thereof.



Sworn to before me this 29
day of March, 2014.
Cynthia J. Smith (SEAL)
Notary Public for South Carolina
My Commission Expires: May 21, 2017

Page 13 of 13

12

et

000072

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the first witness named above and made oath that s/he saw the within

named Travis Hutchings, Phyllis R. Westmoreland
Amy J. Hutchings Cesar A. Garcia
Dianna D. Huston Kira D. Garcia
Eileen Merrifield
Julie L. Brouillette
Timothy D. Brouillatte
John W. Westmoreland, Jr.
Janet S. Sanders
Clyde A. Sanders
Guy S. Richardson
Marjorie H. Sapp
Michael L. Sapp
Meredith R. Brace
Brenda S. Shields
Charles S. Brace
Catherine Farmer
James C. Farmer

sign, seal and as their act and deed, deliver the within written instrument and that s/he with the other witness named above witnessed the execution thereof.

Sworn to before me this 1st
day of April 2014.

Catherine J. Farmer (SEAL)
Notary Public for South Carolina

My Commission Expires: May 21, 2017

13
Page 12 of 13

cef

000073

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

)
)
)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-07-1402

THOMAS J. O'BRIEN,
Plaintiff,

)
)
)
)

v.

ANSWER

HENRY JAMES VAN DAM, ET. AL.,
Defendant.

)
)
)
)

The Defendant above named, Bernard McIntyre, hereby answers the Complaint for Declaratory Relief as follows:

I

That each and every allegation contained in the Complaint not hereinafter specifically admitted is denied.

II

That Defendant admits the allegations contained in Paragraphs 1, 2, 3, and 4 of the Complaint..

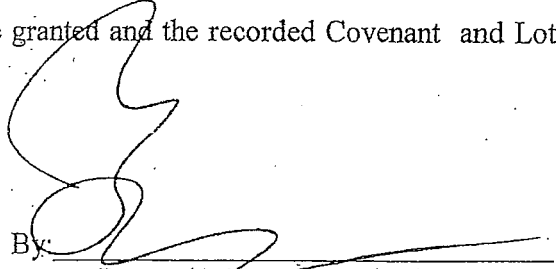
III

That Defendant is without sufficient information to form a belief as to the truth or falsity of the allegations contained in Paragraphs 4, 5, 6, 7 , 8, 9, 10, 11, 12, 13, 14 and 15 of the Complaint, and therefore defers to the Court in hearing and assessing the evidence in determining Plaintiff's entitlement to declaratory judgment relief. Further, specifically addressing the allegations in the aforesaid paragraphs, Defendant further says that there were Covenant and Lot Restrictions for Oakmont Subdivision recorded in the Beaufort County

000074

Register of Deeds (ROD) on February 14, 1978, in Book 259 at Page 2000 and subsequently amended with the Amendment recorded on May 12, 1978 in Book 263 at page 923. These are existing Covenant and Lot Restrictions and said Covenant and Lot Restrictions are valid and should be enforced throughout the Subdivision.

WHEREFORE, Defendant having fully Answered the Complaint herein, Defendant prays that he relief prayed for in the Complaint be granted and the recorded Covenant and Lot Restrictions be enforced.

By: 

Bernard McIntyre, Defendant

1606 King Street/P.O. Box 248
Beaufort, SC 29901-0248
Ph 843/524-9040
Fax 843/524-7152

Beaufort, South Carolina

Dated: June 24, 2014

000075

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

THOMAS J. O'BRIEN,)

Plaintiff,)

HENRY JAMES VAN DAM, THERESA)

D. VAN DAM, CLYDE A. SANDERS,)

JANET S. SANDERS, TIMOTHY D.)

BROUILLETTE, JULIE LYNN)

BROUILLETTE, ROBB R. ALEXANDER,)

BONNIE M. ALEXANDER, FLORIA)

DAVADI, MARIE OUTEIRAL,)

CATHERINE A. DAVIS, ANTHONY R.)

GOMEZ, III, MARY E. GOMEZ, TRAVIS)

HUTCHINGS, AMY J. HUTCHINGS,)

BRUCK K. PARKER, SR., MARY E.)

PARKER, ALBERT L. KEETON, DONNA)

S. KEETON, GREG BRANTLEY,)

KENISHA D. BRANTLEY, EMERSON G.)

DICKSON, EVELYN DICKSON,)

WILLIAM H. WALKER, JR., DEBORAH)

L. WALKER, LINDA J. GOMEZ,)

CHARLES J. BRACE, MEREDITH N.)

BRACE, CHARLES E. HORTON,)

SHARON J. HORTON, EDWARD)

CANALES, CAROLINE M. CANALES,)

MICHAEL L. SAPP, MARJORIE H. SAPP,)

WILLIE J. DRAINS, SYMATHA DRAINS,)

GARY W. TAYLOR, JOHN W.)

WESTMORELAND, PHYLLIS)

WESTMORELAND, MIDWEST)

CONCEPTS CORPORATION, BARRY L.)

REESE, GREGORY C. POOK, JUDITH A.)

ATHEY, RICHARD A. GALGANO,)

RAYMOND F. MATHIS, MAXINE L.)

MATHIS, BERNARD MCINTYRE,)

RALPH PAY KEARNS, GUY SIDNEY)

RICHARDSON, LINDA SUE)

RICHARDSON, DIANNA HUSTON,)

DANIEL R. MORGAN, MICHELLE J.)

MORGAN, LARRY G. MERRIFIELD,)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
C.A. No. 2014-CP-07-1402

DEFENDANT WARREN J. DISBROW'S
ANSWER TO PLAINTIFF'S COMPLAINT

2014 JUL -7 PM 3:39

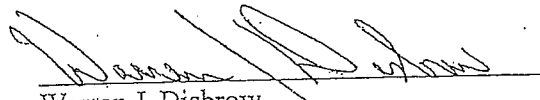
000076

EILEEN MERRIFIELD, JAMES FARMER,)
CATHERINE FARMER, BRENDA)
O'SHIELDS, WARREN J. DISBROW,)
JOHN F. DYKEMAN, CAROL W.)
DYKEMAN, EVERETT R. LENNEX,)
ROSITA C. LENNEX, RAUL DENISE)
DOMINGUEZ, PAULA CHRISTINE)
WRIGHT, SHIRLEY A. SNYDER,)
BENJAMIN J. KILEY, JAMES F.)
BAUER, REVOCABLE TRUST,)
BENJAMIN KOLB, WILLIAM MARK)
FRY, ELIZABETH ANN FRY, MARK A.)
COOK, ROSE M. COOK, AND SHAKY)
POND, LLC,)
Defendants.)

Defendant, Warren J. Disbrow, answering the Complaint of the Plaintiff herein, would respectfully show unto this Honorable Court as follow.

1. This Defendant lacks sufficient knowledge and information upon which to form a belief as to the allegations contained in Paragraphs 1-6, therefore those allegations are denied and strict proof is demanded.
2. This Defendant admits, upon information and belief, to the allegations contained in Paragraphs 7-11.
3. This Defendant denies the allegations contained in Paragraphs 8-15 and strict proof is demanded.

WHEREFORE, having fully answer, Defendant, Warren J. Disbrow, prays that the Complaint be dismissed.


Warren J. Disbrow
684 Royal Drive
Beaufort, SC 29906
(843) 521-1175

July 3, 2014
Beaufort, South Carolina

000077

July 8, 2014

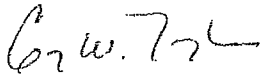
RE: Thomas J. O'Brien v. Henry James Van Dam, Gary W. Taylor, et al.
Case No: 2014-CP-07-01402

To whom it may concern:

Please accept this notice as my answer to the case number above.

I am and have been the owner of Lot 19, 6805 Oakmont Drive within the Oakmont subdivision, Beaufort, SC, since June of 2006. It is my desire to have the covenants of this subdivision terminated. On March 29, 2014, I did sign my name to the document entitled "Agreement to Terminate Covenants".

Sincerely,



Gary W. Taylor
6805 Oakmont Drive
Beaufort, SC 29906
843-263-0252

2014 JUL -9 AM 9:36
CLERK OF COURT
BEAUFORT COUNTY, S.C.

000078

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THOMAS J. O'BRIEN

Plaintiff,

vs.

HENRY JAMES VAN DAM, THERESA D. VAN DAM,
CLYDE A SANDERS, JANET S. SANDERS,
TIMOTHY D. BROUILLETTE, JULIE LYNN
BROUILLETTE, ROBB R. ALEXANDER, BONNIE M.
ALEXANDER, FLORIA DAVADI, MARIE
OUTEIRAL, CATHERINE A. DAVIS, ANTHONY R.
GOMEZ, III, MARY E. GOMEZ, TRAVIS
HUTCHINGS, AMY J. HUTCHINGS, BRUCK K.
PARKER, SR., MARY E. PARKER, ALBERT L.
KEETON, DONNA S. KEETON, GREG BRANTLEY,
KENISHA D. BRANTLEY, EMERSON G. DICKSON,
EVELYN DICKSON, WILLIAM H. WALKER, JR.,
DEBORAH L. WALKER, LINDA J. GOMEZ,
CHARLES J. BRACE, MEREDITH N. BRACE,
CHARLES E. HORTON, SHARON J. HORTON,
EDWARD CANALES, CAROLINE M. CANALES,
MICHAEL L. SAPP, MARJORIE H. SAPP, WILLIE J.
DRAINS, SYMATHA DRAINS, GARY W. TAYLOR,
JOHN W. WESTMORELAND, PHYLLIS
WESTMORELAND, MIDWEST CONCEPTS
CORPORATION, BARRY L. REESE, GREGORY C.
POOK, JUDITH A. ATHEY, RICHARD A. GALGANO,
RAYMOND F. MATHIS, MAXINE L. MATHIS,
BERNARD MCINTYRE, RALPH PAY KEARNS, GUY
SIDNEY RICHARDSON, LINDA SUE RICHARDSON,
DIANNA HUSTON, DANIEL R. MORGAN,
MICHELLE J. MORGAN, LARRY G. MERRIFIELD,
EILEEN MERRIFIELD, JAMES FARMER,
CATHERINE FARMER, BRENDA O'SHIELDS,
WARREN J. DISBROW, JOHN F. DYKEMAN,
CAROL W. DYKEMAN, EVERETT R. LENNEX,

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

C.A. NO. 214-CP-07-1402

DEFENDANT PAULA CHRISTINE WRIGHT
ANSWER TO PLAINTIFF'S COMPLAINT

000079

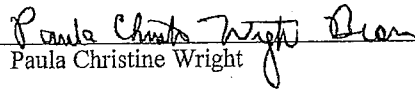
ROSITA C. LENNEX, RAUL DENISE DOMINGUEZ,
PAULA CHRISTINE WRIGHT, SHIRLEY A SNYDER,
BENJAMIN J. KILEY, JAMES F. BAUER,
REVOCABLE TRUST, BENJAMIN KOLB, WILLIAM
MARK FRY, ELIZABETH ANN FRY, MARK A.
COOK, ROSE M. COOK, AND SHAKY POND, LLC.

Defendants

Defendant, Paula Christine Wright, answering the Complaint of the Plaintiff herein, would respectfully show unto this Honorable Court as follow.

1. This Defendant lacks sufficient knowledge and information upon which to form a belief as to the allegations contained in Paragraphs 1-6, therefore those allegations are denied and strict proof is demanded.
2. This Defendant admits, upon information and belief, to the allegations contained in Paragraphs 7-11.
3. This Defendant denies the allegations contained in Paragraphs 12-15 and strict proof is demanded.

WHEREFORE, having fully answer, Defendant, Paula Christine Wright, prays that the Complaint be dismissed.


Paula Christine Wright
6807 Elderberry Drive
Beaufort, SC 29906
(843) 441-9312

July 8, 2014
Beaufort, South Carolina

000080

ANSWER

For A First Cause of Action

(Improper Execution)

12. a.b.c.d.

We are without knowledge or information sufficient to form a belief as to the truth of this.

For A Second Cause of Action

(Fraud in the Inducement)

13.

We are without knowledge or information sufficient to form a belief as to the truth of this.

14.

We are without knowledge or information sufficient to form a belief as to the truth of this.

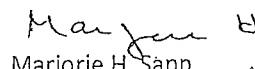
15.

We are without knowledge or information sufficient to form a belief as to the truth of this.


Michael L. Sapp

694 Paige Drive

Burton, S.C. 29906


Marjorie H. Sapp

694 Paige Drive

Burton, S.C. 29906

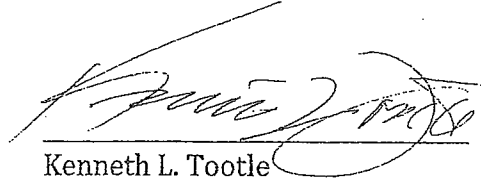
2014 JUL 22 PM 2:30
CLERK OF COURT
BURTON COUNTY, S.C.

000081

a. Even if the allegation of Paragraph 12(a) is technically correct, which is specifically denied, the same is merely a scrivener's error.

b. Even if the allegations of Paragraph 12(a), 12(b) and 12(c) are technically correct, which is specifically denied, the remaining signatures contained on the Agreement To Terminate Covenants constitute a majority of the then property owners as contemplated by Paragraph 19 of the Covenants and Lot Restrictions for Oakmont Subdivision.

WHEREFORE, having Answered the Complaint brought by the Plaintiff, these Defendants pray that the same be dismissed.



Kenneth L. Tootle
Attorney for the Named Defendants
P. O. Box 1321
Beaufort, South Carolina 29901
(843) 524-0424

Beaufort, South Carolina
September 9, 2014.

Carol W. Dykeman
6813 Elderberry Dr
Beaufort, SC 29906

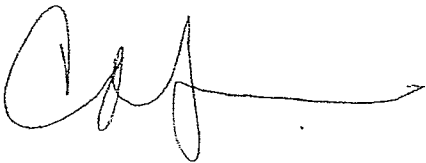
July 19, 2014

Fred Kuhn, Jr
1501 North St
PO Drawer 507
Beaufort, SC 29901

Reply to Civil Action 01402

I did not feel coerced nor misguided in signing the document in question.

Upon signing, my signature was compared with my driver's license by the witness.

A handwritten signature in black ink, appearing to be 'Carol W. Dykeman', with a long horizontal stroke extending to the right.

Carol W. Dykeman

000084

**Answer to the Complaint in
The Court of Common Pleas**

**State of South Carolina
County of Beaufort**

Thomas J. O'Brien (Plaintiff)

Vs..

Henry James Van Dam, Et AL. (Defendants)

2014-CP-07-01402

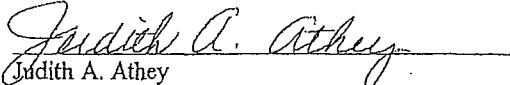
First Cause of Action (Improper Execution)

I hereby certify that I never signed my name nor had it notarized on the document, "Agreement to Terminate Covenants". Therefore, I was not involved in any Improper Execution of the document.

Second Cause of Action (Fraud in the Inducement)

Since I did not sign the agreement and did not agree with the document, I was not fraudulently induced and/or coerced into executing the agreement.

Respectfully Submitted this 21st day of June 2014.


Judith A. Athey
Owner of 6815 Oakmont Drive
Beaufort, SC 29906

000085

Answer to the Complaint in
The Court of Common Pleas

State of South Carolina
County of Beaufort

Thomas J. O'Brien (Plaintiff)

Vs.

Henry James Van Dam, Et AL. (Defendants)

2014-CP-07-01402

First Cause of Action (Improper Execution)

I hereby certify that I never signed my name nor had it notarized on the document, "Agreement to Terminate Covenants". Therefore, I was not involved in any Improper Execution of the document.

Second Cause of Action (Fraud in the Inducement)

Since I did not sign the agreement and did not agree with the document, I was not fraudulently induced and/or coerced into executing the agreement.

Respectfully Submitted this 21st day of June 2014.

7-21-14

Raymond F Mathis Maxine L Mathis
Raymond F + Maxine L MATHIS
Owners of 6821 + 6819 OAKMONT Dr
Beaufort, SC 29906

000086

Barry L. Reese

Gregory C. Pook

6811 Oakmont Drive

Beaufort, SC 29906

June 30, 2014

H. Fred Kuhn, Jr., Esquire

1501 North Street

Post Office Drawer 507

Beaufort, SC 29901

Dear Sir,

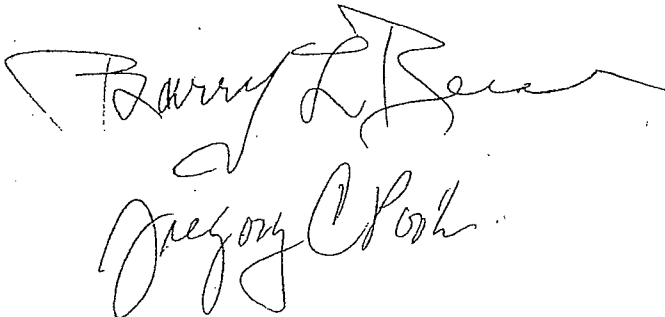
This letter is in reference to the Civil Action, 2014-CP-01402, served on us by you on behalf of Mr. Thomas J. Obrien.

Since neither one of us signed any of the disputed documents listed in the Complaint, nor were we a party to any of the disputed actions and we are in favor of keeping the Covenants of the Oakmont Sub-Division, we respectfully request that both our names be removed as Defendants in this action.

Sincerely,

Barry L. Reese

Gregory C. Pook

Handwritten signatures of Barry L. Reese and Gregory C. Pook. The signature of Barry L. Reese is written above the signature of Gregory C. Pook.

000087

Answer to the Complaint in
The Court of Common Pleas

State of South Carolina
County of Beaufort

Thomas J. O'Brien (Plaintiff)

Vs.

Henry James Van Dam, Et AL. (Defendants)

2014-CP-07-01402

First Cause of Action (Improper Execution)

I hereby certify that I never signed my name nor had it notarized on the document, "Agreement to Terminate Covenants". Therefore, I was not involved in any Improper Execution of the document.

Second Cause of Action (Fraud in the Inducement)

Since I did not sign the agreement and did not agree with the document, I was not fraudulently induced and/or coerced into executing the agreement.

Respectfully Submitted this 21st day of June 2014.

Raymond J. Matt

SHARK Pond LLC

6821 OAKMONT Dr

Beaufort, SC 29906

000088

11/17/14
goc



BEAUFORT COUNTY SC - ROD
BK 3315 Pgs 1529-1539
FILE NUM 2014017449
04/16/2014 02:27:17 PM
REC'D BY rwebb RCPT# 740344
RECORDING FEES \$17.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AGREEMENT TO
TERMINATE COVENANTS

WHEREAS, certain Covenants and Lot Restrictions were imposed upon property known as Oakmont Subdivision, located in Beaufort County, South Carolina, as shown on that certain plat recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Plat Book 26 at Page 206, said Covenants being recorded in the Beaufort County Records in Deed Book 259 at Page 2000, as amended in Deed Book 263 at Page 923, as assigned in Deed Book 227 at Page 799, those Covenants running with the land; and

WHEREAS, said Covenants were to run with the land until January 1, 1985, after which time they were to be automatically extended for successive periods of five (5) years; and

WHEREAS, said Covenants provided for the ability to change or terminate the covenants by recording an instrument signed by a majority of the then property owners within Oakmont Subdivision; and

WHEREAS, the undersigned, being a majority of the current property owners within Oakmont Subdivision, desire to terminate those Covenants;

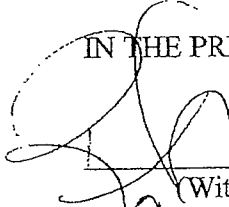
NOW THEREFORE, as set forth in the Covenants and Lot Restrictions of Oakmont Subdivision, the undersigned, being a majority of the current property owners within Oakmont Subdivision, do hereby agree that the Covenants referenced above (as amended and assigned) be and are hereby terminated

[Handwritten signatures and initials]
D.H. Zmm MEX JB TB Jw
BMM MNB Ls DDD ARE
CAS SGH CCH RB TOD JAW
ED EGD LD(22) OK AK St kel RBY WID BCD JB HB CKP

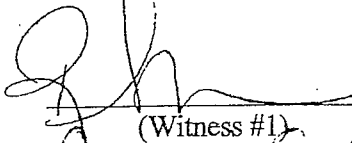
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29 day of March, 2014.

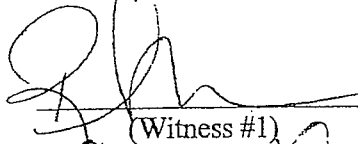
IN THE PRESENCE OF:


(Witness #1)

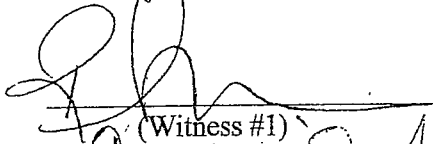
Cynthia E. Jaramun
(Witness #2)


(Witness #1)

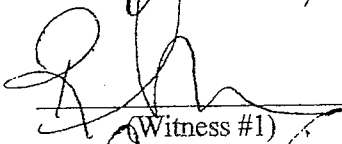
Cynthia E. Jaramun
(Witness #2)


(Witness #1)

Cynthia E. Jaramun
(Witness #2)


(Witness #1)

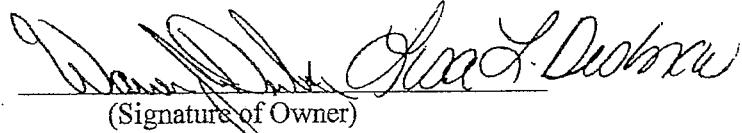
Cynthia E. Jaramun
(Witness #2)


(Witness #1)

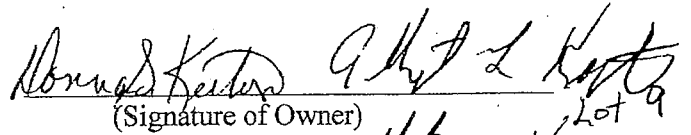
Cynthia E. Jaramun
(Witness #2)

Everlyn Dickson Emerson Dickson
(Signature of Owner)

EVERLYN DICKSON EMERSON DICKSON
(Printed Name and Lot Number)


(Signature of Owner)

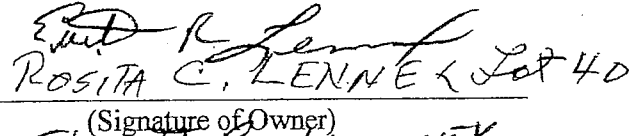
Lisa L. Disbrow
(Printed Name and Lot Number)


(Signature of Owner)

Donna Keeton
(Printed Name and Lot Number)

G.W. Taylor
(Signature of Owner)

GARY W. TAYLOR
(Printed Name and Lot Number)


(Signature of Owner)

EVERETT R. LENNOX
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29 day of March, 2014.

IN THE PRESENCE OF:

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Trueman
(Witness #2)

[Signature]
(Signature of Owner)

William J. Drains Smith Drains 18
(Printed Name and Lot Number)

James F. Bauer Kathleen V. Bauer
(Signature of Owner) Kathleen Bauer

JAMES F. BAUER 45
(Printed Name and Lot Number)

Paula Christine Wright (Brown) 42
(Signature of Owner)

Paula Christine Wright (Brown) 42
(Printed Name and Lot Number)

Cheryl Kearns Ralph R. Kearns
(Signature of Owner)

Cheryl Kearns Ralph Ray Kearns, Jr Lot #31
(Printed Name and Lot Number)

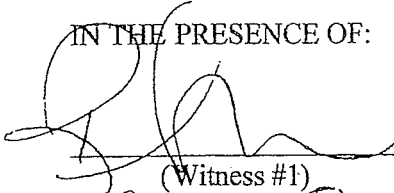
Jose Gomez / Linda Gomez
(Signature of Owner)

Jose & Linda Gomez #13
(Printed Name and Lot Number)

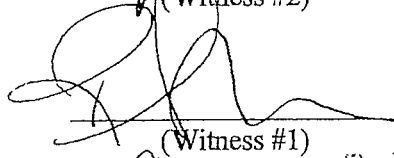
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

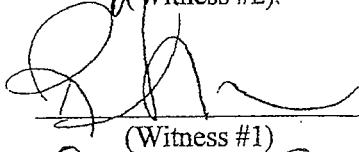
IN THE PRESENCE OF:


(Witness #1)

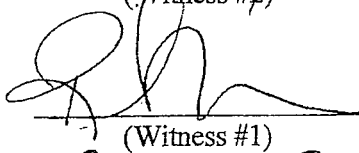
Cynthia J. Tramm
(Witness #2)


(Witness #1)

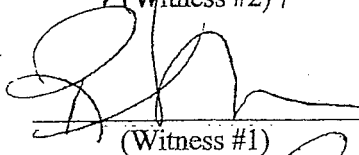
Cynthia J. Tramm
(Witness #2)


(Witness #1)

Cynthia J. Tramm
(Witness #2)


(Witness #1)

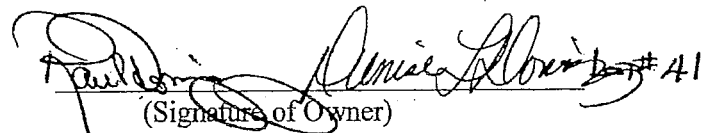
Cynthia J. Tramm
(Witness #2)


(Witness #1)

Cynthia J. Tramm
(Witness #2)

Catherine A. Smith (Davis)
(Signature of Owner)

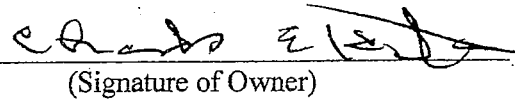
Catherine A. Smith (Davis) #5
(Printed Name and Lot Number)


(Signature of Owner)

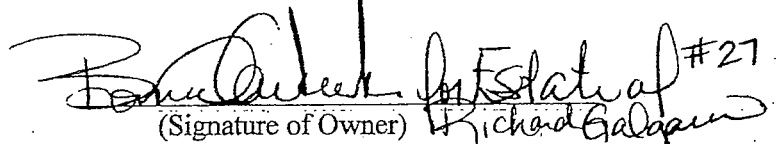
Raul Dominguez DENISE L. Dominguez
(Printed Name and Lot Number)

Sharon J. Horton
(Signature of Owner)

SHARON J. HORTON #15
(Printed Name and Lot Number)


(Signature of Owner)

SHARON J. HORTON #15
(Printed Name and Lot Number)


(Signature of Owner)

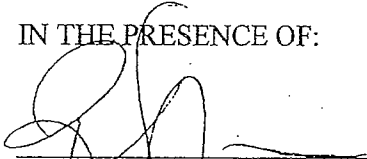
Bonnie Grabenbauer for Estate
(Printed Name and Lot Number)

Richard Galgano

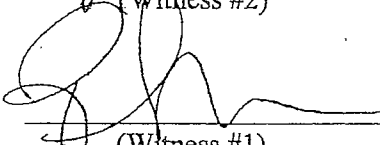
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

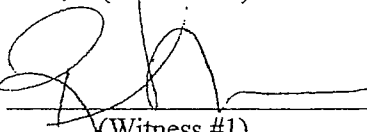
IN THE PRESENCE OF:


(Witness #1)

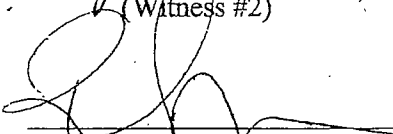
Cynthia J. Jauman
(Witness #2)


(Witness #1)

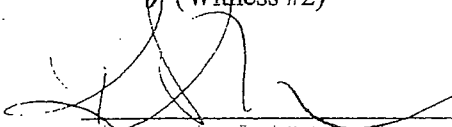
Cynthia J. Jauman
(Witness #2)


(Witness #1)

Cynthia J. Jauman
(Witness #2)


(Witness #1)

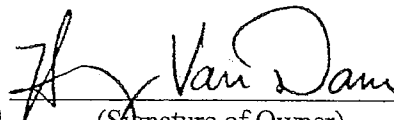
Cynthia J. Jauman
(Witness #2)


(Witness #1)

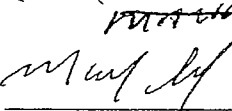
Cynthia Jauman
(Witness #2)

Theresa D. Van Dam Lot #20
(Signature of Owner)

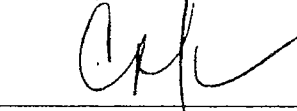
Theresa D. Van Dam
(Printed Name and Lot Number)


(Signature of Owner)

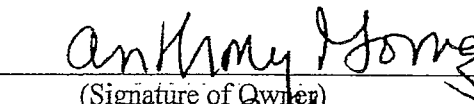
Henry Van Dam Lot #20
(Printed Name and Lot Number)

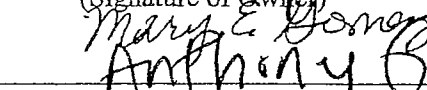
 Rose M. Cook
(Signature of Owner)

MARKA Cook Rose M. Cook Lot 48
(Printed Name and Lot Number)

 Lot 39
(Signature of Owner)

Carol Dykeman
(Printed Name and Lot Number)

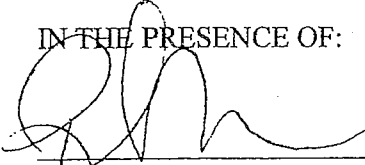

(Signature of Owner)

 Anthony Gomez Lot 6
(Printed Name and Lot Number)
Mary E. Gomez

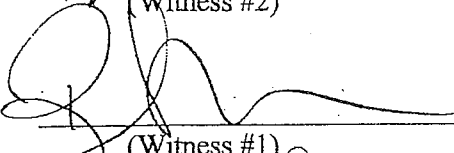
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

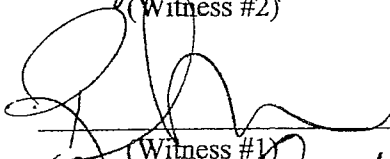
IN THE PRESENCE OF:


(Witness #1)

Cynthia G. Jarami
(Witness #2)


(Witness #1)

Cynthia G. Jarami
(Witness #2)


(Witness #1)

Cynthia G. Jarami
(Witness #2)

(Witness #1)

(Witness #2)

(Witness #1)

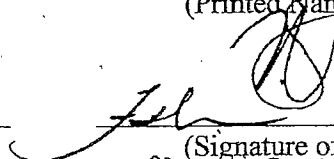
(Witness #2)

Bonnie M. Alexander
(Signature of Owner)

BONNIE M. ALEXANDER
(Printed Name and Lot Number) #3

Linda S. Richardson
(Signature of Owner)

Linda S. Richardson 6045. Richmond
(Printed Name and Lot Number) Lot #32


(Signature of Owner)

Maria C. Davidi
(Printed Name and Lot Number) Lot #4

(Signature of Owner)

(Printed Name and Lot Number)

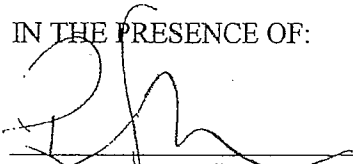
(Signature of Owner)

(Printed Name and Lot Number)

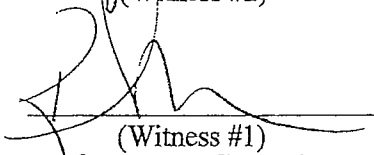
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

1st day of April, 2014.

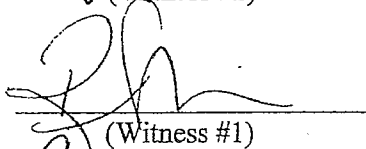
IN THE PRESENCE OF:


(Witness #1)

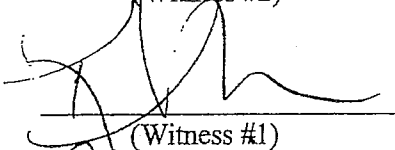
Cynthia Trauern
(Witness #2)


(Witness #1)

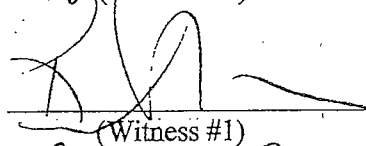
Cynthia Trauern
(Witness #2)


(Witness #1)

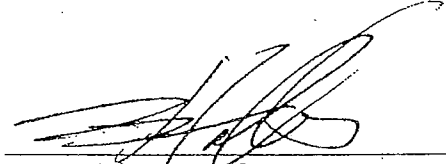
Cynthia Trauern
(Witness #2)


(Witness #1)

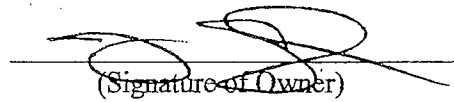
Cynthia Trauern
(Witness #2)


(Witness #1)

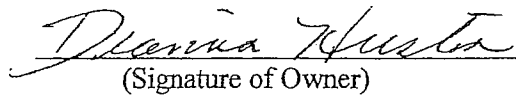
Cynthia J. Trauern
(Witness #2)


(Signature of Owner)

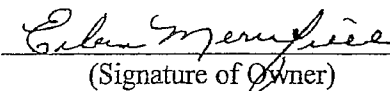
HUTCHINGS TRAVIS J. LOT 7
(Printed Name and Lot Number)


(Signature of Owner)

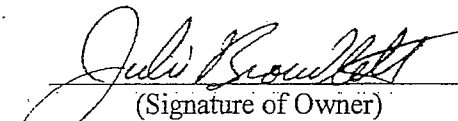
Amy Hutchings Lot 7
(Printed Name and Lot Number)


(Signature of Owner)

DIANNA HUSTON lot 33
(Printed Name and Lot Number)


(Signature of Owner)

Eileen Merrifield #35
(Printed Name and Lot Number)

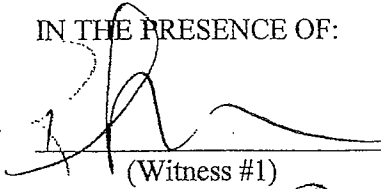

(Signature of Owner)

Julie Brault #2
(Printed Name and Lot Number)

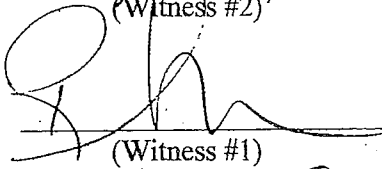
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

1st day of April, 2014.

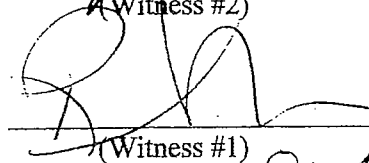
IN THE PRESENCE OF:


(Witness #1)

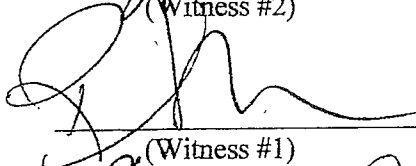
Cynthia J. Traumm
(Witness #2)


(Witness #1)

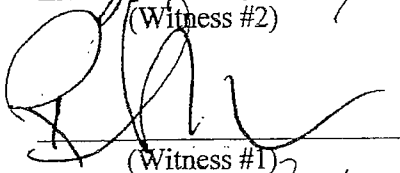
Cynthia J. Traumm
(Witness #2)


(Witness #1)

Cynthia J. Traumm
(Witness #2)


(Witness #1)

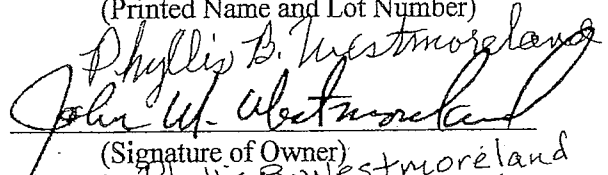
Cynthia J. Traumm
(Witness #2)


(Witness #1)

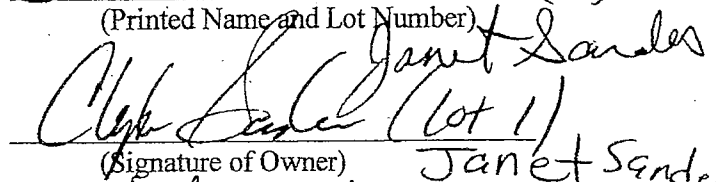
Cynthia J. Traumm
(Witness #2)

Tom D. Brouillette
(Signature of Owner)

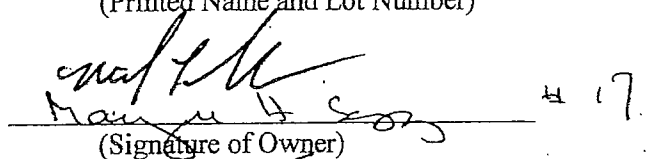
Tim D. Brouillette 2
(Printed Name and Lot Number)


(Signature of Owner)

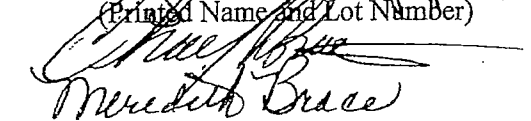
Phyllis B. Westmoreland
John W. Westmoreland
(Printed Name and Lot Number)


(Signature of Owner)

Clyde Sanders (1)
(Printed Name and Lot Number)


(Signature of Owner)

Michael L. Sapp
(Printed Name and Lot Number)


(Signature of Owner)

Meredith Brace
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

9th day of April, 2014.

IN THE PRESENCE OF:

[Signature]
(Witness #1)

Cynthia J. Tramm
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Tramm
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Tramm
(Witness #2)

(Witness #1)

(Witness #2)

(Witness #1)

(Witness #2)

Brenda P O'Shields 37
(Signature of Owner)

Brenda S O'Shields
(Printed Name and Lot Number)

[Signature]
Catherine B. Farmer 36
(Signature of Owner)

James C. Farmer
Catherine B. Farmer
(Printed Name and Lot Number)

[Signature] #21
(Signature of Owner)

KIM D. SARCIA
CESAR SARCIA
(Printed Name and Lot Number)

(Signature of Owner)

(Printed Name and Lot Number)

(Signature of Owner)

(Printed Name and Lot Number)

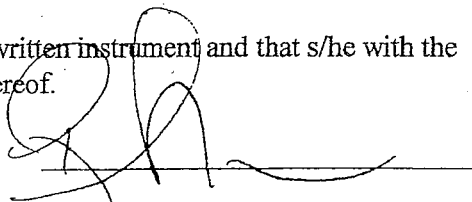
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the first witness named above and made oath that s/he saw the within

named <u>Emerson & Evelyn Dickson</u>	<u>Catherine Ann Smith (Davis)</u>
<u>Warren Disbrow</u>	<u>Raul S. Dominguez</u>
<u>Lisa Disbrow</u>	<u>Sharon J. Horton</u>
<u>Albert Lee Keeton</u>	<u>Charles E. Horton</u>
<u>Donna Westfall Keeton</u>	<u>Bonnie H. Grabenbauer</u>
<u>Gary W. Taylor</u>	<u>Theresa Dee Van Dam</u>
<u>Rosita C. Lennex</u>	<u>Henry J. Van Dam</u>
<u>Everett R. Lennex</u>	<u>Mark A. Cook</u>
<u>Willie J. Drains, III</u>	<u>Rose Mary Cook</u>
<u>Symatha Drains</u>	<u>Carol W. Dykeman</u>
<u>James F. Bauer</u>	<u>Anthony R. Gomez, III</u>
<u>Kathleen V. Bauer</u>	<u>Robb R. Alexander</u>
<u>Paula Wright Brown</u>	<u>Bonnie M. Alexander</u>
<u>Cherry C. Kearns</u>	<u>Linda S. Richardson</u>
<u>Ralph R. Kearns, Jr.</u>	<u>Florian E. Davadi</u>
<u>Jose Gomez Lino</u>	<u>Denise Dominguez</u>
<u>Linda J. Gomez</u>	<u>Mary Gomez</u>

sign, seal and as their act and deed, deliver the within written instrument and that s/he with the other witness named above witnessed the execution thereof.



Sworn to before me this 29
day of March, 2014.
Cynthia J. Smith (SEAL)
Notary Public for South Carolina
My Commission Expires: May 21, 2017

Page 13 of 13

12

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000098

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the first witness named above and made oath that s/he saw the within

named Travis Hutchings, Phyllis R. Westmoreland
Amy J. Hutchings Cesar A. Garcia
Dianna D. Huston Kim D. Garcia
Eileen Merrifield
Julie L. Brouillette
Timothy D. Brouillette
John W. Westmoreland, Jr.
Janet S. Sanders
Clyde A. Sanders
Guy S. Richardson
Marjorie H. Sapp
Michael L. Sapp
Meredith R. Brace
Brenda S. Shields
Charles S. Brace
Catherine Farmer
James C. Farmer

sign, seal and as their act and deed, deliver the within written instrument and that s/he with the other witness named above witnessed the execution thereof.

Sworn to before me this 1st
day of April, 2014.

Cynthia J. Jaramila
Notary Public for South Carolina

My Commission Expires: May 21, 2017

13
Page 13 of 13

cef

000099

State of South Carolina) Court of Common Pleas
) 14th Judicial Circuit
 County of Beaufort) No.: 2014-CP-07-01402

Thomas J. O'Brien,

Plaintiff,

vs.

HEARING

August 4, 2015

Henry James Van Dam, Theresa D.)
 Van Dam, Clyde A. Sanders, Janet)
 S. Sanders, Timothy D.)
 Brouillette, Julie Lynn)
 Brouillette, Robb R. Alexander,)
 Bonnie M. Alexander, Florian)
 Davadi, Maria Outeiral,)
 Catherine A. Davis, Anthony R.)
 Gomez, III, Mary E. Gomez,)
 Travis Hutchings, Amy J.)
 Hutchings, Bruck K. Parker, Sr.,)
 Mary E. Parker, Albert L.)
 Keeton, Donna S. Keeton, Greg)
 Brantley, Kenisha D. Brantley,)
 Emerson G. Dickson, Evelyn)
 Dickson, William H. Walker, Jr.,)
 Deborah L. Walker, Linda J.)
 Gomez, Charles J. Brace,)
 Meredith N. Brace, Charles E.)
 Horton, Sharon J. Horton, Edward)
 Canales, Caroline M. Canales,)
 Michael L. Sapp, Marjorie, H.)
 Sapp, Willie J. Drains, Symatha)
 Drains, Gary W. Taylor, John W.)
 Westmoreland, Phyllis)
 Westmoreland, Midwest Concepts)
 Corporation, Barry L. Reese,)
 Gregory C. Pook, Judith A.)
 Athey, Richard A. Galgano,)
 Raymond F. Mathis, Maxine L.)
 Mathis, Bernard McIntyre, Ralph)
 Ray Kearns, Jr., Cheryl Lynn J.)
 Kearns, Guy Sidney Richardson,)
 Linda Sue Richardson, Dianna)
 Huston, Daniel R. Morgan,)
 Michelle J. Morgan, Larry G.)
 Merrifield, Eileen Merrifield,)
 James Farmer, Catherine B.)

COPY

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1 Farmer, Brenda O'Shields, Warren)
 J. Disbrow, John F. Dykeman,)
 2 Carol W. Dykeman, Everett R.)
 Lennex, Rosita C. Lennex, Raul)
 3 Denise Dominguez, Paula)
 Christine Wright, Shirley A.)
 4 Snyder, Benjamin J. Kiley, James)
 F. Bauer, Revocable Trust,)
 5 Benjamin Kolb, William Mark Fry,)
 Elizabeth Ann Fry, Mark A. Cook,)
 6 Rose M. Cook, and Shaky Pond,)
 LLC,)
 7)
 Defendants.)
 8)
 9

10
 11 Hearing reported by Deborah S. Thomas,
 Certified Verbatim Reporter and Notary Public in and
 12 for the State of South Carolina; said hearing held
 before the Honorable Marvin H. Dukes, III, Beaufort
 13 County Master in Equity and Special Circuit Court
 Judge in accordance with the South Carolina Rules of
 14 Civil Procedure, at the Beaufort County Courthouse,
 102 Ribaut Road, Room 212, Beaufort, South Carolina,
 on August 4, 2015, at the hour of 9:16 a.m.
 15

16
 17 THOMAS REPORTING SERVICES
 156 Argent Way
 Bluffton, South Carolina 29909
 18 (803) 206-7390
 19
 20
 21
 22
 23
 24
 25

000101

Appearances

Representing the Plaintiff:

J. FRED KUHN, JR., ESQUIRE
Moss, Kuhn & Fleming, PA
P.O. Drawer 507
Beaufort, South Carolina 29901
fred@mossandkuhn.com

Representing Defendants Ralph Ray Kearns, Jr., and
Cheryl Lynn J. Kearns:

KENNETH L. TOOTLE, ESQUIRE
Attorney at Law
P.O. Box 1321
Beaufort, South Carolina 29901
kentootle@hargray.com

Representing Defendant Bernard McIntyre:

BERNARD MCINTYRE, ESQUIRE (Pro Se)
Bernard McIntyre Law Office
P.O. Box 248
Beaufort, South Carolina 29901-0248
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000102

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25 000103

1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 (PREMARKED PLAINTIFF'S EXHIBIT
4 NUMBERS 1 THROUGH 7.)

5 JUDGE DUKES: Good morning. We're
6 are here in Case 14-CP-07-1402. This is O'Brien
7 versus Van Dam and others. This matter comes before
8 me pursuant to an order of reference heretofore
9 filed June 3rd, 2015. Today is the final hearing.
10 This is August 4th. It is now 9:20 a.m. I believe
11 the case was scheduled for 9:00.

12 And Mr. Kuhn represents the Plaintiff.
13 Mr. Tootle, do you represent all of the defendants
14 other than Mr. McIntyre or what Defendants do you
15 represent?

16 MR. TOOTLE: Your Honor, I represent
17 specifically Ray and Cheryl Kearns and any of the
18 other named defendants that want me to represent
19 them. Now, upholding the interests of one is
20 upholding the interests of all of them, basically.

21 JUDGE DUKES: All right. And Mr.
22 McIntyre, you are here pro se?

23 MR. MCINTYRE: I am, Your Honor.

24 JUDGE DUKES: Okay. All right.

25 MR. MCINTYRE: And I filed an answer,

1 Your Honor, (inaudible) answer would be my position.

2 JUDGE DUKES: All right. Thank you,
3 sir. But there are unrepresented -- we heard,
4 obviously, Mr. Tootle represents one party. The
5 interests may be similar. Are there any individuals
6 here who are named defendants who are here to
7 represent themselves? If so, make yourselves known?

8 All right. Yes, sir.. Can you stand up
9 and state your name?

10 MR. REESE: Sorry, sir. Barry Reese.
11 6811 Oakmont Drive. I'm not so sure what is going
12 on. I know I'm named in the suit, but I don't know
13 whether it's in my best interests to represent
14 myself or what to be quite honest.

15 JUDGE DUKES: Let me, yeah. Well, I
16 don't know if we have time to let everyone talk for
17 a moment, but that might save some time. I can't
18 tell you if it's in your best interests to represent
19 yourself or not or which side you ought to be on. I
20 have no idea, but I'm glad you are here. So let me
21 ask this lady in the back, ma'am, what is your name?

22 MS. DAWSON: My name is Lucretia
23 Dawson, and I'm here with my husband Amos Dawson.
24 And we do not have an attorney. We are trying to
25 find one.

000105

1 JUDGE DUKES: Okay. The question
2 really is this looks like this has to do with a
3 covenant restriction dispute; is that right?
4 Whether or not these will continue on. My
5 understanding of the Plaintiff's position is that
6 the covenants and restrictions should remain. And
7 the Defendants' position is that they have expired
8 both by time and by a document that take care of
9 doing away with them. Is that essentially where we
10 are with this case?

11 MR. KUHN: Yes, Your Honor.

12 JUDGE DUKES: So depending on which
13 side of that dispute you are on depends on which of
14 these two sides -- I don't think there is a third
15 position.

16 MR. REESE: I'm in favor of keeping
17 the covenants.

18 JUDGE DUKES: All right. Well, then
19 you are probably sitting on the correct side of the
20 courtroom then, not that it really matters, but I
21 guess -- how many other people fall into the same
22 category as these two, not represented and not sure
23 where you want to be on this? Are there others or
24 is everyone else pretty sure of where they want to
25 be?

000106

1 Let me ask you, Ms. Dawson did you say?

2 MS. DAWSON: Yes.

3 JUDGE DUKES: Ms. Dawson, do you have
4 an opinion you wanted to share as to where you fall
5 in this dispute?

6 MS. DAWSON: I hope I'm in the right
7 place. I'm here because we were charged with not
8 paying our covenant fees. And there are a lot of
9 legal things. So I might be --

10 MR. KUHN: Ms. Dawson is not a named
11 party in the suit, Your Honor.

12 JUDGE DUKES: Oh, Ms. Dawson, you
13 might not be in the right courtroom.

14 MS. DAWSON: Is this Dukes -- the
15 Honorable Dukes?

16 JUDGE DUKES: Yes, I'm Marvin Dukes,
17 but the case that we -- what time was your case?

18 MS. DAWSON: 10:00 o'clock.

19 JUDGE DUKES: I'm not sure what we
20 have at 10:00 o'clock, but I tell you what, ma'am, I
21 think you are in the wrong place, but maybe the
22 right judge. Do you have a notice of hearing?

23 MS. DAWSON: Yes, sir, I do.

24 JUDGE DUKES: Why don't we go off the
25 record for a second and maybe I can see Ms. Dawson's

1 notice of hearing because I'm not sure I have
2 anything scheduled for 10:00 o'clock.

3 (Discussion off the record.)

4 JUDGE DUKES: All right. And so,
5 Mr. Reese, did you want to take just a minute and
6 based on your conversation and speak with Mr. Kuhn
7 or Mr. Kuhn do you have any interest in speaking
8 with Mr. Reese? Mr. Reese is the one that is in
9 favor of maintaining the covenants.

10 MR. KUHN: I believe there are others
11 similarly situated, Your Honor, so --

12 JUDGE DUKES: Okay. I just didn't
13 know, Mr. Reese, whether you wanted to be heard
14 individually or whether or not your interests
15 aligned with Mr. Kuhn, if you wanted -- excuse me.
16 With Mr. O'Brien, the Plaintiff.

17 MR. REESE: Unless you need to know
18 my reasons for wanting them.

19 JUDGE DUKES: I don't really need to
20 know anything unless someone wants to tell me.
21 So -- but if you feel that your -- my question is
22 this, as an independent unrepresented party you
23 would have the right to cross examine witnesses and
24 produce your own -- I don't know whether you are
25 involved or what the situation is, but if you didn't

1 need to do that, that would be fine. If you wanted
2 to do that, that would be fine as well.

3 MR. REESE: No, I have no desire to.

4 JUDGE DUKES: All right. Let's do
5 this then, Mr. Kuhn, I'm happy to hear a brief
6 opening and happy to hear from Mr. Tootle and then
7 Mr. Reese and Mr. McIntyre, whoever wants to give a
8 response.

9 MR. KUHN: If it please, the court,
10 Your Honor, Fred Kuhn appearing on behalf of the
11 Plaintiff, Thomas O'Brien. As Your Honor stated,
12 this is an action to rescind a document that
13 purports to terminate all of the restrictive
14 covenants for a subdivision located here in Beaufort
15 County known as Oakmont Subdivision.

16 This is a declaratory judgment action. In
17 other words, we are not seeking any affirmative
18 relief against any of the Defendants. We are not
19 seeking any judgment against any of the Defendants.
20 We are not accusing any of the Defendants of any
21 improper, wrongful conduct of any sort.

22 We are simply asserting that the agreement
23 to terminate covenants was not properly executed and
24 should be rescinded for two reasons. We have two
25 causes of action. 000109

1 I believe that the evidence will show that
2 there were restrictive covenants filed back in 1978,
3 for a first subdivision known as Oakmont
4 Subdivision, that originally had 49 lots in it.
5 Each of the named Defendants is an owner or was an
6 owner of the lots at the time the agreement to
7 terminate these covenants was executed.

8 These covenants were amended in 1980. And
9 the covenants provide in essence that -- they stayed
10 in effect continuously through 1985. And they
11 automatically renew every five years thereafter, but
12 they could be amended by a majority of the property
13 owners of the subdivision.

14 And on April 16, 2014, last year, a
15 document entitled Agreement to Terminate Covenants
16 was recorded here in the courthouse. And we believe
17 that document is improper and should be rescinded
18 and the covenants put back in place until further
19 action is taken by the landowners as they may deem
20 proper.

21 So, we have two causes of action, one
22 improper execution. The agreement on its face is
23 not valid and was improperly executed. For example,
24 on Page 13 a witness swore on April 1st that they
25 saw certain specific individuals execute this

1 document, for example, Brenda O'Shields, James
2 Farmer and Catherine Farmer. But on Page 9 of this
3 document it's clear that they did not sign the
4 document until eight days later, April 9th so it's
5 an impossibility that their signatures could have
6 been notarized before they signed the document.

7 Some of the signatures, for example of
8 Maria Outeiral, are not notarized at all. Their
9 signature is not notarized. And the third reason
10 why the agreement is not proper is it's signed by
11 people who are not owners of property in Oakmont
12 subdivision at the time. And I have a deed that
13 I'll put into evidence to show that, that they had
14 already sold their interest in the subdivision two
15 years earlier.

16 And then, finally, as you can see on its
17 face the document was tampered with and names were
18 added on Page 13 to be notarized on that page. That
19 goes to our improper execution of the document.

20 And our second cause of action, fraud and
21 inducement, there was a memo, for lack of a better
22 term, I have a copy of it here that I'll put into
23 evidence, that was sent around to most of the
24 homeowners which represented that if we keep the
25 covenants we are going to have to form a homeowners

1 association which means we are going to have to
2 start paying assessments and dues to the
3 association, a representation which, of course, is
4 totally false.

5 So for those reasons, Your Honor, we
6 ask -- we are asking the court to rescind the
7 document titled Agreement to Terminate Covenants.
8 And then if the homeowners association wishes it can
9 properly hold a meeting and properly decide that
10 they want to keep the covenants or what we
11 respectfully submit would be a better deal to amend
12 the covenants so that the subdivision does not have
13 any covenants at all. Thank you, Your Honor.

14 JUDGE DUKES: All right. Thank you.
15 Mr. Tootle, happy to hear from you, sir.

16 MR. TOOTLE: May it please the Court,
17 given Mr. Kuhn's eloquent statements here, the truth
18 is that the covenants themselves contain a provision
19 that they could be amended or done away with upon
20 50 percent of the homeowners.

21 The homeowners met. The homeowners signed
22 their -- agreed to sign a document and did so sign a
23 document doing away with the covenants. The number
24 of homeowners originally signing that document was
25 34. There is 49 lots in that subdivision.

1 Thirty-four of the owners signed the document.

2 Mr. Kuhn is saying that a total of five
3 were not either notarized correctly or one of them
4 was not an owner. So that is a total of five of the
5 people that signed the document to rescind.

6 Now, that would leave 29 proper signatures
7 to the document to rescind. Twenty-nine is more --
8 given Mr. Kuhn's argument, which we certainly do
9 not, but even if he is correct we still have 29
10 proper signatures to the document to rescind which
11 far exceeds 50 percent of 49. And we think that
12 alone is enough for this court to uphold the
13 document to rescind the covenants.

14 The notary who I was informed was going to
15 be here today and apparently is not actually worked
16 for Mr. Kuhn's office at the time. I was certain
17 that that being the case that she certainly knows
18 the law regarding notarization and that any
19 differences in the dates would be merely a
20 scribner's error.

21 So you've got scribner's error. Or even
22 if you take Mr. Kuhn's arguments as absolute and
23 correct, you've still got more than 50 percent which
24 have signed the document. And their signatures are
25 not in question. And therefore we assert that this

1 should verify and the Court should uphold this
2 document to rescind those covenants.

3 JUDGE DUKES: Thank you, sir. Mr.
4 McIntyre?

5 MR. MCINTYRE: Your Honor, may it
6 please the court, as a self-represented Defendant I
7 filed an answer. And my answer sets forth a
8 position that is aligned with that of the Plaintiff.
9 And so I would concede my interest to the protection
10 of the Court in accordance with whatever position is
11 propounded by the Plaintiff. And to that extent,
12 Your Honor, I won't be participating in any direct
13 cross examination and submit my interests to the
14 court under the protection of whatever position the
15 Plaintiff is.

16 JUDGE DUKES: Okay.

17 MR. MCINTYRE: And I would respect
18 the court's ruling in that regard.

19 JUDGE DUKES: Thank you, Mr.
20 McIntyre. And, again, so I won't call on you for
21 cross and all, but if you decide to change your mind
22 you certainly have that right. Just hold your hand
23 up and we will go from there, but otherwise I won't,
24 as I move around, call on you again.

25 Mr. Reese, anything you want to add?

1 Anything, Mr. Reese? No? Okay. Let me ask a quick
2 question of the attorneys to see what is undisputed
3 here. I'm told from Mr. Tootle's argument that
4 there are 49 lots -- lot owners. Is that -- is that
5 an undisputed fact or is that in dispute?

6 MR. KUHN: That is undisputed with
7 one clarification. Mr. O'Brien owns two of the lots
8 and a party named Mathis owned two lots which were
9 then consolidated into one lot. And I have a plat
10 that shows that, Your Honor. Originally 49 lots.
11 Each of those is owned by lot owners. Mr. O'Brien
12 owns Lots 24 and 25. And then Lots 28 and 29 were
13 consolidated.

14 JUDGE DUKES: All right.

15 MR. KUHN: Mr. Tootle, do you agree
16 with that?

17 MR. TOOTLE: I agree with that.

18 JUDGE DUKES: Okay. All right. The
19 second question is is it undisputed that within the
20 original covenants of lot restrictions,
21 Paragraph 19, the last sentence, controls
22 essentially what we are talking about here today
23 which talks about an automatic extension for
24 successive periods of five years, quote, unless an
25 instrument signed by a majority of the then property

1 owners within Oakmont subdivision has been recorded
2 agreeing to change these covenants in whole or in
3 part or to terminate the same, period, end quote.

4 Is that the provision that we are dealing
5 with here today or are there other provisions in the
6 covenants and restrictions that are important?

7 MR. KUHN: The Plaintiff respectfully
8 submits that is the dispositive provision, Your
9 Honor.

10 JUDGE DUKES: All right.

11 MR. TOOTLE: And we agree.

12 JUDGE DUKES: All right. So that
13 would be Paragraph 19 of the original covenants and
14 restrictions which are filed. I see where the stamp
15 is so I know they are filed somewhere. There they
16 are. Page 923.

17 All right. And, again, the agreement to
18 terminate the covenants that is in dispute today,
19 also a filed document. Appears to have been filed
20 book 3315, pages 1529 through 1539 in the Beaufort
21 County Registrar of Deeds. I believe that document
22 is undisputed is a part of this -- undisputed that
23 it is a part of this action. I understand the
24 document itself is in dispute.

25 All right. Mr. Kuhn, call your first

1 witness, please, sir.

2 MR. KUHN: May it please the court,
3 Your Honor, I call Thomas O'Brien.

4 JUDGE DUKES: Mr. O'Brien, come on
5 around here if I would, please. Get you to hold
6 your right hand up for me, please. Do you swear or
7 affirm to tell the truth, the whole truth, and
8 nothing but the truth so help you God?

9 MR. O'BRIEN: I do.

10 JUDGE DUKES: All right. Have a
11 seat, please. Answer -- state your full name for
12 the record and answer any questions Mr. Kuhn may
13 have, please.

14 WHEREUPON:

15 THOMAS O'BRIEN, being duly sworn and
16 cautioned to speak the truth, the whole truth and
17 nothing but the truth, testifies as follows:

18 DIRECT EXAMINATION

19 BY MR. KUHN:

20 Q. Will you state your whole name, please,
21 sir.

22 A. Thomas Joseph O'Brien.

23 Q. What is your address?

24 A. 690 Scoshie Court, Beaufort, South
25 Carolina 29906.

000117

1 Q. Are you familiar with Oakmont subdivision?

2 A. Yes, sir.

3 Q. That is a subdivision located in Beaufort
4 County, South Carolina?

5 A. It is.

6 Q. And is that where you live?

7 A. Yes, it is.

8 Q. For how long have you lived there?

9 A. Since 1989.

10 Q. If I can show you a copy of what has been
11 marked Plaintiff's Exhibit 1, do you recognize what
12 that is?

13 A. Yes, sir. That is a survey of Oakmont
14 subdivision with the lots and the open space.

15 Q. Okay. And the open space is sort of in
16 the central area of the subdivision?

17 A. It is.

18 Q. Okay. And then it looks like there were
19 originally 49 lots there?

20 A. That's correct.

21 Q. And do you own one or two lots?

22 A. I own two.

23 Q. And which two do you own?

24 A. Twenty-four and 25.

25 Q. Okay. Is the word O'Brien printed on

1 those lots in that document?

2 A. Yes, it is.

3 Q. And does this fairly and accurately depict
4 generally speaking the lay out of the subdivision
5 and the lots, streets, and the owners?

6 A. Yes, it does.

7 MR. KUHN: Your Honor, I move to
8 admit this as Plaintiff's won .

9 MR. TOOTLE: No objection.

10 JUDGE DUKES: All right. Without
11 objection.

12 JUDGE DUKES: I have a question.
13 Does this accurately depict as of today or as of the
14 date the recision agreement was signed?

15 MR. KUHN: The date the recision
16 agreement was signed. I don't know about all of it,
17 but there are two new owners in the subdivision, Lot
18 26 and 27.

19 JUDGE DUKES: Okay. Thanks. Is that
20 agreed by the parties?

21 MR. TOOTLE: Yes, Your Honor.

22 THE WITNESS: And I don't know if any
23 of the other lots since have sold to anyone or not.

24 JUDGE DUKES: Thanks. Go ahead.

25 BY MR. KUHN:

000119

1 Q. Describe the subdivision. Describe it.

2 A. It is a circular designed subdivision with
3 one road in and basically the same rode out. One
4 entrance road and one exit road. Everything is
5 cul-de-sac. All of the roads basically dead end and
6 you have to loop around the cul-de-sac and then go
7 back out the way you came in.

8 Q. Okay. Single family residences?

9 A. Single family residence.

10 Q. Mobile homes or houses or what?

11 A. To my knowledge there are no mobile homes.
12 And they are all stick built.

13 Q. So a nice subdivision?

14 A. Nice.

15 Q. Do you have lawyers who live there?

16 A. Yes.

17 Q. Other than that a nice subdivision?

18 A. Pardon?

19 Q. Other than that a nice subdivision?

20 A. Oh, no.. Lawyers have lived there and the
21 ones that still own property there are fine. They
22 are people like the rest of us.

23 Q. Families?

24 A. Families.

25 Q. When you purchased your property there was

1 the house already there?

2 A. Yes.

3 Q. Okay. And you've lived there continuously
4 since that time?

5 A. Yes, I have.

6 Q. And covenants were in place at that time?

7 A. Yes, sir.

8 Q. If I can show you what we've marked as
9 Exhibit 2. Do you recognize what that is?

10 A. Yes, sir.

11 MR. TOOTLE: Which one is that,
12 please?

13 THE WITNESS: That is the original
14 covenants for Oakmont subdivision that the Gallahues
15 and the Barrys -- and Irvin Barry had written and
16 registered at the courthouse.

17 MR. KUHN: Your Honor, I believe that
18 the Defendants who brought answers admitted my
19 allegation in the complaint that these covenants and
20 lot restrictions for Oakmont subdivision were duly
21 recorded in the Office of the Registrar of Deeds for
22 Beaufort County, South Carolina, on February 14th,
23 1978, in record book 259 at Page 200. These are
24 attached to the complaint that is Exhibit A.

25 JUDGE DUKES: All right.

1 MR. KUHN: Thank you.

2 JUDGE DUKES: Mr. Tootle, without
3 objection I assume?

4 MR. TOOTLE: Your Honor, we've
5 already stipulated to the court that this is the
6 document.

7 JUDGE DUKES: All right. Thank you.

8 MR. KUHN: To save some time then
9 could we stipulate that Exhibits 3 and 4 are just
10 the amendments to the covenants and the assignment
11 are as alleged in the complaint. The assignment has
12 been recorded in the Office of the Registrar of
13 Deeds for Beaufort County on May 12th, 1978, in
14 record book 263 at Page 923.

15 And the assignment having been recorded in
16 the office of the Registrar of Deeds for Beaufort
17 County, South Carolina, on February 8th, 1980, in
18 record book 227. And I move to enter these, Your
19 Honor, as Plaintiff's 3 and 4.

20 MR. TOOTLE: No objection.

21 JUDGE DUKES: No objection. All
22 right. Plaintiff's 3 and 4.

23 BY MR. KUHN:

24 Q. For lack of a better term, did a movement
25 start within the subdivision by certain individuals

1 to attempt to eliminate all of the covenants for the
2 subdivision?

3 A. Yes.

4 Q. And did that culminate -- did you learn --
5 let me show you this. Show you Exhibit 5. Do you
6 recognize what that document is?

7 MR. TOOTLE: That is the agreement to
8 terminate?

9 THE WITNESS: Yes. This is the
10 finished document that was done in 2014 to terminate
11 all of the restrictive covenants within Oakmont
12 subdivision.

13 JUDGE DUKES: Now, I have a 5 that is
14 a deed. Is that -- the 5 that was handed to me,
15 Plaintiff's 5, is a deed, Garcia and Westmoreland.

16 MR. KUHN: They got out of order.
17 This would be the agreement to terminate covenants,
18 Your Honor. It must be one of the later numbers
19 then.

20 JUDGE DUKES: All right. Well, the
21 one that -- the sticker on this one is 7.

22 MR. KUHN: Okay.

23 JUDGE DUKES: So we are following
24 along. Plaintiff's 7 actually is the agreement to
25 terminate covenants. 000123

1 MR. KUHN: Your Honor, I move to
2 introduce Exhibit 7 then.

3 JUDGE DUKES: All right. Already
4 stipulated to, I think, Mr. Tootle; is that correct?

5 MR. TOOTLE: Yes, Your Honor.

6 JUDGE DUKES: All right.

7 BY MR. KUHN:

8 Q. Mr. O'Brien, did you sign Exhibit 7?

9 A. No.

10 Q. Why not?

11 A. Because I'm not in favor of rescinding all
12 of the restrictive covenants of Oakmont subdivision.

13 Q. Why?

14 A. Because it will leave the development or
15 neighborhood without any protection from many
16 things, many.

17 Q. Okay.

18 A. The County does not have enforcement
19 regulations covering everything that are in the
20 restrictive covenants.

21 Q. Okay.

22 A. And restrictive covenants are a
23 homeowner's way to protect their property rights and
24 values and interest in their property.

25 Q. So, for example, one of the provisions of

1 the covenants was that you could only put a single
2 family residence on a lot; is that right?

3 A. Correct.

4 Q. That eliminated then --

5 A. Somebody could come in, buy one or two
6 lots, and put an apartment complex up. Somebody
7 could come in and put triplexes, duplexes, whatever
8 on a lot.

9 Q. We mentioned mobile homes earlier?

10 A. Well, I don't have necessarily a problem
11 with mobile homes, but some people may have an
12 objection to a mobile home.

13 JUDGE DUKES: Mr. O'Brien, could you
14 move that microphone a little away from you? There
15 you go. No worries.

16 THE WITNESS: All right. I'm sorry.

17 JUDGE DUKES: No, it's just
18 distorting a little bit.

19 BY MR. KUHN:

20 Q. Do you feel that having some sort of
21 reasonable restrictive covenant has an effect on
22 property values?

23 MR. TOOTLE: Your Honor, that is a
24 leading question. I object to his leading.

25 JUDGE DUKES: It is leading. If you

1 could just ask him what his concerns are maybe we
2 can --

3 BY MR. KUHN:

4 Q. Do you have any other concerns about --

5 A. I have numerous --

6 Q. -- the total absence of covenants?

7 A. I have numerous concerns. Without the
8 restrictive covenants -- let me find it in here. I
9 don't have this -- I don't have them set in memory.
10 Actually Number 1, property subject to deed
11 restrictions shall be used for dwelling houses only.
12 And no commercial enterprises shall be conducted
13 thereon.

14 Without that in place any type of business
15 that you can locate in a residence -- and Beaufort
16 County has a book of them -- can be operated at the
17 house to include roofing --

18 MR. TOOTLE: Your Honor, I object.
19 Proper foundation has not been laid for Mr. O'Brien
20 to testify to this, what he's trying to testify to.

21 JUDGE DUKES: Let me ask another --

22 MR. TOOTLE: How does he know?

23 JUDGE DUKES: Let me ask another
24 question, Mr. Kuhn. What is the relevance of his
25 concerns?

000126

1 MR. KUHN: I'll move on. I'll move
2 on, Your Honor.

3 JUDGE DUKES: Okay. Thanks.

4 BY MR. KUHN:

5 Q. Mr. O'Brien, if you look at Exhibit 7, the
6 agreement to terminate the covenants, if you look at
7 the very last page, Page 13 of 13.

8 A. Okay.

9 Q. And there are a number of -- there is an
10 oath there where a witness who signed in the lower
11 right-hand corner states in front of a notary that
12 she saw several people who are listed there sign
13 this document. Do you see that?

14 A. All right. Explain to me again what I'm
15 looking for.

16 Q. Page 13.

17 A. I'm on 13.

18 Q. It starts off, personally appeared before
19 me the first witness named above. Of course, there
20 is no witness named above, correct?

21 A. No, afraid not.

22 Q. And goes on, that she or he saw within
23 named people, and then it lists several people,
24 correct?

25 A. Correct.

000127

1 Q. And then that witness has signed. And the
2 signature is illegible. Do you know who that is by
3 any chance?

4 A. I have no idea who that is.

5 Q. But it's notarized on April 1st before
6 Cynthia J. Traynor. Do you see that?

7 A. Yes.

8 Q. Okay. And if you look in the left-hand
9 column, go up four names, you see one of the people
10 that this person swears on April 1st that they saw
11 sign this document is Fred O'Shields?

12 A. That's correct.

13 Q. If you would then look at Page 9 of this
14 agreement?

15 A. Yes.

16 Q. And these -- this is a signature page for
17 witnesses; is that correct?

18 A. Yes, it is.

19 Q. And do you see the very first person who
20 has signed this is Brenda O'Shields?

21 A. Correct.

22 Q. And Brenda O'Shields signed this on what
23 date?

24 A. According to this piece of paper --

25 MR. TOOTLE: Your Honor, I object.

1 THE WITNESS: -- the 19th --

2 JUDGE DUKES: Hold on. Let him
3 finish his objection.

4 MR. TOOTLE: If he was there then he
5 can testify to that. Our position is we've got a
6 scribner's error going on here. And Mr. O'Brien is
7 only going by what he's reading off the document,
8 not personal knowledge.

9 JUDGE DUKES: That is -- I recognize
10 that, Mr. Tootle. Unless he's going to testify
11 otherwise, right now I think he's just referencing
12 this document. So I'll allow his testimony with
13 regard to simply referencing what he sees on the
14 document. And I did cut off some of his concerns as
15 not being relevant because really why someone would
16 bring an action like this really isn't relevant, but
17 I'll allow him to testify as to at least what he has
18 seeing here, but not -- unless he's going to testify
19 otherwise I understand that he probably wasn't a
20 witness to this, but I don't know what the testimony
21 will hold, so you can go ahead, Mr. O'Brien.

22 THE WITNESS: Okay. Well, the
23 reason -- this is the reason I brought this to Mr.
24 Kuhn to bring this action, seeing these
25 discrepancies that names appear on different sheets

1 with different dates. Supposedly, allegedly
2 notarized on one particular date but then signed
3 again on a different date.

4 BY MR. KUHN:

5 Q. Okay. So with Brenda O'Shields this
6 document purports that someone swore to a notary on
7 April 1st that they saw Brenda O'Shields sign this
8 document, yet this document on its face states that
9 Brenda O'Shields didn't sign it until eight days
10 later. Does that summarize it?

11 A. Yes.

12 Q. Okay. And if we look through this
13 document we see that the same is true for Catherine
14 Farmer?

15 A. Yes.

16 Q. Someone swears they saw her sign on
17 April 1st, but she didn't sign it until later. And
18 the same is true for James Farmer; is that correct?

19 A. That is what it's showing. Yes, it is.

20 Q. And the same is true for Charles Brace?

21 A. Yes.

22 Q. And for Mr. and Mrs. Garcia?

23 A. Yes.

24 Q. If you would look on Page 6 of this
25 agreement?

000130

1 A. Okay.

2 Q. And do you see that with respect to Lot 4
3 an individual named Maria Outeiral, O-u-t-e-i-r-a-l,
4 signed this document on March 29th?

5 A. That is what it's showing.

6 Q. If we look at Page 13, again, is she
7 listed as one of the people whose signatures were
8 notarized?

9 A. On Page 13?

10 Q. Yes, sir. Is her name listed there?

11 A. If it is, I don't see it.

12 Q. If you look again at Page 13, do you see
13 where Caesar A. Garcia and Kim D. Garcia are listed?

14 A. Yes.

15 Q. And if you will look at Page 9, do you see
16 where Kim Garcia and Caesar Garcia signed?

17 A. Yes.

18 Q. And by their name is a lot number. What
19 lot number is that?

20 A. It looks like 21.

21 Q. If I can show you I believe it's probably
22 Exhibit 5. Is this a deed where Mr. and Ms. Garcia
23 sold lot 21 to John Westmoreland and Phyllis
24 Westmoreland?

25 A. Yes, it is. 000131

1 Q. And if you would look on the very last
2 page, when did they sell this lot?

3 A. The 7th day of March, 2012.

4 Q. Two years earlier?

5 A. Yes.

6 MR. KUHN: Your Honor, I would move
7 to introduce Exhibit 5.

8 JUDGE DUKES: Let's see. Now 5 -- is
9 5 the number that we have up here?

10 MR. KUHN: 5, I believe, is the deed.

11 JUDGE DUKES: All right. Double
12 check here. Five is the deed. No objection, Mr.
13 Tootle?

14 MR. TOOTLE: No objection.

15 JUDGE DUKES: All right. Five
16 without objection.

17 BY MR. KUHN:

18 Q. Mr. O'Brien, if I could show you this
19 document. I'm not sure what number it's marked. Do
20 you recognize what that is?

21 A. Yes, sir. That is a letter that was
22 distributed --

23 MR. TOOTLE: Your Honor, I'll object
24 unless he has firsthand knowledge of the
25 distribution.

000132

1 THE WITNESS: I do.

2 MR. TOOTLE: How do you know it was
3 distributed?

4 THE WITNESS: Because one was left in
5 my newspaper box.

6 JUDGE DUKES: Are we talking about
7 Plaintiff's 6?

8 MR. KUHN: Yes, sir, Your Honor.

9 JUDGE DUKES: Okay. All right.

10 BY MR. KUHN:

11 Q. And when was it left in your newspaper
12 box, before or after the agreement to terminate?

13 A. Before.

14 MR. TOOTLE: Again, Your Honor, I'm
15 going to object to this being admitted. It is
16 self-serving. It has -- it's got no signatures.
17 There is no way to identify where this came from,
18 when this came from, or who it came from.

19 JUDGE DUKES: Of course, he hasn't
20 tried to do that yet, Mr. Tootle. He is just saying
21 he found a piece of paper in his mailbox. To the
22 extent -- he can certainly testify to what he found
23 in his mailbox. Where he goes from there may be
24 objectionable, I don't know, but you can continue
25 on, Mr. Kuhn.

000133

1 BY MR. KUHN:

2 Q. And after you found this what did you do?

3 A. Discussed it with some of the people in
4 the neighborhood.

5 Q. And do you know if they found similar
6 papers in their mailboxes?

7 A. They did.

8 Q. Do you know where this came from? Did you
9 ever ascertain that?

10 A. I can't say specifically, no, because it
11 had no identifying features on it or a name. It
12 merely has the person to contact.

13 Q. And who is that?

14 A. Theresa Van Dam.

15 Q. And have you discussed the covenants --
16 removing the covenants with Ms. Van Dam?

17 A. I believe, yes, I did.

18 Q. Okay. Does she own property in Oakmont?
19 She live in Oakmont?

20 A. Yes.

21 Q. There is a statement on here, to keep the
22 current covenants --

23 MR. TOOTLE: Your Honor, now we are
24 getting into the meat of the document, and I've got
25 an objection to the document being admitted.

1 MR. KUHN: Well, I move to admit
2 Plaintiff's --

3 JUDGE DUKES: Well, let's do this.
4 So far what he's testified to is he found something
5 in his mailbox and here it is. I think that is the
6 sum of the testimony. And --

7 MR. TOOTLE: And in addition, Your
8 Honor, that he has no idea where it came from and he
9 has no idea who circulated it. He doesn't know
10 anything other than that piece of paper he found in
11 his newspaper box.

12 JUDGE DUKES: Okay. But to the
13 extent that he found something in his box, I don't
14 have a problem with it as an exhibit. And I
15 understand, Mr. Tootle, if he goes into, and he's
16 certain everyone else got one in their box or
17 something like that, then we may have something, but
18 to the extent he may be the only one that had
19 something in his box. I don't know, but I'll allow
20 it. So Plaintiff's 6.

21 JUDGE DUKES: Go ahead, Mr. Kuhn.

22 BY MR. KUHN:

23 Q. Mr. O'Brien, how many people have
24 acknowledged to you that they have found a similar
25 paper in their box?

000135

1 A. Five..

2 Q. Did you talk to people who said they did
3 not find a similar paper in their box?

4 A. No.

5 MR. TOOTLE: Your Honor, that --
6 again that is another way of trying to get in the
7 hearsay.

8 JUDGE DUKES: Well, it also doesn't
9 have any relevance. Did you speak to people who
10 didn't get something is sort of meaningless from an
11 evidentiary standpoint, but anyway --

12 BY MR. KUHN:

13 Q. Well, everybody you spoke to and
14 questioned about it said they had gotten one. Is
15 that fair to say?

16 A. Yes.

17 Q. And this would have been -- it talks about
18 a meeting at the Van Dam's residence on
19 February 22nd. And talks about a meeting that was
20 held January 11th, 2014. So this is something that
21 you would have found sometime shortly prior to
22 February 22nd of 2014?

23 A. Yes.

24 MR. KUHN: Okay. That is all the
25 questions I have.

000136

CROSS EXAMINATION

BY MR. TOOTLE:

Q. Mr. O'Brien, do you have a vendetta against some of your neighbors?

A. No, sir.

Q. Did you not report some of your neighbors to the Attorney General for allegedly practicing law without a license?

A. I did.

MR. KUHN: Your Honor, I'm going to object to that. It's not relevant.

MR. TOOTLE: I'm on cross examination.

JUDGE DUKES: What is the nature of the objection?

MR. KUHN: It's not relevant.

JUDGE DUKES: What is the relevance, Mr. Tootle? I mean, I guess we're a little outside of -- I cut the Plaintiff off when they wanted to talk about why they wanted to do this. I mean, I guess the real question is kind of a legal question, right? Well, there may be some other evidence, but whether or not this agreement to terminate covenants is effective or not under the law.

MR. TOOTLE: I agree, Your Honor. I

1 have no further questions.

2 JUDGE DUKES: All right. Anything
3 else? Mr. McIntyre, I think you didn't really have
4 an interest. Mr. Reese, anything? No? Okay. All
5 right. I don't have any questions. Call your next
6 witness please.

7 MR. KUHN: Call Mr. or
8 Ms. Brouillette.

9 COURT REPORTER: You need to leave
10 the documents, please.

11 THE WITNESS: Oh, I'm sorry. I
12 thought they were for my reference.

13 JUDGE DUKES: I think I've got the
14 ones with the stickers on them.

15 COURT REPORTER: Have you got all of
16 yours? Okay. You can give those back to the
17 attorney.

18 JUDGE DUKES: Sir, hold your right
19 hand up for me, please. Do you swear or affirm to
20 tell the truth, the whole truth, and nothing but the
21 truth so help you God?

22 MR. BROUILLETTE: I do.

23 JUDGE DUKES: All right. Have a seat
24 if you would, please.

25 WHEREUPON: 000138

1 TIMOTHY BROUILLETTE, being duly sworn
2 and cautioned to speak the truth, the whole truth
3 and nothing but the truth, testifies as follows:

4 DIRECT EXAMINATION

5 BY MR. KUHN:

6 Q. Would you state your full name, please,
7 sir.

8 A. Timothy Donald Brouillette.

9 Q. And did you -- what is your address?

10 A. 681 Royal Drive, Oakmont subdivision.

11 Q. And for how long have you lived in Oakmont
12 subdivision?

13 A. Since 1999.

14 Q. All right. Did you sign the agreement to
15 terminate the covenants?

16 A. Yes, I did.

17 Q. And your wife also owns -- is joint owner
18 of the property?

19 A. Yes, she is.

20 Q. And did she sign the agreement to
21 terminate the covenants?

22 A. Yes, she it.

23 Q. And why did you all sign them?

24 A. She signed it because she said for
25 whatever I want to do she would go ahead and do. So

1 she went ahead and signed it. I initially was for
2 covenants. I initially came down to the church to
3 sign for covenants and I was told that that was only
4 for people that wanted to get rid of the covenants.
5 So I was told I didn't have to be there, so I left.
6 And then later on I had people come to my home
7 requesting -- asking me -- giving their position of
8 why the covenants should be gone. And had other
9 people calling me to the house asking and pleading
10 that they needed two or three more people.

11 And then we went ahead and signed the
12 covenants against our better judgment. And walking
13 home we talked to each other about we didn't really
14 need to sign the covenants. We don't like -- we
15 don't like confrontation. We don't like to bicker
16 back and forth. And we want to do what is best for
17 the neighborhood, but we also have neighbors that we
18 don't to irritate at the same time, so we went ahead
19 and signed it against our better judgment.

20 Q. Did you feel pressured into signing it?

21 A. Yes.

22 Q. Would you rather have covenants over the
23 subdivision?

24 A. Excuse me?

25 Q. Would you rather have covenants for the

1 subdivision?

2 A. Yes. We wanted to have covenants. And
3 then signed -- we signed on the paper, I don't know
4 what paper it was, about having covenants, re-doing
5 the covenants or getting rid of them. And we signed
6 to redo them, to make amendments. And then we were
7 told we couldn't do that. There wasn't enough
8 support for that. So it was either get rid of them
9 or keep them.

10 Q. Other than being told that the only option
11 was to get rid of them as opposed to modifying, were
12 any other representations made to you or was it ever
13 represented to you that if the covenants stayed in
14 place you would have to --

15 MR. TOOTLE: That's a leading
16 question, Your Honor. I object.

17 JUDGE DUKES: Yeah, try not to lead,
18 please, if you would, Mr. Kuhn.

19 BY MR. KUHN:

20 Q. What else did they represent to you if the
21 covenants stayed in place?

22 A. If they stayed in place that -- we have a
23 shed in our backyard. We have a privacy fence that
24 was paid for. And it was permitted through the
25 County. A company put it in, but we might have to

1 get rid of our shed because sheds weren't allowed on
2 the property.

3 Q. I would like to show you I believe it's
4 Exhibit 6, Your Honor, I'm not sure. The letter
5 found by Mr. O'Brien in his mailbox. Did you ever
6 find a similar one in yours?

7 A. Yes.

8 MR. TOOTLE: Your Honor, for the
9 record I will object to this line of questioning on
10 the same basis that I objected to the introduction
11 of this document originally.

12 JUDGE DUKES: All right. And so far
13 the question is did he find a piece of paper like
14 this in his mailbox. So overruled. I'll allow him
15 to --

16 THE WITNESS: And I did sign -- I did
17 -- that is the paper I signed saying I wanted to
18 amend the covenants. And then later on I was told I
19 couldn't -- we -- there was not enough support for
20 it.

21 BY MR. KUHN:

22 Q. One of the options on here is modify the
23 covenants.

24 A. Yes.

25 Q. That was the option you selected?

1 A. Correct.

2 Q. And you then sent this back to somebody or
3 drop it off?

4 A. I don't know. I don't remember where I
5 sent it to. I don't know if somebody collected it.
6 I don't remember that particular portion of it. I
7 wasn't too involved in much of anything. I
8 didn't -- I wanted to be left out.

9 MR. KUHN: Okay. Thank you. That is
10 all the questions I have, Your Honor.

11 JUDGE DUKES: Mr. Tootle?

12 CROSS EXAMINATION

13 BY MR. TOOTLE:

14 Q. After discussions with your neighbors you
15 did sign the document to terminate --

16 A. Yes, sir.

17 Q. -- the covenants?

18 A. Yes, sir.

19 MR. TOOTLE: No further questions.

20 JUDGE DUKES: All right. Any
21 questions, Mr. McIntyre? And Mr. Reese? None?
22 Okay. I don't have any questions. Thank you, sir.
23 Off the record a second.

24 (OFF THE RECORD)

25 JUDGE DUKES: Back on. Mr. Kuhn,

1 call your next witness.

2 MR. KUHN: We rest, Your Honor.

3 JUDGE DUKES: All right. Mr. Tootle,
4 happy to hear from you, sir.

5 MR. TOOTLE: Your Honor, Defense
6 calls Thomas Smith.

7 JUDGE DUKES: Do you swear or affirm
8 to tell the truth, the whole truth, and nothing but
9 the truth so help you God?

10 MR. SMITH: I do, Your Honor.

11 JUDGE DUKES: Thanks. Have a seat.
12 Please state your full name and answer any questions
13 Mr. Tootle may have.

14 MR. SMITH: Thomas Dwight Smith,
15 Junior.

16 WHEREUPON:

17 THOMAS SMITH, being duly sworn and
18 cautioned to speak the truth, the whole truth and
19 nothing but the truth, testifies as follows:

20 DIRECT EXAMINATION

21 BY MR. TOOTLE:

22 Q. Mr. Smith, what is your address, please?

23 A. 800 Broad River Boulevard.

24 Q. And is that in Oakmont subdivision?

25 A. Yes, sir, it is. 000144

1 Q. Were you present at the time that
2 different people in the neighborhood got together
3 and signed what is called an agreement to terminate
4 covenants?

5 A. Yes, sir, I was.

6 Q. Can you tell me where the signatures were
7 made? Where did this happen?

8 A. This happened at our home, at 800 Broad
9 River Boulevard.

10 Q. So those people came into your home?

11 A. Yes, sir.

12 Q. I show you --

13 JUDGE DUKES: Are you looking for --

14 MR. TOOTLE: I'm looking at the
15 agreement to terminate, Your Honor.

16 JUDGE DUKES: Stand by.

17 MR. TOOTLE: I think it's Number 7
18 now.

19 JUDGE DUKES: You are correct.
20 Handing the witness 7, Plaintiff's 7.

21 BY MR. TOOTLE:

22 Q. Turn to Page 2 of that document. Is that
23 document dated March -- what date is that -- that
24 shows on that?

25 A. 29 March, 2014. 000145

1 Q. And on 29 March, 2014, did the people
2 whose signatures appear on this document, did they
3 go to your home?

4 A. Yes, sir. I can't verify each one by
5 looking at them, but, yes, I was there when they
6 were signed. And there was a notary and a witness
7 that signed off on them verifying that each
8 person -- and they verified their identification.

9 Q. Okay. And on March the 29th --

10 MR. KUHN: Your Honor, I'm going to
11 object on the grounds it looks like he's going to
12 try to impeach this document which would be
13 impermissible.

14 JUDGE DUKES: So far he's -- we are
15 looking at a list of names, my understanding of his
16 testimony, and my understanding of his testimony,
17 and maybe you can clear this up for me, Mr. Tootle,
18 is a group of people gathered at his house and
19 signed their names on a document.

20 MR. TOOTLE: That is so far what my
21 question is, Your Honor, yes.

22 JUDGE DUKES: I'll let him go on a
23 little bit, Mr. Kuhn.

24 BY MR. TOOTLE:

25 Q. On March the 29th, did this group of

1 people appear in your house and sign this document?

2 A. Yes, sir.

3 Q. And that goes on for three pages. Their
4 signatures go three consecutive pages?

5 A. Yes, sir.

6 Q. All right. Now turn to Page 7.

7 A. Yes, sir.

8 Q. Can you tell me the date of that page?

9 A. 1st April, 2014.

10 Q. Now, after that there is a list of people
11 who purportedly signed that document. And it also
12 goes on for three consecutive pages. Did those
13 people -- where -- did you see these people sign
14 this document?

15 A. Yes, sir. I was there on both days.

16 Q. And can you tell me where it was signed?

17 A. At our home at 800 Broad River Boulevard.

18 Q. Now, I'll show you Page 9. If you will go
19 to Page 9. Were people in your home on the 9th or
20 was it just the two times that people were there?

21 A. I only remember the two times, sir.

22 Q. Okay. If you will look at Page 9 --

23 A. Yes, sir.

24 Q. -- and it has Ms. O'Shields, a Mr. and
25 Mrs. Farmer, and somebody named Garcia.

1 A. Yes, sir.

2 Q. Were they in your home and did they sign
3 this document in your home and would that have been
4 on April the 1st instead of April the 9th?

5 A. That would have been on the 1st, not the
6 9th.

7 Q. And so the 9th up there is --

8 MR. KUHN: Your Honor, I'm going to
9 object. He's impeaching this document.

10 JUDGE DUKES: Well, let me do this.
11 Why don't you ask him what dates certain people were
12 in the home without reference to the document?

13 BY MR. TOOTLE:

14 Q. Do you recall Ms. O'Shields being in your
15 home?

16 A. Yes, sir, I do.

17 Q. Can you tell me what date she was there?

18 A. No, sir, I can't. Honestly I -- other
19 than looking at the date on here, I don't remember
20 the exact date. I do know that she was there to
21 sign the document.

22 Q. And did she sign the document?

23 A. Yes, sir, she did.

24 Q. And they were in your home, you testified,
25 on two occasions?

000148

1 A. On two occasions.

2 Q. And that would have been March the 29th
3 and April the 1st?

4 A. Yes, sir.

5 Q. And do you recall which time it was that
6 Ms. O'Shields was in your home and signed the
7 document?

8 A. No, sir, I can't recall which time it was.

9 Q. But it was one of those?

10 A. Yes, sir.

11 Q. And would the same be true to Catherine
12 and James Farmer?

13 A. Yes, sir. If I remember correctly, there
14 was a problem with them because I think one of them
15 did not have their identification. And the notary
16 wouldn't sign it until she saw proof of who she was.

17 Q. So she made Mr. and Mrs. Farmer go get an
18 identification card and bring it back?

19 A. Identification card and bring it back
20 before she would notarize it.

21 Q. And would the same be true for Mr. and
22 Mrs. Garcia, were they in your home?

23 A. They were in my home.

24 Q. Did they sign this document?

25 A. Yes, sir.

000149

1 Q. Did you see them sign this document?

2 A. Yes, sir.

3 MR. TOOTLE: I don't have any further
4 questions. Thank you.

5 JUDGE DUKES: Mr. Kuhn?

6 MR. KUHN: No questions.

7 CROSS EXAMINATION

8 BY MR. KUHN:

9 Q. But you are not a property owner in the
10 subdivision?

11 A. My wife and I are. My name is not on it,
12 but I make the payments.

13 Q. You are not on the deed though?

14 A. I'm not on the deed, but I can very easily
15 be put on the deed.

16 MR. KUHN: That is all the questions
17 I have.

18 JUDGE DUKES: All right. I don't
19 have any questions. Thank you very much, sir.

20 THE WITNESS: Yes, sir.

21 JUDGE DUKES: Mr. Tootle, anybody
22 else?

23 MR. TOOTLE: Your Honor, Defense
24 rests.

25 JUDGE DUKES: All right. I really

1 didn't think when I saw this crowd this morning we
2 would be finished at -- I'm happy to hear motions,
3 closing arguments, whatever you all would like to
4 do.

5 MR. KUHN: Just briefly, Your Honor,
6 closing summation more so than argument. The
7 document on its face is improperly executed and
8 defective in at least three particulars.

9 I don't believe a witness can come in to
10 court and contradict the terms of a written
11 agreement or a written document that has been
12 recorded at the courthouse, otherwise no document
13 would be reliable. Someone could just walk in and
14 say, well, I know it says this agreement is to
15 terminate covenants, for example, but it really
16 should have been an agreement to enforce covenants.

17 Or I know it says we did this in 2014, but
18 my memory is we did it 20 years ago and therefore
19 it's expired. You just can't come in and impeach a
20 document with oral -- such testimony.

21 The document is defective in at least
22 three particulars clearly. This witness swore to
23 the notary, that people signed it on April 1st when
24 in fact they did not sign it until over a week
25 later. That is clearly what happened, Your Honor.

1 I respectfully submit that someone just added theirs
2 names to this list.

3 And if you look at it, that is what it
4 looks like they did. You will see those names are
5 added at the end, they appear to be different. Same
6 handwriting, but different ink, different pressure,
7 different style. It appears what happened is
8 someone took this notarized document which was
9 properly witnessed and notarized probably and just
10 added the names thinking no harm, no foul, but that
11 is improper.

12 The second problem with this document in
13 addition to adding names to the notarized statement
14 or claiming that people had signed it, that they
15 witnessed people sign it when they had not yet done
16 so, is that there are names such as this Maria
17 Outeiral that are not part of the notarized --
18 notarization. They are not part of the -- it's
19 required that for this document to be recorded the
20 witnesses have to be notarized. And one of the
21 witnesses is not.

22 Thirdly, Your Honor, it's signed by people
23 who are no longer owners in the Oakmont subdivision.
24 If you take those signatures out, they do not have a
25 majority. When Mr. Tootle was speaking earlier

1 about signatures, he talked literally about
2 signatures. I respectfully submit that the
3 covenants refer to lot owner, that each lot owner
4 gets one vote, one lot, one vote so-to-speak.

5 So if you have two people who own
6 property, a husband and a wife, that is one vote,
7 two signatures. Otherwise you could have a
8 partnership of 50 people owning one lot and they
9 would control everything in the subdivision. A
10 reasonable interpretation of Paragraph 19 is that
11 each lot gets a vote, not every person who owns an
12 interest in a lot gets one vote equal to every other
13 person who owns an interest.

14 In addition to the covenants being
15 defective, you heard testimony that this was a hard
16 pressure sales technique and that one of the people
17 who signed this now wants to rescind their vote to
18 the covenants. And this person had several things
19 misrepresented to him, that he would have to remove
20 his shed and a privacy fence. Totally false
21 representations. You can look through the
22 covenants. There is nothing that prohibits those
23 structures, that would have required him to take
24 those down. He did not agree to terminate the
25 covenants.

000153

1 And then finally, Your Honor, we have this
2 false representation. I think the evidence showed
3 pretty clearly that somebody -- we don't have to
4 show who. We just have to show it was done --
5 distributed a leaflet to the homeowners saying that
6 if you did not get rid of the covenants we are going
7 to have to form a homeowners association and you are
8 going to have to start paying regime fees and annual
9 dues and assessments.

10 Again, a totally false representation.
11 Looking at the totality of the circumstances it is
12 clear that this document is not valid, should be
13 rescinded. And then if a majority of lot owners
14 wish to rescind the covenants or respectfully submit
15 and modify them that they go through the proper
16 steps, do the documentation properly and make
17 accurate representations to the people so that they
18 know what they are doing. Because it's absolutely
19 insane -- I know that sounds like I'm going out on a
20 limb, but it's really insane that you have a nice
21 subdivision with no covenants whatsoever in place.
22 I can't believe that anybody wants just a
23 free-for-all in this subdivision with respect to
24 covenants. Thank you, Your Honor.

25 JUDGE DUKES: Mr. Tootle, happy to

1 hear from you, sir.

2 MR. TOOTLE: In response, Your Honor,
3 that Number 34 did not come from 34 signatures on
4 the documents. It comes from 34 lot owners of lots.
5 And when you have a Mr. and a Mrs. that was only
6 counted as one. If you will count each of those
7 signatures, Judge, they go to one number is assigned
8 to one lot.

9 So if I've got Mr. and Mrs. Van Dam
10 signed, I only attributed one to that. So we've got
11 the signatures of 34 lots -- of the owners of 34
12 lots. Now, given Mr. Kuhn's assertion that the
13 documents were -- are not valid in that one of the
14 owners -- one of the owners of a lot was not
15 notarized or that one of the owners of the lot did
16 not own the lot at the time.

17 Then you can take two off of 34 if Your
18 Honor believes that to be proper. Then again, you
19 have owners of three lots that we assert were
20 nothing more than a scribner's error. That is the
21 April 1st and April 9th situation there. But,
22 Judge, what you've got is testimony that these
23 people were in Mr. Smith's home when they signed it
24 and he sat there and watched them.

25 And so it's got to be a scribner's error

1 that the notary public was so careful that she
2 required identification of the people as they signed
3 the document for her to notarize. So we assert
4 you've got a scribner's error, but even if it's
5 dropped, you take three more off and you've got a
6 total of five. Thirty-four from -- five from 34 is
7 29. You've got more than half of the owners of the
8 property that has signed to revoke the covenants.

9 And we assert, Judge, that based on that,
10 that alone is sufficient. Mr. Kuhn asserts that,
11 well, maybe they signed it under duress. That is an
12 argument he's made. Maybe they were under an
13 impression that something adverse might happen to
14 them if they don't sign it.

15 Well, the testimony of Mr. Brouillette was
16 that, you know, he, in fact, talked with his
17 neighbors and didn't want to cause a controversy and
18 after discussions with his neighbors first he wanted
19 to modify the covenants. And then after discussions
20 with his neighbors he voluntarily signed to
21 terminate them. He didn't say that he was under
22 duress in doing so. He said that he had talked with
23 his neighbors.

24 - And certainly there is some amount of
25 apprehension when you are dealing with neighborhood

1 situations. However, it would not rise to duress.
2 Would not rise to fraudulent actions and the
3 inducement.

4 But even if it did, Your Honor, you are
5 only talking about one more. And we clearly still
6 have more than 50 percent of the owners of the
7 individual lots in the neighborhood have signed the
8 document to terminate the covenants. And we assert
9 that you should uphold that. We believe it's
10 proper.

11 JUDGE DUKES: Mr. Kuhns, Plaintiff
12 any final words or are you satisfied with your
13 summation?

14 MR. KUHN: Your Honor, we've also
15 stood for the point if you look on Page 8, for
16 example, the termination. You will see the
17 signatures of Mr. and Mrs. Westmoreland as the
18 owners of Lot 21. Look on the very next page,
19 Page 9, you will see the signatures of Mr. and
20 Mrs. Garcia also as the owners of Lot 21.

21 Of course, we put in the deed showing that
22 two years before this document was signed Mr. and
23 Mrs. Garcia sold their property to Mr. and
24 Mrs. Westmoreland. This thing is just so full of
25 discrepancies. If you added it all up, this is more

1 than just someone putting in a wrong date.

2 And just to emphasize, the notary was very
3 careful. I believe the notary accurately -- it
4 makes no sense that the notary go to all the trouble
5 of verifying people's identities with their driver's
6 license and then put in the wrong date. It just
7 makes for sense at all.

8 I respectfully submit that what happened
9 is exactly what I suggested, somebody added these
10 names after the notary signed this and turned it
11 back in to whoever she turned it back in to. Thank
12 you, Your Honor.

13 MR. MCINTYRE: Your Honor, if it
14 please the Court?

15 JUDGE DUKES: Yes, sir, Mr. McIntyre?

16 MR. MCINTYRE: Your Honor, I filed my
17 answer and indicated my position was aligned with
18 the Plaintiff. I do think, Your Honor, and, of
19 course, my position is that the covenants stand and
20 they ought to be enforced. If the Defendants are
21 going to come in and say that the covenants have
22 been amended by agreement, then my position, Your
23 Honor, would be that it would be incumbent upon them
24 to prove that there has been, in fact, an agreement
25 to terminate the covenants.

1 And it's their responsibility for them to
2 prove beyond a reasonable doubt, it's their burden
3 of proof, that one, who the homeowners were at the
4 time that this agreement to terminate the covenants
5 was put in place. Two, that more than a majority of
6 those homeowners numerically executed an agreement
7 to terminate the then existing covenants. And I
8 don't think there is any dispute that there was
9 prior to any such alleged agreement to terminate the
10 covenants, there was indeed these restrictive
11 covenants. But the burden of proof is upon them to
12 prove their -- who the homeowners were at the time
13 of the agreement and that more than a majority of
14 them executed the agreement.

15 And looking at the agreement, Your Honor,
16 of course there has been only one witness for the
17 Defendants, but looking at the agreement it's kind
18 of -- it's very difficult to find, one, as to
19 whether or not all of these people are homeowners.

20 You know, I don't know that any deed or
21 the deeds and so forth have been put into evidence.
22 You know, it doesn't indicate necessarily,
23 specifically, you know, what their particular
24 addresses were. There is some general notion about
25 the lots. Some of the lots do duplicate with who

1 the people -- you know, say who they are. And some
2 folks -- I think one of them is Lot 19 or I forget
3 one of the others where there were -- somebody else
4 also said they owned that particular lot. There are
5 a lot of instances where there are husbands and
6 wives where they only count as one.

7 And whenever I look at the list I count
8 seemingly about 29 or 30 lot owners who allegedly
9 signed this agreement. And there is some
10 discrepancy about whether or not they signed or
11 whether people have withdrawn or whether their
12 signature was properly notarized.

13 And then I do think that there is a
14 problem with the threshold argument that a majority
15 didn't sign an agreement that validly terminates the
16 restrictive covenants, but I do think that it's upon
17 the Defendants to prove that -- who the landowners
18 were at the time. And that more than half those lot
19 owners -- otherwise the restrictive covenants would
20 stand. And I have -- I don't think that they have
21 demonstrated that, but I leave that to the court,
22 Your Honor.

23 JUDGE DUKES: All right. Thank you
24 very much, sir.

25 MR. TOOTLE: I would like to respond

1 to that, Judge. I have never been in a situation in
2 a court of law in 40 years when the burden is on the
3 Defense to prove a case. And this is -- this new
4 law that Mr. McIntyre is asserting here that the
5 burden switches to the Defense to prove the case
6 is -- I think it is completely erroneous, Your
7 Honor. And that is any argument on that front.

8 JUDGE DUKES: Yeah, I certainly
9 respect Mr. McIntyre's comments, but respectfully
10 disagree that in this particular case the burden is
11 on the Plaintiff. And I'm going to treat it that
12 way.

13 Let me ask, Lot 21, Mr. Tootle, I guess I
14 need to make sure about this because we've got
15 both -- as I look at these lists, we've got
16 Westmoreland with a parens that is 21 and then we
17 also have Garcia with a parens that is 21. That
18 clearly doesn't work because you can only have
19 one --

20 MR. TOOTLE: It clearly doesn't work,
21 Your Honor. Westmoreland is the proper owner
22 according to the deed.

23 JUDGE DUKES: And the -- when you did
24 your calculations, I guess I'm trying to figure out
25 if one were to take this document and, for instance,

1 the first one is Dickson, all right. Next is
2 Disbrow. That is two. Next is Keeton, three.
3 Taylor is four. It looks like on some of them
4 they've got the lot number. Lennex is five. Is
5 that Drains? I can't read that. Six. And Bauer is
6 seven. White would be eight. Burns is nine. All
7 right. Gomez would be 10. Smith is 11. Dominguez,
8 am I reading that correctly, would be 12.

9 All right. And now Horton has several
10 signature lines, but they are combined together so
11 that would be 13 for Lot 15. Estate of Galgano
12 would be 14. Van Dam would be 15. Cook would be
13 16. Dykeman would be 17. Gomez would be 18.
14 Alexander would be 19. Richardson would be 20. I
15 don't know if I can read that next one.

16 We've got Guttierrez; is that right?

17 MR. TOOTLE: It looks like Davadi.

18 JUDGE DUKES: Davadi?

19 MR. TOOTLE: D-a-v-a-d-i.

20 JUDGE DUKES: Either one, 20 -- that
21 would be number 21, it says Lot 4. All right.
22 Hutchings, that is a different one, would be 22.
23 All right. Hutchings then goes down. Both of those
24 would be 22 under Hutchings. Then we have Huston
25 would be 23. Merrifield would be 24. Brouillette

1 25. Now Brouillette goes on to the next page, we
2 won't count them twice. Westmoreland is the proper
3 owner of Lot 21. So that would be 26. We have to
4 remember, of course, not to count the seller of --
5 that I think we're going to get to. Okay.

6 So then we've got Sanders would be 27. We
7 have Sapp is 28. We have Brace is 29. We have
8 O'Shields is 30. Farmer is 31. And do not count
9 the Garcias because I think we've established that
10 in fact they do not own the property. Westmorelands
11 did, so we counted the Westmorelands. I get 31.

12 And I understand you have issues with the
13 way this was executed; Mr. Kuhn, but is that the --
14 taking out the duplications and taking out the
15 Garcias, is that the number you get as well, Mr.
16 Kuhn.

17 MR. KUHN: That is the number I get
18 by that method, Your Honor, yes, sir.

19 JUDGE DUKES: Okay. So I've got 31.
20 And I haven't heard except from Garcias that there
21 is any question but that they were owners at the
22 time this was executed. Let me say first with
23 regard to the fraud cause of action, I'm going to
24 deny the Plaintiff's relief on the fraud and
25 inducement cause of action. I just didn't hear

1 enough evidence that would have caused -- I just
2 really heard from one property owner. And it didn't
3 really rise to the level of any sort of effect on
4 his free will or anything like that. And this
5 document and his testimony, the document being
6 Plaintiff's Exhibit 6 and the testimony in my mind
7 don't rise to the level of any kind of a fraudulent
8 inducement.

9 With regard to the instrument itself, it
10 appears to have certainly the right number of
11 signatures. The only thing that gives me some pause
12 is what probable was a clerical error, but what we
13 are going to do is allow counsel the opportunity to
14 give me any case law that they wanted to pull
15 together, maybe by the end of the week, with regard
16 to irregularity of instruments, clerical errors, et
17 cetera. And I'm happy to look at it before I rule
18 on the primary and first cause of action.

19 So is Monday at 5:00, is that going to
20 give you enough time.

21 MR. KUHN: Actually I think I'm gone
22 most of next week.

23 JUDGE DUKES: You tell me. What is
24 reasonable? Ten days? Two weeks?

25 MR. KUHN: Two weeks would be good,

1 Your Honor. I am slammed.

2 JUDGE DUKES: All right. Does that
3 work for you as well?

4 MR. TOOTLE: Two weeks?

5 JUDGE DUKES: Two weeks.

6 MR. TOOTLE: Two weeks is fine.

7 JUDGE DUKES: So two weeks. And what
8 I'm looking for is not necessarily a formal brief,
9 but I'm looking for case law, statutory support for
10 each of your positions with regard to possible
11 irregularity in instruments and their effect there
12 of. So any questions? All right then. Thank you
13 all very much.

14 (Whereupon, the hearing was concluded
15 at 10:35 a.m.)

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000165

Certificate of Reporter

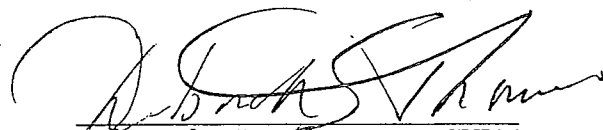
I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of O'Brien vs. Van Dam, et al, on the 4th day of August, 2015: and that the foregoing 66 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

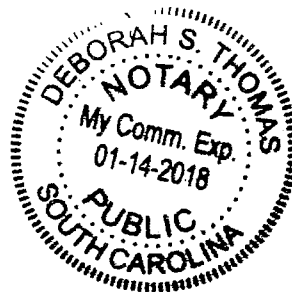
I further certify that the original of said transcript shall be hereafter delivered to J. FRED KUHN, JR., ESQUIRE, Moss, Kuhn & Fleming, PA, P.O. Drawer 507, Beaufort, South Carolina 29901.

In witness whereof I set my hand and seal this 10th of January, 2016.

My Commission
expires 1/4/18



Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina



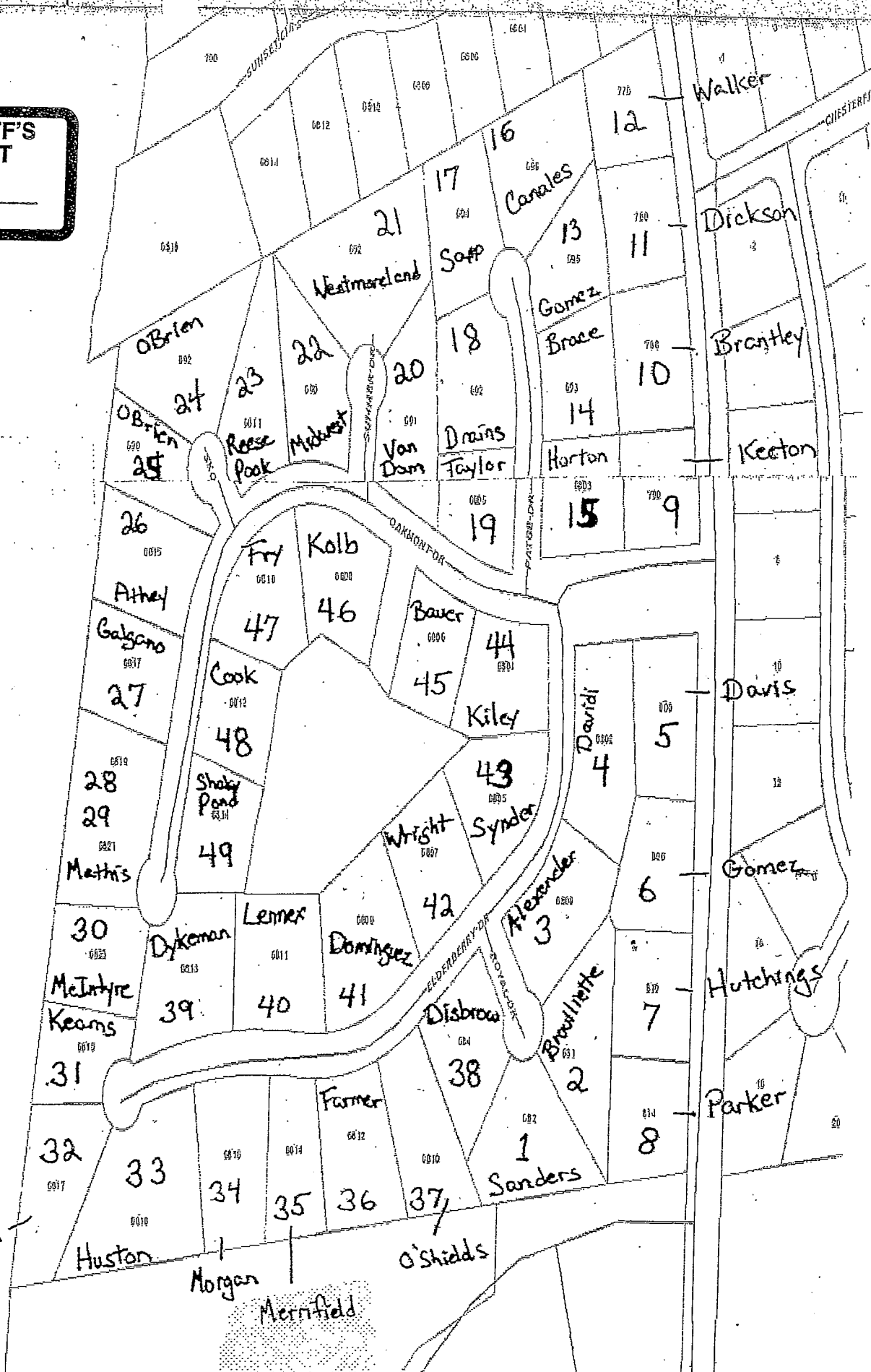
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Base Map 2013 Aerial

PLAINTIFF'S
EXHIBIT
#1

Base Map 2013 Aerial

Richardson



PLAINTIFF'S
EXHIBIT

#2

2000

COVENANTS AND LOT RESTRICTIONS

OAKMONT SUBDIVISION

WHEREAS, ERVIN H. BERRY, does hereby publish, set forth and declare the following protective covenants and restrictions, to-wit:

1. Property subject to these restrictions shall be used for dwelling houses only, and no commercial enterprises shall be conducted thereon.
2. No building shall be located on said property nearer than fifteen (15') feet to any rear line, nor nearer than ten (10') feet from any side line. The location for buildings shall be submitted to Ervin H. Berry, his heirs or assigns for approval, and approval or rejection must be given to the owner within thirty (30) days. The location of buildings shall be in keeping with the best interest of aesthetic values and Ervin H. Berry, his heirs or assigns shall be the final authority as to location upon the lots.
3. No more than one (1) dwelling house may be erected on each lot.
4. Ervin H. Berry, has established a Plans Approval Board for the purpose of examining and passing upon all proposed plans for any structure or structures whatsoever and any additions thereto and remodelings thereof intended to be placed upon its lands. The approval of this Board shall be required on the designs of all residential buildings, club buildings, multiple-occupancy dwellings, fences, signs or any other structure of structures however large or small which may be placed upon the property subject to those restrictions. No construction of any structure whatsoever may be commenced until the Board has issued its approval thereof. If construction has not commenced within ninety (90) days of date of the Board's approval notifications, the plans shall be resubmitted to the Board for full consideration, as if it were a new application. The total enclosed space exclusive of screen porches and garages for residence shall be 1,100 square feet minimum.
5. All lots shall be used for single family residential purposes only. Any detached structures shall be constructed only upon the specific written approval of the Plans Approval Board and in no case shall be constructed prior to the construction of the main building on the residential lot.
6. No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon tending to cause embarrassment or discomfort or annoyance or a nuisance to the neighborhood. There shall not be maintained any plant, device, animal or any other thing whose normal activity or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in the neighborhood.
7. The said Ervin H. Berry reserves unto himself, his heirs or assigns alienable and releaseable easements and rights on, over and under the ground to erect, maintain, and use utility and drainage service and equipment in and over the ten (10') feet of land adjacent to each side of each property line of such property sold subject to these restrictions.

EXHIBIT A

000168

2007

COVENANTS AND LOT RESTRICTIONS

OAKMONT SUBDIVISION

8. No sign shall be erected on any lot except with the written permission of the Plans Approval Board.

9. Ervin H. Berry retains the right to cut bushes, shrubs, trees, and make gradings of soil or cut drainways for surface water whenever and wherever such action is necessary to provide economical and safe installation of utilities and drainage systems and to maintain reasonable standards of health, safety and appearance.

10. Temporary structures may be placed upon the lots during construction of buildings thereon with the written consent of the Board provided, however, that said temporary structures shall be removed prior to the occupancy of the residence on said lot. Said temporary structures shall at no time be used for living quarters. No house trailer except for construction trailers shall be permitted on the property at any time.

11. Each residential lot shall include parking space for at least one (1) automobile.

12. No live trees measuring six (6") inches or more in diameter at a height of four and one-half (4-1/2) feet above ground level may be removed without the approval of the Board.

13. No lot shall be subdivided nor its boundary line changed except with the written consent of the Board. However, Ervin H. Berry hereby expressly reserves to himself, his heirs and assigns, the right to replat any two or more lots shown on the plat of this property so as to create a new building plot or building plots. When such a building plot is created, the restrictions and covenants herein apply to a part of the new lot shall apply to the entire new plot, the work lot as used herein shall be construed to mean building plot.

14. If an owner of property within Oakmont Subdivision should receive an offer to purchase his property, it shall be offered for sale to Ervin H. Berry, his heirs or assigns, at the same price and terms at which the highest bonafide offer has been made for the property and with full disclosure of the intended purchases; and the said Ervin H. Berry shall have ten (10) days within which to exercise his option to purchase said property at this price; and should he fail to refuse, within ten days after receipt of written notice of the price and upon the offered terms, then the owners of said property shall have the right to sell said property subject, however, to all covenants and conditions and restrictions at the price and terms submitted to Ervin H. Berry.

15. Boats, boat trailers, campers or like over-the-road non-motorized equipment may not be stored on the lot unless in the garage, carport or at the rear of the house so as not to be visible from any roadway.

16. All lots shall be kept free of underbrush, weeds, or other unsightly vegetation and in the event that the owner of any lot permits any underbrush, weeds, or other unsightly vegetation to grow upon any lot to a height of two feet or more Ervin H. Berry may enter upon said land to remove the same at the expense of the owner, provided, however, that such expense shall not exceed \$50.00 annually. Ervin H. Berry may likewise enter upon said land to remove the trash which has collected on said lots without such entrance for such purpose being deemed a trespass, all at the expense of the owner, provided, however, that such expense shall not exceed \$60.00 annually. The provisions shall not be construed as an obligation on the part of the said Ervin H. Berry to provide garbage or trash removal service.

COVENANTS AND LOT RESTRICTIONS

OAKMONT SUBDIVISION

2002

17. No wells, for the purpose of obtaining water may be drilled on any lot without the express written consent of Ervin H. Berry.

18. All recreation, open-space land or designated "buffer-space" land qualifying as open space under the Beaufort Joint Planning Commission guidelines, shall be maintained by the said Ervin H. Berry, his heirs or assigns, until such times the control of the developments restrictive covenants and deed restrictions are granted to a homeowner's association of property owners, Beaufort County, or such designee as may be approved by the Beaufort Joint Planning Commission.

19. All covenants and restrictions contained in this declaration shall run with the land and shall be binding on all parties and persons until January 1, 1985; after which time said covenants and restrictions shall be automatically extended for successive periods of five (5) years, unless an instrument signed by a majority of the then property owners within Oakmont Subdivision has been recorded agreeing to change these covenants in whole or in part or to terminate the same.

20. In the event of a violation or a breach of any of these restrictions or covenants to any property owner, or agent, of such owner, the owners of lots in the neighborhood or the property or any of them jointly or severally or Ervin H. Berry shall have the right to proceed at law or in equity to compel a compliance of the terms and conditions hereof and to prevent the violation or breach of said restrictions or protective covenants upon land subject to such restrictions. In addition to the foregoing, Ervin H. Berry shall have the right whenever there shall have been built on any lot subject to these restrictions, any structure which is in violation of these restrictions, to enter upon the said property when such violation exists and summarily remove the same at the expense of the owner, if after thirty (30) days written notice of such violation it shall not be deemed a trespass. The failure of Ervin H. Berry to enforce any right, reservation, restrictions or conditions contained in this instrument however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach or as to breach occurring prior or subsequent thereto and shall not bar nor affect its enforcement. These restrictions incorporate all existing state and federal laws where applicable; and the invalidation by any court of any restriction in this instrument contained, shall in no way affect any of the other restrictions, but they shall remain in full force and effect.

21. Ervin H. Berry, his successors or assigns, may include in any contract or deed hereinafter made or entered into, such modification and/or additions to these protective covenants and restrictions, any additional covenants and restrictions which will not, in the opinion of the Board, lower the standards of the property.

IN WITNESS WHEREOF, ERVIN H. Berry has hereunto set his Hand and Seal this the 17th day of January, 1978.

SIGNED, SEALED & DELIVERED
IN THE PRESENCE OF:

[Signature]
Pamela P. Stockham

[Signature]
ERVIN H. BERRY

000170

2003

THE STATE OF SOUTH CAROLINA
BEAUFORT COUNTY

PERSONALLY appeared before me Julian S. Levin,
and made oath that he saw the within ramed ERVIN H. BERR,
sign, seal, and as his act and deed, deliver the within written
Covenants and Lot Restrictions, and that he with Pamela P.
Stockham witnessed the execution thereof.

SWORN to before me, this 17th
day of January, A.D. 1978.

Julian S. Levin
Notary Public of South Carolina
My Commission Expires: 1981

Pamela P. Stockham

215

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000171

PLAINTIFF'S
EXHIBIT

#3

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AMENDMENT TO
RESTRICTIVE COVENANTS
OAKMONT SUBDIVISION

WHEREAS, by instrument dated January 17, 1978, and recorded on February 14, 1978 in Book 259 of Deeds, at Page 2000, I imposed certain Restrictive Covenants in Oakmont Subdivision, and

WHEREAS, I now desire to amend Paragraph 4 of such Restrictive Covenants and to delete entirely Paragraph 14, now therefore,

I hereby declare that Paragraph 4 of such Restrictive Covenants is amended to provide as follows:

4. Ervin H. Berry, has established a Plans Approval Board for the purpose of examining and passing upon all proposed plans for any structure of structures whatsoever and any additions thereto and remodeling thereof intended to be placed upon its lands. The approval of this Board shall be required on the designs of all residential buildings, club buildings, multiple-occupancy dwellings, fences, signs or any other structure of structures however large or small which may be placed upon the property subject to those restrictions. No construction of any structure whatsoever may be commenced until the Board has issued its approval thereof. If construction has not commenced within ninety (90) days of date of the Board's approval notifications, the plans shall be resubmitted to the Board for full consideration, as if it were a new application. The total enclosed space exclusive of screen porches and garages for residence shall be 1,350 square feet minimum.

I further amend such Restrictive Covenants to provide that Paragraph 14 is deleted therefrom.

IN WITNESS WHEREOF, I have hereunto set my Hand and Seal this 11th day of May, 1978.

ERVIN H. BERRY

SIGNED, SEALED & DELIVERED
IN THE PRESENCE OF:

Pamela P. Stockham

EXHIBIT B

000172

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

924

PERSONALLY appeared before me Pamela P. Stockham
and made oath that s/he saw the within named ERVIN H. BERRY,
sign, seal, and as his act and deed, deliver the within written
Amendment to Restrictive Covenants of Oakmont Subdivision, and
that s/he with Julian S. Levin witnessed the execution
thereof.

Pamela P. Stockham

SWORN TO before me this
11th day of May, 1978.

Julian S. Levin
Notary Public for South Carolina
My Commission Expires: 1-8-81

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Marian H. Fender CLERK OF COURT OF COMMON PLEAS		

000173

PLAINTIFF'S
EXHIBIT

tabbies

#2

799

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

ASSIGNMENT OF INTEREST

FOR AND IN CONSIDERATION OF ONE AND NO/100 (\$1.00) DOLLAR and other good and valuable considerations, I, Ervin H. Berry, do hereby convey all of my right, title and interest in the Covenants and Lot Restrictions for Oakmont Subdivision recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 259 at Page 2000 as amended by document recorded in the Office of the Clerk of Court for Beaufort County, South Carolina in Deed Book 263 at Page 923 to Oakmont, Inc.

In witness whereof, I have hereunto set my Hand and Seal this 21st day of December, 1979.

Witness:

[Signature]
[Signature]

[Signature]
Ervin H. Berry

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

PERSONALLY appeared before me Roberta N. Jaekel and made oath that she saw the within named Ervin H. Berry sign, seal and as his act and deed, deliver the within Assignment of Interest and that she with Sherwood N. Fender witnessed the execution thereof.

SWORN TO before me this 21st day of December, 1979

[Signature]
Notary Public for S. C.
My Commission Expires 4-11-89 (L.S.)

[Signature]

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Sharon Q. Burns
BEAUFORT COUNTY AUDITOR

O'Brien

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DEED

KNOW ALL MEN BY THESE PRESENTS, THAT WE, CESAR A. GARCIA and KIM D. GARCIA (hereinafter the "Grantor"), in the State aforesaid, for and in consideration of full satisfaction of the indebtedness from Grantor to Grantee to me in hand paid at and before the sealing of these presents by JOHN W. WESTMORELAND and PHYLLIS B. WESTMORELAND (hereinafter the "Grantees") of 105 Water's View Road, Hampton, South Carolina 29924, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto the said JOHN W. WESTMORELAND and PHYLLIS B. WESTMORELAND, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns, the following described property, to-wit:

All that certain piece, parcel or lot of land, together with all buildings and improvements thereon, situate, lying and being in Beaufort County, South Carolina, being more particularly shown and designated as Lot 21, Oakmont Subdivision, on a plat prepared by Niels Christensen, dated March 6, 1976 and June 1, 1979 and recorded in Plat Book 26 at Page 206 in the office of the Register of Deeds for Beaufort County, South Carolina. For a more complete description of said property, reference may be had to an individual plat prepared by Christiansen-Khalil Surveyors, Inc., dated March 25, 202 and recorded in Record Book 1562 at Page 2302 in the office of the Register of Deeds for Beaufort County, South Carolina

This property is subject to all applicable covenants, conditions, restrictions and easements, or rights of way filed of record in the office of the Register of Deeds for Beaufort County, South Carolina.

This being the same property conveyed to the Grantors by Deed of the Grantees, dated January 12, 2007 and recorded January 16, 2007 in Record Book 2507 at Page 789 in the office of the Register of Deeds for Beaufort County, South Carolina.

TMS No. 100-30-157

ADD DMP Record 5/15/2012 03:16:18 PM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R100	030	000	0157	0000	00



This Deed was prepared in the Law Offices of Angela Daniels Gooding, P.A., Post Office Box 387, Hampton, South Carolina 29944 without benefit of a title examination with information provided by Grantee.

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

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said JOHN W. WESTMORELAND and PHYLLIS B. WESTMORELAND, as joint tenants with rights of survivorship and not as tenants in common, their heirs and assigns forever

AND Grantors do hereby bind Grantors and Grantors' heirs, assigns, executors and administrators, to warrant and forever defend, all and singular, the said Premises unto the said JOHN W. WESTMORELAND and PHYLLIS B. WESTMORELAND, against Grantors and Grantors' heirs, and all persons whomsoever lawfully claiming or to claim the same, or any part thereof.

IN WITNESS WHEREOF, Grantors has caused these presents to
be executed this 7th day of March 2012.

WITNESSES:

Kathleen S. Nettles
Witness #1

Cesar A. Garcia
CESAR A. GARCIA

Nancy K. Thomas
Notary Public

Kim D. Garcia
KIM D. GARCIA

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I HEREBY CERTIFY, that on this 7th day of March ,2012,
before me, the undersigned Notary Public of the State and County
aforesaid, personally appeared Cesar A. Garcia and Kim D. Garcia
known to me (or satisfactorily proven) to be the person whose name
is subscribed to the within Deed, who acknowledged the due
execution of the foregoing Deed.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal the day and year last above mentioned.

Nancy K. Thomas
Notary Public for South Carolina
My Commission Expires: 16 Sep 2015
County of Beaufort

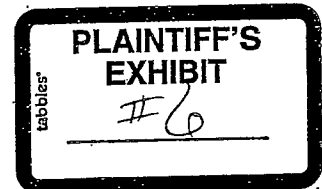
A meeting was held on January 11th, 2014 to discuss the covenants for the Oakmont Subdivision. Many home owners expressed that they did not have a copy of the current covenants for the subdivision. If you do not have a copy of the covenants please contact Theresa Van Dam, 691 Summer Drive, telephone number 843-252-2845 for a copy of the covenants.

It was also discussed that a decision needed to be made whether the homeowners would like to keep the current covenants, modify the current covenants, or remove the covenants for the subdivision. To keep the current covenants or to modify the current covenants would require that a Home Owners Association (HOA) would need to be created which would require monthly/annual fees.

To this end, would you please make a decision from the selections below on how you would like to vote as a home owner in the Oakmont Subdivision. Those wishing to remove the covenants for the subdivision need to attend the meeting on 22 Feb, 2014 @ 10:00 a.m. as there will be a lawyer and a notary on hand to assist us with this process. Once you have made your selection please bring this form to the meeting at Calvary Baptist Church located at 256 Savannah Highway. This form can also be dropped off at Mr. and Mrs. Van Dam's residence, 691 Summer Drive, if you are unable to attend the meeting on February 22nd.

Please check one of the following:

- ☐ Keep Oakmont Subdivision Covenants
- ☐ Modify Oakmont Subdivision Covenants
- ☐ Remove Oakmont Subdivision Covenants



Print Name

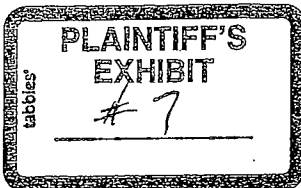
Signature

Print Address

Date

000178

11/17/14
gaw



BEAUFORT COUNTY SC - ROD
BK 3315 Pgs 1529-1539
FILE NUM 2014017449
04/16/2014 02:27:17 PM
REC'D BY rwebb RCPT# 740344
RECORDING FEES \$17.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

AGREEMENT TO
TERMINATE COVENANTS

WHEREAS, certain Covenants and Lot Restrictions were imposed upon property known as Oakmont Subdivision, located in Beaufort County, South Carolina, as shown on that certain plat recorded in the Register of Deeds Office for Beaufort County, South Carolina, in Plat Book 26 at Page 206, said Covenants being recorded in the Beaufort County Records in Deed Book 259 at Page 2000, as amended in Deed Book 263 at Page 923, as assigned in Deed Book 227 at Page 799, those Covenants running with the land; and

WHEREAS, said Covenants were to run with the land until January 1, 1985, after which time they were to be automatically extended for successive periods of five (5) years; and

WHEREAS, said Covenants provided for the ability to change or terminate the covenants by recording an instrument signed by a majority of the then property owners within Oakmont Subdivision; and

WHEREAS, the undersigned, being a majority of the current property owners within Oakmont Subdivision, desire to terminate those Covenants;

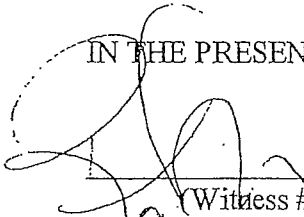
NOW THEREFORE, as set forth in the Covenants and Lot Restrictions of Oakmont Subdivision, the undersigned, being a majority of the current property owners within Oakmont Subdivision, do hereby agree that the Covenants referenced above (as amended and assigned) be and are hereby terminated.

[Handwritten signatures and initials]
D.H. Emmer MEX JB TJB JWB
RRR BMM MNB ELS RRD
Page 1 of 13 ARE
Paw. Lq CAS SGT CETH RBT YOW TAND JBR
ED EGD LD(2D) OK AK of 000179WID bel JB HB CKPH

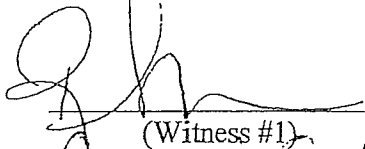
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29 day of March, 2014.

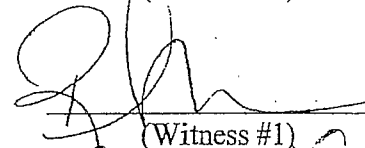
IN THE PRESENCE OF:


(Witness #1)

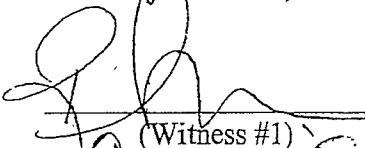
Cynthia E. Jaraman
(Witness #2)


(Witness #1)

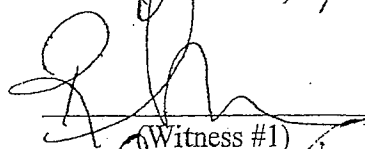
Cynthia E. Jaraman
(Witness #2)


(Witness #1)

Cynthia E. Jaraman
(Witness #2)


(Witness #1)

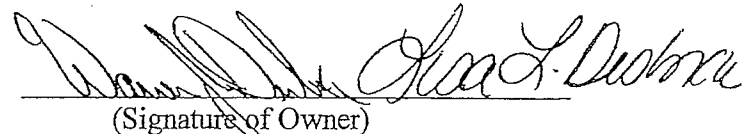
Cynthia E. Jaraman
(Witness #2)


(Witness #1)

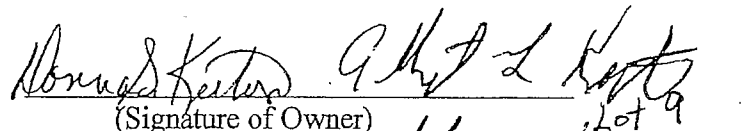
Cynthia E. Jaraman
(Witness #2)

Evelyn Dickson Emerson Dickson
(Signature of Owner) LOT # 11

EVERLYN DICKSON EMERSON DICKSON
(Printed Name and Lot Number)


(Signature of Owner)

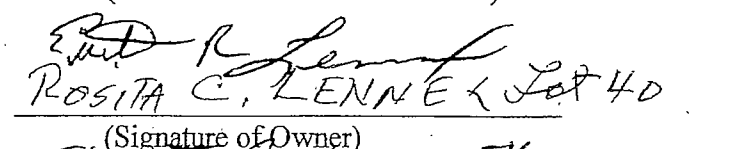
Wendy Dickson Lisa L. Disbrow Lot 38
(Printed Name and Lot Number)


(Signature of Owner) Lot 9

Donna Keeton G.M.T. L. KEETON
(Printed Name and Lot Number)

G.W. Taylor
(Signature of Owner)

GARY W. TAYLOR Lot # 19
(Printed Name and Lot Number)


(Signature of Owner) Lot 40

EVERETT R. LENNOX
Rosita C. Lennox
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29 day of March, 2014.

IN THE PRESENCE OF:

[Signature]
(Witness #1)

Cynthia J. Jarama
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Jarama
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Jarama
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Jarama
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Jarama
(Witness #2)

[Signature]
(Signature of Owner)

William J. Davis & Cynthia Davis (18)
(Printed Name and Lot Number)

James F. Davis Kathleen V. Bauer
(Signature of Owner) Kathleen Bauer
JAMES F. BAUER 45
(Printed Name and Lot Number)

Paula Christine Wright (Brown) 42
(Signature of Owner)

Paula Christine Wright (Brown) 42
(Printed Name and Lot Number)

Cheryl Kearns Ralph R. Kearns
(Signature of Owner)

Cheryl Kearns Ralph R. Kearns, Jr Lot #31
(Printed Name and Lot Number)

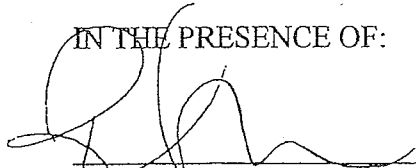
Jose Gomez / Linda Gomez
(Signature of Owner)

Jose & Linda Gomez #13
(Printed Name and Lot Number)

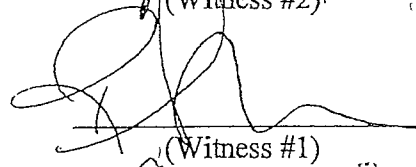
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

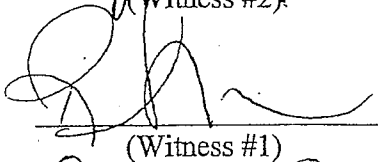
IN THE PRESENCE OF:


(Witness #1)

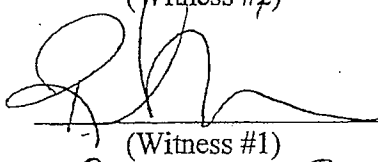
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(Witness #2)


(Witness #1)

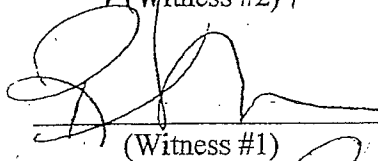
Cynthia J. Trautman
(Witness #2)


(Witness #1)

Cynthia J. Trautman
(Witness #2)


(Witness #1)

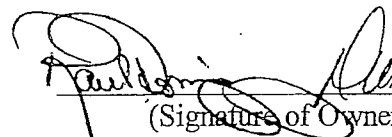
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(Witness #2)


(Witness #1)

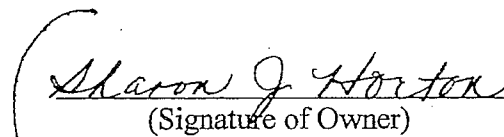
Cynthia J. Trautman
(Witness #2)

Catherine A. Smith (Davis)
(Signature of Owner)

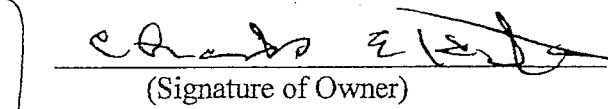
Catherine A. Smith (Davis) #5
(Printed Name and Lot Number)

 Denise Dominguez #41
(Signature of Owner)

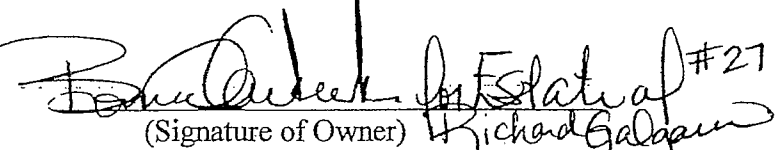
Raul Dominguez DENISE L. Dominguez
(Printed Name and Lot Number)


(Signature of Owner)

SHARON J. HORTON #15
(Printed Name and Lot Number)


(Signature of Owner)

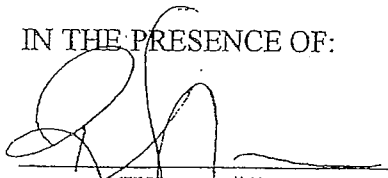
SHARON J. HORTON #15
(Printed Name and Lot Number)

 Richard Galgano #27
(Signature of Owner)

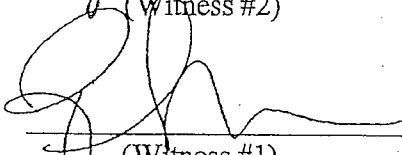
Bonnie Grabenbauer for Estate
(Printed Name and Lot Number)
Richard Galgano

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this
29th day of March, 2014.

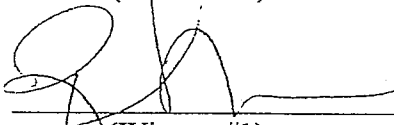
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(Witness #1)

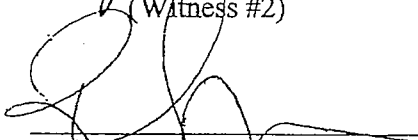
Cynthia J. Jaumain
(Witness #2)


(Witness #1)

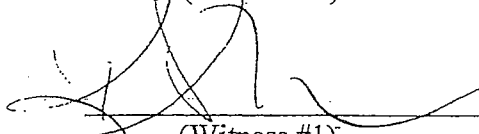
Cynthia J. Jaumain
(Witness #2)


(Witness #1)

Cynthia J. Jaumain
(Witness #2)


(Witness #1)

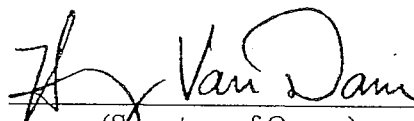
Cynthia J. Jaumain
(Witness #2)


(Witness #1)

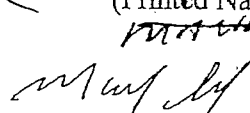
Cynthia J. Jaumain
(Witness #2)

Theresa D. Van Dam Lot #20
(Signature of Owner)

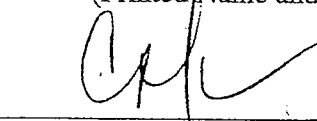
Theresa D. Van Dam
(Printed Name and Lot Number)


(Signature of Owner)

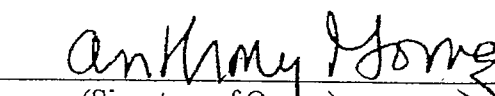
Henry Van Dam Lot #20
(Printed Name and Lot Number)

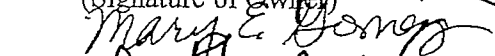
 Rose M. Cook
(Signature of Owner) *care of HB*

MARK COOK Rose M. Cook Lot 48
(Printed Name and Lot Number)

 Lot 39
(Signature of Owner)

Carol Dykeman
(Printed Name and Lot Number)

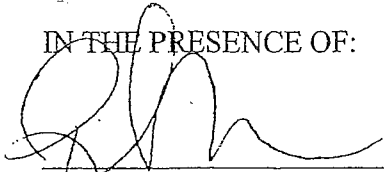

(Signature of Owner)


Anthony Gomez Lot k
(Printed Name and Lot Number)
Mary E. Gomez

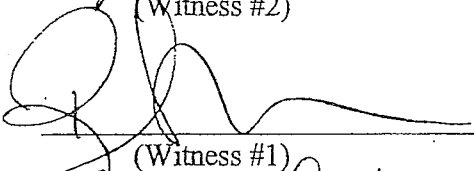
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

29th day of March, 2014.

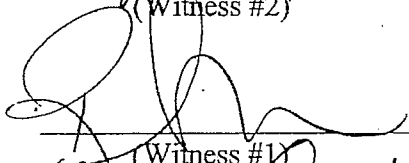
IN THE PRESENCE OF:


(Witness #1)

Cynthia G. Jarama
(Witness #2)


(Witness #1)

Cynthia G. Jarama
(Witness #2)


(Witness #1)

Cynthia G. Jarama
(Witness #2)

(Witness #1)

(Witness #2)

(Witness #1)

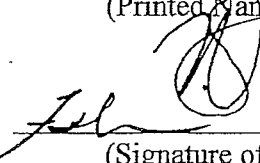
(Witness #2)

Bonnie M. Alexander
(Signature of Owner)

BONNIE M. ALEXANDER
(Printed Name and Lot Number) **#3**

Linda S. Richardson
(Signature of Owner)

Linda S. Richardson **Lot #32**
(Printed Name and Lot Number)


(Signature of Owner)

Maria C. Davidi
(Printed Name and Lot Number)

Lot #4

(Signature of Owner)

(Printed Name and Lot Number)

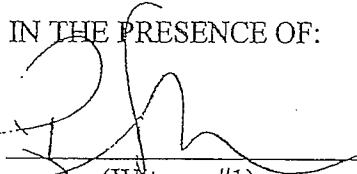
(Signature of Owner)

(Printed Name and Lot Number)

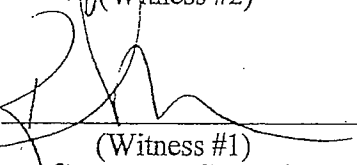
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

1st day of April, 2014.

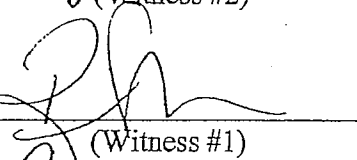
IN THE PRESENCE OF:


(Witness #1)

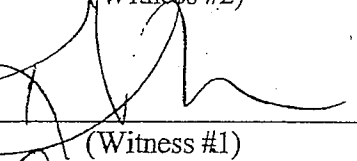
Cynthia J. Truitt
(Witness #2)


(Witness #1)

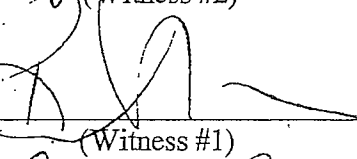
Cynthia J. Truitt
(Witness #2)


(Witness #1)

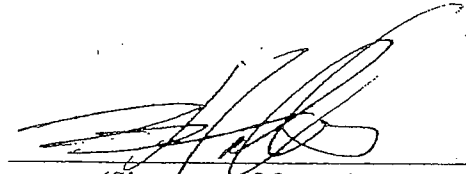
Cynthia J. Truitt
(Witness #2)


(Witness #1)

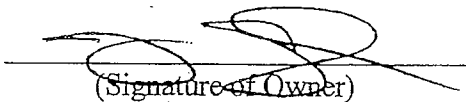
Cynthia J. Truitt
(Witness #2)


(Witness #1)

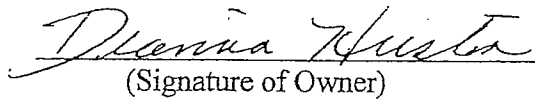
Cynthia J. Truitt
(Witness #2)


(Signature of Owner)

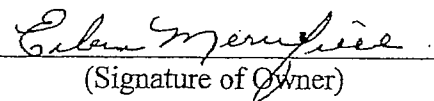
HUTCHINGS TRAVIS J. LOT 7
(Printed Name and Lot Number)


(Signature of Owner)

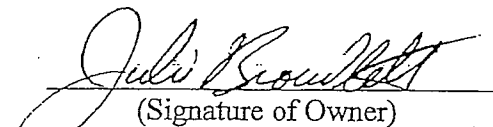
Amy Hutchings Lot 7
(Printed Name and Lot Number)


(Signature of Owner)

DIANNA HUSTON Lot 33
(Printed Name and Lot Number)


(Signature of Owner)

Elean Merrick #35
(Printed Name and Lot Number)

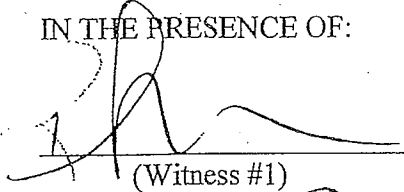

(Signature of Owner)

Julie Brouillette #2
(Printed Name and Lot Number)

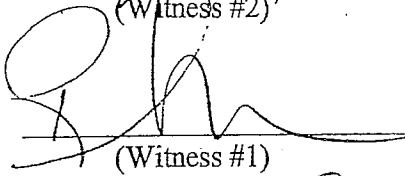
IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

1st day of April, 2014.

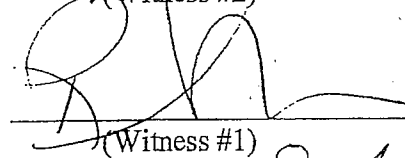
IN THE PRESENCE OF:


(Witness #1)

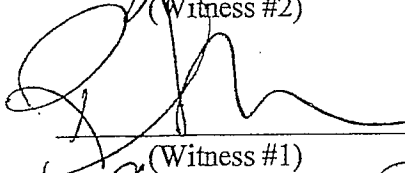
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(Witness #2)


(Witness #1)

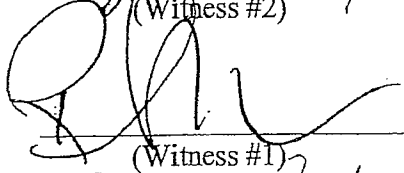
Cynthia J. Traumm
(Witness #2)


(Witness #1)

Cynthia J. Traumm
(Witness #2)


(Witness #1)

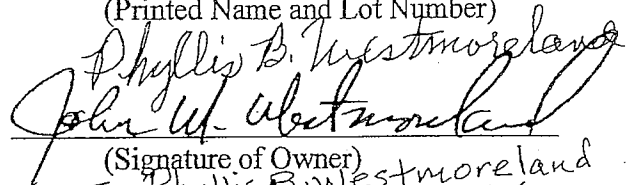
Cynthia J. Traumm
(Witness #2)


(Witness #1)

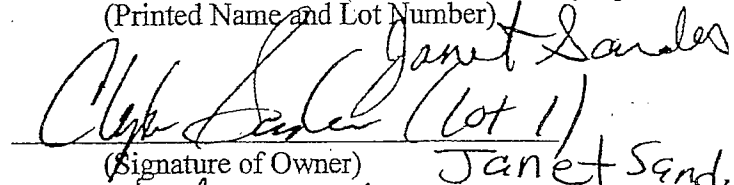
Cynthia J. Traumm
(Witness #2)

Tom D. Brouillette
(Signature of Owner)

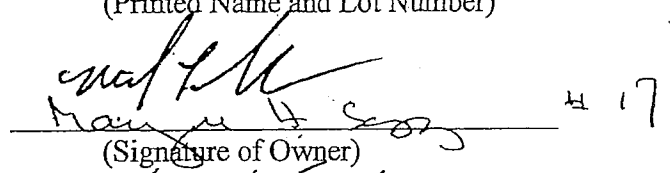
Tim D. Brouillette 2
(Printed Name and Lot Number)


(Signature of Owner)

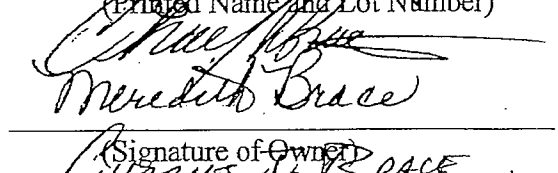
Phyllis B. Westmoreland
John W. Westmoreland (21)
(Printed Name and Lot Number)


(Signature of Owner)

Clyde Sanders (1)
(Printed Name and Lot Number)


(Signature of Owner)

Michael L. Sapp
Marjorie H. Sapp
(Printed Name and Lot Number)


(Signature of Owner)

Meredith Brace #14
(Printed Name and Lot Number)

IN WITNESS WHEREOF, the undersigned have caused these presents to be executed this

9th day of April, 2014.

IN THE PRESENCE OF:

[Signature]
(Witness #1)

Cynthia J. Irujo
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Irujo
(Witness #2)

[Signature]
(Witness #1)

Cynthia J. Irujo
(Witness #2)

(Witness #1)

(Witness #2)

(Witness #1)

(Witness #2)

Brenda D. Shields 37
(Signature of Owner)

Brenda S. Shields
(Printed Name and Lot Number)

[Signature]
(Signature of Owner)

Catherine B. Farmer 36
(Printed Name and Lot Number)

[Signature] #21
(Signature of Owner)

KIM D. GARCIA
CESAR GARCIA
(Printed Name and Lot Number)

(Signature of Owner)

(Printed Name and Lot Number)

(Signature of Owner)

(Printed Name and Lot Number)

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the first witness named above and made oath that s/he saw the within

named Emerson & Evelyn Dickson

Warren Disbrow

Lisa Disbrow

Albert Lee Keeton

Donna Westfall Keeton

Gary W. Taylor

Rosita C. Lenney

Everett R. Lenney

Willie J. Drains, III

Sumatha Drains

James F. Bauer

Kathleen V. Bauer

Paula Wright Brown

Cheryl C. Kearns

Ralph R. Kearns, Jr.

Jose Gomez Lino

Linda J. Gomez

Catherine Ann Smith (Davis)

Raul S. Dominguez

Sharon J. Horton

Charles E. Horton

Bonnie H. Grabenbauer

Theresa Dee Van Dam

Henry J. VanDam

Mark A. Cook

Rose Mary Cook

Carol W. Dykeman

Anthony R. Gomez, III

Robb R. Alexander

Bonnie M. Alexander

Linda S. Richardson

Florian E. Davadi

Denise Dominguez

Mary Gomez

sign, seal and as their act and deed, deliver the within written instrument and that s/he with the other witness named above witnessed the execution thereof.

Sworn to before me this 29
day of March, 2014.
Cynthia J. [Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires: May 21, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the first witness named above and made oath that s/he saw the within

named Travis Hutchings, Phyllis R. Westmoreland
Amy J. Hutchings Cesar A. Garcia
Dianna D. Huston Kim D. Garcia
Eileen Merrifield
Julie L. Brouillette
Timothy D. Brouillette
John W. Westmoreland, Jr.
Janet S. Sanders
Clyde A. Sanders
Guy S. Richardson
Marjorie H. Sapp
Michael L. Sapp
Meredith R. Brace
Brenda S. Shields
Charles S. Brace
Catherine Farmer
James C. Farmer

sign, seal and as their act and deed, deliver the within written instrument and that s/he with the other witness named above witnessed the execution thereof.

Sworn to before me this 1st
day of April, 2014.
Catherine J. Farmer
Notary Public for South Carolina
My Commission Expires: May 21, 2017

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cf

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IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

HONORABLE MARVIN H. DUKES, III
BEAUFORT COUNTY MASTER-IN-EQUITY AND
SPECIAL CIRCUIT COURT JUDGE

CASE NO.: 2014-CP-07-1402

THOMAS J. O'BRIEN,

RECEIVED

JUL 10 2017

SC Court of Appeals

Appellant,

vs.

HENRY JAMES VAN DAM, THERESA D. VAN DAM, CLYDE A. SANDERS, JANET S. SANDERS, TIMOTHY D. BROUILLETTE, JULIE LYNN BROUILLETTE, ROBB R. ALEXANDER BONNIE M. ALEXANDER, FLORIEN DAVADI, MARIA OUTEIRAL, CATHERINE A. DAVIS, ANTHONY R. GOMEZ, III, MARY E. GOMEZ, TRAVIS HUTCHINGS, AMY J. HUTCHINGS, BRUCE K. PARKER, SR., MARY E. PARKER, ALBERT L. KEETON, DONNA S. KEETON, GREG BRANTLEY, KENISH D. BRANTLEY, EMERSON G. DICKSON, EVELYN DICKSON, WILLIAM H. WALKER, JR., DEBORAH L. WALKER, LINDA J. GOMEZ, CHARLES J. BRACE, MEREDITH N. BRACE, CHARLES E. HORTON, SHARON J. HORTON, EDWARD CANALES, CAROLINE M. CANALES, MICHAEL L. SAPP, MARJORIE H. SAPP, WILLIAM J. DRAINS, SYMATHA DRAINS, GARY W. TAYLOR, JOHN W. WESTMORELAND, PHYLLIS WESTMORELAND, MIDWEST CONCEPTS CORPORATION, BARRY L. REESE, GREGORY C. POOK, JUDITH A. ATHEY, RICHARD A. GALGANO, RAYMOND F. MATHIS, MAXINE L. MATHIS, BERNARD MCINTYRE, RALPH RAY KEARNS, JR., CHERYL LYNN J. KEARNS, GUY SIDNEY RICHARDSON, LINDA SUE RICHARDSON, DIANNA HUSTON, DANIEL B. MORGAN, MICHELLE J. MORGAN, LARRY G. MERRIFIELD, EILEEN MERRIFIELD, JAMES FARMER, CATHERINE B. FARMER, BRENDA O'SHIELDS, WARREN J. DISBROW, JOHN F. DYKEMAN, CAROL W. DYKEMAN, EVERETT R. LENNEX,

ROSITA C. LENNEX, RAUL DENISE DOMINGUEZ, PAULA
CHRISTINE WRIGHT, SHIRLEY A. SNYDER, BENJAMIN J.
KILEY, JAMES F. BAUER, REVOCABLE TRUST, BENJAMIN
KOLB, WILLIAM MARK FRY, ELIZABETH ANN FRY, MARK
A. COOK, ROSE M. COOK AND SHAKY POND, LLC

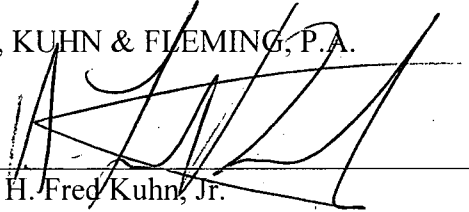
Respondents.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any parties and not any other material.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
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Beaufort, South Carolina 29901
(843)524-3373
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Beaufort, South Carolina
July 7, 2017