THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald, Circuit Court Judge

Op. No. 5588 (S.C. Ct. App. refiled February 27, 2019)

Case No. 2010-CP-10-10490
Appellate Case No. 2015-001590

Brad J. Walbeck and Lea Ann Adkins, Both Individually and Derivatively on Behalf of The I'On Assembly, Inc.; and I'On Assembly, Inc.,

Respondents,

v.

The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC f/k/a Civitas, LLC, and I'On Realty, LLC,

Petitioners.

RECORD ON APPEAL
VOL. 1
R. pp. 9-500

Brian C. Duffy
Julie L. Moore
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
(843) 720-2044
Attorneys for Petitioners

INDEX

Appendix

Court of Appeals Opinion.....1
Order Denying Petitions for Rehearing.....29
Appellants' Petition for Rehearing.....31
Respondents' Petition for Rehearing.....35
Final Brief of Appellants.....111
Final Brief of Respondents.....185
Final Reply Brief of Appellants.....262
Appellants' Supplemental Citation.....288
Respondents' Supplemental Citation.....289

Record on Appeal

Volume I

March 15, 2012 Order. 9
November 6, 2012 Order. 11
February 11, 2014 Order. 13
February 26, 2014 Order. 16
June 20, 2014 Order. 18
August 11, 2014 Order. 19
June 15, 2015 Order Denying JNOV and Motion for New Trial. 21
June 15, 2015 Order Denying Adkins Petition for Unjust Enrichment. 64
June 16, 2015 Order Declaring the Invalidity of The 2000 Recreational Easement. 70
July 13, 2015 Order Denying The I'On Company's Petition for Fees. 79
July 13, 2015 Order Awarding Walbeck Attorney's Fees and Costs. 84
July 16, 2015 Order Finding Defendants in Contempt for Destruction of Evidence. 101
December 22, 2010 Summons and Complaint. 116
March 8, 2011 Amended Complaint. 129

May 27, 2011 Answer. 141
February 7, 2012 Second Amended Complaint. 151
January 2, 2014 Third Amended Complaint. 168
January 9, 2014 Verifications to Third Amended Complaint by Plaintiffs. 184
January 14, 2014 Answer to Third Amended Complaint and Counterclaim. 186
May 12, 2014 Complaint – The I'On Company, LLC v. Walbeck. 199
June 16, 2014 Fourth Amended Complaint. 313
July 18, 2014 Answer to Fourth Amended Complaint and Amended Counterclaims. 330
January 13, 2014 Hearing Transcript. 391
July 24, 2014 Hearing Transcript. 432
January 13 – January 17, 2014 Trial Transcript Excerpts. 467
July 28, 2014 – August 1, 2014 Trial Transcript. 480

Volume II

July 28, 2014 – August 1, 2014 Trial Transcript Cont'd. 501
a. Direct Examination of Tim Eble by Ms. Lynn.....590
b. Cross-Examination of Tim Eble by Mr. Duffy 608
c. Redirect Examination of Tim Eble by Ms. Lynn 622
d. Direct Examination of Thomas Graham by Mr. Lucey.....624
e. Cross-Examination of Thomas Graham by Mr. Young 760
f. Redirect Examination of Thomas Graham by Mr. Lucey.....817
g. Recross Examination of Thomas Graham by Mr. Young.....837
h. Direct Examination of Lee Ann Adkins by Mr. Evans 841
i. Cross-Examination of Lee Ann Adkins by Mr. Duffy.....870
j. Redirect Examination of Lee Ann Adkins by Mr. Evans.....923
k. Recross Examination of Lee Ann Adkins by Mr. Duffy.....926
l. Direct Examination of Julie O'Connor by Mr. Duffy.....928
m. Cross-Examination of Julie O'Connor by Mr. Lucey 931
n. Direct Examination of Stuart Whiteside by Mr. Young.....935

o. Cross-Examination of Stuart Whiteside by Mr. Lucey 943
p. Redirect Examination of Stuart Whiteside by Mr. Young 951
q. Direct Examination of Brad Walbeck by Ms. Lynn.....952
r. Cross-Examination of Bradley Walbeck by Mr. Duffy 972
s. Direct Examination of Julie Hussey by Mr. Evans 986

Volume III

July 28, 2014 – August 1, 2014 Trial Transcript Cont'd.

t. Direct Examination of Julie Hussey by Mr. Evans Cont'd...1001
u. Cross-Examination of Julie Hussey by Mr. Duffy.....1009
v. Direct Examination of Edward Clem by Mr. Young 1067
w. Cross-Examination of Edward Clem by Mr. Evans.....1087
x. Redirect Examination of Edward Clem by Mr. Young.....1091
y. Direct Examination of David Thompson by Mr. Duffy.....1098
z. Cross-Examination of David Thompson by Mr. Lucey.....1102
aa. Direct Examination of Vincent Graham by Mr. Duffy 1106
bb. Cross-Examination of Vincent Graham by Mr. Lucey 1200
cc. Redirect Examination of Vincent Graham by Mr. Duffy.....1286
dd. Recross Examination of Vincent Graham by Mr. Lucey 1296
ee. Redirect Examination of Vincent Graham by Mr. Duffy.....1297
ff. Recross Examination of Vincent Graham by Mr. Lucey 1298
gg. Direct Examination of Debra Bedell by Mr. Duffy.....1300
hh. Cross-Examination of Debra Bedell by Mr. Bouch 1335
ii. Cross-Examination of Debra Bedell by Mr. Evans.....1337
jj. Redirect Examination of Debra Bedell by Mr. Duffy.....1341
kk. Direct Examination of Michael Robinson by Mr. Young.....1369
ll. Cross-Examination of Michael Robinson by Mr. Evans.....1401
mm. Redirect Examination of Michael Robinson
by Mr. Young 1418

Volume IV

mm. Redirect Examination of Michael Robinson by Mr. Young Cont'd.....1501

May 27, 2011 Motion to Dismiss. 1763

May 31, 2012 Motion for Summary Judgment. 1765

October 22, 2012 I'On Memorandum in Support of Motion for Summary Judgment, Ex. A: Walbeck Deposition Excerpts. 1768

January 8, 2014 Motion for Summary Judgment. 1808

June 6, 2014 Defendants' Motion to Amend Answer to Third Amend Complaint and Counterclaims. 1813

July 10, 2014 Defendants' Motion *in Limine* to Exclude Evidence of Settlement. 1816

July 31, 2014 Memorandum in Support of Directed Verdict. 1820

Verdict Form. 1855

August 11, 2014 Motion for Judgment Notwithstanding the Verdict. 1863

August 11, 2014 Walbeck Petition for Attorneys' Fees with Exhibits and Supplemental Memorandum in Support. 1869

August 11, 2014 Adkins' Petition for Unjust Enrichment. 1899

August 11, 2014 Plaintiffs' Motion Regarding Easement and Brief in Support of Judgment. 1903

August 12, 2014 I'On Company, LLC's Petition for Attorneys' Fees. 1910

August 25, 2014 Defendants' Memorandum in Opposition to Plaintiffs' Motion in Support of Judgment on the Validity of the 2000 Recreational Easement. 1915

August 25, 2014 Defendants' Memorandum in Support of Motion for JNOV. 1923

September 4, 2014 Plaintiffs' Memorandum in Opposition to Defendants' Motion for JNOV. 1968

Volume V

September 4, 2014 Plaintiffs' Memorandum in Opposition to Defendants' Motion for JNOV Cont'd. 2001

Court's Exhibits

1 Affidavit of Non-Service as to Russo 2016

2 Stipulation re Settlement Agreement 2017

5 Verification of Lea Ann Adkins 2018

Plaintiffs' Trial Exhibits

3 1997 I'On Impact Assessment 2019

4 August 10, 1999 I'On Plan View Dock No. 1 2040

5 August 10, 1999 I'On Plan View Dock No. 1 2041

6 Notice from Office of Ocean and Coastal 9.9.1999 Resource Management 2042

7 Newkirk Response to Comments 2049

8 Bruce Kinney Letter to Thomas Graham 2051

12 Purchase and Sale Agreement – Creek Club 2053

13 Deed from I'On Club to 148 Civitas 2065

14 Email Chain with Jo Ann Stubblefield 2075

15 Email Chain with Chad and Russo 2078

16 148 Civitas Settlement Statement 2081

26 Emails re Creek Club Under Contract 2084

28 Easement for Use of Boating 2085

29 Creek Club Purchase and Sale Agreement 2100

30 I'On Ordinance 2117

31 *Civitas – The I'On Journal*, Inaugural Issue 2120

32 I'On Ponsbury Neighborhood Plan 2128

33 SC DHEC Critical Area Permit 2132

34 1999 Department of the Army Permit 2151

36 Joint Federal and State Application Form for Activities Affecting Waters 2169

36(a) Office of Ocean and Coastal Resource Management Permit 2173

37 Joint Public Notice for Permit to Construct 6 Community Docks 2177

38 Agreement Between The I'On Company and GR 2197

40 DHEC Permit Approval Letter to Kenneth Hance 2201
41 I'Onsborough Neighborhood Plan 2202
43 Recreational Easement 2206
44(a) Quitclaim Deed from Club to Grahams 2209
46 Fact Sheet for I'On 2214
47 Handover Agreement 2216
48 Fact Sheet for I'On 2218
49 I'On Media Kit Fact Sheet 2220
51 I'On *Celebration 10 Years* Community Brochure 2221
53 Property Report Transmittal Letter 2229
55 Response Letter from Bouch to Adkins 2231
56 Letter from Kinney to Tom Graham 2232
57 Letter from Adkins to Bouch 2234
58 Update Memo/Email from Besenfelder to Gottshalk 2236
58(a) Besenfelder to Russo Email 2238
59 Emails Between Walsh and Adkins 2241
60 Emails among Walsh, Graham, Kinney and Adkins 2243
61 Letter from Tidsdale to The I'On Company 2248
62 Letter from Vincent Graham to Tisdale 2250
62(a) Graham Email Attached to Ex. 62 2251
63 Letter from Adkins to Vincent Graham 2256
64 Interstate Land Sales Subdivisions by Name Search Results 2258
65 Response Letter from Vincent Graham to Adkins 2259
65(a) Resolution Authorizing Sale 2260
66 CV5 Deed by Grahams to 148 Civitas 2263
67 Lot 275 Deed by I'On Company to 148 Civitas 2271
68 Assignment of Certain Club Owner's Rights and Obligations 2280
71 Letter from Walbeck to Vince Graham 2285
72 Letter from Vince Graham to Walbeck 2286
75 Signage at Dock 2287

76 I'On Website Printouts 2291
77 I'On Neighborhood Plan Brochure 2293
85 Newkirk and I'ON emails re Community Dock 2300
86 Permit Application from Newkirk to US Army COE 2304
88 Letter from COE to I'On Requesting a Response to Comments 2329
90 Post and Courier Affidavit of Publication 2330
102 HUD Letter to Vince Graham 2331
103 Request for Voluntary Suspension of Effectiveness 2333
108 Email from Thomas Graham to Martin 2334
109 Agreement Between I'On Company and GR, LLC 2335
111(a) Board Meeting Minutes 2342
115 Email from Russo to Besenfelder 2346
115(a) Chart of Pre-Amendment Lot Purchase Agreement 2347
116 Email from Russo to Besenfelder 2351
116(a) Chart of Lots Contracted of Closed 2353
117 Griffith to Graham re Proposal 2356
118 Barnes to Walbeck re Congratulations 2403
119 Russo to Besenfelder re Outline 2404
120 July 13, 2008 Russo to Besenfelder re Prior Proposal 2406
121 July 17, 2008 Russo to Besenfelder re Prior Proposal 2407
122 July 25, 2008 Russo to Besenfelder re Confidentiality Agreement 2410
123 July 28, 2008 Russo to Besenfelder re Confidentiality Agreement 2411
124 Russo to Besenfelder re Purchase Offer 2413
125 Russo to Besenfelder re Proposal 2414
126 Russo to Besenfelder re Confirming Revisions 2415
127 Purchase Agreement 2417
128 Russo to Besenfelder re Contracts 2427
129 Russo to Besenfelder re Besenfelder Prior Email 2428
130 Russo to Besenfelder re Meeting 2433
131 Russo to Besenfelder re Lease 2435

132 Russo to Besenfelder re Numbers 2438
133 Russo to Besenfelder re Meeting 2439
134 Russo to Besenfelder re Creek Club Purchase Agreement 2440
135 Russo to Besenfelder Forwarding Walsh Email 2441
136 Russo to Besenfelder re Amended Recreational Agreement 2445
137 December 11, 2008 Russo to Besenfelder re Creek Club Agreements 2460
139 April 14, 2009 Russo to Besenfelder re Creek Club Agreements 2461
140 Besenfelder to Russo re Due Diligence 2462

Volume VI

140 Besenfelder to Russo re Due Diligence Cont'd 2501
143 Graham Letter Suspending ISLA Registration 2606
145 I'On Grand Plan 2607
146 Russo Production 2608
147 Amended and Restated Purchase Agreement for CV6 2690
148 Final Purchase Agreement for CV6 2703
150 Property Report Receipts 2720
154 Russo to Besenfelder re Creek Club Sale 2842
156 Steve Speer Message Board Posting 2843
167 Developer Letters to Walbeck 2845
168 Dock 2 Photos 2848
179 Besenfelder to Martin re I'On Common Areas 2852
180 Besenfelder to Grahams re Creek Club Options 2855
181 Tom Graham to Besenfelder re Alternate to Sale of Creek Club 2857
182 Tom Graham to Besenfelder re Kinney and Easement 2862
183 Tom Graham to Vince Graham re Kinney Letter 2875
184 Tom Graham to Vince Graham re Recreational Easement 2879
185 Dock 3 Photos 2882
186 Dock 4 Photos 2891
187 Ariel Photo of Hobcaw 2897

188 Ariel Photo of Wando 2898
189 December 8, 1998 Vince Graham to Joe and Lewis Griffith 2899
190 Joe and Lewis Griffith to Vince Graham 2901
191 March 24, 1999 Vince Graham to Joe and Lewis Griffith 2905
192 Ariel Photos of Hobcaw 2906
193 Email from Besenfelder to Grahams re Creek Club Options 2910
194 Email from Tom Graham to Kinney re Creek Club 2913
195 Email from Tom Graham to Besenfelder et al re Creek Club Transaction 2916
196 Email from Quinn to Besenfelder re I'On Creek Club 2918
200 Plat of HOA Open Space 2921
201 Email from Besenfelder re Final To-Do List for HOA Turnover 2922
202 Besenfelder to Grahams re Creek Club Options 2925
203 Gabriel to Besenfelder re I'On Facilities 2928
204 Besenfelder to Tom Graham re Thoughts on PD Amendment 2929
205 Besenfelder to Vince Graham re Communication with Russo 2932
208 Besenfelder to Vince Graham re Mundy Email 2933
209 Besenfelder to Grahams re Creek Club Sale 2936
210 Tom Graham to Besenfelder re Creek Club Easement and HOA 2937
212 Tom Graham to Vince Graham re Creek Club Issues 2939
213 Besenfelder to Tom Graham re Olde Park Agreement 2941
214 Vince Graham to Tom Graham re Creekside Park 2946
215 Besenfelder to Vince Graham re I'On Update 2949
216 Besenfelder to Grahams re Russo Letter 2950
217 Tom Graham to Kinney re Creek Club Sale 2953
218 Besenfelder to Grahams re Docks 2954
220 Vince Graham to Tom Graham re Impact Statement 2958
221 Tom Graham to Besenfelder re Creek Club Sale 2960
222 Tom Graham to Russo re Creek Club Transaction 2961
223 Vince Graham to Tom Graham and Russo re I'On Message Board 2962

224 Tom Graham to Kinney et al. re HUD Document 2964
225 Russo Settlement Agreement 2968
227 Plat 2972
228 Plat 2985

Defendants' Trial Exhibits

3 Creekside Park Plats 2986
4 I'On Dock Master Plan Plat 2991
5B Image of Community Dock 2 2992
8 1997 Aerial Photo 2993
14 Photo of School Under Construction Spring 2007 2994
15 Photo of East Cooper Charter Montessori School 2995
17 Photo of Pouring Foundation Slab at Holy Ascension, October 2006 2996
18 Photo of Completed Exterior, Holy Ascension, June 2008 2997
19 Google Earth Image 2998
22 1998 Property Report 2999

Volume VII

22 1998 Property Report Cont'd 3001
23 April 2000 Property Report 3035
24 December 2000 Property Report 3074
25 Akins Lot Purchase Agreement 3113
27 Recreational Easement and Agreement to Share Costs 3131
28 August 16, 2000 to I'On Club 3146
32 March 5, 2009 Letter from Adkins to Tim Bouch 3152
33 February 23, 2009 BOZA Meeting Minutes 3154
34 Walbeck Lot Purchase Agreement 3162
38 I'On Assembly Proposed 2004 Budget Summary 3173
39 Draft I'On Assembly 2005 Budget Summary 3175
40 I'On Assembly Draft 2006 Budget Summary 3177
41 I'On Assembly Draft 2007 Budget Summary 3179

42 I'On 2008 Budget 3181
43 I'On 2009 Budget 3184
44 I'On 2010 Proposed Budget 3187
49 Certificate of Occupancy for Creek Club 3190
54 First Amended and Restated Operating Agreement of The I'On Company, LLC 3191
55 Fifth Amended and Restated Operating Agreement of The I'On Company, LLC 3210
56 Second Amended and Restated Operating Agreement of The I'On Club, LLC 3251
59 Certificate of Existence of I'On Club, LLC 3268
60 Certificate of Existence of I'On Company, LLC 3269
62 Andy Gowder I'On Lot Purchase Agreement 3270
63 Andy Gowder Purchaser Receipt 3280
70 Notice of January 7, 2003 Assembly Annual Meeting 3281
71 Proof of Mailing of January 7, 2003 Annual Meeting Notice 3293
72 Walbeck Sign-in Page from January 7, 2003 Annual Meeting 3294
73 Notice of December 3, 2003 Assembly Annual Meeting with Proof of Mailing 3295
74 Mailing List for December 3, 2003 Annual Meeting Notice 3306
75 Walbeck Sign-in Page from December 3, 2003 Annual Meeting 3324
76 Notice of December 2, 2004 Assembly Annual Meeting 3325
77 Notice of December 7, 2005 Assembly Annual Meeting 3334
78 Walbeck Sign-in Page from December 7, 2005 Assembly Annual Meeting 3342
79 Notice of December 6, 2006 Assembly Annual Meeting 3343
80 Adkins and Walbeck Sign-in Page from December 6, 2006 Assembly Annual Meeting 3353
81 Notice of December 12, 2007 Assembly Annual Meeting 3355
82 Adkins and Walbeck Sign-in Page from December 12, 2007

Assembly Annual Meeting 3374
83 Notice of December 11, 2008 Assembly Annual Meeting 3376
84 Walbeck Sign-in Page from December 11, 2008 Assembly Annual Meeting 3395
87 Letter from Alan Barbieri re PUD Amendment 3396
98 "Inspiration for a Neighborhood" advertisements 3399
105 February 24, 2009 Email to Ward Mundy 3401
106 Brock Correspondence Opposing I'On 1995-1997 3403
107 December 3, 2003 Assembly Meeting Minutes 3429
108 February 12, 2004 Assembly Meeting Minutes 3432
109 August 5, 2004 Assembly Meeting Minutes 3436
110 October 21, 2004 Assembly Meeting Minutes 3441
111 November 11, 2004 Assembly Meeting Minutes 3444
112 January 27, 2005 Assembly Meeting Minutes 3448
113 February 9, 2005 Assembly Meeting Minutes 3451
114 February 23, 2005 Assembly Meeting Minutes 3454
115 March 23, 2005 Assembly Meeting Minutes 3456
116 April 27, 2005 Assembly Meeting Minutes 3459
117 July 27, 2005 Assembly Meeting Minutes 3462
118 July 27, 2005 Assembly Meeting Minutes 3464
119 August 24, 2005 Assembly Meeting Minutes 3468
120 September 28, 2005 Assembly Meeting Minutes 3472
121 December 7, 2005 Assembly Meeting Minutes 3475
122 April 26, 2006 Assembly Meeting Minutes 3478
123 February 28, 2007 Assembly Meeting Minutes 3482
124 April 25, 2007 Assembly Meeting Minutes 3490
125 May 18, 2007 Assembly Meeting Minutes 3498

Volume VIII

125 May 18, 2007 Assembly Meeting Minutes Cont'd....3501
126 July 25, 2007 Assembly Meeting Minutes....3503
127 August 22, 2007 Assembly Meeting Minutes....3511
128 September 26, 2007 Assembly Meeting Minutes....3517
129 October 24, 2007 Assembly Meeting Minutes....3525
130 January 16, 2007 Assembly Meeting Minutes....3545
131 October 30, 2008 Assembly Meeting Minutes....3553
132 January 15, 2009 Assembly Meeting Minutes....3558
133 February 26, 2009 Assembly Meeting Minutes....3562
137 August 27, 2007 Proposal to Amend I'On Planned Development Zoning Ordinance....3565
140 GIS of Marshwalk....3569
141 November 21, 2000 Deed to Marshwalk....3571
142 Staging Dock Photo....3579
150 March 23, 2010 Chad Besenfelder Response to Emails from Kent Prause....3580
151 Photo of Avant Garden....3588
152 Mt. Pleasant Board of Zoning Appeals Order....3589
153 Zoning Appeal Petition....3598
155 2004 Ed Clem Emails....3600
157 June 23, 2004 Email from Brad Walbeck re Landscaping....3602
164A Photo of Dock 3....3604
167 Photo of Boat Ramp and Creek Club....3605
173 September 19, 2007 Adkins Email....3606
174 March 22, 2007 Minutes....3607
180 Email re Vote on PD Amendment....3612
182 Creek Club Building Costs....3614
139 Declaration of Covenants, Conditions and Restrictions....3616

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-10490

BRAD J. WALBECK,

Plaintiff,

v.

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REAL ESTATE, LLC; MIKE RUSSO,

Defendants.

ORDER

FILED
2012 MAR 15 AM 9:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS CAUSE comes before this Court on the motion of the Defendants The I'On Company, LLC; The I'On Club, LLC; The I'On Group, LLC f/k/a Civitas, LLC; Vince Graham; Tom Graham; and I'On Realty, LLC (collectively, the "I'On Defendants") to dismiss certain of Plaintiff's claims for breach of contract, breach of fiduciary duty, and fraud/constructive fraud for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6), SCRCP. Upon consideration of the I'On Defendants' memorandum in support of its motion and the arguments of counsel at a hearing before me on February 8, 2012, I find that Plaintiff's Amended Complaint in this action is sufficient to state a claim upon which relief can be granted on these three causes of action.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the I'On Defendants' motion to dismiss is **DENIED.**

This 13 day of March, 2012 at Charleston, South Carolina.

J.C. Nicholson, Jr.
Circuit Court Judge Presiding
Ninth Judicial Circuit, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10490

BRAD J. WALBECK
PLAINTIFF(S)

ION COMPANY LLC, THE ETC, ET AL
DEFENDANT(S)

Submitted by:	**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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), 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.

FILED
2012 NOV 16 PM 4:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Motion for Summary Judgment by Defendant (Defendant-ION; atty-Seth Warren Whitaker) was denied.

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)
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	2060 **Judge Code**	11/06/2012 **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:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	
		CASE NO. 2010-CP-10-10490
BRAD J. WALBECK, et al.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
THE I'ON COMPANY, LLC, et al.,	)	
	)	
Defendants.	)	

FILED
2014 FEB 20 AM 9:29
JULIE J. ARMSTRONG
CLERK OF COURT
BY

ORDER

THIS MATTER CAME BEFORE THE COURT on January 14, 2014, pursuant to requests made on the record and Defendants Mike Russo and 148 Civitas, LLC's Motion for an Order Sealing the "Confidential Term Sheet" entered as Court's Exhibit 1 on January 13, 2014, and those portions of the record pertaining to and outlining the terms and conditions of the settlement. Based upon the factors set forth in Rule 41.1(c), SCRCP, the statements made before the Court, and the written motion of Defendants Mike Russo and 148 Civitas, LLC, filed on January 14, 2014, I find as follows:

1. On January 13, 2014, Defendants Mike Russo ("Russo"), 148 Civitas, LLC, and I'On Assembly, Inc. ("HOA"), and Plaintiffs Brad Walbeck and Lee Ann Adkins, individually and derivatively on behalf of the HOA ("Plaintiffs"), entered into a settlement agreement resolving the issues as to and between those parties, (hereinafter, the "Settling Parties").
2. The settlement agreement neither included nor resolved any claims alleged against the remaining Defendants.

QPM
1

3. The terms of the agreement were set forth in a document drafted by Plaintiffs' counsel and entitled "Confidential Term Sheet." Counsel for each of the Settling Parties initialed the term sheet and confirmed acceptance of the terms. Additionally, Lee Ann Adkins, Brad Walbeck, Mike Russo, on behalf of himself and 148 Civitas, LLC, and Deborah Bedell, President of the I'On Assembly on behalf of the Board of Trustees, consented to the terms set forth therein.
4. This Court admitted the "Confidential Term Sheet" as Court's Exhibit 1.
5. On January 13, 2014, and on the morning of January 14, 2014, the Settling Parties, including necessary non-parties to the suit, additionally made statements on the record setting forth the terms of the settlement.
6. The "Confidential Term Sheet" and the record relating to settlement contains confidential and proprietary business information of both 148 Civitas, LLC, and the HOA, as well as other parties.
7. The trial in this case is ongoing.
8. The complex issues in this lawsuit have been passionately contested. The issues, allegations, and legal theories involved in this lawsuit and settlement have been discussed, debated, and published in various forms, to include neighborhood message boards, email and verbal communications, and newspaper articles, culminating in incendiary and improper comments made in a newspaper article published by The Post and Courier on January 14, 2014.
9. Less drastic alternatives to sealing the requested documents will not afford adequate protection to the Settling Defendants.

2

10. There is no overwhelming public interest to be served by the publication of the terms of settlement.

11. The potential harm to the Settling Parties far outweighs any public significance.

IT IS THEREFORE ORDERED that the "Confidential Term Sheet" entered as Court's Exhibit 1 on January 13, 2014, as well as that portion of the transcript, including any audio recordings, pertaining to and outlining the terms and conditions of the settlement made on the record by the parties and their counsel on January 13-14, 2014, are hereby **SEALED.**

AND IT IS SO ORDERED on this 11th day of February, 2014.

Stephanie P. McDonald
Presiding Judge, 9th Judicial Circuit

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-10490

FILED
2014 FEB 26 AM 9:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I'ON ASSEMBLY, INC., and BRAD J. WALBECK and LEA ANN ADKINS, individually and derivatively on behalf of I'ON ASSEMBLY, INC.,

Plaintiffs,

v.

THE I'ON COMPANY, LLC, THE I'ON CLUB, LLC, THE I'ON GROUP, LLC F/K/A CIVITAS, LLC, VINCE GRAHAM, TOM GRAHAM, and I'ON REALTY, LLC,

Defendants.

ORDER REALIGNING I'ON ASSEMBLY, INC. AS A PARTY PLAINTIFF

THIS CAUSE comes before this Court on the motion of Defendants The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC f/k/a Civitas, LLC, I'On Realty, LLC, Vince Graham, and Tom Graham (the "I'On Defendants"), for an Order realigning the I'On Assembly, Inc. as a party plaintiff in this matter, pursuant to Rule 21, SCRCP. The Court finds as follows:

1. This Court has authority, in its sound discretion, to realign a party "at any stage of the action" on such terms as are just. Rule 21, SCRCP; Branham v. Ford Motor Co., 390 S.C. 203, 241-24, 701 S.E.2d 5, 25-26 (2010).

2. In light of developments in this matter in January 2014, including without limitation the representations of counsel for the I'On Assembly, Inc. to the Court, it is appropriate to realign the I'On Assembly, Inc. as a plaintiff.

3. I'On Assembly, Inc. should be deemed to have adopted Plaintiffs' claims, and Defendants' responses to Plaintiffs' Complaint should be deemed to serve as responses to the Assembly's adopted claims.

4. Plaintiffs Walbeck and Adkins and the I'On Assembly have no opposition to the relief requested.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The I'On Assembly, Inc. is hereby realigned as a party plaintiff in this matter;

2. The I'On Assembly, Inc. is hereby deemed to have adopted Plaintiffs' claims as stated in Plaintiffs' Third Amended Complaint; and

3. The I'On Defendants' responses to the Third Amended Complaint are hereby deemed to serve as responses to the Assembly's thereby adopted claims.

Stephanie P. McDonald
Chief Administrative Judge
Ninth Judicial Circuit

February 21, 2014
Charleston, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-10490

Brad J. Walbeck and Lea Ann Adkins, Individually and Derivatively on Behalf of I'On Assembly, Inc.

PLAINTIFF(S)

The I'On Company, LLC; The I'On Club, LLC; The I'On Group, LLC F/K/A Civitas, LLC; Vince Graham; Tom Graham; I'On Real Estate, LLC

DEFENDANT(S)

Submitted by:	**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(k), 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.

FILED
2014 JUN 20 PM 12:5
JULIE J. ARMSTRONG
CLERK OF COURT
BY

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Consolidate this Case with 2014-CP-10-2984 is hereby GRANTED.

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)
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 | 2163 **Judge Code** | 6/19/14 **Date**

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010- CP-10-10490

I'ON ASSEMBLY, INC., AND BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF I'ON ASSEMBLY, INC.	THE I'ON COMPANY, LLC, THE I'ON CLUB, LLC, THE I'ON GROUP, LLC F/K/A CIVITAS, LLC AND I'ON REALTY, LLC
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	**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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☒ Rule 43(k), 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.

FILED
2014 AUG 11 PM 4:25
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

- Interstate Land Sales Act (ILSA): judgment in favor of Brad J. Walbeck in the amount of $1.00; for the defendants on Lea Ann Adkins' ILSA claim;
- Breach of Contract: Judgment in favor of the I'On Assembly in the amount of $1,000,000.00; judgment in favor of Walbeck in the amount of $10,000.00; for the defendants on Adkins' contract claim;
- Breach of Fiduciary Duty: Judgment in favor of the I'On Assembly in the amount of $1,750,000.00;
- Fraud: For the defendants;
- Negligent Misrepresentation: Judgment in favor of the I'On Assembly in the amount of $1,000,000.00; judgment in favor of Walbeck in the amount of $20,000.00; for the defendants on Adkins' claim; and
- South Carolina Unfair Trade Practices Act: For the defendants.

The jury further found that the defendants' conduct was reckless, willful and/or wanton, but declined to award punitive damages. Plaintiff I'On Assembly elected to recover on the cause of action for breach of fiduciary duty. Plaintiff Brad Walbeck elected to recover on the cause of action for negligent misrepresentation.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : See attached Verdict Forms

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)
The I'On Assembly	The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC F/K/A Civitas, LLC And I'on Realty, LLC	$1,750,000.00
Brad J. Walbeck	The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC F/K/A Civitas, LLC And I'on Realty, LLC	$20,000.00

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

N/A

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	2163 Judge Code	8/11/2014 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:

Justin Lucey; Joshua Evans; Dabny Lynn; Timothy Bouch; Yancey McLeod	**Brian Duffy; J. Rutledge Young; Seth Whitaker**
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter: Sharon Vizer

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BRAD J. WALBECK, AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC., I'ON ASSEMBLY, INC., Plaintiffs, vs. THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-10490 **ORDER DENYING DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR A NEW TRIAL ABSOLUTE, AND FOR A NEW TRIAL NISI REMITTITUR**

Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute or a New Trial Nisi Remittitur (hereinafter "Defendants' JNOV Motion" or "Defendants New Trial Motion"), came before the Court for a hearing on September 4, 2014. As the jury weighed the evidence presented at trial and reached a reasonable conclusion as to the value of Plaintiffs' damages suffered as a proximate result of Defendants' conduct, these motions are now denied.

BACKGROUND

The present case concerns the I'On neighborhood's community amenities, Defendants' representations regarding the amenities during the lot sales, marketing, and development process, and the Defendants' alleged obligations to convey said amenities to the I'On Assembly (the

homeowners' association) and its members (I'On homeowners). Specifically, the amenities at issue included the "Creekside Park," "Community Dock," and the Community Dock's associated parking and boat ramp, all of which are located along the deep waters of Hobcaw Creek on a specific civic lot within I'On known as CV6.[1] According to the testimony of four witnesses at trial, the amenities at issue also included an overflow parking facility which was located on another civic lot within I'On known as CV5.[2] Evidence was presented at trial that during the I'On development and sale process, Defendants obligated themselves to convey these amenities to the I'On Assembly and its members, free and clear of all encumbrances. However, the Defendants entered into talks in mid-2008 to sell the Deep Water Amenities to an unaffiliated, third-party "for profit" entity (the third-party is hereinafter referred to as "Buyers" or "Civitas").[3] Upon learning of the potential sale, several I'On Assembly members, including Plaintiffs, made demands upon the I'On Assembly to secure the rights to the amenity property. (*See, e.g.*, March 11, 2009 Bruce Kinney e-mail, Pl. Ex. 56; February 26, 2009 Templeton letter, Pl. Ex. 53).

As a result of the I'On Assembly members' demands, the Assembly eventually demanded the transfer of the docks and made inquiry regarding the Creekside Park (Pl. Ex. 56). Board members also privately met with Buyers to negotiate modifications to the use limitations on the Creek Club and the HOA amenities.[4] Thereafter, Buyers allegedly withdrew their offer to purchase the Creek Club.

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[1] Defendants also constructed a neighborhood clubhouse, known as the Creek Club, on CV6.

[2] CV5 and CV6 are hereinafter collectively referred to as the "amenity property" or the "community property" or the "Deep Water Amenities".

[3] Notably, documents produced by the I'On Defendants late in this litigation reveal they appeared to be in the process of transferring the Community Dock and boat ramp to the Assembly in 2008. (*See* 2008 Newkirk Environmental E-Mail, Pl. Ex. 85).

[4] Believing the Board had an agreement with Buyers on future use limitations, one Board member supported the commercial use of the Creek Club at a Town hearing on the civic use challenge by several neighbors. After Mount Pleasant denied the use appeal, Buyers refused to negotiate the use limitations further.

APP 2

In the interim, it was represented to the I'On Assembly members that the Defendants were finalizing the paperwork, and "preparing to deed the Community Dock to the I'On Assembly." (*See* March 25, 2009 Chad Besenfelder e-mail, Pl. Ex. 58). The deed was to include the waterfront portion of the CV6 parcel, providing access to the amenities. Unknown to the residents or the Assembly Board, the Defendants and Buyers immediately resumed negotiations amongst themselves, reached a contract, and prepared for transfer of the very amenities that the Defendants represented they were in the process of deeding to the Assembly.

The existence of the pending sale came to light on August 1, 2009, and the sale took place four days later. The I'On Defendants sold the property to Buyers on August 5, 2009.[5] Again, following (a) an unsuccessful demand made by Walbeck to the Defendants requesting that Defendants fulfill their promise to convey the property to the I'On community (Pl. Ex. 71); and (b) continued failure to act by the Assembly, Plaintiffs initiated this action, individually and derivatively on behalf of the Assembly, on December 22, 2010.

Following the filing of Plaintiff's initial Complaint, Plaintiffs twice amended their Complaint on March 8, 2011, and February 7, 2012, respectively.[6] After the filing of Plaintiffs' Second Amended Complaint, Defendants moved for the dismissal of certain claims and/or parties. However, the Defendants' Motion to Dismiss was denied. Thereafter, Defendants filed a Motion for Summary Judgment, which, in turn, was followed by a Motion to Dismiss filed by the Assembly, as well as a Motion to Intervene filed by Tidelands Bank.

At a motion hearing held on October 23, 2012, Defendants' Motion for Summary Judgment, the Assembly's Motion to Dismiss, and Tidelands Bank's Motion to Intervene were

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[5] Buyers substantially increased the number of wedding events, prior to and following the Assembly's repurchase of the property, again adversely affecting I'On residents' access to the property.

[6] Plaintiffs' Second Amended Complaint asserted claims of violation of the Interstate Land Sales Act, breach of contract, breach of fiduciary duty, fraud, negligent misrepresentation, unfair trade practices, civil conspiracy, unjust enrichment, promissory estoppel, and amalgamation against the Defendants

all denied. During this same hearing, Plaintiffs' dismissed their veil-piercing claims against the individual defendants, but maintained their direct causes of action against the individual Defendants as well as their veil-piercing/amalgamation claims against the corporate Defendants.

Approximately one year later, at a motion hearing on January 8, 2013, Plaintiffs were granted leave to file a Third Amended Complaint alleging an additional cause of action of "aiding and abetting." The case was scheduled for a date certain trial for February 18, 2013; however, immediately prior to trial, all parties settled in two separate agreements. Given the then-pending negotiations, mediation, and trial preparations, the Third Amended Complaint was not filed. Buyers later abdicated their settlement agreement, which eventually led to the collapse of the parallel I'On Defendants' settlement agreement. Therefore, the case was reinstated and the Third Amended Complaint was filed on January 2, 2014.

Shortly thereafter, the first trial of this case commenced, but ultimately, ended in a mistrial late on the third full day of trial. Following the January mistrial, Plaintiffs filed a Fourth Amended Complaint, and the case was re-tried before this Court beginning Tuesday, July 29, 2014 and ending Saturday, August 2, 2014. The jury returned verdicts for the Plaintiffs on several causes of action. Specifically, the jury returned a verdict and awarded damages in favor of Walbeck on the following causes of action: (a) Violation of the Interstate Land Sales Full Disclosure Act ("ILSA" or "the Act"); (b) Negligent Misrepresentation; and (c) Breach of Contract. In addition, the jury returned a verdict and awarded damages in favor of the Assembly on the following causes of action: (a) Breach of Fiduciary Duty; (b) Negligent Misrepresentation; and (c) Breach of Contract. As to Adkins' individual claims, the jury returned defense verdicts. Subsequently, Walbeck elected to recover the $20,000 in actual damages awarded to him on the negligent misrepresentation claim while the Assembly elected to recover

the $1,750,000 in actual damages awarded to it under the breach of fiduciary duty claim. Defendants' post-trial motions followed.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

A.) The Evidence Presented Regarding Defendants' Collective Development of the I'On Neighborhood

Plaintiffs presented evidence at trial demonstrating the Defendants' "grand plan" to develop and market the I'On neighborhood as an upscale, residential neighborhood which featured many public common areas as opposed to private individual home sites. (*See* Grand Plan, Pl. Ex. 145). I'On was developed and operated by The I'On Company, a family owned business owned by Tom Graham (75% owner) and his son, Vince Graham, (25% owner).[7] During the initial planning phase of I'On, the I'On Company, under the direct control of the Grahams, also established several other "I'On" entities. I'On Realty was established as the listing and sales agent for the I'On home sites on behalf of the I'On Company. The I'On Club was established to own and operate certain neighborhood amenities, including the pool and tennis club, as a private, members-only club. The I'On Club was a wholly owned subsidiary of The I'On Company. The I'On Company originally served as the Manager for both I'On Realty and the I'On Club. Subsequently, The I'On Group became the Manager of the various I'On LLCs. As evidenced by the record, each of the foregoing I'On entities, along with the Grahams, were involved in many aspects of the development of I'On including planning, financing, marketing, and execution.

[7] Tom Graham holds his interest in The I'On Company through Graham Holdings. Original development work was done in the name of The Graham Company, which appears to have transferred the developmental aspect to the I'On Company. Sometime subsequent to the formation of The I'On Company, Tom Graham sold a 5% interest to his other son, Geoff Graham.

5

B.) Evidence Regarding Defendants' Collective Representations and Contractual Obligations

Plaintiffs also presented evidence at trial demonstrating the many promises, representations and contractual obligations made by the Defendants in connection with providing amenity property, free and clear of all encumbrances, to the Assembly and its members.

First, Plaintiffs evidenced the promotional campaign launched by the Defendants regarding the development of I'On during its conceptual planning. Specifically, Defendants: (a) filed an Impact Assessment with the Town of Mount Pleasant; (b) prepared a Property Report as required by the Interstate Land Sales Act; (c) submitted applications to the Town of Mount Pleasant, DHEC and the Army Corp of Engineers; (d) directed the plans and plats drawn for the neighborhood; and (e) made presentations at town hall meetings and adjacent neighborhood homeowners' association meetings. Inclusive within each of the foregoing were material representations made by the Defendants as to the Deep Water Amenities planned for the I'On development, property which the I'On Defendants represented would belong to the Assembly and its members:

1.) The Impact Assessment

For example, the Impact Assessment filed by "The Graham Company" with the Town of Mount Pleasant in January of 1997, provides:

> There will be no private docks in the neighborhood. Instead, I'On residents will be able to use seven community docks which will provide access to the marsh and waters of Hobcaw Creek of fishing and boating. These docks will range from small crabbing docks to a larger community dock reminiscent of the dock pavilion at Newpoint or at the Sea Island Yacht Club in Rockville.

(*See* Impact Assessment, Pl. Ex. 3 *cf.* Aerial Photos, Pl. Ex. 187, 188, 192).[8]

Notably, the Impact Assessment includes a depiction of the Community Dock at Newpoint, a Beaufort County project developed by Vince Graham, and this dock contains a boat landing and gazebo similar to what was represented by Defendants to be constructed on the I'On amenity property (CV6).

2.) The Property Report

Similarly, the November 3, 1998 Property Report, required by the Interstate Land Sales Act, was drafted by the Defendants to inform potential purchasers of the development plan for the I'On neighborhood. (*See* Property Report Receipts, Pl. Ex. 150). The 1998 Property Report was provided to numerous I'On lot purchasers prior to the execution of their respective purchase contracts. Among other representations regarding the neighborhood, the Property Report includes a "Recreational Facilities" chart representing that the "Community Dock" and "Creekside Park" will be conveyed to the I'On Assembly at no cost during Phase Two of the I'On development process. (*See* Property Report, Pl. Ex. 1). The Property Report's list of "Recreational Facilities" also separates the Creekside Park" from "sidewalks, paths, and trails", indicating a distinction between these various amenities. Moreover, as described in the 1998 Property Report, the "major" characteristic of I'On includes "300 feet of deep water frontage along Hobcaw Creek" which "rather than subdividing into lots. . .is planned as parks" to serve ". . .as an amenity for residents."

As evidenced by the testimony of Walbeck, Eble, and Hussey, the Defendants and/or their agents represented that the "Community Dock" and "Creekside Park" were located on CV6.

[8] Upon Mount Pleasant's subsequent approval of I'On's developmental plans, the Impact Assessment, as a part of said plans, was incorporated by the Ordinance permitting development of the neighborhood.

Moreover, the Defendants and/or their agents represented that the "300 feet of deep water" on Hobcaw Creek would remain unencumbered, and thus, be easily accessible to all I'On residents. The record further reflects Plaintiff Walbeck relied on the representations made in the 1998 Property Report when entering his lot purchase agreement.

3.) The Dock Application

The evidence also reveals plans, applications, and letters submitted between June and October, 1999 to DHEC by Newkirk Environmental, Inc., on behalf of the Defendants. Certain of these documents submitted in support of the dock application similarly represent that the Creekside Park and Community Dock will be owned by the I'On Assembly for the common, recreational use of Assembly members, and that no docks in I'On will be private. In fact, the application touts that the plan, as submitted, preserves the entire waterfront for community access and "the purpose of the proposed structures (the docks) is for the common, recreational use of residents within the I'On community." (*See* Dock Application and Dock Plan, Pl. Ex. 6, 37). In a letter to the Corps of Engineers dated October 28, 1999, the Defendants' agent stated as follows:

> It is important to note that I'On's master plan does not provide for individual docks. The six docks requested by The I'On Company are for the use and enjoyment of the I'On community and are proposed in lieu of private docks along approximately 2,600 linear feet of waterfront.

(*See* October 28, 1999 Corp. of Engineers letter, Pl. Ex. 7).

The dock plan submitted by Defendants and later approved by DHEC, the Army Corp. of Engineers, and a host of other governmental authorities, reveals that the principal I'On dock, the only dock with a both ramp which sits on 300 ft. of deep water frontage along Hobcaw Creek

OPM 8

and is adjacent to a "creekside park",[9] to be located on CV6. Moreover, the dock plan sets forth this amenity as being owned by the "HOA," i.e., the Assembly. (*See* Dock Plan, Pl. Ex. 37).

4.) Plans and Plats

The location of the "Creekside Park", "Community Dock", and boat ramp are also shown on plats and plans of I'On submitted as evidence at trial. Specifically, surveys prepared on behalf of Defendants by Thomas & Hutton Engineering and Palmetto Land Surveying, as well as hand-drawn plats prepared by Defendant's employee, Chad Besenfelder, depict a Creek Club, Community Dock & Boat Ramp, and "HOA Open Space" located on CV6 which, in turn, is located on Hobcaw Creek. (Pl. Ex. 196; Pl. Ex. 200, Pl. Ex. 218).

5.) Marketing Materials and Agent Representations

Plaintiffs presented evidence that, in furtherance of the I'On plan, Defendants reiterated their promises regarding amenity properties directly to I'On lot purchasers via various marketing materials, agent representations, and the lot purchase agreements themselves. Indeed, Plaintiffs showed, through witness testimony and other evidence, that the Developers issued "updated" marketing materials to potential purchasers, including Plaintiff Walbeck, as construction of I'On progressed; however, none of these materials ever disclosed the substitution of an easement, let alone a thirty (30) year easement in lieu of ownership. Notably, *Civitas*, the I'On newsletter and marketing magazine, repeated the representation in the Impact Statement that the waterfront would be accessed through the Parks. (Pl. Ex. 31).

[9] The Creekside Park referred to herein was referred to as "Shelmore Park" in the I'On Park Design, Pl. Ex. 227, Sheet P-7

APM 9

Plaintiffs also demonstrated, by way of an advertising document created by the Defendants entitled "I'On Neighborhood Plan", that Defendants continued to promote the representations included in the pre-amended 1998 Property Report. Specifically, the amenity descriptions within the "Living at I'On" section of the I'On Neighborhood Plan separately advertised "miles of marshfront paths" and "the parks", showing a distinction between the two. In the same advertisement, it promotes that "a boat ramp along Hobcaw Creek" can be "enjoyed by all." (Pl. Ex. 77 at "Recreational Facilities" section). In another piece of promotional material published and created by the Defendants, the amenities are promoted as follows: "Community Dock & Boat Ramp", "3 Crab Docks", "12 Neighborhood Parks", and "2.5 Miles of Marsh-Front Paths". (Pl. Ex. 51).

Moreover, the I'On Defendants promulgated and distributed several brochures, plans, and fact sheets, which represented the: (a) Creek Club; (b) Community Dock; (c) Creekside Park; and (d) 300 feet of deep water frontage along Hobcaw Creek as exclusive amenities for the use and benefit of I'On Residents. For example, in neighborhood plans spanning from pre-development through at least 2008, the Creek Club, Creekside Park, and Community Dock are touted as "recreational facilities" and "amenities" to be "enjoyed by all" I'On residents. (*See* Ponsbury Neighborhood Plan, Pl. Ex. 32; I'Onsborough Neighborhood Plan, Pl. Ex. 41; I'On Neighborhood Plan, Pl. Ex. 77). Similarly, I'On's 2005, 2006, and 2007 neighborhood fact sheets provide "[t]he boat landing and community docks on Hobcaw Creek and Shelmore Creek are available to all I'On Residents." (*See* I'On Fact Sheets, Pl. Ex. 48). In the inaugural issue of *Civitas*, the I'On Journal represents that neighborhood "parks provide access to the neighborhoods' lakes and community docks along Hobcaw Creek, [enabling] all the residents to enjoy its beauty." (*See Civitas*, The I'On Journal, Inaugural Issue, Pl. Ex. 31).

The testimonies of Brad Walbeck and Tim Eble demonstrated that Defendants' agent, Bill Orange, provided guided tours of the neighborhood, all the while representing the amenities to be constructed by the Defendants. According to Walbeck's testimony, for example, Mr. Orange represented that a park, a dock and boat ramp, as well as the "deepest porches in the Lowcountry" would be "located right around the bend" from his lot. Walbeck further testified that the lot "right around the bend" from his lot was CV6 and CV6 was the "only place" in I'On with a dock and boat ramp located on the deep water of Hobcaw Creek. According to Walbeck, Mr. Orange represented that a community clubhouse would be located on this same lot, CV6, and that overflow parking for the clubhouse and dock/boat ramp would be available on another, nearby lot, CV5. Hussey corroborated this testimony. Just as Walbeck relied on the 1998 Property Report, Walbeck also testified that he relied on the aforementioned representations made by Defendants' agent when he entered his purchase contract.

6.) Purchase Contracts

Walbeck testified that his decision to purchase a lot within I'On was based upon the marketing materials distributed and the many representations made by the Defendants as to the I'On amenities, including the Community Clubhouse, Creekside Park, Community Dock, and Associated Parking. After visiting the I'On Sales Center, taking a guided tour of I'On courtesy of Defendants' agent, and reviewing the 1998 Property Report, maps, and other marketing materials depicting I'On's development plan, Plaintiff Walbeck entered into his purchase contract on November 27, 1999. (*See* Walbeck Purchase Agreement, Pl. Ex. 2). Notably, the Walbeck purchase contract expressly referenced the 1998 Property Report which set forth that: (a) the Community Dock and Creekside Park would be conveyed to the I'On Assembly at no cost

ORR 11

during the I'On development process; and (b) the "300 feet of deep water frontage along Hobcaw Creek" would serve "as an amenity" for I'On residents. *Id.* Additionally, the Walbeck contract separately included a version of the "Recreational Chart" contained in the 1998 Property Report and specifically provided that Walbeck could "rely" on the representations included in both the contract and the 1998 Property Report. *Id.* Moreover, the signature page of Walbeck's contract contains an attestation clause, as well as two other "signed, *sealed* and delivered" references, evidencing an intent by both parties that the contract be considered a "sealed instrument." *Id.* [10]

7.) Defendants' Internal Communications

Defendants own internal communications further reveal that Defendants were aware of their promises, and their obligations in connection with same.

For example, in a November 15, 2006 e-mail between Defendant's employee, Chad Besenfelder, and the Grahams, Defendants recognized they still owned "common areas" including the "Creek Club Boat Ramp and Dock" which belonged to the "HOA". (Pl. Ex. 179). A few months later, between April and July of 2007, the Defendants outline their options in connection with several of the I'On amenities, one of which includes giving the HOA "the infamous boat ramp and docks" because "the docks are too controversial and taking away even part of this community amenity would cause trouble." (Pl. Ex. 180, Pl. Ex. 181). Perhaps most significant is the Besenfelder e-mail noting "the docks were promised handover to the homeowners and Vince would like to honor their promise one day" (Pl. Ex. 15), a promise

[10] By special interrogatory, the Jury found this to be a sealed instrument. Plaintiff, Lea Ann Adkins, signed a purchase contract with the Defendants on February 1, 2003. The Adkins' purchase contract differed from the Walbeck purchase contract in that it did not specifically incorporate the 1998 Property Report. (*See* Adkins Purchase Contract, Pl. Ex. 45); however, Adkins testified she was provided with the Property Report at the time of contracting to purchase her lot.

APP 12

repeated in 2009 when Defendants represented they were "preparing to deed the [C]ommunity [D]ock to the I'On Assembly." (*See also* Pl. Ex. 58; Pl. Ex. 214; Pl. Ex. 215; Pl. Ex. 217).

C.) Evidence Presented at Trial Regarding Defendants' Creation, Control and Management of the I'On Assembly

On or about February 5, 1998, the I'On Company incorporated the Assembly for purposes of serving as the I'On homeowners association, as set forth in the Declaration of Covenants, Conditions, and Restrictions of I'On filed February 9, 1998. As set forth therein, all property owners in I'On are members of the Assembly; however, the Assembly Board was not completely "turned over" to the I'On homeowners until December, 2005. Prior to this transition, the Defendants, by and through the I'On Company, remained in control of the I'On Assembly and directed all aspects of the development of the I'On community, including entering into negotiations regarding various real estate transactions. The record reflects one such transaction involving the Defendants' recording of an invalid Recreational Easement on February 9, 2000. (Pl. Ex. 42). Executed by the same Defendant employee on behalf of three Defendant entities, the Recreational Easement purportedly provided for "perpetual" access and usage of CV6, yet the easement's term was expressly limited to thirty years. The record reflects another, similar transaction involving the Defendants' internal conveyance of CV6 on August 15, 2000, for nominal consideration in the amount of five dollars. (Pl. Ex. 11). As this internal transfer of CV6 among the Defendants occurred *after* the Defendants granted the Recreational Easement, Defendants did not have the right to grant the Easement, rendering the Easement null and void.

Not only did Defendants direct, manage, and control all aspects of I'On through 2005, the record further reflects the Defendants still influenced and controlled the day-to-day operations of the Assembly, even after the Assembly was transferred to the I'On homeowners. (See Pl. Ex.

74). In fact, as evidenced by the testimony of Deborah Bedell: (a) the transfer of control and community property from Defendants to the Assembly continued through the time of trial; (b) the Defendants retain and exercise their power to reinstate their own agents as members of the Assembly's Board; and (c) the Defendants retain the absolute power to veto any Board action. Defendants absolute "veto power" is perhaps highlighted best by the testimony of Tom Graham who conceded that the Developer had unilaterally placed Besenfelder back on the Assembly Board in January of 2014, and who compared the Defendants' power to veto any action taken by the Assembly Board to that of the United States Supreme Court.

D.) The Evidence Presented Regarding Defendants' Broken Promises and Failure to Act in Assembly's Best Interest

One month after finalizing the 1998 Property Report, and following many representations that the amenity property would be solely for the use of I'On residents, the Defendants submitted a proposal to a neighboring development, Olde Park, allowing Olde Park residents to use "the I'On Club and I'On's community dock and boat ramp" so long as Olde Park paid a usage fee to the tune of $350,000. (Pl. Ex. 189, 191). Olde Park accepted Defendants' proposal on February 19, 1999, *nine months before* Walbeck entered his purchase contract, yet neither the Defendants nor Defendants' agent informed Walbeck of this material change to his use and enjoyment of the amenity property. (Pl. Ex. 190). Vince Graham conceded this on the witness stand.

In 2000, the Defendants, unbeknownst to I'On purchasers such as Walbeck, amended the 1998 Property Report to remove their obligation to convey a "Creekside Park" and "Community Dock". Notably, this amendment was made within days of Walbeck's closing, yet again, Defendants never informed Walbeck of any change as to the amenities specifically referenced in Walbeck's purchase contract, amenities Walbeck testified that he relied upon in entering the

contract. The record reflects Defendants sent three letters to Walbeck around the amendment time frame, none of which informed Walbeck that the Defendants were no longer going to fulfill their contractual obligations. (Pl. Ex. 167).

Moreover, realizing they still owned the amenity property in 2006, and despite their promises to convey these amenities to the Assembly at no cost, the Defendants entered discussions on how to "capitalize" on the "potential value" of the Community Dock and outlining their options in "selling community facilities", all the while keeping their ideas "quiet for now." (Pl. Ex. 180, 181, 201). Additionally, Defendants tried to capitalize by selling the Creek Club to the HOA, a sale which was contingent on "additional lot entitlement to enable 5 or 6 lots on CV5", despite the Defendants' knowledge that the Creek Club could not be "functional without the parking lot" already located on CV5. (Pl. Ex. 193).[11]

In mid-2008, Defendants entered talks with Civitas regarding the sale of the amenity property, and in August 2008, Civitas contracted to purchase CV6. Although clearly a contract was on the table, Defendants represented to Assembly members that they had "not sold or initiated the sale of the Creek Club." (Pl. Ex. 208).

In response to a demand by I'On resident Catherine Templeton, the Assembly Board wrote Tom Graham and requested that the Docks be deeded to the Assembly on March 11, 2009. The Board further queried Graham as to the location and existence of the "Creekside Park". Concurrently, in a process that began on March 2, 2009, and ended sometime later in March, Civitas' offer/contract to purchase the amenity property was allegedly withdrawn.

Several times in March of 2009, the Defendants reiterated to the Assembly its intention to transfer the amenity property to the Assembly; however, unbeknownst to the I'On homeowners

[11] There was another attempt to sell the Deep Water Amenity to the Assembly in conjunction with the permitting of forty more lots in Phase 11.

and the Assembly, the Defendants and Civitas immediately resumed negotiating the sale of CV6 and CV5, reaching a contract in June of 2009. (*See* Pl. Ex. 58; Pl. Ex. 214; Pl. Ex. 215; Pl. Ex. 217). The contract specifically referenced and acknowledged the existence of the Homeowners' claims relating to the deep water amenities. Pl. Ex. 148 (June 18, 2009 Contract).

On August 1, 2009, the Assembly learned the amenity property was again under contract and, between August 1 and August 5, 2009, the Assembly orally demanded the docks be excluded from the sale and/or that the modifications to the use agreement be consummated. Defendants ignored the Assembly's demand, and on August 5, 2009, Defendants sold and transferred the amenity property to Civitas. The transfer from Defendants to Civitas was at a price of nearly one million dollars less than the then-appraised value of the parcel, and included the overflow parking lot (CV5) that had been previously represented to be available for parking.

Due to the sale of the amenity property to Civitas, which used the amenity property for commercial purposes, Plaintiff Walbeck and Adkins, as well as other Assembly members, were restricted in their use of the amenity property. Specifically, Plaintiffs faced repeated dock closures, increased traffic, drunken parties, and rowdy visitors, all taking place on the very amenity property they were promised to own free and clear of all such encumbrances. (Pl. Ex. 167).

E.) The Evidence Presented as to Plaintiffs' Demands Concerning the Defendants' Failure to Fulfill its Promise and the Assembly's Need to Take Action

Upon learning of the 2008 potential sale of the amenity property, several Assembly members, including Plaintiffs, made oral demands at Assembly meetings and written demands upon the Assembly to secure the rights to the Creekside Park and Community Dock property. (*See, e.g.*, I'On Board Meeting Minutes, Pl. Ex. 52; Templeton Letter, Pl. Ex. 53; Adkins Letter,

Pl. Ex. 54; Bruce Kinney letter, Pl. Ex. 56; Adkins Letter, Pl. Ex. 57). Plaintiffs also demanded that Defendants fulfill their obligations to convey the Creekside Park and Community Dock to the I'On Assembly. (*See, e.g.,* Pl. Ex. 63). Thereafter, the proposed sale of the amenity property was cancelled, and in the interim, it was represented to the Assembly and its members that the Defendants were finalizing the paperwork for the transfer of this common property to the Assembly. (*See* March 25, 2009 Chad Besenfelder e-mail, Pl. Ex. 58). However, this never occurred, and instead, the Defendants sold the property to Civitas on August 5, 2009.[12]

F.) The Evidence Presented Regarding Plaintiffs' Repurchase of the Amenity Property

Plaintiffs settled with Civitas at the commencement of the first trial, and pre-trial hearings were held prior to the commencement of the second trial (Trial II). One of the issues to be addressed was how and whether to reference the Civitas settlement agreement in Trial II. Another issued involved Defendants' motion to assert a counterclaim regarding the validity of the easement. Defendants also filed a new, nearly identical action regarding the validity of the easement and moved to consolidate the new action with pending matter. In both the proposed counterclaim and the new action, Defendants pled the transfer of title of CV6 to the Assembly, thereby further putting into issue what the Assembly had paid for title to CV6. Still, Defendants objected to the amount of consideration paid coming into evidence. Defendants sought to show that the Assembly was not damaged since it had gotten the Deep Water Amenities back; but they

[12] Civitas purchased the property in order to enhance Civitas' profitable bed and breakfast business located in the commercial section of I'On.

objected to the evidence of the amount of consideration paid by the Assembly for these same Deep Water Amenities. The Court ruled that the consideration paid would be admissible.[13]

As a result, Plaintiffs introduced evidence that the Assembly paid $495,000 for the title, while granting Civitas a twenty (20) year free lease, with two additional five-year options, to get the property back. Plaintiffs calculated the damage at $3.5M; but reduced their request to the jury to $2.5M to allow for any offsetting benefit gained by eventual unencumbered title to CV5, eventual possession of the Creek Club, etc., which the Defendants argued were enhancements to which Plaintiffs were not entitled. On the other hand, Defendants discounted the value of the twenty (20) year lease granted by the Assembly and argued to the jury that the enhancements exceeded the Assembly's cost; therefore, the Assembly had not suffered any damage (in Defendants' assessment). The resulting $1.75M verdict in favor of the Assembly HOA demonstrates that the jury weighed the evidence and reached a reasonable conclusion as to the value of Plaintiffs' damages suffered as a proximate result of the Defendants' conduct.

STANDARD OF REVIEW

A.) Judgment Notwithstanding the Verdict

In ruling on a motion for directed verdict, and similarly on a motion for JNOV, the trial court cannot disturb the factual findings of a jury unless a review of the record shows no evidence which reasonably supports them. *Horry County v. Laychur*, 315 S.C. 364, 434 S.E.2d 259 (1993); *Force v. Richland Mem'l Hosp.*, 322 S.C. 283, 471 S.E.2d 714 (Ct. App. 1996). In making this determination, the trial court must view the evidence, and the inferences reasonably drawn therefrom, in the light most favorable to the plaintiff. *Gilliiand v. Doe*, 357 S.C. 197, 592

[13] Defendants later stipulated to the admission of the settlement in consideration of Plaintiffs' agreement that the Defendants rights to appeal the threshold ruling would be preserved.

S.E.2d 626 (2004); *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 494 S.E.2d 835 (Ct.App.1997). Specifically, the trial court is concerned with the existence of evidence, not its weight, and the trial court does not have authority to decide credibility issues or to resolve conflicts in the testimony or the evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320 585 S.E.2d 272, 274 (2003); *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998). Thus, the trial court must deny a motion for JNOV when the evidence leads to more than one inference or its inferences are in doubt. *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281 (2003); *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct.App.2000). Similarly stated, the trial court should uphold a jury's verdict if there is any evidence to sustain it. *Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 231-33, 603 S.E.2d 605, 611 (Ct. App. 2004); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (Ct. App. 1994). Moreover, issues not raised or presented to the trial court or not decided by the trial judge may not be later raised in a post-trial motion for JNOV or otherwise. *Patterson v. Reid*, 318 S.C. 183, 456 S.E.2d 436 (Ct. App. 1995) (noting a party may not use a post-trial motion to raise an issue that could have been raised at trial); *Skinner v. Elrod*, 308 S.C. 239, 417 S.E.2d 599 (Ct. App. 1992).

B.) <u>New Trial Absolute and New Trial Nisi Remittitur</u>

Unlike motions for JNOV, new trial motions assume the existing evidence presents questions reserved for the jury's determination, but ask whether, in light of all the evidence, the jury reached the appropriate result. Thus, in ruling on new trial motions, the trial court, as the "thirteenth juror", has the discretionary power to deny a new trial absolute or *nisi remittitur* if the court agrees with the jury's verdict based upon the law and the facts, evidence and testimony presented at trial. Rule 59, SCRCP; *South Carolina State Hwy. Dep't v. Townsend*, 265 S.C. 253,

217 S.E.2d 778 (1975); *Fallon v. Rucks*, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950) (noting the trial court's discretion is "founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them. . . .").[14]

A trial court may grant new trial *nisi* motions only when the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some influence outside of the evidence. *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993). However, the jury's determination of damages is entitled to substantial deference, and therefore, a jury's verdict should be upheld when it is possible to do so in order to effectuate the jury's express intentions. *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996).

LEGAL DISCUSSION

I. Defendants' Motion for JNOV is Denied

Plaintiffs Properly Maintained a Derivative Action on Behalf of the I'On Assembly

As evidenced by the jury's verdict in favor of the Assembly, Plaintiffs' derivative action, brought by Adkins and Walbeck on behalf of the Assembly, fairly and adequately represents the interests of the other I'On Assembly members in accordance with Rule 23(b)(1) of the South Carolina Rules of Civil Procedure ("SCRCP").

Rule 23(b)(1), SCRCP, governs derivative actions and sets forth the requirements necessary to maintain derivative claims. Specifically, Rule 23(b)(1), SCRCP, requires: (a) the verification of a derivative complaint; (b) particular allegations of the plaintiff's efforts to "obtain action he desires from the directors or comparable authority;" and (c) "the reason for the

[14] In other words, the grant or denial of new trial motions rests within the trial court's discretion, and the court's decision will not be disturbed on appeal unless the court's findings are wholly unsupported by the evidence or its conclusions are controlled by an error of law. *Vinson v. Hartley,* 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct.App. 1996).

plaintiff's failure to obtain the action or for not making the effort." Rule 23(b)(1) further provides that a plaintiff maintaining a derivative action must "fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association." In determining whether an individual plaintiff is an adequate representative, South Carolina Courts consider: (1) the common interests between the plaintiff and the members he represents; and (2) the plaintiff's ability and commitment to prosecute said common interests.

Here, the record reflects that Plaintiffs satisfied Rule 23's verification, demand and futility requirements as well as the aforementioned adequacy considerations. (*See* Plaintiffs' Complaints). First, there is a common interest between the named Plaintiffs and the Assembly members, as all Assembly members suffered due to Defendants' sale of amenity property promised to the Assembly. Moreover, Plaintiffs testified they were not part of any "Civic Lot Gang" and had no interests adverse to other members of the I'On Assembly – in fact, Plaintiffs advanced these members' interests according to the testimony of Julie Hussey, Tim Eble, and Deborah Bedell. Second, by virtue of the verdict and monetary awards rendered in favor of the Assembly, it is clear that the representative Plaintiffs prosecuted this action in an effort to preserve *all* I'On lot purchasers' common interest in the amenity property. Third, any challenge by the Defendants as to the "demands" made upon the Assembly is unavailing as demands were repeatedly made upon the Assembly, an Assembly controlled by the Defendants, thus evidencing the futility of any demand in the first place. Given Plaintiff's satisfaction of Rule 23(b)'s requirements, Plaintiffs' derivative claims are supported by South Carolina law. Thus, the Court declines to set aside the jury's award of $1,750,000 to the Assembly.

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21

Plaintiffs' Claims are Not Barred by the Statute of Limitations

1.) Based Upon the Evidence Presented, the Jury Determined Each Plaintiff "Discovered" their Respective Claims on August 5, 2009

Contrary to Defendants contentions, Plaintiffs' claims are not barred by the Statute of Limitations as evidenced by the jury's verdict specifically finding August 5, 2009, as the date upon which Plaintiffs "discovered" their claims against Defendants. Thus, Plaintiffs claims were brought well within the three-year statute of limitations.[15]

In South Carolina, a party must commence an action within three years of the date the cause of action arises. S.C. Code § 15-3-530 (2005). The three-year statute of limitations "begins to run when the underlying cause of action reasonably ought to have been discovered." *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 SC. 172, 183 (2001) *quoting Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004). According to the discovery rule, "the three year clock starts ticking on the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Id.* "The test for whether the injured party knew or should have known about the cause of action is objective rather than subjective." *Holly Woods*, 392 S.C. at 183 *citing Martin*, 357 S.C. at 576, 593 S.E.2d at 627. Consequently, the question becomes "whether the circumstances of the case would put a person of common knowledge and experience on notice that some right of his had been invaded, or that some claim against another party might exist." *Holly Woods*, 392 S.C. at 183-84 *quoting Young v. S.C. Dep't of Corrs.*, 333 S.C. 714, 719, 511 S.E.2d 413, 416 (Ct. App. 1999).

ARN 22

[15]Moreover, even assuming the jury concluded Plaintiffs "discovered" their claims on an earlier date which would result in Plaintiffs' Complaint falling outside of the Statute of Limitations, the doctrine of equitable estoppel would have served to toll the Statute of Limitations in light of Defendant's misrepresentations and efforts to keep their negotiations with Civitas "quiet for now".

Here, the jury considered the circumstances of this case and concluded that August 5, 2009 was the date Plaintiffs knew or should have known of their claims against Defendants. The jury's conclusion is supported by the evidence presented at trial demonstrating that Defendants sold amenity property promised to the Plaintiffs, including the Creekside Park, Creek Club, Community Dock *and* Boat Ramp, to an unaffiliated, for-profit entity on August 5, 2009. *See* CV5 Deed, Pl. Ex. 66; Lot 275 Deed, Pl. Ex. 67; Assignment of Club Owners' Rights and Obligations, Pl. Ex. 68; CV6 Purchase Agreement, Pl. Ex. 148).

While Defendants maintain the jury ignored other evidence in reaching its conclusion, this argument is without merit – the Court is concerned with the existence of any evidence supporting the jury's findings and has no authority to resolve conflicts purportedly created by the jury's disregard of other evidence. *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320 585 S.E.2d 272, 274 (2003); *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 500 S.E.2d 145 (Ct. App. 1998).

The evidence documenting the August 5, 2009 conveyance of the community property to a "for profit" business (Civitas) as well as the evidence reflecting the Defendants' promise to convey this property to the Assembly, a promise Defendants repeated over the course of many years and even reiterated on the very day they negotiated the sale of the community property, sustains the jury's findings. (*See* Handover Agreement, Pl. Ex. 47; January 15, 2009 Board Meeting Minutes, Pl. Ex. 52; March 11, 2009 Bruce Kinney letter, Pl. Ex. 56; March 25, 2009 Besenfelder E-mail, Pl. Ex. 58; Russo/ Besenfelder E-mails, Pl. Ex. 119-137, 139, 140, 154; Graham/Besenfelder E-mails Pl. Ex. 180-181, 193-196, 201-205, 212, 214-218, 220-224).

Moreover, the public notice and constructive notice doctrines are inapplicable here in light of the Defendants' misrepresentations concerning the conveyance of the community

property. *See Moseley v. All Things Possible*, 395 S.C. 492, 497, 719 S.E.2d 656, 659 (2011) (noting "while Buyers could have ascertained the existence of the easement through investigation of public records, their failure to do so does not preclude them from asserting a tort claim for fraud or negligent misrepresentation.") (internal citations omitted); *Tucker v. Weathersbee*, 98 S.C. 402, 402, 82 S.E.2d 638, 640 (1914) (noting the "mere act of recording" does not establish constructive notice). Accordingly, the Defendants bore the burden of demonstrating that the Plaintiffs had knowledge of the 2009 conveyance of the community property prior to 2009 – a burden the jury found Defendants failed to satisfy after considering the evidence presented by Defendants.[16] *See Richardson v. Mounce*, 19 S.C. 477, 447 (1883) (holding "statute of limitations does not run in favor of fraud until the discovery of the facts which constitute the fraud; and such knowledge being denied [by Plaintiff] in the complaint, the defendant must prove [Plaintiff's] knowledge").

2.) Based Upon the Evidence Presented, the Jury Determined the Purchase Contracts at Issue Were "Sealed Instruments"; thus, a 20 Year Statute of Limitations Applies to Plaintiffs' Breach of Contract Claims

The signature page of Walbeck's purchase agreement includes an attestation clause referencing a "seal" and twice references the agreement was "signed, *sealed* and delivered" - once in connection with Walbeck's signature and once in connection Defendants' signature. (*See* Walbeck Purchase Agreement, Pl. Ex. 2). Thus, Walbeck's purchase agreement contains a

[16]Thus, even though the Defendants attempted to record a Recreational Easement, transferred the community property amongst themselves, and amended the Property Report to delete references involving the Creekside Park and Community Dock prior to 2009, such discrete, unpublished acts cannot be deemed to have put Plaintiffs on notice of the Defendants' actual transfer of community property in 2009.

minimum of three references to a "sealed" instrument, the combination of which supports the jury's findings that the agreement was sealed.[17]

Testimony from a party revealing a special intent to create a sealed instrument is not necessarily required as a factfinder looks to the instrument to determine the intent to seal the same. Section 19-1-160 of the South Carolina Code specifically provides:

> *Whenever it shall appear from the attestation clause or from any other part of any instrument in writing* that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto.

S.C. Code § 19-1-160 (1976) (emphasis added).

A.) Plaintiff Walbeck's Standing to Maintain His Individual Claims as Evidenced by Walbeck's Recovery of Individual Damages

Defendants' argument as to Walbeck's purported lack of standing lacks merit. Walbeck testified regarding his individual damages, and ultimately, he recovered individual damages on three separate claims. Defendants simply cannot, one the one hand, aver "Walbeck has no damages as an individual plaintiff" while, on the other, admit "Walbeck testified he wanted $50,000 in individual damages." (*See* Def. JNOV Motion, p. 14). The testimony Walbeck proffered at trial regarding his individual damages, damages suffered irrespective of his membership in the I'On Assembly, is sufficient to both (a) establish Walbeck's standing to bring his individual claims; and (b) sustain the jury's findings as to Walbeck's individual claims.

Moreover, as a party to his purchase contract, Walbeck is unquestionably a "real party in interest" in connection with the same, and therefore, has standing to personally bring claims

[17] The Walbeck purchase agreement, including its signature page, was prominently displayed repeatedly before the jury, and Walbeck also testified as to the "signed, sealed and delivered" language included on the agreement's signature page.

against Defendants for their failure to fulfill their contractual obligations referenced therein. (*See* Walbeck Purchase Agreement, Pl. Ex. 2); *see also Ex parte Morris,* 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006) ("As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation. . .One must be a real party in interest, *i.e.,* a party who has a real, material, or substantial interest in the subject matter of the action . . .").

B.) Plaintiffs' Breach of Fiduciary Duty Claim

"A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence." *Wogan v. Kunze,* 366 S.C. 583, 605, 623 S.E.2d 107, 119 (Ct. App. 2005); *see also Hendricks v. Clemson Univ.*, 353 S.C. 449, 458, 578 S.E.2d 711, 715 (2003); *O'Shea v. Lesser,* 308 S.C. 10, 15, 416 S.E.2d 629, 631 (1992); *Island Car Wash, Inc. v. Norris,* 292 S.C. 595, 599, 358 S.E.2d 150, 152 (Ct. App. 1987). South Carolina Courts carefully define fiduciary relationships so as to not exclude new cases which may give rise to the relationship. *Goddard v. Fairways Dev. Gen. P'ship.*, 310 S.C. 408, 414, 426 S.E.2d 828, 832 (Ct. App. 1993) *citing Island Car Wash,* 292 S.C. at 599, 358 S.E.2d at 152. Generally, a fiduciary relationship may be presumed from the relationship between the parties, such as the attorney-client relationship, or it may be found to exist by the facts of the particular situation, such as a relationship where trust is reposed on one side and there is resulting superiority and influence on the other side.

When considering facts similar to those presented here, South Carolina courts have found a fiduciary relationship exists between developers and property owners. In *Goddard,* for example, the Court of Appeals expressly recognized a fiduciary relationship between the

26

developer of multiple villas and the owners of said villas by virtue of the organization of homeowners' association and the conveyance of the common areas to the association. *Goddard*, 310 S.C. at 415, 426 S.E.2d at 832-33. By virtue of these very facts - the developers' obligation to create a homeowners' association as well as the developers' obligation to ultimately transfer common elements to the same - the villa owners reposed a special confidence in the developer, "so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the [villa owners] imposing the confidence." *Id.* at 414, 426 S.E.2d at 832.[18] Accordingly, Defendants' emphasis on *Hansen* and *Dunes West* is misplaced as case law makes clear there is no limitation to establishing the existence of a fiduciary relationship so long as "trust" is reposed on one hand and "influence" or "superiority" results on the other.

Here, the record reveals Plaintiffs trusted --and the Defendants promised--to: (a) *construct*, *repair* and *transfer* common amenities to the I'On Community; and (b) form a property owners' association for purposes of, among other things, protecting homeowners' investments. The record further reflects Defendants (a) controlled the Assembly as evidenced by their veto power; (b) managed the Assembly as evidenced by the testimony of Tom and Vince

[18]The *Goddard* Court further referenced the case of *Duncan versus Brookview House, Incorporated* in which the South Carolina Supreme Court found a fiduciary relationship existed between a corporation's promoters and the corporation they were creating. *Id.* at 414-15, 426 S.E.2d at 832. Finding a "corollary" between *promoters* and *developers*, the *Goddard* Court noted: [b]oth [developers and promoters] are *entrusted by interested investors* to bring about a viable organization to serve a specific function." *Goddard's* holding confirms the fiduciary relationship which exists between developers and property owners, a holding which correlates with other South Carolina decisions recognizing a fiduciary relationship between a promoter and the ensuing project. Notably, most associations are organized as nonprofit corporations, and thus, the developer often assumes a dual role as (1) developer-promoter of the development; and (2) director-officer of the developments' property owners' association until the association is self-sufficient. The effect of this dual role is that the developer, during this period, has two separate and distinct loyalties: (1) the operation of the association; and (2) the development and marketing of the project. Such inherent conflict of interest creates a high threshold for the developer to act in the best interests of both his company and the ward (the promoted, new, neighborhood). This conflict of interest often manifests itself adversely in situations where the developer fails to manage the association adequately or where the developer engages in self-dealing. Indeed, a developer in control of an association assumes management and supervision responsibilities similar to those of a corporate director or officer. Therefore, the developer may be held liable if such control results in mismanagement.

Graham; and (c) influenced both the Assembly and its members by making promises (regarding both the repair and conveyance of community amenities) which they failed to keep.

Simply stated, a developer in control of an association may not make decisions which benefit its own interest at the expense of the association and its members. The dual role of developer and officer or director of an association presents an inherent conflict of interest because decisions the director makes for the benefit of the association may in fact be detrimental to the developer's own economic interests. The developer's interest in self-preservation combined with its drive to make a profit often draw judicial scrutiny on conflict situations having the appearance of self-dealing. As noted by our Court of Appeals in *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 599 358 S.E.2d 150, 152 (Ct. App. 1987):

> [I]t is a well-settled equitable rule that anyone acting in a fiduciary relationship shall not be permitted to make use of said relationship to benefit his own personal interests. It is a doctrine repeatedly announced by the courts of this nation that courts of equity will scrutinize with the most zealous vigilance transactions between parties occupying confidential relations toward each other and particularly any transaction between the parties by which the dominant party secures any profit or advantage at the expense of the person under his influence.

In *Dunes West*, for example, the developer served as the original director of the property owners' association, and in this capacity, it failed to properly maintain the property's common areas and failed to create a sufficient reserve fund for maintenance of said common areas. *Concerned Dunes West Residents, Inc. v. Georgia-Pacific Corp.*, 349 S.C. 251, 257, 562 S.E.2d 633, 637 (2002). Due to the developer's collective failures, the South Carolina Supreme Court found the developer breached the fiduciary duties it owed to the association holding as follows:

> The developer of a PUD owes a duty to the POA ***to turn over common areas that are not substandard*** and that are in good repair. ***Failure to do so*** subjects the developer to liability for bringing the common areas ***up to standard***.

Id. (emphasis added).

Here, a developer's failure to convey community properties in their entirety is at least the equivalent of conveying them in "substandard condition" (if not worse), and thus, any distinction between properties which *should have been conveyed* and *properties which were actually conveyed in a substandard condition* is a distinction without a difference.[19] Moreover, the record reflects the developers were in the process of repairing the community dock in preparation for transfer, per the request of the Assembly, while simultaneously, negotiating the sale of this very property to a third-party for profit. In other words, by failing to convey the community properties *as promised* to the Assembly, the Developers failed to act in the best interest of the Assembly, and therefore, breached at least one of the fiduciary duties it owed the Assembly. Thus, Defendants' Motion for JNOV as to the claim for breach of fiduciary duty is denied.

C.) Plaintiffs' Remaining Claims - Breach of Contract, ILSA, and Negligent Misrepresentation

The record reflects that Defendants deliberately failed to fulfill certain promises by selling the very amenity property they promised would belong to the Assembly and its members to an unaffiliated, for-profit entity in 2009. As further demonstrated below, the evidence presented at trial indicates (a) Defendants breached a contract which was intended to directly benefit the Assembly; (b) Plaintiff Walbeck relied on misrepresentations promulgated by the Defendants to his detriment; and (c) Defendants, through various marketing materials and their agents' oral representations, deceived Plaintiff Walbeck as to the purchase of his lot. Accordingly, the jury's findings as to Plaintiffs breach of contract, ILSA, and negligent misrepresentation claims are not untenable, and the motion for JNOV is denied.

[19] Contrary to Defendants' assertion, no South Carolina Court has ever held that "restrictive recognition of fiduciary duties" advances the public policy of this State. (Def. JNOV Motion, p. 17).

Breach of Contract

In South Carolina, a contract between two persons for the benefit of a third person can be enforced by the third person, even if he or she is not named in the contract. *Svenningsen v. Knight*, 286 S.C. 299, 333 S.E.2d 78 (Ct. App. 1985). The third person may enforce the contract if the contracting parties intended to create a direct, rather than an incidental or consequential, benefit to the third person. *Helms Realty, Inc. v. Gibson-Wall Co.*, 363 S.C. 334, 611 S.E.2d 485 (2005) (noting a third-party may enforce a contract which is made for the third-party's benefit); *Bob Hammond Const. Co. v. Banks Const. Co.,* 312 S.C. 422, 440 S.E.2d 890, 891 (Ct. App. 1994) ("[I]f a contract is made for the benefit of a third person, that person may enforce the contract if the contracting parties intended to create a direct. . .benefit to such third person.").

Here, the record reflects the Assembly is a third-party beneficiary of the developer's contractual obligation, as stated in Walbeck's purchase contract, and again, in the 1998 Property Report, to convey the amenity property directly to the Assembly and its members. (*See* 1998 Property Report, Pl. Ex. 1, Walbeck Purchase Agreement, Pl. Ex. 2). Accordingly, Defendants argument must fail – the language of both Walbeck's purchase contract as well as the 1998 Property Report confer a direct benefit upon the Assembly and its members, and thus, the evidence supports the jury's finding that the Assembly qualified as a third-party beneficiary to the same.[20]

Not only do Walbeck's purchase contract and the incorporated 1998 Property Report provide that the amenity property will be conveyed to the Assembly and its members; the I'On Declaration of Covenants, Conditions, and Restrictions ("I'On CCRs"), drafted by the

[20]Defendants maintain a similar argument as to Plaintiff Walbeck's individual breach of contract claim; however, as a party to his own purchase contract, Walbeck clearly has a right to bring an individual breach of contract claim. The jury's award of $10,000 in actual damages on Walbeck's individual breach of contract claim, following the jury's deliberation as to the representations made by Defendants contained therein, is evidence of this fact. In any event, Plaintiff did not elect to recover actual damages under his breach of contract claim.

Defendants, specifically provide that *the I'On Assembly* owns the "Commons" and grants a "non-exclusive easement of use and enjoyment of the Commons" to *all titleholders*. (*See* I'On CCRs, Pl. Ex. 84) (emphasis added). The I'On CCRs further describe the "Commons" as "real property and interests therein which the *Assembly* owns or otherwise holds possessory or use rights in *for the common use and enjoyment of Titleholders*" which necessarily includes the Creekside Park and Community Dock property. (*See* I'On CCRs, Ex. A, Pl. Ex. 84) (emphasis added).

Similarly, the many agreements entered into between the Defendants and governmental authorities, such as HUD, DHEC, and the Town of Mount Pleasant, during the development of the I'On community also directly benefit, by reference, the Assembly and its members. Indeed, the 1997 Impact Assessment, 1998 Property Report, and 1999 Dock Permitting Application prepared and submitted by the Defendants all indicate the amenity property will be owned by the Assembly for the common, recreational use of I'On residents. Each of the foregoing submissions constitutes proposed developmental plans which, once approved by the applicable governing authority, create an obligation, on behalf of the developers, to fulfill said plans.[21]

Finally, Defendants' own representations evidence they intended to directly benefit the Assembly by transferring the amenity property to Assembly on multiple occasions and in reference to the Assembly's and homeowner's concerns regarding the very contracts which also contained these representations.

[21] In fact, most if not all of the government permits require the successful applicant to sign the permit, indicating the Applicant's acceptance of and *agreement to* the conditions of the permit before the permit becomes valid. The permits typically incorporate the Applicant's representations as a condition of the actual permit, which the Applicant must, thereafter, agree to as a condition of the permit being finalized. All of the DHEC and Army Corps of Engineers permits in this case appear to follow this exact process.

Interstate Land Sales Act (ILSA)

Plaintiff (a) repeatedly established the applicability of ILSA to I'On; (b) repeatedly referenced the applicability of ILSA's anti-fraud provisions to Plaintiff Walbeck's claim; and (c) repeatedly presented evidence demonstrating Walbeck's reliance on Defendants' misrepresentations.

(a) Plaintiff Walbeck Qualifies as a Purchaser and the I'On Defendants Qualify as Developers

To warrant protection under the Act, Plaintiffs must show they purchased lots within I'On from a defendant who qualifies as a "developer" or "developer's agent". *Id.* The Act defines a developer as any person who, directly or indirectly, sells, or offers to sell, or advertises for sale any lots in a subdivision. 15 U.S.C. § 1701(5). The Act further defines an agent as a person who represents, or acts for or on behalf of a developer in selling, or offering to sell, any lot or lots in a subdivision. 15 U.S.C. §1701(6).

As evidenced by the record, the I'On Defendants qualify as "developers" or "developer's agents" under ILSA. Indeed, I'On was originally developed by The I'On Company, an entity owned by Tom and Vince Graham. Throughout several developmental stages, the I'On Company managed I'On Realty and The I'On Club, both of which promoted I'On home sites or I'On community amenities.[22] The I'On Group was formed to manage the other I'On entities, and all of these entities, along with the Grahams, participated in the development of I'On. Accordingly, each I'On Defendant qualifies as a "developer" or "developer's agent" as defined by ILSA. (*See* Pl. Ex. 78).

Per ILSA, a "purchaser" is an actual or prospective purchaser of any lot in a subdivision. 15 U.S.C. §1701(10). As evidenced by their respective purchase contracts, Plaintiffs actually

[22] I'On Realty and I'On Club are owned by the same individuals who own the I'On Company.

purchased lots within I'On. Moreover, Plaintiffs directly purchased their lots from the I'On Company (a/k/a the developer) or its representatives. The other named I'On Defendants are agents or controllers of the I'On Company which promulgated and/or failed to correct the misrepresentations made to Plaintiffs during the I'On sale process. As such, Plaintiffs may maintain their cause of action under ILSA against the I'On Defendants. *See Kemp,* 940 F.2d at 113 ("[O]fficers, directors, and participating planners may be held individually liable for violations of the Act. . ."); *Gibbes*, 794 F. Supp. at 1333 ("[T]he determining factor is whether each defendant participated in sales or could be considered as a controlling person in an organization that participated in sales.").[23]

Notably, Defendants themselves repeatedly represented to the public and prospective purchasers, Walbeck included, that they were subject to ILSA.

(b) The I'On Defendants Violated ILSA's Anti-Fraud Provisions By Deceiving Plaintiffs in the Purchase of Their Respective I'On Lots.

Per ILSA's anti-fraud provisions, it is unlawful for a developer or agent to: (1) employ any device, scheme, or artifice to defraud potential purchasers with respect to the sale or lease of property. 15 U.S.C §1703(a)(2)(A); (2) obtain money or property by means of any untrue statement of a material fact, or *any* omission to state a material fact, with respect to any information pertinent to the lot or subdivision. 15 U.S.C. §1703(a)(2)(B); or (3) engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a purchaser. 15 U.S.C. §1703(a)(2)(C).[24]

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[23] Defendants' assertion that Plaintiff failed to satisfy ILSA's 100 lot requirement is untenable given that the 1998 Property Report received by Walbeck, and repeatedly referenced in Walbeck's testimony, provides: "this report covers ***two hundred and forty-four lots (244)*** in Charleston County, South Carolina. . .It is estimated that this subdivision will eventually contain approximately ***seven hundred and eighty (780) lots.***" (Pl. Ex. 1)(emphasis added).

[24] In bringing claims based upon the foregoing anti-fraud provisions, a plaintiff need not demonstrate reliance on defendant's statements in order to prove a violation of § 1703(a)(2)(A) or (C). Under § 1703(a)(2)(B), plaintiff need not demonstrate reliance based on an omission; however, plaintiff may be required to show reliance to maintain a

DPM 33

The record indicates Defendants promulgated an ongoing, interrelated scheme involving multiple representations and omissions made to the Plaintiffs concerning the amenity property that Defendants promised to transfer to the I'On Community. The evidence also shows Defendants knew and should have known of the falsity and materiality of these representations and nondisclosures, and the Defendants, through lot sales, annual homeowner dues, and amenity usage fees, profited from said misrepresentations and non-disclosures. As such, the Defendants are liable to Plaintiff Walbeck under each of the above-described ILSA anti-fraud provisions. Simply stated, a single material misstatement or nondisclosure made by the Defendants in dealing with Plaintiff Walbeck constitutes a violation of ILSA's anti-fraud provisions. Here, the record is riddled with such material misrepresentations and omissions, each of which distinctly establishes the Defendants' liability under the Act, and thus, sustains the jury's verdict in favor of Walbeck on his ILSA claim. (*See, e.g.*, Pl. Ex. 1;[25] Pl. Ex. 2; Pl. Ex. 3; Pl. Ex. 7; Pl. Ex. 37; Pl. Ex. 167).

(c) The I'On Defendants' Misrepresentations and Nondisclosures Were Material

As evidenced by the record, it is precisely this information concerning amenity availability, accessibility, and operation to which Plaintiff Walbeck was entitled before he entered into his purchase agreement. Consequently, any facts related to said amenity availability, accessibility, and operation is undoubtedly "material," particularly, since Walbeck testified that he considered the amenity property and Defendants' representations regarding such in deciding to buy within the I'On Community. As facts related to the amenities are material, and the

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cause of action for an affirmative misrepresentation. Here, Plaintiff satisfies any reliance requirement as detailed in the discussion of the negligent misrepresentation section set forth below.

[25] Also of note is that Plaintiff Walbeck received a copy of the 1998 Property Report before he entered his I'On lot purchase agreement. Moreover, the Walbeck purchase contract expressly referenced the 1998 Property Report which set forth that the community property would be conveyed to the I'On Assembly at no cost during the I'On development process. *Id.*, para. 10. Additionally, the Walbeck contract specifically copied and set forth a version of the *amenity chart* set forth in the Property Report. *Id.*

Defendants misrepresented amenity-related facts in their dealings with Plaintiff Walbeck, the I'On Defendants are in violation of ILSA's anti-fraud provisions.[26] In other words, the evidence presented demonstrates that Plaintiff Walbeck was induced, by the Defendants' sales campaign, to purchase the lot within a subdivision consisting of a number of promised amenities about which he knew little. In the view of Congress, purchasers such as Walbeck are entitled to information, and the developers selling said property are, by Congress's direction, obligated to *truthfully* and *accurately* provide it. By failing to include material information, concealing significant facts, and otherwise misrepresenting community amenities, Defendants deceived Plaintiff Walbeck through various acts, instruments, and communications in connection with his I'On lot purchase.

(d) Defendants' Arguments to the Contrary are Without Merit

Plaintiffs' fraud-based ILSA claims are not barred by the Statute of Limitations. According to the Act, any claim brought under Sections 1703 (a)(2)(A)-(a)(2)(C) is governed by the discovery rule, and Plaintiffs brought this action within three years of discovering the I'On Defendants' material misrepresentations and nondisclosures.[27]

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[26] The Fourth Circuit has made clear that the fact itself must be material, *not* the misrepresentation or omission. *See Greenhouse v. MCG Capital Corp.,* 392 F.3d 650, 656 (4th Cir. 2004). Thus, assuming other requirements are met, as is the case here, any omission of a material fact is *prohibited. Id.* In addition, the materiality inquiry is objective and examines the significance of the omitted fact to a hypothetical reasonable investor or purchaser, not to the specific plaintiff. *See Nolte v. Capital One Fin. Corp.,* 390 F.3d 311, 315 (4th Cir. 2004). Further, materiality "does not require proof that an investor would not have invested had he known the truth; rather, the reasonable investor standard requires a showing of a substantial likelihood that, under all the circumstances, the omitted fact would have assumed actual significance in the deliberations of the reasonable [investor]."*Dunn v. Borta,* 369 F.3d 421, 427 (4th Cir. 2004) (internal citation omitted) (alteration in original). Moreover, in the analogous context, the fact that omitted information is publicly available does not defeat materiality as to a seller's omission. *See, e.g., Dunn,* 369 F.3d at 429. "[I]nvestors are not generally required to look beyond a given document to discover what is true and what is not." *Dunn,* 369 F.3d at 429.

[27] The discovery rule and its implications as to the timing-based affirmative defenses maintained by the I'On Defendants are discussed in detail above.

Further, any argument offered by the Defendants in attempting to disclaim their collective liability for their acts or their agent's acts is baseless in light of the following language noted by the Fourth Circuit in *In Re Total Realty Management, LLC*, 706 F.3d 245, 253 (2013):

> Given the Interstate Land Sales Act's plain language, Congress's intent to address fraudulent promotion in enacting the statute, and our precedent stating that the Interstate Land Sales Act should be read broadly, we agree with the district courts and hold that the Interstate Land Sales Act's fraud provision encompasses entities that participated in the advertising and promotional efforts leading to a challenged real estate transaction, even if they ultimately were not party to the transaction.

Defendants also attempt to disguise their wrong-doing by claiming they conveyed *different* amenity property to the Assembly which they now describe as the "Creekside Park" and the "Community Dock". Contrary to the Defendants' claims, the evidence leads but one logical conclusion – in 2009, the I'On Defendants conveyed *the* Creekside Park and *the* Community Dock listed in the 1998 Property Report and promoted in other marketing materials to Buyers. A "*Marsh*walk" and "*Crabbing* Docks" are simply not the equivalent of the "*Creek*side Park" and deep-water "*Community* Dock" promised to Plaintiffs as they are not located on the 300 feet of deep water frontage along Hobcaw Creek, and neither has a boat ramp or gazebo, as originally depicted, for the use of I'On residents. The Defendants' argument in this regard illustrates the very "bait and switch" type scheme Congress sought to protect innocent purchasers against in enacting ILSA's anti-fraud provisions.

Negligent Misrepresentation

Like Plaintiffs' breach of contract and ILSA claims, Plaintiffs' negligent misrepresentation claims are supported by South Carolina law and the evidence presented at trial. A plaintiff must establish the following elements to recover for negligent misrepresentation: (1) a false representation made by the defendant to the plaintiff; (2) a pecuniary interest by the

defendant in making the statement; (3) a duty of care owed by the defendant to communicate truthful information to the plaintiff; (4) the defendant's breach of said duty by failing to exercise due care; (5) the plaintiff's justifiable reliance on the defendant's representation; and (6) the plaintiff's direct and proximate damage resulting from his reliance on the representation. *Sauner v. Public Serv. Auth. of South Carolina,* 354 S.C. 397, 581 S.E.2d 161, 166 (2003).[28]

Here, the I'On Defendants misrepresented the availability, accessibility, and future ownership of community amenities to Plaintiffs on multiple occasions by varied means of communication for one primary purpose – profit. As the developers of the I'On Community, the Defendants' owed duties, including duties fiduciary in nature, to convey truthful information to Plaintiffs. The record demonstrates the Defendants breached these duties by failing to transfer the very amenities they represented would be transferred to the community for the use and enjoyment of Plaintiffs. Rather, the I'On Defendants sold said amenities for profit on August 5, 2009, and in so doing, continued to transmit to Plaintiffs misrepresentations regarding the Community amenities in an attempt to conceal their own self-dealings. *See Redwend Ltd. P'ship v. Edwards,* 354 S.C. 459, 474, 581 S.E.2d 496, 504 (Ct. App. 2003) ("A duty to exercise reasonable care in giving information exists when the defendant has a pecuniary interest in the transaction.").

Plaintiffs may rely on Defendants' representations without making further inquiry in cases such as this when a fiduciary relationship exists between the parties. *Epstein v. Howell,* 308 S.C. 528, 530-31, 419 S.E.2d 379, 380-82 (Ct. App. 1992). Thus, by the very nature of their relationship, Plaintiffs had a right to justifiably rely upon the I'On Defendants' representations, and did rely on those representations to their pecuniary detriment. Simply stated, the instant case

[28] The key distinction between fraud and negligent misrepresentation is that "fraud requires the conveyance of a known falsity, while negligent misrepresentation is predicated *upon transmission of a negligently made false statement.*" *May v. Hopkinson,* 289 S.C. 549, 557, 347 S.E.2d 508, 513 (Ct. App. 1986) (emphasis added).

involves developers, the Defendants, who owed fiduciary duties to the Assembly and its members, the Plaintiffs, to disclose all relevant facts concerning the conveyance of the amenity property to the I'On community and to refrain from taking advantage of the Plaintiffs by the slightest misrepresentation or concealment. *Goodard,* 310 S.C. at 415, 426 S.E.2d. at 832-33. Under these circumstances, Plaintiffs were justified in relying upon the truth of the I'On Defendants' repeated representations that said amenities would be ultimately transferred to the I'On community, regardless of whether Plaintiffs might have ascertained the falsity of the representation had they further investigated.[29]

Even if a showing of his "actual" reliance is required, as Defendants suggest, Plaintiff Walbeck specifically testified he "relied" on (a) the representations made by Defendants' agent, Mr. Orange, that the Defendants promised to convey the amenity property to the community, and this amenity property was located "around the bend" from Walbeck's lot; (b) the representations contained in his purchase contract wherein Developers promised to convey the same amenity property to the community; (c) the representations contained in the 1998 Property Report, a report which was specifically referenced in his purchase contract and wherein Developers again promised to convey the amenity property to the community; and (d) the graphic representations depicting amenity property "located around the bend" from his lot on maps provided by

[29] *See, e.g., Epstein,* 308 S.C. at 530-31, 419 S.E.2d at 380-82 *citing Halsell v. First Nat'l. Bank,* 48 Okla. 535, 150 P. 489 (1915) (an often-cited case holding a director cannot practice fraud upon a co-director by making false statements concerning corporate affairs to induce the purchase of his stock by the co-director and then successfully defend on the ground that the co-director is charged with the knowledge of corporate affairs and a duty to keep informed of corporate business); 37 Am.Jur.2d *Fraud and Deceit* § 254, at 342 (1968) ("It is well settled that a representee has a right to rely upon representations where a. . .fiduciary relationship exists between the parties [and] in such a case, the buyer generally has the right to rely upon the seller's representations with reference to the property sold, even though the buyer has the opportunity to investigate the matter and ascertain the truth with respect thereto."); *see also Reid v. Harbison Development Corp.,* 285 S.C. 557, 330 S.E.2d 532 (Ct.App.1985), *aff'd in part and remanded,* 289 S.C. 319, 345 S.E.2d 492 (1986) (holding a recipient of a fraudulent representation of fact is justified in relying on its truth, although the recipient might have ascertained the falsity of the representation had the recipient investigated); 37 Am.Jur.2d *supra* § 252, at 337 ("[T]he rule is widely followed. . .that one to whom a positive, distinct, and definite representation has been made is entitled to rely on such representation and need not make further inquiry concerning the particular facts involved. . .").

Defendants throughout the progression of I'On's development. Moreover, Plaintiff Walbeck's testimony also established that Defendants never informed him that they did not intend to fulfill their promises to Walbeck at any time prior to his closing, nor any other time thereafter.

Amalgamation

Prior to submission of the case to the jury, the Court held Defendants are amalgamated as a matter of South Carolina law. At the trial of this case, Plaintiffs demonstrated that any legal distinctions among the Defendant entities are blurred, all are controlled, managed, and owned by the same individuals, and all collectively functioned as one in the day-to-day operations of all aspects of I'On's development, including promulgating deceptive and misleading representations. As noted by the Court, even the Grahams were unsure about which person worked for which entity at which time during which activity. Although not necessary for purposes of warranting this Court's amalgamation ruling, Plaintiffs sufficiently demonstrated both "fundamental unfairness" and many "wrongs" committed by the Defendants.

Specifically, under South Carolina jurisprudence, the "amalgamation" theory provides an avenue for relief when a "piercing the corporate veil" analysis is inapplicable. Unlike the "veil-piercing" theories, amalgamation does not require a showing of a parent company's "domination" of its subsidiary. Rather, under the amalgamation theory, a demonstration of the comingling of corporate interests, entities, and activities which blurs the legal distinction between the corporations and their activities is all that is required in order to hold each Defendant liable for the acts of the others. *See Kincaid v. Landing Development Corp.,* 289 S.C. 89, 91, 344 S.E.2d 869, 871 (Ct. App. 1986). [30]

[30] In *Kincaid,* three related corporations (a development corporation, a management corporation, and a construction corporation) were sued for negligent construction and breach of warranty. The management corporation argued the court should have directed a verdict in its favor because it was merely the marketing and sales company. *Id.* at 96,

Although not required for purposes of establishing amalgamation under *Kincaid*, the record in the present case reflects that the I'On Company and I'On Group did, in fact, dictate the day-to-day operations of the other Defendants and controlled all business decisions related to the I'On development. For example, according to the testimony of Tom Graham, he had direct control over the Defendants "through companies [he] owns or [has]" such as the I'On Company. Additionally, Tom Graham repeatedly testified to the "major" degree in which both he and Vince Graham controlled the conceptual planning of the I'On neighborhood, negotiated business deals in connection with the I'On Development, and directed the managers of the other Defendant entities when making business decisions.

Not only do the I'On Companies employ the same general managers, including themselves, both the owners and managers simultaneously engaged in business dealings acting on behalf of the separate entities. For instance, the invalid Recreational Easement entered into between the I'On Company, I'On Club, and I'On Assembly during February of 2000 in connection with the Community Dock was executed on behalf of *all three entities* by the then general manager for the I'On Company, Joe Barnes. (*See* Recreational Easement, Pl. Ex. 10). Subsequently, another General Manager of the *I'On Company*, Chad Besenfelder, represented to the I'On Assembly, on behalf of the *I'On Group*, that the "I'On Company [was] preparing to deed the [C]ommunity [D]ock to the I'On Assembly" in March of 2009 and the "*I'On Club* will continue to operate the facility." (*See* March 25, 2009 Besenfelder e-mail, Pl. Ex. 58) (emphasis added). At the time this statement was made, the docks were owned by the I'On Club, not the

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344 S.E.2d at 874. In addition to sharing owners, the three companies shared a location. *Id.* Furthermore, the management company was the corporation called to remedy problems. *Id.* Finally, the company's letterhead identified the management company as "A Development, Construction, Sales, and Property Management Company." *Id.* On appeal, the *Kincaid* court affirmed the trial court's finding that this evidence revealed "an amalgamation of corporate interests, entities, and activities so as to blur the legal distinction between the corporations and their activities." *Id.* (emphasis added). As a result, the three related corporations were held liable for the negligent acts of each other.

I'On Company – thus, by virtue of his own statement, General Manager Besenfelder blended all I'On companies into one interchangeable company.

The misuse of this collective control is further evidenced by the various real estate transactions involving the amenity property. For example, CV5 and CV6 were first transferred by the I'On Company to the I'On Club on August 15, 2000, for nominal consideration in the amount of $5.00. (*See* August 15, 2000 Deed, Pl. Ex. 11). Two years later, CV5 was transferred by the I'On Club to the Grahams for the same inadequate consideration and, not surprisingly, no evidence presented to date indicates the Grahams actually paid said consideration to the I'On Club. *Id.* Subsequently, CV5 was sold by the Grahams to Civitas for a discounted purchase price of $225,000 on August 5, 2009. (*See* Settlement Statement, Pl. Ex. 16).

Notably, during the same closing, CV5 was sold to Civitas by the Grahams, CV6 was sold to Civitas by the I'On Club for a discounted purchase price, and a residential lot was also sold by the I'On Company to Civitas for a discounted purchase price. *Id.* As evidenced by the Settlement Statement in connection with the closing of these three properties, the I'On Group, under the direction of the Grahams, executed the closing documents on behalf of both the I'On Club and I'On Company, further reflecting the amalgamation of the Defendants' business operations. *Id.* Similarly, the June 18, 2009 Purchase Agreement for the Creek Club located on CV6 indicates the collective function of the I'On Defendants. (*See* Creek Club Purchase Contract, Pl. Ex. 148). Specifically, the Creek Club Purchase Agreement was entered into between Civitas and the I'On Club, but was executed on the I'On Club's behalf by the I'On Group, and specifically, the I'On Group's Manager, Vince Graham, who is also the manager for both the I'On Company and the I'On Club. *Id.*

Directed Verdict on Defendants' Claim for Abuse of Process

Finally, this Court granted a directed verdict on Defendant's claim for abuse of process. as Defendants failed to establish a question of fact as to all necessary elements of an abuse of process claim. Defendants' motions as to their abuse of process claim are denied.

First, for an ulterior purpose to exist, there must be an illegitimate use of process. Food Lion Inc. v. United. Food & Commercial Workers Intern. Union, 351 S.C. 65, 71 (Ct. App. 2002). Regardless of the exclusion of Defendants' Exhibit 106, Defendants did not present any evidence that the Plaintiffs used the judicial process for anything other than a legitimate purpose. The record reflects Plaintiffs' initiated and prosecuted this action for the sole purpose of righting a wrong – a wrong which affected not only Plaintiffs, but also, community and public interests. Furthermore, Defendants did not produce any evidence of a willful act in the use of the process that was improper because it was unauthorized or aimed at an illegitimate collateral objective. *Id.*

II. Defendants' New Trial Motions are Denied as the Jury's Verdict is Consistent with the Evidence Presented and Supported by the Record

A trial court must grant new trial motions *nisi* only when the verdict is grossly inadequate or excessive so as to be the result of passion, caprice, prejudice, or some influence outside of the evidence. *O'Neal v. Bowles*, 314 S.C. 525, 431 S.E.2d 555 (1993) (noting "the denial of a motion for a new trial *nisi* is within the trial judge's discretion and will not be reversed on appeal absent an abuse of discretion . . . If the amount of the verdict is *grossly* inadequate or excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute.") (emphasis added) (internal citations omitted).

Here, the verdict is not grossly excessive,[31] and the jury's determination of damages is entitled to substantial deference. Accordingly, this Court denies Defendants' New Trial Motions. *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996).

CONCLUSION

Based upon the foregoing, this Court denies Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute or New Trial Nisi Remittitur.

AND IT IS SO ORDERED.

Stephanie P. McDonald
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
Dated: June 15, 2015

[31] In fact, the jury awarded less than the amount the Plaintiffs requested at trial and declined to award punitive damages despite finding that Defendants acted recklessly and without the slightest care.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BRAD J. WALBECK, AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.; I'ON ASSEMBLY, INC., Plaintiffs, vs. THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-10490 **ORDER DENYING PLAINTIFF ADKINS' PETITION FOR UNJUST ENRICHMENT**

INTRODUCTION

This matter came before the Court upon a Petition for Unjust Enrichment filed by Plaintiff Lea Ann Adkins following the trial of this case in which the jury returned verdicts for the Plaintiffs on several causes of action.[1] As to Plaintiff Adkins, the jury found for the I'On Defendants on her individual claims for violation of the Interstate Land Sales Act (ILSA), violation of the South Carolina Unfair Trade Practices Act (UTPA), breach of contract, fraud, and negligent misrepresentation. Both Plaintiff Adkins and Plaintiff Brad Walbeck appeared as derivative plaintiffs on behalf of the I'On Assembly; the jury returned verdicts for the Assembly on the claims for breach of contract, breach of fiduciary duty, and negligent misrepresentation.

[1] The above-captioned matter was tried before a jury between July 29, 2014 and August 2, 2014.

The jury also returned verdicts for individual Plaintiff Walbeck on a number of his claims. Plaintiff Adkins' claims against the I'On Defendants also include an individual claim for unjust enrichment, an equitable claim which came before this Court for consideration at the trial's conclusion. Adkins seeks an Order finding the I'On Defendants were unjustly enriched at her expense because the I'On Defendants wrongfully retained all of Adkins' lot purchase money, despite the fact that they sold certain amenities which the I'On Defendants promised Adkins would be available to her (and, thus, to the I'On Assembly) through her lot purchase. The I'On Defendants oppose Adkins' Petition, maintaining that Adkins had an adequate remedy at law and that Adkins established neither inequity on the part of the I'On Defendants, nor her resulting detriment. Based upon the evidence presented, and as further detailed below, this Court finds that Adkins indeed had an adequate remedy at law and has not established all elements necessary to entitle her to judgment on her unjust enrichment claim.[2]

SUMMARY OF PERTINENT FACTS

On or about February 1, 2003, Adkins entered into a contract for the purchase of a residential lot within the I'On neighborhood. Prior to contracting, Adkins received oral and written representations made by the I'On Defendants regarding the disposition of specific amenities within the neighborhood, which included a "Creekside Park," "the Community Dock," and related facilities (hereinafter collectively referred to as the "Subject Amenities"). The I'On Defendants, through various media, represented to Adkins that the Subject Amenities would be conveyed to the I'On homeowners association (the I'On Assembly) at no cost and with no encumbrances, for the benefit and enjoyment of all property owners within I'On. Relying in part

[2] The factual background of this matter is set forth at length in this Court's Order Denying the I'On Defendants' Motion for JNOV.

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upon the I'On Defendants' representations regarding the Subject Amenities, Adkins purchased a lot from the I'On Defendants for one hundred fifty-nine thousand dollars ($159,000.00).

While both Adkins and Walbeck maintained the derivative claims on behalf of the I'On Assembly, Adkins' individual claims differed from Walbeck's in that Adkins' lot purchase contract did not contain the additional written representation promising the Subject Amenities that Walbeck's contract contained.[3] Specifically, Adkins' Purchase Agreement does not incorporate any of the representations in the 1998 Property Report so hotly contested at trial. The Adkins Purchase Agreement explicitly exempts the application of ILSA to the sale of her lot and makes no reference to a property report. (See Purchase Agreement at ¶ 8(i)).

The factual basis for all of Adkins' claims at trial is the same as the basis for her unjust enrichment claim: that she relied on representations regarding the transfer of amenities to the I'On Assembly when she purchased her lot. (Compare Fourth Amended Complaint with Adkins' Petition at 2.) A jury verdict in Adkins' favor on her claims at law would have provided Adkins with an adequate remedy at law in the form of monetary damages. Adkins' petition for equitable remedies thus necessarily fails because the law provided her with adequate remedies, both in contract and tort, to redress her allegations.

A breach of contract claim provides an adequate remedy at law. See Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 328, 721 S.E.2d 447, 450 (Ct. App. 2011) (finding a contractual agreement between the parties provides an adequate remedy at law). "Absent an express contract, recovery under quantum meruit [i.e., unjust enrichment] is based on quasi-contract."[4] JASDIP Properties SC, LLC v. Estate of Richardson, 395 S.C. 633, 640, 720 S.E.2d 485, 488

[3] Adkins pursued a third-party beneficiary claim at trial which was rejected by the jury.

[4] The terms "quantum meruit," "quasi-contract," and "implied by law contract" are all equivalent terms for an equitable remedy. The terms "restitution" and "unjust enrichment" are modern designations for the older doctrine of quasi-contracts. See Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 325, 734 S.E.2d 177, 180 (Ct. App. 2012).

ORN 3

(Ct. App. 2011) (quoting Earthscapes Unlimited, Inc. v. Ulbrich, 390 S.C. 609, 616, 703 S.E.2d 221, 225 (2010)). Further, if the claims a party "is seeking compensation for . . . are encompassed within the terms of an express contract . . . the plaintiff may not recover under quantum meruit." Williams Carpet Contractors, Inc. v. Skelly, 400 S.C. 320, 328, 734 S.E.2d 177, 181 (Ct. App. 2012).

Adkins and Defendants had an express contract detailing the terms of her lot purchase, and Adkins offered the Purchase Agreement as evidence in support of her claims at trial. (See Plaintiffs' Exhibit 45: Purchase Agreement). In her Complaint, Adkins alleges that "[t]he Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were incorporated into Plaintiff Adkins' lot purchase agreement through the deeds and actions of the I'On Defendants and/or their agents." (See Fourth Amended Complaint at ¶ 64).

The greater weight of the evidence at trial demonstrates that Adkins did not receive the 1998 Property Report and could not have relied on it when entering her lot purchase agreement. Adkins did not purchase her lot until 2003—several years after Defendants stopped issuing the 1998 Property Report in 2001. Adkins claims she received the Property Report from Laurie Thornhill prior to her purchase. Thornhill, however, was not in the practice of issuing the 1998 Property Report to buyers, and this issue was before the jury for its consideration. (See Defendants' Exhibit 65: Wilcox Receipt of 2000 Report and see also trial testimony of David Thompson).

Even if Adkins did receive the 1998 Property Report, she failed to demonstrate that she had a right to rely on it. The language of Adkins' Purchase Agreement expressly exempted her purchase from the ILSA property report requirement and stated that any property reports

DPM

previously issued did not apply to Phase Five of I'On, where Adkins purchased. (See Purchase Agreement at ¶ 8(i) and see Plaintiffs' Exhibit 1: 1998 Property Report at 30).

"Equity is only available when a party is without an adequate remedy at law." EllisDon Constr., Inc. v. Clemson Univ., 391 S.C. 552, 555, 707 S.E.2d 399, 401 (2011). "The function of equity is to supplement the law, not to displace it." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 117, 580 S.E.2d 100, 108 (2003) (internal citation omitted). Further, the "basis for granting equitable relief is the impracticability of obtaining full and adequate compensation at law." Nutt Corp. v. Howell Rd., LLC, 396 S.C. 323, 327, 721 S.E.2d 447, 449 (Ct. App. 2011)

To recover for unjust enrichment a plaintiff must prove: "(1) a benefit conferred by the plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 257, 715 S.E.2d 348, 356 (Ct. App. 2011).

As a separate ground for denial of Adkins' petition, she has failed to demonstrate that it is inequitable for Defendants to retain the $50,000.00 portion of the lot purchase price that she now seeks as restitution. As discussed above, Adkins failed to demonstrate that she received the 1998 Property Report, or that she had a right to rely on it. She admitted that she could not recall whether she read the report before purchasing, and portions of her trial testimony made clear that she never relied on representations, whether oral or written, that the Creekside Park and Community Dock were to be transferred to The Assembly at no cost. Adkins has simply failed to demonstrate that the I'On Defendants' retention of her lot purchase price is inequitable. For these reasons and as Adkins fully litigated her adequate remedies at law, the Court denies Adkins' request for an award on the unjust enrichment cause of action.

OPN 5

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Adkins motion for judgment in her favor on her claim for unjust enrichment is **DENIED**, and judgment is hereby **ENTERED** for Defendants on such claim.

AND IT IS SO ORDERED.

Stephanie P. McDonald
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
Dated: June 15, 2015

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-10490
I'ON ASSEMBLY, INC.; BRAD J. WALBECK, AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC., Plaintiffs, vs. THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC, Defendants.	)	**ORDER DECLARING THE INVALIDITY OF THE 2000 RECREATIONAL EASEMENT**

ORDER

THIS MATTER CAME BEFORE THE COURT on September 3, 2014, upon cross-motions filed by the parties at the conclusion of trial requesting that the Court issue a judgment as to Defendants' equitable claim for declaratory judgment regarding the validity of the 2000 Recreational Easement. Specifically, the declaratory action concerns the validity of a "Recreational Easement and Agreement to Share Costs" dated February 9, 2000 (hereinafter referred to as the "2000 Recreational Easement").

At the September 3, 2014 hearing, Plaintiffs, the I'On Assembly, Inc., Brad Walbeck and Lea Ann Adkins, individually, and derivatively on behalf of the I'On Assembly, Inc. (hereinafter collectively referred to as "Plaintiffs"), were represented by attorneys, Justin Lucey, Joshua

Evans and Dabny Lynn; Defendants, the I'On Company, LLC, the I'On Club, LLC, the I'On Group, LLC f/k/a Civitas, LLC and I'On Realty, LLC (hereinafter collectively referred to as "Defendants") were represented by attorneys, Brian Duffy, Rutledge Young, and Seth Whitaker; and re-aligned Plaintiff the I'On Assembly, Inc., was represented by attorney Tim Bouch.

Having reviewed the submissions of the parties and having heard the oral arguments presented by counsel, this Court declares the 2000 Recreational Easement invalid and void *ab initio.*

SUMMARY OF PERTINENT FACTS

A.) Overview of Present Case

The background of this dispute was aired at length during the trial of this matter and will not be repeated herein except as necessary for purposes of this Order. The factual background of this matter is set forth at length in the Court's Order Denying the I'On Defendants' Motion for JNOV.

B.) The 2000 Recreational Easement

On February 9, 2000, the I'On Club, LLC, the I'On Company, LLC, and the I'On Assembly (then controlled by the Defendants) executed a document entitled "Recreational Easement and Agreement to Share Costs" which purported to grant the parties a perpetual right to use and access certain amenities located on civic lots within the I'On neighborhood.

DPM 2

Specifically, in the 2000 Recreational Easement, the I'On Club, LLC purported to grant the Assembly and its members perpetual use and access of the "Community Dock" and associated boat ramp as well as perpetual use and access of a corresponding parking lot, including the perpetual right to temporarily park vehicles and boat trailers in the parking lot for up to 12 hours. In the same document, the Assembly purported to grant the I'On Club and its members the perpetual right to use and access "East Lake" and the "Athletic Field" through consenting to a grant of easement by the Developer (The I'On Company, LLC).

When the 2000 Recreational Easement was executed, however, the I'On Club did not own the Community Dock, boat ramp, and parking lot. Further, regarding the East Lake and Athletic Field easement, it is undisputed that the Developer controlled the Assembly at the time the Assembly allegedly consented to the Developers' grant of the East Lake easement to the Club.

Significantly, only one individual, Joe Barnes, a general agent for the I'On Defendants, executed the 2000 Recreational Easement on behalf of all three interested parties. Mr. Barnes signed the 2000 Recreational Easement in his capacities as (1) Manager of the I'On Company; (2) Manager of the I'On Club; and (3) President of the I'On Assembly.

Additionally, although the 2000 Recreational Easement purported to provide the foregoing "perpetual" rights, Section 4.2 of the Easement limits its terms to thirty (30) years, superseding any "perpetual" language referenced in the Easement's other provisions.[1]

[1] Where general and specific terms of a contract are inconsistent, the inconsistency is resolved in favor of the more specific terms in the contract. In other words, the specific terms control and the meaning of the general terms are restrained or superseded by the specific. *Southern Ry. Co. v. Columbia Compress Co.*, 280 F. 344, 348 (4th Cir. 1922); *State v. Williams*, 33 S.C.L. 474, 476-77 (Ct. App. 1848); 17A C.J.S. Contracts § 416 (June 2014).

App 3

LEGAL DISCUSSION

Based on the evidence presented and a plain reading of the 2000 Recreational Easement, this Court finds the 2000 Recreational Easement invalid for several reasons.

A.) The 2000 Recreational Easement is Invalid Because the Granting Party Did Not Own the Subject Property at the Time of Execution

The 2000 Recreational Easement is invalid as a matter of law. The I'On Club did not own the relevant property when the Easement was executed. Under South Carolina law, the granting party must, at the time of the granting, own the property over which the easement is granted. *See, e.g., Moore v. Reynolds,* 285 S.C. 574, 578, 330 S.E.2d 542, 545 (Ct. App. 1985); *Guy v. Guy,* 2008 M.E.141, 955 A.2d 212, 215 (2008); *Sakonnet Point Marina Ass'n, Inc. v. Bluff Head Corp.,* 798 A.2d 439, 442 (R.I. 2002); *Trahms v. Starrett,* 34 Cal.App.3d 766, 110 Cal. Rptr. 239, 242 (1973); *Stilbell Realty Corp. v. Cullen,* 352 N.Y.S.2d 656, 658 (1974).

In *Moore,* William Reynolds brought an action to prevent Robert Moore from obstructing his right-of-way over an easement granted by their predecessors in title. *Moore,* 285 S.C. at 575. On appeal, Moore conceded an easement existed but contested the location of the easement as determined by the master. *Id.* at 577. In determining the location of the easement the court factored into its consideration which portion of the land was owned by the grantor at the time the easement was created. *Id.* at 578. In considering this, the court stated, "[T]he easement necessarily had to have been granted upon property owned by [the predecessor] in 1926." *Id.* The court concluded it could not accept Moore's assertion of the

location because that would require the court to conclude that the predecessor granted an easement over land she did not own. *Id.*

Thus, as *Moore* indicates, an easement cannot be granted over land the grantor does not own, and because the I'On Club did not own the property subject to the 2000 Recreational Easement, the Easement is invalid. Indeed, the 2000 Recreational Easement was signed and recorded in February 2000, over six (6) months before the I'On Club acquired title to the Community Dock property from the I'On Company. Accordingly, the 2000 Recreational Easement is invalid as a matter of South Carolina law, and thus, void *ab initio.*

B.) The Assembly's Purchase of the Amenity Property Created a Merger and Subsequent Termination of the Easement.

When the Assembly acquired the Boating Facilities as part of the 2014 settlement with 148 Civitas, the easement regarding the Boating Facilities merged into the Assembly's title to the property.

According to South Carolina jurisprudence, if an entity owns the property over which an easement exists and serves, the easement is terminated. *Haselden v. Schein*, 167 S.C. 534, 166 S.E. 634 (1932). As such, the terms of the 2000 Recreational Easement purporting to grant the Assembly a right to use and access the amenity property upon which the Community Dock, boat ramp, and parking lot are located, were effectively terminated when the Assembly acquired title to this property in accordance with the Settlement Agreement. *See Windham v. Riddle,* 370 S.C. 415,419, 635 S.E.2d 558, 560 (Ct. App. 2006) *aff'd,* 381 S.C. 192, 672 S.E.2d 578 (2009) (holding that an easement cannot exist where both the purported servient and dominant estates are owned by the exact same person).

Given the effective termination of these Easement provisions, this Court finds these terms are no longer valid.

EQUITABLE CONCERNS

The testimony and evidence presented at the trial of this case repeatedly referenced the Easement's ambiguous terms, its non-perpetual interpretation, and its conflicted execution by the same individual, Joe Barnes, for three I'On entities. The jury considered this evidence and implicitly recognized the invalidity of the Easement in light of the Developers' fiduciary relationship with the Assembly. *See Wilson v. Wilson,* 117 S.C. 454, 117 S.E. 330 (1921) ("[W]herever a fiduciary relation exists between two persons and a business transaction occurs between them, as a result of which the superior party obtains a possible benefit, equity raises a presumption against its validity, throwing the burden upon him to prove his good faith.").

While this lack of an arms-length Easement transaction and the Easement's ambiguous terms alone are sufficient to give this court pause, other concerns come into play when Defendants seek the benefit of equitable relief. For example, several times in March of 2009, Defendants reiterated to the Assembly their intention to transfer the amenity property to the Assembly, all while negotiating the sale of CV6 and CV5 (the parking area serving CV6) with third-party for-profit entity Civitas. As the sale actually occurred in August of 2009, it certainly appears that the I'On Defendants made the March 2009 representations in an effort to keep the Assembly and concerned homeowners at bay.

Simply put, the Defendants cannot rely on equitable principles when the evidence, and the jury's verdict, demonstrate that Defendants acted inequitably. The record reflects that

Defendants were aware that the I'On Club did not hold title to the amenity property when the 2000 Recreational Easement was executed, and thus, Defendants are barred from using an equitable doctrine to "ratify" a defective, ineffective instrument. Specifically, Defendants are estopped from utilizing the After-Acquired Title Doctrine because Defendants' employee signed the 2000 Recreational Easement on behalf of all parties while on notice that the I'On Club was not the legal title holder. *See, e.g., Noronha v. Stewart*, 199 Cal.App.3d 485, 491 (1988) ("[b]ecause [the common law after-acquired title doctrine] is based upon estoppel, it does not apply in favor of a grantee who has notice or knowledge that the grantor does not have the full title which he purportedly conveyed.").

Additionally, the Doctrine of Unclean Hands precludes Defendants from relying upon equitable principles such as the After-Acquired Title Doctrine because, in order to recover in equity, one must act equitably. *Wilson v. Landstrom*, 281 S.C. 260, 266 315 S.E.2d 130, 134 (Ct. App. 1984). In the trial of the underlying matter, the jury found that Defendants acted unfairly, and thus, inequitably, in carrying out the fiduciary duties they owed the Assembly. The jury's verdicts further reflect that the I'On Defendants violated certain disclosure and anti-fraud provisions of the Interstate Land Sales Act and misrepresented the availability, accessibility, and future ownership of community amenities to Plaintiffs on multiple occasions by varied means of communication for one primary purpose – profit. Thus, the Court declines to apply the equitable doctrine of after-acquired title for their benefit.

During the course of this action, both 148 Civitas and the Assembly's counsel have represented to the Court that it was their intent and understanding that the Assembly had a perpetual easement to use all of the Boating Facilities located on the Club Property pursuant to the 2000 Recreational Easement. The I'On Defendants have also taken this position.

Nonetheless, the individual Plaintiffs, initially acting derivatively on behalf of the Assembly, sought to have the 2000 Recreational Easement declared invalid, as their theory - - from the outset of this litigation - - was that the promised amenities were to be **conveyed** to the Assembly. Limited access to the deep water and dock closures on the week-ends during Civitas events were not part of the bargain.

This tension between the Assembly leadership and the individual Plaintiffs who brought suit derivatively is emblematic of the problems the individual homeowner members of the Assembly faced in their attempts to have the Assembly take action regarding Defendants' obligations to convey the promised amenities. Prior to the first trial of the case, Assembly counsel sat with the I'On and Civitas Defendants' during the striking of the jury. It was only late in the day on the third day of trial, during the testimony of the Assembly President, Ms. Bedell, that the Court and Defendants learned that the Assembly Board had met the weekend prior to trial and voted to "realign" itself with the Plaintiffs in support of their claims against the I'On Defendants regarding the breach of their obligations to convey the promised amenities to the Assembly. The individual/derivative Plaintiffs' view of the validity and intended duration of the easement was not contrary to the interests of the Assembly - - their claim was always that the I'On Defendants represented that the "Creekside Park," "Community Dock," and the Community Dock's associated parking and boat ramp were to be conveyed to the Assembly. It was not until the "realignment" that the Assembly agreed.

DPM 8

CONCLUSION

In sum, because (a) the I'On Club did not hold title to the amenity property over which the 2000 Recreational Easement was granted at the time the Easement was executed; (b) the "perpetual" terms of the 2000 Recreational Easement are ambiguous; (c) the 2000 Recreational Easement was not an arms-length transaction; (d) the 2000 Recreation Easement was not in the best interest of the Assembly; and/or (e) the provisions of the 2000 Recreational Easement are effectively terminated, this Court declares the 2000 Recreational Easement invalid and void *ab initio* under South Carolina law.

Accordingly, it is hereby:

ORDERED, ADJUDGED, and DECREED that the 2000 Recreational Easement in invalid and void *ab initio*.

AND IT IS SO ORDERED!

Stephanie McDonald
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

June 16, 2015

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON BRAD J. WALBECK AND LEA ANN ADKINS, BOTH INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.; I'ON ASSEMBLY, INC., Plaintiffs, vs. THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; AND I'ON REALTY, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2010-CP-10-10490 **ORDERING DENYING DEFENDANT, I'ON COMPANY, LLC'S, PETITION FOR ATTORNEYS' FEES AND COSTS**

ORDER

THIS MATTER CAME BEFORE THE COURT on September 4, 2014, upon the Petition filed by the Defendant, I'On Company, LLC, requesting that the Court award attorneys' fees and costs in connection with Plaintiff Lea Ann Adkins' breach of contract claim. Plaintiffs were represented by attorneys Justin Lucey, Joshua Evans, and Dabny Lynn; the I'On Company was represented by attorneys Brian Duffy, Rutledge Young, and Seth Whitaker; and re-aligned Plaintiff, the I'On Assembly, Inc., was represented by attorneys Tim Bouch and Yancey McLeod.

Having reviewed the submissions of the parties and having heard the oral arguments presented by counsel, this Court DENIES the I'On Company's Petition for Attorneys' Fees and Costs for the reasons set forth below.[1]

[1] A detailed background of this matter may be found in the Court's Order Denying Defendants' Motion for JNOV.

LEGAL DISCUSSION

The I'On Defendants assert that they are entitled to attorneys' fees from Ms. Adkins based upon the following provision of Ms. Adkins' Lot Purchase Agreement:

> 12(d) **Fees and Costs**: If either party requires services of an attorney to enforce obligations under this Agreement, the prevailing party shall be due from the non-prevailing party reasonable attorneys' fees, costs and expenses actually incurred.

Defendants are not entitled to an award of attorneys' fees because Adkins did in fact prevail at trial as a derivative plaintiff on behalf of the I'On Assembly.2

The jury found in favor of the Assembly on three causes of action brought within the derivative claims initiated by Walbeck and Adkins. In addition, the derivative Plaintiffs prevailed as to a number of Defendants' affirmative defenses; some were overruled by directed verdict, and the jury expressly overruled the statute of limitations defense. The derivative Plaintiffs also prevailed on the Assembly's amalgamation claim.

More importantly, the legal and public benefit achieved by Adkins and Walbeck outweighed any limited success by Defendants. Walbeck and Adkins brought about the filing of this action, despite the reluctance of the Assembly and its governing body to take necessary steps to address the breaches by the I'On Defendants. Following the "realignment" of the Assembly with the Plaintiffs on the eve of the first trial, the Assembly recovered the waterfront amenities from the transferee; the jury in the second trial awarded substantial damages after hearing

2 This section of the Lot Purchase Agreement is inapplicable for additional reasons. First, it is not clear that this provision would apply to the subject matter of this suit; Adkins pursued a third-party beneficiary claim at trial, not a direct breach of contract claim. Second, as the jury awarded a substantial verdict (one million, seven hundred fifty thousand dollars) to the Assembly through the derivative plaintiffs, the I'On Defendants cannot be characterized as "prevailing parties" under the terms of the Agreement. Finally, while the jury denied Adkins' individual claim, the Court denied Defendants' counterclaim against Adkins, resulting in a draw on the individual claims.

evidence of the cost of the amenity compromise and of other damages/loss of use brought about by the actions of the Defendants.

There is simply no practical or legal way to separate the derivative verdicts from Adkins or to attribute them more to Walbeck, just because he prevailed on his claim for personal damages and Adkins did not. The jury unanimously found that Defendants' acts constituted negligent misrepresentations and breaches of their fiduciary duties to the Assembly. Further, the jury found that the Defendants' breaches were committed recklessly, willfully, and/or wantonly. But for the actions of these Defendants, no attorneys would have been necessary to "enforce obligations under this Agreement." The I'On Defendants' argument that additional costs were incurred defending Ms. Adkins' individual claims is unavailing as there was substantial overlap of evidence and law between the Walbeck and Adkins claims, and between the individual claims and the derivative claims.

A plaintiff may achieve "prevailing party" status so long as: (a) plaintiff succeeded on any significant issue raised in the action; or (b) the litigation, in its entirety, resulted in some benefit. *Stevenson v. Branch Banking and Trust Corp.* ("*BB&T*"), 159 Md. App. 620, 662-663 (2004). Here, both of the foregoing factors are satisfied; Adkins succeeded on her derivative claims and the litigation of these claims directly benefited Adkins, personally, as well as hundreds of other I'On homeowners who are a part of the Assembly by virtue of their lot ownership in I'On. Not only did the jury find the Defendants breached various duties owed to the I'On Assembly, into whose shoes Adkins stepped, the jury also found the Defendants did so recklessly, willfully, and/or wantonly. Consequently, Adkins qualifies as a "prevailing party".

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Id.[3] *cf. Farrar v. Hobby,* 506 U.S. 103, 111–12, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992) ("[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff.").

"Our supreme court has defined a "prevailing party" as "one who successfully prosecutes the action or successfully defends against it, prevailing on the main issue, even though not to the extent of the original contention [and] is the one in whose favor the decision or verdict is rendered and judgment entered."" *EFCO Corp. v. Renaissance on Charleston Harbor,* LLC 370 S.C. 612, 617-618, 635 S.E.2d 922, 925 (Ct. App. 2006). From the outset, the main issue in this litigation has been Plaintiffs' allegation that the I'On Defendants improperly sold the "Creekside Park" and "Community Dock" to a third-party, thus violating their obligation to convey these (and the related) amenities to the I'On Assembly and its members, free and clear of all encumbrance. This is the very issue upon which the Assembly prevailed, and it happened only after the initiation of this action by Walbeck and Adkins. The jury rejected the majority of Defendants' arguments on this matter, and they simply are not "prevailing parties" under the Lot Purchase Agreement.

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[3] In *Stevenson versus Branch Banking and Trust Corporation* ("*BB&T*"), 159 Md. App. 620, 662 (2004), the Maryland Court of Appeals addressed the question of whether the trial court erred in awarding Stevenson attorneys' fees, when according to BB&T, "[Stevenson] was not the prevailing party at trial. By almost every measure, [BB&T], not Ms. Stevenson, was the prevailing party." Notably, in addressing the "prevailing party" issue, the *Stevenson* Court provided as follows:

> . . . [F]ederal courts characterize a plaintiff as the prevailing party when she *succeeds on <u>any significant issue that achieves some of the benefit sought in bringing the action</u>*; he or she *<u>does not</u>* have to win it all to be regarded as prevailing . . . Similarly . . . this Court held that plaintiffs may be considered the prevailing parties *<u>if a significant issue is resolved</u>* so as to achieve some of the benefit *<u>through litigation.</u>*

Id. at 662-663 (emphasis added) (citations omitted).

CONCLUSION

Based on the foregoing and after full consideration of the factual and legal issues presented, it is hereby ordered that the I'On Company's Petition for Attorneys' Fees is DENIED.

AND IT IS HEREBY ORDERED!

Stephanie McDonald
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina
July 13, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-10490

BRAD J. WALBECK, AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC., I'ON ASSEMBLY, INC.
PLAINTIFF(S)

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC
DEFENDANT(S)

Submitted by:	**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(k), 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)
BRAD J. WALBECK	**THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC**	**$ 225,000.00**
		$
		$

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.**

James P. McGowan
Circuit Court Judge

2163
Judge Code

7/14/13
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:

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 CHARLESTON I'ON ASSEMBLY, INC.; BRAD J. WALBECK AND LEA ANN ADKINS, BOTH INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC., Plaintiffs, vs. THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; AND I'ON REALTY, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO. 2010-CP-10-10490 **ORDERING GRANTING PLAINTIFF, BRAD WALBECK'S, PETITION FOR ATTORNEYS' FEES**

ORDER

THIS MATTER CAME BEFORE THE COURT on September 4, 2014, upon Petition filed by the Plaintiff, Brad Walbeck (hereinafter "Walbeck"), requesting that the Court award attorneys' fees, interest and costs in connection with the prosecution of the above-captioned action.

At the September 4, 2014 hearing, Walbeck was represented by attorneys Justin Lucey, Joshua F. Evans, and Dabny Lynn; the I'On Defendants[1] were represented by attorneys Brian Duffy, Rutledge Young, and Seth Whitaker; and re-aligned Plaintiff, the I'On Assembly, Inc., was represented by attorney Tim Bouch.

Having reviewed the submissions of the parties and having heard the oral arguments presented by counsel, this Court GRANTS Walbeck's Petition, and awards Justin O'Toole Lucey, P.A. a total of $225,000 in attorneys' fees.

[1] The I'On Company, LLC; the I'On Club, LLC; the I'On Group, LLC f/k/a Civitas, LLC; and I'On Realty, LLC are collectively referred to as the "I'On Defendants."

INTRODUCTION

This matter came before the Court upon a Petition for Attorneys' Fees, Interest and Costs filed by Walbeck following the trial of this case in which the jury returned a verdict and awarded damages in favor of Walbeck on a number of causes of action, including negligent misrepresentation, breach of contract, and violation of the Interstate Land Sales Full Disclosure Act (ILSA). Walbeck avers he is entitled to receive the actual damages awarded him under his negligent misrepresentation claim and an award of reasonable attorneys' fees under his ILSA claim, a separate verdict. The I'On Defendants oppose Walbeck's Petition on three grounds: (1) the I'On Defendants maintain Walbeck's nominal recovery under his ILSA claim precludes an award of attorneys' fees and costs; (2) the I'On Defendants suggest their meritorious defense precludes an award of attorneys' fees and costs; and (3) the I'On Defendants challenge the reasonableness of the fees requested by Walbeck.

Based upon the evidence presented, and as further detailed below, Walbeck is entitled to an award of attorneys' fees under his ILSA claim, and this Court awards Walbeck's counsel, Justin O'Toole Lucey, P.A., $225,000 in attorneys' fees.

SUMMARY OF PERTINENT FACTS[2]

This case was tried before a jury between July 29, 2014 and August 2, 2014. At the conclusion of trial, the jury returned a verdict and awarded damages in favor of Walbeck on the following causes of action: (a) Violation of the Interstate Land Sales Full Disclosure Act ("ILSA" or "the Act"); (b) Negligent Misrepresentation; and (c) Breach of Contract.[3] In addition, the jury returned a verdict and awarded damages in favor of Plaintiff, I'On Assembly, Inc. ("the

[2] This Order incorporates by reference the factual background encompassed in this Court's other post-trial Orders including the Order Denying the I'On Defendants' Motion for JNOV.

[3] Following deliberation, the jury awarded Walbeck actual damages in the amount of Twenty Thousand Dollars ($20,000.00) on his negligence misrepresentation claim; Ten Thousand Dollars ($10,000.00) on his breach of contract claim; and One Dollar ($1.00) on his Interstate Land Sales Full Disclosure Act (hereinafter "ILSA") claim.

DPM 2

Assembly"), on the following causes of action: (a) Breach of Fiduciary Duty; and (b) Negligent Misrepresentation. Subsequently, Walbeck elected to recover the $20,000 in actual damages awarded to him on the negligent misrepresentation claim while the Assembly elected to recover the $1,750,000 in actual damages awarded to it for Defendants' breach of fiduciary duty.

On August 11, 2014, Walbeck filed his Petition requesting a total award of $1,070,500 in attorneys' fees and costs.[4] On August 25, 2014, the I'On Defendants filed a Memorandum in Opposition to Walbeck's Petition under seal due to confidential settlement terms discussed within the pleading. Approximately one week later, Walbeck filed a Supplemental Memorandum in Support of his Petition and arguments were then heard at a motion hearing scheduled for September 4, 2014. Following the September 4th hearing, the Court took the fee issue under advisement, requesting that the parties submit additional arguments and substantiating evidence. Over the course of the next week, both parties submitted additional arguments and Walbeck's counsel submitted their statements of time and expenses for *in camera* review by letter dated September 11, 2014.

FINDINGS AND CONCLUSIONS

A.) Walbeck is Entitled to Recover Attorneys' Fees Under His ILSA Claim in Addition to Actual Damages Under his Negligent Misrepresentation Claim

Walbeck is entitled to an award of attorneys' fees under the provisions of ILSA[5] in addition to the actual damages Walbeck elected to receive under his common law negligent misrepresentation claim. *See* 15 U.S.C. § 1709(a)-(c) (2012) (allowing statutory recovery of attorneys' fees, interest and costs).

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[4]Walbeck's Petition was accompanied by the Affidavit of Justin Lucey, lead counsel for the Plaintiffs. Mr. Lucey's Affidavit itemized the $1,070,550 total award requested as being comprised of $1,015,000 in attorneys' fees and $55,500 in costs.

[5] The Interstate Land Sales Full Disclosure Act provides for the recovery of attorneys' fees, interest and court costs when a developer violates the disclosure or anti-fraud provisions contained therein. *See* 15 U.S.C. § 1709(b) (2012) ("The amount recoverable . . . may include, in addition to matters specified [in this section] interest, court costs, and reasonable amounts for attorneys' fees, independent appraisers' fees, and travel to and from the lot.").

3

Under prevailing South Carolina jurisprudence, the recovery of statutorily prescribed fees and the recovery of actual damages under a separate, common law cause of action does not constitute double recovery. Similarly stated, a Plaintiff may recover attorneys' fees under a statutory claim, such as ILSA, in addition to actual damages under a common law claim, such as negligent misrepresentation. *Austin v. Stokes-Craven Holding Corp.*, 406 S.C. 187, 193, 750 S.E.2d 78, 81 (2013) *citing Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 64, 691 S.E.2d 135, 157 (2010) ("[A] plaintiff who elects to receive damages awarded under a common law theory may also be entitled to recover statutory costs and attorney fees to which he is entitled under a separate verdict."). "[T]he rationale for this position is that an award for [damages] does not amount to double recovery for a single wrong given attorneys' fees are intended to make such claims economically viable for private citizens . . . ." *Id.*

Here, as in *Austin*, Walbeck's recovery of attorneys' fees under his statutory claim, ILSA, is not duplicative of the award of actual damages under his common law claim, negligent misrepresentation. Accordingly, Walbeck is entitled to recover reasonable attorneys' fees under his ILSA claim.

B.) Walbeck is Entitled an Award of Reasonable Attorneys' Fees Under His ILSA Claim Despite His Award of Nominal Damages

The United States Supreme Court's decision in *Farrar* does not serve to automatically preclude attorneys' fees awards in nominal damages case. *See Mercer v. Duke University (Mercer III)*, 401 F.3d 199, 206-09 (4th Cir. 2005) *citing Mercer v. Duke University (Mercer II)*, 50 Fed. Appx. 643, 646 (4th Cir. 2002) ("[w]e have never interpreted *Farrar* as automatically precluding attorney's fee awards in all nominal-damage cases.") (unpublished); *Clark v. Sims*, 28 F.3d 420, 425 (4th Cir. 1994) (remanding fee award in nominal-damage case for reconsideration in light of plaintiff's limited success). Rather, in *Farrar*, the Supreme Court held where a

OPM 4

prevailing party[6] recovers nominal damages, "the only reasonable fee is *usually* no fee at all." *Farrar,* 506 U.S. at 115 (emphasis added); *Id.* at 121 (O'Connor, J., concurring) ("[n]ominal relief does not necessarily a nominal victory make."); *Id.* at 124 (White, J., dissenting) (noting that the majority did not hold "that recovery of nominal damages *never* can support the award of attorneys' fees").

Because the *Farrar* Court "provides little guidance for courts considering whether an award of attorneys' fees is warranted" in nominal damage cases, the Fourth Circuit follows Justice O'Connor's concurring opinion in *Farrar* wherein she identified three factors to be considered in determining how to assess attorneys' fees to a nominally prevailing party:

(1) The difference between the amount of damages sought and recovered;

(2) The significance of the legal issue on which the plaintiff has prevailed; and

(3) Whether the litigation has accomplished some public goal other than occupying the time and energy of counsel, court and client.

Mercer III, 401 F.3d at 203; *Farrar,* 506 U.S. at 121, 113 S.Ct. 566 (O'Connor, J., concurring).

Relying on the "O'Connor factors," several courts of appeal, including the Fourth Circuit, permit attorneys' fees awards <u>despite</u> the award of only nominal damages. In *Mercer*, for example, the plaintiff was awarded only nominal damages; however, the Fourth Circuit upheld an award of $350,000 in attorneys' fees despite the de minimis compensatory relief.[7] *Mercer III,* 401 F.3d 199 at 206-09. As noted by the *Mercer III* Court:

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[6] "[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff." *Farrar v. Hobby,* 506 U.S. 103, 111–12, 113 S.Ct. 566, 121 L.Ed.2d 494 (1992). This standard is satisfied by a "judgment for damages in *any amount*, whether compensatory or *nominal*." *Id.* at 113 (emphasis added). Accordingly, the award of nominal damages in favor of Walbeck on his ILSA claim suffices to qualify Walbeck as a prevailing party.

[7] The Fourth Circuit's decision in *Mercer versus Duke University* resolved a number of issues originating from a Title IX action brought by Heather Mercer, a former kicker on Duke University's Division I-A football team. Mercer, who enrolled at Duke University in 1994 as a full-time student, was an all-state place kicker on her high school football team and wanted to continue playing football at the collegiate level. Following several attempts by Mercer to join Duke's football team, Duke's head football coach, Mr. Goldsmith, made Mercer a playing member of the team in April of 1995. After Mercer officially became part of the team, an onslaught of media attention and publicity ensued; some of which cast Mercer's membership in a negative light. Goldsmith appeared to begin to

DPM 5

> Because the Court in *Farrar* held that plaintiffs recovering only nominal damages *usually* or *often* will not be entitled to an award of attorney's fees, it is clear that such plaintiffs will at least *sometimes* be entitled to a fee award. Our cases have recognized as much.
>
> Although the majority opinion in *Farrar* provides little guidance for courts considering whether an award of attorney's fees is warranted, Justice O'Connor in a separate concurring opinion addressed the question in more detail. . .She suggested that when determining whether attorney's fees are warranted in a nominal-damages case, courts should consider "the extent of relief, the significance of the legal issue on which the plaintiff prevailed, and the public purpose served" by the litigation . . .
>
> We believe that the factors set forth by Justice O'Connor help separate the usual nominal-damage case, which warrants no fee award, *from the unusual case that does warrant an award of attorney's fees.* Accordingly, we will consider the district court's decision to award attorney's fees by way of the factors identified by Justice O'Connor.

Mercer III, 401 F.3d 199 at 203-04 (emphasis in original and added); *see also Sheppard v. Riverview Nursing Center, Inc.*, 88 F.3d 1332, 1336 (4th Cir. 1996) (referring to the O'Connor factors when analyzing the question of attorneys' fees in nominal damages cases).

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regret making Mercer a member, fearing the attention would negatively impact the rest of the team. Subsequently, in the fall of 1996, Goldsmith officially dismissed Mercer from the team, citing "performance reasons" for Mercer's dismissal. Mercer filed suit against Duke University and Goldsmith, seeking declaratory, injunctive, and monetary relief, alleging they violated Title IX by discriminating against her on the basis of sex. The United States District Court for the Middle District of North Carolina dismissed Mercer's complaint based on an interpretation of the statutory "contact-sport exception." The Fourth Circuit reversed, holding the contact-sport exception was inapplicable, and remanded the issue to the district court for further proceedings. On remand to the district court, a federal jury found that Goldsmith had discriminated against Mercer in violation of Title IX, awarding Mercer two million dollars in punitive damages and one dollar in compensatory damages. She was then awarded approximately $389,000 in attorneys' fees and costs. On appeal, however, the Fourth Circuit in *Mercer II* vacated the punitive damages award, finding private litigants may not recover punitive damages under Title IX based upon the United States Supreme Court decision in *Barnes v. Gorman*, 536 U.S. 181 (2002). Despite vacating Mercer's award of punitive damages, leaving her with only one dollar in compensatory damages, the *Mercer II* Court rejected Duke's claim that Mercer was no longer entitled to attorneys' fees as a matter of law. Instead, the court remanded the issue to the district court to decide "in light of Mercer's now limited success at trial" whether she should recover attorneys' fees and, if so, what amount. In remanding the case, the *Mercer II* Court suggested that the Supreme Court's holding in *Farrar versus Hobby* should guide the district court in deciding attorneys' fees and costs. In particular, the *Mercer II* Court referred to Justice O'Connor's concurring opinion, in which she articulated additional grounds for a court to award attorneys' fees to a nominally-recovering plaintiff. On remand, the district court held that Mercer should still recover the attorneys' fees from her Title IX claim. Notably, the district court utilized Justice O'Connor's three factor test from her concurring opinion in *Farrar*, and in applying these three factors, the court concluded that Mercer's victory was neither pyrrhic nor *de minimis*, and thus, she should recover reasonable attorneys' fees. The district court then calculated the amount that it deemed reasonable for recovery, resulting in a total award to Mercer of $349,243.96 for attorneys' fees. Following the district court's decision, Duke appealed to the Fourth Circuit again in *Mercer III*, arguing the district court erred in awarding attorneys' fees and that the appropriate award "is an award of no fees at all." The *Mercer III* Court affirmed the district court's holding, concluding Mercer was entitled to attorneys' fees as a prevailing party, and upholding the fees awarded by the district court.

C.) **The Balance of the O'Connor Factors Weighs in Favor of Walbeck, and thus, Walbeck is Entitled an Award of Attorneys' Fees**

The Fourth Circuit recently followed the majority of circuit courts in utilizing the O'Connor factors to determine whether a "nominally-recovering" plaintiff should recover attorneys' fees. The Fourth Circuit's interpretation of the O'Connor factors supports awarding attorneys' fees to Walbeck. Decided after *Farrar*, the Fourth Circuit in *Mercer* opined attorneys' fees are warranted in cases "which [serve] a significant public purpose" and where a plaintiff "succeed[s] on a significant legal issue," regardless of the monetary degree of such success. *Mercer III,* 401 F.3d 199 at 207-08; *see also Diaz-Rivera,* 377 F.3d at 125) ("[T]he Supreme Court has explicitly rejected the proposition that fee awards . . . should necessarily be proportionate to the amount of damages . . . plaintiff actually recovers.") (internal quotations omitted); *Cabrera,* 24 F.3d at 393 (2nd Cir. 1994) (upholding fee award based on significance of legal issue on which plaintiff prevailed and accomplishment of public purpose); *Jama.,* 577 F.3d at 176 (finding the degree of a plaintiff's success should consider not only the difference between the relief sought and achieved, but also the significance of the legal issue decided and whether the litigation served a public purpose); *Morales,* 96 F.3d at 361 (overruling district court's calculation of attorneys' fees because of failure to consider second and third O'Connor factors). In other words, it is the balancing of all O'Connor factors that proves dispositive of whether a plaintiff is entitled a fee award. Here, the balance weighs in favor of Walbeck, and thus, an award of attorneys' fees is warranted.

1.) Walbeck Succeeded on a Significant Legal Issue

First, Walbeck succeeded on an important legal issue – ILSA's anti-fraud provisions. Walbeck's reliance on these provisions, as opposed to the I'On Defendants' reliance on ILSA's anti-disclosure provisions, emphasizes this point. Walbeck's case confirmed that wronged purchasers may proceed under ILSA's anti-fraud provisions based upon a developer's material

misrepresentations, whether made orally, in writing, or otherwise. Additionally, Walbeck's case resulted in a first of its kind liability determination – the facts as found by the jury determined the I'On Defendants were legally responsible for violating Walbeck's rights under ILSA's anti-fraud provisions. Consequently, Walbeck succeeded on a significant legal issue, and thus, the second O'Connor factor weighs in favor of an award of fees to Walbeck.

2.) Walbeck's ILSA Claim Served an Important Public Purpose

Second, ILSA's purpose of limiting unfair and deceptive acts in the sale of land to the public is an important public purpose. *Kemp v. Peterson,* 940 F.2d 110, 112 (4th Cir. 1991) (noting the purpose of ILSA is to "prevent fraud and deception in the sale of undeveloped land."). Irrespective of the monetary recovery Walbeck received under his ILSA claim, Walbeck's victory signaled to developers, including the I'On Defendants, the importance of ensuring that their property-related advertisements and representations do not mislead innocent purchasers or otherwise violate ILSA's anti-fraud provisions. *See, e.g., Lippoldt v. Cole,* 468 F.3d 1204, 1224 (10th Cir. 2006) (holding that a fee award was justified because the ruling against the defendants would encourage the defendants to comply with the First Amendment going forward).

Not only does Walbeck's ILSA claim serve a public purpose, the public interest is best served by shifting the burden of the expense of litigation onto the shoulders of those whose unfair and deceptive acts are responsible for the litigation in the first place. Ultimately, the I'On Defendants were the cause of the litigation at issue, and thus, it is "reasonable" that the I'On Defendants should bear the burden of the attorneys' fees necessarily expended in vindicating wronged purchasers' rights. Allowing a plaintiff who successfully pursues an action under ILSA to recover his attorneys' fees encourages individuals to pursue litigation to protect the public interest. Similarly, requiring unsuccessful defendants to pay the plaintiff's attorneys' fees

discourages developers from engaging in deceptive and unfair practices, such as promulgating false advertisements and material misrepresentations, thereby enforcing the purpose of ILSA. *See Farrar,* 506 U.S. at 121–22, 113 S.Ct. 566 (O'Connor, J., concurring) (explaining that a plaintiff's "success might be considered material if it also accomplished some public goal other than occupying the time and energy of counsel, court, and client").

Moreover, if this Court focused on the dollar value and the result of the case when awarding attorneys' fees, the remedial purpose of ILSA would be frustrated. If attorneys' fees awards in ILSA cases do not provide a reasonable return, it will be economically impossible for attorneys to represent their clients. In other words, the courthouse doors will be closed to all but those with either potentially substantial damages, or those with sufficient economic resources to afford the litigation expenses involved. Such a situation would defy legislative intent – it is precisely those individuals with ILSA complaints who cannot afford attorneys' fees whom ILSA's remedial provisions are intended to protect.

Simply stated, the primary purpose of ILSA is to prevent developers from deceiving purchasers when promoting and selling property, and to require developers who deceive purchasers to pay for all costs stemming from their misconduct. Imposing a purchaser's attorneys' fees upon deceitful developers promotes ILSA's public purpose, and thus, the third O'Connor factor also weighs in favor of Walbeck.

3.) Walbeck's Total Recovery is Not Nominal

Finally, although similar to *Mercer* in that Walbeck recovered on an important statutory claim, Walbeck's recovery on his common law claims, in addition to his ILSA claim, distinguishes him from the plaintiffs in *Farrar* and *Mercer* who received only nominal damages *in total.* While the impact of this specific scenario has not been squarely addressed by South Carolina courts, the Third Circuit addressed a similar scenario and concluded a plaintiff's

recovery on related, common law claims may affirmatively demonstrate the "successfulness" of plaintiff's statutory claim.

In *Jama versus Esmor Correctional Services, Incorporated*, the Third Circuit was faced with the question of whether a plaintiff's success on her negligence claim ($100,000 award) could "independently inform the degree of her success" on her Religious Freedom Restoration Act ("RFRA") claim ($1 award). Following a lengthy analysis which involved defining what constitutes a "related" claim under the United States Supreme Court's decision in *Hensley versus Eckerhardt*, the *Jama* Court held as follows:

> Applying this reasoning here, we conclude that the *Hensley* standard should guide a district court's consideration of pendent state claims in a litigation where a plaintiff has prevailed on a fee-eligible federal claim. We will vacate the award and remand the matter for the District Court to make this discretionary determination in the first instance. The District Court should determine whether Jama's RFRA and pendent state negligence claims involved a "common core of facts" or were based on "related legal theories." *If the claims are related under this standard, the results on Jama's tort claims may inform the degree of Jama's overall success* . . . Whether or not the state and federal claims are related, the District Court should also consider the extent to which Jama's RFRA claim might, *even independently, justify a fee award under the factors articulated by Justice O'Connor in Farrar.* Thus, while the jury's nominal award must undoubtedly color the degree of Jama's success on her RFRA claim, the District Court *should also consider the significance of the legal issue on which she prevailed and determine whether her victory served a public purpose.*

Jama v. Esmor Correctional Services, Inc., 577 F.3d 169, 179-80 (3rd Cir. 2009) (emphasis added) (citations omitted).[8] *See also Rogers Group, Inc. v. City of Fayetteville, Ark.*, 683 F.3d 903 (8th Cir. 2012)(holding quarry was a "prevailing party" under 42 U.S.C. § 1988 even though constitutional claim went unaddressed where non-constitutional claim upon which it prevailed arose from same common nucleus of operative fact as constitutional claim).9

[8] *See also Farrar v. Hobby*, 506 U.S. at 111–12 ("[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in a way that directly benefits the plaintiff."); *Stevenson v. Branch Banking and Trust Co.*, 159 Md. App. 620, 662-663 (2004) ("[F]ederal courts characterize a plaintiff as the prevailing party when she *succeeds on any significant issue that achieves some of the benefit sought in bringing the action*; he or she *does not* have to win it all to be regarded as prevailing . . . this Court held that plaintiffs may be considered the prevailing parties *if a significant issue is resolved* so as to achieve some of the benefit *through litigation.*") (emphasis added).

10

Here, Walbeck's individual and derivative claims all involved a "common core of facts" based upon the I'On Defendants' repeated promises to convey certain amenities to the I'On community. Thus, the overall success of Walbeck is not measured solely by the amount of monetary recovery he was awarded on the ILSA claim;[10] rather, Walbeck's success is measured by: (a) the results Walbeck achieved on his negligent misrepresentation claim; and (b) the results Walbeck achieved on behalf of the I'On Assembly on its breach of fiduciary duty claim. Walbeck's success is further measured by the fact that he prevailed on his ILSA claim, and in so prevailing, he succeeded on a significant legal issue and served a public purpose. Simply stated, the crux of Walbeck's ILSA claim, and the nucleus from which it stemmed, resulted in both a substantial success for the Assembly, of which he is a member, as well as significant success for the public at large. Based upon the foregoing, the balance of the O'Connor factors weighs in favor of Walbeck, and thus, Walbeck is entitled an award of reasonable attorneys' fees.

The I'On Defendants' failure to provide promised amenity property to the I'On Assembly and its members was the catalyst for both Walbeck's ILSA claim as well as Walbeck's and the Assembly's common law claims. Because all of these claims were based upon a common core of facts, and involved interrelated theories, it is impractical, if not impossible, to ascertain how many of the hours spent by Walbeck's counsel were devoted solely to Walbeck's ILSA claim.[11] *See Austin,* 406 S.C. at 192-93, 750 S.E.2d at 80-81 *citing Austin,* 387 S.C. at 64, 691 S.E.2d at 153 (noting plaintiff "was entitled to the entire amount of his request as it would have been difficult to dissect [plaintiff's] counsel's fee affidavit to ascertain how much time was spent on

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9 This is distinct from the "common fund" doctrine. *See e.g., Layman v. State,* 376 S.C. 434, 452, 658 S.E.2d 320, 329-30 (2008)(as discussed in Defendants' Opposition Memorandum).

[10] It is worth noting that, but for the I'On Defendants' destruction of ILSA-related evidence such, as the "Letter to JoAnn.doc" and the HUD subdirectory, Walbeck's ILSA verdict may well have been more than one dollar. *See* Order Finding the I'On Defendants in Contempt for Destruction of Evidence.

[11] The interrelation of these claims is further supported by the jury's findings - not only did the jury find that the I'On Defendants wronged the I'On Assembly, into whose shoes Walbeck stepped, the jury found the I'On Defendants also wronged Walbeck, individually.

11

this particular claim given the violation of the Act was based on the same facts and circumstances underlying his claims for fraud and constructive fraud.") (internal citations omitted); *Taylor v. Nix*, 307 S.C. 551, 557, 416 S.E.2d 619, 622 (1992) ("We hold when an action in which attorney fees are recoverable by statute is joined with alternative theories of recovery based on the same transaction, no allocation of attorney's services need be made except to the extent counsel admits that a portion of the services was totally unrelated to the statutory claim . . .").

D.) Walbeck is Entitled an Award of Reasonable Attorneys' Fees in the Amount of $225,000.

Walbeck has requested an award of attorneys' fees in the amount of $1,015,000.[12] Based upon the record produced at trial, this Court awards Walbeck $225,000 in attorneys' fees[13] and makes the following findings in support of this award's reasonableness.[14]

1) ***The Nature, Extent and Difficulty of the Legal Services Rendered***

Walbeck was represented by the law firm of Justin O'Toole Lucey, P.A. ("Lucey Law Firm"). The Lucey Law Firm spent considerable time and effort on the prosecution of this complex and lengthy case. The prosecution of this case involved complex legal issues,

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[12] The $1,015,000 in attorneys' fees requested by Walbeck does not include the portion of attorneys' fees paid by other parties pursuant to a settlement entered before the trial of this matter.

[13] In addition to the "constellation of factors" comprising the court's consideration of the fee award, the following items account for the difference between the attorneys' fees requested and the amount awarded: (i) an $86,600 reduction in fees associated with the initial trial of this matter; (ii) an $18,224.50 reduction in fees associated with attorneys' fees related to Plaintiffs' Rule to Show Cause; and (iii) a $260,175.50 reduction in fees associated with the I'On Defendants' objections as to fees incurred on other claims and fee rates. *See Austin and Taylor, supra.*

[14] Although Walbeck received a limited monetary recovery under his ILSA claim, this Court retains its discretion to determine what constitutes a "reasonable" attorneys' fee. *Farmers and Merchants Bank v. Fargnoli,* 274 S.C. 23, 260 S.E.2d 185 (1979) (noting the amount of attorney fees to be awarded in a particular case is within the discretion of the trial judge provided the award is reasonable); *see also Footnote 9, supra.* When determining the reasonableness of attorneys' fees under a statute mandating the award of attorneys' fees, a court must consider six factors: (1) the nature, extent, and difficulty of the legal services rendered; (2) the time and labor necessarily devoted to the case; (3) the professional standing of counsel; (4) the contingency of compensation; (5) the fee customarily charged in the locality for similar legal services; and (6) the beneficial results obtained. Consideration should be given to all six criteria in establishing reasonable attorneys' fees; none of these six factors is controlling. *Baron Data Systems, Inc. v. Loter*, 297 S.C. 382, 384, 377 S.E.2d 296, 297 (1989).

APP 12

voluminous discovery, many dispositive and pre-trial motions, trial preparation and trial, all of which necessarily required tremendous resources of time and expenses.[15] The complexity of the issues involved in this case, coupled with the I'On Defendants' active role in defending this litigation, warranted the time expended by the Lucey Law Firm in bringing this matter to an ultimate resolution.

2) ***The Time and Labor Necessarily Devoted to the Case.***

This Court has reviewed the time records of the Lucey Law Firm, along with the Affidavit of Justin Lucey, the firm's principal and lead counsel in this matter. Mr. Lucey documented the time billed by him and his staff since the commencement of this matter through trial. The Lucey Law Firm expended more than 4,000 hours of time in prosecuting this action, and the verdicts speak to both the preparation and competency of the firm as well as the amount of time, labor and expenses exhausted in the prosecution the lawsuit. The reasonableness of the hours necessarily expended by the Lucey Law Firm on this case is further supported by: (a) the vigorous defense presented by the I'On Defendants; (b) discovery efforts which spanned a time frame of more than three years; (c) significant pre-trial and dispositive motion practices; and (d) a complex procedural posture.

3) ***The Professional Standing of Counsel.***

As previously mentioned Walbeck was represented by the Lucey Law Firm, with Justin O'Toole Lucey serving as lead counsel, and Joshua F. Evans and Dabny Lynn serving as associate counsel. Mr. Lucey has been practicing law, specifically complex litigation, for twenty-eight (28) years. Mr. Lucey is a highly regarded member of the Charleston and South Carolina

[15] This lawsuit was made more complex as a result of a settlement agreement and mistrial that occurred in January 2014. Prior to the filing of this lawsuit, the I'On Defendants sold the Creek Club property to a third party. That third party was originally made a party to this suit, but eventually entered into an intricate settlement agreement that allowed the Plaintiffs to purchase the property in exchange for monetary consideration and a long-term term lease with many terms and conditions. Furthermore, the case was originally tried in January 2014. As a result of many different variables, a mistrial was declared and the suit was re-tried in the recent proceeding.

bars, has tried many cases, and has achieved some record verdicts on behalf of his clients. This court is aware that Mr. Lucey and his firm have high standing and regard in the legal community. Furthermore, the I'On Defendants have not objected to the quality or standing of any of Walbeck's attorneys in this matter.

4) ***The Contingency of Compensation.***

The Lucey Law Firm accepted this case on a contingency basis, with no assurance that it would be able to collect the attorneys' fees incurred in this matter. As indicated by Mr. Lucey, recovery remained almost completely contingent up and until a week before trial, with only a limited amount being secured from settling defendants.[16] The fee agreement between Walbeck and the Lucey Law Firm (upon appeal or retrial) is for 38.5% of any award or the fee awarded by the court, whichever is greater. Clearly, a contingency award would yield a greater sum than the fees and costs awarded by this court today.

5) ***The Fee Customarily Charged in the Locality for Similar Legal Services.***

The Lucey Law Firm kept contemporaneous time records throughout this case and these records indicate that the hourly rates charged by the firm for lead counsel, associate counsel, paralegals and legal assistants are reasonable and commensurate with rates charged by other firms in the area with the same or similar experience in complex litigation.

6) ***The Beneficial Results Obtained.***

As noted above, the Lucey Law Firm was able to procure for Walbeck substantial results, not only in terms of monetary compensation, but also in terms of promoting public interest and advancing a significant legal issue.

Having weighed the complexity of the issues involved in this case, the time and service necessary to fully prosecute this matter, the competency of counsel, the contingencies of

[16] The portion of attorneys' fees secured by settling parties was deducted from Walbeck's Petition.

compensation, the appropriateness of fees incurred, and the beneficial results obtained, this Court finds an award of $225,000 in attorneys' fees to be reasonable. In awarding a fee in an amount significantly less than that sought in the Petition, the court attempts to reflect proportionality in the award as to both the degree of success obtained and the hours devoted to the ILSA claim, while recognizing the impracticality articulated by our supreme court in *Austin*.

CONCLUSION

Based on the foregoing and after full consideration of the factual and legal issues presented, it is hereby ordered that Walbeck's Petition for Attorneys' Fees is GRANTED; and,

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT Walbeck is awarded attorneys' fees in the amount of Two Hundred Twenty-Five Thousand Dollars and 00/100 (225,000.00) for the I'On Defendants' violation of ILSA.

AND IT IS HEREBY ORDERED!

Stephanie McDonald
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

July 13, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-10-10490

BRAD J. WALBECK, AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC., I'ON ASSEMBLY, INC.
PLAINTIFF(S)

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC
DEFENDANT(S)

FILED
2015 OCT 16 AM 11:53
CHARLESTON COUNTY CLERK OF COURT

Submitted by:	**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(k), 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)
BRAD J. WALBECK, AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC., I'ON ASSEMBLY, INC.	**THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC**	**$ 23,337.26**
		$
		$

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 | 2163 Judge Code | 7/14/13 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:

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	IN THE COURT OF COMMON PLEAS
	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	CASE NO. 2010-CP-10-10490
I'ON ASSEMBLY, INC.; BRAD J. WALBECK AND LEA ANN ADKINS, BOTH INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	**ORDERING FINDING DEFENDANTS IN CONTEMPT FOR THE DESTRUCTION OF EVIDENCE**
Plaintiffs,	
vs.	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; AND I'ON REALTY, LLC,	
Defendants.	

FILED
2015 JUL 16 AM 11:54
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Plaintiffs have petitioned for Sanctions on their Rule to Show Cause, alleging the destruction of electronically-stored evidence by the I'On Defendants.[1] Having reviewed the filed supporting materials as well as the Besenfelder affidavit filed in opposition to the Petition, and being familiar with the facts and circumstances of this matter from two trials and numerous hearings, the Court finds the I'On Defendants in contempt. Accordingly, the Court sanctions the I'On Defendants in the total amount of $23,337.26.[2]

[1]For purposes of this Order, The I'On Company, LLC; the I'On Club, LLC; and the I'On Group, LLC f/k/a Civitas, LLC are collectively referred to as the "I'On Defendants." As noted by the Plaintiffs in their Memorandum in Support of their Rule to Show Cause, I'On Realty, LLC was removed from this matter although named in Plaintiffs' Rule to Show Cause Petition filed January 14, 2014.

[2] This finding implicates **only** the conduct of the I'On Defendants, not their counsel. Plaintiffs have alleged no contemptuous behavior on the part of defense counsel, nor has the Court observed a basis for any allegation of a discovery violation or otherwise sanctionable behavior on the part of the attorneys defending this case. The Court holds the attorneys involved in the litigation of this matter in the highest regard.

SUMMARY OF PERTINENT FACTS[3]

A.) Notice of Claim

This action sought to recover certain amenities the I'On Defendants promised to provide to the I'On Assembly and its members free and clear of all encumbrances.[4] Rather than fulfill this promise, the I'On Defendants sold these amenities to a third party on August 5, 2009. The I'On Defendants expressly acknowledged their awareness of Plaintiffs' claim to the amenities in their June 18, 2009, contract to sell the amenities to the third-party Buyer, 148 Civitas, LLC:

> 26. Disclosures. Buyer acknowledges that certain parties have the right to use the dock and boat ramp facilities that are a part of the Real Property ["Real Property" being defined in Para. 2(a) and Exhibit A as Lot CV-6] pursuant to a Recreational Easement. . . .Buyer also acknowledges that *Seller has disclosed to Buyer that certain owners in the I'On neighborhood have alleged certain rights and interests in the Real Property and dock facilities located thereon in connection with a HUD Property Report* prepared and issued by *TIC* as the Developer of the I'On neighborhood.

(Pl. Ex. 29) (emphasis added).

As this June 18, 2009 sales contract was signed on behalf of all I'On Defendants,[5] entities which the Court has ruled are amalgamated, it cannot be disputed that all I'On Defendants were aware of Plaintiffs' claims, and thus, equally aware of the relevance of any dock, park, and Property Report-related documents, both paper and electronic, by June 18, 2009, well before the first file deletion took place.[6]

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[3]This Order incorporates by reference the factual background set forth in the Court's other post-trial Orders, including the Order Denying the I'On Defendants' Motion for JNOV.

[4]The I'On Assembly is the homeowners' association for the I'On neighborhood.

[5]Specifically, the June 18, 2009 sales contract was signed by Vincent Graham on behalf of the *I'On Group, LLC*, as Manager for the *I'On Club, LLC*. The *I'On Group, LLC* was also the manager for *The I'On Company, LLC*. (Pl. Ex. 29). Additionally, the sale of the Creek Club was part of a four-plus party transaction whereby the Grahams were selling CV-5 while the *I'On Company, LLC* was simultaneously selling Lot 275 to the same Buyers.

[6]As Plaintiffs' motion was filed before the second trial, and before the jury verdict was rendered, it relied upon the June 18, 2009 contract disclosure date as a reliable notice date. However, the evidence Plaintiffs presented at trial established that the I'On Defendants were: (a) put on notice of Plaintiffs' claims at least by February of 2009; and

B.) Filing of Service of Suit

This case commenced on December 22, 2010, upon the filing of Plaintiffs' Initial Complaint. Plaintiffs' amended the Complaint on March 8, 2011, and the Amended Complaint was served on the I'On Defendants between March 28 and 29, 2011. On or about June 10, 2011, Plaintiffs served their initial discovery requests upon the I'On Defendants. On July 14, 2011, the I'On Defendants responded to Plaintiffs' discovery requests, but failed to produce many meaningful documents and e-mail communications. As discovery progressed, Plaintiffs discerned, through the contents of other evidentiary sources, that the I'On Defendants should have been in possession of a substantial number of relevant e-mail communications, the majority of which had not been produced to Plaintiffs.

C.) The Results of Plaintiff's Forensic Examination of the I'On Defendants' Computers

Due to the I'On Defendants' failure to produce the aforementioned e-mail communications (and other potentially responsive evidence), Plaintiffs moved to compel discovery and moved for a forensic examination of the I'On Defendants' computers. The I'On Defendants consented to the forensic examination of the hard drive of the computer of the I'On Defendants' employee and manager, Chad Besenfelder. The forensic examination utilized search terms eventually agreed upon by the Plaintiffs and the I'On Defendants. The forensic examination revealed both deleted files and subdirectories. The deleted files were last accessed between *January 7, 2011, and February 24, 2012.* (*See* Pl. Memo Supp. Pet., Ex. B). Therefore, the files were deleted sometime thereafter. Thus, the deletions occurred up to two-and-one-half years after the I'On Defendants confirmed in writing that they were on notice of homeowner claims relating to the Property Report/amenities. Significantly, most deletions occurred after the

(b) the I'On Defendants were aware of Plaintiffs' rights years earlier as they contemplated what to do with the waterfront amenities.

APPX 3

I'On Defendants responded to Plaintiffs' June 10, 2011 discovery requests. (*See* Pl. Ex. 29; Pl. Memo Supp. Pet., Ex. B).

As explained by the Affidavit of John Akerman, a Certified Computer Examiner with Rosen Litigation Technology Consulting, Inc.,[7] Besenfelder deleted approximately *51,527 files and folders*; *at least 229* of which contained words responsive to the narrowed search terms provided by Plaintiffs and the I'On Defendants.[8] Notably, the examination revealed a host of deleted files with relevant, material, and discoverable titles such as:

- "Boat Ramp Response1.doc",
- "COMMUNITY DOCK OPERATION.doc",
- "Letter to Jo Anne.doc",
- "Summary of Boat Ramp.doc", and
- "THE CREEKCLUB DESCRIPTION.doc".

The examination further revealed one of the more intriguing and unquestionably relevant folders entitled "HUD". In response to Mr. Akerman's findings and Affidavit, Besenfelder filed his own Affidavit,[9] attesting he deleted "only duplicate files" after attempting to organize them. However, Besenfelder's assertions are fundamentally flawed as the original copies of the deleted folders and files, such as those identified by name above, are not found elsewhere on the hard drive.[10] Stated differently, there are no originals or duplicates for a majority of the deleted files. If Besenfelder did, in fact, copy the files into folders for organizational purposes, before abandoning this undertaking, it logically follows that the originals would be found elsewhere on

[7]*See* Akerman's Initial and Supplemental Affidavits and CV (Pl. Memo Supp. Pet., Exs. B and C).
[8]*See* Spreadsheet Documenting Deleted Files and Folders accompanying Ackerman's Initial Affidavit. (Pl. Memo Supp. Pet., Ex. B).
[9]*See* Besenfelder Affidavit. (Pl. Memo Supp. Pet., Ex. D).
[10]*See* Akerman's Supplemental Affidavit (Pl. Memo Supp. Pet., Ex. B).

his computer. They were not.[11] Further, at no point during his May 24, 2012 deposition did Besenfelder disclose the deletions, or attempted "organization" of the files.

D.) The I'On Defendants Had a Duty to Preserve This Evidence Both When They Acknowledged the Potential Claims In June of 2009 and at All Times Thereafter, Including After Notice of Suit

As evidenced by the record, the I'On Defendants wrongfully deleted hundreds of discoverable documents related to the amenities that the I'On Defendants promised to the Plaintiffs, but later sold to a third party for profit. While knowing of their promise to transfer these amenities to Plaintiffs, and while knowing of Plaintiffs' claims related to these amenities, the I'On Defendants (or their agents) willfully destroyed evidence relating to these amenities in breach of their duty to preserve evidence. While the I'On Defendants were given the opportunity to defend or explain this conduct, no meaningful information (other than the Besenfelder affidavit) was proffered in opposition or in mitigation. Given the I'On Defendants' misconduct, this Court finds them in contempt for their destruction of evidence.

E.) The Likely Probative Value of the Destroyed Evidence and the Likely Result of its Absence

It can be reasonably inferred that the I'On Defendants' destruction of evidence, or at least their failure to retain the evidence, was knowing and/or intentional and that the destroyed evidence was more significant than the evidence left on the hard drive. *See Kershaw County Bd. of Educ. v. U.S. Gypsum Co.*, 302 S.C. 390, 394, 396 S.E.2d 369, 372 (1990) (upholding jury charge which advised that "when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party.").

[11]Akerman's Supplemental Affidavit further addresses the inaccuracy of Besenfelder's assertions. (*See* Pl. Memo Supp. Pet., Ex. B).

APN 5

As the jury found that the I'On Defendants' conduct was "reckless, willful, and/or wanton" based upon the evidence presented at trial, it can be reasonably inferred that the destroyed evidence would have either further encouraged the I'On Defendants to reach a pre-trial settlement, saving hundreds of hours of legal time for Plaintiffs, or would have resulted in a monetary punitive damage award. Under either scenario, Plaintiffs have been damaged by the destruction of the evidence.

A discussion of several of the missing documents/categories illustrates its significance. One missing document was entitled "Letter to Jo Anne.doc"; one missing subdirectory was entitled "HUD". Jo Anne Stubblefield was the I'On Defendants' attorney for the HUD Property Report filings, a key set of evidence in the case. Tom Graham relied on his March 25, 2009 e-mail to JoAnn Stubblefield, and her response, as his justification for not transferring the amenities to the Assembly and the Plaintiffs. (Pl. Exs.14, 184, and 65). No "Letter to Jo Anne.doc", or anything similar, ever surfaced in evidence. The missing letter to Stubblefield may have been the original instructions on how and why to remove the Community Dock from the HUD property report, or what amenities were being substituted for the Community Dock. The HUD subdirectory was similarly probative and may well have had the draft HUD reports with changes and comments embedded. The substance of any such "draft" HUD report, as well as any communications related to the same, could have served as substantiating evidence crucial to Plaintiffs' punitive damage request given this request turned upon evidence corroborating the I'On Defendants' intentions in redefining specific amenity references. The other destroyed documents entitled "Boat Ramp Response1.doc", "COMMUNITY DOCK OPERATION.doc", "Summary of Boat Ramp.doc", and "THE CREEKCLUB DESCRIPTION.doc" are equally probative – the titles of each of these destroyed documents reference the very amenities the I'On

Defendants failed to properly convey to the I'On Assembly, and thus, each goes to the heart of Plaintiffs' claims.

F.) The Plaintiffs Suffered Due to the I'On Defendants' Conduct

The record also reflects that Plaintiffs sustained losses due to the I'On Defendants' conduct. Plaintiffs incurred expenses totaling $5,112.76 in investigating this conduct, and attorneys' fees totaling $18,224.50 in prosecuting this conduct. The I'On Defendants allowed the Plaintiffs to incur these expenses unnecessarily – in fact, their deletion of many of the e-mails and subfolders occurred after they were served with Plaintiffs' discovery requests. Moreover, it may be inferred that the electronic files deleted by the I'On Defendants were adverse to their case, and thus, potentially crucial to Plaintiffs' case. This case was one in which "words mattered," according to the oft-repeated testimony of Tom Graham, and the I'On Defendants knowingly deleted communications containing the key "words" litigated twice in this case.

LEGAL DISCUSSION

1.) South Carolina Courts are Authorized to Impose Penalties on Parties Who Destroy Evidence Related to Pending or Potential Claims

South Carolina courts are permitted, at their discretion, to impose penalties on parties who wrongfully destroy relevant evidence or otherwise hinder the production of relevant evidence. *Kershaw,* 302 S.C. at 394, 396 S.E.2d at 372 (noting "the selection of a sanction is within the court's discretion" in instances where a party fails to comply with a discovery order); *see also Vodusek v. Bayliner Marine Corp.*, 78 F.3d 148, 156 (4th Cir. 1995) (noting courts enjoy broad discretion to select a fitting response to discovery violations, and any such response should serve the twin purposes of "leveling the evidentiary playing field and . . . sanctioning the improper conduct.").

Because the destruction of relevant evidence clearly violates the spirit of discovery, a wide range of punishments may be imposed under our common law and the South Carolina Rules of Civil Procedure including, but not limited to, the dismissal of a lawsuit, entry of a default judgment, exclusion of evidence and testimony, favorable presumptions about the contents of missing evidence, and assessment of monetary sanctions. *Cheap–O's Truck Stop, Inc. v. Cloyd,* 350 S.C. 596, 609, 567 S.E.2d 514, 520 (Ct. App. 2002) (citation omitted) ("Courts, by exercising their contempt power, can award [attorneys'] fees under a compensatory contempt theory.").

While spoliation cases in South Carolina have been few and far between, the reasoning supporting the imposition of penalties in instances where a party to litigation destroys evidence remains true today. Simply stated, it is "[t]he need to preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth that gives rise to the court's power to sanction." *See, e.g., Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2001); Black's Law Dictionary 1401 (6th ed. 1990) (defining spoliation as "the destruction of evidence. It constitutes an obstruction of justice.").

2.) <u>South Carolina Courts May Impose Sanctions Upon Parties Who, Aware of an Existing or Potential Claim, Destroy Evidence Relevant to the Claim</u>

Thus, although South Carolina courts do not recognize spoliation of evidence as an independent cause of action, our Courts may impose sanctions upon a party who destroys evidence he knows is relevant, and thus, has a duty to preserve. *Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 151-152, 714 S.E.2d 537, 541 (2011) (recognizing while most states have refused to recognize an independent spoliation tort, these states "continue to rely on traditional non-tort remedies such as sanctions and adverse jury instructions for redress."); *Kershaw*, 302 S.C. at

394, 396 S.E.2d at 372 (observing traditional factors of intentional misconduct and prejudice to the other party are relevant to the court's imposition of penalties for the destruction of evidence, and leaving the door open for the court to impose a full range of penalties given the facts of a particular case); *see also Weinstein's Federal Evidence* § 301.06, 301–28.3 (2d ed. 2003) ("[T]here must be a sufficient foundational showing that the party who destroyed the evidence had notice both of the potential claim and of the evidence's potential relevance.").

The modern trend in federal evidentiary jurisprudence recognizes that parties have a duty to preserve evidence they know, or reasonably should know, is relevant to a given claim, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, and/or is the subject of a pending discovery request.

This duty to preserve evidence automatically arises when a party is served with a complaint given the party has actual knowledge that litigation has begun, and therefore, is bound to preserve all discoverable evidence. This duty also arises where litigation is reasonably foreseeable, but has not yet officially commenced, such as here where there are pre-litigation communications between and among the parties demonstrating that at the time of the communications, the I'On Defendants anticipated the Plaintiffs' claims. *Silvestri*, 271 F.3d at 590 (defining spoliation of evidence as "the destruction or material alteration of evidence or the failure to preserve property for another's use as evidence in pending or reasonably foreseeable litigation," and holding the duty to preserve material evidence arises "[n]ot only during litigation, but also extends to that period *before the litigation when a party reasonably should know that the evidence may be relevant to anticipate litigation.*") (emphasis added); *see also* Jeffrey S. Kinsler & Anne R. Keyes MacIver, Demystifying Spoliation of Evidence, 34 Tort & Ins. L.J. 761, 764 (Spring 1999).

In *Turner v. Hudson Transit Lines, Inc.* 142 F.R.D. 68, 72 -73 (S.D.N.Y. 1991), New York's Southern District Court "concluded that courts have the power under both Rule 37 and their inherent powers to impose sanctions for spoliation of evidence." Robert L. Tucker, *The Flexible Doctrine of Spoliation of Evidence: Cause of Action, Defense, Evidentiary Presumption, and Discovery Sanction*, 27 U. Tol. L. Rev. 67, 82 -83 (1995)(footnotes omitted) *cited in Cole Vision Corp. v. Hobbs*, 394 S.C. 144, 153, 714 S.E.2d 537, 542 (2011). "[N]o duty to preserve arises unless the party possessing the evidence has notice of its relevance. *See Danna v. New York Telephone Co.,* 752 F.Supp. 594, 616 n. 9 (S.D.N.Y.1990). Of course, a party is on notice once it has received a discovery request. Beyond that, the complaint itself may alert a party that certain information is relevant and likely to be sought in discovery." *Turner*, 142 F.R.D. at 73.

In declining to recognize an independent tort for the negligent spoliation of evidence, our Supreme Court referenced the Tucker article in examining the remedial options available to parties alleging (and courts considering) instances of spoliation. Tucker explains:

> Occasionally, courts are hesitant to rely on Rule 37, believing that it does not deal specifically with the issue of spoliation.... Yet in such cases, courts may still impose sanctions, relying on their "inherent power to regulate litigation, preserve and protect the integrity of proceedings before [them], and sanction parties for abuse of practices."
>
> Courts thus have the power to sanction the destruction of evidence, whether that authority is derived from Rule 37 or from their inherent powers.

Id., 27 U. Tol. L. Rev. at 82 -83.

3.) <u>Defendants, Aware of Plaintiffs' Claims in June 18, 2009, Destroyed Evidence They Knew to be Relevant to Plaintiffs' Claims</u>

In this case, the record reflects the I'On Defendants destroyed evidence, evidence which the I'On Defendants knew related to Plaintiffs' claims, and thus, this Court finds the I'On Defendants in contempt.

DPM 10

The I'On Defendants, by their own words, were on notice of the Plaintiffs' claims by June 18, 2009. They were also expressly aware of evidence relevant to Plaintiffs' claims. In fact, the June 18, 2009 Sales Contract signed on behalf of the I'On Defendants specifically highlights three categories of relevant evidence: (1) the Property Report, and evidence relating thereto; (2) the docks and parcel, and evidence relating thereto; and (3) the homeowners' claims concerning these amenities, and evidence relating thereto. (Pl. Ex. 29).

Despite knowing such evidence related to Plaintiffs' claims in 2009, the I'On Defendants deleted portions of similarly-related evidence after receiving Plaintiffs' Complaint in 2011, before and after responding to Plaintiffs' discovery requests in 2011, and again, before appearing for depositions in 2012. By intentionally deleting relevant evidence and repeatedly failing to produce evidence known to relate to Plaintiffs' claims, the I'On Defendants breached their duty of preservation, a breach that, without proper justification, qualifies as a circumstance which warrants this Court's finding of contempt, accompanied by compensation.

In instances where the Court deems a party to be in contempt, the Court may impose judicial sanctions for either or both of the following purposes: "(i) to coerce the defendant into compliance with a court order; and/or (ii) to compensate the complainant for losses sustained." *United States v. United Mine Workers of America,* 330 U.S. 258, 304-305, 67 S.Ct. 677, 701-702, 91 L.Ed. 884 (1947); *see also Cheap–O's Truck Stop, Inc., v. Cloyd,* 350 S.C. 596, 609, 567 S.E.2d 514, 520 (Ct. App. 2002) ("[a]ny component of a sanction must be directly related to the contemptuous conduct and the loss incurred by the offended party.").

The second purpose, compensatory contempt, may take many forms including, but not limited to, reimbursement of attorneys' fees, expenses and fines associated with the contemptuous conduct. Indeed, "[c]ourts, by exercising their contempt power, can award

[attorneys'] fees under a compensatory contempt theory." *Cheap–O's Truck Stop, Inc.,* 350 S.C. at 609, 567 S.E.2d at 520 (Ct. App. 2002) (citation omitted); *see also Poston v. Poston,* 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998) ("In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorneys' fees. The award of attorneys' fees is not a punishment but an indemnification to the party who instituted the contempt proceeding."); *Lindsay v. Lindsay,* 328 S.C. 329, 345, 491 S.E.2d 583, 592 (Ct. App. 1997) ("A compensatory contempt award may include attorney fees.") (citation omitted); *Curlee v. Howle,* 277 S.C. 377, 386-87, 287 S.E.2d 915, 919-20 (1982) ("Compensatory contempt is a money award for the plaintiff when the defendant has injured the plaintiff by violating a previous court order . . . Included in the actual loss are the costs of defending and enforcing the court's order, including litigation costs and attorneys' fees.").

Plaintiffs also ask that the Court fine these Defendants to compensate Plaintiffs Walbeck and Adkins for the time required to assist their attorneys resulting from the intentional destruction of the electronic evidence. Although fines would be authorized pursuant to the Court's inherent contempt powers, I decline to impose additional fines here. The world of electronic discovery continues to evolve, as does South Carolina's case law addressing its abuse. The Court determines the attorneys' fees and costs awarded to compensate Plaintiffs for the damages incurred due to the intentional deletion of these documents and subfiles to be a sufficient sanction in this matter.

CONCLUSION

Based upon the foregoing, the record reflects that the I'On Defendants wrongfully deleted at least one hundred and seventeen documents relevant to this case.

Accordingly,

IT IS ORDERED, ADJUDGED, AND DECREED that The I'On Company, LLC, the I'On Club, LLC, and the I'On Group, LLC are in contempt of this Court due to the destruction of relevant evidence which should have been preserved; and

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that compensatory sanctions against The I'On Company, LLC; the I'On Club, LLC; and the I'On Group, LLC are warranted and awarded as follows:

(i) Attorneys' fees in the amount of $18,224.50 for the value of time Plaintiffs' counsel spent in addressing the missing discovery and the subsequent Rule to Show Cause;[12]

(ii) Costs in the amount of $5,112.76 for the expenses incurred by Plaintiffs' counsel relating to the forensic examination of the I'On Defendants' computers;

AND IT IS SO ORDERED !

Stephanie P. McDonald
Presiding Judge

Charleston, South Carolina
Dated: July 14, 2015

[12]This award includes the attorney and paralegal time necessary to review the ESI once it was retrieved from the I'On Defendants' computers.

1/

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK,	)	
	)	
Plaintiff,	)	
	)	**SUMMONS**
vs.	)	(Jury Trial Demanded)
	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC	)	
	)	
Defendants.	)	

FILED
2010 DEC 22 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

10-01935

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office at 415 Mill Street, Mount Pleasant, South Carolina within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Complaint plus interest and costs.

JUSTIN O'TOOLE LUCEY, PA

Justin Lucey, Esquire
415 Mill Street
Mt. Pleasant, SC 29464
(843) 849-8400

Charleston, South Carolina
December 22, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK,	)	
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC	)	
Defendants.	)	

COMPLAINT
(Jury Trial Demanded)

FILED
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JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Brad J. Walbeck, complaining of the Defendants named herein, would respectfully allege and show the court as follows:

1. Plaintiff Brad J. Walbeck ("Walbeck"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

2. Plaintiff Walbeck's residence is located in I'On at 114 North Shelmore Boulevard, Mount Pleasant, South Carolina, 29464, and is also described as Lot 224 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

3. Defendant The I'On Company, LLC ("I'On Company") is a limited liability company formed under the laws of South Carolina.

4. Defendant The I'On Group, LLC, formerly known as Civitas, LLC is a limited liability company formed under the laws of South Carolina.

5. I'On Group was and/or is a member of the I'On Company.

6. Defendant I'On Club, LLC ("I'On Club") is a limited liability company formed under the laws of South Carolina.

7. I'On Club was created by I'On Group for the purposes of owning and managing the recreational facilities and amenities in the I'On community.

8. Defendant I'On Real Estate, LLC is a limited liability company formed under the laws of South Carolina.

9. I'On Real Estate, LLC operated as the real estate brokerage entity responsible for promotion and sale of the homesites located in the I'On community.

10. The I'On Group; The I'On Company, LLC; The I'On Club; and I'On Real Estate ("the I'On Entities") have been operated in such manner so that their legal distinction is blurred and they are amalgamated as a single entity and/or are the alter ego of each other.

11. Defendants Vince Graham and Tom Graham own, manage, and/or control, in whole or in part, I'On Company, I'On Group, I'On Club, and I'On Real Estate. [All of the foregoing Defendants may occasionally be referred to as "the I'On Defendants"]

12. I'On Defendants served as the founder and developer of the subdivision known as I'On.

13. At all times relevant herein, Vince and Tom Graham were acting on their own behalf and/or as an agent of the other I'On Defendants.

14. Defendant 148 Civitas, LLC ("148 Civitas") is a limited liability company formed under the laws of South Carolina.

15. 148 Civitas is the current owner of Creekside Park and the Community Dock designated by TMS # 5350600230.

16. Defendant Mike Russo owns, manages, and/or controls 148 Civitas.

17. At all times relevant herein, Mike Russo was acting on his own behalf and/or as an agent of 148 Civitas.

18. Plaintiff brings this action on behalf of himself and derivatively on behalf of the I'On Assembly and its members, the other property owners in I'On, because the homeowners association known as the I'On Assembly ("Assembly") has failed to protect and enforce the rights of the Assembly and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

19. Plaintiff Walbeck purchased the above-described real property from Defendant, The I'On Company, LLC on or about March 31, 2000 and subsequently constructed a house thereon that serves as his primary residence.

20. A Property Report ("the Property Report") dated November 3, 1998, was given to the Plaintiff.

21. The Property Report was given to other prospective lot purchasers in I'On.

22. The Property Report was given to purchasers at the time of, or before any agreements to purchase property in I'On were entered.

23. The Property Report contained representations regarding the Lots and Neighborhood.

24. The Property Report representations were either required by law, or were made with the intention of inducing the Plaintiff and others similarly situated into relying on such representations in order that they might purchase lots in I'On.

25. In the property report, the I'On Defendants represented to the Plaintiff and others that the ownership to the "Creckside Park and the Community Dock" would be transferred and conveyed to Assembly for the use and benefit of all lot owners in I'On.

26. Both the park location and the dock are shown on plats of I'On."

27. Defendants' representation that Creekside Park and the Community Dock would be transferred to the Assembly was intended to induce Plaintiff and other homeowners to purchase lots in I'On.

28. A year of more after the Property Report was first published, the I'On Company amended the Original Property Report. However, the Company continued to distribute the Original Property Report to potential lot purchasers with the intent that the information contained in said report would be relied upon by potential buyers when making their decision to purchase a lot in I'On; and failed to notify past or prospective purchasers of the amendment.

29. Plaintiff and other similarly-situated lot owners relied upon the representations described in the foregoing paragraphs when they made a decision to purchase their lots.

30. The Defendants have failed and refused to transfer ownership of Creekside Park or the Community Dock to the Assembly.

31. Circa 2000, the parcels that were intended to become Creekside Park and Community Dock were transferred from the I'On Company to the I'On Club, allegedly for the benefit and use of the homeowners. However, in 2009 the I'On club transferred the Creekside Park and Community Dock to 148 Civitas, an unaffiliated, for-profit entity.

32. Not only have the I'On Defendants failed to transfer the amenities to the Assembly, but the members' current use of the amenities is being impeded by the new owner and is set to expire circa 2030.

33. The failure to transfer the title to Creekside Park and the Community Dock has damaged Plaintiff and all lot owners in I'On. The value of each lot has been diminished by the Defendants' misfeasance, malfeasance, and nonfeasance.

34. Several I'On homeowners have made repeated demands upon the Assembly and its Board to secure the Assembly and its members the rights to the Creekside Park and

Community Dock; and provided the Board with the necessary information to do so. However, the Board has failed to secure the rights and has acquiesced to the sale of these amenities.

35. As monetary damages cannot adequately compensate Plaintiff, the Assembly, and it's members, Plaintiff seeks specific performance of the Defendants' obligations in all counts hereunder.

COUNT I
(Violation of the Interstate Land Sales Act—As to Defendants The I'On Company, LLC; I'On Real Estate, LLC; The I'On Group, LLC; and Vince Graham)

36. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth herein verbatim.

37. At the time the contracts for the sale of real property described herein were executed, I'On Company was subject to the requirements and provisions of Title 15, §§1702, et seq., Chapter 42 of the United States Code which is known as the Interstate Land Sales Act ("ILSA").

38. All legal requirements and provisions set forth in the ILSA are applicable to all transactions between I'On Company, the Plaintiff, and all similarly-situated lot owners in I'On.

39. Defendants have violated the ILSA, Title 15, Chapter 42 §1702, et seq., U.S. Code by: (1) issuing a Property Report that made representations to prospective purchasers of lots that were false; and/or (2) continually distributing copies of the Property Report to potential purchasers, with knowledge that it contained false representations and that these representations would likely be relied upon, and were in fact relied upon by numerous lot purchasers in I'On; (3) failing to honor the representations therein.

40. Plaintiff and the Assembly are entitled to an award for damages caused by these Defendants' violations of the ILSA, and for such other relief as provided in said Act, including, but not limited to injunctive relief, costs and attorney fees.

COUNT II
(Breach of Contract—As to The I'On Company, LLC)

41. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth herein verbatim.

42. The Defendants' obligation to convey the Creekside Park and Community Dock to the Assembly were incorporated into the Plaintiff's and homeowners' contracts for the purchase of lots in I'On.

43. The Defendants breached their contracts with the Plaintiff and the homeowners by failing to convey the Creekside Park and Community Dock to the Assembly.

44. The Assembly and homeowners are additionally third-party beneficiaries of the contractual obligations.

45. Plaintiff and the Assembly are entitled to specific enforcement of the contract(s) and/or an award of damages in an amount to be determined by the trier of fact.

COUNT III
(Breach of Fiduciary Duty—As to the I'On Defendants)

46. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

47. The I'On Defendants have a fiduciary relationship to the Plaintiff as a result of their capacity as the developer and steward of the I'On community amenities and their former capacity controlling the Board of the Assembly.

48. The I'On Defendants breached the fiduciary relationship by failing to honor their trust, by failing to disclose their breach of duty, by failure to enforce the Assembly's rights, and by self-dealing.

49. Given the fiduciary relationship, the burden falls upon the Defendants to prove at arm's length and fair nature of the transactions described herein.

50. Plaintiff and the Assembly are entitled to an award of damages in an amount to be determined by the trier of fact and specific performance.

COUNT IV
(Fraud—Constructive Fraud—As to the I'On Defendants)

51. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

52. The Defendants represented to Plaintiff that the Creekside Park and Community Dock would be conveyed to the Assembly.

53. The Creekside Park and Community Dock were touted as valuable amenities and were used to induce purchasers, including Plaintiff.

54. The Defendants knew that access to the Creekside Park and Community Dock was a valuable asset to lot purchasers, including Plaintiff.

55. Plaintiff had no reason to know Defendants' representations regarding conveyance of the Creekside Park and Community Dock were false.

56. Plaintiff relied on Defendants' representations that they would convey the Creekside Park and Community Dock to the Assembly.

57. The Defendants failed to convey the Creekside Park and Community Dock.

58. Plaintiff has been deprived of access and his interest in the Creekside Park and Community Dock.

59. Defendants made a false, material representation; they knew it was false or recklessly disregarded the fact that it was false; Defendants intended that the representation be relied upon by the Plaintiff(s); the Plaintiff was ignorant of the representation's falsity; the Plaintiff relied on the truth of the representation and was entitled to do so; and Plaintiff suffered injury as a proximate and consequent result of that reliance.

60. Plaintiff is entitled to an award and judgment as a result of the fraudulent conduct of the Defendants described herein, and for such other relief as the law provides.

COUNT V
(Negligent Misrepresentation—As to the I'On Defendants)

61. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

62. The I'On Defendants made oral and written representations that the Community Dock and Community Park would be transferred to the Assembly.

63. The Defendants had a pecuniary interest in the subject matter of the representations.

64. The Defendants owed a duty of care to the Plaintiff to communicate truthfully all information regarding his purchase in I'On, without material omission.

65. The Defendants' breached that duty owed by misrepresenting facts which induced the Plaintiff and other lot purchasers to enter into contracts for the purchase of lots in I'On.

66. The Plaintiff, the Assembly, and its members have suffered a pecuniary loss as a direct and proximate result of his reliance on the Defendants' false representations.

67. The Plaintiff and the Assembly, and its members are entitled to an award of damages in an amount to be determined by the trier of fact.

COUNT VI
(Civil Conspiracy—As to All Defendants)

68. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

69. All defendants in this action have conspired and acted in concert to injure the Plaintiff and the Assembly and deprive them of their rights to the Creekside Park and Community Dock for the Defendants' gain.

70. The Defendants' above-described acts have caused the Plaintiff, the Assembly, and its members special damages.

71. The Plaintiff is entitled to an award of damages in an amount to be determined by the trier of fact.

COUNT VII
(S.C. Unfair Trade Practices Act—As to All Defendants)

72. Plaintiff re-alleges the allegations contained in the above paragraphs as if fully set forth herein.

73. The Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

74. Defendants' above-described activities constitute unfair and deceptive practices in the conduct of their trade.

75. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

76. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

77. Defendants' wrongs entitle the Plaintiff to an award of treble damages, attorneys fees, and costs.

78. Plaintiff is entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of the SCUPTA, and to an award for damages, treble damages, costs, and attorney fees for the prosecution of this action.

COUNT VIII
(Unjust Enrichment—As to All Defendants)

79. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

80. The Defendants have been unjustly enriched at the expense of the Plaintiffs, the Assembly, and those similarly situated.

81. The Plaintiff and the Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiff and the Assembly.

COUNT IX
(Promissory Estoppel—As to the I'On Defendants)

82. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

83. The I'On Defendants promised the Plaintiff, the Assembly, and other similarly-situated homeowners that it would convey the Creekside Park and Community Dock to the Assembly for the benefit of all landowners in I'On and this promise was unambiguous.

84. Plaintiff relied on this promise. Defendants expected and foresaw Plaintiff's reliance.

85. Plaintiff is entitled to an order of this Court requiring the I'On Company to specifically perform said conveyances, and to an award of costs, damages, consequential and special damages and attorneys' fees.

COUNT X
(Veil Piercing/Alter Ego)

86. Plaintiff believes the I'On Defendants to be alter egos of each other and to be one and the same; therefore, Defendants Grahams are personally liable for any damages to the Plaintiffs and Assembly caused by these corporate entities.

87. Plaintiff believes the 148 Civitas and Russo Defendants to be alter egos of each other and to be one and the same; therefore, Defendant Russo is personally liable for any damages to the Plaintiffs and Assembly caused by these corporate entities.

FINAL COUNT
Tortious Interference With Contract
(against 148 Civitas & Russo)

88. Defendants knew and were aware of the I'On Defendants' contractual obligation to transfer the Creekside Park and Community Dock to the Assembly; Defendants intentionally procured the I'On Defendants breach thereof, without justification; which act as proximately damaged Plaintiff, the Assembly, and its members in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs prays for a judgment of this Court for himself and others similarly situated for:

1. actual, consequential, special, statutory, and punitive damages
2. specific performance and injunctive relief
3. attorney fees and costs.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua F. Evans
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
T: (843) 849-8400
F: (843) 849-8406

Attorney for Plaintiffs

December 22, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK,	)	
	)	
Plaintiff,	)	
	)	**AMENDED COMPLAINT**
vs.	)	(Jury Trial Demanded)
	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REAL ESTATE, LLC; MIKE RUSSO,	)	
	)	
Defendants.	)	
	)	

JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff, Brad J. Walbeck, complaining of the Defendants named herein, would respectfully allege and show the court as follows:

1. Plaintiff Brad J. Walbeck ("Walbeck"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

2. Plaintiff Walbeck's residence is located in I'On at 114 North Shelmore Boulevard, Mount Pleasant, South Carolina, 29464, and is also described as Lot 224 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

3. Defendant The I'On Company, LLC ("I'On Company") is a limited liability company formed under the laws of South Carolina.

4. Defendant The I'On Group, LLC, formerly known as Civitas, LLC is a limited liability company formed under the laws of South Carolina.

5. I'On Group was and/or is a member of the I'On Company, and at all relevant times hereto, controlled the I'On Company.

6. Defendant I'On Club, LLC ("I'On Club") is a limited liability company formed under the laws of South Carolina.

7. I'On Club was created by I'On Group for the purposes of owning and managing the recreational facilities and amenities in the I'On community.

8. Defendant I'On Real Estate, LLC is a limited liability company formed under the laws of South Carolina.

9. I'On Real Estate, LLC operated as the real estate brokerage entity responsible for promotion and sale of the homesites located in the I'On community.

10. The I'On Group; The I'On Company, LLC; The I'On Club; and I'On Real Estate ("the I'On Defendants") have been operated in such manner so that their legal distinction is blurred and they are amalgamated as a single entity and/or are the alter ego of each other.

11. Defendants Vince Graham and Tom Graham own, manage, and/or control, in whole or in part, I'On Company, I'On Group, I'On Club, and I'On Real Estate. [All of the foregoing Defendants may occasionally be referred to as "the I'On Defendants"]

12. I'On Defendants served as the developer of the subdivision known as I'On.

13. At all times relevant herein, Vince and Tom Graham were acting on their own behalf and/or as an agent of the other I'On Defendants.

14. Defendant 148 Civitas, LLC ("148 Civitas") is a limited liability company formed under the laws of South Carolina.

15. 148 Civitas is the current owner of Creekside Park and the Community Dock designated by TMS # 5350600230.

16. Defendant Mike Russo owns, manages, and/or controls 148 Civitas.

17. At all times relevant herein, Mike Russo was acting on his own behalf and/or as an agent of 148 Civitas.

18. Plaintiff brings this action on behalf of himself and derivatively on behalf of the I'On Assembly and its members, the other property owners in I'On, because the homeowners

association known as the I'On Assembly ("Assembly") has failed to protect and enforce the rights of the Assembly and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

19. Plaintiff Walbeck entered into a contract to purchase the above-described real property from Defendant I'On Company on or about November 27, 1999.

20. Plaintiff Walbeck purchased the above-described real property from Defendant, The I'On Company, LLC on or about March 31, 2000 and subsequently constructed a house thereon that serves as his primary residence.

21. A Property Report ("the Property Report") dated November 3, 1998, was given to the Plaintiff.

22. The Property Report was given to other prospective lot purchasers in I'On.

23. The Property Report was given to purchasers at the time of, or before any agreements to purchase property in I'On were entered.

24. The Property Report contained representations regarding the Lots and Neighborhood.

25. The Property Report representations were either required by law, or were made with the intention of inducing the Plaintiff and others similarly situated into relying on such representations in order that they might purchase lots in I'On.

26. In the property report, the I'On Defendants represented to the Plaintiff and others that the ownership to the "Creekside Park and the Community Dock" would be transferred and conveyed to Assembly for the use and benefit of all lot owners in I'On.

27. Both the park location and the dock are shown on plats of I'On.

28. Defendants' representation that Creekside Park and the Community Dock would be transferred to the Assembly was intended to induce Plaintiff and other homeowners to purchase lots in I'On.

29. A year or more after the Property Report was first published, the I'On Company amended the Original Property Report. However, the Company continued to distribute the Original Property Report to potential lot purchasers with the intent that the information contained in said report would be relied upon by potential buyers when making their decision to purchase a lot in I'On; and failed to notify past or prospective purchasers of the amendment.

30. Plaintiff and other similarly-situated lot owners relied upon the representations described in the foregoing paragraphs when they made a decision to purchase their lots.

31. The Defendants have failed and refused to transfer ownership of Creekside Park or the Community Dock to the Assembly.

32. Circa 2000, the parcels that were intended to become Creekside Park and Community Dock were transferred from the I'On Company to the I'On Club, allegedly for the benefit and use of the homeowners. However, in 2009 the I'On club transferred the Creekside Park and Community Dock to 148 Civitas, an unaffiliated, for-profit entity.

33. Not only have the I'On Defendants failed to transfer the amenities to the Assembly, but the members' current use of the amenities is being impeded by the new owner and is set to expire circa 2030.

34. The failure to transfer the title to Creekside Park and the Community Dock has damaged Plaintiff and all lot owners in I'On. The value of each lot has been diminished by the Defendants' misfeasance, malfeasance, and nonfeasance.

35. Several I'On homeowners have made repeated demands upon the Assembly and its Board to secure the Assembly and its members the rights to the Creekside Park and

Community Dock; and provided the Board with the necessary information to do so. However, the Board has failed to secure the rights and has acquiesced to the sale of these amenities.

36. As monetary damages cannot adequately compensate Plaintiff, the Assembly, and it's members, Plaintiff seeks specific performance of the Defendants' obligations.

FOR A FIRST CAUSE OF ACTION
(Violation of the Interstate Land Sales Act – As to Defendants The I'On Company, LLC; I'On Real Estate, LLC; The I'On Group, LLC; and Vince Graham)

37. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth herein verbatim.

38. At the time the contracts for the sale of real property described herein were executed, I'On Company was subject to the requirements and provisions of Title 15, §§1702, et seq., Chapter 42 of the United States Code which is known as the Interstate Land Sales Act ("ILSA").

39. All legal requirements and provisions set forth in the ILSA are applicable to all transactions between I'On Company, the Plaintiff, and all similarly-situated lot owners in I'On.

40. Defendants have violated the ILSA, Title 15, Chapter 42 §1702, et seq., U.S. Code by: (1) issuing a Property Report that made representations to prospective purchasers of lots that were false; and/or (2) continually distributing copies of the Property Report to potential purchasers, with knowledge that it contained false representations and that these representations would likely be relied upon, and were in fact relied upon by numerous lot purchasers in I'On; (3) failing to honor the representations therein.

41. Plaintiff and the Assembly are entitled to an award for damages caused by these Defendants' violations of the ILSA, and for such other relief as provided in said Act, including, but not limited to injunctive relief, costs and attorney fees.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract – As to The I'On Company, LLC)

42. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth herein verbatim.

43. The Defendants' obligation to convey the Creekside Park and Community Dock to the Assembly were incorporated into the Plaintiff's and homeowners' contracts for the purchase of lots in I'On.

44. The Defendants breached their contracts with the Plaintiff and the homeowners by failing to convey the Creekside Park and Community Dock to the Assembly.

45. The Assembly and homeowners are additionally third-party beneficiaries of the contractual obligations.

46. Plaintiff and the Assembly are entitled to specific enforcement of the contract(s) and/or an award of damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty – As to the I'On Defendants)

47. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

48. The I'On Defendants have a fiduciary relationship to the Plaintiff as a result of their capacity as the developer and steward of the I'On community amenities and their former capacity controlling the Board of the Assembly.

49. The I'On Defendants breached the fiduciary relationship by failing to honor their trust, by failing to disclose their breach of duty, by failure to enforce the Assembly's rights, and by self-dealing.

50. Given the fiduciary relationship, the burden falls upon the Defendants to prove at arm's length and fair nature of the transactions described herein.

51. Plaintiff and the Assembly are entitled to an award of damages in an amount to be determined by the trier of fact and specific performance.

FOR A FOURTH CAUSE OF ACTION
(Fraud/Constructive Fraud – As to the I'On Defendants)

52. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

53. The Defendants represented to Plaintiff that the Creekside Park and Community Dock would be conveyed to the Assembly.

54. The Creekside Park and Community Dock were touted as valuable amenities and were used to induce purchasers, including Plaintiff.

55. The Defendants knew that access to the Creekside Park and Community Dock was a valuable asset to lot purchasers, including Plaintiff.

56. Plaintiff had no reason to know Defendants' representations regarding conveyance of the Creekside Park and Community Dock were false.

57. Plaintiff relied on Defendants' representations that they would convey the Creekside Park and Community Dock to the Assembly.

58. The Defendants failed to convey the Creekside Park and Community Dock.

59. Plaintiff has been deprived of access and his interest in the Creekside Park and Community Dock.

60. Defendants made a false, material representation; they knew it was false or recklessly disregarded the fact that it was false; Defendants intended that the representation be relied upon by the Plaintiff(s); the Plaintiff was ignorant of the representation's falsity; the Plaintiff relied on the truth of the representation and was entitled to do so; and Plaintiff suffered injury as a proximate and consequent result of that reliance.

61. Plaintiff is entitled to an award and judgment as a result of the fraudulent conduct of the Defendants described herein, and for such other relief as the law provides.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation – As to the I'On Defendants)

62. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

63. The I'On Defendants made oral and written representations that the Community Dock and Community Park would be transferred to the Assembly.

63. The Defendants had a pecuniary interest in the subject matter of the representations.

64. The Defendants owed a duty of care to the Plaintiff to communicate truthfully all information regarding his purchase in I'On, without material omission.

65. The Defendants' breached that duty owed by misrepresenting facts which induced the Plaintiff and other lot purchasers to enter into contracts for the purchase of lots in I'On.

66. The Plaintiff, the Assembly, and its members have suffered a pecuniary loss as a direct and proximate result of his reliance on the Defendants' false representations.

67. The Plaintiff and the Assembly, and its members are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy – As to All Defendants)

68. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

69. All defendants in this action have conspired and acted in concert to injure the Plaintiff and the Assembly and deprive them of their rights to the Creekside Park and Community Dock for the Defendants' gain.

70. The Defendants' above-described acts have caused the Plaintiff, the Assembly, and its members special damages.

71. The Plaintiff is entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SEVENTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act – As to All Defendants)

72. Plaintiff re-alleges the allegations contained in the above paragraphs as if fully set forth herein.

73. The Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

74. Defendants' above-described activities constitute unfair and deceptive practices in the conduct of their trade.

75. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

76. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

77. Defendants' wrongs entitle the Plaintiff to an award of treble damages, attorneys fees, and costs.

78. Plaintiff is entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of the SCUPTA, and to an award for damages, treble damages, costs, and attorney fees for the prosecution of this action.

FOR A EIGHTH CAUSE OF ACTION
(Unjust Enrichment – As to All Defendants)

79. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

80. The Defendants have been unjustly enriched at the expense of the Plaintiffs, the Assembly, and those similarly situated.

81. The Plaintiff and the Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiff and the Assembly.

FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel – As to the I'On Defendants)

82. Plaintiff re-alleges all of the foregoing allegations of the Complaint as if set forth here verbatim.

83. The I'On Defendants promised the Plaintiff, the Assembly, and other similarly-situated homeowners that it would convey the Creekside Park and Community Dock to the Assembly for the benefit of all landowners in I'On and this promise was unambiguous.

84. Plaintiff relied on this promise. Defendants expected and foresaw Plaintiff's reliance.

85. Plaintiff is entitled to an order of this Court requiring the I'On Company to specifically perform said conveyances, and to an award of costs, damages, consequential and special damages and attorneys' fees.

FOR A TENTH CAUSE OF ACTION
(Veil Piercing/Alter Ego)

86. Plaintiff believes the I'On Defendants to be alter egos of each other and the Grahams and to be one and the same; therefore, Defendants Grahams are personally liable for any damages to the Plaintiffs and Assembly caused by these corporate entities.

87. Plaintiff believes the 148 Civitas and Russo Defendants to be alter egos of each other and to be one and the same; therefore, Defendant Russo is personally liable for any damages to the Plaintiffs and Assembly caused by these corporate entities.

FOR A ELEVENTH CAUSE OF ACTION
(Tortious Interference With Contract – As to 148 Civitas & Russo)

88. Defendants knew and were aware of the I'On Defendants' contractual obligation to transfer the Creekside Park and Community Dock to the Assembly; Defendants intentionally procured the I'On Defendants breach thereof, without justification; which act as proximately damaged Plaintiff, the Assembly, and its members in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs prays for a judgment of this Court for himself and others similarly situated for:

1. actual, consequential, special, statutory, and punitive damages
2. specific performance and injunctive relief
3. attorney fees and costs.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua F. Evans
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
T: (843) 849-8400
F: (843) 849-8406

March 8, 2010
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK,	)	
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REAL ESTATE, LLC; MIKE RUSSO,	)	
Defendants.	)	

Verification of Brad J. Walbeck

FILED
2011 MAR 21 PM 1:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Brad J. Walbeck, hereby verify, that the facts and allegations in the Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Brad J. Walbeck

SWORN to and subscribed before me
this 21 day of March, 2011

Brooke Tiesino
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6-23-20

STATE OF SOUTH CAROLINA **COUNTY OF CHARLESTON**	**IN THE COURT OF COMMON PLEAS** **NINTH JUDICIAL CIRCUIT** **CIVIL ACTION NO. 2010-CP-10-10490**
BRAD J. WALBECK, **Plaintiff,** **v.** **THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REAL ESTATE, LLC; MIKE RUSSO,** **Defendants.**	**ANSWER OF DEFENDANTS THE I'ON COMPANY, LLC; I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; AND I'ON REALTY, LLC**

FILED
CHARLIE J. ARMSTRONG
CLERK OF COURT
2010 MAY 27 AM 9:33

COME NOW Defendants The I'On Company, LLC; I'On Club, LLC; The I'On Group, LLC f/k/a Civitas, LLC; Vince Graham; Tom Graham; and I'On Realty, LLC (improperly identified as "I'On Real Estate, LLC") (collectively the "I'On Defendants"), by and through counsel, subject to their motion to dismiss certain claims, and answer Plaintiff's Amended Complaint as follows:

GENERAL DENIAL

The I'On Defendants deny all allegations of the Amended Complaint not specifically admitted herein.

FIRST DEFENSE AND ANSWER

1. The I'On Defendants admit the allegations of Paragraph 1, upon information and belief.

2. The I'On Defendants admit the allegations of Paragraph 2, upon information and belief.

3. The I'On Defendants admit the allegations of Paragraph 3.

4. The I'On Defendants admit the allegations of Paragraph 4.

5. The I'On Defendants deny the allegations of Paragraph 5.

6. The I'On Defendants admit the allegations of Paragraph 6.

7. The I'On Defendants deny the allegations of Paragraph 7.

8. The I'On Defendants deny the allegations of Paragraph 8 and further that I'On Realty, LLC is a limited liability company formed under the laws of South Carolina.

9. The I'On Defendants deny the allegations of Paragraph 9.

10. The I'On Defendants deny the allegations of Paragraph 10.

11. The I'On Defendants deny the allegations of Paragraph 11.

12. Responding to Paragraph 12, the I'On Defendants admit that The I'On Company, LLC served as the developer of the neighborhood known as I'On, and deny the remaining allegations therein.

13. The I'On Defendants deny the allegations of Paragraph 13.

14. The I'On Defendants admit the allegations of Paragraph 14, upon information and belief.

15. The I'On Defendants deny the allegations of Paragraph 15.

16. The I'On Defendants are without information sufficient to form a belief as to the allegations of Paragraph 16 and therefore deny same.

17. The I'On Defendants are without information sufficient to form a belief as to the allegations of Paragraph 17 and therefore deny same.

18. The I'On Defendants deny the allegations of Paragraph 18.

19. The I'On Defendants admit the allegations of Paragraph 19.

20. The I'On Defendants admit the allegations of Paragraph 20, upon information and belief.

21. The I'On Defendants deny the allegations of Paragraph 21.

22. The I'On Defendants currently are without information sufficient to form a belief as to the allegations of Paragraph 22 and therefore deny same.

23. The I'On Defendants currently are without information sufficient to form a belief as to the allegations of Paragraph 23 and therefore deny same.

24. Responding to Paragraph 24, the I'On Defendants state that the Property Report is a document which speaks for itself.

25. The I'On Defendants deny the allegations of Paragraph 25.

26. The I'On Defendants deny the allegations of Paragraph 26.

27. The I'On Defendants deny the allegations of Paragraph 27.

28. The I'On Defendants deny the allegations of Paragraph 28.

29. Responding to Paragraph 29, the I'On Defendants admit that The I'On Company amended the property report as of April 10, 2000, and deny the remaining allegations therein.

30. The I'On Defendants deny the allegations of Paragraph 30.

31. The I'On Defendants deny the allegations of Paragraph 31.

32. Responding to Paragraph 32, the I'On Defendants admit that The I'On Company transferred property to I'On Club on or about August 15, 2000, and that I'On Club transferred property to 148 Civitas on or about August 5, 2009, and further deny the remaining allegations therein.

33. The I'On Defendants deny the allegations of Paragraph 33.

34. The I'On Defendants deny the allegations of Paragraph 34.

35. Responding to Paragraph 35, the I'On Defendants admit upon information and belief that a certain member or members of the Assembly has made demands upon the Assembly to bring suit regarding the issue raised in the Amended Complaint and that the Assembly has refused to do so; the I'On Defendants deny the remaining allegations of Paragraph 35.

36. The I'On Defendants deny the allegations of Paragraph 36.

37. Responding to Paragraph 37, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

38. The I'On Defendants currently are without information sufficient as to the property described to form a belief as to the allegations of Paragraph 38 and therefore deny same.

39. The I'On Defendants deny the allegations of Paragraph 39.

40. The I'On Defendants deny the allegations of Paragraph 40.

41. The I'On Defendants deny the allegations of Paragraph 41.

42. Responding to Paragraph 42, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

43. The I'On Defendants deny the allegations of Paragraph 43.

44. The I'On Defendants deny the allegations of Paragraph 44.

45. The I'On Defendants deny the allegations of Paragraph 45.

46. The I'On Defendants deny the allegations of Paragraph 46.

47. Responding to Paragraph 47, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

48. The I'On Defendants deny the allegations of Paragraph 48.

49. The I'On Defendants deny the allegations of Paragraph 49.

50. The I'On Defendants deny the allegations of Paragraph 50.

51. The I'On Defendants deny the allegations of Paragraph 51.

52. Responding to Paragraph 52, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

53. The I'On Defendants deny the allegations of Paragraph 53.

54. The I'On Defendants deny the allegations of Paragraph 54.

55. Responding to Paragraph 55, the I'On Defendants admit that access to the recreational facilities and amenities provided in I'On is valuable to resident customers and deny the remaining allegations therein.

56. Responding to Paragraph 56, the I'On Defendants are without sufficient information to form a response absent further identification of particular representations by particular defendants; however, the I'On Defendants further state that they are aware of no false representations regarding conveyance of a Creekside Park and a Community Dock to the Assembly.

57. The I'On Defendants deny the allegations of Paragraph 57.

58. The I'On Defendants deny the allegations of Paragraph 58.

59. The I'On Defendants deny the allegations of Paragraph 59.

60. The I'On Defendants deny the allegations of Paragraph 60.

61. The I'On Defendants deny the allegations of Paragraph 61.

62. Responding to Paragraph 62, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

63. The I'On Defendants deny the allegations of each Paragraph 63.

64. Responding to Paragraph 64, the I'On Defendants admit that The I'On Company owed to Plaintiff the standard duties that a seller owes a purchaser under the circumstances, and deny the remaining allegations therein

65. The I'On Defendants deny the allegations of Paragraph 65.

66. The I'On Defendants deny the allegations of Paragraph 66.

67. The I'On Defendants deny the allegations of Paragraph 67.

68. Responding to Paragraph 68, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

69. The I'On Defendants deny the allegations of Paragraph 69.

70. The I'On Defendants deny the allegations of Paragraph 70.

71. The I'On Defendants deny the allegations of Paragraph 71.

72. Responding to Paragraph 72, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

73. Paragraph 73 states a legal conclusion to which no response is required.

74. The I'On Defendants deny the allegations of Paragraph 74.

75. The I'On Defendants deny the allegations of Paragraph 75.

76. The I'On Defendants deny the allegations of Paragraph 76.

77. The I'On Defendants deny the allegations of Paragraph 77.

78. The I'On Defendants deny the allegations of Paragraph 78.

79. Responding to Paragraph 79, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

80. The I'On Defendants deny the allegations of Paragraph 80.

81. The I'On Defendants deny the allegations of Paragraph 81.

82. Responding to Paragraph 82, the I'On Defendants restate all of the foregoing responses to the allegations of the Amended Complaint.

83. The I'On Defendants deny the allegations of Paragraph 83.

84. The I'On Defendants deny the allegations of Paragraph 84.

85. The I'On Defendants deny the allegations of Paragraph 85.

86. The I'On Defendants deny the allegations of Paragraph 86.

87. The I'On Defendants currently are without information sufficient to form a belief as to the allegations of Paragraph 87 and therefore deny same

88. The I'On Defendants deny the allegations of Paragraph 88.

89. The I'On Defendants deny the allegations of the WHEREFORE paragraph and all of its subparts.

SECOND DEFENSE
(Failure to State a Claim)

90. Plaintiff's claims should be dismissed for failure to state a claim upon which relief may be granted.

THIRD DEFENSE
(Statute of Limitations)

91. Plaintiff's claims are barred by the statute of limitations.

FOURTH DEFENSE
(Lack of Standing/Jurisdiction)

92. Plaintiff's derivative claims are barred because he lacks standing to bring such claims and the Court therefore lacks jurisdiction to hear them.

FIFTH DEFENSE
(Laches)

93. Plaintiff's claims are barred by the doctrine of laches.

SIXTH DEFENSE
(Unclean Hands)

94. Plaintiff's claims are barred by the doctrine of unclean hands.

SEVENTH DEFENSE
(Statute of Frauds)

95. Plaintiff's claims are barred by the statute of frauds.

EIGHTH DEFENSE
(Waiver)

96. To the extent Plaintiff had any cognizable claims, he has waived them.

NINTH DEFENSE
(Failure to Mitigate)

97. To the extent Plaintiff suffered any damages as a result of the allegations in the Complaint, he failed to mitigate them.

FURTHER ANSWERING THE AMENDED COMPLAINT AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

98. The I'On Defendants restate and incorporate here all of its foregoing admissions, averments, and responses.

99. Upon information and belief, this action was filed as a result of the efforts of certain individuals who are not party to the action.

100. Those individuals have continually challenged actions of one or more of the I'On Defendants over the past several years.

101. Those challenges have been unsuccessful.

102. One of those individuals threatened suit in 2009 based on the very same allegations raised in this action.

103. The claims presented are time barred and are subject to dismissal except where a claim may avoid outright dismissal through unspecified allegations of representations by unspecified Defendants at unspecified times.

104. Upon information and belief, the present action was filed in the course and as part of a continued and unjustified campaign against one or more of the I'On Defendants and not for the purpose of seeking a remedy for any damages from a legally cognizable wrong.

105. As such, the Complaint was filed for the ulterior purposes to harm or embarrass one or more of the I'On Defendants and to create a financial burden on them.

106. In filing the Amended Complaint in the present action, Plaintiff has engaged in willful acts in the improper use of process.

107. In verifying unfounded allegations, Plaintiff has engaged in willful acts in the improper use of process.

108. As an actual and proximate result of Plaintiff's wrongful acts, the I'On Defendants have suffered damages including the costs and attorney's fees required to defend this action.

109. The I'On Defendants are entitled to recover damages including without limitation their attorney's fees and costs.

110. Plaintiff's acts pleaded herein were done willfully, wantonly, and with reckless disregard to the rights of the I'On Defendants. The I'On Defendants therefore are entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, The I'On Defendants pray the Court to:

i. Enter an order declaring that Plaintiff shall have and recover nothing from The I'On Defendants;

ii. Enter an order in favor of the I'On Defendants on their counterclaim and award all recoverable damages including without limitation attorney's fees and costs.

iii. Tax the costs of this action against Plaintiff; and

iv. Provide such other relief in this action as may be just and proper.

This 26th day of May, 2011 at Charleston, South Carolina.

Respectfully submitted,

Brian C. Duffy
bduffy@duffyandyoung.com
Seth W. Whitaker
swhitaker@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for the I'On Defendants

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.	)	**SECOND AMENDED COMPLAINT** (Jury Trial Demanded)
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); 148 CIVITAS, LLC; MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.	)	

FILED
2012 FEB -7 A 11: 37
JULIE J. ARMSTRONG
CLERK OF COURT

The Plaintiffs, Brad J. Walbeck and Lea Ann Adkins, individually and derivatively on behalf of the I'On Assembly, complaining of the Defendants named herein, would respectfully allege and show the court as follows:

1. Plaintiff Brad J. Walbeck ("Walbeck"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

2. Plaintiff Walbeck's residence is located in I'On at 114 North Shelmore Boulevard, Mount Pleasant, South Carolina, 29464, and is also described as Lot 224 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

3. Plaintiff Lea Ann Adkins ("Adkins"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

4. Plaintiff Adkins' residence is located in I'On at 34 Hopetown Road, Mount Pleasant, South Carolina, 29464, and is also described as Lot 5 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

5. Defendant The I'On Company, LLC ("I'On Company") is a limited liability company formed under the laws of South Carolina.

6. Defendant The I'On Group, LLC, formerly known as Civitas, LLC is a limited liability company formed under the laws of South Carolina.

7. I'On Group was and/or is a member of the I'On Company, and at all relevant times hereto, owned, operated, and/or controlled the I'On Company.

8. Defendant I'On Club, LLC ("I'On Club") is a limited liability company formed under the laws of South Carolina.

9. I'On Club was created by I'On Group for the purposes of owning and managing recreational facilities and amenities in the I'On community.

10. Defendant I'On Realty, LLC (formerly identified as I'On Real Estate, LLC) is a limited liability company formed under the laws of South Carolina.

11. I'On Realty, LLC operated as the real estate brokerage entity responsible for promotion and sale of the homesites located in the I'On community.

12. The I'On Group; The I'On Company, LLC; The I'On Club; and I'On Realty have been operated in such manner so that their legal distinction is blurred and they are amalgamated as a single entity and/or are the alter ego of each other.

13. Defendants Vince Graham and Tom Graham own, manage, and/or control, in whole or in part, I'On Company, I'On Group, I'On Club, and I'On Realty. [All of the foregoing Defendants may occasionally be referred to as "the I'On Defendants"]

14. I'On Defendants served as the developer of the subdivision known as I'On.

15. At all times relevant herein, Vince and Tom Graham were acting on their own behalf and/or as an agent of the other I'On Defendants.

16. Defendant 148 Civitas, LLC ("148 Civitas") is a limited liability company formed under the laws of South Carolina.

17. 148 Civitas is the current owner of Creekside Park and the Community Dock designated by TMS # 5350600230.

18. Defendant Mike Russo owns, manages, and/or controls 148 Civitas.

19. At all times relevant herein, Mike Russo was acting on his own behalf and/or as an agent of 148 Civitas.

20. Defendant I'On Assembly, Inc. ("The Assembly") is a corporation formed under the laws of South Carolina and is included herein as a party-defendant in that it has a significant interest in the outcome of this litigation and because Defendant Russo has previously moved to dismiss this suit unless The Assembly was added to this suit.

21. The Assembly is the homeowners association for the I'On neighborhood.

22. By virtue of property ownership in I'On, Plaintiffs Walbeck and Adkins are members of The Assembly, and have been members of The Assembly at all times relevant herein.

23. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the The Assembly and its members, the other property owners in I'On, because The Assembly has failed to protect and enforce the rights of The Assembly and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

24. Plaintiff Walbeck entered into a contract to purchase the above-described real property from Defendant I'On Company on or about November 27, 1999.

25. Plaintiff Walbeck purchased the above-described real property from Defendant, I'On Company, LLC on or about March 31, 2000 and subsequently constructed a house thereon that serves as his primary residence.

26. Plaintiff Adkins purchased the above-described real property from Defendant, I'On Company, LLC on or about June 4, 2003 and subsequently constructed a house thereon that serves as his primary residence.

27. A Property Report ("the Property Report") dated November 3, 1998, was provided to the Plaintiffs by one or more agent(s) of the I'On Defendants.

28. The Property Report was given to other prospective lot purchasers in I'On.

29. The Property Report was given to purchasers at the time of, or before any agreements to purchase property in I'On were entered.

30. The Property Report contained representations regarding the Lots and Neighborhood.

31. The Property Report representations were either required by law, or were made with the intention of inducing the Plaintiff and others similarly situated into relying on such representations in order that they might purchase lots in I'On.

32. In the property report, the I'On Defendants represented to the Plaintiffs and others that homeowners would have unencumbered access and use of the "Creekside Park" and the "Community Dock" and that the owners use of these amenities would be transferred and conveyed to The Assembly for the use and benefit of all owners in I'On.

33. Both the park location and the dock are shown on plats of I'On.

34. Defendants' representation that Creekside Park and the Community Dock would be available for and transferred to The Assembly was intended to induce Plaintiffs and other homeowners/Assembly members to purchase lots in I'On.

35. A year or more after the Property Report was first published, I'On Company amended the Original Property Report. However, the Company continued to distribute the Original Property Report to potential lot purchasers.

36. The Original Property Report continued to be distributed to potential lot purchasers with the intent that the information contained in said report would be relied upon by potential buyers when making their decision to purchase a lot in I'On.

37. The I'On Defendants failed to notify past or prospective purchasers, and The Assembly, of the amendment.

38. Plaintiffs and other purchasers relied upon the representations described in the foregoing paragraphs when they made a decision to purchase their lots.

39. The Defendants have failed and refused to transfer ownership of Creekside Park or the Community Dock to The Assembly.

40. Plaintiffs did not learn that the I'On Defendants had not or did not intend to convey the amenities until circa 2009 when rumored the I'On Defendants' proposed transfer of the amenities to a third-party surfaced.

41. Circa 2000, unbeknownst to Plaintiffs, the parcels that were intended to become Creekside Park and Community Dock were transferred from I'On Company to I'On Club, allegedly for the benefit and use of the members of The Assembly. However, in 2009 I'On Club transferred the Creekside Park and Community Dock to 148 Civitas, an unaffiliated, for-profit entity.

42. Not only have the I'On Defendants failed to transfer the amenities to The Assembly, but the members' current use of the amenities is being impeded by the new owner and is set to expire circa 2030.

43. The failure to transfer the title to Creekside Park and the Community Dock has damaged Plaintiffs, all lot owners in I'On, and The Assembly. The value of each lot, and the value of membership in The Assembly, has been diminished by the Defendants' misfeasance, malfeasance, and nonfeasance.

44. Several I'On homeowners have made repeated demands upon The Assembly and its Board to secure The Assembly and its members the rights to the Creekside Park and Community Dock; and provided the Board with the necessary information to do so.

45. On or about February 26, 2009 The Assembly member and I'On property owner Catherine Templeton made a demand upon The Assembly (hereinafter the "Templeton Demand") to act in order to secure The Assembly and its member's unencumbered title, access, and use of the Creekside Park and Community Dock ("the Rights").

46. Plaintiffs were contemporaneously aware of the Templeton Demand as Templeton's Demand was made both by letter and overtly and publicly at an Assembly meeting.

47. On or about March 5, 2009 and March 11, 2009 Adkins made a request to The Assembly's attorney and registered agent, Timothy Bouch, Esquire, (hereinafter the "Adkins/Bouch Demand") to investigate the allegations that the I'On Company was contractually obligated to convey Creekside Park and Community Dock to The Assembly.

48. Walbeck was contemporaneously aware of the Adkins/Bouch Demand.

49. On or about March 10, 2009 The Assembly attorney and registered agent, Timothy Bouch, Esquire, informed Adkins, and copied The Assembly Board President Bruce Kinney, that The Assembly was working to secure formal title to properties represented to be the property of The Assembly.

50. On or about March 11, 2009 The Assembly Board President, Bruce Kinney, demanded that I'On Company convey the Community Dock to The Assembly, but failed to demand conveyance of the Creekside Park.

51. Plaintiffs were contemporaneously aware of The Assembly's half-hearted attempts to sccure title to Community Dock and silence as to the sale of the Creekside Park.

52. During the month of April 2009, Adkins and The Assembly Board member Matt Walsh ("Walsh") discussed the I'On Defendants obligation to convey the Creekside Park and Community Dock to The Assembly. Concurrently, Walsh relayed Adkins demands to I'On Defendants. Walbeck was contemporaneously aware of these communications.

53. During the months of June and July, 2009 Walbeck and Adkins made demands upon the I'On Defendants to convey the Creekside Park and Community Dock to The Assembly. The Assembly Board was aware of the demands and subsequent refusals from the I'On Defendants.

54. Despite repeated demands to the I'On Defendants and The Assembly Board, the Board has failed to take the necessary action to secure unencumbered title, access, and use of Creekside Park and Community Dock.

55. Additional demands upon The Assembly would now be futile as The Assembly has failed to act to protect the rights of The Assembly and its members, despite being provided with both the information necessary and the opportunity to do so. The I'On Defendants' conveyance of the amenities to a third-party evidences the Board's failure to secure the rights to the Property, and the futility of further demand on The Assembly and its Board.

56. As monetary damages cannot adequately compensate Plaintiffs, The Assembly, and its members, Plaintiffs seek specific performance of the Defendants' obligations.

FOR A FIRST CAUSE OF ACTION
(Violation of the Interstate Land Sales Act – As to Defendants The I'On Company, LLC; I'On Real Estate, LLC; The I'On Group, LLC; and Vince Graham)

57. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth herein verbatim.

58. At the time the contracts for the sale of real property described herein were executed, I'On Company was subject to the requirements and provisions of Title 15, §§1702, et seq., Chapter 42 of the United States Code which is known as the Interstate Land Sales Act ("ILSA").

59. All legal requirements and provisions set forth in the ILSA are applicable to all transactions between I'On Company, the Plaintiffs, and all similarly-situated lot owners in I'On.

60. Defendants have violated the ILSA, Title 15, Chapter 42 §1702, et seq., U.S. Code by: (1) issuing a Property Report that made representations to prospective purchasers of lots that were false; and/or (2) continually distributing copies of the Property Report to potential purchasers, with knowledge that it contained false representations and that these representations would likely be relied upon, and were in fact relied upon by numerous lot purchasers in I'On; (3) failing to honor the representations therein.

61. Plaintiffs and The Assembly are entitled to an award for damages caused by these Defendants' violations of the ILSA, and for such other relief as provided in said Act, including, but not limited to injunctive relief, costs and attorney fees.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract – As to The I'On Company, LLC)

62. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth herein verbatim.

63. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were expressly incorporated into Plaintiff Walbeck's and other homeowners' contracts for the purchase of lots in I'On.

64. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were incorporated into Plaintiff Adkins' lot purchase agreement through the deeds and actions of the I'On Defendants and/or their agents.

65. The Assembly is an intended third party beneficiary to the contracts between Plaintiffs, other owners, and the I'On Defendants.

66. The Defendants breached their contracts with the Plaintiffs, other homeowners, and The Assembly by failing to convey the Creekside Park and Community Dock to The Assembly.

67. Plaintiffs and The Assembly are entitled to specific enforcement of the contract(s) and/or an award of damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty – As to the I'On Defendants)

68. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

69. The I'On Defendants have a fiduciary relationship to the Plaintiffs by virtue of their capacity as the developer and steward of the I'On community amenities and their former capacity controlling the Board of The Assembly.

70. The I'On Defendants breached the fiduciary relationship by failing to honor their trust, by failing to disclose their breach of duty, by failure to enforce The Assembly's rights, and by self-dealing.

71. Given the fiduciary relationship, the burden falls upon the Defendants to prove at arm's length and fair nature of the transactions described herein.

72. Plaintiffs and The Assembly are entitled to an award of damages in an amount to be determined by the trier of fact and specific performance.

FOR A FOURTH CAUSE OF ACTION
(Fraud/Constructive Fraud – As to the I'On Defendants)

73. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

74. The Defendants represented to Plaintiffs that the Creekside Park and Community Dock would be conveyed to The Assembly.

75. The Creekside Park and Community Dock were marketed as valuable amenities induced purchasers, including Plaintiffs, into purchasing home sites in I'On.

76. The Defendants knew that access to the Creekside Park and Community Dock was a valuable asset to lot purchasers, including Plaintiffs.

77. The Defendants intended for lot purchasers, including Plaintiffs, to rely on the above-described representations.

78. Plaintiffs had no reason to know Defendants' representations regarding conveyance of the Creekside Park and Community Dock were false.

79. Plaintiffs relied on Defendants' representations that they would convey the Creekside Park and Community Dock to The Assembly.

80. The Defendants failed to convey the Creekside Park and Community Dock.

81. Plaintiffs have been deprived of access and his interest in the Creekside Park and Community Dock.

82. Defendants made a false, material representation; they knew it was false or recklessly disregarded the fact that it was false; Defendants intended that the representation be relied upon by the Plaintiffs; the Plaintiffs were ignorant of the representation's falsity; the

Plaintiffs relied on the truth of the representation and was entitled to do so; and Plaintiffs suffered injury as a proximate and consequent result of that reliance.

83. Plaintiffs are entitled to an award and judgment as a result of the fraudulent conduct of the Defendants described herein, and for such other relief as the law provides.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation – As to the I'On Defendants)

84. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

85. The I'On Defendants made oral and written representations that the Community Dock and Creekside Park would be transferred to The Assembly.

86. The Defendants had a pecuniary interest in the subject matter of the representations.

87. The Defendants owed a duty of care to the Plaintiffs to communicate truthfully all information regarding his purchase in I'On, without material omission.

88. The Defendants' breached that duty owed by misrepresenting facts which induced the Plaintiffs and other lot purchasers to enter into contracts for the purchase of lots in I'On.

89. The Plaintiffs, The Assembly, and its members have suffered a pecuniary loss as a direct and proximate result of his reliance on the Defendants' false representations.

90. The Plaintiffs and The Assembly, and its members are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy – As to All Defendants Except I'On Assembly, Inc.)

91. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

92. All Defendants in this action have conspired and acted in concert to injure the Plaintiffs and The Assembly and deprive them of their rights to the Creekside Park and Community Dock for the Defendants' gain.

93. The Defendants' above-described acts have caused the Plaintiffs, The Assembly, and its members special damages.

94. The Plaintiffs are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SEVENTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act – As to I'On Defendants)

95. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

96. The Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

97. Defendants' above-described activities constitute unfair and deceptive practices in the conduct of their trade.

98. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

99. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

100. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys fees, and costs.

101. Plaintiffs are entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of the SCUPTA, and to an award for damages, treble damages, costs, and attorney fees for the prosecution of this action.

FOR A EIGHTH CAUSE OF ACTION
(Unjust Enrichment – As to All Defendants Except Assembly)

102. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

103. The Defendants have been unjustly enriched at the expense of the Plaintiffs, The Assembly, and those similarly situated.

104. The Plaintiffs and The Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Assembly.

FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel – As to the I'On Defendants)

105. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

106. The I'On Defendants promised the Plaintiffs, The Assembly, and other similarly-situated homeowners that it would convey the Creekside Park and Community Dock to The Assembly for the benefit of all landowners in I'On and this promise was unambiguous.

107. Plaintiffs relied on this promise. Defendants expected and foresaw Plaintiffs' reliance.

108. Plaintiffs are entitled to an order of this Court requiring the I'On Company to specifically perform said conveyances, and to an award of costs, damages, consequential and special damages and attorneys' fees.

FOR A TENTH CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation)

109. Plaintiffs believe the I'On Defendants to be alter egos of each other and the Grahams and to be one and the same; therefore, Defendants Grahams are personally liable for any damages to the Plaintiffs and The Assembly caused by these corporate entities.

110. Plaintiffs believe the 148 Civitas and Russo Defendants to be alter egos of each other and to be one and the same; therefore, Defendant Russo is personally liable for any damages to the Plaintiffs and The Assembly caused by these corporate entities.

111. All I'On Defendants were operating together as joint venturers, members, and/or agents in the development, marketing, management, and sale of the lots at I'On, and were owned and operated by substantially the same principles at all times relevant to the development, marketing, management, and sales. As such, these Defendants are amalgamated in a manner in which they were all operating as one in the same.

112. Vince Graham, Tom Graham, and Mike Russo used their respective corporations to shield themselves from liability for their wrongful activities.

FOR A ELEVENTH CAUSE OF ACTION
(Tortious Interference With Contract – As to 148 Civitas & Russo)

113. Defendants knew and were aware of the I'On Defendants' contractual obligation to transfer the Creekside Park and Community Dock to The Assembly; Defendants intentionally procured the I'On Defendants breach thereof, without justification; which act as proximately damaged Plaintiffs, The Assembly, and its members in an amount to be determined by the trier of fact.

WHEREFORE, Plaintiffs prays for a judgment of this Court for themselves, The Assembly, and its members:

1. actual, consequential, special, statutory, and punitive damages;
2. specific performance and injunctive relief; and
3. attorney fees and costs.

(SIGNATURE ON NEXT PAGE)

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua F. Evans
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
T: (843) 849-8400
F: (843) 849-8406

February 7, 2012
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	)	**Verification of Brad J. Walbeck**
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.	)	

FILED
2012 FEB -7 AM 11:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Brad J. Walbeck, hereby verify, that the facts and allegations in the Second Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Brad J. Walbeck

SWORN to and subscribed before me
this 30 day of January, 2012

Brooke Treviño
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6-23-20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	)	**Verification of Lea Ann Adkins**
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.	)	

FILED
2012 FEB -7 AM 11:38
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

I, Lea Ann Adkins, hereby verify, that the facts and allegations in the Second Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Lea Ann Adkins

SWORN to and subscribed before me
this 7th day of February, 2012

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 8/3/21

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
	)	
BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.	)	**THIRD AMENDED COMPLAINT** (Jury Trial Demanded)
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); 148 CIVITAS, LLC; MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.	)	

FILED
2011 JAN -2 P 1:11
CHARLESTON COUNTY
CLERK OF COURT

The Plaintiffs, Brad J. Walbeck and Lea Ann Adkins, individually and derivatively on behalf of the I'On Assembly, complaining of the Defendants named herein, would respectfully allege and show the court as follows:

1. Plaintiff Brad J. Walbeck ("Walbeck"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

2. Plaintiff Walbeck's residence is located in I'On at 114 North Shelmore Boulevard, Mount Pleasant, South Carolina, 29464, and is also described as Lot 224 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

3. Plaintiff Lea Ann Adkins ("Adkins"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

4. Plaintiff Adkins' residence is located in I'On at 34 Hopetown Road, Mount Pleasant, South Carolina, 29464, and is also described as Lot 5 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

5. Defendant The I'On Company, LLC ("I'On Company") is a limited liability company formed under the laws of South Carolina.

6. Defendant The I'On Group, LLC, formerly known as Civitas, LLC is a limited liability company formed under the laws of South Carolina.

7. I'On Group was and/or is a member of the I'On Company, and at all relevant times hereto, owned, operated, and/or controlled the I'On Company.

8. Defendant I'On Club, LLC ("I'On Club") is a limited liability company formed under the laws of South Carolina.

9. I'On Club was created by I'On Group for the purposes of owning and managing recreational facilities and amenities in the I'On community.

10. Defendant I'On Realty, LLC (formerly identified as I'On Real Estate, LLC) is a limited liability company formed under the laws of South Carolina.

11. I'On Realty, LLC operated as the real estate brokerage entity responsible for promotion and sale of the homesites located in the I'On community.

12. The I'On Group; The I'On Company, LLC; The I'On Club; and I'On Realty have been operated in such manner so that their legal distinction is blurred and they are amalgamated as a single entity and/or are the alter ego of each other.

13. Defendants Vince Graham and Tom Graham own, manage, and/or control, in whole or in part, I'On Company, I'On Group, I'On Club, and I'On Realty. [All of the foregoing Defendants may occasionally be referred to as "the I'On Defendants"]

14. I'On Defendants served as the developer of the subdivision known as I'On.

15. At all times relevant herein, Vince and Tom Graham were acting on their own behalf and/or as an agent of the other I'On Defendants.

16. Defendant 148 Civitas, LLC ("148 Civitas") is a limited liability company formed under the laws of South Carolina.

17. 148 Civitas is the current owner of Creekside Park and the Community Dock designated by TMS # 5350600230.

18. Defendant Mike Russo owns, manages, and/or controls 148 Civitas.

19. At all times relevant herein, Mike Russo was acting on his own behalf and/or as an agent of 148 Civitas.

20. Defendant I'On Assembly, Inc. ("The Assembly") is a corporation formed under the laws of South Carolina and is included herein as a party-defendant in that it has a significant interest in the outcome of this litigation and because Defendant Russo has previously moved to dismiss this suit unless The Assembly was added to this suit.

21. The Assembly is the homeowners association for the I'On neighborhood.

22. By virtue of property ownership in I'On, Plaintiffs Walbeck and Adkins are members of The Assembly, and have been members of The Assembly at all times relevant herein.

23. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the The Assembly and its members, the other property owners in I'On, because The Assembly has failed to protect and enforce the rights of The Assembly and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

24. Plaintiff Walbeck entered into a contract to purchase the above-described real property from Defendant I'On Company on or about November 27, 1999.

25. Plaintiff Walbeck purchased the above-described real property from Defendant, I'On Company, LLC on or about March 31, 2000 and subsequently constructed a house thereon that serves as his primary residence.

26. Plaintiff Adkins purchased the above-described real property from Defendant, I'On Company, LLC on or about June 4, 2003 and subsequently constructed a house thereon that serves as her primary residence.

27. A Property Report ("the Property Report") dated November 3, 1998, was provided to the Plaintiffs by one or more agent(s) of the I'On Defendants.

28. The Property Report was given to other prospective lot purchasers in I'On.

29. The Property Report was given to purchasers at the time of, or before any agreements to purchase property in I'On were entered.

30. The Property Report contained representations regarding the Lots and Neighborhood.

31. The Property Report representations were either required by law, or were made with the intention of inducing the Plaintiff and others similarly situated into relying on such representations in order that they might purchase lots in I'On.

32. In the property report, the I'On Defendants represented to the Plaintiffs and others that homeowners would have unencumbered access and use of the "Creekside Park" and the "Community Dock" and that the owners use of these amenities would be transferred and conveyed to The Assembly for the use and benefit of all owners in I'On.

33. Both the park location and the dock are shown on plats of I'On.

34. Defendants' representation that Creekside Park and the Community Dock would be available for and transferred to The Assembly was intended to induce Plaintiffs and other homeowners/Assembly members to purchase lots in I'On.

35. A year or more after the Property Report was first published, I'On Company amended the Original Property Report. However, the Company continued to distribute the Original Property Report to potential lot purchasers.

36. The Original Property Report continued to be distributed to potential lot purchasers with the intent that the information contained in said report would be relied upon by potential buyers when making their decision to purchase a lot in I'On.

37. The I'On Defendants failed to notify past or prospective purchasers, and The Assembly, of the amendment.

38. Plaintiffs and other purchasers relied upon the representations described in the foregoing paragraphs when they made a decision to purchase their lots.

39. The Defendants have failed and refused to transfer ownership of Creekside Park or the Community Dock to The Assembly.

40. Plaintiffs did not learn that the I'On Defendants had not or did not intend to convey the amenities until circa 2009 when rumored the I'On Defendants' proposed transfer of the amenities to a third-party surfaced.

41. Circa 2000, unbeknownst to Plaintiffs, the parcels that were intended to become Creekside Park and Community Dock were transferred from I'On Company to I'On Club, allegedly for the benefit and use of the members of The Assembly. However, in 2009 I'On Club transferred the Creekside Park and Community Dock to 148 Civitas, an unaffiliated, for-profit entity.

42. Not only have the I'On Defendants failed to transfer the amenities to The Assembly, but the members' current use of the amenities is being impeded by the new owner and is set to expire circa 2030.

43. The failure to transfer the title to Creekside Park and the Community Dock has damaged Plaintiffs, all lot owners in I'On, and The Assembly. The value of each lot, and the value of membership in The Assembly, has been diminished by the Defendants' misfeasance, malfeasance, and nonfeasance.

44. Several I'On homeowners have made repeated demands upon The Assembly and its Board to secure The Assembly and its members the rights to the Creekside Park and Community Dock; and provided the Board with the necessary information to do so.

45. On or about February 26, 2009 The Assembly member and I'On property owner Catherine Templeton made a demand upon The Assembly (hereinafter the "Templeton Demand") to act in order to secure The Assembly and its member's unencumbered title, access, and use of the Creekside Park and Community Dock ("the Rights").

46. Plaintiffs were contemporaneously aware of the Templeton Demand as Templeton's Demand was made both by letter and overtly and publicly at an Assembly meeting.

47. On or about March 5, 2009 and March 11, 2009 Adkins made a request to The Assembly's attorney and registered agent, Timothy Bouch, Esquire, (hereinafter the "Adkins/Bouch Demand") to investigate the allegations that the I'On Company was contractually obligated to convey Creekside Park and Community Dock to The Assembly.

48. Walbeck was contemporaneously aware of the Adkins/Bouch Demand.

49. On or about March 10, 2009 The Assembly attorney and registered agent, Timothy Bouch, Esquire, informed Adkins, and copied The Assembly Board President Bruce Kinney, that The Assembly was working to secure formal title to properties represented to be the property of The Assembly.

50. On or about March 11, 2009 The Assembly Board President, Bruce Kinney, demanded that I'On Company convey the Community Dock to The Assembly, but failed to demand conveyance of the Creekside Park.

51. Plaintiffs were contemporaneously aware of The Assembly's half-hearted attempts to secure title to Community Dock and silence as to the sale of the Creekside Park.

52. During the month of April 2009, Adkins and The Assembly Board member Matt Walsh ("Walsh") discussed the I'On Defendants obligation to convey the Creekside Park and Community Dock to The Assembly. Concurrently, Walsh relayed Adkins demands to I'On Defendants. Walbeck was contemporaneously aware of these communications.

53. During the months of June and July, 2009 Walbeck and Adkins made demands upon the I'On Defendants to convey the Creekside Park and Community Dock to The Assembly. The Assembly Board was aware of the demands and subsequent refusals from the I'On Defendants.

54. Despite repeated demands to the I'On Defendants and The Assembly Board, the Board has failed to take the necessary action to secure unencumbered title, access, and use of Creekside Park and Community Dock.

55. Additional demands upon The Assembly would now be futile as The Assembly has failed to act to protect the rights of The Assembly and its members, despite being provided with both the information necessary and the opportunity to do so. The I'On Defendants' conveyance of the amenities to a third-party evidences the Board's failure to secure the rights to the Property, and the futility of further demand on The Assembly and its Board.

56. As monetary damages cannot adequately compensate Plaintiffs, The Assembly, and its members, Plaintiffs seek specific performance of the Defendants' obligations.

FOR A FIRST CAUSE OF ACTION
(Violation of the Interstate Land Sales Act – As to Defendants The I'On Company, LLC; I'On Realty, LLC; The I'On Group, LLC; and Vince Graham)

57. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth herein verbatim.

58. At the time the contracts for the sale of real property described herein were executed, I'On Company was subject to the requirements and provisions of Title 15, §§1702. et seq., Chapter 42 of the United States Code which is known as the Interstate Land Sales Act ("ILSA").

59. All legal requirements and provisions set forth in the ILSA are applicable to all transactions between I'On Company, the Plaintiffs, and all similarly-situated lot owners in I'On.

60. Defendants have violated the ILSA, Title 15, Chapter 42 §1702, et seq., U.S. Code by: (1) issuing a Property Report that made representations to prospective purchasers of lots that were false; and/or (2) continually distributing copies of the Property Report to potential purchasers, with knowledge that it contained false representations and that these representations would likely be relied upon, and were in fact relied upon by numerous lot purchasers in I'On; (3) failing to honor the representations therein.

61. Plaintiffs and The Assembly are entitled to an award for damages caused by these Defendants' violations of the ILSA, and for such other relief as provided in said Act, including, but not limited to injunctive relief, costs and attorney fees.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract – As to The I'On Company, LLC)

62. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth herein verbatim.

63. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were expressly incorporated into Plaintiff Walbeck's and other homeowners' contracts for the purchase of lots in I'On.

64. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were incorporated into Plaintiff Adkins' lot purchase agreement through the deeds and actions of the I'On Defendants and/or their agents.

65. The Assembly is an intended third party beneficiary to the contracts between Plaintiffs, other owners, and the I'On Defendants.

66. The I'On Defendants breached their contracts with the Plaintiffs, other homeowners, and The Assembly by failing to convey the Creekside Park and Community Dock to The Assembly. The I'On Defendants' breach of contract was accompanied by fraudulent intent, to wit, said Defendants knew at the time they entered the contracts and/or consummated their objectives that they did not intend to fulfill the terms related to the above-referenced amenities.

67. Plaintiffs and The Assembly are entitled to specific enforcement of the contract(s) and/or an award of damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty – As to the I'On Defendants)

68. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

69. The I'On Defendants have a fiduciary relationship to the Plaintiffs by virtue of their capacity as the developer and steward of the I'On community amenities and their former capacity controlling the Board of The Assembly.

70. The I'On Defendants breached the fiduciary relationship by failing to honor their trust, by failing to disclose their breach of duty, by failure to enforce The Assembly's rights, and by self-dealing.

71. Given the fiduciary relationship, the burden falls upon the Defendants to prove at arm's length and fair nature of the transactions described herein.

72. Plaintiffs and The Assembly are entitled to an award of damages in an amount to be determined by the trier of fact and specific performance.

FOR A FOURTH CAUSE OF ACTION
(Fraud/Constructive Fraud – As to the I'On Defendants)

73. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

74. The Defendants represented to Plaintiffs that the Creekside Park and Community Dock would be conveyed to The Assembly.

75. The Creekside Park and Community Dock were marketed as valuable amenities induced purchasers, including Plaintiffs, into purchasing home sites in I'On.

76. The Defendants knew that access to the Creekside Park and Community Dock was a valuable asset to lot purchasers, including Plaintiffs.

77. The Defendants intended for lot purchasers, including Plaintiffs, to rely on the above-described representations.

78. Plaintiffs had no reason to know Defendants' representations regarding conveyance of the Creekside Park and Community Dock were false.

79. Plaintiffs relied on Defendants' representations that they would convey the Creekside Park and Community Dock to The Assembly.

80. The Defendants failed to convey the Creekside Park and Community Dock.

81. Plaintiffs have been deprived of access and his interest in the Creekside Park and Community Dock.

82. Defendants made a false, material representation; they knew it was false or recklessly disregarded the fact that it was false; Defendants intended that the representation be relied upon by the Plaintiffs; the Plaintiffs were ignorant of the representation's falsity; the Plaintiffs relied on the truth of the representation and was entitled to do so; and Plaintiffs suffered injury as a proximate and consequent result of that reliance.

83. Plaintiffs are entitled to an award and judgment as a result of the fraudulent conduct of the Defendants described herein, and for such other relief as the law provides.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation – As to the I'On Defendants)

84. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

85. The I'On Defendants made oral and written representations that the Community Dock and Creekside Park would be transferred to The Assembly.

86. The Defendants had a pecuniary interest in the subject matter of the representations.

87. The Defendants owed a duty of care to the Plaintiffs to communicate truthfully all information regarding his purchase in I'On, without material omission.

88. The Defendants' breached that duty owed by misrepresenting facts which induced the Plaintiffs and other lot purchasers to enter into contracts for the purchase of lots in I'On.

89. The Plaintiffs, The Assembly, and its members have suffered a pecuniary loss as a direct and proximate result of his reliance on the Defendants' false representations.

90. The Plaintiffs and The Assembly, and its members are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy – As to All Defendants Except I'On Assembly, Inc.)

91. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

92. All Defendants in this action have conspired and acted in concert to injure the Plaintiffs and The Assembly and deprive them of their rights to the Creekside Park and Community Dock for the Defendants' gain.

93. The Defendants' above-described acts have caused the Plaintiffs, The Assembly, and its members special damages.

94. The Plaintiffs are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SEVENTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act – As to I'On Defendants)

95. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

96. The Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

97. Defendants' above-described activities constitute unfair and deceptive practices in the conduct of their trade.

98. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

99. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

100. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys fees, and costs.

101. Plaintiffs are entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of the SCUPTA, and to an award for damages, treble damages, costs, and attorney fees for the prosecution of this action.

FOR A EIGHTH CAUSE OF ACTION
(Unjust Enrichment – As to All Defendants Except Assembly)

102. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

103. The Defendants have been unjustly enriched at the expense of the Plaintiffs, The Assembly, and those similarly situated.

104. The Plaintiffs and The Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Assembly.

FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel – As to the I'On Defendants)

105. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

106. The I'On Defendants promised the Plaintiffs, The Assembly, and other similarly-situated homeowners that it would convey the Creekside Park and Community Dock to The Assembly for the benefit of all landowners in I'On and this promise was unambiguous.

107. Plaintiffs relied on this promise. Defendants expected and foresaw Plaintiffs' reliance.

108. Plaintiffs are entitled to an order of this Court requiring the I'On Company to specifically perform said conveyances, and to an award of costs, damages, consequential and special damages and attorneys' fees.

FOR A TENTH CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation As to The I'On Company, LLC; I'ON Club, LLC, I'On Realty, LLC, and The I'On Group, LLC)

109. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

110. Plaintiffs believe the I'On Company, I'On Club, I'On Realty, and I'On Group to be alter egos of each other, and therefore, liable for the actions of each other at I'On and any damages resulting from said actions.

111. The I'On Company, I'On Club, I'On Realty, and I'On Group were operating together as joint venturers, members, and/or agents in the development, marketing, management, and sale of the lots at I'On. As such, these Defendants are amalgamated in a manner in which they were all operating as one in the same.

112. The I'On Company, I'On Club, I'On Realty, and I'On Group were owned and operated by substantially the same principals and/or used the same trade names at all times relevant to the development, marketing, management, and sale of the lots at I'On. Hence, these Defendants are amalgamated so as to blur the legal distinctions of said entities.

113. The I'On Company, I'On Club, I'On Realty, and I'On Group failed to observe necessary corporate formalities, were undercapitalized, and/or were otherwise so intermingled that each has become the alter ego of the other or are all amalgamated.

114. The I'On Company's, I'On Club's, I'On Realty's, and I'On Group's conduct and abuse of the corporate form have resulted in fundamental unfairness to Plaintiffs.

115. The I'On Company's, I'On Club's, I'On Realty's, and I'On Group's abuse of the corporate form makes it appropriate and just that any liability imposed on one of these Defendants, be imposed upon the other Defendants.

FOR A ELEVENTH CAUSE OF ACTION
(Tortious Interference With Contract – As to 148 Civitas, LLC & Russo)

116. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

117. Defendants knew and were aware of the I'On Defendants' contractual obligation to transfer the Creekside Park and Community Dock to The Assembly and the Plaintiffs' prospective economic advantages relating to said amenities; Defendants intentionally procured the I'On Defendants breach thereof, without justification; which act as proximately damaged Plaintiffs, The Assembly, and its members in an amount to be determined by the trier of fact.

FOR A TWELFTH CAUSE OF ACTION
(Aiding and Abetting – As to 148 Civitas, LLC & Russo)

118. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

119. The I'On Defendants had contractual obligations and fiduciary duties requiring the I'On Defendants to convey the Creekside Park and Community Dock to The Assembly and its members.

120. In failing to convey the Creekside Park and Community Dock to The Assembly and its members, the I'On Defendants breached their contractual obligations and fiduciary duties to Plaintiffs.

121. Defendants 148 Civitas and Russo aided and abetted the I'On Defendants' breach of contract, breach of fiduciary duty and/or the I'On Defendants' otherwise wrongful activities in connection with the failed conveyance of the Community Dock and Creekside Park.

122. 148 Civitas and Russo knew of the Plaintiffs' interest in the Community Dock and Creekside Park and participated in the I'On Defendants' non-transfer of the Community Dock and Creekside Park to Plaintiffs.

123. As a direct and proximate result of 148 Civitas' and Russo's aiding and abetting the I'On Defendants' multiple breaches, Plaintiffs have suffered actual, consequential and special damages, including but not limited to, loss of economic opportunity and loss of unfettered deep water access.

124. Plaintiffs are entitled to judgment against 148 Civitas and Russo for actual and punitive damages for aiding and abetting the I'On Defendants' multiple breaches and misconduct.

WHEREFORE, Plaintiffs prays for a judgment of this Court for themselves, The Assembly, and its members:

1. actual, consequential, special, statutory, and punitive damages;
2. specific performance and injunctive relief;
3. the imposition of a construction trust in favor of the Plaintiffs regarding the property and proceeds obtained by 148 Civitas, Russo and/or the I'On Defendants through the unlawful means described above;
4. attorney fees and costs; and
5. such other relief as has been plead or is proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua F. Evans
Dabny Lynn
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
T: (843) 849-8400
F: (843) 849-8406

January 2, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	)	
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.		

Verification of Brad J. Walbeck

2014 JAN -9 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Brad J. Walbeck, hereby verify, that the facts and allegations in the Third Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Brad J. Walbeck

SWORN to and subscribed before me
this 9 day of January, 2014

Bradley Tirevino
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10/23/20

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	)	**Verification of Lea Ann Adkins**
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.	)	

2014 JAN -9 PM 3:50
JULIE J. ARMSTRONG
CLERK OF COURT
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I, Lea Ann Adkins, hereby verify, that the facts and allegations in the Third Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Lea Ann Adkins

SWORN to and subscribed before me
this 9 day of January, 2014

Brooke Trevino
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 6/23/20

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-10490

BRAD J. WALBECK and LEA ANN ADKINS, individually and derivatively on behalf of THE I'ON ASSEMBLY, INC.,

Plaintiff,

v.

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); 148 CIVITAS, LLC; MIKE RUSSO; AND I'ON ASSEMBLY, INC.

Defendants.

ANSWER TO THIRD AMENDED COMPLAINT AND COUNTERCLAIM OF DEFENDANTS THE I'ON COMPANY, LLC; I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; AND I'ON REALTY, LLC

FILED
2014 APR 9 P 2:21
CHARLESTON COUNTY
CLERK OF COURT

COME NOW Defendants The I'On Company, LLC; I'On Club, LLC; The I'On Group, LLC f/k/a Civitas, LLC; Vince Graham; Tom Graham; and I'On Realty, LLC (collectively the "I'On Defendants"), by and through counsel, and answer Plaintiffs' Third Amended Complaint as follows:

GENERAL DENIAL

The I'On Defendants deny all allegations of the Third Amended Complaint not specifically admitted herein.

FIRST DEFENSE AND ANSWER

1. The I'On Defendants admit the allegations of Paragraph 1, upon information and belief.

2. The I'On Defendants admit the allegations of Paragraph 2, upon information and belief.

3. The I'On Defendants admit the allegations of Paragraph 3, upon information and belief.

4. The I'On Defendants admit the allegations of Paragraph 4, upon information and belief.

5. The I'On Defendants admit the allegations of Paragraph 5.

6. The I'On Defendants admit the allegations of Paragraph 6.

7. The I'On Defendants deny the allegations of Paragraph 7.

8. The I'On Defendants admit the allegations of Paragraph 8.

9. The I'On Defendants deny the allegations of Paragraph 9.

10. The I'On Defendants admit the allegations of Paragraph 10.

11. The I'On Defendants deny the allegations of Paragraph 11.

12. The I'On Defendants deny the allegations of Paragraph 12.

13. The I'On Defendants deny the allegations of Paragraph 13.

14. I'On Defendants admit the allegations of Paragraph 14.

15. The I'On Defendants deny the allegations of Paragraph 15.

16. The I'On Defendants admit the allegations of Paragraph 16, upon information and belief.

17. The I'On Defendants deny the allegations of Paragraph 17.

18. The I'On Defendants are without information sufficient to form a belief as to the allegations of Paragraph 18 and therefore deny same.

19. The I'On Defendants are without information sufficient to form a belief as to the allegations of Paragraph 19 and therefore deny same.

20. Responding to Paragraph 20, The I'On Defendants admit that the I'On Assembly is a corporation formed under the laws of the State of South Carolina, but deny the remaining allegations of Paragraph 20.

21. The I'On Defendants admit the allegations of Paragraph 21.

22. Responding to Paragraph 22, the I'On Defendants admit that ownership of property in I'On gives Plaintiffs Walbeck and Adkins such rights and privileges as are provided for in the I'On [CCRs], and crave reference to that document for a full description of such rights and privileges. The I'On Defendants deny any allegations of this Paragraph inconsistent with the language of the [CCRs], and deny all further allegations of Paragraph 22.

23. The I'On Defendants deny the allegations of Paragraph 23.

24. The I'On Defendants admit the allegations of Paragraph 24.

25. The I'On Defendants admit the allegations of Paragraph 25, upon information and belief.

26. The I'On Defendants admit the allegations of Paragraph 26, upon information and belief.

27. The I'On Defendants deny the allegations of Paragraph 27.

28. The I'On Defendants admit that other prospective purchasers were provided the 1998 Property Report before the report was amended in 2000, and deny remaining allegations.

29. The I'On Defendants admit that a small percentage of purchasers in I'On were provided the 1998 Property Report before the report was amended in 2000 and deny remaining allegations.

30. Responding to Paragraph 30, the I'On Defendants state that the Property Report is a document which speaks for itself and crave reference thereto. The I'On Defendants deny any allegations of Paragraph 30 inconsistent with the Property Report.

31. The I'On Defendants deny the allegations of Paragraph 31.

32. The I'On Defendants deny the allegations of Paragraph 32.

33. The I'On Defendants deny the allegations of Paragraph 33.

34. The I'On Defendants deny the allegations of Paragraph 34.

35. Responding to Paragraph 35, the I'On Defendants admit that The I'On Company amended the property report as of April 10, 2000, and deny the remaining allegations therein.

36. The I'On Defendants deny the allegations of Paragraph 36.

37. The I'On Defendants deny the allegations of Paragraph 37.

38. The I'On Defendants deny the allegations of Paragraph 38.

39. The I'On Defendants deny the allegations of Paragraph 39.

40. The I'On Defendants deny the allegations of Paragraph 40.

41. Responding to Paragraph 41, the I'On Defendants admit that The I'On Company transferred property to I'On Club on or about August 15, 2000, and that I'On Club transferred property to 148 Civitas on or about August 5, 2009, and further deny the remaining allegations therein.

42. The I'On Defendants deny the allegations of Paragraph 42.

43. The I'On Defendants deny the allegations of Paragraph 43.

44. The I'On Defendants deny the allegations of Paragraph 44.

45. Responding to Paragraph 45, the I'On Defendants crave reference to the writing referred to and deny any allegations inconsistent therewith.

46. Responding to Paragraph 46, the I'On Defendants crave reference to the writing referred to and deny any inconsistent allegations and all remaining allegations.

47. The I'On Defendants admit the allegations of Paragraph 47, upon information and belief.

48. The I'On Defendants currently are without information sufficient to form a belief as to the allegations of Paragraph 48 and therefore deny the same.

49. The I'On Defendants deny the allegations of Paragraph 49.

50. The I'On Defendants deny the allegations of Paragraph 50.

51. The I'On Defendants deny the allegations of Paragraph 51.

52. The I'On Defendants deny the allegations of Paragraph 52 as stated.

53. The I'On Defendants deny the allegations of Paragraph 53.

54. The I'On Defendants deny the allegations of Paragraph 54.

55. The I'On Defendants deny the allegations of Paragraph 55.

56. The I'On Defendants deny the allegations of Paragraph 56.

57. Responding to Paragraph 57, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

58. The I'On Defendants deny the allegations of Paragraph 58.

59. The I'On Defendants deny the allegations of Paragraph 59.

60. The I'On Defendants deny the allegations of Paragraph 60.

61. The I'On Defendants deny the allegations of Paragraph 61.

62. Responding to Paragraph 62, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

63. The I'On Defendants deny the allegations of Paragraph 63.

64. The I'On Defendants deny the allegations of Paragraph 64.

65. The I'On Defendants deny the allegations of Paragraph 65.

66. The I'On Defendants deny the allegations of Paragraph 66.

67. The I'On Defendants deny the allegations of Paragraph 67.

68. Responding to Paragraph 68, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

69. The I'On Defendants deny the allegations of Paragraph 69.

70. The I'On Defendants deny the allegations of Paragraph 70.

71. The I'On Defendants deny the allegations of Paragraph 71.

72. The I'On Defendants deny the allegations of Paragraph 72.

73. Responding to Paragraph 73, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

74. The I'On Defendants deny the allegations of Paragraph 74.

75. The I'On Defendants deny the allegations of Paragraph 75.

76. Responding to Paragraph 76, the I'On Defendants admit that access to the recreational facilities and amenities provided in I'On is valuable to resident customers and deny the remaining allegations therein.

77. The I'On Defendants deny the allegations of Paragraph 77.

78. Responding to Paragraph 78, the I'On Defendants are without sufficient information to form a response absent further identification of particular representations by particular defendants; however, the I'On Defendants further state that they are aware of no false representations regarding conveyance of a Creekside Park and a Community Dock to the Assembly.

79. The I'On Defendants deny the allegations of Paragraph 79.

80. The I'On Defendants deny the allegations of Paragraph 80.

81. The I'On Defendants deny the allegations of Paragraph 81.

82. The I'On Defendants deny the allegations of Paragraph 82.

83. The I'On Defendants deny the allegations of Paragraph 83.

84. Responding to Paragraph 84, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

85. The I'On Defendants deny the allegations of Paragraph 85.

86. The I'On Defendants deny the allegations of Paragraph 86.

87. Responding to Paragraph 87, the I'On Defendants admit that The I'On Company owed to Plaintiff the standard duties that a seller owes a purchaser under the circumstances, and deny the remaining allegations therein.

88. The I'On Defendants deny the allegations of Paragraph 88.

89. The I'On Defendants deny the allegations of Paragraph 89.

90. The I'On Defendants deny the allegations of Paragraph 90.

91. Responding to Paragraph 91, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

92. The I'On Defendants deny the allegations of Paragraph 92.

93. The I'On Defendants deny the allegations of Paragraph 93.

94. The I'On Defendants deny the allegations of Paragraph 94.

95. Responding to Paragraph 95, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

96. Paragraph 96 states a legal conclusion to which no response is required.

97. The I'On Defendants deny the allegations of Paragraph 97.

98. The I'On Defendants deny the allegations of Paragraph 98.

99. The I'On Defendants deny the allegations of Paragraph 99.

100. The I'On Defendants deny the allegations of Paragraph 100.

101. The I'On Defendants deny the allegations of Paragraph 101.

102. Responding to Paragraph 102, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

103. The I'On Defendants deny the allegations of Paragraph 103.

104. The I'On Defendants deny the allegations of Paragraph 104.

105. Responding to Paragraph 105, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

106. The I'On Defendants deny the allegations of Paragraph 106.

107. The I'On Defendants deny the allegations of Paragraph 107.

108. The I'On Defendants deny the allegations of Paragraph 108.

109. Responding to Paragraph 109, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

110. The I'On Defendants deny the allegations of Paragraph 110.

111. The I'On Defendants deny the allegations of Paragraph 111.

112. The I'On Defendants deny the allegations of Paragraph 112.

113. The I'On Defendants deny the allegations of Paragraph 113.

114. The I'On Defendants deny the allegations of Paragraph 114.

115. The I'On Defendants deny the allegations of Paragraph 115.

116. Responding to Paragraph 116, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

117. The I'On Defendants deny the allegations of Paragraph 117.

118. Responding to Paragraph 118, the I'On Defendants restate all of the foregoing responses to the allegations of the Second Amended Complaint.

119. The I'On Defendants deny the allegations of Paragraph 119.

120. The I'On Defendants deny the allegations of Paragraph 120.

121. The I'On Defendants deny the allegations of Paragraph 121.

122. The I'On Defendants deny the allegations of Paragraph 122.

123. The I'On Defendants deny the allegations of Paragraph 123.

124. The I'On Defendants deny the allegations of Paragraph 124.

125. The I'On Defendants deny the allegations of the WHEREFORE paragraph and all of its subparts.

SECOND DEFENSE
(Failure to State a Claim)

126. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief may be granted.

THIRD DEFENSE
(Statute of Limitations)

127. Plaintiffs' claims are barred by the statute of limitations.

FOURTH DEFENSE
(Lack of Standing/Jurisdiction)

128. Plaintiffs' derivative claims are barred because they lack standing to bring such claims and the Court therefore lacks jurisdiction to hear them.

FIFTH DEFENSE
(Laches)

129. Plaintiffs' claims are barred by the doctrine of laches.

SIXTH DEFENSE
(Unclean Hands)

130. Plaintiffs' claims are barred by the doctrine of unclean hands.

SEVENTH DEFENSE
(Statute of Frauds)

131. Plaintiffs' claims are barred by the statute of frauds.

EIGHTH DEFENSE
(Waiver)

132. To the extent Plaintiffs had any cognizable claims, they have waived them.

NINTH DEFENSE
(Failure to Mitigate)

133. To the extent Plaintiffs suffered any damages as a result of the allegations in the Third Amended Complaint, they failed to mitigate them.

FURTHER ANSWERING THE THIRD AMENDED COMPLAINT AND BY WAY OF COUNTERCLAIM
(Abuse of Process)

134. The I'On Defendants restate and incorporate here all of their foregoing admissions, averments, and responses.

135. Upon information and belief, this action was filed as a result of the efforts of certain I'On residents, some of whom are not party to the action, to harass or injure one or more of the I'On Defendants.

136. Such I'On residents have continually challenged the actions of the I'On Defendants over the past several years.

137. Such I'On residents' challenges have been unsuccessful.

138. One such I'On resident, Plaintiff Adkins, threatened suit in 2009 based on allegations substantially similar to those pleaded in Plaintiffs' Complaints and the amendments thereto.

139. Plaintiffs' claims are time-barred and are subject to dismissal. In any instance where Plaintiffs' claims may avoid outright dismissal, such avoidance is solely by virtue of unspecified allegations of misrepresentations by unspecified Defendants at unspecified times, contrary to the specific pleading requirements for fraud or misrepresentation provided by the South Carolina Rules of Civil Procedure.

140. Upon information and belief, the present action was filed in the course and as part of a continued and unjustified campaign to harass or injure the I'On Defendants, and not for the purpose of seeking a remedy for any damages from a legally cognizable wrong.

141. Plaintiffs filed their Complaint and the amendments thereto for the unauthorized and illegitimate collateral objectives of harm, embarrassment, and financial burden to one or more of the I'On Defendants.

142. Plaintiffs have engaged in willful acts in the improper use of process, including without limitation:

a. filing the Complaint and amendments thereto in the present action;

b. verifying unfounded allegations in support of the Complaint and amendments thereto;

c. filing or serving motions, discovery responses, and other papers in the case, whether before or after filing of the present counterclaim; and

d. in such other particulars as the I'On Defendants may present at trial.

143. As an actual and proximate result of Plaintiffs' wrongful acts, the I'On Defendants have suffered damages including the costs and attorney's fees required to defend this action.

144. The I'On Defendants are entitled to recover compensatory damages, including without limitation their attorney's fees and costs.

145. Plaintiffs' acts pleaded herein were done willfully, wantonly, and with reckless disregard to the rights of the I'On Defendants. The I'On Defendants therefore are entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, The I'On Defendants pray the Court to:

i. Enter an order declaring that Plaintiffs shall have and recover nothing from The I'On Defendants;

ii. Enter an order in favor of the I'On Defendants on their counterclaim and award all recoverable damages, including without limitation reasonable attorney's fees and costs.

iii. Tax the costs of this action against Plaintiffs, including attorney's fees and costs; and

iv. Provide such other relief in this action as may be just and proper.

This 14th day of January, 2014 at Charleston, South Carolina.

Brian C. Duffy
bduffy@duffyandyoung.com
J. Rutledge Young, III
ryoung@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for the I'On Defendants

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. _____

THE I'ON COMPANY, LLC and THE I'ON CLUB, LLC,

Plaintiffs,

v.

THE I'ON ASSEMBLY, INC.; BRAD J. WALBECK; AND LEE ANN ADKINS,

Defendants.

FILED
2014 MAY 12 AM 10:50
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COMPLAINT

COME NOW Plaintiffs, The I'On Company, LLC and the I'On Club, LLC, ("Plaintiffs"), by and through counsel, and state as follows:

PARTIES

1. The I'On Company, LLC ("I'On Company") is a limited liability company formed and existing under the laws of South Carolina. The I'On Company is a party to the Recreational Easement and Agreement to Share Costs recorded in Deed Book M342, Page 051 at the Charleston County RMC Office (the "Recreational Easement"). A true and correct copy of the Recreational Easement is attached hereto as Exhibit 1.

2. The I'On Club, LLC ("I'On Club") is a limited liability company formed and existing under the laws of South Carolina. The I'On Company is a party to the Recreational Easement and previous owner of the I'On Club and related property.

3. The I'On Assembly, Inc. ("Assembly") is a nonprofit corporation formed and existing under the laws of South Carolina. The I'On Assembly is a party to the Recreational Easement. The Assembly is the current owner of the property at issue.

4. Brad J. Walbeck ("Walbeck") is a resident of Charleston County, South Carolina and an owner of real estate located in the I'On subdivision. He is a plaintiff in a civil action in the Charleston County Court of Common Pleas, Case No. 2010-CP-10-10490 ("Walbeck Action").

5. Walbeck purports to bring claims in the Walbeck Action both individually and derivatively on behalf of the I'On Assembly.

6. Lea Ann Adkins ("Adkins") is a resident of Charleston County, South Carolina and an owner of real estate located in the I'On subdivision. She is also plaintiff in the Walbeck Action.

7. Adkins purports to bring claims in the Walbeck Action individually and derivatively on behalf of the I'On Assembly.

STATEMENT OF FACTS

8. I'On is a planned community which the I'On Company developed in Charleston County.

9. The Assembly is the I'On homeowners' association and is the entity charged with administering the Declaration of Covenants, Conditions, and Restrictions for I'On recorded in Deed Book 297, Page 282 of the RMC Office for Charleston County, South Carolina (the "Declaration"). A true and correct copy of the Declaration is attached hereto as Exhibit 2.

10. The Recreational Easement describes Club Property as including recreational facilities including a boat ramp and dock and a driveway and parking area to serve them, defined by the Recreational Easement as "Boating Facilities," for the use enjoyment of I'On Club members and "such other persons as Club Owner may authorize." (Recreational Easement at 1-2).

11. At the time the Recreational Easement was executed, the I'On Company still held title to the real property encompassing the Club Property described by Exhibit B of the Recreational Easement.

12. At the time the Recreational Easement was executed, the I'On Club was expected to become the owner of the "Club Property" described by Exhibit B of the Recreational Easement.

13. The Recreational Easement was executed by I'On Company, I'On Club, and Assembly on February 9, 2000, and was recorded on February 15, 2000.

14. The I'On Club acquired ownership of the real property encompassing the Club Property on August 15, 2000.

15. From the execution of the Recreational Easement in February, 2000 until August, 2009, I'On Company, I'On Club, and the Assembly continuously operated under the Recreational Easement.

16. In August 2009, the I'On Club sold the Club Property to 148 Civitas, LLC ("148 Civitas"), a limited liability company formed and existing under the laws of South Carolina. The deed transferring the Club Property from the I'On Club to 148 Civitas was recorded in Deed Book 73, Page 784 of the RMC Office for Charleston County, South Carolina (the "148 Civitas Deed"). A true and correct copy of the 148 Civitas Deed is attached hereto as Exhibit 3. The 148 Civitas Deed stated specifically that 148 Civitas' interests were expressly subject to the Recreational Easement. (See 148 Civitas Deed, Exhibit B at §8).

17. 148 Civitas and the I'On Club entered into a supplemental easement, entitled the "Assignment of Certain Club Owner's Rights and obligations Under Recreational Easement and Agreement to Share Costs," recorded in Deed Book 73, Page 776 of the RMC Office for Charleston County, South Carolina (the "Supplemental Easement"). A true and correct copy of the Supplemental Easement is attached hereto as Exhibit 4. The Supplemental Easement specifically incorporated the Recreational Easement and did not alter the Assembly's rights and obligations under the Recreational Easement. The Supplemental Easement obligated both 148 Civitas and the I'On Club to operate under the Recreational Easement as "Club Owner."

18. Following the sale, 148 Civitas, the I'On Club, the I'On Company, and the Assembly continued to operate under the Recreational Easement.

19. Under the terms of the Recreational Easement, the Assembly was provided an easement for the use and enjoyment of the Boating Facilities. Such easement is "a perpetual, nonexclusive easement" allowing the Assembly and its members the right to use the driveways and parking areas within Club Property, the "boat ramp which is part of the Boating Facilities," and "the boat dock which is part of the Boating Facilities." (Recreational Easement at Art. I § 1.1).

20. Notwithstanding any other provision of the Recreational Easement, it was and is the Plaintiffs' intent and understanding that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement be perpetual.

21. Notwithstanding any other provision of the Recreational Easement, it was and is the Assembly's intent and understanding that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement be perpetual.

22. On December 22, 2010, Brad J. Walbeck filed the Walbeck Action. The Assembly was initially named as a defendant in the Walbeck Action, along with the I'On Company, the I'On Club, 148 Civitas, and a number of other defendants. A copy of the Third Amended Complaint in the Walbeck Action is attached hereto as Exhibit 5.

23. The Court has since realigned the Assembly as a party Plaintiff. A copy of the Court's Order Realigning I'On Assembly, Inc. as a Party Plaintiff filed in the Walbeck Action on February 26, 2014 is attached hereto as Exhibit 6.

24. On February 20, 2014, 148 Civitas transferred the Club Property, including the Boating Facilities, to the Assembly. A true and correct copy of the limited warranty deed transferring the Club Property from 148 Civitas to the Assembly is attached hereto as Exhibit 7.

25. Following the transfer of the Club Property to the Assembly, the I'On Club, the I'On Company, and the Assembly continued to operate under the Recreational Easement.

26. As 148 Civitas represented to the Court in the Walbeck Action, it was 148 Civitas' intent and understanding that the Assembly had an undisputed, perpetual easement to use all of the Boating Facilities located on the Club Property pursuant to the Recreational Easement.

27. The Assembly has represented in the Walbeck Action that the easement to use all of the Boating Facilities located on the Club Property is perpetual.

28. Defendants Walbeck and Adkins, purporting to act on behalf of the Assembly in the Walbeck Action, have asserted that the Recreational Easement is invalid and that, if valid, its provisions are limited to a thirty-year term.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment as to Validity)

29. Plaintiffs incorporate by reference the allegations of paragraphs 1 through 28 of this Complaint as if fully set forth herein.

30. Under S.C. Code §§ 15-53-30 and -40, Plaintiffs are entitled to have any question of validity of the Recreational Easement determined and obtain a declaration of rights, status, or other legal relations thereunder, before or after a breach thereof.

31. All parties to the Recreational Easement have demonstrated intent that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement be valid.

32. All parties to the Recreational Easement have operated under the Recreational Easement with respect to the easement for the use and enjoyment of the Boating Facilities granted to the Assembly.

33. The Recreational Easement was recorded, making the Assembly's easement for the use and enjoyment of the Boating Facilities valid with respect to subsequent purchasers of the Club Property.

34. Following the sale of the Club Property by the I'On Club to 148 Civitas, both entities evidenced their intent that the Assembly's easement for use and enjoyment of the Boating Facilities be valid and enforceable with respect to 148 Civitas.

35. Plaintiffs are entitled to a declaratory judgment of this Court that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement is valid.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment as to Duration)

36. Plaintiff incorporates by reference the allegations of paragraphs 1 through 35 of this Complaint as if fully set forth herein.

37. Under S.C. Code §§ 15-53-30 and -40, Plaintiff is entitled to have any question of construction of the Recreational Easement determined and obtain a declaration of rights, status, or other legal relations thereunder, before or after a breach thereof.

38. All parties to the Recreational Easement have evidenced their intent that the Assembly's easement for the use and enjoyment of the Boating Facilities is perpetual.

39. Plaintiffs are entitled to a declaratory judgment of this Court that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement is perpetual.

WHEREFORE, Plaintiffs respectfully pray this this Court for a judgment declaring that the easement for the use and enjoyment of the Boating Facilities granted to the Defendant I'On Assembly by the Recreational Easement and Agreement to Share Costs recorded in Deed Book M342, Page 051 at the Charleston County RMC Office is valid and is perpetual, and granting such other and further relief as the Court may deem just and proper.

(Signature on Following Page)

This 12th day of May, 2014 at Charleston, South Carolina.

Brian C. Duffy
bduffy@duffyandyoung.com
Seth W. Whitaker
swhitaker@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for the Plaintiffs

EXHIBIT 1

BK M 342PG051

INDEXING NOTE: Please cross-reference to Declaration recorded at: Deed Book ~~XXXX~~ C297 Page ~~XXXX~~ 282

Prepared by/Record and return to:

Joseph E. Barnes
The I'On Company, L.L.C.
159 Civitas Street
Mt. Pleasant, South Carolina 29464

THIS SPACE FOR RECORDER'S USE

RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS

THIS RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS ("Agreement") is made this 9th day of February, 2000, by and between I'ON CLUB, LLC, a South Carolina limited liability company ("Club Owner"), THE I'ON COMPANY, L.L.C., a South Carolina limited liability company ("Developer"), and I'ON ASSEMBLY, INC., a South Carolina nonprofit corporation ("Assembly").

BACKGROUND STATEMENT

WHEREAS, I'On is a planned community which Developer is developing in Charleston County, South Carolina (the **"Community"**); and

WHEREAS, the Assembly is the entity charged with administering that Declaration of Covenants, Conditions, and Restrictions for I'On recorded in Deed Book 297, Page 282 of the Registry of Mesne Conveyances for Charleston County, South Carolina, as such Declaration may be amended or supplemented from time to time (**"Declaration"**), and maintaining and operating certain property described therein as **"Commons"**; and

WHEREAS, the Commons consists of such real property and interests therein as the Assembly owns or otherwise holds possessory or use rights in for the common use and enjoyment of the owners of property subject to the Declaration or their lessees, the occupants of their property, and their guests and invitees, and such other persons as the Declaration or the Assembly's Board of Trustees may authorize; and

WHEREAS, Developer is the owner of the property described on Exhibit "A"of this Agreement (**"Eastlake and the Amenity Area"**), which Developer intends to convey to the Assembly as a part of the Commons; and

WHEREAS, Club Owner is the owner of the real property described on Exhibit "B" of this Agreement (the **"Club Property"**), on which it has constructed or intends to construct certain recreational facilities, including a boat ramp and dock and a driveway and parking area to

serve them (**"Boating Facilities"**), for the use and enjoyment of those persons who apply, are approved, and pay the required fees for membership in a club established by Club Owner known as the I'On Club (the **"Club Members"**) and such other persons as Club Owner may authorize; and

WHEREAS, the Assembly desires to acquire and Club Owner is willing to grant a nonexclusive easement over the Club Property for access to and use and enjoyment of the Boating Facilities by the owners of property subject to the Declaration or their lessees, the occupants of such property, and their guests, in common with such other persons as Club Owner may authorize; and

WHEREAS, the Assembly and Club Owner desire to provide for a reasonable allocation between them of the costs which Club Owner incurs in maintaining, repairing, replacing, insuring and operating those portions of the Club Property subject to such easement; and

WHEREAS, Club Owner desires to obtain a right of access to and use of Eastlake and the Amenity Area for the purpose of sponsoring various clinics, lessons, and recreational activities for such Club Members and others as Club Owner may authorize to participate; and

WHEREAS, pursuant to Section 5-103(c) of the Declaration, the Assembly, acting through its Board of Trustees, is authorized to grant easements, licenses and similar interests over the Commons for any lawful purpose which its Board of Trustees determines to be consistent with the interests of the Assembly; and

WHEREAS, the Assembly's Board of Trustees has determined that it is in the interests of the Assembly to promote sponsorship of clinics, lessons and other recreational activities within the Community and to enter into this Agreement; and

WHEREAS, Developer, as the current owner of Eastlake and Amenity Area, is willing to grant an easement over Eastlake and the Amenity Area to Club Owner for such purpose;

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Club Owner, Assembly, and Developer hereby agree as follows:

Article I
Easements

1.1. Easement for Use and Enjoyment of Boating Facilities.

(a) Subject to subsection (b) below, Club Owner hereby grants to Assembly, for the benefit of the owners of property subject to the Declaration or their lessees, the occupants of such

property, and their guests, in common with such other persons as Club Owner may authorize, a perpetual, nonexclusive easement over and on:

(i) the driveways and designated parking areas within the Club Property, for the purposes of vehicular and pedestrian access to the Boating Facilities and temporary parking of vehicles and boat trailers, for periods not to exceed 12 hours in any 24 hour period without Club Operator's express permission, while using the Boating Facilities or while the boat launched from such trailer is in the water; and

(ii) the boat ramp which is part of the Boating Facilities, for the purpose of launching and recovery of boats; and

(iii) the boat dock which is part of the Boating Facilities, for the purpose of temporary docking of boats for periods not to exceed 8 hours in any 24 hour period, and for use and enjoyment of the dock by pedestrians, for fishing, and for such other purposes as Club Owner may permit.

(b) The foregoing easement shall be subject to:

(i) the right of Club Owner to adopt and amend reasonable rules and regulations pertaining to the use of the Boating Facilities, including, without limitation, rules establishing operating hours, limitations on and fees for guest use, and parking and traffic regulations; provided, any such rules and regulations shall apply uniformly to Club Members and other authorized users of the Boating Facilities;

(ii) the right of Club Owner to suspend the right of any person to use the Boating Facilities for any infraction of such rules and regulations and to recover from the Assembly or from such person all costs which Club Owner incurs in repairing any damage to the Club Property or the Boating Facilities resulting from the negligence, recklessness, or willful misconduct of any person exercising such easement;

(iii) the right of Club Owner to temporarily close or reserve the Boating Facilities from time to time, for limited periods of time, for maintenance and special events, including, without limitation, private parties, lessons, and similar activities;

(iv) the right of Club Owner to deny access to the Boating Facilities pursuant to this easement for any period during which the Assembly is delinquent in paying amounts owed to Club Owner hereunder; and

(v) the right of Club Owner to offer boat and/or tackle rentals, sell bait and offer similar items and services for a fee or other charge, and to appropriate for its exclusive use such portion of the Boating Facilities as Club Owner deems reasonably necessary to provide such items or services;

(vi) the right of Club Owner to install on the Club Property a fence, gate, key entry or other mechanisms or systems to limit access to the Boating Facilities by unauthorized persons and during times that the Boating Facilities are closed, and to require authorized users to purchase, for a fee not to exceed Club Owner's cost, a key, pass card or similar devices to gain access to the Boating Facilities; and

(vii) any other easements and restrictions of record affecting the Club Property.

1.2. Easement for Use and Enjoyment of Commons.

(a) Subject to subsection (b) below, Assembly hereby consents to the grant of, and Developer hereby grants to Club Owner, for the benefit of such Club Members, their guests, and other persons as Club Owner may authorize, a perpetual, nonexclusive easement over and on:

(i) the property described on Exhibit "A" as "Eastlake" and the boathouse and other facilities thereon, for purposes of boating, fishing, storing boats, boat rentals, and conducting clinics, lessons and other activities sponsored by Club Owner which do not materially adversely interfere with use of the lake by others and for which Club Owner may or may not charge a fee, in its discretion;

(ii) the property described on Exhibit "A" as "Amenity Area", for the purpose of engaging in games, sports and other recreational activities and conducting clinics and lessons sponsored by Club Owner, for which Club Owner may or may not charge a fee, in its discretion;

provided, no person may exercise this easement without the prior permission of Club Owner and then only to the extent authorized by Club Owner.

(b) The foregoing easement shall be subject to:

(i) the requirement that Club Owner make arrangements in advance with the Assembly before exercising the easement for group activities or in a manner that will materially limit the access to or use of such facilities by others;

(ii) the right of the Assembly to charge Club Owner reasonable user fees for use of the Commons by persons who are not otherwise authorized to use the Commons pursuant to the Declaration, and to charge Club Owner for any reasonable costs incurred and documented by the Assembly in making the facilities available to Club Owner, over and above its usual and customary costs, such fees and costs to be agreed upon between Club Owner and the Assembly in advance of such use;

(iii) the right of the Assembly to adopt and amend reasonable rules and regulations pertaining to the use of the Commons, including, without limitation, rules establishing operating hours and parking and traffic regulations; provided, any such rules and regulations shall apply uniformly to all authorized users of the Commons (whether authorized

pursuant to this Agreement or otherwise) and shall not unreasonably interfere with the ability of Club Owner to exercise the easement rights granted herein;

(iv) the right of the Assembly to suspend the right of any person to use the Commons for any infraction of such rules and regulations and to recover from any person exercising such easement all costs which the Assembly incurs in repairing any damage to the Commons resulting from the negligence, recklessness, or willful misconduct of any person exercising such easement;

(v) the right of the Assembly to temporarily close or reserve portions of the Commons from time to time, for limited periods of time, for maintenance and special events;

(vi) the right of the Assembly to install a fence, gate, key entry or other mechanisms or systems to limit access to portions of the Commons by unauthorized persons and during times that the Commons are closed, and to require authorized users to purchase, for a fee not to exceed the Assembly's cost, a key, pass card or similar devices to gain access; and

(vii) any other easements and restrictions of record affecting the Commons.

Article II
Obligation to Maintain and Insure

2.1. Maintenance Responsibility. Club Owner shall maintain the portions of the Club Property that are subject to an easement under Article I in good repair and in a manner consistent with the standard of maintenance generally prevailing within the Community. Assembly shall maintain Eastlake and the Amenity Area in good repair and in a manner consistent with the standard of maintenance generally prevailing within the Community.

2.2. Insurance Responsibility. Club Owner and the Assembly shall each obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available, on the property and facilities which it is obligated to maintain under Section 2.1:

(a) Property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements, in amounts sufficient to cover full replacement cost (less a reasonable deductible);

(b) Commercial general liability insurance, insuring such party for damage or injury caused by the negligence of such party or any of its employees, agents or contractors while acting on such party's behalf, in such amount as the party deems prudent; provided, if available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Each party shall have the other named as an additional insured under this coverage.

2.3. Right to Enforce. If either Club Owner or the Assembly fails to adequately to perform its maintenance responsibilities hereunder or fails to obtain and maintain insurance as required herein, the other party may notify it of such default and, unless the defaulting party takes affirmative steps to cure such default within a reasonable period of time set forth in the notice, the other may pursue any and all remedies available to it at law or in equity to enforce the defaulting party's obligations hereunder.

Article III
Obligation of Assembly to Share Costs

3.1. Covenant to Pay. The Assembly shall be obligated to pay to Club Owner assessments as provided for herein to cover a share of the costs incurred by Club Owner in maintaining, repairing, replacing, operating and insuring the Boating Facilities. Such obligation shall be a separate and independent covenant on the part of the Assembly, and no diminution or abatement of the Assembly's financial obligations hereunder or setoff shall be claimed or allowed by reason of any alleged failure of Club Owner to adequately maintain or insure the Boating Facilities, the sole remedy of the Assembly for failure of Club Owner to perform being suit at law or in equity.

3.2. Computation of Assessment.

(a) Not later than November 1 of each year, Club Owner shall prepare an estimated budget for maintenance, operation, repair, replacement and insurance of the Boating Facilities during the coming calendar year, including a reasonable and appropriate amount to be placed in a reserve fund for capital repairs to and replacement of improvements to the Boating Facilities (the "Budget"). The costs of operation shall include, by way of example and not limitation, utility costs, insurance premiums, and compensation and related costs of personnel who devote all or a portion of their time to the maintenance and/ or operation of the Boating Facilities (including, without limitation, any management personnel, and maintenance personnel), allocated in proportion to the average time devoted to matters relating to the Boating Facilities, if less than full time is so devoted.

(b) Not later than November 15 of each year, Club Owner shall send a copy of the Budget to the Assembly along with notice of the assessment for the Assembly's share of such costs. The Assembly's share shall be computed by multiplying the total Budget by a fraction, the numerator of which is the number of Lots subject to assessment under the Declaration as of November 1 of the year preceding the year for which the Budget is to be effective (y) and the denominator of which is that number (y) plus the number of memberships in the Club issued and outstanding to persons who do not own a Lot in the Community as of such date (z), reflected by the following formula:

$$\text{Assembly's} = \frac{y}{\quad} \times \text{Budget}$$

Share

y + z

(c) The total assessment levied for the Assembly's share of the Budget shall be payable in equal quarterly installments on or before the last day of each calendar quarter.

(d) In the event that the Club Owner for any reason fails to determine the Budget for any year, then until such time as a Budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

3.3. Adjustment for Actual Expenses. Within 60 days after the end of each fiscal year, Club Operator shall provide to the Assembly a statement of expenses for the previous year in an actual versus budget format. In the event that the actual expenses (including budgeted contributions to a reserve fund) for any year are less than reflected in the Budget, any excess amount paid by the Assembly for such year shall be credited against future amounts due from the Assembly. In the event that the actual expenses (including budgeted contributions to a reserve fund) for any year are greater than reflected in the Budget, the shortfall may be added to the Budget for the following year for purposes of computing the Assembly's assessment for that year.

3.4. Delinquencies; Collection. Any amounts due from the Assembly hereunder which are delinquent for a period of more than 10 days shall incur a late charge in the amount of $25.00 or 10% of the amount due, whichever is greater. In addition, the Assembly shall reimburse Club Owner for costs incurred in attempting to collect the past due amount, including reasonable attorneys' and paralegals' fees actually incurred, whether or not suit is filed. If the delinquent amount remains unpaid 45 days after the due date, Club Owner may institute suit to collect the delinquent amount, plus late charges, interest at the rate of 18% (or the maximum rate permitted by law, whichever is less) from the date first due and payable, and costs of collection, as described above. All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest and then to other delinquent amounts.

3.5. Expenditure of Funds. The assessments levied by Club Owner hereunder may be used for such purposes relating to the maintenance, operation, repair, replacement and insurance of the Boating Facilities as Club Owner deems appropriate. The judgment of Club Owner in the allocation and expenditure of such funds shall be final so long as such judgment is exercised in good faith, and neither Club Owner, its members, officers, or agents shall be liable to any person or entity for any error in judgment, or any action or inaction relating to the expenditure of such funds; provided, nothing herein shall protect any person from liability for gross negligence or willful misconduct in the handling of such funds.

3.6. Recordkeeping. Club Owner shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities under this Agreement. Such books and records and financial statements related thereto shall be made available for inspection and copying by the Assembly's officers, trustees, or agents upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be

paid by the Assembly or person requesting such copies. If the Assembly desires to have the records audited, it may do so at its own expense, and Club Owner shall cooperate by making available to the party performing the audit the records, including all supporting materials (e.g., check copies, invoices, etc.) for the year in question. If the amount of actual expenses for the year is disputed after audit, the Assembly and Club Owner shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by Club Owner by five (5%) percent or more, Club Owner shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by Club Owner by two (2%) percent or less, then the Assembly shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by Club Owner and the Assembly. Variances shall be taken into account in the following year's Budget as provided above.

Article IV
General

4.1. Amendment. This Agreement may be amended only by an instrument signed on behalf of the Assembly, with the approval of a majority of the members of its Board of Trustees, and by the Club Owner. Amendments to this Agreement shall become effective upon recordation in the Registry of Mesne Conveyances for Charleston County, South Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Agreement.

4.2. Term. This Agreement, as it may be amended pursuant to Section 4.1, shall have a term of 30 years and thereafter shall automatically be renewed for successive periods of 10 years each unless and until terminated by either party at the end of the initial or any renewal term by written notice to the other given not less than 6 months prior to the end of such term. However, if any of the covenants, conditions, restrictions, or other provisions of this Agreement shall be declared by a court of law to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

4.3. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any nonessential provision to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this Agreement are declared to be severable.

4.4. Notices. Any notice provided for in this Agreement shall be in writing and shall be deemed to have been duly given, if personally delivered, at the time of personal delivery, or if

mailed, on the second business day following the deposit of the envelope containing such notice in the United States Mail, registered or certified, first class postage prepaid, and properly addressed:

(a) if to Club Owner, at the address of the principal office of I'On Club, LLC in the State of South Carolina; or

(b) if to the Assembly, at the address of the principal office of I'On Assembly, Inc. in the State of South Carolina.

4.5. Indemnification; Assumption of Risk. Each party shall indemnify and hold harmless the other from any loss, damages, and costs, including reasonable attorneys and paralegal fees, which the indemnified party may incur as a result of the failure of persons exercising the easement granted to the other party herein to comply with the rules and regulations adopted for use of the property subject to such easement.

Each person exercising the easement rights granted hereunder assumes all risk of personal injury, including death, and loss or damage to personal property, arising out of their use of the property subject to the easement and agrees that the Assembly, Club Owner and their respective owners, members, officers, trustees, directors, agents and employees, shall have no liability for, and further agrees to indemnify and hold each of the foregoing harmless from, any and all claims arising out of any such injury, loss or damage, unless and except to the extent that such injury, loss or damage is the direct result of the gross negligence or willful misconduct of the party to be held liable.

4.6. Binding Effect; Successors and Assigns. This Agreement and the easements created herein shall run with the title to Eastlake and the Amenity Area and the Club Property and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in Eastlake and the Amenity Area or the Club Property, their successors, successors-in-interest and assigns, as well as the owners of the real property now and hereafter made subject to the Declaration and their respective successors and successors-in-title.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CLUB OWNER: I'ON CLUB, LLC, a South Carolina limited liability company

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By: _____
Name: Joseph E. Brana
Title: Manager

BK M 342PG060

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Club, LLC, a South Carolina limited liability company, by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

David E. Thompson

Sworn to before me this 9th day of February, 2000:

[Notarial Seal]

Linda M. German
Notary Public for the State of South Carolina
My Commission Expires: 3/2/2009

DEVELOPER: THE I'ON COMPANY, LLC, a South Carolina limited liability company

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By:
Name: Joseph E. Barnes
Title: Manager

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

BK M 342PG061

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Club, LLC, a South Carolina limited liability company, by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof:

David E. Thompson

Sworn to before me this 9th day of February, 2000:

[Notarial Seal]

Linda M. German
Notary Public for the State of South Carolina
My Commission Expires: 3/2/2009

ASSEMBLY: I'ON ASSEMBLY INC., a South Carolina nonprofit corporation

[Corporate Seal]

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By:
Name: Registered Joseph E. Barnes
Title: President

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

Linda M. German
Linda M. German (Printed Name)

BK M 342PG062

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Assembly, Inc., a South Carolina nonprofit corporation by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

David E. Thompson

Sworn to before me this 9th day of February, 2000:

[Notarial Seal]

Linda M. Herman
Notary Public for the State of South Carolina

My Commission Expires: 3/2/2009

523901/Club/Rec.Easmt/020700/jps

BK M C 42PG063

Exhibit "A"

Eastlake and the Amenity Area

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as "Eastlake, 13.48 acres" on a plat entitled "Plat of Eastlake Containing 13.48 Acres, Owned by The I'On Company, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated December 21, 1998, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book ED, Page 229, said tract having such size, shape, buttings, and boundings as shown on said plat;

TOGETHER WITH:

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as "Amenity Area, 109,934 square feet" on a plat entitled "Final Subdivision Plat of Lots 11-49, 60-69, Phase I-A, I'On, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated April 12, 1998, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book EC, Page 631, said tract having such size, shape, buttings, and boundings as shown on said plat;

Said tract butting and bounding according to said plat as follows: to the south on the right-of-way of Mathis Ferry Road, to the west on the right-of-way of Eastlake Road, to the north on a 20' Drainage Easement, and to the east on property now or formerly of R. E. Mevers (TMS #514-00-00-074).

BK M 342PG064

Exhibit "B"

Club Property

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as Lot CV-6 on a plat entitled "Conditional Subdivision Plat of Phase II, Subphases A-E, I'On, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated April 19, 1999, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book ED, Page 108-109, said tract having such size, shape, buttings, and boundings as shown on said plat;

Henry B. Fishburne, Jr.

20.00 B

BK M 342PG065

FILED

M 342-51

2000 FEB 15 PM 12:55

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

EXHIBIT 2

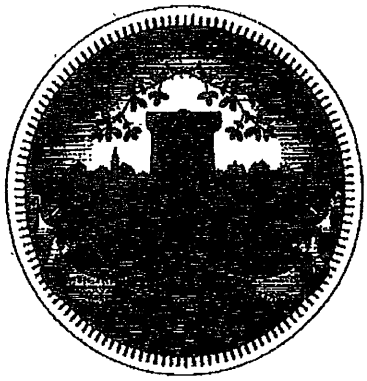
RC 297PG282

DECLARATION

OF COVENANTS, CONDITIONS, AND RESTRICTIONS

for

I'On



The I'On Company, LLC
P. O. Box 986
Mt. Pleasant, SC 29465

BK C 297PG283

DECLARATION

OF COVENANTS, CONDITIONS, AND RESTRICTIONS

for

I'On

The I'On Company, LLC
P. O. Box 986
Mt. Pleasant, SC 29465

(803) 971-1662

BK C 297PG284

"Sons of this Place, Let
This of you be said
That you who live are
Worthy of the Dead
These gave their lives that
You who live may reap
A richer Harvest ere
You sleep."
-Anon. (Inscription on Boston on the Watertown square monument.)

BK C 297PG285

- TABLE OF CONTENTS -

		Page
PREAMBLE		1
FOUNDER'S DECLARATION		2
ARTICLE I	General Provisions	3
1-101	Definitions	3
1-102	Applicability of Declaration and Jurisdiction of Assembly	3
1-103	Neighborhood Plan	3
ARTICLE II	I'On Assembly	4
2-101	Establishment of Assembly	4
2-102	Organization and Operation of the Assembly	4
2-103	Voting Rights	5
2-104	Assembly's Finances and Power of Assessment	5
2-105	Powers and Responsibilities of Assembly	6
ARTICLE III	Standards of Use, Conduct and Maintenance	8
3-101	Compliance with Governing Documents	8
3-102	Rulemaking Authority and Procedures	8
3-103	Limitations on Rulemaking Authority	9
3-104	Maintenance and Repair of Real Property	10
3-105	Special Use Lots	10
ARTICLE IV	Architectural Standards	10
4-101	General	10
4-102	I'On Design Committee	11
4-103	Scope of Review	11
4-104	Schedule for Review	11
4-105	Commencement and Completion of Construction	12
ARTICLE V	Easements	12
5-101	Validity of Easements	12
5-102	Easement of Use and Enjoyment	12
5-103	General Easements	12
5-104	Party Walls and Other Shared Structures	14
ARTICLE VI	The Commons	14
6-101	Title to the Commons	14
6-102	Control of the Commons	15
6-103	Condemnation or Taking	15
6-104	Damage to the Commons	15

BK C 297PG286

ARTICLE VII Insurance 15

7-101 Required Coverages 15
7-102 Policy Requirements 16

ARTICLE VIII Protection of Lenders 17

8-101 Right to Notice of Certain Actions 17

ARTICLE IX Founders Rights and Obligations 17

9-101 Duration of Founder's Rights and Obligations 17
9-102 Right to Complete Neighborhood Plan 18
9-103 Amendments and Other Actions Affecting the Founder 18
9-104 Assembly-Related Rights and Obligations 18
9-105 Easements for Development, Utilities and Other Purposes 19
9-106 Right to Develop, Build and Market 19
9-107 Founder's Power of Attorney to Amend Governing Documents 19
9-108 Right to Transfer or Assign Rights and Obligations 20

ARTICLE X I'On Trust 20

10-101 Authority to Collect Transfer Fee 20
10-102 Purpose of Transfer Fees 20
10-103 Exempt Transfers 21

ARTICLE XI Operation of Declaration 21

11-101 Duration of Declaration 21
11-102 Amendment 21
11-103 Enforcement 21
11-104 Interpretation 22

- TABLE OF EXHIBITS -

EXHIBIT	DESCRIPTION
A	Definitions of Significant Terms
B	Real Property Initially Comprising I'On
C	Real Property Subject to Annexation
D	Initial I'On Rules

BK C 297PG287

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
for
I'On

PREAMBLE

WE, THE FOUNDER AND ALL TITLEHOLDERS who now have or will come to own Real Property in I'On, located in Mount Pleasant, South Carolina, affirm and subscribe to the purposes and provisions of this Declaration and concur as to the material importance and value to all Titleholders of I'On of the principles set forth herein; further,

WE AFFIRM THE CENTRAL PURPOSE of this Declaration to be to provide for the overall development, administration, maintenance and preservation of the planned community of I'On for the benefit of all Titleholders.

WE FURTHER ENDORSE AND PLEDGE our support for and commitment to the provisions of this Declaration and the following principles which have materially influenced both the Neighborhood Plan for I'On and the formation of the I'On Assembly, an association comprised of all Titleholders established to own, operate and maintain various common areas and community improvements within I'On and to administer and enforce this Declaration and the other Governing Documents referenced herein:

On Stewardship:

To advance stewardship for the human and natural ecosystems of I'On;

On Civility and the Rights of Individuals

To encourage an advancing level of civility which promotes an individual's right to make personal lifestyle decisions so long as they do not interfere with or impair the personal or property rights of others, they uphold the integrity of the civic realm, and comply with the purpose and intent of this Declaration and the other Governing Documents for I'On, while recognizing that in order to promote the health, happiness and peace of mind of the majority, each person must give up a certain degree of freedom of choice for the benefit of the whole;

On Personal Enrichment:

To provide a cultural environment that engenders a desire to make I'On a community in which residents are better able to realize their individual potential by virtue of their participation in civic life;

On Individual Responsibility to the Community:

To foster active participation in the affairs of I'On in recognition that a direct relationship exists between the quality of life in a neighborhood and the degree to which its residents take part in the civic life of the community;

On Self Government:

To achieve, through the operation of this Declaration and the other Governing Documents and the good will of the Titleholders and residents of I'On, a neighborhood governing body that ceaselessly strives for harmony between all parties who own Real Property, live or work in I'On;

On Change and Duty:

In recognition that time and circumstance may alter the appropriateness of certain provisions of this Declaration, we hereby recognize that the evolution of a community is a dynamic process in which they key to success is the ability to adapt to those inevitable changes, in order to remain responsive to the needs and desires of its current Titleholders and residents and the generations to follow.

FOUNDER'S DECLARATION

AS FOUNDER, responsible for development of I'On, we hold the following to be true:

Freedom enlivens the human spirit.

Social and cultural diversity enrich a community.

Perfection, with regard to governing bodies, is not possible. However, striving for excellence is.

Vision and leadership are necessary elements to sustain and improve a community's health.

ACKNOWLEDGING THESE TRUTHS, we aspire to the following goals:

- To lay the foundation for a community which promotes neighborliness and civic life;
- To further the enjoyment of the natural resources of I'On and of the Lowcountry;
- To enhance the natural beauty of I'On;
- To foster creative human energy and the arts within I'On and the Town of Mount Pleasant;
- To provide a means of effective self-government of I'On, and to provide the early leadership for that government to set the example for those who follow;
- To nurture a respect and pride in craftsmanship;
- To build an exemplary model for the State of South Carolina which arouses her citizenry to restore and improve upon her planning and architectural traditions in order that her built environment be enhanced and her natural environment conserved for the benefit of ourselves and future generations.

NOW, THEREFORE, The I'On Company, LLC, as Founder and as the owner of the Real Property described in Exhibit B to this Declaration, does hereby declare this _____ day of_____, Nineteen Hundred and Ninety-Eight, that all of the Real Property described on Exhibit B, and such additional Real Property as may hereafter be included in accordance with the provisions of this Declaration, shall be known as

I'On

and shall hereafter be owned, held, used, enjoyed and conveyed subject to the terms of this Declaration, which shall run with the title to all such Real Property and shall be binding upon all Persons having any right, title or interest in such Real Property, their heirs, successors, successors-in-title and assigns.

ARTICLE I
General Provisions

"Every organization of men, be it social or political, ultimately relies on man's capacity for making promises and keeping them." - Hannah Arendt

§1-101 [Definitions]

The terms used in this Declaration are intended to have their normal, commonly understood meanings except as otherwise specified. Capitalized terms used in the Governing Documents shall have the meanings ascribed to them in Exhibit A, "Definitions of Significant Terms," unless the context specifies otherwise.

§1-102 [Applicability of Declaration and Jurisdiction of Assembly]

(a) This Declaration shall govern the ownership, development, and use, and the transfer or conveyance of any interest in, the Real Property now or hereafter comprising I'On. Except as may otherwise specifically be provided in this Declaration, the jurisdiction of I'On Assembly, Inc. shall extend to all of I'On, as it now exists or as it may be expanded.

(b) I'On shall initially include all of the Real Property described on Exhibit B, "Real Property Initially Comprising I'On". I'On may be expanded to include additional land upon the recordation of a Declaration of Annexation in the Public Records, specifying the Real Property to be annexed and signed by the owner of such Real Property. Declarations of Annexation filed by any person other than Founder, so long as Founder has any rights or obligations under Article IX, "Founder's Rights and Obligations," shall require Founder's prior written approval. Such additions shall be subject to Applicable Law and the following conditions:

(1) Founder may from time to time expand I'On to include all or any part of the land described in Exhibit C, as well as any land contiguous to that described in Exhibit C, until all of the land described on Exhibit C has been added to I'On or 20 years from the date of recording of this Declaration, whichever is earlier.

(2) Except for annexations by or with the consent of Founder as provided in § 1-102(a), any Declaration of Annexation shall be subject to the Approval of Titleholders entitled to cast seventy-five percent (75%) of the total votes held by Titleholders.

(3) A copy of any Declaration of Annexation shall be filed with the Assembly upon recording in the Public Records.

§ 1-103 [Neighborhood Plan]

Ordinance No. 97010 adopted by the Town of Mount Pleasant, South Carolina on March 11, 1997, as it may be amended, provides for the mixed use planned development known as I'On and sets forth a plan for the development of I'On (the "Neighborhood Plan"). For the purpose of beneficially securing and enriching the visual character of I'On, the Neighborhood Plan incorporates the I'On Code, which sets forth various design guidelines for construction within I'On. The I'On Code is intended to establish a consistent thematic harmony throughout I'On. Variances from the I'On Code may be granted on the basis of architectural merit.

The Neighborhood Plan and the I'On Code may be modified by Founder, subject to any necessary approval of the Town of Mount Pleasant, to accommodate and respond to changes in technological, economic, environmental, legal, and social conditions which affect the development, marketing, community operations, or achievement of the purposes and intent of this Declaration. Nothing in the Neighborhood Plan shall bind Founder to subject any land to the provisions of this Declaration or to develop any land in accordance with the Neighborhood Plan unless and until Founder records a Declaration of Annexation subjecting such land to this Declaration.

By acceptance of a deed conveying title to a Lot, the Titleholder of such Lot shall be deemed to consent to any amendments or modifications to the Neighborhood Plan, including amendments for the purpose of making technical corrections, defining easements and making boundary line adjustments affecting the Titleholder's Lot.

ARTICLE II
I'On Assembly

"An institution is but the lengthening shadow of one man." - Ralph Waldo Emerson

§ 2-101 [Establishment of Assembly]

The Founder has filed Articles of Incorporation for I'On Assembly, Inc., with the State of South Carolina, establishing the Assembly as a nonprofit corporation under South Carolina law. The Assembly is the primary body responsible for administering this Declaration. The Assembly is charged with duties and powers prescribed by law and the Governing Documents. The Assembly's primary purposes are to promote the purposes and intent of this Declaration, to carry out the duties assigned to it and exercise the authority granted to it under the Governing Documents, and to own, operate, manage, maintain and control certain properties for the benefit of Titleholders.

In accordance with its Articles of Incorporation and Applicable Law, the I'On Assembly may delegate any of its powers or duties, may merge with another organization similar in nature and purposes, or may assign its rights and obligations under the Governing Documents to any such organization. However, no such merger or assignment shall have the effect of revoking, changing, or adding to the provisions of this Declaration in the absence of an amendment to this Declaration adopted in accordance with Article IX.

§ 2-102 [Organization and Operation of the Assembly]

(a). Membership. There shall be two classes of membership in the Assembly, as follows:

(1) Founder. The Founder shall hold a Founder membership in the Assembly as long as it has any rights under Article IX of this Declaration.

(2) Titleholders. Each Titleholder shall automatically become a member of the Assembly upon taking title to a Lot in I'On and shall remain a member as long as such Titleholder continues to own any Real Property in I'On. There shall be only one membership per Lot. If title to a Lot is held jointly, all Titleholders of such Lot shall share the privileges and responsibilities of such membership. The membership rights of a Titleholder that is not a natural person may be exercised by any officer, director, member, partner or trustee, or by the individual designated from time to time by the Titleholder by written notice to the Assembly.

(b) Administration.

(1) Board of Trustees. Except to the extent that the Governing Documents or Applicable Law specifically provide for a vote of the membership, or of particular classes of members, for certain actions, or otherwise assign specific responsibilities to other bodies, all of the rights and powers of the Assembly shall be vested in a Board of Trustees selected as provided in the Bylaws and may be exercised without a vote of the membership.

(2) Board of Appeals. A Board of Appeals, consisting of three members to five members appointed by the Board of Trustees as set forth in the Bylaws, shall handle appeals from decisions of the Covenants Committee, in accordance with the Bylaws and such procedures as the Board of Appeals may establish. In addition, after termination of the Founder's right to appoint the I'On Design Committee pursuant to the Declaration, the Board of Appeals shall handle appeals from decisions of the I'On Design Committee in accordance with such procedures as the Board of Appeals may establish.

(3) I'On Design Committee. The I'On Design Committee, consisting of three to five members selected as provided in Article IV, shall act on Titleholders' requests for approval of proposed Improvements and changes to existing Improvements. After termination of the Founder's right to appoint the I'On Design Committee, Titleholders may appeal Design Committee decisions to the Board of Appeals.

(4) Covenants Committee. A Covenants Committee, consisting of three to five members appointed by the Board of Trustees as set forth in the Bylaws, shall investigate complaints regarding alleged breaches of the Governing Documents, conduct hearings and make rulings in accordance with the procedures set forth in the Bylaws, and recommend to the Board of Trustees appropriate sanctions or remedies for violations. Titleholders may appeal Covenants Committee's decisions to the Board of Appeals.

§ 2-103 [Voting Rights]

Titleholders must be in good standing with the Assembly to vote on matters arising before the Assembly. To be in good standing, a Titleholder must be current to within 30 days of the due date of all financial obligations to the Assembly. Voting rights shall be as follows:

(a) Titleholders. On any matter requiring a vote or the Approval of Titleholders under the Governing Documents, a Titleholder is entitled to one vote for each Lot as to which he or she is a Titleholder, except that there shall be only one vote for each Lot regardless of the number of Titleholders who jointly hold title to a Lot. In the case of a Lot to which title is held jointly, the vote for such Lot shall be cast as the joint Titleholders determine among themselves and advise the Secretary of the Assembly in writing prior to a vote being taken. In the absence of such advice, any Titleholder casting the vote for such Lot shall be presumed to have the concurrence of all Titleholders and, if more than one Titleholder attempts to cast the vote for such Lot, the vote shall be suspended. The right to cast a Titleholder vote shall not be assigned, transferred, pledged, hypothecated, or alienated in any way except by duly executed proxy as may be permitted in the Bylaws.

(b) Founder. So long as the Founder membership exists, the Founder shall not vote as a Titleholder, but shall be entitled to grant or withhold its Approval of certain actions as set forth in the Governing Documents, in addition to such other rights as are specifically granted or reserved to the Founder under the Governing Documents.

2-104 [Assembly's Finances and Power of Assessment]

(a) Establishment of Personal Obligation and Lien for Assessments. The Assembly shall levy assessments in accordance with this §2-104 upon each Lot to fund the expenses which the Assembly incurs, or expects to incur, in exercising its authority and performing its duties under the Governing Documents. Each Titleholder shall be personally obligated to pay all assessments levied upon such Titleholder's Lot during the period that he holds title to such Lot, and shall be jointly and severally obligated with the former Titleholder for any assessments which are unpaid at the time of his acquisition of title to the Lot. In addition, such personal obligation shall include the obligation to pay late charges, in such amount as the Board of Trustees may establish by resolution, and interest (computed from the due date at a rate of 10% per annum or such higher rate as the Board of Trustees may establish, subject to the limitations of Applicable Law) on delinquent assessments, and costs of collection, including reasonable legal fees, whether or not suit is filed. The Assembly shall have a continuing lien against each Lot to secure the payment of delinquent assessments and the additional charges authorized in this section, which lien shall have priority over all other liens except those that are statutorily superior and liens of recorded first priority Mortgages held by Institutional Lenders.

The Assembly may foreclose its lien through judicial or, to the extent permitted by Applicable Law, nonjudicial foreclosure proceedings in the same manner as any first trust mortgage under South Carolina law. Alternatively, the Assembly may sue for unpaid assessments and other amounts authorized hereunder without foreclosing or waiving its lien.

The obligation to pay assessments may not be avoided by non-residency, non-use of the Commons, abandonment of the Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Titleholder, and may not be offset, reduced or avoided by reason of any action or inaction on the part

of the Assembly. The sale or transfer of a Lot shall not affect the obligation for assessments or the Assembly's lien, except that the sale or transfer of any Lot pursuant to the foreclosure of a first Mortgage shall extinguish the lien as to any installments of assessments and other charges due prior to such foreclosure. Any person acquiring title following foreclosure of such a Mortgage shall not be personally liable for assessments or other charges that were due prior to his or her acquisition of title.

(b) **Types and Computation of Assessments.**

(1) **General Assessments.** The Assembly shall levy General Assessments against all Lots to fund all expenses other than those for which other types of assessments are specifically authorized in this §2-104(b). General Assessments shall be levied at an equal rate per Lot, based on an annual budget of estimated expenses which takes into account the number of Lots subject to assessment and the sources and estimated amounts of funds to cover such expenses. The Board of Trustees shall be responsible for preparing and adopting the budget and revising it as appropriate, and shall provide notice of the amount of assessment and a copy of the budget, as it may be revised, to each Titleholder at least 30 days prior to the effective date thereof.

Any budget or revision adopted by the Board of Trustees shall automatically take effect 30 days after the date of its adoption by the Board of Trustees unless disapproved at a meeting of the Assembly by Titleholders entitled to cast at least 75% of the total eligible votes of Titleholders and by the Founder, if the Founder Membership exists. The Board of Trustees shall not be obligated to call a meeting of the Assembly to consider any budget except upon a petition of the members pursuant to the Bylaws presented within 10 days after the date of the assessment notice. If any proposed budget is disapproved or the Board of Trustees fails for any reason to adopt a budget for any year, the budget most recently in effect shall continue until a new budget is determined in accordance with this section. Subject to the rights of Titleholders to disapprove any budget, the Board may retroactively budget and assess for any expenses incurred or shortfalls experienced by the Assembly.

(2) **Other Assessments**

(A) To the extent specifically authorized in this Declaration or in any Declaration of Annexation, the Board of Trustees may levy Specific Area Assessments for the costs of benefits or services which the Assembly provides to the Lots within a specific area of Lots. Specific Area Assessments shall be levied in such manner as specified in the provision of this Declaration or the Declaration of Annexation authorizing the same.

(B) An assessment may be levied against the Lot of a Titleholder who has been found, in the manner set forth in the Bylaws, to have violated provisions of the Governing Documents, resulting in monetary costs to the Assembly. The Covenants Committee, which shall determine such costs, may consider direct as well as consequential costs such as legal fees and increased insurance or operating costs. Titleholders shall have ultimate responsibility for damages sustained by the Assembly as a result of actions by the Titleholder's lessees, guests or invitees.

§2-105 [Powers and Responsibilities of Assembly]

(a) **Enforcement of Governing Documents** The Assembly may impose sanctions for violation of the Governing Documents upon recommendation of the Covenants Committee after notice and a hearing and exhaustion of appeal rights in accordance with the procedures set forth in the Bylaws. (The Titleholder shall be responsible and may be sanctioned for violations by an occupant, guest or invitee of his Lot.) Sanctions may include:

(i) imposition of reasonable monetary fines that shall constitute a lien upon the violator's Lot;

(ii) suspension of the right to vote;

(iii) suspension of the right to use the Commons other than as reasonably necessary to gain access to one's Lot;

(iv) suspension of any services which the Assembly provides to the Lot of any Titleholder who is more than 30 days delinquent in paying any assessment or other charge owed to the Assembly;

(v) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(vi) requiring removal of any structure or improvement in violation of Article IV and restoration of the Lot to its previous condition and, upon failure of the Titleholder to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the Lot to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of a Titleholder who fails to comply with the terms and provisions of Article IV and the I'On Code from continuing or performing any further activities in I'On; and

(viii) assessing all costs incurred by the Assembly to effect compliance with the Governing Documents against the responsible Titleholder and his or her Lot.

In addition, the Board of Trustees may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in the Bylaws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of provisions of the I'On Rules regulating parking); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

All sanctions and remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Assembly prevails, it shall be entitled to recover all costs, including, attorneys fees and court costs, reasonably incurred in such action.

The decision to pursue enforcement action in any particular case shall be left to the Board of Trustee's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case, (i) the Assembly's position is not strong enough to justify taking any or further action; or that (ii) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Assembly's resources, or (iv) that it is not in the Assembly's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action. Such a decision shall not be construed a waiver of the right of the Assembly to enforce such provision at a later time under other circumstances or preclude the Assembly from enforcing any other covenant, restriction or rule.

(b) Litigation. The Assembly may institute, defend, settle, or intervene in, mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Commons, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Assembly or its members.

(c) Provision of Services. The Assembly may provide services and facilities for the Titleholders, and their Lots, and shall be authorized to enter into and terminate contracts or agreements with third parties, including the Founder, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the option of the Titleholder, or may include the costs thereof in the Assembly's operating budget and assess it as part of the General Assessment if provided to all Lots. By way of example, such services and facilities could include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation as to what, if any, services shall be provided. In addition, the Board of Trustees shall be permitted to modify or cancel

existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Lots shall not exempt any Titleholder from the obligation to pay assessments for such services.

(d) **Safety and Security.** Each Titleholder, occupant, lessee and invitee of Real Property in I'On is responsible for his or her own safety and the security of his or her property in I'On. However, the Assembly may, but shall not be obligated to, maintain or support certain activities within I'On designed to enhance the security and safety measures which each person provides for themselves and their property. In so doing, the Assembly assumes no duty or liability for the safety or security of any person or property or for loss or injury resulting from acts of third parties. Neither the Assembly nor the Founder shall in any way be considered insurers or guarantors of security within I'On, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to I'On, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.

ARTICLE III
Standards of Use, Conduct and Maintenance

"That government is best which governs least." - Thomas Jefferson

§3-101 [Compliance with Governing Documents]

Every Titleholder and occupant of Real Property in I'On shall comply with the Governing Documents. Use and occupancy of Real Property in I'On shall be subject to the provisions of the Governing Documents, including Declarations of Annexation which may set forth additional protective covenants applicable to the Real Property annexed thereby and the I'On Rules, as they may be modified, repealed, or supplemented in accordance with the procedures set forth in this Article. The initial I'On Rules are set forth on Exhibit D.

§3-102 [Rulemaking Authority and Procedures]

(a) **Board Authority.** The Board of Trustees may from time to time modify, repeal, or supplement the initial I'On Rules set forth on Exhibit D by rulemaking action without the necessity of an amendment to this Declaration. The Board shall send notice by mail to all Titleholders concerning any such proposed action at least five business days prior to the Board of Trustees meeting at which such action is to be considered. Titleholders shall have a reasonable opportunity to be heard at the meeting prior to the proposed action being put to a vote. Any proposed rulemaking action shall require a majority vote of the Board of Trustees.

(b) **Member Authority.** The Titleholders may from time to time modify, repeal or supplement the I'On Rules, or reverse any rulemaking action taken by the Board of Trustees, by a vote at a meeting of the membership of Titleholders representing more than 50% of the total eligible votes of Titleholders, and by the Founder Member, if still in existence.

(c) **Notice.** Prior to any action taken under this Section becoming effective, the Board of Trustees shall send notice of the action taken to each Titleholder. The effective date shall be not less than 30 days following the date of such notice.

(d) **Scope of Authority; Conflicts.** No rulemaking action taken under this Article shall have the effect of modifying, repealing or expanding the I'On Code or any provision of this Declaration other than Exhibit D. In the event of a conflict between the I'On Code and the I'On Rules, the I'On Code shall control. The procedures required under this Section shall not apply to the enactment and enforcement of administrative and procedural rules and regulations governing use of the Commons and such other matters as are left to the discretion of the Board of Trustees under the

Governing Documents, unless the Board of Trustees chooses to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times. The Board shall exercise business judgment in the enactment, amendment, and enforcement of such administrative rules and regulations.

(e) **Effect on Real Property.** Each Titleholder, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Real Property in I'On can be affected by rulemaking action taken under this Article and that the I'On Rules may change from time to time. All purchasers of Real Property in I'On are hereby put on notice that the I'On Rules as set forth on Exhibit D may have been amended. The Assembly shall make current copies of the I'On Rules available to any Titleholder upon request.

§3-103 [Limitations on Rulemaking Authority]

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial I'On Rules set forth in Exhibit D, all rulemaking action under this Article shall comply with the following provisions:

(a) **Similar Treatment.** Similarly situated persons shall be treated similarly; however, the I'On Rules may vary by area and land use.

(b) **Displays.** The right to display religious and holiday signs, symbols, and decorations inside structures shall not be abridged, except that rules adopted pursuant to this Article may regulate the time, place, and manner of displaying those items visible from outside the structure.

(c) **Signs.** No rules shall regulate the content of political signs; however, rules may regulate the time, place and manner of posting such signs and establish design criteria, to the extent not addressed by the I'On Code.

(d) **Household Composition.** No rule shall interfere with the freedom of persons to determine the composition of their households, except that the Assembly shall have the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each dwelling on the basis of the size and facilities of the dwelling and its fair use of the Commons.

(e) **Activities Within Structures.** No rule shall interfere with the activities carried on within the confines of structures, except that it may restrict or prohibit any activities that create monetary costs for the Assembly or other Titleholders, that pose a danger to the health or safety of occupants of other Real Property, that generate excessive noise or traffic, that create unsightly conditions visible from outside of the structures, or that create an unreasonable source of annoyance to persons outside of the structure.

(f) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the Titleholders to the detriment of any Titleholder over that Titleholder's objection expressed in writing to the Assembly. Nothing in this provision shall restrict the right of the Board of Trustees to increase the amount of assessments as provided in Section 2-104.

(g) **Alienation.** No rule shall prohibit leasing or transfer of any Real Property, or require consent of the Assembly or Board of Trustees for leasing or transfer of any Real Property; provided, rules may require a minimum initial lease term of up to 12 months and may require inclusion of specific language for the protection of the Assembly in each lease.

(h) **Abridging Existing Rights.** No rule shall require a Titleholder or occupant of any Lot to dispose of personal property that was maintained in or on his Lot prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Titleholder's ownership or occupant's residency of the Lot, and shall not apply to subsequent Titleholders or personswho take title or occupancy after adoption of the rule.

(i) Applicability to Founder. The I'On Rules shall not apply to Real Property owned by the Founder or members of the I'On Guild during the duration of Founder's Rights and Obligations under Article IX, to the extent that such rules would interfere with their ability to develop, market or sell such Real Property, as determined in the discretion of the Founder.

§3-104 [Maintenance and Repair of Real Property]

Each Titleholder shall be responsible for maintaining such Titleholder's Real Property in a clean and attractive condition and in good order and repair. In the event a structure sustains damage clearly visible from the exterior, its Titleholder shall repair or reconstruct the structure in accordance with its appearance prior to damage unless the Assembly agrees to the contrary. The repair or reconstruction shall be accomplished within 90 days of the damage unless the Assembly grants a waiver based upon a finding of hardship. Should a Titleholder not conform to these provisions, the Assembly may accomplish necessary repairs or reconstruction according to its best judgement, and levy an assessment upon the Titleholder for the costs involved.

§3-105 [Special Use Lots]

The Founder shall have the right to designate any Lot as a Special Use Lot in the deed by which Founder conveys title to the Lot. In addition, the Association, upon written petition by the Titleholder of the Lot and Approval of Titleholders entitled to cast a majority of the total votes of Titleholders, may designate any Lot as a Special Use Lot. Special Use Lots may be used (i) for residential purposes (including such ancillary home business uses, if any, as may be permitted by the I'On Rules on Lots which are not Special Use Lots); or (ii) for such commercial purposes as may be specifically authorized in the deed designating the Lot as a Special Use Lot or by resolution of the Assembly approving the designation of the Lot as a Special Use Lot; or (iii) for a combination of such uses.

ARTICLE IV
Architectural Standards

"We shape buildings, thereafter they shape us." - Winston Churchill

§4-101 [General]

(a) Approval Required. No Improvements shall be made, placed, constructed or installed on any Lot and no exterior modifications to existing Improvements shall be undertaken without prior approval of the I'On Design Committee in accordance with this Article, except that the Founder's activities shall be exempt from this requirement so long as it is engaged in development or construction in I'On.

(b) I'On Code. All Improvements to Real Property in I'On shall conform to the I'On Code unless a variance has been granted in writing pursuant to this Article. The Founder shall have exclusive authority to amend the I'On Code until all of the Real Property described on Exhibits B and C has initially been developed, after which the power to amend shall pass to the I'On Design Committee. Any amendments to the I'On Code shall be prospective in effect and shall not apply to require modifications to or removal of structures previously approved once construction has commenced.

§4-102 [I'On Design Committee]

(a) Composition. The Design Committee shall be comprised of three to five persons who shall be appointed, and may be removed and replaced, in the discretion of the Founder, so long as the Founder owns any unimproved Real Property described on Exhibits B or C, and thereafter in the discretion of the Board of Trustees. The members of the Design Committee may, but need not be, Titleholders, and may include architects, engineers or similar professionals who may receive such compensation for their service as the Board of Trustees may determine appropriate.

(b) Fees. The Design Committee may establish and charge reasonable fees to defray costs of administering applications for approval under this Article.

(c) Powers and Duties. The I'On Design Committee shall receive and act on all applications of Titleholders seeking approval of proposed Improvements or proposed changes to existing Improvements to Real Property in I'On. The Design Committee shall establish and make available to all Titleholders guidelines and procedures for applications and required submissions.

The Design Committee may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

The Committee may authorize variances from compliance with the I'On Code or any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (i) be effective unless in writing; (ii) be contrary to this Declaration; or (c) bind the Committee to grant a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

§4-103 [Scope of Review]

In reviewing each application and related submissions, the Design Committee shall be guided by the I'On Code; however, the I'On Code shall not be the exclusive basis for its decisions and compliance with the I'On Code does not guarantee approval of any application. The Design Committee may consider any factors it deems relevant, including harmony of external design with surrounding structures and environment and consistency with the visual themes established for I'On. Its decisions may be based on purely aesthetic considerations. Each Titleholder, by accepting a deed to Real Property in I'On, acknowledges that determinations as to such matters are subjective and opinions may vary as to the desirability or attractiveness of particular improvements.

The architectural standards and procedures established pursuant to this Article and the I'On Code are intended as a mechanism for maintaining and enhancing the overall aesthetics of I'On and shall not create any duty to any person. The Committee shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size or of similar design.

Neither the Founder, the Assembly, nor the Design Committee shall be held liable for soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications. In all such matters, the Assembly shall defend and indemnify the I'On Design Committee and its members.

§ 4-104 [Schedule for Review]

The Design Committee shall notify the applicant of its determination on an application within 30 days after receipt of the completed application and all required information. The Committee may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. In the case of disapproval, the Committee may, but shall not be obligated to, specify the reasons for any

objections and/or offer suggestions for curing any objections. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the U. S. Postal Service. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant.

In the event that the Committee fails to respond in a timely manner, approval shall be deemed to have been given; however, no approval deemed to have been given under this paragraph shall be inconsistent with the I'On Code.

After termination of the Founder's right to appoint the Committee, any denial of an application by the Committee may be appealed to the Board of Appeals in accordance with such procedures as the Board of Appeals may establish.

§4-105 [Commencement and Completion of Construction]

If construction has not commenced on a project for which an application has been approved within six months after the date of approval, such approval shall be deemed withdrawn. Once construction is commenced, it shall be diligently pursued to completion. Unless otherwise agreed in writing by the Design Committee, all elements of proposed improvements for which plans are approved hereunder shall be completed within one year after the date of approval, or such shorter period as may be specified in any agreement for the purchase of the Lot from the Founder.

ARTICLE V
Easements

"The job is not to 'plan', but to reveal." - Benton MacKaye

§5-101 [Validity of Easements]

The provisions of this Article may not be amended or modified in any fashion without concurrence of the Founder as long as Founder retains its Rights and Obligations under Article IX. All easements provided for herein, shall run with the title to the land, and shall inure to the benefit of and be binding upon all Titleholders. Easements running in favor of the Founder, Members of the I'On Guild, the Assembly, and all other easements, may be transferred to respective comparable entities or persons.

§5-102 [Easement of Use and Enjoyment]

Subject to such reasonable rules as the Board of Trustees may adopt, all Titleholders, their lessees, occupants of their Lots, guests and invitees, are hereby granted a non-exclusive easement of use and enjoyment of the Commons except for those portions of the Commons declared in a Declaration of Annexation to be for the exclusive or primary use and enjoyment of residents of a described area. Titleholders shall be deemed to have delegated their rights of enjoyment to the Commons to their lessees; however, Titleholders shall remain responsible for damages to the Commons committed by their lessees or lessees' guests or invitees.

§5-103 [General Easements]

(a) **Easement for Public Servants.** The Founder does hereby grant to those public servants whose duties include public safety and property protection activities, a perpetual, nonexclusive easement of access through I'On and to, from and over exterior portions of each Lot as necessary to carry out their duties, subject to reasonable processes and requirements of Applicable Law.

(b) **Easement for Assembly.** The Founder does hereby grant to the Assembly, its officers, agents, contractors and designees, a perpetual, nonexclusive easement over the Real Property comprising I'On as reasonably necessary to carry out its responsibilities and exercise its authority as provided for in the Governing Documents. Such entry shall be preceded by due notice unless an emergency jeopardizing life, limb or property exits.

(c) **Easements over Commons.** The Assembly, acting through the Board of Trustees, shall have a right to grant easements, rights of way, licenses and similar interests over any part of the Commons for any lawful purpose which it determines, in its own discretion, to be consistent with the interests of the Assembly.

(d) **Easement for Encroachments and Maintenance.** The Founder hereby reserves and grants a perpetual, nonexclusive easement over each Lot, not exceeding one foot in width, for the benefit of each adjoining Lot and the Commons, for the purpose of accommodating any encroachment due to settlement or shifting of improvements, roof overhangs, fences constructed, gutters, or draining of rainwater from roofs, and for the maintenance of said encroachments so long as they shall exist. The rights and obligations of Titleholders shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created if such encroachment occurred due to the willful misconduct of the Titleholder or Titleholders claiming the easement, and provided further that any such encroachments shall be required to conform to Applicable Law.

In addition, the Founder hereby reserves and grants a perpetual, nonexclusive easement over each Lot for the benefit of adjacent Lots and Commons, not to exceed five feet in width, to permit access for maintenance and repair of the structures on the benefited Lot; provided, such easement shall be exercised in a matter that would not be considered a nuisance by a reasonable person, and further provided that the party exercising the easement shall restore to its original condition anything that is disturbed as a result of such maintenance and repair.

(d) **Easement for Utility Usage.** A mutual right and easement for utility services is hereby granted for the benefit of all Titleholders, such that no Titleholder shall take any action which would in any way interfere with utility services being provided to other Titleholders within I'On. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Titleholders within I'On, then the Titleholder of such Lot shall promptly, at his expense, repair any damage to such utilities caused by Titleholder, his guests or invitees. The rights and duties with respect to sanitary sewer and water, storm drains, downspouts, yard drains, cable television, electricity, gas and telephone lines, connections and facilities shall be governed by the following:

(1) Whenever utility services have been partially or wholly installed within I'On, the Titleholder of any Lot, or the Assembly shall have the right, and are hereby granted an easement to the extent necessary to enter or have a utility company enter any portion of I'On in which said installations lie to repair, replace and generally maintain said installations.

(2) The right granted in subsection (d)(1) above shall be only to the extent necessary to entitle the Real Property of the Titleholder or Assembly serviced by said installation to its full and reasonable use and enjoyment and provided further that anyone exercising said right shall be responsible for restoring the surface of the easement area so used to its condition, as nearly as practically possible, prior to such use.

(3) In the event of a dispute between Titleholders with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, upon written request of one of such Titleholders addressed to the Assembly, the matter shall be submitted to the Board of Trustees, who shall decide the dispute, and the decision of the Board of Trustees (or its designee) shall be final and conclusive as to the parties.

(e) **Conservation and Landscape Easements.** Some Lots may be subjected to a non-disturbance easements or similar easements for conservation or wetlands buffering purposes. Further, some Lots may be subjected to landscape easements for the purpose of maintaining specified plantings, levels of maintenance, signs, walls, fences and other decorative structures. The operation of such easements shall be governed by provisions in the Declarations of Annexation or other recorded instruments, and by policies duly enacted by the Assembly pursuant to its authority set forth in this Declaration.

§5-104 [Party Walls and Other Shared Structures]

The rights and duties of Titleholders with respect to party walls and party fences shall be governed by the following.

(a) **General Rules of Law to Apply.** Each wall, fence, driveway or similar structure which is constructed as a part of the original construction of structures on Lots, and any part of which is placed on the dividing line between separate Lots and intended to serve both such Lots, shall constitute a party structure. To the extent not inconsistent with this Section, the general rules of law regarding party walls and liability for damage to such structures shall apply.

(b) **Sharing of Repair and Maintenance, and Costs of Destruction.** The cost of routine maintenance and repair of any party structure shall be shared equally by the Titleholders of the Lots served thereby. If a party structure is damaged or destroyed by a cause other than by the act of only one of the adjoining Titleholders, his lessees, agents, invitees, or occupants of his Lot (including ordinary wear and tear), then either Titleholder may restore the structure. Any Titleholder who thereafter makes use of the structure (personally or through his lessees, agents, invitees, or occupant of his Lot) shall contribute a pro rata share of the costs of restoration.

(c) **Repairs of Damage Caused by One Titleholder.** If any party structure is damaged or destroyed through the act of only one adjoining Titleholder, or any of his agents, invitees or members of his family so as to deprive the other adjoining Titleholder of the full use and enjoyment of such structure, the Titleholder responsible for such damage shall forthwith proceed to rebuild or repair the wall or fence to as good a condition as formerly, without cost to the adjoining Titleholder.

(d) **Changes to Party Walls and Party Fences.** A Titleholder desiring to make changes to a party structure in any manner affecting either the appearance of such from the adjoining Titleholder's side, or in any way that may affect the adjoining Titleholder's use and enjoyment of such, shall secure the written approval of the adjoining Titleholder, in addition to any other approvals required by this Declaration or Applicable Law.

(e) **Right to Contribution Runs with Land.** The right of any Titleholder to contribution from any other Titleholder under this section shall be appurtenant to the land, inure to the benefit of, and shall pass to such Titleholder's successors in title.

(f) **Disputes.** In the event of a dispute between Titleholders with respect to the application and force of any provision of this Section, then upon written request of one such Titleholder, the matter shall be submitted to the Board of Appeals who shall decide the dispute.

ARTICLE VI
The Commons

"A town plan is a structure whose purpose is to make room for life to happen." Jonathan Hale

§6-101 [Title to the Commons]

The Assembly shall assume full responsibility for the control and maintenance of the Commons as conveyed to the Assembly by the Founder unless contrary provisions are made through contract or in the instrument of conveyance. Upon a vote of two-thirds (2/3) or more of outstanding Titleholder votes, the Assembly may transfer title to some or all of the Commons to another entity.

§6-102 [Control of the Commons]

The Assembly shall be exclusively responsible for the control and management of the Commons, as well as any property over which it has responsibilities by virtue of a lease, rental agreement, other contract or easement.

§6-103 [Condemnation or Taking]

Proceeds from the disposition of the Assembly's Real Property by ordinary sale, condemnation or taking by eminent domain, shall be used for such purposes as the Assembly determines. No Titleholder shall have any right to any portion of such funds for his personal benefit.

§6-104 [Damage to Commons]

In the event of damage to or destruction of Commons or other property which the Assembly is obligated to insure, the Board of Trustees or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements shall be repaired or reconstructed unless Titleholders entitled to cast at least 75% of the total eligible votes of Titleholders, and the Founder Member, if still in existence, agree within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Assembly within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Commons shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Assembly in a neat and attractive, landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Assembly for the benefit of its members or the Titleholders of Lots insured, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Trustees may, without a vote of the members, levy special assessments to cover the shortfall against those Titleholders responsible for the premiums for the applicable insurance coverage under Section 7-101.

ARTICLE VII
Insurance

"Weep not that the world changes - did it keep a stable, changeless state 'twere cause indeed to weep."
- William Cullen Bryant

§7-101 [Required Coverages]

The Assembly shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on The Commons and other Real Property, regardless of ownership, to the extent that the Assembly is responsible for repair or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. Such insurance shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes, less a reasonable deductible;

(b) Commercial general liability insurance, insuring the Assembly and its members for damage or injury caused by the negligence of the Assembly or any of its members, employees, agents, or contractors while acting on its behalf, in such amount as the Board of Trustees deems prudent; provided, if generally available at reasonable cost,

such coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(c) Directors and officers liability coverage;

(d) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Assembly funds in an amount determined in the Board's business judgment but not less than an amount equal to one-sixth of the annual General Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(e) Such additional insurance as may be required by law or as the Board, in the exercise of its business judgment, determines advisable.

In addition, the Assembly shall, if so specified in a Declaration of Annexation, obtain and maintain property insurance on the insurable improvements subject to such Declaration of Annexation. Any such policies shall provide for a certificate of insurance to be furnished upon request to the Titleholder of each Lot insured.

Premiums for all insurance maintained by the Assembly shall be included in the General Assessment levied against each Lot pursuant to Section 2-104, except that premiums for property insurance on specific Lots shall be allocated among the benefited Lots as provided in the Declaration of Annexation applicable to such Lots

§7-102 [Policy Requirements]

All policies shall provide for a certificate of insurance to be furnished to the Assembly and, upon request, to each Member.

The policies may contain a reasonable deductible. In the event of an insured loss, the deductible shall be allocated among the Lots in the same manner as the premium for the applicable insurance coverage.

All insurance coverage obtained by the Assembly shall:

(a) be written with a company authorized to do business in South Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Assembly as trustee for the benefited parties. Policies on the Commons shall be for the benefit of the Assembly and its Members. Policies covering individual Lots shall be for the benefit of the Titleholder of the Lot and its Mortgagee, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Titleholders, occupants, or their Mortgagees individually;

(d) provide that each Titleholder is an insured person under the policy with respect to liability arising out of such Titleholder's interest, as a member of the Assembly, in the Commons;

(e) provide a waiver of subrogation under the policy against any Titleholder orocoupant of a Lot;

(f) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any curable defect or violation without prior written demand to the Assembly to cure the defect or violation and allowance of a reasonable time to cure; and

(g) include an endorsement precluding cancellation, invalidation, or denial of benefits under the policy on account of any act or omission of any one or more individuals, unless such individuals are acting within the scope of its authority on behalf of the Assembly.

(b) include an endorsement excluding Titleholders' individual policies from consideration under any "other insurance" clause;

(i) include an endorsement requiring at least 30 days' prior written notice to the Assembly of any cancellation, substantial modification, or non-renewal;

ARTICLE VIII
Protection of Lenders

"Let us raise a standard to which the wise and honest can repair." – George Washington

§8-101 [Right to Notice of Certain Actions]

Any Institutional Lender who provides a written request to the Assembly stating its name and address and the street address of the Real Property to which its Mortgage relates ("Mortgaged Property") will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of I'On or which affects the Mortgaged Property;

(b) Any delinquency in the payment of assessments or charges owed on the Mortgaged Property which has continued for a period of 60 days, or any other violation of the Governing Documents relating to the Mortgaged Property or the Titleholder or occupant thereof which is not cured within 60 days; or

(c) Any lapse, cancellation, or material modification of any insurance policy that the Assembly maintains.

ARTICLE IX
Founder's Rights and Obligations

"Example is the school of mankind. They will learn at no other." -Edmund Burke

To secure the Founder's interests in development of I'On, to further the principles, missions and goals upon which I'On is founded, the Founder shall have the benefit of certain rights and shall be subject to certain obligations as set forth in this Article and elsewhere in the Governing Documents.

§9-101 [Duration of Founder's Rights and Obligations]

The duration of Founder's Rights and Obligations under this Article shall extend until the later of the conveyance of all Lots contained in the Real Property described in Exhibits B and C to Titleholders other than Founder or Builders, or termination of the Founder's right to file a Declaration of Annexation under §1-102(b), except that some specific Founder's Rights and Obligations may expire by virtue of their being tied to the occurrence of certain events arising prior to conveyance of all Lots. The Founder however, may voluntarily terminate all Founder's Rights and Obligations by expressing such in writing to the Assembly.

§9-102 [Right to Complete Neighborhood Plan]

(a) **Development Activities.** The Founder shall have the right to conduct all activities required to complete the Neighborhood Plan, as more fully provided for in Article I of this Declaration. The Assembly shall not take any position of opposition against provisions of the Neighborhood Plan in a public setting, nor utilize any of its material or financial resources to oppose development activities of the Founder so long as such activities are consistent with the Neighborhood Plan. This provision is not intended to diminish the right of any individual to express opinions,

nor of the Assembly to pursue any remedy against any alleged breaches of agreements or representations by the Founder.

(b) **Design Standards.** In consideration of the considerable time, effort and money the Founder has expended in developing the I'On Code, as long as Founder's Rights and Obligations remain in force, no changes shall be made to the I'On Code without Founder's concurrence. However, the Founder may effect changes to the I'On Code provided such changes are only prospective in effect.

(c) **Annexations.** The Founder shall have the right to incrementally annex all Real Property described in Exhibit C, subject to the provisions of Article I. The Assembly shall not take any action to prevent such annexations.

§9-103 [Amendments and Other Actions Affecting the Founder]

(a) **Founding and Governing Documents.** The Assembly shall make no amendments to the Governing Documents that materially affect the Founder's interests, nor shall the Assembly adopt other measures that materially affect the Founder's interests without Founder's concurrence. In this context, Founder's interests shall include the interests of the members of the I'On Guild, because of the indispensable role of these members in fulfilling the intents of the Neighborhood Plan.

(b) **Easements.** The Assembly shall not take action seeking to alter provisions of easements established by the Founder, nor to prevent establishment of easements necessary to completing the Neighborhood Plan.

§9-104 [Assembly-Related Rights and Obligations]

(a) **Founder's Responsibilities for Affairs of Assembly.** The Founder shall be exclusively responsible for conducting the affairs of the Assembly until at least one Titleholder, other than Founder or a Member of the I'On Guild, has been elected to a seat on the Board of Trustees. Thereafter, the Board of Trustees shall act strictly in conformance with the provisions of the Governing Documents and in accordance with Applicable Law.

(b) **Founder's Right to Appoint Board of Trustees.** Except to the extent that the Bylaws specifically provide for election of certain Trustees by the Members, the Founder Member shall have sole and full authority to appoint, remove and replace the members of the Board of Trustees until *the earlier of*:

(i) the date as of which 75% of the total acreage of the Real Property described in Exhibits B and C to the Declaration has been conveyed to persons other than Founder or a Builder;

(ii) 20 years after the date on which the Declaration is recorded in the Public Records; or

(ii) when, in its discretion, the Founder Member so determines.

(c) **Founder's Right to Disapprove Actions.** So long as the Founder Membership exists, the Founder shall have a right to disapprove any action, policy or program of the Assembly, the Board of Trustees, and any committee which, in the sole judgment of the Founder, would tend to impair rights of Founder or Builders under this Declaration or the Bylaws, or interfere with development or construction of any portion of I'On, or diminish the level of services being provided by the Assembly. Such right to disapprove shall be exercised as set forth in the Bylaws.

(d) **Founder's Obligation to Financial Support of Assembly.** The Founder shall provide funds to cover all cash deficits in the Assembly's operations for two years following the conveyance of the first Lot to a Titleholder other than Founder and shall otherwise not be obligated to make further payments of General Assessments for Lots owned until the expiration of Founder's Rights and Obligations.

§9-105 [Easements for Development, Utilities and Other Purposes]

(a) The Founder reserves for itself, its successors, assigns and designees, a non-exclusive easement over all Real Property within I'On, so long as the Founder owns any Real Property described on Exhibits B or C, to the extent reasonably necessary for the purpose of (i) installing utilities (including electricity, water, sewer, telephone, cable television and similar systems), infrastructure, and drainage systems to serve any Real Property described on Exhibits B or C or adjacent property, (ii) establishing or protecting environmental protection zones and special landscape zones, and (iii) any other purposes reasonably related to the founding principles, mission and goals of I'On; provided, such easements shall be restricted to setback areas on Lots, public rights-of-way, the Commons, and such other easement areas as may be reserved on recorded plats, and the exercise of such easements shall not unreasonably interfere with the use or development of any Lot.

(b) The Founder also reserves for itself, its successors, assigns and designees, and grants to the Assembly, a perpetual, non-exclusive easement of access over the Real Property in I'On as reasonably necessary for the purpose of inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described in subsection (a), and grants to the providers of utilities serving I'On a perpetual, nonexclusive easement of access to read, maintain and repair their respective utility meters.

(c) All work associated with the exercise of the easements reserved and granted in subsections (a) and (b) above shall be performed in such a manner as to minimize interference with the use and enjoyment of the Real Property burdened by the easement. Upon completion of the work, the person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permit entry into the structures on any Lot and, except in an emergency, entry onto any Lot shall be only after reasonable notice to the Titleholder or occupants of the Lot.

§9-106 [Right to Develop, Build and Market]

For the duration of Founder's Rights and Obligations, Founder and members of the I'On Guild shall have the right to conduct development, construction, marketing and customer service operations within I'On in a customary and reasonable fashion. This includes the right to maintain construction and sales offices and model homes on Lots which they own, a right of access over the streets and rights-of-way within I'On by construction and supply vehicles, and the right to store materials and equipment related to such land development and construction on property owned by Founder or members of the I'On Guild, respectively. However, it shall be incumbent upon those exercising these reserved rights to conduct their activities in ways respectful of the comfort and safety of the occupants of Real Property in I'On.

§9-107 [Founder's Power of Attorney to Amend Governing Documents]

(a) **Founder's Limited Right to Amend Declaration.** For a period of five years from the date on which this Declaration is recorded in the Public Records, the Founder shall have the right to amend the Governing Documents to correct scrivener's errors, to conform to requirements of Applicable Law or Institutional Lenders, and for such other purposes as do not materially adversely affect the title to any Lot or the rights specifically granted to Titleholders hereunder.

(b) **Appointment.** By acceptance of a deed to any Lot, or by acceptance of a legal or equitable interest in any Real Property in I'On, each and every contract purchaser, Titleholder, Institutional Lender, and other lien holder or party claiming a legal or equitable interest in any portion of I'On does automatically and irrevocably name, constitute, appoint and confirm Founder as attorney-in-fact for the purpose of executing amendments to this Declaration in accordance with the provisions contained throughout this Declaration.

(c) **Duration.** The power of attorney created in this §9-107 is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to each Lot and be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Such power of attorney shall continue in effect until the expiration of Founder's Rights and Obligations pursuant to §9-101.

§9-108 [Right to Transfer or Assign Rights and Obligations]

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Founder shall have the right to transfer or assign any or all of its Rights and Obligations under this Article and any or all of its rights and obligations set forth elsewhere in the Governing Documents, in whole or in part, temporarily or permanently. Any such transfer or assignment shall be set forth in a written instrument executed by the Founder in recordable form.

ARTICLE X
I'On Trust

"A teacher affects eternity; he can never tell where his influence stops."
-Henry Adams

§10-101 [Authority to Collect Transfer Fee]

Except as otherwise provided in this Article, upon the sale and transfer of title to any Lot in I'On, the transferring Titleholder shall pay to the I'On Trust, a South Carolina nonprofit corporation, a transfer fee in the amount of one tenth of one percent (.1%) of the total cost to the purchaser of the Lot and any improvements on the Lot, as such cost is shown by the amount of tax imposed by Charleston County, South Carolina on the transfer of title, but excluding taxes and stamps or other fees charged by Charleston County, South Carolina on such transfer. Such transfer fee shall be the personal obligation of the transferring Titleholder and, in addition, the I'On Trust shall have a lien against the Lot to secure payment of such transfer fee. Such lien shall be prior and superior to all other liens except (a) the Assembly's lien for assessments under §2-104, and (b) such liens as have priority over the Assembly's lien under that Section. Such lien may be enforced by the I'On Trust by suit, judgment and foreclosure in the same manner as the Assembly's lien for assessments under §2-104.

§10-102 [Purpose of Transfer Fee]

All transfer fees collected pursuant to this Article shall be deposited into a segregated account to used for such purposes as the board of trustees of the I'On Trust deems beneficial to the general good and welfare of I'On. By way of example and not limitation, such transfer fees might be used to help fund:

(a) preservation and maintenance of natural areas, wildlife preserves, or similar conservation areas and historical features, and sponsorship of educational programs and activities which contribute to the overall understanding, appreciation and preservation of the natural environment and history of I'On;

(b) programs and activities which serve to promote a sense of community within I'On, such as recreational leagues, historical or cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and

(c) social services, community outreach programs, and other charitable causes.

§10-103 [Exempt Transfers]

No transfer fee shall be levied upon transfer of title to a Lot:

(a) by or to Founder;

(b) by a builder who held title to the Lot solely for purposes of development and resale;

(c) by the Titleholder of a Lot to any person who was also a Titleholder of such Lot immediately prior to such transfer;

(d) to the Titleholder's estate, surviving spouse or child upon the death of the Titleholder;

(e) to an entity wholly owned by the grantor; provided, upon any subsequent sale and transfer of an ownership interest in such entity, the transfer fee shall become due;

(f) to an Institutional Lender pursuant to a Mortgage, foreclosure of a Mortgage, or in lieu of foreclosure of a Mortgage held by the Institutional Lender.

ARTICLE XI
Operation of Declaration

"Where there is no vision, the people perish." - Proverbs 29:18

§11-101 [Duration of Declaration]

This Declaration shall run with the land comprising I'On and bind all Titleholders and the occupants, guests and invitees of their Lots for a period of 25 years from the date on which this Declaration is recorded in the Public Records. After this time it shall be automatically extended for successive periods of 10 years unless within the last year prior to an expiration date an instrument signed by Titleholders representing eighty percent (80%) of all Lots expressly terminates this Declaration. To be effective, a termination of the Declaration must be recorded.

§11-102 [Amendment]

Except as otherwise specifically provided in this Declaration, this Declaration may be amended only upon Approval of Titleholders representing at least seventy-five percent (75%) of all eligible Titleholder votes. Such an amendment must be recorded in the Public Records in order to become effective.

§11-103 [Enforcement]

The Founder, the Assembly, any Titleholder, or First Mortgagee, as their interest may arise, shall have the right to enforce, by proceeding at law or in equity, the provisions of this Declaration and other Governing Documents. Failure to enforce any provisions of this or other Governing Documents shall not be deemed a waiver of the right to do so thereafter.

§11-104 [Interpretation]

(a) Except as provided otherwise by law, the provisions of this Declaration, together with Declarations of Annexation, shall take precedence over the Articles of Incorporation and the Articles of Incorporation shall take precedence over the Bylaws. The Declaration shall take precedence over Declarations of Annexation, except in cases where a Declaration of Annexation is fulfilling a provision or intent of the Declaration.

(b) Unless the context otherwise indicates, the use of the singular shall include the plural and vice versa; the use of one gender shall include all genders. The use of the terms, "include" or "including" shall mean "including without limitation." This Declaration shall be liberally construed in favor of the party seeking to enforce its objectives and provisions for the protection and enhancement of values, marketability and desirability of I'On and the overall quality of life for its residents. The headings used in the Governing Documents are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof. Unless context otherwise indicates, the meanings of capitalized terms employed in the main body of this Declaration shall be interpreted according to the definitions provided in Exhibit A.

(c) Any finding in judicial proceedings holding that a particular provision is null and void shall not serve to diminish to effectiveness of any other provision.

(d) Failure by the Assembly to enforce any provision of this Declaration at any time shall not serve to diminish the validity and operation of such provision in the future.

IN WITNESS WHEREOF, the Founder has set its hand and seal as of the date first above written.

FOUNDER: THE I'ON COMPANY, LLC, a South Carolina limited liability company

BY: _____
Vincent G. Graham, its manager

WITNESSES:

Pam Martin

Stacy L. Hall

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within-named The I'On Company, LLC, a South Carolina limited liability company by Vincent G. Graham, its manager, sign, seal and deliver the within instrument, and that (s)he with the other witness above subscribed, witnessed the execution thereof.

Pam Martin

Sworn to before me this 5 day of February, 1998:

Stacy L. Hall
Notary Public for the State of South Carolina

My Commission Expires: 10/2000

22

EXHIBIT A
Definitions of Significant Terms

Applicable Law: all local, state and federal ordinances, laws and regulations that apply to the particular subject matter.

Approval: the affirmative vote, written consent, or any combination thereof, of persons entitled to cast the specified number or percentage of eligible votes, or of a specified person or entity

Articles: the Articles of Incorporation of I'On Assembly, Inc , filed with the Secretary of State for the State of South Carolina, as they may be amended.

Assembly: I'On Assembly, Inc., a South Carolina nonprofit corporation, its successors or assigns.

Board of Trustees: the body primarily responsible for administration of the Assembly, selected as provided in the Bylaws and generally serving the same role as a board of directors under South Carolina corporate law, as more particularly described in §2-102(b)(1)

Bylaws: The Bylaws of I'On Assembly, Inc., as they may be amended.

Commons: Real Property and interests therein which the Assembly owns or otherwise holds possessory or use rights in for the common use and enjoyment of Titleholders.

Declaration of Annexation: a legal instrument filed in the Public Records pursuant to Section 1-102 which extends the provisions of this Declaration to other Real Property. Declarations of Annexations may contain such additional covenants, restrictions and easements and complimentary provisions applicable to that Real Property as the Founder deems appropriate.

Founder: The I'On Company, LLC, its successors and assigns.

Founder Control Period: the period of time during which the Founder is entitled to appoint all or a majority of the members of the Board of Trustees, as provided in §9-104.

Founder's Rights and Obligations: those rights and obligations of the Founder set forth in Article IX.

Governing Documents: the Declaration, the Articles, the Bylaws, the I'On Code, the I'On Rules, and any applicable Declaration of Annexation.

Improvements: any grading or other site work on Lots, including planting or removal of plants, trees and other landscaping materials; any structure or thing attached to, placed, constructed or installed on any Lot (other than inside enclosed structures), and any modifications to existing Improvements.

Institutional Lender: a financial services institution regularly engaged in financing the purchase, construction, or improvement of real estate, or any guarantor, insurer, or assignee of loans made by such a lender, who has notified the Assembly of its mortgage interests in I'On.

I'On: the Real Property described on Exhibit B and such additional Real Property as is made a part of I'On by filing of a Declaration of Annexation in accordance with §1-102.

I'On Assembly, Inc.: the non-stock corporation in which each Titleholder has a membership interest.

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I'On Guild: those persons identified from time to time by the Founder who are engaged in the business of constructing homes for resale and who apply and are admitted to the I'On Guild by the Founder, making them eligible to purchase property and build homes in I'On for resale as long as they remain participants in good standing in the I'On Guild.

I'On Rules: the body of rules regulating use, conduct, occupancy, and other matters within I'On, as initially set forth on Exhibit D and as they may be modified, repealed and supplemented pursuant to Article III.

Lot: any subdivided plot of land within I'On intended for independent ownership and use, excepting the Commons and property dedicated to the public.

Member: a person or entity entitled to membership in the Assembly, as provided in §2-102.

Mortgage: a mortgage, deed of trust, or similar security instrument affecting title to any Real Property in I'On. The term **Mortgagee** shall refer to the holder of a Mortgage.

Neighborhood Plan: Ordinance No. 97010 adopted by the Town of Mount Pleasant, South Carolina on March 11, 1997, as it may be amended, which provides for the mixed use planned development known as I'On and sets forth a plan for the development of I'On.

Public Records: the Registry of Mesne Conveyances for Charleston County, South Carolina, or such other place as may be designated by Applicable Law as the official place for filing of legal instruments related to Real Property.

Real Property: land and any improvements thereon.

Special Use Lot: a Lot so designated pursuant to §3-105.

Titleholder: one or more persons who hold record title to any Real Property in I'On, other than persons who hold an interest merely as security for the performance of an obligation.

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EXHIBIT "B"

REAL PROPERTY INITIALLY COMPRISING I'ON

All those lots, pieces, or parcels of land situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as "Lots 10 through 49", inclusive, and "Lots 60 through 69", inclusive, Phase I-A, I'On and "Amenity Area (109,934 sq. ft.)", "Eastlake Road 50' R/W", "Sowell Street 50' R/W", "President Street 36' R/W", "Grace Lane 25' R/W", and all "HOA Accesses" on a plat thereof entitled "Conditional Subdivision Plat of Lots 11 - 49, 60 - 69, Phase I-A, I'On, Town of Mt. Pleasant, Charleston County, S.C." dated January 7, 1998, prepared by F. Elliotte Quinn, III, R.L.S. of SouthStar Surveying, Inc. and recorded in the RMC Office for Charleston County in Plat Book EC at page 258; said lots, amenity areas, streets, lanes and accesses having such sizes, shapes, locations, buttings and boundings as are shown on said plat.

BK C 297PG312

EXHIBIT "C"

REAL PROPERTY SUBJECT TO ANNEXATION

ALL that certain piece, parcel or tract of land, and the improvements thereon, situate, lying and begin in Christ Church Parish, in the County of Charleston and State of South Carolina, containing 325.02 acres of highland and 107.1 acres of marshland and pond as shown on a Plat of E. M. Seabrook, Jr., C.E., and L.S, No 1375, dated January 14, 1964, and recorded in the Office of the RMC for Charleston County, S.C. in Plat Book R, Page 1; said tract measuring and containing and butting and bounding to the South on the right-of-way of the Mathis Ferry Road Three Thousand Two Hundred Ninety-Three and One Tenth (3,293.1') feet, as designated by the lettered line ABCDEF on said Plat; on the West line on lands of various owners in Scanlonville, on Muirhead Road, on Hobcaw Drive and on Hobcaw Point Five Thousand Eight Hundred One and Eight-Tenths (5,801.8') feet, as designated by the lettered broken line ONMLKJIHGF; on the North line on the waters of Hobcaw Creek; and on the East line on lands now or formerly of E. Capers and J. Read Johnson Four Thousand Six Hundred Forty-Five and Seven-Tenths (4,645.7') feet, as designated by the lettered line PQRA on said Plat; all as by reference to said Plat of E.M. Seabrook, Jr., will more fully appear; EXCEPTING THEREFROM the William Read family cemetery of a quarter of an acre in extent on the Read Old Home Tract, with the rights of ingress and egress thereto said cemetery, being designated by a cross mark on the said Plat; ALSO, EXCEPTING THEREFROM, the following described premises: All that piece, or lot of land, in Christ Church Parish, Charleston County, South Carolina, containing ONE (1) ACRE, more or less, bounded on the North and East by lands of Cooper Corporation, formerly Shelmore Oyster Products Company; on the South by lands now or formerly of Benjamin Brown, et al; on the West by Muirhead Road (Molasses Creek Road), with lines and marks as agreed upon by H.G. Leiding and Benjamin Brown, May 21, 1943, said marks being blazed.

SAVING AND EXCEPTING THEREFROM, all that certain piece, parcel or tract of land, and improvements thereon, situate, lying and being in Christ Church Parish, in the County of Charleston, State of South Carolina, containing 78.00 acres highland and 12.4 acres marsh as shown on a Plat by E. M. Seabrook, Jr., Inc. dated May 18, 1976, and entitled, "Plat of Tract of Land Situate on Mathis Ferry Road in Christ Church Parish, Charleston County, S.C., and owned by R. E. Mevers," and said Plat was recorded on the 8th day of June, 1976, in Plat Book AG, Page 58, R.M.C. Office for Charleston County, South Carolina.

Said parcel of land having such size, shape, dimensions, butting and boundings as will by reference to said Plat more fully appear.

BK C 297PG313

EXHIBIT D
I'On Rules

§D-101 Vehicles. Except for temporary guests and visitors, only standard private passenger vehicles, including passenger vans and pick-up trucks, are permitted to be parked within I'On. Such vehicles must bear current licenses, be in operating condition, bear no signs, and be parked at the rear of a Lot behind a home, or in designated areas. Further, boats and boat trailers may be stored only at the rear of the Lot only.Boats and trailers must be adequately screened to be visible only from the service lane, not from the thoroughfares.

§D-102 Pets. Household pets may be kept provided they do not cause a disturbance or become a nuisance to Titleholders and occupants of other Lots in I'On. Each owner shall be responsible for immediately collecting and properly disposing of wastes of his pet. Pets shall be under leash or voice control at all times when walked or exercised outside the confines of a Lot.

§D-103 Antennas. Television antennas, radio receivers, or other similar devices shall be contained entirely within the interior of a structure. 18" diameter or smaller satellite dishes are permitted provided they are not visible from persons on adjacent Lots or passersby.

§D-104 Trash and Refuse. Trash and refuse containers shall be stored so as not to be visible from persons on adjacent Lots or by passersby. Each Titleholder shall keep all parts of his Lot in good order and repair and free from debris.

§D-105 Signs. One temporary "For Sale", "For Rent", "Open" or other sign is permitted on a Lot with face surface no larger than 40 square inches, displayed no more than 4 feet above ground.

Warren & Sinkler
Post Office Box 1254
Charleston, SC 29402

BK C 297PG314

38.00

FILED
C297-282
98 FEB -9 PM 3:48
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

EXHIBIT 3



RMC Bk 0073 Pg 784 : pg 1 *

STATE OF SOUTH CAROLINA)
) **GENERAL WARRANTY INDENTURE DEED**
COUNTY OF CHARLESTON)

WHEREAS, I'On Club, LLC, is a South Carolina limited liability company, and The I'On Group, LLC, its Manager by Vincent G. Graham, its Manager, is authorized to execute and deliver deeds on behalf of the I'On Club, LLC.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I'ON CLUB, LLC ("Grantor"), in the State aforesaid, for and in consideration of the sum of ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($1,400,000.00), unto it paid by 148 CIVITAS, LLC, a South Carolina limited liability company, ("Grantee") in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject all limitations, covenants, easements, restrictions, reservations and conditions set forth in Exhibit B attached hereto and incorporated herein by reference (the "Permitted Exceptions"), unto the Grantee, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE FOR A FULL AND COMPLETE LEGAL DESCRIPTION OF THE PROPERTY BEING CONVEYED (THE "PROPERTY" OR "PREMISES")

Grantee(s) Address: 74 Hopetown Rd
Mt Pleasant SC 29464

TOGETHER with, subject to the Permitted Exceptions, 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, subject to the Permitted Exceptions, all and singular the premises before mentioned unto the said Grantee, its successors and assigns, forever.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises, subject to the Permitted Exceptions, unto the said Grantee, its successors and assigns, against itself and its successors and assigns, and all persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE: The Grantee by the acceptance and execution of this General Warranty Indenture Deed acknowledges that the conveyance is subject to all of the terms and conditions contained in this General Warranty Indenture Deed.

RMC Bk 0073 Pg 784 : Pg 2 *

IN WITNESS WHEREOF the undersigned Hand and Seal this 5 day of August 2009.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

I'ON CLUB, LLC

By: The I'On Group, LLC
Its: Manager

1st Witness

By: Vincent G. Graham
Its: Manager

2nd Witness

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON)

I, Daniel Q. Orvin. (Notary Public), do hereby certify that I'On Club, LLC, by The I'On Group, LLC, its Manager, by Vincent G. Graham, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this the 5 day of August 2009.

Notary Public For South Carolina
My Commission Expires: 8-11-10

[SEAL]

(01566584.)

RMC Bk 0073 Pg 784 : pg 3 *

IN WITNESS WHEREOF, the Grantee has affixed its Hand and Seal this 5th day of August 2009.

WITNESSES:

148 CIVITAS, LLC

By: Stephen W Speer

Printed Name: Stephen W. Speer

Its: Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Andrew L McLester (Notary Public), do hereby certify that 148 Civitas, LLC, by Stephen W Speer, its Member, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this the 5th day of August 2009.

Notary Public For South Carolina
My Commission Expires: 6/19/2014

{01566584.}

RMC Bk 0073 Pg 784 : Pg 4 *

Exhibit "A"

Legal Description

ALL that certain lot, piece or parcel of land and all improvements thereon located in I'On, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as CV-6 on a plat entitled, "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, S.C." prepared by Thomas & Hutton Engineering Co., dated September 12, 2000, and recorded on January 30, 2001 in the RMC Office for Charleston County in Plat Book EE, at Page 573, said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the property conveyed to I'on Club, LLC by deed of The I'On Company, L.L.C., dated August 15, 2000, recorded August 16, 2000, in the RMC Office for Charleston County, South Carolina in Book C-353, at page 484.

TMS No.: 535-06-00-230

RMC Bk 0073 Pg 784 ; pg 5 *

Exhibit B

Permitted Exceptions

1. Ad valorem real property taxes for the year 2009 and all subsequent years, a lien not yet due and payable.

2. All limitations, covenants, easements, restrictions, reservations and conditions of record which may affect the Property whether or not mentioned herein.

3. Declaration of Restrictive Covenants executed December 10, 1998 by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the trust under the Will of Hampton S. Alford and recorded in the RMC Office for Charleston County in Book L316, at Page 19.

4. Title to Real Estate and Reservation of Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the trust under the Will of Hampton S. Alford to The I'On Company, LLC dated August 12, 1997 and recorded in the RMC Office for Charleston County in Book J288, at Page 190.

5. Title to Real Estate and Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the trust under the Will of Hampton S. Alford to The I'On Company, LLC dated January 11, 1999 and recorded in the RMC Office for Charleston County in Book Y319, at Page 382.

6. Easements to The Commissioners of Public Works of the Town of Mount Pleasant, South Carolina recorded in the RMC Office for Charleston County in Book Y332, at Page 383; Book J316, at Page 228; Book O319, at Page 482; Book T416, at Page 667; Book S346, at Page 641; and Book T337, at Page 856.

7. Drainage Easement from The I'On Company, LLC to the Town of Mount Pleasant dated October 5, 2000 and recorded in the RMC Office for Charleston County in Book U393, at Page 203.

8. Recreational Easement and Agreement to Share Costs executed February 9, 2000 by I'On Club, LLC, The I'On Company, LLC, and I'On Assembly, Inc. and recorded in the RMC Office for Charleston County in Book M342, at Page 51.

9. Easement to South Carolina Electric and Gas Company recorded in the RMC Office for Charleston County in Book X115, at Page 28, RMC Office for Charleston County.

10. Easement to BellSouth Telecommunications, Inc. dated November 6, 1997 and recorded in the RMC Office for Charleston County in Book U292, at Page 209.

11. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF

RMC Bk 0073 Pg 784 : pg 6 *

MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated September 12, 2000 and recorded in the RMC Office for Charleston County in Plat Book EE, at Page 572-573.

12. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "PLAT OF THE SUBDIVISION OF A 163.64 ACRE RESIDUAL TRACT TO CREATE PHASE II (37.70 ACRES) & PUMP STATION SITE (0.10 ACRES), I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated January 6, 1999 and recorded in the RMC Office for Charleston County in Plat Book EC, at Page 997.

13. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "CONDITIONAL PLAT OF PHASE II, SUBPHASES A-E, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated September 12, 2000 and recorded in the RMC Office for Charleston County in Plat Book ED, at Page 108-109.

14. A reservation of non-exclusive easements along the boundary lines of the Property for the installation and maintenance of utilities.

15. The restriction that the Property shall not be used for any type of Vacation Time Sharing Plan as defined by S.C. Code Section 27-32-10, et. seq., as amended, without the express, written consent of the The I'On Company, LLC ("TIC") or its successors or assigns.

16. Zoning or other restrictions of record as imposed by governmental authorities having jurisdiction over the use of the Property.

17. Any interest created by or limitations on use imposed by the Federal Coastal Zone Management Act or other Federal law or regulations or by South Carolina Code Section 48-19-10 through Section 48-39-220, as amended, or any regulations promulgated pursuant to said State or Federal laws, inclusive of DHEC (formerly South Carolina Coastal Council) and the U.S. Army Corps of Engineers.

18. Easement for Use and Enjoyment of Boating Facilities by and between 148 Civitas, LLC and I'On Club, LLC dated August 5, 2009 and recorded in the RMC Office for Charleston County simultaneously herewith.

19. All facts which are shown on any existing survey or would be shown on a current survey of the Property.

20. Claims of any property owners in the I'On neighborhood or other parties alleging rights and interests in the Property and dock facilities located thereon in connection with any HUD Property Report prepared and issued by TIC as the developer of the I'On neighborhood.

21. Rights of third parties to use in the Property and dock facilities located thereon.

RMC Bk 0073 Pg 784 : pg 7 *

22. A reservation of non-exclusive easements for the installation and maintenance of all utilities (i) adjacent to, parallel with and within 3 feet of the two side boundary lines of the Property, and (ii) within applicable setbacks for the front and rear boundary lines.

23. The Property is further subject to the following:

(i) if the Property is ever used or developed for residential purposes or rezoned for residential use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the "Declaration of Covenants, Conditions and Restrictions for I'On", recorded in Book C297, page 282 in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Residential Declaration"), and all related documents referenced therein, and those set forth in the I'On Code. Grantee acknowledges and agrees that if the Property is ever used or developed for residential purposes or rezoned for residential use, Grantee and any successor in title shall automatically become a member of the I'On Assembly, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property. Grantee acknowledges that only builders approved by TIC, its successors or assigns, the developer of I'On, may construct homes or improvements or complete renovations on homes in I'On. Such approval requirement is for the protection of TIC, only and shall not be construed to create any duty or liability to Grantee on the part of TIC. Grantee agrees that Grantee shall not permit any person other than a builder approved by TIC to construct a home on the Property while title is vested in Grantee. Grantee also acknowledges that builders in the I'On Guild who construct homes or provide construction services in I'On have agreed to pay the William Means Real Estate, LLC and/or the listing agent a commission of six percent (6%) of the Gross Sales Price of the improvements to be constructed by such builder on lots in I'On owned by third party buyers, such as Grantee. This Commission is to be calculated as follows: Commission = .06 x Gross Sales Price. The Gross Sales Price includes the Commission and can be calculated as follows: Gross Sales Price = The total of cost of improvements and overhead and profit divided by 0.94. Such commission shall be paid upon closing of the construction loan or commencement of construction, whichever next occurs after the builder enters into the contract for construction of a home for which a commission is payable;

(ii) if the Property is ever used or developed for commercial purposes or rezoned for commercial use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the Conditions, and Restrictions for I'On Square, dated August 23, 2000, and recorded September 8, 2000, in Book R354, Page 129 in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Commercial Declaration"), and all related documents referenced therein. Grantee acknowledges and agrees that if the Property is ever used or developed for commercial purposes or rezoned for commercial use, Grantee

RMC Bk 0073 Pg 784 : pg 8 *

and any successor in title shall automatically become a member of the I'On Square Association, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property;

(iii) no structure or exterior items shall be placed, erected, or installed upon the Property, and no improvements or site work, exterior alterations of existing improvements, or planting or removal of landscaping, shall take place on any portion of the Property unless the design and plans for such is reviewed and approved in writing by Grantor or TIC, their successors and assigns; provided however, that if the Property is used or developed for residential or commercial purposes or rezoned for residential or commercial uses, which results in the Property becoming subject to the Residential Declaration or the Commercial Declaration, such review and approval shall be made in accordance with the applicable declaration; and

(iv) Grantor hereby reserves, for the benefit of Grantor and TIC, their successors or assigns, a non-exclusive perpetual easement in gross for the storage of four (4) kayaks under the porch of the building located on the Property or if unavailable, in such other comparable location on the Property as the Grantee may determine in its reasonable discretion.

Grantee agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of subsections (i) through (iv) of this Paragraph 23.

STATE OF SOUTH CAROLINA) AFFIDAVIT Date of August 5, 2009

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

1. I have read the information on the back of this affidavit and I understand such information.
2. The property is being transferred from I'On Club, LLC to 148 Civitas, LLC on August 5, 2009.
3. Check one of the following: The Deed is
   a) __x__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c) __EXEMPT from the deed recording fee because (exemptions 1-12) (If exempt, please skip items 4-6, and go to item 7of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $1,400,000.00.
   b) The fee is computed on the fair market value of the realty which is $__.
   c) The fee is computed on the fair market value of the realty as established for property tax purposes which is $1,400,000.00
5. Check YES__ or NO___ to the following: A Lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is $ _.
6. The DEED recording fee is computed as follows:
   a) $1,400,000.00 on the amount listed in item 4 above_
   b) _____ the amount listed in item 5 above (no amount place zero)
   c) $
   d) $1,400,000.00 subtract line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:_____.
8. Check IF Property other than Real Property is being transferred on this Deed, (A) _____Mobile Home (B) _____Other
9. ____DEED OF DISTRIBUTION-ATTORNEY'S AFFIDAVIT: Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above name decedent.
10. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 5th of August, 2009.

_____ Notary Public for SC,

My Commission Exp: 11/19/14

RMC Bk 0073 Pg 784 : pg 9 *

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
WOODDY LAW FIRM, LLC
ATTORNEYS AT LAW
622 JOHNNIE DODDS BLVD.
MT. PLEASANT SC 29464

RECORDED

Date: August 7, 2009
Time: 3:20:56 PM

Book	Page	DocType
0073	784	Deed

Charlie Lybrand, Register
Charleston County, SC

RMC Bk 0073 Pg 784 : pg 10 *

MAKER:
I'ON CLUB LLC

RECIPIENT:
148 CIVITAS LLC

Original Book:

Original Page:

Note:

of Pages: 10

Recording Fee	$ 10.00
State Fee	$ 3,640.00
County Fee	$ 1,540.00
Extra Pages	$ 5.00
Postage	$ -
Chattel	$ -
TOTAL	$ 5,195.00

DRAWER: Drawer 3
CLERK: ECP

RECEIVED FROM RMC
AUDITOR'S OFFICE
AUG 10 2009
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR
REP MK
DATE 8/10/09
04

0073	784	08/07/2009	10
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Original Book	Original Page	Doc Type	Recorded Time

EXHIBIT 4



RMC Bk 0073 Pg 776 : pg 1 *

The original Recreational Easement and Agreement to Share Costs was dated on the February 9, 2000 and recorded in the RMC Office for Charleston County in Book M342, at Page 051.

STATE OF SOUTH CAROLINA	)	ASSIGNMENT OF CERTAIN CLUB OWNER'S
	)	RIGHTS AND OBLIGATIONS UNDER
	)	RECREATIONAL EASEMENT AND AGREEMENT
COUNTY OF CHARLESTON	)	TO SHARE COSTS

THIS ASSIGNMENT OF CERTAIN CLUB OWNER'S RIGHTS AND OBLIGATIONS UNDER RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS (hereinafter sometimes referred to as the "Assignment") is entered into on the 5th day of August, 2009, by and between **I'On Club, LLC**, a South Carolina limited liability company (hereinafter, "Assignor") and **148 Civitas, LLC**, a South Carolina limited liability company (hereinafter, "Assignee").

WITNESSETH:

WHEREAS Assignor is the owner of certain real property located in I'On subdivision, in the Town of Mt. Pleasant, County of Charleston, State of South Carolina identified as the "Club Property" in the "Recreational Easement and Agreement to Share Costs" dated February 9, 2000 and recorded in the RMC Office for Charleston County in Book M342, at Page 051 (hereinafter, the "Recreational Agreement");

WHEREAS Assignor previously entered into the Recreational Agreement with The I'On Company, LLC (hereinafter, "TIC") and the I'On Assembly, Inc. (hereinafter, the "Assembly") and, pursuant to the terms of thereof, Assignor granted to the Assembly, subject to certain conditions set forth in the Recreational Agreement, a perpetual, nonexclusive easement over and on certain portions of the Club Property, identified therein as the "Boating Facilities;"

WHEREAS, in the Recreational Agreement, TIC granted to Assignor, subject to certain conditions set forth therein, a perpetual, nonexclusive easement over and on property identified in the therein as "Eastlake" and the "Amenity Area;"

WHEREAS the Recreational Agreement also set forth various parties' obligations to maintain and insure the Club Property, Eastlake, and the Amenity Area;

WHEREAS the Recreational Agreement obligated the Assembly to pay Assignor assessments to cover a share of the costs of maintaining, repairing, replacing, operating and insuring the Boating Facilities; and

WHEREAS Assignor and Michael Russo ("Russo") previously entered into a Contract dated June 18, 2009 whereby Assignor agreed to sell to Russo, and Russo to purchase from Assignor, certain real property known as Lot CV-6, I'On, Mt. Pleasant, South Carolina (identified by TMS No. 535-06-00-230) (hereinafter, the "Property"), as well as certain personal property and other Assets, described in detail in said Contract;

RMC Bk 0073 Pg 776 : pg 2 *

WHEREAS Russo has assigned all his rights, obligations, and interest under the Contract to Assignee by Assignment of Contracts of even date herewith; and

WHEREAS, in connection with the sale of the Property, Assignor has agreed to assign certain rights, obligations, and interest in the Recreational Agreement to Assignee and Assignee has agreed assume such rights, obligations, and interest, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee, intending to be legally bound hereby, agree as follows:

1. Subject to the terms herein including, without limitation, Paragraph 6 below, Assignor hereby assigns, transfers, and forever conveys to Assignee all of its rights, obligations, and interest as Club Owner under the Recreation Agreement, as set forth in detail therein, which rights, obligations and interest are incorporated into this Assignment by reference, as if they were set forth herein verbatim EXCEPT, HOWEVER, ASSIGNOR HEREBY RESERVES UNTO ITSELF AND DOES NOT ASSIGN ALL RIGHTS TO THE EASEMENT SET FORTH IN SECTION 1.2 OF THE RECREATIONAL AGREEMENT PREVIOUSLY GRANTED TO CLUB OWNER FOR THE BENEFIT OF CLUB MEMBERS, THEIR GUESTS, AND OTHER PERSONS AS CLUB OWNER MAY AUTHORIZE, BEING A PERPETUAL, NONEXCLUSIVE EASEMENT OVER AND ON THE PROPERTY DESCRIBED IN THE RECREATIONAL AGREEMENT AS EASTLAKE AND THE AMENITY AREA AND ASSIGNOR HEREBY RESERVES UNTO ITSELF AND DOES NOT ASSIGN ALL RIGHTS OF ENFORCEMENT UNDER SECTION 2.3 OF THE RECREATIONAL AGREEMENT.

2. Assignee hereby assumes all the rights, obligations, and interest of the Club Owner as set forth in the Recreation Agreement EXCEPT WITH REGARD TO THE ABOVE REFERENCED RESERVATION SET FORTH IN SECTION 1.

3. Assignor hereby agrees to provide to Assignee copies of all documents related to the use and operation of the Boating Facilities, including Budget information, within a reasonable time following the effective date of this Assignment.

4. All of the covenants, terms and conditions set forth in this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

6. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ASSIGNEE SHALL NOT AMEND THE RECREATIONAL AGREEMENT IN ANY WAY WHICH MAY AFFECT ASSIGNOR OR ITS RESERVED RIGHTS UNDER THE RECREATIONAL AGREEMENT (AS IDENTIFIED HEREIN, SPECIFICALLY WITH REGARD TO SECTIONS 1.2 AND 2.3 OF THE RECREATIONAL AGREEMENT) WITHOUT THE WRITTEN CONSENT OF ASSIGNOR WHICH CONSENT MAY BE WITHHELD IN ASSIGNOR'S SOLE DISCRETION. ASSIGNEE SHALL IMMEDIATELY

RMC Bk 0073 Pg 776 : pg 3 *

NOTIFY ASSIGNOR OF RECEIPT OF NOTICE (IN ACCORDANCE WITH SECTION 4.4 OF THE RECREATIONAL AGREEMENT) FROM ANY PARTY TO THE RECREATIONAL AGREEMENT OF ANY ISSUE WHICH MAY IN ANY WAY AFFECT ASSIGNOR OR ITS RESERVED RIGHTS UNDER THE RECREATIONAL AGREEMENT.

7. Assignor and Assignee may pursue any remedy at law or in equity against the other for a breach of this Assignment.

8. The parties hereto agree to execute such other documents (recordable or otherwise) necessary to effect the intent of the terms of this Assignment.

[SIGNATURE PAGES TO FOLLOW]

RMC Bk 0073 Pg 776 : pg 4 *

IN WITNESS WHEREOF, Assignor has hereunto set its Hand and Seal this 5th day of August, 2009 to this ASSIGNMENT OF CERTAIN CLUB OWNER'S RIGHTS AND OBLIGATIONS UNDER RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS.

WITNESSES:

Witness # 1

Witness # 2

I'ON CLUB, LLC, a South Carolina limited liability company

BY: The I'On Group, LLC
Its: Manager

BY: Vincent G. Graham
ITS: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that The I'On Group, LLC*, as Manager of I'On Club, LLC personally appeared before me this 5th day of August, 2009 and acknowledged the due execution of the foregoing instrument. By Vincent G. Graham, Its Manager

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 8-11-10

{01573692.2}

RMC Bk 0073 Pg 776 : pg 5 *

IN WITNESS WHEREOF, Assignee has hereunto set its Hand and Seal this 5th day of August, 2009 to this ASSIGNMENT OF CLUB OWNER'S RIGHTS AND OBLIGATIONS UNDER RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS.

WITNESSES:

Witness # 1

Witness # 2

148 CIVITAS, LLC, a South Carolina limited liability company

BY: Stephen W. Speer

ITS: Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that Stephen W. Speer as Member 148 Civitas, LLC personally appeared before me this 5th day of August, 2009 and acknowledged the due execution of the foregoing instrument.

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 8/14/2014

[01573692.2]

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

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Filed By:

WOODDY LAW FIRM, LLC
ATTORNEYS AT LAW
622 JOHNNIE DODDS BLVD.
MT. PLEASANT SC 29464

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RMC Bk 0073 Pg 776 : pg 6 *

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EXHIBIT 5

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,

Plaintiff,

vs.

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; 148 CIVITAS, LLC; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); MIKE RUSSO; AND I'ON ASSEMBLY, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10490

THIRD AMENDED SUMMONS

FILED
2014 JAN -2 PM 2:11
CLERK OF COURT
BY

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Third Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Third Amended Complaint upon the subscriber at his office at 415 Mill Street, Post Office Box 806, Mount Pleasant, South Carolina within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer within the prescribed time, a judgment by default will be rendered against you for the amount or other remedy requested in the attached Third Amended Complaint plus interest and costs.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua E. Evans
Dabny Lynn
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806

T: (843) 849-8400
F: (843) 849-8406

January 7, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
	)	
BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.	)	**THIRD AMENDED COMPLAINT** (Jury Trial Demanded)
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC); 148 CIVITAS, LLC; MIKE RUSSO; AND I'ON ASSEMBLY, INC.,	)	
Defendants.	)	

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CLERK OF COURT

The Plaintiffs, Brad J. Walbeck and Lea Ann Adkins, individually and derivatively on behalf of the I'On Assembly, complaining of the Defendants named herein, would respectfully allege and show the court as follows:

1. Plaintiff Brad J. Walbeck ("Walbeck"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

2. Plaintiff Walbeck's residence is located in I'On at 114 North Shelmore Boulevard, Mount Pleasant, South Carolina, 29464, and is also described as Lot 224 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

3. Plaintiff Lea Ann Adkins ("Adkins"), a resident of Charleston County, South Carolina is an owner of real estate located in the Charleston County subdivision known as I'On.

4. Plaintiff Adkins' residence is located in I'On at 34 Hopetown Road, Mount Pleasant, South Carolina, 29464, and is also described as Lot 5 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

5. Defendant The I'On Company, LLC ("I'On Company") is a limited liability company formed under the laws of South Carolina.

6. Defendant The I'On Group, LLC, formerly known as Civitas, LLC is a limited liability company formed under the laws of South Carolina.

7. I'On Group was and/or is a member of the I'On Company, and at all relevant times hereto, owned, operated, and/or controlled the I'On Company.

8. Defendant I'On Club, LLC ("I'On Club") is a limited liability company formed under the laws of South Carolina.

9. I'On Club was created by I'On Group for the purposes of owning and managing recreational facilities and amenities in the I'On community.

10. Defendant I'On Realty, LLC (formerly identified as I'On Real Estate, LLC) is a limited liability company formed under the laws of South Carolina.

11. I'On Realty, LLC operated as the real estate brokerage entity responsible for promotion and sale of the homesites located in the I'On community.

12. The I'On Group; The I'On Company, LLC; The I'On Club; and I'On Realty have been operated in such manner so that their legal distinction is blurred and they are amalgamated as a single entity and/or are the alter ego of each other.

13. Defendants Vince Graham and Tom Graham own, manage, and/or control, in whole or in part, I'On Company, I'On Group, I'On Club, and I'On Realty. [All of the foregoing Defendants may occasionally be referred to as "the I'On Defendants"]

14. I'On Defendants served as the developer of the subdivision known as I'On.

15. At all times relevant herein, Vince and Tom Graham were acting on their own behalf and/or as an agent of the other I'On Defendants.

16. Defendant 148 Civitas, LLC ("148 Civitas") is a limited liability company formed under the laws of South Carolina.

17. 148 Civitas is the current owner of Creekside Park and the Community Dock designated by TMS # 5350600230.

18. Defendant Mike Russo owns, manages, and/or controls 148 Civitas.

19. At all times relevant herein, Mike Russo was acting on his own behalf and/or as an agent of 148 Civitas.

20. Defendant I'On Assembly, Inc. ("The Assembly") is a corporation formed under the laws of South Carolina and is included herein as a party-defendant in that it has a significant interest in the outcome of this litigation and because Defendant Russo has previously moved to dismiss this suit unless The Assembly was added to this suit.

21. The Assembly is the homeowners association for the I'On neighborhood.

22. By virtue of property ownership in I'On, Plaintiffs Walbeck and Adkins are members of The Assembly, and have been members of The Assembly at all times relevant herein.

23. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of the The Assembly and its members, the other property owners in I'On, because The Assembly has failed to protect and enforce the rights of The Assembly and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

24. Plaintiff Walbeck entered into a contract to purchase the above-described real property from Defendant I'On Company on or about November 27, 1999.

25. Plaintiff Walbeck purchased the above-described real property from Defendant, I'On Company, LLC on or about March 31, 2000 and subsequently constructed a house thereon that serves as his primary residence.

26. Plaintiff Adkins purchased the above-described real property from Defendant, I'On Company, LLC on or about June 4, 2003 and subsequently constructed a house thereon that serves as her primary residence.

27. A Property Report ("the Property Report") dated November 3, 1998, was provided to the Plaintiffs by one or more agent(s) of the I'On Defendants.

28. The Property Report was given to other prospective lot purchasers in I'On.

29. The Property Report was given to purchasers at the time of, or before any agreements to purchase property in I'On were entered.

30. The Property Report contained representations regarding the Lots and Neighborhood.

31. The Property Report representations were either required by law, or were made with the intention of inducing the Plaintiff and others similarly situated into relying on such representations in order that they might purchase lots in I'On.

32. In the property report, the I'On Defendants represented to the Plaintiffs and others that homeowners would have unencumbered access and use of the "Creekside Park" and the "Community Dock" and that the owners use of these amenities would be transferred and conveyed to The Assembly for the use and benefit of all owners in I'On.

33. Both the park location and the dock are shown on plats of I'On.

34. Defendants' representation that Creekside Park and the Community Dock would be available for and transferred to The Assembly was intended to induce Plaintiffs and other homeowners/Assembly members to purchase lots in I'On.

35. A year or more after the Property Report was first published, I'On Company amended the Original Property Report. However, the Company continued to distribute the Original Property Report to potential lot purchasers.

36. The Original Property Report continued to be distributed to potential lot purchasers with the intent that the information contained in said report would be relied upon by potential buyers when making their decision to purchase a lot in I'On.

37. The I'On Defendants failed to notify past or prospective purchasers, and The Assembly, of the amendment.

38. Plaintiffs and other purchasers relied upon the representations described in the foregoing paragraphs when they made a decision to purchase their lots.

39. The Defendants have failed and refused to transfer ownership of Creekside Park or the Community Dock to The Assembly.

40. Plaintiffs did not learn that the I'On Defendants had not or did not intend to convey the amenities until circa 2009 when rumored the I'On Defendants' proposed transfer of the amenities to a third-party surfaced.

41. Circa 2000, unbeknownst to Plaintiffs, the parcels that were intended to become Creekside Park and Community Dock were transferred from I'On Company to I'On Club, allegedly for the benefit and use of the members of The Assembly. However, in 2009 I'On Club transferred the Creekside Park and Community Dock to 148 Civitas, an unaffiliated, for-profit entity.

42. Not only have the I'On Defendants failed to transfer the amenities to The Assembly, but the members' current use of the amenities is being impeded by the new owner and is set to expire circa 2030.

43. The failure to transfer the title to Creekside Park and the Community Dock has damaged Plaintiffs, all lot owners in I'On, and The Assembly. The value of each lot, and the value of membership in The Assembly, has been diminished by the Defendants' misfeasance, malfeasance, and nonfeasance.

44. Several I'On homeowners have made repeated demands upon The Assembly and its Board to secure The Assembly and its members the rights to the Creekside Park and Community Dock; and provided the Board with the necessary information to do so.

45. On or about February 26, 2009 The Assembly member and I'On property owner Catherine Templeton made a demand upon The Assembly (hereinafter the "Templeton Demand") to act in order to secure The Assembly and its member's unencumbered title, access, and use of the Creekside Park and Community Dock ("the Rights").

46. Plaintiffs were contemporaneously aware of the Templeton Demand as Templeton's Demand was made both by letter and overtly and publicly at an Assembly meeting.

47. On or about March 5, 2009 and March 11, 2009 Adkins made a request to The Assembly's attorney and registered agent, Timothy Bouch, Esquire, (hereinafter the "Adkins/Bouch Demand") to investigate the allegations that the I'On Company was contractually obligated to convey Creekside Park and Community Dock to The Assembly.

48. Walbeck was contemporaneously aware of the Adkins/Bouch Demand.

49. On or about March 10, 2009 The Assembly attorney and registered agent, Timothy Bouch, Esquire, informed Adkins, and copied The Assembly Board President Bruce Kinney, that The Assembly was working to secure formal title to properties represented to be the property of The Assembly.

50. On or about March 11, 2009 The Assembly Board President, Bruce Kinney, demanded that I'On Company convey the Community Dock to The Assembly, but failed to demand conveyance of the Creekside Park.

51. Plaintiffs were contemporaneously aware of The Assembly's half-hearted attempts to secure title to Community Dock and silence as to the sale of the Creekside Park.

52. During the month of April 2009, Adkins and The Assembly Board member Matt Walsh ("Walsh") discussed the I'On Defendants obligation to convey the Creekside Park and Community Dock to The Assembly. Concurrently, Walsh relayed Adkins demands to I'On Defendants. Walbeck was contemporaneously aware of these communications.

53. During the months of June and July, 2009 Walbeck and Adkins made demands upon the I'On Defendants to convey the Creekside Park and Community Dock to The Assembly. The Assembly Board was aware of the demands and subsequent refusals from the I'On Defendants.

54. Despite repeated demands to the I'On Defendants and The Assembly Board, the Board has failed to take the necessary action to secure unencumbered title, access, and use of Creekside Park and Community Dock.

55. Additional demands upon The Assembly would now be futile as The Assembly has failed to act to protect the rights of The Assembly and its members, despite being provided with both the information necessary and the opportunity to do so. The I'On Defendants' conveyance of the amenities to a third-party evidences the Board's failure to secure the rights to the Property, and the futility of further demand on The Assembly and its Board.

56. As monetary damages cannot adequately compensate Plaintiffs, The Assembly, and its members, Plaintiffs seek specific performance of the Defendants' obligations.

FOR A FIRST CAUSE OF ACTION
(Violation of the Interstate Land Sales Act – As to Defendants The I'On Company, LLC; I'On Realty, LLC; The I'On Group, LLC; and Vince Graham)

57. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth herein verbatim.

58. At the time the contracts for the sale of real property described herein were executed, I'On Company was subject to the requirements and provisions of Title 15, §§1702, et seq., Chapter 42 of the United States Code which is known as the Interstate Land Sales Act ("ILSA").

59. All legal requirements and provisions set forth in the ILSA are applicable to all transactions between I'On Company, the Plaintiffs, and all similarly-situated lot owners in I'On.

60. Defendants have violated the ILSA, Title 15, Chapter 42 §1702, et seq., U.S. Code by: (1) issuing a Property Report that made representations to prospective purchasers of lots that were false; and/or (2) continually distributing copies of the Property Report to potential purchasers, with knowledge that it contained false representations and that these representations would likely be relied upon, and were in fact relied upon by numerous lot purchasers in I'On; (3) failing to honor the representations therein.

61. Plaintiffs and The Assembly are entitled to an award for damages caused by these Defendants' violations of the ILSA, and for such other relief as provided in said Act, including, but not limited to injunctive relief, costs and attorney fees.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract – As to The I'On Company, LLC)

62. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth herein verbatim.

63. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were expressly incorporated into Plaintiff Walbeck's and other homeowners' contracts for the purchase of lots in I'On.

64. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were incorporated into Plaintiff Adkins' lot purchase agreement through the deeds and actions of the I'On Defendants and/or their agents.

65. The Assembly is an intended third party beneficiary to the contracts between Plaintiffs, other owners, and the I'On Defendants.

66. The I'On Defendants breached their contracts with the Plaintiffs, other homeowners, and The Assembly by failing to convey the Creekside Park and Community Dock to The Assembly. The I'On Defendants' breach of contract was accompanied by fraudulent intent, to wit, said Defendants knew at the time they entered the contracts and/or consummated their objectives that they did not intend to fulfill the terms related to the above-referenced amenities.

67. Plaintiffs and The Assembly are entitled to specific enforcement of the contract(s) and/or an award of damages in an amount to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty – As to the I'On Defendants)

68. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

69. The I'On Defendants have a fiduciary relationship to the Plaintiffs by virtue of their capacity as the developer and steward of the I'On community amenities and their former capacity controlling the Board of The Assembly.

70. The I'On Defendants breached the fiduciary relationship by failing to honor their trust, by failing to disclose their breach of duty, by failure to enforce The Assembly's rights, and by self-dealing.

71. Given the fiduciary relationship, the burden falls upon the Defendants to prove at arm's length and fair nature of the transactions described herein.

72. Plaintiffs and The Assembly are entitled to an award of damages in an amount to be determined by the trier of fact and specific performance.

FOR A FOURTH CAUSE OF ACTION
(Fraud/Constructive Fraud – As to the I'On Defendants)

73. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

74. The Defendants represented to Plaintiffs that the Creekside Park and Community Dock would be conveyed to The Assembly.

75. The Creekside Park and Community Dock were marketed as valuable amenities induced purchasers, including Plaintiffs, into purchasing home sites in I'On.

76. The Defendants knew that access to the Creekside Park and Community Dock was a valuable asset to lot purchasers, including Plaintiffs.

77. The Defendants intended for lot purchasers, including Plaintiffs, to rely on the above-described representations.

78. Plaintiffs had no reason to know Defendants' representations regarding conveyance of the Creekside Park and Community Dock were false.

79. Plaintiffs relied on Defendants' representations that they would convey the Creekside Park and Community Dock to The Assembly.

80. The Defendants failed to convey the Creekside Park and Community Dock.

81. Plaintiffs have been deprived of access and his interest in the Creekside Park and Community Dock.

82. Defendants made a false, material representation; they knew it was false or recklessly disregarded the fact that it was false; Defendants intended that the representation be relied upon by the Plaintiffs; the Plaintiffs were ignorant of the representation's falsity; the Plaintiffs relied on the truth of the representation and was entitled to do so; and Plaintiffs suffered injury as a proximate and consequent result of that reliance.

83. Plaintiffs are entitled to an award and judgment as a result of the fraudulent conduct of the Defendants described herein, and for such other relief as the law provides.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation – As to the I'On Defendants)

84. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

85. The I'On Defendants made oral and written representations that the Community Dock and Creekside Park would be transferred to The Assembly.

86. The Defendants had a pecuniary interest in the subject matter of the representations.

87. The Defendants owed a duty of care to the Plaintiffs to communicate truthfully all information regarding his purchase in I'On, without material omission.

88. The Defendants' breached that duty owed by misrepresenting facts which induced the Plaintiffs and other lot purchasers to enter into contracts for the purchase of lots in I'On.

89. The Plaintiffs, The Assembly, and its members have suffered a pecuniary loss as a direct and proximate result of his reliance on the Defendants' false representations.

90. The Plaintiffs and The Assembly, and its members are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy – As to All Defendants Except I'On Assembly, Inc.)

91. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

92. All Defendants in this action have conspired and acted in concert to injure the Plaintiffs and The Assembly and deprive them of their rights to the Creekside Park and Community Dock for the Defendants' gain.

93. The Defendants' above-described acts have caused the Plaintiffs, The Assembly, and its members special damages.

94. The Plaintiffs are entitled to an award of damages in an amount to be determined by the trier of fact.

FOR A SEVENTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act – As to I'On Defendants)

95. Plaintiffs re-allege the allegations contained in the above paragraphs as if fully set forth herein.

96. The Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

97. Defendants' above-described activities constitute unfair and deceptive practices in the conduct of their trade.

98. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

99. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

100. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys fees, and costs.

101. Plaintiffs are entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of the SCUPTA, and to an award for damages, treble damages, costs, and attorney fees for the prosecution of this action.

FOR A EIGHTH CAUSE OF ACTION
(Unjust Enrichment – As to All Defendants Except Assembly)

102. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

103. The Defendants have been unjustly enriched at the expense of the Plaintiffs, The Assembly, and those similarly situated.

104. The Plaintiffs and The Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Assembly.

FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel – As to the I'On Defendants)

105. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

106. The I'On Defendants promised the Plaintiffs, The Assembly, and other similarly-situated homeowners that it would convey the Creekside Park and Community Dock to The Assembly for the benefit of all landowners in I'On and this promise was unambiguous.

107. Plaintiffs relied on this promise. Defendants expected and foresaw Plaintiffs' reliance.

108. Plaintiffs are entitled to an order of this Court requiring the I'On Company to specifically perform said conveyances, and to an award of costs, damages, consequential and special damages and attorneys' fees.

FOR A TENTH CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation As to The I'On Company, LLC; I'ON Club, LLC, I'On Realty, LLC, and The I'On Group, LLC)

109. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

110. Plaintiffs believe the I'On Company, I'On Club, I'On Realty, and I'On Group to be alter egos of each other, and therefore, liable for the actions of each other at I'On and any damages resulting from said actions.

111. The I'On Company, I'On Club, I'On Realty, and I'On Group were operating together as joint venturers, members, and/or agents in the development, marketing, management, and sale of the lots at I'On. As such, these Defendants are amalgamated in a manner in which they were all operating as one in the same.

112. The I'On Company, I'On Club, I'On Realty, and I'On Group were owned and operated by substantially the same principals and/or used the same trade names at all times relevant to the development, marketing, management, and sale of the lots at I'On. Hence, these Defendants are amalgamated so as to blur the legal distinctions of said entities.

113. The I'On Company, I'On Club, I'On Realty, and I'On Group failed to observe necessary corporate formalities, were undercapitalized, and/or were otherwise so intermingled that each has become the alter ego of the other or are all amalgamated.

114. The I'On Company's, I'On Club's, I'On Realty's, and I'On Group's conduct and abuse of the corporate form have resulted in fundamental unfairness to Plaintiffs.

115. The I'On Company's, I'On Club's, I'On Realty's, and I'On Group's abuse of the corporate form makes it appropriate and just that any liability imposed on one of these Defendants, be imposed upon the other Defendants.

FOR A ELEVENTH CAUSE OF ACTION
(Tortious Interference With Contract – As to 148 Civitas, LLC & Russo)

116. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

117. Defendants knew and were aware of the I'On Defendants' contractual obligation to transfer the Creekside Park and Community Dock to The Assembly and the Plaintiffs' prospective economic advantages relating to said amenities; Defendants intentionally procured the I'On Defendants breach thereof, without justification; which act as proximately damaged Plaintiffs, The Assembly, and its members in an amount to be determined by the trier of fact.

FOR A TWELFTH CAUSE OF ACTION
(Aiding and Abetting – As to 148 Civitas, LLC & Russo)

118. Plaintiffs re-allege all of the foregoing allegations of the Complaint as if set forth here verbatim.

119. The I'On Defendants had contractual obligations and fiduciary duties requiring the I'On Defendants to convey the Creekside Park and Community Dock to The Assembly and its members.

120. In failing to convey the Creekside Park and Community Dock to The Assembly and its members, the I'On Defendants breached their contractual obligations and fiduciary duties to Plaintiffs.

121. Defendants 148 Civitas and Russo aided and abetted the I'On Defendants' breach of contract, breach of fiduciary duty and/or the I'On Defendants' otherwise wrongful activities in connection with the failed conveyance of the Community Dock and Creekside Park.

122. 148 Civitas and Russo knew of the Plaintiffs' interest in the Community Dock and Creekside Park and participated in the I'On Defendants' non-transfer of the Community Dock and Creekside Park to Plaintiffs.

123. As a direct and proximate result of 148 Civitas' and Russo's aiding and abetting the I'On Defendants' multiple breaches, Plaintiffs have suffered actual, consequential and special damages, including but not limited to, loss of economic opportunity and loss of unfettered deep water access.

124. Plaintiffs are entitled to judgment against 148 Civitas and Russo for actual and punitive damages for aiding and abetting the I'On Defendants' multiple breaches and misconduct.

WHEREFORE, Plaintiffs prays for a judgment of this Court for themselves, The Assembly, and its members:

1. actual, consequential, special, statutory, and punitive damages;
2. specific performance and injunctive relief;
3. the imposition of a construction trust in favor of the Plaintiffs regarding the property and proceeds obtained by 148 Civitas, Russo and/or the I'On Defendants through the unlawful means described above;
4. attorney fees and costs; and
5. such other relief as has been plead or is proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua F. Evans
Dabny Lynn
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
T: (843) 849-8400
F: (843) 849-8406

January 2, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I, the undersigned, of the law offices of Justin O'Toole Lucey, P.A., do hereby certify that I have this date, served a true and correct filed copy of **Plaintiffs' Third Amended Complaint** to the following parties:

Via Email and U.S. Mail
Brian C. Duffy, Esquire
Seth W. Whitaker, Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
Attorney for The I'On Company, LLC, The I'Ion Club, LLC, The I'On Group, LLC f/k/a Civtas, LLC, Vince Graham, Tom Graham, and I'On Realty, LLC

Via Email and U.S. Mail
Timothy W. Bouch, Esquire
Leath Bouch & Seekings, LLP
92 Broad Street
Charleston, SC 29401
Attorney for I'On Assembly, LLC

FILED
2014 JAN -2 PM 2:11
CLERK OF COURT
BY

Via Email and U.S. Mail
Charles S. Altman, Esquire
Meredith L. Coker, Esquire
Altman & Coker, LLC
575 King Street, Suite A
Charleston, SC 29403
Attorneys for Mike Russo and 148 Civitas, LLC

Via Email and U.S. Mail
Jenkins Mann, Esquire
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor
Columbia, SC 29202
Attorney for Mike Russo, 148 Civitas, LLC, and Tidelands Bank

By: Brooke Trevino
Brooke Trevino

This 2 day of January, 2014
Charleston, South Carolina

EXHIBIT 6

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-10490

FILED
2014 FEB 26 AM 9:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I'ON ASSEMBLY, INC., and BRAD J. WALBECK and LEA ANN ADKINS, individually and derivatively on behalf of I'ON ASSEMBLY, INC.,

Plaintiffs,

v.

THE I'ON COMPANY, LLC, THE I'ON CLUB, LLC, THE I'ON GROUP, LLC F/K/A CIVITAS, LLC, VINCE GRAHAM, TOM GRAHAM, and I'ON REALTY, LLC,

Defendants.

ORDER REALIGNING I'ON ASSEMBLY, INC. AS A PARTY PLAINTIFF

THIS CAUSE comes before this Court on the motion of Defendants The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC f/k/a Civitas, LLC, I'On Realty, LLC, Vince Graham, and Tom Graham (the "I'On Defendants"), for an Order realigning the I'On Assembly, Inc. as a party plaintiff in this matter, pursuant to Rule 21, SCRCP. The Court finds as follows:

1. This Court has authority, in its sound discretion, to realign a party "at any stage of the action" on such terms as are just. Rule 21, SCRCP; Branham v. Ford Motor Co., 390 S.C. 203, 241-24, 701 S.E.2d 5, 25-26 (2010).

2. In light of developments in this matter in January 2014, including without limitation the representations of counsel for the I'On Assembly, Inc. to the Court, it is appropriate to realign the I'On Assembly, Inc. as a plaintiff.

3. I'On Assembly, Inc. should be deemed to have adopted Plaintiffs' claims, and Defendants' responses to Plaintiffs' Complaint should be deemed to serve as responses to the Assembly's adopted claims.

4. Plaintiffs Walbeck and Adkins and the I'On Assembly have no opposition to the relief requested.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The I'On Assembly, Inc. is hereby realigned as a party plaintiff in this matter;

2. The I'On Assembly, Inc. is hereby deemed to have adopted Plaintiffs' claims as stated in Plaintiffs' Third Amended Complaint; and

3. The I'On Defendants' responses to the Third Amended Complaint are hereby deemed to serve as responses to the Assembly's thereby adopted claims.

Stephanie P. McDonald
Chief Administrative Judge
Ninth Judicial Circuit

February 21, 2014
Charleston, South Carolina

DUFFY & YOUNG LLC
96 BROAD STREET, CHARLESTON SC 29401
telephone 843-720-2044 *facsimile* 843-720-2047
ATTORNEYS AT LAW

February 20, 2014

VIA COURIER

The Honorable Stephanie P. McDonald
100 Broad Street
Suite 427
Charleston, SC 29401

RE: Walbeck v. The I'On Company, LLC
Charleston County Case No. 2010-CP-10-10490

Dear Judge McDonald:

Enclosed please find a filed copy of the I'On Defendants' Motion to Realign I'On Assembly, Inc. as a Party Plaintiff in the above-referenced matter, as well as a proposed Order granting same. Should the proposed Order meet with your approval, I would appreciate it if you would please sign the proposed Order and send same to the Clerk of Court's office for filing.

I have included a self-addressed, stamped, return envelope for the Court's convenience.

Thank you for your consideration in this matter.

Best regards,

Brian C. Duffy

Enclosures
cc: Justin O'Toole Lucey, Esq. (via U.S. mail)
Joshua F. Evans, Esq. (via U.S. mail)
Timothy W. Bouch, Esq. (via U.S. mail)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Brad Walbeck, et al.,	)	CASE NO.
☐ Plaintiff	)	2010-CP-10-10490
	)	
v.	)	MOTION AND ORDER INFORMATION
	)	FORM AND COVER SHEET
The I'On Company, LLC, Et Al.	)	
☒ Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Justin Lucey, Bar No.	Brian C. Duffy, Bar No. 16247
Address:	Address:
	96 Broad Street
phone: fax:	Charleston, SC 29401
e-mail: other:	phone: 843-720-2044 fax:
	e-mail: bduffy@duffyandyoung.com other:

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☒ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted 2/2/14

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	_____ JUDGE
☐ Other:	CODE: 2163 Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-10490

I'ON ASSEMBLY, INC., and BRAD J. WALBECK and LEA ANN ADKINS, individually and derivatively on behalf of I'ON ASSEMBLY, INC.,

Plaintiffs,

v.

THE I'ON COMPANY, LLC, THE I'ON CLUB, LLC, THE I'ON GROUP, LLC F/K/A CIVITAS, LLC, VINCE GRAHAM, TOM GRAHAM, and I'ON REALTY, LLC,

Defendants.

MOTION TO REALIGN I'ON ASSEMBLY, INC. AS A PARTY PLAINTIFF

FILED
2014 FEB 20 AM 10:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

COME NOW Defendants The I'On Company, LLC, The I'On Club, LLC, The I'On Group, LLC f/k/a Civitas, LLC, I'On Realty, LLC, Vince Graham, and Tom Graham (the "I'On Defendants"), by and through counsel, and move this Court for an Order realigning the I'On Assembly, Inc. as a party plaintiff in this matter, pursuant to Rule 21, SCRCP. The I'On Defendants understand that Plaintiffs Walbeck and Adkins and the I'On Assembly have no opposition to the relief requested.

In support of their motion, the movants state as follows:

1. This Court has authority, in its sound discretion, to realign a party "at any stage of the action" on such terms as are just. Rule 21, SCRCP; Branham v. Ford Motor Co., 390 S.C. 203, 241-24, 701 S.E.2d 5, 25-26 (2010).

2. In light of developments in January 2014, it is appropriate to realign the I'On Assembly, Inc. as a plaintiff.

3. I'On Assembly, Inc. should be deemed to have adopted Plaintiffs' claims, and Defendants' responses to Plaintiffs' Complaint should be deemed to serve as responses to the Assembly's adopted claims.

WHEREFORE, movants respectfully pray this honorable Court that the I'On Assembly, Inc. be realigned as a party plaintiff in this matter; that it be deemed to have adopted Plaintiffs' claims as stated in Plaintiffs' Third Amended Complaint; and that the I'On Defendants' responses to the Third Amended Complaint be deemed to serve as responses to the Assembly's thereby adopted claims.

This 20th day of February, 2014 at Charleston, South Carolina.

Brian C. Duffy
J. Rutledge Young, III
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for I'On Defendants

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO REALIGN I'ON ASSEMBLY, INC. AS A PARTY PLAINTIFF** has been served upon each of the parties to this action by depositing same in the United States mail, postage prepaid, in an envelope(s) addressed as follows:

Justin O. Lucey, Esq.
Joshua F. Evans, Esq.
415 Mill Street
PO Box 806
Mount Pleasant, SC 29465

Timothy W. Bouch, Esq.
Leath Bouch & Seekings
92 Broad Street
Charleston, SC 29401

FILED
2014 FEB 20 AM 10:40
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This 20th day of February, 2014.

DUFFY & YOUNG, LLC

EXHIBIT 7

Upon Recording, return to:
ALTMAN & COKER
575 KING STREET, SUITE A
CHARLESTON, SC 29403

BP0389564

#PGS: 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That148 CIVITAS, LLC, a South Carolina limited liability company, ("Grantor") in the state aforesaid, in consideration of the sum of Four Hundred Ninety Five Thousand & 00/100 Dollars ($495,000.00), to the Grantor in hand paid at and before the sealing of these presents by I'ON ASSEMBLY, INC., a South Carolina corporation, ("Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described real property, to wit:

SEE EXHIBIT "A" ATTACHED HERETO

Grantee's Address:

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 Grantee, its successors and assigns forever, the herein described property.

AND the said Grantor hereby binds itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors and assigns lawfully claiming, or to claim the same, or any part thereof.

WITNESS the Grantor's hand and seal this 14 day of January, 2014.

Signed, Sealed and Delivered
in the Presence of:

148 Civitas, LLC, a South Carolina limited liability company

By: Stephen W. Speer
Its: Member

By: Michael N. Russo
Its: Member

Speerex, Ltd.

By: Stephen W. Speer
Its: General Partner

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON)

BEFORE me personally appeared Stephen W. Speer, well known to be the Member of 148 Civitas, LLC, and as General Partner of Speerex, Ltd., and Michael N. Russo, well known to be the Member of 148 Civitas, LLC, who executed the foregoing instrument, and they acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 14th day of January, 2014.

Meghan M. Russo
Notary Public for South Carolina
My Commission Expires: 8/10/2019

EXHIBIT A

ALL that certain lot, piece or parcel of land and all improvements thereon, located in I'On, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as CV-6 on a plat entitled, "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, S.C." prepared by Thomas & Hutton Engineering Co., dated September 12, 2000, and recorded on January 30, 2001 in the RMC Office for Charleston County in Plat Book EE, at Page 573, said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to 148 Civitas, LLC, by deed of I'On Club, LLC, dated August 5, 2009, recorded August 7, 2009, in the RMC Office for Charleston County, South Carolina in Book 0073 at Page 784.

TMS# 535-06-00-230

Exhibit B

Permitted Exceptions

1. Ad valorem real property taxes for the year 2014 and all subsequent years, a lien not yet due and payable

2. All limitations, covenants, easements, restrictions, reservations and conditions of record which may affect the Property whether or not mentioned herein.

3. Declaration of Restrictive Covenants executed December 10, 1998 by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the Trust under the Will of Hampton S. Alford and recorded in the RMC Office for Charleston County in Book L316, at Page 19.

4. Title to Real Estate and Reservation of Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the Trust under the Will of Hampton S. Alford to The I'On Company, LLC dated August 12, 1997 and recorded in the RMC Office for Charleston County in Book J288, at Page 190.

5. Title to Real Estate and Reservation of Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the Trust under the Will of Hampton S. Alford to The I'On Company, LLC dated January 11, 1999 and recorded in the RMC Office for Charleston County in Book Y319, at Page 382.

6. Easements to The Commissioners of Public Works of the Town of Mount Pleasant, South Carolina recorded in the RMC Office for Charleston County in Book Y332, at Page 383; Book J316, at Page 288; Book O319, at Page 482; Book T416, at Page 667; Book S346, at Page 641; and Book T337, at Page 856.

7. Drainage Easement from The I'On Company, LLC to the Town of Mount Pleasant dated October 5, 2000 and recorded in the RMC Office for Charleston County in Book U393, at Page 203.

8. Easement to South Carolina Electric and Gas Company recorded in the RMC Office for Charleston County in Book X115, at Page 28.

9. Easement to BellSouth Telecommunications, Inc. dated November 6, 1997 and recorded in the RMC Office for Charleston County in Book U292, at Page 209.

10. Any and all Easements, rights of way, or other encumbrances shown on that certain plat entitled "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated September 12, 2000 and recorded in the RMC office for Charleston County in Plat Book EE, at Page 572-573.

11. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "PLAT OF THE SUBDIVISION OF A 163.64 ACRE RESIDUAL TRACT TO CREATE PHASE II (37.70 ACRES) & PUMP STATION SITE (0.10 ACRES), I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS #10292, dated January 6, 1999 and recorded in the RMC Office for Charleston County in Plat Book EC, at Page 997.

12. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "CONDITIONAL PLAT OF PHASE II, SUBPHASES A-E, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS #10292, dated September 12, 2000 and recorded in the RMC Office for Charleston County in Plat Book ED, at Page 108-109.

13. A reservation of non-exclusive easements along the boundary lines of the Property for the installation and maintenance of utilities.

14. The restriction that the Property shall not be used for any type of Vacation Time Sharing Plan as defined by S.C. Code Section 27-32-10, et. seq., as amended, without the express, written consent of The I'On Company, LLC ("TIC") or its successors or assigns.

15. Zoning or other restrictions of record as imposed by governmental authorities having jurisdiction over the use of the property.

16. Any interest created by or limitations on use imposed by the Federal Coastal Zone Management Act or other Federal law or regulations or by South Carolina Code Section 48-19-10 through Section 48-39-220, as amended, or any regulations promulgated pursuant to said State or Federal laws, inclusive of DHEC (formerly South Carolina Coastal Council) and the U.S. Army Corps of Engineers.

17. Easement for Use and Enjoyment of Boating Facilities by and between 148 Civitas, LLC and I'On Club, LLC dated August 5, 2009 and recorded on August 7, 2009, in the RMC Office for Charleston County in Book 0073 at Page 775.

18. All facts which are shown on any existing survey or would be shown on a current survey of the Property.

20. A reservation of non-exclusive easements for the installation and maintenance of all utilities (i) adjacent to, parallel with and within 3 feet of the two side boundary lines of the Property, and (ii) within applicable setbacks for the front and rear boundary lines.

21. The Property is further subject to the following:

(i) if the Property is ever used or developed for residential purposes or rezoned for residential use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the "Declaration of Covenants, Conditions and Restrictions for I'On", recorded in Book C297, page 282 in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Residential Declaration"), and all related documents referenced therein, and those set forth in the I'On Code. Grantee acknowledges and agrees that if the Property is ever used or developed for residential purposes or rezoned for residential use, Grantee and any successor in title shall automatically become a member of the I'On Assembly, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property. Grantee acknowledges that only builders approved by TIC, its successors or assigns, the developer of I'On, may construct homes or improvements or complete renovations on homes in I'On. Such approval requirement is for the protection of TIC, only and shall not be construed to create any duty or liability to Grantee on the part of TIC. Grantee agrees that Grantee shall not permit any person other than a builder approved by TIC to construct a home on the Property while title is vested in Grantee. Grantee also acknowledges that builders in the I'On Guild who construct homes or provide construction services in I'On have agreed to pay the William Means Real Estate, LLC and/or the listing agent a commission of six percent (6%) of the Gross Sales Price of the improvements to be constructed by such builder on lots in I'On owned by third party buyers, such as Grantee. This Commission is to be calculated as follows: Commission = .06 x Gross Sales Price. The Gross Sales Prices includes the Commission and can be calculated as follows: Gross Sales Price = The total of cost of improvements and overhead and profit divided by 0.94. Such commission shall be paid upon closing of the construction loan or commencement of construction, whichever next occurs after the builder enters into the contract for construction of a home for which a commission is payable;

(ii) if the Property is ever used or developed for commercial purposes or rezoned for commercial use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations

on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the Conditions, and Restrictions of I'On Square, dated August 23, 2000, and recorded September 8, 2000, in Book R354, Page 129, in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Commercial Declaration"), and all related documents referenced therein. Grantee acknowledges and agrees that if the Property is ever used or developed for commercial purposes or rezoned for commercial use, Grantee and any successor in title shall automatically become a member of the I'On Square Association, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property;

(iii) no structure or exterior items shall be placed, erected, or installed upon the Property, and no improvements or site work, exterior alterations of existing improvements, or planting or removal of landscaping, shall take place on any portion of the Property unless the design and plans for such is reviewed and approved in writing by Grantor or TIC, their successor and assigns; provided however, that if the Property is used or developed for residential or commercial purposes or rezoned for residential or commercial uses, which results in the Property becoming subject to the Residential Declaration or the Commercial Declaration, such review and approval shall be made in accordance with the applicable declaration; and

(iv) I'On Club, LLC, hereby reserves, for the benefit of I'On Club, LLC and TIC, their successors or assigns, a non-exclusive perpetual easement in gross for the storage of four (4) kayaks under the porch of the building located on the Property or if unavailable, in such other comparable location on the Property as the Grantee may determine in its reasonable discretion.

Grantee agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of subsections (i) through (iv) of this Paragraph 21.

22. Lease to 148 Civitas, LLC.

23. All covenants, restrictions, easements, and agreement of record.

STATE OF SOUTH CAROLINA AFFIDAVIT
COUNTY OF CHARLESTON

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by 148 CIVITAS, LLC, to I'ON ASSEMBLY, INC., on January _____, 2014.

3. Check one of the following: *The DEED is* check one

(a)__X_ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b)_____subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.

(c)_____EXEMPT from the deed recording fee because (exemption#_____). (Explanation if required) _____.

(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a)__x__The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $495,000.00

(b)_____The fee is computed on the fair market value of the realty which is $_____.

(c)_____The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES___ or NO_X_ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____

6. The DEED Recording Fee is computed as follows:

(a) $495,000.00 the amount listed in item 4 above

(b) 0.00 the amount listed in item 5 above (no amount place zero)

(c) $495,000.00 Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative for Grantor.

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

_____

Grantor, Grantee, or Legal Representative connected with this transaction

Sworn to before me this 14th day of January, 2014.

_____

Notary Public for South Carolina

My Commission Expires: 8/10/2019

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

ALTMAN & COKER LLC
575 KING STREET
SUITE A
CHARLESTON SC 29403

MAKER:

148 CIVITAS LLC

RECIPIENT:

I'ON ASSEMBLY INC

Original Book:

Original Page:

AUDITOR STAMP HERE

PID VERIFIED BY ASSESSOR

REP

DATE

Note:

RECORDED

Date: February 20, 2014
Time: 12:15:12 PM

Book	Page	DocType
0389	564	Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 9

Recording Fee	$	10.00
State Fee	$	1,287.00
County Fee	$	544.50
Extra Pages	$	4.00
Postage	$	-
Chattel	$	-
TOTAL	$	1,845.50

DRAWER: Drawer 1
CLERK: KLH

0389 Book

564 Page

02/20/2014 Recorded Date

9 # Pgs

Original Book

Original Page

D Doc Type

12:15:12 Recorded Time

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BRAD J. WALBECK AND LEA ANN ADKINS, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.

Plaintiffs,

And,

I'ON ASSEMBLY, INC., former Defendant Realigned as Plaintiff,

vs.

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; and, I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC;

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-10-10490

FOURTH AMENDED COMPLAINT
(Jury Trial Demanded)

2014 JUN 16 AM 11:06
CLERK OF COURT
BY

The Plaintiffs, Brad J. Walbeck and Lea Ann Adkins, individually and derivatively on behalf of the I'On Assembly, complaining of the Defendants named herein, would respectfully allege and show the court as follows:

1. Plaintiff Walbeck's residence is located in the I'On neighborhood at 114 North Shelmore Boulevard, Mount Pleasant, South Carolina, 29464, and is also described as Lot 224 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

2. Plaintiff Adkins' residence is located in the I'On neighborhood at 34 Hopetown Road, Mount Pleasant, South Carolina, 29464, and is also described as Lot 5 on a plat of I'On by Thomas and Hutton dated August 11, 1999.

3. Defendant The I'On Company, LLC ("I'On Company") is a limited liability company formed under the laws of South Carolina.

4. Defendant The I'On Group, LLC, formerly known as Civitas, LLC is a limited liability company formed under the laws of South Carolina.

5. Defendant I'On Club, LLC ("I'On Club") is a limited liability company formed under the laws of South Carolina.

6. Defendant I'On Realty, LLC (formerly identified as I'On Real Estate, LLC) is a limited liability company formed under the laws of South Carolina.

7. I'On Realty, LLC operated as the real estate brokerage entity responsible for promotion and sale of the home sites located in the I'On community.

8. Defendants Vince Graham and Tom Graham own, manage, and/or control, in whole or in part, directly or indirectly, the I'On Company, I'On Group, I'On Club, and I'On Realty.

9. The I'On Group; The I'On Company, LLC; The I'On Club; and I'On Realty have been operated in such manner so that their legal distinction is blurred and they are amalgamated as a single entity and/or are the alter ego of each other.

10. Defendants served as the developer of the subdivision known as I'On.

11. At all times relevant herein, Vince and Tom Graham were acting on their own behalf and/or as an agent of the other I'On Defendants.

12. Former Defendant, realigned Plaintiff, I'On Assembly, Inc. ("The Assembly") is a corporation formed under the laws of South Carolina. The Assembly is the homeowners association for the I'On neighborhood. The Assembly was added as a party at the insistence of one or more current or prior defendants in this matter and was realigned as a Plaintiff in 2014.

13. By virtue of property ownership in I'On, Plaintiffs Walbeck and Adkins are members of The Assembly, and have been members of The Assembly at all times relevant herein.

14. Plaintiffs bring this action on behalf of themselves and derivatively on behalf of The Assembly and its members, the other property owners in I'On, because The Assembly has previously failed to protect and enforce the rights of The Assembly and its members with respect to the matters alleged herein.

FACTUAL BACKGROUND

15. Plaintiff Walbeck entered into a contract to purchase the above-described real property from Defendant I'On Company on or about November 27, 1999.

16. Plaintiff Walbeck purchased the above-described real property from Defendant, I'On Company, LLC on or about March 31, 2000 and subsequently constructed a house thereon that serves as his primary residence.

17. Plaintiff Adkins purchased the above-described real property from Defendant, I'On Company, LLC on or about June 4, 2003 and subsequently constructed a house thereon that serves as her primary residence.

18. A Property Report ("the Property Report") dated November 3, 1998, was provided to the Plaintiffs by one or more agent(s) of the I'On Defendants.

19. The Property Report was given to other prospective lot purchasers in I'On.

20. The Property Report was given to purchasers at the time of, or before any agreements to purchase property in I'On were entered.

21. The Property Report contained representations regarding the Lots and Neighborhood.

22. The Property Report representations were either required by law, or were made with the intention of inducing the Plaintiff and others similarly situated into relying on such representations in order that they might purchase lots in I'On.

23. In the property report, the I'On Defendants represented to the Plaintiffs and others that homeowners would have unencumbered access and use of the "Creekside Park" and the "Community Dock" and that the owners use of these amenities would be transferred and conveyed to The Assembly for the use and benefit of all owners in I'On.

24. Both the park location and the dock are shown on plans, planning materials, an marketing materials for I'On, including the "Grand Plan."

25. Defendants' representation that Creekside Park and the Community Dock would be available for and transferred to The Assembly, in conjunction with other representations and marketing, was intended to induce Plaintiffs and other homeowners/Assembly members to purchase lots in I'On.

26. Before and after the Walbeck contract was executed, and before the Walbeck purchase was consummated, Defendants amended their plans for the amenities without disclosure to Walbeck.

27. In late 1999, Defendants negotiated a sale of usage rights in the amenities to third parties, without disclosure to the Plaintiffs.

28. Circa August 15, 2000, unbeknownst to Plaintiffs, the parcels that were intended to become Creekside Park and Community Dock were transferred from I'On Company to I'On Club, allegedly still for the benefit and use of the members of The Assembly, by virtue of a prior, albeit invalid, Recreational Easement dated February 9, 2009, granted by I'On Club, before it owned the right to grant an easement.

29. Defendants had a duty to disclose to Plaintiffs the changes in the amenities plans and all matters relating to the amenities.

30. Circa April, 2000, Defendants amended the Original Property Report. However, the Company continued to distribute the Original Property Report to potential lot purchasers.

31. Hundreds of lot purchasers were provided the Original Property Report.

32. The Original Property Report continued to be distributed to potential lot purchasers with the intent that the information contained in said report would be relied upon by potential buyers when making their decision to purchase a lot in I'On.

33. The I'On Defendants failed to notify past or prospective purchasers, and The Assembly, of the amendment to the Property Report or of changes to the "Grand Plan" or the amenities.

34. Plaintiffs and other purchasers relied upon the representations described in the foregoing paragraphs when they made a decision to purchase their lots.

35. The Defendants did not transfer ownership of Creekside Park or the Community Dock to The Assembly.

36. Plaintiffs did not learn that the I'On Defendants had not or did not intend to convey the amenities until circa late 2008 when rumors relating to the I'On Defendants' proposed transfer of the amenities to a third-party surfaced.

37. After Homeowners objected to the third-party transfer, and after the Assembly insisted on certain restrictions, Defendants represented that the third-party transfer had been cancelled.

38. Several I'On homeowners made repeated demands upon The Assembly and its Board to secure The Assembly and its members the rights to the Creekside Park and Community Dock; and provided the Board with the necessary information to do so.

39. On or about February 26, 2009 The Assembly member and I'On property owner Catherine Templeton made a demand upon The Assembly (hereinafter the "Templeton Demand") to act in order to secure The Assembly and its members' unencumbered title, access, and use of the Creekside Park and Community Dock ("the Rights").

40. Plaintiffs were contemporaneously aware of the Templeton Demand as Templeton's Demand was made both by letter and overtly and publicly at an Assembly meeting.

41. On or about March 5, 2009 and March 11, 2009, Adkins made a request to The Assembly's attorney and registered agent, to investigate the allegations that the I'On Company was contractually obligated to convey Creekside Park and Community Dock to The Assembly.

42. Walbeck was contemporaneously aware of the Adkins Demand.

43. On or about March 10, 2009, The Assembly, through its attorney, informed Adkins, that The Assembly was working to secure formal title to properties represented to be the property of The Assembly.

44. On or about March 11, 2009, The Assembly Board President, Bruce Kinney, demanded that I'On Company convey the Community Dock to The Assembly, and inquired of the Creekside Park.

45. Plaintiffs were contemporaneously aware of The Assembly's attempts to secure title to Community Dock and silence as to the sale of the Creekside Park.

46. During the month of April 2009, Adkins and The Assembly Board member Matt Walsh ("Walsh") discussed the I'On Defendants obligation to convey the Creekside Park and Community Dock to The Assembly. Concurrently, Walsh relayed Adkins demands to I'On Defendants. Walbeck was contemporaneously aware of these communications.

47. During the months of June and July 2009, Walbeck and Adkins made demands upon the I'On Defendants to convey the Creekside Park and Community Dock to The Assembly.

The Assembly Board was aware of the demands and subsequent refusals from the I'On Defendants.

48. Despite repeated demands to the I'On Defendants and The Assembly Board, the Board did not take the necessary action to secure unencumbered title, access, and use of Creekside Park and Community Dock.

49. Circa August 5, 2009, without notice to the Assembly or homeowners, I'On Club transferred the Creekside Park and Community Dock to 148 Civitas, an unaffiliated, for-profit entity,

50. The third-party transferee, 148 Civitas, further impeded the homeowners' access to the amenities.

51. The failure to transfer the title to Creekside Park and the Community Dock has damaged Plaintiffs, all lot owners in I'On, and The Assembly. The value of each lot, and the value of membership in The Assembly, and the use and enjoyment of the community by its homeowners and members, has been diminished by the third-party transfer.

52. Additional demands upon The Assembly prior to suite would have been futile as The Assembly has failed to timely act to protect the rights of The Assembly and its members. Defendants' conveyance of the amenities to a third-party evidences the Board's failure to secure the rights to the Property, and the futility of further demand on The Assembly and its Board.

53. At all times relevant herein, Defendants owed Plaintiffs and The Assembly a duty of full and adequate disclosure due to their pecuniary interest, their undertakings, their representations, their omissions, and their fiduciary duties.

54. Defendants have breached their duties of full and/or adequate disclosure.

55. As many of the instruments upon which Plaintiffs rely are sealed instruments, a twenty (20) year statute of limitations applies to Plaintiffs claims.

56. Defendants are estopped from relying on any statutes of limitation or repose by virtue of its acts of fraudulent concealment.

FOR A FIRST CAUSE OF ACTION
(Violation of the Interstate Land Sales Act)

57. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth herein verbatim.

58. At the time the contracts for the sale of real property described herein were executed, I'On Company was subject to the requirements and provisions of Title 15, §§1702, et seq., Chapter 42 of the United States Code which is known as the Interstate Land Sales Act ("ILSA").

59. All legal requirements and provisions set forth in the ILSA are applicable to all transactions between I'On Company, the Plaintiffs, and all similarly-situated lot owners in I'On.

60. Defendants have violated the ILSA, Title 15, Chapter 42 §1702, et seq., U.S. Code by: (1) issuing a Property Report that made representations to prospective purchasers of lots that were false; and/or (2) continually distributing copies of the Property Report to potential purchasers, with knowledge that it contained false representations and that these representations would likely be relied upon, and were in fact relied upon by numerous lot purchasers in I'On; (3) failing to honor the representations therein.

61. Plaintiffs and The Assembly are entitled to an award for damages caused by these Defendants' violations of the ILSA, and for such other relief as provided in said Act, including, but not limited to injunctive relief, costs and attorney fees.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

62. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth herein verbatim.

63. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were expressly incorporated into Plaintiff Walbeck's and other homeowners' contracts for the purchase of lots in I'On.

64. The Defendants' obligation to convey the Creekside Park and Community Dock to The Assembly were incorporated into Plaintiff Adkins' lot purchase agreement through the deeds and actions of the I'On Defendants and/or their agents.

65. The Assembly is an intended third party beneficiary to the contracts between Plaintiffs, other owners, and the I'On Defendants.

66. The I'On Defendants breached their contracts with the Plaintiffs, other homeowners, and The Assembly by failing to convey the Creekside Park and Community Dock to The Assembly. The I'On Defendants' breach of contract was accompanied by fraudulent intent, to wit, said Defendants knew at the time they entered the contracts and/or consummated their objectives that they did not intend to fulfill the terms related to the above-referenced amenities.

67. The fraudulent intent is evidenced by Defendants' sale of property interests to Olde Park between the time of the Walbeck contract and the date of the Walbeck deed, without disclosure to Walbeck.

68. The fraudulent intent is further evidenced by the amendment of the Property Report without disclosure to Walbeck or others.

69. Plaintiffs and The Assembly are entitled to an award of damages in an amount to be determined by the trier of fact.

70. If it is shown that Defendants' acts were accompanied by fraudulent acts, Plaintiffs are entitled to an award of punitive damages against Defendants.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

71. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

72. Defendants have a fiduciary relationship to the Plaintiffs by virtue of their capacity as the developer and steward of the I'On community amenities and their former capacity controlling the Board of The Assembly.

73. Defendants breached the fiduciary relationship by failing to honor their trust, by failing to disclose their breach of duty, by failure to enforce The Assembly's rights, and by self-dealing.

74. Given the fiduciary relationship, the burden falls upon the Defendants to prove at arm's length and fair nature of the transactions described herein.

75. Plaintiffs and The Assembly are entitled to an award of damages in an amount to be determined by the trier of fact and specific performance.

FOR A FOURTH CAUSE OF ACTION
(Fraud/Constructive Fraud)

76. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

77. The Defendants represented to Plaintiffs that the Creekside Park and Community Dock would be conveyed to The Assembly.

78. The Creekside Park and Community Dock were marketed as valuable amenities induced purchasers, including Plaintiffs, into purchasing home sites in I'On.

79. The Defendants knew that access to the Creekside Park and Community Dock was a valuable asset to lot purchasers, including Plaintiffs.

80. The Defendants intended for lot purchasers, including Plaintiffs, to rely on the above-described representations.

81. Plaintiffs had no reason to know Defendants' representations regarding conveyance of the Creekside Park and Community Dock were false.

82. Plaintiffs relied on Defendants' representations that they would convey the Creekside Park and Community Dock to The Assembly.

83. The Defendants failed to convey the Creekside Park and Community Dock.

84. Plaintiffs have been deprived of access and his interest in the Creekside Park and Community Dock.

85. Defendants made a false, material representation; they knew it was false or recklessly disregarded the fact that it was false; Defendants intended that the representation be relied upon by the Plaintiffs; the Plaintiffs were ignorant of the representation's falsity; the Plaintiffs relied on the truth of the representation and was entitled to do so; and Plaintiffs suffered injury as a proximate and consequent result of that reliance.

86. Plaintiffs are entitled to an award and judgment as a result of the fraudulent conduct of the Defendants described herein, and for such other relief as the law provides.

FOR A FIFTH CAUSE OF ACTION
(Negligent Misrepresentation)

87. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

88. The I'On Defendants made oral and written representations that the Community Dock and Creekside Park would be transferred to The Assembly.

89. The Defendants had a pecuniary interest in the subject matter of the representations.

90. The Defendants owed a duty of care to the Plaintiffs to communicate truthfully all information regarding his purchase in I'On, without material omission.

91. The Defendants' breached that duty owed by misrepresenting facts which, in conjunction with other representations, induced the Plaintiffs and other lot purchasers to enter into contracts for the purchase of lots in I'On.

92. The Plaintiffs, The Assembly, and its members have suffered a pecuniary loss as a direct and proximate result of his reliance on the Defendants' false representations.

93. The Plaintiffs, The Assembly, and its members are entitled to an award of damages in an amount to be determined by the trier of fact.

94. If it is shown that said negligence was gross or in reckless disregard for the rights of others, or other qualifying criteria, plaintiffs are entitled to an award of punitive damages.

FOR A SIXTH CAUSE OF ACTION
(Civil Conspiracy – As to Graham Defendants)

95. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

96. Defendants have conspired and acted in concert amongst themselves and with third parties to injure the Plaintiffs and The Assembly and deprive them of their rights to the Creekside Park and Community Dock for the Defendants' gain.

97. The Defendants' above-described acts have caused the Plaintiffs, The Assembly, and its members special damages.

98. The Plaintiffs are entitled to an award of damages in an amount to be determined by the trier of fact, including punitive damages.

FOR A SEVENTH CAUSE OF ACTION
(S.C. Unfair Trade Practices Act – As to I'On Defendants)

99. Plaintiffs re-allege the allegations contained in the Fourth Amended Complaint as if fully set forth herein.

100. The Defendants were engaged in trade and commerce as defined by the South Carolina Unfair Trade Practices Act.

101. Defendants' above-described activities constitute unfair and deceptive practices in the conduct of their trade.

102. Defendants' above-described acts are capable of repetition and adversely affect the public interest.

103. Defendants knew or should have known their conduct was in violation of South Carolina Code Section 39-5-20.

104. Defendants' wrongs entitle the Plaintiffs to an award of treble damages, attorneys fees, and costs.

105. Plaintiffs are entitled to a judgment of the Court as a result of the Defendants' repetitive and multiple violations of the SCUPTA, and to an award for damages, treble damages, costs, and attorney fees for the prosecution of this action.

FOR A EIGHTH CAUSE OF ACTION
(Unjust Enrichment)

106. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

107. By the sale of the amenities and rights in the amenities, the Defendants have been unjustly enriched at the expense of the Plaintiffs, The Assembly, and those similarly situated.

108. The Plaintiffs and The Assembly should be permitted recovery of that amount the Defendants have been unjustly enriched at the expense of the Plaintiffs and The Assembly.

FOR A NINTH CAUSE OF ACTION
(Promissory Estoppel – As to the I'On Defendants)

109. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

110. Defendants promised the Plaintiffs, The Assembly, and other similarly-situated homeowners that they would convey the Creekside Park and Community Dock to The Assembly for the benefit of all landowners in I'On and this promise was unambiguous.

111. Plaintiffs relied on this promise. Defendants expected and foresaw Plaintiffs' reliance.

112. Plaintiffs are entitled to an order of this Court requiring the I'On Company to specifically perform said conveyances, and to an award of costs, damages, consequential and special damages and attorneys' fees.

FOR A TENTH CAUSE OF ACTION
(Veil Piercing/Alter Ego/Amalgamation)

113. Plaintiffs re-allege all of the foregoing allegations of the Fourth Amended Complaint as if set forth here verbatim.

114. Plaintiffs believe the I'On Company, I'On Club, I'On Realty, and I'On Group to be alter egos of each other, and therefore, liable for the actions of each other at I'On and any damages resulting from said actions.

115. The I'On Company, I'On Club, I'On Realty, and I'On Group were operating together as joint venturers, members, and/or agents in the development, marketing, management, and sale of the lots at I'On. As such, these Defendants are amalgamated in a manner in which they were all operating as one in the same.

116. The I'On Company, I'On Club, I'On Realty, and I'On Group were owned and operated by substantially the same principals and/or used the same trade names at all times

relevant to the development, marketing, management, and sale of the lots at I'On. Hence, these Defendants are amalgamated so as to blur the legal distinctions of said entities.

117. The I'On Company, I'On Club, I'On Realty, and I'On Group failed to observe necessary corporate formalities, were undercapitalized, and/or were otherwise so intermingled that each has become the alter ego of the other or are all amalgamated.

118. The I'On Company's, I'On Club's, I'On Realty's, and I'On Group's conduct and abuse of the corporate form have resulted in fundamental unfairness to Plaintiffs.

119. The I'On Company's, I'On Club's, I'On Realty's, and I'On Group's abuse of the corporate form makes it appropriate and just that any liability imposed on one of these Defendants, be imposed upon the other Defendants.

WHEREFORE, Plaintiffs prays for a judgment of this Court for themselves, The Assembly, and its members:

1. actual, consequential, special, statutory, and punitive damages;
2. attorney fees and costs; and
3. such other relief as has been plead or is proper.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, P.A.

By: _____

Justin Lucey
Joshua F. Evans
Dabby Lynn
415 Mill Street
Post Office Box 806
Mount Pleasant, SC 29465-0806
T: (843) 849-8400
F: (843) 849-8406

June 16, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
I'ON ASSEMBLY, INC.; BRAD J. WALBECK AND LEA ANN ADKINS, BOTH INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	)	**Verification of Lea Ann Adkins**
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC),	)	
Defendants.	)	

FILED
2014 JUL 28 AM 10:03
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Lea Ann Adkins, hereby verify, that the facts and allegations in the Fourth Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Lea Ann Adkins

SWORN to and subscribed before me
this 25th day of July, 2014

Teri M. Burdick

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03/06/2017

Teri M. Burdick
My Comm. Expires
Notary
Public
3/6/2017
South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO. 2010-CP-10-10490
I'ON ASSEMBLY, INC.; BRAD J. WALBECK AND LEA ANN ADKINS, BOTH INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF THE I'ON ASSEMBLY, INC.,	)	**Verification of Brad J. Walbeck**
Plaintiff,	)	
vs.	)	
THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; VINCE GRAHAM; TOM GRAHAM; I'ON REALTY, LLC (FORMERLY IDENTIFIED AS I'ON REAL ESTATE, LLC),	)	
Defendants.	)	

FILED
2014 JUL 28 AM 10:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Brad J. Walbeck, hereby verify, that the facts and allegations in the Fourth Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein and remain one today.

Brad J. Walbeck

SWORN to and subscribed before me
this 25th day of July, 2014

Teri M. Burdick

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 03/06/2017

Teri M. Burdick
My Comm. Expires
Notary
Public
3/6/2017
South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2010-CP-10-10490

BRAD J. WALBECK and LEA ANN ADKINS,

Plaintiffs,

And,

I'ON ASSEMBLY, INC., former Defendant realigned as Plaintiff,

v.

THE I'ON COMPANY, LLC, THE I'ON CLUB, LLC, THE I'ON GROUP, LLC F/K/A CIVITAS, LLC, VINCE GRAHAM, TOM GRAHAM, and I'ON REALTY, LLC,

Defendants.

FILED
2014 JUL 18 PM 12:1
JULIE J. ARIS
CLERK OF COURT
BY

ANSWER TO FOURTH AMENDED COMPLAINT AND COUNTERCLAIMS

COME NOW Defendants The I'On Company, LLC (the "I'On Company"), the I'On Club, LLC (the "I'On Club"), the I'On Group, LLC f/k/a Civitas, LLC ("I'On Group"), Vince Graham, Tom Graham, and I'On Realty ("I'On Realty"; collectively "Defendants") by and through counsel, and answer Plaintiffs' Fourth Amended Complaint as follows:

GENERAL DENIAL

The Defendants deny all allegations of the Third Amended Complaint not specifically admitted herein.

FIRST DEFENSE AND ANSWER

1. The Defendants admit the allegations of Paragraph 1, upon information and belief.

2. The Defendants admit the allegations of Paragraph 2, upon information and belief.

3. The Defendants admit the allegations of Paragraph 3.

4. The Defendants admit the allegations of Paragraph 4.

5. The Defendants admit the allegations of Paragraph 5.

6. The Defendants admit the allegations of Paragraph 6.

7. The Defendants admit the allegations of Paragraph 7.

8. The Defendants deny the allegations of Paragraph 8.

9. The Defendants deny the allegations of Paragraph 9.

10. The Defendants deny the allegations of Paragraph 10.

11. The Defendants deny the allegations of Paragraph 11.

12. The Defendants admit, upon information and belief, that Former Defendant, realigned Plaintiff, I'On Assembly, Inc. ("The Assembly") is a corporation formed under the laws of South Carolina and that it is the homeowners association for the I'On neighborhood. Defendants admit that The Assembly was realigned as a Plaintiff in 2014. Defendants deny the remaining allegations of Paragraph 12 and demand strict proof thereof.

13. Responding to Paragraph 13, the Defendants admit that ownership of property in I'On gives Walbeck and Adkins such rights and privileges as are provided for in the Recorded Declaration of Covenants, Conditions, and Restrictions of I'On ("I'On CCRs"), and crave reference to that document for a full description of such rights and privileges. The Defendants deny any allegations of this Paragraph inconsistent with the language of the I'On CCRs, and deny all further allegations of Paragraph 13.

14. Defendants deny the allegations of Paragraph 14.

15. The Defendants admit the allegations of Paragraph 15.

16. The Defendants admit the allegations of Paragraph 16, upon information and belief.

17. The Defendants admit the allegations of Paragraph 17, upon information and belief.

18. The Defendants deny the allegations of Paragraph 18.

19. The Defendants admit that other prospective purchasers were provided the 1998 Property report before the report was amended in 2000, and deny the remaining allegations of Paragraph 19.

20. The Defendants admit that a small percentage of purchasers in I'On were provided the 1998 Property Report before the report was amended in 2000 and deny the remaining allegations of Paragraph 20.

21. Responding to Paragraph 21, the Defendants state that the Property Report is a document which speaks for itself and crave reference thereto. The Defendants deny any allegations of Paragraph 21 inconsistent with the Property Report.

22. The Defendants deny the allegations of Paragraph 22.

23. The Defendants deny the allegations of Paragraph 23.

24. The Defendants deny the allegations of Paragraph 24.

25. The Defendants deny the allegations of Paragraph 25.

26. Responding to Paragraph 26, the Defendants admit that The I'On Company amended the Property Report as of April 10, 2000, and deny the remaining allegations contained therein.

27. The Defendants deny the allegations of Paragraph 27.

28. Responding to Paragraph 28, the Defendants admit that The I'On Company transferred property to the I'On Club on or about August 15, 2000. The Defendants note that the I'On Club, the I'On Company, and the I'On Assembly entered into a Recreational Easement and Agreement to Share Costs dated February 9, 2000. Defendants further deny the remaining allegations therein.

29. The Defendants deny the allegations of Paragraph 29.

30. Responding to Paragraph 30, Defendants admit that the Property Report was amended in 2000, but deny the remaining allegations contained therein.

31. The Defendants deny the allegations of Paragraph 31.

32. The Defendants deny the allegations of Paragraph 32.

33. The Defendants deny the allegations of Paragraph 33.

34. The Defendants deny the allegations of Paragraph 34.

35. The Defendants deny the allegations of Paragraph 35.

36. The Defendants deny the allegations of Paragraph 36.

37. The Defendants deny the allegations of Paragraph 37.

38. The Defendants deny the allegations of Paragraph 38.

39. Responding to Paragraph 39, Defendants crave reference to the writing referred to and deny any allegations inconsistent therewith.

40. The Defendants deny the allegations of Paragraph 40.

41. Responding to Paragraph 41, Defendants crave reference to the writing referred to and deny any allegations inconsistent therewith.

42. The Defendants are currently without information sufficient to form a belief as to the allegations of Paragraph 42 and therefore deny the same.

43. The Defendants deny the allegations of Paragraph 43.

44. The Defendants deny the allegations of Paragraph 44.

45. The Defendants deny the allegations of Paragraph 45.

46. The Defendants deny the allegations of Paragraph 46 as stated.

47. The Defendants deny the allegations of Paragraph 47.

48. The Defendants deny the allegations of Paragraph 48.

49. The Defendants deny the allegations of Paragraph 49.

50. The Defendants deny the allegations of Paragraph 50.

51. The Defendants deny the allegations of Paragraph 51.

52. The Defendants deny the allegations of Paragraph 52.

53. The Defendants deny the allegations of Paragraph 53.

54. The Defendants deny the allegations of Paragraph 54.

55. The Defendants deny the allegations of Paragraph 55.

56. The Defendants deny the allegations of Paragraph 56.

57. Responding to Paragraph 57, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

58. The Defendants deny the allegations of Paragraph 58.

59. The Defendants deny the allegations of Paragraph 59.

60. The Defendants deny the allegations of Paragraph 60.

61. The Defendants deny the allegations of Paragraph 61.

62. Responding to Paragraph 62, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

63. The Defendants deny the allegations of Paragraph 63.

64. The Defendants deny the allegations of Paragraph 64.

65. The Defendants deny the allegations of Paragraph 65.

66. The Defendants deny the allegations of Paragraph 66.

67. The Defendants deny the allegations of Paragraph 67.

68. The Defendants deny the allegations of Paragraph 68.

69. The Defendants deny the allegations of Paragraph 69.

70. The Defendants deny the allegations of Paragraph 70.

71. Responding to Paragraph 71, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

72. The Defendants deny the allegations of Paragraph 72.

73. The Defendants deny the allegations of Paragraph 73.

74. The Defendants deny the allegations of Paragraph 74.

75. The Defendants deny the allegations of Paragraph 75.

76. Responding to Paragraph 76, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

77. The Defendants deny the allegations of Paragraph 77.

78. The Defendants deny the allegations of Paragraph 78.

79. Responding to Paragraph 79, the Defendants admit that access to the recreational facilities and amenities provided in I'On is valuable to resident customers and deny the remaining allegations therein.

80. The Defendants deny the allegations of Paragraph 80.

81. Responding to Paragraph 81, the Defendants are without sufficient information to form a response absent further identification of particular representations by particular

defendants; however, the Defendants further state that they are aware of no false representations regarding conveyance of a Creekside Park and a Community Dock to the Assembly.

82. The Defendants deny the allegations of Paragraph 82.

83. The Defendants deny the allegations of Paragraph 83.

84. The Defendants deny the allegations of Paragraph 84.

85. The Defendants deny the allegations of Paragraph 85.

86. The Defendants deny the allegations of Paragraph 86.

87. Responding to Paragraph 87, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

88. The Defendants deny the allegations of Paragraph 88.

89. The Defendants deny the allegations of Paragraph 89.

90. The Defendants deny the allegations of Paragraph 90.

91. The Defendants deny the allegations of Paragraph 91.

92. The Defendants deny the allegations of Paragraph 92.

93. The Defendants deny the allegations of Paragraph 93.

94. The Defendants deny the allegations of Paragraph 94.

95. Responding to Paragraph 95, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

96. The Defendants deny the allegations of Paragraph 96.

97. The Defendants deny the allegations of Paragraph 97.

98. The Defendants deny the allegations of Paragraph 98.

99. Responding to Paragraph 99, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

100. Paragraph 100 states a legal conclusion to which no response is required.

101. The Defendants deny the allegations of Paragraph 101.

102. The Defendants deny the allegations of Paragraph 102.

103. The Defendants deny the allegations of Paragraph 103.

104. The Defendants deny the allegations of Paragraph 104.

105. The Defendants deny the allegations of Paragraph 105.

106. Responding to Paragraph 106, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

107. The Defendants deny the allegations of Paragraph 107.

108. The Defendants deny the allegations of Paragraph 108.

109. Responding to Paragraph 109, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

110. The Defendants deny the allegations of Paragraph 110.

111. The Defendants deny the allegations of Paragraph 111.

112. The Defendants deny the allegations of Paragraph 112.

113. Responding to Paragraph 113, the Defendants restate all of the foregoing responses to the allegations of the Fourth Amended Complaint.

114. The Defendants deny the allegations of Paragraph 114.

115. The Defendants deny the allegations of Paragraph 115.

116. The Defendants deny the allegations of Paragraph 116.

117. The Defendants deny the allegations of Paragraph 117.

118. The Defendants deny the allegations of Paragraph 118.

119. The Defendants deny the allegations of Paragraph 119.

120. The Defendants deny the allegations of the WHEREFORE paragraph and all of its subparts.

SECOND DEFENSE
(Failure to State a Claim)

121. Plaintiffs' claims should be dismissed for failure to state a claim upon which relief may be granted.

THIRD DEFENSE
(Statute of Limitations)

122. Plaintiffs' claims are barred by the statute of limitations.

FOURTH DEFENSE
(Lack of Standing/Jurisdiction)

123. Plaintiffs' derivative claims are barred because they lack standing to bring such claims and the Court therefore lacks jurisdiction to hear them.

FIFTH DEFENSE
(Laches)

124. Plaintiffs' claims are barred by the doctrine of laches.

SIXTH DEFENSE
(Unclean Hands)

125. Plaintiffs' claims are barred by the doctrine of unclean hands.

SEVENTH DEFENSE
(Statute of Frauds)

126. Plaintiffs' claims are barred by the statute of frauds.

EIGHTH DEFENSE
(Waiver)

127. To the extent Plaintiffs had any cognizable claims, they have waived them.

NINTH DEFENSE
(Failure to Mitigate)

128. To the extent Plaintiffs suffered any damages as a result of the allegations in the Third Amended Complaint, they failed to mitigate them.

FURTHER ANSWERING THE FOURTH AMENDED COMPLAINT AND BY WAY OF COUNTERCLAIMS

129. The Defendants restate and incorporate here all of their foregoing admissions, averments, and responses.

130. The Assembly is the I'On homeowners' association and is the entity charged with administering the Declaration of Covenants, Conditions, and Restrictions for I'On recorded in Deed Book 297, Page 282 of the RMC Office for Charleston County, South Carolina (the "Declaration").

131. The Recreational Easement describes Club Property as including recreational facilities including a boat ramp and dock and a driveway and parking area to serve them, defined by the Recreational Easement as "Boating Facilities," for the use enjoyment of I'On Club members and "such other persons as Club Owner may authorize." (Recreational Easement at 1-2) A true and correct copy of the Recreational Easement is attached here as Exhibit 1.

132. At the time the Recreational Easement was executed, the I'On Company still held title to the real property encompassing the Club Property described by Exhibit B of the Recreational Easement.

133. At the time the Recreational Easement was executed, the I'On Club was expected to become the owner of the "Club Property" described by Exhibit B of the Recreational Easement.

134. The Recreational Easement was executed by I'On Company, I'On Club, and Assembly on February 9, 2000, and was recorded on February 15, 2000.

135. The I'On Club acquired ownership of the real property encompassing the Club Property on August 15, 2000.

136. From the execution of the Recreational Easement in February, 2000 until August, 2009, I'On Company, I'On Club, and the Assembly continuously operated under the Recreational Easement.

137. In August 2009, the I'On Club sold the Club Property to 148 Civitas, LLC ("148 Civitas"), a limited liability company formed and existing under the laws of South Carolina. The deed transferring the Club Property from the I'On Club to 148 Civitas was recorded in Deed Book 73, Page 784 of the RMC Office for Charleston County, South Carolina (the "148 Civitas Deed"). A true and correct copy of the 148 Civitas Deed is attached hereto as Exhibit 2. The 148 Civitas Deed stated specifically that 148 Civitas' interests were expressly subject to the Recreational Easement. (See 148 Civitas Deed, Exhibit B at §8).

138. 148 Civitas and the I'On Club entered into a supplemental easement, entitled the "Assignment of Certain Club Owner's Rights and obligations Under Recreational Easement and Agreement to Share Costs," recorded in Deed Book 73, Page 776 of the RMC Office for Charleston County, South Carolina (the "Supplemental Easement"). A true and correct copy of the Supplemental Easement is attached hereto as Exhibit 3. The Supplemental Easement specifically incorporated the Recreational Easement and did not alter the Assembly's rights and obligations under the Recreational Easement. The Supplemental Easement obligated both 148 Civitas and the I'On Club to operate under the Recreational Easement as "Club Owner."

139. Following the sale, 148 Civitas, the I'On Club, the I'On Company, and the Assembly continued to operate under the Recreational Easement.

140. Under the terms of the Recreational Easement, the Assembly was provided an easement for the use and enjoyment of the Boating Facilities. Such easement is "a perpetual, nonexclusive easement" allowing the Assembly and its members the right to use the driveways and parking areas within Club Property, the "boat ramp which is part of the Boating Facilities," and "the boat dock which is part of the Boating Facilities." (Recreational Easement at Art. I § 1.1).

141. Notwithstanding any other provision of the Recreational Easement, it was and is the Plaintiffs' intent and understanding that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement be perpetual.

142. Notwithstanding any other provision of the Recreational Easement, it was and is the Assembly's intent and understanding that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement be perpetual.

143. On December 22, 2010, Brad J. Walbeck filed the above captioned action. The Assembly was initially named as a defendant in this action, along with the I'On Company, the I'On Club, 148 Civitas, and a number of other defendants.

144. The Court has since realigned the Assembly as a party Plaintiff.

145. On February 20, 2014, 148 Civitas transferred the Club Property, including the Boating Facilities, to the Assembly. A true and correct copy of the limited warranty deed transferring the Club Property from 148 Civitas to the Assembly is attached hereto as Exhibit 4.

146. Following the transfer of the Club Property to the Assembly, the I'On Club, the I'On Company, and the Assembly continued to operate under the Recreational Easement.

147. As 148 Civitas represented to the Court in this action, it was 148 Civitas' intent and understanding that the Assembly had an undisputed, perpetual easement to use all of the Boating Facilities located on the Club Property pursuant to the Recreational Easement.

148. The Assembly has represented in this action that the easement to use all of the Boating Facilities located on the Club Property is perpetual.

149. Defendants Walbeck and Adkins, purporting to act on behalf of the Assembly in this action, have asserted that the Recreational Easement is invalid and that, if valid, its provisions are limited to a thirty-year term.

FOR A FIRST COUNTERCLAIM BY THE I'ON COMPANY AND THE I'ON CLUB
(Declaratory Judgment as to Validity)

150. Defendants I'On Company and I'On Club incorporate by reference the allegations of paragraphs 1 through 150 of this Answer and Counterclaims as if fully set forth herein.

151. Under S.C. Code §§ 15-53-30 and -40, the I'On Company and the I'On Club are entitled to have any question of validity of the Recreational Easement determined and obtain a declaration of rights, status, or other legal relations thereunder, before or after a breach thereof.

152. All parties to the Recreational Easement have demonstrated intent that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement be valid.

153. All parties to the Recreational Easement have operated under the Recreational Easement with respect to the easement for the use and enjoyment of the Boating Facilities granted to the Assembly.

154. The Recreational Easement was recorded, making the Assembly's easement for the use and enjoyment of the Boating Facilities valid with respect to subsequent purchasers of the Club Property.

155. Following the sale of the Club Property by the I'On Club to 148 Civitas, both entities evidenced their intent that the Assembly's easement for use and enjoyment of the Boating Facilities be valid and enforceable with respect to 148 Civitas.

156. I'On Company and the I'On Club are entitled to a declaratory judgment of this Court that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement is valid.

FOR A SECOND COUNTERCLAIM BY THE I'ON COMPANY AND THE I'ON CLUB
(Declaratory Judgment as to Duration)

157. Defendants I'On Company and I'On Club incorporate by reference the allegations of paragraphs 1 through 157 of this Answer and Counterclaims as if fully set forth herein.

158. Under S.C. Code §§ 15-53-30 and -40, the I'On Company and the I'On Club are entitled to have any question of construction of the Recreational Easement determined and obtain a declaration of rights, status, or other legal relations thereunder, before or after a breach thereof.

159. All parties to the Recreational Easement have evidenced their intent that the Assembly's easement for the use and enjoyment of the Boating Facilities is perpetual.

160. The I'On Company and the I'On Club are entitled to a declaratory judgment of this Court that the easement for the use and enjoyment of the Boating Facilities granted to the Assembly by the Recreational Easement is perpetual.

FOR A THIRD COUNTERCLAIM BY ALL DEFENDANTS
(Abuse of Process)

161. Defendants incorporate by reference the allegations of paragraphs 1 through 161 of this Answer and Counterclaims as if fully set forth herein.

162. Upon information and belief, this action was filed as a result of the efforts of certain I'On residents, some of whom are not party to the action, to harass or injure one or more of the Defendants.

163. Such I'On residents have continually challenged the actions of the Defendants over the past several years.

164. Such I'On residents' challenges have been unsuccessful.

165. One such I'On resident, Plaintiff Adkins, threatened suit in 2009 based on allegations substantially similar to those pleaded in Plaintiffs' Complaints and the amendments thereto.

166. Plaintiffs' claims are time-barred and are subject to dismissal. In any instance where Plaintiffs' claims may avoid outright dismissal, such avoidance is solely by virtue of unspecified allegations of misrepresentations by unspecified Defendants at unspecified times, contrary to the specific pleading requirements for fraud or misrepresentation provided by the South Carolina Rules of Civil Procedure.

167. Upon information and belief, the present action was filed in the course and as part of a continued and unjustified campaign to harass or injure the Defendants, and not for the purpose of seeking a remedy for any damages from a legally cognizable wrong.

168. Plaintiffs filed their Complaint and the amendments thereto for the unauthorized and illegitimate collateral objectives of harm, embarrassment, and financial burden to one or more of the Defendants.

169. Plaintiffs have engaged in willful acts in the improper use of process, including without limitation:

a. filing the Complaint and amendments thereto in the present action;

b. verifying unfounded allegations in support of the Complaint and amendments thereto;

c. filing or serving motions, discovery responses, and other papers in the case, whether before or after filing of the present counterclaim; and

d. in such other particulars as the Defendants may present at trial.

170. As an actual and proximate result of Plaintiffs' wrongful acts, the Defendants have suffered damages including the costs and attorney's fees required to defend this action.

171. The Defendants are entitled to recover compensatory damages, including without limitation their attorney's fees and costs.

172. Plaintiffs' acts pleaded herein were done willfully, wantonly, and with reckless disregard to the rights of the Defendants. The Defendants therefore are entitled to recover punitive damages.

PRAYER FOR RELIEF

WHEREFORE, The Defendants pray the Court to:

i. Enter an order declaring that Plaintiffs shall have and recover nothing from The Defendants;

ii. Enter a judgment declaring that the easement for the use and enjoyment of the Boating Facilities granted to the Defendant I'On Assembly by the Recreational Easement and Agreement to Share Costs recorded in Deed Book M342, Page 051 at the Charleston County RMC Office is valid and is perpetual;

iii. Enter an order in favor of the Defendants on their abuse of process counterclaim and award all recoverable damages, including without limitation reasonable attorney's fees and costs.

iv. Tax the costs of this action against Plaintiffs, including attorney's fees and costs; and,

v. Provide such other relief in this action as may be just and proper.

This 18th day of July, 2014 at Charleston, South Carolina.

Brian C. Duffy
bduffy@duffyandyoung.com
J. Rutledge Young, III
ryoung@duffyandyoung.com
Seth W. Whitaker
swhitaker@duffyandyoung.com
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)
Attorneys for the Defendants

EXHIBIT 1

BK M 342PG051

INDEXING NOTE: Please cross-reference to Declaration recorded at: Deed Book ~~XXXX~~ C297 Page ~~XXXX~~ 282

Prepared by/Record and return to:

Joseph E. Barnes
The I'On Company, L.L.C.
159 Civitas Street
Mt. Pleasant, South Carolina 29464

THIS SPACE FOR RECORDER'S USE

RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS

THIS RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS ("Agreement") is made this 9th day of February, 2000, by and between I'ON CLUB, LLC, a South Carolina limited liability company ("Club Owner"), THE I'ON COMPANY, L.L.C., a South Carolina limited liability company ("Developer"), and I'ON ASSEMBLY, INC., a South Carolina nonprofit corporation ("Assembly").

BACKGROUND STATEMENT

WHEREAS, I'On is a planned community which Developer is developing in Charleston County, South Carolina (the "**Community**"); and

WHEREAS, the Assembly is the entity charged with administering that Declaration of Covenants, Conditions, and Restrictions for I'On recorded in Deed Book 297, Page 282 of the Registry of Mesne Conveyances for Charleston County, South Carolina, as such Declaration may be amended or supplemented from time to time ("**Declaration**"), and maintaining and operating certain property described therein as "**Commons**"; and

WHEREAS, the Commons consists of such real property and interests therein as the Assembly owns or otherwise holds possessory or use rights in for the common use and enjoyment of the owners of property subject to the Declaration or their lessees, the occupants of their property, and their guests and invitees, and such other persons as the Declaration or the Assembly's Board of Trustees may authorize; and

WHEREAS, Developer is the owner of the property described on Exhibit "A"of this Agreement ("**Eastlake and the Amenity Area**"), which Developer intends to convey to the Assembly as a part of the Commons; and

WHEREAS, Club Owner is the owner of the real property described on Exhibit "B" of this Agreement (the "**Club Property**"), on which it has constructed or intends to construct certain recreational facilities, including a boat ramp and dock and a driveway and parking area to

serve them ("**Boating Facilities**"), for the use and enjoyment of those persons who apply, are approved, and pay the required fees for membership in a club established by Club Owner known as the I'On Club (the "**Club Members**") and such other persons as Club Owner may authorize; and

WHEREAS, the Assembly desires to acquire and Club Owner is willing to grant a nonexclusive easement over the Club Property for access to and use and enjoyment of the Boating Facilities by the owners of property subject to the Declaration or their lessees, the occupants of such property, and their guests, in common with such other persons as Club Owner may authorize; and

WHEREAS, the Assembly and Club Owner desire to provide for a reasonable allocation between them of the costs which Club Owner incurs in maintaining, repairing, replacing, insuring and operating those portions of the Club Property subject to such easement; and

WHEREAS, Club Owner desires to obtain a right of access to and use of Eastlake and the Amenity Area for the purpose of sponsoring various clinics, lessons, and recreational activities for such Club Members and others as Club Owner may authorize to participate; and

WHEREAS, pursuant to Section 5-103(c) of the Declaration, the Assembly, acting through its Board of Trustees, is authorized to grant easements, licenses and similar interests over the Commons for any lawful purpose which its Board of Trustees determines to be consistent with the interests of the Assembly; and

WHEREAS, the Assembly's Board of Trustees has determined that it is in the interests of the Assembly to promote sponsorship of clinics, lessons and other recreational activities within the Community and to enter into this Agreement; and

WHEREAS, Developer, as the current owner of Eastlake and Amenity Area, is willing to grant an easement over Eastlake and the Amenity Area to Club Owner for such purpose;

NOW, THEREFORE, for and in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, Club Owner, Assembly, and Developer hereby agree as follows:

Article I
Easements

1.1. Easement for Use and Enjoyment of Boating Facilities.

(a) Subject to subsection (b) below, Club Owner hereby grants to Assembly, for the benefit of the owners of property subject to the Declaration or their lessees, the occupants of such

property, and their guests, in common with such other persons as Club Owner may authorize, a perpetual, nonexclusive easement over and on:

(i) the driveways and designated parking areas within the Club Property, for the purposes of vehicular and pedestrian access to the Boating Facilities and temporary parking of vehicles and boat trailers, for periods not to exceed 12 hours in any 24 hour period without Club Operator's express permission, while using the Boating Facilities or while the boat launched from such trailer is in the water; and

(ii) the boat ramp which is part of the Boating Facilities, for the purpose of launching and recovery of boats; and

(iii) the boat dock which is part of the Boating Facilities, for the purpose of temporary docking of boats for periods not to exceed 8 hours in any 24 hour period, and for use and enjoyment of the dock by pedestrians, for fishing, and for such other purposes as Club Owner may permit.

(b) The foregoing easement shall be subject to:

(i) the right of Club Owner to adopt and amend reasonable rules and regulations pertaining to the use of the Boating Facilities, including, without limitation, rules establishing operating hours, limitations on and fees for guest use, and parking and traffic regulations; provided, any such rules and regulations shall apply uniformly to Club Members and other authorized users of the Boating Facilities;

(ii) the right of Club Owner to suspend the right of any person to use the Boating Facilities for any infraction of such rules and regulations and to recover from the Assembly or from such person all costs which Club Owner incurs in repairing any damage to the Club Property or the Boating Facilities resulting from the negligence, recklessness, or willful misconduct of any person exercising such easement;

(iii) the right of Club Owner to temporarily close or reserve the Boating Facilities from time to time, for limited periods of time, for maintenance and special events, including, without limitation, private parties, lessons, and similar activities;

(iv) the right of Club Owner to deny access to the Boating Facilities pursuant to this easement for any period during which the Assembly is delinquent in paying amounts owed to Club Owner hereunder; and

(v) the right of Club Owner to offer boat and/or tackle rentals, sell bait and offer similar items and services for a fee or other charge, and to appropriate for its exclusive use such portion of the Boating Facilities as Club Owner deems reasonably necessary to provide such items or services;

(vi) the right of Club Owner to install on the Club Property a fence, gate, key entry or other mechanisms or systems to limit access to the Boating Facilities by unauthorized persons and during times that the Boating Facilities are closed, and to require authorized users to purchase, for a fee not to exceed Club Owner's cost, a key, pass card or similar devices to gain access to the Boating Facilities; and

(vii) any other easements and restrictions of record affecting the Club Property.

1.2. Easement for Use and Enjoyment of Commons.

(a) Subject to subsection (b) below, Assembly hereby consents to the grant of, and Developer hereby grants to Club Owner, for the benefit of such Club Members, their guests, and other persons as Club Owner may authorize, a perpetual, nonexclusive easement over and on:

(i) the property described on Exhibit "A" as "Eastlake" and the boathouse and other facilities thereon, for purposes of boating, fishing, storing boats, boat rentals, and conducting clinics, lessons and other activities sponsored by Club Owner which do not materially adversely interfere with use of the lake by others and for which Club Owner may or may not charge a fee, in its discretion;

(ii) the property described on Exhibit "A" as "Amenity Area", for the purpose of engaging in games, sports and other recreational activities and conducting clinics and lessons sponsored by Club Owner, for which Club Owner may or may not charge a fee, in its discretion;

provided, no person may exercise this easement without the prior permission of Club Owner and then only to the extent authorized by Club Owner.

(b) The foregoing easement shall be subject to:

(i) the requirement that Club Owner make arrangements in advance with the Assembly before exercising the easement for group activities or in a manner that will materially limit the access to or use of such facilities by others;

(ii) the right of the Assembly to charge Club Owner reasonable user fees for use of the Commons by persons who are not otherwise authorized to use the Commons pursuant to the Declaration, and to charge Club Owner for any reasonable costs incurred and documented by the Assembly in making the facilities available to Club Owner, over and above its usual and customary costs, such fees and costs to be agreed upon between Club Owner and the Assembly in advance of such use;

(iii) the right of the Assembly to adopt and amend reasonable rules and regulations pertaining to the use of the Commons, including, without limitation, rules establishing operating hours and parking and traffic regulations; provided, any such rules and regulations shall apply uniformly to all authorized users of the Commons (whether authorized

pursuant to this Agreement or otherwise) and shall not unreasonably interfere with the ability of Club Owner to exercise the easement rights granted herein;

(iv) the right of the Assembly to suspend the right of any person to use the Commons for any infraction of such rules and regulations and to recover from any person exercising such easement all costs which the Assembly incurs in repairing any damage to the Commons resulting from the negligence, recklessness, or willful misconduct of any person exercising such easement;

(v) the right of the Assembly to temporarily close or reserve portions of the Commons from time to time, for limited periods of time, for maintenance and special events;

(vi) the right of the Assembly to install a fence, gate, key entry or other mechanisms or systems to limit access to portions of the Commons by unauthorized persons and during times that the Commons are closed, and to require authorized users to purchase, for a fee not to exceed the Assembly's cost, a key, pass card or similar devices to gain access; and

(vii) any other easements and restrictions of record affecting the Commons.

Article II
Obligation to Maintain and Insure

2.1. Maintenance Responsibility. Club Owner shall maintain the portions of the Club Property that are subject to an easement under Article I in good repair and in a manner consistent with the standard of maintenance generally prevailing within the Community. Assembly shall maintain Eastlake and the Amenity Area in good repair and in a manner consistent with the standard of maintenance generally prevailing within the Community.

2.2. Insurance Responsibility. Club Owner and the Assembly shall each obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available, on the property and facilities which it is obligated to maintain under Section 2.1:

(a) Property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements, in amounts sufficient to cover full replacement cost (less a reasonable deductible);

(b) Commercial general liability insurance, insuring such party for damage or injury caused by the negligence of such party or any of its employees, agents or contractors while acting on such party's behalf, in such amount as the party deems prudent; provided, if available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Each party shall have the other named as an additional insured under this coverage.

2.3. Right to Enforce. If either Club Owner or the Assembly fails to adequately to perform its maintenance responsibilities hereunder or fails to obtain and maintain insurance as required herein, the other party may notify it of such default and, unless the defaulting party takes affirmative steps to cure such default within a reasonable period of time set forth in the notice, the other may pursue any and all remedies available to it at law or in equity to enforce the defaulting party's obligations hereunder.

Article III
Obligation of Assembly to Share Costs

3.1. Covenant to Pay. The Assembly shall be obligated to pay to Club Owner assessments as provided for herein to cover a share of the costs incurred by Club Owner in maintaining, repairing, replacing, operating and insuring the Boating Facilities. Such obligation shall be a separate and independent covenant on the part of the Assembly, and no diminution or abatement of the Assembly's financial obligations hereunder or setoff shall be claimed or allowed by reason of any alleged failure of Club Owner to adequately maintain or insure the Boating Facilities, the sole remedy of the Assembly for failure of Club Owner to perform being suit at law or in equity.

3.2. Computation of Assessment.

(a) Not later than November 1 of each year, Club Owner shall prepare an estimated budget for maintenance, operation, repair, replacement and insurance of the Boating Facilities during the coming calendar year, including a reasonable and appropriate amount to be placed in a reserve fund for capital repairs to and replacement of improvements to the Boating Facilities (the "Budget"). The costs of operation shall include, by way of example and not limitation, utility costs, insurance premiums, and compensation and related costs of personnel who devote all or a portion of their time to the maintenance and/ or operation of the Boating Facilities (including, without limitation, any management personnel, and maintenance personnel), allocated in proportion to the average time devoted to matters relating to the Boating Facilities, if less than full time is so devoted.

(b) Not later than November 15 of each year, Club Owner shall send a copy of the Budget to the Assembly along with notice of the assessment for the Assembly's share of such costs. The Assembly's share shall be computed by multiplying the total Budget by a fraction, the numerator of which is the number of Lots subject to assessment under the Declaration as of November 1 of the year preceding the year for which the Budget is to be effective (y) and the denominator of which is that number (y) plus the number of memberships in the Club issued and outstanding to persons who do not own a Lot in the Community as of such date (z), reflected by the following formula:

$$\text{Assembly's} = \frac{y}{\quad} \times \text{Budget}$$

Share

y + z

(c) The total assessment levied for the Assembly's share of the Budget shall be payable in equal quarterly installments on or before the last day of each calendar quarter.

(d) In the event that the Club Owner for any reason fails to determine the Budget for any year, then until such time as a Budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

3.3. Adjustment for Actual Expenses. Within 60 days after the end of each fiscal year, Club Operator shall provide to the Assembly a statement of expenses for the previous year in an actual versus budget format. In the event that the actual expenses (including budgeted contributions to a reserve fund) for any year are less than reflected in the Budget, any excess amount paid by the Assembly for such year shall be credited against future amounts due from the Assembly. In the event that the actual expenses (including budgeted contributions to a reserve fund) for any year are greater than reflected in the Budget, the shortfall may be added to the Budget for the following year for purposes of computing the Assembly's assessment for that year.

3.4. Delinquencies; Collection. Any amounts due from the Assembly hereunder which are delinquent for a period of more than 10 days shall incur a late charge in the amount of $25.00 or 10% of the amount due, whichever is greater. In addition, the Assembly shall reimburse Club Owner for costs incurred in attempting to collect the past due amount, including reasonable attorneys' and paralegals' fees actually incurred, whether or not suit is filed. If the delinquent amount remains unpaid 45 days after the due date, Club Owner may institute suit to collect the delinquent amount, plus late charges, interest at the rate of 18% (or the maximum rate permitted by law, whichever is less) from the date first due and payable, and costs of collection, as described above. All payments shall be applied first to costs and attorneys' fees, then to late charges, then to interest and then to other delinquent amounts.

3.5. Expenditure of Funds. The assessments levied by Club Owner hereunder may be used for such purposes relating to the maintenance, operation, repair, replacement and insurance of the Boating Facilities as Club Owner deems appropriate. The judgment of Club Owner in the allocation and expenditure of such funds shall be final so long as such judgment is exercised in good faith, and neither Club Owner, its members, officers, or agents shall be liable to any person or entity for any error in judgment, or any action or inaction relating to the expenditure of such funds; provided, nothing herein shall protect any person from liability for gross negligence or willful misconduct in the handling of such funds.

3.6. Recordkeeping. Club Owner shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities under this Agreement. Such books and records and financial statements related thereto shall be made available for inspection and copying by the Assembly's officers, trustees, or agents upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be

paid by the Assembly or person requesting such copies. If the Assembly desires to have the records audited, it may do so at its own expense, and Club Owner shall cooperate by making available to the party performing the audit the records, including all supporting materials (e.g., check copies, invoices, etc.) for the year in question. If the amount of actual expenses for the year is disputed after audit, the Assembly and Club Owner shall cause a second audit to be performed by a mutually acceptable auditor and the decision of the second auditor shall be binding. If the amount as determined by the second auditor varies from the amount asserted by Club Owner by five (5%) percent or more, Club Owner shall pay the entire cost of the second auditor. If the amount as determined by the second auditor varies from the amount asserted by Club Owner by two (2%) percent or less, then the Assembly shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by Club Owner and the Assembly. Variances shall be taken into account in the following year's Budget as provided above.

Article IV
General

4.1. Amendment. This Agreement may be amended only by an instrument signed on behalf of the Assembly, with the approval of a majority of the members of its Board of Trustees, and by the Club Owner. Amendments to this Agreement shall become effective upon recordation in the Registry of Mesne Conveyances for Charleston County, South Carolina, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Agreement.

4.2. Term. This Agreement, as it may be amended pursuant to Section 4.1, shall have a term of 30 years and thereafter shall automatically be renewed for successive periods of 10 years each unless and until terminated by either party at the end of the initial or any renewal term by written notice to the other given not less than 6 months prior to the end of such term. However, if any of the covenants, conditions, restrictions, or other provisions of this Agreement shall be declared by a court of law to be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

4.3. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any nonessential provision to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application and without defeating the intent hereof, and, to this end, the provisions of this Agreement are declared to be severable.

4.4. Notices. Any notice provided for in this Agreement shall be in writing and shall be deemed to have been duly given, if personally delivered, at the time of personal delivery, or if

mailed, on the second business day following the deposit of the envelope containing such notice in the United States Mail, registered or certified, first class postage prepaid, and properly addressed:

(a) if to Club Owner, at the address of the principal office of I'On Club, LLC in the State of South Carolina; or

(b) if to the Assembly, at the address of the principal office of I'On Assembly, Inc. in the State of South Carolina.

4.5. Indemnification; Assumption of Risk. Each party shall indemnify and hold harmless the other from any loss, damages, and costs, including reasonable attorneys and paralegal fees, which the indemnified party may incur as a result of the failure of persons exercising the easement granted to the other party herein to comply with the rules and regulations adopted for use of the property subject to such easement.

Each person exercising the easement rights granted hereunder assumes all risk of personal injury, including death, and loss or damage to personal property, arising out of their use of the property subject to the easement and agrees that the Assembly, Club Owner and their respective owners, members, officers, trustees, directors, agents and employees, shall have no liability for, and further agrees to indemnify and hold each of the foregoing harmless from, any and all claims arising out of any such injury, loss or damage, unless and except to the extent that such injury, loss or damage is the direct result of the gross negligence or willful misconduct of the party to be held liable.

4.6. Binding Effect; Successors and Assigns. This Agreement and the easements created herein shall run with the title to Eastlake and the Amenity Area and the Club Property and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in Eastlake and the Amenity Area or the Club Property, their successors, successors-in-interest and assigns, as well as the owners of the real property now and hereafter made subject to the Declaration and their respective successors and successors-in-title.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first above written.

CLUB OWNER: I'ON CLUB, LLC, a South Carolina limited liability company

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By: _____
Name: Joseph E. Bruno
Title: Manager

BK M 342PG060

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Club, LLC, a South Carolina limited liability company, by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

David E. Thompson

Sworn to before me this 9th day of February, 2000:

[Notarial Seal]

Linda M. German
Notary Public for the State of South Carolina
My Commission Expires: 3/2/2009

DEVELOPER: THE I'ON COMPANY, LLC, a South Carolina limited liability company

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By:
Name: Joseph E. Barnes
Title: Manager

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

BK M 342PG061

Linda M. German
Linda M. German (Printed Name)

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Club, LLC, a South Carolina limited liability company, by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof:

David E. Thompson

Sworn to before me this 9th day of February, 2000:

[Notarial Seal]

Linda M. German
Notary Public for the State of South Carolina
My Commission Expires: 3/2/2009

ASSEMBLY: I'ON ASSEMBLY INC., a South Carolina nonprofit corporation

[Corporate Seal]

ADDRESS: 516 Mathis Ferry Road
Mt. Pleasant, SC 29464

By: [signature]
Name: Joseph E. Barnes
Title: President

WITNESSES:

David E. Thompson
David E. Thompson (Printed Name)

Linda M. German
Linda M. German (Printed Name)

BK M 342PG062

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

PERSONALLY appeared before me the undersigned witness and made the oath that (s)he saw the within named I'On Assembly, Inc., a South Carolina nonprofit corporation by Joe Barnes, its Manager, sign, seal and deliver the within instrument, and the (s)he with the other witness above subscribed, witnessed the execution thereof.

David E. Thompson

Sworn to before me this 9th day of February, 2000:

[Notarial Seal]

Linda M. Herman
Notary Public for the State of South Carolina

My Commission Expires: 3/2/2009

523901/Club/Rec.Easmt/020700/jps

BK M C 42PG063

Exhibit "A"

Eastlake and the Amenity Area

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as "Eastlake, 13.48 acres" on a plat entitled "Plat of Eastlake Containing 13.48 Acres, Owned by The I'On Company, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated December 21, 1998, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book ED, Page 229, said tract having such size, shape, buttings, and boundings as shown on said plat;

TOGETHER WITH:

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as "Amenity Area, 109,934 square feet" on a plat entitled "Final Subdivision Plat of Lots 11-49, 60-69, Phase I-A, I'On, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated April 12, 1998, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book EC, Page 631, said tract having such size, shape, buttings, and boundings as shown on said plat;

Said tract butting and bounding according to said plat as follows: to the south on the right-of-way of Mathis Ferry Road, to the west on the right-of-way of Eastlake Road, to the north on a 20' Drainage Easement, and to the east on property now or formerly of R. E. Mevers (TMS #514-00-00-074).

BK M 342PG064

Exhibit "B"

Club Property

ALL that certain piece, parcel or tract of land, situate, lying and being in I'On in the Town of Mt. Pleasant, County of Charleston, State of South Carolina, being shown as Lot CV-6 on a plat entitled "Conditional Subdivision Plat of Phase II, Subphases A-E, I'On, Town of Mt. Pleasant, Charleston County, South Carolina" prepared by F. Elliotte Quinn, III, R.L.S. of Thomas and Hutton Engineering Company, dated April 19, 1999, and recorded in the RMC Office for Charleston County, South Carolina in Plat Book ED, Page 108-109, said tract having such size, shape, buttings, and boundings as shown on said plat;

Henry B. Richburne, Jr.

TO
X
Mr. Richburne

20.00 B

BK M 342PG065

FILED

M342-51

2000 FEB 15 PM 12:55

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

EXHIBIT 2

RMC Bk 0073 Pg 784 : pg 1 *

BP0073784

STATE OF SOUTH CAROLINA)
) **GENERAL WARRANTY INDENTURE DEED**
COUNTY OF CHARLESTON)

WHEREAS, I'On Club, LLC, is a South Carolina limited liability company, and The I'On Group, LLC, its Manager by Vincent G. Graham, its Manager, is authorized to execute and deliver deeds on behalf of the I'On Club, LLC.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I'ON CLUB, LLC ("Grantor"), in the State aforesaid, for and in consideration of the sum of ONE MILLION FOUR HUNDRED THOUSAND AND 00/100 DOLLARS ($1,400,000.00), unto it paid by 148 CIVITAS, LLC, a South Carolina limited liability company, ("Grantee") in the State aforesaid, the receipt of which is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release, subject all limitations, covenants, easements, restrictions, reservations and conditions set forth in Exhibit B attached hereto and incorporated herein by reference (the "Permitted Exceptions"), unto the Grantee, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE FOR A FULL AND COMPLETE LEGAL DESCRIPTION OF THE PROPERTY BEING CONVEYED (THE "PROPERTY" OR "PREMISES")

Grantee(s) Address: 74 Hopetown Rd
Mt Pleasant SC 29464

TOGETHER with, subject to the Permitted Exceptions, 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, subject to the Permitted Exceptions, all and singular the premises before mentioned unto the said Grantee, its successors and assigns, forever.

AND GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises, subject to the Permitted Exceptions, unto the said Grantee, its successors and assigns, against itself and its successors and assigns, and all persons whomsoever lawfully claiming, or to claim, the same or any part thereof.

ACKNOWLEDGMENT AND RATIFICATION BY GRANTEE: The Grantee by the acceptance and execution of this General Warranty Indenture Deed acknowledges that the conveyance is subject to all of the terms and conditions contained in this General Warranty Indenture Deed.

RMC Bk 0073 Pg 784 : pg 2 *

IN WITNESS WHEREOF the undersigned Hand and Seal this 5 day of August 2009.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

I'ON CLUB, LLC

By: The I'On Group, LLC
Its: Manager

1st Witness

By: _____
Vincent G. Graham
Its: Manager

2nd Witness

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON)

I, Daniel Q. Orvin. (Notary Public), do hereby certify that I'On Club, LLC, by The I'On Group, LLC, its Manager, by Vincent G. Graham, its Manager, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this the 5 day of August 2009.

Notary Public For South Carolina
My Commission Expires: 8-11-10

[SEAL]

{01566584.}

RMC Bk 0073 Pg 284 : pg 3 :

IN WITNESS WHEREOF, the Grantee has affixed its Hand and Seal this 5th day of August 2009.

WITNESSES:

148 CIVITAS, LLC

By: Stephen W Speer

Printed Name: Stephen W. Speer

Its: Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Andrew L McLester (Notary Public), do hereby certify that 148 Civitas, LLC, by Stephen W Speer, its Member, personally appeared before me this day and acknowledged the due execution of the foregoing Deed.

Witness my hand and official seal this the 5th day of August 2009.

Notary Public For South Carolina
My Commission Expires: 8/19/2014

RMC Bk 0073 Pg 784 : Pg 4 *

Exhibit "A"

Legal Description

ALL that certain lot, piece or parcel of land and all improvements thereon located in I'On, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as CV-6 on a plat entitled, "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, S.C." prepared by Thomas & Hutton Engineering Co., dated September 12, 2000, and recorded on January 30, 2001 in the RMC Office for Charleston County in Plat Book EE, at Page 573, said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the property conveyed to I'on Club, LLC by deed of The I'On Company, L.L.C., dated August 15, 2000, recorded August 16, 2000, in the RMC Office for Charleston County, South Carolina in Book C-353, at page 484.

TMS No.: 535-06-00-230

RMC Bk 0073 Pg 784 : pg 5 *

Exhibit B

Permitted Exceptions

1. Ad valorem real property taxes for the year 2009 and all subsequent years, a lien not yet due and payable.

2. All limitations, covenants, easements, restrictions, reservations and conditions of record which may affect the Property whether or not mentioned herein.

3. Declaration of Restrictive Covenants executed December 10, 1998 by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the trust under the Will of Hampton S. Alford and recorded in the RMC Office for Charleston County in Book L316, at Page 19.

4. Title to Real Estate and Reservation of Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the trust under the Will of Hampton S. Alford to The I'On Company, LLC dated August 12, 1997 and recorded in the RMC Office for Charleston County in Book J288, at Page 190.

5. Title to Real Estate and Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the trust under the Will of Hampton S. Alford to The I'On Company, LLC dated January 11, 1999 and recorded in the RMC Office for Charleston County in Book Y319, at Page 382.

6. Easements to The Commissioners of Public Works of the Town of Mount Pleasant, South Carolina recorded in the RMC Office for Charleston County in Book Y332, at Page 383; Book J316, at Page 228; Book O319, at Page 482; Book T416, at Page 667; Book S346, at Page 641; and Book T337, at Page 856.

7. Drainage Easement from The I'On Company, LLC to the Town of Mount Pleasant dated October 5, 2000 and recorded in the RMC Office for Charleston County in Book U393, at Page 203.

8. Recreational Easement and Agreement to Share Costs executed February 9, 2000 by I'On Club, LLC, The I'On Company, LLC, and I'On Assembly, Inc. and recorded in the RMC Office for Charleston County in Book M342, at Page 51.

9. Easement to South Carolina Electric and Gas Company recorded in the RMC Office for Charleston County in Book X115, at Page 28, RMC Office for Charleston County.

10. Easement to BellSouth Telecommunications, Inc. dated November 6, 1997 and recorded in the RMC Office for Charleston County in Book U292, at Page 209.

11. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF

RMC Bk 0073 Pg 784 : pg 6 *

MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated September 12, 2000 and recorded in the RMC Office for Charleston County in Plat Book EE, at Page 572-573.

12. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "PLAT OF THE SUBDIVISION OF A 163.64 ACRE RESIDUAL TRACT TO CREATE PHASE II (37.70 ACRES) & PUMP STATION SITE (0.10 ACRES), I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated January 6, 1999 and recorded in the RMC Office for Charleston County in Plat Book EC, at Page 997.

13. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "CONDITIONAL PLAT OF PHASE II, SUBPHASES A-E, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated September 12, 2000 and recorded in the RMC Office for Charleston County in Plat Book ED, at Page 108-109.

14. A reservation of non-exclusive easements along the boundary lines of the Property for the installation and maintenance of utilities.

15. The restriction that the Property shall not be used for any type of Vacation Time Sharing Plan as defined by S.C. Code Section 27-32-10, et. seq., as amended, without the express, written consent of the The I'On Company, LLC ("TIC") or its successors or assigns.

16. Zoning or other restrictions of record as imposed by governmental authorities having jurisdiction over the use of the Property.

17. Any interest created by or limitations on use imposed by the Federal Coastal Zone Management Act or other Federal law or regulations or by South Carolina Code Section 48-19-10 through Section 48-39-220, as amended, or any regulations promulgated pursuant to said State or Federal laws, inclusive of DHEC (formerly South Carolina Coastal Council) and the U.S. Army Corps of Engineers.

18. Easement for Use and Enjoyment of Boating Facilities by and between 148 Civitas, LLC and I'On Club, LLC dated August 5, 2009 and recorded in the RMC Office for Charleston County simultaneously herewith.

19. All facts which are shown on any existing survey or would be shown on a current survey of the Property.

20. Claims of any property owners in the I'On neighborhood or other parties alleging rights and interests in the Property and dock facilities located thereon in connection with any HUD Property Report prepared and issued by TIC as the developer of the I'On neighborhood.

21. Rights of third parties to use in the Property and dock facilities located thereon.

RMC Bk 0073 Pg 784 : pg 7 *

22. A reservation of non-exclusive easements for the installation and maintenance of all utilities (i) adjacent to, parallel with and within 3 feet of the two side boundary lines of the Property, and (ii) within applicable setbacks for the front and rear boundary lines.

23. The Property is further subject to the following:

(i) if the Property is ever used or developed for residential purposes or rezoned for residential use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the "Declaration of Covenants, Conditions and Restrictions for I'On", recorded in Book C297, page 282 in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Residential Declaration"), and all related documents referenced therein, and those set forth in the I'On Code. Grantee acknowledges and agrees that if the Property is ever used or developed for residential purposes or rezoned for residential use, Grantee and any successor in title shall automatically become a member of the I'On Assembly, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property. Grantee acknowledges that only builders approved by TIC, its successors or assigns, the developer of I'On, may construct homes or improvements or complete renovations on homes in I'On. Such approval requirement is for the protection of TIC, only and shall not be construed to create any duty or liability to Grantee on the part of TIC. Grantee agrees that Grantee shall not permit any person other than a builder approved by TIC to construct a home on the Property while title is vested in Grantee. Grantee also acknowledges that builders in the I'On Guild who construct homes or provide construction services in I'On have agreed to pay the William Means Real Estate, LLC and/or the listing agent a commission of six percent (6%) of the Gross Sales Price of the improvements to be constructed by such builder on lots in I'On owned by third party buyers, such as Grantee. This Commission is to be calculated as follows: Commission = .06 x Gross Sales Price. The Gross Sales Price includes the Commission and can be calculated as follows; Gross Sales Price = The total of cost of improvements and overhead and profit divided by 0.94. Such commission shall be paid upon closing of the construction loan or commencement of construction, whichever next occurs after the builder enters into the contract for construction of a home for which a commission is payable;

(ii) if the Property is ever used or developed for commercial purposes or rezoned for commercial use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the Conditions, and Restrictions for I'On Square, dated August 23, 2000, and recorded September 8, 2000, in Book R354, Page 129 in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Commercial Declaration"), and all related documents referenced therein. Grantee acknowledges and agrees that if the Property is ever used or developed for commercial purposes or rezoned for commercial use, Grantee

RMC Bk 0073 Pg 784 : pg 8 *

and any successor in title shall automatically become a member of the I'On Square Association, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property;

(iii) no structure or exterior items shall be placed, erected, or installed upon the Property, and no improvements or site work, exterior alterations of existing improvements, or planting or removal of landscaping, shall take place on any portion of the Property unless the design and plans for such is reviewed and approved in writing by Grantor or TIC, their successors and assigns; provided however, that if the Property is used or developed for residential or commercial purposes or rezoned for residential or commercial uses, which results in the Property becoming subject to the Residential Declaration or the Commercial Declaration, such review and approval shall be made in accordance with the applicable declaration; and

(iv) Grantor hereby reserves, for the benefit of Grantor and TIC, their successors or assigns, a non-exclusive perpetual easement in gross for the storage of four (4) kayaks under the porch of the building located on the Property or if unavailable, in such other comparable location on the Property as the Grantee may determine in its reasonable discretion.

Grantee agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of subsections (i) through (iv) of this Paragraph 23.

STATE OF SOUTH CAROLINA) AFFIDAVIT Date of August 5, 2009

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

1. I have read the information on the back of this affidavit and I understand such information.
2. The property is being transferred from I'On Club, LLC to 148 Civitas, LLC on August 5, 2009.
3. Check one of the following: The Deed is
   a) __x__subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b) ____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c) __EXEMPT from the deed recording fee because (exemptions 1-12) (If exempt, please skip items 4-6, and go to item 7of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $1,400,000.00.
   b) The fee is computed on the fair market value of the realty which is $__.
   c) The fee is computed on the fair market value of the realty as established for property tax purposes which is $1,400,000.00
5. Check YES__ or NO___ to the following: A Lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is $ _.
6. The DEED recording fee is computed as follows:
   a) $1,400,000.00 on the amount listed in item 4 above_
   b) _____ the amount listed in item 5 above (no amount place zero)
   c) $
   d) $1,400,000.00 subtract line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:_____.
8. Check IF Property other than Real Property is being transferred on this Deed. (A) _____Mobile Home (B) _____Other
9. ____DEED OF DISTRIBUTION-ATTORNEY'S AFFIDAVIT: Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above name decedent.
10. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 5th of August, 2009.

_____Notary Public for SC,

My Commission Exp: 7/1/19

RMC Bk 0073 Pg 784 : pg 9 *

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:
WOODDY LAW FIRM, LLC
ATTORNEYS AT LAW
622 JOHNNIE DODDS BLVD.
MT. PLEASANT SC 29464

RECORDED

Date: August 7, 2009
Time: 3:20:56 PM

Book	Page	DocType
0073	784	Deed

Charlie Lybrand, Register
Charleston County, SC

RMC Bk 0073 Pg 784 : Pg 10 *

MAKER:
I'ON CLUB LLC

RECIPIENT:
148 CIVITAS LLC

Original Book:

Original Page:

Note:

of Pages: 10

Recording Fee	$ 10.00
State Fee	$ 3,640.00
County Fee	$ 1,540.00
Extra Pages	$ 5.00
Postage	$ -
Chattel	$ -
TOTAL	$ 5,195.00

DRAWER	Drawer 3
CLERK	ECP

RECEIVED FROM RMC
AUG 10 2009
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR
REP MK
DATE 8/10/09
04

0073 Book
784 Page
08/07/2009 Recorded Date
10 # Pgs

Original Book
Original Page
D Doc Type
15:20:56 Recorded Time

EXHIBIT 3



RMC Bk 0073 Pg 776 : Pg 1 *

The original Recreational Easement and Agreement to Share Costs was dated on the February 9, 2000 and recorded in the RMC Office for Charleston County in Book M342, at Page 051.

STATE OF SOUTH CAROLINA	)	ASSIGNMENT OF CERTAIN CLUB OWNER'S
	)	RIGHTS AND OBLIGATIONS UNDER
	)	RECREATIONAL EASEMENT AND AGREEMENT
COUNTY OF CHARLESTON	)	TO SHARE COSTS

THIS ASSIGNMENT OF CERTAIN CLUB OWNER'S RIGHTS AND OBLIGATIONS UNDER RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS (hereinafter sometimes referred to as the "Assignment") is entered into on the 5th day of August, 2009, by and between **I'On Club, LLC**, a South Carolina limited liability company (hereinafter, "Assignor") and **148 Civitas, LLC**, a South Carolina limited liability company (hereinafter, "Assignee").

WITNESSETH:

WHEREAS Assignor is the owner of certain real property located in I'On subdivision, in the Town of Mt. Pleasant, County of Charleston, State of South Carolina identified as the "Club Property" in the "Recreational Easement and Agreement to Share Costs" dated February 9, 2000 and recorded in the RMC Office for Charleston County in Book M342, at Page 051 (hereinafter, the "Recreational Agreement");

WHEREAS Assignor previously entered into the Recreational Agreement with The I'On Company, LLC (hereinafter, "TIC") and the I'On Assembly, Inc. (hereinafter, the "Assembly") and, pursuant to the terms of thereof, Assignor granted to the Assembly, subject to certain conditions set forth in the Recreational Agreement, a perpetual, nonexclusive easement over and on certain portions of the Club Property, identified therein as the "Boating Facilities;"

WHEREAS, in the Recreational Agreement, TIC granted to Assignor, subject to certain conditions set forth therein, a perpetual, nonexclusive easement over and on property identified in the thereln as "Eastlake" and the "Amenity Area;"

WHEREAS the Recreational Agreement also set forth various parties' obligations to maintain and insure the Club Property, Eastlake, and the Amenity Area;

WHEREAS the Recreational Agreement obligated the Assembly to pay Assignor assessments to cover a share of the costs of maintaining, repairing, replacing, operating and insuring the Boating Facilities; and

WHEREAS Assignor and Michael Russo ("Russo") previously entered into a Contract dated June 18, 2009 whereby Assignor agreed to sell to Russo, and Russo to purchase from Assignor, certain real property known as Lot CV-6, I'On, Mt. Pleasant, South Carolina (identified by TMS No. 535-06-00-230) (hereinafter, the "Property"), as well as certain personal property and other Assets, described in detail in said Contract;

RMC Bk 0073 Pg 776 : pg 2 *

WHEREAS Russo has assigned all his rights, obligations, and interest under the Contract to Assignee by Assignment of Contracts of even date herewith; and

WHEREAS, in connection with the sale of the Property, Assignor has agreed to assign certain rights, obligations, and interest in the Recreational Agreement to Assignee and Assignee has agreed assume such rights, obligations, and interest, as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignor and Assignee, intending to be legally bound hereby, agree as follows:

1. Subject to the terms herein including, without limitation, Paragraph 6 below, Assignor hereby assigns, transfers, and forever conveys to Assignee all of its rights, obligations, and interest as Club Owner under the Recreation Agreement, as set forth in detail therein, which rights, obligations and interest are incorporated into this Assignment by reference, as if they were set forth herein verbatim EXCEPT, HOWEVER, ASSIGNOR HEREBY RESERVES UNTO ITSELF AND DOES NOT ASSIGN ALL RIGHTS TO THE EASEMENT SET FORTH IN SECTION 1.2 OF THE RECREATIONAL AGREEMENT PREVIOUSLY GRANTED TO CLUB OWNER FOR THE BENEFIT OF CLUB MEMBERS, THEIR GUESTS, AND OTHER PERSONS AS CLUB OWNER MAY AUTHORIZE, BEING A PERPETUAL, NONEXCLUSIVE EASEMENT OVER AND ON THE PROPERTY DESCRIBED IN THE RECREATIONAL AGREEMENT AS EASTLAKE AND THE AMENITY AREA AND ASSIGNOR HEREBY RESERVES UNTO ITSELF AND DOES NOT ASSIGN ALL RIGHTS OF ENFORCEMENT UNDER SECTION 2.3 OF THE RECREATIONAL AGREEMENT.

2. Assignee hereby assumes all the rights, obligations, and interest of the Club Owner as set forth in the Recreation Agreement EXCEPT WITH REGARD TO THE ABOVE REFERENCED RESERVATION SET FORTH IN SECTION 1.

3. Assignor hereby agrees to provide to Assignee copies of all documents related to the use and operation of the Boating Facilities, including Budget information, within a reasonable time following the effective date of this Assignment.

4. All of the covenants, terms and conditions set forth in this Assignment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

6. NOTWITHSTANDING ANYTHING CONTAINED HEREIN TO THE CONTRARY, ASSIGNEE SHALL NOT AMEND THE RECREATIONAL AGREEMENT IN ANY WAY WHICH MAY AFFECT ASSIGNOR OR ITS RESERVED RIGHTS UNDER THE RECREATIONAL AGREEMENT (AS IDENTIFIED HEREIN, SPECIFICALLY WITH REGARD TO SECTIONS 1.2 AND 2.3 OF THE RECREATIONAL AGREEMENT) WITHOUT THE WRITTEN CONSENT OF ASSIGNOR WHICH CONSENT MAY BE WITHHELD IN ASSIGNOR'S SOLE DISCRETION. ASSIGNEE SHALL IMMEDIATELY

RMC BK: 0073 Pg 776 : Pg 3 :

NOTIFY ASSIGNOR OF RECEIPT OF NOTICE (IN ACCORDANCE WITH SECTION 4.4 OF THE RECREATIONAL AGREEMENT) FROM ANY PARTY TO THE RECREATIONAL AGREEMENT OF ANY ISSUE WHICH MAY IN ANY WAY AFFECT ASSIGNOR OR ITS RESERVED RIGHTS UNDER THE RECREATIONAL AGREEMENT.

7. Assignor and Assignee may pursue any remedy at law or in equity against the other for a breach of this Assignment.

8. The parties hereto agree to execute such other documents (recordable or otherwise) necessary to effect the intent of the terms of this Assignment.

[SIGNATURE PAGES TO FOLLOW]

RMC Bk 0073 Pg 776 : pg 4 *

IN WITNESS WHEREOF, Assignor has hereunto set its Hand and Seal this 5th day of August, 2009 to this ASSIGNMENT OF CERTAIN CLUB OWNER'S RIGHTS AND OBLIGATIONS UNDER RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS.

WITNESSES:

Witness # 1

Witness # 2

I'ON CLUB, LLC, a South Carolina limited liability company

BY: The I'On Group, LLC
Its: Manager

BY: Vincent G. Graham
ITS: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that The I'On Group, LLC*, as Manager of I'On Club, LLC personally appeared before me this 5th day of August, 2009 and acknowledged the due execution of the foregoing instrument. By Vincent G. Graham, Its Manager

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 8-11-10

[01573692.2]

RMC Bk 0073 Pg 776 : pg 5 *

IN WITNESS WHEREOF, Assignee has hereunto set its Hand and Seal this 5th day of August, 2009 to this ASSIGNMENT OF CLUB OWNER'S RIGHTS AND OBLIGATIONS UNDER RECREATIONAL EASEMENT AND AGREEMENT TO SHARE COSTS.

WITNESSES:

Witness # 1

Witness # 2

148 CIVITAS, LLC, a South Carolina limited liability company

BY: Stephen W. Speer

ITS: Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

I, the undersigned, a Notary Public for the State of South Carolina do hereby certify that Stephen W. Speer as Member 148 Civitas, LLC personally appeared before me this 5th day of August, 2009 and acknowledged the due execution of the foregoing instrument.

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 8/14/2014

{01573692.2}

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Indexed & Scanned per Box Instructions

Filed By:

WOODDY LAW FIRM, LLC
ATTORNEYS AT LAW
622 JOHNNIE DODDS BLVD.
MT. PLEASANT SC 29464

RECORDED

Date:	August 7, 2009
Time:	3:17:22 PM

Book	Page	DocType
0073	776	Misc/Asgt

Charlie Lybrand, Register
Charleston County, SC

RMC Bk 0073 Pg 776 : pg 6 of 6

Maker: I'ON CLUB LLC

Recipient: 148 CIVITAS LLC

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843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

EXHIBIT 4

Upon Recording, return to:
ALTMAN & COKER
575 KING STREET, SUITE A
CHARLESTON, SC 29403

BP0389564

#PGS: 9

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That148 CIVITAS, LLC, a South Carolina limited liability company, ("Grantor") in the state aforesaid, in consideration of the sum of Four Hundred Ninety Five Thousand & 00/100 Dollars ($495,000.00), to the Grantor in hand paid at and before the sealing of these presents by I'ON ASSEMBLY, INC., a South Carolina corporation, ("Grantee"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantee, its successors and assigns, the following described real property, to wit:

SEE EXHIBIT "A" ATTACHED HERETO

Grantee's Address:

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 Grantee, its successors and assigns forever, the herein described property.

AND the said Grantor hereby binds itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantee, its successors and assigns, against itself and its successors and assigns lawfully claiming, or to claim the same, or any part thereof.

WITNESS the Grantor's hand and seal this 14 day of January, 2014.

Signed, Sealed and Delivered
in the Presence of:

148 Civitas, LLC, a South Carolina limited liability company

By: Stephen W. Speer
Its: Member

By: Michael N. Russo
Its: Member

Speerex, Ltd.

By: Stephen W. Speer
Its: General Partner

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGMENT**
COUNTY OF CHARLESTON)

BEFORE me personally appeared Stephen W. Speer, well known to be the Member of 148 Civitas, LLC, and as General Partner of Speerex, Ltd., and Michael N. Russo, well known to be the Member of 148 Civitas, LLC, who executed the foregoing instrument, and they acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 14th day of January, 2014.

Notary Public for South Carolina
My Commission Expires: 8/10/2019

EXHIBIT A

ALL that certain lot, piece or parcel of land and all improvements thereon, located in I'On, situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as CV-6 on a plat entitled, "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, S.C." prepared by Thomas & Hutton Engineering Co., dated September 12, 2000, and recorded on January 30, 2001 in the RMC Office for Charleston County in Plat Book EE, at Page 573, said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING the same property conveyed to 148 Civitas, LLC, by deed of I'On Club, LLC, dated August 5, 2009, recorded August 7, 2009, in the RMC Office for Charleston County, South Carolina in Book 0073 at Page 784.

TMS# 535-06-00-230

Exhibit B

Permitted Exceptions

1. Ad valorem real property taxes for the year 2014 and all subsequent years, a lien not yet due and payable

2. All limitations, covenants, easements, restrictions, reservations and conditions of record which may affect the Property whether or not mentioned herein.

3. Declaration of Restrictive Covenants executed December 10, 1998 by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the Trust under the Will of Hampton S. Alford and recorded in the RMC Office for Charleston County in Book L316, at Page 19.

4. Title to Real Estate and Reservation of Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the Trust under the Will of Hampton S. Alford to The I'On Company, LLC dated August 12, 1997 and recorded in the RMC Office for Charleston County in Book J288, at Page 190.

5. Title to Real Estate and Reservation of Easements from by David N. Jordan, KREPS Investment Company, LLC, KAYJ Investment Company, LLC, L-J, Inc., and Barbara J. Alford, as Trustee of the Trust under the Will of Hampton S. Alford to The I'On Company, LLC dated January 11, 1999 and recorded in the RMC Office for Charleston County in Book Y319, at Page 382.

6. Easements to The Commissioners of Public Works of the Town of Mount Pleasant, South Carolina recorded in the RMC Office for Charleston County in Book Y332, at Page 383; Book J316, at Page 288; Book O319, at Page 482; Book T416, at Page 667; Book S346, at Page 641; and Book T337, at Page 856.

7. Drainage Easement from The I'On Company, LLC to the Town of Mount Pleasant dated October 5, 2000 and recorded in the RMC Office for Charleston County in Book U393, at Page 203.

8. Easement to South Carolina Electric and Gas Company recorded in the RMC Office for Charleston County in Book X115, at Page 28.

9. Easement to BellSouth Telecommunications, Inc. dated November 6, 1997 and recorded in the RMC Office for Charleston County in Book U292, at Page 209.

10. Any and all Easements, rights of way, or other encumbrances shown on that certain plat entitled "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS # 10292, dated September 12, 2000 and recorded in the RMC office for Charleston County in Plat Book EE, at Page 572-573.

11. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "PLAT OF THE SUBDIVISION OF A 163.64 ACRE RESIDUAL TRACT TO CREATE PHASE II (37.70 ACRES) & PUMP STATION SITE (0.10 ACRES), I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS #10292, dated January 6, 1999 and recorded in the RMC Office for Charleston County in Plat Book EC, at Page 997.

12. Any and all easements, rights of way, or other encumbrances shown on that certain plat entitled "CONDITIONAL PLAT OF PHASE II, SUBPHASES A-E, I'ON, TOWN OF MT. PLEASANT, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by F. Elliotte Quinn, III, RLS #10292, dated September 12, 2000 and recorded in the RMC Office for Charleston County in Plat Book ED, at Page 108-109.

13. A reservation of non-exclusive easements along the boundary lines of the Property for the installation and maintenance of utilities.

14. The restriction that the Property shall not be used for any type of Vacation Time Sharing Plan as defined by S.C. Code Section 27-32-10, et. seq., as amended, without the express, written consent of The I'On Company, LLC ("TIC") or its successors or assigns.

15. Zoning or other restrictions of record as imposed by governmental authorities having jurisdiction over the use of the property.

16. Any interest created by or limitations on use imposed by the Federal Coastal Zone Management Act or other Federal law or regulations or by South Carolina Code Section 48-19-10 through Section 48-39-220, as amended, or any regulations promulgated pursuant to said State or Federal laws, inclusive of DHEC (formerly South Carolina Coastal Council) and the U.S. Army Corps of Engineers.

17. Easement for Use and Enjoyment of Boating Facilities by and between 148 Civitas, LLC and I'On Club, LLC dated August 5, 2009 and recorded on August 7, 2009, in the RMC Office for Charleston County in Book 0073 at Page 775.

18. All facts which are shown on any existing survey or would be shown on a current survey of the Property.

20. A reservation of non-exclusive easements for the installation and maintenance of all utilities (i) adjacent to, parallel with and within 3 feet of the two side boundary lines of the Property, and (ii) within applicable setbacks for the front and rear boundary lines.

21. The Property is further subject to the following:

(i) if the Property is ever used or developed for residential purposes or rezoned for residential use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the "Declaration of Covenants, Conditions and Restrictions for I'On", recorded in Book C297, page 282 in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Residential Declaration"), and all related documents referenced therein, and those set forth in the I'On Code. Grantee acknowledges and agrees that if the Property is ever used or developed for residential purposes or rezoned for residential use, Grantee and any successor in title shall automatically become a member of the I'On Assembly, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property. Grantee acknowledges that only builders approved by TIC, its successors or assigns, the developer of I'On, may construct homes or improvements or complete renovations on homes in I'On. Such approval requirement is for the protection of TIC, only and shall not be construed to create any duty or liability to Grantee on the part of TIC. Grantee agrees that Grantee shall not permit any person other than a builder approved by TIC to construct a home on the Property while title is vested in Grantee. Grantee also acknowledges that builders in the I'On Guild who construct homes or provide construction services in I'On have agreed to pay the William Means Real Estate, LLC and/or the listing agent a commission of six percent (6%) of the Gross Sales Price of the improvements to be constructed by such builder on lots in I'On owned by third party buyers, such as Grantee. This Commission is to be calculated as follows: Commission = .06 x Gross Sales Price. The Gross Sales Prices includes the Commission and can be calculated as follows: Gross Sales Price = The total of cost of improvements and overhead and profit divided by 0.94. Such commission shall be paid upon closing of the construction loan or commencement of construction, whichever next occurs after the builder enters into the contract for construction of a home for which a commission is payable;

(ii) if the Property is ever used or developed for commercial purposes or rezoned for commercial use, it shall automatically become subject to all covenants, restrictions, conditions, easements, rights, reservations, limitations, limitations

on use, architectural and landscape approvals, and affirmative obligations to pay all assessments and charges as set forth in the Conditions, and Restrictions of I'On Square, dated August 23, 2000, and recorded September 8, 2000, in Book R354, Page 129, in the RMC Office for Charleston County, South Carolina, along with all recorded supplements and amendments thereto (collectively the "Commercial Declaration"), and all related documents referenced therein. Grantee acknowledges and agrees that if the Property is ever used or developed for commercial purposes or rezoned for commercial use, Grantee and any successor in title shall automatically become a member of the I'On Square Association, Inc., and remain a member so long as Grantee and any successor in title hold title to the Property;

(iii) no structure or exterior items shall be placed, erected, or installed upon the Property, and no improvements or site work, exterior alterations of existing improvements, or planting or removal of landscaping, shall take place on any portion of the Property unless the design and plans for such is reviewed and approved in writing by Grantor or TIC, their successor and assigns; provided however, that if the Property is used or developed for residential or commercial purposes or rezoned for residential or commercial uses, which results in the Property becoming subject to the Residential Declaration or the Commercial Declaration, such review and approval shall be made in accordance with the applicable declaration; and

(iv) I'On Club, LLC, hereby reserves, for the benefit of I'On Club, LLC and TIC, their successors or assigns, a non-exclusive perpetual easement in gross for the storage of four (4) kayaks under the porch of the building located on the Property or if unavailable, in such other comparable location on the Property as the Grantee may determine in its reasonable discretion.

Grantee agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of subsections (i) through (iv) of this Paragraph 21.

22. Lease to 148 Civitas, LLC.

23. All covenants, restrictions, easements, and agreement of record.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

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

1. I have read the information on this Affidavit and I understand such information.

2. The property is being transferred by **148 CIVITAS, LLC, to I'ON ASSEMBLY, INC.**, on January _____, 2014.

3. Check one of the following: ***The DEED is*** **check one**

(a) __X__ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.

(b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.

(c) _____ EXEMPT from the deed recording fee because (exemption#_____). (Explanation if required). _____.

(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.

(a) __X__ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $495,000.00

(b) _____ The fee is computed on the fair market value of the realty which is $_____.

(c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES__ or NO__X__ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is $_____

6. The DEED Recording Fee is computed as follows:

(a) $495,000.00 the amount listed in item 4 above

(b) 0.00 the amount listed in item 5 above (no amount place zero)

(c) $495,000.00 Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative for Grantor.

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

_____
Grantor, Grantee, or Legal Representative connected with this transaction

Sworn to before me this 14th day of January, 2014.

_____
Notary Public for South Carolina
My Commission Expires: 8/10/2019

RECORDER'S PAGE

NOTE: This page MUST remain with the original document

Filed By:

ALTMAN & COKER LLC
575 KING STREET
SUITE A
CHARLESTON SC 29403

RECORDED

Date:	February 20, 2014
Time:	12:15:12 PM

Book	Page	DocType
0389	564	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:
148 CIVITAS LLC

RECIPIENT:
I'ON ASSEMBLY INC

Original Book:

Original Page:

Note:

of Pages: 9

Recording Fee	$	10.00
State Fee	$	1,287.00
County Fee	$	544.50
Extra Pages	$	4.00
Postage	$	-
Chattel	$	-
TOTAL	$	1,845.50

DRAWER: Drawer 1
CLERK: KLH

AUDITOR STAMP HERE

PID VERIFIED BY ASSESSOR
REP _____
DATE _____

0389 Book

564 Page

02/20/2014 Recorded Date

9 # Pgs

Original Book

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12:15:12 Recorded Time

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2010-CP-10-10490
)
)
BRAD WALBECK and LEE ANN)
ADKINS, individually and) Transcript
derivatively on behalf of) of
I'On Club, Inc.) Pretrial Motions
)
VS.)
)
The I'On Company, LLC;)
The I'On Club, LLC; The)
I'On Club, LLC; The I'On)
Group, LLC F/K/A Civitas,)
LLC; Vince Graham; Tom)
Graham; 148 Civitas LLC;)
I'On Real Estate, LLC;)
Mike Russo; and I'On)
Assembly, Inc.,)
)
Defendant.)

DATE: January 13, 2014

B E F O R E:

The Honorable Stephanie P. McDonald

A P P E A R A N C E:

JUSTIN O'TOOLE LUCEY, PA
BY: JUSTIN LUCEY, JOSHUA EVANS and DABNY LYNN
For the Plaintiffs

DUFFY & YOUNG, LLC
BY: BRIAN C. DUFFY and J. RUTLEDGE YOUNG, III
Attorneys for I'On Company, LLC;
The I'On Club, LLC; The I'On Club, LLC; The I'On
Group, LLC F/K/A Civitas, LLC; Vince Graham;
Tom Graham

LEATH, BOUCH & SEEKINGS, LLP
BY: TIMOTHY BOUCH and YANCEY A. McLEOD, III
For the I'On Assembly, Inc.

A P P E A R A N C E S (continued):

ADAMS AND REESE, LLP
BY: KIRBY D. SHEALY, III and LANA H. SIMS, IV
Attorneys for the Defendants, 148 Civitas, LLC

ALTMAN & COKER, LLC
BY: CHARLES S. ALTMAN and MEREDITH COKER
Attorneys for the Defendant, Mike Russo

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

THE COURT: All right. I'm going to let y'all get some lunch in just a minute. And then we want to come back about, I don't know, 2:45 ought to give you plenty of time to get something to eat. We can start working through the motions. I also want to get together with you people and do a little informal discussion about where we are mediation-wise and if there's anything the Court can do to help move that along.

I remember Judge Newman and Judge Dennis used to do that when I was on y'all's side of the table. Sometimes we would take several hours to do that. I don't generally knock heads quite that much, but I would like to talk to folks and their clients in that regard as much as allowed, as is allowed under the rules of judicial conduct.

(Off the record dicussion takes place.)

THE COURT: All right. So y'all be back at 2:45 and we will do that. I doubt I will push on y'all as hard as Judge Dennis and Judge Newman used to push on us, but I do want to talk to you a little bit and see where we are. And then we will start working through the motions.

I've gotten several summary judgment-ish type motions both on January 8th and this morning. I think we might be past the deadline on that, folks, but I will

hear from y'all on that if you want to. Certainly, I think it's something everybody needs to keep in mind for directed verdict purposes.

I will tell you what I read over the weekend and last week. There are several things that are going to be streamlined down; if not beforehand by consent, definitely at the halftime portion of this.

And Mr. Graham's deposition was very interesting. I think I probably have all of the exhibits that went along with it now in one of these notebooks that you have given me. But if you have anything anything else that I need to look at, let me know. Okay?

All right. We will be at ease until 2:45. See you back in here and we will kind of break it down and see where we are. Thank you.

(Luncheon recess was taken.)

THE COURT: All right. I hope y'all had a nice lunch. New things that were submitted to me this morning. And as I indicated before we broke, before I subject the jury to all of this, I do want to talk with everybody to see where we are. I definitely want to talk to the lawyers in a few minutes. I would like to talk to Mr. Lucey and the plaintiffs, and see where they are and what they could possibly receive to maybe resolve this.

I certainly don't want to do that over anyone's

objection. As y'all know, the rules allow that kind of informal process if everybody agrees. Quite frankly, I don't remember any judge ever asking me if I agree or not, just did it, but I'm newer than some of those guys are.

Any suggestions first, or anybody have an objection to me talking with Mr. Lucey and the plaintiffs?

MR. LUCEY: Your Honor, we are an open book. We are happy to discuss everything. We would ask that the Court protect everybody's record by polling and make sure there's no objection. We would welcome that opportunity, but make sure --

THE COURT: So the plaintiff consents then.

MR. DUFFY: Zero objection from Duffy and Young's client.

MR. ALTMAN: On behalf of Russo, we do not object.

THE COURT: Is Mr. Bouch here?

MR. BOUCH: No objection, Your Honor.

THE COURT: Did I forget anybody? Have I missed any group?

MR. LUCEY: No, ma'am.

THE COURT: Let me talk to Mr. Lucey and the plaintiffs first. Let me talk to Mr. Lucey separately

first, and I will get the plaintiffs, and then I will chat with everyone else. I'm hoping not to waste anybody's time. I just need to get the lay of the land and to see if there's any way we could resolve this. We do have the rest of today and all day tomorrow to go through the motions, and there are several pending.

MR. LUCEY: I actually don't mind talking publicly, because with the Assembly being involved, this is kind of like an open book, with the exception of Mr. Duffy hasn't necessarily been involved in some of the side negotiations.

But, frankly, also, there were mediation agreements. And there's been a lot of community involvement in I'On. So there's been a lot of airing on a lot of things. I don't really see a lot that's left that's confidential.

THE COURT: Reminded me a little bit like a festivus airing of grievances type. I have read the settlement agreements, as y'all know, because I went through, wanted to look at what motions were pending last year.

I also read the -- I guess soliloquy would be a nice way to put it. That motion in limine would be granted, by the way, if we were on that right now. What the Yale lawyer on behalf of the board, or I guess the

Assembly, shared with everyone that were presented as minutes, weren't the kind of minutes I had ever seen, but I think that gave me a flavor of some of the background.

So that being said, I'm happy to hear anything you want to tell me. I know everybody has still been talking over the weekend. I could tell, because you were continuing to send me documents and such.

But where are we from the plaintiffs' perspective? You want to just put that on the record?

MR. LUCEY: Yes, ma'am. There's been no discussions with the Graham-related defendants, because -- we also have the I'On Assembly here, but we can backtrack into that.

There has been continued discussions with Mr. Russo's group. And the last place they got up to this morning as we were walking to the jury room was that I would sell an extra year of free rent to my clients if they were agreeing to all the other terms. There actually was a term sheet sent from my office to the still-participating mediator, Tom Wills, and to Mr. Bouch and to Mr. Altman, with a copy to Sam Altman, his brother who, Your Honor, is the bank's attorney. So he's actually been a bit of a facilitator. But he's been in that loop because the bank wants to protect their interest. So there was that term sheet.

It contained some things that were objectionable to Civitas. We agreed to drop the requirement -- we tentatively agreed -- to some extent, I'm actually speaking at this point without the complete authority from my clients. I will be frank about that, because there's been too many moving balls for them to actually give authority on something, among other things. But also, they had a lot of concerns about the neighborhood.

But there was a term sheet submitted which had a lot of unacceptable things. We actually got very close this morning. I indicated I would sell -- that they would go to 20 years on the free lease, which we'd already been discussing, which was communicated to the mediator some days ago. We were in agreement on everything else. I would sell one more year free rent to my clients to settle the deal.

And the only -- without limiting Mr. Altman in any way, the only complete pushback I got was their issue that when the docks are closed for wedding ceremonies, we need to be able to ask the people to leave the docks, which doesn't sound so obnoxious at the first instance, Your Honor, but if the Court will indulge me, please.

Weddings often take place Saturday afternoon. There's 716 residents in I'On, like most of us, that work weekdays and use their boats and the boat docks Saturday

afternoon. It's a huge conflict.

And the background of this, Your Honor, is, in fact, that this club was operated by the Grahams with little or no closure until the transfer to Civitas in 2009. And we actually have some testimony from some ex-employees to present on that if it becomes an issue at trial.

There's a Creek Club there, a little wedding lawn in front of it. That's where the weddings are.

THE COURT: On that lawn?

MR. LUCEY: On that lawn, typically on that lawn; unless it's really bad weather, they go inside. It's scenic. And the main problem seems to be they don't want the sunbathers, so to speak, or the kids in the background on the community dock that's about 100 feet out when they are taking the photographs of the bride.

Now, before this, there has been more conflict because there's been a decorum issue. Some of the residents don't like getting kicked out of the docks, and so they are a little less well-behaved when they are around these wedding ceremonies. But we've already long ago agreed that if we reach an agreement, that everybody will agree to enforce decorum rules during ceremonies.

So the only issue I knew that was left was requiring residents to actually vacate the dock during

the wedding ceremonies. And I was told that was a deal-breaker.

I still need -- if they were to agree to those terms, I still need to sell my clients on them. My clients don't want any closures. They have no objection to a wedding business proceeding there, but the front of this property is supposed to be part of this creek walk. And it's supposed to be access to the dock. And they believe the community should never be kicked out of there. And I understand that.

But we've tried to compromise that and mitigate it by limiting the closures to 30 minutes and no more than three per week and no more than 120 events per year, most of which I understand is substantially in place.

I kind of backed into this for the Court. So I didn't give the Court the complete picture on this particular settlement. Let me do that in one second.

The primary avenue for the settlement is basically that the Civitas transfers us the Creek Club now, and we rent it back to them for free for a negotiated period for them to earn back their investment and to make some money, and then we get the whole facility in 20 years. And I can tell you, there's been many variations of this discussed, but that's where we were at 9:29 this morning as we walked into the jury

room.

If you want me to finish the picture -- or I could sit down on that one.

THE COURT: I'm happy to hear --

MR. LUCEY: We actually had an agreement with the Graham-related defendants a year ago at mediation. It was an agreement that was valued at approximately $975,000. It was actually closer to 999, 998, something like that. We could pull it out. But to some extent, it was in tandem with this other deal. And when the original Russo deal fell apart, it did too.

It involved partially an in-kind settlement by the I'On-related defendants. They were going to build this assembly hall and pay a certain amount of the plaintiff's attorney fees and expenses, and that was it. And the assembly hall -- they were going to donate the land, and that was valued at approximately -- the construction of the land was valued at approximately $775,000. They were also supposed to provide the engineering, which would be another 25- or $30,000.

And I would have to check the agreement, but my vague recollection is that their contribution to the attorney fees and expenses was either 250 or 260, somewhere in that range. And we have those documents if -- in fact, they are signed from the original

agreement.

When we tried to put this back together last summer, we thought that the best way to make a deal happen with Russo was to convert the Graham deal to cash, because then we would have more cash to negotiate with Russo to get our Creek Club back.

The Graham-related defendants, as we perceive it -- I don't want to speak for anybody else -- as we perceive it, do not want to convert it to cash because they have ulterior goals. They want this new building constructed because they were going to take the top half of it as a free office for certain amount of years. And that would allow them to move some activities out of the Creek Club across the street and give them more room at the Creek Club. So they were looking at a partially limited situation.

It also appears to be that they don't want to have the appearance of having actually settled this suit. They would rather be able to say, "Hey, I built them an assembly hall," than, "I caved to plaintiffs' demands." And our efforts, Mr. Wills's efforts last June to convert that settlement to a cash settlement didn't go anywhere.

Besides the Russo deal falling apart, a second reason the I'On deal fell apart is the Assembly board, more or less, either informal or formally, let it be

known that they didn't think that the new assembly hall was, I believe, big enough or in the right location. And they just didn't like that idea. So that's -- that was another reason to go towards a cash deal, so that the details of whether to build the assembly hall, whether Creek Club or some other place, could get resolved at some other time.

That's the long and short of it, Your Honor.

THE COURT: So, basically, there were ongoing discussions with the Russo group. And there's a hangup over getting people off the dock during the weddings. That's the only hangup left?

MR. LUCEY: That's my understanding. I haven't received a crystal clear 21-years-would-do-it answer. That was the understanding that I had.

THE COURT: All right.

MR. BOUCH: Need to be fair. I know I've been kind of in the backshot on all of this. Mr. Russo's been very clear that he needs some sort of 30-year provision. Mr. Russo's folks have objected to that continually as being too long. When we had the discussions this morning, there was a 20, 21-year provision, that dollar-a-year rent, basically.

Mr. Russo came back and said, I need that 10 years, but I will pay you a considerable amount of rent

and closure fees for the years 21 through 30, which we believe is still the case. So that extra 10 years and the -- to give you some perspective of the Assembly, Your Honor, we are talking about two docks --

THE COURT: I know what it looks like.

MR. BOUCH: We are talking about closing one of them for a wedding ceremony. The schedule is published well in advance. You know, two days a week, we are going to close it at two o'clock for 30 minutes, kind of thing.

I'm sympathetic on behalf of the residents to plaintiffs' concern about this. There are other areas you can go to for that 30 minutes. And it's not like it's a surprise.

THE COURT: Okay. Yes, sir.

MR. ALTMAN: If it please the Court. We started having discussions on behalf of the Civitas defendants several weeks ago with Mr. Bouch to try to come up with something that the Assembly would be happy with. And we went back and forth for a good bit of time, and came up with a resolution. We were not in discussions with Mr. Lucey at that time. But the basic concept of what we were going to do is this; is going to be actually a 15-year lease with three five-year options to be automatically exercised.

And we have this loan to Tidelands Bank. As Mr.

Lucey said, my brother, Sam Altman, represents the sale. And we had to satisfy with the bank deal because they need to convert -- involve the lease. And they needed to convert their loan to a leasehold mortgage and part of the property, because there are three pieces of property involved. There's where the Creek Club is located. There's a residential lot next to it that is used in conjunction with the Creek Club. And then there's the parking lot, which is down the road. And we determined that 30 years was something we needed.

But the closures were very, very important. Because, let's face it, couples getting married, bride and the groom - let's give them both credit - they want decorum. They want quiet. This is something that's solemn. It's the most important day of their lives, or one of the most important days of their lives. And taking a chance having somebody sitting out on a dock, yelling, screaming while pictures are being taken, it's not what you want to see. Closing is 30 minutes. I think if you work it out on a yearly basis, it's a half percent of the time in a year.

THE COURT: When they stop playing on the 18th hole at sea line, sit and watching the people getting married in the quarter deck and listen to people scream, "Don't do it," it's better to have a little bit of

decorum. I understand that.

MR. ALTMAN: What we were doing in exchange for that, from January 1 of this year to the end of this year, there would be no pay for the closures. But commencing January 1, 2015, any time we close the dock, we pay them $250 for the next 20 years.

THE COURT: Is part of the deal, if any deal is reached for the closures -- has Mr. Bouch indicated the neighborhood would know ahead of time what was scheduled and what time?

MR. ALTMAN: Absolutely. And, again, it's only one of the two docks would be closed. There's a parking lot that is not being used. It's available first-come/first-served basis. There's what we call the launching dock. It's a dock you can fish or sunbathe. There's a boat ramp that will never be closed. Then we agreed that for the final 10 years of the lease, we would pay $500 per closure.

So if we look at that, we are talking about roughly $975,000 over the period of time. Also, in exchange for what we were going to get, Lot CV5, which is the parking lot, at the end of the lease, we were going to give that to the Assembly. So I don't know what the value would be. I've heard estimate $500,000. So we are talking about $1,475,000 of value that we would be giving

to the Assembly or paying to the Assembly potentially over the life of this lease. So it's not like we are getting something for nothing.

There were some other issues that there were going to be some breaks for rent, the Assembly using the facility, for breaks for the residents using the facility, for using it for less than the normal rent. There was a specific number of uses that was going to be given or allowed at a much lesser rent. There's a $300 charge for catering, wanting to use the prep kitchen. Things get lost, things get broken, because we don't have control to over it. So we needed that. We think that's totally reasonable.

And there were a few other things, but those were the basics of what we were talking about. As Mr. Lucey said, there was a brick wall apparently in front of the idea of the closures, again, 30 minutes.

THE COURT: Well, there's another issue that we need to look at, and I'm sure y'all have addressed. Who is even authorized to speak on behalf of the Assembly as to the closures? I think we need to look at Mr. Bouch, who is the attorney for the Assembly, to figure some of that out. I know there's a motion right now to dismiss any derivative-type prosecution of this.

I'm not saying one way or another what would

happen. I just got it this morning, but I knew that was an issue running throughout this litigation. I think your folks need to look hard at what's being offered on here, because that's a huge question lingering over this action, which you know. I know, Mr. Lucey, you know that.

MR. LUCEY: Sure. But until the Court throws us out, if it decides to do so, we do believe we are validly pursuing on individual basis. And what the Court just raised is further complicated by something the Court might have seen in the file, the existing easement that supposedly controls what's going on --

THE COURT: -- was given before the people had authority to give it, correct?

MR. LUCEY: Yes.

THE COURT: And Jim Barnes, or Joe Barnes, signed on behalf of all three people. Yeah, I saw it. This is a mess, for lack of a better word. And, you know, at best, as plaintiffs, you win some award from the jury and end up in Columbia for years. At worst, you end up with nothing. And, you know, I haven't heard the arguments yet to know which way it is going to go. But, you know, that's a risk facing all the defendants as well. This is a mess.

MR. ALTMAN: That's why we made the offers that

we had, which we candidly admit we've gone through the mediator. We sat down with the Assembly. And if the Court allowed the derivative suit to go forward, who is the benefit for? It's for the benefit of the Assembly. The Assembly board says, this is a good deal for us.

THE COURT: Is there anybody from the Assembly board present?

MR. BOUCH: Your Honor, Ms. Bedell, who is the president of the Assembly, is being entertained by Judge Young in the Grand Jury right at this moment, but she says as soon as she finishes, she would be up here. She's in the building.

MR. DUFFY: What did she do?

THE COURT: Is she on the Grand Jury?

MR. DUFFY: She's been summoned for the Grand Jury, and I believe they are just organizing.

THE COURT: Judge Dennis starts at two o'clock, generally. So she doesn't know if she's gotten picked or not?

MR. BOUCH: At 2:30, when Judge Young walked in, she had not been, but I don't know the extent of that.

THE COURT: That's easy to fix. Is Ms. Bedell the one that gave the long discussion?

MR. BOUCH: That was, more or less, an informal general community meeting. It wasn't a formal meeting.

There was a lot of controversy around the neighborhood and a lot of pressure on her to say what's going on, and that's where that went.

But, Your Honor, the Assembly is in favor of these agreements. And I could say that. I have authority to say that. And while we've gone back and forth on whether this is a derivative action as set forth in my trial brief, I did note to Mr. Lucey that -- and when I went back over this this weekend, Judge Dennis denied our motion to dismiss. He ruled this was a derivative action. I believe that's the law of the case. And I don't believe we're in a position to challenge that. That ruling won on appeal.

THE COURT: It did what?

MR. BOUCH: It won on appeal.

THE COURT: Well, he denied the motion to dismiss, right?

MR. BOUCH: Yes. And his comments are that Mr. Lucey brought this as a derivative action. I think it is, therefore --

THE COURT: So what is it that was handed up to me today, January 13, motion to dismiss plaintiff's derivative claims?

MR. DUFFY: Well, we also filed one on the same basis, Your Honor, denied his motion to dismiss because

he claimed there was no relief alleged against him. It was not law of the case that's --

THE COURT: I'm not saying it's the law of the case.

MR. DUFFY: We both challenge that, that it was a proper derivative action.

THE COURT: I guess my question is this, and it's a trick question: If a judge at the circuit level has already denied the motion to dismiss based on the same legal grounds, I'm certainly not going to come forward and grant this now. I wasn't going to anyway, because it's too late, quite frankly. Tread lightly. All right. I understand.

MR. DUFFY: I was just going to suggest, Your Honor, I don't believe it was the same grounds that were raised. It was a separate issue.

THE COURT: Well, it says may be based on a memorandum to be filed in the future in any such matters as may be just and proper, but it was handed to me this morning.

MS. COKER: If I may say, procedurally, we were served with plaintiff's third amended complaint that brought a new cause of action and changed some allegations.

THE COURT: Okay.

MS. COKER: On January 2nd, I believe, we answered that. And in that answer, put our Rule 12 motions and filed the memorandum in support of that as well.

THE COURT: Okay.

MR. LUCEY: It does not change the allegations. It adds a cause of action. And, actually, what the Court's heard so far is an understatement. Judge Dennis didn't just deny the motion to dismiss. He denied both motions for summary judgment. And the Court would be rather impressed with the overlap of the issues. It was a rather global attempt by the defendants.

MR. ALTMAN: Your Honor, I have been more involved in one case for motions for summary judgment, motion to dismiss that have been brought up on numerous occasions --

THE COURT: Usually you have to have new grounds or some new evidence.

MR. ALTMAN: No question about that, but it has been brought up again, so it doesn't totally foreclose it.

Coming back to the settlement proposal, we just think it is reasonable. It is appropriate. And, again, the Assembly agrees with us.

THE COURT: Well, it sounds like that Mr. Lucey

needs to talk to his clients and we need to figure out what's left to hammer out.

MR. LUCEY: If we are going to discuss reasonableness, and if I'm going to be pushed back to 30 years, you should hear what reasonableness is.

THE COURT: I'm not here to make you settle your case. I'm not here to determine what's reasonable or not. I'm here to listen and attempt to facilitate. That's for y'all to work out. Why do I need to hear what's reasonable in your mind?

MR. LUCEY: Because, Your Honor, we welcome your facilitation and we would like you to have a full deck of cards as you do it. And part of what I would like to point out to Your Honor about the reasonableness is this: This is a lawsuit; it is for wrongdoing. And the Civitas defendants are defending an action for civil conspiracy --

THE COURT: For now.

MR. LUCEY: For now. The Civitas defendants are out-of-pocket one-half million dollars. That's it. They are no longer out-of-pocket half million dollars because they've been operating the business for 4 1/2 years making $300,000 a year. And as part of the deal you heard today, the Assembly is giving them back that $500,000 anyway. So not only are they not

out-of-pocket --

THE COURT: Wait then. You didn't mention that in your part, but is $500,000 being paid from the Assembly to the Civitas defendants?

MR. LUCEY: $495,000, Your Honor.

THE COURT: Plus the lease provision that would happen at some point down the line, plus the payment for any closures that would happen at some terminus of time?

MR. BOUCH: When it comes the other way, we pay 495 for the title to the property. They lease it back.

THE COURT: Right.

MR. BOUCH: They give us approximately -- beginning end of year, because weddings aren't scheduled in two-week intervals, beginning next January, they will pay us $250 every time a bride wants to --

THE COURT: That --

MR. BOUCH: About $25,000 a year. After the 20 years, the proposal on the table is they will guarantee us $100,000 a year for the last 10 years in combination of rent and closure fees, which the Assembly feels is very, very desirable from a maintenance, upkeep, taxes and insurance aspect of not only this building, but the property.

One of the terms of the leaseback is the Civitas group has agreed to pay a pro rata share of taxes,

insurance and maintenance on the building. And we have drafted a commercial lease to that effect. So, in essence, from the Assembly's standpoint, considerable maintenance and expense and taxes and insurance will be deferred by this, and would otherwise be the responsibility of the residents. And that's one of the main reasons it's very attractive.

MR. ALTMAN: One minor contradiction. The Civitas group would pay 100 percent of the maintenance and repairs on the building, keep the building insured, pro rata share of the taxes for the particular lot that would cover a -- I think what we propose is 50 percent of the land, which we would have less than 50 percent of, and I believe 75 percent of the building, the improvements on the property, because the dock's over something, but we pay pro rata share of the taxes.

We will keep the building insured. We have an obligation to fully maintain roof structure, interior, exterior, the whole nine yards. It's not a pro rata share.

THE COURT: For some determinate time?

MR. ALTMAN: As long as we have the lease in existence.

MR. BOUCH: Before Mr. Lucey -- there are two other provisions I think that are important, Your Honor.

The Assembly will be given, at the end of the lease, this excess parking lot. And, quite frankly, under no theory of this present case would we have any claim on that at all.

THE COURT: Okay. That's CV5?

MR. BOUCH: That's CV5. And there's a residential Lot 275 that is owned by Mr. Russo and the Civitas group. And they have landscaped together with the Creek Club. They have given us an option and right of refusal on that. Again, that particular property would be -- would enhance the complex. And we have no claim against that under any theory of the lawsuit. So those are two points that, again, have convinced the board that this is something that should be worth pursuing. And I know Mr. Lucey has something to say for the record.

MR. LUCEY: I just wanted to finish the financial picture, Your Honor. The uncontested evidence as of now -- you are welcome to see any other evidence, but the uncontested evidence is Civitas is making 300,000 a year. Not only have they already been paid everything out-of-pocket, 20 years, $6 million profit, that's after the mortgage payment. Business pays off the mortgage. They don't pay that off. Business pays it off. They are still making 300,000 a year. We are giving them 20 years

at 300,000. That's $6 million.

We don't think that they need the extra 3 million to get the last 10 years. We believe they contributed to the problem that brings us before you today. And they have been contributing to the resolution. We don't think a $7 1/2 million return on a half-million-dollar-out-of-pocket investment is much of a contribution.

MR. ALTMAN: My response to that is --

THE COURT: Y'all can fight about this all day long. It's not for me to decide.

MR. ALTMAN: My comment is this. We are not in business with the Assembly. It's no different than any other commercial transaction. We rent property. We promote our business. We make our money. We pay a fair rent. The Assembly says we have a fair rent. We just think it's fair. It's reasonable. Again, for that extra 10 years, we are talking about guaranteeing $100,000 a year.

You know, as far as a return is concerned, the Assembly thinks it is reasonable. And we would hope that Mr. Lucey and his clients would think that that's a reasonable way to resolve this matter.

THE COURT: Well, do you need to talk to your folks, Mr. Lucey? What do we need to do?

MR. LUCEY: We have a standing offer. We have a term sheet we've given them. I will talk them into one more year if they agree to the conditions we've given them. And we already agreed how that term sheet needs to be modified. I will persuade my clients on that last year to give them one more year, 21 years.

THE COURT: Let me stop you real quick on that. I understand that the motion to dismiss the -- we'll call them the derivative claims - I'm not sure that's what it really is - has been denied. But if at some point it appears that as, I guess, class representatives or Assembly representatives, that the plaintiffs aren't acting in the best interest of the Assembly, it opens a whole other can of worms. Y'all need to have a chat about that.

MR. LUCEY: For the Court's information, there was a petition -- before this got settled last time, there was a petition put together by the homeowners. And in two weeks, there was 350 signatures on that petition.

THE COURT: To say what?

MR. LUCEY: To get the docks back and to get the restrictions off. I don't have exact wording in front of me.

THE COURT: I don't think there's any argument that getting the docks back and taking the restriction

off is something that the neighborhood would want. I seriously doubt that the petition went into the kind of detail that the term sheet did.

MR. LUCEY: It said -- now I recall, Your Honor, said for the board to support Brad Walbeck and Lea Ann Adkins in this lawsuit, and it filed a detailed presentation to the homeowner what the evidence --

THE COURT: Yeah, I read it.

MR. ALTMAN: That petition, whatever it was, was a long time ago. There's been a lot of developments. And I think --

THE COURT: I know all of this already. I don't know why y'all need to keep telling me. All right. Do you all need additional time to talk? And this really kind of leaves the Graham defendants not having a say in this, necessarily. So if there's anything y'all want to put on the record, I'm happy to do that.

Mr. Bouch, seems to me that you need to be sitting over there talking to those folks.

MR. BOUCH: Well, I was the last one in after lunch, which is why I'm sitting over here, Your Honor. I would appreciate if the Court would entertain, as you started now, with maybe talking with the individual lawyers and the individual clients just to see where we are.

I mean, Mr. Lucey has accurately identified we have two issues, dock closure for 30 minutes, and the extra 10 years.

THE COURT: Okay.

MR. BOUCH: And I don't know how to break that. I really don't. I could sit over there for the rest of the week, and I don't think I could break that, quite frankly.

THE COURT: All right.

MR. BOUCH: And that's my only suggestion, Your Honor, if we are going to make any progress at all. I apologize Mr. Duffy hadn't been included on this, but --

THE COURT: Oh, no, you don't need to apologize to me.

MR. BOUCH: Negotiation, the way negotiations has gone in the last two to three months, there hasn't been anything we are interested in.

MR. DUFFY: Thank you, Your Honor. You asked if I had something for the record. I disagree with the way things were characterized, our earlier settlement agreement and what all that meant. I know you don't want to hear that.

THE COURT: But I understand that, and I accept that, for the record. Again, everything that was just told to me could have been said, we are still fighting

over dock closure 30 minutes, and nine years. But, you know, I understand everybody wanted to put their information on the record.

Okay. As I recall, and we polled, everybody's consented to kind of breaking this down a little bit and talking to everybody. I'm happy to meet with Mr. Lucey and his clients first, and then see where we could get.

You know, I've expressed some of my concerns. Certainly, I haven't expressed all of them. But I think y'all know there are several legal issues that need to be decided on.

There's no doubt in my mind it gets appealed by somebody. So unless we could put some kind of at least partial resolution, break the case down into what's left to try and against whom, there's going to be no closure on this for years to come.

So that being said, let me talk to these folks, and then I'm happy to meet with whoever wants to chat next. Y'all be at ease. And I will see you in a minute.

(A recess transpired.)

MR. LUCEY: Your Honor, we have a term sheet that was originally negotiated. Number of different parts we've come together on. And the Civitas-related defendants, the Assembly, and the individual derivative plaintiffs have agreed --

THE COURT: The individual what?

MR. LUCEY: Derivative plaintiffs have agreed on this term sheet. It's a global settlement as to all claims by the plaintiffs in this suit against Civitas and Mr. Russo.

THE COURT: Okay.

MR. LUCEY: It is typed and initialed. It is still contingent upon the bank approving it, which has to occur by tomorrow. Also contingent upon Russo signing or Civitas signing the deed tomorrow by 3 p.m. They don't want to be in Charleston the following morning. But they agreed to sign that deed as long as the bank gives us their consent.

THE COURT: Yes, sir.

MR. ALTMAN: Only thing I would say, this is the first time I heard about 3 p.m. tomorrow being an issue. We have to get bank approval. There's a payment in exchange for CV6 which has to be done simultaneously. I don't think we can necessarily complete this by three o'clock tomorrow. I have spoken to Sam Altman, the bank's attorney, and explained to him that the lease is a 20-year lease, not a 15-year lease, which is what their decision apparently was predicated on that we found out a short time ago.

He has said he will have someone from the bank

here tomorrow. But we still -- they may need to get an up-to-date appraisal before we could get it solved. So it may take a little longer than tomorrow to get all of this worked out, but I think we will get a feel for it first thing in the morning.

THE COURT: Somebody needs to be here at 9:30 in the morning to tell me where we are. And by somebody, I mean somebody from the bank. We've got a trial. We picked a jury.

MR. ALTMAN: He said he will have someone from the bank here in the morning; no question about it.

THE COURT: All right.

MR. LUCEY: And while we understand that there may be paperwork the bank has to do, this does require a signed deed. This agreement does require a signed deed.

MR. BOUCH: We will work that out. We will have plenty of pressure on the bank tomorrow.

THE COURT: Y'all have to speak up so my court reporter can hear you.

MR. BOUCH: We will work it out. Only other thing, Your Honor, is I believe Mr. Lucey -- as Your Honor has been involved in quite hard negotiations, the terms of the lease was one that the Assembly insisted on over the objections of Mr. Russo's clients. And I wanted the record to reflect that they had substantial problems

with it, and it was over their strong objection we were able to agree on this lease term.

THE COURT: Okay. Thank you.

MR. LUCEY: And along those lines too, Mr. Bouch, we had discussed that the contribution by the Assembly for $495,000 was its idea. And we would like the Assembly to put on the record where the money is coming from. We don't want our clients accused of causing an assessment or anything.

MR. BOUCH: The funds are coming from the Assembly's reserve accounts. There are no present plans and they are not going to be funded by any immediate assessment or increased dues.

THE COURT: Does the Assembly have the money in the reserve account?

MR. BOUCH: Yes. May take more than 24 hours to get it out of cash and CDs and et cetera, but there is sufficient money. And solely by payment, this money will not trigger assessment against the residents.

THE COURT: Okay.

MR. LUCEY: And lastly, Your Honor, while there are some lease details in this document, there actually is a lease that has been drafted, will be finalized tonight when we bring it with us tomorrow, so we can get closure on those details.

THE COURT: Okay. Did you want to have -- go ahead.

MR. BOUCH: It was exchanged a couple days ago.

MR. LUCEY: While the lease has more details, there is one scribner's piece in here that my clients were concerned about. I just want to clarify on the record because of the way it is written. There's a pro rata provision here. The pro rata only applies to the taxes. It doesn't apply to the other expenses in that line.

THE COURT: Which paragraph is that?

MR. LUCEY: That would be Paragraph 2, Your Honor. As I understand it from Mr. Bouch, the agreement on the pro rata of the taxes is that Civitas will pay for 75 percent of the taxes attributable to the improvements, and 50 percent of the taxes attributable to the landowner.

MR. ALTMAN: That's correct, Your Honor. And Civitas is responsible for repairs and maintenance on a portion of the property it's leasing, not on the docks.

THE COURT: Certainly.

MR. BOUCH: We understand.

THE COURT: Okay.

MR. LUCEY: And just so there's no misunderstanding, since my client's huge focus is

closure, this is limited to three closures per week after currently booked events this year. So starting January 1 of next year, there is a limit of three closures per week and 120 events per year. And it's in this document.

THE COURT: I saw it.

MR. LUCEY: We would like to make this document a court exhibit.

THE COURT: Let's get it marked as Court's 1.

(Court's Exhibit 1, Confidential Term Sheet, was marked for identification.)

THE COURT: I have the plans. Mr. Russo signed or initialed the document in some way, or are we going to put on the record --

MR. BOUCH: The lawyers involved signed it and initialed on all the pending changes, Your Honor.

THE COURT: And I want to hear from the two individual and representative plaintiffs, and then also Mr. Russo.

All right. Ms. Adkins, do you understand the terms of the settlement?

MS. ADKINS: As was discussed, yes, here just now.

THE COURT: Do you understand what was written on the paper?

MS. ADKINS: Your Honor, the version that I saw

did not have certain corrections on it, so I haven't seen the final version. That's my only hesitation.

THE COURT: Why don't we wait for her to bring it back with everything on it. I think the lawyers put it on the record pretty efficiently and succinctly, but I want to make sure we don't have any misunderstanding or confusion.

MR. LUCEY: That was my fault. When I e-mailed the first time, I e-mailed the first draft. I made the corrections on the computer and showed them the corrections, but everybody else started editing the prior draft.

THE COURT: No problem at all. I appreciate the hard work you all put into this this afternoon. And I want to make sure that we have the most up-to-date version.

MR. ALTMAN: Your Honor, we appreciate your assistance in getting us here.

THE COURT: I didn't do much but provide a room, but I appreciate that. Thank you. The more streamlined we could get it, the better. As y'all know, public policy of the State of South Carolina favors alternative dispute resolution and settlement. So, thank you all.

Y'all come up and grab these.

MR. LUCEY: My clients are ready when the Court

is.

THE COURT: All right. I think I was asking Ms. Adkins if she is in agreement with the settlement terms as set forth in Court's Exhibit 1.

MS. ADKINS: Yes.

THE COURT: You are?

MRS. ADKINS: Yes.

THE COURT: Mr. Walbeck, are you in agreement with the settlement forms as set forth in the term sheet and also what Mr. Lucey put on the record?

MR. WALBECK: I'm consenting to it.

THE COURT: You are consenting to the settlement?

MR. WALBECK: Yes.

THE COURT: Anything further you want to put on the record, Mr. Lucey?

MR. LUCEY: No, ma'am.

THE COURT: Mr. Altman?

MR. ALTMAN: Mr. Russo is here.

THE COURT: Mr. Russo, are you here individually and also as a representative of 148 Civitas?

MR. RUSSO: Yes, Your Honor.

THE COURT: And are you in agreement with the settlement terms set forth in Court's Exhibit 1?

MR. RUSSO: Yes, ma'am.

THE COURT: Anything else you need me to ask him about or anything else you want to put on the record? I understand it's contingent on the bank's approval.

MR. ALTMAN: Other than that, Your Honor, there's nothing else.

THE COURT: Those are all of the Civitas defendants, correct?

MR. ALTMAN: That's correct.

THE COURT: Mr. Bouch, what about the Assembly? I believe you put your consent on the record. Is this our Assembly president?

MS. BEDELL: I am, Your Honor.

THE COURT: If you could give us your name for the record.

THE WITNESS: My name is Debra Bedell, B-e-d-e-l-l.

THE COURT: All right. And on behalf of the I'On Assembly, are you in agreement with the settlement terms as put forth in Court's Exhibit 1?

MS. BEDELL: Yes, ma'am, I am.

THE COURT: Anything else anybody needs to add?

MS. BEDELL: We would just like to thank the other parties to their hard work in coming to an agreement that benefits everyone.

THE COURT: I thank them as well. I truly do

appreciate it. This leaves us with a little more direction in how to proceed in the case.

Anything else we need to put on the record before tomorrow morning when we come back at 9:30 to see what motions we have remaining with the I'On Company defendants, and we can mark exhibits and get ready to go? Anything you need to put on the record, Mr. Duffy?

MR. DUFFY: No, ma'am.

THE COURT: Mr. Lucey?

MR. LUCEY: No, ma'am.

THE COURT: Then I will see y'all at 9:30. We will also have Mr. Altman and someone from the bank here. Everybody may want to come here to deal with the bank.

(Whereupon, the proceedings adjourn for the day.)

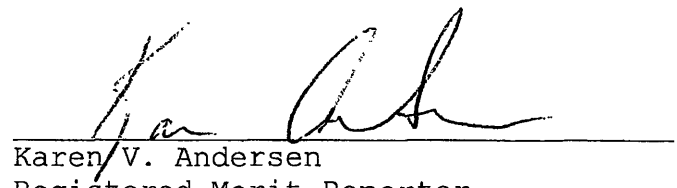
(Proceedings are concluded.)

CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter, Certified Realtime Reporter, and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate and complete Transcript of Record of the proceedings.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 30th day of January, 2014, at Charleston, Charleston County, South Carolina.



Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter
My Commission expires:
September 14, 2016

State of South Carolina

Court of Common Pleas

County of Charleston

Transcript of Record

2010-CP-10-10490

I'ON ASSEMBLY, INC.; BRAD J. WALBECK and LEA ANN ADKINS, individually and derivatively on behalf of I'ON ASSEMBLY, INC.,

Plaintiffs,

vs.

THE I'ON COMPANY, LLC; THE I'ON CLUB, LLC; THE I'ON GROUP, LLC F/K/A CIVITAS, LLC; and I'ON REALTY, LLC,

Defendants.

July 24, 2014
Charleston, South Carolina

B E F O R E:

The Honorable Stephanie P. McDonald, Judge

A P P E A R A N C E S:

Justin O'Toole Lucey, Esquire
Attorney for Plaintiffs Walbeck and Adkins

Timothy W. Bouch, Esquire
Yancey A. McLeod, Esquire
Attorneys for Plaintiff I'On Assembly

Brian C. Duffy, Esquire
Attorney for the I'On Company, LLC; The I'On Club, LLC; The I'On Group, LLC f/k/a Civitas, LLC; and I'On Realty, LLC

Stacy S. Johnson, RPR
Circuit Court Reporter

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PAGE

CERTIFICATE OF REPORTER 35

E X H I B T S

NO.	DESCRIPTION	ID.	EVD.

NO EXHIBITS WERE INTRODUCED

P R O C E E D I N G S

THE COURT: All right. I've reviewed everything y'all have sent with the exception of the new matters that came just now, but I did get some e-mails last night and this morning and I have looked at them, so I am happy to take these motions in the order in which y'all like. It really doesn't matter. Mr. Duffy?

MR. DUFFY: I think an easy way to do it, Your Honor, might be a few of them where there is little or nothing to add from the last time we were before the Court.

THE COURT: Okay.

MR. DUFFY: And on that note, Mr. Lucey and I have agreed, as I believe that Your Honor suggested at the last hearing, that we just incorporate whatever the record is on these motions into this pre-trial hearing as well.

THE COURT: We did. And I reviewed part of that transcript, the one that I had, earlier today. Y'all argued these motions extensively prior to the first trial and absent some new matter, I don't anticipate changing what I ruled then. I want you to put anything else you want to put on the record, but I've reviewed what you argued before so I consider that part of this record as well in the "for what it's worth" category.

MR. DUFFY: Thank you, Your Honor. Well, that would entirely take care of two of the motions; one of which was our motion in limine to exclude Exhibit 112, which is the special meeting minutes.

THE COURT: And I believe I indicated last time I would exclude those. They were really more, I found, a self-serving recitation of what the Assembly had done up to that point by Ms. Bedell, who is an attorney, and they were unlike any meeting minutes that I had ever seen. So even if they were somehow otherwise admissible, which I don't think they are, we'll agree to keep them out. So that is granted.

MR. DUFFY: Thank you, Your Honor. The other that we re-filed that we'd have no additional argument at all is the statement Mr. Graham made in his deposition, which, I think, Your Honor was taking under advisement to see how it may go.

THE COURT: Right. And I gave, as I recall, and this is what I was thinking about again today, I doubt I'll let y'all get into that statement. I think he said something like if I start beating my wife again, when did I start beating my wife. It was just an off-the-cuff comment that depends entirely on how he behaves on the stand and what his other testimony is. So you can let him know that, although I think he got

the message last time.

MR. DUFFY: Thank you. One additional point on the motion in limine for Exhibit 50, which I honestly don't recall whether there was a ruling or what it was, but it's an administrative law order -- purported order, it isn't signed, I don't believe, but in any event, we would repeat the same arguments with the exception that if that comes in -- because the order addresses the dock master plan and issues with that, we think that our Exhibit 104, which I understand has been objected to, should come in as well, which is DHEC's letter to Mr. Lucey responding to his inquiry about whether there was some misrepresentation to DHEC that was a problem and deciding there was not.

THE COURT: Okay. And y'all correct me, if I'm wrong, but what I recall about the administrative law court order was if it somehow became relevant and pertinent or, you know, the door was otherwise open to let it in, it might come in, I could rule on that at that point. But, Mr. Lucey, correct me if I'm wrong on that.

MR. LUCEY: That's correct, Your Honor.

THE COURT: That's correct?

MR. LUCEY: Yes. So it's out unless a foundation or -- is laid or something of some kind.

THE COURT: Yes. And so if we get to the point where it -- something opens up and it needs to come in, I'll certainly think about it at that time, but at this point I don't see it coming in. And that was Exhibit 50?

MR. DUFFY: Yes, ma'am.

THE COURT: Okay. And so then 104 was related to Exhibit 50, correct?

MR. DUFFY: Yes, ma'am.

THE COURT: Okay. All right.

MR. DUFFY: On the -- essentially the parole evidence motion, Your Honor, I think that the one point that I would want to at least highlight or raise in addition is that we've come to this point after many years, and I don't believe the Plaintiffs have any evidence of individuals' damages that they're presenting, and I think because of that their claims, their individual claims -- that essentially what they're pursuing is on behalf of the Assembly and so that is -- although we certainly find fault with whether it's properly done so, but they purport to have a derivative action for their damages and because of that their individual claims should not be a part of this trial, which is how the Plaintiffs are trying to get in all this other evidence to talk about fraud

and misrepresentation and hear all these other things that we're -- you know, some of this evidence that we're challenging, Your Honor, is well after any of these Plaintiffs bought their property here. What they're trying to do is bring in anything they can that supports their basically subsequent interpretation of what -- of what happened earlier and I think that the only vehicle that they have to get those in is through these individual claims, which shouldn't be there. And the case is Brown versus Stewart. I believe it's already in the record, but I wanted to make that point with regard to this particular motion.

THE COURT: Do you have a cite for Brown versus Stewart?

MR. DUFFY: I sure do. It is 348 SC 33.

THE COURT: Okay. And I understand the argument, and I do think a good bit of the evidence comes in more as to the Assembly claim than as to Mr. Walbeck or Ms. Adkins individually. Was there ever any motion, I just don't recall, to sever their claims and try that separately or did the realignment throw that off?

I know there was an objection to the Assembly ever being made a party and then there was those who argued that it had to be made a party, it was a necessary party. Just -- are you seeking a limiting instruction

on behalf of the individual Plaintiffs? How do you want me to deal with that?

MR. DUFFY: Well, Your Honor, I think that -- I believe we challenged the individual claims earlier on before the case was directly before Your Honor and because of how we challenged things before and where essentially I don't think you were gonna revisit some of those issues, but I don't think those individual claims should exist.

THE COURT: At all?

MR. DUFFY: At all at trial. And because of that, this evidence, which is being used, the vehicle for these individual claims is, I think, at least for a lot of the evidence would otherwise have, there's no claim for reliance by the Assembly, so none of their claims are based on reliance by the Assembly or, you know, there was no direct contract with the Assembly or anything like that as being challenged here, so a lot of this evidence is used, Your Honor --

THE COURT: Y'all, back me up. Who moved to bring the Assembly in? I can't remember.

MR. DUFFY: The Russos did.

THE COURT: The Russos did. Okay.

MR. DUFFY: But aside from that, Your Honor, I don't know that that -- our point is they are purporting

to bring it as a derivative action. They are seeking benefits for the Assembly and so whether the Assembly is in or out, they just shouldn't be having -- they shouldn't have these individual claims because what they're asking for is stuff for the Assembly.

THE COURT: I understand. All right. Mr. Lucey, do you want to address that?

MR. LUCEY: Yes, Your Honor. I was actually kind of following the -- the Court's indication on June 19th that all decided motions would not be revisited unless there was something new and I wasn't noticed that there was something new about this particular motion.

THE COURT: Well, here's the problem. Y'all gave me part of the transcript that I ruled on before and we had several hours of motions and then, I think, almost four days of trial -- three days of trial because one day was motions, I need you to remind me based on how things came in, and we've got a realignment now. The Assembly is part of the Plaintiff's suit, as I understand it. Didn't they realign with the Plaintiff?

MR. LUCEY: Yes, ma'am. The realignment order was entered.

THE COURT: Okay. I just want to make sure that the evidence comes in in the proper way in light of that.

MR. LUCEY: The Court's order, and I didn't know we were missing a transcript, and I'll be happy to investigate that and procure it, the Court's order on the motion in limine to exclude certain irrelevant evidence regarding the Creekside Harbor Community Dock was completely denied by the Court --

THE COURT: Right.

MR. LUCEY: -- and I think Mr. Duffy would agree with that. I would have to double-check, but I'm unaware there's been a motion for summary judgment as to Ms. Adkins or Mr. Walbeck. If it were, it would probably have been some of the motions that Judge Dennis denied.

THE COURT: That's what I thought. There was a motion to dismiss and then, I think, some motions for summary judgment that Judge Dennis denied that I was not gonna revisit in light of there not being any new grounds for them. I think I indicated we would talk about that at the directed verdict stage.

MS. LUCEY: Yes, ma'am.

THE COURT: Is that right?

MR. DUFFY: I believe that's right, Your Honor.

THE COURT: That part of the transcript I did have. Okay. All right. Well, then, you know, we'll try the case and at that point you can certainly break

it apart with a fine tooth comb and see who relied on what, okay?

All right. What else?

MR. DUFFY: Let's see, Your Honor. We have a -- we filed a motion in limine that is essentially following up on the issue we discussed the last time that we were before Your Honor, which relates to the settlement, and what I tried to do is frame it up in a way that articulated it, I think, better than I may have been doing it before, which is the way -- the nature of this suit has been about, you know, certain portions of property and whether they were -- the Assembly received them or not. They now have them. I think that is just an inescapable fact that has to be dealt with, which is, frankly, a result of, you know, congratulations to the Plaintiffs if they like what they got, but it's a result of settling with one party and not the other. That is now the -- essentially the platform you have for this suit is that you own those properties.

THE COURT: Well, you own those properties subject to a multiyear lease and certain closures during the day on the weekends when people want to use either the community dock or a community dock, right? Isn't that what they bought?

MR. DUFFY: Well, they have the property. They agreed to that lease as part of their settlement negotiations and that they get rights to additional property, which, again, was at least before the settlement got them those rights that had nothing to do with this case.

THE COURT: What, CB-6 or CB-5, the excess parking lot?

MR. DUFFY: Yeah, CB-5 and 6.

THE COURT: Okay. I understand. Thank you. And, you know, as I said, I don't know that the settlement agreement as a document is going to come in, but the terms, what the Assembly had to front as far as the costs that were paid and then the other costs and the closures that the residents and members of the Assembly had to undergo, I think that's fair game and not violative of Rule 403 or Rule 408.

Now that being said, the Defendants can then talk about the benefits to the Assembly and making money from leasing that back, but as I understand the Plaintiff's argument, their argument -- I'm not saying the Court endorses it or adopts it, this is gonna be for the jury, is they were supposed to have that property anyway. Not the parking lot, the excess parking lot. I don't think that was ever part of the

claim, but they were supposed to have that Creek Club parcel and that deep water dock, not a tidal, fish, Hobcaw Creek tributary, and I think that's what we're here to fight about and what the damages are, if any. I know that's an oversimplification, but that's still the crux of the problem, isn't it?

MR. LUCEY: I would believe so, Your Honor.

THE COURT: Okay. All right. Then my prior ruling as to the settlement terms, not the actual agreement unless something happens that causes it to need to come in or y'all agree that it needs to come in, but the terms and what they had to pay the Assembly and what they have to -- you know, as I recall, one of the big sticking points with the settlement was the 20-year, 21-year versus 30-year lease. They didn't want to give up any lease at all, so that could be a detriment or a benefit depending on how it's argued.

All right. What else? The prior rulings about a community dock versus the community dock, those stand as far as that evidence coming in, okay? So that motion is denied and you can certainly re-raise that if you need to when we get to that point.

MR. DUFFY: Thank you, Your Honor.

The other motion that we filed is a request for Your Honor to take judicial notice of representations

that were made to the Court about the easement being perpetual.

THE COURT: The easement. Okay.

MR. DUFFY: And it's as simple as that. There were representations made to the Court that the easement -- that certain parties believed the easement is perpetual. I think it's appropriate to take judicial notice of what the proceedings have been and it's certainly more efficient than calling in lawyers for parties and parties that are no longer here.

THE COURT: Well, and maybe I'm getting off on a red herring, but as I understood it, part of the argument was also that Jim Barnes or Jack Barnes never had the authority to offer the easement or agree to an easement, whether it was perpetual or not, and signed it in three different places, but if I'm on the wrong easement, please let me know.

MR. DUFFY: No, I think -- and let me just clarify what we're asking for. We're asking for it to take judicial notice of those representations to the Court. Not -- not saying that means that now you can't argue this anymore, but we should be able to say that this is what these other parties have told the Court about the easement and that doesn't -- that doesn't take away their argument that they think it's invalid and that

sort of thing.

THE COURT: Okay. I mean, Mr. Lucey, I'm not sure what that gets you, but explain to me where we're going here.

MR. LUCEY: Yes, Your Honor. Actually the stakeholders in depositions all refused to say it was a perpetual easement. On the eve of trial apparently some of the stakeholders strategically changed their position on that, but that doesn't give rise to a fact of the type that is typically judicially noticed, it's still a disputed fact because it's been said two different ways by the same party.

When he was under oath, Mr. Russo was asked just to, right there, confirm -- please confirm it's a perpetual easement and, you know, we can get rid of that issue. He refused to. Obviously the Plaintiffs were concerned about him changing on the eve of trial and the Grahams were asked about it and they said well, it's what the lawyers asked us to sign and it is what it is. Confirm it's perpetual. They would not. In fact, Your Honor, this becomes even more relevant. We didn't finish examining Mr. Graham in the last trial, the second Mr. Graham, but as it turns out twice the Board attempted to get the Grahams to confirm the perpetual nature of the easement prior to or so transfer, and they

refused to do it. So this is a very contested issue. And Your Honor is right. When Mr. Barnes signed the deed granting the easement, the entity he purported to sign for did not own the property. So to say that it was perpetual -- to say something that's potentially an invalid ab initio is perpetual would just give rise to more jury proof.

THE COURT: Okay. Yes, sir?

MR. McLEOD: In that same line, I would just, you know, point out to the Court on Page 3 of 5, the actual statement that was made, is that the easement would be perpetual, and so --

THE COURT: Who said that?

MR. McLEOD: -- it wasn't changed.

THE COURT: Who said that?

MR. McLEOD: But it goes to whether or not --

THE COURT: Mr. Bouch?

MR. McLEOD: Yes.

THE COURT: Well, that's -- Mr. Bouch thought it would be perpetual, but if the other people think it wasn't perpetual, the Grahams refused to say it would be perpetual and Barnes never had the authority to sign the easement anyway. Let me hear from Mr. Bouch and then I'll hear from Mr. Duffy.

MR. BOUCH: Your Honor, I'll let Mr. McLeod deal

with the -- I said what I said --

THE COURT: Okay.

MR. BOUCH: -- in the context of what I said.

THE COURT: Sure.

MR. BOUCH: At the time, the Assembly was concerned about access period.

THE COURT: Right.

MR. BOUCH: Since that time, we have been compelled to purchase the property. That easement has merged as to the Assembly and what we're stuck with potentially is an obligation to support Mr. Graham's moneymaking club for either eighteen years or perpetuity, and that's still in dispute.

THE COURT: Okay.

MR. BOUCH: I mean, that may -- there was never a stipulation entered into in the record. I said what I said, and I'm not, you know, apologizing for that at the time and in the context of the issue that came up the last time, but --

THE COURT: Okay.

MR. BOUCH: And, quite frankly, as Your Honor has pointed out, with the merger there's quite a realignment of interest in that.

THE COURT: Sure. All right. Yes, sir?

MR. DUFFY: Your Honor, and what I was trying to

make clear to start with is we're not asking you to declare it is perpetual, but there can be no dispute because I will say in the record in the documents of what we're asking the Court to take judicial notice that these parties represented to the Court. It's as simple as that. Instead of calling Mr. Bouch and saying did you say this, you just take judicial notice that yes, this was a representation to the Court and they can argue all these things if they want to.

THE COURT: I guess my point is this. Without -- I mean, I take judicial notice of what everybody said. I don't know that I can do anything with that judicial notice, but, unfortunately, I've learned in these years I remember more than sometimes I wish I did and it catches lawyers unawares sometimes, but to what end? I mean, how -- okay. If I take judicial notice, what are you seeking to do with it or how do you want to get it in? I'm not sure what the --

MR. DUFFY: I should be able to talk about it.

THE COURT: You want to be able to talk about it. Okay.

MR. DUFFY: And that would be part of what you instruct the jury; that that part -- that it --

THE COURT: That the Assembly's counsel believed the easement to be perpetual?

MR. DUFFY: That we quoted it to just represent that the easement is perpetual and that the Russo -- and so essentially everybody who was on the easement told the Court it was perpetual. That's really --

THE COURT: Well, because that's what they wanted it to be.

MR. DUFFY: And that can be an argument for them, but we want to have that in.

THE COURT: Okay. Yes, sir?

MR. McLEOD: That was in light of the fact that we didn't even own the -- the property, you know. The real question is the validity of it.

THE COURT: Right. I agree. Okay.

MR. McLEOD: Because the statement --

MR. DUFFY: And I'm not asking you to determine that, Your Honor.

THE COURT: I understand.

MR. McLEOD: It takes the statement out of context.

THE COURT: Okay. Hand -- give me at some point the part of the transcript that talks about that, the whole part, and I will look at it, but I -- without putting Mr. Bouch on the stand, I doubt I'm gonna let the defense or anybody refer to what another lawyer said for purposes of argument to the jury, so, okay? But let me look at it. What else?

MR. DUFFY: Your Honor, I'm not sure if on the next one that we need to address it or not, but it was something that was produced to us recently. It was an on-line petition. We challenge that as proper evidence. I don't know if it's being offered as an exhibit or not.

THE COURT: Okay.

MR. LUCEY: Your Honor, we're gonna mark it and if they open the door to us -- that door might be open, but until they -- I'll respect it until they were to open that door, but then we'd want to move it in.

THE COURT: Okay. Well, I'll rule on it if it comes up, but y'all -- before you pop it up on anybody, make sure you show it to me, okay?

MR. DUFFY: Yes, ma'am. The only other thing on my mind is that I saw -- when I was looking through the exhibits, and we haven't discussed this yet, but in light of the bifurcation what we did last time is we have redacted evidence of, you know, the I'ON Company's profits and everything else, what their business plan was, and the exhibits I have from them are not redacted and I just wanted to make sure that that's taken care of also.

THE COURT: Okay.

MR. LUCEY: That would be Exhibit 9.

MR. DUFFY: I think it was more than one, but I think it's not --

MR. LUCEY: I know expressly as to Exhibit 9 that we have reason to redact insurance information and financial information and I think we had just planned on getting it done before the jury actually saw it and it may not have actually happened yet, but we're gonna do that.

THE COURT: Okay. Do make those redactions, please. We're not gonna get into net worth and that kind of financial profit and loss information unless it becomes necessary to do so.

Okay. What else?

MR. LUCEY: On that issue, while we're on that issue, I want to express to the Court what I intend to say in opening in case anybody wants to correct me while the jury's not present.

THE COURT: Sure.

MR. LUCEY: After I describe the causes of action that the Plaintiff is before the jury on, I'm not gonna reference -- I'm not gonna use the word punitive damages, but I'm gonna say "and the Plaintiffs additionally have a claim wherein they're asking you, the jury, to find that the Defendants acted with reckless disregard for the Defendant's rights, and the

meaning or significance of that will be more clear to you when the judge talks to you at the end of the case, but for now I'm just mentioning this is gonna be an issue that the Plaintiffs will be attempting to show you through evidence.

THE COURT: Okay. Anything? I mean, I think that's proper. You know, you can tell them what you're planning to show them.

MR. DUFFY: I don't have any objection.

THE COURT: Okay. All right. What's next?

MR. DUFFY: That's all from my plate.

THE COURT: Okay. Any motions on behalf of the Plaintiff; the individual plaintiffs or the Assembly from either Mr. Lucey, Mr. Bouch, Mr. McLeod? Anything y'all have?

MR. LUCEY: There's one more motion by the Defendant. You were going to move to sequester.

MR. DUFFY: I'm sorry. Yes. Thank you.

THE COURT: And I'll grant that as well. I know we've got certain Assembly members. I believe we had an agreement last time that anybody who was planning on testifying were sequestered, but if people were just here to watch, they can.

MR. LUCEY: Yes. Testifying witnesses were sequestered.

THE COURT: Okay.

MR. McLEOD: And obviously that would exclude Ms. Bedell.

THE COURT: Yes, Ms. Bedell can be here as the representative of the Assembly certainly. And, you know, just make sure and let them all know ahead of time I don't like nodding and sighing and making faces and -- not histrionics basically.

MR. LUCEY: Yes, ma'am. I'll remind them of that.

THE COURT: Thank you.

MR. McLEOD: In that regard, Your Honor, how do you anticipate the actual sitting at the trial? Would the Assembly have some table, you know, in terms of -- you know, I think we've discussed with Mr. Lucey and he's gonna do most, if not all, the questioning. We're just here to help.

THE COURT: We're not in 4C, we're in 4B, and so there's not gonna be a whole lot of room. What I've done before -- well, it really doesn't work because y'all are closest to the jury, and that's how it's supposed to be. If there's room for an extra table, you can have an extra table, but I don't know that that's gonna happen. Yes, sir?

MR. BOUCH: Your Honor, in light of your previous ruling, even though we are an independent party,

uncouched, Mr. Lucey is gonna try the case.

THE COURT: Okay.

MR. BOUCH: I'm gonna sit here at his table or before the Bar with Ms. Bedell. I do not anticipate Your Honor permitting me to make separate opening statements, closing or separate examinations of a witness.

THE COURT: Okay.

MR. BOUCH: If you're changing that, let me know so I can prepare an opening.

THE COURT: I don't see any reason to change that, but, you know, let me know if y'all have an objection.

MR. BOUCH: I didn't want to run afoul of the Court on the day of trial, Your Honor. I just wanted to make sure that --

THE COURT: My understanding was that Mr. Lucey was going to try the case, but if I'm wrong, y'all let me know. I mean, y'all decide so we can figure it out.

MR. LUCEY: May I have permission for Mr. Bouch and Ms. Bedell to actually sit behind the rail if we're in a small courtroom because I will have two attorneys and a paralegal with me.

THE COURT: Sure. It doesn't matter to me, yeah.

MR. LUCEY: That's fine. That's fine.

THE COURT: I mean, we'll still get y'all to stand

up and introduce you to the jury and see if anybody knows y'all or has any knowledge.

MR. BOUCH: I guess my conundrum, Your Honor, is I don't want to be sitting here and anybody wonder what the hell is he doing here? Pardon me.

THE COURT: On behalf of the I'On Assembly.

MR. DUFFY: They'll be doing that anyway.

MR. BOUCH: Right, yeah. Well, that's true. I mean, that's not the first time that observation's been made, but --

THE COURT: I think it will be fine.

MR. BOUCH: But by the same token, Your Honor, I don't mind. I don't want to get in Mr. Lucey's way, but by the same token we are -- I do understand.

THE COURT: They might -- I can't remember the configuration of 4B right now because it's a little bit of a mirror of this one. Y'all can be tucked in the corner, if you want. If you want to be in front of the rail, you can be. It doesn't matter to me and it really doesn't matter period.

MR. BOUCH: I don't think that does, Your Honor. I just don't want to be looked upon as someone who's expected to independently examine a witness or independently make opening and closing statements. The -- as I understand your previous ruling, because we are

aligned with Mr. Lucey that you used the example of you and Ms. Senn practicing together and defending the same party; only one lawyer gets to talk. That's fine with me. I just want to make sure I'm not expected to do other things.

THE COURT: Let me think temperately before I respond to that. You have different clients. As I understand it, your interests are all aligned, okay?

MR. BOUCH: For 99 percent of it, you're right, Your Honor.

THE COURT: Now if there's an issue in which you are not aligned with Mr. Lucey and you need to make a separate opening or you need to cross-examine or put up your own witnesses, just let me know that so that we can know the mode of trial. Because Sandy Senn and I represented the same people and were law partners, usually judges didn't let us tag team people. We did if we could get away with it.

MR. BOUCH: Your Honor, if I feel I need to stand up and talk, I'll give you a heads-up at the appropriate time.

THE COURT: That would be great, but you do it however you think you need to do it, okay?

MR. BOUCH: All right. Thank you, Your Honor.

THE COURT: What's next?

MR. LUCEY: Your Honor, in my e-mail to your clerk earlier this week, I had mentioned one other issue. I wanted to confirm that the prior exhibit stipulations and rulings remained so for this case.

THE COURT: Same stipulations to the exhibits or do y'all need to revisit that and chat about it?

MR. DUFFY: No, I think it's the same. I mean, we've added a few and we'll send those maybe this morning just to clarify them and there are a couple of others, but I'd expect that from Mr. Lucey, but I'm not changing any position on it.

THE COURT: Okay.

MR. LUCEY: And the five or six exhibits that were actually authenticated and admitted at trial are already authenticated now.

MR. DUFFY: I am not exactly sure what you're referring to, but I don't plan to challenge anything that's already in.

THE COURT: Okay.

MR. LUCEY: And I realize this it just housekeeping, but I'm just trying to make sure --

THE COURT: No, no. I appreciate it. I do. I just -- I can't remember every single thing I did in the trial, so if there's something y'all need to refresh my recollection on, y'all either tell me or get me a

transcript, okay?

MR. DUFFY: And can I make one point, Your Honor?

THE COURT: Sure.

MR. DUFFY: And I don't know what specific exhibits we're talking about, but I have no problem going with what's already been ruled on presuming the same objections are incorporated.

THE COURT: Based on the objections that you made previously, yes.

MR. LUCEY: We agree that all prior objections are included by stipulation.

THE COURT: And if we need to all look at a transcript, we can do that, but, you know, I am hesitant to sit up here and say oh, everything's preserved and everything's protected. As far as I'm concerned, they would be, but I don't know. You know, this is -- it was mistried, we're essentially starting over. I'm hopefully not gonna change my mind on a bunch of things because in my mind hopefully I got it right before, but I do want y'all to be protected as much as you can be so if there's -- if there's an important objection that needs to be made, you're gonna make it again, Mr. Duffy; the same with Mr. Lucey and Mr. Bouch and Mr. McLeod, so I'm not worried about that, but I would imagine that unless there's some new law coming

out where something that's changed the reason for the ruling, the ruling would be same, so. But I have to have that information.

MR. LUCEY: Yes, ma'am. We have double-checked the transcript against the exhibit list, my staff has. I just haven't checked their work. I have that to stipulate with the others and we'll have it. I just want to check their work first.

THE COURT: Okay. Great. I appreciate that. That would be wonderful. A few things have transpired since the last trial. I don't remember how many trials we've had since then. Okay.

MR. LUCEY: And the last matter from the Plaintiff that I'm aware of at this time, Your Honor, is a motion in limine as to the issue of value or setoff evidenced by the Defendant. They named an appraiser who valued all benefits we got out of the Russo transition. I'm not asking for them to necessarily disclose, you know, their trial plan. I just either want to be trying their offset to the Court after trial or to the jury during trial, but just not twice. I've actually had trials before where inadvertently the offset gets both argued to the jury and gets argued post-trial, so it's like I'm subject to a double offset, and I just want to avoid that possible occurrence.

THE COURT: Okay.

MR. DUFFY: Your Honor, I think that's one of the problems that comes in when you start arguing new claims for damages that are associated with an offset and so it's our position that it is an offset because it is at -- Smith v. Widener is the case that we have about offsets, so it's just a general rule, but -- so I think it does come in with what value they got in settlement is an offset of what they recover for the tort claims out of, but if they're also gonna argue for damages related to the settlement, then we should be able to present the balance of that as well.

THE COURT: Here's the issue. You're allowed to present your appraiser or talk about whatever benefits they gained from the settlement, just as Mr. Lucey is allowed to show that as an element of damages and what the Assembly and others had to put forward or pull out of their CDs or their bank accounts to pay for the Creek Club property. What happens afterwards is something that the Court will have to look at in terms of an offset, you know, and whether it even would be an offset at all. Really it's premature to even talk about that at this time. What we need to deal with is what comes in during the trial. You know, it would depend on, quite frankly, how we structure the verdict form

and what the jury did and what kind of offset, if any. I mean, this is a strange case in that it's not a traditional offset-type case, okay?

MR. LUCEY: Yes, Your Honor.

THE COURT: I mean, I believe we're gonna have to have a pretty specific verdict form depending on how the evidence comes down in this.

All right. What's next?

MR. LUCEY: Nothing from the Plaintiff, Your Honor.

THE COURT: All right. Anything from the Assembly?

MR. McLEOD: No, ma'am. Thank you, Your Honor.

THE COURT: Okay. Anything further from the defense?

MR. DUFFY: Nothing, Your Honor.

THE COURT: Okay. Well, thank y'all for trimming this down and for everything you sent me.

MR. LUCEY: If we're concluding then and we're the first jury struck on Monday, we may, in fact, start before lunch; would that be correct?

THE COURT: I doubt it will take before lunch because I have to qualify and just knowing how long that takes to get going. Usually -- and I don't even know if we have any felony jury trials I have to pick or not. I haven't been told yet how many juries I have to pick. I would love to have us selected and ready to

go by about 11:30, but I think that's wildly optimistic. I would say after lunch, 2:00 probably. I have to be able to give them a chance to get something to eat. Really it depends on how many people have excuses for why they need to get out of jury duty.

MR. LUCEY: Is the Court's typical schedule 9 to 5:30 with a 1:00 lunch? It know it's gonna vary, but is that the typical?

THE COURT: I usually go from about 9:30 to maybe 12:30 or 1:00 because we usually have things we have to handle before we even get started with the trial and then go until about 5:30 unless there's a witness problem, you know, where you have to reshuffle that. Sometimes we go a little bit later. Now, you know, with everybody who has to pick children up from school or daycare or whatever, it's hard to go much past 5:30 without jurors getting upset. So it really just depends on our jury and we'll know that more on Monday, but I don't think we have any complicated other matters scheduled next week. We don't -- okay, great -- so far right now. So, yeah, about 9:30 to 5:30. And we do get to pick first, so. I just still don't see how we'll start before lunch.

MR. DUFFY: What time are we starting jury qualifications?

THE COURT: When do they come in for rollcall? They come in at 9:00 and check in, but they usually don't go for rollcall until about 9:30 or so and then I'll come down and do the actual qualification, but it takes almost an hour to do rollcall, usually about 10:30, and then -- so it's usually 11:20 before we even break to the separate courtrooms to be able to pick the jury and, you know, there's so many people that are gonna know people in this case. It took us a while to pick the jury the last time from what I recall. I mean, I think we're lucky if we have our jury picked by 12:30. And if y'all will re-send me some clean voir dire -- and since we don't have the Russo Defendants that we have to ask about this time, this will streamline it a lot -- that will be great. And y'all -- you know, as far as the Assembly, y'all don't need to send me a separate set if you're comfortable with what Mr. Lucey sends me. You're certainly welcome to if you want to. I just need to know the names to tell people if anybody other than Mr. McLeod and Mr. Bouch and, you know, Ms. Bedell I'll ask about and then we'll read the witness list, introduce the lawyers. Same as last time.

Okay. What else? Anything else? And I think y'all know from before, I know Mr. Lucey's tried a couple of things, I don't require y'all to stand when

the jury comes in and out. It confuses them. They don't understand what's going on, they don't feel like they can sit down. They do take notes. I have a brief intro I give, but it's pretty innocuous. And you'll have plenty of time to object and protect your record as much as you need to for anything. Because unless something's amicably resolved, I'll say what I said in the prior transcript. Somebody's gonna go to Columbia. I don't know, but...

All right. Well, thank y'all for streamlining this, work on exhibits, and I'll see y'all at qualification Monday. If you need anything else, we're around this afternoon and tomorrow and I have my e-mail over the weekend, so just let me know.

MR. DUFFY: Thank you.

MR. LUCEY: Thank you.

THE COURT: Good to see everybody.

(Proceedings concluded at 12:12 PM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 24th day of July, 2014.

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I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

September 30, 2014

Stacy S. Johnson

STACY S. JOHNSON
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
) Court of Common Pleas
COUNTY OF CHARLESTON) Case No. 2010-CP-10-10490
)
)
BRAD WALBECK and LEE ANN)
ADKINS, individually and) Transcript
derivatively on behalf of) of
I'On Club, Inc.) Proceedings
)
VS.)
)
The I'On Company, LLC;)
The I'On Club, LLC; The)
I'On Club, LLC; The I'On)
Group, LLC F/K/A Civitas,)
LLC; Vince Graham; Tom)
Graham; 148 Civitas LLC;)
I'On Real Estate, LLC;)
Mike Russo; and I'On)
Assembly, Inc.,)
)
Defendant.) DATE:
) January 13 - 17, 2014

B E F O R E:

The Honorable Stephanie P. McDonald

A P P E A R A N C E:

JUSTIN O'TOOLE LUCEY, PA
BY: JUSTIN LUCEY, JOSHUA EVANS and DABNY LYNN
For the Plaintiffs

DUFFY & YOUNG, LLC
BY: BRIAN C. DUFFY and J. RUTLEDGE YOUNG, III
Attorneys for I'On Company, LLC;
The I'On Club, LLC; The I'On Club, LLC; The I'On
Group, LLC F/K/A Civitas, LLC; Vince Graham;
Tom Graham

LEATH, BOUCH & SEEKINGS, LLP
BY: TIMOTHY BOUCH and YANCEY A. McLEOD, III
For the Defendant, I'On Assembly, Inc.

STATE OF SOUTH CAROLINA)
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BY: JUSTIN LUCEY, JOSHUA EVANS and DABNY LYNN
For the Plaintiffs

DUFFY & YOUNG, LLC
BY: BRIAN C. DUFFY and J. RUTLEDGE YOUNG, III
Attorneys for I'On Company, LLC;
The I'On Club, LLC; The I'On Club, LLC; The I'On
Group, LLC F/K/A Civitas, LLC; Vince Graham;
Tom Graham

LEATH, BOUCH & SEEKINGS, LLP
BY: TIMOTHY BOUCH and YANCEY A. McLEOD, III
For the Defendant, I'On Assembly, Inc.

A P P E A R A N C E S (continued):

ADAMS AND REESE, LLP
BY: KIRBY D. SHEALY, III and LANA H. SIMS, IV
Attorneys for the Defendants, 148 Civitas, LLC

ALTMAN & COKER, LLC
BY: CHARLES S. ALTMAN and MEREDITH COKER
Attorneys for the Defendant, Mike Russo

Karen V. Andersen, RMR, CRR
Circuit Court Reporter

THE COURT: Thank you. Appreciate that. All right. Okay. I think I cut Mr. Duffy off.

MR. DUFFY: Thank you, Your Honor. I will be brief. The question really is what we are requesting is the Court to declare that it's perpetual. We have every party to the agreement who had been operating under it for years, who -- we have the Assembly at least saying it's perpetual now. And as far as the Russo defendants, who as I've mentioned, I had a stipulation yesterday, they are not here to confirm it, but they've done so in their own filing, which is the plaintiffs' request for a specific performance on Page 6, they indicate: Importantly, plaintiffs and the Assembly already have the undisputed perpetual right to use all of the amenities located on the subject property pursuant to the recreational easement.

THE COURT: Where is that?

MR. DUFFY: Page 6 of their specific performance argument. And even drops a footnote: To the extent any party disputes whether recreational easement is perpetual, defendants hereby incorporate everything the I'On defendants say.

So Russo, who is the other party, and the Assembly, everybody says it's perpetual. We ask the Court to declare that as the intent of the parties, that

is a question for the Court to clarify that easement as perpetual. And it should limit a lot of the evidence that would be introduced and suggest otherwise.

THE COURT: All right. Mr. Lucey.

MR. LUCEY: Yes, ma'am. As a matter of contract instruction, which I believe isn't in the first instance in the Court's domain, but certain things go to the jury, but I think --

THE COURT: Only if there's no ambiguity whatsoever.

MR. LUCEY: Yes, ma'am. And so if we look at the contract and we construe according to the textbook contract law with the easement, in the general description, Page 1 or 2, it does refer to it as a perpetual easement.

THE COURT: Okay.

MR. LUCEY: But there is a term later in the contract which says term.

THE COURT: Okay.

MR. LUCEY: And it says this expires at the 30 years unless renewed, or within 21 years of the last living decedent of Queen Elizabeth, III, or something like that.

As a matter of contract construction law, Your Honor, we would submit to the Court that more specific

terms control more general terms. In this case, the term paragraph is much more specific than the generic description earlier in the document. And so the better interpretation would be that, one, at least there's a conflict and ambiguity; and two, under standard textbook construction, the term of 30 years would, in fact, control.

THE COURT: Let me ask you this question. And I do see the specific term. It's Article 4, Section 4.2. How is it in your client's interest on behalf of the Assembly as members of the Assembly? Right now they are still plaintiffs individually and derivatively. How in the world is it in the Assembly's interest to argue that the agreement -- that the easement, to the extent it is even valid, is not perpetual? How is that in the Assembly's interest to argue that when everybody else stipulates that it is?

MR. LUCEY: Well, they did stipulate in their depositions. There's sworn testimony. We gave them that opportunity. We thought they would show up at trial and say, this is valid. So we asked them in their depositions. And by the time we asked the Grahams, one, they conceded to 30 years, and two, they had no more power to change it. Russo refused to voluntarily make it perpetual in his deposition repeatedly.

THE COURT: Right. That doesn't answer my question I asked you though.

MR. LUCEY: I'm sorry. Let me try further please.

Secondly, Your Honor, for the plaintiffs, for the Assembly to solve the problem, they have to recognize the problem first. The longer they waited, the more of a chance the stronger of the defendants' arguments regarding statute of limitations and latches become. And that's what they are here arguing about half the stuff today. So they have to recognize the problem to solve it. But in the first instance, the entire easement is invalid because it's recorded out of sequence.

And secondly, the easement isn't what anybody was promised anyway. So it's -- our plaintiffs have done is recognize that the easement doesn't even do what they claim it does, it's temporary. The defendants never disclosed the temporary nature of the waterfront amenities to any homeowners. They admitted that repeatedly in their depositions. It's temporary. Doesn't give the rights it is supposed to. It was recorded out of order.

THE COURT: I admit that. I've seen that. I mean, I understand we probably have more evidence about it. You are still not answering my question. But, okay,

I understand what your argument is; I do. But what the best interest of the Assembly is versus what the outlook for this lawsuit is and what's being hunted for partially, are not necessarily the same thing. So, I'm just aware of that. I'm not going to rule on it now. I need to look at it in greater detail about the issue of the easement.

I think, quite frankly, the problem with the easement is the question of the validity of it in the first place, more so than what it actually says.

MR. DUFFY: If I might suggest to you, the case of 10 Woodruff Oaks, LLC vs. Point Development, LLC.

THE COURT: All right. What's the cite for that?

MR. DUFFY: 385 SC 174, 2009, Court of Appeals case.

THE COURT: All right.

MR. DUFFY: At 180 to 181, essentially, is where they start talking about the intention of the parties and how you can demonstrate what the intent is, which is really what you are after. I don't understand how the Assembly can even argue if everybody who is a party to the instrument says what the intent is, and the intent is otherwise. But this goes to the overcome technical glitches in granting property rights. The I'On Company

was still the record titleholder and is a party to the easement. They clearly intended for this to have the same effect. They granted the property to the club later, and it was operated the same way. The easement intent overcomes any technical defaults in this case that supports that, Your Honor.

And as far as the contention of the term being limited and which of those should take effect, I think perpetual, there can be no other interpretation. Blacks Law Dictionary says: Never ceasing, continuous, enduring, lasting, unlimited in respect of time. So to give effect to the intent of the granting of the easement is, of course, it is forever.

THE COURT: Well, I would agree with you if 4.2 was not in the body of the agreement. And -- and I haven't read everybody's deposition yet or heard all of the evidence yet -- if the parties, certain of the defendants, had not testified contrary to that previously. I think what that ends up doing is, instead of necessarily making it a issue of law for the Court at this point, it makes it just additional evidence that the plaintiff seeks to use to show the jury that the ball keeps moving based on what the defendants are seeking. I'm just telling you what I think he probably -- what I would want to do with it.

MR. DUFFY: I would suggest to you, the only time they responded that way was when they were fed: Did you see this; what does this mean?

They always intended for it to be perpetual. They never said, we meant to limit it.

THE COURT: We can look at it and bring that out.

MR. DUFFY: What takes care of that are the current stipulations and the current filing that say they represent to the Court what that is. Those are the parties to the agreement.

THE COURT: Well, and I understand that. To the extent that a stipulation is accepted as evidence at the time of trial, so is testimony coming from the witness stand, and even -- y'all can stipulate to everything you want to. But if something previously was said that was contrary to that, and it's admissible, we still could get to that, that might be something they want to go into.

So, Mr. Lucey.

MR. LUCEY: I just want to clarify, Ms. Graham does not say it was intended to be perpetual. He says: That's what the attorney put there; yes, I approved it. He kind of implies that he considered it to be a standing legal provision of some sort, but it's what the attorneys did.

And, secondly, I would further note to Your Honor that we don't have DJ action seeking to have this declared valid or invalid. Like the Court says, it's just evidence. And I'On didn't file a DJ action to have it declared perpetual, nor did the Assembly. Nobody asked the Court for that relief. It is just evidence as the Court initially ordered.

MR. DUFFY: Your Honor, I just -- I believe our motion presents it as a legal matter for the Court to decide. And I will call your attention to the paragraph that followed the term. Just briefly, as you know, it's a easement and agreement to share costs. After the agreement to share costs, it says the agreement has that term provision. Beneath that is a severability provision, which you can have -- consistently read that the cost-sharing terminates, and give effect to the actual granting of rights, which are perpetual, which is in the portion that actually grants the right.

THE COURT: Well, I mean, but the severability provision says what severability provisions always say, if the application of any nonessential provision shall be permitted or held valid, doesn't affect the remainder of the document. But it can apply to either thing. It can apply to the word perpetual used in a general descriptor at the beginning, or it could apply to the very specific

term of 4.2.

I need to read the 10 Woodruff Oaks case and look at the entire contract again. I've already looked at it and the pertinent provisions. But what I've got in front of me is a motion for summary judgment regarding the perpetuity of the recreational easement. There's certainly more than a scintilla here for me to deny summary judgment. So that's not a issue that I'm going to grant in the defendant's favor. I'm just going to deny it, since it's presented as a motion for summary judgment at this time.

Once I hear all of the evidence -- I read Tom Graham's deposition, I believe. I don't believe I read Vince's yet. So I will need to see what comes out about that. You know, it still doesn't address my overlying concern of -- I understand they want to use that as evidence to serve the greater portion of the plaintiffs' case -- how that is necessarily in the best interest of the Assembly. You know, perhaps it becomes somewhat moot in light of the consent terms that were entered yesterday and described in greater detail on the record. But we are going to have to look at that as well.

Okay. So that motion is denied.

What's next?

MR. DUFFY: Just looking at my list of things we

Ms. Bedell testified to yesterday and my review of the transcript.

I'm not fussing at anybody for working out a settlement or zealously representing your clients. Y'all did what you were supposed to do. But they had two jury strikes in a situation where somebody should have been sitting at your table to help you strike your jurors. And by you, I say the plaintiffs for the purpose of the record.

In no way am I suggesting that the trial has not gone well for the plaintiffs. The trial is not going well for the defendants. This has nothing to do with my ruling today. Y'all need to talk to your lawyers and work this out. It needs to be worked out.

But because of the way the strikes were allocated after the board had explicitly endorsed the plaintiffs' case, and then I've looked through, and it was the Civitas motion to add and the Russo's defendant motion to add the Assembly as an indispensable party. I'm not going to punish these defendants for the co-defendant's motion.

It's a mistrial. I apologize for the time and expense to everyone. The cumulative unfairness just greatly troubles me.

MR. BOUCH: May I put something on the record,

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF
COUNTY OF CHARLESTON)	COMMON PLEAS
_____)	2010-CP-10-10490
I'ON ASSEMBLY, INC., ET AL)	
PLAINTIFFS)	VOLUME I OF V
v.)	TRANSCRIPT OF RECORD
)	
THE I'ON COMPANY, ET AL)	
DEFENDANTS)	
_____)	

JULY 28TH - AUGUST 1, 2014
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE P. MCDONALD

A P P E A R A N C E S:

JUSTIN O. LUCEY, ESQUIRE
JOSHUA F. EVANS, ESQUIRE
DABNY LYNN, ESQUIRE
TIMOTHY W. BOUCH, ESQUIRE
YANCY MCLEOD, ESQUIRE
ATTORNEYS FOR PLAINTIFFS

BRIAN C. DUFFY, ESQUIRE
J. RUTLEDGE YOUNG, III, ESQUIRE
SETH W. WHITAKER, ESQUIRE
ATTORNEYS FOR DEFENDANTS

SHARON VIZER, OFFICIAL COURT REPORTER

I N D E X

DAY I

Jury Selection 23

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

THE COURT: All right. Well, I'm happy to hear from you. Why don't y'all get started with what you want to tell me about a proposed settlement agreement with the individuals and then we'll move forward from there. We're not picking -- it will take Judge Harrington a little while to pick that for the defendant's case.

MR. LUCEY: Your Honor, the derivative plaintiffs and the individual defendants have executed a settlement agreement as to claims against individual defendants. We are awaiting a final response from the Assembly as to their consent to this agreement, to the extent that it's necessary. We are not -- we are not sure that it is. We are the derivative plaintiffs, but we prefer to have a clean record --

THE COURT: But who are we waiting on? Is there a new president? Is Ms. Bedell not the president anymore? Does Mr. Bouch not have authorization?

MR. BOUCH: I have not had authority from my client to agree to this, Your Honor. It came up yesterday afternoon.

THE COURT: Who is your client?

MR. BOUCH: My client is the Assembly.

THE COURT: Who speaks for the Assembly?

MR. BOUCH: Well, I can as their lawyer.

THE COURT: Right. But are you telling me they need to vote or does the Board of Directors or the current president have authority?

MR. BOUCH: The Board has the authority. The Board has not given me the authority to represent it. We agreed to it. I do not oppose it. I realize that under the terms of the previously entered settlement, that we agreed to cooperate with the plaintiffs and we will.

I have not been able to secure, since 3:00 yesterday afternoon, a formal vote of the Board. So, therefore, I cannot represent to the Court that I have authority to agree to it.

THE COURT: Fair enough. I assume they've got a conference call set up tonight or when?

MR. BOUCH: We've been going back and forth, Your Honor. As Mr. Lucey said, I'm not so sure what would happen if they didn't agree to it.

THE COURT: Okay.

MR. BOUCH: So --

THE COURT: It just seems like a pretty easy housekeeping thing to -- I know Boards I've chaired, we'd voted last night. So anyway, get working on it.

MR. DUFFY: For what it's worth, Your Honor, it is very important to us because it involves a dismissal of any claims -- general dismissal of any claims to date. We do think that's important. And, obviously, it's important to us that this gets done before voir dire --

THE COURT: Who is that president now?

MR. DUFFY: Ms. Bedell is the president.

THE COURT: Is there no chain e-mail or contact information we have for everybody?

MR. DUFFY: We do have e-mail, Your Honor.

THE COURT: Well, why don't we get working on that?

MR. BOUCH: Your Honor, we have been. The answer up to now has been no.

THE COURT: Okay. Well...

MR. BOUCH: Now, I haven't been able to meet personally with those who have reservations because one is in Cincinnati and the other is in Chicago. However, as Mr. Lucey has represented to the court, I'm not so sure it matters. Because I am legally obligated to the court to cooperate with the derivative plaintiffs and I said I will and I do.

THE COURT: I agree. And I understand that and certainly appreciate that on your part. Okay. And I understand that it's important to the defendants to

have that in a vote. It might be necessary at some point to get those folks here that are having so many problems causing this -- you know, it was the Assembly that derailed the case last time. I really, really don't want that to happen again. Okay.

Yes, sir. All right. Well, go ahead and put what you want to put on the record and they'll get working on it.

MR. LUCEY: Yes, ma'am. And just so -- the background is clearly on the record. The plaintiffs did bring the Assembly up-to-date yesterday morning and asked if they would be on stand by all day for a consent response by e-mail. And we actually asked, in advance, "well, what number would you find acceptable", and we weren't given one, so we proceeded with --

THE COURT: How many Board members are there?

MR. LUCEY: I believe there are five.

MS. BEDELL: No, we have eight including -- including a representative of the I'On Company.

THE COURT: And you have a vote, I guess?

MS. BEDELL: Yes, I do. And I'm included in that eight.

THE COURT: Okay. And is it a simple majority to approve something or do you have some kind of specificity in your bylaws that require something else?

MS. BEDELL: No. This would be a simple majority, Your Honor.

THE COURT: Okay. So you need five. I'm assuming you are agreeing and the representative of the I'On Company, I imagine, would agree so --

MS. BEDELL: Well, we wouldn't probably allow him to vote, Your Honor. We think he has a conflict of interest and obviously is not allowed to vote on this matter.

THE COURT: So you need four then, right? So you need three more, plus you, right?

MS. BEDELL: That would be correct, Your Honor.

THE COURT: Okay. I mean, that doesn't sound like an Herculean task, but I throw that out there in the for what it's worth category. That's certainly not on Mr. Bouch. All right. Go ahead, Mr. Lucey.

MR. LUCEY: So, Your Honor, the -- the one settlement aspect which we should make the court aware of, among others, is that the defense has requested confidentiality as to the amount. So what we have done, and what we propose to do for the court, is we've executed two agreements, and they're enforceable by the contempt powers of the court. So we have proposed to redact the financial amount in the version handed to the court, and maintain the financial amount in the

private version that's completely executed, that's identical, in case any enforcement were to be necessary. Of course, if enforcement is necessary, the confidentiality would go out the window.

THE COURT: Wouldn't you do it under seal to have it approved, so that the court has something and not just the confidential -- I mean, there's a way we do this -- I think, it's 41.1, right?

MR. LUCEY: That's actually preferable. I was just saving the seal argument for the court. I prefer that.

THE COURT: Okay. And as far as the other, I'm thinking about it more and I'm in agreement, I believe, with Mr. Bouch. You know the Board -- the Assembly wasn't exactly cooperative all along with this lawsuit, and that's why it became a derivative action as I understand it.

So my position would be that the plaintiffs, who bore the brunt and traveled with this derivative action, would have the authority to act. I certainly would rather have the Board and Assembly endorse it, but that's not going hamstring us -- I'm just kind of thinking out loud here. I know there's certain things that are important probably to Mr. Duffy's clients.

MR. DUFFY: Yes, Your Honor. And, of course, one

thing is that we challenged that derivative status. So we don't want to, by implication of having this settlement go through, and that way somehow to be deemed to have consented.

THE COURT: I wouldn't find that to be a waiver of the derivative status, to the extent that we can get some of this resolved, I think the public policy of the State of South Carolina is to resolve matters such as this. It's not to allow homeowners associations that had a strange motive at the beginning of the lawsuit, to run everything off the rails. Yes, sir.

MR. BOUCH: Your Honor, again, I want to cooperate with Mr. Lucey as -- as I previously represented. He gave us the settlement agreement a few minutes ago. Logistically, the confidentiality position, which they acknowledged in the settlement agreement is difficult -- is difficult to the extent I can -- I feel I can disclose it to the Board.

THE COURT: I think you have to disclose it to the Board.

MR. BOUCH: Right. And at some point, it has to be disclosed to the homeowners. Now, I'm assuming that -- well, until the case is over or something like that, but I just have to raise the fact that I represent 750 property owners.

THE COURT: I understand it. And those 750 folks with some heavy duty opinions, I would imagine.

MR. BOUCH: There are 750 opinions and it's their money, so at some point I'm going to have to tell them.

THE COURT: What is your position on that, Mr. Duffy and Mr. Lucey? I'm not sure that it can be confidential as to the folks that are actually a member of the Assembly and homeowners. I don't want to scuttle the settlement, but --

MR. DUFFY: Your Honor, I think Mr. Lucey has drafted a paragraph that addresses that pretty well.

THE COURT: Okay. Great. All right. I'm sorry -- I keep interrupting you. I'm just trying to anticipate issues.

MR. LUCEY: Paragraph 4.

THE COURT: Paragraph 4. Okay. And has Mr. Bouch seen this?

MR. LUCEY: He has an unsigned copy, Your Honor.

THE COURT: "Amount paid by Grahams to remain confidential. However, Grahams acknowledge that Assembly will be procuring Board approval and that it is difficult to silence neighborhood matters, and plaintiffs shall fulfill their duty in this regard with a good faith effort." I think that's buying a problem that Mr. Bouch is going to have to deal with, and I --

you know, talk to me about that. I mean, I don't -- y'all can agree to whatever you can agree, but at some point that becomes problematic.

MR. DUFFY: Well, Your Honor, I think that maybe one way to delineate things, is that it is -- it is open to pass along this information to all homeowners. And I'm just thinking out loud, how to stop, you know, diatribes on web sites and --

THE COURT: Here's the thing. It's open to pass along to homeowners -- the problem we're having is William Hamilton and the other people that ran to the newspaper before the last trial started. And I'm not going to have that again. And, you know, we'll just -- it will be within the inherent power of the court to sanction anybody that violates the confidentiality provision. Yes, sir.

MR. BOUCH: And, Your Honor, I was just going to say, we have no problem keeping this within the Board and threatening them with all kinds of fire and brimstone --

THE COURT: Great.

MR. BOUCH: -- until the end of the case. Now after that, I kind of lose control, I guess.

THE COURT: I don't know that you do if you have a court order that says it's confidential amongst the

members of I'On Assembly. And if I find out who violated it, we'll deal with it from there.

MR. BOUCH: Well, what I'm saying is, Your Honor, I can keep it within the Board this week.

THE COURT: Sure.

MR. BOUCH: After that, they are going to have to report to the neighborhood, here's the money, and this and that. Now, you know, once it is recognized, once the folks get on the internet or whatnot, we can say it's just within the Assembly, but --

THE COURT: Well, and somebody can bring me the e-mails that I just said I would sanction -- people would be sanctioned for, you know. I'm -- I'm working two jobs now, but one of them will be over in a couple of weeks, so that can be my mission going forward, to keep jurisdiction of that and continue to deal with the egos in I'On.

MR. BOUCH: I'll be happy to convey that in -- in the terms and words that Your Honor--

THE COURT: I think your client needs you. (Pause.) Okay. Let's keep going. All right. Go ahead, Mr. Lucey. I'll try not to interrupt you, but I can't promise.

MR. LUCEY: I'd like to hand back up to the court the settlement agreement. And as we are on the record,

without going into the amount stipulated, let me go further to explain to the court -- paragraph 2 is a -- there's a two level financial commitment by the Grahams being made.

THE COURT: Okay.

MR. LUCEY: One is cash within 60 days for a certain amount. And another is to the extent that we get a verdict against the remaining corporate defendants, that they can't satisfy out of their assets, we are entitled to compensation by the Grahams individually for a certain amount more of our damages. And that amount is set forth in the agreement, Your Honor.

THE COURT: Okay.

MR. LUCEY: We have further agreed that we will not seek discovery sanctions -- there's an issue here about deleted e-mails, and what have you, we will not seek discovery sanctions against individuals or individual corporations like Chad Besenfelder, but we reserve the right to seek that against the corporations.

And the -- that as part of this agreement, to ensure that the -- the corporate defendants weren't already judgment proof, if you please, we required the defendants to provide us financial statements. I

reviewed them this morning. And they made certain representations to us regarding liens existing on certain real property and club property, so that I can satisfy my obligation to my clients that the judgment is recoverable against these defendants in a reasonable amount -- the remaining defendants.

As stated previously, we already discussed the confidentiality and the agreement is enforceable by the contempt powers of the Court. And if there's any disagreement as to the actual language of any formal settlement document, as Your Honor will be in Columbia, we've agreed that Tom Wills (ph) would provide a binding resolution of any language dispute.

THE COURT: That's a great idea. Okay.

MR. LUCEY: Yes, ma'am.

THE COURT: Mr. Duffy?

MR. DUFFY: That is the agreement, Your Honor.

THE COURT: All right. And, Mr. Bouch, I understand you don't object to the agreement, but you don't have authorization from your client to agree to it, and whether we need to have authorization is an issue that will remain for another day, but y'all are working on it?

MR. BOUCH: I hope to have something by lunch.

THE COURT: I appreciate it. Thank you, sir.

MR. LUCEY: On that issue, to the extent it is necessary, Your Honor, when they realigned the -- the Assembly did not file a pleading as such, a complaint. They adopted plaintiff's existing complaint. That has since been amended.

THE COURT: Okay.

MR. LUCEY: And it has not yet been adopted by the Assembly. They can only adopt what we have. And to the extent that it becomes an issue with the vote, plaintiffs believe that it's dismissed -- or claims against the individuals, both individually and derivatively with prejudice, there is no claim for the Assembly any longer to be asserted. It's dismissed with prejudice.

THE COURT: All right. Mr. Bouch, are you understanding that?

MR. BOUCH: I hope to have the authority by -- by lunch that will make all this moot.

THE COURT: Wonderful. Okay. Then -- well, I tell you what -- I thank y'all for working on this. I know it's been hard and everybody's been working on it. And, Mr. Bouch, I think you may have the most difficult job dealing with 700 certain people and some folks on the Board -- some folks on Boards -- it's always hard to deal with the Board.

That being said, I know we need to pick the jury shortly, or do we want to pick this jury after lunch so that we have time to hear whatever Mr. Bouch has from his folks -- I don't know if it changes the voir dire or the posture of the case. It certainly eliminates some of the questions. I'm happy to hear from y'all.

MR. DUFFY: Your Honor, I would have two options essentially that would satisfy us, either start after lunch -- which seems like an easy one -- or if -- if the plaintiffs are confident enough in just leaving the Grahams out named as individual defendants in the voir dire, then that's our concern. I mean obviously they could -- if it doesn't happen, they can -- they have a whole trial to deal with the fact that they are defendants and it won't be a secret.

THE COURT: Well, if doesn't happen, we're going to have to deal with me ordering the members of the Board to come here and explain to me what they're doing and dealing with all that, so --

MR. BOUCH: Your Honor, insofar as Mr. Duffy's comment, this is something I don't need their authority. We agree not to mention the individuals in voir dire.

THE COURT: Okay.

MR. BOUCH: That's something I can do without a

vote, so.

THE COURT: I appreciate it. All right. Great.

MR. BOUCH: So that's moot.

THE COURT: So -- then -- okay. Anything further anybody needs to put on the record with respect to the settlement?

MR. LUCEY: No, but we have consented to Mr. Duffy's amended voir dire, which changes the Grahams from parties to witnesses.

THE COURT: Okay.

MR. LUCEY: And we're finally proceeding on that basis so that we can move this along. That they would be referred to in voir dire as witnesses while we're awaiting the final consent from Mr. Bouch's client.

THE COURT: Work for you, Tim?

MR. BOUCH: That's fine, Your Honor.

THE COURT: Okay. Great. Did y'all make the agreement without the figures in it a court's exhibit or do you want to? You don't have to.

MR. LUCEY: We were going to proceed with your suggestion, filing it under seal instead.

THE COURT: Okay. That's fine.

MR. DUFFY: Yes, ma'am.

THE COURT: Great. Just make sure I don't forget to dot my Is and cross the Ts.

MR. LUCEY: And at one of our breaks, Mr. Duffy and I will write in the modification to paragraph 4 regarding the homeowners.

THE COURT: Okay. And I'm going to give this back because I don't want to have it, so thank you.

Okay. Let me just take a look at the amended -- really, the amendment just changed the way the caption is, is that correct, or was there any other substantive change?

MR. DUFFY: Yeah, Your Honor. If you see on three, which it just list defendants, and they're no longer defendants.

THE COURT: Got it.

MR. DUFFY: We took that out. And it puts them instead in the witness category.

THE COURT: Perfect.

MR. DUFFY: So they get named as just the witnesses and not --

THE COURT: Okay. Well, let me go ahead and get -- if I could hear from the individual defendants and then the individual plaintiffs, who also represent the class for what it is -- the homeowners, that this is their settlement agreement and that they agree. Could we just hear from the Grahams, if you could go ahead and have them stand up.

MR. TOM GRAHAM: I do.

THE COURT: You do agree, sir?

MR. TOM GRAHAM: I do agree.

THE COURT: Thank you, sir. Yes, sir.

MR. VINCE GRAHAM: Yes, Your Honor. Vince Graham. I agree as well.

THE COURT: Thank you so much. Yes, sir.

MR. BRAD WALBECK: Brad Walbeck. I totally support this.

THE COURT: Thank you.

MS. LEA ANN ADKINS: Lea Ann Adkins. I do agree with it.

THE COURT: All right. And, Ms. Bedell, I understand you've got to hear from the rest of your Board, correct?

MS. BEDELL: That's correct, Your Honor. I sent both an e-mail and a text.

THE COURT: Okay. Wonderful. I appreciate that and thank y'all. Thank y'all for working on this.

Okay. I think I have gone through and figured out the names I have pronunciation issues with.

I will ask all of the voir dire except for number 9. I'm going to ask my standard is there anyone who's unable to follow the law as the court gives it to you. I'm not going to create a problem that isn't

there, by telling people how much they are going to have to listen.

MR. DUFFY: Fine with me, Your Honor.

THE COURT: That's part of my charge anyway so -- anybody have horrible heart ache about that?

MR. LUCEY: No, Your Honor.

THE COURT: All right. Then I ask at the end, and I think y'all have included it, just is there anyone who knows if there's any reason whatsoever why they should not serve on this particular case? Every now and then somebody will have some strange reason that nobody thought to ask, although these are pretty thorough. Any objections to the proposed joint voir dire from anybody?

MR. LUCEY: No, Your Honor.

THE COURT: All right. Thank y'all for getting together to work on that. All right. What else can we take up before we get to the jury? Don's here.

THE CLERK: They're about halfway through voir dire in the criminal case.

THE COURT: Oh, wonderful.

THE CLERK: So they're moving things along. My guess would be they probably still have about another at least maybe 30 minutes. Hopefully by 12:15 you'll have them.

THE COURT: All right. Let's go ahead and get it picked, then, if everybody is okay with it.

MR. LUCEY: Yes, ma'am. That's fine.

THE COURT: Okay. Great. Thank you, Don.

MR. LUCEY: We have provided the court reporter with the plaintiff's list. The bold exhibits are stipulated. We have brought additional copies for the court, so the bolded exhibits on our list are stipulated into evidence.

THE COURT: Okay.

MR. LUCEY: I believe the defendants are following a similar methodology.

THE COURT: Okay.

MR. LUCEY: I am using a similar power point to that to which I provided everybody last time. I have a PDF that I was about to forward to both the court and to Mr. Duffy to see.

THE COURT: You don't need to send it to me if I have the hard copy.

MR. LUCEY: Okay. And I have brought a -- I've brought a hard copy for you.

THE COURT: Okay. This is not it?

MR. LUCEY: It's almost the same. There's just a few -- it's shortened --

THE COURT: Mr. Duffy has it already? The other