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THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2010-CP-10-10490

Appellate Case No.: 2015-001590

I'On Assembly, Inc., Brad J. Walbeck, and Lea Ann Adkins, individually and derivatively on behalf of I'On Assembly, Inc.,

Petitioners,

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

Respondents.

APPENDIX TO THE PETITION FOR WRIT OF CERTIORARI
VOLUME VI

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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, BOTH 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; AND I'ON REALTY, LLC Defendants.	**BRIEF IN SUPPORT OF JUDGMENT IN I'ON ASSEMBLY'S FAVOR ON THE INVALIDITY OF THE 2000 RECREATIONAL EASEMENT**

Plaintiffs Brad J. Walbeck, and Lea Ann Adkins, individually and derivatively on behalf of the I'On Assembly, Inc., (hereinafter collectively referred to as Plaintiffs), by and through their undersigned counsel, hereby submit the following Memorandum in Support of Plaintiffs' Declaratory Action[1]. The Plaintiffs respectfully request the court issue an order declaring the 2000 Recreation Easement is invalid and void *ab initio*.

FACTUAL BACKROUND

On February 9, 2000, the I'On Club, LLC, the I'On Company, LLC, and the I'On Assembly executed a document entitled "Recreational Easement and Agreement to Share Costs." (hereinafter referred to as Easement) (Attached hereto as Exhibit "A"). In the Easement, the I'On Club purported to grant the Assembly an ostensibly perpetual right to use the Dock, parking lot and boat ramp, including the right to temporarily park vehicles and boat trailers in the parking lot for up to 12 hours. The Assembly in turn granted the I'On Club a similarly ostensibly

[1] Specifically, this memorandum is in support of judgment in I'On Assembly's favor and in opposition of judgment in the Defendants' favor in both this case and the companion case, I'On et al v. Walbeck, 2014-CP-10-02984.

perpetual right to use Eastlake and the Athletic Field for I'On Club members. Section 4.2 of the Easement limits its term to thirty years, negating any "perpetual" granting language referenced in previous sections.[2]

Moreover, only one individual, Joe Barnes, signed the Easement. Mr. Barnes signed the Easement three times in his capacities as Manager of the I'On Company, Manager of the I'On Club, and President of the I'On Assembly. This was not an arms' length transaction. At the time of the execution, the I'On Club, LLC did not even own the Dock, parking lot, or boat ramp. At the time of the execution, the Assembly did not own the Eastlake and Athletic Fields.

ARGUMENT

I. The Easement is Void Because the I'On Club Did Not have Title at the Time it Granted the Easement.

The 2000 Recreational Easement is invalid as a matter of law. Neither the I'On Club nor the I'On Assembly owned the relevant property at the time the Easement was executed. 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 that was 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

[2] The Easement also provided for a sharing of costs to operate and maintain the Boating Facilities (the boat ramp, dock and parking area) according to a formula based on a proportion of the number of I'On lots compared with the number of non-I'On-lot-owner Club members.

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 said, "[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.

As the court determined in Moore, an easement cannot be granted over land the grantor does not own. Following this rule the Recreational Easement cannot be valid. The Easement was signed and recorded in February 2000, over 6 months before the I'On Club acquired title to the dock amenity property from the I'On Company. Moreover, the Assembly did not acquire title to the Eastlake property until November 14, 2003, nearly three years after the execution of the Easement. Because the I'On Club and I'On Assembly did not hold title to the subject property at the time of the execution of the Easement, those entities as a matter of law could not grant or otherwise encumber those properties. The Easement is void *ab initio*.

II. An Invalid Easement Cannot be Cured by Application of the After-Acquired Title Doctrine or Subsequent Ratification of the Deed.

The Defendants assertions that the invalid Easement was cured via ratification or the doctrine of After-Acquired Title are off-base.

First, the After-Acquired Title Doctrine does not apply to servitudes. That doctrine is applicable to deed conveyances only, and prevents a seller from claiming he did not have title to the property at the time of the sale. *See Corbin v. Carlin*, 366 S.C. 187 (Ct. App. 2005). In the instant case, the void transaction was not a sale of property and did not involve the conveyance of a deed. Rather, the void transaction was the purported conveyance of an easement over land the grantor did not own. The After-Acquired Title Doctrine is not applicable. *See generally Douglas v. Medical Investors*, Inc., 256 S.C. 440 (1971)("An easement is a right which one

person has to use the land of another for a specific purpose . . . and gives no title to the land on which the servitude is imposed. An easement is therefore not an estate in lands in the usual sense.").

Similarly, Defendants' contention that a deed can be ratified by the subsequent act of its grantor is too off-base. The case on which the Defendants rely to support their argument does not stand for the proposition that one without title can convey property and by subsequent act ratify the conveyance. Instead, the rule deals with the transfer of property by an infant. Tolar v. Marion Cty. Lumber Co., 75 S.E. 545 (1912).

In Tolar, Ashton L Berry, the titleholder, conveyed title to a lumber company before his 18th birthday. Id. at 545. Sometime after conveying title but still before his 18th birthday Berry mortgaged the property to a third-party. Id. On March 4, 1902, four days after Berry reached the age of majority he ratified the mortgage to the third-party by indorsing the mortgage. Id. Later that year Berry then ratified and confirmed his deed of conveyance to the lumber company. Id. The court found that because the mortgage was the first transaction to be ratified as an adult, the lumber company would take title subject to the mortgage. The court concluded that when an individual executes a deed of conveyance as an infant and then later, after reaching the age of majority, executes another deed or mortgage the deed made as an infant becomes ineffectual. Id. at 546.

The rule that an infant, upon reaching majority, may ratify a document executed by him does not equate to a rule that a subsequent owner may ratify the transfer of land he does not own. The principle that Defendants put forth is in other words the After-Acquired Title Doctrine. As stated above, Plaintiffs contend that the After-Acquired Title Doctrine does not apply to servitudes such as easements.

Furthermore, the After-Acquired Title Doctrine is an equitable doctrine intended to estop a party from claiming he did not have title at the time of the sale. Corbin v. Carlin, 366 S.C. 187 (Ct. App. 2005). Being an equitable doctrine the party seeking it must come with clean hands if he intends to recover. Aaron v. Mahl, 674 S.E.2d 482 (S.C. 2009). The fact that Joseph Barnes signed all three documents indicates that the transaction was not an arm's length transaction and he was on actual notice that at the time of the purported grant the I'On Club did not own the property. The I'On Companies cannot now use the After-Acquired Title Doctrine in an effort to fix the mistake they made in early 2000.

III. The Easement is Invalid Because, in Granting the Easement, the Developers Breached the Fiduciary Duties they owed the Assembly

The easement is further invalidated given the Developers, in granting the easement, violated the fiduciary duties they owed to the Assembly. Simply stated, the Developers failed to act in the best interest of the Assembly when they granted a non-perpetual, invalid easement, a failure which was considered by the jury, and thus, encompassed within the jury's verdict against the Developers for breach of fiduciary duty. Indeed, the testimony and evidence presented at the trial of this case repeatedly referenced the easement's ambiguous terms, its non-perpetual interpretation, and its erroneous execution by the same individual, Joe Barnes, for three I'On entities. Clearly, 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.").

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

When the owner of the dominant estate acquires title to the servient estate over which the right-of-way exists the easement is extinguished because the essential ingredient of a right-of-way would be wanting. In other words, if the same entity owns the estate over which the easement exists and the easement serves, the easement is terminated. Haselden v. Schein, 167 S.C. 534, 166 S.E. 634 (1932). As such, any easement in favor of the Assembly ceased to exist when it acquired title to the subject property in accordance with the Settlement Agreement.[3] *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). It would be difficult, if not impossible, to reconcile a valid easement with the verdict rendered by the jury.

WHEREFORE, The Plaintiffs respectfully request this Court enter an order Declaring the 2000 Easement invalid and unenforceable.

Respectfully submitted,

JUSTIN O'TOOLE LUCEY, PA

By: _____
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[3] Moreover, any remaining easement rights are voidable under ISLA and Plaintiff Walbeck's favorable ISLA verdict.

Fax: (843) 849-8406

Attorneys for the Plaintiffs

Charleston, South Carolina

Dated: 9/11/14

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, and I'ON REALTY, LLC,

Defendants.

DEFENDANT I'ON COMPANY, LLC'S PETITION FOR ATTORNEYS' FEES AND COSTS

FILED
2014 AUG 12 PM 4:35
J. HARVEY STRONG
CLERK OF COURT

TO: JUSTIN O. LUCEY, ESQ. and TIMOTHY W. BOUCH, ESQ., COUNSEL FOR THE PLAINTIFFS:

YOU WILL PLEASE TAKE NOTICE that as soon as counsel may be lawfully heard, Defendant The I'On Company, LLC will petition the Court for an award of attorneys' fees and costs. In support of their petition, the I'On Co. shows the Court as follows:

SUMMARY OF FACTS

1. This case was tried before this Court between Tuesday, July 29, 2014 and ended in the early morning of Saturday, August 2, 2014. The jury returned a verdict finding against Lea Ann Adkins ("Adkins") as to all of her claims, including her claim for breach of contract. (See Verdict Form, Question 14, p. 3). A true and correct copy of the Verdict Form in the above captioned action will be attached hereto as **Exhibit A** once published.

2. Pursuant to Section 12(d) of Ms. Adkins' I'On Lot Purchase Agreement between Ms. Adkins and the I'On Company, a true and correct copy of which is attached hereto as

Exhibit B, the prevailing party in any action to enforce obligations under the agreement shall recover from the non-prevailing party "reasonable attorneys' fees, costs and expenses *actually incurred.*" (emphasis added)

3. The I'On Company is the prevailing party with respect to Ms. Adkins' breach of contract claim – indeed with respect to all claims brought by Ms. Adkins. (See Verdict Form, Questions 8, 14, 22, 28, and 32).

4. A party need not prevail on all claims with respect to all parties to be entitled to an award of attorneys' fees and costs where it is entitled by contract. See e.g. Fox v. Vice, 131 S. Ct. 2205, 2214, 180 L.Ed.2d 45 (2011) (holding that "[a]nalogous principles" govern fee shifting to plaintiffs and defendants, and a defendant was entitled to an award of fees and costs even where it was not the prevailing party with respect to all claims).

5. The initial Complaint in this action was filed on December 22, 2010. Plaintiff Adkins joined the action as a Plaintiff on February 7, 2012. The claims at issue in this action are those alleged by the two plaintiffs Adkins and Brad J. Walbeck. As such, the I'On Company requests an award of one half of the total reasonable fees and costs incurred in its defense of this action from February 7, 2012 through the entry of a verdict.

6. The fees and costs actually incurred in this action from February 7, 2012 through the trial of this action are total fees of five hundred and twenty-eight thousand two hundred and thirty dollars and seventy-five cents ($528,230.50) and costs of forty-seven nine hundred and sixteen dollars and ninety eight cents ($47,916.98). Therefore, the I'On Company requests an award of two hundred and sixty-four thousand one hundred and fifteen dollars and thirty eight cents ($264,115.25) in attorneys' fees and twenty-three thousand nine hundred and fifty-eight

dollars and forty-nine cents ($23,958.49) in costs, for a total award of two hundred eighty-eight thousand and seventy-three dollars and seventy-four cents ($288,073.74).

7. The defense of this case involved voluminous discovery, numerous depositions, a significant number of motions, trial preparation, and trial. Given the mistrial in January, 2014, the I'On Company essentially had to prepare for trial twice, resulting in significantly increased costs. All told, the I'On Company's defense has required significant amounts of time and has resulted in significant fees incurred by the I'On Company and other Defendants.

8. The firm of Duffy & Young, LLC represented the Plaintiffs in this case. Brian C. Duffy and J. Rutledge Young, III were lead counsel, attorneys Seth W. Whitaker and Julie L. Moore were associate counsel involved in the trial of this action. Other attorneys within Duffy & Young provided further more limited assistance. Mr. Duffy and Mr. Young both have significant experience trying complex civil matters and are highly regarded members of the Charleston bar and South Carolina bar.

9. The fee structure for invoices associated with this matter was substantially reduced from current hourly rates charged by Duffy & Young. The standard hourly rate for Messrs. Duffy and Young is $375, and their time in this case was billed at $325/hour and reduced further to $300/hour. The standard hourly rate for Special Counsel to the firm is over $400 per hour and was reduced to $375 per hour. Mr. Whitaker, Ms. Moore and Ms. Johnson's time was billed at $250/hour, also reduced from existing rates. Paralegals' time is billed at $125 per hour.

10. In addition to the reduced hourly rates, fees in the amount of $174,871.93 associated with the first trial were generated but not actually incurred by the I'On Company in

light of a flat fee arrangement applicable only to December 2013 and January 2014. Those fees generated are not a part of this request.

11. Counsel believes that the rates charged by Duffy & Young for the services of its partners, principal, counsel, associate attorneys, paralegals and legal assistants are commensurate with rates charged in Charleston County by other attorneys with the same or similar experience in complex litigation matters. Given the complexity of this case, the amount of discovery required, the mistrial, the settlement among other parties adding to the complexity of trial, and the ultimate trial of this action, Defendant contends the total fee and expense award sought by this Petition is reasonable.

12. An Affidavit of Brian C. Duffy attached hereto as **Exhibit C**, further supports a finding that the fees and expenses requested by the I'On Club are reasonable.

WHEREFORE, based on the law of the State of South Carolina, the grounds set forth above, and such further materials as may be properly submitted to the Court, Defendant I'On Club respectfully prays this Honorable Court to award attorneys' fees and costs actually incurred to The I'On Company, LLC in the amount of two hundred eighty-eight thousand and seventy-three dollars and seventy-four cents ($288,073.74).

This 12 day of August, 2014 at Charleston, South Carolina.

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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, and TOM GRAHAM,

Defendants.

MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION IN SUPPORT OF JUDGMENT IN I'ON ASSEMBLY'S FAVOR ON THE INVALIDITY OF THE 2000 RECREATIONAL EASEMENT

FILED
2015 SEP 25 AM 9:30
J. ARMSTRONG
CLERK OF COURT

Defendants the I'On Company, LLC ("I'On Company"), the I'On Club, LLC ("I'On Club"), the I'On Group, LLC F/K/A/ Civitas, LLC ("I'On Group") and I'On Realty, LLC ("I'On Realty" and collectively as "Defendants"), by and through their undersigned counsel, submit the following Memorandum in Opposition to Plaintiffs' Motion in Support of Judgment in I'On Assembly's Favor on the Invalidity of the 2000 Recreational Easement.[1] For the reasons detailed below, Defendants respectfully request the Court deny Plaintiffs' motion and instead enter an order declaring the 2000 Recreational Easement was valid and perpetual.

FACTUAL BACKGROUND

On February 9, 2000, the I'On Company, the I'On Club and the I'On Assembly, Inc. ("Assembly") executed a "Recreational Easement and Agreement to Share Costs" ("2000 Recreational Easement") recorded in Deed Book M342, Page 051 at the RMC Office for

[1] As with the Plaintiffs' motion, this memorandum addresses declaratory judgment claims concerning the validity of the 2000 Recreational Easement in both the above captioned action and the companion case, I'On Company, LLC et al. v. Walbeck et al., 2014-CP-10-02984.

Charleston County. At the time the 2000 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 2000 Recreational Easement; however, the I'On Club was expected to become the owner of the "Club Property," and acquired ownership of the same on August 15, 2000. The Assembly signed the easement as "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" and "maintaining and operating certain property described therein as 'Commons'". (2000 Recreational Easement at p. 1). As acknowledged by the 2000 Recreational Easement, the "Eastlake and the Amenity Area" described by Exhibit A of the 2000 Recreational Easement was owned by the I'On Company at the time the 2000 Recreational Easement was executed, but such property was intended to be conveyed to the Assembly as "a part of the Commons." (Id). Ownership of the Eastlake and Amenity Area property was officially transferred to the Assembly on November 14, 2003.

The 2000 Recreational Easement granted the Assembly "a nonexclusive easement over the Club Property for access to and use and enjoyment of the Boating Facilities by the owners of the 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." (Id. at p. 2). Under the terms of the 2000 Recreational Easement, the easement for the use and enjoyment of the Boating Facilities was a "perpetual, nonexclusive easement." (2000 Recreational Easement at Art. I § 1.1.) The 2000 Recreational Easement also contained cost sharing provisions which were limited to a 30-year term. From the execution of the 2000 Recreational Easement until August, 2009, the I'On Company, I'On Club, and the Assembly continuously operated under the terms of the Recreational Easement.

In August 2009, the I'On Club sold the Club Property to 148 Civitas, LLC ("148 Civitas"). 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 (the "Supplemental Easement"). The Supplemental Easement specifically incorporated the 2000 Recreational Easement. The Supplemental Easement obligated both 148 Civitas and the I'On Club to operate under the terms of the 2000 Recreational Easement as "Club Owner." (See Supplemental Easement, p. 2). Following the sale until the Boating Facilities were transferred to the Assembly pursuant to the Settlement Agreement in February 2014, 148 Civitas, the I'On Club, the I'On Company, and the Assembly continued to operate under the terms of the 2000 Recreational Easement.

During the course of this action, through prior filings and stipulation, both 148 Civitas and the Assembly have represented that it was their 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 2000 Recreational Easement.

ARGUMENT

While the Defendants do not dispute that the easement granting the Assembly access to the Boating Facilities has merged following the Assembly's acquisition of the Boating Facilities from 148 Civitas following entry of the settlement between the Assembly and 148 Civitas, the issue of whether the Easement was valid from the time of its execution until the Assembly's acquisition of title to lot CV-6 in February 2014 remains germane to this action and determination of damages to which the Plaintiffs may be entitled. The Plaintiffs' revisionist view of the validity and intended perpetuity of the easement has been directly contrary to the

interests of the Assembly, for which they brought their claims derivatively, and directly contradictory to the representations and stipulations all of the parties to the easement.

A. The Recreational Easement was Valid.

Plaintiffs assert that the 2000 Recreational Easement was invalid as it was executed prior to the transfer of the Club Property to the I'On Club and the transfer of the Eastlake property to the Assembly in 2003. However, this argument fails for a number of reasons. First, by its terms, the 2000 Recreational Easement acknowledges that the transfers of the Club Property and Eastlake Property from the I'On Company to the I'On Club and Assembly respectively were intended future transfers. Once the transfers were effectuated, the I'On Club and the I'On Assembly subsequently ratified the easement by their actions

Despite Plaintiffs' contentions to the contrary, South Carolina has long recognized that a deed which conveys property to which the grantor lacks title may be ratified by subsequent acts of the grantor after he acquires title. See e.g. Nettles v. Cummings, 30 S.C. Eq. (9 Rich. Eq.) 440, 448 (1857); Tolar v. Marion Cty. Lumber Co., 93 S.C. 274, 75 S.E. 545 (1912); Corbin v. Carlin, 366 S.C. 187, 192-93, 620 S.E.2d 745, 748 (Ct. App. 2005) (citing Richardson v. Atlantic Coast Lumber Corp., 93 S.C. 254, 75 S.E. 371, 372 (1912)). There is no indication that the after-acquired title doctrine does not apply to servitudes. The cases cited by the Plaintiffs in support of their distinction between servitudes and deed conveyances simply do not reach such a conclusion. See Corbin, 366 S.C. at 192-93, 620 S.E.2d at 748 (stating the general rule "settled beyond controversy in this state" that title could be acquired through application of the after-acquired title doctrine, but not addressing any limitation of said doctrine to deed transfers as opposed to servitudes); Douglas v. Medical Investors, Inc., 256 S.C. 440, 445-448, 182 S.E.2d 720, 723 (1971) (holding that an easement in gross could be formed by reservation in a deed).

Courts in other jurisdictions have specifically applied the after-acquired title doctrine to subsequently affirm easements. See e.g., Supraner v. Citizens Sav. Bank, 303 Mass. 460, 465, 22 N.E.2d 38, 41 (1939) (applying After-Acquired Title doctrine to easement stating the "rule has been held to apply to easements"); Noronha v. Stewart, 199 Cal. App. 3d 485, 491, 245 Cal.Rptr.94 (Cal. Ct. App. 2d Dist. 1988) (recognizing subsequent affirmation of easement pursuant to after-acquired title doctrine); Tishomingo Railroad Co., Inc. v. Bellsouth Telecommunications, Inc., 819 F. Supp. 2d 632 (N.D. Miss. 2010) (recognizing after-acquired easement in favor of Bellsouth).

With respect to the 2000 Recreational Easement, the parties to the 2000 Recreational Easement, including both the I'On Club and the Assembly, operated under the terms of the 2000 Recreational Easement—both with respect to use of the Boating Facilities and the Assembly's maintenance contributions—for many years after the date of conveyance of the Lot CV-6 and the docks to the I'On Club. The Assembly continued to do so even after control of the Assembly was turned over to the homeowners, by budgeting and paying dock usage fees to the I'On Club. The parties thereby ratified the 2000 Recreational Easement's validity and cured any defect.

Moreover, the Assembly engaged a lawyer to advise them as to the 2000 Recreational Easement at least as early as 2004. Nevertheless, they did not propose changes, did not suggest a problem with invalidity or a limited term, and did not alter their continued adherence to the terms of the 2000 Easement.

Finally, if the parties to a deed acquiesce, a third-person cannot invalidate the deed by showing what might be fraud or mistake. McCullough v. Wall, 38 S.C.L. (4 Rich.) 68 (1850); Sanders v. Hartzog, 6 S.C. (6 Richardson) 479 (1876). The Plaintiffs, therefore, cannot challenge the validity of the 2000 Recreational Easement, only its interpretation. In statements

to this Court related to the first trial of this action, all parties to the 2000 Recreational Easement agreed it was valid.

B. The Recreational Easement was Perpetual.

As a matter of law, as well as pursuant to Section 4.3 of the 2000 Recreational Easement, the Court must interpret the terms of deed and easements as a whole and give effect to all of the provisions contained therein if possible. Millvale Plantation, LLC v. Carrison Family Ltd. P'ship, 401 S.C. 166, 174, 736 S.E.2d 286, 290 (Ct. App. 2012); K & A Acquisition Group, LLC v. Island Pointe, LLC, 383 S.C. 563, 682 S.E.2d 252, 262 (2009). The 2000 Recreational Easement contains multiple components with respect to the Assembly's rights and obligations: it both grants easements for the use and enjoyment of the Boating Facilities by the Assembly and the Commons by the I'On Club, and it establishes a cost-sharing agreement that obligates the Assembly and the I'On Club to each contribute to Boating Facilities maintenance. In Section 1.1 of the 2000 Recreational Easement specifically describing the easement for use and enjoyment of Boating Facilities, the 2000 Recreational Easement states that such easement shall be "a perpetual, nonexclusive easement." (2000 Recreational Easement, Sect. 1.1(a)). The section pertaining to the easement for the I'On Club's use and enjoyment of the commons contains similar language. (2000 Recreational Easement, Sect. 1.2(a)). All parties to the 2000 Recreational Easement have evidenced their intent that the Assembly's easement for the use and enjoyment of the Boating Facilities was perpetual. (See e.g. Def. I'On Assembly, Inc.'s Pre-Trial Brief at 3 ("[t]he I'On Club granted to the Assembly a perpetual right to use the Dock, parking lot and boat ramp") (Exhibit 1)).

These provisions are reconcilable with Section 4.2 of the 2000 Recreational Easement, which establishes a 30-year duration for the Assembly's financial obligations with respect to

Boating Facility maintenance. Defendants' proposed interpretation, unlike the Plaintiffs', gives effect to the perpetual nature of the use easement and the 30-year term of the cost-sharing agreement. Articles II and III of the 2000 Recreational Easement establishing the cost-sharing agreement and the I'On Club and Assembly's respective maintenance obligations do not contain durational language. (See 2000 Recreational Easement, Arts. II and III). Finally, Section 4.2 states that "[t]his Agreement . . . shall have a term of 30 years." The "Agreement" is distinguishable from the easements for use and enjoyment of the Boating Facilities and Commons. The distinction is even made by the document title: Recreational Easement and Agreement to Share Costs. The Defendants' interpretation complies with Section 4.3 and South Carolina precedent by giving effect to all provisions of the 2000 Recreational Easement. Plaintiffs' interpretation would ask the Court to ignore the language specifically establishing the easement contained therein as perpetual.

C. Plaintiffs' Position is Inconsistent with Assembly Interests.

The Plaintiffs' position that the 2000 Recreational Easement was invalid is incongruous with the representations and interests of the Assembly, on behalf of whom the Plaintiffs bring derivative claims. While contending that Assembly and its members were damaged for potentially having their access rights to the Boating Facilities expire, Plaintiffs simultaneously fought the enforceable stipulation in Court by all parties to make it clear the easement was perpetual. Despite Plaintiffs' litigation-driven arguments to the contrary, the 2000 Recreational Easement established a perpetual easement for the Assembly's use and enjoyment of the Boating Facilities.

CONCLUSION

For the reasons stated above, the 2000 Recreational Easement was valid and created a perpetual easement for the use and enjoyment of the Boating Facilities. The Defendants therefore respectfully request this Court deny Plaintiffs' instant motion and instead enter an order declaring that from the time of its execution until the date the Assembly acquired Lot CV-6 and the Boating Facilities from 148 Civitas, the 2000 Recreational Easement was valid and the easement for the Assembly's use of the Boating Facilities it created was perpetual. Such order would then be part of the Court's consideration of Defendants' motion for judgment notwithstanding the verdict, or, in the alternative, for a new trial absolute or a new trial nisi remittitur.

This 25th day of August, 2014 at Charleston, South Carolina.

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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, and I'ON REALTY, LLC,

Defendants.

DEFENDANTS' MEMORANDUM IN SUPPORT OF MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT, OR, IN THE ALTERNATIVE, NEW TRIAL ABSOLUTE OR NEW TRIAL NISI REMITTITUR

FILED
2010 AUG 25 AM 9:01
JEAN H. ARMSTRONG
CLERK OF COURT

COME NOW Defendants, I'On Company, LLC, the I'On Club, LLC, the I'On Group, LLC, and I'On Realty, LLC (collectively the "Defendants"), by and through counsel, and submit the following legal authorities in support of their motion for judgment notwithstanding the verdict, or, in the alternative, for a new trial absolute or a new trial nisi remittitur, pursuant to Rules 50(b) and 59(a) and (e) of the South Carolina Rules of Civil Procedure.

Defendants hereby incorporate by reference all legal arguments advanced in their motions for directed verdict, and in their motions for summary judgment, in support of the present motion.

I. Defendants are entitled to judgment notwithstanding the verdict.

A motion for judgment notwithstanding the verdict is a renewal of the motions for directed verdict made during trial on the ground that the evidence at trial presents only issues of law. Rule 50(b), SCRCP. Defendants hereby incorporate all grounds cited in their motions during trial for directed verdict, in their motion for judgment notwithstanding the verdict and for

a new trial filed in this action, and all questions briefed herein, including those briefed as grounds for a new trial, as grounds for entry of judgment notwithstanding the verdict.

1. Plaintiffs failed to properly bring and maintain a derivative action on behalf of the I'On Assembly (Grounds 1 and 2).

The rule governing derivative actions, Rule 23(b), "seeks to prevent the unrestrained use of derivative actions by minority shareholders, which would undermine the basic principle of corporate governance that the decisions of the corporation should be made by its management or, in certain situations, by an affirmative vote of a majority of the shareholders." Carolina First Corp. v. Whittle, 343 S.C. 176, 185, 539 S.E.2d 402, 407 (Ct. App. 2000). The derivative Plaintiffs have never properly met the strict requirements of alleging demand and refusal or futility of demand as required by Rule 23(b). Nor has there ever been a need for the individual Plaintiffs, who have unique interests in the maintenance of this suit not shared by the Assembly or its other members, to maintain the same claims on behalf of the Assembly derivatively that it pursued at trial of its own accord. Because of these fundamental legal defects in derivative Plaintiffs' claims, Defendants are entitled to judgment notwithstanding the verdict on those claims.

The derivative Plaintiffs have, despite an initial and four amended complaints, never properly initiated and maintained a derivative action, as Defendants have repeatedly pointed out in the course of this litigation. Specifically, the derivative Plaintiffs have failed to make or allege with verification and particularity proper demand on and refusal by the Assembly; have likewise failed properly to plead the futility of demand; and have acknowledged by their testimony at trial and in their most recent complaint that the facts pleaded in their prior complaints to establish the prerequisites of their derivative claims are no longer true.

In fact, Plaintiffs also conceded at trial that substantive facts they alleged in their complaint to support the derivative action—and verified to be true—in fact were not true. For the Court to permit a derivative action, which survived pretrial motions to dismiss and for summary judgment because of the verification of facts which it now knows to be untrue, to proceed would be no less than to permit Plaintiffs to use the rule requiring verification of derivative pleadings, which was designed to prevent fraud upon the court and the corporate plaintiff, to perpetrate such a fraud and benefit therefrom. This Court should dismiss the derivative claims on JNOV to prevent this abuse of the judicial process.

For a plaintiff to bring a derivative action, Rule 23(b) requires that the plaintiff "allege with particularity the efforts, if any, made by the plaintiff to obtain the action he desires from the directors or comparable authority." (Emphasis added.) As the court explained in Carolina First, "[a]t a minimum, a demand must identify the alleged wrongdoers, describe the factual basis of the wrongful acts and the harm caused to the corporation, and request remedial relief. . . . Such a pre-suit demand must be alleged, not in a conclusory fashion, but through particularized allegations." 343 S.C. at 189, 539 S.E.2d at 409-10. The shareholder must make "an earnest, not a simulated, effort with the managing body of the corporation, to induce remedial action on their part, and this must be made apparent to the court." Id. at 186, 539 S.E.2d at 408.

Plaintiffs have argued that two demands were made on the Board, but neither is sufficient in law. The first—Plaintiffs' Exhibit 53—was made by a person other than the Plaintiffs, Catherine Templeton. The uncontradicted evidence shows that Mrs. Templeton subsequently settled her claims with the Defendants. In fact, Plaintiffs asked Tom Graham to confirm that he has no evidence this lawsuit was in any way filed on behalf of Mrs. Templeton, which he did. No evidence demonstrated any support by Mrs. Templeton for Plaintiffs' current lawsuit. For

these reasons, Mrs. Templeton's letter of February 26, 2009 is not a derivative demand on which these Plaintiffs can base their derivative claims.

Although Plaintiff Walbeck brought this suit initially, he never claimed to have made any demand on the Assembly Board, and he should be dismissed as a derivative Plaintiff. Plaintiffs make a poor effort to rescue their claims by asserting what they call the "Adkins Demand," Plaintiffs' Exhibits 54 and 57. In these two letters to the Board's attorney, Adkins never goes further than to request that he give an opinion as to the Assembly's rights. The allegations of the complaint, at all stages, have been equally vague regarding these "demands." Plaintiffs repeatedly failed to describe specific wrongful acts, to identify the specific harm caused to the corporation, and to request any relief. These "demands" are therefore an improper basis for a derivative suit.

Knowing their "demands" are legally insufficient, Plaintiffs have also pleaded and argued that demand was futile. If alleging futility, the shareholder must demonstrate "why the Board of Directors should not be allowed to decide whether to institute litigation." Id. at 188, 539 S.E.2d at 409. Plaintiffs have not pleaded or otherwise provided an explanation as to why the Board was not qualified to make that decision.

In prior versions of their complaint, up through the Third Amended Complaint filed January 2, 2014, Plaintiffs alleged and verified that additional demands on the Assembly "would now be futile as The Assembly has failed to act to protect the rights of The Assembly and its members...." (Emphasis added.) This bare and wholly conclusory allegation falls far short of a demonstration of specific facts showing why the Assembly Board should not have been allowed to make the litigation decision.

The actual evidence at trial revealed much conflict among Assembly members as to whether they wanted ownership of the Creek Club docks, the boating facilities, or the Creek Club itself when they were presented with opportunities to own them at various times over the years. It was very reasonable for the Assembly's Board to exercise its business judgment to refuse to pursue the claims Plaintiffs now allege, particularly in light of Plaintiffs' asserted costs and fees associated with pursuing this action.

In the most recent Fourth Amended Complaint, the words "would now be futile" have become "would have been futile." By making this change, derivative Plaintiffs concede at the very least that demand is no longer futile because the Assembly accepted their claims on the eve of the mistrial of this case in January 2014. Immediately thereafter, the Assembly gained ownership of the property which the derivative Plaintiffs claimed. As a result, the nature of the relief sought against the Defendants has changed substantially—substantially enough that the Plaintiffs' claims are now new claims. No demand ever has been presented to the Assembly to press the new claims which Plaintiffs here allege arose out of the settlement, including claims for damages based on the cash price of the settlement, the alleged leasehold value of the Creek Club building, and the alleged price of the buyout of years 21-30 of that lease. Plaintiffs admitted in pre-trial deposition testimony that all their monetary damages arose post-settlement—an admission directly contrary to their verified allegations. Adkins July 9, 2014 Dep. 60:13-61:11 (Exhibit A hereto); Walbeck July 9, 2014 Dep. 29:8-30:14 (Exhibit B hereto). Moreover, the Assembly in fact agreed to assist in the plaintiffs' prosecution of claims. The prosecution of these claims, therefore, cannot be through a proper derivative action.

Although Plaintiffs have argued that the developers had a "veto power" over Board actions which would have rendered demand futile, they could not identify any decision regarding

this litigation (or any other matter) made by the Board which the existence of such power actually influenced.

Under South Carolina law, the purpose of these strict demand requirements for derivative suits is to ensure that boards of directors retain control of the acts taken on their corporations' behalf. Carolina First, 343 S.C. 176, 185-87, 539 S.E.2d at 407-08. The Assembly Board is infinitely better placed to balance the interests of all its members than derivative Plaintiffs, who represent only one among many points of view with respect to the claims at issue here.

In addition, a plaintiff bringing a derivative action must "fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation." Rule 23(b)(1), SCRCP. If the plaintiff does not, "[t]he derivative action may not be maintained." Id. In Waller v. Seabrook Island Property Owners Association, 300 S.C. 465, 468, 388 S.E.2d 799, 801 (1990), the South Carolina Supreme Court held that the mere fact that the plaintiffs were property owners in a large or populous development did not, in and of itself, qualify them to fairly and adequately represent the interests of the other property owners. Rather, the plaintiffs "must demonstrate they have no interest antagonistic to or in conflict with the interest of the unnamed members of the class such that they are fairly and adequately able to protect the interest of the purported class." Id.

The federal rule is identical to the South Carolina rule on this point. See Fed. R. Civ. P. 23.1(a). In Kuzmickey v. Dunmore Corp., 420 F. Supp. 226, 230-31 (E.D. Penn. 1976), a court interpreting the fair and adequate representation requirement held that where a single shareholder owning 16 percent of the stock in a corporation could not claim to fairly and adequately represent the interests of any "similarly situated" shareholders. Accord Rothenberg v. Security Management Co., Inc., 667 F.2d 958, 962 (11th Cir. 1982) (dismissing derivative action and

noting that named plaintiff owned only 2.04% of outstanding stock). To construe the rule otherwise would be to render unnecessary the language of the rule concerning representation of similarly situated shareholders. Kuzmickey, 420 F. Supp. at 230-31.

The derivative Plaintiffs cannot adequately represent all of the homeowners' legal interests, which require careful balancing, not just an assumption that it is best for the Assembly to own property. The evidence at trial revealed a wide range of opinion within the Assembly membership about whether outright ownership was in the Assembly's best interests. To maintain their derivative action, Plaintiffs must meet their burden of proof to establish a lack of antagonistic or conflicting interests. Waller, 300 S.C. at 468, 388 S.E.2d at 801. Derivative Plaintiffs' particular interests are protected by the Assembly's fiduciary duties to them, for breach of which they can bring an action against the Assembly.

The derivative Plaintiffs have taken positions in this litigation clearly contrary to the Assembly's interests. They have repeatedly argued to this Court that the easement in favor of the Assembly granting perpetual access to the Creek Club docks and boating facilities was invalid or that it was not perpetual—despite the stipulation by the Assembly's attorney at the inception of the mistrial of this case, and by counsel for 148 Civitas in prior motion filings, that the easement was perpetual and that it was in the Assembly's interests for it to be so. Thus, all parties to the easement agreed in court that the easement was valid and perpetual; the individual plaintiffs argued the opposite.

Defendants respectfully pray that the Court grant judgment notwithstanding the verdict on the derivative Plaintiffs' claims in this action for failure to comply with the requirements for derivative actions.

2. Plaintiffs' claims are barred by the applicable statutes of limitations (Grounds 3 through 6).

Plaintiffs' claims are subject to a three-year limitations period. See S.C. Code § 15-3-530(1), (2) and (5) (state-law claims); 15 U.S.C. § 1711(a)(2) (ILSA). Walbeck's individual claims are time-barred as to Defendants I'On Company, I'On Club, and I'On Group, because they accrued before December 22, 2007, and as to Defendant I'On Realty (which was not named in the initial action) because they accrued before March 8, 2008. The derivative claims are time-barred because they accrued before February 7, 2009, and the Assembly's own action is time-barred because its claims accrued before February 26, 2011.

The statute of limitations had run years before Plaintiffs instituted their action. No reasonable factfinder could conclude, as the jury did in this case, that the Plaintiffs' claims as to both the Creekside Park and the Community Dock accrued when the sale of Lot CV-6 to 148 Civitas, LLC closed on August 5, 2009. Defendants are therefore entitled to judgment notwithstanding the verdict.

Of particular note, even without disregarding the jury's verdict regarding the date of accrual of the claims, the Assembly did not become a plaintiff in this matter until February 26, 2014. If the derivative Plaintiffs' claims are dismissed for failure to properly plead and prove a derivative action, as is proper, the Assembly's own claims are thus time-barred.

The evidence is uncontroverted that at no time during the discussions with the Assembly leading up to the sale of Lot CV-6 to 148 Civitas, LLC in 2009 was there any discussion of conveying a park, and certainly not Lot CV-6 as a whole, which was being sold along with the adjacent Lot 275. Rather, the representations about conveying anything to the Assembly related to conveying the docks and boat ramp. For the jury to find specifically, as it did in response to

jury questions 2, 4, and 6, that the date that claims regarding ownership of a "Creekside Park" accrued was August 5, 2009 is completely untenable.

More generally, to reach the conclusion it did, the jury had to ignore the following uncontradicted evidence regarding when the Assembly knew or should have known it did not own Lot CV-6:

- The Assembly Board has operated under the February 9, 2000 Recreational Easement and Agreement to Share Costs since the docks were completed, which was itself sufficient notice to the I'On Assembly that the I'On Company did not intend to give the dock and boating facilities to the Assembly outright.

- On August 15, 2000, Lot CV-6 was conveyed of record from the Company to the Club which operated the Creek Club as a private for-rent facility from the outset once construction was complete.

- On April 10, 2001, a Certificate of Occupancy was issued for the I'On Creek Club building on Lot CV-6, indicating construction was complete. It is likewise uncontroverted that all docks in I'On were complete by this date.

- By December 3, 2003, non-developer homeowners constituted a majority of the Assembly Board and the entire Finance Committee, which analyzed expenses including payments to I'On Club reflected on annual budgets for rental of the Creek Club and for usage of the Creek Club dock. Moreover, the Finance Committee included Andy Gowder, Ed Clem, Annie Bonk, and Chairperson Libby Eble, all of whom received the 1998 Property Report prior to purchasing their lots.

- On February 12, 2004, at an Assembly Board meeting (with non-developer homeowners constituting a majority of the Assembly Board), Vince Graham told those in attendance that the I'On Club owned the dock at the Creek Club and referenced the easement agreement. Attendees included Andy Gowder, Gaye Joyner, and Libby Eble (each members of the Board), Ed Clem, and Annie Bonk (both Finance Committee members at that time and Clem later became Finance Committee Chair, a Board Member, and President of the Board), all of whom received the 1998 Property Report prior to purchasing their lots.

- By August 5, 2004, the Assembly had engaged its own attorney (Rick Brownyard) to advise it regarding the easement agreement and replace it if advisable. The same persons were in attendance.

- On November 11, 2004, the Board considered the possibility of the Creek Club being sold as a private residence. Ms. Bonk and Ms. Joyner, both recipients of the 1998 Report, were present.

- On March 23, 2005, the Board discussed its attorney's drafting effort and the fact that Olde Park residents contracted for access to the boating facilities years before. Ed Clem and Annie Bonk, both recipients of the 1998 Report, were present.

- On April 27, 2005, the Board again discussed the potential sale of the Creek Club and access to the boat ramp by easement. Ed Clem, Annie Bonk, and John White, all recipients of the 1998 Report, were present.

- On July 27, 2005, with Ed Clem and John White present as board members, the Board advised attendees that the Creek Club is the property of the I'On Club – and that the Assembly is not obligated to purchase it once development of the neighborhood is complete.

- On December 7, 2005, the last member of the Assembly Board affiliated with the I'On Company left the Board. As of this date, all documents described above were in the Assembly's records and available to the new Board on December 7, 2005. Ed Clem and John White, both recipients of the 1998 Property Report, were members of the Board. Clem continued on the Board and continued on the Finance Committee.

- During the April 25, 2007 Board Meeting, with Ed Clem and Libby Eble present (both Finance Committee members, and Clem a Board Member), the Board entertained discussion of the Assembly potentially purchasing the Creek Club and the boating facilities and overflow parking lot for $1,500,000.

- During the May 18, 2007 Board Meeting, with Ed Clem present, the Board entertained discussion of the Assembly potentially purchasing the Creek Club and adjacent parking lot for $700,000. The same proposal was considered during ensuing meetings, including August 22, 2007 with Mr. Clem and Ms. Bonk and Ms. Eble present.

- By the end of October 2007, the Assembly Board had established a Boating Committee whose stated purposes and responsibilities included "utilization and interpretation of the easement between the I'On Assembly and the I'On Company and [its] subsidiary organizations including the I'On Club." Plaintiff Adkins was a charter member.

- Each year, both before and over the handover of control, when it budgeted, the Assembly budgeted funds to pay for a Creek Club dock usage fee and for rental of the Creek Club for Assembly meetings and events. The dock payment was required by and made pursuant to the 2000 Recreational Easement. These two budget line items put every member of the Assembly on notice each year that it did not own the docks and that the easement was in place.

- Notices of annual meetings, including draft budgets, were provided to all I'On homeowners each year as required by law. Draft budgets included the Creek Club dock usage fee and Creek Club rental fee. Thus, on an annual basis, all homeowners in I'On, including Walbeck and Adkins, were made aware that they did not own the docks or

Creek Club. Walbeck and Adkins received the mailings and attended annual meetings where the proposed budgets were adopted.

Likewise, Walbeck's individual claims are based on the contention that, pursuant to the 1998 Property Report, the I'On Company was supposed to convey the "Creekside Park" and "Community Dock" "upon completion of construction." Walbeck plainly knew or should have known that the Creek Club building—or any other planned improvement to Civic Lot 6—and the docks in I'On were completed by April 10, 2001. Walbeck's title deed (Defendants' Exhibit 145) is explicitly subject to the I'On Declarations and all documents referenced therein, and to the recorded plat which includes Lot CV-6. Any claim which Walbeck had accrued at the latest on April 10, 2001, and no reasonable factfinder could conclude otherwise.

A claim accrues when the injured party knew or should have known by the exercise of "reasonable diligence" of the existence of a cause of action. Martin v. Companion Healthcare Corp., 357 S.C. 570, 575, 593 S.E.2d 624, 627 (Ct. App. 2004). This test is objective, not subjective. Id. The claim accrues not when advice of counsel is sought or a full-blown theory of recovery is developed. Id. at 576, 593 S.E.2d at 628 (emphasis added). Rather, a claim arises when the circumstances of the case would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 395, 593 S.E.2d 183, 187 (Ct. App. 2004). Thus, the legal issue is whether and when each Plaintiff knew or should have known of the existence of a cause of action.

Even if the Assembly has cognizable claims for breach of fiduciary duty, breach of contract, or negligent misrepresentation for the conduct of its formerly developer-controlled Board, such claims must be filed promptly after the homeowners assume control. In Magnolia North Property Owners' Association, Inc. v. Heritage Communities, Inc., 397 S.C. 348, 725

S.E.2d 112 (Ct. App. 2012), the Court of Appeals equitably tolled a limitations period for a POA to bring a lawsuit because the POA was composed entirely of officers of the developer until eight months before suit was commenced. The Court focused on when "the property owners gained control" over the POA as the time of accrual. 397 S.C. 348, 725 S.E.2d 112. In the present case, unlike in Magnolia, there were homeowners with their own fiduciary duties to the association on the Board—and in fact comprising a majority of the Board—even before "control" of the POA was transferred. Under Magnolia, it is proper to hold that claims for conduct of a POA board of directors while it was controlled by developer representatives accrue at the time control is handed over; in this case, on December 3, 2003. Even under Plaintiff's theory, control passed in December of 2005.

On the record of the trial of this case, no reasonable factfinder could conclude that the Plaintiffs were not on notice of the existence of a potential claim until August 5, 2009. Because the evidence actually demonstrates that the claims accrued, as to both the "Community Dock" and the "Creekside Park," more than three years before each Plaintiff filed suit, Defendants are entitled to judgment notwithstanding the verdict on the statute of limitations. In the alternative, because the verdicts do not distinguish between the damages awarded regarding the "Community Dock" and the damages awarded regarding the "Creekside Park," if the Court finds that Defendants are entitled to JNOV on statute of limitations grounds on the claim regarding a "Creekside Park," Defendants are entitled to a new trial regarding the "Community Dock" claim only.

Although the Plaintiffs suggest that the I'On Club ownership and operation of the property as a private club should be of no moment or should excuse them from recognizing a potential claim, that argument is unavailing for several reasons. First, the Assembly Board's

budgeting and payment of fees and its various discussions over time described above regarding ownership of the Creek Club trigger notice of any potential claims irrespective of who actually owns the property at the time. Moreover, though the Plaintiffs and Assembly now assert that the Club and Company were one and the same, the Assembly's minutes reveal that it has long been informed of and understood the distinction between the entities. See Assembly minutes dated February 12, 2004 (Defendants' Exhibit 108); August 5, 2004 (Exhibit 109); February 23, 2005 (Exhibit 114); March 23, 2005 (Exhibit 115); April 27, 2005 (Exhibit 116); July 27, 2005 (Exhibit 118); August 24, 2005 (Exhibit 119); December 7, 2005 (Exhibit 121); August 22, 2007 (Exhibit 127); September 26, 2007 (Exhibit 128); October 24, 2007 (Exhibit 129); January 15, 2009 (Exhibit 132).

The jury found that the parties intended to create a sealed instrument when Walbeck and the Defendants executed Walbeck's I'On Lot Purchase Agreement, resulting in the application of a twenty-year statute of limitations to Walbeck's breach of contract claim. The evidence is insufficient, however, to support the conclusion that it was the parties' intent that the Agreement be treated as a sealed instrument. See Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548, 550 (Ct. App. 2005); Treadaway v. Smith, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996); S.C. Dep't of Soc. Servs. v. Winyah Nursing Homes, Inc., 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984). No testimony from any party revealed any special intent or knowledge that the language of the document would create a special type of instrument, or that in creating such special type of instrument, the parties meant to prolong the limitations period. South Carolina Courts are careful not to create a legal scheme under which the twenty-year statute becomes the default limitations period for contract claims. Carolina Marine Handling, Inc. v. Lasch, 363 S.C.

169, 175-76, 609 S.E.2d 548, 552 (Ct. App. 2005). This Court should therefore grant judgment notwithstanding the verdict regarding the creation of a sealed instrument.

Because the jury found that the claims were not-time barred, the equitable doctrines of estoppel and tolling are not presently before the Court. Should the Court reach those issues in its analysis, Defendants hereby incorporate the arguments advanced on those issues in their memorandum in support of their motion for directed verdict.

3. Walbeck lacked standing because all losses he sought to remedy are losses to the Assembly (Ground 7).

Walbeck's own testimony revealed that he has no standing to recover the relief he sought. Walbeck testified that he wanted $50,000 in individual damages, because that is the amount by which he would have reduced his purchase price had he known that the Creekside Park and Community Dock, as he claims to have understood those terms, would not be deeded to the Assembly as promised—in other words, that is the value he places on his share of the Assembly's ownership of the amenities he claims. These damages are not unique to him, but are simply his share in the perceived loss to the Assembly, not to himself. Tim Eble, another homeowner, likewise gave uncontradicted testimony that the amenities which the Plaintiffs claim do not benefit him directly at all, but benefit the Assembly.

Walbeck has no damages as an individual plaintiff. An action seeking to remedy a loss to a corporation is a derivative action. Brown v. Stewart, 348 S.C. 33, 49, 557 S.E.2d 676, 684 (Ct. App. 2001). "A shareholder may maintain an individual action only if his loss is separate and distinct from that of the corporation. A shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder." Id. The latter sentence describes Walbeck's claim exactly; the gravamen of his suit is a perceived injury to the Assembly, not to himself. His right to walk on or use the docks and

marshwalk on Lot CV-6 is derived from his membership in the Assembly, which is what gives him access to these amenities.

South Carolina courts have further recognized sound reasons for this rule, all of which apply here: "(1) it prevents a multiplicity of lawsuits by shareholders; (2) it protects corporate creditors by putting the proceeds of the recovery back in corporations; (3) it protects the interests of all shareholders by increasing the value of their shares, instead of allowing a recovery by one shareholder to prejudice the rights of others not a party to the suit; and (4) it adequately compensates the injured shareholder by increasing the value of his shares." Id. at 51, 557 S.E.2d at 685.

Here, any wrongful diminution in value of Walbeck's lot would immediately be rectified through an increase in the value of Walbeck's shares in the Assembly. Walbeck thus lacks standing to bring such claims as an individual. To the extent that Walbeck seeks either money damages for claims based on their membership of the I'On Assembly, he lacks standing to bring such claims individually. Defendants are therefore entitled to judgment notwithstanding the verdict on his claims.

4. Plaintiffs have no breach of fiduciary duty claim recognized under South Carolina law (Grounds 8 and 9).

The fiduciary duty of a developer to a homeowners' association is limited to that recognized in the line of cases including Concerned Dunes West Residents v. Georgia-Pacific Corp., 349 S.C. 251, 562 S.E.2d 633 (2002) and Goddard v. Fairways Development G.P., 310 S.C. 408, 426 S.E.2d 828 (Ct. App. 1993). These cases recognize a very limited duty of developers that, when they convey common areas to a property owners' association, they must either convey such areas in good repair or provide sufficient funds to perform any needed repairs. This Court's rulings on directed verdict and charge to the jury expanded the scope of

this duty to create a general fiduciary duty of developers to "act in the best interests of property owners while controlling the development's property owners association." This expanded scope of the duty is nowhere recognized in existing law; therefore, the Court should now grant Defendants' motion for JNOV on the Assembly's breach of fiduciary duty claim.

South Carolina courts have been very restrictive in recognizing the existence of fiduciary duties. See Hendricks v. Clemson Univ., 353 S.C. 449, 459, 578 S.E.2d 711, 716 (2003) ("Historically, this Court has reserved imposition of fiduciary duties to legal or business settings, often in which one person entrusts money to another, such as with lawyers, brokers, corporate directors, and corporate promoters.")

The facts of Goddard and Concerned Dunes West demonstrate the narrow scope of the recognized developer fiduciary duty. In Goddard, the developer of a 90-unit PUD "unload[ed]" control of all common areas to the HOA after selling just five residential units. Goddard, 310 S.C. at 414-16, 426 S.E.2d at 832-33. This small number of homeowners was left to bear the costs of maintaining all common areas without a plan to establish a reserve or fund the Association until assessments were adequate to cover maintenance costs. The Goddard court, finding evidence that the common areas were substandard at the time of transfer, recognized a fiduciary duty in that context and found the developer liable for the cost of repairs.

In Concerned Dunes West, the transfer of common areas to the HOA was made within a week of the developer discovering that the PUD's roads were in need of repairs. No repairs were made at the time of transfer; pursuant to the POA's covenants, the POA was responsible for maintenance and repairs. Concerned Dunes West, 349 S.C. at 255, 562 S.E.2d at 635-36. The Supreme Court confirmed the narrow duty it recognized in Goddard: "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. at 257, 562 S.E.2d at 637.

The limited duty between a developer and a homeowners association should not be extended here. Plaintiffs contend that the duty recognized by Goddard and Concerned Dunes West is to be construed as a blanket fiduciary duty of a developer to exercise control over a POA in the best interests of the homeowners. The Goddard court, however, refused to apply such a duty. It held rather that the conduct of directors of a POA, even where, as in Goddard, the directors are developers, must be judged by the "business judgment rule," such that "absent a showing of bad faith, dishonesty, or incompetence, the judgment of the directors will not be set aside by judicial action." 310 S.C. at 414, 426 S.E.2d at 832. The jury in this case specifically rejected all claims of fraud or unfair and deceptive trade practices; therefore it did not find bad faith.

Nor are Defendants in the position of corporate promoters owing promoter fiduciary duties. As the South Carolina Supreme Court recognized last week in Hansen v. Fields Company, LLC, ___ S.C. ___, ___ S.E.2d ___, 2014 WL 4087772 (August 20, 2014), a corporate promoter acts before a corporation comes into existence; thus, for instance, a corporate promoter is not an agent, because he cannot be an agent of a non-existent corporate principal. The uncontroverted evidence shows that the I'On Assembly has existed as a corporate entity since June 4, 1998, and thus the developer which created it ceased to be a corporate promoter of it on that date, well before the issues in this case arose.

Plaintiffs also advance a more limited position: that the fiduciary duty to provide common elements that are not substandard and that are in good repair is expandable into a duty to provide promised common elements. This ignores the plain meaning of Concerned Dunes

West's statement of the rule, which is that "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. at 257, 562 S.E.2d at 637 (emphasis added).

The two situations are distinguishable from a public policy perspective. Where a developer gives substandard common elements to a homeowners' association under circumstances like those in Goddard and Concerned Dunes West, there may often be no underlying contract or representation on which the homeowners' association can base a claim against the developer. Recognition of a separate legal duty may therefore be necessary to protect the homeowners' association from being stuck with a substantial repair liability. But in cases such as this one, where homeowners' associations seek to enforce alleged promises by developers to provide particular common elements, other preexisting causes of action such as fraud, negligent misrepresentation, and breach of contract are available. To recognize a new breach of fiduciary duty claim to provide all promised common elements under the present circumstances is both unnecessary and contrary to the South Carolina public policy of restrictive recognition of fiduciary duties.

This Court should grant JNOV in favor of Defendants and thereby decline to extend the developer fiduciary duty beyond that recognized in Goddard and Concerned Dunes West.

5. Defendants are entitled to JNOV on Plaintiffs' claim for breach of contract (Grounds 10 and 11).

The jury returned a verdict in favor of the I'On Assembly for breach of contract. The I'On Assembly was never party to any contract with the I'On Company regarding ownership of Lot CV-6, nor in privity with any such party, and cannot therefore sustain a direct action for breach of contract. Goode v. St. Stephens United Methodist Church, 329 S.C. 433, 445, 494

S.E.2d 827, 833 (Ct. App. 1997). Thus, the Assembly's only possible claim is as an intended third-party beneficiary of Walbeck's purchase contract. The South Carolina courts have repeatedly held that only parties intended to be directly benefitted by a contract can bring an action to enforce it as third-party beneficiaries. Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). "In the absence of a clear intent to benefit the third person, he cannot sue on the contract." TC X, Inc. v. Commonwealth Land Title Ins. Co., 928 F. Supp. 618, 623 (D.S.C. 1995).

The language of the contract fails to support any such conclusion of a direct intent by the parties to benefit the Assembly in entering into it. A reasonable factfinder can only conclude that any benefit to the Assembly was incidental. Nor did Plaintiffs introduce any extrinsic evidence that any party intended to confer any specific benefit on the Assembly by entering into the purchase contracts. Rather, as facts adduced at trial revealed, the result to the Assembly from the contracts at issue very well may be considered a burden to the Assembly, not a benefit. The jury's finding that the Assembly could sustain a third-party breach of contract action is therefore untenable, and Defendants are entitled to JNOV on the Assembly's breach of contract claim.

Defendants are likewise entitled to JNOV on Walbeck's individual contract claim, which is based entirely on the meanings of the terms "Creekside Park" and "Community Dock" as used in his purchase contract and the 1998 Property Report. Tim Eble testified that the language of the Property Report had "no ambiguity" about what the homeowners were supposed to get. Lea Ann Adkins likewise testified that to her, there is no doubt what "Creekside Park" and "Community Dock" in the Property Report refer to. It is thus improper for the Plaintiffs to ask the finder of fact to apply extrinsic evidence to create an ambiguity in Walbeck's contract to

allow them to alter the plain meaning of the contract language by incorporating extrinsic evidence of the meanings of these terms.

Furthermore, the verdict on Walbeck's breach of contract claim is inconsistent with the verdict on his ILSA claim. Both are based on the same language and rely on the same document, the 1998 Property Report. For the jury to award $10,000 in damages for breach of contract and $1.00 under ILSA is irreconcilable. The could should therefore grant JNOV, or in the alternative grant a new trial nisi remittitur for a nominal $1.00 verdict on Walbeck's breach of contract claim.

6. Defendants are entitled to JNOV on Walbeck's ILSA claim (Grounds 12 through 14).

Walbeck's ILSA claim fails as a matter of law because he never established that ILSA actually applies to I'On. In particular, Walbeck never put forth evidence demonstrating that more than 100 lots in I'On were sold directly by the developer to individual purchasers, as opposed to builders or developers who built and resold. See 15 U.S.C.A. § 1702(a). Walbeck simply attempted to rely on the fact that Defendants actually complied with ILSA with respect to him and other buyers as his evidence that they were required to do so. There is, however, no legal support for making such assumption absent proof; rather, the plaintiff in an ILSA action bears the burden of proving that he qualifies for ILSA protection, as this Court correctly charged the jury without objection from Plaintiffs.

Walbeck's claim also fails for lack of reliance. Walbeck could not have relied on the extrinsic documents which now form the basis of his interpretation of the meanings of the terms "Creekside Park" and "Community Dock" in making his purchase, because by his own admission he had never seen them at that time. Because there is no other evidence of representations made to him that contradict the plain language of the Property Report, he lacks a cognizable ILSA claim.

A South Carolina federal district court addressed a similar issue in Gibbes v. Rose Hill Plantation Development Co., 794 F. Supp. 1327 (D.S.C. 1992). In that case, Plaintiffs contended a violation of the ILSA on the ground that the "stables" and "docks," which had been promised conveyance to their homeowners' association in two ILSA property reports, were supposed to be a fifty-two acre "Equestrian Center" including a polo field and floating docks. Id. at 1335. Developer actually conveyed a 17.24 acre stable complex, without a polo field, and non-floating docks. Id. at 1331, 1335. The Gibbes court granted summary judgment to the defendants as to plaintiffs' claims on false statements in the property report, pursuant to 15 U.S.C. § 1703(a)(1), because the property report in question did not define the terms "docks" or "stables" or specify their size or configuration, and the developer did in fact transfer docks and stables to the homeowners' association; therefore, the property reports at issue neither misstated nor omitted any material fact on such points. Id. at 1335-36. Likewise here, the Assembly received a "Creekside Park" and "Community Dock" in the ordinary meaning of those terms, which the property report did not further define. In fact, the Gibbes holding is even more appropriate here where Plaintiffs somehow contend that the reference to "Community Dock" actually entitles them to the two docks at Civic Lot 6.

Walbeck attempted to circumvent this rule at trial by citing oral representations by agents of Defendants. In Gibbes, one plaintiff alleged that he had been specifically told that the stables promised in the property report would be of a certain size, and was found to have established a genuine issue of fact for trial under 15 U.S.C. § 1703(a)(2) on that basis. Gibbes, 794 F. Supp. 1336-37. Although Walbeck testified at length about oral representations supposedly made to him by real estate agents of Defendants regarding the Creek Club and docks, he admits that no one ever told him that the I'On Assembly would receive ownership of Lot CV-6. Rather, he

assumed that since CV-6 was a civic lot on plans of I'On, it would be owned by the Assembly—an assumption on his part with no basis in any representation ever made by Defendants, who have consistently stated that civic lots, such as those which are now home to schools and churches, can be privately owned. Walbeck cannot point to a statement which is a specific misrepresentation by Defendants in dealing with him as a purchaser regarding Assembly ownership of Lot CV-6. His ILSA claim therefore fails as a matter of law, and Defendants are entitled to JNOV thereon.

7. Defendants are entitled to JNOV on Plaintiffs' negligent misrepresentation claim (Grounds 15 and 16).

A plaintiff must prove the following elements to establish a claim for negligent misrepresentation: (1) defendant's false representation to the plaintiff; (2) defendant's pecuniary interest in the representation; (3) defendant's duty of care to communicate truthful information to the plaintiff; (4) breach of the duty; (5) Plaintiff's justifiable reliance on the representation; and (6) plaintiff's pecuniary loss as a proximate result of his reliance on the representation. Turner v. Milliman, 392 S.C. 116, 123, 708 S.E.2d 766, 770 (2011).

Significantly, a forward-looking statement—such as the Defendants' statement at the time of the 1998 Property Report that they would provide certain amenities to the Assembly—is not ordinarily actionable as a negligent misrepresentation unless the plaintiff can prove that the defendant promised to do a thing with no intention at the time of keeping such promise. A mere breach of contract does not constitute fraud. Turner v. Milliman, 392 S.C. 116, 123, 708 S.E.2d 766, 770-71 (2011). There is no evidence that Defendants did not intend to convey a "Community Dock" and a "Creekside Park" to the Assembly, as part of Phase 2 of I'On, either at the time of the preparation of the Property Report or at the time of its presentation to Walbeck. Whether or not Defendants' intentions later changed, without deception at the time the statement

was made there can be no negligent misrepresentation. Furthermore, Walbeck's position on this issue again requires him to rely on statements in documents he admits he did not see until years later, as described in more detail below.

The Assembly cannot establish a claim for negligent misrepresentation as a matter of law because it cannot show that it actually relied on any false representation of the Defendants or suffered any damages as a result. The record is replete with correct representations to the Assembly of the fact that it did not own Lot CV-6 from 2001 through 2009, as well as offers to the Assembly to purchase the lot—not to receive it for free. The only allegedly negligent misrepresentations are those which Defendants made in 2009 about whether a sale of CV-6 to 148 Civitas would or would not take place, or about giving the docks and boat ramp to the Assembly. All these representations were gratuitous and induced no reliance. The Assembly has failed to show how it relied, or how any of its conduct would have differed, or why any damages it incurred were a result of its reliance on a negligent misrepresentation to it by Defendants in 2009. If the Assembly's conduct in reliance was forbearance in filing suit, that may be relevant to the Court's analysis of equitable estoppel of the limitations period. But the decision whether to file suit is about redress for a preexisting legal right—not the creation of a new legal right. No actionable misrepresentation occurred in 2009. Defendants are therefore entitled to JNOV on this claim.

Walbeck claims negligent misrepresentation based on supposed reliance on extrinsic evidence which he admits he never saw until years after he purchased his lot in I'On. He could not have relied on the documents, such as the I'On Impact Assessment and ORCM permit application, which now form the basis of his claimed interpretation of the meanings of the terms "Creekside Park" and "Community Dock," because he admits he never saw them before making

his purchase decision. Nor was any reliance on alleged representations to him by I'On Realty agent Bill Orange justified, because his contract explicitly states that he had no right to rely on any representations except those contained in his contract or the Property Report.

The only question properly put to the factfinder was whether the Assembly received a "Creekside Park" and a "Community Dock" within the ordinary meanings of those terms—not what those terms meant according to documents which Walbeck never saw. To the extent the jury considered such evidence to find a negligent misrepresentation, such consideration was improper. Based on the evidence properly before the factfinder on this question, the only reasonable conclusion is that no reliance on the alleged negligent misrepresentation to Walbeck took place. This Court should therefore grant JNOV for Defendants on such claim.

8. Defendants' declaratory judgment claims regarding the validity and perpetuity of the 2000 Recreational Easement should have been granted as a matter of law. (Grounds 17 and 18).

Plaintiffs filed a separate motion seeking a judgment declaring the 2000 Recreational Easement invalid on August 11, 2014. Defendants file contemporaneously herewith a response to that motion, and hereby incorporate that response as their argument in favor of judgment as a matter of law that the 2000 Recreational Easement was in fact valid and that the portion pertaining to use of the Boating Facilities was perpetual.

During the trial, Plaintiffs repeatedly cited the supposed invalidity of the easement, or its supposed termination in the year 2030, to support their claim for breach of fiduciary duty. Had that issue been determined as a matter of law in advance, or had the jury been instructed that it had been determined prior to deliberation, Plaintiffs' argument would have been significantly undercut. The result of the Court's failure to rule on the issue, to make evidentiary rulings accordingly, and to instruct the jury thereon is substantial unfair prejudice to the Defendants.

Defendants are entitled to judgment notwithstanding the verdict on this claim, and to a new trial absolute on the remaining claims as a result of such prejudice.

9. Plaintiffs' damages awards are based wholly on speculation or conjecture. (Grounds 19 through 24).

While mathematical certainty of damages is not required, the evidence "should be such that a court or jury can reasonably determine an appropriate amount. . . . Neither the existence, causation, nor amount of damages can be left to the judge's or jury's conjecture, guess or speculation. . . . Bald allegations are insufficient to establish a claim for diminution in value, and the evidence must not be speculative as to the amount of the alleged diminution." Yadkin Brick Co. v. Materials Recovery Co., 339 S.C. 640, 646, 529 S.E.2d 764, 767 (Ct. App. 2000).

The jury did not base its damages awards to the Assembly, of $1 million for breach of contract and negligent misrepresentation and $1.75 million on breach of fiduciary duty, on the evidence of damages presented by any party or any comprehensible adjustment to that evidence. Thus the amount of these damages awards was based solely on the jury's speculation or conjecture, is improper, and is subject to judgment notwithstanding the verdict.

Walbeck has no evidence, expert or otherwise, supporting a claim of diminution in value of his lot, except his own purely speculative guess which has no basis in fact or logic. Walbeck asked for $50,000 in damages on this basis, but his total purchase price was $61,500. He admitted that pricing in I'On at the time he bought was "take it or leave it," and would not say that he would not have bought in I'On if he had known that the Assembly would not own the "Creekside Park" and "Community Dock" as he claims to have understood those terms. This testimony is plainly irrational, illogical, and speculative.

Furthermore, Walbeck was only awarded $20,000 on his negligent misrepresentation claim, $10,000 on his breach of contract claim, and $1.00 on his ILSA claim—figures which

have no basis in the record. Defendants are therefore entitled to judgment notwithstanding the verdict on these claims on the ground that the damages awards are based wholly on speculation or conjecture.

10. The Court erred as a matter of law in finding that Defendants are amalgamated. (Ground 25).

The Court found as a matter of law before charging the jury that all Defendants are liable for Plaintiffs' claims as a single unit under Plaintiffs' "amalgamation" theory. As Plaintiffs presented it, this is a novel theory under South Carolina law having different requirements than the more established and familiar alter ego theory. In particular, as Plaintiffs would have it, amalgamation differs from alter ego by not requiring proof of resulting fraud, wrong, or fundamental unfairness; total domination and control is sufficient. This is an erroneous interpretation of South Carolina law arising from some confusion in the existing opinions on the issue.

The existing amalgamation cases trace back to a single opinion, Kincaid v. Landing Development Corp., 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986), which cites no authority and upholds the trial court summarily. Of the cases which cite Kincaid, one of them, Pope v. Heritage Communities, Inc., 395 S.C. 404, 418, 717 S.E.2d 765, 772 (Ct. App. 2011), did not squarely present the issue, because the question of whether the trial court erred by not requiring "fraud, wrong, or fundamental unfairness" to find amalgamation was found not to have been preserved for appeal. In the other, Mid-South Mgmt. Co. v. Sherwood Development Corp., 374 S.C. 588, 605, 649 S.E.2d 135, 144 (Ct. App. 2007), the Court found no shared liability under any theory. There is thus no case squarely holding that "amalgamation" is a separate theory from alter ego under South Carolina law.

The corporate form may be disregarded only where equity requires. Hunting v. Elders, 359 S.C. 217, 223-24, 597 S.E.2d 803, 806 (Ct. App. 2004). The circumstances under which this may be done by an alter ego analysis are set forth in detail in Mid-South:

> An alter-ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Control may be shown where the subservient entity manifests no separate interest of its own and functions solely to achieve the goals of the dominant entity. However, this theory does not apply in the absence of fraud or misuse of control by the dominant entity which results in some injustice. . . . [C]ontrol, in and of itself, is not sufficient to find that a subservient corporation is the alter-ego of the dominant one; one must show that the retention of separate corporate personalities would promote fraud, wrong or injustice, or would contravene public policy.

374 S.C. at 603, 649 S.E.2d at 143 (emphasis added). There is no evidence of inequities that would result from permitting the Defendants to maintain their separate corporate forms, such as promotion of fraud, wrong or injustice or contravention of public policy. Defendants are therefore entitled to judgment notwithstanding the verdict, or in the alternative to a new trial absolute, because of the erroneous finding of amalgamation.

11. The Court erred as a matter of law in granting directed verdict on Defendants' claim for abuse of process. (Ground 26).

A claim for abuse of process has two elements: ulterior purpose, and a willful act in use of process not proper in regular conduct of proceedings. Broadmoor Apartments v. Horwitz, 306 S.C. 482, 413 S.E.2d 9 (1991). As noted in the discussion of the exclusion of Exhibit 106 below, Defendants attempted to present significant evidence of Plaintiffs' ulterior purpose, which the Court refused to admit. Tom and Vince Graham also testified regarding Plaintiffs' longstanding opposition to I'On. Furthermore, the evidence presented at trial was sufficient to create a question of fact as to whether Plaintiffs willfully filed verified complaints containing statements they knew were false in an effort to initiate and perpetuate this lawsuit and to harass Defendants. The Court should therefore reverse its prior ruling and grant judgment notwithstanding the

verdict for Defendants, or in the alternative, grant a new trial absolute on Defendants' abuse of process counterclaim.

II. This Court should grant Defendants a new trial absolute.

Defendants contend that they are entitled to a new trial absolute for all reasons set forth above, as well as those enumerated below. The analyses above regarding Defendants' grounds for new trial numbers 7 (directed verdict on abuse of process, Part I.11), 10 (scope of breach of fiduciary duty under South Carolina law, Part I.4), and 12 (amalgamation, Part I.10) apply also to the motion for new trial and are likewise incorporated by reference here.

The grant or denial of new trial motions rests within the discretion of the circuit court. Brinkley v. S. C. Dept. of Corr., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009).

1. The Court improperly admitted evidence of Defendants' marketing efforts after June 4, 2003 which was irrelevant to the claims at trial and unfairly prejudiced Defendants (Ground 1).

Defendants moved in limine to exclude, and objected to the admission of, evidence of their marketing efforts after June 4, 2003, the date the second of the individual plaintiffs contracted to purchase property from The I'On Company. Such evidence, which includes marketing materials, project fact sheet, mailers, and website images, is not relevant to the Plaintiffs' claims for breach of fiduciary duty, negligent misrepresentation, breach of contract, or violation of ILSA, or to any of the other claims tried in this case. Furthermore, it was unfairly prejudicial to Defendants, in that it allowed Plaintiffs to argue to the jury that Defendants made deceptive statements, although there was absolutely no evidence that any such statement was relied on by any Plaintiff in this case to its detriment, and provided a false basis for the jury to find that Plaintiffs' claims did not accrue until August 5, 2009. Plaintiffs' negligent misrepresentation claims will not lie without proof of their actual, justifiable reliance on a representation. Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766 (2011). Plaintiffs could not

have relied on any such documents published after Plaintiffs' purchases of property, so their existence and contents are irrelevant to any misrepresentation, fiduciary duty, or ILSA claim. The admission of the documents thus constitutes reversible error, and Defendants are therefore entitled to a new trial absolute.

2. The Court improperly refused to take judicial notice of representations made by counsel for the Assembly and by 148 Civitas, LLC regarding the perpetuity of the easement (Grounds 2 and 3).

Defendants moved in limine and argued during trial that the Court should take judicial notice of representations made earlier in this case by counsel for the I'On Assembly and 148 Civitas, LLC regarding the perpetuity of the access easement granted by Section 1.1 of the 2000 Recreational Easement and Agreement to Share Costs. The Court refused to do so. In particular, Defendants requested judicial notice of (1) Mr. Bouch's statement to the Court that "we have always believed that it's in our interest that it be perpetual, but recognizing there is an interest there. I was asked yesterday to stipulate that the easement would be perpetual, and I said yes;" and (2) 148 Civitas's statement in its motion for partial summary judgment that "[i]mportantly, 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."

These issues were placed directly in issue before this Court by the Defendants' complaint in the consolidated action No. 2014-CP-10-2984. The Assembly explicitly denied paragraph 27 of the Complaint in that consolidated action alleging that it "has represented in the Walbeck Action that the easement to use all of the Boating Facilities located on the Club Property is perpetual."

Plaintiffs proceeded to argue to the jury that Defendants wronged Plaintiffs and jeopardized their access to the docks on Lot CV-6 by including a 30-year time limitation in a different part of the document, and were awarded a verdict based thereon, although every party

to the easement had stipulated before this Court that the easement was perpetual. The stipulation also refuted the Plaintiffs' argument that the easement was invalid. The judicial notice would have exposed this alleged breach of duty as a litigation-driven contention contrary to the stipulation of the parties to the easement and to more than a decade of their operation under the easement. The Court's failure to take judicial notice of these prior representations therefore permitted Plaintiffs to make an incomplete statement of important facts in the case to the jury without correction.

The necessity for the judicial notice was made more glaring following the denial by the Assembly's corporate representative, Deborah Bedell, that such a stipulation had been made, and her statement before the jury of her recollection of the Court's description of Assembly counsel's stipulation, which the Court had made outside the presence of the jury. In addition, the other party to the easement, Mike Russo—now bound by the earlier settlement agreement to support the Plaintiffs' effort regarding the easement—intentionally and brazenly avoided service of a trial subpoena.

All information regarding which Defendants requested judicial notice is in the Court's own records, and therefore a proper subject for judicial notice under Rule 201 of the South Carolina Rules of Evidence. See Wise v. Wise, 394 S.C. 591, 601, 716 S.E.2d 117, 122 (Ct. App. 2011) ("[a] court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records"). Because the failure to take judicial notice of these representations under the circumstances constitutes reversible error, this Court should grant Defendants' motion for a new trial absolute.

3. The Court improperly admitted extrinsic evidence of whether the Assembly was an intended third-party beneficiary of the Walbeck Sales Contract (Ground 4).

A party cannot use extrinsic evidence to create an ambiguity which does not exist within the four corners of the instrument. Silver v. Aabstract Pools and Spas, 376 S.C. 585, 591 (Ct. App. 2008); Davis v. Davis, 372 S.C. 64, 75 (Ct. App. 2006). Nor can a party use extrinsic evidence to read additional terms into a contract which are not present. See ESA, 392 S.C. at 20 (refusing to read an additional term into the contract that does not exist); Davis, 372 S.C at 76 (refusing to imply additional conditions when contract's plain language suggested no such intent). Thus, in this case, Plaintiffs cannot use extrinsic evidence to establish an intent in Walbeck's contract to benefit the Assembly which is not present within the four corners of the instrument.

In light of the fact that the contracts themselves do not establish the Assembly as a third-party beneficiary, Plaintiffs sought to use extrinsic evidence and subsequent marketing statements in an attempt to create an intent not revealed in the contracts. This is improper and constitutes reversible error; the Court should therefore grant Defendants a new trial absolute.

4. Plaintiffs' counsel and the testimony of Deborah Bedell improperly and prejudicially characterized the exercise of control of The Assembly Board in front of the jury without a proper curative instruction (Grounds 5 and 6).

In an attempt to rescue the Plaintiffs' claims from application of the statute of limitations, the Assembly's counsel elicited testimony, readily provided by his client's representative, which was entirely new and completely false. Plaintiffs seek to use some idle provisions of the covenants governing the I'On Assembly to suggest that The I'On Company controlled the Assembly Board. The provisions never had been invoked, and Ms. Bedell had testified previously that she certainly did not think The I'On Company exercised control over the Board. Nonetheless, she testified affirmatively in response to a question whether one reason the Board had refused to authorize counsel to join the suit sooner or to bring suit against the Defendants independently was this idle "veto power" in the covenants. As the proffer of further cross-

examination revealed, Ms. Bedell had no knowledge of the Board ever considering such action in the first instance, and no knowledge of any Board member ever being influenced in consideration of such legal action by any power reserved in the covenants.

The jury should have been told to disregard Ms. Bedell's testimony as to the Board's consideration of any control or power reserved to The I'On Company having ever been considered by any Board member. Moreover, the false and unfairly prejudicial testimony required a curative instruction, and one framed in a way that did not simply prejudice defendant further by calling attention to the issue the Plaintiffs advanced. The Court recognized the necessity of this approach, and considered an appropriate instruction, but ultimately rejected it in favor of an instruction that would have reinforced the prejudice to the Defendants. Defendants opted not to suffer that instruction; the record before the jury thus remained uncorrected. The Court's refusal to give a charge which caused Defendants demonstrable prejudice is reversible error. Pittman v. Stevens, 364 S.C. 337, 340, 613 S.E.2d 378, 380 (2005). Defendants are therefore entitled to a new trial absolute.

5. The Court improperly excluded from evidence Defendants' Exhibit 106 which was offered to demonstrate evidence of Defendants' abuse of process counterclaim and general theme of their defense (Ground 8).

Defendants presented compelling evidence that the claims Plaintiffs were pursuing against them were not based on legitimate gripes, but were instead part of a larger campaign of long standing waged against them and their development by a handful of people, notably Ms. Adkins and her companion, Steve Brock, who lives with her in I'On. Testimony and emails linked Mr. Brock to the effort to bring these claims. In response, Plaintiffs sought to characterize Defendants as threatening legal claims against anyone who challenges them, and in particular Ms. Templeton for arguably tortiously interfering with the contract for sale to 148 Civitas.

After laying the foundation with Mr. Vince Graham of the many legal challenges this group of critics has launched against them over nearly twenty years, and that the I'On Company collected opposition materials along the way, Mr. Graham identified the documents collected in Defendants' Exhibit 106 and counsel moved to admit the exhibit. The Court reviewed the materials and sustained the objection on the grounds that the exhibit was simply cumulative.

The twenty-fifth (next to last) page of the exhibit, a January 23, 1997 letter from Steve Brock to Mr. Jordan, alone demonstrates the independent importance of the exhibit. First, the letter shows an early attempt to interfere with the developer's contract with the Jordan family to buy the real property in the first instance. More important, Mr. Brock indicated he would "do everything in [his] power to defeat this project [I'On]." He warned that he had "often been underestimated."

This evidence was not cumulative and was important to establishing Defendants' general theory of the case and their counterclaim. The evidence also tended to refute the Plaintiffs' responsive characterization of Defendants' counterclaims and defense theory. Its exclusion was therefore reversible error and a ground for a new trial absolute.

6. The jury's verdict as to The Assembly's claims for breach of fiduciary duty, breach of contract and negligent misrepresentation is inconsistent and cannot be reconciled (Ground 9).

Verdicts which are irreconcilably inconsistent should not stand, and a new trial should be granted, because the parties and the judge "should not be required to guess as to what the jury sought to render." Daves v. Cleary, 355 S.C. 216, 231, 584 S.E.2d 423, 430 (Ct. App. 2003).

In the present case, Plaintiffs' claimed damages for each particular plaintiff were the same on all claims. The jury returned a verdict which not only did not award any amount of damages which the Plaintiffs sought, but awarded different amounts of damages on different claims without any basis for doing so. There is no way to reconcile a $1.75 million verdict for

breach of fiduciary duty and $1 million verdicts for breach of contract and negligent misrepresentation for the Assembly with each other in this case. The damages sought as a result of each claim are exactly the same. Likewise, the differing verdicts of $20,000 for negligent misrepresentation, $10,000 for breach of contract, and $1.00 for ILSA for Walbeck cannot be reconciled, either. The court should therefore grant a new trial absolute or, in the alternative, a new trial nisi remittitur for the lowest of these verdict amounts for each Plaintiff.

7. The Court improperly admitted into evidence the terms of the Settlement Agreement between Plaintiffs and Mike Russo and 148 Civitas, LLC (Ground 13).

The terms of the settlement between Plaintiffs and former Defendants 148 Civitas, LLC and Russo should have been excluded from evidence pursuant to Rules 403 and 408 of the South Carolina Rules of Evidence. Their admission focused the trial on the partial settlement rather than on the claims actually alleged in the case. For example, the Plaintiffs presented at least $2,782,000 in damages related to the settlement agreement, including $495,000 in cash, $1,975,000 as the value of the leasehold interest in the Creek Club, and $312,000 as the present value of the buyout of years 21-30 of the lease. Such confusion, distraction and unfair prejudice to a litigant are the very reasons that settlement agreements are inadmissible pursuant to South Carolina Rule of Evidence 408. It forbids the admission of settlements if offered "to prove or disprove the validity or amount of a disputed claim." S.C.R. Evid. 408. Plaintiffs used the settlement agreement to establish their damages, i.e., the "amount of a disputed claim." The terms of the settlement should have been excluded under both Rule 408 and Rule 403. Defendants recognize that the fact that a settlement took place may be admissible, but the terms should not have been admitted into evidence. See, e.g., Kennon v. Slipstreamer, Inc., 794 F.2d 1067, 1069 (5th Cir. 1986) (holding that "disclosure of the fact of settlement" was admissible for the purpose of explaining the absence of settling defendants and avoiding jury confusion while

"disclosure of the amount of settlement, however, is a different matter" and was properly excluded pursuant to Rule 408). Admission of the settlement terms was likewise substantially more prejudicial than probative and therefore inadmissible under Rule 403. Admission of the settlement terms constitutes reversible error and is a ground for a new trial absolute.

In addition, any claim based on the settlement was a separate claim. The Assembly entered an agreement with the former Defendants which included many terms and secured many benefits beyond those sought in the lawsuit to that point. Any claim about whether the lease included in the settlement was appropriate should have first been the subject of a demand on the Assembly Board for agreeing to it instead of continuing to pursue its claims. If some damages resulted from the agreement, the Assembly then should have brought a suit on its own. If the Assembly refused and the Plaintiffs believed the Assembly's rights were not protected, they could have made a demand on the Assembly to pursue a new action.

8. The jury's verdict is based on passion and caprice and is so large that it shocks the conscience (Ground 14).

The trial judge must grant a new trial absolute if the amount of the verdict is grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, or some other improper motive. Vinson v. Hartley, 324 S.C. 389, 404, 477 S.E.2d 715, 723 (Ct. App. 1996). The amounts of the verdicts for the Assembly are completely inconsistent with any damages evidence advanced by Plaintiffs, and are therefore based on passion and caprice. The Court should therefore grant a new trial absolute.

In addition, the evidence established and Plaintiffs tacitly conceded they never expected or relied on any promise to own the Creek Club building free of charge. Nevertheless, the largest damages figure they requested was for the leasehold of the Creek Club building to 148

Civitas. Plaintiffs received everything else they claimed for the price of $495,000. Accordingly, the verdict for the Assembly was grossly excessive. Mr. Robinson's testimony of the more than $2 million value the Assembly received in the transaction that cost them $495,000 further indicates that the verdict was excessive.

9. The evidence presented at trial does not justify the verdict and Defendants are entitled to a new trial pursuant to the thirteenth juror doctrine (Ground 15).

The thirteenth juror doctrine is a vehicle by which the circuit court may grant a new trial absolute when it finds the evidence does not justify the verdict. Trivelas v. S. C. Dept. of Transp., 357 S.C. 545, 553, 593 S.E.2d 504, 508 (Ct. App. 2004). Where conflicting evidence exists on the contested issues, a circuit court's decision to sit as a thirteenth juror and grant a new trial absolute is inviolable. Id.

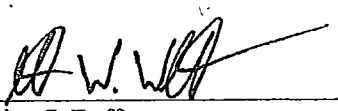
For all the reasons noted above, the evidence presented at trial does not justify the verdict for either the Assembly or Walbeck. The Court should therefore grant Plaintiff a new trial absolute under the thirteenth juror doctrine.

III. This Court should grant Defendants a new trial nisi remittitur.

The trial judge has wide discretionary power to reduce the amount of a verdict which in his or her judgment is excessive by granting a motion for new trial nisi remittitur. Rush v. Blanchard, 310 S.C. 375, 381, 426 S.E.2d 802, 806 (1993).

For all the reasons discussed above, the jury's awards to the Assembly and to Walbeck were excessive and should be reduced as an alternative to a grant of a new trial.

This 25th day of August, 2014 at Charleston, South Carolina.



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EXHIBIT A

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

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

Plaintiffs,

vs. CASE NO. 2010-CP-10-10490

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; and I'ON ASSEMBLY, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF: LEA ANN ADKINS

DATE: July 9, 2014

TIME: 9:13 AM

LOCATION: Duffy & Young, LLC
96 Broad Street
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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MR. BOUCH: Insofar as it involves conversations with counsel, it is privileged.

BY MR. DUFFY:

Q. Let me put it this way, let me put it this way: These are two separate analyses, as you mentioned, of what you view damages are as of July 8th, 2014. Is that right?

A. Yes.

Q. And you also understand that you had testified earlier that what you were looking for was the assembly to own CV6. Is that right?

A. I said that basically that is true.

Q. What you seek in damages, are these -- are the changes, the additions, are those damages that you now contend are your damages following the settlement agreement with Mike Russo?

MR. EVANS: Object to form.

THE WITNESS: I believe I understand what you're asking. I should say that when you reference when I said what I wanted before, that I wanted the property, CV6. I didn't just want the assembly to own it on paper. I wanted it as it had been promised to us, and I think I said that in my deposition, that I wanted what had been promised, and what we have today is ownership, but

it certainly is not what we were promised.
BY MR. DUFFY:
Q. Okay. And my question is: The change from what I want is the CV6 for the assembly, as it was promised, to enumerating the damages that are reflected on these two sheets, that change has come about since the settlement with Mike Russo. Is that right?
MR. BOUCH: Objection to form.
MR. EVANS: Object to form.
THE WITNESS: Yes.
BY MR. DUFFY:
Q. Okay. Now, the sale of CV5 is listed here. So you seek $225,000 for the sale of CV5, along with prejudgment interest that's reflected as $117,194.37?
A. Yes.
Q. Okay. I see an unfunded reserves listed. What does that mean?
A. In the past, the assembly and the I'On Club and then later 148 Civitas, simply put, shared use and expenses, to some extent, for the waterfront properties' facilities back there, and it was agreed, I think as would be understandable when you own an asset like that, that there would

EXHIBIT B

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

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

Plaintiffs,

vs. CASE NO. 2010-CP-10-10490

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; and I'ON ASSEMBLY, INC.,

Defendants.

VIDEOTAPED DEPOSITION OF: BRAD J. WALBECK

DATE: July 9, 2014

TIME: 11:09 AM

LOCATION: Duffy & Young, LLC
96 Broad Street
Charleston, SC

TAKEN BY: Counsel for the Defendants

REPORTED BY: MARIE H. BRUEGGER, Registered Professional Reporter, CRR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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Q. And is what was promised, as you understood it, Civic Lot 6, free and clear of encumbrances?

A. Yes.

Q. Now, there's obviously more listed on these two pages.

A. Right.

Q. What I want to know is is your contention of these additional items of damage, do those contentions arise subsequent to entering the settlement agreement?

MR. BOUCH: Objection to form.

MR. EVANS: Object to form.

THE WITNESS: You may have to rephrase it. I alleged these damages have arisen because the defendants didn't do what they said they were going to do, caused these damages.

BY MR. DUFFY:

Q. Right, but before, you were looking -- you sought as a remedy in the lawsuit conveyance of Civic Lot 6, free and clear of encumbrances, correct?

MR. BOUCH: Objection to form.

MR. EVANS: Object to form.

THE WITNESS: Right.

BY MR. DUFFY:

Q. You're not seeking that anymore, right?

MR. EVANS: Object to form.

THE WITNESS: There have been consequences.

BY MR. DUFFY:

Q. Right, and that's what I'm asking.

A. Right, right.

Q. Do these reflect --

A. Yes.

Q. -- damages you're seeking since the entry of the settlement?

A. Yes.

MR. EVANS: Object to form.

BY MR. DUFFY:

Q. You were here when we discussed the unfunded reserves with Ms. Adkins. Can you tell me what your understanding of the line item for unfunded reserves is?

A. The developer has a duty to fund ongoing for replacement of docks. The docks have a limited life span, the boat ramp, all of -- the docks are wooden. They're going to rot out. They'll need to be replaced. So it's something

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON 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.	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2010-CP-10-10490 **PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT OR, ALTERNATIVELY, FOR A NEW TRIAL ABSOLUTE OR NEW TRIAL NISI REMITTITUR**

Plaintiffs, Brad Walbeck and Lea Ann Adkins, individually and derivatively on behalf of the I'On Assembly, Inc. (hereinafter collectively referred to as "Plaintiffs"), by and through their undersigned counsel, hereby submit this Memorandum in Opposition to Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute or New Trial Nisi Remittutur (hereinafter "Defendants' JNOV Motion" or "Defendants New Trial Motion"), and pursuant thereto, states as follows:

SUMMARY OF ARGUMENT

This Court should deny Defendants' JNOV Motion because South Carolina law and the evidence presented at trial supports this Court's prior rulings as well as each and every verdict rendered by the jury in favor of Plaintiffs. Similarly, this Court should deny Defendants New

Trial Motions because the jury's verdicts are consistent with the evidence presented and well supported by the record.

STATEMENT OF THE CASE

The present case concerns I'On community amenities that the Defendants obligated themselves to convey 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. 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.[1] During the I'On development and sale process, the Defendants obligated themselves to convey each of the foregoing amenities to the I'On Assembly and its members, free and clear of all encumbrances. However, despite their repeated promises[2] to convey these amenities as well as to maintain a public waterfront, the Defendants entered into talks in mid-2008 to sell the Deep Water Amenities to an unaffiliated, third-party for profit (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

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

[2] As discussed in detail below, the Defendants' promises to keep the waterfront public, and out of private ownership, were reiterated during: (a) the many meetings held prior to approval of the I'On development and again reiterated in (b) the Impact Assessment filed with the Town and incorporated into the town ordinance granting approval of the project; (c) the Property Report required by the Interstate Land Sales Act; (d) various I'On marketing materials; (e) several I'On lot purchase agreements; (f) the dock applications submitted by I'On to DHEC; and (g) by I'On Realty agents to prospective purchasers.

[3] Notably, documents produced by the I'On Defendants late in this litigation reveal they were actually 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).

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 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.

In the interim, it was represented to the I'On Assembly members that the Defendants were finalizing the paperwork, "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, reached a contract, and prepared to close on the very amenities that the Defendants represented they were in the process of deeding to the Assembly.

After months of the Defendants lying in the grass, 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 unsuccessful demand made by (a) Walbeck to the Defendants requesting 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.

[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 the Town hearing on the civic use challenge[4] by several neighbors. After Mount Pleasant denied the use appeal, Buyers refused to negotiate the use limitations further.

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

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, the Defendants moved for the dismissal of certain claims and/or parties. However, the Defendants' Motion to Dismiss was denied, and thereafter, the 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, the Defendants' Motion for Summary Judgment, the Assembly's Motion to Dismiss, and Tidelands Bank's Motion to Intervene were all denied. During the 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 causes of action against the corporate Defendants.

Approximately one year later, at a motion hearing dated January 8, 2013, Plaintiffs were granted leave to file a Third Amended Complaint alleging an additional cause of action of aiding and abetting. This 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 Defendant 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 just short of the close of Plaintiffs' case. Following the January mistrial, Plaintiffs' filed

[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

a Fourth Amended Complaint, and this case was re-tried before this Court beginning Tuesday, July 29, 2014 and ending Friday, August 1, 2014. The jury returned a verdict in Plaintiffs' favor. 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. Subsequently, Walbeck elected to recover the $20,000 in actual damages awarded to him under 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. Defendant's JNOV Motion followed.

SUMMARY OF EVIDENCE PRESENTED AT TRIAL

A.) The Evidence Presented Regarding Defendants' Collective Development of 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 consisting of Tom Graham owning 75% and his son, Vince Graham, owning 25%[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

[7] Tom Graham holds his interest in The I'On Company through Graham Holdings. Original development work was 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.

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 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 various aspects of the development of I'On including planning, financing, marketing, and execution.

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 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 Amenity planned for the I'On development, property which was promised to belong 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 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 Property Report dated November 3, 1998, 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 I'On lot purchasers, including Plaintiff Walbeck and Adkins, prior to the execution of their respective purchase contracts. Among other representations regarding the neighborhood, the Property Report includes a "Recreational Facilities" chart which provides a "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 "Creekside Park" from "sidewalks, paths, and trails", indicating a distinction between these amenities promised to be transferred to the Assembly. Moreover, as described in the 1998 Property Report, the "major" characteristics of I'On includes "300 feet of deep water frontage along Hobcaw Creek" which

[8] Upon Mt. 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, thereby having the effect of law.

"rather than subdividing into lots. . .is planned as parks" to serve ". . .as an amenity for residents."

As evidenced by the testimony of Walbeck, Ebly, and Hussey, the Defendants and/or their agents represented the "Community Dock" and "Creekside Park" were located on CV6. Moreover, the Defendants and/or their agents represented 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, similarly represent 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 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).

Importantly, the dock plan submitted by Defendants and later approved by DHEC, the Army Corp. of Engineers and a host of other governmental authorities, reveals the principal I'On dock, the only dock with a both ramp which sits on 300 ft. of deep water frontage along Hobcaw Creek and is adjacent to a "creekside park",[9] is located on CV 6. 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

As also established during the trial of this case, the location of the "Creekside Park", "Community Dock", and boat ramp are also shown on plats and plans of I'On. 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, clearly depict a Creek Club, Community Dock & Boat Ramp, and "HOA Open Space" located on CV 6 which, in turn, is located on Hobcaw Creek. (Pl. Ex. 196; Pl. Ex. 200, Pl. Ex. 218).

5.) Marketing Materials and Agent Representations

In addition to the foregoing, Plaintiffs evidenced that in furtherance of the I'On plan, Defendants reiterated their promises regarding amenity properties directly to I'On lot purchasers via way of 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 year easement. Notably, "Civitas", the I'On 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 "Shellmore Park" in the I'On Park Design, Pl. Ex. 227, Sheet P-7

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Stephanie P. McDonald, Circuit Court Judge

Case No. 2010-CP-10-10490

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

Appellants.

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Plaintiff also demonstrated, via 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 advertises "miles of marshfront paths" and "the parks", showing a distinction between the two. In the same advertisement, it promotes under Recreational Facilities that "a boat ramp along Hobcaw Creek" can be "enjoyed by all." (Pl. Ex. 77). In yet 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). Additionally, the inaugural issue of *Civitas*, the I'On Journal represents 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).

Plaintiffs also showed, through the testimonies of Brad Walbeck and Tim Eble, 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 also represented 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 collaborated this testimony. Just as Walbeck relied on the 1998 Property Report, Walbeck also testified he relied on the aforementioned representations made by Defendants' agent when he entered his purchase contract.

6.) Purchase Contracts

Indeed, based upon the marketing materials distributed and the many representations the Defendants made as to I'On amenities, including the Community Clubhouse, Creekside Park, Community Dock and Associated Parking, Plaintiff Walbeck decided to purchase a lot within I'On. 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 developmental plan, Plaintiff Walbeck entered into his a 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: (a) the Community Dock and Creekside Park would be conveyed to the I'On Assembly at no cost 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 the Walbeck contract specifically provided Walbeck could specifically "rely" on the representations included in both the contract and the 1998 Property Report. *Id.* Moreover, the signature page of Walbeck's contract contained 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

Not only is the record replete with evidence of the promises and representations made by Defendants to the Assembly and its members regarding the amenity property, the record also reveals Defendants were aware of their promises, and their obligations in connection with same, as evidenced by Defendants own communications.

For example, as evidenced by a November 15, 2006 e-mail between Defendant's employee, Chad Besenfelder, and the Grahams, the 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). Similarly, in May of 2007, Defendants provided a "list of venues being transferred to the I'On Assembly", a list which includes "The Boat Ramp." (Pl. Ex. 203). Perhaps most

[10] 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 Property Report. (*See* Adkins Purchase Contract, Pl. Ex. 45). Nevertheless, Adkins was provided the Property Report at the time of contracting to purchase her lot. (*See* Property Report, Pl. Ex. 1).

poignant, 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 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.) Evidenced 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 was not "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 according to its express provisions. The record reflects another, similar transaction involving the Defendants' internal conveyance of CV 6 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 prior to 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 continues through today; (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

As previously mentioned, the record reflects Defendants made many promises to the Assembly and I'On lot purchasers regarding the conveyance of the amenity property free and clear of all encumbrances. In addition to ample evidence of Defendants promises, representations and contractual obligations, the record is replete with evidence of Defendants' failure to fulfill the same.

Indeed, only 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 the Defendants' agent informed Walbeck of this material change to his use and enjoyment of the amenity property. (Pl. Ex. 190).

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 specifically relied upon in entering the same. In fact, 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, the 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 they had "not sold or initiated the sale of the Creek Club." (Pl. Ex. 208).

[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.

In response to the Templeton demand, the Assembly Board wrote Tom Graham and requested 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 completed 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 Assembly; however, unbeknownst to the I'On homeowners and the Assembly, the Defendants and Civitas immediately resumed negotiating the sale of CV 6 and CV 5 e, and reached contract in June of 2009. (*See* Pl. Ex. 58; Pl. Ex. 214; Pl. Ex. 215; Pl. Ex. 217). 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. All 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 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, who 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 were forced to endure 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 the Defendants fulfill its 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

As the Court is aware, Plaintiffs settled with Russo at the commencement of the first trial, and were content to try the remaining case without reference to the settlement agreement. However, I'On Defendants moved to assert a counterclaim regarding the validity of the easement; and filed a new, nearly identical action regarding the validity of the easement; and moved to consolidate the new action into the old action. In both the new counterclaim and the new action, the Defendants pled the transfer of title of CV 6 to the Assembly, thereby putting into issue what the Assembly had paid for the title, while still objecting to evidence of the consideration paid from coming into evidence. In other words, the Defendants sought to show

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

that the Assembly was not damaged since it had gotten the Deepwater Amenity back; but objected to the evidence of payment.

This was an improper attempt at twisting the evidence, and the Court rejected it and ruled that the consideration paid would be admissible. Even as the Court indicated how it would rule if the Defendants pressed on, the Defendants did not withdraw the attempt to place the new title into evidence. Plaintiffs even offered on the record to try the case either way – with evidence of the title and consideration paid; or without. Defendants failed to avail themselves of this opportunity. Having improperly created the evidentiary issue, and having failed to avail itself of the opportunity to solve the problem it was creating, the Defendants cannot be heard to complain of the admission of this evidence.[13]

As a result, Plaintiffs introduced evidence that the Assembly paid $495,000 and granted a twenty year free lease, with two additional five year options, to get the property back. Plaintiffs calculated the damage at $3.5M; but reduce their request to the jury to $2.5M to allow for any offsetting benefit gained by eventual title to CV-5, eventual possession of the Creek Club, etc., which the Defendants argued were enhancements to which Plaintiffs were not entitled. On the other hand, Defendants ignored the value of the twenty year lease granted by the Assembly and argued to the jury that the enhancements exceeded the Assembly's cost, and therefore the Assembly had not suffered any damage. The resulting $1.75M verdict indicates 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.

IMPORTANT LEGAL PRINCIPLES

A.) Judgment Notwithstanding the Verdict

[1313] Defendants later stipulated to the admission of the entire settlement in consideration of Plaintiffs' agreement that the Defendants rights to appeal the threshold ruling would be preserved.

A motion for a directed verdict is predicate to a motion for judgment notwithstanding the verdict ("JNOV"). In other words, a JNOV motion allows the trial court to reconsider its ruling on a directed verdict motion, but the court's consideration is limited to the grounds argued for directed verdict. Rule 50(b), SCRCP. 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. *Gilliland v. Doe*, 357 S.C. 197, 592 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).[14]

B.) New Trial Absolute and New Trial Nisi Remittur

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 remittutur* 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. . . .").[15]

A trial court may grant new trial 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).

ARGUMENT[16]

[14] Many of the Defendants' current grounds were not raised or argued during directed verdict motions, at the close of Plaintiffs' case and/or at the close of Defendant's case and are not presented for consideration at this time.

[15] 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 error of law. *Vinson v. Hartley,* 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct.App. 1996).

[16] In further support of Plaintiffs' Opposition to Defendants JNOV and New Trial Motions, Plaintiffs incorporate all grounds cited in their various motions, responses, and memoranda previously filed in this action as well as all grounds referenced in their trial brief or otherwise made during motion hearings or the two trials of this matter. Regarding Defendants' JNOV argument as to the Recreational Easement, Plaintiffs note Defendants rely on their

I. This Court Should Deny Defendants' JNOV Motion Because the Law and the Evidence Supports Each Verdict Rendered by the Jury In Favor of Plaintiffs

A.) 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 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 stipulates 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 plaintiff's failure to obtain the action or for not making the effort." Rule 23(b)(1), SCRCP, further provides 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 two criteria: (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 clearly reflects Plaintiffs' satisfied Rule 23's verification, demand and futility requirements as well as the aforementioned adequacy considerations. (*See* Plaintiffs'

Memorandum in Opposition to Plaintiffs' Motion for a Declaratory Judgment on the Easement, and do not assert a substantive argument regarding the Easement in their JNOV Motion. Accordingly, Plaintiffs similarly rely on their Motion for a Declaratory Judgment on the Easement, along with Plaintiffs' Memoranda in Support of the same, and incorporate these arguments in opposition to Defendants' JNOV Motion as if fully stated herein.

Complaints). First, there is a common interest between the named Plaintiffs and the Assembly members, as all Assembly members suffered due to Defendants' conveyance 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 Plaintiffs, its clear Plaintiffs successfully, and vigorously, 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 this Court recognized, 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, derivative claims which the jury found were supported by the evidence and derivative claims which resulted in an award of $1,750,000 to the Assembly.

B.) Plaintiffs' Claims are Not Barred by the Statute of Limitations

1.) Based Upon the Evidence Presented, the Jury Determined Each Plaintiff "Discovered" Each of Their Respective Claims on August 5, 2009, and thus, Plaintiffs' Brought Suit Well Within the Statute of Limitations

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. Because the jury determined, based upon the evidence, that Plaintiffs discovered the full extent of Defendants'

misconduct on August 5, 2009, Plaintiffs claims were brought well within the three-year statute of limitations.[17]

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).[18]

Here, twelves persons of common knowledge and experience considered the circumstances of this case and concluded August 5, 2009 was the date Plaintiffs knew or should

[17]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.

[18]Throughout Defendants' JNOV Motion, Defendants' erroneously characterize the discovery rule as one which is governed by the "existence of a potential claim" as opposed to the "existence of an actual claim." (*See* Def. JNOV Motion, p. 12). Notably, this issue was addressed by the Court when considering the language of the general verdict form, and the Court agreed with Plaintiffs that, under South Carolina law, it's one's awareness of the "existence of an actual claim" that governs the application of the discovery rule. As a result, Defendants consented to a change in the general verdict form which eliminated the word "potential" from all questions relating to when Plaintiffs "discovered their claims" against Defendants. In so consenting, Defendants waived any arguments regarding Plaintiffs' discovery of "potential" claims, and its Plaintiffs' discovery of "potential" claims which is the crux of Defendants' statute of limitation argument.

have known of their claims against Defendants. The jury's conclusion is clearly supported by the overwhelming evidence presented at trial which demonstrated that the 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* CV 5 Deed, Pl. Ex. 66; Lot 275 Deed, Pl. Ex. 67; Assignment of Club Owners' Rights and Obligations, Pl. Ex. 68; CV 6 Purchase Agreement, Pl. Ex. 148).

While Defendants maintain the jury "ignored" other evidence in reaching their conclusion, the Defendants' argument is wholly without merit – this Court is only concerned with the existence of any evidence supporting the jury's findings, and this Court does not have the 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).

Here, the evidence revealed the very fact which constituted each and every cause of action maintained by Plaintiffs was the Defendants' August 5, 2009 conveyance of community property to a third-party in direct contravention of Defendants' repeated promise to convey this property to Plaintiffs. Clearly, the evidence documenting the August 5, 2009 conveyance 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' many 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.[19] *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 Properly Determined the Purchase Contracts at Issue Were "Sealed Instruments", and thus, a 20 Year Statute of Limitations Applies to Plaintiffs' Breach of Contract Claim

Just as the evidence sustains the jury's findings as to the dates Plaintiffs "discovered" their respective claims, so too does the evidence sustain the jury's findings that Plaintiff Walbeck's purchase contract was a "sealed instrument."

Specifically, the signature page of Walbeck's purchase agreement includes an attestation clause referencing a "seal", and in addition to the attestation clause, twice references the

[19]Thus, even though the Defendants recorded a Recreational Easement, transferred the community property among 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.

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 minimum of three references to a "sealed" instrument, the combination of which clearly supports the jury's findings that the agreement was, in fact, sealed.[20]

Moreover, contrary to Defendants' contentions, "testimony" from a party revealing a special intent to create a sealed instrument is simply not required; rather, one need only look at the instrument (aka the evidence) itself to ascertain whether there was an intent to seal the same. Indeed, 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).

Here, the jury found it "appeared" from the many "sealed" references existing within Walbeck's purchase contract that the contract was intended to be a "sealed instrument." This is all that is required for an instrument to be "sealed" under South Carolina law, and thus, all that is required to sustain the jury's "sealed instrument" finding.

C.) Plaintiff Walbeck Has The Standing Necessary to Maintain His Individual Claims as Evidenced by Walbeck's Recovery of Individual Damages

Defendants' argument as to Walbeck's purported lack of individual standing is equally misplaced and disingenuous in light of Walbeck's testimony regarding his individual damages,

[20] Indeed, 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.

and ultimately, his "recovery" of 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). Clearly, the testimony Defendants admit Walbeck proffered at the trial of this matter 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, Walbeck has standing to personally bring claims 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 . . .").

D.) Plaintiffs' Breach of Fiduciary Duty Claim is Grounded within South Carolina Law

While Defendants cite a "line of cases" purportedly limiting the fiduciary duties a developer owes a homeowners' association, Defendants cannot escape this simple truth: *the relationship* between a developer and a homeowners' association the developer creates, manages and controls, is exactly the type of "special relationship" which *gives rise to fiduciary status under South Carolina law.* According to South Carolina law, "*anyone acting in a fiduciary relationship shall not* be permitted to make use of said relationship to *benefit his own personal interests.*" *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.").

Consequently, the Court's "expansion" of South Carolina law in recognizing a "general fiduciary duty of developers to act in the best interests of property owners while controlling the development's property owners association" is really no "expansion" at all – South Carolina law recognizes the fiduciary relationship between a developer and a property owners association and South Carolina law recognizes fiduciaries cannot taken advantage of such "special" relationships. *Id.*[21]

1.) Existence of a Fiduciary Relationship and The "General" Fiduciary Duty

Based upon the evidence presented, it is clear a fiduciary relationship exists between the Defendants and the Assembly. Under our jurisprudence, "[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). Contrary to Defendant's contentions, 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 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 villa 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.[22] Accordingly, Defendants' new emphasis on *Hansen* and its repeated emphasis on *Dunes West* is still misplaced – Defendants still ignore the *precedent already set* in cases involving "fiduciary relationships" – precedent which makes clear there is no "limitation" to establishing

[22]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.

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' investment. 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 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 as evidenced by the jury's verdict. A fiduciary relationship is presumed to exist between these parties under South Carolina law.

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.*

Given the record reflects Plaintiffs imposed a special trust in Defendants, and the overwhelming evidence indicates Defendants took advantage of this trust to better serve their personal interest as opposed to the Assembly's interest, there exists no error in this Court's prior ruling, and thus, this Court should deny Defendants' JNOV Motion.

2.) Other Fiduciary Duties Developers Owe Property Owners

As an additional sustaining ground, developers, in their fiduciary capacity, also owe homeowners' associations other duties expressly recognized by our Courts in the developer-association context. These additional duties, fiduciary by their very nature, include the duty to properly maintain a development's common areas and to establish a fund sufficient to maintain said areas.[23] In *Dunes West*, for example, the developer served as the original directors 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).

Obviously, as here, a developer's failure to convey community properties in their entirety is the equivalent of conveying them in "substandard condition," and thus, any distinction between properties which *should have been conveyed* and *properties which were actually*

[23] 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).

conveyed in a substandard condition is a distinction without a difference. 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, rendering developers' argument wholly without merit. 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, and this one failure is all that is necessary to uphold the jury's verdict.

E.) Defendants Are Not Entitled to JNOV on Any of Plaintiffs' Claims

As evidenced by the record, the I'On Defendants, in their role as fiduciaries and in their role as developers, made many promises to the Plaintiffs, both in writing and via way of a multitude of other representations. Specifically, Defendants *promised* to convey the Creekside Park and Community Dock to the Assembly and its members as evidenced by the testimony of Tom and Vince Graham as well as by the express terms of Plaintiff Walbeck's purchase contract and the 1998 Property Report. (*See* Property Report, Pl. Ex. 1; Walbeck Purchase Agreement, Pl. Ex. 2). In addition, Defendants *promised* to convey the Community Dock and associated boat ramp to the Assembly and its members as evidenced again by both Tom and Vince Graham's trial testimony as well as by the March 2009 Defendant e-mails. (*See* Pl. Ex. 58; Pl. Ex. 214; Pl. Ex. 215; Pl. Ex. 217). Defendants also *promised* to convey the 300 feet of deep water frontage along Hobcaw Creek and the "deepest porches" in the Lowcountry for the use and enjoyment of all I'On residents as reflected by various marketing materials and the testimony of Brad Walbeck. Similarly, Defendants *promised* to maintain an open waterfront, free from private ownership, and thus, easily accessible by all I'On residents according to the overwhelming

majority of trial witnesses as well as according to the Developers' own representations to a number of government agencies.

Not only does the record reflect the Defendants' many promises to Plaintiffs, the record also reflects the Defendants deliberately failed to fulfill these 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. Given the record contains ample evidence of the Defendants' contractual obligations and other guarantees as well as Defendants' failure to abide by the same, the Defendants are not entitled to JNOV on Plaintiffs' breach of contract claims, Plaintiff Walbeck's ILSA claim, nor on Plaintiffs' negligent misrepresentation claims. As further demonstrated below, the evidence presented at the trial of case 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" as Defendants suggest, and there is no error of law which warrants the grant of Defendants' JNOV Motion.

1.) Plaintiffs' Breach of Contract Claim Does not Warrant JNOV

First, the jury's finding that the Assembly was entitled to a favorable verdict under its breach of contract claim is not "untenable" given the Assembly is an intended third-party beneficiary of both Plaintiff Walbeck's purchase agreement, the hundred odd other purchase agreements referenced in Pl. Ex. 115, and the 1998 Property Report.

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.

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 is wholly without merit – the language of both Walbeck's purchase contract as well as the 1998 Property Report clearly 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.[24]

Moreover, not only does both Walbeck's purchase contract as well as 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 Defendants, specifically provide *the I'On Assembly* owns the "Commons" and grants a "non-exclusive easement of use and enjoyment of the Commons" to *all titleholders.* (*See*

[24]Defendants maintain a similar argument as to the "untenableness" of 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 of the representations made by Defendants contained therein, is evidence of this fact. Moreover, as Plaintiff did not elect to recover actual damages under his breach of contract claim, any error possibly attributed to either this Court or the jury's determination is harmless, and thus, does not warrant a JNOV.

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 Mt. 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.[25]

Finally, Defendants, by virtue of their own representations, even clarify 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. Accordingly, Defendants' argument is as duplicitous as Defendants' representations, and duplicity does not warrant a JNOV.

2.) Plaintiff Walbeck's ILSA Claim Does Not Warrant JNOV

Second, neither this Court's prior rulings nor the jury's ultimate findings as to Plaintiff's Walbeck ILSA claim warrants this Court's grant of Defendants' JNOV. Contrary to Defendants'

[25] 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 Engineer permits in this case appear to follow this exact process.

contentions, 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 "developers 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.[26] 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 "developers" or "developer agents" 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 purchased lots within I'On. Moreover, Plaintiffs directly purchased their lots from I'On

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

Company (aka 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.").[27]

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

(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).[28]

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[27] Defendants' assertion that Plaintiff failed to satisfy ILSA's 100 lot requirement is ludicrous 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).

[28] In bringing claims based upon the foregoing anti-fraud provisions, 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 cause of action for an affirmative misrepresentation. Here, Plaintiff satisfies any reliance requirement as detailed in the negligent misrepresentation section below.

As discussed repeatedly herein, the record indicates Defendants promulgated an ongoing, interrelated scheme involving multiple representations and omissions made to the Plaintiffs concerning the amenity property the 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 both this Court's ruling as well as the jury's verdict in favor of Walbeck on his ILSA claim. (*See, e.g.,* Pl. Ex. 1;[29] 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

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

[29] 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 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.*

are material, and the Defendants misrepresented amenity-related facts in their dealings with Plaintiff Walbeck, the I'On Defendants are in violation of ILSA's anti-fraud provisions.[30] In other words, the evidence presented implicates Plaintiff Walbeck was induced, by the Defendants' sales campaign, to purchase lots 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 misrepresent community amenities, the Defendants deceived Plaintiff Walbeck through various acts, instruments and communications in connection with his I'On lot purchase. Accordingly, the Defendants must be responsible for the consequences, and thus, this Court should deny Defendants JNOV Motion as to Plaintiff Walbeck's ILSA claim.

(d) Defendants Arguments to the Contrary are Without Merit

While the Defendants' posit varied arguments in an attempt to avoid liability under ILSA's anti-fraud provisions, all such arguments are without merit. First, contrary to Defendants' contention, 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

[30] Notably, 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.

governed by the discovery rule, and Plaintiffs brought this action within three years of discovering the I'On Defendants' material misrepresentations and nondisclosures.[31]

Second, any argument offered by the Defendants 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.*

Third, the Defendants also attempt to disguise their wrong-doing by claiming they conveyed *different* amenity property to the Assembly which, conveniently, they now describe as the "Creekside Park" and the "Community Dock". Contrary to the Defendants' claims, the evidence leads to one logical conclusion – 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 in 2009. A "*Marsh*walk" and "*Crabbing* Docks" are simply not the same as the "*Creek*side Park" and "*Community* Dock" promised to Plaintiffs, no matter how the I'On Defendants cut it. Indeed, the "Marshwalk" and "Crabbing Docks" 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 in the first place. The Defendants cannot, and

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

should not, be permitted to rely on subsequent misrepresentations in an effort to disclaim prior misrepresentations, and thus, this Court should deny Defendants' JNOV Motion.

3.) Plaintiffs' Negligent Misrepresentation Claim Does Not Warrant JNOV

Third, like Plaintiffs' breach of contract and ILSA claims, Plaintiffs' negligent misrepresentation claims are also supported by South Carolina law and the evidence presented at the trial of this matter. Under South Carolina jurisprudence, 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 result of reliance on the representation. *Sauner v. Public Serv. Auth. of South Carolina,* 354 S.C. 397, 581 S.E.2d 161, 166 (2003).[32]

Here, the I'On Defendants misrepresented the availability, accessibility, and acquired 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 to 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 the I'On Defendants' self-dealings. *See Redwend*

[32] The key difference 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).

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 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, the 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 investigated.[33]

[33] *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. . .").

Even if a showing of his "actual" reliance is required, as Defendants suggests, 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 Defendants throughout the progression of I'On's development. Moreover, Plaintiff Walbeck's testimony also established Defendants never informed him that they did not intend to fulfill their promises to Walbeck at any time prior to his closing, or any other time thereafter.[34]

F.) This Court Did Not Err in Finding Defendants Were Amalgamated

Contrary to Defendants' contentions, this Court correctly held Defendants are amalgamated as a matter of South Carolina law. At the trial of this case, Plaintiffs demonstrated that any legal distinction 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 of which person worked for which entity. Although not necessary for purposes of warranting this Court's

[34] Defendants' argument regarding the "speculativeness" of Plaintiffs' damages is not properly before this Court. This argument is not argued in Defendants' Directed Verdict Supporting Memorandum, and was not argued by Defendants at the Directed Verdict stage. Accordingly, it is outside the scope of a JNOV Motion. Even if within the proper scope of the JNOV Motion, the fact the Defendants are arguing *over specific, monetary damages the jury awarded* indicates there was evidence of non-speculative damages introduced at the trial of the case, eliminating any need for a JNOV.

amalgamation ruling, Plaintiffs sufficiently demonstrated both "fundamental unfairness" and many "wrongs" committed by the Defendants, rendering meritless Defendants' entire argument.

Specifically, under South Carolina jurisprudence, the "amalgamation" theory provides an avenue for relief akin to piercing the corporate veil. However, unlike other veil periling theories, amalgamation does not require a showing of a parent company's "domination" of its subsidiary.[35] 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 others. *See Kincaid v. Landing Development Corp.*, 289 S.C. 89, 91, 344 S.E.2d 869, 871 (Ct. App. 1986). [36]

Although not required for purposes of establishing amalgamation per the *Kincaid* Court, the record in the present case reflects 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

[35] In Defendants' JNOV Motion, Defendants' maintain "as Plaintiffs would have it. . .total domination and control is sufficient"; however, this is not what Plaintiffs maintain and this is why "amalgamation" is different from the many "alter-ego" theories cases relied upon by Defendants in their brief.

[36] 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, 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.

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, who have engaged in business dealings acting on behalf of the separate entities simultaneously. 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 I'On Company – thus, by virtue of this very statement, 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, CV 5 and CV 6 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, Civic Site 5 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, Civic Site 5 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, Civic Site 5 was sold to Civitas by *the Grahams*, Civic Site 6 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 Civic Site 6 also indicates the collective function of the I'On Defendants. (*See* Creek Club Purchase Contract, Pl. Ex. 29). 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.*

In light of the Defendants' interchangeable business operations and identities, and each I'On entity's control over each other, it follows the I'On Defendants functioned solely to achieve their collective purpose,[37] and thus, are amalgamated.

G.) This Court Did Not Err in Granting a Directed Verdict on Defendants' Claim for Abuse of Process

Finally, this Court correctly granted a directed verdict on Defendant's claim for abuse of process. Simply stated, Defendants failed to establish a question of fact on both necessary elements of an abuse of process claim, and thus, failed to meet their own burden.

[37]Their collective purpose in this instance was to profit as much as possible by misleading and deceiving innocent purchasers.

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 *proper* 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.* Defendants also did not introduce any evidence to support their accusation that Plaintiffs falsified their verified complaint. In fact, Defendants' went so far to support their baseless claim that they postulated the existence of a "Free Civic Lot Gang" that no one testified they belonged to, let alone existed. Defendants' baseless assertions, coupled with their failure to establish evidence of both an ulterior purpose and willful act are fatal flaws to the Defendants' counter-claim, flaws which this Court correctly recognized in granting a directed verdict on Defendants' abuse of process counterclaim.

II. This Court Should Deny Defendants' New Trial Motions Because The Jury's Verdict Is Consistent With The Evidence Presented And Well Supported By The Record

While Defendants posit a host of arguments in an attempt to circumvent liability by way of a new trial, all of Defendants assertions ignore South Carolina jurisprudence which clearly indicates that a trial court must grant new trial 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) (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,[38] and the jury's determination of damages is entitled to substantial deference. Accordingly, despite any argument Defendant maintains to the contrary, this Court should uphold the jury's verdict in order to effectuate the jury's express intentions, and thus, deny 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 should deny Defendants' Motion for Judgment Notwithstanding the Verdict, or in the alternative, for a New Trial Absolute or New Trial Nisi Remittutur.

Respectfully submitted,
JUSTIN O'TOOLE LUCEY, PA

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Charleston, South Carolina
Dated: September 4, 2014

[38] In fact, the jury awarded less than the amount the Plaintiffs requested at trial and the jury did not award any punitive damages despite finding the Defendants acted recklessly and without the slightest care.

AFFIDAVIT OF NON-SERVICE

State of South Carolina **County of Charleston** **Common Pleas Court**

Case Number: 2010-CP-10-10490 Court Date: 7/28/2014 9:00 am

Plaintiff:
Brad J. Walbeck
vs.
Defendant:
The I'on Company, LLC; The I'on Club, LLC et. al.

RETURN NON EST INVENTUS

For:
Brian C. Duffy, Esq.
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401

Received by PROCESS SERVICE, INC. to be served on **Mike Russo, 148 Civitas St., Mount Pleasant, SC 29464.**

I, John Gordon, being duly sworn, depose and say that on the **14th day of July, 2014** at 10:29 am, I:

DISCONTINUED ATTEMPTING SERVICE of the **WITNESS CHECK ($33.00), LETTER, TRIAL SUBPOENA and PROOF OF SERVICE for the reasons detailed in the comments below.**

Additional Information pertaining to this Service:
In attempts to serve Mike Russo, I called him to see if he would be willing to meet me so that I could complete service. He explained that he would not be available for a couple of weeks and that I should call him again in the future. In calling him back he advised me that he would not be available to be served because he is avoiding the papers. He said that by the time someone found him to make service, the case would be over. Returning documents as advised by attorney's office.

I am over eighteen and have no interest in the above action.

John Gordon
Process Server

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2014001584

Subscribed and Sworn to before me on the 14th day of July, 2014 by the affiant who is personally known to me.

NOTARY PUBLIC
Commission Expires: 02/20/23

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Lucey Law

Justin Lucey <jlucey@lucey-law.com>

Exhibit Stipulation

McDonald, Stephanie P. <smcdonald@sccourts.org> Fri, Jul 25, 2014 at 6:41 PM
To: Justin Lucey <jlucey@lucey-law.com>
Cc: "Thornton, Sarah W." <sthornton@sccourts.org>, Brian Duffy <bduffy@duffyandyoung.com>, Josh Evans <jevans@lucey-law.com>, Dabny Lynn <dlynn@lucey-law.com>, Tim Bouch <tbouch@leathbouchlaw.com>, Yancey McLeod <ymcleod@leathbouchlaw.com>

The stipulation is fine with me; please just remind me on Monday that we need to put the stipulation on the record and reiterate that it has been made without any waiver of the prior objections. Thanks and have a great week-end, everyone.

On Jul 25, 2014, at 6:04 PM, "Justin Lucey" <jlucey@lucey-law.com<mailto:jlucey@lucey-law.com>> wrote:

Judge McDonald:
Subject to your approval, in light of your rulings overruling objections to terms of the settlement coming into evidence since the acquisition of title is coming into evidence, the Parties have agreed to stipulate the settlement agreement into evidence as an exhibit, with paras. 8 and 10 redacted.
This stipulation is expressly made in light of the Court's pretrial rulings and, by agreement of the parties, it is made without prejudice to the Defendants' right to challenge the rulings in the first instance at a later time.
The Parties are writing you in advance to see if the Court will accept and approve of this stipulation. As it will affect the preparation of our cases, an indication from the Court before Monday, if feasible, would be beneficial to both parties.
Counsel for defendant approved this email in advance and is copied on this email and is invited to reply with any clarification he deems necessary.
Justin Lucey
<Confidential Term Sheet.pdf>
~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Agreed: 7-25-14
Justin Lucey
Attorney for Plaintiffs

Tim Bouch
Attorney for Assembly.

7/26/14
Brian Duffy
Attorney for Ds
~~~

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 _____

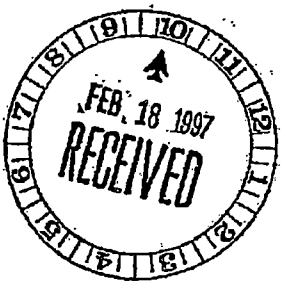
I, Lea Ann Adkins, hereby verify, that the facts and allegations in the Second Amended Complaint are made upon personal knowledge and are true and correct to the best of my knowledge and belief, and further verify that I was a member of the Assembly both at the time of the acts complained of therein 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

I'ON
Impact Assessment



The Graham Company
935 Houston Northcutt Boulevard, Suite 101
Mt. Pleasant, South Carolina 29464
January 1997



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IMPACT ASSESSMENT - Introduction

General Description and Identification of Impacts

The Graham Company proposes to create a mixed use, traditional walking neighborhood on a 243 acre tract of land in the Town of Mt. Pleasant. I'On will be built in the manner of older coastal towns like Beaufort, Charleston and the Old Village of Mt. Pleasant. The Graham Company will draw heavily upon experience gained in developing the neo-traditional neighborhoods of North Cove in Peachtree City, Georgia, and The Village at Port Royal, Broad Street and Newpoint in Beaufort, South Carolina. These neighborhoods are also built in the manner of the previously mentioned historic towns under Planned Unit Development (PUD) zoning ordinances (similar to Mt. Pleasant's PD Ordinance). Such PUD ordinances enable variations from conventional lot sizes and width requirements, as well as front, rear and side yard setbacks.

The first zoning ordinances were implemented in New York City in 1916 and did not come into widespread use in the South until the 1960's (Mt. Pleasant's first zoning ordinance was adopted in 1979). Because of such ordinances, a change from R1 zoning to Planned Development is essential to build a neighborhood like I'On that emulates the character of the Lowcountry's older towns and villages. While planned for only 3.12 units/acre, lower in density than the historic models, (Beaufort's Old Point is greater than 5 units per acre, the Old Village is 3.78 units per acre and the Charleston Peninsula is as much as 18 units per acre South of Broad Street), I'On will utilize the same principles and traditions that make these neighborhoods so desirable and render extraordinarily high property values.

In developing I'On, the Graham Company will fully comply with the spirit and intent of the goals and objectives listed in the 1992 Redman/Johnston Master Plan, as well as the 1994 document, "Strategic Planning for the Town of Mt. Pleasant - Findings, Recommendations and Action Plans". Specific impacts are identified and discussed in the Impact section to follow.

The 243 acre property is bounded on the north by the marshes and waterways of Hobcaw Creek, to the east by a 70 acre tract of land presently owned by Sonny Mevers, to the south by Mathis Ferry Road, and to the west by Muirhead Road, Hobcaw Point, and a 17 acre tract of land presently owned by Dorothy Ayers and others. Of the 243 acres within the tract, 24.6 acres are man-made lakes. The property has an unusually high elevation for the area, ranging from 7 to 25 feet above sea level with an average elevation of 19 feet above sea level. Soil types are primarily fine loamy sands with excellent permeability.

From the late 1600's to the early 1900's, the land was used for agricultural purposes. Earlier this century, the fields were used to grow tomatoes, cucumbers and pine trees and the water frontage was used as a base for Shelmore Seafood company. More recently, the present owners mined dirt for road building and other construction projects. This mining has enhanced the property's value by creating the aforementioned freshwater lakes.

I'On will consist of a maximum of 759 residential units. In addition, there will be 16,000 s.f. of neighborhood shops and 14,000 s.f. of office space that will accommodate small businesses. The areas for shops and office space have been specifically delineated on the master plan. Uses permitted in those areas are restricted to all uses allowed in Section 156.089 NC, Neighborhood Commercial District of the Mt. Pleasant Zoning Code, except that no automotive oriented businesses will be allowed. Throughout the community, specific sites are designated for civic buildings - neighborhood clubhouses, a scout den hut, churches and other civic uses.

The critical line along the marshes and waters of Hobcaw Creek, and the freshwater wetlands on the site have been delineated and approved by the U.S. Army Corps of Engineers.

Several areas within I'On's boundaries have been identified by a professional archaeologist to be of historic and archaeological significance. Of particular note is a family cemetery plot dating to the early 1700's. Included here among the interred is Jacob Bond I'On, for whom the neighborhood is named. I'On was a celebrated hero in the War of 1812 and a past President of the S.C. Senate. The developers have met with descendants of those buried in the cemetery and are working with them to restore and preserve this significant site. Several other sites may have archeological significance and The Graham Company will conduct further studies to determine their merit. The developer will cooperate fully with the State Department of Archives and History in recording, recovering, and/or preserving important sites.

IMPACTS

Water Supply

The daily potable water demand for the proposed 759 dwelling units will be 284,625 gallons based on 375 gallons per day per dwelling unit as prescribed by the Mt. Pleasant Waterworks & Sewer Commission. Water will be supplied by the Mt. Pleasant Waterworks & Sewer Commission and the distribution system will be designed to meet all DHEC (Department of Health and Environmental Control) and Mt. Pleasant Waterworks & Sewer Commission guidelines.

Wastewater

This project will generate 233,700 gallons of domestic wastewater per day based on the Mt. Pleasant Waterworks and Sewer Commission guidelines of 300 gallons per day per dwelling unit and 6,000 gallons per day for the 30,000 s.f. of small shops and office space. Homes will be served by a system of pump stations and gravity lines to transport the wastewater across Mathis Ferry Road and US 17, through a power easement adjacent to The Groves to Coleman Boulevard. The wastewater will then be transported to the Mt. Pleasant Waterworks and Sewer Commission treatment facility on Center Street for treatment and disposal.

Development Impact Fees are estimated to be approximately $1,791,700 to the Mt. Pleasant Waterworks and Sewer Commission.

Solid Waste

According to information supplied by the Town, a garbage truck used by the Town has the capacity to serve 1,500 dwelling units. Therefore, I'On will generate a volume of garbage to fill approximately 51% of one truck. This combined with other growth in Mt. Pleasant will necessitate the addition of one truck and requisite personnel at a future date.

Transportation

Access to I'On is from Mathis Ferry Road. As part of the overall development plan, a connecting road will be built linking Mathis Ferry Road to the Lowcountry Boulevard intersection at US 17. This road will be directly across Mathis Ferry Road from the main entrance to the neighborhood and will greatly improve traffic circulation in the entire area.

A traffic roundabout is planned for the main community entrance at Mathis Ferry Road. A roundabout is a sophisticated traffic channeling device that will serve to "calm" traffic on Mathis Ferry Road as well as preserve the aesthetic character of the road. Further information on these traffic circulation improvements is provided in the Traffic Impact Study following this report.

Internally, the road system is organized into a network grid. Road cross sections have been designed in conformance with state of the art traffic guidelines emphasizing the pedestrian environment and low speed intersection geometrics. The design of roads meets the recommendation of the 1992 Redman/Johnston Master Plan: *"Streets should be built at a human scale and linked with public spaces that fully accommodate cars without being eclipsed by them."*

I'On has 2,488 linear feet of frontage along the section of Mathis Ferry Road designated as a South Carolina Scenic Highway in June of 1988. The developers believe this scenic corridor is a tremendous asset to the Town of Mt. Pleasant. Unfortunately, the quality of the live oak canopy has been severely diminished by past damage from Hurricane Hugo, the present practices of utility companies to cut branches to keep utility lines free of obstruction, and water lines and storm drainage pipes installed within the trees' roots.

Recognizing the importance of Mathis Ferry Road to Mt. Pleasant, the developer intends to enhance this scenic corridor in five distinct ways:

1) Create an easement on I'On property and work with SCE&G and BellSouth to move overhead utility lines off of Mathis Ferry Road into this new easement. This would enable the existing and replacement live oaks on Mathis Ferry Road to branch out and grow without impeding the lines and line maintenance.



Utility lines running through live oaks on Mathis Ferry Road



Enhancement of live oak canopy on Mathis Ferry Road

2) Work with SCDOT and the Town to re-plant live oaks in the right-of-way where trees have died or been removed in order to restore the continuous tree canopy along the road.

3) Construct a traffic calming roundabout with landscape feature in the middle..

4) Refrain from building large signage monuments identifying the neighborhood. Instead, utilize understated brick columns and white rail fencing to designate entryways to I'On.

5) Maintain and enhance the opaque screening effect by providing a 25' natural buffer along the 2,488 feet of frontage as recommended by the Planning Board in their Mathis Ferry Road Plan.

These improvements are in accordance with the 1992 Redman/Johnston Master Plan, the recommendations of the Urban Landscape Issue Committee, as well as the more recent Mathis Ferry Road Plan. They will enhance the scenic nature of Mathis Ferry Road. For a more complete discussion of traffic, please see the Traffic Impact Study following this report.

Drainage

The property currently drains overland to three lakes on the property, a large wetland at the headwaters of Molasses Creek, and the adjacent salt marshes.

I'On will make extensive use of the three lakes and the existing freshwater wetlands to limit storm water runoff to pre-development rates and contain non point runoff from entering the salt marsh.

The extensive park system planned along the highlands above the marshes and waters of Hobcaw Creek, together with other best management practices will serve a dual purpose of providing storm water control and serving as an amenity for residents. Storm water facilities will be designed to meet all DHEC-OCRM and Town of Mt. Pleasant guidelines.

Recreation

A traditional walking neighborhood entails smaller individual homesites with significant areas devoted to parks, formal greens and other open spaces for use by the residents. In keeping with these principles, the plan for I'On calls for at least one park within a 3 minute walk of every homesite.

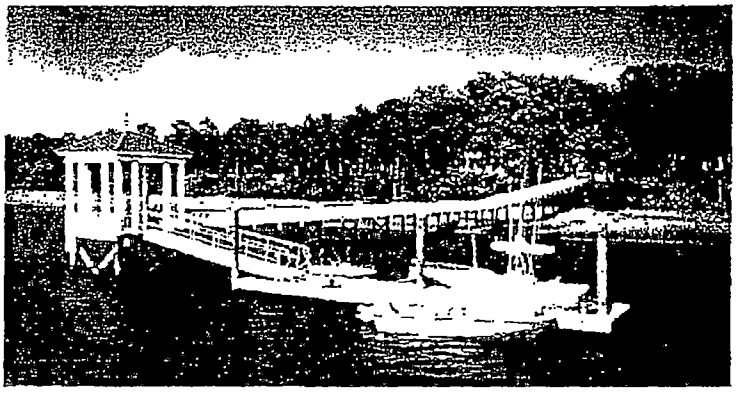
I'On has approximately 2.1 miles of marsh and deep water frontage along Hobcaw Creek. It also has 1.46 miles of frontage along the above mentioned lakes. Rather than divide up this premium frontage among a relatively few private lots, the developers believe that the value of the neighborhood as a whole is significantly enhanced if all residents have access to these amenities. They base this approach on their experience at Newpoint and Broad Street, in Beaufort, South Carolina and North Cove, in Peachtree City, Georgia as well as observation and study at places like historic Charleston, Beaufort and the Old Village where all residents have access to the waterfront at road endings and in established parks.

Therefore, over 75% of the marsh, water frontage and lake frontage has been planned as parks providing access to all residents of the neighborhood.



A park on Middle Street in the Old Village

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 for 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. Two of the lakes will be connected with a canal and will be available to non-motorized boat traffic for fishing and other activities. The third lake will be preserved as a wildlife sanctuary.



Community dock pavilion at Newpoint

Open spaces in the more dense areas of the development will be organized into parks and squares. Sidewalks, bike paths and walking trails will be built throughout the neighborhood. In all, more than 12 miles of these walks and paths will be built to promote the pedestrian nature of the development.

Small play grounds will be scattered throughout the neighborhood. There will be at least five tennis courts and two pools. All parks, docks and other community facilities will be administered by the property owners association and private clubs. Acreage throughout I'On has been reserved for ball fields and other private recreational uses for the owners in the neighborhood.



Clubhouses in I'On will be modeled after traditional structures like the Sea Island Yacht Club in Rockville, SC



The Town of Mt. Pleasant Subdivision Regulations requires 5.5 acres of land per 1,000 population be set aside and dedicated for public park and recreational facilities. If existing or proposed facilities are in close proximity to proposed developments, the payment of a fee in the amount of the assessed value of the required recreational land in lieu of dedicating the property is usually acceptable. In the case of I'On, the fee would be based on the following acreage calculations:

Recreational Land Required = 759 D.U. x $\frac{2.50 \text{ persons}}{\text{D.U.}}$ x $\frac{5.5 \text{ acres}}{1000 \text{ persons}}$

= 10.44 acres

The Plan indicates recreational facilities and passive open space comprising 36.2 acres of land. Since this open/recreation space exceeds that calculated above, the developer requests a 50% credit towards the recreation land requirement, and to pay the fee rather than dedicate this open space to the Town. The Recreation Fee is based on the appraised value of the property in its predeveloped state. Based on assumed current appraised value of $28,000.00 per acre, the Recreation Fee for the 5.22 acres of land would be $146,160.00 or $192.57 per lot.

Tom O'Rourke, the Director of Recreational Services, has indicated he has no objection to this development.

Education

Lynda F. Davis, Area Superintendent for the Charleston County School District discussed the mobile classroom situation being used in Mt. Pleasant. She mentioned a new middle and elementary schools will open in August 1998 and 1999 respectively. She further stated that the school system in Mt. Pleasant would be able to handle I'On's educational needs.

Police

The Chief of Police, Thomas Sexton, has indicated the Town of Mt. Pleasant Police Department will be able to adequately supply police protection to the neighborhood. Crime Prevention Officer, E.J. German, will provide training and organization for neighborhood watch programs and information on protection of civic property.

Fire Protection

Home construction will meet or surpass all building and fire codes so as to have no adverse effect on the Town's ISO rating. The water system will be engineered to provide pressure at hydrants of at least 1000 gallons per minute. Chief Steve Mims has indicated the Town of Mt. Pleasant Fire Department will be able to serve this development.

Environmental Resources

I'On consists largely of open fields and relatively young (+/- 25 years old) hardwood growth. There are also many specimen live oaks scattered throughout the property. These oaks have suffered some hurricane damage, but are still significant and will be cared for in an ongoing forest management program. Per property owner association (POA) documents, all builders and homeowners will be encouraged to save as many trees as practically possible when building individual homes. Permission will be required before cutting any tree larger than 6 inches in caliper. An extensive tree planting program along all streets in the neighborhood will be undertaken as part of the infrastructure improvements.

The design for the thoroughfares will guarantee the planting of more than 1200 trees along I'On streets.

I'On's outstanding water resources and the Mathis Ferry Road Scenic Corridor are discussed in the Recreation and Transportation sections of this document.

Fiscal Consideration

The number of units allowed is 759. Assuming a fair market value of $225,000 for each home, the total value created is $170,775,000. Using an assessment ratio of 4 percent for each unit, produces an assessment value of $6,831,000. Based on the current Town of Mt. Pleasant millage rate of 59.5 and the county rate of 197.8, the total annual property tax revenue generated from I'On would be $406,444, to the Town of Mt. Pleasant and $1,351,171 to Charleston County.

Housing

In accordance with the specific recommendation made on page 29 of the 1992 Redman/Johnston Master Plan for the Mathis Ferry Road site, I'On is planned primarily as a detached single family neighborhood. Home prices will range from $150,000 to well over $500,000.

Homesites in I'On will be sold to individuals and contractors who will build homes in accordance with established architectural guidelines which promote a traditional Lowcountry style of architecture with raised foundations, classic proportions and deep porches. All lots will be developed with roads, drainage, sewer, water, electricity, telephone, and cable TV lines installed.



Traditional houses like the shown here in Newpoint will be built in I'On

I'On is located within one of the best school districts in Charleston County and is conveniently located near the Town's Center, the Mark Clark Expressway, shopping and the Cooper River Bridge. The neighborhood will offer Mt. Pleasant residents a desirable alternative in a close in location.

The extraordinarily high cost of housing in places like downtown Charleston and the Old Village demonstrates the popularity and demand for homes in these types of traditional neighborhoods. Together with Mt. Pleasant's very strong growth potential, this community will help meet the already solid demand for quality housing and development in the area.

SPECIAL CONSIDERATIONS

The Graham Company initiated the planning and development of I'On largely because of the strong correlation between their own concept for the property and the Town of Mt. Pleasant's vision for new development as expressed in the 1992 Master Plan and 1994 Strategic Plan. As a private developer, The Graham Company believes these documents to be far-sighted and responsible planning tools that with continued enlightened leadership, will enhance the vitality and quality of the Town of Mt. Pleasant.

As part of Section S154.50 "Subdivision Application Checklist" required for the subdivision development process each applicant must include those special considerations detailing "the relationship of the proposed development to the Town's Master Plan, objectives and policies," the "relationships to existing or proposed public facilities," and "any relationship to special land use or development areas".

Below are a sampling of passages from the Town's Strategic Plan, Master Plan and the Mathis Ferry Road Plan. These excerpts indicate the strong correlation between the development concept for I'On and the vision for development expressed in the Town's plans.

Reprinted from the Redman/Johnston and Associates Town of Mt. Pleasant Master Plan adopted by Town Council, March 1992:

The Community Character Context (pages 6 and 7 of the Master Plan):

The rich quality of its historic built environment, coupled with the unique and beautiful local natural environmental features and amenities, are the most dominant and positive underlying qualities of Mount Pleasant's community character. More recently, these qualities have been overshadowed by standardization and national techniques of commercial strip development - a type of development which is not sensitive to the existing character of the community, forcing the built environment to accommodate the perceived tastes of the market place.

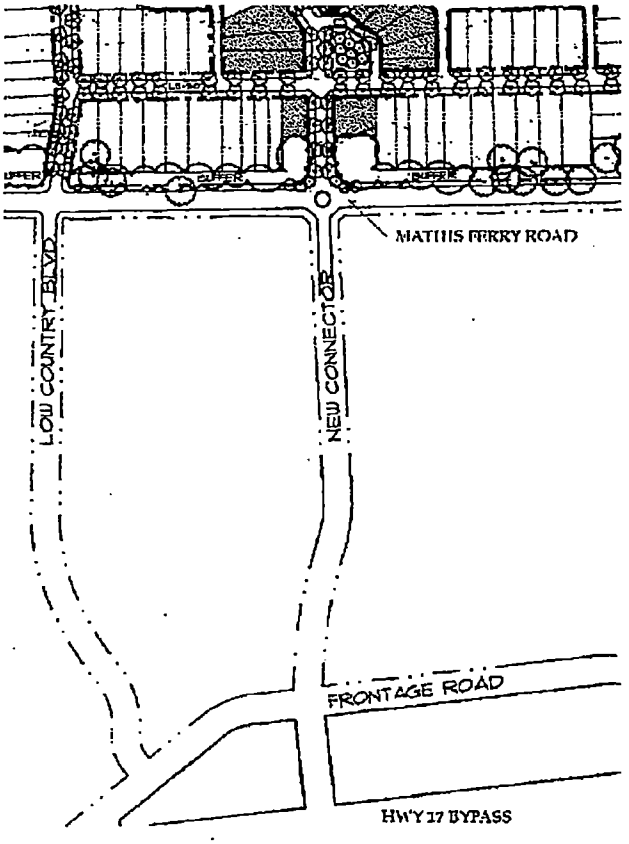
The Old Village retains the architectural and landscape idioms of historic Mount Pleasant. Large old live oak trees, such as are found in Alhambra Park, accentuate the landscape, co-existing on a street system that is practical despite deviating from almost every current engineering design standard. The Old Village is a special community resource, much of which is protected under the provisions of the Town's historic district zoning.

Much of the new residential development beyond the "old corporate limits" can be characterized as post-1940's, suburban residential communities. Many are larger, planned communities that have been designed to be self contained, turning in on themselves. Catering to the automobile generation, street design in these communities has departed from the grid pattern of the older neighborhoods in favor of an internal, curvilinear, street system that is often unintelligible to those not intimately familiar with the development. Local access streets feed into a few collector streets that intersect major roads at one or two points. This form of street layout permits the current standard of "efficient travel speeds", as well as providing opportunities to create secluded building sites on a myriad of cul-de-sac streets and at the same time permits maximum private use

of the waterfront. It does not however present many opportunities for interconnection with the overall highway system. Each of these more recent developments creates its own identity or sense of fiefdom which may or may not impart a distinguishable link to the Town's overall identity.

The plan for I'On reinforces what the Master Plan describes as ***"the most dominant and positive underlying qualities of Mount Pleasant's community character."***

I'On falls within Neighborhood Two as identified in the Master Plan. Regarding transportation issues in this section, the Master Plan makes the following recommendation: *"The addition of connecting links from Mathis Ferry over to US 17 . . . will help alleviate some of the traffic load in this corridor."*



Detail showing new connector that will link Mathis Ferry Road and US 17

The developers will build an extension linking Mathis Ferry Road and US 17 as part of the overall project. This is discussed in more detail in the Traffic Impact Report in Section II.

Chapter III of the Master Plan outlines in detail the Goals and Objectives for Growth Management, Land Use, Transportation, Environment, and Urban Design. The plan for

I'On is in complete accord with each of these goals. The following excerpts from the Objectives section are particularly noteworthy:

- from *Growth Management*
Direct development to areas already served or proposed to be served with adequate public facilities such as sewer, water, roads, and schools.

-from *Land Use*
Encourage traditional neighborhood development forms, modeled on the "Old Village" in new developments.

-from *Environment*
Coordinate environmental quality protection efforts with future opportunities to establish public parks, natural recreation areas and open spaces.

- from *Transportation*
Increase opportunities for public access to tidal waters.

-from *Urban Design*
Encourage traditional development form in areas where street systems and/or adjacent development suggest is appropriate.

Finally, in Chapter IV dealing with Implementation Recommendations the Master Plan calls for encouraging the type of development proposed for the property *specifically "through design that follows traditional neighborhood development form and adopts the urban conventions which were standard in the United States from colonial times until the 1940's. A genuine village core (neighborhood center), could be built based on these traditional neighborhood planning principals."* The recommendations continue to point out that a reasonably large site still exists on Mathis Ferry Road where a traditional neighborhood could be created.

Furthermore, the plan for I'On complies with each of the 12 points listed on page 72 of the Master Plan that call on the Town to review for proposed Traditional Neighborhood developments. These 12 points are as follows:

"*In reviewing proposed plans for Traditional Neighborhood development, the Town should insure that the proposed plan will result in:*

1. *pedestrian scale neighborhoods;*
2. *slow vehicular speeds;*
3. *style and tradition of American towns developed prior to 1940;*
4. *parking located to the side and rear of structures as opposed to dominating the streetscape or site frontage;*
5. *dwellings, shops and work places generally located in close proximity to each other;*

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4. *parking located to the side and rear of structures as opposed to dominating the streetscape or site frontage;*
5. *dwellings, shops and work places generally located in close proximity to each other;*

6. *modest sized buildings fronting on, and aligned with, streets in a disciplined manner, generally uninterrupted by parking lots;*

7. *generally regular geometric patterns of streets and blocks arranged to provide comprehensible and interesting routes of travel;*

8. *a hierarchy of streets - some narrow and convenient for a balanced mix of pedestrian and automobiles, while others wider to carry greater traffic and perhaps serve as the major ceremonial boulevard, or commercial main street;*

9. *well configured squares, greens, gardens and parks woven into the street and blocks patterns and dedicated to collective social activity, recreation and visual enjoyment.*

10. *civic buildings for assembly, or for other civic purposes, sighted to act as visual landmarks and symbols of identity within the community;*



Structures like the Mt. Pleasant Presbyterian Church will serve as inspiration for civic buildings in I'On

11. *a recognizable, functionally diverse, visually unified neighborhood or town center, often fronting on a major civic space such as a village green or square, and frequently linked to a traditionally important crossroads or waterfront; and*

12. *a built-up neighborhood with an overall size small enough to permit residents and workers, if they so choose, to walk or ride bicycles comfortably rather than being required to drive throughout much of the neighborhood."*

Reprinted from "Strategic Planning for the Town of Mt. Pleasant - Findings, Recommendations and Action Plans", dated March 14, 1994.

Page 4 - 5, URBAN LANDSCAPE ISSUE COMMITTEE, FINDINGS: SUBURBAN SPRAWL:

At the heart of the issues concerning growth, appearance and the built environment is the issue of suburban sprawl. The land use pattern found today throughout suburban America is fundamentally dependent upon: 1) the linear extension of arterial highways; 2) the rigid separation of uses; 3) the continued availability of relatively inexpensive land and; 4) the unregulated expansion of infrastructure. Today's commercial centers are invariably beyond a reasonable walking distance from residential neighborhoods, and moreover, they are generally inaccessible to bike transportation due to safety concerns.

The committee further finds that today's residential development patterns also contribute equally to suburban sprawl. Today's typical, low-density, one access subdivisions, with curvilinear street systems, are purposefully isolated from non-residential land uses - - a decision that not only extends the limits of the area's development, but also makes the automobile a necessity for any activities outside the subdivision. This residential sprawl also contributes to the loss of natural space, and dramatically to an increased cost of providing municipal services. Ultimately, the greatest impact of residential sprawl may be the creation of communities within a community, wherein a common purpose, a community spirit, and a "sense of place" are almost non-existent. The negative effects of suburban sprawl will damage the very character of Mount Pleasant which has attracted so many people over the past twenty years. Moreover, ultimately, the economic stability of the community may be eroded, and conditions conducive to crime and the general degradation of quality of life may result if suburban sprawl is allowed to become the dominant trend in development over the next 15 years.

Page 5, FINDINGS: SUBURBAN SPRAWL, RECOMMENDATIONS:

Town Council should adopt policies wherein all new development (residential and commercial) would have to consider, recognize and address the negative aspects of urban sprawl. These policies should encourage and, where appropriate, require developers to use land efficiently and economically, as well as promote the establishment of mixed use development, and village/type commercial/residential development in appropriate areas of Town...

Page 5, FINDINGS: SUBURBAN SPRAWL, ACTION PLAN RECOMMENDATION TWO:

Require new subdivisions to:

1) *Interconnect*
2) *Utilize a grid pattern for streets and*
3) *Install sidewalks and bikeways where deemed appropriate relative to existing land use patterns, transportation corridors, environmental considerations and long-range Master Plan considerations.*

Page 5, FINDINGS: SUBURBAN SPRAWL, ACTION PLAN RECOMMENDATION THREE:

Require the:

1) *Linking of residential areas, to commercial zones and neighborhood stores*
2) *Provide for Carefully planned integration of neighborhood stores into new residential subdivisions in a manner that is sensitive to residential settings where deemed appropriate relative to existing land use patterns, transportation corridors, environmental considerations and long-range Master Plan considerations*

Page 6, FINDINGS: SUBURBAN SPRAWL, ACTION PLAN RECOMMENDATION FOUR:

Require sidewalks and/or bikeways to be constructed during construction of subdivision in coordination with Town-wide pedestrian walks and bikeway Master Planning.

Page 7, FINDINGS: THE MUNICIPAL SERVICE AREA AND POPULATION GROWTH, RECOMMENDATIONS:

Given local trends toward low-density residential development, the Town Council should establish a policy that recognizes that such development may contribute to suburban sprawl and is often wasteful in terms of infrastructure. Whenever feasible, the Town Council should require the new development with their associated populations, be concentrated around existing infrastructure.

Page 8, FINDINGS: THE MUNICIPAL SERVICE AREA AND POPULATION GROWTH, ACTION PLAN RECOMMENDATION TWO:

Actively oppose developments that do not comply with the Master Plan and /or which would encourage "leapfrog" development associated with suburban sprawl.

Page 9, FINDINGS: OPEN LAND AND GREEN SPACE PRESERVATION, ACTION PLAN RECOMMENDATION ONE:

The Town should develop a green space/belt acquisition plan and funding program and also consider the "transfer of development rights" and other incentive programs as means of acquiring or preserving open space.

Page 15, ECONOMIC DEVELOPMENT ISSUE COMMITTEE, FINDINGS: STATE OF THE ECONOMY, OPPORTUNITIES:

f) To further manage growth so that it continues to be of a quality that will constitute an asset as opposed to a liability for future development opportunities.

Page 15, ECONOMIC DEVELOPMENT ISSUE COMMITTEE, FINDINGS: STATE OF THE ECONOMY, THREATS:

c) *Urban sprawl is an almost naturally occurring phenomenon for rapidly developing communities, and is costly, inefficient and generally unsightly and may drive away Class "A" types of development.*

Page 16, ECONOMIC DEVELOPMENT ISSUE COMMITTEE, FINDINGS: STATE OF THE ECONOMY, ACTION PLAN RECOMMENDATION TWO, MASTER PLANNING FOR GROWTH AND THE NATURAL ENVIRONMENT:

4) Develop strategies and policies to restrain urban sprawl, which would be positive for the recruitment of appropriate businesses and industries.

5) Formulate economic development strategies that consider the natural environment and our natural resources as assets for attracting tourists, new residents and business opportunities.

In summary, the proposed location is an excellent site for a neo-traditional development for the following reasons:

1. The site is identified in the Master Plan as a location where a traditional neighborhood could be built.
2. Developing on the outskirts of the Town consumes more of our precious natural and agricultural lands. Furthermore, such outward development drains the vitality of the core area of Mt. Pleasant by diverting investment from the existing developed areas. It may have the harmful long-term effect of weakening the local economy and straining the fragile bonds of the community.

MATHIS FERRY ROAD PLAN

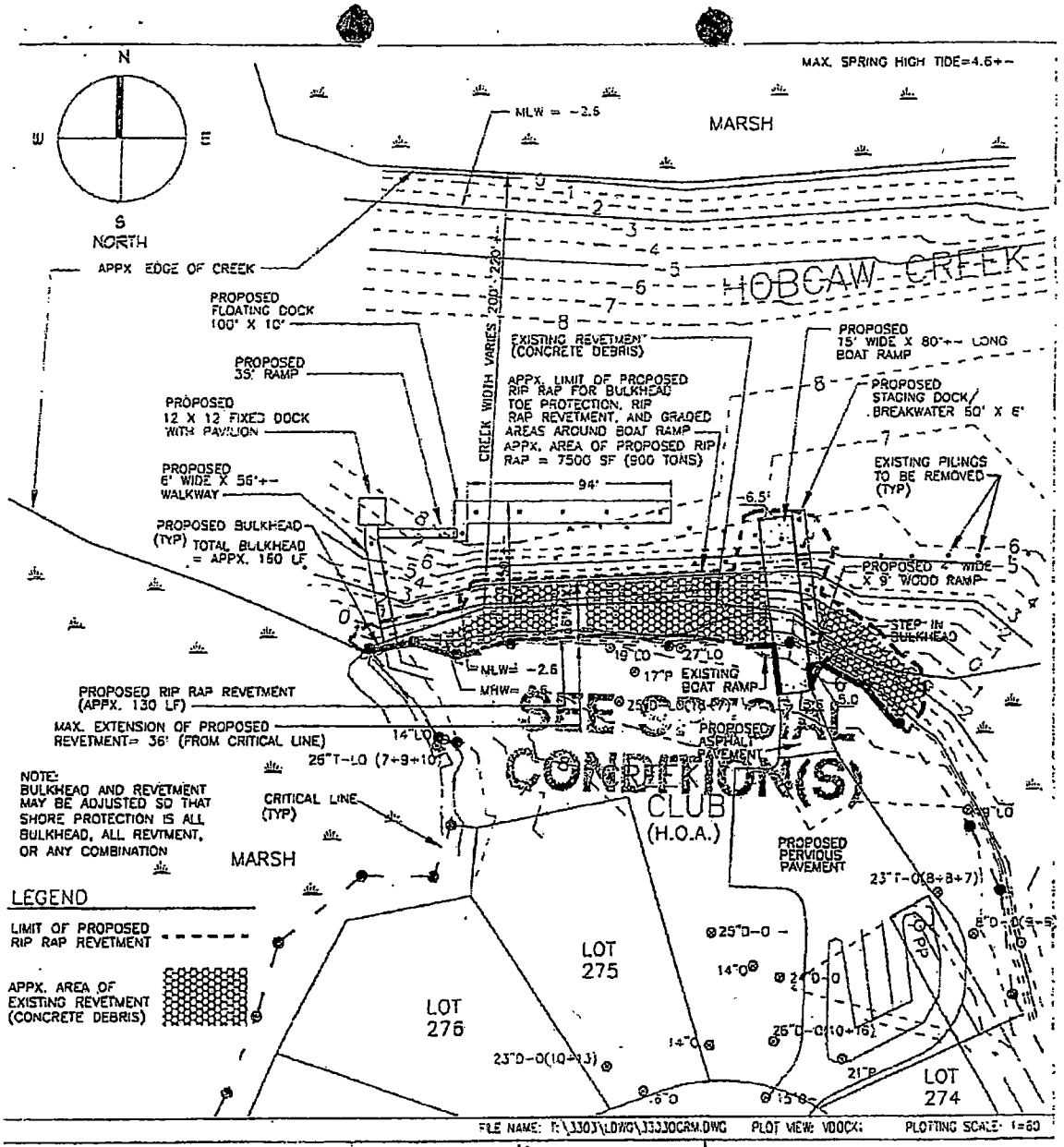
The Plan for I'On meets or exceeds the recommendations of the Mathis Ferry Road Plan. These recommendations include the following:

- *"To keep the intensity of development under control, property owners should be strongly encouraged to develop their parcels in accordance with the 1992 Redman/Johnston Master Plan recommendations."*
- *"an undisturbed natural buffer should be required along a property's frontage on the Scenic Corridor to minimize the visibility of the development from Mathis Ferry Road."*

"It is important to reiterate that these buffers should remain natural and undisturbed as thinning of underbrush and small caliper growth can quickly diminish the opaque screening effect produced by an undisturbed natural buffer. Therefore, by leaving these buffers undisturbed, the tree-lined character of Mathis Ferry Road right-of-way can be protected and reinforced."

The planning techniques exhibited in the traditional walking neighborhood of North Cove in Peachtree City, Georgia, the Village of Port Royal, Broad Street and Newpoint in Beaufort, South Carolina, as well as the Plan and Code for I'On demonstrate that the developers' values are right in line with the goals and objectives listed in the Town's Plans.

We have committed ourselves to developing I'On in accordance with traditional neighborhood principles set forth in the Master Plan and Strategic Plan, and creating a new neighborhood that will be a model for future development in Mt. Pleasant, the State of South Carolina and throughout the Southeast. It will be a place the developers, planners, the Town and all participants can truly take pride in being involved.



0' 30' 60'
SCALE: 1" = 60'
DATUM: MSL, 1929 NGVD

I'ON
PLAN VIEW
DOCK #1, BOAT RAMP, & SHORE PROTECTION
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

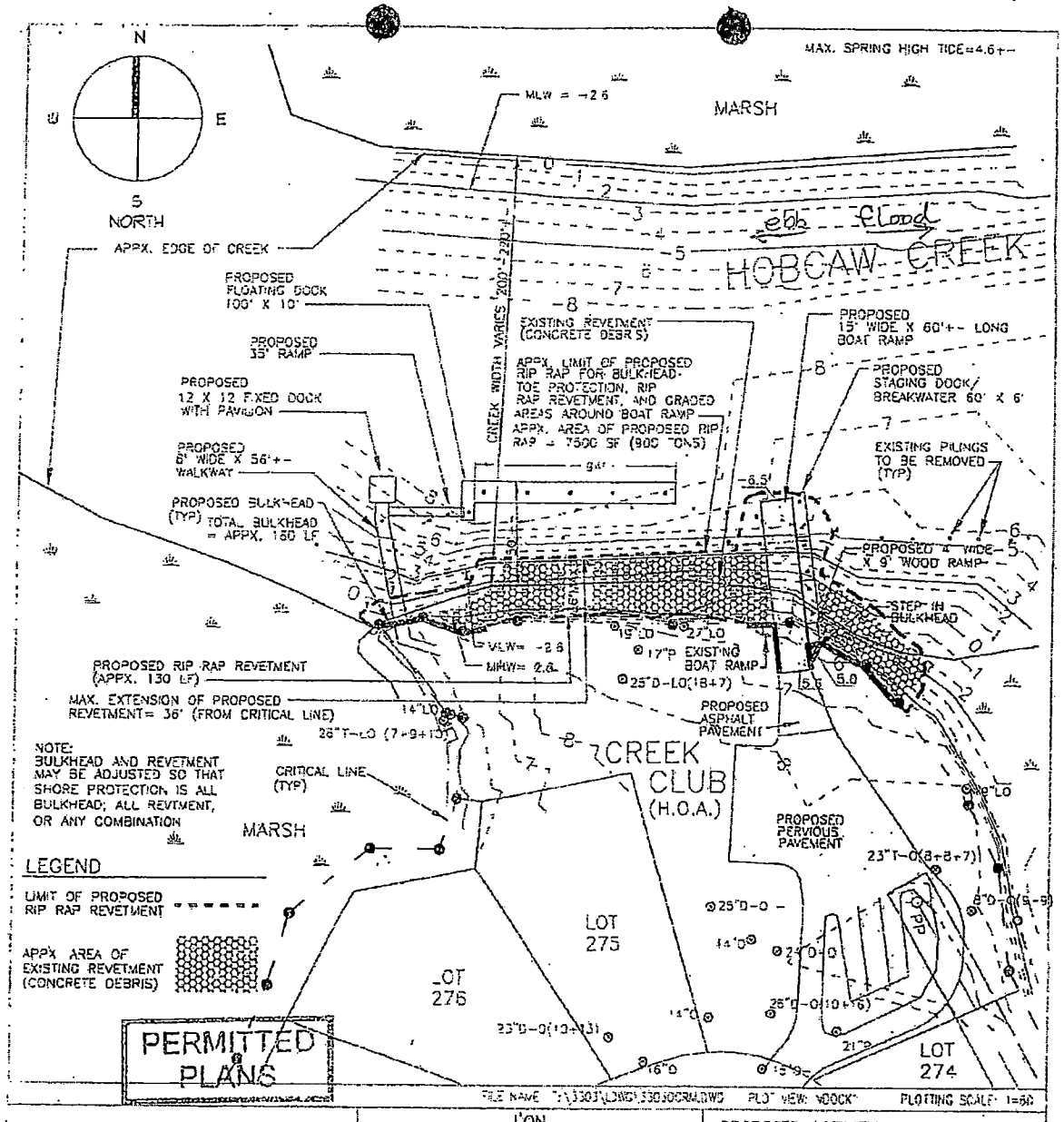
SHEET 4 OF 14 DATE: 8/10/99

8 OF 18

PLAINTIFF'S EXHIBIT 9

Creek Club - Plaintiff
DHEC 000041

APPENDIX 2516



I'ON

PLAN VIEW
DOCK #1, BOAT RAMP, & SHORE PROTECTION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-16-322

SHEET 4 OF 14 DATE: 8/10/99

PLAINTIFF'S EXHIBIT
5

Creek Club - Plaintiff
DHEC 000088

South Carolina
DHEC
Department of Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(803)744-5838 Fax (803)744-5847

Commissioner: Douglas E. Bryant

Board: John H. Burriss, Chairman
William M. Hull, Jr., MD, Vice Chairman
Roger Leaks, Jr., Secretary

Richard E. Jabbour, DDS
Cyndi C. Mosteller
Brian K. Smith
Rodney L. Grandy

Promoting Health, Protecting the Environment

Office of Ocean and Coastal Resource Management
Christopher L. Brooks, Bureau Chief

TO ALL INTERESTED PARTIES
Notification of Public Notice

Enclosed are public notices issued by the SCDHEC Office of Ocean and Coastal Resource Management. All interested parties are allowed 30 days for major developments and 15 days for minor developments after receipt of the public notices to file written comments to the OCRM pertaining to the applications. Only those comments received within this period must be reviewed by the OCRM in processing the permit application. Any person wishing notification of the initial OCRM decision on any specific public notice must make written request within the designated review period for that public notice.

APPLICANT	PUBLIC NOTICE NUMBER	SUSPENSE DATE
SC Department of Transportation	99-1A-308-P-C	October 9, 1999
The I'On Company	99-1G-322-P	October 9, 1999
Colleton River Development Co.	99-1E-310-P	October 9, 1999
Colleton River Development Co.	99-1E-311-P	October 9, 1999
Colleton River Development Co.	99-1E-312-P	October 9, 1999
Colleton River Development Co.	99-1E-313-P	October 9, 1999
Colleton River Development Co.	99-1E-314-P	October 9, 1999
Colleton River Development Co.	99-1E-315-P	October 9, 1999
Colleton River Development Co.	99-1E-316-P	October 9, 1999
Colleton River Development Co.	99-1E-317-P	October 9, 1999
Colleton River Development Co.	99-1E-318-P	October 9, 1999
Colleton River Development Co.	99-1E-319-P	October 9, 1999
Colleton River Development Co.	99-1E-320-P	October 9, 1999
Colleton River Development Co.	99-1E-321-P	October 9, 1999

September 9, 1999
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Joint Federal and State Application Form For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina	This Space for Official Use Only. Application # OCRM-99-383-F Date Received: Project Manager:

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant's Name.	4. Agent's Name (an agent is not required).
THE I'ON COMPANY	**NEWKIRK ENVIRONMENTAL, INC.**
2. Applicant's Address.	5. Agent's Address.
C/O GEOFF GRAHAM **POST OFFICE BOX 980** **MT. PLEASANT, SC 29465**	**192 East Bay Street, Suite 201** **Charleston, SC 29401** 9.9.99
3. Applicant's Contact Number (include area code).	6. Agent's Contact Number (include area code).
Residence: **N/A** Business: **843/971-1662** FAX: **843/971-1664**	Residence: **N/A** Business: **(843) 722-4958** FAX: **(843) 723-6684**
7. Project Title.	9. Project Location. **MT. PLEASANT, SC**
I'ON	Street Address: **MATHIS FERRY ROAD** County: **CHARLESTON** Latitude: **32° 49' 00"** Longitude: **79° 52' 45"**
8. Nearest Waterbody to project site (if known).	
HOBCAW CREEK	

10. Directions to the Site (attach additional sheets if needed).

SEE ATTACHED.

11. Description of the Overall Project and of Each Activity In or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed).

SEE ATTACHED.

12. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed).

SEE ATTACHED.

13. Type and	tity of Materials To Be Discharged, N/A	14. Type and Quantity of Impacts to U.S. Waters (including wetlands) N/A			
Dirt or	soil: _____ cy	Filling: _____ ☐ acres ☐ sq.ft.	_____ cy		
Cle	and: _____ cy	Backfill & Bedding: _____ ☐ acres ☐ sq.ft.	_____ cy		
	/ud: _____ cy	Landclearing: _____ ☐ acres ☐ sq.ft.	_____ cy		
	lay: _____ cy	Dredging or Excavation: _____ ☐ acres ☐ sq.ft.	_____ cy		
Gravel,Rock,	one: _____ cy	Flooding: _____ ☐ acres ☐ sq.ft.	_____ cy		
	ater: _____ cy	Draining: _____ ☐ acres ☐ sq.ft.	_____ cy		
Other (d	be): _____ cy	Shading: _____ ☐ acres ☐ sq.ft.	_____ cy		
	AL: _____ cy	TOTALS _____ ☐ acres ☐ sq.ft.	_____ cy		

15. Names an dresses of All Adjoining Property Owners (attach additional sheets if needed).
SEE ATTAC PUBLIC NOTICE MAILING LIST DATA FORM.

16. Has any p n of the work already commenced? If yes, describe all work that has been done and the dates of the work.
NO.

17. List all Cer tions, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

18. Authoriz of Agent.
I hereby author e agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish suppler information in support of this application.

X [signature] 8-20-99
Applicant's Signature Date

19. Certifica
Application i eby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that th ormation in this application is complete and accurate. I further certify that I possess the authority to undertake the work describ rein or am acting as the duly authorized agent for the applicant.

[signature] 8-20-99 [signature] 8-20-99
Applic s Signature Date Agent's Signature Date

The applicatio t be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization s ent in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdictio ny department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact o es false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any fa ctitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Submit the co ed application form with the required drawings and all supporting information as indicated below.

Send all or application materials to:	Send one complete copy to:	Send one complete copy to:
U.S. Corps of Engineers	S.C. Dept. of Health & Environmental Control	S.C. Dept. of Health & Environmental Control
Charlesto rict, Regulatory Branch	Office of Ocean and Coastal Resource Management	Office of Environmental Quality Control
P.O. Box ATTN: CESAC-CO-P	1362 McMillan Avenue, Suite 400	2600 Bull Street
Charles South Carolina 29402	Charleston, South Carolina 29405	Columbia, South Carolina 29201
3) 727-4330	(803) 744-5838	(803) 734-5300

Creek Club - Plaintiff
DHEC 000134

June 30, 1999

U.S. ARMY CORPS OF ENGINEERS
Post Office Box 919
Charleston, SC 29402-0919

To Whom It May Concern:

This is to certify that the work subject to the jurisdiction of the US Army Corps of Engineers as described in my application dated 6-20-99 is, to the best of my knowledge, consistent with the South Carolina Coastal Zone Management Program.

The wetland delineations used in preparing this application have been done in accordance with Corps of Engineers methods and techniques and are an accurate representation of the location of all jurisdictional wetlands within the project. The delineation has been reviewed and approved by the Corps and assigned the following delineation number SAC-81-95-1154(P).

Since my project is located in the Coastal Zone of South Carolina, I understand that the US Army Corps of Engineers must provide this statement to the SC Department of Health and Environmental Control (SC DHEC) - Office of Ocean and Coastal Resource Management (OCRM) for its review and that a Department of the Army permit will not be issued until the SC DHEC - OCRM concurs with my findings. I also understand that additional information concerning my project may be required by the SCDHEC-OCRM to facilitate its review of my project and that additional certifications may be required for other Federal or State authorizations.

SIGNATURE OF APPLICANT

Geoffrey D. Gibbons, PM, The TDi Company
PRINTED NAME

159 Civitas Street, Mt Pleasant SC 29464
ADDRESS

Creek Club - Plaintiff
DHEC 000135

South Carolina
DHEC
Department of Health and Environmental Control

AFFIDAVIT OF OWNERSHIP OR CONTROL

Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(803) 744-5838 (803) 744-5847 (fax)

I hereby certify that I am the (check one):

- [x] Record Owner
- [ ] Lessee
- [ ] Record Easement Holder
- [ ] Applicant to Record Owner For Easement
- [ ] Contract To Purchase Property

of the below described property situated in Charleston County, South Carolina, and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

LEGAL DESCRIPTION OF HIGHLAND AND / OR COPY OF CERTIFIED PLAT, IF AVAILABLE. (Give legal description here or write "see attached")

TAX MAP #514-00-00-052
Plat Book EB, Page 52
RMC Office
Charleston County

I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean highwater by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Signature Joseph E. Barnes
General Manager
The I'On Company

Sworn to and subscribed before me at Mt. Pleasant, Charleston County, South Carolina, this 6th day of July, 1999.

Notary Public Linda M. German

My commission expires: March 2, 2009

Creek Club - Plaintiff
DHEC 000136

10, 11 & 12 Project Location, Description & Purpose

The project site is an approximately 243 acre tract of land located between Mathis Ferry Road and Hobcaw Creek in the City of Mt. Pleasant, South Carolina. The site can be accessed from Mathis Ferry Road. The I'on Company (I'on), is currently developing the property with approximately 750 residential dwelling units. Project plans are for a mixed use, traditional neighborhood, with streets and lots laid out in a grid pattern with sidewalks and easy access to numerous common areas and open spaces. One significant feature of the plan preserves the entire, approximately ½ mile, of waterfront for community access. Two, 6' wide, pedestrian/bicycle bridges totaling 263' in length, have been permitted (97-1G-189-C & P) across marshes associated with Hobcaw Creek, for the purpose of providing community access to the common area along the waterfront. A conceptual dock master plan for six (6) community docks was submitted to SCDHEC-OCRM for review during the wetland master plan permit process in 1997.

I'on proposes, with this application, to finalize the location, design and use of the planned community docks. Specifically, I'on proposes to construct:

1. A 15' X 80' concrete boat ramp with associated rip-rap and 6' X 60' floating breakwater/staging dock in Hobcaw Creek;
2. Approximately 160 linear feet of wooden bulkhead with rip rap toe protection, to be constructed within approximately 18" of the SCDHEC-OCRM critical line adjacent to Hobcaw Creek;
3. Approximately 130 linear feet of rip-rap revetment to be constructed at the existing shoreline adjacent to Hobcaw Creek;

R/permitcomm

4. A 6' X 36' walkway leading to a 12' X 12' fixed pierhead with roof and a 10' by 100' floating dock, providing approximately 194 linear feet of temporary moorage for boats;
5. Two 6' X 28' and 40' walkways leading to 8' X 50' floating docks in an unnamed tributary of Hobcaw Creek;
6. Three 6' X 60', 200' and 140' walkways leading to 6' X 8' fixed pier heads in an unnamed tributary of Hobcaw Creek; and
7. Removal of existing pilings in Hobcaw Creek.

* The proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkhead, all revetment or any combination.

The purpose of proposed structures is for the common, recreational use of residents within the I'on community. All proposed docks are to be utilized for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and electric lighting will be provided to the main dock in Hobcaw Creek (dock #1) and electric lighting only will be provided to the other five docks. No other services will be provided.

NEWKIRK
ENVIRONMENTAL, INC

RECEIVED
NOV 0 1 1999
DHEC-OCRM
CHARLESTON OFFICE

October 28, 1999

Ms. Mary Hope Glenn
Corps of Engineers
Post Office Box 919
Charleston, SC 29402

RE: THE I'On COMPANY
P/N 99-1G-322

Dear Mary Hope:

This is in response to your correspondence of October 21, 1999 wherein you provided copies of comment letters from S.C. Department of Natural Resources (SCDNR), S. C. State Historic Preservation Office (SHPO) and members of the general public in response to the referenced project. Newkirk Environmental, Inc. offers the following comments for your consideration.

1. SCDNR correspondence of September 23, 1999 offered no objections to the project provided the proposed erosion control structure is constructed at the existing shoreline and is limited in scope to what is necessary to accomplish the intended purpose. The I'On Company's application is consistent with these recommendations.

2. SHPO's correspondence of October 5, 1999 offers no objections to the proposed project. I'On is fully aware of responsibilities under the Memorandum of Agreement with S. C. Department of Health & Environmental Control - Office of Ocean and Coastal Resource Management (SCDHEC-OCRM), SHPO and The I'On Company.

3. Correspondence from Mr. & Mrs. Hammond and Mr. Miller dated September 23, 1999 and September 28, 1999 respectively state a number of concerns, including, improper notification of adjacent owners, misrepresentation of the creek system, impacts on marshlands and lighting.

   As to notification: The I'On Company's application provided the name and mailing address of Orrin and Margaret Hammond as adjacent property owners, 590 East Hobcaw Drive, Mt. Pleasant, SC 29464-2507.

Savannah, GA Office
340 Eisenhower Drive
Building 200, Suite 201
Savannah, GA 31406
(912) 354-6494
Facsimile: (912) 354-7179
E-Mail: NewkirkGA@aol.com

Charleston, SC Office
192 East Bay Street
Suite 201
Charleston, SC 29401
(843) 722-4958
Facsimile: (843) 723-6684
E-Mail: NewkirkEnv@aol.com

Hendersonville, NC Office
100 N. Main Street, Suite 205
Post Office Box 2876
Hendersonville, NC 28793
(828) 698-0091
Facsimile: (828) 698-0255
E-Mail: NewkirkNC@aol.com

PLAINTIFF'S EXHIBIT 7

Creek Club - Plaintiff
DHEC 000148

As to misrepresentation of the size and scope of Hobcaw Creek and its tributaries: The drawing package included with The I'On Company's permit application provides site specific dimensions of the creeks at each dock site. These dimensions are based upon site survey data from a registered land surveyor. Creek depths are also provided where floating docks are proposed.

As to impacts on marshlands: This issue has been debated for at least the past twenty (20) years and will, most likely, continue for the next 20 years. However, numerous recreational docks similar to those requested by The I'On Company have been permitted in the past and it is the general opinion among the various state and federal environmental agencies that the impact of recreational docks and piers on the ecology of the saltmarsh is minimal. Recreational docks are an aesthetic or social issue. As indicated in the letters from Mr. & Mrs. Hammond and Mr. Miller, adjacent owners do not want to look at other people's docks. Additionally, SCDHEC-OCRM has regulations governing the permitting and construction of docks and piers that are designed to minimize the potential impact of these structures on marshlands. The I'On Company application is completely consistent with these regulations.

As to lighting: The I'On Company intends only low level, solar powered, motion detector lighting and necessary navigation lighting on docks 4 through 6. Docks 1-3 may need to provide higher level lighting but it would also be solar powered, motion detector lighting that would only illuminate when in use.

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.

Please do not hesitate to contact me with any further questions you may have concerning this application.

Sincerely,

Kenneth H. Hance
Newkirk Environmental, Inc.
Charleston Office

cc: Geoff Graham, The I'On Company
Curtis Joyner, SCDHEC-OCRM
John W. Miller
Mr. & Mrs. Orrin B. Hammond

RAction.ltr

The I'On Assembly, Inc.

March 11. 2009

Sent Via email thomasc.graham@comcast.net

Mr. Thomas Graham
The I'On Company
[redacted]
Mt. Pleasant, SC 29464

Re: Creek Side Club

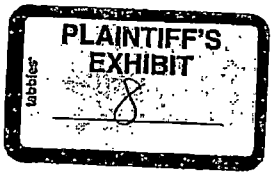
Dear Tom:

As we discussed last week, the I'On Assembly Board was recently provided copies of the 1998 HUD Property Report and the 1997 I'On Impact Statement. These were the documents that I emailed to you and Chad last week. Page 21 of the HUD Report lists various Recreational Facilities that were to be constructed by The I'On Company and conveyed to the I'On Assembly upon completion. Included in that list is a "Community Dock." After looking at the description and photographs of the proposed community docks in the Impact Statement, and reading that there were to be no private docks in I'On, it seems clear that the HUD Report contemplated the multiple docks at the Creek Club.

I understand that Chad is preparing the legal documentation for turning over other facilities to the Assembly, including but not limited to the amphitheater, the canals, I'On Square Park, and various paths and trails. Please include the Creek Club docks and access to the docks in that documentation. In that regard, I anticipate the I'On Board working with you to create a cross easement and use agreement between the Assembly and the Creek Club owner. When you can, would either you or Chad please let me know when we might have something for the Assembly's counsel to review.

Assuming this process will move rather quickly, I will make arrangements for the docks to be inspected following the procedures that Dave Rosengren has used for other facilities turned over to the Assembly. While I have not seen the purchase contract with Mike Russo and his partners, I have been told that the proposed sale includes the docks. Following our earlier conversations, the Board expects that the docks will now be excluded from the sale, but access would be part of a new easement.

Additionally, the HUD Report lists a "Creekside Park" as part of the Recreational Facilities that was to be started and completed at the same time as the docks. Would you please let us know if this park was ever built, and if so, where it is located and whether it has been conveyed to the Assembly?



As stated earlier, the Assembly Board just became aware of the HUD Report and the Impact Statement. Otherwise this matter would have been dealt with much sooner. However, since discussions about turning the docks over to the Assembly have been going on for some time, I would expect this to be a smooth transition.

Sincerely,

Bruce E. Kinney
I'On Assembly Board President

Cc: Tim Bouch
Matt Walsh

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, § 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this 18 day of JUNE, 2009, by and between I'On Club, LLC, a South Carolina limited liability company ("Seller"), and Michael Russo and his permitted assigns ("Buyer").

RECITALS

WHEREAS, Seller is the owner of certain Real Property and Personal Property (each as defined herein), and Seller rents the building and associated facilities located on such Real Property, together with the Personal Property for various events under the trade name Creek Club at I'On (the "Creek Club");

WHEREAS, Buyer and Thomas C. Graham, Vincent G. Graham and Geoffrey D. Graham (collectively, "Graham") have entered into a Purchase and Sale Agreement of even date herewith, for the purchase and sale of certain real property described therein (the "Graham Agreement");

WHEREAS, Buyer and The I'On Company, LLC ("TIC") entered into a Purchase and Sale Agreement of even date herewith, for the purchase and sale of certain real property described therein (the "TIC Agreement");

WHEREAS, Seller has agreed to sell to Buyer certain assets owned by Seller and used in connection with its operation of the Creek Club, all in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, the parties have agreed that Seller's obligation to consummate the transactions described in this Agreement (including, without limitation, the sale of certain assets of the I'On Club and I'On Creek Club described herein to Buyer) is contingent on Buyer simultaneously consummating the transactions described in the Graham Agreement and the TIC Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100ths Dollars ($10.00) paid by Buyer to Seller and subject to the mutual terms, covenants, conditions and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.

2. Purchase and Sale of Assets. Seller agrees to sell and Buyer agrees to purchase the following assets of Seller (the "Assets"):

PLAINTIFF'S EXHIBIT 12

PENGAD 800-631-6989

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(c) all refunds related to the Creek Club accruing on or before the date of closing.

(d) Any personal effects of Seller specifically described on the attached Schedule 4.

4. Purchase Price and Deposit. The consideration to be paid to the Seller for the Assets at the Closing is One Million Four Hundred Thousand and 00/100 Dollars ($1,400,000.00) ("Purchase Price"), payable as follows:

(a) On or before the Effective Date, Buyer shall deposit an earnest money deposit in the sum of Twenty Thousand and 00/100 ($20,000.00) Dollars (the "Deposit") with Buist Moore Smythe McGee PA, ("Escrow Agent") to be held in escrow in a non-interest bearing account by Escrow Agent as provided herein. Unless this Agreement is sooner terminated as provided herein, the Deposit shall be applied to the Purchase Price at Closing (as hereinafter defined); and

(b) The balance of the Purchase Price, less credit for the Deposit and further subject to such other credits, prorations and adjustments as are provided herein, shall be paid at Closing by Buyer in immediately available funds.

5. Allocation of Purchase Price. The Purchase Price for the Assets shall be allocated as shown on Schedule 5. Buyer and Seller agrees to comply with IRC §1060 if necessary and shall report the transactions for all tax purposes in a manner consistent with such allocation.

6. Closing. The closing of the purchase and sale of the Assets, herein called "Closing", shall be held thirty (30) days after the expiration of the Inspection Period, as hereinafter defined (the "Closing Date"), at the offices of Buyer's attorney or at such other place as shall be mutually agreeable to the parties hereto. Buyer acknowledges and agrees that the Closing shall be held simultaneously with the closing of the property described in the Graham Agreement and the property described in the TIC Agreement.

(a) On the date of the Closing, the Seller shall execute, where necessary, and deliver to Buyer the following:

(i) A general warranty indenture deed in recordable form conveying the Property to Buyer in fee simple free and clear of all liens and encumbrances except for: (i) zoning and other applicable laws; (ii) taxes or governmental assessments for the then current year which are not yet due and payable; (iii) all agreements, covenants, conditions, easements, and restrictions of record which may affect the Property; (iv) all facts which are shown on any existing survey or would be shown on a current survey of the Property; (v) a reservation of non-exclusive easements for the installation and maintenance of all utilities (A) adjacent to, parallel with and within 3 feet of the two side boundary lines of the Property, and (B) within applicable setbacks for the front and rear boundary lines; (vi) the restriction that the Property shall not be

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7. Inspection Period. For the period commencing on the Effective Date and expiring at 5:00 P.M.E.D.T. on the 30th day thereafter (the "Inspection Period"), Buyer and its agents shall have the right to make an inspection of the Assets, including title matters, soil, engineering, planning, environmental, permitting, zoning or other studies and investigations as Buyer shall deem appropriate. Buyer shall have the right, during the Inspection Period, to examine and inspect the books and records relating to operations of the Creek Club and the Assets, which books and records shall be made available to Buyer at the Seller's office during normal business hours. Buyer shall have the right to physically inspect the Assets during the Inspection Period, conduct such studies and review such of the books and records relating to the operation of the Creek Club as Buyer may elect, and determine whether the Assets are satisfactory for Buyer's contemplated use thereof. Buyer or Buyer's authorized representatives shall have the right from and after the Effective Date to enter upon and make tests on the Real Property, including, but not limited to, tests to determine the presence of any hazardous materials. Such inspections are to be conducted in a manner as not to unreasonably interfere with the operation of the Creek Club by Seller. Buyer shall pay all costs incurred by Buyer in making any such inspections and investigations and shall indemnify, defend and hold the Seller harmless from any liens, claims, losses and liabilities arising out of the Buyer's exercise of such right and privilege to go upon the Real Property. If the Real Property is disturbed in any manner by Buyer or its agents or representatives in accomplishing such inspections, tests or investigation, Buyer shall restore the Real Property to its prior existing condition or a condition as close thereto as commercially reasonable. Buyer acknowledges that this Agreement is entered into by Buyer without reliance on any warranties, statements or representations, either written or oral, express or implied, by Seller, or by any agent, employee or representative of Seller, or by any broker or other person purporting to represent Seller, relating to the marketability or investment potential of the Assets, the zoning or use of the Real Property, the legal or tax consequences of this Agreement and the purchase or ownership of the Assets, or other matters, except as set forth in this Agreement between Seller and Buyer. Buyer warrants and represents to Seller that if such matters are of concern to him, Buyer has sought and obtained independent advice relative thereto.

In the event Buyer, in Buyer's sole judgment and discretion, concludes that said inspections, reviews, studies and/or investigations are not satisfactory, for any or no specific reason, then Buyer may terminate this Agreement by delivering written notice of such determination to Seller on or before the expiration of the Inspection Period. If Buyer fails to timely give such notice of termination to Seller, this Paragraph shall be of no further force and effect, and Buyer shall have no further right to terminate this Agreement pursuant to this Paragraph. If Buyer does give notice of termination to Seller on or before the expiration of the Inspection Period, then the Deposit shall be refunded to Buyer, less the sum of One Hundred and 00/100 Dollars ($100.00) as consideration for Buyer's inspection rights as set forth herein, and the parties hereto shall have no further rights, duties or obligations under this Agreement.

8. Conditions to Closing. The following shall be conditions to the applicable parties' obligation to close the contemplated transaction:

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the Real Property is ever used or developed for residential purposes or rezoned for residential use, Buyer and any successor in title shall automatically become a member of the I'On Assembly, Inc., and remain a member so long as Buyer and any successor in title hold title to the Real Property. Buyer acknowledges that only builders approved by TIC, 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 Buyer on the part of TIC. Buyer agrees that Buyer shall not permit any person other than a builder approved by TIC to construct a home on the Real Property while title is vested in Buyer. Buyer 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 Buyer. 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. As set forth above, no commission to cooperating brokers will be paid by TIC or the Seller on the cost of improvements; or,

(b) 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. Buyer acknowledges and agrees that if the Real Property is ever used or developed for commercial purposes or rezoned for commercial use, Buyer and any successor in title shall automatically become a member of the I'On Square Association, Inc., and remain a member so long as Buyer and any successor in title hold title to the Real Property.

The covenants and limitations contained in this Paragraph 11, among others set forth herein, are covenants that run with the land and are thus applicable and binding upon all successors in title to the Real Property. Such covenants and limitations shall be included in the Deed. Buyer agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of this Paragraph 11.

12. Design Review and Approval. No structure or exterior items shall be placed, erected, or installed upon the Real 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 Real Property unless the design and plans for such is reviewed and approved

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promptly make the appropriate adjustment, and the party owing sums by reason of such adjustment shall promptly remit such sums to the other party.

16. Possession. Buyer shall be entitled to possession of the Assets upon Closing.

17. Reservation of Right. Seller shall reserve, for the benefit of Seller and TIC, their successors or assigns, a non-exclusive perpetual easement in the Deed conveying the Real Property to Buyer for the storage of four (4) kayaks under the porch of the building located on the Real Property or if unavailable, in such other comparable location on the Real Property as the Buyer may determine in his reasonable discretion.

18. Default and Remedy.

(a) If Seller has performed its covenants and agreements hereunder but Buyer has breached its covenants and agreements hereunder and has failed, refused or is unable to consummate the purchase and sale contemplated herein by the date of Closing, Seller shall be entitled to retain the Deposit paid by Buyer to Seller as and for Seller's liquidated damages and sole remedy for Buyer's default. If Seller has breached its covenants and agreements under this Agreement and has failed, refused or is unable to consummate the purchase and sale contemplated herein by the date of Closing, then Buyer may (i) proceed against Seller to enforce its rights hereunder in an action for specific performance, or (ii) elect to terminate this Agreement, in which case Buyer shall be entitled to a full refund of the Deposit.

(b) Seller agrees to indemnify, defend, and hold Buyer harmless from and against all demands, claims, actions, losses, damages, liabilities, costs, and expenses, including without limitation reasonable attorney's fees and expenses, asserted against or incurred by the Buyer resulting from or arising out of (i) a breach of any covenant, agreement, representation, or warranty of Seller contained in this Agreement, or (ii) operation of Creek Club and ownership of the Assets by Seller prior to the Closing. Buyer agrees to indemnify, defend, and hold Seller, its affiliates, and each of their officers, managers, directors, members, shareholders, employees, and agents (collectively, the "Seller's Indemnitees") harmless from and against all demands, claims, actions, losses, damages, liabilities, costs, and expenses, including without limitation reasonable attorney's fees and expenses, asserted against or incurred by the Seller's Indemnitees resulting from or arising out of (i) a breach of any covenant, agreement, representation, or warranty of Buyer contained in this Agreement or (ii) the operation of the Creek Club and ownership of the Assets by Buyer following the Closing.

(c) If it shall be necessary for either Buyer or Seller to employ an attorney to enforce its rights pursuant to this Agreement because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorney's fees and expenses (including without limitation paralegal fees), including those incurred on appeal.

19. Survival. If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and

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agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in anyway change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

23. Confidentiality. Without the prior written consent of the other party, neither the Seller nor the Buyer will disclose to any person or entity, other than its legal counsel, a proposed lender, necessary governmental authorities and/or other agents with a reasonable need to know such information, either the fact that this Agreement has been entered into or any of the terms, conditions or other facts with respect thereto, including the status thereof. Seller will not disclose to any person or entity, other than its legal counsel, any personal or financial information provided to Seller by Buyer in connection with the transaction contemplated by this Agreement.

24. Assets "As Is". Buyer acknowledges and agrees that, prior to purchasing the Assets, Buyer will have inspected the physical condition of the Assets and upon the Closing shall conclusively be deemed to have been satisfied with the results of the physical inspection. Buyer further acknowledges and agrees that, except as otherwise set forth herein, it is purchasing the Assets on an "AS IS" basis and "WITH ALL FAULTS" condition WITH NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

25. Severability. Any provision of this Agreement which is unenforceable or invalid or the inclusion of which would affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect and the parties shall use their best efforts to substitute a like but enforceable and valid provision in lieu of the unenforceable or invalid provision.

26. Disclosures. Buyer acknowledges that certain parties have the right to use the dock and boat ramp facilities that are part of the Real Property pursuant to a "Recreational Easement and Agreement to Share Costs" dated _____ recorded on _____ in Book ____, Page ____ the RMC Office for Charleston County, South Carolina. 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.

27. Binding Effect. All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

28. Survival. The provisions of this Agreement and any Exhibits or Schedules attached hereto which contemplate performance after Closing shall survive the Closing and shall not be merged into or with the Deed.

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35. Arbitration. Any claims or disputes arising out of or related to this Agreement are subject to binding arbitration pursuant to the Commercial Rules of the American Arbitration Association, as amended and in effect at the time of such hearing. The arbitration shall take place in Charleston, South Carolina. Each party shall use all reasonable efforts to ensure that any arbitration proceeding is completed within sixty (60) days following notice of a request for arbitration hereunder. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable.

36. WAIVER OF JURY TRIAL. THE BUYER AND THE SELLER WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT.

37. TIME OF THE ESSENCE. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

[remainder of page left intentionally blank]

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EXHIBIT A

Real Property

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.

TMS No.: 535-06-00-230 (Lot CV-6)

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Schedule 6

(a) A reservation of non-exclusive easements along the boundary lines of the Property for the installation and maintenance of utilities contained in the Declaration;

(d) Easement to South Carolina Electric and Gas Company, recorded in Book X115 at page 28, RMC Office for Charleston County;

(e) Easements for access, utilities and drainage reserved in the deed from 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, L.L.C. dated August 12, 1997 and recorded in the RMC Office for Charleston County in book J288 at page 190.

(f) Easement to BellSouth Telecommunications, Inc. dated November 6, 1997 and recorded November 7, 1997 in the RMC Office for Charleston County in Book U292 at page 209;

(g) The restriction that the Property shall not be used for any type of Vacation Time Sharing Plan as defined by Section 27-32-10 et. Seq., S.C. Code (1976), as amended, without the express, written consent of Seller, its successors and assigns;

(h) Zoning or other restrictions of record as imposed by governmental authorities having jurisdiction over the use of the property.

(i) 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 48-39-10 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 U.S. Army Corps of Engineers.

(j) Ad valorem property taxes and governmental assessments not due prior to closing of this sale.

(k) All easements, conditions, restrictions and other matters contained in Declarations of Restrictive Covenants dated December 10, 1998 and recorded in the RMC Office for Charleston County in Book L313 at page 13 and as shown on the plat entitled "Plat of Wetlands and Buffers for I'On, Town of Mt. Pleasant, Charleston County, SC" dated June 9, 1998 by Thomas and Hutton Engineering Company and recorded in Plat Book EC at pages 899-903, aforesaid records.

(l) Easement to CPW recorded in the RMC Office for Charleston County in Book J316 at page 228 and O319 at page 482.

(m) Recreational Easement and Agreement to Share Costs dated _____ recorded on _____ in Book _____, Page ____ the RMC Office for Charleston County, South Carolina.

EQUIPMENT LIST CREEK CLUB RENOVATION

1. 8FT X 10FT WALK IN COOLER	$13,500.00
2. 11 FT KITCHEN EXHAUST HOOD W/ANSUL SYSTEM	$23,000.00
3. TWO 35LB FRYERS	$3600.00
4. 60 INCH 4BURNER W/GRIDDDLE RANGE	$5300.00
5. TWO 36INCH CONVECTION OVENS	$6900.00
6. THREE COMPARTMENT POT SINK	$1675.00
7. STAINLESS STEEL TABLES AND SINKS	$6500.00
TOTAL	$60,475.00

ADDITIONAL HVAC	$ 7500.00

	2007	2008	Projected
Income			
Boat Ramp	$5,891	$8,888	$8,888
Event Rentals	$270,916	$302,809	$300,000
Kayak Rentals	$1,270	$990	$990
Fireplace	$1,800	$1,700	$1,700
[redacted]			
Total Income	**$279,877**	**$314,387**	**$647,578**
Expenses			
Boat Ramp Expenses	($1,087)	($1,791)	($1,791)
Boat Ramp Insurance	($7,425)	($7,410)	($7,410)
Firewood	($450)	($510)	($510)
Food & Beverage Expenses (22%)			($73,920)
Management			
Support	($596)	$0	$0
Accounting	($629)	($650)	($3,000)
Copier Lease	($388)	$0	$0
Management Fees			($35,000)
Creek Club Salaries	($53,144)	($61,325)	($70,000)
Food & Beverage Labor (12%)			($40,320)
Commissions/Bonuses	($22,284)	$0	$0
Health Benefits	($5,101)	$0	($10,000)
Payroll Taxes	($3,532)	$0	$0
Phones/Travel	$0	($900)	$0
Postage	($531)	$0	($500)
Office Supplies	($478)	$0	($1,500)
Telephone/Internet	($989)	$0	($1,500)
Utilities			
Electric	($5,742)	($5,808)	($15,000)
Trash Removal	$0	($86)	($600)
Water/Sewer	($3,839)	($3,125)	($4,800)
Cable	($1,337)	($1,459)	$0
Maintenance			
Custodial Services	$0	($31)	$0
Gen Supplies/Equip.	($273)	$0	$0
Grounds Maintenance	($6,579)	($4,248)	($4,248)
Kitchen Supplies	($1,302)	($2,267)	($6,000)
Bldg. Maintenance	($8,896)	($12,121)	($12,121)
Pest Control	($404)	($1,169)	($1,169)
Propane	($217)	($932)	($3,600)
Taxes & Licenses			
Business License	($704)	($708)	($5,000)
Property Taxes	($10,508)	($10,159)	($10,159)
WC/Prop/GL Insurance	($14,804)	($14,445)	($14,445)
Advertising/Promotion/Signage	($14,967)	($13,038)	($25,000)
Total Expenses	**($166,206)**	**($142,182)**	**($347,593)**
Net Income/Expense	**$113,671**	**$172,205**	**$299,985**
Depreciation - Bldg, FF&E	$29,723	$29,225	$35,000
Debt Expenses			($142,345)
Net Profit:			**$192,640**

Property Purchase 06-2009	
Lot 275	($125,000)
CV-5	($225,000)
CV-6	($1,400,000)
Kitchen renovation expenses	($100,000)
Total Purchase	**($1,850,000)**
Closing costs at 1.00%	($18,500)
15% Down Payment	$277,500
Total Note	**($1,591,000)**
6.50% Annual Interest Rate	($103,415)
Initial Monthly Interest	($8,618)
20 year mortgage/monthly	**($11,862)**
Annual mortgage payments	**($142,345)**

[redacted]

Current Bookings/Month		
Sep-2009	13	
Oct-2009	19	
Nov-2009	11	2009
Dec-2009	9	52
Jan-2010	2	
Feb-2010	2	
Mar-2010	4	
Apr-2010	6	
May-2010	9	
Jun-2010	2	
Jul-2010	2	
Aug-2010	0	
Sep-2010	3	
Oct-2010	1	
Nov-2010	0	2010
Dec-2010	0	31
Total:	83	83

RENTAL RESERVATIONS - BY DATE RESERVED

Count of Rental Fee	DR_Year										
DR_Mon	2001	2002	2003	2004	2005	2006	2007	2008	2009	Grand Total	% '08/'07 '08
Jan	1	16	27	34	40	38	57	30	20	263	67%
Feb		13	18	20	9	14	16	9	60	160	867%
Mar	4	19	25	11	12	21	11	21	12	136	57%
Apr	10	10	16	7	14	17	21	18	15	128	83%
May	15	23	9	5	18	16	8	18	14	126	78%
Jun	12	10	21	6	9	22	15	15		110	
Jul	11	3	9	16	13	17	12	15		90	
Aug	16	21	20	19	13	12	18	13		132	
Sep	10	20	5	14	16	19	12	16		116	
Oct	13	16	22	7	12	8	10	17		107	
Nov	12	24	8	8	9	16	9	13		97	
Dec	9	12	7	7	5	10	8	10		88	
Grand Total	112	190	188	148	172	230	197	197	121	1553	61%

TOTAL RENTAL BOOKINGS - BY EVENT DATE

Count of Rental Fee	Year										
Mon	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Grand Total
Jan		2	11	10	9	9	13	8	11	2	74
Feb		8	11	12	12	15	12	11	10	2	93
Mar		11	13	14	11	18	19	26	15	4	129
Apr	5	15	15	12	14	19	18	19	16	6	139
May	7	11	20	22	19	23	22	23	22	9	178
Jun	10	16	13	19	12	22	25	21	15	2	155
Jul	8	18	10	11	10	18	19	16	11	2	123
Aug	11	9	15	18	8	17	18	20	9		125
Sep	11	14	18	11	10	21	15	19	13	3	135
Oct	15	7	22	21	20	14	19	20	19	1	158
Nov	12	8	15	11	10	12	16	17	11		112
Dec	11	19	23	18	15	13	9	11	9		128
Grand Total	90	138	186	180	149	199	208	211	161	31	1553

Sum of Rental Fee	DR_Year										
DR_Mon	2001	2002	2003	2004	2005	2006	2007	2008	2009	Grand Total	% '08/'07 '08
Jan	150	10,250	25,700	26,774	36,160	35,606	34,105	28,774	39,853	237,471	139%
Feb		10,290	13,500	22,886	16,625	18,800	21,913	24,880	38,098	166,972	153%
Mar	4,160	12,020	9,625	9,410	25,600	32,316	21,525	25,610	29,028	169,315	113%
Apr	5,710	4,940	16,765	9,950	14,772	21,730	31,313	26,910	50,612	184,701	188%
May	8,780	10,980	9,050	6,520	29,125	27,058	9,720	24,516	29,275	153,042	119%
Jun	5,350	8,780	23,438	4,550	17,250	36,440	30,180	21,832		145,820	
Jul	5,880	3,010	11,050	9,740	21,380	27,420	25,848	19,664		124,101	
Aug	11,070	20,365	26,280	11,575	21,688	18,665	31,180	10,298		151,100	
Sep	8,920	14,190	7,000	17,340	22,180	33,480	37,140	34,413		172,673	
Oct	8,165	19,980	22,315	13,350	18,645	10,540	25,850	38,310		152,855	
Nov	8,580	13,500	10,475	5,500	16,850	29,850	18,885	25,575		124,805	
Dec	7,780	8,670	9,730	3,570	9,300	14,005	19,425	15,655		88,145	
Grand Total	66,895	132,985	186,928	141,145	247,594	305,709	304,643	294,435	186,866	########	83%

Sum of Rental Fee	Year										
Mon	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Grand Total
Jan		300	6,150	7,100	2,820	5,200	9,474	12,050	10,672	4,500	58,266
Feb		3,750	3,900	10,350	7,225	10,780	7,494	14,935	7,585	4,500	70,529
Mar		8,970	8,915	15,752	14,925	18,331	23,674	24,898	24,600	16,940	155,004
Apr	1,550	11,850	11,830	14,215	17,510	30,868	28,899	33,315	30,373	21,221	201,550
May	3,830	7,440	14,275	27,820	21,975	31,287	30,482	34,568	51,163	32,980	255,799
Jun	4,950	11,325	12,585	20,217	15,400	24,483	29,729	29,210	34,490	5,899	188,287
Jul	3,070	11,370	9,000	14,562	12,315	25,270	24,124	22,300	16,366	6,160	144,567
Aug	6,070	5,430	12,375	14,000	11,860	19,265	21,094	35,205	13,418		138,717
Sep	3,980	8,810	16,155	9,850	15,580	31,485	30,217	38,208	22,428	4,350	178,870
Oct	6,525	5,400	18,775	26,660	31,797	21,701	26,582	37,078	44,625	5,445	228,588
Nov	5,560	4,810	9,965	12,400	17,190	17,425	28,388	24,253	16,923		135,913
Dec	6,350	9,115	15,503	14,864	18,530	15,245	13,825	12,697	8,900		115,029
Grand Total	44,895	84,370	139,428	187,590	187,127	251,449	271,960	318,715	281,572	101,994	########

Average of Rental Fee	DR_Year										
DR_Mon	2,001	2,002	2,003	2,004	2,005	2,006	2,007	2,008	2,009	Grand Tot	% '08/'07 '08
Jan	150	641	952	787	904	814	598	959	1,998	839	208%
Feb		792	711	1,143	1,847	1,343	1,370	2,764	635	1,044	23%
Mar	1,045	633	385	855	2,133	1,539	1,957	1,220	2,419	1,245	196%
Apr	571	494	1,173	1,421	1,055	1,278	1,491	1,485	3,374	1,443	226%
May	453	478	1,006	1,304	1,618	1,691	1,215	1,362	2,091	1,215	164%
Jun	446	678	1,116	758	1,917	1,858	2,012	1,455		1,328	
Jul	544	1,003	1,228	974	1,845	1,613	2,154	1,311		1,378	
Aug	692	970	1,314	609	1,868	1,555	1,731	792		1,145	
Sep	892	710	1,400	1,239	1,293	1,782	3,095	1,912		1,489	
Oct	626	1 110	1,014	1,907	1,387	1,318	2,585	2,138		1,429	
Nov	549	563	1,309	917	1,872	1,853	1,852	1,987		1,287	
Dec	974	513	1,380	510	1,860	1,401	2,428	1,568		1,267	
Grand Total	613	700	984	987	1,440	1,329	1,548	1,495	1,545	1,204	103%

Average of Rental Fee	Year										
Mon	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	Grand Total
Jan		150	559	710	353	578	729	1,506	970	2,250	787
Feb		469	355	883	802	719	825	1,358	759	2,250	758
Mar		634	668	1,125	1,357	1,146	1,246	958	1,640	4,235	1,202
Apr	310	777	788	1,185	1,251	1,631	1,606	1,753	1,898	3,537	1,450
May	547	678	714	1,285	1,157	1,380	1,385	1,503	2,328	3,664	1,437
Jun	495	708	988	1,084	1,283	1,112	1,189	1,391	2,299	2,949	1,215
Jul	384	632	900	1,324	1,232	1,404	1,270	1,394	1,491	3,080	1,175
Aug	552	603	825	737	1,483	1,133	1,172	1,760	1,491		1,101
Sep	383	488	898	877	1,558	1,499	1,879	2,011	1,725	1,450	1,286
Oct	588	771	853	1,270	1,580	1,550	1,399	1,854	2,349	5,445	1,434
Nov	547	801	884	1,127	1,719	1,452	1,849	1,427	1,536		1,214
Dec	577	480	874	826	1,235	1,173	1,538	1,154	989		898
Grand Total	499	811	750	1,042	1,256	1,284	1,308	1,510	1,749	3,290	1,204

APPENDIX 2540

148Civitas 0346

BP0073784

RMC Bk 0073 Pg 784 : pg 1 of

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.

{01566584.}

PLAINTIFF'S EXHIBIT 13
PENGAD 800-631-6989

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)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

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 0023 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: 8/19/2014

{01366584}

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

{01566584}

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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

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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.

{01366584.}

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

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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.

{01566584.}

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: 4/19/19

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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

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MAKER:
I'ON CLUB LLC

RECIPIENT:
148 CIVITAS LLC

Note:

Original Book:

Original Page:

# 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 MKJ
DATE 8/10/09
04

0073	784	08/07/2009	10
Book	Page	Recorded Date	# Pgs

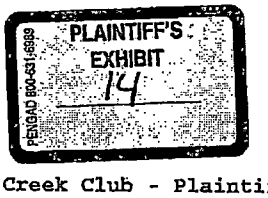
		D	15:20:56
Original Book	Original Page	Doc Type	Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

------ Forwarded Message
From: Tom Graham <ThomasC.Graham@comcast.net>
Date: Wed, 25 Mar 2009 17:10:38 -0400
To: Bruce Kinney <bkinney94@gmail.com>, Dan Orvin <dorvin@buistmoore.com>, Mike Russo <mrusso7465@aol.com>
Cc: Vincent Graham <vgraham@iongroup.com>, Chad Besenfelder <chad@iongroup.com>
Conversation: Recreational easement
Subject: FW: Recreational easement

I think this explains why the community dock was not conveyed to the Assembly.
--
Tom Graham
[redacted]
------ Forwarded Message
From: "Jo Anne P. Stubblefield" <JStubblefield@hspclegal.com>
Date: Wed, 25 Mar 2009 15:30:38 -0400
To: Tom Graham <ThomasC.Graham@comcast.net>
Subject: RE: Recreational easement

Yes, I did. The original HUD Property Report dated November 3, 1998 made reference to a "community dock" to be located in Phase 2 that would be conveyed to the I'On Assembly and thereafter maintained by the I'On Assembly as a common expense. I don't recall whether there was more than one dock originally planned, but in early 2000 the decision was made to have the I'On Club own and maintain a parking area, boat ramp and dock as part of the Club Facilities and grant an easement to the I'On Assembly for use of all of these facilities so that property owners would have the same use rights they would have had in the "community dock" referenced in the original Property Report, but in addition would have rights to use the parking area and boat ramp (which had not been mentioned in the original Property Report and which the property owners would otherwise have had no right to use unless they joined the Club). The Recreational Easement was drafted to create that easement and to provide for the Assembly to contribute to the costs incurred by the Club in maintaining the boat dock, boat ramp, and parking area. Once that was finalized and recorded, we amended the HUD Property Report (effective April 2000) to reflect that, and thereafter the Property Report stated, with reference to the Recreational Facilities:



Creek Club - Plaintiff
Walbeck 000173

Maintaining the Facilities

I'On Assembly, Inc. will be responsible for operation and maintenance of the recreational facilities described in the chart above, except as follows. Sidewalks will be maintained by the Town of Mt. Pleasant. The community dock will be owned, operated and maintained by I'On Club, L.L.C., subject to an easement for use and access by members of I'On Assembly, Inc. as set forth in a recorded easement agreement between I'On Assembly, Inc. and I'On Club, L.L.C. Such easement agreement obligates the Assembly to pay a share of the costs of maintaining and operating the community dock, as well as any adjacent boat ramp and parking area made available for use by members of I'On Assembly, Inc.

Transfer of the Facilities

The recreational facilities listed in the chart above, other than the sidewalks and community dock, shall, upon completion of construction, be conveyed to I'On Assembly, Inc. by quitclaim deed free and clear of all monetary liens and encumbrances at no cost to I'On Assembly, Inc. or its members.

Jo Anne P. Stubblefield
Hyatt & Stubblefield, P.C.
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30303
(404) 659-6600 telephone
(404) 658-1725 facsimile
jstubblefield@hspclegal.com <mailto:jstubblefield@hspclegal.com>

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From: Tom Graham [mailto:ThomasC.Graham@comcast.net]
Sent: Wednesday, March 25, 2009 2:56 PM
To: Jo Anne P. Stubblefield
Subject: Recreational easement

Jo Anne,

Did you author with Joe Barnes the I'On Recreational Easement attached? The I'On Assembly (HOA) wants The I'On to convey the "community dock" to them. The "community dock" was listed in the HUD Report as an amenity to be conveyed to the HOA.

--
Tom Graham
[redacted]
Mount Pleasant, SC 29464

Subj: **FW: Creek Club, Please keep confidential.**
Date: 9/9/2008 12:17:15 P.M. Eastern Daylight Time
From: chad@jongroup.com
To: mrusso7465@aol.com

Mike

The I'On Club retained John Oliver, CPA with Dixon-Hughes accounting firm to help separate Creek Club from the balance of Club and provide meaningful financial reporting for both entities. John is assisting Merritt Farmer, I'On Club Controller, prepare separate financial statements for Creek Club for the current year as well as 2006 and 2007. Tom Graham told me this information would be available today but I would expect them tomorrow.

Review information needed:

Profit and losses from the first year through current (yearly)
We will have 2006, 2007, and current year for you this week. Do you need from first year as indicated above?

Event bookings yearly from first year to current (give me 2009 also)
See attached

Give me rental rates with the bookings
See attached

Tax returns last three years
I will need to contact Tom Graham to release this information. I am not sure if this is obtainable since the CC combined with I'On Club

Any employment contracts
I made sure not to create employment contracts in the past due to pending Club exit strategy. I will double check with Bud.

Any vendor or service contracts
Again, I made no contracts with Creek Club operations. There may be an ice machine lease and a 30-day notice for landscape and pest control contractors. I suggest we check with Eliza to be sure.

Any maintenance records
I suggest Eliza create a maintenance record. Not much done other that resurfacing floors, adding new drapes, minor painting, landscape work (irrigation systems), insect repellant system, landscape lighting.

Agreements or easements with HOA
Agreements or easements with Old Park
Agreements or easements with Ion Club and/or members
See attached. The TIC/Olde Park official agreement not on digital file so I need more time locating original. I have a letter from Joe Griffith, Inc dated February 19, 1999 describing the Creek Club as an amenity and Olde Park residents having access to I'On Club, boat docks and Creek Club rental facility. In addition, Olde Park has first priority and discounted rates for Creek Club as I'On Club Members. I will need to work with Olde Park and revise this agreement. Worst case, if Olde Park does not agree to change agreement would you honor I'On Club member discounts (I think it is 10%). I will send you the agreement when I locate it.

Property Tax bills current
Insurance bills current
I will need this information from the club bookkeeper

A letter from Tom giving us a 30 day extension on lot 275 if needed
Tom Graham has agreed to write you a letter. I will draft a letter for him to sign.



Plat subdividing boat dock from Creek Club.

I contact Thomas and Hutton to provide us a plat subdividing the docks. I suggest we extend the HOA path from the boat ramp to the marsh path at Lot 275. This will protect access for residents.

TIC maintained a good relationship with the residents but this took an enormous effort on our part over the years. I understand that keeping the docks an entity of the Creek Club may help define the property Civic however, I would suggest we lead our initial idea of subdividing the docks and keeping TIC control. The docks were promised handover to the homeowners and Vince would like to honor that someday.

I will find out when Eliza and other club staff will be notified of Creek Club sale. I should have a key for you later today. Give me until 3PM.

Chad

Chad Besenfelder
[redacted]
Mt. Pleasant, SC 29464
Direct: 843.284.2129
Fax: 843.971.1664
Email: chad@iongroup.com
Website: www.iongroup.com

I'ON



From: MRUSSO7465@aol.com [mailto:MRUSSO7465@aol.com]
Sent: Friday, August 29, 2008 8:14 AM
To: Chad Besenfelder
Subject: Re: Creek Club

Chad

These are the things I need for due diligence, I may have more latter

Profit and losses from the first year through current(yearly)
Event bookings yearly from first year to current (give me 2009 also)
Give me rental rates with the bookings
Tax returns last three years
Any employment contracts
Any vendor or service contracts
Any maintenance records

Agreements or easements with HOA
Agreements or easements with Old Park
Agreements or easements with Ion Club and/or members
Property Tax bills current
Insurance bills current
A letter from Tom giving us a 30 day extention on lot 275 if needed

I also believe that because of the civic zoning aspect we may end up having to take the docks a part of the deal and it may just be cleaner and easier that way. Of course we would honor all existing agreements and easements in place making it just "business as usual" which could avoid any problems with HOA . If we do proceed this way I would like information about the dock permitting and any applicable regualations.

Thanks.....Russo

In a message dated 8/19/2008 3:48:54 P.M. Eastern Daylight Time, chad@iongroup.com writes:

> Mike,
>
> I spoke with our attorney and he feels the contract is fine and will clean up today. I do not expect any problems. I told him it was a priority and he is going to get to it this evening. He works late so it may not be available until tomorrow.
>
> Chad

It's only a deal if it's where *you* want to go. Find your travel deal here.

OMB NO. 2502-0265

A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT

SETTLEMENT STATEMENT

B. TYPE OF LOAN: 1. ☐ FHA 2. ☐ FmHA 3. ☒ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS.

G. FILE NUMBER: 09REL140.F

7. LOAN NUMBER:

8. MORTGAGE INS CASE NUMBER:

C. NOTE: *This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(POC)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.*

1 0 3/08 (09REL140.F.PFD/09REL140.F/12)

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
148 Civitas, LLC	fOn Club, LLC The fOn Company, LLC Geoffrey D. Graham Thomas C. Graham Vincent G. Graham	Tidelands Bank 875 Lowcountry Blvd. Mt. Pleasant, SC 29464

G. PROPERTY LOCATION:	H. SETTLEMENT AGENT: 57-1124736	I. SETTLEMENT DATE:
3 Lots in the Town of Mt. Pleasant: 1. Lot CV-6, fOn 2. Lot 275, fOn 3. Lot CV-5, fOn Parking Area Charleston County, South Carolina	The Wooddy Law Firm, LLC PLACE OF SETTLEMENT 622 Johnnie Dodds Blvd. Mount Pleasant, SC 29464	August 5, 2009

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	1,750,000.00	401. Contract Sales Price	1,750,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	20,142.00	403.	
104.		404.	
105.		405.	
Adjustments For Items Paid By Seller in advance		*Adjustments For Items Paid By Seller in advance*	
106. City/Town Taxes to		406. City/Town Taxes to	
107. Taxes on 3 lots to		407. Taxes on 3 lots to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	1,770,142.00	*420. GROSS AMOUNT DUE TO SELLER*	1,750,000.00
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money	30,000.00	501. Excess Deposit (See instructions)	
202. Principal Amount of New Loan(s)	1,387,500.00	502. Settlement Charges to Seller (Line 1400)	164,059.29
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first Mortgage to Wachovia/Lot 275 ($0)	
205.		505. Payoff of second Mortgage to SunTrust/Lot CV-6	468,801.26
206.		506. Deposit retained by seller	30,000.00
207.		507. Proceeds for Lot CV-5 to Grahams	216,045.26
208.		508.	
209.		509.	
Adjustments For Items Unpaid By Seller		*Adjustments For Items Unpaid By Seller*	
210. City/Town Taxes to		510. City/Town Taxes to	
211. Taxes on 3 lots 01/01/09 to 08/05/09	12,695.09	511. Taxes on 3 lots 01/01/09 to 08/05/09	12,695.09
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517. Proceeds for Lot 275 to The fOn Company, LLC	116,739.77
218.		518. Proceeds for Lot CV-6 to fOn Club, LLC	721,560.31
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	1,430,195.09	*520. TOTAL REDUCTION AMOUNT DUE SELLER*	1,750,000.00
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120)	1,770,142.00	601. Gross Amount Due To Seller (Line 420)	1,750,000.00
302. Less Amount Paid By/For Borrower (Line 220)	(1,430,195.09)	602. Less Reductions Due Seller (Line 520)	(1,750,000.00)
303. CASH (X FROM) (TO) BORROWER	339,946.91	*603. CASH (TO) (FROM) SELLER*	0.00

By signing page 2 of this statement, the signatories acknowledge receipt of a completed copy of page 1 of this two page statement.

PLAINTIFF'S EXHIBIT 16

148Civitas 0406

L. SETTLEMENT CHARGES

			PAID FROM BORROWER'S FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price $ @ %				
Division of Commission (line 700) as Follows:				
701. $ to				
702. $ to				
703. Commission Paid at Settlement	less Deposit Held By Seller			
704.	to			
800. ITEMS PAYABLE IN CONNECTION WITH LOAN				
801. Loan Origination Fee 0.5000 %	to Tidelands Bank		6,937.50	
802. Loan Discount %	to			
803. Appraisal Fee	to Charleston Appraisal Company, LLC		2,125.00	
804. Credit Report	to			
805. Lender's Inspection Fee	to			
806. Tax Service Fee	to			
807. Flood Certification Fee	to Tidelands Bank		14.00	
808. Underwriting Fee				
809. Processing Fee				
810. Doc Prep Fee				
811. Yield Spread Premium				
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE				
901. Interest From 08/05/09 to 09/01/09 @ $ /day (27 days %)				
902. Mortgage Insurance Premium for months to				
903. Hazard Insurance Premium for 1.0 years to Pinckney Carter Company		POC (B)		
904. Flood Insurance 1.0 years to Pinckney Carter Company			558.00	
905. Dock Insurance	to Pinckney Carter Company		3,074.00	
1000. RESERVES DEPOSITED WITH LENDER				
1001. Hazard Insurance	months @ $ per month			
1002. Mortgage Insurance	months @ $ per month			
1003. City/Town Taxes	months @ $ per month			
1004. Taxes on 3 lots	months @ $ per month			
1005. Assessments	months @ $ per month			
1006. Flood Insurance	months @ $ per month			
1007.	months @ $ per month			
1008. Aggregate Escrow Adjustment	months @ $ per month			
1100. TITLE CHARGES				
1101. Settlement or Closing Fee	to The Wooddy Law Firm, LLC		3,250.00	
1102. Abstract or Title Search (1)	to East Bay Land Title, Inc.	Lot 275	150.50	
1103. Abstract or Title Search (2)	to Mike Rourk	Lot CV-6 & Lot CV-5	325.00	
1104. Title Update	to Mike Rourk	All 3 Lots	225.00	
1105. Title Insurance Binder	to The Wooddy Law Firm, LLC		100.00	
1106. Courier/Mail Fees/FedEx/Copies	to The Wooddy Law Firm, LLC		25.00	
1107. Attorney's Fees	to			
(includes above item numbers:	)			
1108. Title Insurance	to First Title & Abstract Co., Inc.		2,925.00	
(includes above item numbers: 1109	)			
1109. Lender's Coverage	$ 1,387,500.00			
1110. Owner's Coverage	$ 1,750,000.00			
1111. Obtain & Record Releases	to The Wooddy Law Firm, LLC	$15 (CV-6) $15 (275)		30.00
1112. Kayak Storage Pro-ration	to 148 Civitas, LLC			261.29
1113.				
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES				
1201. Recording Fees: Deed $ 46.00; Mortgage $ 16.00;		Releases $	62.00	
1202. City/County Tax/Stamps: Deed	; Mortgage			
1203. State Tax/Stamps: Deed	6,475.00; Mortgage			6,475.00
1204. Contribution Fee	to I'On Trust	Lot 275		125.00
1205. Pro-rata 2009 HOA Dues	to I'On Assembly	Lot 275	371.00	
1300. ADDITIONAL SETTLEMENT CHARGES				
1301. Survey	to			
1302. Pest Inspection	to			
1303. Window Repairs	to 148 Civitas, LLC	Lot CV-6		15,000.00
1304. Creek Club Event Deposits	to Jacob's Kitchen/Inn at I'On, Inc.	Lot CV-5		142,167.00
1305. Transfer Fee	I'On Assembly	Lot 275 Exempt b/c contract 8/8		
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			20,142.00	164,058.29

148Civitas 0407

[GSREL] 10.7 (GSREL10 F:12)

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower:	148 Civitas, LLC
Seller:	l'On Club, LLC The l'On Company, LLC Geoffrey D. Graham Thomas C. Graham Vincent G. Graham
Lender:	Tidelands Bank
Settlement Agent:	The Wooddy Law Firm, LLC (843)881-3700
Place of Settlement:	622 Johnnie Dodds Blvd. Mount Pleasant, SC 29464
Settlement Date:	August 5, 2009
Property Location:	3 Lots in the Town of Mt. Pleasant: 1. Lot CV-6, l'On 2. Lot 275, l'On 3. Lot CV-5, l'On Charleston County, South Carolina

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

148 Civitas, LLC

BY: _____
Stephen W. Spoor, Member

l'On Club, LLC

BY: l'On Group, LLC
Manager

BY: _____
Vincent G. Graham
Manager

The l'On Company, LLC

BY: l'On Group, LLC
Manager

BY: _____
Vincent G. Graham
Manager

_____
Geoffrey D. Graham

_____
Thomas C. Graham

_____
Vincent G. Graham

To the best of my knowledge, the HUD-1 Settlement Statement which I have prepared is a true and accurate account of the funds which were received and have been or will be disbursed by the undersigned as part of the settlement of this transaction.

_____
The Wooddy Law Firm, LLC
Settlement Agent

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

148Civitas 0408

Meredith Coker

From: Speerhome [speerhome@comcast.net]
Sent: Saturday, August 01, 2009 11:27 PM
To: 'Steve Speer'
Subject: FW: I'On Community Bulletin - Creek Club

From: I'On Assembly NEWS [mailto:ionassembly@comcast.net]
Sent: Saturday, August 01, 2009 4:22 PM
To: Stephen SPEER
Subject: I'On Community Bulletin - Creek Club

To All I'On Residents:
The I'On Assembly Board has recently learned that the Creek Club, the parking lot adjacent to it, and the "overflow" parking lot on Saturday Road are under contract to be sold to a group of I'On residents. It is our understanding that Mike Russo (operator of Jacob's Kitchen and the Inn at I'On) will assume responsibility for club operations. Closing is expected to take place sometime during August.
Please Note: The I'On Assembly's right of access and usage of the boating facilities, including the boat dock, is protected by a recorded Recreational Easement <http://www.ioncommunity.com/document/ion_assembly_ccr_recreational_easement.pdf?21167> that binds the current and any future Creek Club owner. A copy of that easement can be found on the I'On Community web site.
This is all the information we have at this time. As we learn more, we will share it with you.
Sincerely,
Bruce Kinney
Assembly Board President

Please click HERE <http://www.ioncommunity.com> to visit the I'On Community web site.

PLAINTIFF'S EXHIBIT 26

Speer 115

STATE OF SOUTH CAROLINA)
) EASEMENT FOR USE AND ENJOYMENT OF BOATING FACILITIES
COUNTY OF CHARLESTON)

THIS EASEMENT FOR USE AND ENJOYMENT OF BOATING FACILITIES (hereinafter sometimes referred to as the "Easement") is entered into on the 5th day of August, 2009, by and between **I'On Club, LLC**, a South Carolina limited liability company (hereinafter, "Club Owner") and **148 Civitas, LLC**, a South Carolina limited liability company (hereinafter, "148 Civitas").

WITNESSETH:

WHEREAS in that certain "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"), Club Owner, The I'On Company, LLC, and I'On Assembly, Inc. established certain easements, entered into certain agreements, and set forth the rights of various parties concerning real property identified therein as Eastlake (described in Exhibit A to the Recreational Agreement), the Amenity Area (described in Exhibit A to the Recreational Agreement), and the Club Property (described in Exhibit B to the Recreational Agreement);

WHEREAS, at the time of the execution and recording of the Recreational Agreement, Club Owner was the owner of the Club Property, as well as the I'On Club, a recreational facility located within I'On, housing tennis and swimming facilities for owners of lots within I'On subdivision, as well as others;

WHEREAS the Recreational Agreement provided, among other things, a perpetual, nonexclusive easement over and on the Boating Facilities of the Club Property, as defined therein, for the benefit of owners of real property subject to Declaration of Covenants, Conditions, and Restrictions for I'On executed February 5, 1998 by The I'On Company, LLC and recorded in the RMC Office for Charleston County in Book C297, at Page 282, as amended and/or modified (hereinafter, the "Declaration");

WHEREAS simultaneously with the execution of this Easement, Club Owner has conveyed the Club Property (described in Exhibit B to the Recreational Agreement and in the attached Exhibit A) to 148 Civitas, but Club Owner has retained ownership and operational control of the I'On Club;

WHEREAS, in conjunction with the conveyance of the Club Property to 148 Civitas, Club Owner has assigned, transferred, and conveyed to 148 Civitas certain of its rights, obligations, and interest as Club Owner under the Recreational Agreement in that certain Assignment of Certain Club Owner's Rights and Obligations Under Recreational Easement and Agreement to Share Costs, which is being recorded simultaneously herewith, (CLUB OWNER



HAS RETAINED, HOWEVER, THOSE RIGHTS SET FORTH IN SECTION 1.2 AND 2.3 OF THE RECREATIONAL AGREEMENT); and

WHEREAS, as stated in the Recreational Agreement, the Boating Facilities were intended, at least in part, "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")," however, no express grant of an easement to provide such a right to Club Members was included in the Recreational Agreement;

WHEREAS Club Owner and 148 Civitas now wish to establish an easement for use and enjoyment of Boating Facilities to Club Members.

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, Club Owner and 148 Civitas, intending to be legally bound hereby, agree as follows:

1. Easement for Use and Enjoyment of Boating Facilities

(a) Subject to subsection (b) below, 148 Civitas hereby grants to Club Owner, for the benefit of Club Members, their guests and other persons as the Club Owner may authorize, a perpetual, assignable, commercial, nonexclusive easement in gross over and on:

(1) the driveways and designated parking areas within the Club Property, for the purposes of vehicular and pedestrian access to the Boating Facilities (as defined in the Recreational Agreement) and temporary parking of vehicles and boat trailers, for periods not to exceed 12 hours in any 24 hour period without 148 Civitas' express permission, while using the Boating Facilities or while the boat launched from such trailer is in the water; and

(2) the boat ramp which is part of the Boating Facilities, for the purpose of launching and recovery of boats;

(3) 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 deck by pedestrians, for fishing, and for such other purposes as 148 Civitas may permit.

(b) This easement shall be subject to:

(1) the right of 148 Civitas 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;

(2) the right of 148 Civitas to suspend the right of any person to use the Boating Facilities for any infraction of such rules and regulations and to recover form the Club Owner or from such person all costs which 148 Civitas incurs in repairing any damage to the Club Property or the Boating Facilities resulting from the negligence, recklessness, or willful misconduct of any Club Member exercising such easement;

(3) the right of 148 Civitas to temporarily close or reserve the Boating Facilities from time to time, for limited periods of time, for maintenance and for special events, including, without limitation, private parties, events, weddings, lessons, or other similar activities;

(4) the right of 148 Civitas to deny access to the Boating Facilities pursuant to this easement for any period during which the I'On Club is delinquent in paying amounts owed to 148 Civitas hereunder;

(5) the right of 148 Civitas 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 148 Civitas deems reasonably necessary to provide such items or services;

(6) the right of 148 Civitas 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 148 Civitas' cost, a key, pass card, or similar devices to gain access to the Boating Facilities; and

(7) any other easements and restriction of record affecting the Club Property.

2 Maintenance and Insurance

148 Civitas, as the owner of the Club Property, shall now have the responsibilities for maintaining and insuring the Club Property originally conferred upon Club Owner in Article II of the Recreational Agreement. Nothing herein shall be interpreted to modify or amend the Assembly's obligations concerning maintenance and insurance in Article II of the Recreational Agreement.

3. Obligation to Share Costs

(a) Covenant to Pay

Club Owner shall be obligated to pay to 148 Civitas assessments as provided for herein to cover a share of the costs incurred by 148 Civitas in maintaining, repairing, replacing, operating

and insuring the Boating Facilities. Such obligation shall be a separate and independent covenant on the part of Club Owner, and no diminution or abatement of Club Owner's financial obligations hereunder or setoff shall be claimed or allowed by reason of any alleged failure of 148 Civitas to adequately maintain or insure the Boating Facilities, the sole remedy of Club Owner for failure of 148 Civitas to perform being suit at law or equity.

(b) Computation of Assessment

(1) Not later than November 1 of each year, 148 Civitas 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 (hereinafter, 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.

(2) Not later than November 15 of each year, 148 Civitas shall send a copy of the Budget to Club Owner and the Assembly along with notice of the assessment for each parties' 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 effect (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 I'On as of such date (z), reflected by the following formula:

$$\text{Assembly's Share} = \frac{y}{y+z} \times \text{Budget}$$

The portion of the Budget not paid by the Assembly shall be paid by Club Owner.

(3) The assessment levied for the Assembly's share and the Club Owner's share of the Budget shall be payable in equal quarterly installments on or before the last day of each calendar quarter.

(4) In the event that 148 Civitas 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.

(c) Adjustment for Actual Expenses

Within 60 days after the end of each fiscal year, 148 Civitas shall provide to the Assembly and Club Owner 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 or Club Owner for such year shall be credited against future amounts due form them. 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 for the following year for purposes of computing the assessment of the Assembly and Club Owner for that year.

(d) Delinquencies; Collection

Any amounts due from the Assembly or Club Owner 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 and Club Owner, as applicable, shall reimburse 148 Civitas 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, 148 Civitas 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 the 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.

(e) Expenditure of Funds

The assessments levied by 148 Civitas hereunder may be used for such purposes relating to the maintenance, operation, repair, replacement and insurance of the Boating Facilities as 148 Civitas deems appropriate. The judgment of 148 Civitas in the allocation and expenditure of such funds shall be final so long as such judgment is exercised in good faith, and neither 148 Civitas, or its agents, employees, or representatives 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 handling such funds.

(f) Recordkeeping

148 Civitas shall maintain or cause to be maintained full and accurate books of account with respect to the performance of its responsibilities under this Easement. 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 or by Club Owners principals or agents during normal business hours or under other reasonable circumstances. Copying charges shall be paid by the person or entity requesting such copies. If any part desires to have the records audited, it may do so at its own expense, and 148 Civitas 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 party requesting the audit and 148 Civitas 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 148 Civitas by five (5%) percent or more, 148 Civitas shall pay the entire cost of the second audit. If the amount as determined by the second auditor varies from the amount asserted by 148 Civitas by two (2%) percent or less, then the party requesting the audit shall pay the entire cost of the second auditor. Otherwise, the cost of the second auditor shall be shared equally by 148 Civitas and the party requesting the audit. Variances shall be taken into account in the following year's Budget, as provided above.

(f) Nothing contained in this Easement shall be interpreted to amend or modify the provisions of Article III of the Recreational Agreement concerning the Assembly's obligation to pay assessments to cover a share of the costs incurred by the owner of the Club Property in maintaining, repairing, replacing, operating and insuring the Boating Facilities.

4. Term of Easement

The term of this Easement shall be for the same period of time set forth in Section 4.2 of the Recreational Agreement, so that the term of the Easement to the Club Owner, for the benefit of Club Members, shall expire 30 years after the execution of the Recreational Agreement (not 30 years after the execution of this Easement), and thereafter shall automatically be renewed for successive periods of 10 years, as is set forth in Section 4.2 of the Recreational Agreement, unless and until terminated by 148 Civitas or Club Owner 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 Easement 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.

5. Amendment

This Easement may be amended only by an instrument signed on behalf of 148 Civitas and Club Owner. Amendments to this Easement shall become effective upon recording in the RMC Office for Charleston County, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Easement.

6. Severability

Whenever possible, each provision of this Easement shall be interpreted in such a 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 Easement are declared to be severable.

7. Notices

Any notice provided for in this Easement 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;

(b) if to 148 Civitas, at the address of the principal office of 148 Civitas, LLC in the State of South Carolina.

8. 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 of damage to personal property, arising out of their use of the property subject to the easement and agrees that 148 Civitas, 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.

9. Binding Effect; Successors and Assigns

This Easement shall run with the title to the Club Property and shall be binding upon and inure to the benefit of all parties having any right, title, or interest in the Club Property, their successors, successors-in-interest, and assigns.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Club Owner has hereunto set its Hand and Seal this 5th day of August, 2009 to this EASEMENT FOR USE AND ENJOYMENT OF BOATING FACILITIES.

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: 8/11/2010

[01527691 2]

IN WITNESS WHEREOF, 148 Civitas has hereunto set its Hand and Seal this 5th day of August, 2009 to this EASEMENT FOR USE AND ENJOYMENT OF BOATING FACILITIES.

WITNESSES:

Witness #1

Witness # 2

148 CIVITAS, LLC, a South Carolina limited liability company

BY: _____
Stephen W. Spear, 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. Spear, 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: 6/19/2017

EXHIBIT A

Lot CV-6

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 Lot CV-6 on a 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, 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, LLC dated August 15, 2000 and recorded in the RMC Office for Charleston County in Book 353, at Page 484.

TMS No. 535-06-00-230

(01573691.2)

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;

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

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]

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]

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]

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE UNIFORM ARBITRATION ACT, § 15-48-10, ET SEQ., CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of this 18 day of JUNE, 2009, by and between I'On Club, LLC, a South Carolina limited liability company ("Seller"), and Michael Russo and his permitted assigns ("Buyer").

RECITALS

WHEREAS, Seller is the owner of certain Real Property and Personal Property (each as defined herein), and Seller rents the building and associated facilities located on such Real Property, together with the Personal Property for various events under the trade name Creek Club at I'On (the "Creek Club");

WHEREAS, Buyer and Thomas C. Graham, Vincent G. Graham and Geoffrey D. Graham (collectively, "Graham") have entered into a Purchase and Sale Agreement of even date herewith, for the purchase and sale of certain real property described therein (the "Graham Agreement");

WHERERAS, Buyer and The I'On Company, LLC ("TIC") entered into a Purchase and Sale Agreement of even date herewith, for the purchase and sale of certain real property described therein (the "TIC Agreement");

WHEREAS, Seller has agreed to sell to Buyer certain assets owned by Seller and used in connection with its operation of the Creek Club, all in accordance with the terms and conditions hereinafter set forth; and

WHEREAS, the parties have agreed that Seller's obligation to consummate the transactions described in this Agreement (including, without limitation, the sale of certain assets of the I'On Club and I'On Creek Club described herein to Buyer) is contingent on Buyer simultaneously consummating the transactions described in the Graham Agreement and the TIC Agreement.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100ths Dollars ($10.00) paid by Buyer to Seller and subject to the mutual terms, covenants, conditions and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Incorporation of Recitals. The above recitals are incorporated herein by reference.

2. Purchase and Sale of Assets. Seller agrees to sell and Buyer agrees to purchase the following assets of Seller (the "Assets"):

PLAINTIFF'S EXHIBIT 29

(a) the property more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with all buildings, structures and improvements thereon, fixtures and equipment, including any light fixtures, and also together with all and singular the tenements, hereditaments, rights, easements and appurtenances now or hereafter belonging thereto (collectively, the "Real Property");

(b) Certain fixtures, appliances, tables, chairs, and exterior furniture owned by Seller and used or held for use in connection with the business or operation of the Creek Club, set forth on Schedule 1 attached hereto and incorporated herein by reference (collectively, the "Personal Property");

(c) Seller's interest in the leases, subleases, and rental agreements that grant a possessory interest in and to any space situated on the Real Property or that otherwise grant rights with regard to use of all or any portion of the Real Property, and all prepaid rentals (to the extent applicable to a period beyond the Closing Date and security deposits thereunder, set forth on Schedule 2 attached hereto and incorporated herein by reference (collectively, the "Assumed Leases"); and

(d) Seller's interest in the contracts, options, purchase orders, commitments or other agreements relating to the Assets or the operation of the Creek Club, set forth on Schedule 3 attached hereto and incorporated herein by reference (collectively, the "Assumed Agreements", together with the Assumed Leases, the "Assumed Contracts"); and

(e) All goodwill associated with the Creek Club.

Buyer shall not assume, in connection with the transactions contemplated hereby, any liability or obligation of the Seller whatsoever, and the Seller shall retain responsibility for all liabilities and obligations accrued or incurred prior to Closing and all liabilities and obligations arising from the Seller's operations prior to Closing, whether or not accrued and whether or not disclosed. As the sole exception to the previous sentence, effective as of the time of Closing, the Buyer shall assume the obligations of the Seller under each Assumed Contract that is expressly assumed by Buyer in accordance with the terms hereof to the extent such obligations are not required to be performed prior to Closing, and accrue and relate to the operation of the Creek Club subsequent to the Closing.

3. Assets Excluded from Sale. Seller does not intend to sell to Buyer, and Buyer will not acquire under the terms hereof, any of the following assets of the Seller:

(a) Any cash on hand (or cash equivalents), securities, demand, savings, or other deposits in any bank or savings and loan institution or other financial institution, any negotiable or non-negotiable instruments, or any other investments (except as otherwise provided herein);

(b) Any accounts receivable of the Seller for rentals on or before the date of Closing;

(c) all refunds related to the Creek Club accruing on or before the date of closing.

(d) Any personal effects of Seller specifically described on the attached Schedule 4.

4. Purchase Price and Deposit. The consideration to be paid to the Seller for the Assets at the Closing is One Million Four Hundred Thousand and 00/100 Dollars ($1,400,000.00) ("Purchase Price"), payable as follows:

(a) On or before the Effective Date, Buyer shall deposit an earnest money deposit in the sum of Twenty Thousand and 00/100 ($20,000.00) Dollars (the "Deposit") with Buist Moore Smythe McGee PA, ("Escrow Agent") to be held in escrow in a non-interest bearing account by Escrow Agent as provided herein. Unless this Agreement is sooner terminated as provided herein, the Deposit shall be applied to the Purchase Price at Closing (as hereinafter defined); and

(b) The balance of the Purchase Price, less credit for the Deposit and further subject to such other credits, prorations and adjustments as are provided herein, shall be paid at Closing by Buyer in immediately available funds.

5. Allocation of Purchase Price. The Purchase Price for the Assets shall be allocated as shown on Schedule 5. Buyer and Seller agrees to comply with IRC §1060 if necessary and shall report the transactions for all tax purposes in a manner consistent with such allocation.

6. Closing. The closing of the purchase and sale of the Assets, herein called "Closing", shall be held thirty (30) days after the expiration of the Inspection Period, as hereinafter defined (the "Closing Date"), at the offices of Buyer's attorney or at such other place as shall be mutually agreeable to the parties hereto. Buyer acknowledges and agrees that the Closing shall be held simultaneously with the closing of the property described in the Graham Agreement and the property described in the TIC Agreement.

(a) On the date of the Closing, the Seller shall execute, where necessary, and deliver to Buyer the following:

(i) A general warranty indenture deed in recordable form conveying the Property to Buyer in fee simple free and clear of all liens and encumbrances except for: (i) zoning and other applicable laws; (ii) taxes or governmental assessments for the then current year which are not yet due and payable; (iii) all agreements, covenants, conditions, easements, and restrictions of record which may affect the Property; (iv) all facts which are shown on any existing survey or would be shown on a current survey of the Property; (v) a reservation of non-exclusive easements for the installation and maintenance of all utilities (A) adjacent to, parallel with and within 3 feet of the two side boundary lines of the Property, and (B) within applicable setbacks for the front and rear boundary lines; (vi) the restriction that the Property shall not be

used for any type of Vacation Time Sharing Plan as defined by Section 27-32-10 et seq., S.C. Code (1976), as amended, without the express, written consent of Seller or TIC, its successors and assigns; and (vii) other matters approved or waived by Buyer as provided for in this Agreement (collectively, the "Permitted Exceptions").

(ii) A FIRPTA Certificate and Seller's tax identification number or Social Security Number.

(iii) an officer's affidavit of Seller certifying as to the validity and accuracy of the attached certificates of existence and good standing, certified copies of articles of organization or incorporation, operating agreement or bylaws, authorizing resolutions, and incumbency of the persons executing the transaction documents.

(iv) Seller's affidavits and state tax withholding affidavits.

(v) One or more bills of sale and assignments, executed by Seller in form and substance reasonably satisfactory to Buyer, conveying the Assets (other than the Real Property) to Buyer free and clear of all encumbrances.

(vi) A current tax compliance letter as to Seller from the South Carolina Department of Revenue or a current Transferor Affidavit executed by Seller stating that the conveyance of the Property is not part of a transfer of a majority of assets of the business of Seller, based on the fair market value of the real property transferred.

(vii) Such other documents as may reasonably be requested by Buyer or his counsel to effectuate the transactions contemplated hereunder.

(b) The On the date of the Closing, the Buyer shall execute, where necessary, and deliver to Seller the following:

(i) The Purchase Price payable in accordance with the terms of Paragraph 4 above.

(ii) Such assignment and assumption agreements as necessary to evidence the assumption of the Assumed Contracts by Buyer.

(iii) Such other documents as may reasonably be requested by Seller or its counsel to effectuate the transactions contemplated hereunder.

The sale described herein shall be closed in escrow pending recording of all recordable documents. Each party shall at any time and from time to time after the Closing execute, acknowledge where required, and deliver such further instruments and documents, and take such other action as may be reasonably requested by the other party in order to carry out the purposes of this Agreement.

7. Inspection Period. For the period commencing on the Effective Date and expiring at 5:00 P.M.E.D.T. on the 30th day thereafter (the "Inspection Period"), Buyer and its agents shall have the right to make an inspection of the Assets, including title matters, soil, engineering, planning, environmental, permitting, zoning or other studies and investigations as Buyer shall deem appropriate. Buyer shall have the right, during the Inspection Period, to examine and inspect the books and records relating to operations of the Creek Club and the Assets, which books and records shall be made available to Buyer at the Seller's office during normal business hours. Buyer shall have the right to physically inspect the Assets during the Inspection Period, conduct such studies and review such of the books and records relating to the operation of the Creek Club as Buyer may elect, and determine whether the Assets are satisfactory for Buyer's contemplated use thereof. Buyer or Buyer's authorized representatives shall have the right from and after the Effective Date to enter upon and make tests on the Real Property, including, but not limited to, tests to determine the presence of any hazardous materials. Such inspections are to be conducted in a manner as not to unreasonably interfere with the operation of the Creek Club by Seller. Buyer shall pay all costs incurred by Buyer in making any such inspections and investigations and shall indemnify, defend and hold the Seller harmless from any liens, claims, losses and liabilities arising out of the Buyer's exercise of such right and privilege to go upon the Real Property. If the Real Property is disturbed in any manner by Buyer or its agents or representatives in accomplishing such inspections, tests or investigation, Buyer shall restore the Real Property to its prior existing condition or a condition as close thereto as commercially reasonable. Buyer acknowledges that this Agreement is entered into by Buyer without reliance on any warranties, statements or representations, either written or oral, express or implied, by Seller, or by any agent, employee or representative of Seller, or by any broker or other person purporting to represent Seller, relating to the marketability or investment potential of the Assets, the zoning or use of the Real Property, the legal or tax consequences of this Agreement and the purchase or ownership of the Assets, or other matters, except as set forth in this Agreement between Seller and Buyer. Buyer warrants and represents to Seller that if such matters are of concern to him, Buyer has sought and obtained independent advice relative thereto.

In the event Buyer, in Buyer's sole judgment and discretion, concludes that said inspections, reviews, studies and/or investigations are not satisfactory, for any or no specific reason, then Buyer may terminate this Agreement by delivering written notice of such determination to Seller on or before the expiration of the Inspection Period. If Buyer fails to timely give such notice of termination to Seller, this Paragraph shall be of no further force and effect, and Buyer shall have no further right to terminate this Agreement pursuant to this Paragraph. If Buyer does give notice of termination to Seller on or before the expiration of the Inspection Period, then the Deposit shall be refunded to Buyer, less the sum of One Hundred and 00/100 Dollars ($100.00) as consideration for Buyer's inspection rights as set forth herein, and the parties hereto shall have no further rights, duties or obligations under this Agreement.

8. Conditions to Closing. The following shall be conditions to the applicable parties' obligation to close the contemplated transaction:

(a) If Seller determines that the consummation of the transactions contemplated hereby violates any third party rights ("Third Party Violation"), Seller shall disclose such Third Party Violation to Buyer and either party may elect to terminate this agreement within fourteen (14) days from Buyer's receipt of written notice of the same.

(b) Seller's obligation to close shall be contingent upon Buyer consummating the transactions described in the Graham Agreement and the TIC Agreement simultaneously with the closing of the purchase and sale of the Assets.

Upon termination by either party in accordance with this Paragraph 8, the Deposit will be refunded to Buyer, and the parties hereto will have no further rights, duties or obligations under this Agreement.

9. Seller's Representations and Warranties. Seller represents and warrants as of the date hereof (or as of the date of delivery of the relevant schedules, as applicable) and as of the Closing Date as follows:

(a) Seller is duly organized and in good standing under the laws of the state of South Carolina and is duly qualified to transact business in South Carolina and has all requisite powers to enter into this Agreement and to perform Seller's obligations hereunder and under any document required to be executed or delivered on behalf of Seller hereunder.

(b) This Agreement has been duly authorized by all necessary action on the part of the Seller, has been duly executed and delivered on behalf of the Seller, constitutes the valid and binding agreement of the Seller, and is enforceable in accordance with its terms. Seller is not now bankrupt or insolvent, nor will it be made insolvent as a result of this transaction, and Seller does not expect to file for bankruptcy or other protection or relief from creditors.

10. Operation Prior to Closing. Between the date hereof and the Closing Date, Seller will conduct the operation of the Creek Club in the ordinary course in accordance with its past practices (except where such conduct would conflict with the obligations of Seller under this Agreement).

11. Use and Development of Real Property; Rezoning. Notwithstanding anything contained herein to the contrary, if the Real Property is ever:

(a) 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. Buyer acknowledges and agrees that if

the Real Property is ever used or developed for residential purposes or rezoned for residential use, Buyer and any successor in title shall automatically become a member of the I'On Assembly, Inc., and remain a member so long as Buyer and any successor in title hold title to the Real Property. Buyer acknowledges that only builders approved by TIC, 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 Buyer on the part of TIC. Buyer agrees that Buyer shall not permit any person other than a builder approved by TIC to construct a home on the Real Property while title is vested in Buyer. Buyer 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 Buyer. 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. As set forth above, no commission to cooperating brokers will be paid by TIC or the Seller on the cost of improvements; or,

(b) 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. Buyer acknowledges and agrees that if the Real Property is ever used or developed for commercial purposes or rezoned for commercial use, Buyer and any successor in title shall automatically become a member of the I'On Square Association, Inc., and remain a member so long as Buyer and any successor in title hold title to the Real Property.

The covenants and limitations contained in this Paragraph 11, among others set forth herein, are covenants that run with the land and are thus applicable and binding upon all successors in title to the Real Property. Such covenants and limitations shall be included in the Deed. Buyer agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of this Paragraph 11.

12. Design Review and Approval. No structure or exterior items shall be placed, erected, or installed upon the Real 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 Real Property unless the design and plans for such is reviewed and approved

in writing by Seller or TIC, their successors and assigns; provided however, that if the Real Property is used or developed for residential or commercial purposes or rezoned for residential or commercial uses, which results in the Real Property becoming subject to the Residential Declaration or the Commercial Declaration as provided in Paragraph 11 above, such review and approval shall be made in accordance with the applicable declaration. The covenants and limitations contained in this Paragraph 12, among others set forth herein, are covenants that run with the land and are thus applicable and binding upon all successors in title to the Real Property. Such covenants and limitations shall be included in the Deed. Buyer agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of this Paragraph 12.

13. Closing Costs. The Seller shall be responsible for the fees and expenses of Seller's attorneys, deed preparation fees, the fees or taxes for documentary stamps or other transfer taxes, including all fees due pursuant to South Carolina Code Sections 12-24-10, et seq. with respect to the transfer of the Real Property to the Buyer, real estate or brokerage commissions to be paid by Seller, and any other costs and expenses actually incurred by the Seller. The Buyer shall be responsible for the fees and expenses of Buyer's attorneys, real estate or brokerage commissions to be paid by Buyer, and any other costs and expenses actually incurred by the Buyer. All other closing costs, if any, shall be allocated between Buyer and Seller as is customary in the applicable jurisdiction where the Real Property is located.

14. Adjustments and Prorations.

(a) Adjustments and Prorations. Except as otherwise provided herein, the following matters and items shall be apportioned on the Closing Date between the parties hereto or, where applicable, credited in total to a particular party:

(i) Taxes and Assessments. All ad valorem taxes, personal property taxes, water and sewer rents, rates and charges and vault charges and other municipal permit fees.

(ii) Utilities. Telephone and other communications, water, sewer, heat, steam, electric power, gas, lighting and any other utility service, with Seller receiving a credit for all deposits, if any, made by Seller as security under any such public service contracts if the same is transferable and provided such deposit remains on deposit for the benefit of Buyer.

(iii) Assumed Contracts. Seller shall deliver to Buyer the amount of all refundable security deposits and fees held by, or paid to, Seller under the Assumed Contracts or, alternatively, the Buyer, in Buyer's discretion, shall receive a cash credit for such amounts at Closing.

15. Estimates and Adjustments; Accounting. If the actual amount of any item is not known as of Closing, the proration will be based on the most current and accurate billing information available. If the actual amount of any such item, when later determined, and prorated for the applicable period, differs from the credit given therefor, the parties shall

promptly make the appropriate adjustment, and the party owing sums by reason of such adjustment shall promptly remit such sums to the other party.

16. Possession. Buyer shall be entitled to possession of the Assets upon Closing.

17. Reservation of Right. Seller shall reserve, for the benefit of Seller and TIC, their successors or assigns, a non-exclusive perpetual easement in the Deed conveying the Real Property to Buyer for the storage of four (4) kayaks under the porch of the building located on the Real Property or if unavailable, in such other comparable location on the Real Property as the Buyer may determine in his reasonable discretion.

18. Default and Remedy.

(a) If Seller has performed its covenants and agreements hereunder but Buyer has breached its covenants and agreements hereunder and has failed, refused or is unable to consummate the purchase and sale contemplated herein by the date of Closing, Seller shall be entitled to retain the Deposit paid by Buyer to Seller as and for Seller's liquidated damages and sole remedy for Buyer's default. If Seller has breached its covenants and agreements under this Agreement and has failed, refused or is unable to consummate the purchase and sale contemplated herein by the date of Closing, then Buyer may (i) proceed against Seller to enforce its rights hereunder in an action for specific performance, or (ii) elect to terminate this Agreement, in which case Buyer shall be entitled to a full refund of the Deposit.

(b) Seller agrees to indemnify, defend, and hold Buyer harmless from and against all demands, claims, actions, losses, damages, liabilities, costs, and expenses, including without limitation reasonable attorney's fees and expenses, asserted against or incurred by the Buyer resulting from or arising out of (i) a breach of any covenant, agreement, representation, or warranty of Seller contained in this Agreement, or (ii) operation of Creek Club and ownership of the Assets by Seller prior to the Closing. Buyer agrees to indemnify, defend, and hold Seller, its affiliates, and each of their officers, managers, directors, members, shareholders, employees, and agents (collectively, the "Seller's Indemnitees") harmless from and against all demands, claims, actions, losses, damages, liabilities, costs, and expenses, including without limitation reasonable attorney's fees and expenses, asserted against or incurred by the Seller's Indemnitees resulting from or arising out of (i) a breach of any covenant, agreement, representation, or warranty of Buyer contained in this Agreement or (ii) the operation of the Creek Club and ownership of the Assets by Buyer following the Closing.

(c) If it shall be necessary for either Buyer or Seller to employ an attorney to enforce its rights pursuant to this Agreement because of the default of the other party, the defaulting party shall reimburse the non-defaulting party for reasonable attorney's fees and expenses (including without limitation paralegal fees), including those incurred on appeal.

19. Survival. If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the Closing, it shall survive the Closing and

remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

20. Assignment. This Agreement shall not be assigned by either party without the written consent of the other party, provided that Buyer may assign this Agreement without the consent of Seller to an entity that is at least 50% owned or controlled by Buyer.

21. Notice. All notices shall be in writing and shall be deemed to have been properly given on the earlier of (i) when delivered in person, (ii) three (3) days after deposit in the United States Mail, with adequate postage, and sent by registered or certified mail with return receipt requested, to the appropriate party at the address set out below, (iii) one (1) Business Day after deposit with Federal Express, Express Mail or other overnight delivery service for next day delivery, addressed to the appropriate party at the address set out below, or (iv) when transmitted by facsimile to the facsimile number for each party set forth below, and a copy of such facsimile is sent out by one of the methods set forth in clauses (i) through (iii) above. No notice shall be deemed properly given unless sent by one of the methods set forth above and actually received or refused on a Business Day (as defined herein).

AS TO BUYER:

Michael Russo

_____

_____

Fax No. _____

AS TO SELLER:

_____

I'On Club, LLC
159 Civitas Street
Mt. Pleasant, SC 29464
Fax: 843.971.4748

WITH A COPY TO:

Daniel Q. Orvin, Esq.
Buist Moore Smythe McGee P. A.
Post Office Box 999
Charleston, South Carolina 29402
Fax No. 843-723-7398

22. Entire Agreement; Modification. This Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written

agreement between the parties. It is expressly agreed that there are no verbal understandings or agreements which in anyway change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless made in writing and duly executed by the parties hereto.

23. Confidentiality. Without the prior written consent of the other party, neither the Seller nor the Buyer will disclose to any person or entity, other than its legal counsel, a proposed lender, necessary governmental authorities and/or other agents with a reasonable need to know such information, either the fact that this Agreement has been entered into or any of the terms, conditions or other facts with respect thereto, including the status thereof. Seller will not disclose to any person or entity, other than its legal counsel, any personal or financial information provided to Seller by Buyer in connection with the transaction contemplated by this Agreement.

24. Assets "As Is". Buyer acknowledges and agrees that, prior to purchasing the Assets, Buyer will have inspected the physical condition of the Assets and upon the Closing shall conclusively be deemed to have been satisfied with the results of the physical inspection. Buyer further acknowledges and agrees that, except as otherwise set forth herein, it is purchasing the Assets on an "AS IS" basis and "WITH ALL FAULTS" condition WITH NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

25. Severability. Any provision of this Agreement which is unenforceable or invalid or the inclusion of which would affect the validity, legality or enforcement of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force and effect and the parties shall use their best efforts to substitute a like but enforceable and valid provision in lieu of the unenforceable or invalid provision.

26. Disclosures. Buyer acknowledges that certain parties have the right to use the dock and boat ramp facilities that are part of the Real Property pursuant to a "Recreational Easement and Agreement to Share Costs" dated _____ recorded on _____ in Book _____, Page ____ the RMC Office for Charleston County, South Carolina. 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.

27. Binding Effect. All covenants, agreements, warranties and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, personal representatives, successors and assigns.

28. Survival. The provisions of this Agreement and any Exhibits or Schedules attached hereto which contemplate performance after Closing shall survive the Closing and shall not be merged into or with the Deed.

29. Escrow Agent. The Escrow Agent shall have no duties except as stated herein. The parties agree that it shall not constitute a conflict of interest for the Escrow Agent to represent one of the parties in connection with this Agreement. If the Escrow Agent is in doubt as to its duties or liabilities under this Agreement, for any reason, it may, in its sole discretion, continue to hold the said Deposit, or so much thereof as it deems appropriate until: (a) Seller and Buyer mutually agree to disbursement thereof, (b) an order or judgment of a court of competent jurisdiction determines the rights of the parties hereto, or (c), as an alternative, the Escrow Agent shall have the right to interplead such Deposit with the Clerk of the Court of Common Pleas for the County in which the Property is located, and upon notifying both the Buyer and Seller of such action, all duties of the Escrow Agent under the terms of the Agreement shall terminate, except to the extent of accounting for such escrow funds. The Escrow Agent shall not be liable for anything it may do or refrain from doing in connection herewith provided that it acts in good faith and without gross negligence or intentional breach of this Agreement. Unless a dispute shall arise relating to the Escrow Agent's duties, Buyer shall be responsible for the Escrow Agent's fees. In the event that the Escrow Agent becomes involved in litigation relating to the Escrow, the non-prevailing party shall be responsible for the payment of the Escrow Agent's reasonable fees and expenses and for the reasonable attorney fees and costs of the prevailing party.

30. Governing Law. This Agreement shall be governed by the laws of the State of South Carolina.

31. Effective Date. The "Effective Date" of this Agreement for all purposes shall be the date when a fully-executed counterpart to this Agreement is delivered to the Buyer, signed and initialed by Buyer and Seller.

32. Business Days. If the time period by which any right, option or election provided under this Agreement must be exercised, or by which any act required hereunder must be performed, or by which the Closing must be held, occurs on a non-Business Day, then such time period shall be automatically extended through the close of business on the next regularly scheduled Business Day. As used herein "Business Day" shall mean any day other than Saturday, Sunday and any other day that is a national holiday in the United States or a state holiday in the State of South Carolina, or is a day on which banking institutions in either such nation or state are authorized or required by law or other governmental action to close.

33. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all parties hereto, whether or not each counterpart is executed by all parties hereto, so long as each party hereto has executed one or more counterparts hereof.

34. Facsimile Signatures. The parties hereto acknowledge and agree that any party may execute and deliver facsimile copies of this Agreement and said facsimile copies will have the same binding effect as executed original counterparts.

35. Arbitration. Any claims or disputes arising out of or related to this Agreement are subject to binding arbitration pursuant to the Commercial Rules of the American Arbitration Association, as amended and in effect at the time of such hearing. The arbitration shall take place in Charleston, South Carolina. Each party shall use all reasonable efforts to ensure that any arbitration proceeding is completed within sixty (60) days following notice of a request for arbitration hereunder. The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable.

36. WAIVER OF JURY TRIAL. THE BUYER AND THE SELLER WAIVE TRIAL BY JURY WITH RESPECT TO ANY ACTION, CLAIM, SUIT OR PROCEEDING ARISING OUT OF THIS AGREEMENT.

37. TIME OF THE ESSENCE. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

[remainder of page left intentionally blank]

IN WITNESS WHEREOF, the parties hereto have caused this Purchase and Sale Agreement to be executed as of the date and year first above written.

WITNESSES:

Chad Beseneker

Pam Martin

SELLER:

I'ON CLUB, LLC

By: The I'On Group, LLC
Its: Manager

By: VINCENT GRAHAM
Its: MANAGER

Chad Beseneker

BUYER

Michael Russo

EXHIBIT A

Real Property

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.

TMS No.: 535-06-00-230 (Lot CV-6)

Schedule 1

"Personal Property"

1. On-site furniture including leather chair, podium, 125 folding chairs, 15 round tables, 6 rectangle tables, storage racks, 6 rocking chairs, and 2 picnic tables
2. Kitchen appliances including stove and refrigerator.
3. Computer and video surveillance system
4. Large screen TV

Schedule 2

"Assumed Leases"

1. See attached rental Logmaster and deposits
2. Kayak storage space rentals

Schedule 3

"Assumed Agreements"

1. BuzzOff Insect services.
2. Landscape service (monthly agreement)
3. Ice machine lease

Schedule 4

"Personal Effects of Seller"

1. Construction equipment stored onsite including streetlights, construction equipment and gate.
2. Realty signage and post diggers
3. Kayaks
4. Charleston waterways framed artwork

Schedule 5

"Allocation of Price"

1. Land, Building and Fixed Assets $1,070,000
2. Docks $330,000

Schedule 6

(a) A reservation of non-exclusive easements along the boundary lines of the Property for the installation and maintenance of utilities contained in the Declaration;

(d) Easement to South Carolina Electric and Gas Company, recorded in Book X115 at page 28, RMC Office for Charleston County;

(e) Easements for access, utilities and drainage reserved in the deed from 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, L.L.C. dated August 12, 1997 and recorded in the RMC Office for Charleston County in book J288 at page 190.

(f) Easement to BellSouth Telecommunications, Inc. dated November 6, 1997 and recorded November 7, 1997 in the RMC Office for Charleston County in Book U292 at page 209;

(g) The restriction that the Property shall not be used for any type of Vacation Time Sharing Plan as defined by Section 27-32-10 et. Seq., S.C. Code (1976), as amended, without the express, written consent of Seller, its successors and assigns;

(h) Zoning or other restrictions of record as imposed by governmental authorities having jurisdiction over the use of the property.

(i) 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 48-39-10 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 U.S. Army Corps of Engineers.

(j) Ad valorem property taxes and governmental assessments not due prior to closing of this sale.

(k) All easements, conditions, restrictions and other matters contained in Declarations of Restrictive Covenants dated December 10, 1998 and recorded in the RMC Office for Charleston County in Book L313 at page 13 and as shown on the plat entitled "Plat of Wetlands and Buffers for I'On, Town of Mt. Pleasant, Charleston County, SC" dated June 9, 1998 by Thomas and Hutton Engineering Company and recorded in Plat Book EC at pages 899-903, aforesaid records.

(l) Easement to CPW recorded in the RMC Office for Charleston County in Book J316 at page 228 and O319 at page 482.

(m) Recreational Easement and Agreement to Share Costs dated _____, recorded on _____ in Book _____, Page _____ the RMC Office for Charleston County, South Carolina.

ORDINANCE NO. 97010

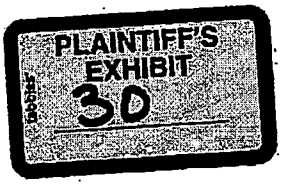
STATE OF SOUTH CAROLINA	)	AN ORDINANCE PROVIDING FOR A
	)	PLANNED DEVELOPMENT ON THE
COUNTY OF CHARLESTON	)	APPROXIMATELY 243 ACRES OF LAND
	)	DESCRIBED AS THE JORDAN TRACT,
TOWN OF MOUNT PLEASANT	)	TO BE KNOWN AS "I'ON"

WHEREAS, the Developers of an approximately 243 acre tract of land identified in a document entitled "I'On Impact Assessment" dated January 1997, prepared by The Graham Company, and a document entitled "The I'On Code" prepared by The Graham Company, and the sketch plan map entitled "I'On Technical Plan" dated January 28, 1997, said documents which are attached hereto and made a part hereof as Exhibits "A," "B," and "C," respectively, desire to create a planned development with a mixed use and traditional walking neighborhood built in a manner of older coastal towns like Beaufort, Charleston and the Old Village of Mount Pleasant; and

WHEREAS, the Mount Pleasant Board of Planning and Zoning held a public hearing on January 22, 1996, pursuant to the Mount Pleasant Code of Ordinances, to consider this requested rezoning; and

WHEREAS, the Mount Pleasant Board of Planning and Zoning made the following findings of fact as a basis for a recommendation for approval of this Planned Development Ordinance:

1. This plan is in harmony with the Master Plan which suggests this type of development,
2. That the overall density is less than what would be normal R1 zoning, which allows for more open space,
3. That the traffic has been shown to be within acceptable limits of reasonable traffic study the Engineers and further confirmed by Kimley-Horn, the Town's traffic advisors,
4. That the other impacts within the Impact Assessment are acceptable and,



5. Also with the knowledge that this is a Rezoning and Impact Assessment and a Sketch Plan and that further details will continue to be worked out concerning the roads as well as other technical details,
6. That the developer and his team of Engineers and Planners continue to work with the Town to solve these technical concerns;

WHEREAS, Mount Pleasant Town Council is empowered with the authority to adopt planned development ordinances and make amendments to the Official Zoning Map of the Town of Mount Pleasant, and now desires to do so with respect to the referenced property.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Town Council of the Municipality of Mount Pleasant, in Council assembled, that the property described as the Jordan Tract, comprising approximately 243 acres of land located on Mathis Ferry Road to be known as "I'On," is hereby zoned PD, Planned Development, subject to the specific requirements of Exhibits "A," "B," and "C" hereto to the extent said requirements are not modified by the hereinbelow requirements, and the Official Zoning Map of the Town is hereby amended to reflect the same.

BE IT FURTHER ORDAINED THAT the I'On Code has further been clarified with respect to the building height requirement, pavement width of the right-of-way type classified as "Road" and the buffer along Mathis Ferry Road as expressed in letters to Joel Ford from The Graham Company, dated February 17, and 18, 1997, respectively, and more fully explained as follows:

1. The maximum building height shall be 30 feet as measured to the eaves of a structure. In no event shall a building be over 38 feet I total height.
2. The pavement width requirement for the "Road" thoroughfare type listed in the I'On Code shall hereby be increased from 18 feet in width to 20 feet in width.
3. A twenty-five foot natural undisturbed buffer shall be provided along Mathis Ferry Road. At Town Council's discretion, an eight foot tall wooden fence shall be constructed behind the buffer, and/or additional plantings of eleagnus and wax myrtle installed within sparse areas of the buffer. The wood fence may be stained green to blend in with the existing vegetation.

THIS ORDINANCE SHALL BE EFFECTIVE IMMEDIATELY UPON FINAL READING.

SIGNED, SEALED AND DELIVERED THIS 11th DAY OF March, 1997.

Cheryll N. Woods-Flowers, Mayor
Town of Mount Pleasant

ATTEST:

Carol J. Hunter
Carol J. Hunter
Clerk of Council

March 11, 1997
Mount Pleasant, SC

Introduced: Feb. 18, 1997
Final Reading: Mar. 11, 1997

APPROVED AS TO FORM:

R. Allen Young
Town Attorney

CIVITAS
The I'On Journal

JACOB BOND I'ON

The Story of A Town Founder

By Caroline Simons

During the hurricane of 1911, my grandmother and four of her children were vacationing at the summer home of Jacob Bond I'On on Sullivan's Island. Tales of the storm and how soldiers from Fort Moultrie rescued the family and took them safely into the Fort, are my first recollections of my great-great-great-great Uncle, Jacob Bond I'On.



"*Old Uncle*," as he is still known in our family, lived two hundred years ago, but his memory is preserved in tradition and tales of his life and service to this country. He never married, but he was the patriarch of a large family. His opinion was highly respected and sought on all critical decisions.

While staying at his home on Sullivan's Island, *Old Uncle* often entertained officers from Fort Moultrie. Interestingly, one of these officers was a young lieutenant, William Sherman. During the burning of Columbia, Sherman gave protection to *Old Uncle's* family, but not their home, which was torched.

Jacob Bond I'On and his twin, Mary Ashby I'On, were born on July 6, 1782. He graduated from Yale in 1803. After entering the US Army as a captain, he commanded the Marcello Tower on James Island, the most important post in the defense of Charleston during the war of 1812.

He served in the South Carolina Senate for ten years and was president from 1832 to 1828. During that time he was also elected Intendant of Sullivan's Island and represented Christ Church Parish at the Nullification Convention, signing the Ordinance of Nullification. In 1852, he attended the Southern Rights State Convention, a precursor to the Civil War.

Jacob Bond I'On died July 17, 1859. He is buried in the Bond cemetery located on the former grounds of his beloved Hobcaw Plantation, much of which is now I'On, renamed to honor this great family.

Caroline Simons is his great, great, great, great niece of Jacob Bond I'On. She lives in Mount Pleasant. Her family has been very supportive and helpful in the I'On Community's efforts to rededicate the I'On Monument and family cemetery.

LAYING THE FOUNDATION

CIVITAS
The I'On Journal



"It is requisite for the ideal artist to possess a force of character that seems hardly compatible with its delicacy: he must keep his faith in himself while the incredulous world assails him with its utter disbelief: he must be his own sole disciple both as respects his genius and to the objects to which it is directed."

Nathaniel Hawthorne, The Artist of the Beautiful

PLAINTIFF'S EXHIBIT 31

Inaugural Issue

Priceless

CIVITAS

THE I'ON JOURNAL

I'ON BREAKS GROUND IN MT. PLEASANT

The Inaugural Issue

Laying the Foundation

COVER STORY
I'On Breaks Ground
The plan for I'On. How it will be built, neighborhood by neighborhood ..... *Page 1*

THE FOUNDERS' LETTER
Welcome to this inaugural issue. What you can expect from Civitas: The I'On Journal ... *Page 2*

LOWCOUNTRY TRADITIONS
A neighborhood store only a few blocks away provides a rite of passage for children growing up in Mount Pleasant ..... *Page 2*

ELEMENTAL ARCHITECTURE
The evolution and functions of the front porch and how it defines living in the South ... *Page 3*

INSPIRATION FOR A NEIGHBORHOOD
Two guest writers look at what it takes to bring out the best in the creation of communities and special places.

An Environmentalist Makes A Wish
Sam Passmore explains why air quality, water quality, and rural land conservation advocates need models such as I'On ..... *Page 4*

How Do We Define Community
Julie Cofer looks at active and passive definitions of community and the role of the individual ... *Page 5*

IMAGES OF COMMUNITY
Photographers Stephaney Moyer and Cheri Pitrillo capture some of I'On's most beloved residents ..... *Pages 45-5*

WRITER'S BLOCK
Poetry by local and well known poets.

Political Science ..... *Page 4*
by Elizabeth Snydel Morgan

Haiku ..... *Page 5*
by Drew Beck

The Boy ..... *Page 6*
by Jessie Kimball

TURN OF THE CENTURY
Technology develops connections within a community, tying the past to the future ..... *Page 6*

CLASSIFIEDS
If you need it, we might have it ..... *Page 6*

THE BEAUTIFUL BUILDING
How the I'On Guild brings back the art and craftsmanship of construction ..... *Page 7*

SIGNED & SEALED
The significance behind the I'On Seal ... *Page 7*

JACOB BOND I'ON
A great, great, great, great niece describes how her "Old Uncle" changed her life and the Lowcountry ..... *Back Cover*



Pictured: A typical street scene. The first homes of I'On surround the southwest corner of the neighborhood's largest lake and will encircle the deep green park. I'On's characterized by thoughtful homes of different size and styles, paved and brick-lined sidewalks of large front steps along the lake, pedestrian passage, and easy access to the neighborhood store and services.

"The history of [illegible] by [illegible] designed by [illegible] examples of [illegible] direction from the [illegible] [illegible] and order, or an [illegible] the [illegible] of [illegible] thought"

Charles S. Mathews, an Architect Consultant for Mount Pleasant based Architectural Design Firm, Re-Design, Inc., [illegible] the office of Duany & Plater-Zyberk & Company

I'On is a traditional walking neighborhood. It draws from the same planning methodology that makes historic coastal towns so endearing. Lessons from these beloved places combine with modern technology to shape I'On's plan.

I'On benefits from its Founders' experience building other traditional neighborhoods including the nationally acclaimed Newpoint, the Village at Port Royal, and Broad Street in Beaufort, South Carolina as well as North Cove in Peachtree City, Georgia. The internationally renowned planning firms of Duany Plater-Zyberk & Company, and Dover, Kohl & Partners crafted the original master plan. The local firms of Seamon Whiteside & Associates and Designworks fine-tuned the details.

I'On encompasses 243 acres — the size of the Charleston peninsula south of Broad Street. Everywhere, intimate tree-lined streets lead to richly detailed parks and squares. Some thoroughfares are shady, ambling lanes like those found in the Old Village of Mount Pleasant. Others are narrow, winding streets complete with slate walks and granite curbs, like those found in historic Charleston. Parks provide access to the neighborhoods' lakes and the community docks along Hobcaw Creek, enable all the residents to enjoy its beauty.

There are eight sites reserved for civic uses including small churches and community buildings. In the heart of I'On is a small square surrounded by neighborhood shops and offices. This square will be easily accessible to the rest of Mount Pleasant via a modern roundabout on Mathis Ferry Rd. and a new connector road linking I'On to Johnnie Dodds Blvd.

I'On is comprised of six small neighborhoods, or boroughs, each encompassing 80 to 150 homes. These boroughs, developed over time, include Eastlake, Jonsborough, Shelmore, Westlake, Ponsbury, and Montrose.

The first neighborhood is Eastlake, named for the 12-acre lake it borders. Its amenities include a boathouse pavilion, recreational fields, playgrounds, and a linear park along the lake. I'On's principle swim and tennis facilities are also located in Eastlake.

The homes of I'On, are inspired by the architectural traditions of the Lowcountry. Their lots range in sizes just big enough for a home with a private courtyard to large parcels benefiting gracious estates. Deep porches, high ceilings, and classic proportion distinguish each home. Materials are chosen for authentic quality and ability to age gracefully over time. Elegant smaller houses sit comfortably beside grand neighbors. Harmony is achieved through the craftsmanship of fine detailing and the inviting civic realm that each building shares.

Above all, I'On will be a comfortable place to live: a home to welcome family and friends.

Neighborhood Checklist

- ☐ Can you entertain on your front porch?
- ☐ Can your child walk to a park?
- ☐ Does your house have a unique identity on your street?
- ☐ Would a dog feel comfortable sleeping in the street?
- ☐ Is there a range of incomes and professions in the neighborhood?
- ☐ Is it welcoming to both grandparents and children?
- ☐ Is it a memorable place?
- ☐ Does the neighborhood invite block parties?
- ☐ Would you feel comfortable going next door to borrow a cup of sugar?
- ☐ Is the neighborhood a place where you would like to spend the rest of your life?

Plater-Zyberk Production Group

The Founders' Letter

Laying the Foundation

By Vince Graham
President, The I'On Company

"Laying the Foundation" is the theme for this inaugural issue of *Civitas: The I'On Journal*. *Civitas* is the Latin word for a union of citizens, town, or civilization. This Journal serves as a diary for the union of this neighborhood. It will be full of history and information. Most importantly *Civitas* hopes to convey the spirit and philosophy of this place called I'On.

Future issues of *Civitas* will include writings from the famous and not so famous. Names you will instantly recognize, and names you will come to know as friends and neighbors. This issue's contributors include writers who have had, and will continue to have, a profound impact on the way I'On will grow. Their passion for the social and building traditions of the Lowcountry serve as the bricks for the neighborhood's foundation. Their enthusiasm and hope for our future provide its mortar.

Getting to this groundbreaking point has required leadership, faith, and support on the part of many individuals. We pledge to honor these efforts with thoughtful dedication to knitting the parts of this neighborhood into a thriving whole. It will be worth it. For I'On will evolve into a place where the whole is much greater than the sum of its parts: a neighborhood of extraordinary value we can be proud to leave to future generations.

As I'On evolves from the talents and creative abilities of the people who work on and live in this neighborhood, so too will this journal. I hope you enjoy this inaugural issue of *Civitas*, and if you find yourself in our direction, stop by and say hello.

V.G. Graham

CIVITAS
The I'On Journal

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Contributors

Vince Graham	Chris Pfaffle
Andrea Glenn	Elizabeth Seydel Morgan
Cliff	Drew Beck
Mucky Hill	Jessie Kendall
Sam Passmore	Andrew Beck
Julie Cofer	Geoff Graham
Stephaney Mayer	Caroline Simms

Contributions are Welcome!

DALY & SAWYER
Construction, Inc.

MICHAEL DALY (803) 884-7195 NEIL SAWYER

Lowcountry Traditions

A neighborhood store, to which kids can ride their bikes without their parents, offers a rite of passage and the beginning of their life as community members. It's also a great place for adults to go, with or without the kids.

By Andrea Glenn

When we were looking for houses, we were happy to find a neighborhood with sidewalks, front porches, and big, shady yards. But it wasn't until we moved in that we realized how lucky we were. Before the movers had finished unloading the truck, our two oldest children were begging to explore their new surroundings. We had lived in a resort community with a substantial transient population and continual traffic where I would never have let my children roam. I wanted this neighborhood to be different.

Reluctantly, we allowed the two older ones to set off on their bicycles. I should admit that I was a bit jealous. They were off discovering the live oaks, marshes and shrimp docks while I was left to unpack boxes. When they returned, they could hardly contain their excitement over what they had found. It wasn't fiddler crabs, lizards, raccoons, or even the enormous container ships cruising by that caught their eyes. They had found THE drugstore.



It has been three years since we moved in and my children stepped back in time. Only a few short blocks from our home is the center of their universe. My husband and I try so hard to protect them from some of the world's harsh realities, but we feel comfortable sending them there. It is a place where they can go, to enjoy the best milk shakes around, and their innocence as well.

The drugstore and its proximity to our home certainly has its conveniences. But, aside from the fact that I can walk to pick up our prescriptions, it is so much more than just a drug store. It provides the foundation of our community. Our daily visits to pick up sundries, buy a stamp and pay the phone bills bring all of the neighbors together. It's the spot to go when children need to show off a new baseball card or celebrate a good report card.

Of course, sometimes I still go to the chain drugstores, but the experience can't come close. Few things compare to the sight of teenagers dressed in their church clothes sitting at a lunch counter sipping cold drinks while they read comics.

So many people go through the entire day without seeing or speaking to their neighbors. Not us. With our sidewalks, porches, and visits to the drugstore, we have many opportunities to run into one another. The children and adults are able to meet and even become friends. A trip to the drugstore will inevitably result in greeting several friends, neighbors, their children, and sometimes even their dog. Who's got a cold, going on a trip or getting ready for camp? Everyone checks up on one another. The social interaction is certainly fun, but, more importantly, it creates a wonderful sense of security.

Our children also recognize that safety. The sea of unlocked bicycles surrounding the front door attests to that. *Miss Linda* holds court at the snack bar and tends to all. She knows their names and the kids know her rules! She makes the best grilled cheese and nobody can pour a colder "co-cola" from a fountain. No bad words allowed and you'd better have your shoes on. Everybody tends to their manners at the drugstore because stories definitely get back to parents. You never know whose mama might be listening.

Andrea Glenn lives in the Old Village of Mount Pleasant with her family: Vernon, C.C., Douglas, and Rosena. Andrea is head of Community Relations for Ashley Hall; Vernon is an attorney; C.C. is in the 5th grade and Rosena is in the 4K class of Ashley Hall; Douglas, a 1st grader, attends Charleston Day School. They each go to Pitt Street Pharmacy once a day (at least).
Cliff is a well loved Mount Pleasant artist and regular at Pitt St. Pharmacy.

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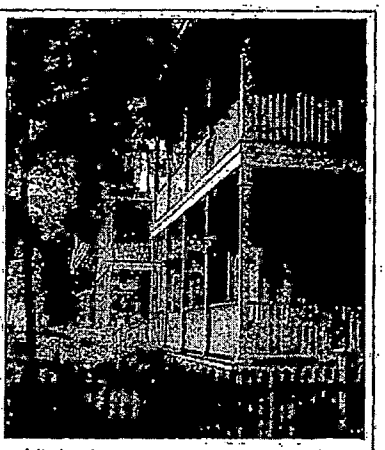
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ELEMENTAL ARCHITECTURE

The Role of the Porch

By Macky Hill



Have you ever known the pleasure of rocking on the porch while the rain falls? How about talking to friends sitting on a porch rail? When was the last time you lounged on a porch swing, drinking lemonade and watched the world go by? What about walking around your neighborhood, not because you feel the need to exercise, but because your neighborhood is beautiful, and everyone is out either strolling or sitting on their front porch? Certainly without porches, life is just not as good, but where did they come from and how have they evolved over time?

Ever since the Crusaders returned from the Holy Land with pearls, money, and a hunger for things exotic, porches have been an important ingredient in the good life. Once houses ceased to be fortresses and the climate in Europe warmed up, outdoor rooms were added. Italian house plans of the 1500's have outdoor rooms, and they were seen in the Netherlands and England by the mid 1600's. Colonial expansion in the Caribbean and South America with their tropical climates created a demand for shady, open architecture, and the porch found its market.

Here in the colony of Carolina, two styles of architecture emerged. There were attached houses built within the walled medieval style city of Charles Town, as well as plantation homes and farmhouses scattered across the peninsula and fifty miles inland.

In town, porches couldn't be added to row houses, but balconies could, with tall windows or doors. Even sidewalks in the commercial areas were roofed over with porticoes to protect passers-by from rain and sun.

The plantation and farmhouses were built in the Caribbean style with one-story porches on the Southern and Western sides, to catch the prevailing winds. It could get miserably hot, but the country house porches were deep enough to give shade from the high summer sun. The real genius, however, was that their ceilings were high enough to admit the lower, winter sun's warming rays.

As the walled city expanded to take in farmland, streets that ran North and South cut the gable ends of several farmhouses and their porches, creating the "Charleston Single House." This unique style began to influence the newer houses being built in these out lying areas. By the 1820's, beautiful streetscapes had been created, in which multiple story porches, or "piazzas," facing the southern side of the street, became the primary living space eight months out of the year. Sleeping porches were the rule, up until the 1930's, and portions of the porches were hidden by large shutter-like screens or placed on the garden side of the house, out in the breeze but away from prying eyes.

With air conditioning, the living porch moved inside. Sadly the formal, but very friendly, open neighborhoods, which had encouraged the evening promenade, or post-supper constitutional, were diminished by the porch's absence. Cars, radio, then television began to rule life, and house plans turned inward, focusing on the private rather than the public realm. Large garages facing the street and huge front yards pushed neighbors farther away from one another, and soon, neighborhoods were replaced by "subdivisions." Porches and other aspects of the public realm, including sidewalks, became ornamental rather than functional.

It is said that the soul of a place is hard to define, until it is missing and you know something very important is gone. The loss of the porch and its significant role in the public realm has taken its toll on our sense of place and feeling of neighborhood.

I'On has brought porches back, returning these "living rooms" to the street. With the return of the porch also comes the art of porch building. For a true porch, plan on doing whatever it takes to build some of your square footage outside. Eight feet deep is minimum; nine is mostly dry in the rain; and ten or more is ready for a party. Height is important. Too low, and you miss the sun during the six months you need it. A shady porch is pretty depressing in January. There should be a minimum height of nine feet from the deck to the bottom edge of the frieze. If your first floor ceilings are twelve feet high, this should be the height of your porch ceilings.

Aim your porch South or West if you can, and if your neighbor's porch faces a side yard, think about not only facing yours similarly, but also consider minimizing your windows along the side facing their porch. In Charleston, this is called "North Side Manners," and is a sign of respect for your neighbor's privacy.

Be sure to use appropriate design, since the porch can be a building's single most important architectural feature. Do not scrimp on materials, because this climate is not forgiving. Also, while designing your porches, think about and plan for future expansion. Your builder will have some good observations to offer. There may be some structural choices you can make now, which could greatly reduce your effort and cost later. Remember that porches are not decoration; they are exterior rooms. Constructed properly you will get more enjoyment from them, and spend a great deal of time on them. Your neighborhood will feel the difference.

Macky Hill is an architectural historian known for its extensive research & understanding of this region. He has applied this knowledge of classic design toward the creation of the I'On Plan Book. Macky is responsible for facilitating and inspiring good design in I'On.

Elemental Architecture is a regular feature in Civitas and provides an opportunity to learn about the fundamentals and history of architectural details predominant in I'On.

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INSPIRATION FOR

An Environmentalist Makes A Wish

By Sam Passmore

Environmental activists are basically normal, in case you were wondering. We don't get some weird sort of pleasure from standing in opposition to a road widening here, a sewer line there and a marina out yonder. We think we're right, but we don't relish the role of naysayer. In fact, we yearn to stand in support of economic enterprises that offer significant environmental benefits. We want to be able to respond to the question: "O.K. Now I know what you're against, but what are you *for*?" Increasingly, the enthusiastic answer among environmentalists is: "traditional neighborhood design." Here's at least part of the reason why...

Air Quality. The average American household makes about 12 trips per day, ten of them by car. Many of the trips are less than a mile and a half long and don't involve lugging home a week's worth of groceries. We could easily make such convenience trips – to the video shop or drug store – by bicycle or on foot, if our communities were designed with the pedestrians and cyclists in mind. Sadly, most of our roadways are designed exclusively for the automobile; so we drive, and we drive, and we drive, and we drive. The result: urban air quality is expected to decline by 2005, despite the stringent tail pipe emission standards of the Clean Air Act. Our driving habits, which are largely a function of community design, will offset all of Detroit's technology gains.

Traditional neighborhoods, because many destinations are nearby and the streets are inviting, create transportation options. Residents actually have the choice of leaving the car at home! And when we do so, even for a short trip, we also do the environment a big favor because the largest share of auto pollution is generated from cold starts. Western European households make the same number of daily trips as their American counterparts, but only about half by car. Most of their other trips are on foot or by bike, because Western Europeans never abandoned the traditional development pattern. On our side of the Atlantic, a return to traditional practices would mean we might all breathe a little easier (and maybe a little longer too).

Water Quality. Every time it rains, pollutants are washed off of driveways, roads, parking lots and other hard surfaces into our rivers and creeks. Such "runoff pollution" accounts for sixty percent of all surface water quality pollution in the United States. About one-third of South Carolina's shellfish beds are closed to commercial harvest. Most recent closures have been attributed to runoff.

Traditional neighborhoods, because they are more compact and streets are not as wide, have less impervious surface on a per household basis than low-density sprawl. The volume of runoff pollution is directly related to the amount of hard, or "impervious," surfaces present within a drainage area. Thus, traditional neighborhoods generate less runoff pollution. Indeed, a recent study of the Belle Hall plantation site in Mt. Pleasant found that the sprawl pattern generates three times more runoff than the traditional town.

Rural Lands. Between 1970 and 1990, the population of the Charleston region grew by about 70%, but the physical dimensions of the urban area grew by 150%, according to the U.S. Census Bureau. The story is similar, and even more dramatic, elsewhere. During the same period, Cleveland lost population, but its girth grew by 30%! Such inefficiencies in land use unnecessarily destroy farmland, timberland and important natural areas at the urban edge. The American Farmland Trust reports that 12 million acres of prime farmland were lost to sprawl between 1982 and 1992.

Traditional neighborhoods, because they can gracefully absorb more households per acre, relieve pressure to develop lands further out. For this reason, new neighborhoods built along traditional lines are well suited for vacant lands within the urbanized area. Also, because traditional neighborhoods are such desirable places to live, they entice people to stay in town. In this way, building great cities and towns will help save the countryside.

Sprawl development patterns have become the standard by which cities and towns have grown for the last fifty years. Challenging this norm is not easy. Environmental advocates aren't the only naysayers. There are a million theoretical reasons why some people say building new traditional neighborhoods will never work, and I have heard them all. My favorite: "People in South Carolina won't go for sidewalks, because it's too hot to walk." What we advocates need are real world examples that prove opponents of traditional neighborhoods wrong: models that show South Carolinians will pay good money to live in a walkable neighborhood. I'On, a complete contemporary model of traditional design principles, provides a stellar example.

Do our settlement patterns define what it is that we want to be? Isn't it time to build neighborhoods that are places that celebrate the human experience and conserve the beauty of our environment?

Sam Passmore is the land use director for the South Carolina Coastal Conservation League. SCCCL is a grassroots, non-profit organization dedicated to protecting State and Coastal resources.

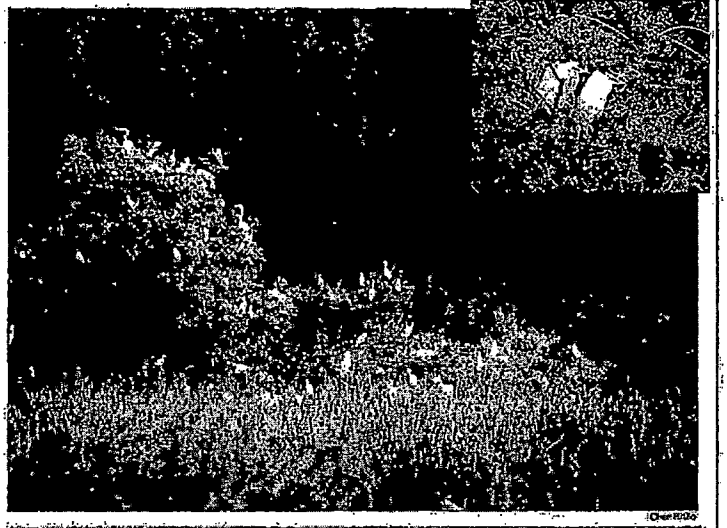
Political Science

By Elizabeth Seydel Morgan

The Governor studies history
to learn and rehearse the theory
of branching. He needs to know
the this-or-that, the here-or-there
that took the flow to where we are,
so he can say the terrible yes or no
to time. But now he knows
he needs to hold them both
in level hands.

That's why the Governor's so ambiguous.
She says, "Governor would you care
for beer or tea?" He smiles at her
enough to shake her poet's heart,
says, "I'd love to take a drink with you."
She understands this art that leaders make.
There is no other art.

Elizabeth Seydel Morgan is a poet living in Richmond, Va. "Political Science" is a poem from her book *The Governor of Desire*, printed by Louisiana State University Press. Copyright 1993.



The fairway, traveled and featured, is termed a cart path. Here's a reason to legislate of wearing high-top golf shoes. Many golf spaces during their holiday season the longest sentence in recreational conservation easement with the Audubon Society recently was that of 99 to perform.

Stephanie Mayer is a local photographer and HSA instructor specializing in the study of movement. Her photographs have been published in several magazines. She lives on the Isle of Palms.

Chet Raymo is devoted to photographing the winds of the world. His photographic trademark is his sense of humor along with his pure formal accordance. His artistic skill is that he doesn't capture the moment, he captures the split second.

A NEIGHBORHOOD

How Do We Define Community

By Julie Cofer

I spent yesterday afternoon with a one and a half-year-old. Bright eyed and eager, he watched our every move and followed our attention around the room. I just glanced briefly at the big box lying on the floor or the flowers in the garden. He stopped everything to peek inside, to feel their texture, to shake them up, and to build his own relationship with them. He made them a part of his world. The adults had a discussion about the future of our hometown, complete with generalizations and speculations. He sat for a moment, listened and examined our faces and the sounds of our words, with the same intensity that mastered the box and the flowers. Then he gave us his response; he called out "heeey," he shook in frustration. The conversation stopped.

Honestly, I don't remember being one and a half, but I think that is where it all begins: this search for understanding one's place within a community. Back to those overheard discussions: the hopes, ideals, and postulations.

Community can be a hot topic. I think it is because, it feels good; it rolls out of the mouth. It is so "politically correct" – to be for a group and to support the good of the whole. There is safety in numbers and community has a plural nature. It tries to capture something about being a part of the larger picture, something that says you are not alone in this world.

Unfortunately however, when it comes to defining community we want to give it boundaries and to determine who is in and who is out. With boundaries, to build a community is to gather together people with similarities; to make many into one. A challenge to the group is heresy; it is to be anti-community. This is why those hiding behind these boundaries can be so poorly equipped to handle change or diversity, and why new ideas seem so threatening.

It is as if the group becomes its own entity; something separate from the people within it. "This community likes this, or believes in that." People claim to represent the community to know what IT wants, to hide behind it like a shield. What happens to differences?

With generalities, individual struggles can seem so insignificant. Although when it comes to actions, individual decisions will always prevail. What happens to our individuality when we become a part of a community defined with generalities? In today's world, where we are constantly reminded of the ever presence of change and the chaos around us, can we continue to define community with boundaries?

We should look closer at what brings us together, what we need from others, what it means to *be in community*, rather than what it is to *be a community*.

Humans are "political animals" with the ability and the need for discourse. We need communication just as we need food and shelter. We commune, or come into communion with one another, to share ideas and feelings. Through these relationships, we are given something to relate to – a point of reference.

We come into community, not to lose ourselves within a group, but to find ourselves; to discover our own individual identity. I bounce my ideas off of you. What do you think? Do you feel the same way? Your response gives me the chance to reflect on mine, to enhance my own. I have an opportunity to see how you react, to test my hypotheses.

Communities work when they give us these chances and opportunities; when they are defined not with a boundary, but with interaction and reflection. Like a mirror, the value is not in creating a new entity, the image that we see, but in helping us see ourselves from different angles.

Community is only as strong as the experiences of the individuals within. It is the interplay, the sharing of thoughts and experiences, within community that makes it thrive on differences and diversity. This interplay allows for fluidity and the ability to adapt. Change is not the enemy for a gathering of individuals. As individuals, we recognize our humanity. Rather than trying to be an ideal member of the group, the perfect representative, we can be ourselves and bring civility and honesty to the table. We can strive for greatness because we are not focused on unattainable perfection.

The ability to inspire and celebrate the best within each one of us should be the standard by which communities are measured. To talk about the future of communities and the development of people collectively, we have to focus on ways to improve communication and personal involvement at all levels. This is why things such as a sidewalk wide enough for two people to stroll and talk, porches, connected streets, neighborhood businesses, parks, and even this publication, are so important. These things provide opportunities for individuals to learn from others about our own possibilities; to encounter each other as fellow humans, to "be in community."

I wonder if that is what my one and half-year-old friend was calling to our attention. For as soon as he interrupted our conversation, we looked at him, this special gift, and found ourselves amazed and inspired by his existence. We want so much for him to find his own way. Our actions try to express our care and love, to let him know what a unique individual he is. We surround him with community, which is why, perhaps, he understands it so well.

Julie Cofer is President of Civic Communications, a community relations firm that engages the public in productive communication about land use, planning, and development.



Chad Ensor

A mother eyed and her two baby bird recognize that it's a great place to raise a family.

A Haiku*

by Drew Beck

Helpless fledgling squawks
impatiently waits for grub
then mother returns.

The Boy

by Jessie Kendall

The mind goes gooey
quick, short, breaths.
humming a tune,
seeking the moon,
picking the petals
off a brown
black eyed Susan.
And stumbling over the words
Stomach fumbling.
Blue Sky.
A bird flies by.
Life is at full speed.
Because the Boy's arm....
...brushed her sleeve.

Drew Beck is an accomplished poet and resident of Mount Pleasant. He is a 7th grader at Charleston Day School.

Jessie Kendall, an artist and poet, is a recent graduate of Wando High School and will be attending Winthrop College. The Boy has been reprinted by permission from the writer and the 1997 Wando High School Somagund literary Magazine.

*Haikus are Japanese forms of poetry, noted for their fixed 17 syllable form & their natural/organic nature. – Planning Production Editor.

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TURN OF THE CENTURY

How I'On is Learning from the Past and for the Future

By Andrew Beck

After months of e-mailing messages to my old friend Homer Hendrickson, I decided one afternoon that it would be nice to hear his voice and catch up with him: a telephone call was long overdue.

There were several unsuccessful attempts at getting him on the hoot-n-holler, requiring multiple voice mails (not to be confused with e-mails). Homer, an Architect practicing from his home office on Maryland's sleepy Eastern Shore, rang me up and jumped right into what I had been up to. "I really enjoyed your hyper-text language matrix e-mail about this new project your working on. Tell me about it."

Keeping in mind that Homer is a student of Postmodern architecture, I carefully couched my words. "Well Homer," I began, "I'm working on a new neighborhood that is truly turn of the century in concept."

"No pipe rail, stainless steel cable, or deconstructivist facades in the entire community. What unimaginative and old fashioned stuff!" Homer exclaimed.

These POMOs (Postmodernists) are so pompous, I thought to myself, and then responded "That's right Homer. Just classically proportioned architecture in the Lowcountry vernacular. But what's more important," I added, "is that we are making this a turn of the next century community as well."

I could hear Homer's gears turning six hundred miles away through the twisted pair copper cable over which our conversation was being transmitted. "Synthetic stucco and powder-coated, multi-colored aluminum window extrusions sporting gold tinted reflectorized glass?" Homer exclaimed.

"No, no, no; Homer, nothing like that. When I say turn of the next century, I'm thinking of stuff like our community home page on the Internet. There will be an Intranet with a bulletin board to find that golf or tennis partner, to locate a babysitter for Friday night, or to send an e-mail down to the corner restaurant for a dinner reservation. We are also thinking about..." Just then, my call-waiting signal beeped. "Wait a minute, Homer, got another call."

"Sorry, man, it was just another one of those high-tech stock brokers trying to put me in the latest Internet Software Company. Where were we? Oh, yeah, we were talking about the next century. Believe it or not, we are also working on the latest technology in water meters. They can be read by radio signal rather than by some guy walking around with a pad of paper and a pen. Just think, no more barking dogs. We're also setting up I'On to be fed with fiber optic cable and working with the existing communications companies to get the leading edge two-way coaxial cable service."

"That sounds great," Homer replied, "But listen Andy, I've gotta get back to work. Call me back when you are ready to talk about how Corbu's style might improve your streetscapes. Great talkin' to you."

I hung up the phone and sat for a moment reflecting on our conversation. I've been in the building business for over twenty years. Back when I started fresh out of college, a calculator cost three or four hundred dollars (and that's in 1975 dollars). Fax machines and cell phones weren't yet a dream, and the only personal computers were on the Apollo spacecraft.

In twenty years, the pace of our lives has been dramatically changed by technology. Not long ago, when someone told you over the phone that the contract was in the mail, you knew you had at least a couple of days to ponder the pending decision cast by your signature. Overnight express shortened that line of consideration to less than twenty-four hours. The fax machine leaves you with only minutes to contemplate the decision you are expected to make as fast as the missive is spit out of that little beige box. With cell phones and call forwarding we are constantly available to our emissaries. We now live in an era where the pace of technology compresses the times of our lives. It can make our lives easier and more convenient, but sometimes I need quiet and solitude for reflection.

Those great verandahs on the homes of I'On come from the turn of the last century, a time when a familiar place to sit in contemplation or conversation was just as important as it is now. I'On's shady streets and intimate parks encourage us to leave our televisions and computers behind, to take a stroll, to breathe the fresh air, and to meet others face to face. Ironic, isn't it? The building and planning elements prominent in the last century, remain as necessary components of life today, while technology propels us into the next century. Nice combination, don't you think?

Andrew Beck is the Project Manager for I'On. An experienced developer and recovering Postmodernist, Andy has built housing and commercial projects throughout the United States. When he is not working, you can find Andy boating and enjoying time with his family.



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When you visit take time to walk the neighborhood, its inviting architectural architecture, you will discover peaceful streets, sidewalks and parks. Visit the Newport Clubhouse, which is the center of the neighborhood. And until then, as the wonderful Greek and duck families overlooking the Hamlet River. This setting has been described as "...the most elegant combination of American landscape and architecture created in the latter half of the 20th century."

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THE BEAUTIFUL BUILDING

The I'On Guild

When our ancestors climbed out of the caves, fashioned their first tools, and started building, civilization began. It began with humanity's primal urge to find shelter, and has evolved into a spiritual desire to create.

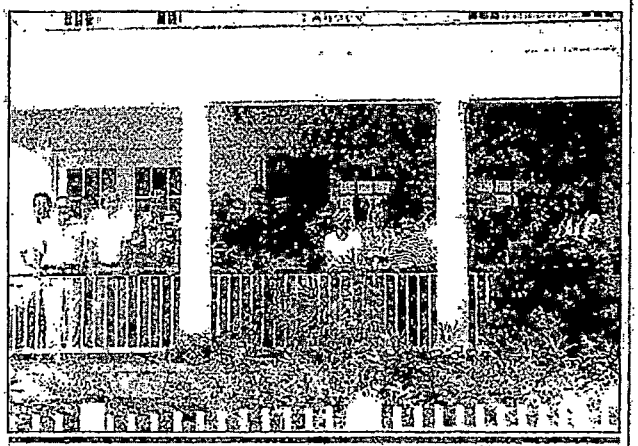
That spiritual desire to form beauty from nothingness ties us to this Earth and lifts our eyes above the horizon. In raising our children, in sculpting our statues, and in building our homes, we both sink our roots and lift our branches. The legacies we leave – be they descendants, works of art, or buildings – mark our progress as a civilized people.

Our homes, civic buildings, churches and businesses are shaped by the hands of craftsmen, under the direction of a builder. When we eat, when we sleep, and when we do business, we see the work of this profession all around us.

After researching and interviewing local builders, the I'On Company invited ten to become the founding members of the I'On Guild. In developing the Guild, they looked for builders who respect their craft. In plain terms, they looked for builders who strive to build something worth preserving and capable of enduring.

The formation of a Guild does more than encourage commradery. It enables better communication between builders, the development team, the sales agents, trade contractors, and each other. Hopefully, it even fosters a little friendly competition. All of which is important in building homes. Especially within the neighborhoods of I'On with their emphasis on design detail, the public realm, and the relationships between the buildings along a street.

Rare are the traditions of the building arts, born from apprenticeship and passed on from one generation to the next, such as masonry, carpentry, and ironwork. The I'On Guild will work to restore these traditions and support their cultural advancement.



Members of the I'On Guild, the I'On Company, I'On Realty, and Project Architects looking onto the green at Newpoint, a neighborhood developed by I'On's founders in Beautiful, SC. The group came together July 29th, 1997 to tour new and historic neighborhoods. From left to right: Neil Sawyer, Steve Weaver, Vance Graham, Alan Patterson, Chris Smith, Andie Geer, John Henrickson, Michael Daly, David Keil, John Lesemann, Tim Hogan, Richard Cuman, Bill Weaver, Mocky Hill, Betsy Kolman, Chris Frost, Hardy Lyon, Linda Wills, Lisa Jordinson, Janis Wills, Kevin Kolman, Bill DeSantis, Andy Beck, Geoff Gingham, and Bill Nelson (not pictured: Patrick Sisson, Mike Hill, Kenny Seamon, Stacey Rosebrock, and Tom Graham).

I'On homeowners can select a builder from the Guild to create a custom home and be assured of quality and an appreciation of the I'On style. By working with I'On's development and marketing teams, Guild members will use the I'On Plan Book to deliver beautiful homes for the neighborhood's future residents.

"Mount Pleasant is a crown of jewels, and I'On will be a beautiful diamond in that crown, sparkling: a lovely addition that will enhance the wonderful community."

Joan Bell, providing public comment at the Mount Pleasant Town Council Meeting at which I'On was approved by the Mayor and Council Members. The Bells are one of I'On's first families.

SIGNED & SEALED

The Meaning Behind The I'On Seal

The origination of Seals is found in a promise, for they are a symbol of commitment. Sealed documents are honorable because of their ability to be authenticated and validated. The Seal of a Town says this is what we value, where we come from, and where we want to go. For a business, a Seal is a pictorial vision statement.

The I'On Seal was developed by the Founders to encompass all of these elements. It serves as a sign of the commitment, the authenticity, the values, and the goals promised to the property owners, residents, and friends of I'On and the surrounding community. Not only is its existence noteworthy, but so are each of the symbols within it.

Ne Oublie, "never forget," is the Graham Family motto. Appropriate as a reminder of the family's role in building this community. The motto also adheres to the principles of traditional neighborhood development that look at historic models for guidance.

Cresco, is the Town of Mount Pleasant's motto. It means "I am growing." It calls the town's citizens to welcome the future and the exciting opportunities to come.

Civitas describes a union of citizens, a town, or civilization. More than simply coming together, the Latin word *civitas* expresses the emotions, rituals, and convictions that emerge within the union.

The two Live Oak branches with their acorns are special features on the property. Taken from the Live Oak tree on the Town of Mount Pleasant's Seal, they indicate the Founders' commitment to steward the environmental features and natural beauty of this area.

The Oak is significant for its strength and endurance. Each acorn symbolizes the energy and promise of new development. Together, the branches and acorns are reminders of life's renewal. By framing the Seal, the two branches also demonstrate the importance of relationships.

The I'On Monument with its classic details points to the emphasis on design and architectural standards. Most importantly, it is a tribute to the legacy of the I'On family and their community spirit – a reminder of this property's history.

The marsh leading to the silhouetted landscape portrays the view that visitors and residents of I'On will see when approaching the neighborhood from Hobcaw Creek. The beautiful marsh surrounding the creek defines the Lowcountry. The silhouette includes I'On's homes, businesses, and civic buildings.

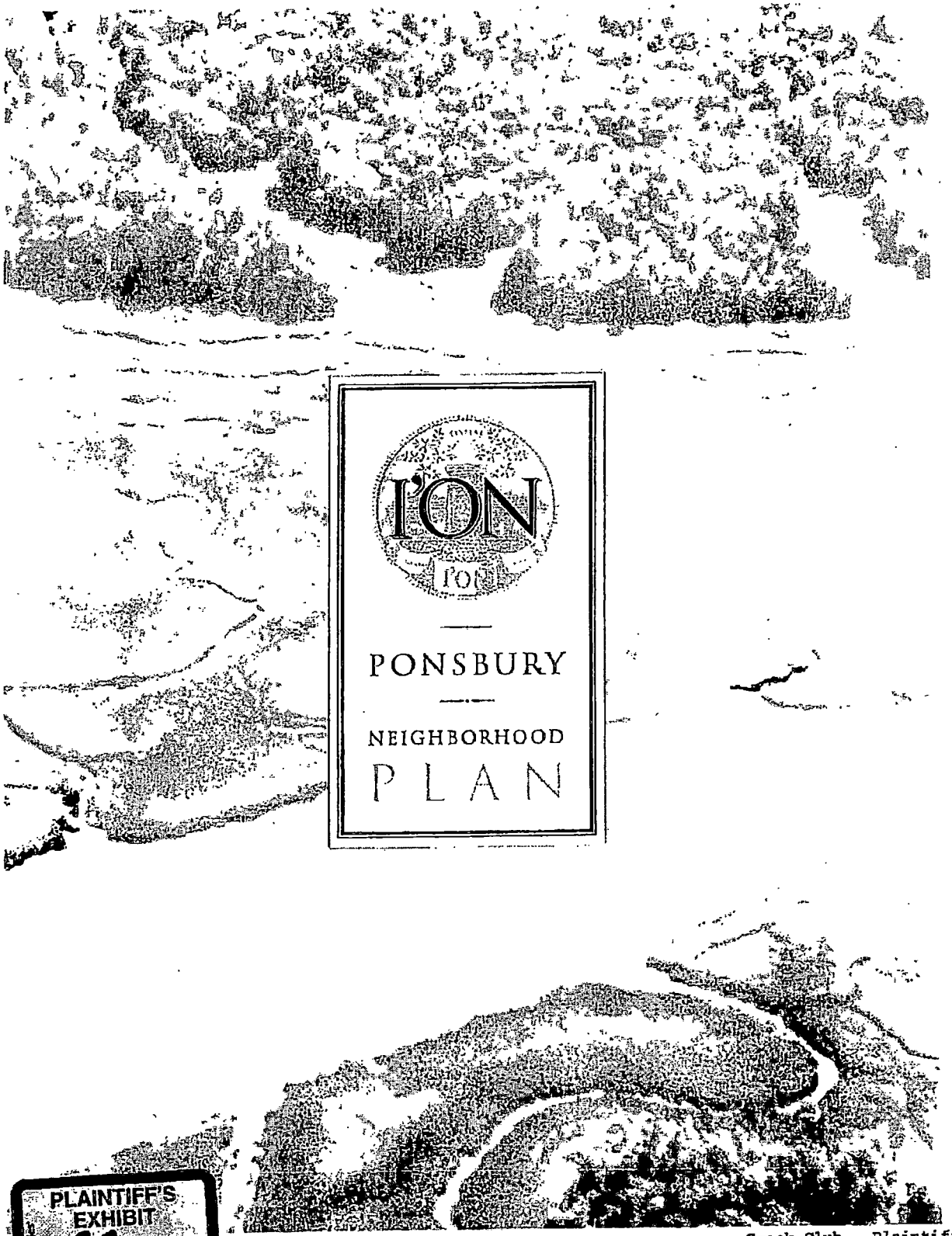
The Rising Sun in the background shares its light with all that it touches. It reminds us of the dawn of a new day and serves as an inspiration to shine forth in brilliance.

More than a logo, the I'On Seal serves as a reminder of the commitment to quality, history and hope. Look for it not only on I'On contracts, but also on its stationery, signs, and manhole covers.

Group W of Atlanta designed the I'On seal. This graphic arts firm specializes in promotional information, symbolic representations, seals and stamps.

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A TRADITIONAL WALKING NEIGHBORHOOD

I'ON was developed and planned through the careful study of traditional neighborhoods and vernacular architecture in neighboring areas including downtown Charleston, the Old Village of Mt. Pleasant, Beaufort, and Savannah. Tree-lined streets, miles of marshfront paths, and shady sidewalks are designed to encourage walking, bicycling, and neighborly interaction among I'ON residents. Complemented by the architectural style of the homes, the passive amenities – parks and green spaces – create a sense of place and community within I'ON.

THE I'ON CODE

The I'ON Code was created to provide a set of design guidelines to foster the creation of a thoughtfully designed community. The Code is intended to provide visual harmony among buildings through the use of appropriate architectural proportions, elements and details. The I'ON Design Committee reviews all construction, site, and landscaping plans for compliance with the Code and provides guidance when necessary.

THE I'ON SQUARE

Truly the heart of the neighborhood, the I'ON Square will offer charming shops, restaurants, and offices within a short walk or bicycle ride from every home in I'ON.

THE I'ON ASSEMBLY

Each homeowner belongs to the I'ON Assembly which governs the neighborhood's common areas. Shared maintenance costs of the Assembly include insurance and care of street landscaping.

THE I'ON TRUST

Environmental, social, and cultural activities in I'On, as well as in Mt. Pleasant, are programmed, coordinated and sponsored by The I'On Trust. The Trust, a non-profit organization, is actively supported by neighbors, friends, and patrons, and helps to maintain the social infrastructure of I'On.

RECREATIONAL FACILITIES

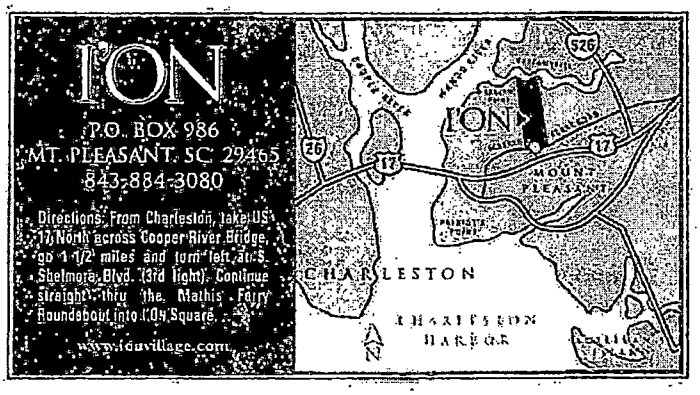
The I'ON Club will offer swimming, tennis, and the use of the Shelmore Creek Club. Membership is optional. Playgrounds, marshfront paths, community docks, and a boat ramp along Hobcaw Creek will also be available to I'ON residents upon completion.

SCHOOLS & LIBRARIES

Mt. Pleasant boasts the highest ranked public schools in the region. Children attend James B. Edwards Elementary only 1.5 miles from I'ON, Moultrie Middle School approximately 2 miles away near the Old Village, and Wando High School just 2 miles up Mathis Ferry Road. Excellent private schools are also nearby. Neighbors can walk or ride bikes to the Mt. Pleasant Regional Library, only a mile away.

HOSPITALS

The East Cooper Regional Hospital is 1.2 miles from I'ON. Roper Hospital and the State's Medical University, in downtown Charleston, provide renowned health facilities within a 10-minute drive.

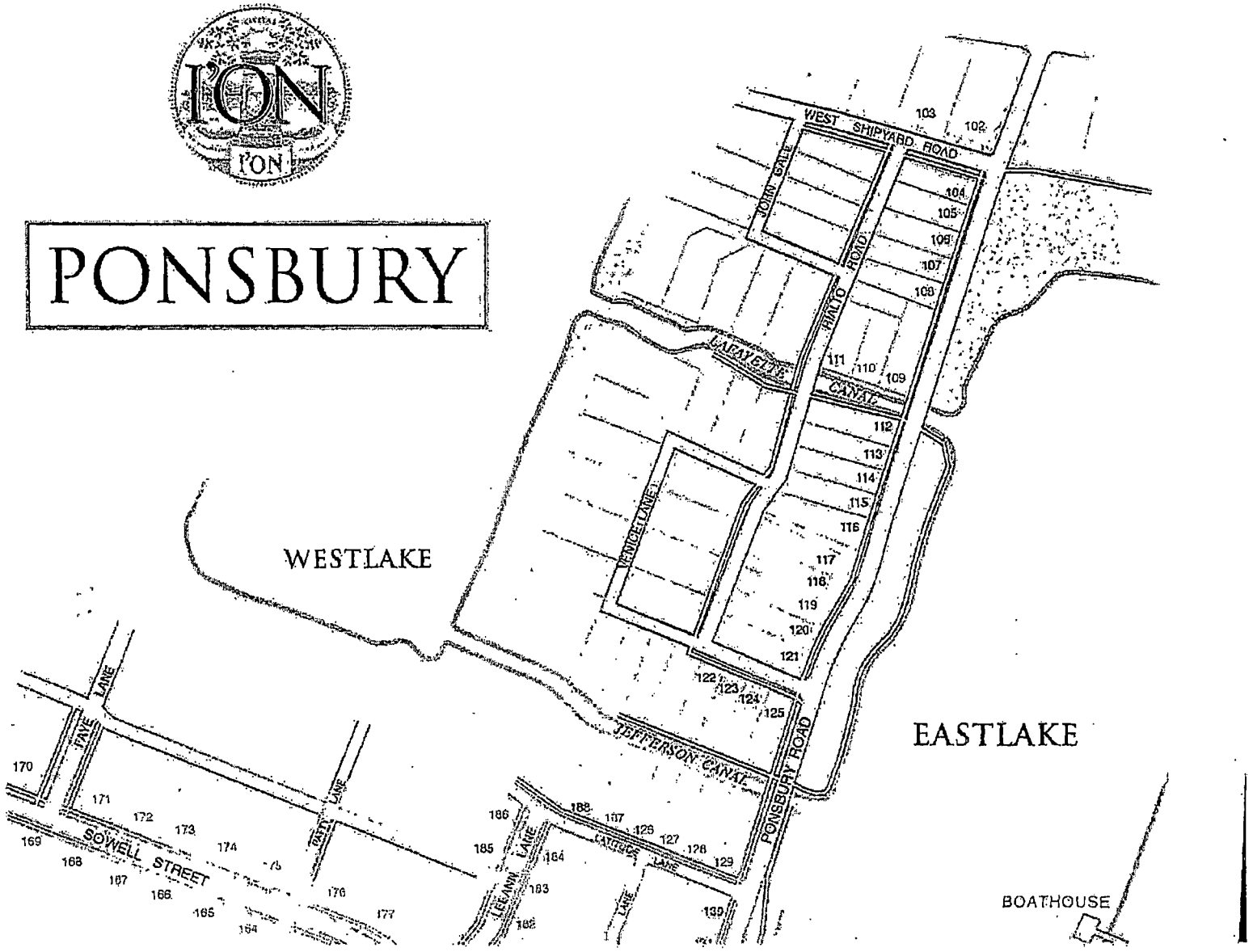


For informational purposes only. Kindly note all site plans, property lines, rights of way, improvements, and amenities depicted, or described herein, are subject to change or cancellation (in whole or part) without notice. The I'On Company may modify designs prior to or during construction. Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.

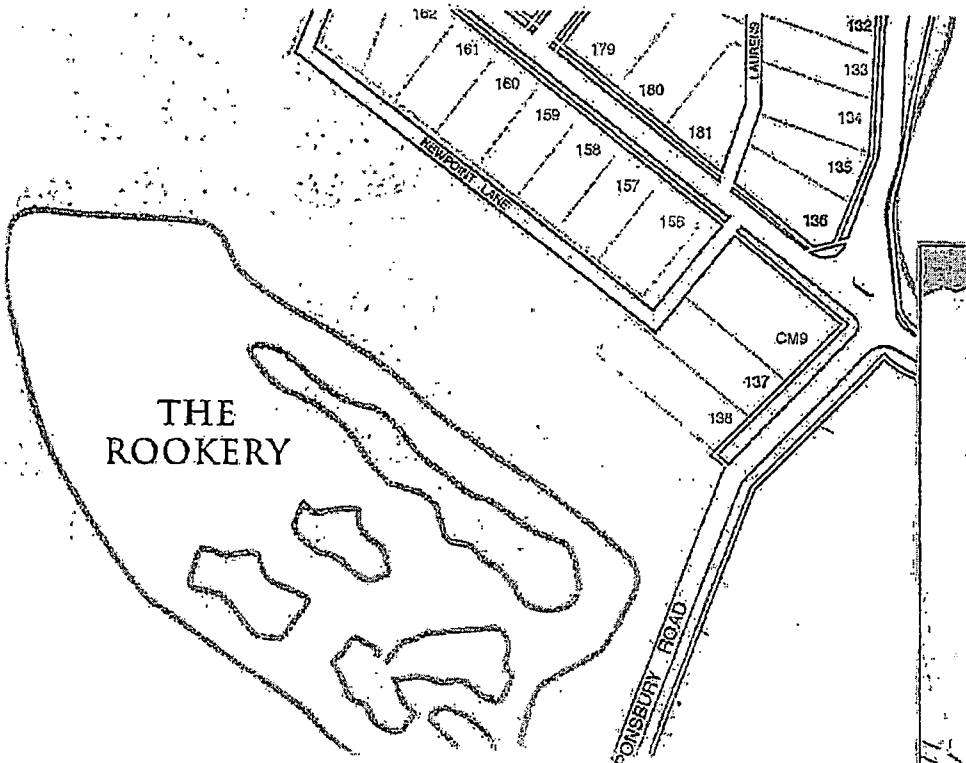
021599

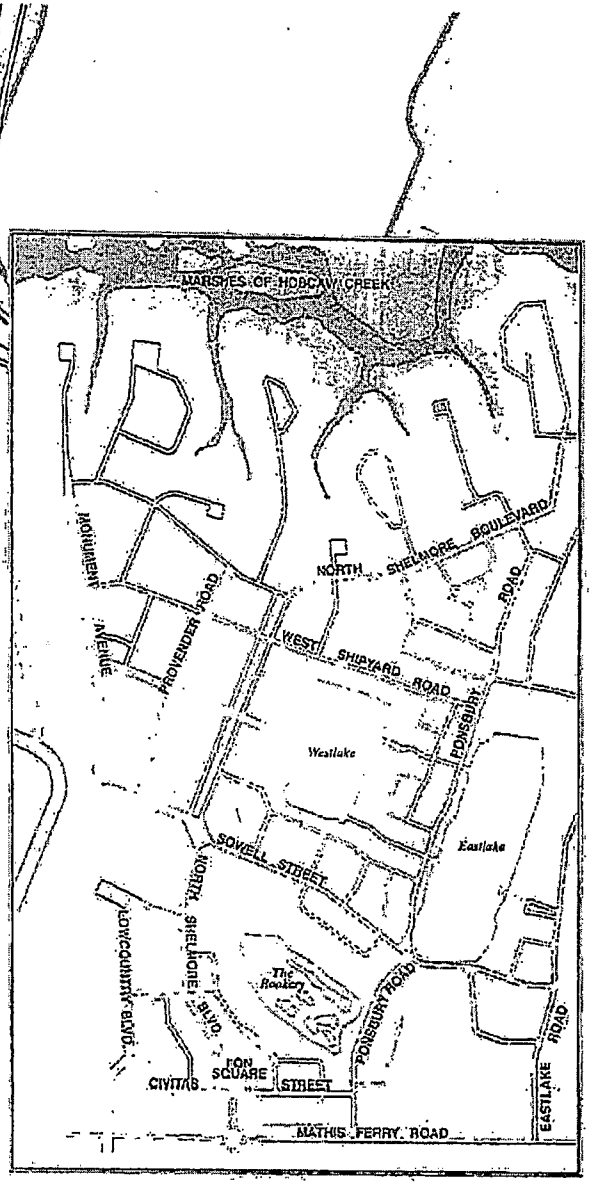
Creek Club - Plaintiff
Walbeck 000094

APPENDIX 2605

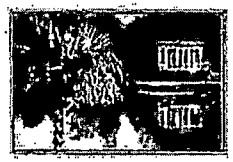


Creek Club - Plaintiff
Walbeck 000095





I'ON IS A TRADITIONAL WALKING NEIGHBORHOOD



built in the manner of early coastal towns like Beaufort, historic Charleston, and the Old Village of Mount Pleasant. Please refer to the Availability Listings for those homes and sites currently available.

FOR MORE INFORMATION OR TO ARRANGE A PERSONAL TOUR, PLEASE CALL I'ON REALTY: 843-884-3080

APPENDIX 2607

Creek Club - Plaintiff
Walbeck 000096

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

Permittee:	**The I'On Company**
Permit Number:	**99-1G-322-P**
Date of Issuance:	**December 8, 1999**
Expiration Date:	**December 8, 2004**
Location:	**On and adjacent to Hobcaw Creek at several locations adjacent to the common area along the waterfront of the I'On Development, off of Mathis Ferry Road, Mount Pleasant, Charleston County, South Carolina.**

SEE SPECIAL CONDITION(S)

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

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

DESCRIPTION OF THE PROJECT

The proposed work consists of constructing a 15' by 80' concrete boat ramp stabilized by riprap at the site of an existing boat ramp. A 6' by 60' staging dock/breakwater attached to highland by a 4' by 9' timber ramp is to be installed adjacent to the proposed boat ramp. The applicant also proposes to install 160 linear feet of wooden bulkhead with riprap toe protection at the area of existing concrete debris revetment near the proposed and existing boat ramp. Approximately 130 feet of riprap revetment is also to be constructed adjacent to this site as shown on the attached plans. The applicant has requested that the proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkheads, all revetments, or any combination of the two. In addition, the applicant has proposed to construct six (6) community docks as described in the attached narrative and shown on the attached plans. All proposed docks are to be used for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and electric lighting will be provided to the main dock in Hobcaw Creek (dock #1) and electric lighting will be provided to the other five docks. No other services will be provided. The purpose of the proposed work is for bank stabilization and for the common, private, recreational use of the residents within the I'On community.

SEE NEXT PAGE . .

PLAINTIFF'S EXHIBIT 33

Creek Club - Plaintiff
DHEC 000026

Creek Club - Plaintiff
DHEC 000027

SPECIAL CONDITIONS

1. Provided the handrails are constructed to what is minimally required for safety as outlined in the Southern Building Code.

2. Provided the floating dock for dock #3 is reduced to 8' by 40'.

3. Provided dock #6 is aligned according to Attachment "A".

4. Provided that all remnants of the existing non-functional dock is removed from the critical area in conjunction with construction of the permitted dock.

5. Provided that as proposed, all docks must be for temporary moorage only. Permanent moorage of boats is prohibited.

6. Provided that the proposed bulkhead is constructed within 18" of the erosional escarpment as it exists at the time of construction.

7. Provided that only clean earthen material free from all potential sources of pollution is used as backfill.

8. Provided that the applicant implements best management practices during construction to minimize erosion and migration of sediments off-site. These practices may include use of mulches, hay bales, silt fences, or other devices capable of preventing erosion and migration of sediments. All disturbed land surfaces must be stabilized upon project completion.

9. Provided access to the project site must be attained from upland locations when possible.

10. Provided that if access cannot be gained solely from an upland location, any equipment should be operated from floating barges.

11. Provided that if piles for dock construction consist of concrete, it should be of clean masonry material free of all potential sources of pollution.

12. Provided that litter receptacle must be placed near all docks and walkways.

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

SEE NEXT PAGE

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

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

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

P/N# 99-1G-322-P

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

Geoff D. Graham 12/13/99

(PERMITTEE) Geoff Graham, PM (DATE)

The I'On Company The I'On Company

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

12/16/99

(DIRECTOR OF PERMITTING) (DATE)

Richard Chinnis
or his Designee
Other Authorized State Official

SEE NEXT PAGE

GENERAL CONDITIONS

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

1. That the permittee, in accepting this permit, covenants and agrees to comply with and abide by the provisions and conditions herein and assumes all responsibility and liability and agrees to save the South Carolina Department of Health and Environmental Control and the State of South Carolina, its employees or representatives, harmless from all claims of damage arising out of operations conducted pursuant to this permit.

2. That if the activity authorized herein is not constructed or completed within five years of the date of issuance, this permit shall automatically expire. A request for an extension of time must be made in writing.

3. That all authorized work shall be conducted in a manner that minimizes any adverse impact on fish, wildlife and water quality.

4. That this permit does not relieve the permittee from the requirements of obtaining a permit from the U. S. Army Corps of Engineers or any other applicable federal agency, nor from the necessity of complying with all applicable federal, state and/or local laws, ordinances, and zoning regulations. This permit is granted subject to the rights of the State of South Carolina in the navigable waters and shall be subject further to all rights held by the State of South Carolina under the public trust doctrine as well as any other right the State may have in the waters and submerged lands of the coast.

5. That this permit does not convey, expressly or impliedly, any property rights in real estate or material nor any exclusive privileges; nor does it authorize the permittee to alienate, diminish, infringe upon or otherwise restrict the property rights of any other person or the public; nor shall this permit be interpreted as appropriating public properties for private use.

6. That the permittee shall permit the Department or its authorized agents or representatives to make periodic inspections at any reasonable time deemed necessary in order to ensure that the activity being performed is in accordance with the terms and conditions of this permit. Acceptance of this permit constitutes prior consent to such inspection.

7. That any abandonment of the permitted activity will require restoration of the area to a satisfactory condition as determined by the Department.

8. That this permit may not be transferred to a third party without prior written notice to the Department.

9. That if the display of lights and signals on any structure or work authorized herein is not otherwise provided for by law, such lights and special signals as may be prescribed by the United States Coast Guard shall be installed and maintained by and at the expense of the permittee.

10. That the SCDHEC-OCRM shall be notified in writing upon commencement of work and that the permit placard or a copy of the placard shall be posted in a conspicuous place at the project site during the entire period of work.

11. That the structure or work authorized herein shall be in accordance with the plans and drawings attached hereto, and shall be maintained in good condition. Failure to build in accordance with the plans and drawings attached hereto, or failure to maintain the structure in good condition shall result in the revocation of this permit and possible removal of the offending structure.

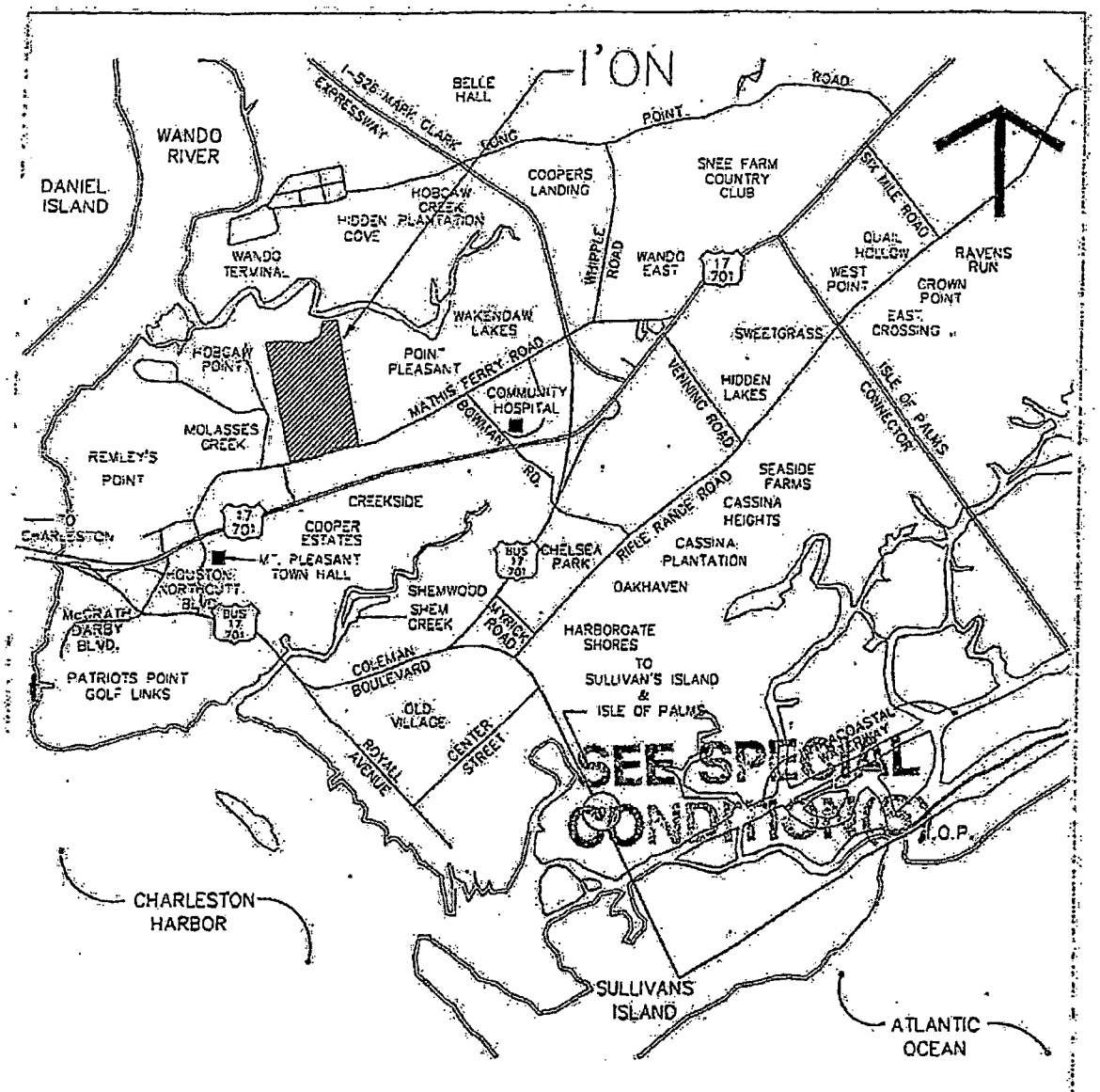
12. That the authorization for activities or construction of structures herein constitutes a revocable license. The Department may require the permittee to modify any permitted activity or to remove structures authorized herein, if and when it is determined by the Department that such activity or structure violates the public's health, safety, or welfare, or the activity is inconsistent with the public trust doctrine. Modification of an activity or removal of a structure shall be ordered only after reasonable notice stating the reasons therefore and the opportunity for the permittee to respond in writing. When the permittee is notified that SCDHEC intends to revoke or modify the permit, permittee agrees to immediately stop work pending resolution of the revocation.

13. That the Department shall have the right to revoke, suspend, or modify this permit in the event it is determined the permitted structure (1) significantly impacts the public health, safety, welfare, and/or is violative of Section 48-39-150, (2) that the information and data which the permittee or any other agencies have provided in connection with the permit application is either false, incomplete or inaccurate, or (3) that the activity is not in compliance with the drawings submitted by the applicant. That the permittee, upon receipt of the Department's written intent to revoke, suspend, or modify the permit has the right to a hearing. Prior to revocation, suspension, or modification of this permit, the Department shall provide written notification of intent to revoke to the Permittee, and Permittee can respond with a written explanation to the Department. (South Carolina Code Section 1-023-370 shall govern the procedure for revocation, suspension or modification herein described).

14. That any modification, suspension or revocation of this permit shall not be the basis of any claim for damages against the Department or the State of South Carolina or any employee, agent, or representative of the Department or the State of South Carolina.

15. That all activities authorized herein shall, if they involve a discharge or deposit into navigable waters or ocean waters, be at all times consistent with all applicable water quality standards, effluent limitations and standards of performance, prohibitions, and pretreatment standards established pursuant to applicable federal, state and local laws.

16. That extreme care shall be exercised to prevent any adverse or undesirable effects from this work on the property of others. This permit authorizes no invasion of adjacent private property, and SCDHEC assumes no responsibility or liability from any claims of damage arising out of any operations conducted by the permittee pursuant to the permit.

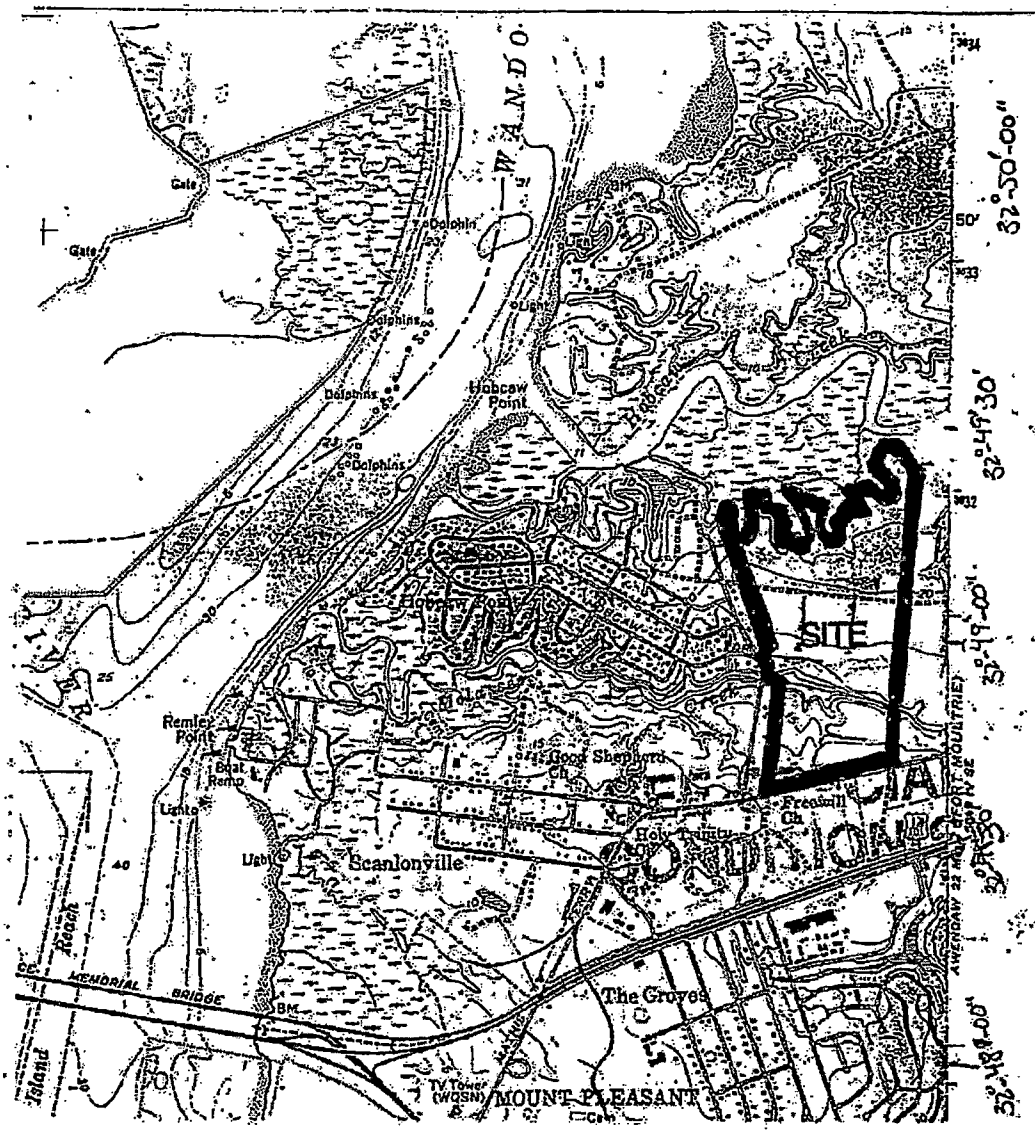


FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VLOCMAP PLOTTING SCALE: 1"=100'

NOT TO SCALE DATUM: MSL, 1929 NGVD	I'ON PROJECT LOCATION (MOUNT PLEASANT) APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION 99-16-322 SHEET 1 OF 14 DATE: 8/10/99

5 OF 18

Creek Club - Plaintiff
DHEC 000035



SITE LATITUDE: 32°49'0" SITE LONGITUDE: 79°52'45" NOTE: MAP TAKEN FROM CHARLESTON QUAD

FILE NAME: [illegible] PLOT VIEW: MSGS PLOTTING SCALE: 1=[illegible]

I'ON

PROJECT LOCATION
(USGS MAP)

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

SCALE: 1" = 2000'+-

DATUM: MSL, 1929 NGVD

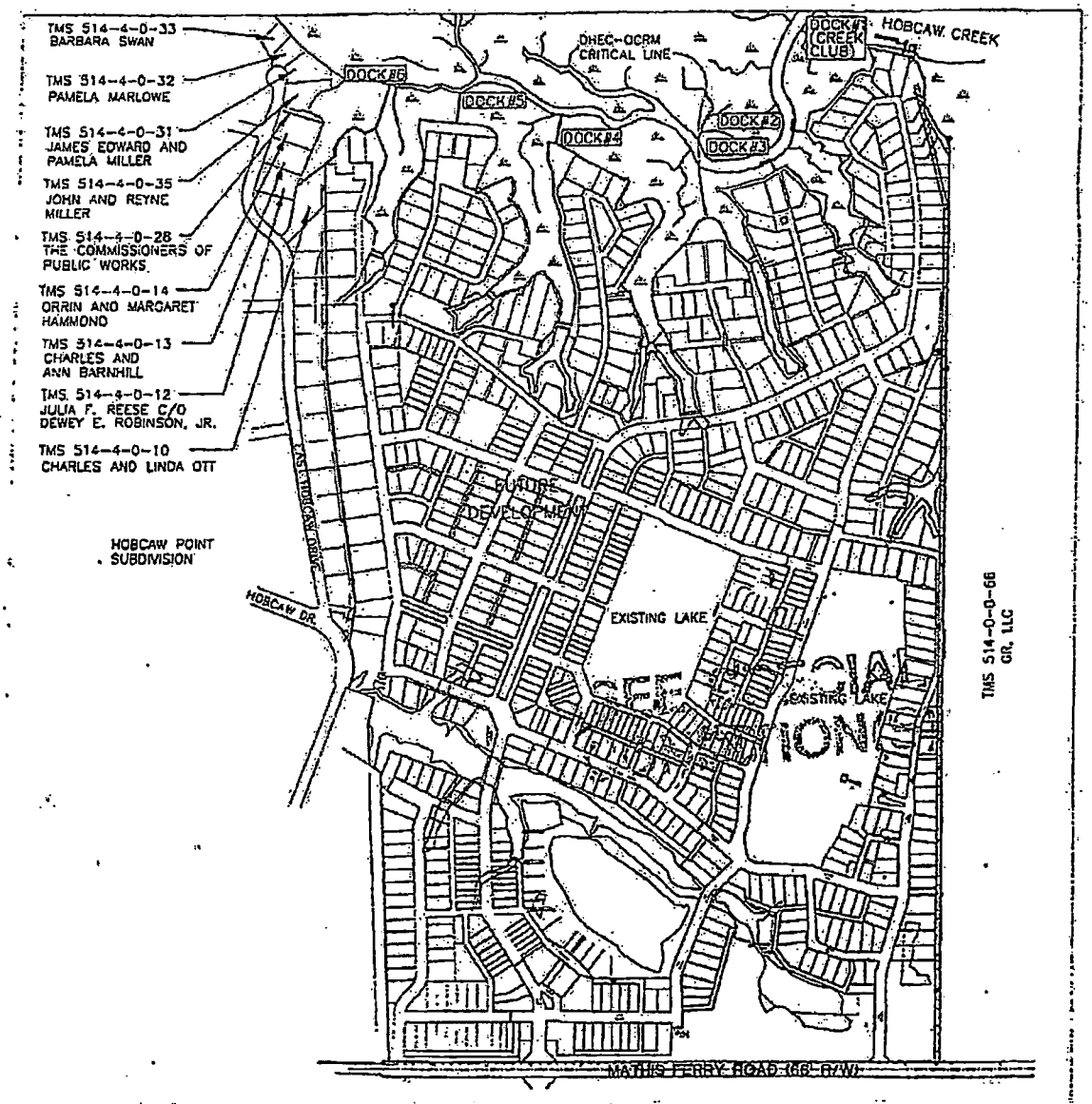
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

99-19-322

SHEET 2 OF 14 DATE: 8/10/99

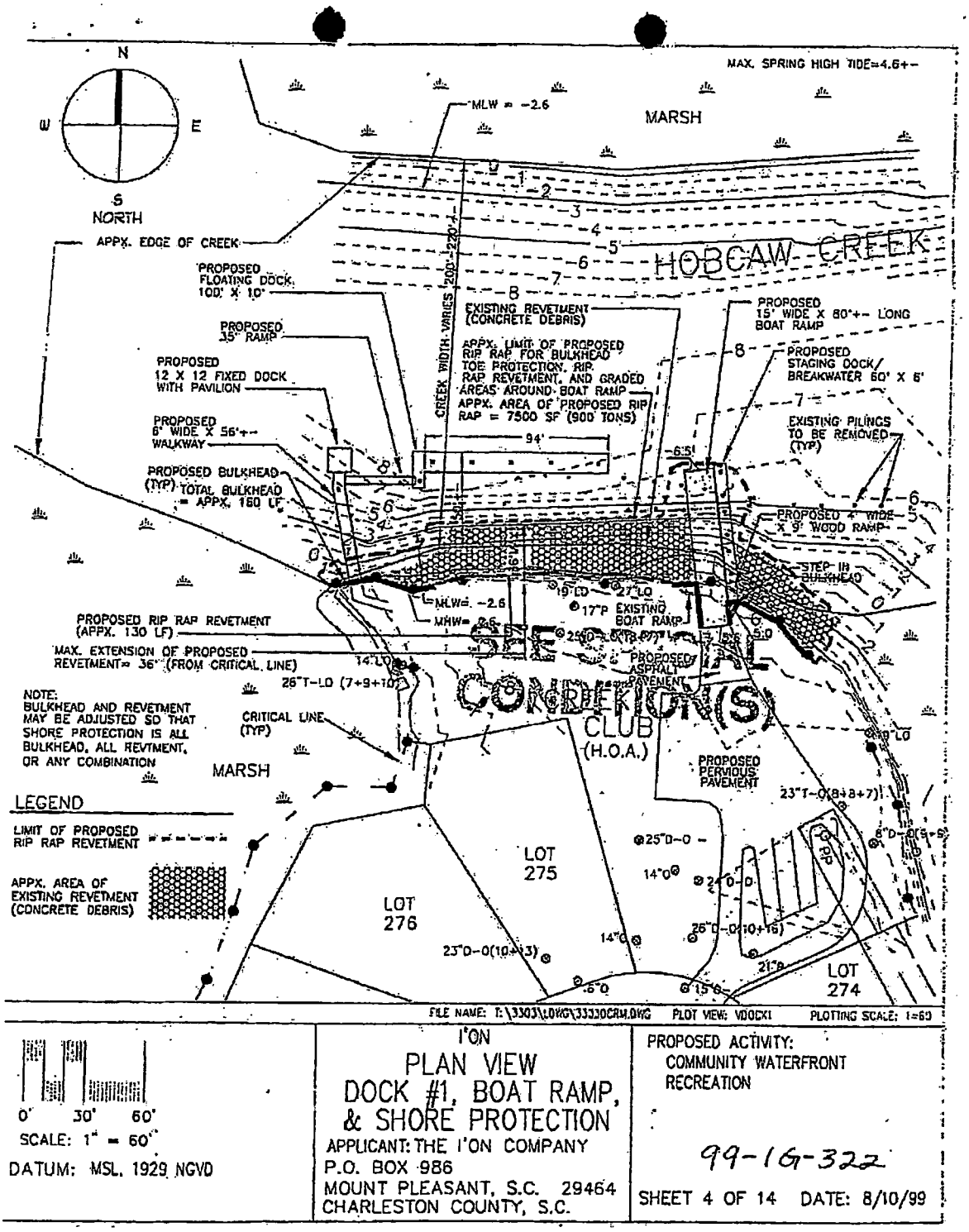
6 OF 18

Creek Club - Plaintiff
DHEC 000037



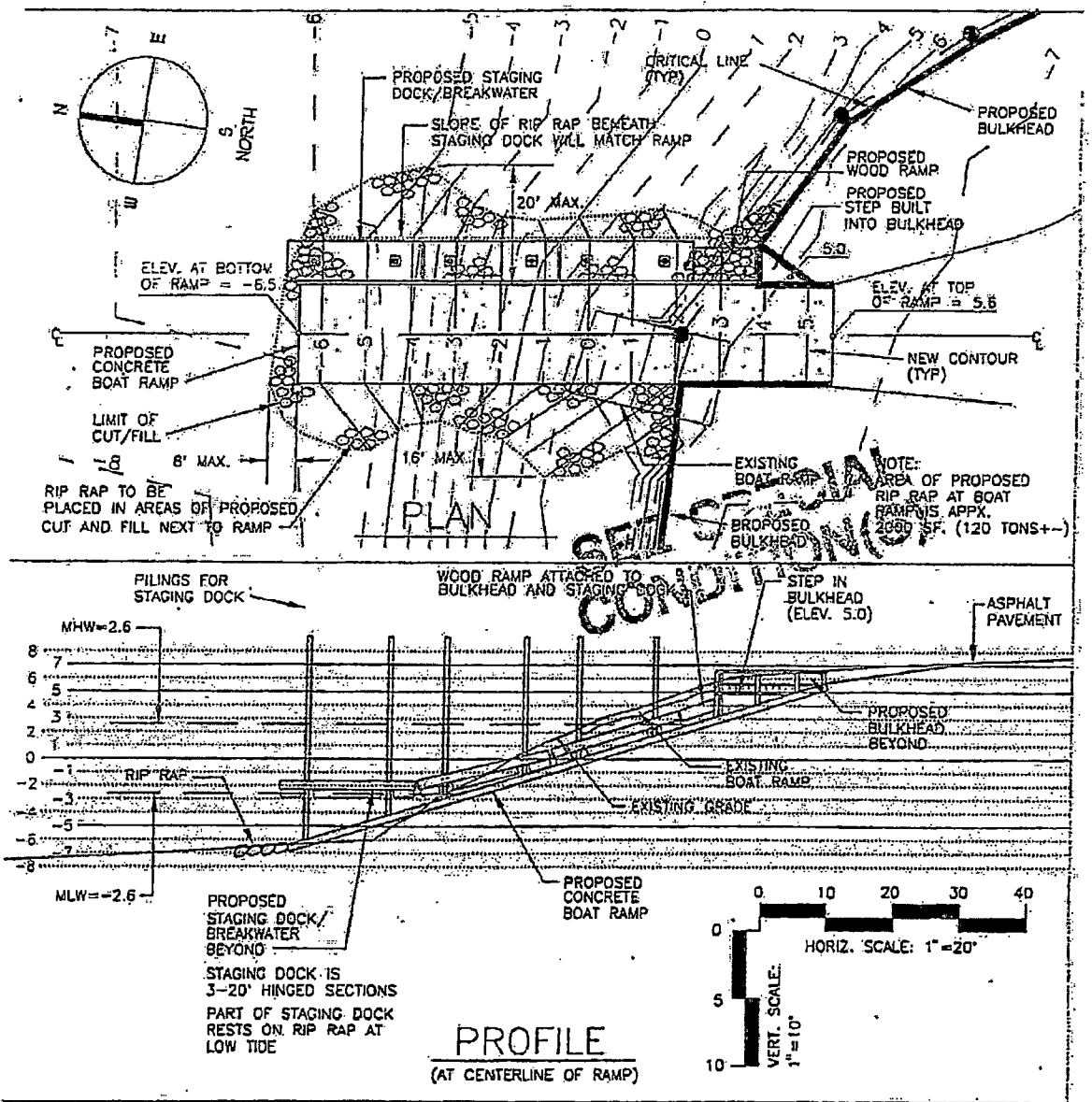
7 of 18

Creek Club - Plaintiff
DHEC 000039



8 OF 18

Creek Club - Plaintiff
DHEC 000041



FILE NAME: I:\3303\LDWG\3303DCRM.DWG PLOT VIEW: VPLPROF PLOTTING SCALE: 1=20

I'ON

BOAT RAMP PLAN AND PROFILE

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

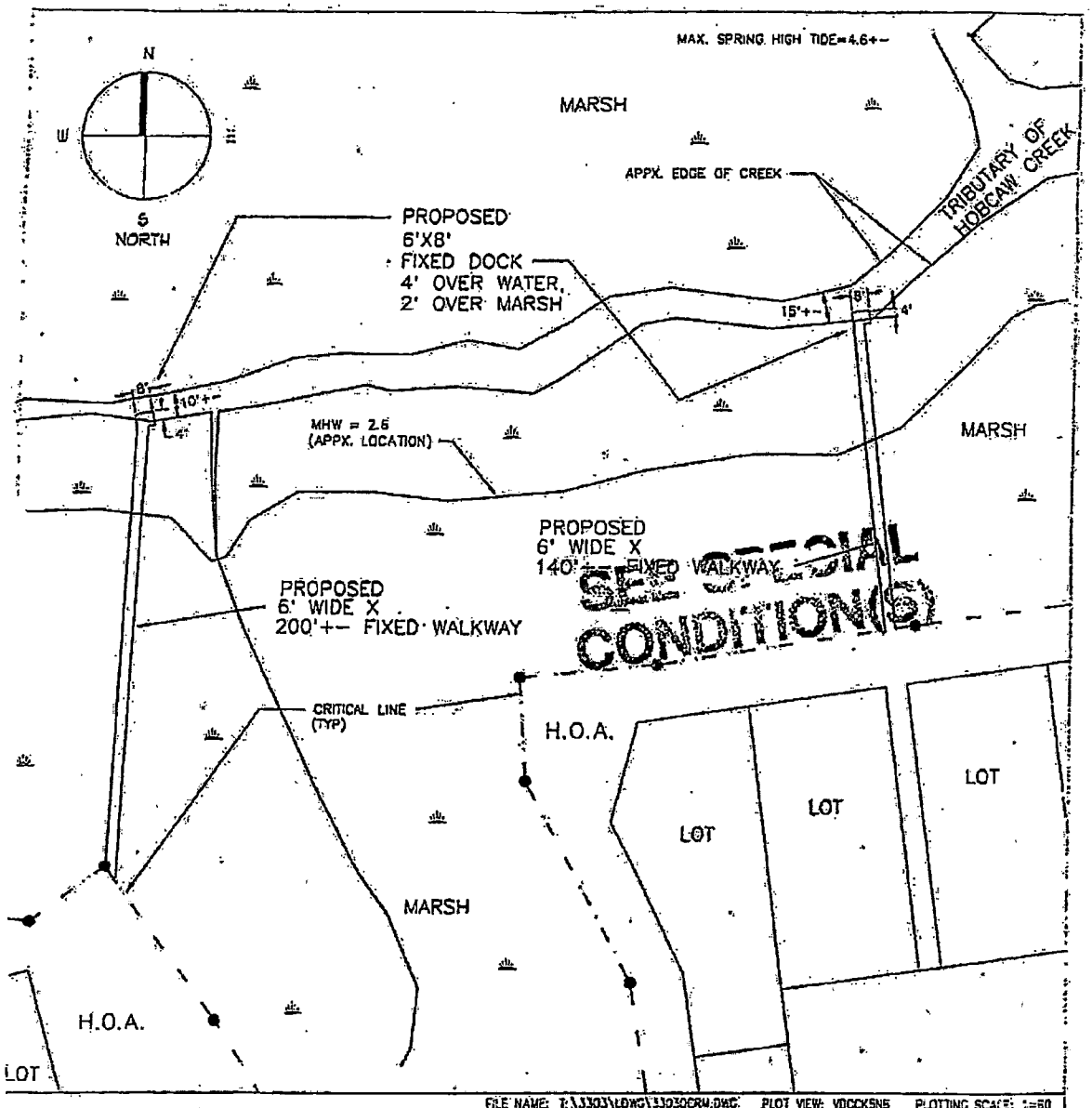
99-1G-322

DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 8 OF 14 DATE: 8/10/99

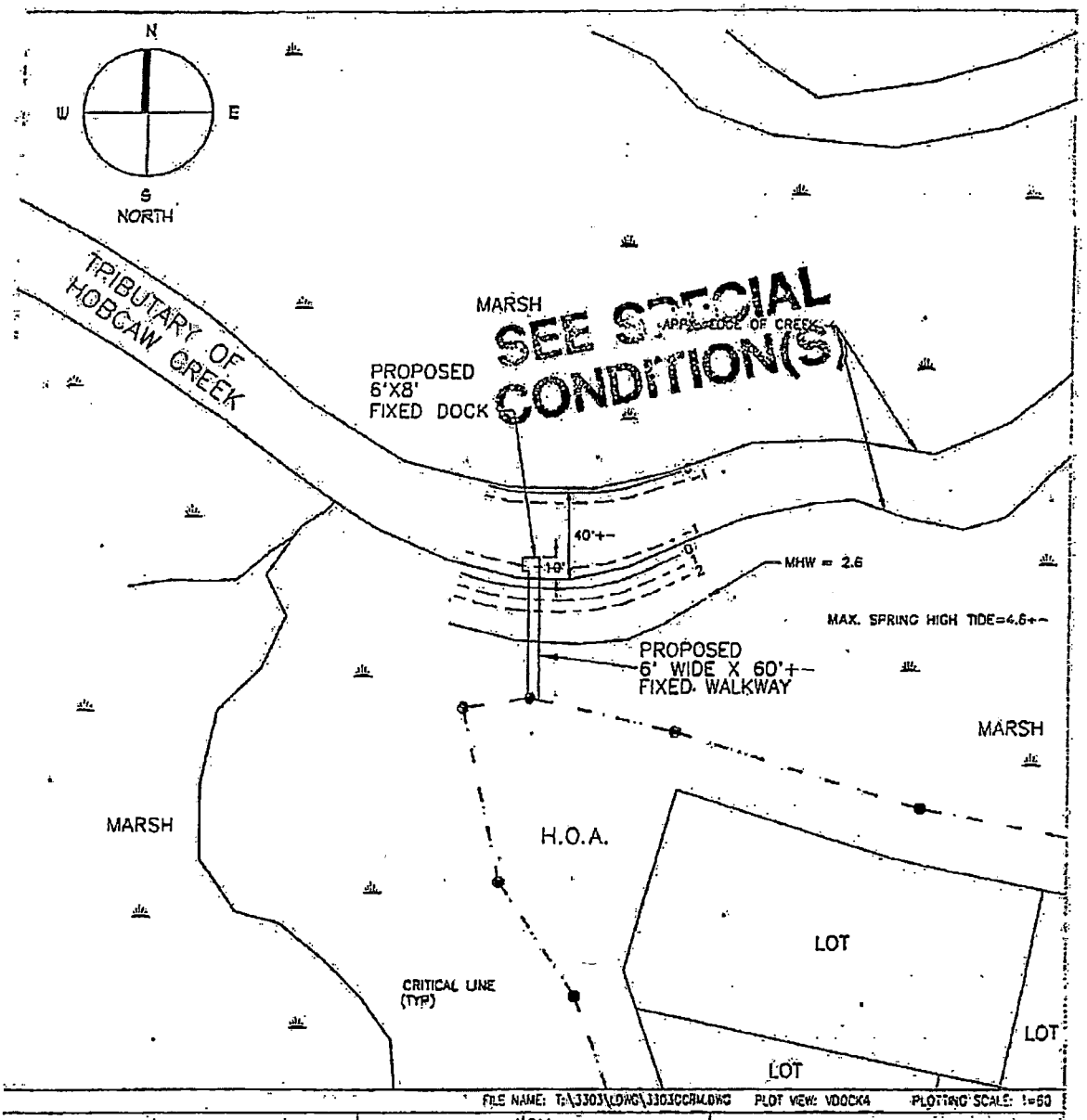
9 OF 18

Creek Club - Plaintiff
DHEC 000043



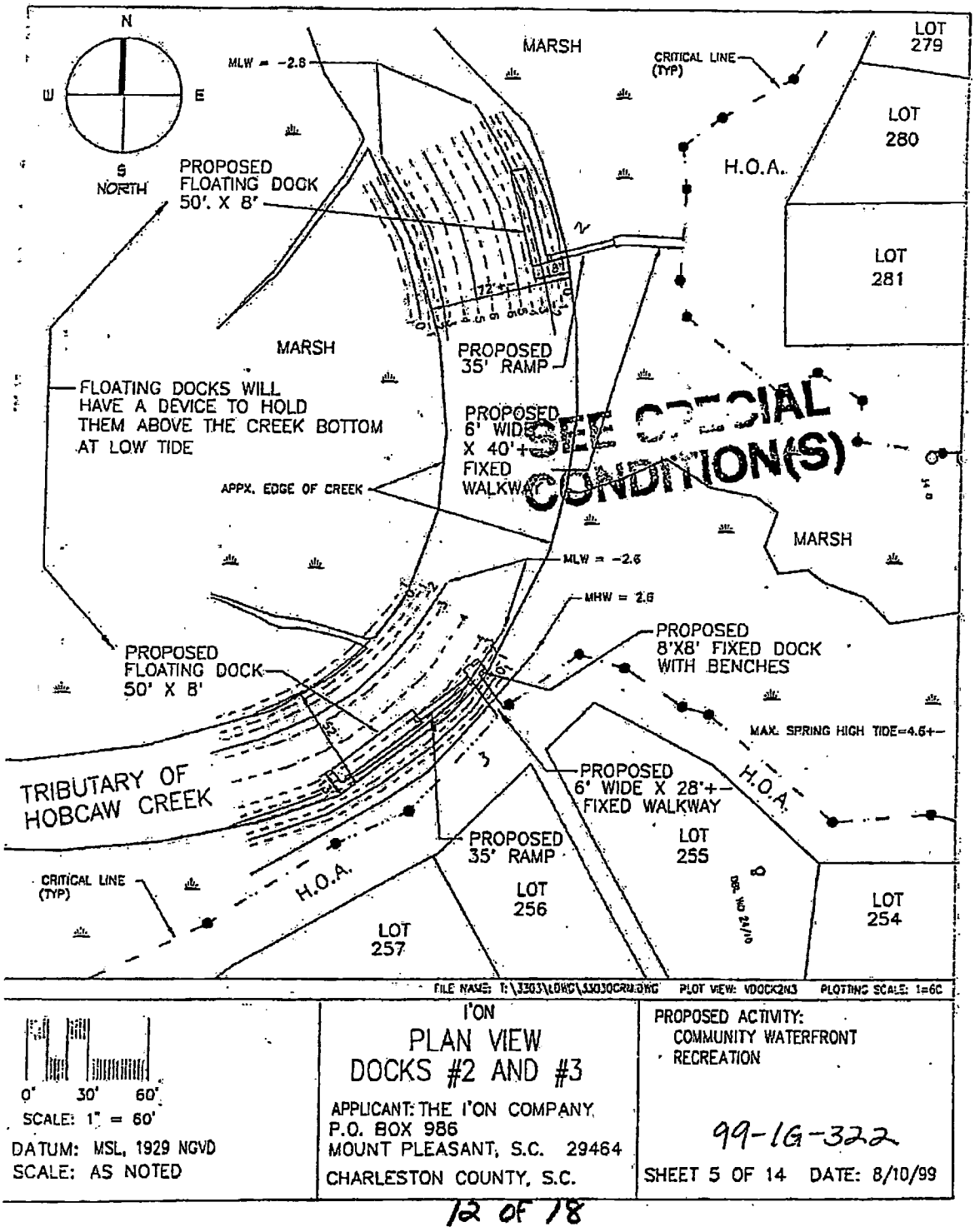
10 OF 18

Creek Club - Plaintiff
DHEC 000045



11 OF 18

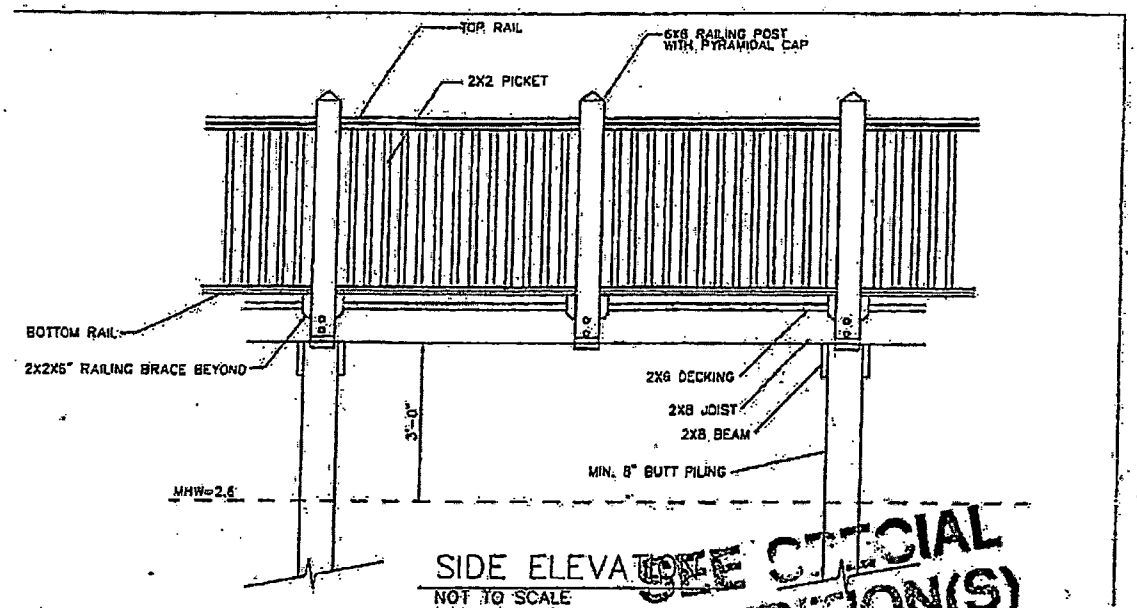
Creek Club - Plaintiff
DHEC 000047



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Creek Club - Plaintiff
DHEC 000049

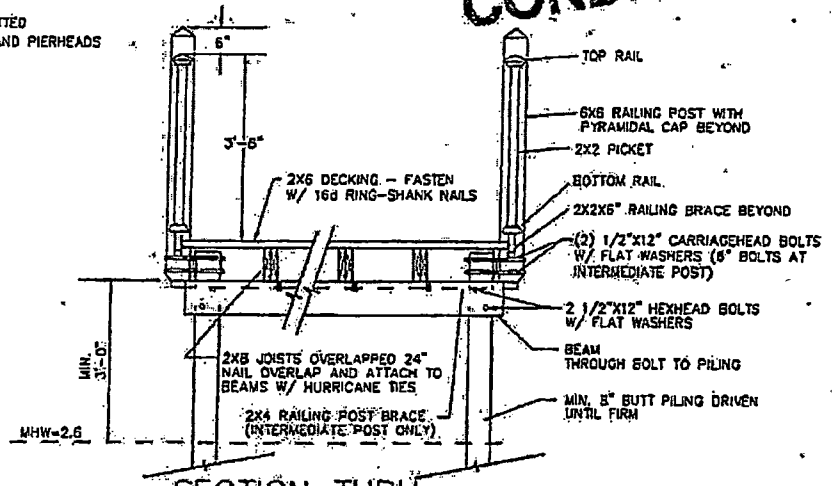
APPENDIX 2620



SIDE ELEVATION
NOT TO SCALE

SEE SPECIAL CONDITION(S)

NOTE:
RAILINGS MAY BE OMITTED AT SOME WALKWAYS AND PIERHEADS



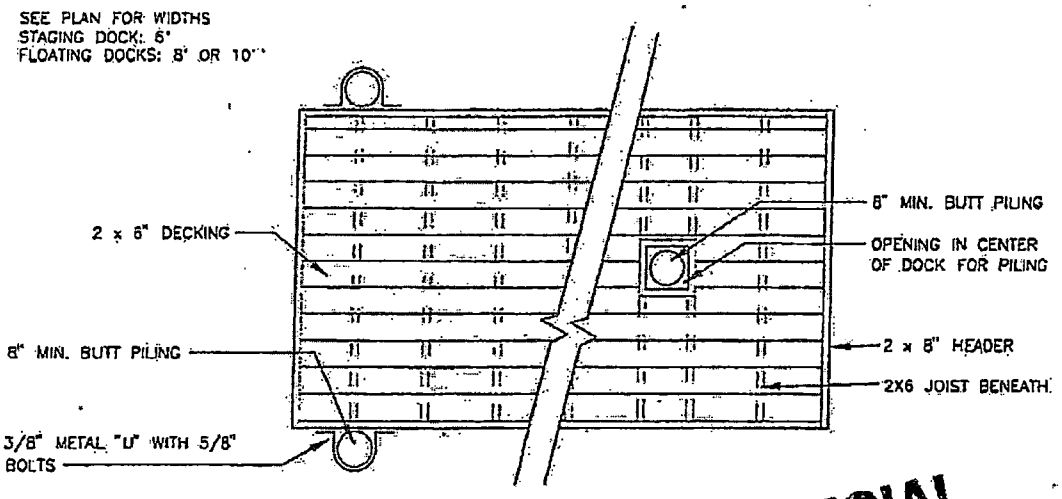
SECTION THRU
NOT TO SCALE

FILE NAME: T:\1303\DWG\1303OCRM.DWG PLOT VIEW: VFIXED PLOTTING SCALE: 1=2.67

DATUM: MSL, 1929 NGVD SCALE: AS NOTED	I'ON FIXED DOCK/ BOARDWALK APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION 99-1G-322 SHEET 9 OF 14 DATE: 8/10/99

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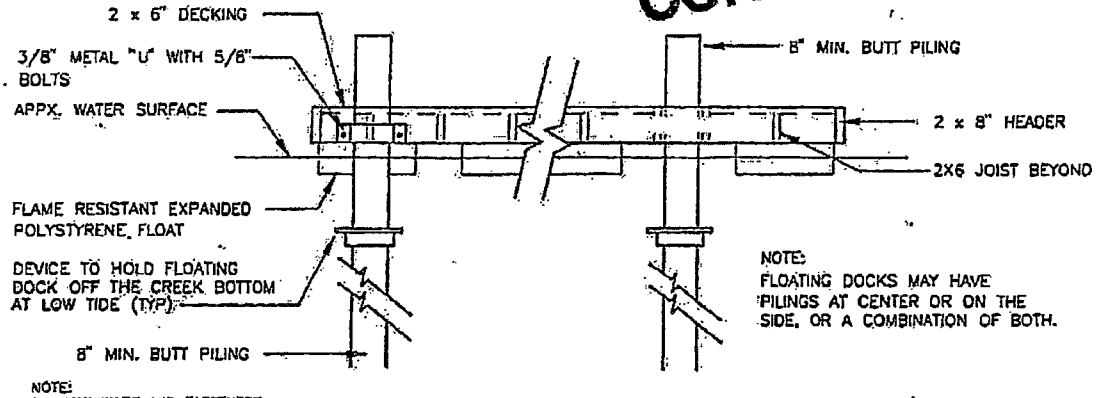
Creek Club - Plaintiff
DHEC 000051



PLAN VIEW

NOT TO SCALE

SEE SPECIAL CONDITION(S)



SIDE ELEVATION

NOT TO SCALE

FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VFLOAT PLOTTING SCALE: 1=2.67

I'ON

FLOATING/STAGING DOCK

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

14 of 18

PROPOSED ACTIVITY:
. COMMUNITY WATERFRONT RECREATION

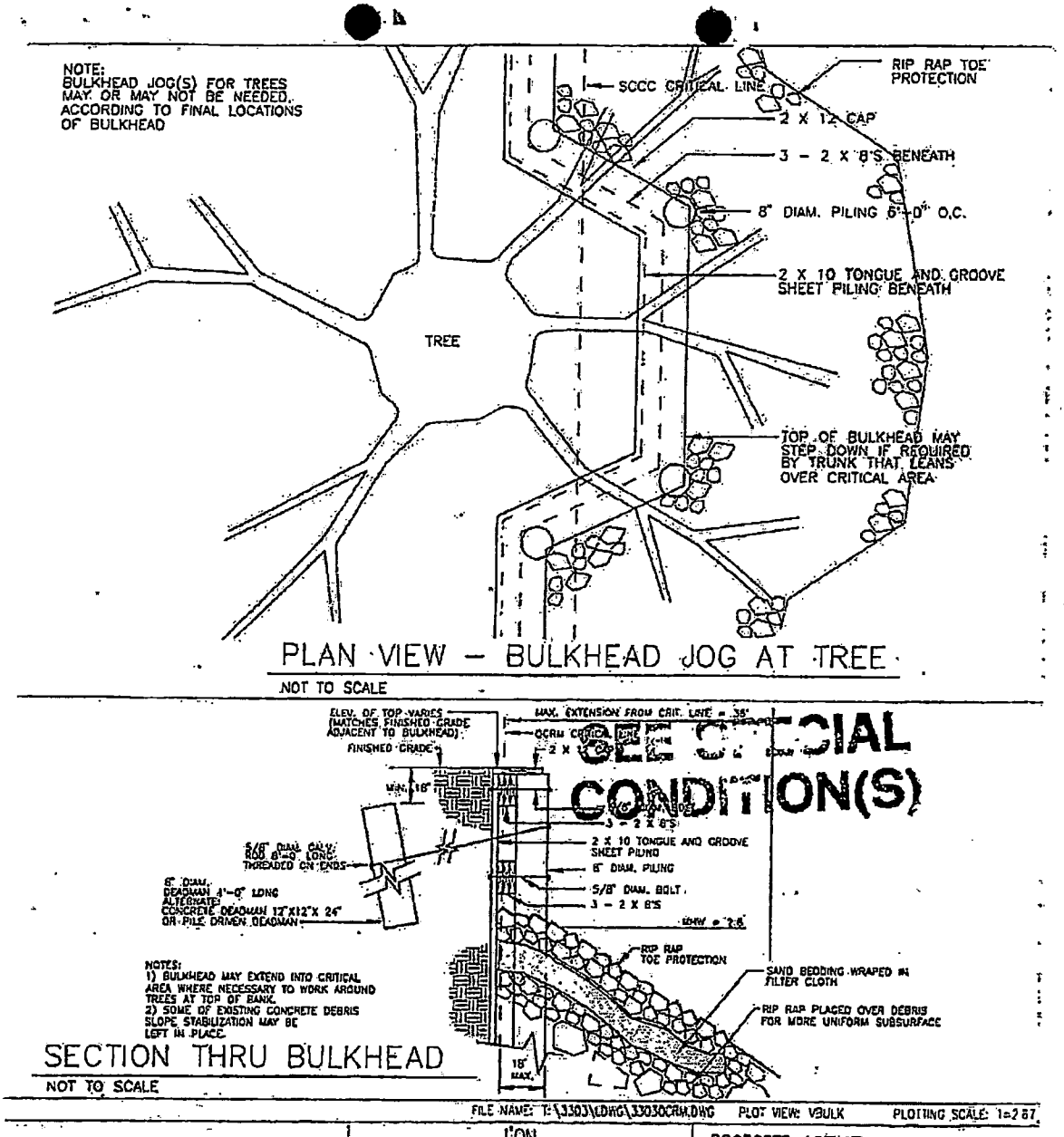
99-1G-322

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

SHEET 10 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000053



GE CRITICAL CONDITION(S)

I'ON

BULKHEAD

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

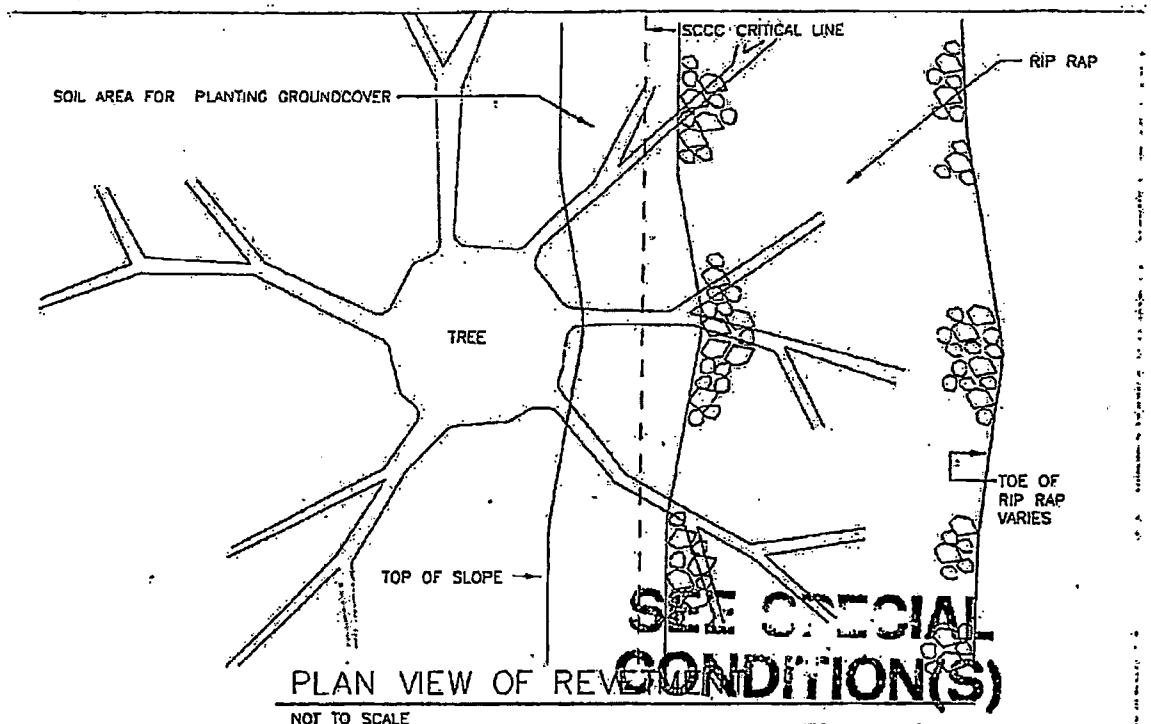
99-1G-322

DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 11 OF 14 DATE: 8/10/99

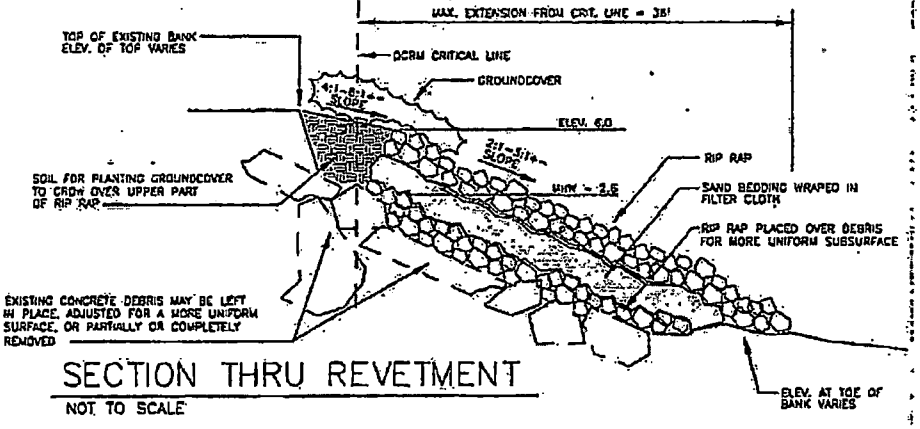
15 OF 18

Creek Club - Plaintiff
DHEC 000055



PLAN VIEW OF REVETMENT

NOT TO SCALE



SECTION THRU REVETMENT

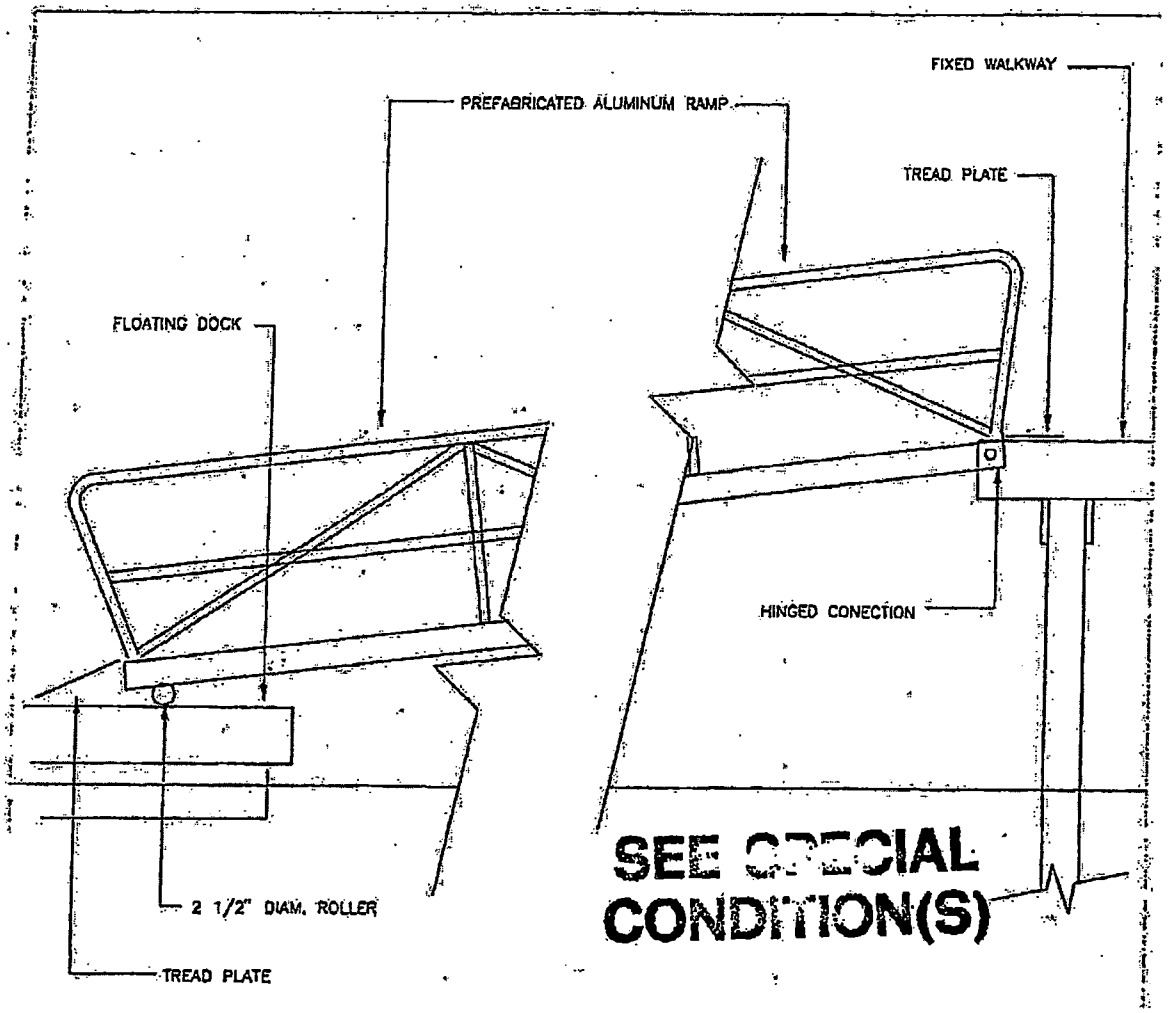
NOT TO SCALE

FILE NAME: T:\1303\DWG\1303OCRM.DWG; PLOT VIEW: VREVET PLOTTING SCALE: 1=2.67

	I'ON RIP RAP REVETMENT	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION.
DATUM: MSL, 1929 NGVD SCALE: AS NOTED	APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	99-1G-322 SHEET 12 OF 14 DATE: 8/10/99

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Creek Club - Plaintiff
DHEC 000057



ELEVATION OF RAMP

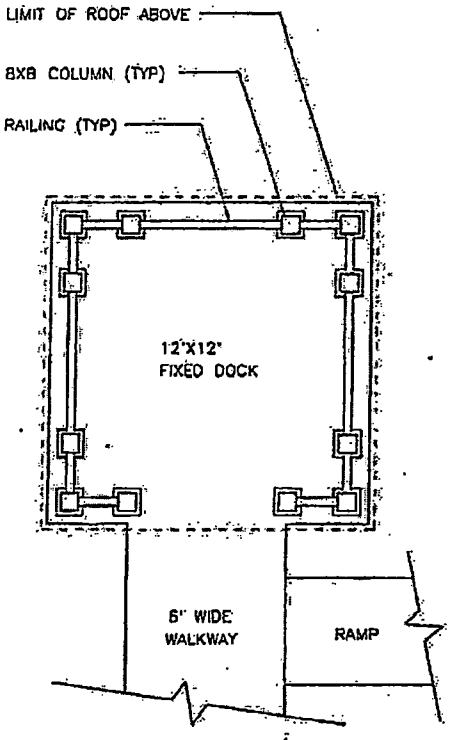
NOT TO SCALE

FILE NAME: T:\3303\DWG\3303CRM.DWG PLOT VIEW: VRAMP PLOTTING SCALE: 1=2.67'

	I'ON RAMP	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION
DATUM: MSL, 1929 NGVD SCALE: AS NOTED	APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	99-1G-322 SHEET 13 OF 14 DATE: 8/10/99

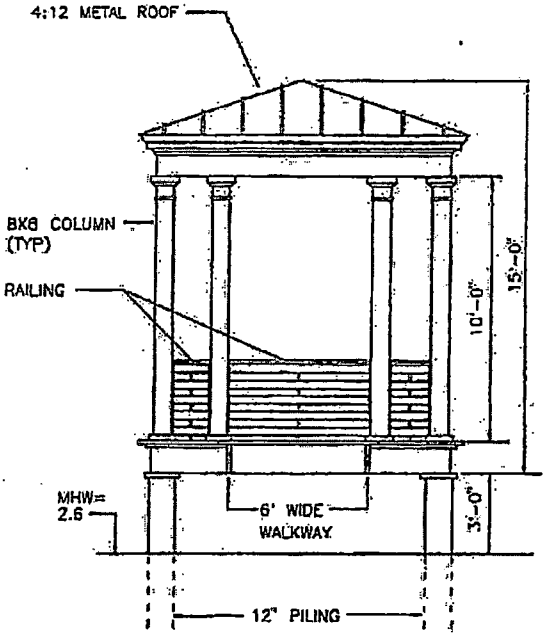
17 of 18

Creek Club - Plaintiff
DHEC 000059



PLAN VIEW OF PAVILION
NOT TO SCALE

NOTE:
THIS PAVILION IS INTENDED AS AN ARCHITECTURAL FEATURE. THE HEIGHT AND PROPORTIONS SHOWN ARE ESSENTIAL FACTORS IN IT'S AESTHETIC APPEAL.



ELEVATION OF PAVILION
NOT TO SCALE

SEE SPECIAL CONDITION(S)

FILE: NAME: [illegible] PLOT VIEW: VPAV PLOTTING SCALE: 1=5.34

I'ON

PAVILION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-1G-322

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

SHEET 14 OF 14 DATE: 8/10/99

18 OF 18

Creek Club - Plaintiff
DHEC 000061

DEPARTMENT OF THE ARMY PERMIT

Permittee: THE I'ON COMPANY

c/o NEWKIRK ENVIRONMENTAL, INC.
192 EAST BAY STREET, SUITE 201 CHARLESTON,
SOUTH CAROLINA 29401

Permit No: 99-1G-322

Issuing Office: CHARLESTON DISTRICT

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:
To construct six community docks, a boat ramp and staging dock, a bulkhead or riprap revetment, and the removal of existing pilings for bank stabilization and for the common, private recreational use of the residents of the I'On Community in accordance with the attached drawings entitled: Applicant: The I'On Company, P. O. Box 986, Mount Pleasant, SC 29464, Charleston County, S.C.; Proposed Activity: Community Waterfront Recreation. Sheets 1, 2, 4, 6, 8 thru 14 of 14 dated August 10, 1999; Sheet 3, revised February 18, 2000; Sheet 5 revised January 5, 2000; Sheet 7 revised December 8, 1999.

Project Location:
This project is located in Hobcaw Creek at several locations adjacent to the common area along the waterfront of the I'On development, which is located off of Mathis Ferry Road, Mount Pleasant, Charleston County, South Carolina.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on **31 March 2005.** If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

Refer to ENG FORM 1721,NOV 86 EDITION OF SEP 82 IS OBSOLETE (33 CFR 325 (Appendix A))



Creek Club - Plaintiff
DHEC 000081

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

SEE PAGE 4.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

☒ Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

☒ Section 404 of the Clean Water Act (33 U.S.C. 1344).

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above);

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

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

(PERMITTEE) _____ (DATE) _____
THE I'ON COMPANY

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER) _____ (DATE) _____
MARK S. HELD, LTC
or his Designee
Robert H. Riggs
Chief, Regulatory Branch

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE) _____ (DATE) _____

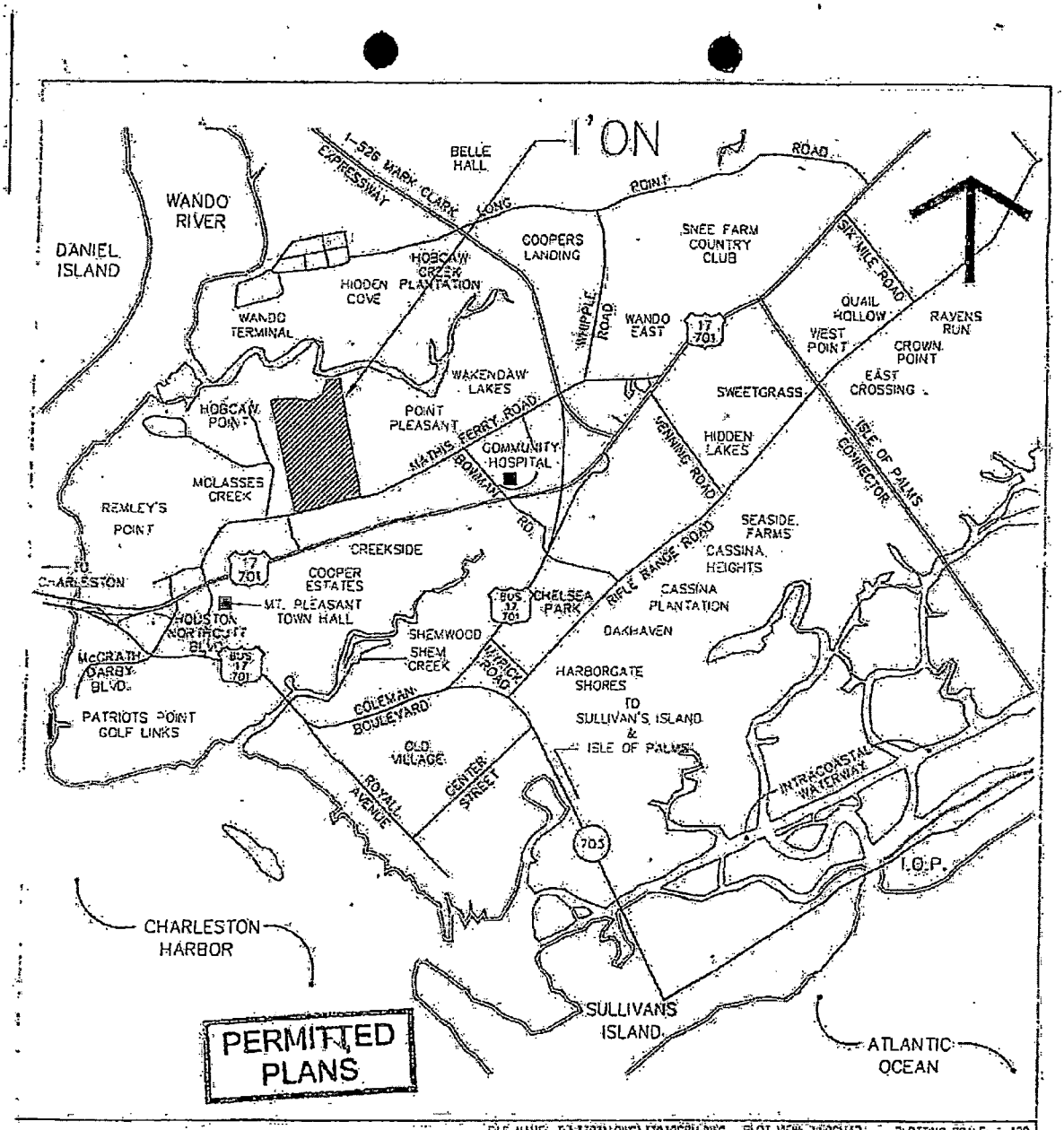
CONDITIONS FOR P/N #:99-1G-322

a. That the permittee agrees to provide all contractors associated with construction of the authorized activity a copy of the permit and drawings. A copy of the permit will be available at the construction site at all times.

b. The permittee agrees that dock #6 must be constructed in the new location as shown on sheet 7 of 14 revised December 8, 1999.

c. That the permittee agrees that only solar powered, motion detector lighting that illuminates only when in use may be used on docks 1, 2, and 3. In addition, the permittee agrees that only low level, solar powered, motion detector lighting that illuminates only when in use may be used on docks 4, 5, and 6, in addition to any navigation lights that may be required.

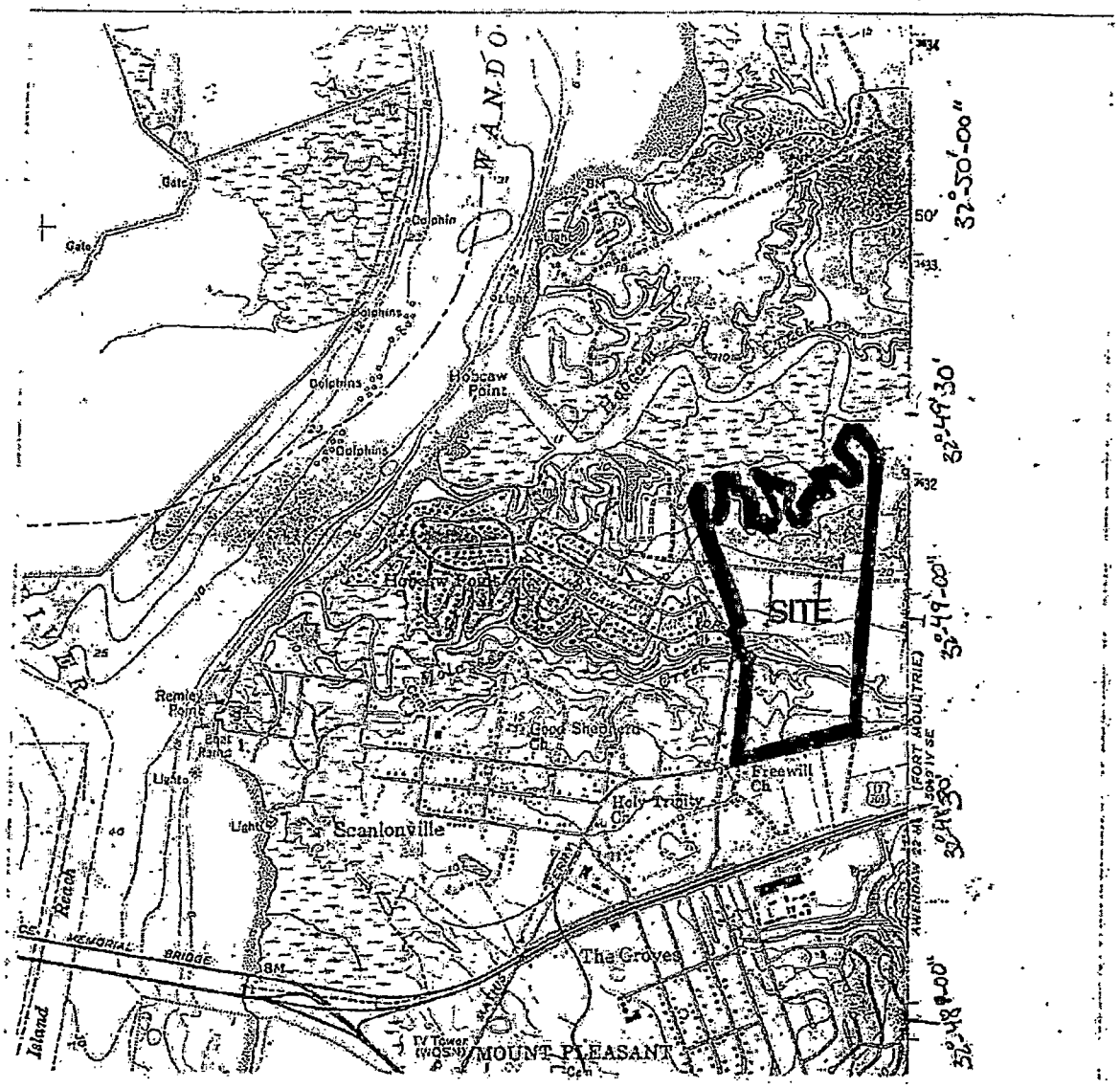
Creek Club - Plaintiff
DHEC 000084



FILE NAME: T:\3303\LOWC\3303LOCMAP.DWG PLOT VIEW: VLOCMAP PLOTTING SCALE: 1=100

NOT TO SCALE DATUM: MSL, 1929 NGVD	I'ON PROJECT LOCATION (MOUNT PLEASANT) APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION 99-1G-322 SHEET 1 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000085



SITE LATITUDE: 32°49'0" SITE LONGITUDE: 79°52'45" NOTE: MAP TAKEN FROM CHARLESTON QUAD

FILE NAME: I:\33031\DWG\33030CP1.DWG PLOT VIEW: VUSGS PLOTTING SCALE: 1=130

PERMITTED PLANS

SCALE: 1" = 2000'+-

DATUM: MSL, 1929 NGVD

I'ON

PROJECT LOCATION (USGS MAP)

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

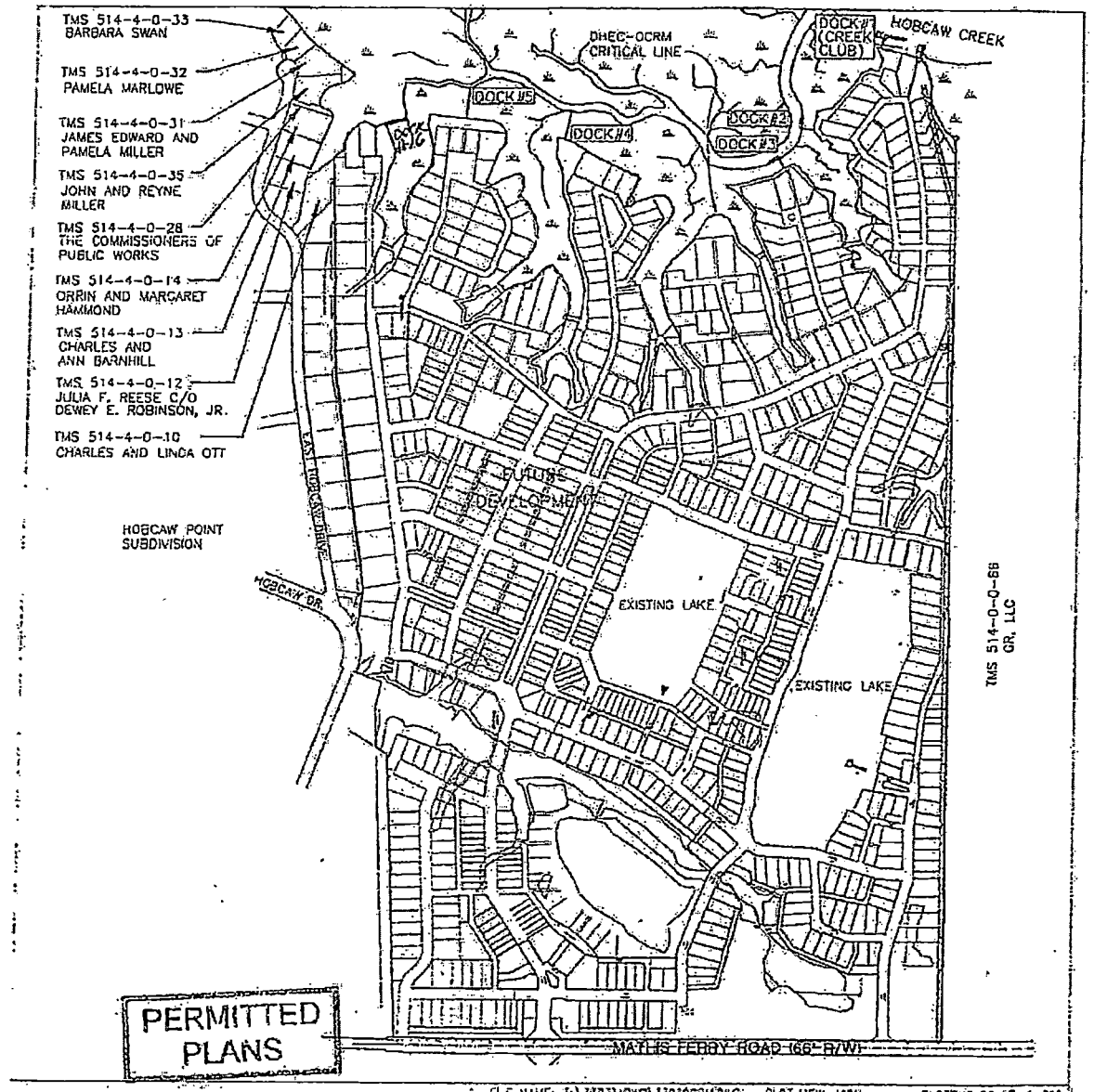
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

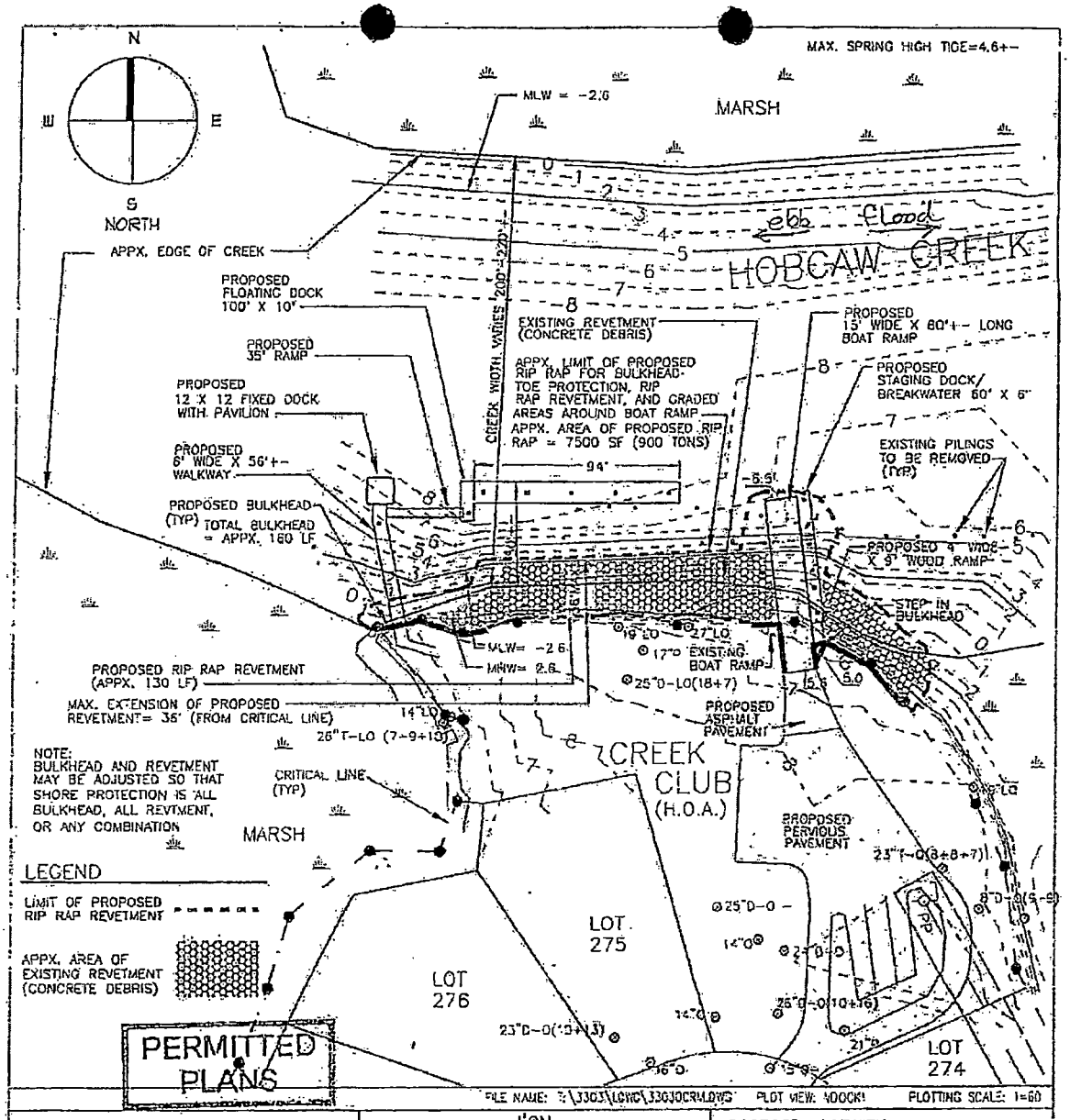
99-19-322

SHEET 2 OF 14 DATE: 8/10/99

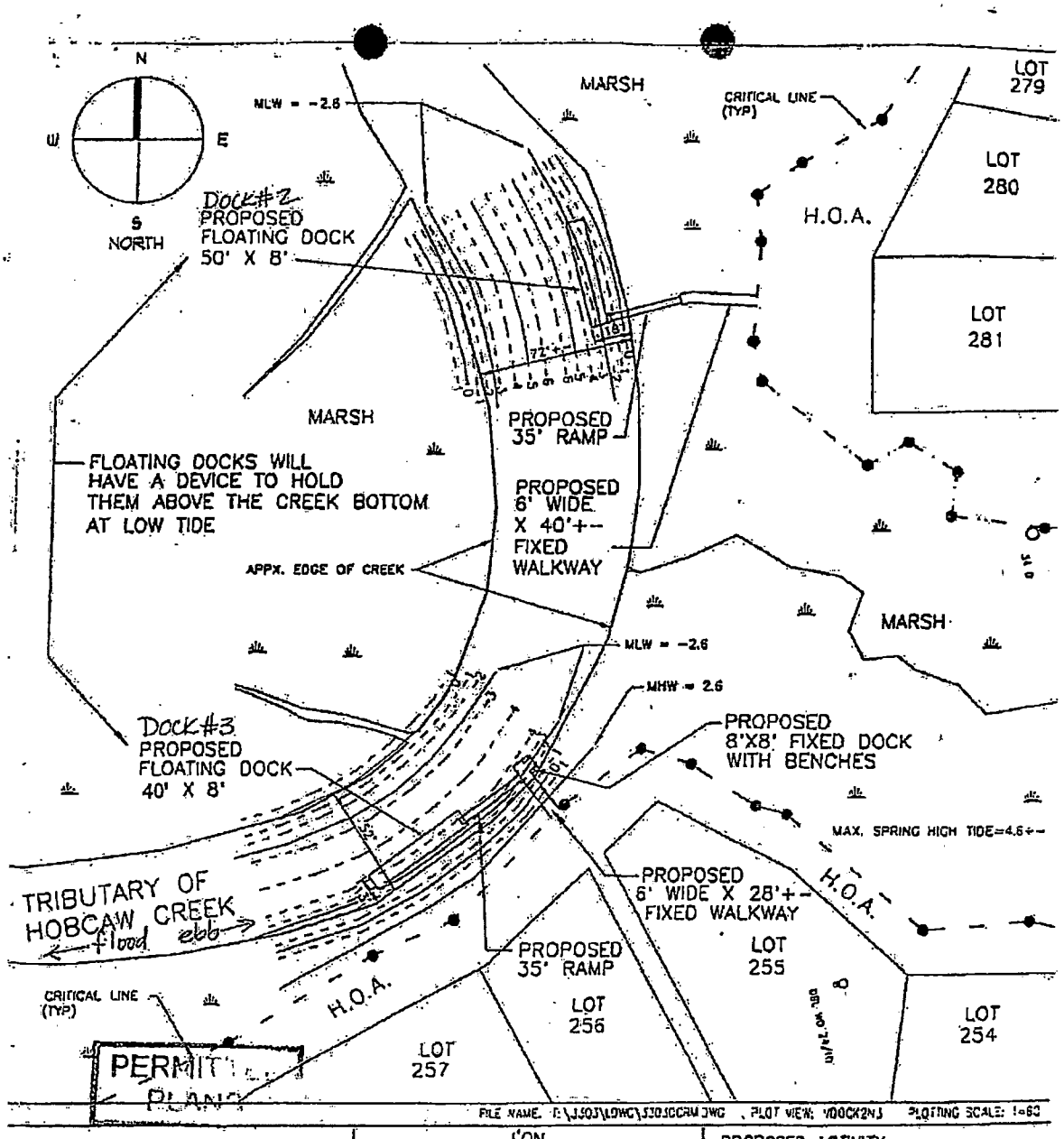
Creek Club - Plaintiff
DHEC 000086



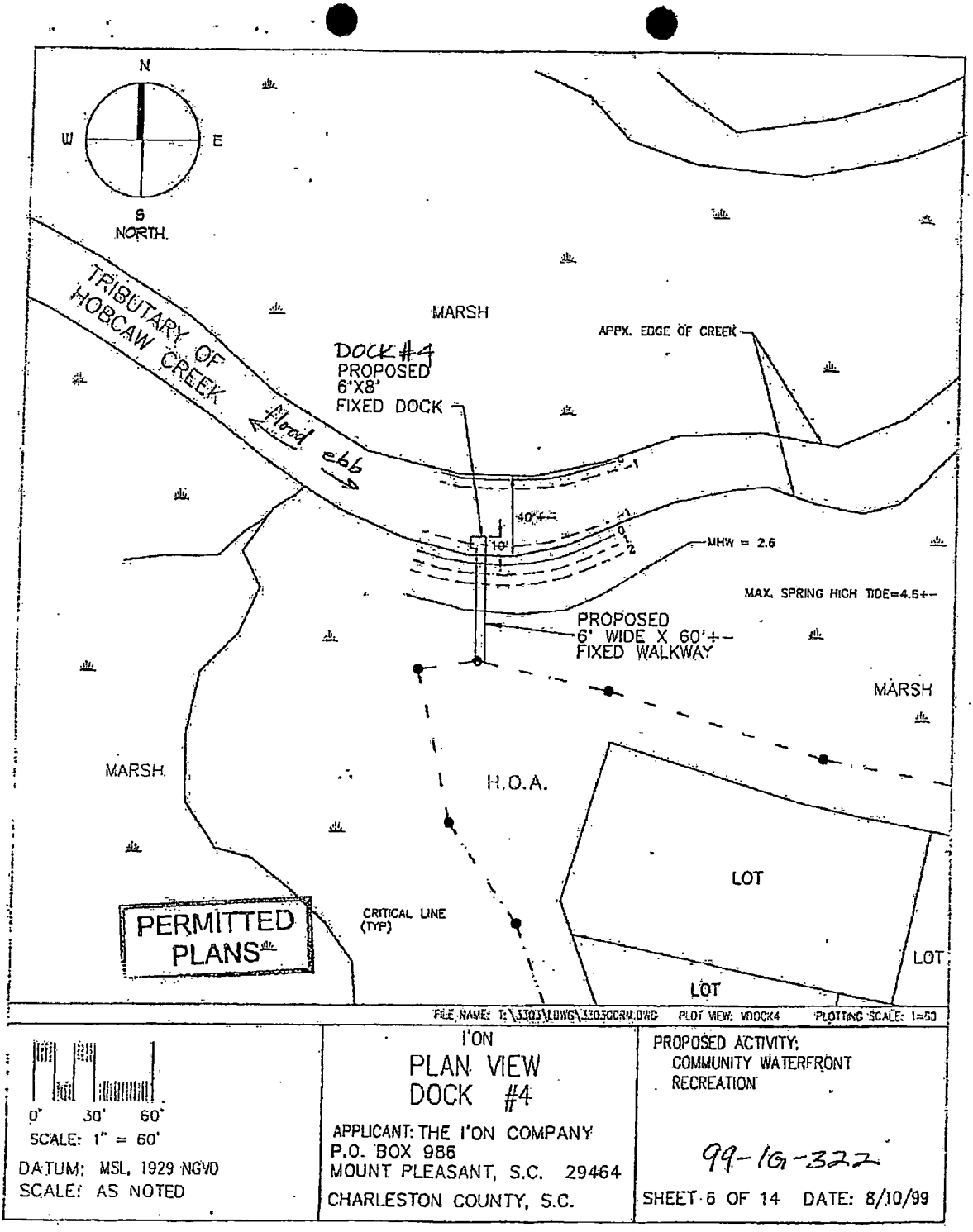
Creek Club - Plaintiff
DHEC 000087



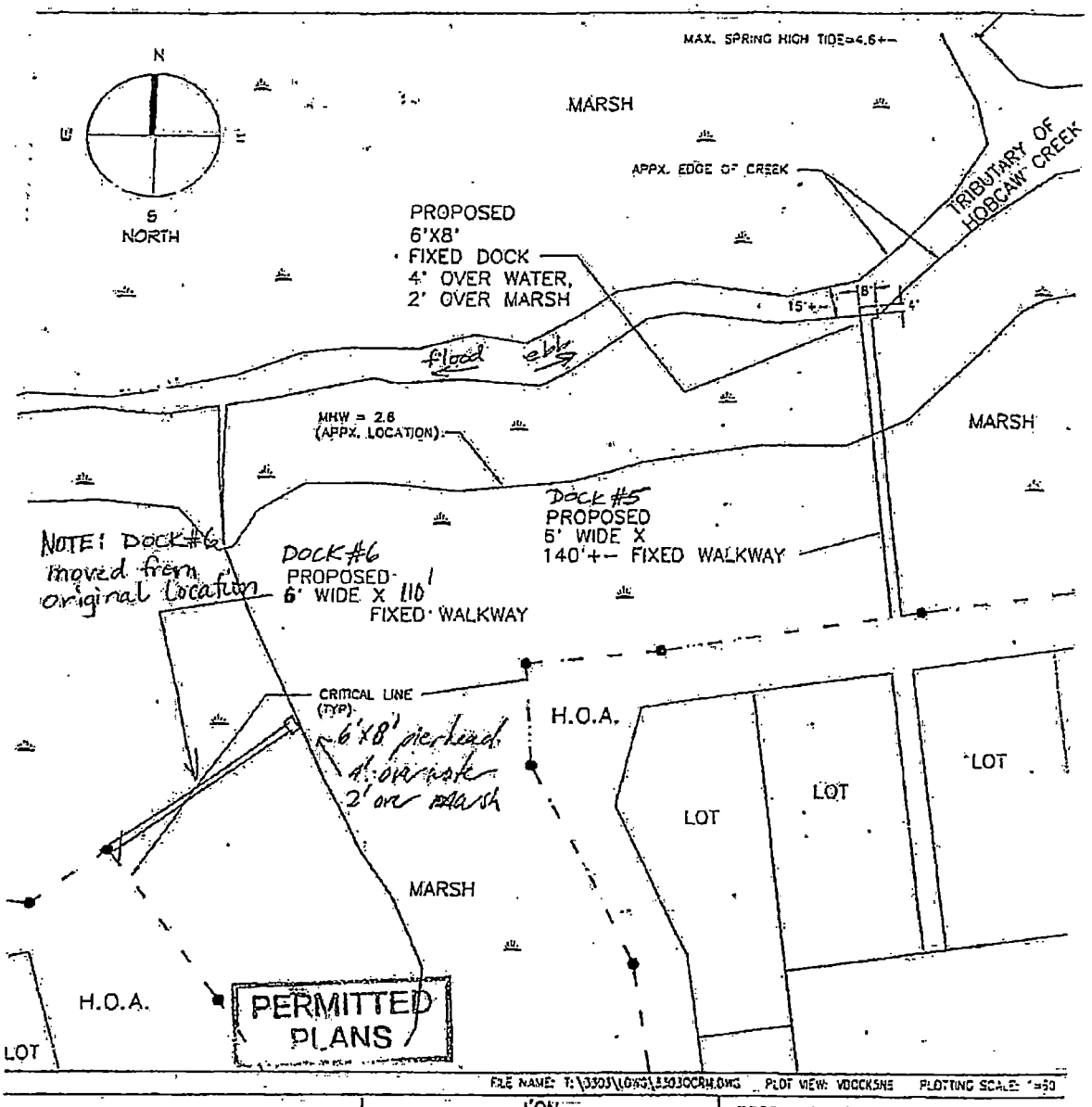
Creek Club - Plaintiff
DHEC 000088



Creek Club - Plaintiff
DHEC 000089



Creek Club - Plaintiff
DHEC 000090



I'ON

PLAN VIEW
DOCKS #5 AND #6

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

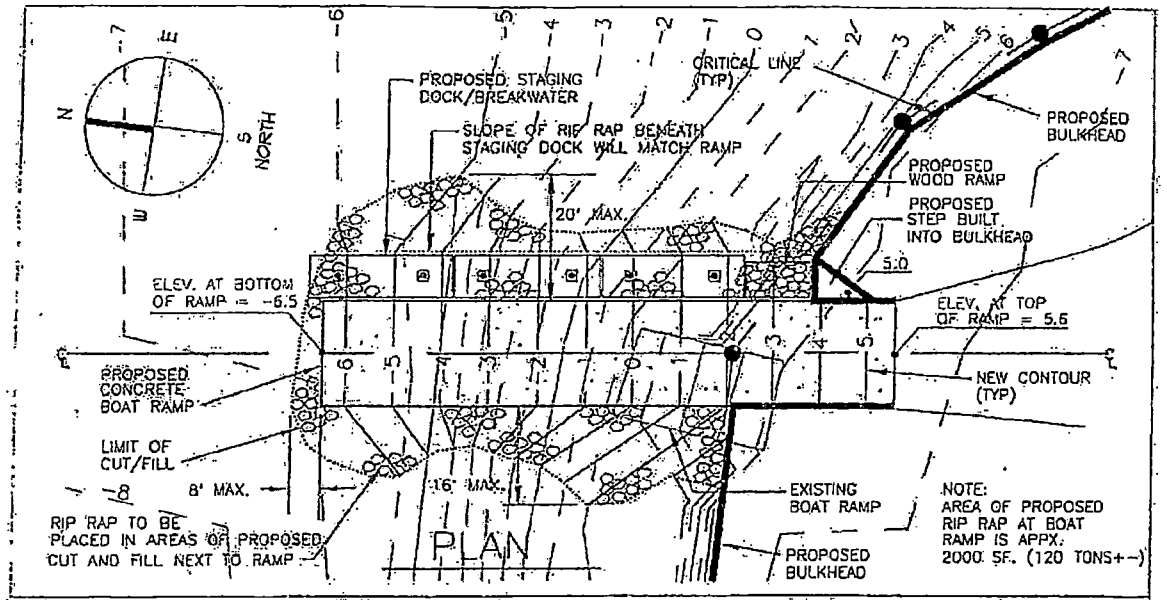
CHARLESTON COUNTY, S.C.

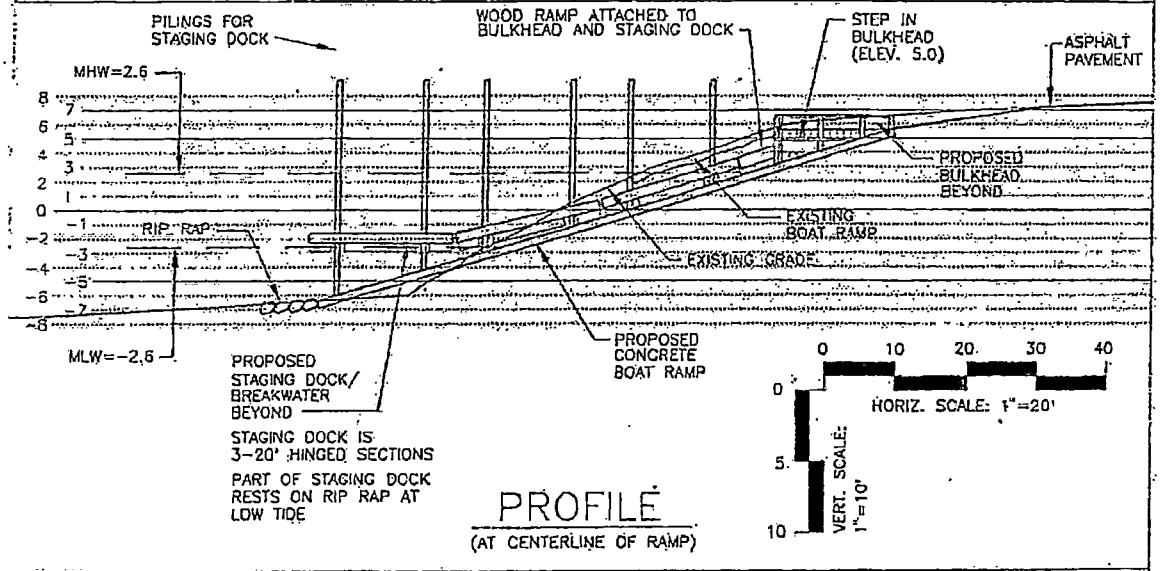
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

Revised 12/8/99
99-1G-322
SHEET 7 OF 14

Creek Club - Plaintiff
DHEC 000091





FILE NAME: T:\3303\DWG\3303CRM.DWG PLOT VIEW: VPLPROF PLOTTING SCALE: 1=20

PERMITTED PLANS

I'ON

BOAT RAMP PLAN AND PROFILE

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C., 29464
CHARLESTON COUNTY, S.C.

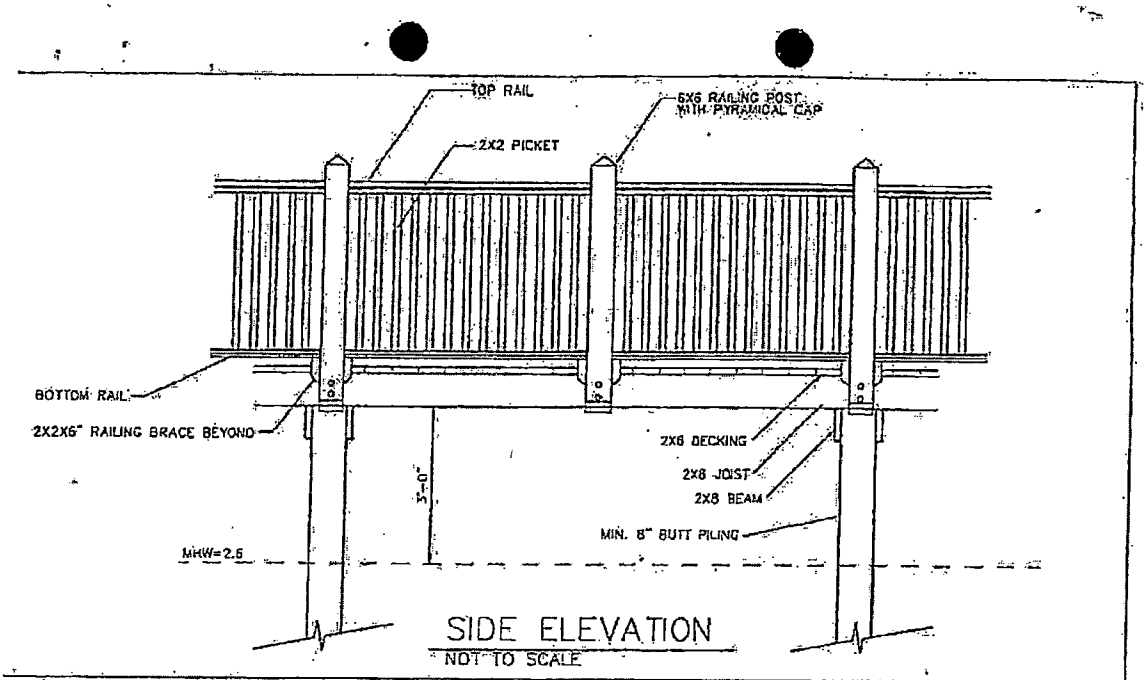
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

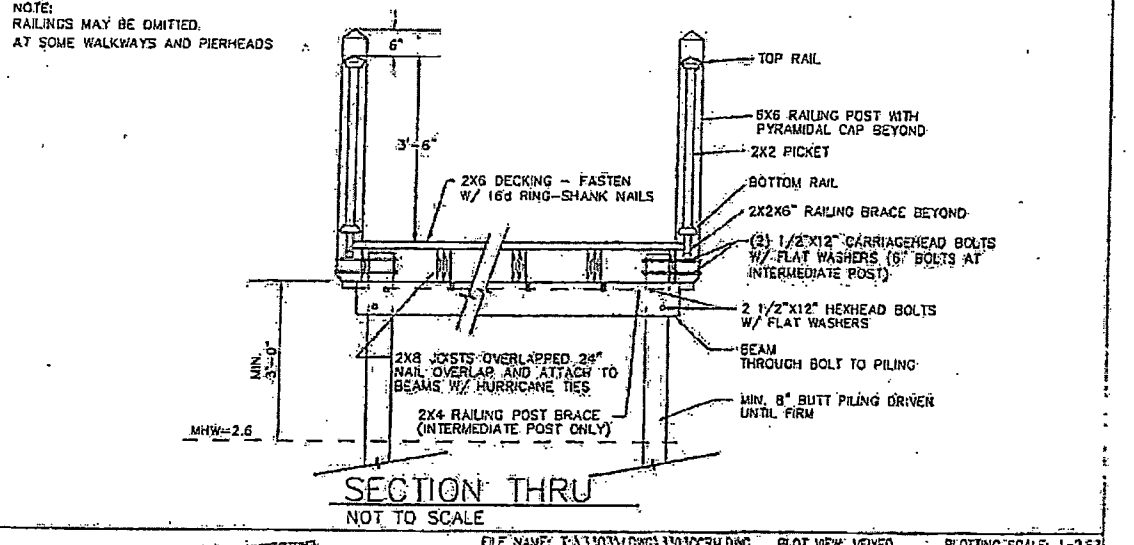
99-1G-322

DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 8 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000092





FILE NAME: T:\3303\DWG\3303DCRM.DWG PLOT VIEW: VFIXED PLOTTING SCALE: 1=2.67'

PERMITTED PLANS

I'ON

FIXED DOCK/ BOARDWALK

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

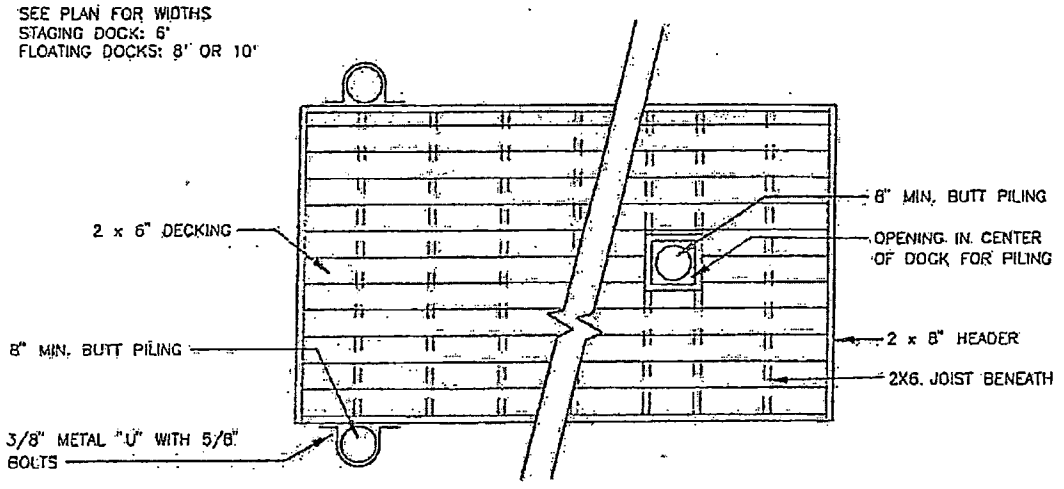
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-16-322

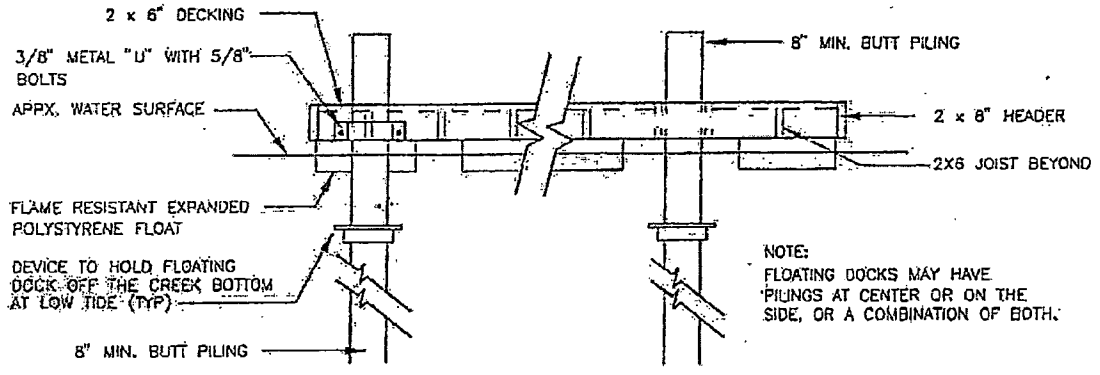
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 9 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000093



PLAN VIEW
NOT TO SCALE



NOTE:
ALL HARDWARE AND FASTENERS GALVANIZED

SIDE ELEVATION
NOT TO SCALE

FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VFLOAT PLOTTING SCALE: 1=2.67

PERMITTED PLANS

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

I'ON

FLOATING/STAGING DOCK

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

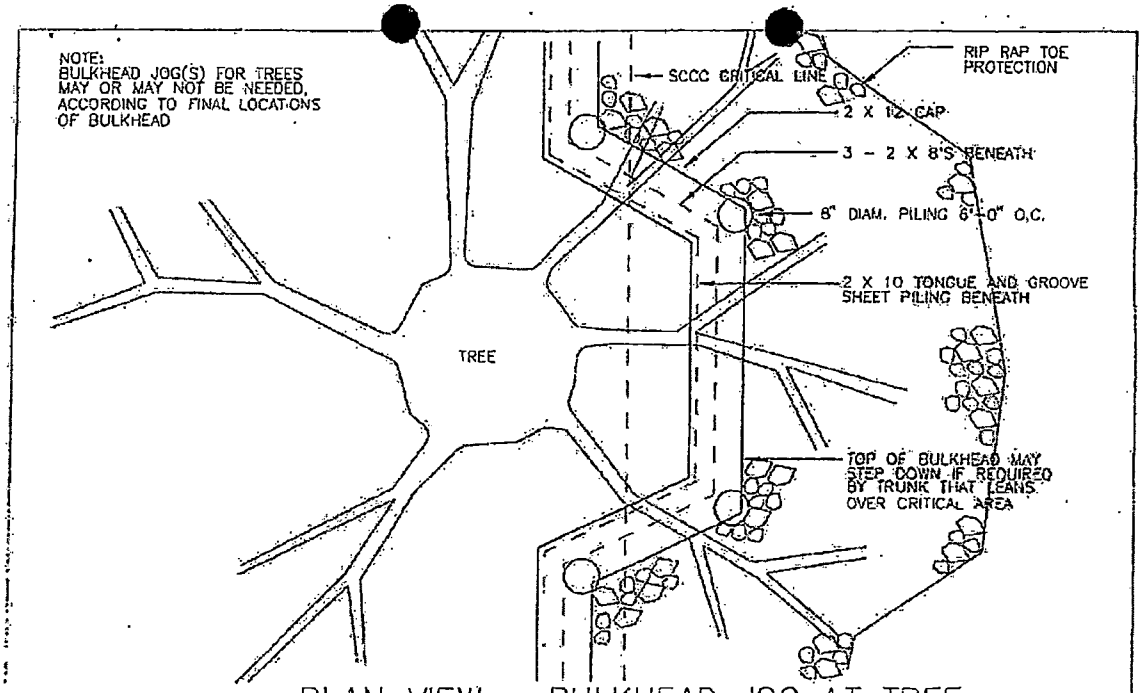
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

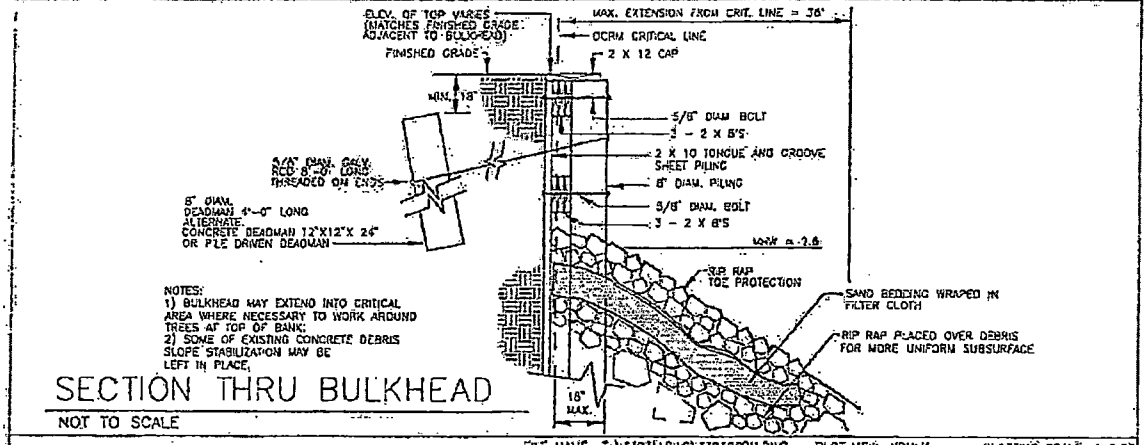
SHEET 10 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000094



PLAN VIEW – BULKHEAD JOG AT TREE

NOT TO SCALE



SECTION THRU BULKHEAD

NOT TO SCALE

FILE NAME: P:\5303\DWG\5303SCCRU.DWG PLOT VIEW: VBUILK PLOTTING SCALE: 1=2.67

PERMITTED PLANS

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

I'ON

BULKHEAD

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

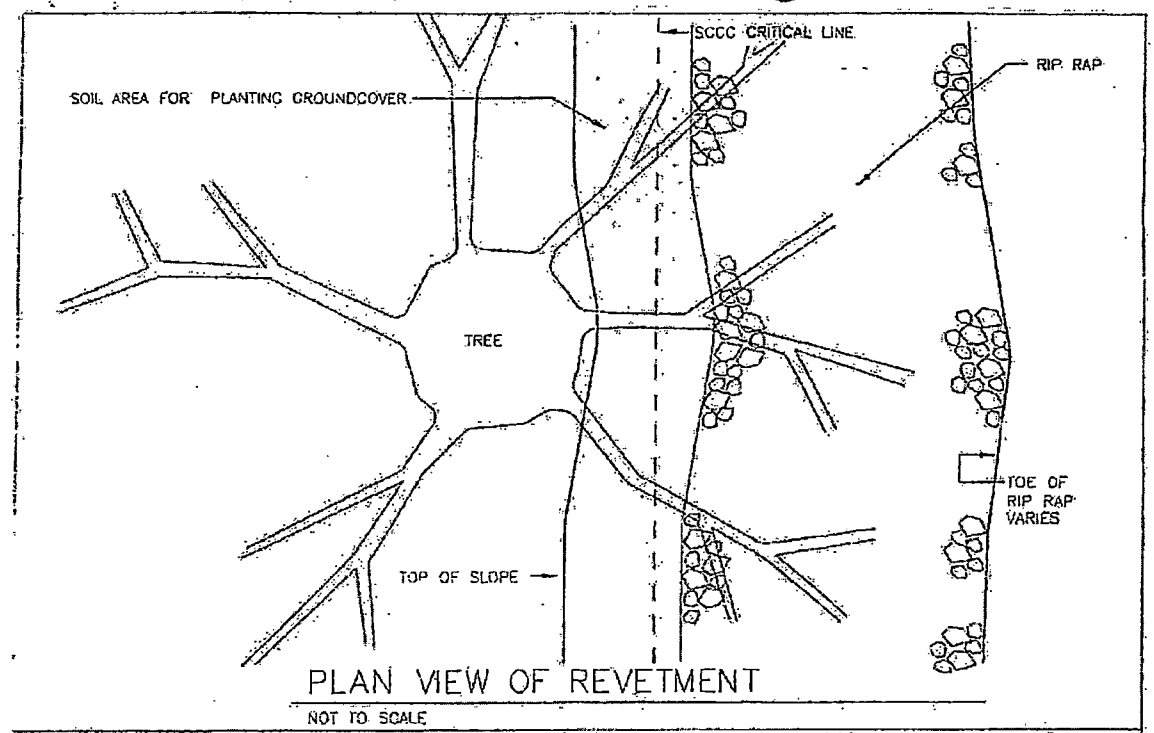
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

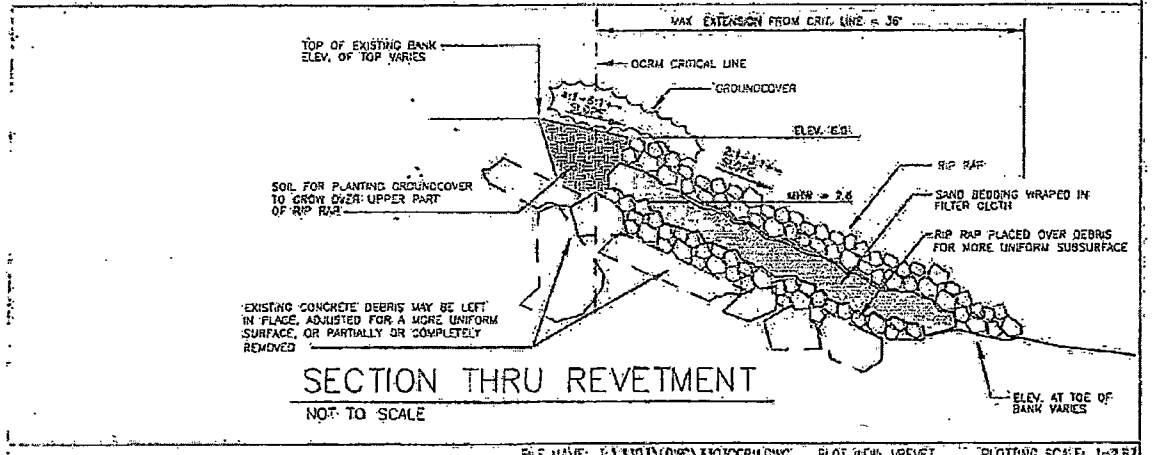
SHEET 11 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000095



PLAN VIEW OF REVETMENT

NOT TO SCALE



SECTION THRU REVETMENT

NOT TO SCALE

FILE NAME: I:\330\DWG\330OCRM.DWG PLOT VIEW: VREVET PLOTTING SCALE: 1=2.57

PERMITTED PLANS

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

I'ON

RIP RAP REVETMENT

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

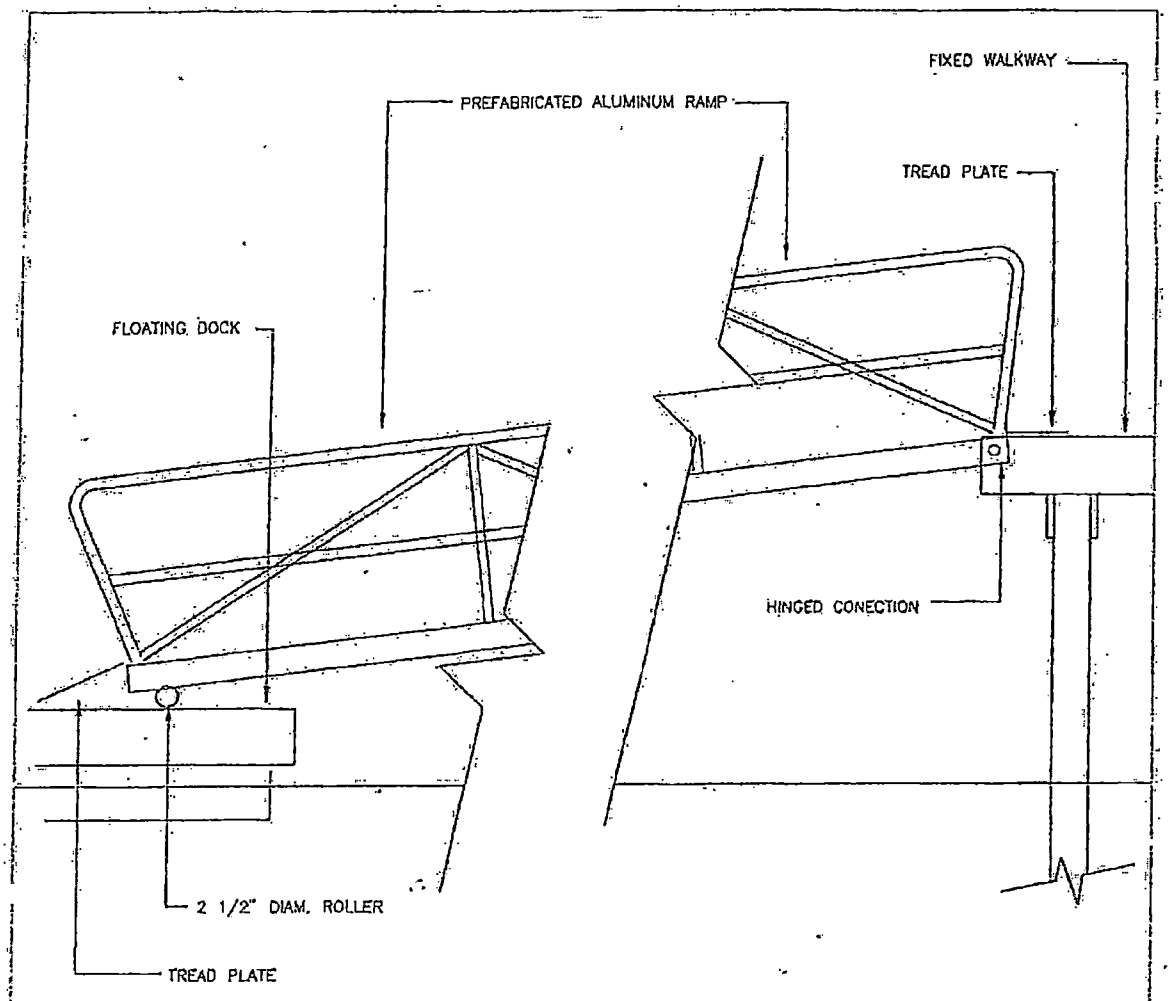
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

SHEET 12 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000096



ELEVATION OF RAMP

NOT TO SCALE

FILE NAME: T:\3305\DWG\3305DCRM.DWG PLOT VIEW: VRAMP PLOTTING SCALE: 1=2.67

PERMITTED PLANS

DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

I'ON

RAMP

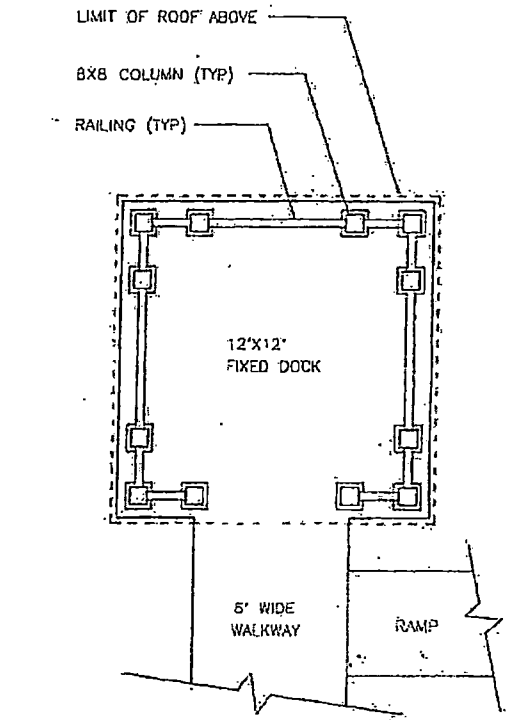
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-16-322

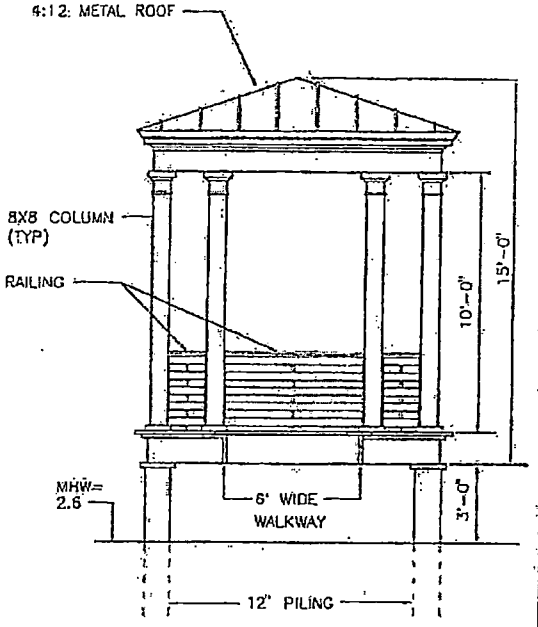
SHEET 13 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000097



PLAN VIEW OF PAVILION
NOT TO SCALE

NOTE:
THIS PAVILION IS INTENDED AS AN ARCHITECTURAL FEATURE. THE HEIGHT AND PROPORTIONS SHOWN ARE ESSENTIAL FACTORS IN IT'S AESTHETIC APPEAL.



ELEVATION OF PAVILION
NOT TO SCALE

FILE NAME: T:\3103\CDWG\3103C2W.DWG PLOT VIEW: \PAV PLOTTING SCALE: 1=5.34

PERMITTED PLANS

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

I'ON

PAVILION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-1G-322

SHEET 14 OF 14 DATE: 8/10/99

Creek Club - Plaintiff
DHEC 000098

Joint Federal and State Application Form For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina	This Space For Official Use Only. Application # OCRM-99-343-I Date Received: Project Manager:

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant's Name.	4. Agent's Name (an agent is not required):
THE I'ON COMPANY	**NEWKIRK ENVIRONMENTAL, INC.**
2. Applicant's Address.	5. Agent's Address.
C/O GEOFF GRAHAM **POST OFFICE BOX 980** **MT. PLEASANT, SC 29465**	**192 East Bay Street, Suite 201** **Charleston, SC 29401** 9.9.99
3. Applicant's Contact Number (include area code).	6. Agent's Contact Number (include area code).
Residence: **N/A** Business: **843/971-1662** FAX: **843/971-1664**	Residence: **N/A** Business: **(843) 722-4958** FAX: **(843) 723-6684**
7. Project Title.	9. Project Location. **MT. PLEASANT, SC**
I'ON	Street Address: **MATHIS FERRY ROAD** County: **CHARLESTON** Latitude: **32° 49' 00"** Longitude: **79° 52' 45"**
8. Nearest Waterbody to project site (if known).	
HOBCAW CREEK	

10. Directions to the Site (attach additional sheets if needed).

SEE ATTACHED.

11. Description of the Overall Project and of Each Activity In or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed).

SEE ATTACHED.

12. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed).

SEE ATTACHED.



Creek Club - Plaintiff
DHEC 000133

13. Type and	...tity of Materials To Be Discharged. N/A	14. Type and Quantity of Impacts to U.S. Waters (including wetlands) N/A
Dirt or Cle	soil: _____ cy	Filling: _____ ☐ acres ☐ sq.ft. _____ cy
	...nd: _____ cy	Backfill & Bedding: _____ ☐ acres ☐ sq.ft. _____ cy
	...ud: _____ cy	Landclearing: _____ ☐ acres ☐ sq.ft. _____ cy
	...lay: _____ cy	Dredging or Excavation: _____ ☐ acres ☐ sq.ft. _____ cy
Gravel,Rock,	...one: _____ cy	Flooding: _____ ☐ acres ☐ sq.ft. _____ cy
	...ete: _____ cy	Draining: _____ ☐ acres ☐ sq.ft. _____ cy
Other (E	...be): _____ cy	Shading: _____ ☐ acres ☐ sq.ft. _____ cy
	...AL: _____ cy	TOTALS _____ ☐ acres ☐ sq.ft. _____ cy

15. Names an ...dresses of All Adjoining Property Owners (attach additional sheets if needed).
SEE ATTAC ...PUBLIC NOTICE MAILING LIST DATA FORM.

16. Has any p ...n of the work already commenced? If yes, describe all work that has been done and the dates of the work.
NO.

17. List all Cer ...tions, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

18. Authoriz ...of Agent.
I hereby author ...e agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish suppler ...information in support of this application.

X _____ 8-20-99
Applicant's Signature Date

19. Certifica ...
Application i ...eby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that th ...ormation in this application is complete and accurate. I further certify that I possess the authority to undertake the work describ ...rein or am acting as the duly authorized agent for the applicant.

_____ 8-20-99 _____ 8-20-99
Applic ...Signature Date Agent's Signature Date

The applicatio ...t be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization s ...ent in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdictio ...y department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact o ...es false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any fa ...ctitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Submit the co ...ed application form with the required drawings and all supporting information as indicated below.

Send all or ...application materials to:
U.S. ...Corps of Engineers
Charlesto ...rict, Regulatory Branch
P.O. Box ...ATTN: CESAC-CO-P
Charles ...South Carolina 29402
...3) 727-4330

Send one complete copy to:
S.C. Dept. of Health & Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
(803) 744-5838

Send one complete copy to:
S.C. Dept. of Health & Environmental Control
Office of Environmental Quality Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 734-5300

Creek Club - Plaintiff
DHEC 000134

10, 11 & 12 Project Location, Description & Purpose

The project site is an approximately 243 acre tract of land located between Mathis Ferry Road and Hobcaw Creek in the City of Mt. Pleasant, South Carolina. The site can be accessed from Mathis Ferry Road. The I'on Company (I'on), is currently developing the property with approximately 750 residential dwelling units. Project plans are for a mixed use, traditional neighborhood, with streets and lots laid out in a grid pattern with sidewalks and easy access to numerous common areas and open spaces. One significant feature of the plan preserves the entire, approximately ½ mile, of waterfront for community access. Two, 6' wide, pedestrian/bicycle bridges totaling 263' in length, have been permitted (97-1G-189-C & P) across marshes associated with Hobcaw Creek, for the purpose of providing community access to the common area along the waterfront. A conceptual dock master plan for six (6) community docks was submitted to SCDHEC-OCRM for review during the wetland master plan permit process in 1997.

I'on proposes, with this application, to finalize the location, design and use of the planned community docks. Specifically, I'on proposes to construct:

1. A 15' X 80' concrete boat ramp with associated rip-rap and 6' X 60' floating breakwater/staging dock in Hobcaw Creek;
*2. Approximately 160 linear feet of wooden bulkhead with rip rap toe protection, to be constructed within approximately 18" of the SCDHEC-OCRM critical line adjacent to Hobcaw Creek;
*3. Approximately 130 linear feet of rip-rap revetment to be constructed at the existing shoreline adjacent to Hobcaw Creek;

R/perfloocoin

PN 99-1G-322

Creek Club - Plaintiff
DHEC 000130

4. A 6' X 56' walkway leading to a 12' X 12' fixed pierhead with roof and a 10' by 100' floating dock, providing approximately 194 linear feet of temporary moorage for boats;
5. Two 4' X 28' and 40' walkways leading to 8' X 50' floating docks in an unnamed tributary of Hobcaw Creek;
6. Three 4' X 60', 200' and 140' walkways leading to 6' X 8' fixed pier heads in an unnamed tributary of Hobcaw Creek; and
7. Removal of existing pilings in Hobcaw Creek.

* The proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkhead, all revetment or any combination.

The purpose of proposed structures is for the common, recreational use of residents within the I'on community. All proposed docks are to be utilized for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and electric lighting will be provided to the main dock in Hobcaw Creek (dock #1) and electric lighting only will be provided to the other five docks. No other services will be provided.

PN#99-16-322

Creek Club - Plaintiff
DHEC 000131

Coastal Zone Critical Area Permitting
Office of Ocean and Coastal Resource Management - SCDHEC

Permit Name: THE I'ON COMPANY
Decision:

Permit:
Permit with Conditions: ✓
Deny:

I. Background Information — DataBase ID# 40052
Permit Number: 99-1G-322-P
P/N Date: 9/9/99 — Date Received: 8/23/99

Permit Type: 6 COMMUNITY DOCKS, BOAT RAMP, RIP-RAP, BULKHEAD — Permit Agency: OCRM, COE, EQC

County: CHARLESTON — Water Body: HOBCAW CREEK

Location Description: AT THE I'ON DEVELOPEMENT OFF MATHIS FERRY ROAD, MOUNT PLEASANT

II. Brief Project Description:

IS THE FOLLOWING: CONSTRUCT A 15' BY 80' BOAT RAMP, A 6' BY 60' STAGING DOCK/BREAKWATER WITH A 4' BY 9' RAMP; CONSTRUCT 6 COMMUNITY DOCKS: DOCK #1 A 6' BY 56' WALKWAY LEADING TO A 12' BY 12' PIERHEAD WITH ROOF AND A 10' WIDE BY 100' LONG FLOATING DOCK. DOCK #2: A 6' BY 40' WALKWAY LEADING TO AN 8' BY 50' FLOATING DOCK,; DOCK #3: A 6' BY 28' WALKWAY LEADING TO AN 8' BY 50' FLOATING DOCK; DOCK #4: 6' BY 60' WALKWAY LEADING TO A 6' BY 8' PIERHEAD; DOCK #5: A 6' BY 140' WALKWAY LEADING TO A 4' BY 8' PIERHEAD; DOCK #6: A 6' BY 200 WALKWAY LEADING TO A 8' BY 10' PIERHEAD. ALSO 130' OF RIP RAP WILL BE PLACED ALONG THE SHORELINE AT THE BOAT RAMP WITH A 160' OF BULKHEAD.

III. Summary of Public and Agency Comments (List by name, date & comment summary if none, so indicate):

Federal Agencies: NONE

State Agencies: SCIAA, 5/12/99, COND.; SCDNR, 9/23/99, NO OBJ.; SCSPA, 9/7/99, NO OBJ.

Public Comment: JOHN MILLER, 9/28/99, OBJECTS; LOUIS GRIFFITH, 9/27/99, NO OBJ., ORRIN HAMMOND, 9/23/99, OBJECTS

Adjoining Property Owners: NONE

PLAINTIFF'S EXHIBIT 36a

Creek Club - Plaintiff
DHEC 000157

A. (Commentor) (Date of comment) (Comment summary)

IV. Environmental and Policy Assessment:

A. Describe the coastal resources (i.e., vegetation, habitat, etc.) which will be impacted:

INTERTIDAL CREEK, SPARTINA ALTERNIFLORA, JUNCAS ROMINERUS

B. Stated purpose of Activity:

PROVIDE ACCESS TO RIVER BY RESIDENTS OF THE DEVELOPMENT

C. Name and approximate width of waterbody:

HOBCAW CREEK AND ITS TRIBUTARY:
AT DOCK #1: 200'; AT DOCK #2: 72'; AT DOCK #3 52'; AT DOCK #4 40'; AT DOCK #5 15'; AT DOCK #6 10'

D. GIS Review

1) Previous Permits: THE GRAHAM COMPANY, 97-1G-289-P (FOOTBRIDGES)

2) Previous Enforcements NONE

3) Dock Master Plans N/A

4) Other OCRM Approvals: SW, WW, WS FOR PHASES 1 AND 2 ISSUED PREVIOUSLY

E. Does the project impact a GAPC (if so, describe) NO

F. Applicable Regulations

1)General Guidelines 30-1(A)

2)Further Guidelines 30-11(B)

3)Specific Project Standards 30-12(A)(B)(C)(E)

G. Has the project been modified to minimize impacts (if so, describe)? NO

H. Is mitigation required and, if so, does it meet CZM policy (describe)? NO.

Does the project contravene any coastal zone regulations? ✓ Yes ___ No

(If No, skip to section VI; if Yes, complete Section VI.)

V. Modifications for bringing the project into compliance with regulations:

See Below notes

VI. Field assessment by: Date:

(Name) (Date) 9/22/99

VII: Reviewed By:

1. Project Manager: (signature/date) 11/29/99

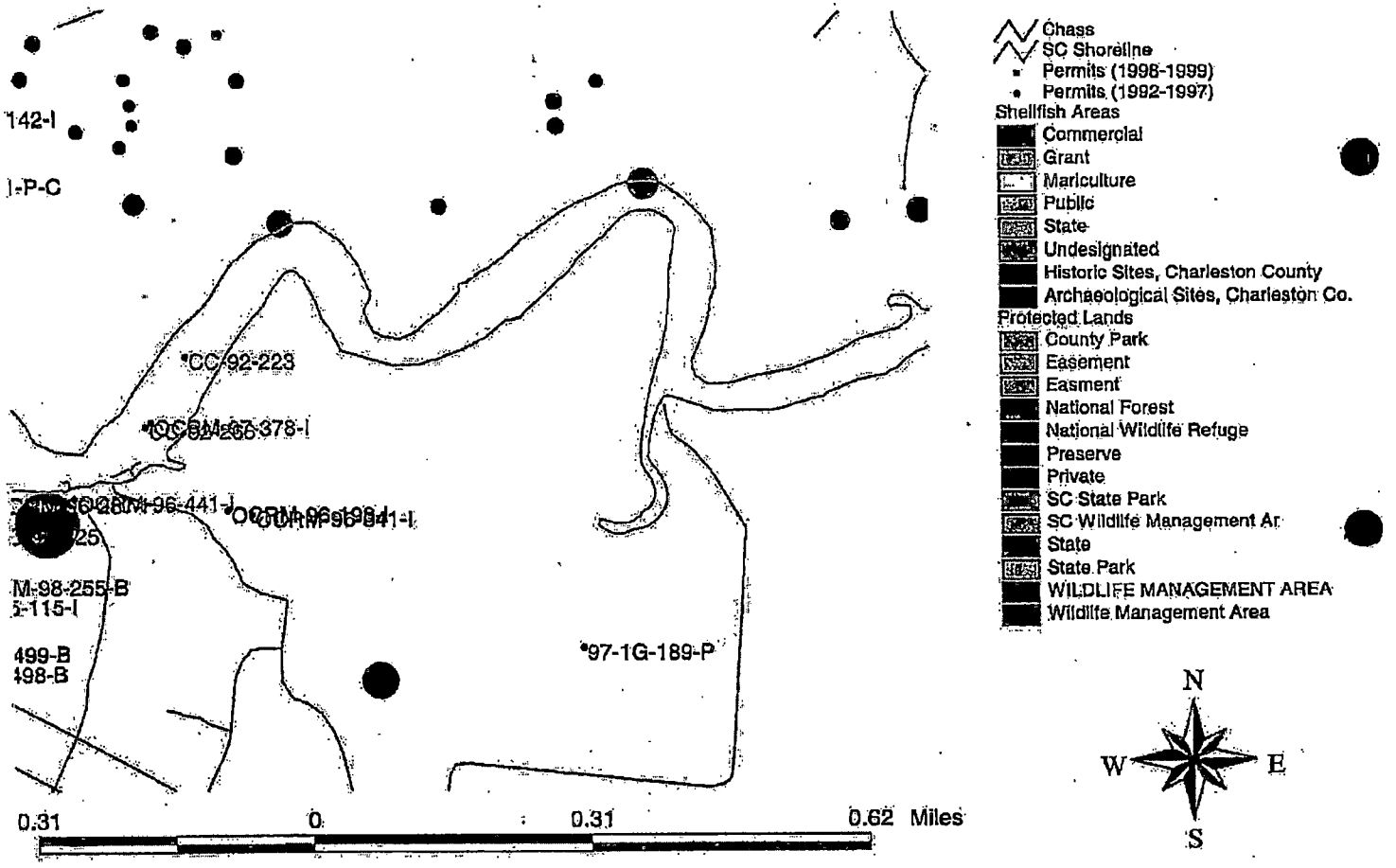
2. Staff Biologist (signature/date) 11/29/99

XI. Notes: DUE TO CONCERNS EXPRESSED BY THE PUBLIC, I TOURED THE CREEK INTO THE LOCATIONS OF ALL THE PROPOSED DOKCS ON 11/2/99. I DETERMINED THAT DOCK #6 COULD BE RELOCATED TO ANOTHER TRIBUTARY THUS LESSENING THE IMPACTS TO THE RESIDENTS OF OLD HOBCAW. ALSO IN CONSIDERING SPECIAL GEOGRAPHIC CIRCUMSTANCES AND THE FACT THE DOCKS ARE FOR COMMUNITY USE, DOCKS #2 AND #3 QUALIFY FOR 360 TOTAL SQUARE FEET. DOCK #3 WILL BE REDUCED BY AUTHORIZING AN 8' BY 40' FLOATING DOCK.

ALSO, HISTORICALLY OCRM HAS NOT AUTHORIZED ROOFS ON HOBCAW CREEK, THEREFORE, THE ROOFS MUST BE DELETED IN ACCORDANCE WITH R 30-12(A)(2)(r)

Creek Club - Plaintiff
DHEC 000159

GIS REVIEW I'ON COMPANY



APPENDIX 2652

Creek Club - Plaintiff
DHEC 000160

JOINT
PUBLIC NOTICE

CHARLESTON DISTRICT, CORPS OF ENGINEERS
334 MEETING STREET - ROOM 621
P.O. BOX 919
CHARLESTON, SOUTH CAROLINA 29402
and the
S. C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

3 SEPTEMBER 1999

REGULATORY
Refer to: P/N #99-1G-322-P

MAJOR ACTIVITY

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), Sections 401 and 404 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (48-39-10 et seq.) an application has been submitted to the Department of the Army and the S.C. Department of Health and Environmental Control by

THE I'ON COMPANY
C/O NEWKIRK ENVIRONMENTAL, INC.
192 EAST BAY STREET, SUITE 201
CHARLESTON, SOUTH CAROLINA 29401

for a permit to construct six (6) community docks, a boat ramp and staging dock, a bulkhead or riprap revetment, and remove existing pilings in

HOBCAW CREEK

at several locations adjacent to the common area along the waterfront of the I'on development, off of Mathis Ferry Road, Mt. Pleasant, Charleston County, South Carolina.

In order to give all interested parties an opportunity to express their views

NOTICE

is hereby given that written statements regarding the proposed work will be received by both of the above mentioned offices until

12 O'CLOCK NOON, MONDAY, 3 OCTOBER 1999

from those interested in the activity and whose interests may be affected by the proposed work.



REGULATORY
Refer to: P/N #99-1G-322-P

3 SEPTEMBER 1999

The proposed work consists of constructing a 15' x 80' concrete boat ramp stabilized by riprap at the site of an existing boat ramp. A 6' x 60' staging dock/breakwater attached to highland by a 4' x 9' timber ramp is to be installed adjacent to the proposed boat ramp. The applicant also proposes to install 160 linear feet of wooden bulkhead with riprap toe protection at the area of existing concrete debris revetment near the proposed and existing boat ramp. Approximately 130 linear feet of riprap revetment is also to be constructed adjacent to this site as shown on the attached plans. The applicant has requested that the proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkhead, all revetment, or any combination of the two. In addition, the applicant has proposed to construct six (6) community docks as described in the attached narrative and shown on the attached plans. All proposed docks are to be used for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and electric lighting will be provided to the main dock in Hobcaw Creek (dock #1) and electric lighting will be provided to the other five docks. No other services will be provided. The purpose of the proposed work is for bank stabilization and for the common, private recreational use of the residents within the I'on community.

NOTE: Plans depicting the work described in this notice are available and will be provided, upon receipt of a written request, to anyone that is interested in obtaining a copy of the plans for the specific project. The request must identify the project of interest by public notice number and a self-addressed stamped envelope must also be provided for mailing the drawings to you. Your request for drawings should be addressed to the

U.S. Army Corps of Engineers
ATTN: REGULATORY
Post Office Box 919
Charleston, South Carolina 29402-0919

The District Engineer has concluded that the discharges associated with this project, both direct and indirect, should be reviewed by the South Carolina Department of Health and Environmental Control in accordance with provisions of Section 401 of the Clean Water Act. As such, this notice constitutes a request, on behalf of the applicant, for certification that this project will comply with applicable effluent limitations and water quality standards. The work shown on this application must also be certified as consistent with applicable provisions the Coastal Zone Management Program (15 CFR 930). The District Engineer will not process this application to a conclusion until such certifications are received. The applicant is hereby advised that supplemental information may be required by the State to facilitate the review.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Implementation of the proposed project would impact 0.21 acres of estuarine substrates and emergent

REGULATORY
Refer to: P/N #99-1G-322-P

3 SEPTEMBER 1999

wetlands utilized by various life stages of species comprising the red drum, shrimp, and snapper-grouper management complexes. Our initial determination is that the proposed action would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service (NMFS). Our final determination relative to project impacts and the need for mitigation measures is subject to review by and coordination with the NMFS.

The District Engineer has consulted the latest published version of the National Register of Historic Places for the presence or absence of registered properties, or properties listed as being eligible for inclusion therein, and this worksite is not included as a registered property or property listed as being eligible for inclusion in the Register. Consultation of the National Register constitutes the extent of cultural resource investigations by the District Engineer, and he is otherwise unaware of the presence of such resources. Presently unknown archaeological, scientific, prehistorical, or historical data may be lost or destroyed by the work to be accomplished under the requested permit.

The District Engineer has consulted the most recently available information and has determined that the project is not likely to affect the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species which has been determined to be critical. This public notice serves as a request to the U. S. Fish and Wildlife Service and the National Marine Fisheries Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the proposed activity, pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended).

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. Requests for a public hearing shall state, with particularity, the reasons for holding a public hearing.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest and will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency (EPA), under authority of Section 404(b) of the Clean Water Act and, as appropriate, the criteria established under authority of Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project will be considered including the cumulative effects thereof; among those are

REGULATORY
Refer to: P/N #99-1G-322-P

3 SEPTEMBER 1999

conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. A permit will be granted unless the District Engineer determines that it would be contrary to the public interest. In cases of conflicting property rights, the Corps of Engineers cannot undertake to adjudicate rival claims.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

If there are any questions concerning this public notice, please contact me at A/C 843-727-4330.

Mary Hope Glenn
Project Manager
Regulatory Branch
U.S. Army Corps of Engineers

10, 11 & 12 Project Location, Description & Purpose

The project site is an approximately 243 acre tract of land located between Mathis Ferry Road and Hobcaw Creek in the City of Mt. Pleasant, South Carolina. The site can be accessed from Mathis Ferry Road. The I'on Company (I'on), is currently developing the property with approximately 750 residential dwelling units. Project plans are for a mixed use, traditional neighborhood, with streets and lots laid out in a grid pattern with sidewalks and easy access to numerous common areas and open spaces. One significant feature of the plan preserves the entire, approximately ½ mile, of waterfront for community access. Two, 6' wide, pedestrian/bicycle bridges totaling 263' in length, have been permitted (97-1G-189-C & P) across marshes associated with Hobcaw Creek, for the purpose of providing community access to the common area along the waterfront. A conceptual dock master plan for six (6) community docks was submitted to SCDHEC-OCRM for review during the wetland master plan permit process in 1997.

I'on proposes, with this application, to finalize the location, design and use of the planned community docks. Specifically, I'on proposes to construct:

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*2. Approximately 160 linear feet of wooden bulkhead with rip rap toe protection, to be constructed within approximately 18" of the SCDHEC-OCRM critical line adjacent to Hobcaw Creek;

*3. Approximately 130 linear feet of rip-rap revetment to be constructed at the existing shoreline adjacent to Hobcaw Creek;

R/pcs/ioncoem

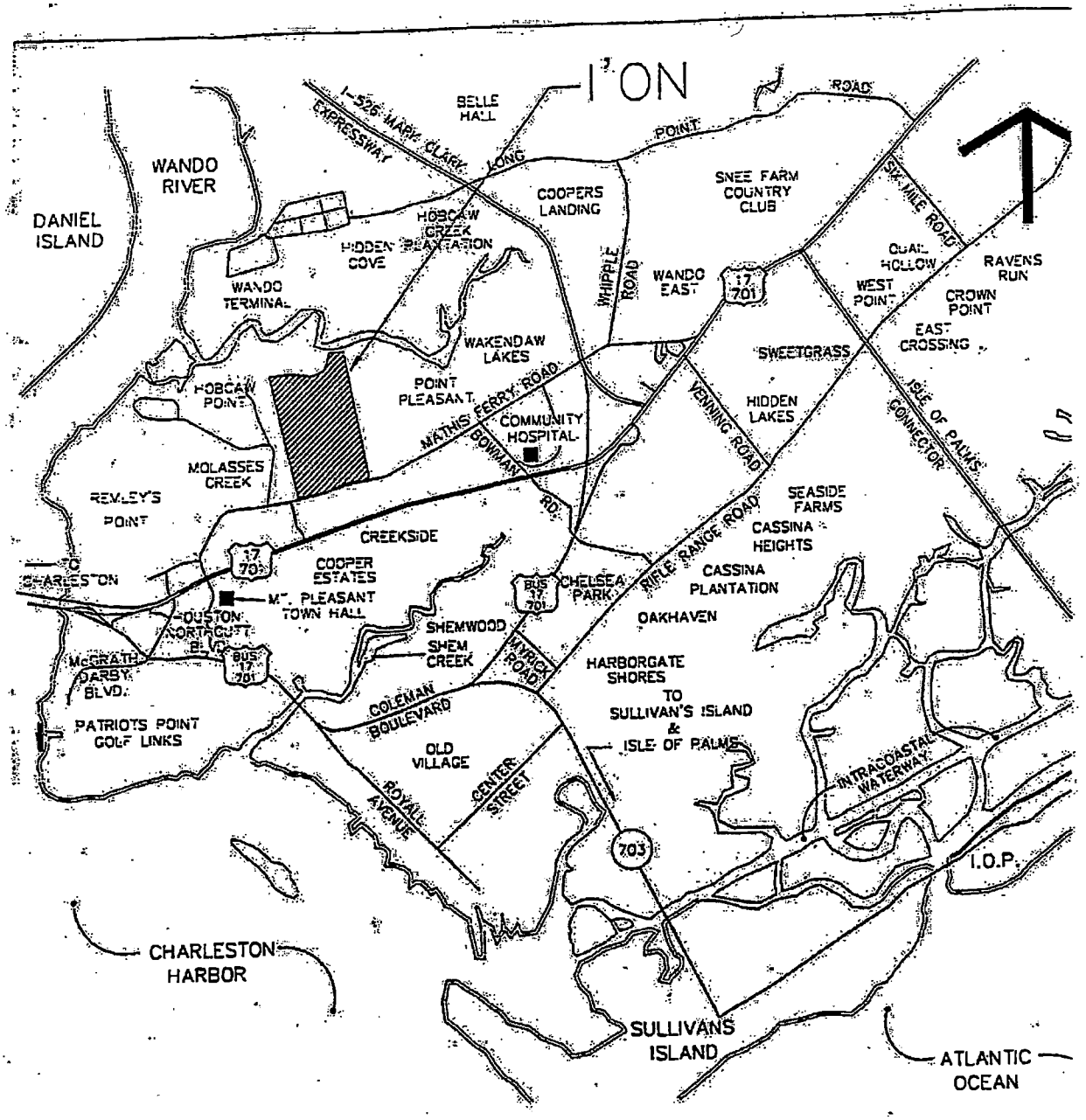
PN 99-1G-322

4. A 6' X 56' walkway leading to a 12' X 12' fixed pierhead with roof and a 10' by 100' floating dock, providing approximately 194 linear feet of temporary moorage for boats;
5. Two 6' X 28' and 40' walkways leading to 8' X 50' floating docks in an unnamed tributary of Hobcaw Creek;
6. Three 6' X 60', 200' and 140' walkways leading to 6' X 8' fixed pier heads in an unnamed tributary of Hobcaw Creek; and
7. Removal of existing pilings in Hobcaw Creek.

* The proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkhead, all revetment or any combination.

The purpose of proposed structures is for the common, recreational use of residents within the I'on community. All proposed docks are to be utilized for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and electric lighting will be provided to the main dock in Hobcaw Creek (dock #1) and electric lighting only will be provided to the other five docks. No other services will be provided.

PN#99-16-322



FILE NAME: T:\3303\LDWG\3303OCRM.DWG PLOT VIEW: VLOCMAP PLOTTING SCALE

NOT TO SCALE

DATUM: MSL, 1929 NGVD

I'ON

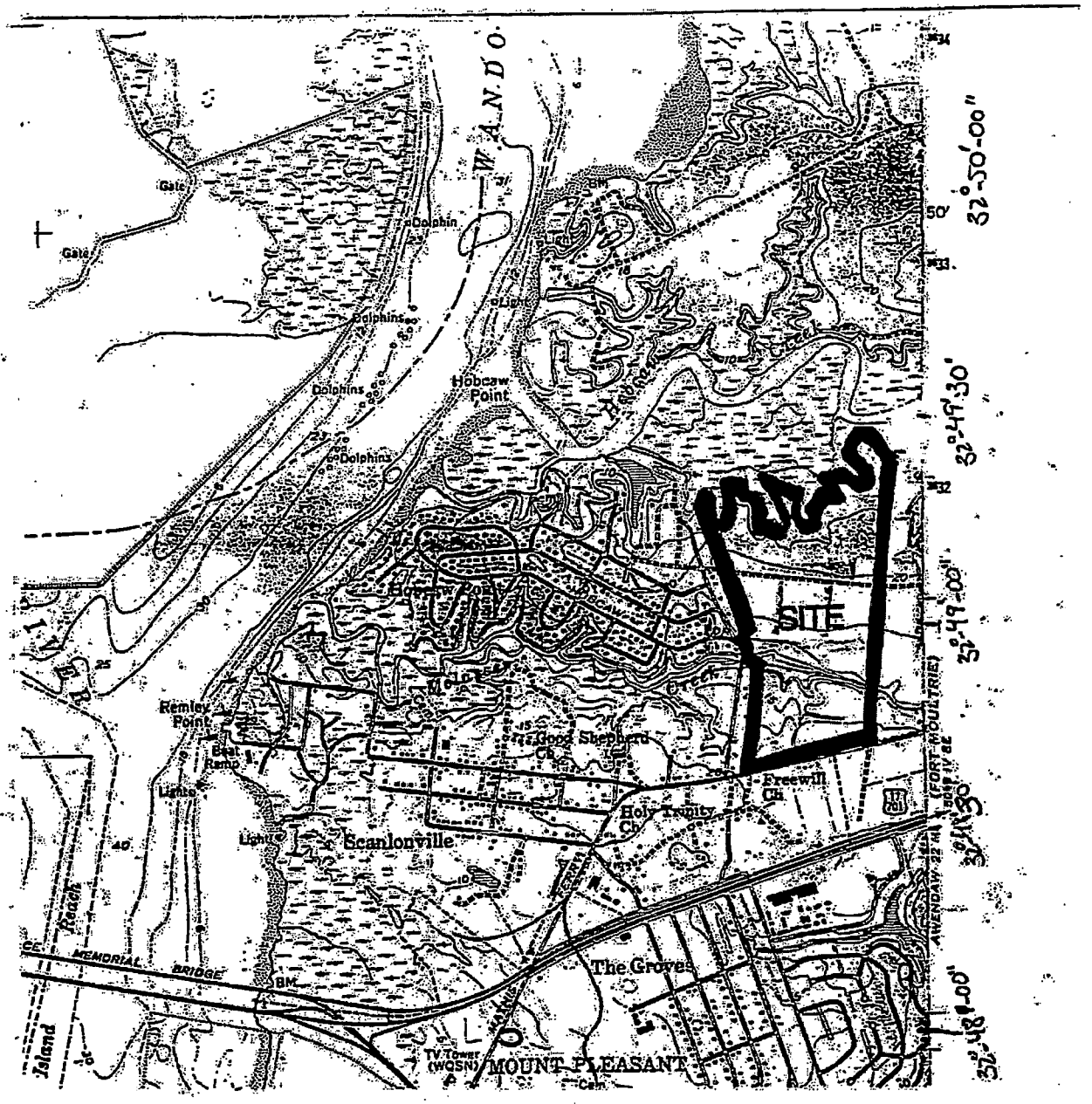
PROJECT LOCATION (MOUNT PLEASANT)

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-19-322

SHEET 1 OF 14 DATE: 8/10



SITE LATITUDE: 32°49'0" SITE LONGITUDE: 79°52'45" NOTE: MAP TAKEN FROM CHARLESTON QU

FILE NAME: F:\3303\DWG\3303OPV.DWG PLOT VIEW: WUSGS PLOTTING SCALE:

I'ON

PROJECT LOCATION (USGS MAP)

PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION

SCALE: 1" = 2000'+-

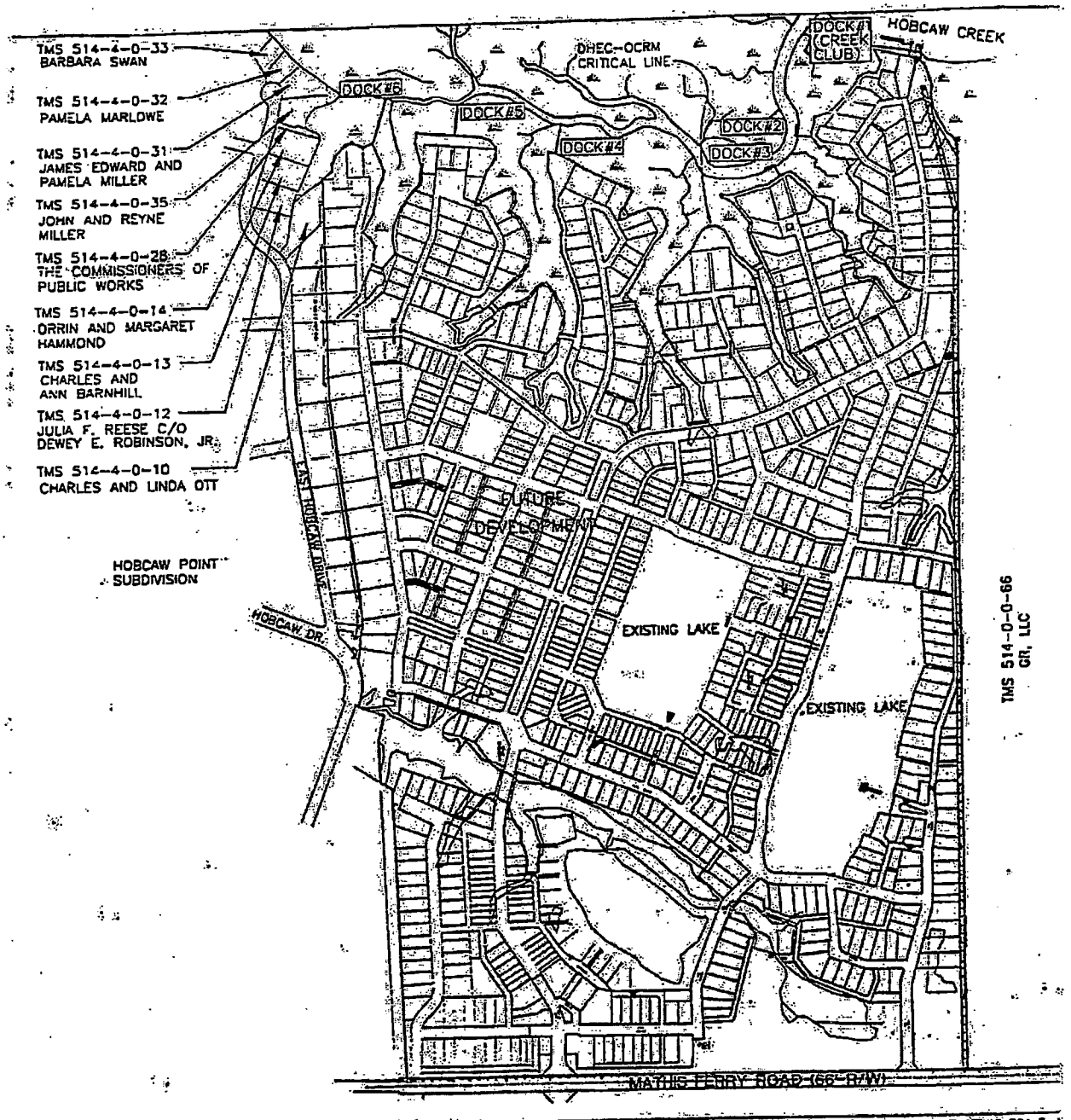
DATUM: MSL, 1929 NGVD

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

99-19-322

SHEET 2 OF 14 DATE: 8/10/



FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VION PLOTTING SCALE:

0' 300' 600'
SCALE: 1" = 600'

DATUM: MSL, 1929 NGVD

I'ON

PLAN VIEW OF I'ON PROJECT

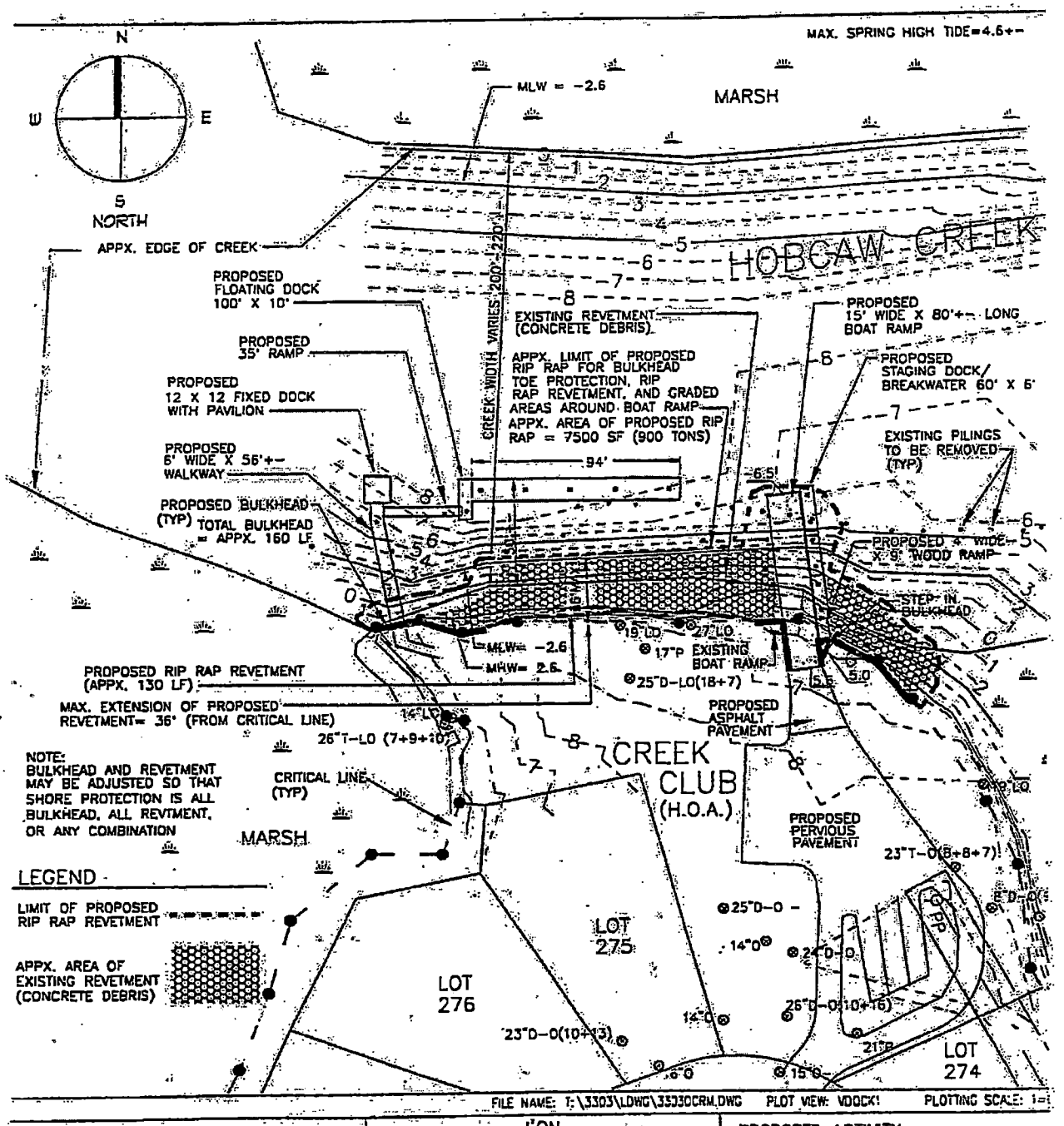
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-1G-322

SHEET 3 OF 14 DATE: 8/10,



0' 30' 60'

SCALE: 1" = 60'

DATUM: MSL, 1929 NGVD

I'ON

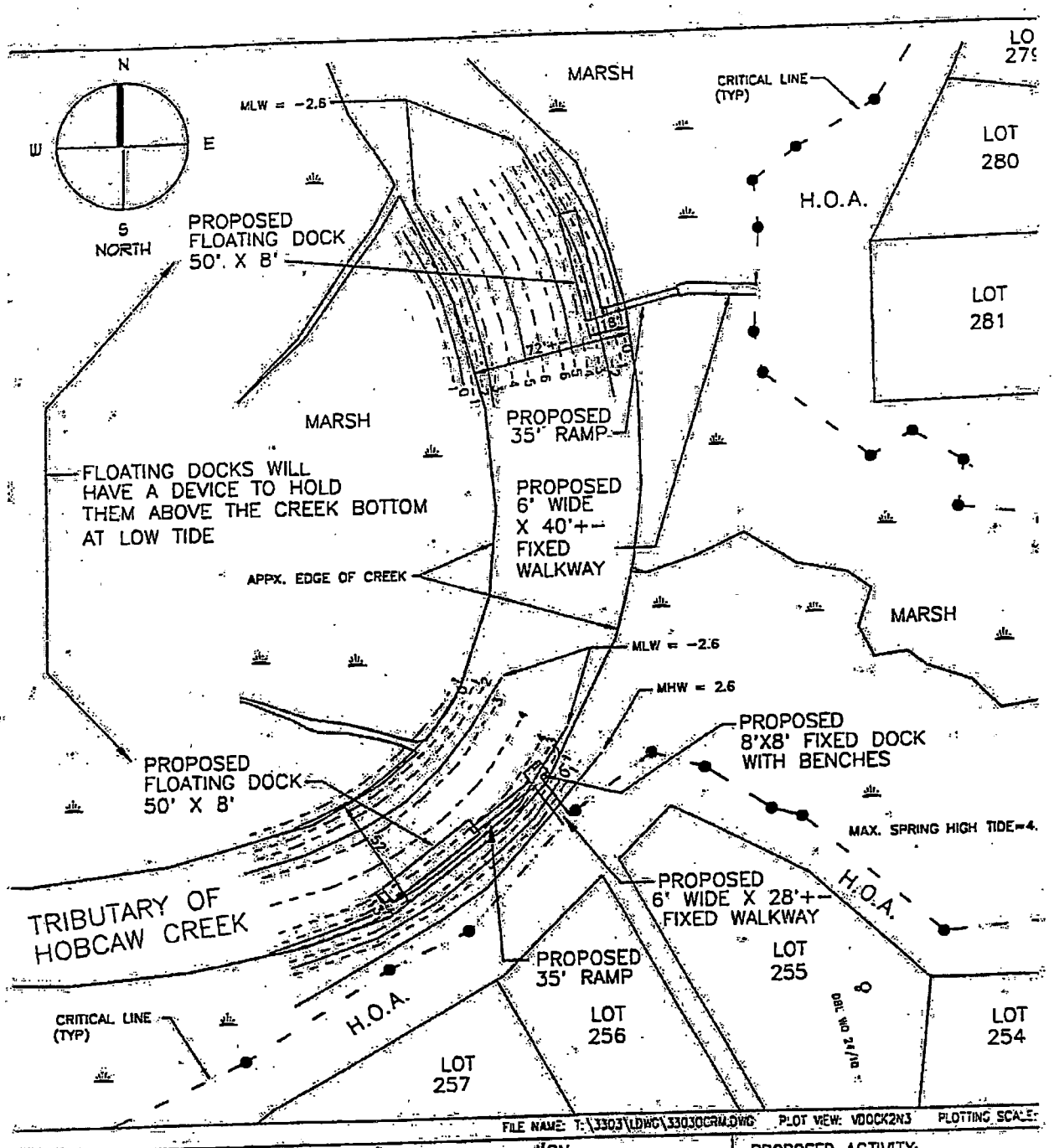
PLAN VIEW DOCK #1, BOAT RAMP, & SHORE PROTECTION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-16-322

SHEET 4 OF 14 DATE: 8/10/9



0' 30' 60'

SCALE: 1" = 60'

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

I'ON

PLAN VIEW DOCKS #2 AND #3

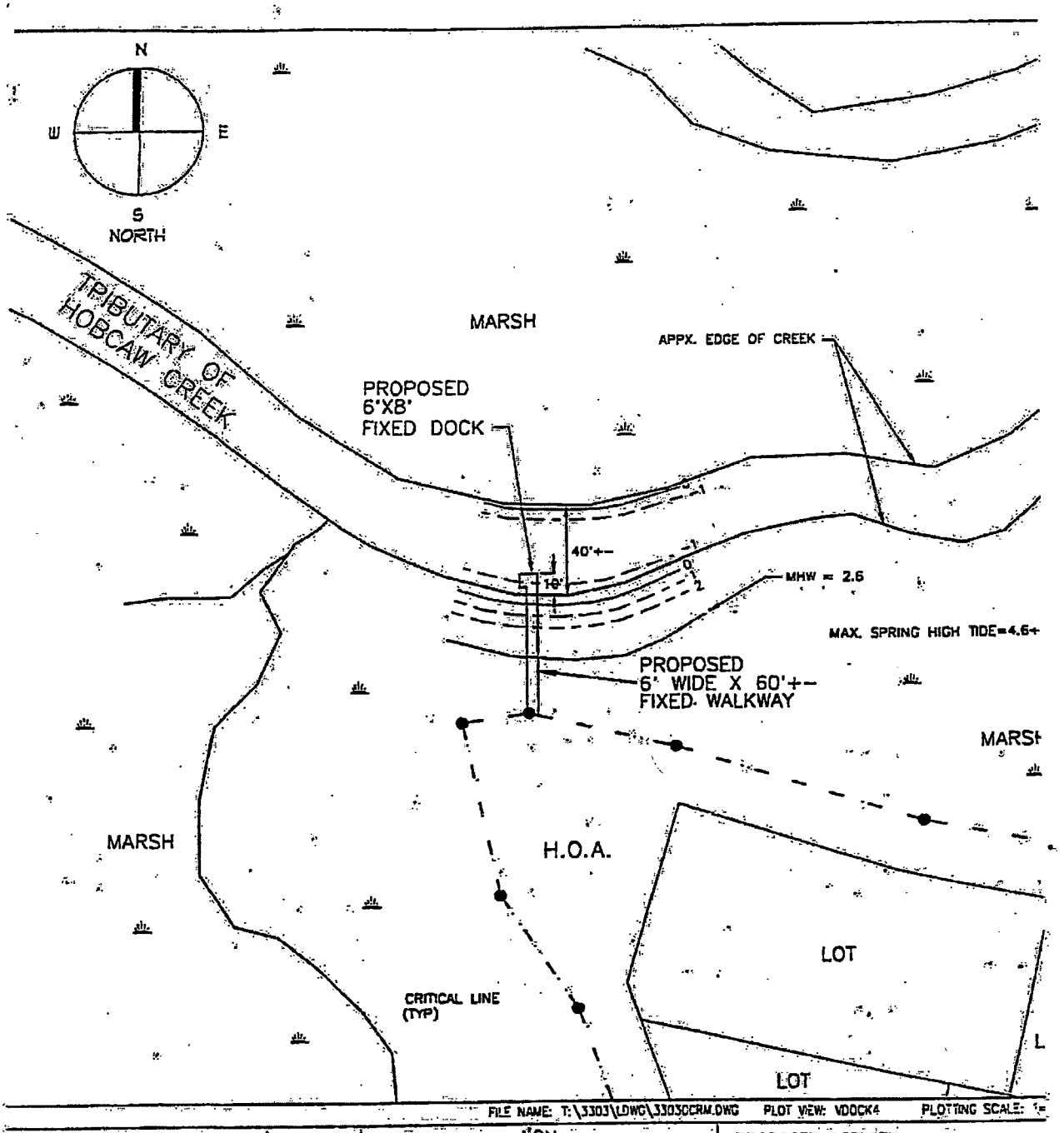
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-1G-322

SHEET 5 OF 14 DATE: 8/1C



0' 30' 60'
SCALE: 1" = 60'
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

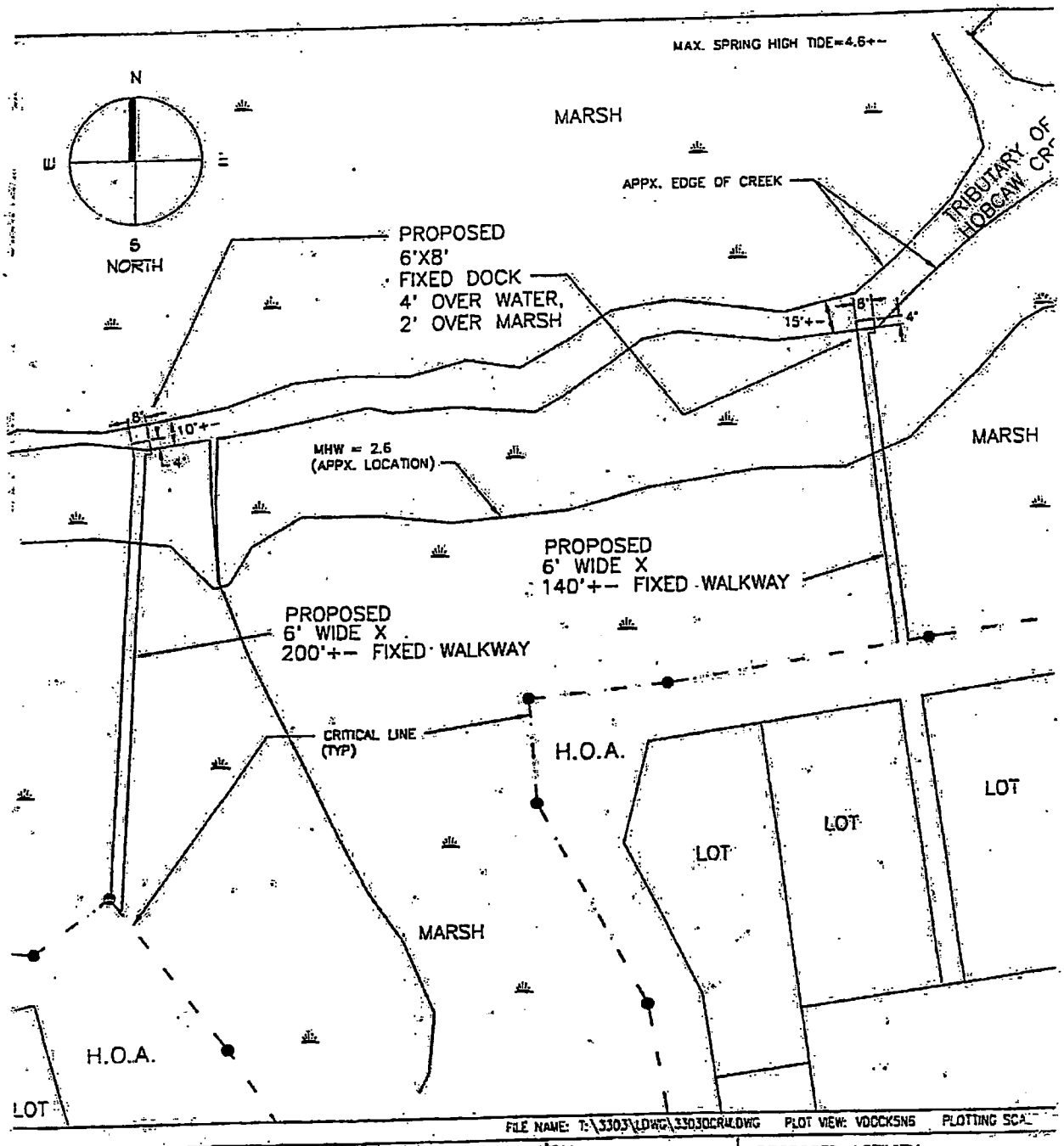
I'ON
PLAN VIEW
DOCK #4

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-IG-322

SHEET 6 OF 14 DATE: 8/10/9



0' 30' 60'

SCALE: 1" = 60'

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

I'ON

PLAN VIEW
DOCKS #5 AND #6

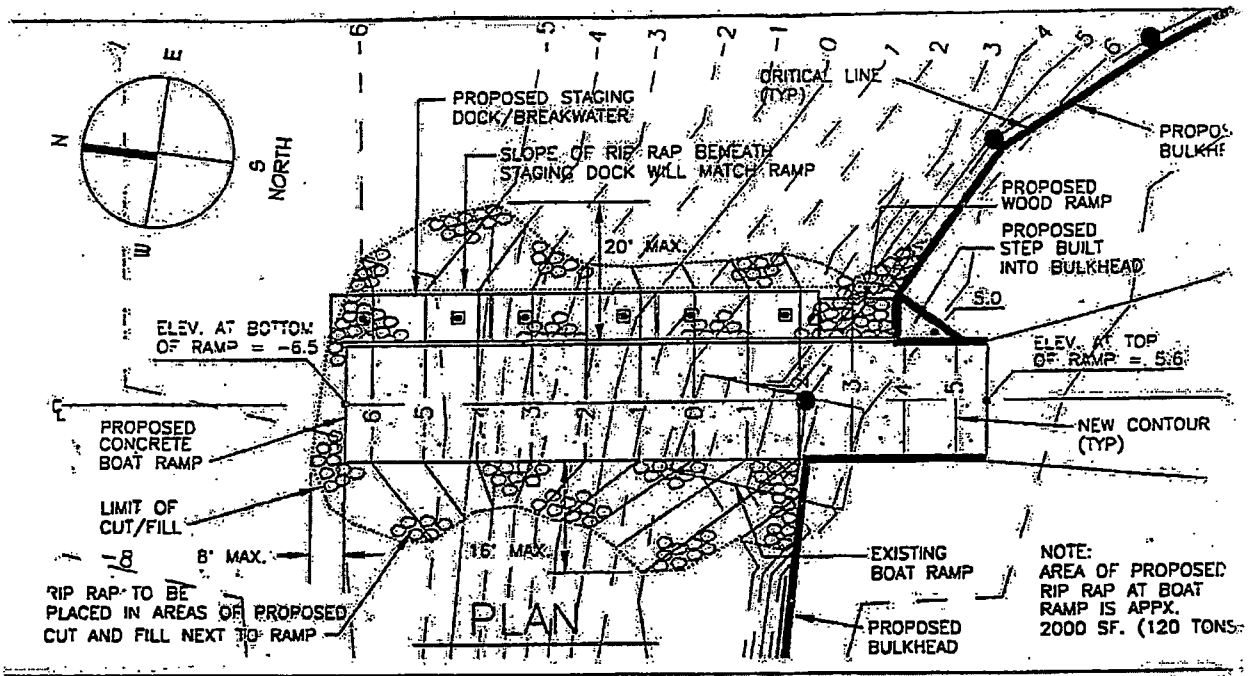
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

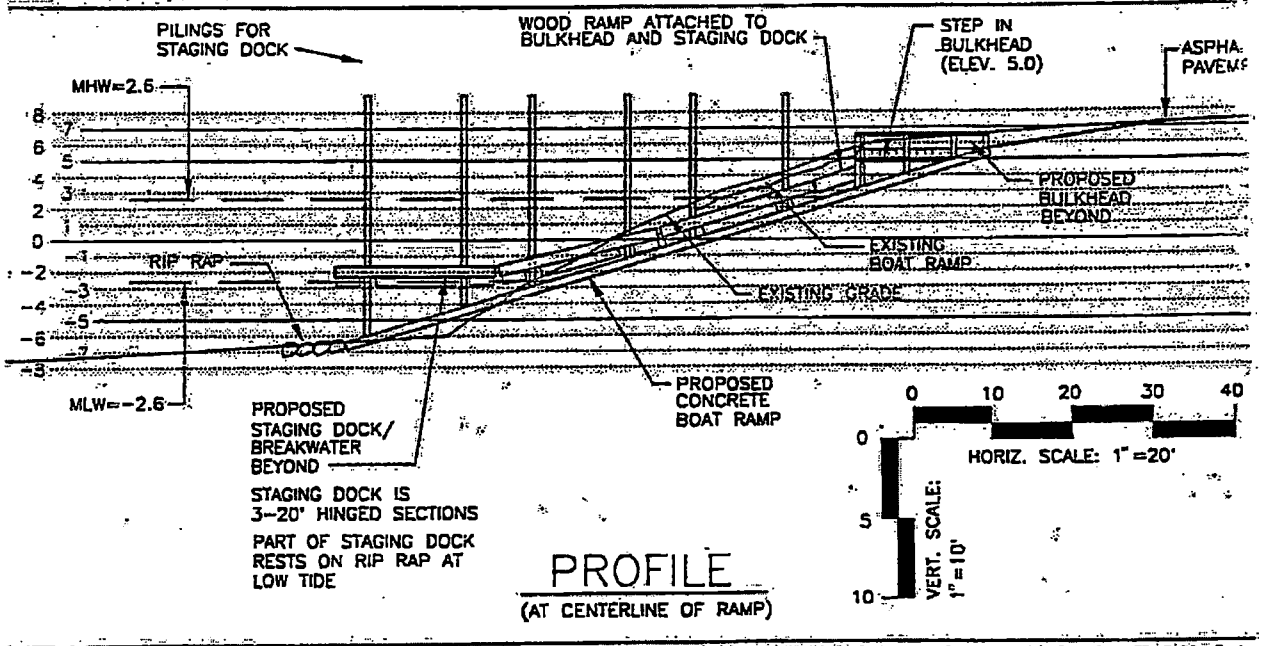
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-1G-322

SHEET 7 OF 14 DATE: 8/10/





FILE NAME: T:\3303\DWG\3303DCRM.DWG PLOT VIEW: VPLPROF PLOTTING SCALE: 1=

I'ON

BOAT RAMP PLAN AND PROFILE

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

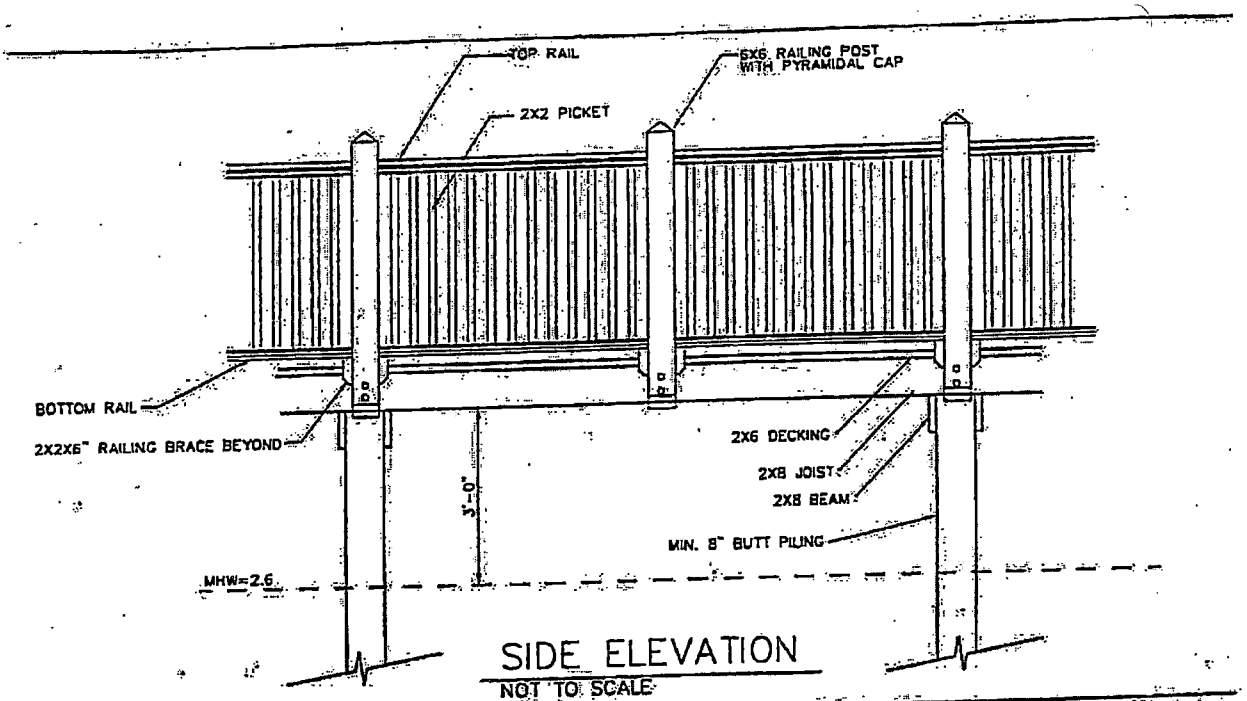
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

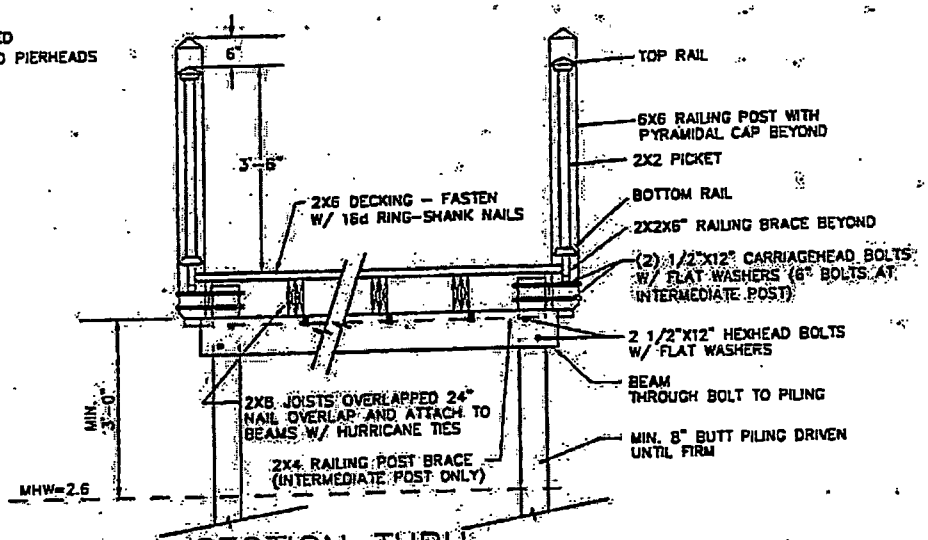
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 8 OF 14 DATE: 8/10/9



SIDE ELEVATION
NOT TO SCALE

NOTE:
RAILINGS MAY BE OMITTED
AT SOME WALKWAYS AND PIERHEADS



SECTION THRU
NOT TO SCALE

FILE NAME: T:\3303\LDWG\3303OCRM.DWG PLOT VIEW: VEIXED PLOTTING SCALE: 1=

I'ON

FIXED DOCK/ BOARDWALK

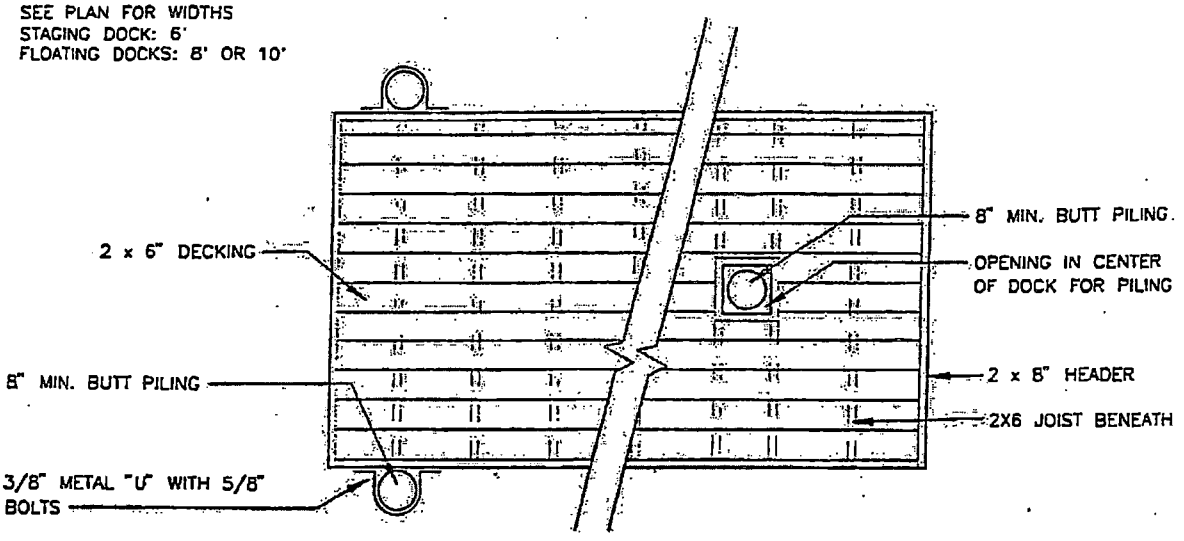
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

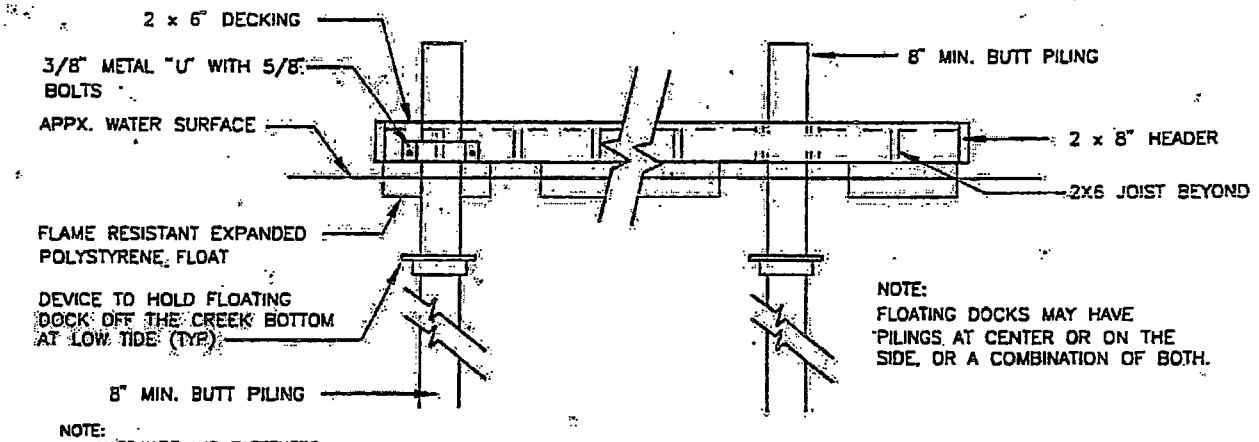
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 9 OF 14 DATE: 8/10/9



PLAN VIEW

NOT TO SCALE



NOTE:
ALL HARDWARE AND FASTENERS GALVANIZED

SIDE ELEVATION

NOT TO SCALE

FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VFLOAT PLOTTING SCALE: 1=2

I'ON

FLOATING/STAGING DOCK

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

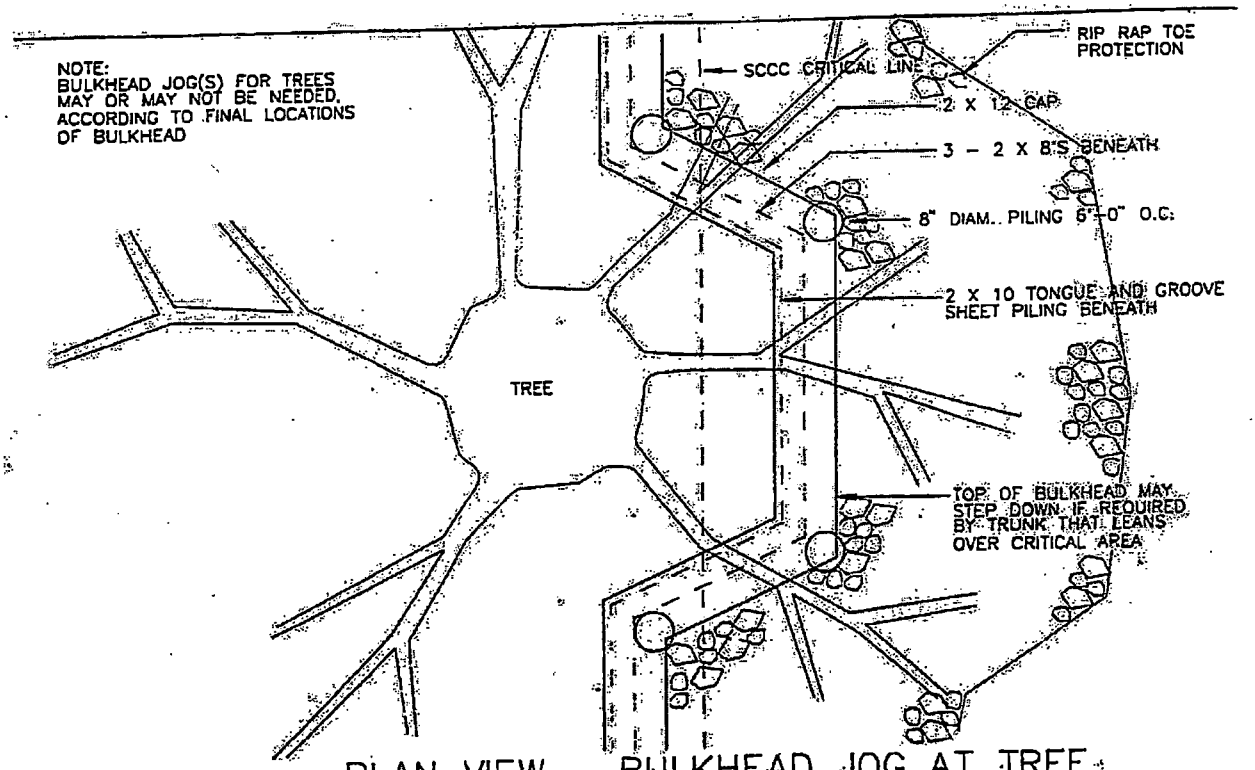
PROPOSED ACTIVITY:
. COMMUNITY WATERFRONT RECREATION

99-1G-322

DATUM: MSL, 1929 NGVD

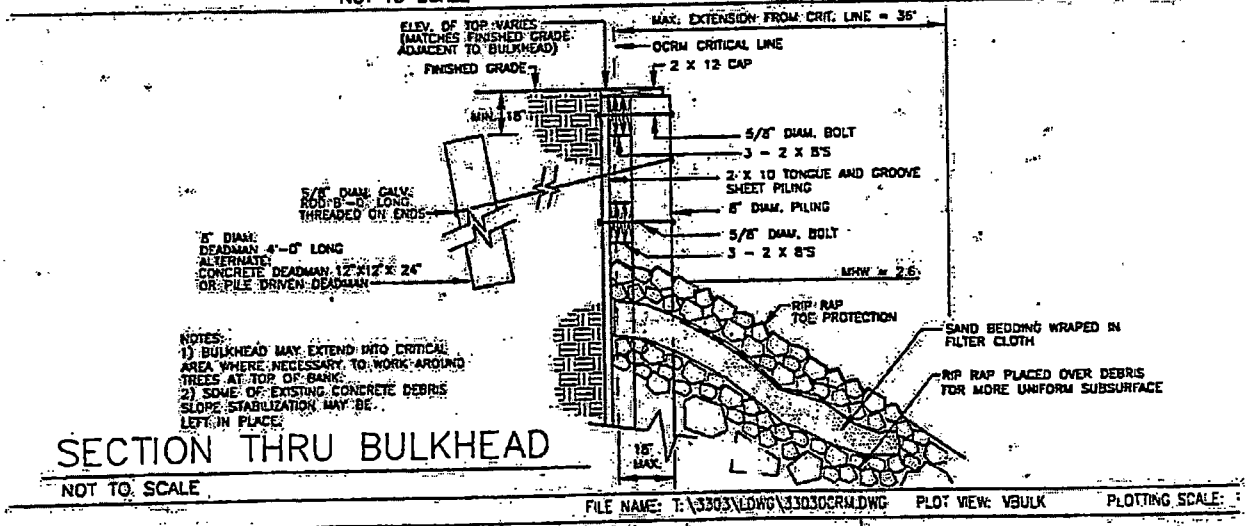
SCALE: AS NOTED

SHEET 10 OF 14 DATE: 8/10/99



PLAN VIEW – BULKHEAD JOG AT TREE

NOT TO SCALE



SECTION THRU BULKHEAD

NOT TO SCALE

FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VBULK PLOTTING SCALE:

I'ON

BULKHEAD

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

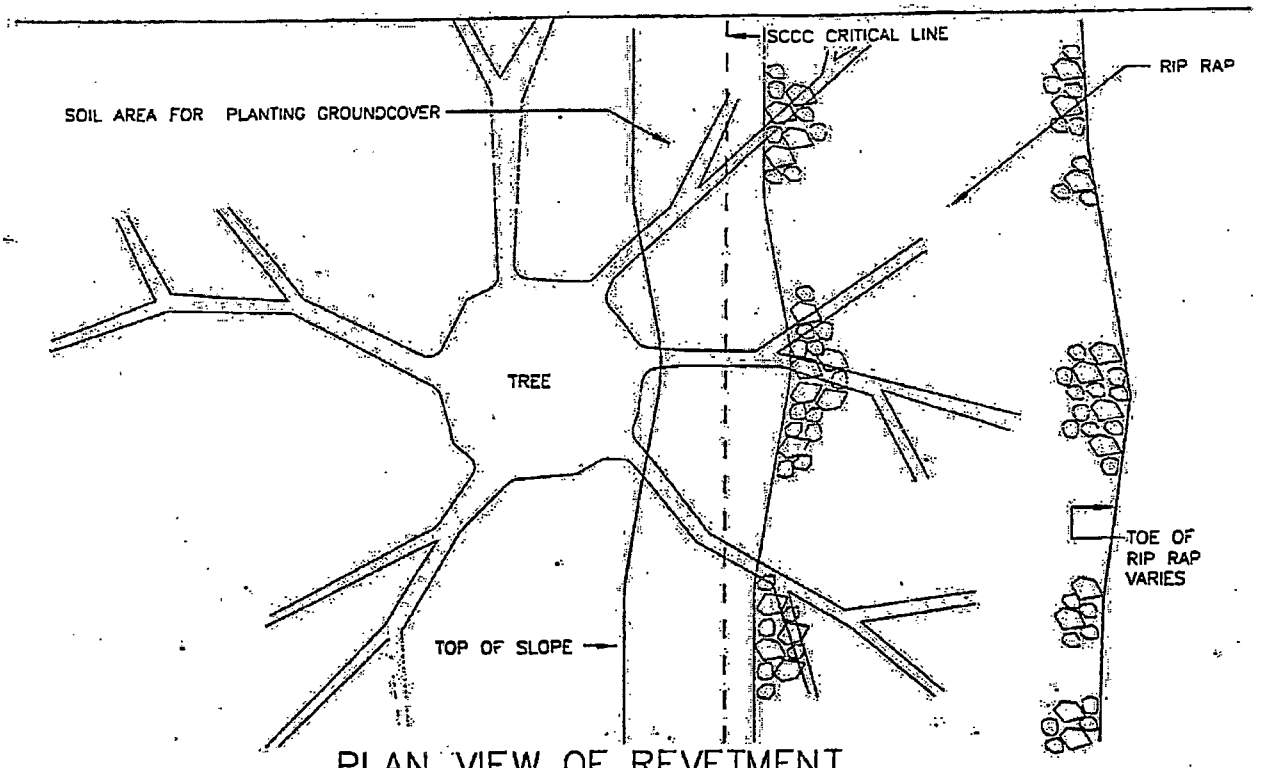
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-1G-322

SHEET 11 OF 14 DATE: 8/10/

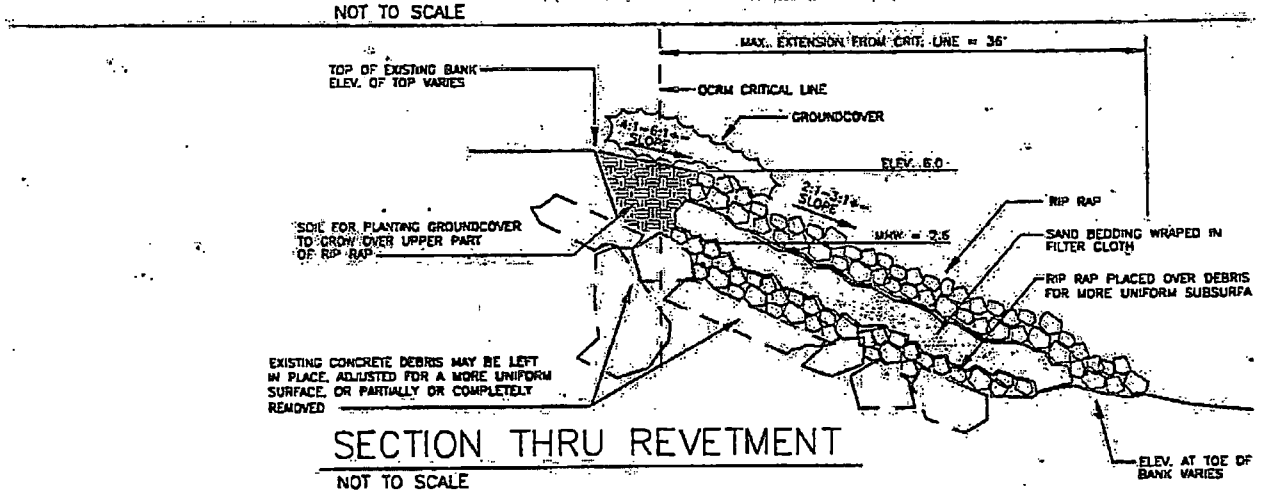
DATUM: MSL, 1929 NGVD

SCALE: AS NOTED



PLAN VIEW OF REVETMENT

NOT TO SCALE

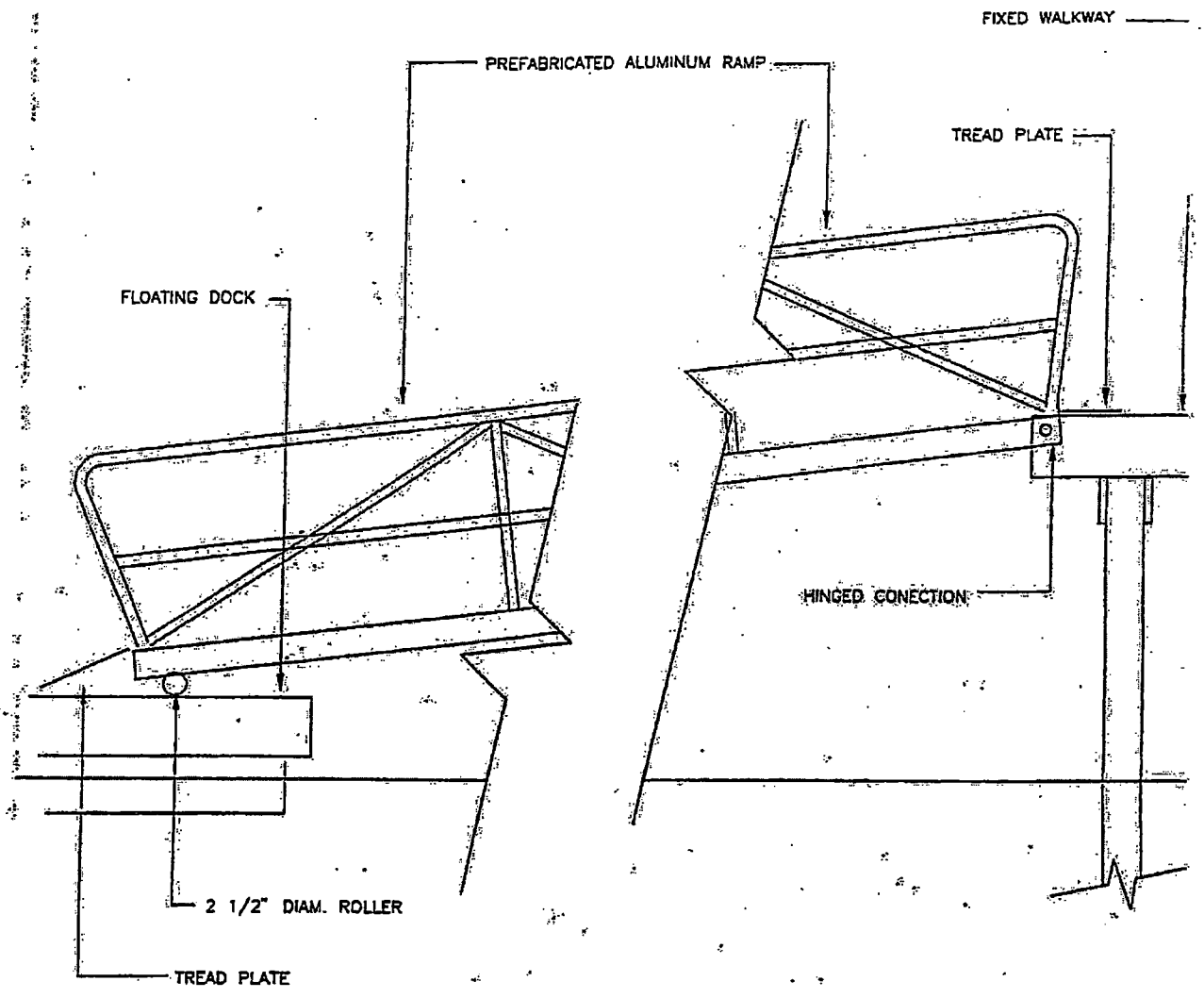


SECTION THRU REVETMENT

NOT TO SCALE

FILE NAME: T:\3303\LDWG\3303OCRM.DWG PLOT VIEW: VREVET PLOTTING SCALE: 1=

	I'ON RIP RAP REVETMENT APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION 99-16-322 SHEET 12 OF 14 DATE: 8/10/9
DATUM: MSL, 1929 NGVD SCALE: AS NOTED		



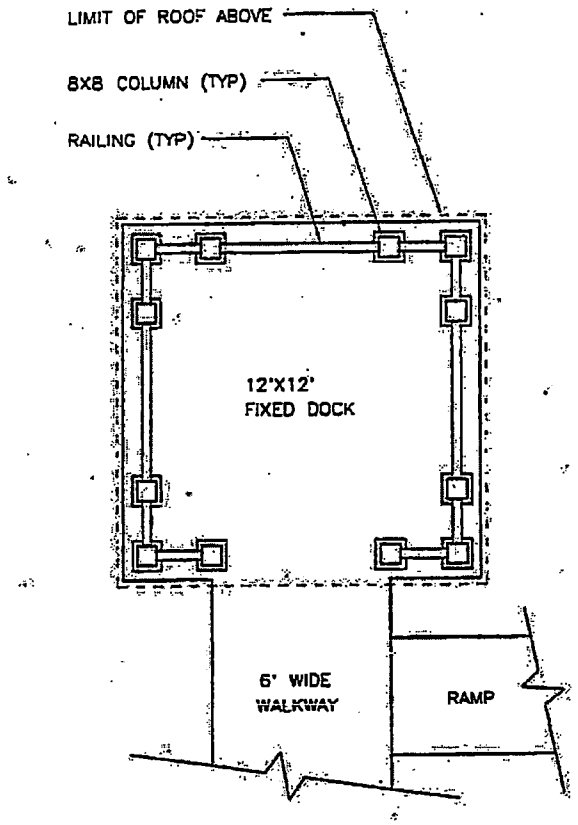
ELEVATION OF RAMP

NOT TO SCALE

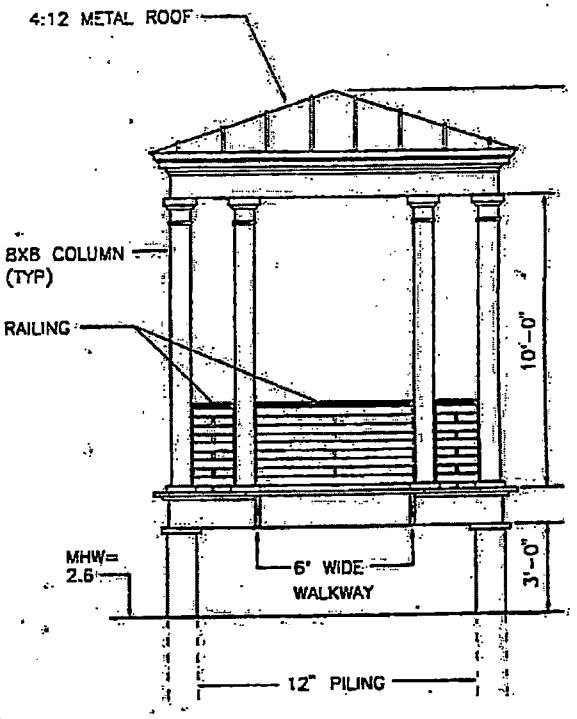
FILE NAME: T:\3303\LDWG\33030CRM.DWG PLOT VIEW: VRAMP PLOTTING SCALE: 1=2

	I'ON RAMP APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION 99-16-322 SHEET 13 OF 14 DATE: 8/10/99
DATUM: MSL, 1929 NGVD SCALE: AS NOTED		

NOTE:
THIS PAVILION IS INTENDED AS AN ARCHITECTURAL FEATUR
THE HEIGHT AND PROPORTIONS SHOWN ARE ESSENTIAL
FACTORS IN IT'S AESTHETIC APPEAL.



PLAN VIEW OF PAVILION
NOT TO SCALE



ELEVATION OF PAVILION
NOT TO SCALE

FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VPAV PLOTTING SCALE

I'ON

PAVILION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

99-1G-322

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

SHEET 14 OF 14 DATE: 8/1

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AGREEMENT

Agreement made this _____ day of September, 1999, by and between THE I'ON COMPANY, L.L.C., a South Carolina Limited Liability Company ("I'On") and GR, LLC, a South Carolina Limited Liability Company ("GR").

RECITALS

I'On is the Owner of a certain tract of land known as the I'On Development on Mathis Ferry Road, Mount Pleasant, South Carolina and is presently engaged in the development of the residential community designated as "I'On" (the "I'On Development").

GR has acquired a tract of land known as the "Mevers Property" which is adjacent to the I'On Development for the purpose of developing a residential community to be known as "Olde Park" (the "Olde Park Development").

I'On has constructed or will construct a road and sewer collection system for the use and benefit of the residents of the I'On Development.

I'On plans to provide its residents with the opportunity to utilize certain club amenities including, but not limited to tennis courts, swimming pools, community dock, boat ramp and a club house to be located on Hobcaw Creek through a proprietary club proposed to be called the "I'On Club".

GR desires (i) to construct a road to provide access between the I'On Development and the Olde Park Development, (ii) to tie into the I'On sewer collection system and lift station, and (iii) provide homeowners in Olde Park Development with access to membership interests in the I'On Club.

I'On has agreed to permit GR to construct said access road, tie into said sewer collection system and to make certain membership interests in the I'On Club available to residence of Olde Park on the terms and conditions set forth herein.

NOW, THEREFORE, for One Dollar ($1.00) and other good and valuable consideration, the sufficiency and receipt is hereby acknowledged, the parties agree as follows:

I. SEWER SYSTEM

1. Access to the Sewer Collection System. Once I'On has completed construction of its sewer system, GR shall have the right, at GR's sole cost and expense, to tie into the I'On sewer collection system at the access point designated on a drawing prepared by Seaman, Whiteside & Associates, Inc. (the "Engineer") attached as Exhibit "A" hereto and incorporated herein by reference. I'On agrees to execute such easement agreement as may be reasonably necessary to reflect of record the right to access the sewer collection system.

2. Specifications. The proposed sewer main shall be designed by Engineer and shall be constructed by a reputable contractor in a good and workmanlike manner in accordance with plans



and specifications prepared by Engineer and all requirements of the Town of Mt. Pleasant and Mt. Pleasant Waterworks. The proposed sewer main shall be stubbed out of sewer manhole #14 a minimum of 15 feet. Manhole #14 shall be set approximately 4' from the common property line on the I'On property. The sewer main shall extend into the GR tract not less than 10', nor more than 15'. The sewer main shall be 8" in (inside) diameter. The end of the 8" sewer main on the GR Tract shall be set at an invert elevation of 0.81', as depicted on the construction plans prepared for I'On Phase II, by Seamon Whiteside and Associates dated October 7, 1998, latest revision of May 24, 1999 and on Exhibit A. The capacity utilized by GR shall be limited to 115 RHUs. The sewer main shall be installed in accordance with the Mt. Pleasant Waterworks specifications for sanitary sewer systems and shall be conveyed to Mt. Pleasant Waterworks upon completion.

II. ROADS

1. Access to I'On Roads. Subject to applicable governmental approval, GR shall be permitted to construct an access road to intersect East Lake Road in I'On Development as more fully described on Exhibit "B" attached hereto and incorporated by reference.

2. Specifications. The proposed road connection shall be constructed as depicted on the attached Exhibit B. The roadway shall be comprised of a minimum of 6" of base course with a minimum of 2" of asphalt surface course, as required by subdivision construction standards established by the Town of Mt. Pleasant. The roadway width shall be not more than 20', for two way traffic, with the possibility of the addition of curb and gutter on each side of the road as needed to facilitate roadway drainage and/or meet the requirements of the Town of Mt. Pleasant. Upon completion, said road shall be publicly dedicated and conveyed to the Town of Mt. Pleasant.

3. Access Date. Such access point will become available to GR and will be open to traffic only after all of the platted roads serving the Olde Park Development have been constructed, paved, and dedicated and accepted by the Town of Mt. Pleasant (the "Access Date").

4. Construction Traffic. Contractors, sub-contractors and their agents and employees working in the I'On Development shall only use the I'On Development road system. Contractors, sub-contractors and their agents and employees working in the Olde Park Development shall only utilize Olde Park Development roads. Both I'On and GR will take the steps necessary to insure that third parties working in each development will comply with this provision.

5. Landscaping. GR at its expense shall, on or prior to the Access Date, landscape along the Access Road with such continuous plantings as shall be reasonably agreeable to I'On, it being understood and agreed that the plantings will consist of wax myrtles, yaupon holly and/or live oak indigenous, specimen, large shrubs and canopy trees. GR shall maintain said landscaped areas in a clean and attractive condition, and shall further obligate any homeowners association established for Olde Park to maintain landscaped areas. GR shall install an opaque vegetative buffer at the rear of Olde Park lots 15 through 18.

III. THE I'ON CLUB

1. Club Facilities. The I'On Company through a proprietary club to be entitled The I'On Club proposes to develop tennis, swimming and boating facilities within the I'On Development. In the initial phase of development, the I'On Club will construct six (6) clay tennis courts (three

lighted) an eight lane by twenty-five (25) yard swimming pool, children's pool, locker and bathing facilities, a Creek Club to be located on Hobcaw Creek, a boat ramp and community dock. The terms of membership, dues schedule, and amenity packages will be set forth in the club plan documents to be prepared by The I'On Club.

2. Memberships. The I'On Club will issue up to 850 memberships and I'On will reserve up to 115 initial memberships for residents of the Olde Park Development. Olde Park property owners electing to become members of the I'On Club will pay the same initiation fees and will be subject to the same dues schedule as members who receive an invitation for membership from The I'On Company.

3. Not Yet Determined. GR acknowledges that the I'On Club has not yet been formed and there may be some changes in the ultimate amenities established, the dues structure and other matters which are not capable of being finally determined as of the date hereof. Notwithstanding the foregoing, I'On agrees that the 115 memberships to be made available to Olde Park Development residents shall be made available on the same basis as made available to residents in the I'On Development. Similarly, the boat ramp and community dock will be made available for use by Olde Park residents on the same terms and conditions as made available to I'On residents. In the event that elements of the I'On Club that are actually completed are less than those described above, then GR's payment obligation shall be proportionally reduced according to Schedule D, attached hereto and made a part of this Agreement.

IV. CONSIDERATION

1. Amount. GR will pay to the I'On a total of Four Hundred Fifty Thousand and No/100 ($450,000.00) for access to the sewer system, road access, and the availability of participation by Olde Park residents in the I'On Club membership plan. Payment shall be in the form of Four Hundred Thousand and No/100 Dollars ($400,000.00) in cash and the conveyance by GR to I'On of .94 acres of land (valued at $50,000) as shown on a plat prepared by _____ and attached hereto as Exhibit "C".

2. Payment Terms. Payment will be made as follows: Upon execution of this Agreement, One Hundred Thousand and No/100 ($100,000.00); upon the issuance of a land disturbance permit by the Town of Mount Pleasant to GR for development for Olde Park, One Hundred Thousand and No/100 ($100,000.00); upon fifty (50%) percent completion of the swimming pool, six tennis courts and locker and bathing facility by I'On, One Hundred Thousand and No/100 ($100,000.00); upon completion of the Creek Club building, boat ramp, and community dock by I'On, One Hundred Thousand and No/100 Dollars ($100,000). All of said payments shall be nonrefundable at the time of payment, except that in the event that facilities actually completed by The I'On Company fall short of those specified above, then GR, LLC shall be entitled to a proportionate refund according to Schedule D. If said payments are not made as set forth herein, then I'On shall have the right to terminate this Agreement and GR and the residents of the Olde Park Development shall not be entitled to access the sewer system, roads, and club facilities as described herein.

3. Transfer of Land. With respect to the transfer of land, GR shall convey good and marketable fee simple title to said property by general warranty deed upon execution of this Agreement pursuant to a subdivision plat prepared by _____ at the expense of GR. GR shall pay deed stamps based on a value of $50,000 at the time of closing.

4. Entire Agreement. This Agreement, together with the other written agreements and instruments executed concurrently herewith or pursuant to the provisions hereof, contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between them respecting such matters.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which should be deemed an original, but all of which together constitute one in the same instrument.

6. Headings. Paragraph headings are for purposes of convenience and identification only and shall not be used to interpret and construe this Agreement.

7. Waiver. The failure of any party hereto to demand performance of any acts required hereunder shall not be deemed a waiver of right to enforce such performance or any other performance required later. A waiver can only be made if it is in writing and signed by the party excusing performance. Any attempted oral waiver shall not be valid.

8. Gender in Number. Whenever the singular or plural number or the masculine, feminine or neuter gender, is used herein, it shall equally include the others.

9. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

10. Binding Effect. This Agreement shall be binding upon, and inure to benefit of, the parties, respective heirs, representatives, successors and assigns.

11. Modification. This Agreement may be modified only be a written document signed by representatives of both parties. A properties oral modification shall not be effective.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

THE I'ON COMPANY, L.L.C.

_____ By: _____

_____ Its: Manager

GR, LLC

_____ By: _____

_____ Its: Manager

_____

South Carolina
DHEC
Department of Health and Environmental Control
1362 McMillan Avenue, Suite 400
Charleston, SC 29405
(803)744-5838 Fax (803)744-5847

Commissioner: Douglas E. Bryant

Board: John H. Burriss, Chairman
William M. Hull, Jr., MD, Vice Chairman
Roger Leaks, Jr., Secretary

Richard E. Jabbour, DDS
Cyndi C. Mosteller
Brian K. Smith
Rodney L. Grandy

Promoting Health, Protecting the Environment

Office of Ocean and Coastal Resource Management
Christopher L. Brooks, Deputy Commissioner

December 8, 1999

SPECIAL CONDITION(S)

Mr. Kenneth Hance
Newkirk Environmental Consultants
129 East Bay Street, Suite 201
Charleston, South Carolina 29401

Re: P/N# 99-1G-322-P
The I'On Company

Dear Mr. Hance:

The SCDHEC Office of Ocean and Coastal Resource Management has reviewed your application to construct six community docks, a boat ramp and staging dock, a bulkhead or rip-rap revetment and remove existing pilings at several locations adjacent to the common area along the waterfront of the I'On Development, Mount Pleasant, Charleston County, South Carolina and has issued a permit for this work. You should carefully read any Special Conditions, which we have placed on the permit, as they may modify the permitted activity. In addition, there are a series of General Conditions, which you should also review.

One copy of the permit, as issued, is enclosed. After carefully reading the permit, if you wish to accept the permit as issued, sign and date the permit in the signature block entitled "PERMITTEE".

PLEASE READ CAREFULLY: You are required to return a signed copy of your permit to this Department. If this permit is not signed and returned within thirty (30) days of issuance *OR* a written notice of Intent to Appeal filed within fifteen days (15), the Department reserves the right to cancel this permit.

After we have received **your accepted/signed permit a State official, designated to act for the Office of Coastal Resource Management will validate the permit and the completed permit will be returned to you from this department. At that time a request for construction placard card will be sent. You must send in this card before the time you wish to start construction. At that time a construction placard will be sent to you to post at the construction site.**

PLEASE NOTE: You are not authorized to commence work under the permit until we have received a copy of the entire permit accepted by you and you have received a copy signed by the permit Director or other authorized State official and a construction placard has been issued.

The receipt of this permit does not relieve you of the responsibility of acquiring any other federal or local permits that may be required.

Sincerely,

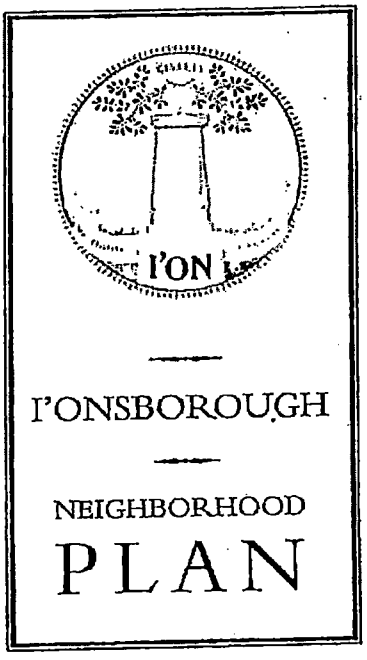
Richard Chinnis
Director of Permitting

newcove.doc\6
Enclosure

recycled paper

* I believe this was part of the original public notice of dock application

PLAINTIFF'S EXHIBIT 40





Creek Club - Plaintiff
Walbeck 000089

A NEIGHBORHOOD UNIQUELEY ITS OWN

I'On was developed and planned through the careful study of traditional neighborhoods and vernacular architecture in neighboring areas including downtown Charleston, the Old Village of Mt. Pleasant, Beaufort, and Savannah. Tree-lined streets, miles of marshfront paths, and shady sidewalks are designed to encourage walking, bicycling, and neighborly interactions among I'On residents. Complemented by the architectural style of the homes—the passive amenities parks and green spaces--create a sense of place and community within I'On.

THE I'ON CODE

The I'On Code was created to provide a set of design guidelines to foster the creation of a thoughtfully designed community. The Code is intended to provide visual harmony among buildings through the use of appropriate architectural proportions, elements, and details. The I'On Design Committee reviews all construction, site, and landscaping plans for compliance with the Code and provides guidance when necessary.

THE I'ON SQUARE

Truly the heart of the neighborhood, the I'On Square offers charming shops, salons and offices; additional commercial neighbors may include restaurants, gourmet food and wine stores, and more offices.– all within a short walk or bicycle ride from every home in I'On.

THE I'ON ASSEMBLY

Each homeowner belongs to the I'On Assembly, which governs the neighborhood's common areas. Shared maintenance costs of the Assembly include insurance and care of street landscaping.

THE I'ON TRUST

Environmental, social, and cultural activities in I'On, as well as in Mt Pleasant, are programmed, coordinated, and sponsored by The I'On Trust. The Trust, a non-profit organization, is actively supported by neighbors, friends, and patrons.

RECREATIONAL FACILITIES

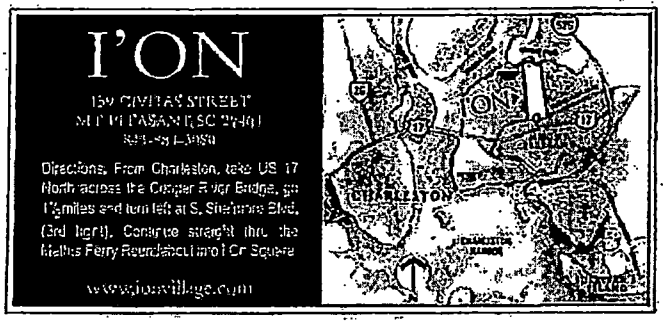
The I'On Club, when completed in 2000, will offer swimming, tennis, and the use of the Shelmore Creek Club (est completion 2001) This club is a private facility offering membership rights to all area residents.

SCHOOLS AND LIBRARIES

Mt. Pleasant boasts the highest-ranked public schools in the region. Children attend James B. Edwards Elementary School only 1.5 miles from I'On, Moultrie Middle School approximately 2 miles away near the Old Village, and Wando High School just 2 miles up Mathis Ferry Road. Excellent private schools are also nearby. Neighbors can walk or ride bikes to the Mt. Pleasant Regional Library, only a mile away.

HOSPITALS

The East Cooper Regional Hospital is 1.2 miles from I'On. Roper Hospital and the State's Medical University, in downtown Charleston, provide renowned health facilities within a 10-minute drive.

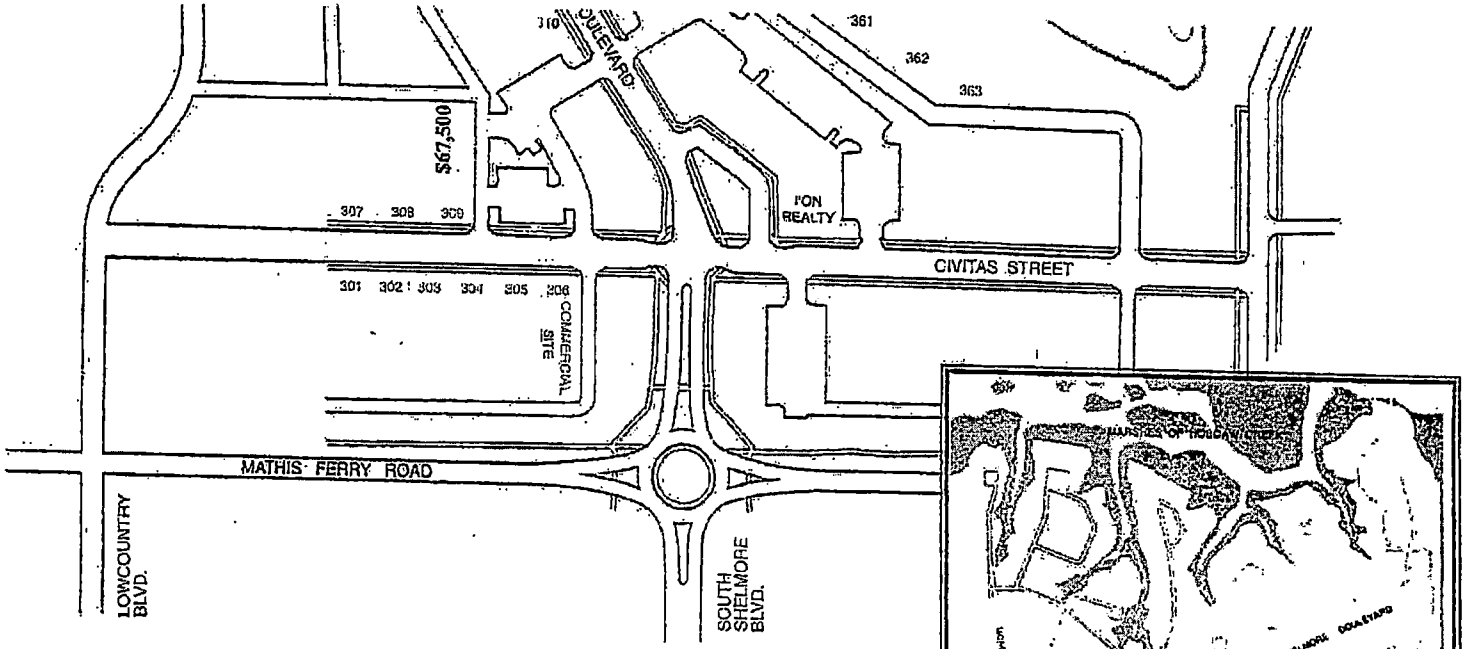


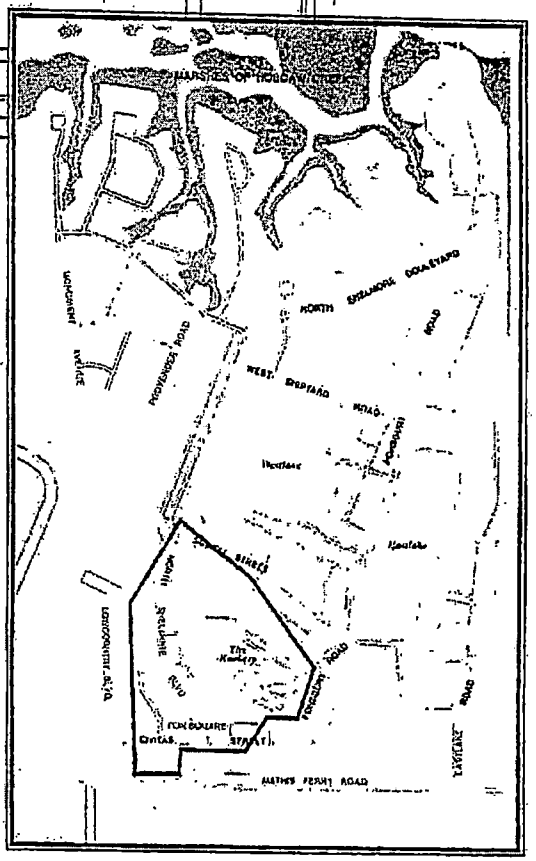
I'ON
150 CIVITAS STREET
MT PLEASANT, SC 29464
843-849-3858

Directions: From Charleston, take US 17 North across the Cooper River Bridge, go 1½ miles and turn left at S. Shelmore Blvd. (3rd light). Continue straight thru the Mathis Ferry Roundabout into I'On Square

www.ionvillage.com

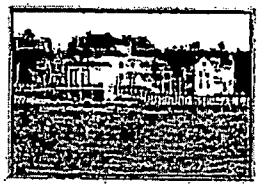
For informational purposes only. Kindly note all site plans, property lines, rights of way, improvements, and amenities depicted, or described herein, are subject to change or cancellation (in whole or part) without notice. The I'On Company may modify designs prior to or during construction. Obtain the Property Report required by Federal law and read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.





I'On, a new neighborhood in Mt. Pleasant, exemplifies the best of neighborhood building and planning practices with an eye toward a classical architectural style. While inspired by coastal towns and villages like Beaufort, Savannah, Charleston, and the Old Village of Mt. Pleasant, I'On is uniquely its own.

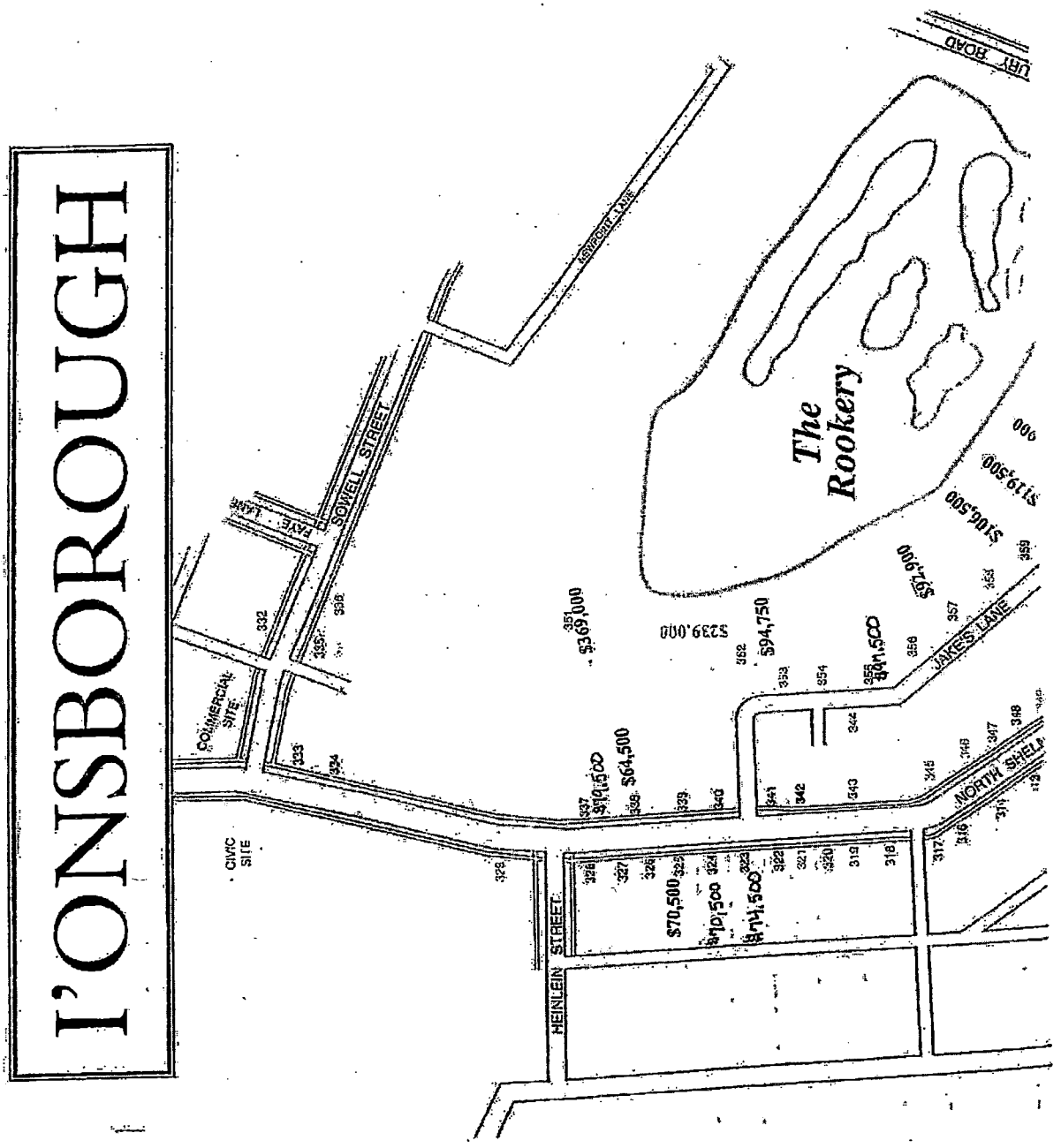
FOR MORE INFORMATION, PLEASE CALL I'ON REALTY 843.884.3080 OR VISIT OUR WEBSITE AT WWW.IONVILLAGE.COM.



I'ON



Creek Club - Plaintiff
Walbeck 000091


I'ONSBOROUGH
The Rookery
SOWELL STREET
HEINLEIN STREET
JAKES LANE
NORTH SHELF
COMMERCIAL SITE
CIVIC SITE
$369,000
$64,500
$94,750
$239,000
$70,500
$71,500
$71,500
$71

RECEIVED
MAR 0 2 2000
DHEC-OCRM
CHARLESTON OFFICE

DECISION DOCUMENT ON

PERMIT # 99-1G-322

This document is an evaluation of the application for a Department of the Army permit submitted by The I'On Company under Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (33 U.S.C. 1344) and constitutes a review for compliance with the 404(b)(1) Guidelines, an Environmental Assessment, a Finding of No Significant Impact (FONSI), and Statement of Findings. All factors which may be relevant to the proposal have been considered including the cumulative effects thereof and those factors referenced in paragraph 2, below. The proposed project is located in Hobcaw Creek at several locations adjacent to the common area along the waterfront of the I'On development, which is located off of Mathis Ferry Road, Mount Pleasant, Charleston County, South Carolina. The proposed project consists of constructing six community docks, a boat ramp and staging dock, a bulkhead or riprap revetment, and the removal of existing pilings. In detail, the proposed project consists of constructing a 15' x 80' concrete boat ramp stabilized by riprap at the site of an existing boat ramp. A 6' x 60' staging dock/breakwater attached to highland by a 4' x 9' timber ramp is to be installed adjacent to the proposed boat ramp. The applicant also proposes to install 160 linear feet of wooden bulkhead with riprap toe protection at the area of existing concrete debris revetment near the proposed and existing boat ramp. Approximately 130 linear feet of riprap revetment is also to be constructed adjacent to this site as shown on the attached plans. The applicant has requested that the proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkhead, all revetment, or any combination of the two. In addition, the applicant has proposed to construct six (6) community docks. Community dock #1 consists of a timber pier with a 12' x 12' pierhead with a pavillion attached to highland by a 6' x 56' walkway. In addition, a 10' x 100' floating dock is to be installed on the upstream side of the pierhead and attached to the pierhead by a 4' x 35' ramp. Community dock #2 consists of a 6' x 40' timber walkway attached to highland. An 8' x 50' floating dock is to be installed at the waterward end of the walkway and attached to the walkway by a 4' x 35' ramp. Community dock #3 consists of a timber pier with an 8' x 8' fixed pierhead with benches attached to highland by a 6' x 28' walkway. An 8' x 40' floating dock is to be installed on the upstream side of the pierhead and attached to the pierhead by a 4' x 35' ramp. Community dock #4 consists of a timber pier with a 6' x 8' pierhead attached to highland by a 6' x 60' walkway. Community Dock #5 consists of a timber pier with a 6' x 8' pierhead(4' over water, 2' over marsh) attached to highland by a 6' x 140' walkway. Community dock #6 consists of a timber pier with a 6' x 8' pierhead (4' over water, 2' over marsh) attached to highland by a 6' x 110' walkway. All proposed docks are to be used for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and lighting will be provided to the main dock in Hobcaw Creek (dock #1). Docks 4-6 may be lit only by low level, solar powered, motion detector lighting and any necessary navigation lighting. Docks 1-3 may need higher level lighting but it will also be solar powered, motion detector lighting that will illuminate only when in use. No other services will be provided. The purpose of the proposed work is for bank stabilization and for the common, private recreational use of the residents within the I'On community.

1. I have reviewed and evaluated, in light of the overall public interest, the documents and factors concerning this permit application, as well as the stated views of other interested Federal and Non-Federal agencies and the concerned public, relative to the proposed work.



In these creeks. With regard to aesthetics and impacts to marshlands, the agent for the applicant responded to these comments stating that "It is important to note that l'On's master plan does not provide for individual docks. The six docks requested by the l'On Company are for the use and enjoyment of the l'On community and are proposed in lieu of individual private docks along approximately 2,600 linear feet of waterfront". The docks have been designed to minimize the potential impact of the structures on marshlands and are consistent with current State and Federal Regulations. In addition, the location of dock #6 has been moved as shown on sheet 7 of 14 revised December 8, 1999. This was made a condition of the State Permit/401 Water Quality Certification. In its new location, the dock should not be seen by the Hammonds or the Millers. Since this concession materially reduced the controversy surrounding the application and facilitated a timely resolution of this issue, a condition reflecting this will be inserted in the permit as follows:

"The permittee agrees that dock #6 must be constructed in the new location as shown on sheet 7 of 14 revised December 8, 1999."

In response to the concerns of these adjacent property owners with regard to lighting, the applicant has changed the type of lighting on the docks. The type of lighting has been changed from electrical lighting to low level, solar powered motion detector lighting and any necessary navigation lighting on docks 4, 5, and 6. Docks 1, 2, and 3 may need higher level lighting, but it will also be solar powered, motion detector lighting that will only illuminate when in use. Since this concession materially reduced the controversy surrounding the application and facilitated a timely resolution of this issue, a condition reflecting this will be inserted in the permit as follows:

"That the permittee agrees that only solar powered, motion detector lighting that illuminates only when in use may be used on docks 1, 2, and 3. In addition, the permittee agrees that only low level, solar powered, motion detector lighting that illuminates only when in use may be used on docks 4, 5, and 6, in addition to any navigation lights that may be required."

d. **Other considerations:** A review of the information supplied by the applicant, other pertinent documents and/or information, and comments received in response to the public notice indicates that no aspect of the proposed project is likely to jeopardize the continued existence of threatened or endangered species nor destroy or modify the habitat of these species determined critical in accordance with the Endangered Species Act of 1973. A special condition has been included in this permit which requires that a copy of the permit and drawings be available at the site of the permitted activity during construction. The purpose of the project is for bank stabilization and for the common, private recreational use of the residents of the l'On community.

In light of the special conditions a compliance inspection will be conducted to determine if compliance with the terms and conditions of the permit has occurred.

4. 404(b)(1) Finding of Compliance:

After careful consideration of the potential short-term and long-term effects of the proposed

discharge of dredged or fill material on the physical substrate; water circulation; fluctuation, and salinity; suspended particulates and turbidity; contaminants; aquatic ecosystem and organic determination; proposed disposal site and mixing zones; cumulative effects on aquatic ecosystems; and secondary effects on the aquatic environment in accordance with subparts C-F of 40 CFR 230 and after careful consideration and evaluation of all practicable alternatives and in finding that all appropriate and practicable measures to minimize the potential harm to the aquatic ecosystem have been taken in accordance with subpart H. I find this proposal to be in compliance with the 404(b)(1) Guidelines.

5. **Finding of No Significant Impact (FONSI):**

Based on the information presented above and in consideration of other pertinent documents and/or information, and after considering the purpose of and need for the action, alternatives (as appropriate), the effected environment and the consequences of the action, I have concluded that the proposed project will not result in a significant impact on the human environment. As a result, the preparation of an Environmental Impact Statement (EIS) is not warranted.

6. I find that issuance of the Department of the Army permit as prescribed by current Department of the Army regulations to the I'On Company for the proposed work in accordance with the drawings attached hereto, is based on a thorough analysis and evaluation of the various factors enumerated above; that there are no reasonable alternatives available to the applicant that will achieve the purposes for which the work is being constructed; that the proposed work is in accordance with the overall desires of the public as reflected in the comments of State and local agencies and the general public; that the proposed work is deemed to comply with established State and local laws, regulations and codes; that there have been no identified significant adverse environmental effects related to the work and that the proposed work will not significantly affect the quality of the human environment as evidenced by paragraph 5, above; that the issuance of this permit is consonant with National policy, statutes, and administrative directives; and that on balance, issuance of a Department of the Army permit to the I'On Company for the proposed work is not contrary to the public interest.

February 28, 2000

for: Mark S. Held
Lieutenant Colonel, U.S. Army
District Engineer

Robert H. Riggs
Regulatory Branch

A copy of the NAO was attached to the letter. MHR 2/29/00

BK O 415PG653

STATE OF SOUTH CAROLINA)
) QUITCLAIM DEED
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, that **I'ON CLUB, LLC**, in the State aforesaid, for/and in consideration of the sum of FIVE AND NO/100 DOLLARS ($5.00), to it in hand paid at and before the sealing of these Presents by **GEOFFREY D. GRAHAM, THOMAS C. GRAHAM AND VINCENT G. GRAHAM**, in the State aforesaid, the receipt whereof is hereby acknowledged, has remised, released and forever quitclaimed, and by these Presents do remise, release and forever quitclaim unto the said **GEOFFREY D. GRAHAM , THOMAS C. GRAHAM AND VINCENT G. GRAHAM**, the following described property, to-wit:

SEE EXHIBIT "A" ATTACHED HERETO
AND INCORPORATED HEREIN BY REFERENCE FOR LEGAL DESCRIPTION.

TMS Number: 535-06-00-219

Address of Grantee(s):
159 CIVITAS STREET
MT. PLEASANT, SC 29464

This is the same property conveyed to the Grantor(s) by deed of conveyance from The I'On Company, LLC, dated August 15, 2000, and recorded August 16, 2000, in Book C353, page 484, in the R.M.C. Office for Charleston County, South Carolina.

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 **GEOFFREY D. GRAHAM, THOMAS C. GRAHAM AND VINCENT G. GRAHAM**, their heirs and assigns, forever.



BK 0 415PG654

IN WITNESS WHEREOF, I'ON CLUB, LLC, a South Carolina Limited Liability Company, has caused these presents to be executed in its name by Vincent G. Graham, its Manager, this _____ day of August, in the year of our Lord Two Thousand Two and in the Two Hundred and Twenty-seventh year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

I'ON CLUB, LLC

Barbara G. Salter
Witness #1

By: _____
Vincent G. Graham
Its: Manager

R M Mahaffey, Jr.
Witness #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me by I'ON CLUB, LLC, by Vincent G. Graham, its Manager, this 15th day of August, 2002.

Notary Public for SOUTH CAROLINA (SEAL)
My commission expires: 3/2/07

BK 0 415PG655

EXHIBIT A

ALL that lot, piece or parcel of land situate, lying and being in the Town of Mt. Pleasant, Charleston County, South Carolina, shown and designated as Lot CV5, Phase 2A, I'On, on a plat prepared by Thomas & Hutton Engineering Co., entitled "FINAL PLAT OF PHASE 2, SUBPHASES B THROUGH F I'ON TOWN OF MT. PLEASANT CHARLESTON COUNTY, SOUTH CAROLINA" dated September 12, 2000 and recorded in Book EE, page 572, Charleston County RMC Office; said lot having such size, shape, location, butting and bounding as are shown on the said plat.

Said property is subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

BK 0 415PG656

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 I'ON CLUB, LLC TO GEOFFREY D. GRAHAM THOMAS C. GRAHAM AND VINCENT G. GRAHAM ON August 15th 2002.

3. Check one of the following: *The DEED is*
(a)____subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b)____subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(c) ✓ EXEMPT from the deed recording fee because (exemption # 12) Quitclaim
(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)____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $_____.
(b)____ The fee is computed on the fair market value of the realty which is $_____.
(c)____ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES___ or NO___ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If YES, the amount of the outstanding balance of this lien or encumbrance is $.

6. The DEED Recording Fee is computed as follows:
(a)_____ the amount listed in item 4 above
(b)_____ the amount listed in item 5 above (no amount place zero)
(c)_____ 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 : Grantor

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

Grantor, Grantee, or Legal Representative connected with this transaction
Dixon F. Pearce, II, Esq.
Print or Type Name here

Sworn to before me this 15th day of August, 2002.
Linda M. Sherman
Notary Public for SOUTH CAROLINA
My Commission Expires: 3/2/09

BK 0 415PG657

RECORDER'S PAGE
This page Must remain with the original document.

Recording Fee 10.00
State Fee
County Fee EXEMPT
Postage
TOTAL 10.00
A

Buist & Byars, LLC
~~P.O. Box 570~~
~~Charleston, SC 29402~~
~~MT Pleasant~~

FILED
0415-653
2002 AUG 20 PM 1:54
CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

PID VERIFIED BY ASSESSOR
REP LMG
DATE 8/27/02

RECEIVED FROM RMC
AUG 27 2002
PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

Fact Sheet
I'On: The Company and the Neighborhood

Name: I'On – named for Jacob Bond I'On (1782-1860), a planter, South Carolina statesman and hero of the War of 1812, whose family owned the property.

Founded: March 1998

Location: Mount Pleasant, South Carolina

Developer: The I'On Company, founded by Vincent, Geoff and Tom Graham

Purpose: The I'On Company aspires to create an environment where people are proud to live, work and play. The company seeks to build a place of enduring aesthetic, economic and social value.

Recent: Selected as "Best Community in the Nation" and "Best Smart Growth Neighborhood in the Country" by Professional Builder and the NAHB (National Association of Home Builders). Awarded the Stewardship Award by the S.C. Department of Natural Resources for the I'On's protection of the natural environment and its adherence to smart growth principles. 2003 Congress for New Urbanism Charter Award Winner.

Community: Inspired by traditional neighborhoods of the Lowcountry, the neighborhood features single-family homes, a commercial center, athletic facilities, a sports club and waterfront walkways and sidewalks, designed around an interconnected network of streets and blocks to encourage social interaction among residents.

Size: 243 acres situated on an in-fill location along Hobcaw and Shelmore creeks.

Population: Approximately 500 households with over 800 residents as of May 2005.

Lots: I'On has 762 homesites are divided into six small "boroughs," each planned for 80 to 150 homes. Currently, there are over 500 homes in I'On with 100 more under construction.

With lots designed to accommodate houses of all sizes, I'On provides homes for a wide range of individual tastes and needs.

Prices: Homesites range from $225,000 to over $500,000. Homes range from $600,000 to over $2,000,000.

Builders: All homes in I'On are custom built by one of the builders in the I'On Guild, a group of 21 of the Charleston area's most innovative builders who embrace the community's philosophy and quality standards.

IDC: The I'On Code was created to ensure each home is built with fine quality and craftsmanship that will stand up over time. This small, specialized set of building rules pays careful attention to building sites, proportions, materials and craftsmanship. The Code encourages residents and builders to construct classically-inspired homes that reflect the architectural style of coastal towns such as Charleston and Savannah. The homes, currently starting in size from 960 square-feet, are characterized by welcoming piazzas, distinctive columns and high ceilings. The I'On code is enforced the I'On Design Committee. All plans and improvements must be approved by IDC, fees will apply.

5/16/2005

(over)



Creek Club - Plaintiff
Walbeck 000484

Green Space:	Native trees and vegetation provide buffers along the street and within the community. Public green spaces include the Rookery - a home to migratory birds and wildlife, the Eastlake Boathouse and Park, Westlake Park, the two-mile Marshwalk along Shelmore and Hobcaw creeks, playgrounds, a soccer field, marshes, trails and intimate pocket parks. I'On is also home to the Montessori of Mount Pleasant School and two future churches.
Mixed-use:	In addition to parks and green spaces, the neighborhood includes 30,000-square-feet of commercial use and six civic sites for churches, schools and community centers.
Club:	The I'On Club is a swim, tennis, fitness and social facility.
Creek Club:	The quintessential Lowcountry option located on the banks of Hobcaw Creek with over 5,000 sqft., and the deepest porches in the Lowcountry. The open floor plan includes tall oversized windows overlooking the water on three sides, high ceilings and two grand fireplaces both inside and out. The architecture is typical "Lowcountry", informal enough to be comfortable, yet classic in the line and form. It is appropriate for almost any occasion. Complete with a catering kitchen, indoor/outdoor fireplaces, spacious porches and spectacular marsh views.
Community Docks:	The boat landing and community docks on Hobcaw Creek and Shelmore Creek are available to all I'On Residents.
I'On Assembly:	The I'On Assembly, the neighborhood homeowners association, is responsible for the maintenance and care of the neighborhood's common areas, parks and green spaces. Annual dues are currently $650.
I'On Trust:	The I'On Trust is a non-profit organization that sponsors and supports education and cultural events for the entire Mount Pleasant area with special emphasis on neighborhood programming in I'On.
Taxes:	Property taxes on primary residences in Mount Pleasant average approximately $700 per $100,000 of appraised value.
Schools:	Mount Pleasant schools enjoy a high percentage of parent involvement, volunteer power and municipal and community support. The neighborhood is served by James B. Edwards Elementary School, Moultrie Middle School and Wando High Schools – all which receive high test scores statewide. In addition to the public schools, there are 23 private or parochial schools in the Charleston area. I'On is also the new home of the Montessori School of Mount Pleasant.
Hospitals:	East Cooper Community Hospital, a 100-bed full service medical facility, is conveniently located one mile from the neighborhood. The area is also served by Trident Regional Medical Center, the U.S. Naval Hospital, and a large medical complex in the City of Charleston including the Medical University of South Carolina.

Contact, I'On Realty (843) 884-3080, info@ionvillage.com

5/16/2005

(over)

Creek Club - Plaintiff
Walbeck 000485

Handover Agreement Between I'On Company and I'On Assembly

The undersigned representatives of the I'On Company and the I'On Assembly agree to the following process for the handover of common area property and structures to the I'On Assembly

1) The I'On Company will notify the I'On Assembly Board when common area property and structures are ready to be handed over to the I'On Assembly. The I'On Company places a high priority on the transfer of property in an expeditious manner and it is expected that the I'On Assembly will act in good faith to readily accept these properties given the successful completion of the process detailed below. Prior to execution of this handover process, all maintenance and repairs of this property is the responsibility of the I'On Company.

2) The I'On Assembly Board will identify a board member, the appropriate committee representatives, and the management company representative to participate in the handover process. The landscaping company will be included as appropriate.

3) A time for a formal review of the property to be handed over will be agreed by all parties.

4) The I'On Company will lead a walk-thru process for each area. The walk-thru will include a review of the scope of each property — the property borders; the type of plant materials used; the irrigation system if applicable; lighting if applicable; any controls, pumps or other mechanical items; locks; materials of construction; recommended maintenance; maintenance contacts; and any other information which would be relevant for the I'On Assembly to take responsibility for the area. The I'On Company will provide this relevant information to the Assembly representatives in the form of a binder or notebook of details, design drawings, and specifications

5) The representatives of the I'On Assembly will make a judgment whether the condition of the areas to be transferred are acceptable.

   a. If the condition is deemed acceptable, the asset transfer will take place and the I'On Assembly will begin maintenance of the area once the title has been officially transferred. The I'On Company will manage the handover process to ensure that the request for handover of maintenance responsibility and the official title transfer take place simultaneously.

   b. If repairs are required, then the I'On Company will take responsibility to make corrections as appropriate. When repairs have been completed, the I'On Company will schedule a second walk-thru process.



6) In order to prevent a budget imbalance within the Assembly budget, an asset handover forecast will be incorporated into the budgeting process. Specifically, a designate of the I'On Company will present a forecast of the scope and timing of any projected asset transfers to the Budget Committee. This projected forecast can then be incorporated as the Budget Committee constructs the budget.

7) Formal asset handover does not relieve the I'On Company of responsibility for any asset that prematurely fails due to incorrect design or installation. It is expected that the I'On Company and I'On Assembly will make every attempt to work in a collaborative/good faith manner in order to qualify the I'On Company's responsibility "within reason".

I'On Company (Date)

I'On Assembly President (Date)

I'On Assembly Vice-President (Date)

Fact Sheet
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Founded: March 1998

Location: Mount Pleasant, South Carolina

Developer: The I'On Company, founded by Vincent, Geoff and Tom Graham

Purpose: The I'On Company aspires to create an environment where people are proud to live, work and play. The company seeks to build a place of enduring aesthetic, economic and social value.

Recent: Selected as "Best Community in the Nation" and "Best Smart Growth Neighborhood in the Country" by Professional Builder and the NAHB (National Association of Home Builders). Awarded the Stewardship Award by the S.C. Department of Natural Resources for the I'On's protection of the natural environment and its adherence to smart growth principles. 2003 Congress for New Urbanism Charter Award Winner.

Community: Inspired by traditional neighborhoods of the Lowcountry, the neighborhood features single-family homes, a commercial center, athletic facilities, a sports club and waterfront walkways and sidewalks, designed around an interconnected network of streets and blocks to encourage social interaction among residents.

Size: 243 acres situated on an in-fill location along Hobcaw and Shelmore creeks.

Population: Approximately 500 households with over 800 residents as of May 2005.

Lots: I'On has 762 homesites are divided into six small "boroughs," each planned for 80 to 150 homes. Currently, there are over 500 homes in I'On with 100 more under construction.

With lots designed to accommodate houses of all sizes, I'On provides homes for a wide range of individual tastes and needs.

Prices: Homesites range from $225,000 to over $500,000. Homes range from $600,000 to over $2,000,000.

Builders: All homes in I'On are custom built by one of the builders in the I'On Guild, a group of 21 of the Charleston area's most innovative builders who embrace the community's philosophy and quality standards.

IDC: The I'On Code was created to ensure each home is built with fine quality and craftsmanship that will stand up over time. This small, specialized set of building rules pays careful attention to building sites, proportions, materials and craftsmanship. The Code encourages residents and builders to construct classically-inspired homes that reflect the architectural style of coastal towns such a Charleston and Savannah. The homes, currently starting in size from 960 square-feet, are characterized by welcoming piazzas, distinctive columns and high ceilings. The I'On code is enforced the I'On Design Committee. All plans and improvements must be approved by IDC, fees will apply.



Green Space:	Native trees and vegetation provide buffers along the street and within the community. Public green spaces include the Rookery - a home to migratory birds and wildlife, the Eastlake Boathouse and Park, Westlake Park, the two-mile Marshwalk along Shelmore and Hobcaw creeks, playgrounds, a soccer field, marshes, trails and intimate pocket parks. I'On is also home to the Montessori of Mount Pleasant School and two future churches.
Mixed-use:	In addition to parks and green spaces, the neighborhood includes 30,000-square-feet of commercial use and six civic sites for churches, schools and community centers.
Club:	The I'On Club is a swim, tennis, fitness and social facility.
Creek Club:	The quintessential Lowcountry option located on the banks of Hobcaw Creek with over 5,000 sqft., and the deepest porches in the Lowcountry. The open floor plan includes tall oversized windows overlooking the water on three sides, high ceilings and two grand fireplaces both inside and out. The architecture is typical "Lowcountry", informal enough to be comfortable, yet classic in the line and form. It is appropriate for almost any occasion. Complete with a catering kitchen, indoor/outdoor fireplaces, spacious porches and spectacular marsh views.
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I'On Assembly:	The I'On Assembly, the neighborhood homeowners association, is responsible for the maintenance and care of the neighborhood's common areas, parks and green spaces. Annual dues are currently $650.
I'On Trust:	The I'On Trust is a non-profit organization that sponsors and supports education and cultural events for the entire Mount Pleasant area with special emphasis on neighborhood programming in I'On.
Taxes:	Property taxes on primary residences in Mount Pleasant average approximately $700 per $100,000 of appraised value.
Schools:	Mount Pleasant schools enjoy a high percentage of parent involvement, volunteer power and municipal and community support. The neighborhood is served by James B. Edwards Elementary School, Moultrie Middle School and Wando High Schools – all which receive high test scores statewide. In addition to the public schools, there are 23 private or parochial schools in the Charleston area. I'On is also the new home of the Montessori School of Mount Pleasant.
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Contact, I'On Realty (843) 884-3080, info@ionvillage.com

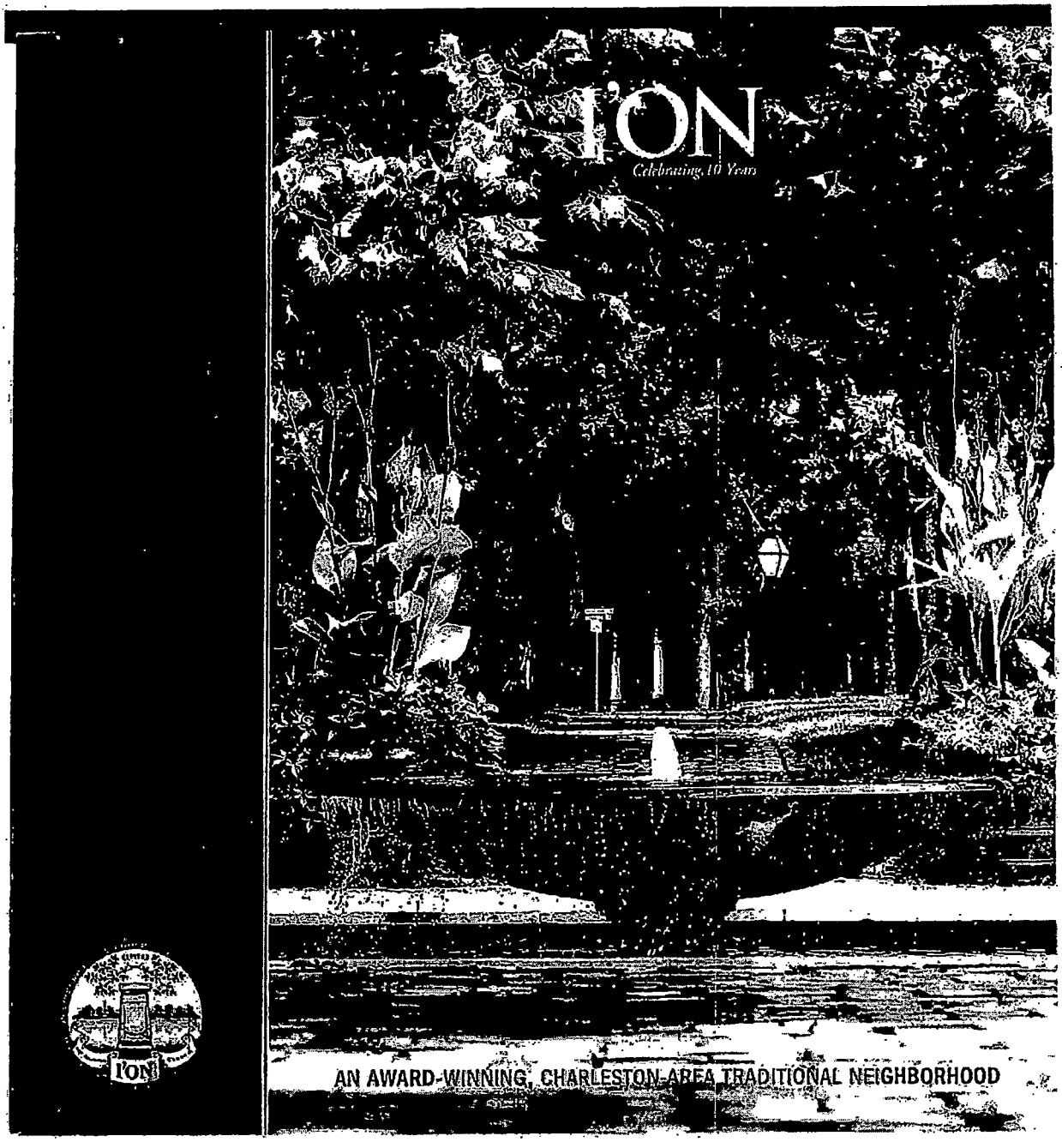
Creek Club - Plaintiff
Walbeck 000489

I'On Media Kit
Fact Sheet

Name:	I'On – named for Jacob Bond I'On (1782-1860), a planter, South Carolina statesman and hero during the War of 1812, whose family owned the property.
Founded:	March 1998
Location:	Mount Pleasant, South Carolina
Developer:	The I'On Company, founded by Vincent, Geoff and Tom Graham
Mission:	I'On's mission is to design a neighborhood that enhances the social, cultural, economic and environmental aspects of life. I'On's philosophy incorporates the importance of true community through a healthy relationship between the position of each home and the public and civic realms.
Size:	243 acres; 43 acres of green space, including playing fields, a community amphitheater, parks and civic-use areas;
Population:	Approximately 646 households as of March 2007.
Homesites:	I'On's 762 homesites are divided into six small "boroughs," each planned for 80 to 150 homes. Currently, there are more than 600 homes in I'On completed or under construction with another 116 homesites remaining.
Builders:	I'On has also carefully chosen 21 of the Charleston area's most impressive builders to form the I'On Guild.
Prices:	Homesites range from $225,000 to over $500,000. Homes range from $500,000 to over $2,000,000. Over the past five years, property in I'On has appreciated more than 20% per year. In 2006, average home prices had increased 26 percent in I'On.
Amenities:	The I'On Club, a swim, tennis, fitness and social facility; the Creek Club, a venue located on the banks of Hobcaw Creek with more than 5,000 square feet; community boat landing and docks on Hobcaw and Shelmore Creeks; East Cooper Charter Montessori School; two churches, one under construction and another to begin soon; Marshwalk and walking trail



Creek Club - Plaintiff
Walbeck 000487



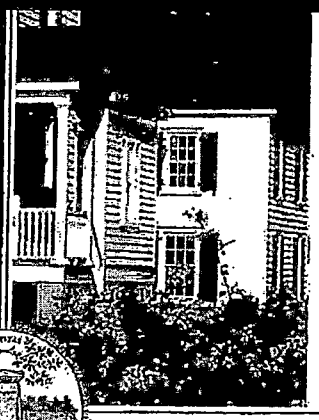


Creek Club - Plaintiff
Walbeck 000078



Recognized nationally for its thoughtful planning and uncomplicated elegance, I'On is a Lowcountry village of remarkable architectural and natural beauty, shimmering lakes and salty creeks, fine eateries and offices you can walk to, and ample spaces to play.

I'On is a place to **LIVE.**



Welcome to I'On

A PLACE YOU'LL WANT TO SETTLE INTO, AND STAY...

I'On is such a place. With the perfect balance of fine architectural design and natural beauty, it strikes a chord with many people who, from their first visit, tell us they instantly feel at home.

I'On is proof that a village can be both neighborly and private. Few communities offer festivals in the village square, farmers' markets, lively concerts at the outdoor amphitheater – alongside the pristine silence of lakes, a Rookery and marshes.

It's all here. With a Jr. Olympic-size swimming pool, tennis courts, boat ramps, docks, canals, fishing lakes and the I'On Creek Club, opportunities to be sociable or to find solitude are just a stroll or bike ride away.

"I'On is the sort of pedestrian-friendly, intimate place that people long thought couldn't be built today."

-Coastal Living Magazine

Creek Club - Plaintiff
Walbeck 000080

CLASSICAL ARCHITECTURE & CHARMING PROPORTIONS: UNIQUELY I'ON

Distinctive homes. A neighborhood with a strong sense of place. Preserved natural beauty. It's no wonder I'On was voted Best Community in the Nation.

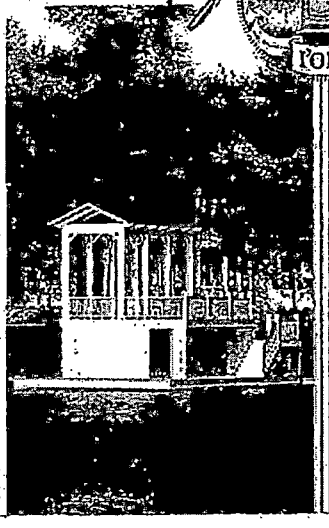
I'On offers the freedom of self-expression with homesites that range from smaller, more intimate sites to marsh-front locations — and builders that translate dreams into reality.

In fact, some of the country's finest architects and master guild builders create the homes at I'On. Classical styling with porches, private gardens and courtyards create an atmosphere that suggests a European village mixed with an American small town.

At I'On, the streets are well laid out: houses are carefully situated to insure beauty and privacy — and shopping, parks, and recreation are all within walking distance.

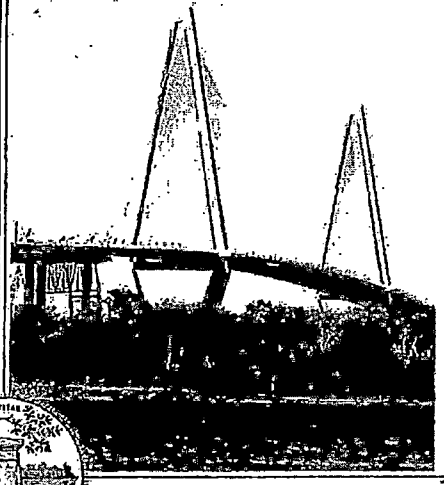
classic style & natural beauty





"...this community seeks to create a pleasing mix of outdoor spaces connected by pedestrian-friendly streets."

-Southern Living Magazine



BEST COMMUNITY IN THE NATION

BEST SMART GROWTH NEIGHBORHOOD IN THE COUNTRY

TOP 10 US DESTINATIONS

NEW AMERICAN DREAM TOWN

Lowcountry living

AN AWARD-WINNING NEIGHBORHOOD IN AN AWARD-WINNING CITY

Charleston is a vibrant city that has been praised and painted by writers and artists for centuries. Famous for its historically significant architecture, visitors come from all over the world to explore; to shop; to dine; and to take in the rich cultural life.

The beaches of South Carolina are famous in their own right. And the ones near I'On are some of the best on the Atlantic coast. Surfing, kayaking, deep-sea fishing and sailing are just a few of the benefits of living in the Lowcountry.

Only 4 miles from downtown Charleston and six miles to the beaches, I'On is centrally located near the Arthur Ravenel Bridge in Mount Pleasant — and is accessible to top-quality medical care and one of the region's best school systems.

Surrounded by historical charm and natural beauty, I'On is perfectly situated for discovering the best the Lowcountry has to offer.

AMENITIES

Amphitheater *(Westlake)*
Boathouse *(Eastlake)*
Community Dock & Boat Ramp
3 Crab Docks
Creek Club *(5,000-square foot event facility)*
2 Footbridges
I'On Club *(pool, tennis, workout facilities)*
2 Lakes
12 Neighborhood Parks
2.5 Miles of Marsh-Front Paths
2 Open Fields
Outdoor Sculpture
5 Playgrounds
6 Miles of Walking Trails

CULTURAL OFFERINGS

"Neighborhood First Friday Cocktails" *(monthly)*
4th of July Celebration *(parade & festivities)*
Bike Race
Block Parties *(various streets; various dates)*
Gardening Club
Halloween Festival *(parade, music, face painters, pumpkin carving)*
Holiday Tour of Homes
I'On Trust *(non-profit cultural organization)*
I'Onissimo *(neighborhood band)*
I'On Man Biathlon
Monthly Women's Coffee
Spoleto Arts Festival Events *(changes annually)*
Street Fair *(annual Lowcountry celebration)*

a multitude of cultural events

"Communities are all different, but I know when I'm in one.

People speak to their neighbors by name, sometimes to their neighbor's dogs.

No one is a stranger for long."

-Charles Kuralt



Creek Club - Plaintiff
Walbeck 000083

I'ON REALTY

No one understands the I'On experience better than I'On Realty — from buying to building to living in I'On. In fact, many of our agents call I'On home.

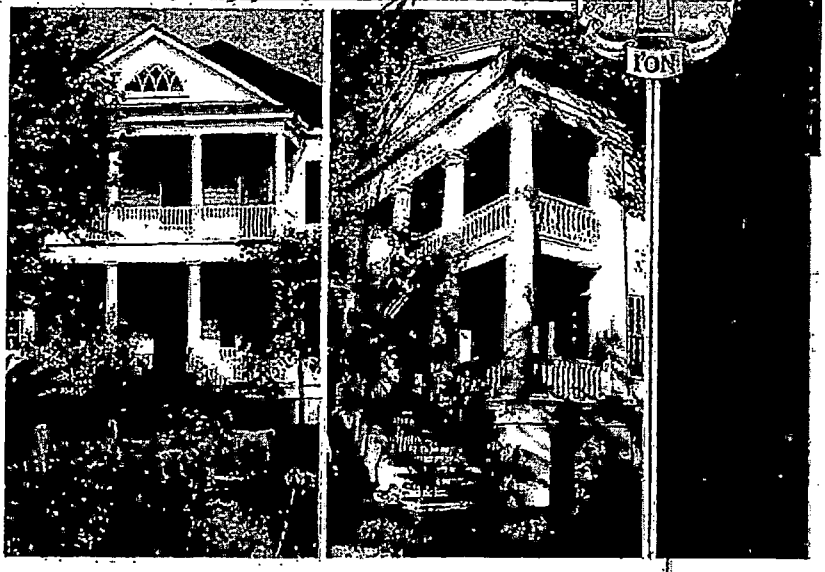
We extend our neighborly attitude to our community — we regularly sponsor events with the I'On Trust and support a variety of community organizations in the greater Charleston Area.

With homesites from the mid 100's and a variety of existing homes for sale, there are many ways to live in I'On.

Begin your adventure soon. Call our real estate team, and we'll assist with everything you need to know about available homes and homesites — 843.884.3080.

an unparalleled knowledge

I'ON REALTY IS CONVENIENTLY LOCATED WITHIN I'ON AND IS THE ONLY REAL ESTATE AGENCY REPRESENTING NEW HOMES AND HOMESITES AT I'ON.



Creek Club - Plaintiff
Walbeck 000084

Creek Club - Plaintiff
Walback 000085

map & directions

Just a five-mile drive from Charleston, I'On is conveniently located in beautiful Mount Pleasant, SC, between scenic Mathis Ferry Road and the creeks of Hobcaw and Shelmore.

The Charleston International Airport is within 15 miles, and shopping, beaches, dining, entertainment and the region's finest schools are all nearby within walking or driving distance.

DIRECTIONS FROM I-26

Heading east on I-26 toward Charleston, merge onto U.S. 17 North via exit 221-B toward Mount Pleasant.

Follow the bridge across the Cooper River, and turn left onto Mathis Ferry Road at the second traffic light in Mount Pleasant.

After about one mile, turn left into I'On at the traffic circle. I'On Realty offices are on the right at 159 Civitas Street.

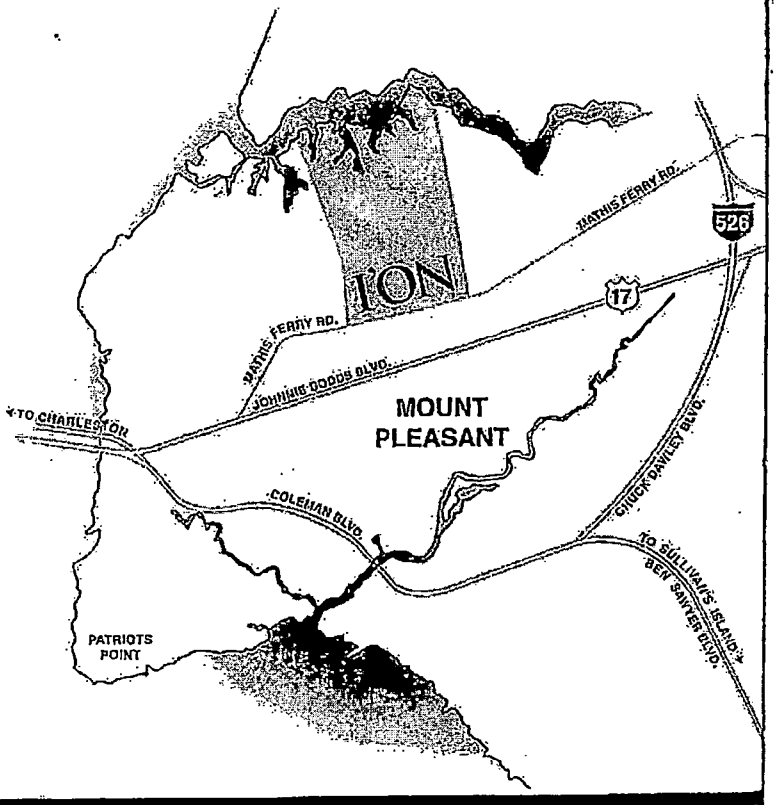
DIRECTIONS FROM I-526

Heading east on I-526 toward Mount Pleasant, merge onto U.S. 17 South toward Charleston.

After approximately two miles, turn right onto Mathis Ferry Road.

After approximately one mile, turn left into I'On at the traffic circle. I'On Realty offices are located on the right at 159 Civitas Street.

843.884.3080
www.ionrealty.com



February 26, 2009

Mr. Bruce Kinney
Chairman, I'On Board of Trustees
c/o The I'On Company
159 Civitas Street
Mt. Pleasant, SC 29464

BY HAND

Dear Bruce:

Provided to you and the Board is a copy of the property report for I'On subdivision which is required under the Federal Interstate Land Sales Act administered by the US Office of Housing and Urban Development (HUD). The act requires that this report, prepared by the I'On Company, be provided to buyers of lots upon execution of a contract. There are numerous criminal and civil penalties for certain violations of the act, including failure to provide it to all buyers. Developers must retain acknowledgement of receipt.

On page 21 of the report you will find a list of recreational properties. On the following page is the clear requirement that these properties be deeded to the HOA upon completion. The Board of the I'On Assembly is on notice that action must be taken immediately to secure any of these properties which have not been so far titled to the Assembly, according to the terms of ownership specified in the report. If the Board has taken any action that has served to limit rights of use by Titleholders or otherwise release, limit or abandon those rights or ownership or control of property identified, such actions must be unambiguously and immediately reversed. That specifically applies to the Community Dock at the Creek Club. It has been previously reported that the Board declined to accept ownership of the Community Dock at the Creek Club. If this is an accurate account, the Board did not have the authority to deprive individual Titleholders of the ownership of property.

Tangentially, the "quitclaim deed" promised in the report simply means "we'll give you whatever rights we have", however the real estate on which the docks sit belongs to a third party. There is documentation that indicates intent to deed this land to the developers, but there is no record of transfer of ownership. Given that ownership of the Community Dock, as well as other specified properties, must come without encumbrance, the Board should remind the I'On Company of this circumstance before accepting ownership.

If timely property transfer has not occurred, the Board should immediately seek legal counsel and notify its E&O carrier to insure coverage and determine under which Board the failure occurred since it could be alleged that this Board, and perhaps previous Boards, failed in their fiduciary responsibility to the Assembly. The current Board must consider, not simply ownership, but pursuit of damages from the I'On Company on the presumption that the Assembly has met its obligations under any and all agreements without enjoyment of the benefit of ownership.



Creek Club - Plaintiff
Walbeck 000121

Aside from ownership, right of access to the Community Dock should be affirmed with various affected parties. Please note on page 21 of the HUD report that that access to the Community Dock is restricted to... *"lot owners and other members of the HOA, including the developer and their respective guests."* Commercial use is not required and may, in fact, be denied as a matter of law and would be, in any case, inadvisable given concerns over liability. In fact, it may be proved that the Assembly's right to access the docks has been illegally restricted by an existing "easement" that provides the owner the right to restrict the owners of the Community Dock access to the docks "from time to time".

It is recommended that the Board immediately secure legal advice on behalf of Titleholders to determine whether South Carolina Law supports an "easement by necessity" for landlocked parcels. There is some legal authority in South Carolina for the presumption that if property is deeded, access to it must be provided. That would certainly be the understanding of a reasonable person reading the guarantees of the HUD property report. It would be reasonable to assume, rather than negotiate, an easement by necessity over land defined as a "civic use". Your attorney should be able to find these authorities on South Carolina law and advise the Board on behalf of the Assembly.

Importantly, the report also provides that there will be other facilities not listed in the chart and that the "use of, and access to, such (not listed) facilities is not guaranteed." By implication, this indicates that use of and access to all charted recreational facilities is guaranteed.

Sincerely,

Catherine M.B. Templeton
34 Saturday Road

LEATH, BOUCH & CRAWFORD LLP
PRACTICE LIMITED TO COMMERCIAL LITIGATION & CREDITORS RIGHTS
WITH EMPHASIS ON CONSTRUCTION & ENVIRONMENTAL LAW

March 10, 2009

Lea Ann Adkins
[redacted]
Mount Pleasant, SC 29464

Re: I'On Assembly

Dear Ms. Adkins:

Thank you for your letter to me dated March 5, 2009, concerning the I'On Assembly. While I appreciate your interest in receiving my opinion, I have been retained by the Board of the I'On Assembly and as such any legal opinions that I express are necessarily those belonging to the Board.

Insofar as the pending sale of the Creek Club, it is the understanding of the Board that the sale will not include items which were intended to be or are the property of the I'On Assembly. The Board is working with the developer to secure formal title to those items which were represented to be the property of the I'On Assembly. A certain number of facilities exist in the subdivision that may or may not belong to third parties and as set forth in the property report, they contain restrictions or obligations that are not those of the I'On Assembly.

I appreciate your continuing interest of the efforts of the I'On Assembly and its Board to fulfill those responsibilities set forth in the declarations and covenants.

If you have any further questions, please do not hesitate to contact me. Thank you and with best regards, I am

Very truly yours,

LEATH, BOUCH, CRAWFORD & von KELLER, LLP

Timothy W. Bouch

TWB/lf
cc: Bruce Kinney

PLAINTIFF'S EXHIBIT 55

CHARLESTON: P.O BOX 59, CHARLESTON, SC 29402 • 92 BROAD STREET • CHARLESTON, SC 29401 • 843-[illegible]
COLUMBIA: P.O BOX 4216, COLUMBIA, SC 29240 • 1640 ST. JULIAN PLACE, COLUMBIA, SC 29204 • 803-790-2626 • FACSIMILE 803-790-1277

Creek Club - Plaintiff
Walbeck 000132

The I'On Assembly, Inc.

March 11. 2009

Sent Via email thomasc.graham@comcast.net .

Mr. Thomas Graham
The I'On Company
159 Civitas Street
Mt. Pleasant, SC 29464

Re: Creek Side Club

Dear Tom:

As we discussed last week, the I'On Assembly Board was recently provided copies of the 1998 HUD Property Report and the 1997 I'On Impact Statement. These were the documents that I emailed to you and Chad last week. Page 21 of the HUD Report lists various Recreational Facilities that were to be constructed by The I'On Company and conveyed to the I'On Assembly upon completion. Included in that list is a "Community Dock." After looking at the description and photographs of the proposed community docks in the Impact Statement, and reading that there were to be no private docks in I'On, it seems clear that the HUD Report contemplated the multiple docks at the Creek Club.

I understand that Chad is preparing the legal documentation for turning over other facilities to the Assembly, including but not limited to the amphitheater, the canals, I'On Square Park, and various paths and trails. Please include the Creek Club docks and access to the docks in that documentation. In that regard, I anticipate the I'On Board working with you to create a cross easement and use agreement between the Assembly and the Creek Club owner. When you can, would either you or Chad please let me know when we might have something for the Assembly's counsel to review.

Assuming this process will move rather quickly, I will make arrangements for the docks to be inspected following the procedures that Dave Rosengren has used for other facilities turned over to the Assembly. While I have not seen the purchase contract with Mike Russo and his partners, I have been told that the proposed sale includes the docks. Following our earlier conversations, the Board expects that the docks will now be excluded from the sale, but access would be part of a new easement.

Additionally, the HUD Report lists a "Creekside Park" as part of the Recreational Facilities that was to be started and completed at the same time as the docks. Would you please let us know if this park was ever built, and if so, where it is located and whether it has been conveyed to the Assembly?



As stated earlier, the Assembly Board just became aware of the HUD Report and the Impact Statement. Otherwise this matter would have been dealt with much sooner. However, since discussions about turning the docks over to the Assembly have been going on for some time, I would expect this to be a smooth transition.

Sincerely,

Bruce E. Kinney
I'On Assembly Board President

Cc: Tim Bouch
Matt Walsh

March 11, 2009

Mr. Timothy W. Bouch
Leath, Bouch and Crawford
134 Meeting Street
Charleston, SC 29402

FAX 937-0606

Dear Mr. Bouch:

As a follow-up to my letter of last week, there are two additional points regarding the HUD report which I offer, to insure you are provided with all information currently available in determining eventual rights to the subject properties – Civic Site 6 and Creekside Park.

First of all, you will notice the chart on Page 21 of the Report is divided into sections -- one for Phase One and another for Phase Two. The Sketch Plan for I'On shows how the neighborhood was developed in phases over time, with each phase well-documented by location, number of residential lots, and number of civic and commercial lots. The HUD report lists "Creekside Park" in Phase Two of the development, which includes two civic lots – one is a landlocked parcel (currently used as a parking lot) and the other is the waterfront parcel where the Creek Club is located. Since "Creekside Park" must be found in Phase Two, and presumably must be found on water, the Creek Club parcel is the only logical location for this "park."

Second, referring to the Impact Assessment, there is the park on Middle Street in the Old Village used as an example of the type of park to be found in I'On. When I wrote to you last week, I mentioned the photograph in the Impact Assessment; however, since then I have actually visited that park on Middle Street, which is the home to the town's Alhambra Hall and its surrounding park. The similarities between the Middle Street park and our own Creek Club parcel are numerous. Both are located on deepwater frontage. Both parcels are civic sites and include structures which serve as premiere special event venues.

The primary difference in the two parcels, however, is the expanse of park area around the structures. In the case of Alhambra Hall, which includes approximately 3280 square feet of available floor space, there is left a significant expanse of park area around it, enough to accommodate people utilizing the park grounds even while a wedding or other event is taking place. One function does not exclude the other on Middle Street.

But in the case of the civic site in I'On, the Creek Club building (which according to its own website, "boasts over 5000 square feet of space") so dominates its relatively small parcel that little opportunity exists for park activity if the building is in use, and activity is



limited even when it's not in use. There is simply not a sufficient amount of land left for "all residents to have access to the waterfront" in an established park, following the construction of the expansive Creek Club building.

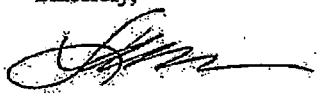
I hope this additional information will be helpful to you as you analyze the HUD Property Report and the properties it has documented. From what I have learned about the HUD Report requirements, there should have been more specific information provided in the Report about the "Creekside Park" facility. I found the following information online in a government guide for federal regulations, regarding the reporting of these "Recreational facilities:"

§ 1710.214 Recreational facilities.

(a) Submit a synopsis of the proposed plans and estimated cost of any proposed or partially constructed recreational facility disclosed in §1710.114. This item should include the general dimensions and a brief description of the facility but it should not include blueprints or similar technical materials.

Obviously no dimensions or description of "Creekside Park" were included, as required, in our Property Report; however, in the absence of such we are left to obvious conclusions based on the Impact Assessment and Sketch Plan, along with other references which may be found.

Sincerely,



Lea Ann Adkins

From: Chad Besenfelder [chad@iongroup.com]
Sent: Wednesday, March 25, 2009 1:14 PM
To: Jane Gottshalk
Cc: Bruce Kinney; Matt Walsh; Mcauley, Joseph; Barbara Fry; Brady Anderson; John.J.Powers@gsk.com;
Dave Rosengren; Sheri Cooper; Vince Graham
Subject: I'On Development Update

I'On Assembly Board Meeting March 25, 2009. Development Update:

Creek Club Sale:
Mike Russo and partners have withdrawn their purchase proposal for the Creek Club. Earnest money has been returned.
The I'On Club will continue to operate the facility.
Docks:

The I'On Company is preparing to deed the community dock to the I'On Assembly. We plan to subdivide a parcel to be recorded and deeded. Inspections and enhancements will be completed prior to turnover.

Amphitheater:
Prices are in for repairing the irrigation pump. Dave Rosengren has been a great help. HM Northcutt will perform a
diagnostics on the system to confirm needed repairs and adequate equipment to extend lines to Maybank Green.

Phase 11:
Design and estimates are complete to cleanup Phase 11 and extend the pedestrian entrance from Mobile Street to
Muirhead Road. The Town of Mount Pleasant is reviewing the plan and we expect the project to begin next week. I will
split into three phases: 1) clear area for pedestrian path, remove gate at Mobile Street and add bollards, and handle
drainage needs (2 weeks), 2) clear AB Evans staging area (3 weeks), 3) remove berms and grade to original condition (2
weeks).
Temporary Garden Plots Phase 11:
TIC and community members have begun discussion of a possible temporary garden located at Phase 11. The project is
expected to start small with the addition of a garden structure, irrigation, extended fencing, small parking area, compost
area, and garden plot designs. Estimates are in the works and we will have a detailed update for the Assembly next
month.
Phase 7 and 9 Enhancements:
TIC met with contractors and completed design and improvement costs for turnover of all remaining open space to HOA.
The plan consists of marsh walk improvements, Phase 9 cul-de-sac enhancements, and allowance package for future
enhancements after development of homes are complete.
Phase 9 and 10 Infrastructure:



TIC met with Town engineers and begun inspection of installed infrastructure including streets, sidewalks, curbs, and
storm drains. We expect to turn over the streets to the Town in April.
Lafayette Canal and Square Turnover:
TIC would like to schedule a walk through with HOA infrastructure committee to begin handover of the Lafayette canal
to HOA. Inspection of bulkheads and canal conditions will be performed and deeds will be prepared. I would like to
complete the walk through in April and make improvements if needed by the end of May for turnover. Square is ready to
deed to HOA.
IDC:
TIC has begun the process of turning over IDC to the I'On Assembly and the progress is good. TIC plans to meet with
AMCS to review policies and procedures during April to help transition the administrative of IDC. TIC expects the
process will take some time and Jody has begun negotiation with Macky Hill to continue to serve as neighborhood design
coordinator.

Subj: **FW: Creek Club, Please keep confidential.**
Date: 9/9/2008 12:17:15 P.M. Eastern Daylight Time
From: chad@iongroup.com
To: mrusso7465@aol.com

Mike

The I'On Club retained John Oliver, CPA with Dixon-Hughes accounting firm to help separate Creek Club from the balance of Club and provide meaningful financial reporting for both entities. John is assisting Merritt Farmer, I'On Club Controller, prepare separate financial statements for Creek Club for the current year as well as 2006 and 2007. Tom Graham told me this information would be available today but I would expect them tomorrow.

Review information needed:

Profit and losses from the first year through current (yearly)
We will have 2006, 2007, and current year for you this week. Do you need from first year as indicated above?

Event bookings yearly from first year to current (give me 2009 also)
See attached

Give me rental rates with the bookings
See attached

Tax returns last three years
I will need to contact Tom Graham to release this information. I am not sure if this is obtainable since the CC combined with I'On Club

Any employment contracts
I made sure not to create employment contracts in the past due to pending Club exit strategy. I will double check with Bud.

Any vendor or service contracts
Again, I made no contracts with Creek Club operations. There may be an ice machine lease and a 30-day notice for landscape and pest control contractors. I suggest we check with Eliza to be sure.

Any maintenance records
I suggest Eliza create a maintenance record. Not much done other that resurfacing floors, adding new drapes, minor painting, landscape work (irrigation systems), insect repellant system, landscape lighting.

Agreements or easements with HOA
Agreements or easements with Old Park
Agreements or easements with Ion Club and/or members
See attached. The TIC/Olde Park official agreement not on digital file so I need more time locating original. I have a letter from Joe Griffith, Inc dated February 19, 1999 describing the Creek Club as an amenity and Olde Park residents having access to I'On Club, boat docks and Creek Club rental facility. In addition, Olde Park has first priority and discounted rates for Creek Club as I'On Club Members. I will need to work with Olde Park and revise this agreement. Worst case, if Olde Park does not agree to change agreement would you honor I'On Club member discounts (I think it is 10%). I will send you the agreement when I locate it.

Property Tax bills current
Insurance bills current
I will need this information from the club bookkeeper

A letter from Tom giving us a 30 day extension on lot 275 if needed
Tom Graham has agreed to write you a letter. I will draft a letter for him to sign.



Plat subdividing boat dock from Creek Club.

I contact Thomas and Hutton to provide us a plat subdividing the docks. I suggest we extend the HOA path from the boat ramp to the marsh path at Lot 275. This will protect access for residents.

TIC maintained a good relationship with the residents but this took an enormous effort on our part over the years. I understand that keeping the docks an entity of the Creek Club may help define the property Civic however, I would suggest we lead our initial idea of subdividing the docks and keeping TIC control. The docks were promised handover to the homeowners and Vince would like to honor that someday.

I will find out when Eliza and other club staff will be notified of Creek Club sale. I should have a key for you later today. Give me until 3PM.

Chad

Chad Besenfelder
159 Civitas Street
Mt. Pleasant, SC 29464
Direct: 843.284.2129
Fax: 843.971.1664
Email: chad@iongroup.com
Website: www.iongroup.com

I'ON

From: MRUSSO7465@aol.com [mailto:MRUSSO7465@aol.com]
Sent: Friday, August 29, 2008 8:14 AM
To: Chad Besenfelder
Subject: Re: Creek Club

Chad

These are the things I need for due diligence, I may have more latter

Profit and losses from the first year through current(yearly)
Event bookings yearly from first year to current (give me 2009 also)
Give me rental rates with the bookings
Tax returns last three years.
Any employment contracts
Any vendor or service contracts
Any maintenance records

Agreements or easements with HOA
Agreements or easements with Old Park
Agreements or easements with Ion Club and/or members
Property Tax bills current
Insurance bills current
A letter from Tom giving us a 30 day extention on lot 275 if needed

I also believe that because of the civic zoning aspect we may end up having to take the docks a part of the deal and it may just be cleaner and easier that way. Of course we would honor all existing agreements and easements in place making it just "business as usual" which could avoid any problems with HOA. If we do proceed this way I would like information about the dock permitting and any applicable regualations.

Thanks.....Russo

In a message dated 8/19/2008 3:48:54 P.M. Eastern Daylight Time, chad@iongroup.com writes:

> Mike,
>
> I spoke with our attorney and he feels the contract is fine and will clean up today. I do not expect any problems. I told him it was a priority and he is going to get to it this evening. He works late so it may not be available until tomorrow.
>
> Chad

It's only a deal if it's where *you* want to go. Find your travel deal here.

Subj: **Re: creek club sale??**
Date: 4/1/2009 12:12:47 P.M. Eastern Daylight Time
From:
To:

Thanks, Lea Ann. Chad is not in a position to do anything other than regurgitate what Vince tells him. Even if we beat him up at the board meeting, all he would say is what he said. It serves no purpose. I will try to talk to Vince and see what he can add to this dialogue. I think engaging Vince is the right next step. Surely he will have to answer as to why he has decided that the marsh walk is the park.

On Wed, Apr 1, 2009 at 11:49 AM, < > wrote:

We have a copy of it – we got it from Washington DC. Even the federal government, it appears, is more efficient than the l'On Company! Bruce seems to have seen it. Will he let you see it, perhaps? You are welcome to a copy of mine.

I'll share my thoughts about the identity of Creekside Park, some of which you've heard before. I will admit I was astounded that not one person on the Board had one question for Chad in the meeting regarding the linear park explanation. Anyway, my thoughts regarding Creekside Park being Civic Site 6:

The Impact Assessment references a park on Middle Street in the Old Village of Mount Pleasant, and it even includes a photograph of this park. In fact, this Middle Street park is the home to Alhambra Hall, a special event venue strikingly similar to our own Creek Club. Both facilities are surrounded by a lawn of park area and both are located on waterfront parcels. If descriptions and models in the Impact Assessment are to be trusted, then the vision of this park on Middle Street would have been realized with the construction of the Creek Club and its surrounding park on Civic Site 6. The Property Report chart included an entry for "paths and trails" in Phase 2, so clearly the marsh walk trail was *already accounted for* in the list of facilities. There was no model mentioned in the Impact Assessment of the Newport, Rhode Island linear park, which Chad Besenfelder claimed was the inspiration for the marsh walk (park) he would have us believe was formerly known as Creekside Park.

The burden is on the Grahams to PROVE what Creekside Park is – in the absence of a map with it stamped on the marsh walk, we have to look to other proof, as stated above. Models and ideas expressed in the impact assessment were very specific. The Middle Street park, where Alhambra Hall is located, is evidenced in the impact assessment. The linear park of Newport, R.I. is not. Then, the paths and trails already being significant enough for their own mention in the Property Report seals the deal, in my mind – the marsh walk trail is already included in the recreational facilities separate from Creekside Park. Newport's linear park in Rhode Island is never mentioned in the assessment. The site of Alhambra Hall is. Yes, you might say I don't agree with the explanation – the bigger question is why would anyone? Did you not expect he would offer objection to the contention that Creekside Park is home to the Creek Club? I can't believe the Board, collectively, listened to Chad's explanation from Vince (about which he wants no further conversation, remember!) and just said, "Okay. Thank you." What are your thoughts?

Lea Ann

In a message dated 4/1/2009 11:21:50 A.M. Eastern Daylight Time, writes:

There is no sale that we are aware of. I am sure that TIC will try again, but right now I am not aware of anything and have been told by The Grahams that it is going to be run by The Ion Club.

That said, anything is possible.

In response to your last email- I am not sure what to tell you on the HUD. I have asked for and am waiting for the amended HUD and will share when i get it.

As for Creek side park, I assume you are not satisfied with Vince's definition, though I am not sure where there is a concrete alternative.

Monday, April 27, 2009 AOL: LEAADK



The docks should be deeded to the HOA soon, and we are working with TIC to make sure that is done properly.

Thanks,
Matt

On Wed, Apr 1, 2009 at 10:13 AM, < > wrote:

Received this today, plus a lot of email from other neighbors in response to it! Anything new?

--Lea Ann

"Creek Club Sale Update .. by Bruce Kinney, Assembly President

In the March Newsletter I provided an update on the potential sale of the Creek Club. As of this writing, the sale has been cancelled. A lot of time and energy was devoted to dealing with the sale. In the process we learned a lot that will help guide the Assembly if this, or any other sale, occurs in the future."

Feeling the pinch at the grocery store?

Matthew Walsh
[redacted]

<}}}}}<

Feeling the pinch at the grocery store?

Matthew Walsh
[redacted]

<}}}}}<

Monday, April 27, 2009 AOL: LEAADK

From: Matt Walsh [mailto:matt.e.walsh@gmail.com]
Sent: Wednesday, April 01, 2009 12:16 PM
To: Vince Graham
Cc: Bruce Kinney
Subject: Question

Vince,

I hope this message finds you well. I have some neighbors who are troubled by the definition of the creekside park you had Chad deliver at the last meeting. Here is an excerpt from an email concerning this issue. I must admit, it seems to ask some interesting questions:

"The Impact Assessment references a park on Middle Street in the Old Village of Mount Pleasant, and it even includes a photograph of this park. In fact, this Middle Street park is the home to Alhambra Hall, a special event venue strikingly similar to our own Creek Club. Both facilities are surrounded by a lawn of park area and both are located on waterfront parcels. If descriptions and models in the Impact Assessment are to be trusted, then the vision of this park on Middle Street would have been realized with the construction of the Creek Club and its surrounding park on Civic Site 6. The Property Report chart included an entry for "paths and trails" in Phase 2, so clearly the marsh walk trail was already accounted for in the list of facilities. There was no model mentioned in the Impact Assessment of the Newport, Rhode Island linear park, which Chad Beseinfelder claimed was the inspiration for the marsh walk (park) he would have us believe was formerly known as Creekside Park.

The burden is on the Grahams to PROVE what Creekside Park is -- in the absence of a map with it stamped on the marsh walk, we have to look to other proof, as stated above. Models and ideas expressed in the impact assessment were very specific. The Middle Street park, where Alhambra Hall is located, is evidenced in the impact assessment. The linear park of Newport, R.I. is not. Then, the paths and trails already being significant enough for their own mention in the Property Report seals the deal, in my mind -- the marsh walk trail is already included in the recreational facilities separate from Creekside Park. Newport's linear park in Rhode Island is never mentioned in the assessment. The site of Alhambra Hall is."

It sue would be great if you could clear up what seems to be some confusion. Feel free to give me a call if you would prefer to discuss.



Creek Club - Plaintiff
Walbeck 000161

Best regards,

Matthew Walsh
[redacted]

<}}}}}<

Matthew Walsh
[redacted]

<}}}}}<

Matthew Walsh
[redacted]

<}}}}}<

From the beginning of the events involving the Creek Club property, the Board has shown little initiative or interest in representing the Assembly and insuring its best interests are protected. The board's first action back in the fall – after denying there even was a potential sale – was to begin "working with" the buyers. The Board failed to ask the question of whether the properties even *could* be sold to private investors by the I'On Company. It took a small group of residents to bring attention to that fact.

Much has happened since that near-disastrous transaction. Having been presented with the 1998 HUD Property Report, which promised the Assembly ownership of certain recreational facilities in I'On, the Board took no action to secure them. When told in March by the I'On Company that the 1998 HUD Report was "undone" by a 2000 amendment, the Board took no action. As late as this week, I learned the Board has not even asked its attorney for advice about the Assembly's rights and whether they were violated by the amendment – nor anything else related to this matter. Perhaps the worst offense is the Board never informing the Assembly of this new information. There has been no communication with us regarding the Property Reports and no opportunity for input from the residents. The last information from the president involved four pages of his explanation about the new easement he negotiated with the Creek Club buyers – which was later confirmed to have been *verbatim* what the buyers proposed to him in the first place. The subject has not been on the Board meeting's agenda for months (though agendas have not been posted since February.) From all appearances, it is now a non-issue for the Board.

The questions left unanswered – indeed, even unaddressed – regarding the Creek Club and Civic Site 6 property affect the property rights and values of every, single titleholder in I'On. The Board's failure to secure the properties promised to the Assembly is beyond understanding, and in my opinion, quite risky. The absence of initiative is irresponsible, and I question whether the Board has even seriously studied anything -- the Property Reports, the numerous other documents, communications, and contracts available for examination. I have written to you and also the Assembly attorney, I have attended and spoken at meetings of the Board, and even met with you individually. It is increasingly obvious to me that my interests, as a titleholder, are not being represented by the Board, which seems focused on the interests of the I'On Company.

As I wrote to you previously, I object to the conveyance of the Community Dock to the Assembly's ownership with any type of easement or other agreement of any kind attached to it. I expect the Board to work actively, with vigilance, to see that the Assembly acquires any and all the properties promised to it in the Property Reports and other documentation. Any agreements that serve to encumber the property should come after notice of intent of the Board and a period of comment by the Assembly prior to execution.

Further correspondence between us is now uncomfortable to me, following your admission of sharing my most recent emails on these same topics with Vince Graham, of the I'On Company, without my prior knowledge or permission.

From: Matt Walsh [mailto:matt.e.walsh@gmail.com]
Sent: Thursday, April 02, 2009 6:31 PM
To: Vince Graham
Subject: Re: Question

Vince,

Attached is the refereced document. Thanks. I look forward to your thoughts.

Best,

Matt

On Thu, Apr 2, 2009 at 2:14 PM, Vince Graham <vince@iongroup.com> wrote:

Matt,

I'm not familiar with an "Impact Assessment." Could your excerpter possibly mean the "Impact Statement"?

Vince

Lea Ann Adkins

In a message dated 4/25/2009 8:48:33 A.M. Eastern Daylight Time, matt.e.walsh@gmail.com writes:
I have not talked to the attorney. I am waiting for chad to respond about when the docks will be deeded. I will contact the attorney and see what his advice is. Specifically what part of the amendment are you most interested in his advice on? I want to be certain that I cover your concerns. Please send to me when you can.

Sent via BlackBerry by AT&T

From: LEAADK@aol.com
Date: Sat, 25 Apr 2009 08:34:06 EDT
To: <matt.e.walsh@gmail.com>
Subject: Re: easement budget
Matt,

I attended the meeting. The Creek Club, amended HUD, nor anything else related to the properties in question were discussed at the meeting. They were not on the agenda. Chad Besenfelder did not show up for the meeting. I did ask Bruce Kinney if he had contacted the Assembly attorney about the information presented last month about the 2000 amendment, and he said he had not, although he had spoken to him about the fire/burned house situation. He said perhaps you have been in touch with the attorney, however, about the HUD. If so, what was his advice about the amendment?

At the March meeting of the Board, there was talk about the l'On Company deeding ownership of the community dock to the Assembly. The Board has been made aware of the provisions in the 1998 HUD PR, which requires the deeding of the dock to be made without encumbrances—which would include any easement.

If the Board eventually feels an easement is in the best interest of the Assembly, once the dock has been acquired, so be it. However, there should be prior notice to the Assembly of the acquisition and an opportunity for the Assembly to comment about the execution of any easement involving the newly-acquired property.

Lea Ann

In a message dated 4/19/2009 7:59:20 P.M. Eastern Daylight Time, matt.e.walsh@gmail.com writes:
Lea Ann,
Have you seen the Amended HUD doument? If not I have one that I would be happy to send. I will not be able to make the meeting this week as I have a prior commitment. I believe the Creek Club and the amended HUD will be on the agenda.
Thanks,
Matt

On Fri, Apr 17, 2009 at 11:30 AM, < > wrote:
Could you please provide me with a copy of last year's expenses versus budget report under the Recreational Easement, and if any adjustments were made.

I would also appreciate the dates of the last inspection of the books and audit.

Lea Ann

NEXSEN|PRUET

Thomas S. Tisdale, Jr.
Member
Admitted in SC

RECEIVED JUN 29 2009

June 25, 2009

The I'On Company
c/o The I'On Group, LLC
159 Civitas Street
Mount Pleasant, SC 29464

Gentlemen:

This firm represents Lea Ann Adkins and Brad J. Walbeck who are property owners in I'On. Our clients contend that misrepresentations were made to them and contractual commitments have been breached by the I'On Company, and that other legal wrongs have been committed by The I'On Company or its agent(s) at or about the time they purchased property in the I'On development.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach

The crux of their complaint against the I'On Company is that they were assured by various means that Creekside Park and the Community Dock would be conveyed to The Assembly which, as you are aware, is the homeowners' association of I'On property owners.

At the request of Mrs. Adkins and Mr. Walbeck, we have drafted a preliminary Complaint containing most, but perhaps not all, of factual and legal basis for their claims. The Complaint has, of course, not been filed or served but is in draft form and does not necessarily represent the final version of any such Complaint that may subsequently be filed. In any case, enclosed herewith is a copy of the draft Complaint for the purpose of informing your company of the claims.

Our clients have been told by a representative of the I'On Company there is no room for discussion on the topic of properties offered in the HUD Property Report, which we understand amounts to a refusal to convey the properties. Further, correspondence sent to the Grahams from Mrs. Adkins about this situation was ever acknowledged. Our clients have come to believe this is the only manner left to seek a fair and promised result.

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1749
F 843.414.8220
E TTisdale@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law



The purpose of this letter is to ask you and your counsel to review the claims that are proposed and to consider complying with the request of our clients that the property described in the Complaint be conveyed to the Assembly, as the Company represented that it would be when they purchased their property in the development. Such compliance by the Company would avert litigation and, we believe, would satisfy the claims as far as our clients are concerned. We are, of course, unable to speak for the interests of any other property owners with respect to any other claims that may be made.

This letter and the enclosed draft Complaint is being sent to you solely for the purpose of trying to resolve the claims now rather than later, and neither this letter nor the draft Complaint is to be used for any other purpose.

We are available if you or your counsel wish to meet with us concerning these matters to seek a reasonable conclusion to these claims.

Very truly yours,

Thomas S. Tisdale, Jr.

TST/taj
Enc.
cc: Mrs. Lea Ann Adkins
Mr. Brad Walbeck

July 3, 2009

Mr. Thomas Tisdale, Jr.
Nexsen Pruet
205 King Street, Suite 400
Charleston, SC 29401

Dear Mr. Tisdale:

I am in receipt of your letter of June 25, 2009 and draft complaint.

With regard to Mrs. Adkins' correspondence, Matt Walsh, a member of the I'On Assembly Board of Trustees, sent me an email on April 1, 2009 saying he had "some neighbors who are troubled by the definition of the creekside park" and asking for clarification. Included with Mr. Walsh's note was an excerpt from an email that was sent to him by one of these neighbors concerning the park definition.

On April 3, 2009, I responded to Mr. Walsh with an email intended to clarify the issue. A copy of that email correspondence is attached to this letter.

Mrs. Adkins' sent me a letter dated April 1, 2009, which I read on April 6, 2009. As this letter contained language identical to that of the excerpt sent by Mr. Walsh, I assumed – incorrectly – that Mr. Walsh had forwarded my attempt at clarification to those neighbors who had contacted him with concerns about the definition. My presumptions were a mistake, and by copy of this letter I hereby apologize to Mrs. Adkins for the delayed response to her letter of April 1, 2009.

In summary, the "Creekside Park" is the +/- 2 mile linear park adjacent to the marshes of Hobcaw Creek. With regard to the "Community Dock", The I'On Company, conveyed two Phase 2 community docks to the I'On Assembly years ago. A third dock in Phase 2 is owned by the I'On Club. The Club enables members of the I'On Assembly use of this dock for recreational activities such as fishing and boating. I hope this clarifies matters for you and your clients.

Please feel welcome to contact me if you have additional questions.

Sincerely,

Vincent G. Graham

Cc: Lea Ann Adkins
Brad Walbeck
Bruce Kinney
Matt Walsh
Chad Besenfelder
Tom Graham



Liane Marcotulli

From: Vince Graham [vince@iongroup.com]
Sent: Friday, April 03, 2009 12:22 PM
To: Matt Walsh
Cc: Bruce Kinney; Chad Besenfelder
Subject: FW: Question
Attachments: image001.jpg; image002.jpg; IOnImpactAssessment.pdf

Thanks Matt. I hadn't seen that document in a long time, but remember it now. Did you read the "Special Considerations" section? It's hard to believe I'On's opponents would make the argument that the neighborhood vision was not consistent with Town plans. Even more ironic is the fact that a member of the opposition's leadership now lives in the neighborhood. Reading this again after so many years also brings to mind the tremendous amount of support the neighborhood received from many Mt. Pleasant citizens. Many of those citizens played important leadership roles in creating the Town's 1992 Redman/Johnston Masterplan and 1994 Strategic Plan – both put in place prior to our arrival in Mt. Pleasant. We should all be grateful for this support, because without it, I'On might very well not be here today.

Your excerpter wrote "Models and ideas expressed in the impact assessment were very specific." I couldn't agree more. The image above the caption "A park on Middle Street in the Old Village" on Page 6 of the *Impact Assessment* is not Alhambra Hall, but a smaller park about 3 blocks southeast at the end of Middle Street. I admire Alhambra Hall, but could find no mention of it in the document.

The third sentence on Page 7 of the document states "All parks, docks and other community facilities will be administered by the property owners association ***and private clubs*** (emphasis added)."

On that same page are two images of the Sea Island Yacht Club in Rockville, which flank the caption "Clubhouses in I'On will be modeled after traditional structures like the Sea Island Yacht Club in Rockville, SC".

Like the Creek Club, the SIYC occupies a prominent point at the end of a linear park (originally an old post road) that runs between the houses and Bohicket Creek. Also like the Creek Club, the SIYC sits on its own land parcel with an adjacent broad green space overlooking Bohicket Creek. Even though the SIYC and its adjacent green space are privately owned, pedestrians are allowed to pass back and forth between the aforementioned linear park and "Sea Island Yacht Club Road" – the public thoroughfare leading to the SIYC. If you've never been down there you might want to go check it out. It's a soulful spot and might help you and/or your excerpter better understand the vision for that part of I'On.

The creekside park (commonly referred to these days as the "Marsh Walk") was inspired by similar waterfront parks in other parts of the country and world. It was common practice to create such parks in urban neighborhoods prior to World War II. After that time, the convention changed to one of privatizing the water's edge (Hobcaw Point and Olde Parke are two examples of this convention).

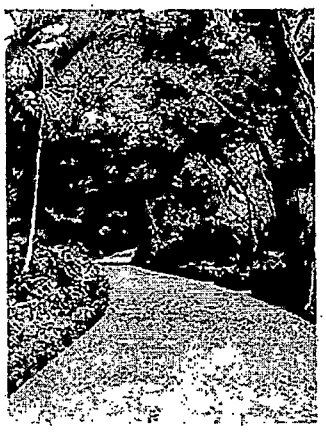


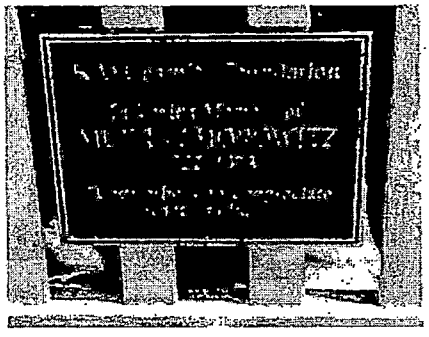
Two linear parks which inspired the design of l'On's "Marsh Walk" are "Lake Trail" along the back side of Palm Beach, Florida and "Cliff Walk" in Newport, Rhode Island. These are beautiful parks that provide public access to the views over the water. While the homes along the "Marsh Walk" aren't quite as grand as those overlooking the "Cliff Walk" in Newport, the design principle of public accessibility to the water's edge is the same.

Hope this is what you needed and it enables you to clear up any confusion. Perhaps it might be helpful to post an explanation on the message board. Feel welcome to contact me if you would like to discuss further.

Vince

P.S. – Here is an image of Lake Trail in Palm Beach. With approval and probably some kind of donation, the City of Palm Beach allows its citizens to post plaques along the trail in certain locations. Here is an image of one such plaque. I recall biking along the trail years ago on a hot day and at the north end of the trail, a citizen had actually paid to have a water fountain installed with a plaque that invited passer bys to refresh themselves. I thought it a nice gesture that was greatly appreciated on a hot day of biking. Maybe the Assembly might want to encourage such touches.





Here is a link to more information about the Cliff Walk in Newport:
http://images.google.com/imgres?imgurl=http://riroads.com/images/cliff_walk_1.jpg&imgrefurl=http://riroads.com/history/cliff_walk.htm&usg=__KVWB-oz0gjvdH_zE7zJrMBJV9b8=&h=300&w=450&sz=41&hl=en&start=6&sig2=Sb5FCpq7xq2h8wsFOiEAZg&um=1&itbs=1&tbnid=YpiqxgR2O3

62VM:&tbnh=85&tbnw=127&prev=/images%3Fq%3DCliff%2BWalk%2BNewport,%2BRI%26hl%3Den%26rlz%3D1B3RNFA_enUS246US246%26sa%3DN%26um%3D1&ei=NCzWSaT8A5fKlQeA1ojVDA.

From: Matt Walsh [mailto:matt.e.walsh@gmail.com]
Sent: Thursday, April 02, 2009 6:31 PM
To: Vince Graham
Subject: Re: Question

Vince,
Attached is the refereced document. Thanks. I look forward to your thoughts.
Best,
Matt

On Thu, Apr 2, 2009 at 2:14 PM, Vince Graham <vince@iongroup.com> wrote:

Matt,

I'm not familiar with an "Impact Assessment." Could your excerpter possibly mean the "Impact Statement"?

Vince

From: Matt Walsh [mailto:matt.e.walsh@gmail.com]
Sent: Wednesday, April 01, 2009 12:16 PM
To: Vince Graham
Cc: Bruce Kinney
Subject: Question

Vince,

I hope this message finds you well. I have some neighbors who are troubled by the definition of the creekside park you had Chad deliver at the last meeting. Here is an excerpt from an email concerning this issue. I must admit, it seems to ask some interesting questions:

"The Impact Assessment references a park on Middle Street in the Old Village of Mount Pleasant, and it even includes a photograph of this park. In fact, this Middle Street park is the home to Alhambra Hall, a special event venue strikingly similar to our own Creek Club. Both facilities are surrounded by a lawn of park area and both are located on waterfront parcels. If descriptions and models in the Impact Assessment are to be trusted, then the vision of this park on Middle Street would have been realized with the construction of the Creek Club and its surrounding park on Civic Site 6. The Property Report chart included an entry for "paths and trails" in Phase 2, so clearly the marsh walk trail was already accounted for in the list of facilities. There was no model mentioned in the Impact Assessment of the Newport, Rhode Island linear park, which Chad Besenfelder claimed was the inspiration for the marsh walk (park) he would have us believe was formerly known as Creekside Park.

The burden is on the Grahams to PROVE what Creekside Park is -- in the absence of a map with it stamped on the marsh walk, we have to look to other proof, as stated above. Models and ideas expressed in the impact assessment were very specific, The Middle Street park, where Alhambra Hall is located, is evidenced in the impact assessment. The linear park of Newport, R.I. is not. Then, the paths and trails already being significant enough for their own mention in the Property Report seals the deal, in my mind -- the marsh walk trail is already included in the recreational facilities separate from Creekside Park. Newport's linear park in Rhode Island is never mentioned in the assessment. The site of Alhambra Hall is."

It sue would be great if you could clear up what seems to be some confusion. Feel free to give me a call if you would prefer to discuss.

Best regards,

Matthew Walsh
[redacted]
<'}}}}}><

Matthew Walsh
[redacted]
<'}}}}}><

July 15, 2009

Mr. Vincent G. Graham
The I'On Company
159 Civitas Street
Mount Pleasant, SC 29464

Dear Vince:

I want to address the assertions offered in your letter of July 3, 2009. leaving the broader legal issues of the Complaint to my attorney.

The location of Creekside Park is clear from all the available evidence. To begin with, it is established that Creekside Park is wholly contained in Phase 2. The marsh walk path, which you insist is a linear Creekside Park, is not wholly contained in Phase 2. There is no mention of a planned linear park in the Impact Assessment. The HUD Property Report promises Creekside Park ownership to the Assembly, and separately promises "paths and trails." Creekside Park was obviously intended to be in addition to paths and trails. Common sense and clear evidence indicate that what we know today as the marsh walk path was never intended to be Creekside Park.

Further, the Impact Assessment says all residents will have access to the waterfront at road endings and in established parks, which proves the large Community Dock was originally intended to be accessed through a park – in this case, Creekside Park, as the other I'On docks currently are (all are surrounded by HOA-owned open space.) Instead, our waterfront and dock access are offered only over private property through an easement and are not guaranteed once Creekside Park, now called the "Club Property," is sold – thereby potentially setting the Community Dock off limits to residents. The expressed vision of waterfront access for "all residents" through established parks certainly contradicts today's reality of Hobcaw Creek and the Community Dock, accessible only across your private property by way of a very limited easement agreement, and only then if convenient around the Creek Club bookings.

Your own planners, Dover-Kohl, include language on their website today describing I'On as having a "continuous public waterfront." This would be true, if not for your privately-owned Creek Club parcel that is supposed to now be our Creekside Park. Interestingly, ownership of the Creek Club parcel transferred to the I'On Club, rather than the Assembly, the same year you amended the HUD Property Report to eliminate Creekside Park altogether from this federally-filed document – more reason to believe the creek side parcel of the Creek Club was intended to be Creekside Park. You showed the Newpoint dock as your illustration in the Impact Assessment to represent our future Community Dock here in I'On. Ownership of that Dock was transferred to the Newpoint



Homeowners Association (I have a copy of the title) as well as title to a large park area surrounding it, similar to the Creek Club parcel overlooking the I'On Community Dock. Your often-used Newpoint analogy to I'On differs with reality when it comes to ownership of these valuable areas.

Even the I'On Company itself once claimed in a self-published article, "*Parks* provide access to the neighborhood's lakes and the community docks along Hobcaw Creek, enable (sic) all the residents to enjoy its beauty." Your own words communicated the promise of parks for accessing docks and the waterfront, rather than private club property. Early sales material published and distributed by The I'On Company promised access to the boat ramp and dock to all residents -- with no mention of these being available only on a when-convenient basis through a limited easement -- in fact, the easement didn't even exist when this enticement was offered. Clearly there was a shift in your vision, and it no longer included waterfront access for all residents as earlier promised, and it has diminished the value of our property. While you sold property based on these promises, your promises are still unmet - there is no continuous public waterfront, there is no creek-side park, there is no Assembly ownership of the Community Dock, and there is no guarantee "all residents" will even be allowed to access the Hobcaw Creek-side property in the future.

These property issues are matters of principle to me. I am not a combative person and would prefer a friendly relationship to confrontation; however, it is not possible to merely shrug and walk away from a conflict of this significance to the future of I'On and its very waterfront identity. In this dispute, I personally stand to gain no more than any other member of the Assembly, but I have chosen to pursue this for us all. You have made clear to the entire Assembly your unwillingness to further discuss these matters, as announced through your spokesperson at a recent Board meeting. While I am willing to sit down with you to resolve this conflict, doing so would apparently be a pointless exercise given your stated position of no further discussion. And speaking of no further communication, your explanation of having responded to my formal letter through Board member Matt Walsh is an odd method of correspondence -- one which does little to encourage productive dialogue and, in fact, avoids it altogether. Months have passed since I first tried to engage you in discussion and, if not for the letter from my attorney, I feel quite certain there would still be no response from you. In summary, I want what was promised to the Assembly to be conveyed to the Assembly, as soon as possible. I hope you will join me in this pursuit of fairness and contractual compliance.

Sincerely,

Lea Ann Adkins

cc: Tom Tisdale, Tom Graham, Bruce Kinney, Brad Walbeck, Chad Besenfelder, Assembly Board of Trustees

Housing
About Housing
Contact us
Keywords
Single Family
Audience groups
Buying a home
Events & training
FHA insured loans
Common questions
Housing counseling
HUD homes/ REO
Owning a home
Reference guide
Regulatory programs
Hospitals
Multifamily
CAHP
Reading room
Online forums
Work online
Weocasts
Mailing lists
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Help

Interstate Land Sales Subdivisions by Name

The Interstate Land Sales program protects consumers from fraud and abuse in the sale or lease of land. In 1968 Congress enacted the Interstate Land Sales Full Disclosure Act, which is patterned after the Securities Law of 1933 and requires land developers to register subdivisions of 100 or more non-exempt lots with HUD and to provide each purchaser with a disclosure document called a Property Report. The Property Report contains relevant information about the subdivision and must be delivered to each purchaser before the signing of the contract or agreement.

Information by State
Esta página en español
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Interstate Land Sales Subdivisions starting with 'I' has 373 Subdivisions.

Home | By Developer | By State | Next Page | Search
| A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z
Page 1 of 19 (1 - 20)

Subdivision Name	Subdivision ID	OIL SR No.	State	Registration Status	Current Developer
I'On	30264	O-7555-46-	SC	Registered-Active	I' On Company, L.L.C., A South Carolina Limited Liability Company
I-4 Acres	19990	O-2021-12-	FL	Registered-Suspended	Jose I Garcia Rios
Ice 2, a Condominium	31160	---	FL	Registered-Suspended	ICE 2, LLC
Ice Box Estates	17291	4-0938-08-	CO	Exempt-Active	George Wolf
Ice, a Condominium	30826	---	FL	Registered-Suspended	Ice, LLC
Ichetucknee Forest	18846	4-4379-12-	FL	Exempt-Active	Ichetucknee Forest Inc
Ichetucknee River Est & 1st Add'N	15018	-0722-12-	FL	Exempt-Active	Davis Davis & Davis
Icon Brickell Condominium No. One	31341	---	FL	Registered-Active	TRG-Brickell Point NE, Ltd.
Icon Brickell Condominium No. Two	31362	---	FL	Registered-Active	TRG-Brickell Point SE, Ltd,
ICON Condominium	31264	---	CA	Registered-Active	ICON, LLC
Icon Las Olas Condominium	31668	---	FL	Registered-Active	Las Olas Yacht Club Associates, Ltd.
Icon Palm Beach Condominium	31690	---	FL	Registered-Active	TRG North Flagler Venture, Ltd.
Icon Tower One Condominium	31290	---	NV	Registered-Active	Related CCD, LLC
Icon Tower Two Condominium	31329	---	NV	Registered-Active	Related CCD, LLC
IconBrickell Condominium No. Three	31499	---	FL	Registered-Active	TRG - Brickell Point West, Ltd.

PLAINTIFF'S EXHIBIT 64

July 27, 2009

Dear Ms. Adkins:

Contrary to your assertions, The I'On Company did not provide you with any HUD property report and never entered into a contract with you for purchase and sale of your I'On lot 5-104. According to our records, on November 15, 2002, The I'On Company contracted to sell that lot to Simonini Company which later transferred that lot purchase contract to you subject to your agreement to have Simonini build your house for you.

In any event, I responded to the complaint sent to us by your attorney regarding the "creekside park" with my letter dated July 3, 2009.

Possibly the clarification of this subject by JoAnne Stubblefield, Esq., which Tom Graham forwarded to the I'On Assembly Board on March 25, 2009 may allay your concerns and answer your questions regarding I'On resident access to the boating facilities located on I'On Club property. A copy of that clarification memo is attached. Please note that if a transfer of the Creek Club to another entity were ever to occur, it would not change the nature of the recorded Recreational Easement between The I'On Company, LLC, the I'On Club, LLC and the I'On Assembly, nor diminish I'On residents' rights to continued access to the boating facilities.

Feel welcome to contact me if you'd like to discuss further.

Sincerely,

Vincent G. Graham

Cc. Tom Tisdale
Brad Walbeck
Bruce Kinney
Assembly Board of Trustees
Chad Besenfelder
Tom Graham



RESOLUTIONS

The I'On Company, L.L.C.

The undersigned, being all the Members of The I'On Company, L.L.C., a South Carolina limited liability company ("LLC"), hereby waives notice and the requirement of a meeting and consents to the following Resolutions; that such Resolutions are in full force and effect and have not been amended or rescinded; and that such Resolutions are in full conformity with the provisions of the Operating Agreement of The I'On Company, L.L.C.:

WHEREAS, the Manager of the LLC is The I'On Group, L.L.C. and is authorized to take all actions on behalf of the LLC;

WHEREAS, Vincent G. Graham is the Manager of The I'On Group, L.L.C.; and

WHEREAS, the LLC wishes to ratify and confirm all actions taken by the I'On Group, L.L.C., its Manager, by Vincent G. Graham, its Manager, as in the name of and on behalf of the LLC, including but not limited to, the execution of the following Contract: Purchase and Sale Agreement, dated June 18, 2009, by and between The I'On Company, L.L.C., as Seller, and Michael Russo, as Buyer, for the Sale of Lot 275, 42 Saturday Road, Mount Pleasant, South Carolina.

BE IT RESOLVED that any actions taken by the I'On Group, L.L.C., as Manager of the LLC, by Vincent G.. Graham, its Manager, prior to the adoption of these Resolutions which are within the authority conferred by these Resolutions are hereby ratified, confirmed, approved and adopted in all respects as actions taken by and in the name of the LLC;

BE IT RESOLVED that the LLC is hereby authorized to sell and convey the real property and the improvements thereon located in Charleston County, South Carolina, and being more fully described and identified in Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), pursuant to the terms, covenants and conditions of that certain Purchase and Sale Agreement by and between the LLC, as Seller, and Michael Russo, as Buyer, dated June 18, 2009, (the "Purchase and Sale Agreement") for the consideration of One Hundred Twenty-Five Thousand and No/100ths Dollars ($125,000.00); and it was

FURTHER RESOLVED that The I'On Group, LLC, as Manager of the LLC, by Vincent G. Graham, its Manager, is duly authorized, on behalf of the LLC, to execute all Deeds, Affidavits, Closing Statements, Assignments, Agreements and other miscellaneous closing documents in connection with the foregoing sale of the Property, and is further authorized to execute any and all other documents ancillary thereto in order to effectuate the above-described transaction.



{01567018.}

IN WITNESS WHEREOF, the undersigned have affixed its Seal this 5 day of August 2009.

MEMBERS:

GRAHAM DEVELOPMENT, ~~INC.~~ LLC

By: _____

Printed Name: Thomas C. Graham

Its: Manager

_____

Vincent G. Graham

_____

Geoffrey D. Graham

IN WITNESS WHEREOF, the undersigned have affixed its Seal this 5 day of August 2009.

MEMBERS:

GRAHAM DEVELOPMENT, INC.

By: _____

Printed Name: _____

Its: _____

_____
Vincent G. Graham

_____
Geoffrey D. Graham

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY INDENTURE DEED
COUNTY OF CHARLESTON)

KNOW ALL MEN BY THESE PRESENTS, that GEOFFREY D. GRAHAM, THOMAS C. GRAHAM, AND VINCENT G. GRAHAM ("Grantors"), in the State aforesaid, for and in consideration of the sum of TWO HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($225,000.00), 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 to the limitations, covenants, easements, conditions and restrictions 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 GRANTORS do hereby bind themselves, their heirs 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 them and their heirs 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.

PLAINTIFF'S EXHIBIT 66

IN WITNESS WHEREOF the undersigned Hand and Seal this 5 day of August 2009.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Geoffrey D. Graham by Vincent G. Graham his attorney-in-fact

1st Witness

Geoffrey D. Graham, by Vincent G. Graham, his attorney-in-fact

2nd Witness

Thomas C. Graham

Vincent G. Graham

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF CHARLESTON)

I, Daniel Q. Orvin (Notary Public), do hereby certify that Geoffrey D. Graham by Vincent G. Graham, his attorney-in-fact, Thomas C. Graham, and Vincent G. Graham 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]

(01566511.2)

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

(01566511.2)

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-5 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 EB, 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 Geoffrey D. Graham, Thomas, C. Graham, and Vincent G. Graham by Quit Claim Deed of I'On Club, LLC, dated August 15, 2002, recorded August 20, 2002, in the RMC Office for Charleston County, South Carolina, in Book O-415, page 653. BEING the same property conveyed to I'On Club, LLC by deed of The I'On Company, LLC, dated August 15, 2000, and recorded August 16, 2000, in the RMC Office for Charleston County, South Carolina, in Book C-353, page 484.

TMS No. 535-06-00-219

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. 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.

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.

148Civitas 0425

{01506511.2}

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 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. All facts which are shown on any existing survey or would be shown on a current survey of the Property.

18. 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.

19. 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 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

Grantee agrees to execute such other documents (recordable or otherwise) necessary to effect the intent of sections(i) through (iii) of this Paragraph 19.

148Civitas 0427

(015665(1.2)

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 Geoffrey D. Graham, Thomas C. Graham and Vincent G. Graham 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 $225,000.00.

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 $225,000.00

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) $225,000.00 on the amount listed in item 4 above_

b) _____ the amount listed in item 5 above (no amount place zero)

c) $

d) $225,000.00 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: 11/15/19

148Civitas 0428

RMC Bk 0073 Pg 765 : pg 1 of

BP0073765

STATE OF SOUTH CAROLINA)
) GENERAL WARRANTY INDENTURE DEED
COUNTY OF CHARLESTON)

WHEREAS The I'On Company, L.L.C., 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 Company, L.L.C.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that THE I'ON COMPANY, L.L.C., a South Carolina limited liability company, ("Grantor"), in the State aforesaid, for and in consideration of the sum of ONE HUNDRED TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($125,000.00), 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 to the limitations, covenants, easements, conditions and restrictions 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.

{01566593.}

PLAINTIFF'S EXHIBIT 67

148Civitas 0172

RMC Bk 0073 Pg 765 : pg 2 ~

IN WITNESS WHEREOF the undersigned Hand and Seal this 5 day of August 2009.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

THE I'ON COMPANY, L.L.C.

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 The I'On Company, L.L.C., 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]

{01566593.}

RMC Bk 0073 Pg 765 : 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

{01566593.}

RMC Bk 0073 Pg 765 : 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 Lot 275 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 The I'On Company, L.L.C., by deed of 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, dated January 11, 1999, recorded February 9, 1999, in the RMC Office for Charleston County, South Carolina in Book Y-319, at page 382.

TMS Nos.: 535-06-00-231

RMC Bk 0073 Pg 765 : 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. Declaration of Covenants, Conditions, and Restrictions for I'On executed February 5, 1998 by The I'On Company, LLC and recorded in the RMC Office for Charleston County in Book C297, at Page 282 (as amended and/or modified, including, without limitation, those certain amendments and modifications recorded in the RMC Office for Charleston County in Book P325, at Page 334; Book S361, at Page 297; Book H347, at Page 655; BookY411, at Page 26; Book 0064, at Page 41; Book N368, at Page 898; Book L447, at Page 640; Book U508, at Page 274 (collectively, the "Declaration").

8. 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.

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.

RMC Bk 0073 Pg 765 : pg 6 *

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 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 contained in the aforesaid Declaration.

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. All facts which are shown on any existing survey or would be shown on a current survey of the Property.

19. 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.

20. The Property herein conveyed may be subject to Transfer Fee payable to the I'On Trust in Accordance with the aforesaid Declaration. Further, to covenants conditions, restrictions and other limitations, easements, the By-Laws of I'On Assembly, Inc., the

RMC Bk 0073 Pg 765 : pg 7 *

The I'On Code, and building design and construction guidelines, all as is more fully and completely set forth in, referred to in or provided for by the aforesaid Declaration.

21. 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

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 The I'On Company, 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 $125,000.00.
   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 $125,000.00
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) $ 125,000.00 on the amount listed in item 4 above_
   b) _____ the amount listed in item 5 above (no amount place zero)
   c) $125,000.00 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: 11/15/14

RMC Bk 0073 Pg 765 : pg 8 of

148Civitas 0179

RECORDER'S PAGE

NOTE: This page MUST remain with the original document.

RECORDED

Date: August 7, 2009
Time: 3:11:25 PM

Book	Page	DocType
0073	765	Deed

Charlie Lybrand, Register
Charleston County, SC

Filed By:
WOODDY LAW FIRM, LLC
ATTORNEYS AT LAW
622 JOHNNIE DODDS BLVD.
MT. PLEASANT SC 29464

MAKER:
I'ON COMPANY L L C

RECIPIENT:
148 CIVITAS LLC

Original Book:

Original Page:

Note:

# of Pages: 9

Recording Fee	$	10.00
State Fee	$	325.00
County Fee	$	137.50
Extra Pages	$	4.00
Postage	$	-
Chattel	$	-
TOTAL	$	476.50

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

0073 Book | 765 Page | 08/07/2009 Recorded Date | 9 # Pgs

Original Book | Original Page | D Doc Type | 15:11:25 Recorded Time

843-958-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

BK 0073 PG 765 - 9

148Civitas 0180

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;



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

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]

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}

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: 2/24/2014

(01573692.2)

RECEIVED AUG 17 2009

Mr. Vince Graham
The I'On Company
159 Civitas Street
Mt. Pleasant, SC 29464

August 13, 2009

Dear Mr. Graham,

In 1999, I signed a contract to purchase property from the I'On Company, using an I'On Realty agent. I was provided a Property Report, upon which I relied, which promised the Assembly ownership of certain recreational facilities. My contract itself referenced the Property Report, and contained its own language about the facilities. In March 2000, I closed on the property, again relying on the Property Reports.

I was never informed there had been any change to the Property Report, and I was never informed of the changes, nor the contemplated changes, in ownership of the recreational facilities. My agent never made me aware of there being any plan for changes in ownership or access to the recreational facilities.

When purchasing my property in 1999, I relied upon the information provided to me being accurate. Your signature on the Property Report attested to the accuracy of its contents. The price I paid for my property included, I was lead to believe, Assembly ownership and perpetual access to the waterfront facilities which make our neighborhood so desirable and valuable. After closing on my property, these rights were insidiously taken from me, without my knowledge. As I am sure you are aware, once a contract is ratified, one party to the contract cannot take away rights that were part of the contract.

I request that you immediately convey the properties in question and honor the terms with which I agreed and contracted in purchasing my property in 1999.

Sincerely,

Brad Walbeck
[redacted]
Mt. Pleasant, SC 29464



September 10, 2009

Mr. Brad Walbeck
[redacted]
Mount Pleasant, SC 29464

Dear Mr. Walbeck,

Regarding your letter of August 13, 2009, please allow me to clarify the HUD Property Report recreational facilities.

Rather than subdividing premium marsh and water frontage into private lots, over 75% of the I'On marsh, water frontage and lake frontage was planned as an extensive park system. This system included a linear park along highlands above marshes and waters of Hobcaw Creek. The I'On Company deeded Phase 2 recreational facilities including this park and two community docks to the I'On Assembly shortly after completion. Please note my letter sent to Matt Walsh and the I'On Assembly Board including the 1997 I'On Impact Assessment.

The HUD Property Report also referenced additional privately owned recreational facilities that may be operated as clubs for paying members. The decision was made later to change the HUD Report granting I'On residents' use of the Creek Club's boating facilities as they would common recreational facilities throughout I'On. I have included with this letter the February 9, 2000 Recreational Easement and JoAnne Stubblefield's, Esq. clarification for your review.

The recent transfer of the Creek Club to another entity will not change the nature of the recorded Recreational Easement between the I'On Company, LLC, The I'On Club, LLC, and the I'On Assembly, nor diminish I'On residents' rights to continue access to the Creek Club boating facilities.

Please feel welcome to contact me if you would like to discuss further.

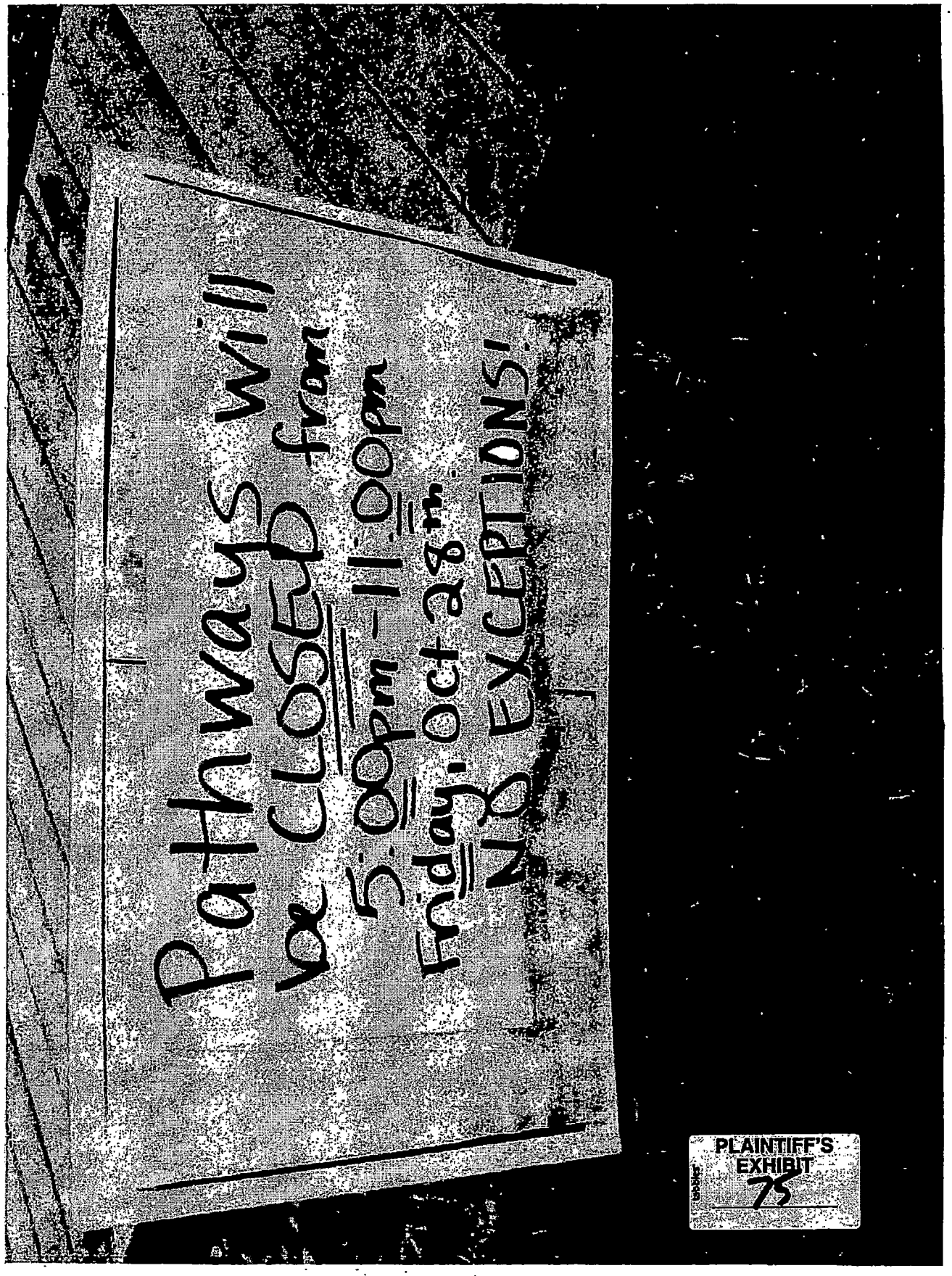
Sincerely,

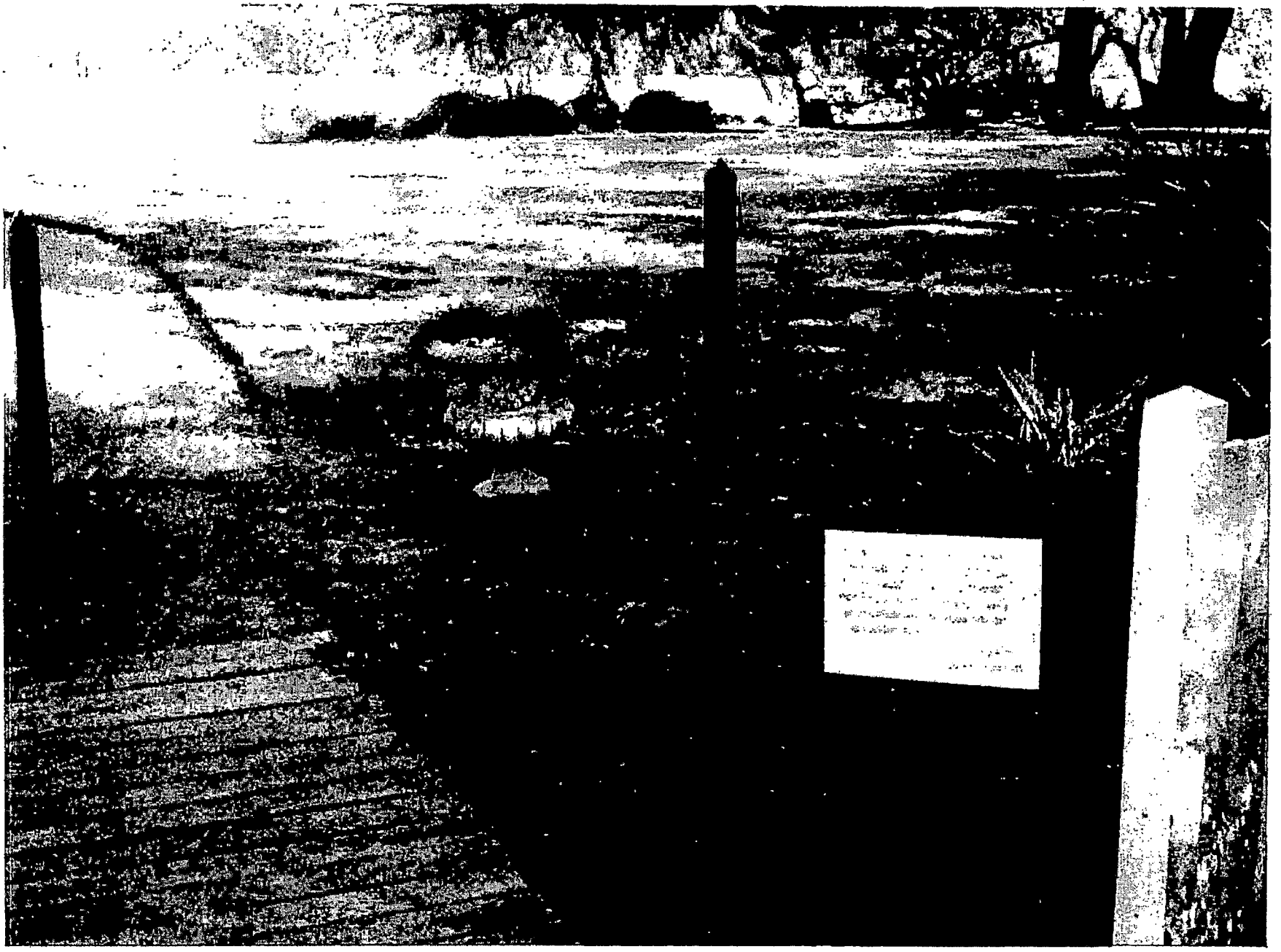
Vincent Graham

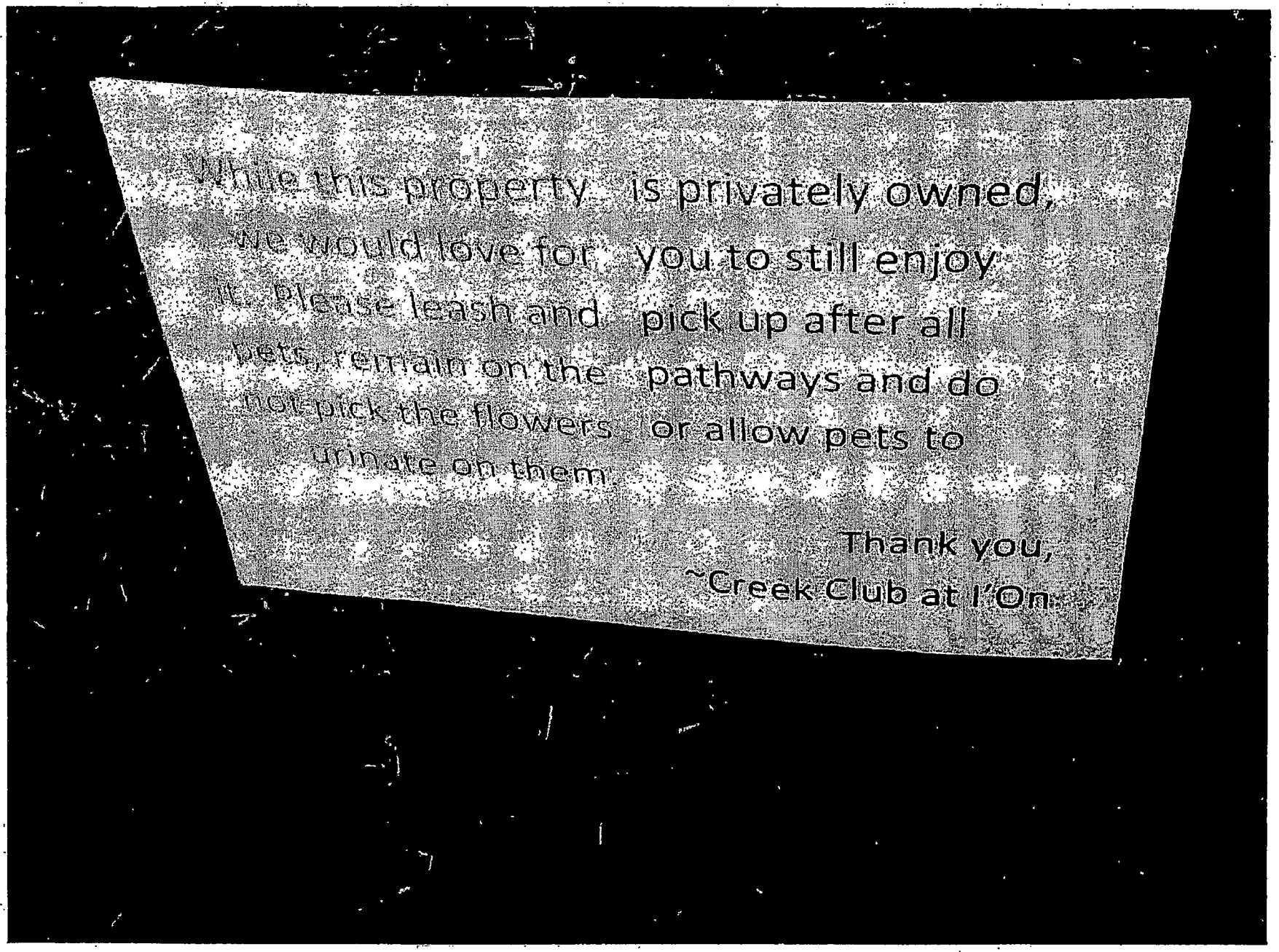
Cc. Bruce Kinney
Assembly Board of Trustees
Chad Besenfelder
Tom Graham

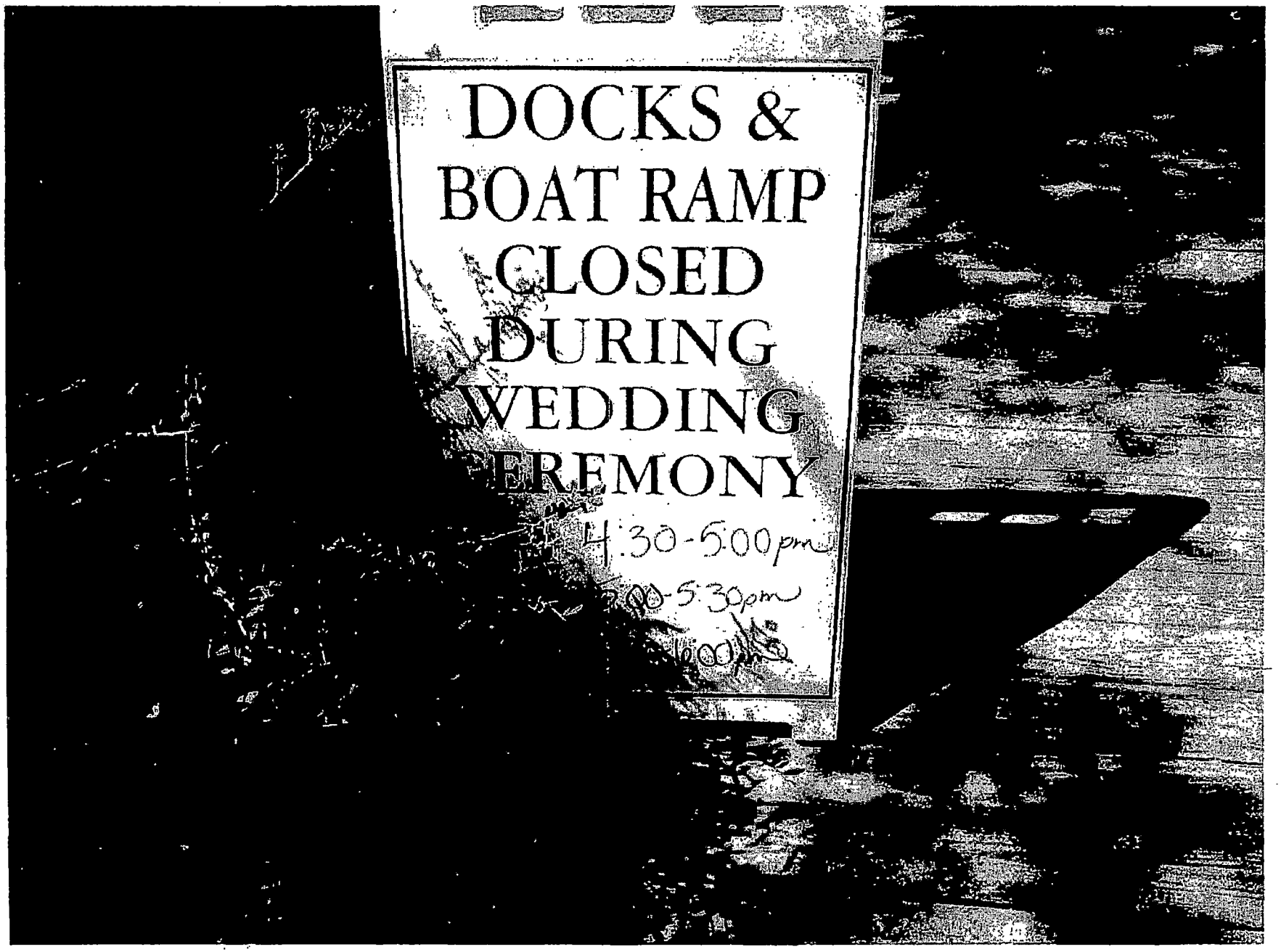
PLAINTIFF'S EXHIBIT 72

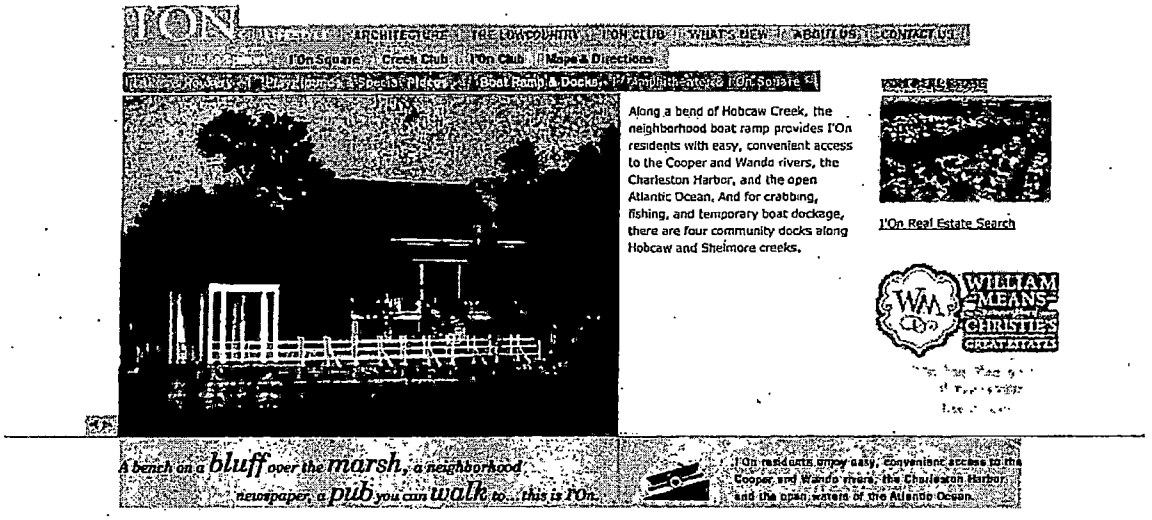
I'On Defendants 000044


Pathways will be closed from 5:00pm - 11:00pm Friday Oct 28th
NO EXCEPTIONS!
PLAINTIFF'S EXHIBIT
75

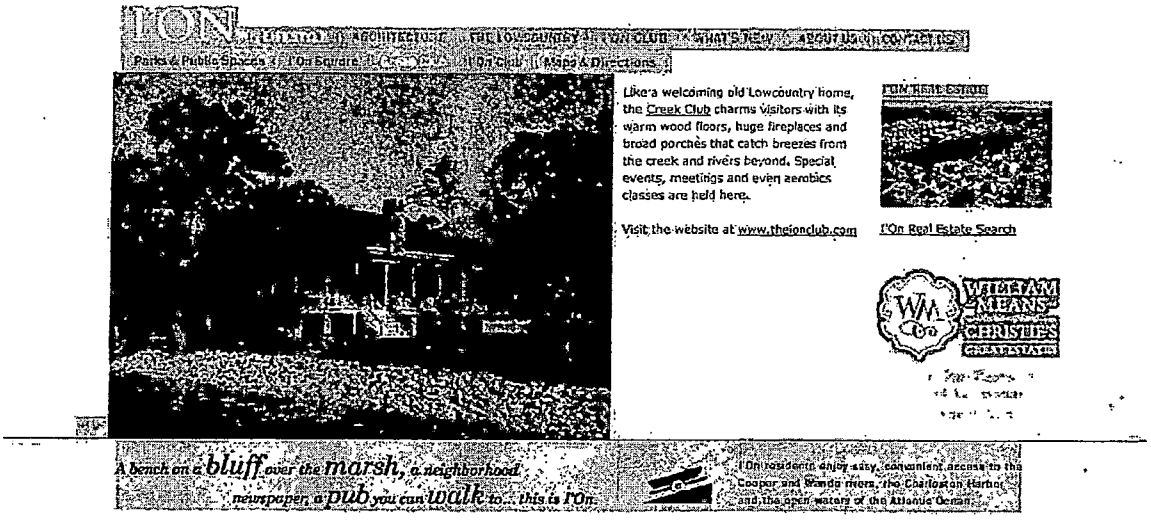



While this property is privately owned,
we would love for you to still enjoy
it. Please leash and pick up after all
pets, remain on the pathways and do
not pick the flowers or allow pets to
urinate on them.
Thank you,
~Creek Club at I'On~


DOCKS &
BOAT RAMP
CLOSED
DURING
WEDDING
EREMONY
4:30-5:00pm
5:30pm



PLAINTIFF'S EXHIBIT 76


I'ON
Parks & Public Spaces
Like a welcoming old Lowcountry home, the Creek Club charms visitors with its warm wood floors, huge fireplaces and broad porches that catch breezes from the creek and rivers beyond. Special events, meetings and even aerobics classes are held here.
Visit the website at www.theionclub.com
I'On Real Estate Search
WILLIAM MEANS CHRISTIE'S GREAT ESTATES
A bench on a bluff over the marsh, a neighborhood newspaper, a pub you can walk to... this is I'On.
I'On residents enjoy easy, convenient access to the Cooper and Wando rivers, the Charleston Harbor, and the open waters of the Atlantic Ocean.



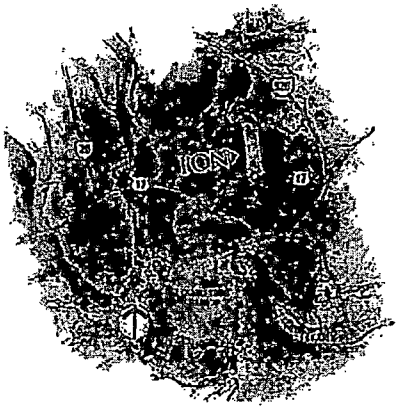
PLAINTIFF'S EXHIBIT 77

Creek Club - Plaintiff
Walbeck 000097

HAVE YOU HEARD WHAT EVERYONE'S BEEN SAYING ABOUT I'ON?

"It's the sort of pedestrian-friendly, intimate place that people long thought couldn't be built today."
COASTAL LIVING MAGAZINE

"The houses at I'On echo the rich architectural heritage of Charleston. The attention to design carries through in the details."
SOUTHERN LIVING

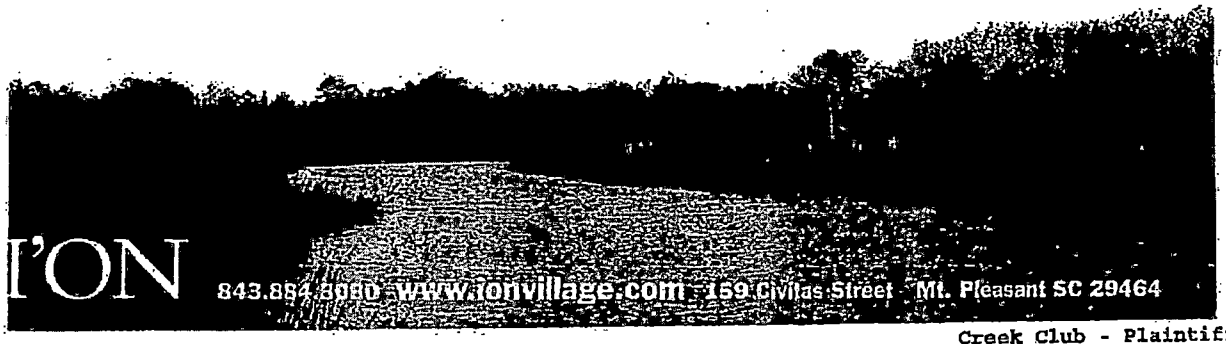


"It's thoughtful stewardship of the environment through its careful planning and construction has created an exemplary example to be followed."
SOUTH CAROLINA DEPARTMENT OF NATURAL RESOURCES

I'On is revolutionizing suburban development...no wonder its winning national awards and considered Charleston's best new neighborhood.
CHARLESTON CITY PAPER

"Today, I'On is a success – for its conservation-minded supporters, for its persistent developers, and for the people who call it home."
SOUTH CAROLINA COASTAL CONSERVATION LEAGUE

See for yourself what all the talk is about, visit us today!



Creek Club - Plaintiff
Walbeck 000098

Living at I'On

I'On, comprised of 243 acres with more than 762 planned homes, was developed and planned through the careful study of traditional neighborhoods and vernacular architecture in neighboring areas including downtown Charleston, the Old Village of Mt. Pleasant, Beaufort, and Savannah. Tree-lined streets, miles of marshfront paths, and shady sidewalks are designed to encourage walking, bicycling, and neighborly interaction among I'On residents. Complemented by the architectural style of the homes, the parks, green spaces and sidewalks create a sense of place and community within I'On.

THE I'ON CODE

The I'On Code was created to provide a set of design guidelines to foster the creation of a thoughtfully designed community. The Code is intended to provide visual harmony among buildings through the use of appropriate architectural proportions, elements and details. The I'On Design Committee reviews all construction drawings, site plans, and landscaping plans for compliance with the Code and provides guidance when necessary.

THE I'ON SQUARE

Truly the heart of the neighborhood, the I'On Square offers charming shops, restaurants, and offices within a short walk or bicycle ride from every home in I'On.

THE I'ON ASSEMBLY

Each homeowner belongs to the I'On Assembly which governs the neighborhood's common areas. Shared maintenance costs of the Assembly include insurance and care of street landscaping.

THE I'ON TRUST

Neighbors and friends actively support environmental, social, and cultural activities in I'On, as well as in Mt. Pleasant. By celebrating the spirit of community, the not-for-profit Trust helps to foster the social infrastructure of I'On.

RECREATIONAL FACILITIES

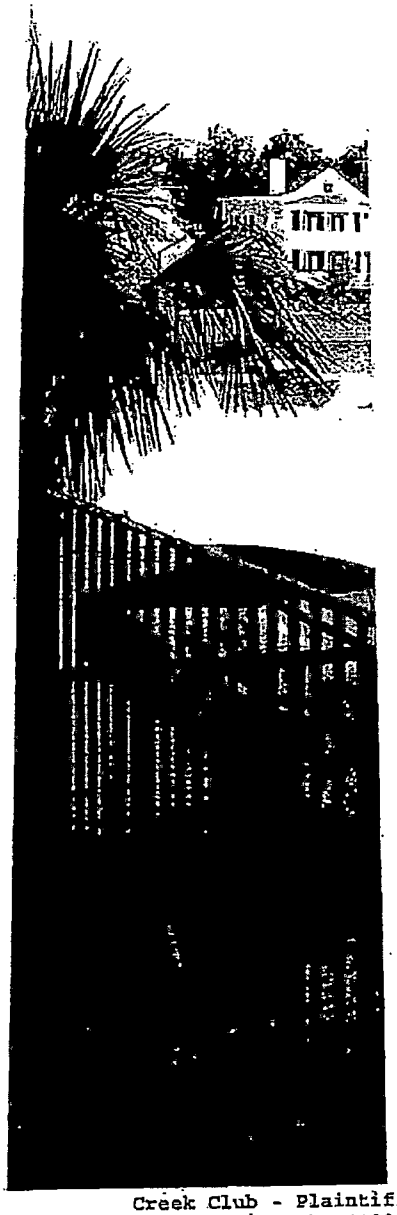
The I'On Club offers swimming, tennis, fitness, and the use of the Creek Club Memberships are optional and are available to non-residents. Playgrounds, ball fields, marshfront paths, community docks, and a boat ramp along Hobcaw Creek are enjoyed by all and make up about 40% of the total land area in the neighborhood.

SCHOOLS & LIBRARIES

Mt. Pleasant boasts some of the highest ranked public schools in the region. Children attend James B. Edwards Elementary only 1½ miles from I'On, Moultrie Middle approximately 2 miles away near the Old Village, and Wando High School. Excellent private schools are also nearby. Also, neighbors can walk or ride bikes to the Mt. Pleasant Regional Library, less than 1 mile away.

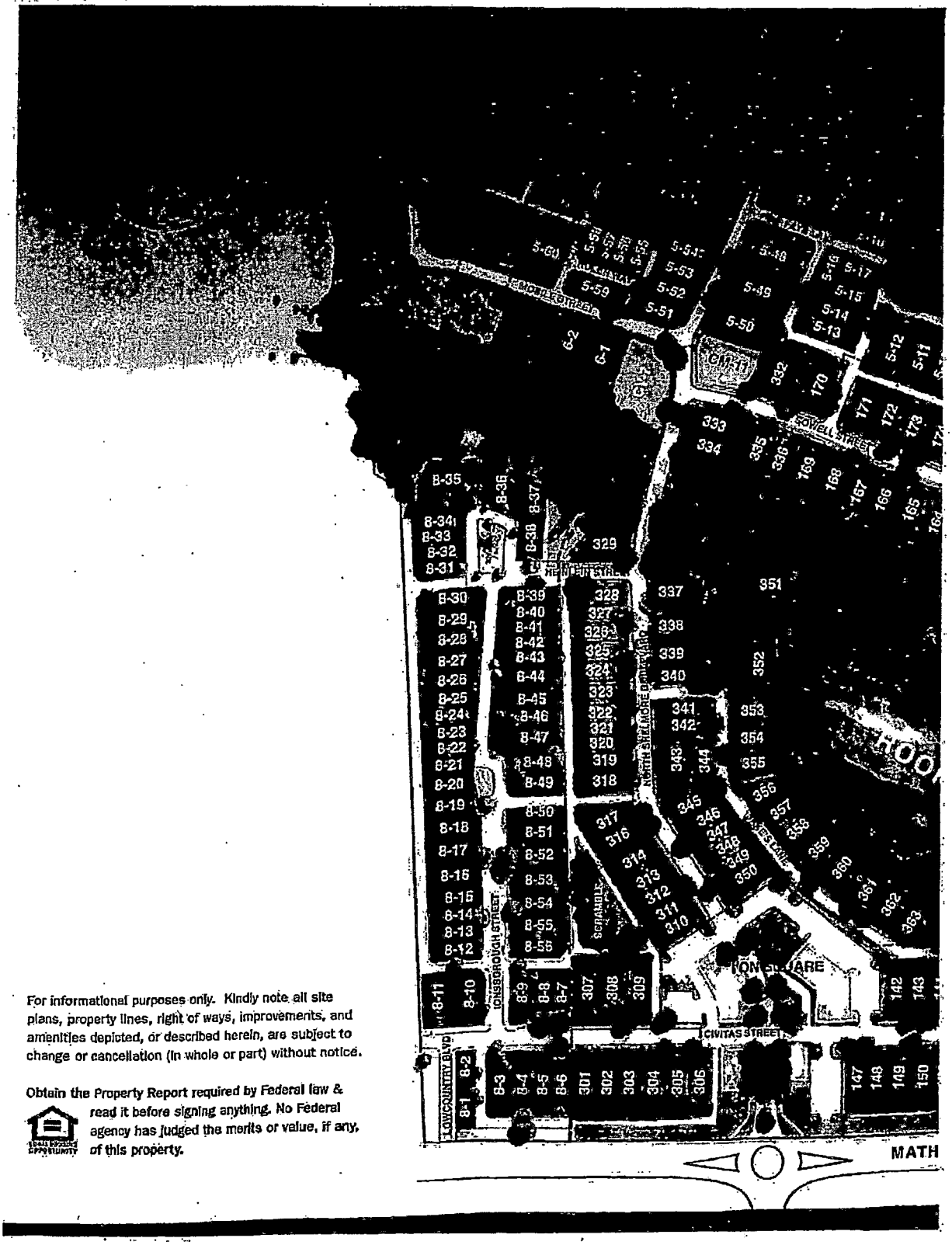
HOSPITALS

The East Cooper Regional Hospital is 1.2 miles from I'On. Roper Hospital and the Medical University of South Carolina, in downtown Charleston, provide renowned health facilities within a 10-minute drive.



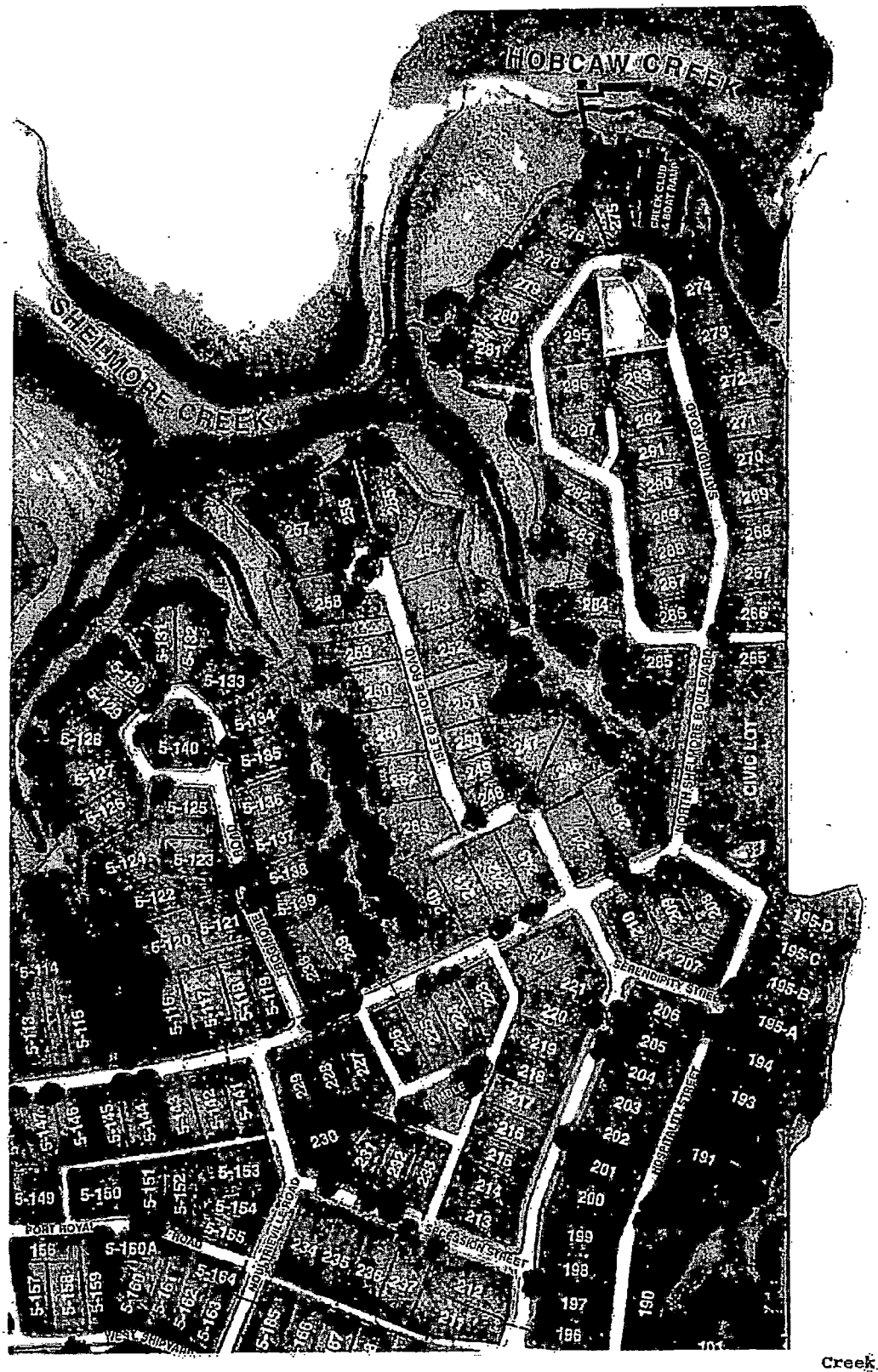
Creek Club - Plaintiff
Walbeck 000099

Creek Club - Plaintiff
Malbeck 000100



For informational purposes only. Kindly note all site plans, property lines, right of ways, improvements, and amenities depicted, or described herein, are subject to change or cancellation (in whole or part) without notice.

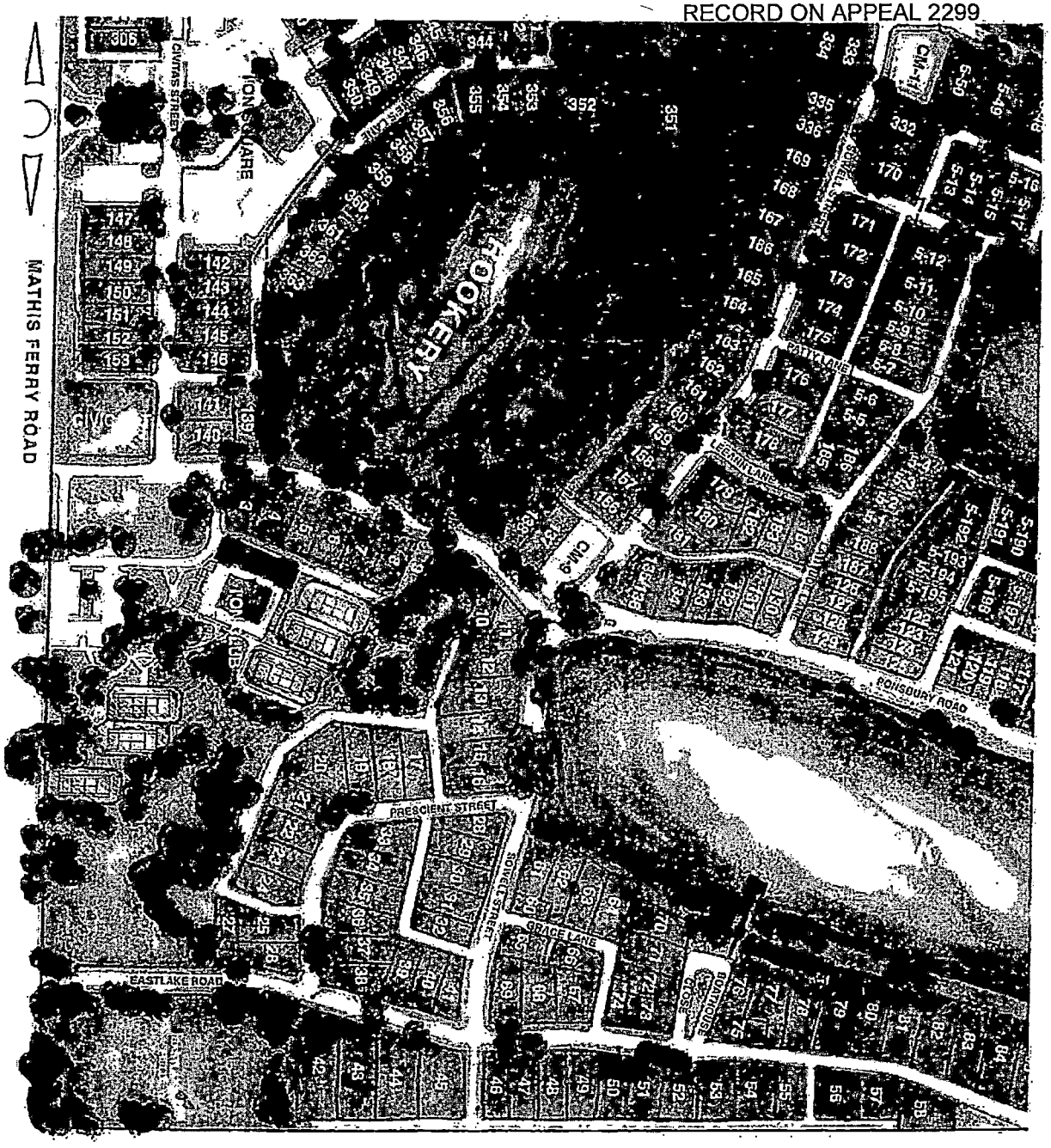
Obtain the Property Report required by Federal law & read it before signing anything. No Federal agency has judged the merits or value, if any, of this property.



Creek Club - Plaintiff
Walbeck 000101



Creek Club - Plaintiff
Walbeck 000102



Creek Club - Plaintiff
Walbeck 000103

Ken Hance

From: Steve Nichols [steve@newkirkenv.com]
Sent: Wednesday, April 23, 2008 1:38 PM
To: 'ken hance'
Subject: FW: I'On Community Dock
Attachments: BoatDockRampMaintenancePlan.doc; 102927.pdf

See below

Stephen A. Nichols
Managing Partner
Newkirk Environmental, Inc.
1887 Clements Ferry Road
Charleston, SC 29492
(843) 388-6585 office
(843) 388-6580 fax
[redacted]

From: Chad Besenfelder [mailto:chad@longroup.com]
Sent: Wednesday, April 23, 2008 12:37 PM
To: mcbridea@dnr.sc.gov; Steve Nichols
Subject: I'On Community Dock

Need some advice.

Attached is the I'On Development's Dock and Ramp Maintenance Plan. Would you please review this document and send me your thoughts. We are ready to deed this community dock and ramp to the homeowners and wish to comply with regulations. In addition, we would like your recommendations on boat storage and docking. Currently we do not allow boats to be left unattended. Residents wish to moor boats at the community dock overnight and possibly raft multiple boats together.

Note the attached survey of our community dock. The dock is positioned ¼ of Creek Width or 50' from shoreline of Hobcaw 200-220' width. Rafting would obstruct waterway, correct?

I appreciate your thoughts.

Chad Besenfelder

Chad Besenfelder
The I'On Company
159 Civitas Street
Mount Pleasant, SC 29464
843-284-2129



4/23/2008

OPERATION & MAINTENANCE PLAN
FOR THE
I'ON BOAT RAMP AND DOCKS

A. The Operation & Maintenance Plan applies to the following facilities in I'On:
   1. Creek Club dock and boat ramp
   2. Saturday Road dock
   3. Isle of Hope Road dock
   4. Hopetown Road dock
   5. McClellanville Road dock
   6. Edenton Street dock

   These facilities are for the exclusive use of I'On residents.

B. Discharging oil, bilge water, etc. is prohibited while docked.

   The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable water and contiguous zone of the United States. Violators will be held responsible for any legal penalties imposed and will be charged the full clean-up cost.

C. Discharging marine heads is prohibited while docked.

D. Boats must not be left unattended. Live-aboards are not permitted.

E. Garbage and trash must be bagged and placed in receptacles or taken with you.

F. Major repairs-those involving the outfitting or refitting of vessels at dock-are prohibited. Minor repairs-those involving mechanical adjustments or electrical work at dock-are permitted. The I'On Club staff and the I'On Assembly must be notified of any work being performed on boat while docked.

G. Swimming and diving from the docks is prohibited.

H. Fishing from the docks is permitted, although cleaning fish is prohibited.

I. The I'On Club and the I'On Assembly reserve the right to refuse dock space to any vessel deemed to be in unsafe condition.

J. The I'On Club and I'On Assembly reserve the right to change any part of the Operations and Maintenance Plan and Waiver.

K. Vehicles and boat trailers should be parked at the boat owner's home, while boat is in use.

L. It may be necessary to close the boat ramp and docks without notice for required maintenance and/or construction activities in surrounding areas.

GENERAL INFORMATION

A. One key for access to the boat ramp will be issued per lot. There is a $25 annual fee to the I'On Club. There is a $25 replacement cost for a lost key.

B. In order to protect your I'On Community assets, please remember to lock the access chain at the boat ramp after each use.

C. Important phone numbers:

Charleston County Emergency Preparedness	740-6400	
Police, Fire, Ambulance	911	
U.S. Coast Guard	724-7616	*If no answer, call 723-9378*
I'On Club	971-7834	
I'On Assembly	849-7062	

D. The I'On Club and the I'On Assembly and are not responsible for any loss or damage caused by vandalism or theft. Owners are responsible at all times for the security of their vessels.

E. Hurricane Emergency Preparedness Policy:
1. A hurricane watch is issued 48 hours before the expected landfall of a storm.
2. A hurricane warning is issued 24 hours before the expected landfall of a storm.
3. An evacuation order is issued 12 hours prior to the expected landfall of gale force winds (39 to 57 mph) preceding the hurricane. All persons are required to evacuate.
4. Move vessels to areas less susceptible to hurricane damage.
5. No one is allowed to return to the docks until Charleston County Emergency Preparedness determines it is safe to do so.

The I'On Club, I'On Assembly, and The I'On Company endorse the policies of Charleston County Emergency Preparedness. Whenever possible, vessels should be moved to areas less susceptible to hurricane damage. The owner of each vessel should select such an area in advance and rehearse moving the vessel to that area. Criteria for selection should include ease of access and inland distance from oceans and sounds.

LIABILITY

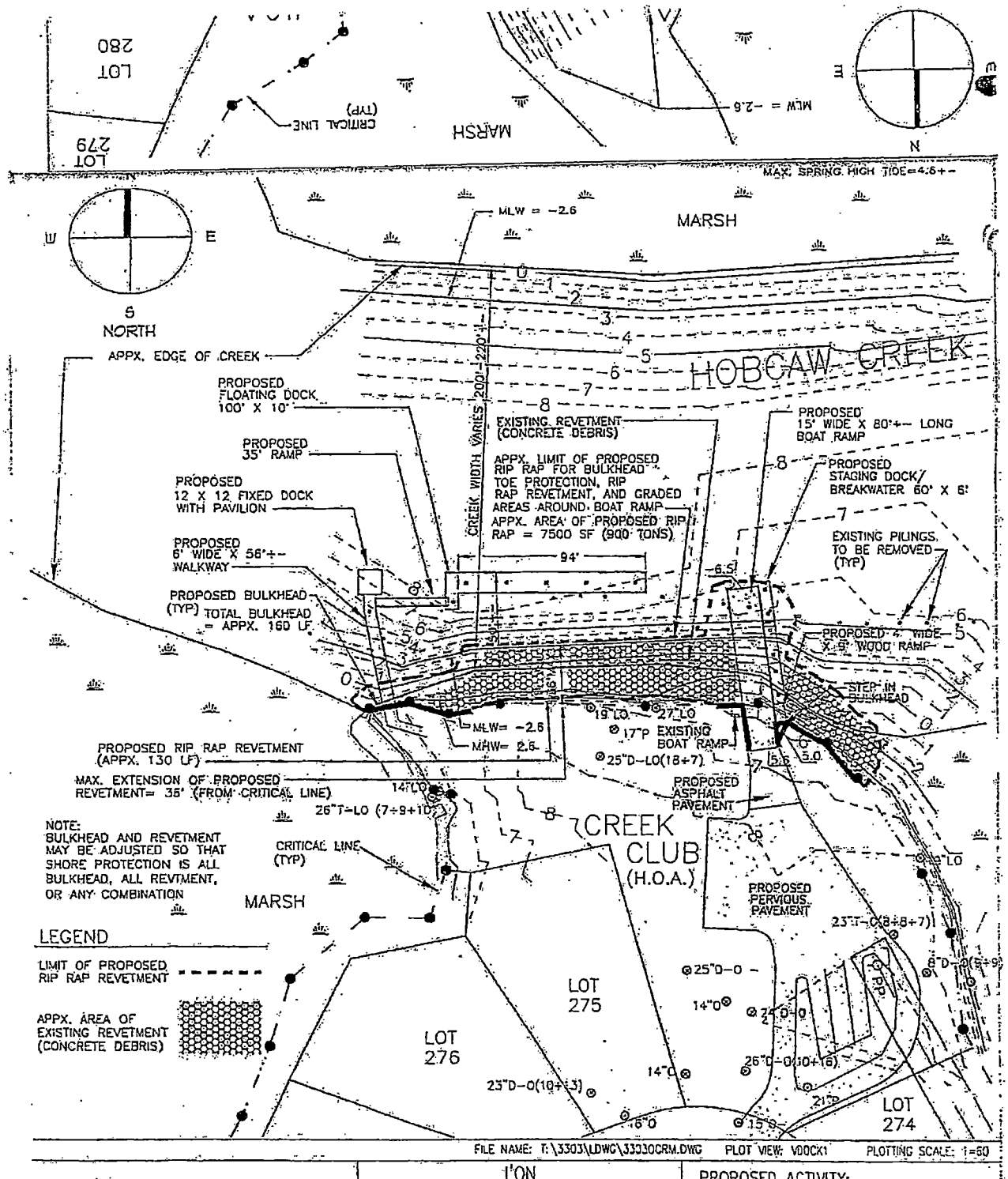
The use of dock space is at the sole risk of the owner. The I'On Club, I'On Assembly, and The I'On Company shall not be liable for the care and protection of any vessel, its appurtenances, or contents. The I'On Club, I'On Assembly, and The I'On Company shall not be held responsible for injuries to owners or their guests occurring on or around the docks.

I have read and received a copy of the Operation and Maintenance Plan and the Waiver for the I'On boat ramp and docks. I agree to comply with all of the terms of these documents.

Resident_____
(Print Name)

Signature_____

Date_____



I'ON

PLAN VIEW DOCK #1, BOAT RAMP, & SHORE PROTECTION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

99-16-322

APPENDIX 2779

NEWKIRK
ENVIRONMENTAL, INC

August 12, 1999

Ms. Tina Hadden
Charleston District
U. S. Army Corps of Engineers
Post Office Box 919
Charleston, SC 29402-0919

RE: I'on Community Docks
Mt. Pleasant, Charleston County, SC

Dear Tina:

Enclosed for your review and use is a permit application for community docks associated with a residential development in Mt. Pleasant, Charleston County, South Carolina.

Those agencies/individuals indicated as being copied by this correspondence have been provided a complete copy of the application package.

Please do not hesitate to contact me with any questions or comments you may have concerning this application.

Sincerely,

Kenneth H. Hance
NEWKIRK ENVIRONMENTAL, INC.

cc: Richard Chinnis, SCDHEC-OCRM
Rheta Geddings, SCDHEC-EQC
Geoff Graham, I'on Company
Freeman Milligan, Seamon, Whiteside & Assoc.

Enclosures



Savannah, GA Office
340 Eisenhower Drive
Building 200, Suite 201
Savannah, GA 31406
(912) 354-6494
Facsimile: (912) 354-7179
E-Mail: NewkirkGA@aol.com

Charleston, SC Office
192 East Bay Street
Suite 201
Charleston, SC 29401
(843) 722-4958
Facsimile: (843) 723-6684
E-Mail: NewkirkEnv@aol.com

Hendersonville, NC Office
300 N. Main Street, Suite 205
Post Office Box 2876
Hendersonville, NC 28793
(828) 698-0091
Facsimile: (828) 698-0255
E-Mail: NewkirkNC@aol.com

Joint Federal and State Application Form For Activities Affecting Waters of the United States or Critical Areas of the State of South Carolina	This Space for Official Use Only. Application # Date Received: Project Manager:

Authorities: 33 USC 401, 33 USC 403, 33 USC 407, 33 USC 408, 33 USC 1341, 33 USC 1344, 33 USC 1413 and Section 48-39-10 et. seq of the South Carolina Code of Laws. These laws require permits for activities in, or affecting, navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps of Engineers and the State of South Carolina have established a joint application process for activities requiring both Federal and State review or approval. Under this joint process, you may use this form, together with the required drawings and supporting information, to apply for both Federal and/or State permit(s).

Drawings and Supplemental Information Requirements: In addition to the information on this form, you must submit a set of drawings and, in some cases, additional information. A completed application form together with all required drawings and supplemental information is required before an application can be considered complete. See the attached instruction sheets for details regarding these requirements. You may attach additional sheets if necessary to provide complete information.

1. Applicant's Name. **THE I'ON COMPANY**	4. Agent's Name (an agent is not required). **NEWKIRK ENVIRONMENTAL, INC.**
2. Applicant's Address. **C/O GEOFF GRAHAM** **POST OFFICE BOX 980** **MT. PLEASANT, SC 29465**	5. Agent's Address. **192 East Bay Street, Suite 201** **Charleston, SC 29401**
3. Applicant's Contact Number (include area code). Residence: **N/A** Business: **843/971-1662** FAX: **843/971-1664**	6. Agent's Contact Number (include area code). Residence: **N/A** Business: **(843) 722-4958** FAX: **(843) 723-6684**
7. Project Title. **I'ON**	9. Project Location. **MT. PLEASANT, SC** Street Address: **MATHIS FERRY ROAD** County: **CHARLESTON** Latitude: **32° 49' 00"** Longitude: **79° 52' 45"**
8. Nearest Waterbody to project site (if known). **HOBCAW CREEK**	

10. Directions to the Site (attach additional sheets if needed).

SEE ATTACHED.

11. Description of the Overall Project and of Each Activity In or Affecting U.S. Waters or State Critical Areas (attach additional sheets if needed).

SEE ATTACHED.

12. Overall Project Purpose and the Basic Purpose of Each Activity In or Affecting U.S. Waters (attach additional sheets if needed).

SEE ATTACHED.

13. Type and Quantity of Materials To Be Discharged. N/A		14. Type and Quantity of Impacts to U.S. Waters (including wetlands) N/A			
Dirt or Topsoil:	____ cy	Filling:	____ ☐ acres ☐ sq.ft.	____	cy
Clean Sand:	____ cy	Backfill & Bedding:	____ ☐ acres ☐ sq.ft.	____	cy
Mud:	____ cy	Landclearing:	____ ☐ acres ☐ sq.ft.	____	cy
Clay:	____ cy	Dredging or Excavation:	____ ☐ acres ☐ sq.ft.	____	cy
Gravel,Rock, or Stone:	____ cy	Flooding:	____ ☐ acres ☐ sq.ft.	____	cy
Concrete:	____ cy	Draining:	____ ☐ acres ☐ sq.ft.	____	cy
Other (describe):	____ cy	Shading:	____ ☐ acres ☐ sq.ft.	____	cy
TOTAL:	____ cy	TOTALS	____ ☐ acres ☐ sq.ft.	____	cy

15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed).
SEE ATTACHED PUBLIC NOTICE MAILING LIST DATA FORM.

16. Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of the work.
NO.

17. List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

18. Authorization of Agent.
I hereby authorize the agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

X _____ 8-20-99

Applicant's Signature Date

19. Certification.
Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.

_____ 8-20-99 _____ 8-20-99

Applicant's Signature Date Agent's Signature Date

The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Submit the completed application form with the required drawings and all supporting information as indicated below.

Send all original application materials to:
U.S. Army Corps of Engineers
Charleston District, Regulatory Branch
P.O. Box 919, ATTN: CESAC-CO-P
Charleston, South Carolina 29402
(803) 727-4330

Send one complete copy to:
S.C. Dept. of Health & Environmental Control
Office of Ocean and Coastal Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405
(803) 744-5838

Send one complete copy to:
S.C. Dept. of Health & Environmental Control
Office of Environmental Quality Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 734-5300

13. Type and Quantity of Materials To Be Discharged. N/A

Dirt or Topsoil:	____ cy
Clean Sand:	____ cy
Mud:	____ cy
Clay:	____ cy
Gravel, Rock, or Stone:	833 ± cy
Concrete:	17 ± cy
Other (describe):	____ cy
TOTAL:	850 ± cy

14. Type and Quantity of Impacts to U.S. Waters (including wetlands) N/A

RIPRAP * CONCRETE	Filling:	7500 ± 900 ±	☐ acres	☒ sq.ft.	833 ± 17 ± cy
	Backfill & Bedding:	____	☐ acres	☐ sq.ft.	____ cy
	Landclearing:	____	☐ acres	☐ sq.ft.	____ cy
*	Dredging or Excavation:	900 ±	☐ acres	☒ sq.ft.	65 ± cy
	Flooding:	____	☐ acres	☐ sq.ft.	____ cy
	Draining:	____	☐ acres	☐ sq.ft.	____ cy
	Shading:	____	☐ acres	☐ sq.ft.	____ cy
	TOTALS	9300 ±	☐ acres	☒ sq.ft.	915 ± cy

* CONCRETE FILL + EXCAVATION IS W/IN THE SAME FOOTPRINT.

15. Names and Addresses of All Adjoining Property Owners (attach additional sheets if needed).
SEE ATTACHED PUBLIC NOTICE MAILING LIST DATA FORM.

16. Has any portion of the work already commenced? If yes, describe all work that has been done and the dates of the work.
NO.

17. List all Certifications, Approvals, and Denials received from Federal, State, or Local Agencies for work described in this application.

18. Authorization of Agent.
I hereby authorize the agent whose name is given in block number 4 of this application to act in my behalf in the processing of this application and to furnish supplemental information in support of this application.

X [signature] 8-20-99

Applicant's Signature Date

19. Certification.
Application is hereby made for a permit or permits to authorize the work and uses of the work as described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent for the applicant.

[signature] 8-20-99 Kenneth Hence 8-20-99

Applicant's Signature Date Agent's Signature Date

The application must be signed by the person who desires to undertake the proposed activity or it may be signed by a duly authorized agent if the authorization statement in blocks 4 and 18 have been completed and signed. 18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

Submit the completed application form with the required drawings and all supporting information as indicated below.

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(803) 744-5838

Send one complete copy to:
S.C. Dept. of Health & Environmental Control
Office of Environmental Quality Control
2600 Bull Street
Columbia, South Carolina 29201
(803) 734-5300

June 30, 1999

U.S. ARMY CORPS OF ENGINEERS
Post Office Box 919
Charleston, SC 29402-0919

To Whom It May Concern:

This is to certify that the work subject to the jurisdiction of the US Army Corps of Engineers as described in my application dated 5-20-99 is, to the best of my knowledge, consistent with the South Carolina Coastal Zone Management Program.

The wetland delineations used in preparing this application have been done in accordance with Corps of Engineers methods and techniques and are an accurate representation of the location of all jurisdictional wetlands within the project. The delineation has been reviewed and approved by the Corps and assigned the following delineation number SAC-81-95-1154(P).

Since my project is located in the Coastal Zone of South Carolina, I understand that the US Army Corps of Engineers must provide this statement to the SC Department of Health and Environmental Control (SC DHEC) - Office of Ocean and Coastal Resource Management (OCRM) for its review and that a Department of the Army permit will not be issued until the SC DHEC - OCRM concurs with my findings. I also understand that additional information concerning my project may be required by the SCDHEC-OCRM to facilitate its review of my project and that additional certifications may be required for other Federal or State authorizations.

X _____
SIGNATURE OF APPLICANT

Geoffrey D. Gilbert, PM, The TDA Company
PRINTED NAME

159 Civitas Street, Mt Pleasant SC 29464
ADDRESS

South Carolina DHEC Department of Health and Environmental Control	AFFIDAVIT OF OWNERSHIP OR CONTROL	Office of Ocean and Coastal Resource Management 1362 McMillan Avenue, Suite 400 Charleston, SC 29405 (803) 744-5838 (803) 744-5847 (fax)

I hereby certify that I am the (check one):

[X] Record Owner

[ ] Lessee

[ ] Record Easement Holder

[ ] Applicant to Record Owner For Easement

[X] Contract To Purchase Property

of the below described property situated in Charleston County, South Carolina; and that said property is all of that said property that is contiguous to and landward of the area in which the work proposed in the permit application is to be conducted. Furthermore, I certify that as record owner, lessee, or record easement holder, I have, or will have prior to undertaking the work, necessary approvals or permission from all other persons with a legal interest in said property to conduct the work proposed in the permit application.

LEGAL DESCRIPTION OF HIGHLAND AND / OR COPY OF CERTIFIED PLAT, IF AVAILABLE. (Give legal description here or write "see attached")

TAX MAP #514-00-00-052
Plat Book EB, Page 52
RMC Office
Charleston County

I also certify that the project as proposed does not cross any wetlands or areas below mean high water which is in the ownership of other private persons or public or private entities and that there is no disputed claim to the wetlands or areas below mean highwater by private person or other entities due to a Kings Grant, State Grant, easement or conveyance or other legal document evidencing ownership of these areas.

Signature Joseph E. Barnes
General Manager
The I'On Company

Sworn to and subscribed before me at Mt. Pleasant, Charleston County, South Carolina, this 6th day of July, 1999.

Notary Public Linda M. German

My commission expires: March 2, 2009

10, 11 & 12 Project Location, Description & Purpose

The project site is an approximately 243 acre tract of land located between Mathis Ferry Road and Hobcaw Creek in the City of Mt. Pleasant, South Carolina. The site can be accessed from Mathis Ferry Road. The I'on Company (I'on), is currently developing the property with approximately 750 residential dwelling units. Project plans are for a mixed use, traditional neighborhood, with streets and lots laid out in a grid pattern with sidewalks and easy access to numerous common areas and open spaces. One significant feature of the plan preserves the entire, approximately ½ mile, of waterfront for community access. Two, 6' wide, pedestrian/bicycle bridges totaling 263' in length, have been permitted (97-1G-189-C & P) across marshes associated with Hobcaw Creek, for the purpose of providing community access to the common area along the waterfront. A conceptual dock master plan for six (6) community docks was submitted to SCDHEC-OCRM for review during the wetland master plan permit process in 1997.

I'on proposes, with this application, to finalize the location, design and use of the planned community docks. Specifically, I'on proposes to construct:

1. A 15' X 80' concrete boat ramp with associated rip-rap and 6' X 60' floating breakwater/staging dock in Hobcaw Creek;.
*2. Approximately 160 linear feet of wooden bulkhead with rip rap toe protection, to be constructed within approximately 18" of the SCDHEC-OCRM critical line adjacent to Hobcaw Creek;
*3. Approximately 130 linear feet of rip-rap revetment to be constructed at the existing shoreline adjacent to Hobcaw Creek;

R/per/fencomm

4. A 6' X 56' walkway leading to a 12' X 12' fixed pierhead with roof and a 10' by 100' floating dock, providing approximately 194 linear feet of temporary moorage for boats;
5. Two 4' X 28' and 40' walkways leading to 8' X 50' floating docks in an unnamed tributary of Hobcaw Creek;
6. Three 4' X 60', 200' and 140' walkways leading to 6' X 8' fixed pier heads in an unnamed tributary of Hobcaw Creek; and
7. Removal of existing pilings in Hobcaw Creek.

* The proposed bulkhead and revetment construction may be adjusted so that shore protection is all bulkhead, all revetment or any combination.

The purpose of proposed structures is for the common, recreational use of residents within the I'on community. All proposed docks are to be utilized for temporary moorage only. No permanent moorage of boats will be allowed. Potable water and electric lighting will be provided to the main dock in Hobcaw Creek (dock #1) and electric lighting only will be provided to the other five docks. No other services will be provided.

Riperfloatcomm

4. A 6' X 56' walkway leading to a 12' X 12' fixed pierhead with roof and a 10' by 100' floating dock, providing approximately 194 linear feet of temporary moorage for boats;
5. Two 6' X 28' and 40' walkways leading to 8' X 50' floating docks in an unnamed tributary of Hobcaw Creek;
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R/permitcomm

PUBLIC NOTICE MAILING LIST DATA FORM

Instructions: **Use of this form is voluntary.** Applicants are not required to complete or submit this form. However, submittal of the completed form with your application may speed the processing of your application. If you are uncertain of an item, put a question mark next to that item or leave it blank. Do not call the Corps of Engineers to obtain the information for completing this form. Only qualified consultants are expected to know certain data. Attach additional sheets if more space if required.

Applicant(s):

NAME	MAILING ADDRESS (Street, City, State & Zip)	Phone
THE I'ON COMPANY	c/o Geoff Graham, Post Office Box 980, Mt. Pleasant, SC 29465	843/971-1662

Proposed Project:

Project Title	Nearest Impacted Waterbody (Include stream code if known)
I'on	Hobcaw Creek

Agent (if any):

Business Name	Mailing Address (Street, City, State & Zip)		
NEWKIRK ENVIRONMENTAL, INC.	192 East Bay Street, Suite 201, Charleston, SC 29401		
Primary Point of Contact:	Phone	Secondary Point of Contact	Phone
Ken Hance	843/722-4958	Duncan C. Newkirk	843/722-4958

Adjacent Property Owners (attach additional sheets if necessary)

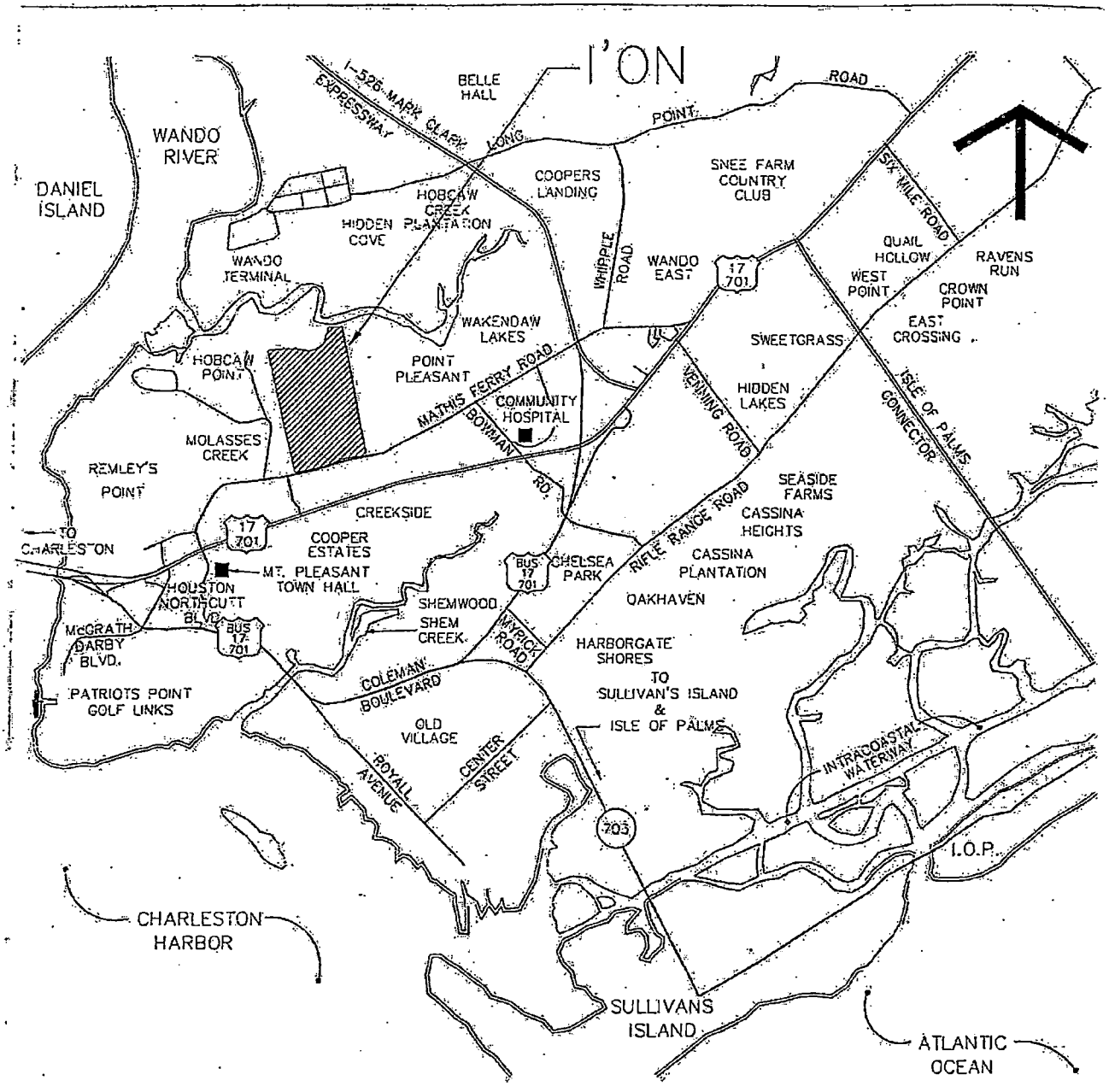
Name	
Charles & Linda Ott	606 East Hobcaw Drive, Mt. Pleasant, SC 29464
Herschel & Maxine Hudson	602 East Hobcaw Drive, Mt. Pleasant, SC 29464
Julia F. Reese c/o Dewey E. Robinson, Jr.	598 East Hobcaw Drive, Mt. Pleasant, SC 29464
Charles & Ann Barnhill	594 East Hobcaw Drive, Mt. Pleasant, SC 29464
Orrin & Margaret Hammond	590 East Hobcaw Drive, Mt. Pleasant, SC 29464
The Commissioners of Public Works	P. O. Box 330, Mt. Pleasant, SC 29464
James Edward & Pamela Miller	578 East Hobcaw Drive, Mt. Pleasant, SC 29464
Pamela Marlowe	572 East Hobcaw Drive, Mt. Pleasant, SC 29464
Barbara Swan	570 East Hobcaw Drive, Mt. Pleasant, SC 29464
John & Reyne Miller	586 East Hobcaw Drive, Mt. Pleasant, SC 29464
Sheryl Lynne McGillivry	583 Creole Retreat, Mt. Pleasant, SC 29464
GR, L.L.C., c/o Joe Griffith Realty	180 East Bay Street, Charleston, SC 29401
*** See next page	

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Public Notice Mailing List Data Form
Page Two

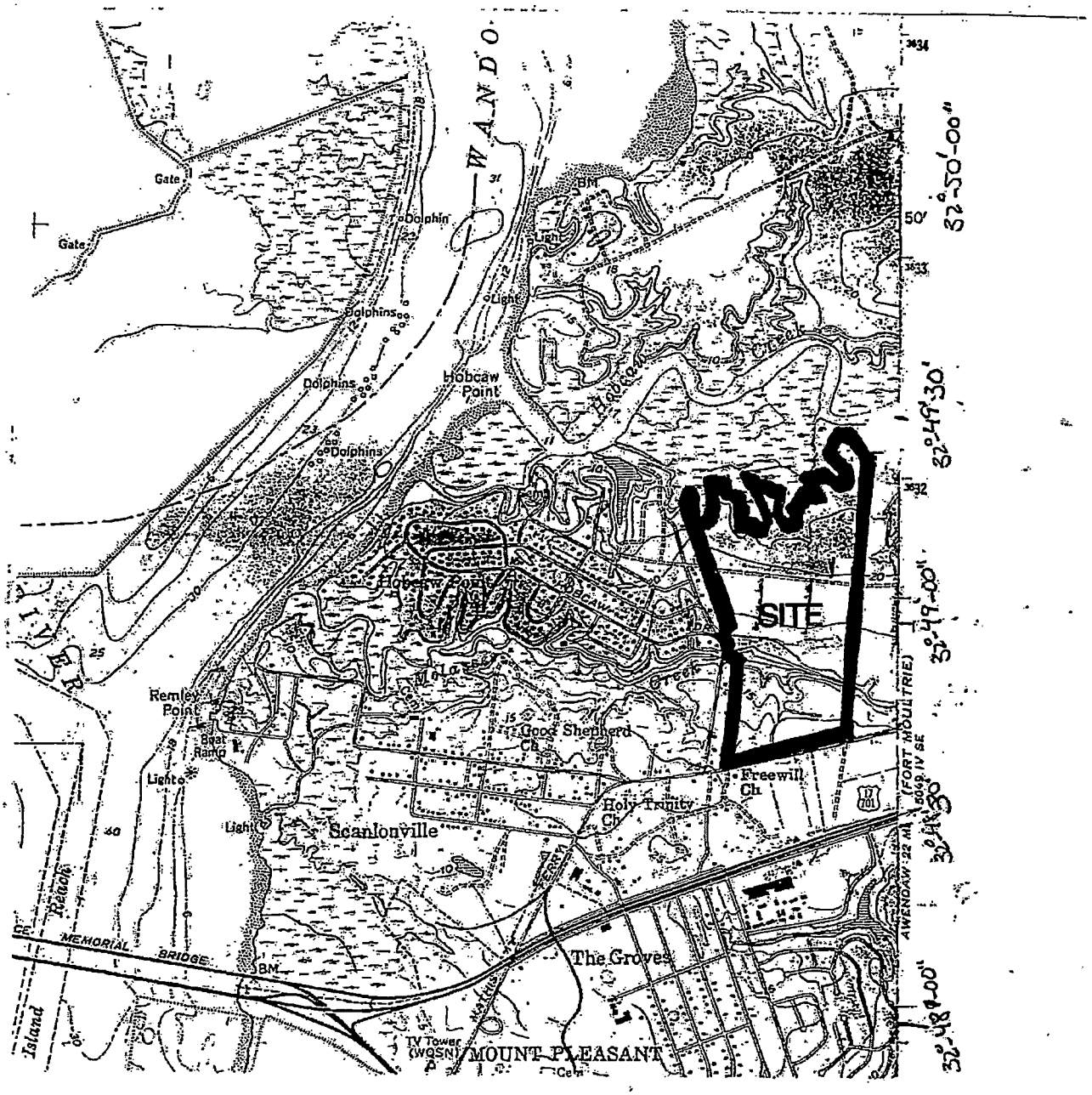
Adjacent Property Owners (attach additional sheets if necessary)	
Name	
Gordon Wilcox	49 Elizabeth Street, Charleston, SC 29403
Chris Fraser	382 Quinby Court, Mt. Pleasant, SC 29464
James F. Snyder & Margaret M. Snyder	10602 Twelve Oaks, Houston, TX 77024
Robert & Susan Simpson	1152-4 Village Creek Lane, Mt. Pleasant, SC 29464
John Moriarty	49 Elizabeth Street, Charleston, SC 29403
F. William Kellman	147 Tradd Street, Charleston, SC 29401
Jeff Pellegrino, Peris Homes	518 Mathis Ferry Road, Mt. Pleasant, SC 29464
William Murphy, Patricia James, Inc.	d/b/a Long Life Lighting, 665 Perimeter Road, Greenville, SC 29605

z/per/paolice.lst



FILE NAME: T:\3303\LDWG\3303OCRM.DWG PLOT VIEW: VLOCMAP PLOTTING SCALE: 1=100

NOT TO SCALE DATUM: MSL, 1929 NGVD	I'ON PROJECT LOCATION (MOUNT PLEASANT) APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION SHEET 1 OF 14 DATE: 8/10/99



SITE LATITUDE: 32°49'0" SITE LONGITUDE: 79°52'45" NOTE: MAP TAKEN FROM CHARLESTON QUAD

FILE NAME: P:\USGS.DWG\USGSCOPY.DWG PLOT VIEW: USGS PLOTTING SCALE: 1=100

I'ON

PROJECT LOCATION (USGS MAP)

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

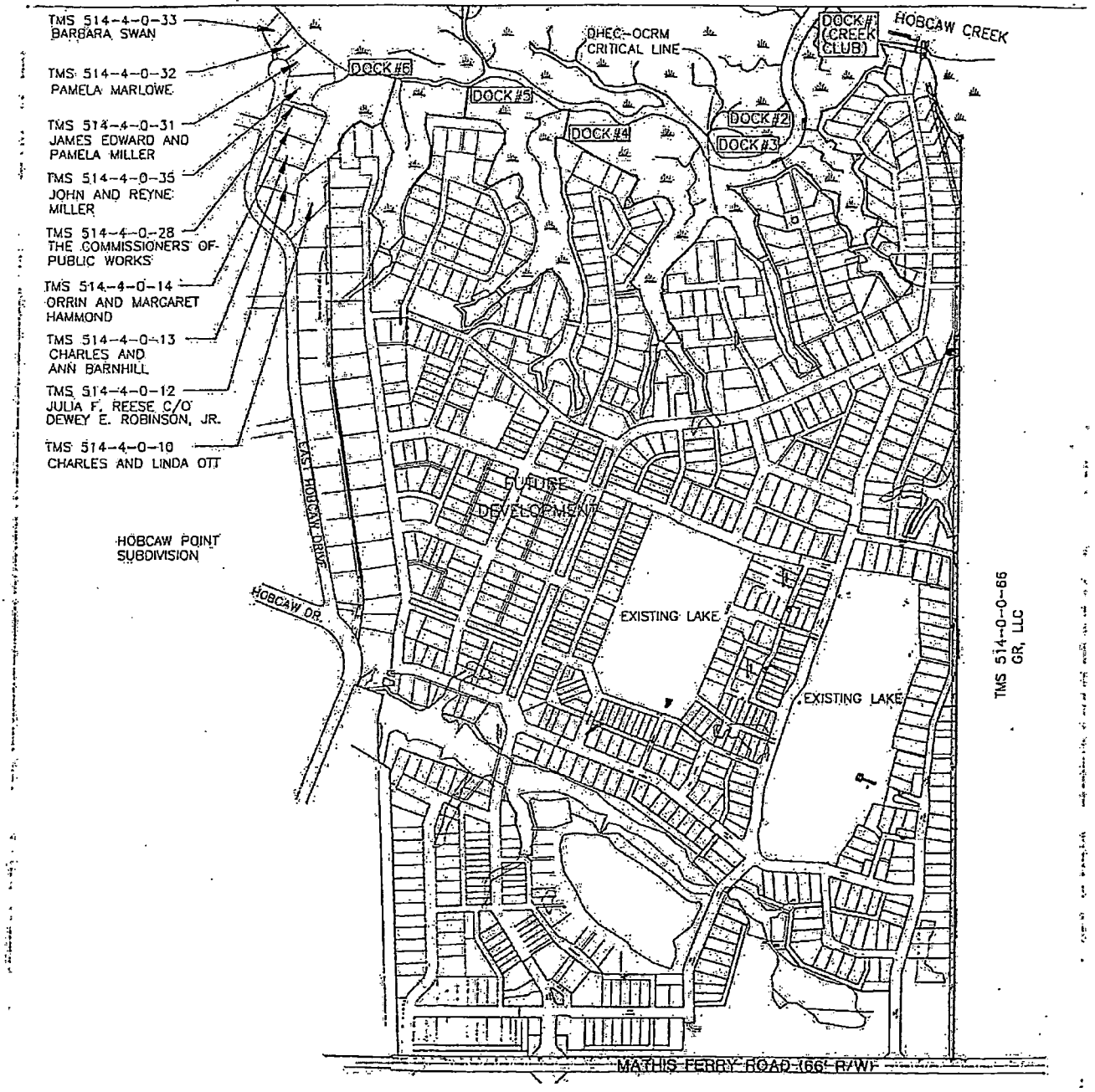
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DATUM: MSL, 1929 NGVD

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

SHEET 2 OF 14 DATE: 8/10/99



FILE NAME: T:\3303\LDWG\3303GCRM.DWG PLOT VIEW: MGN PLOTTING SCALE: 1=600

0' 300' 600'
SCALE: 1" = 600'

DATUM: MSL, 1929 NGVD

I'ON

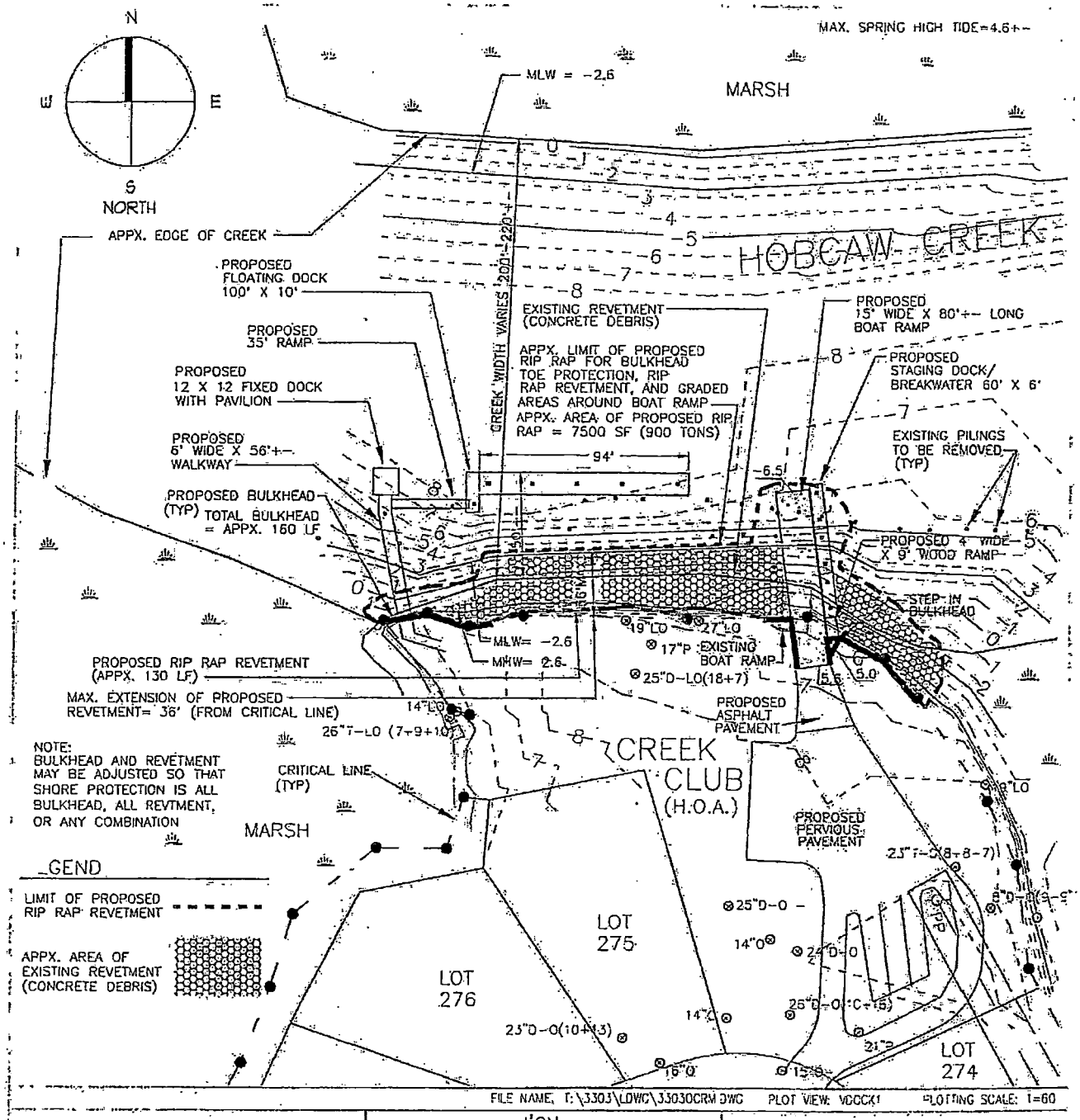
PLAN VIEW OF I'ON PROJECT

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION

SHEET 3 OF 14 DATE: 8/10/99



I'ON

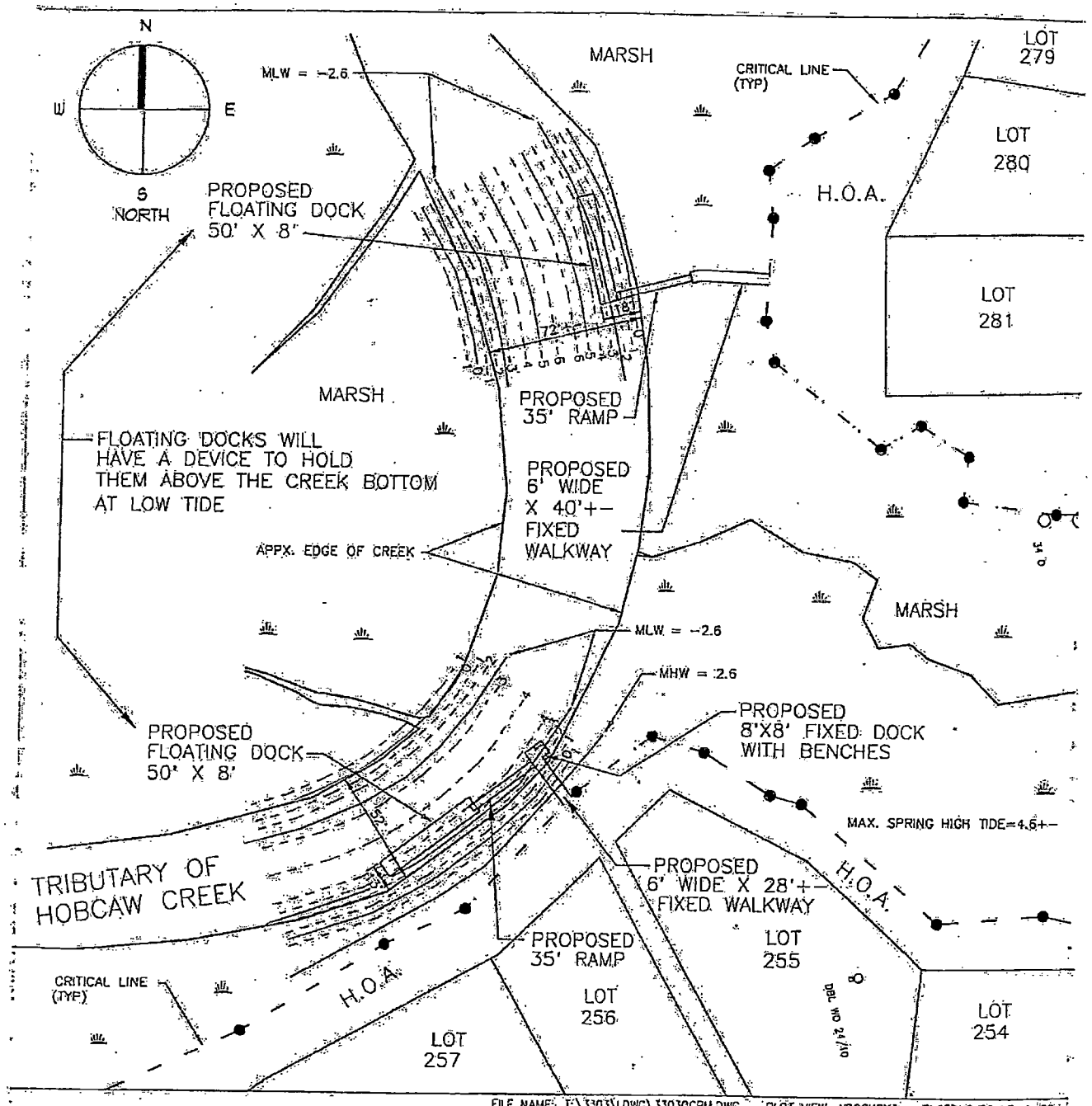
PLAN VIEW DOCK #1, BOAT RAMP, & SHORE PROTECTION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

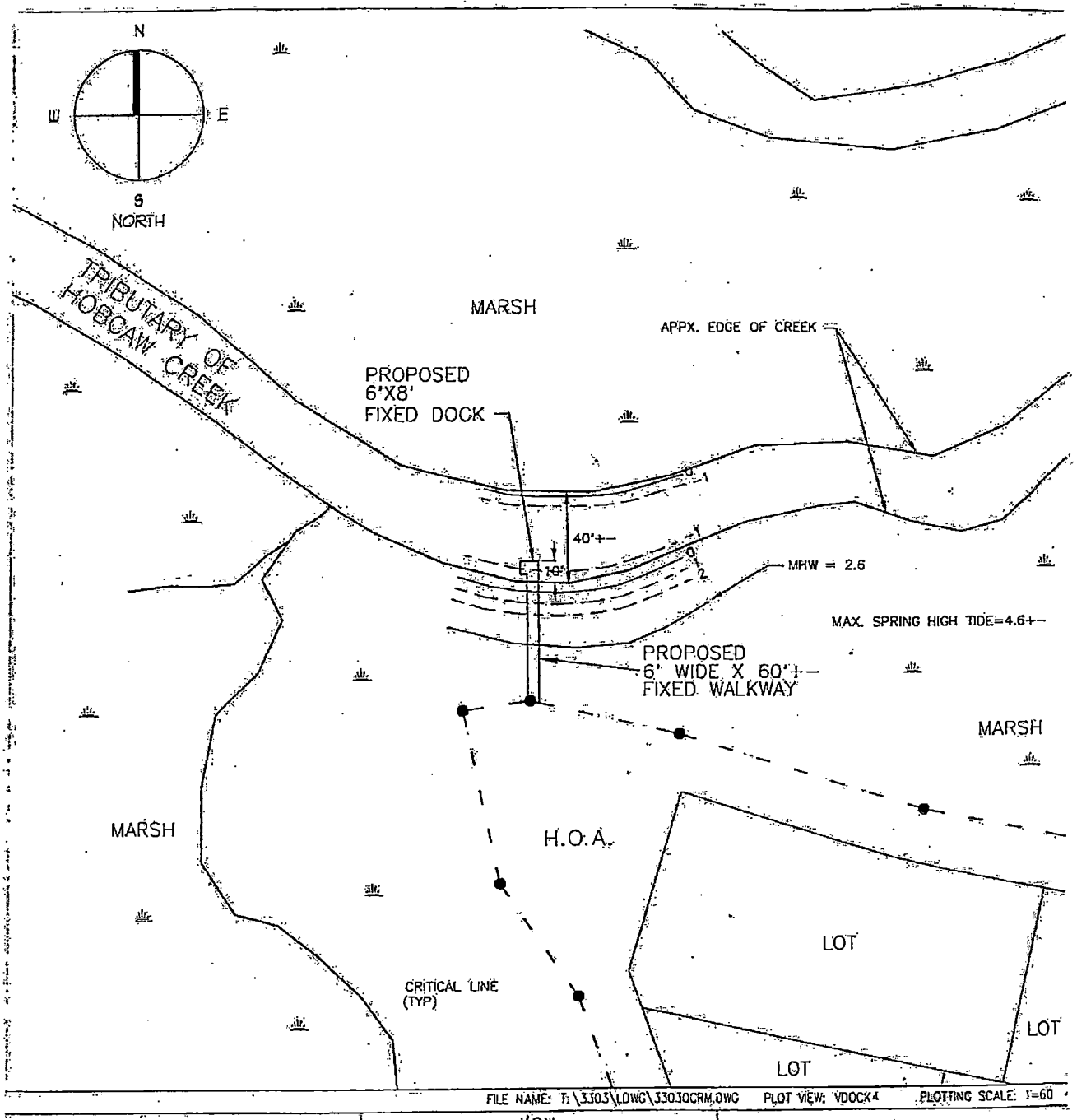
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

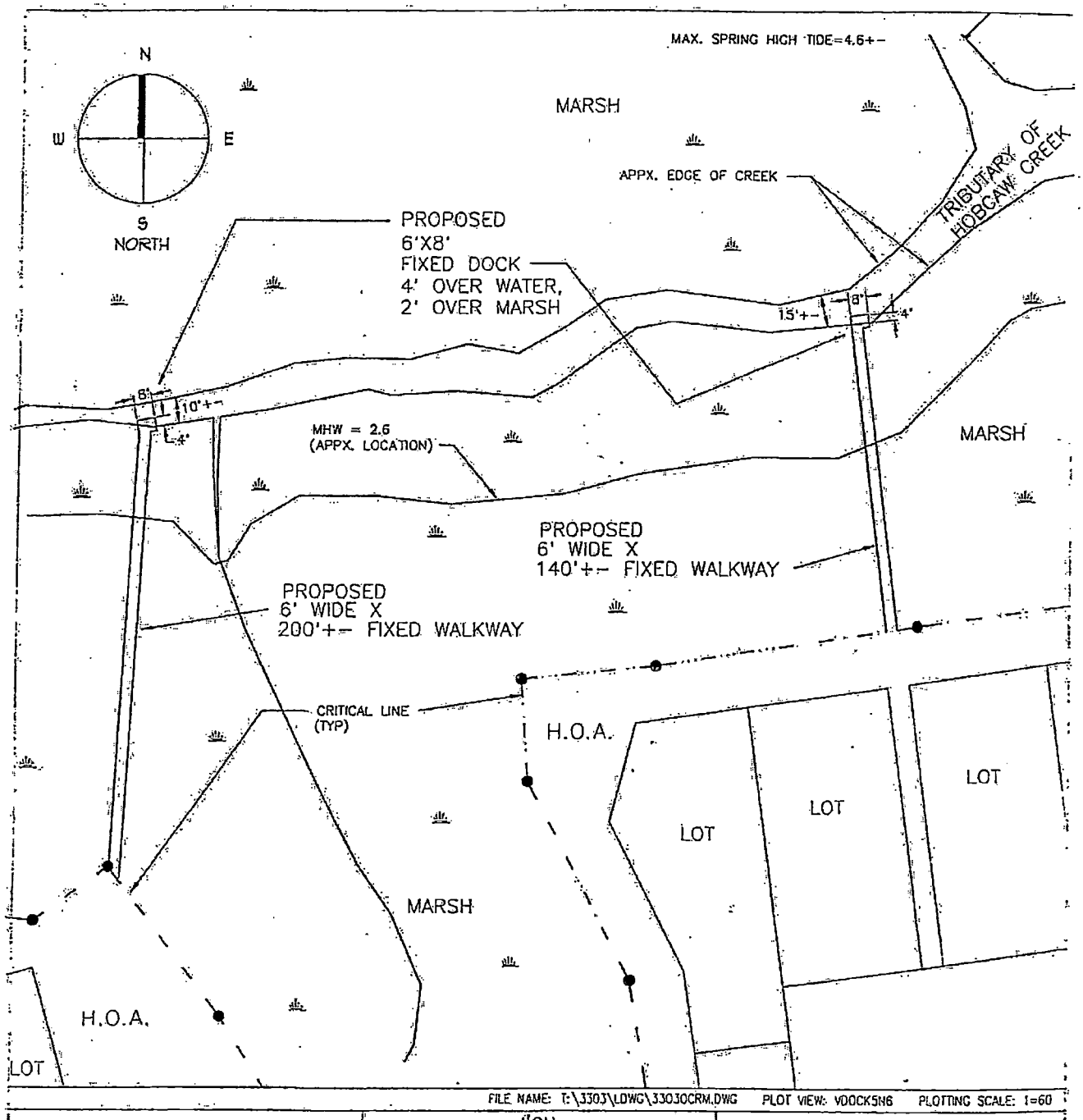
SHEET 4 OF 14 DATE: 8/10/99

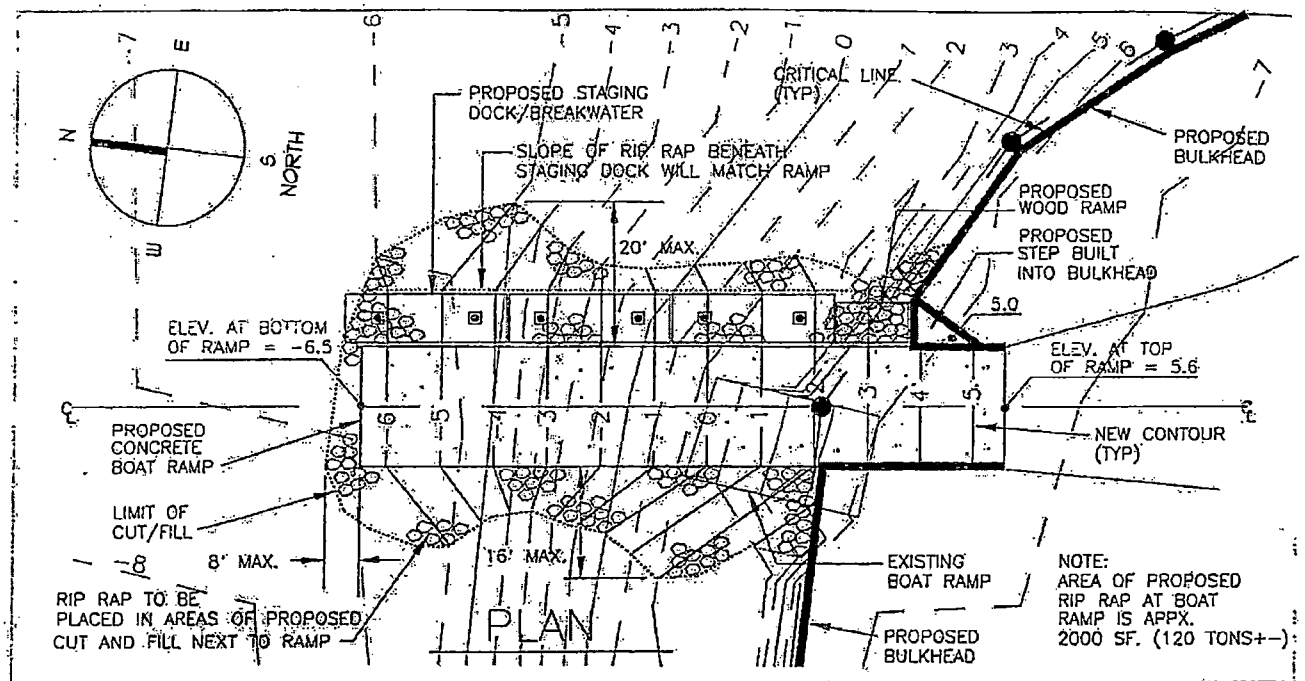
APPENDIX 2794

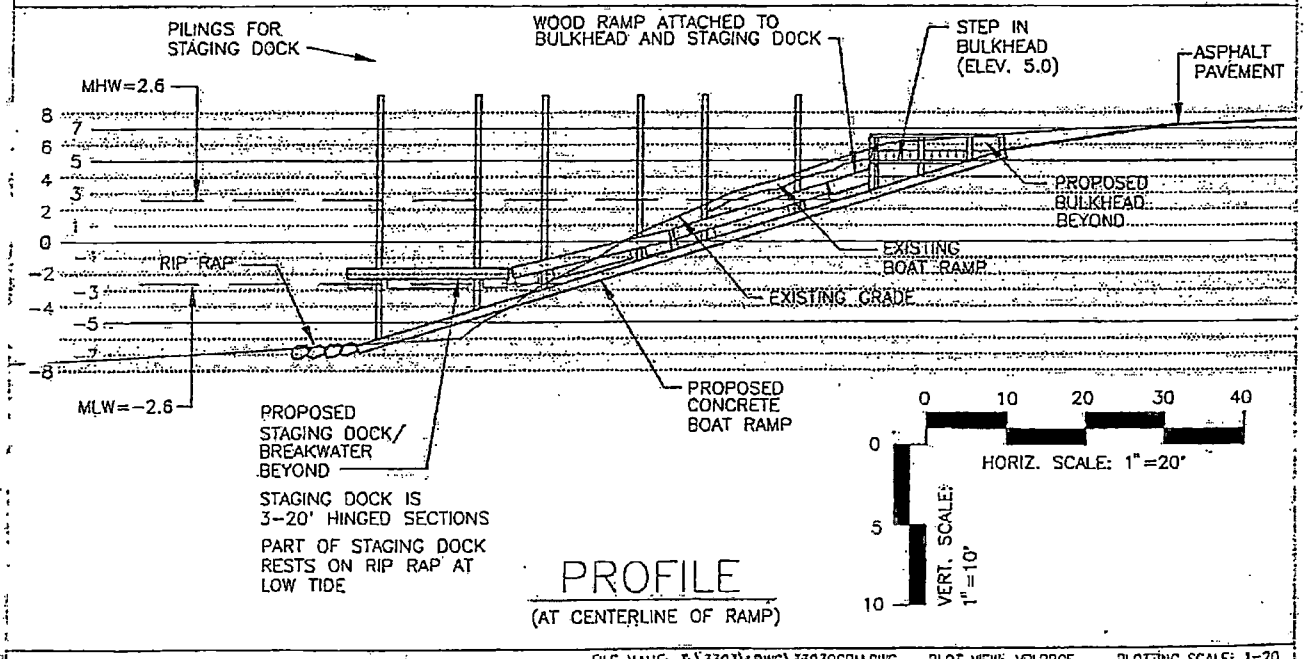


APPENDIX 2795


N
W
E
S
NORTH
TRIBUTARY OF HOBCAW CREEK
MARSH
APPX. EDGE OF CREEK
PROPOSED
6'X8'
FIXED DOCK
40'+-
10'
MHW = 2.6
MAX. SPRING HIGH TIDE=4.6+-
PROPOSED
6' WIDE X 60'+-
FIXED WALKWAY
MARSH
MARSH
H.O.A.
LOT
LOT
LOT
CRITICAL LINE
(TYP)
FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VDOCK4 PLOTTING SCALE: 1=60
0' 30' 60'
SCALE: 1" = 60'
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED
I'ON
PLAN VIEW
DOCK #4
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION
SHEET 6 OF 14 DATE: 8/10/99

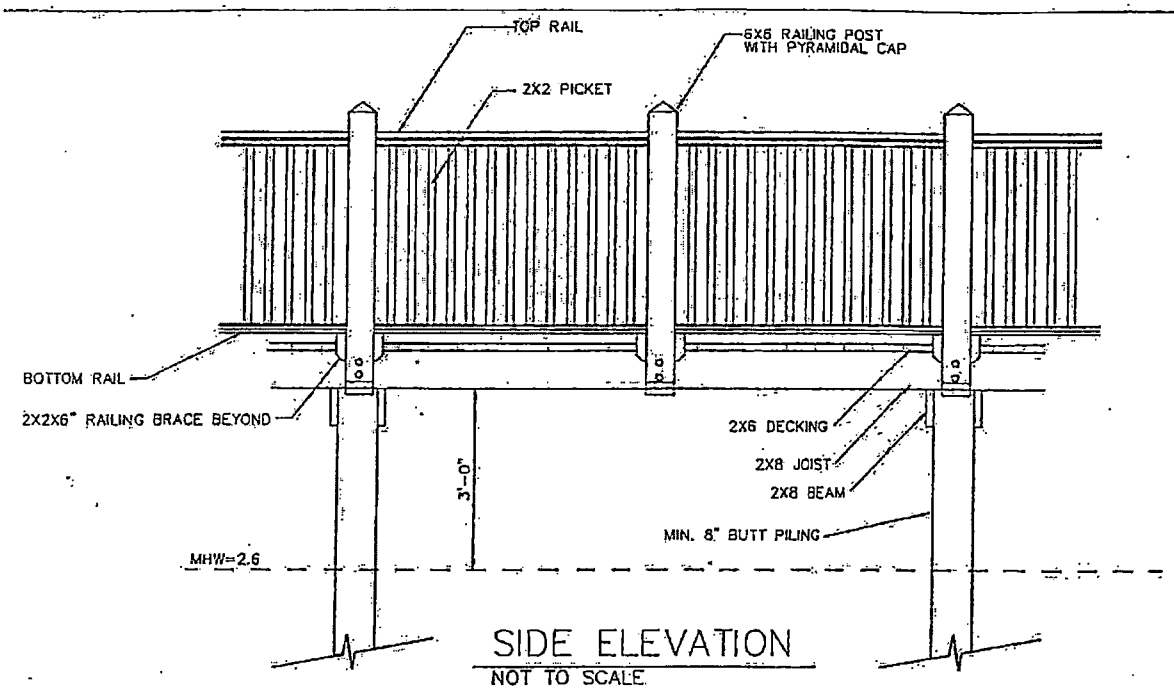

MAX. SPRING HIGH TIDE=4.6+-
N
W
E
S
NORTH
MARSH
APPX. EDGE OF CREEK
TRIBUTARY OF HOBCAW CREEK
PROPOSED
6'X8'
FIXED DOCK
4' OVER WATER,
2' OVER MARSH
15'+-
8'
4'
6'
10'+-
4'
MHW = 2.6
(APPX. LOCATION)
MARSH
PROPOSED
6' WIDE X
140'+- FIXED WALKWAY
PROPOSED
6' WIDE X
200'+- FIXED WALKWAY
CRITICAL LINE
(TYP)
H.O.A.
LOT
LOT
LOT
MARSH
H.O.A.
LOT
FILE NAME: T:\3303\LDWG\33030CRM.DWG PLOT VIEW: VDOCK5N6 PLOTTING SCALE: 1=60
0' 30' 60'
SCALE: 1" = 60'
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED
I'ON
PLAN VIEW
DOCKS #5 AND #6
APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT
RECREATION
SHEET 7 OF 14 DATE: 8/10/99





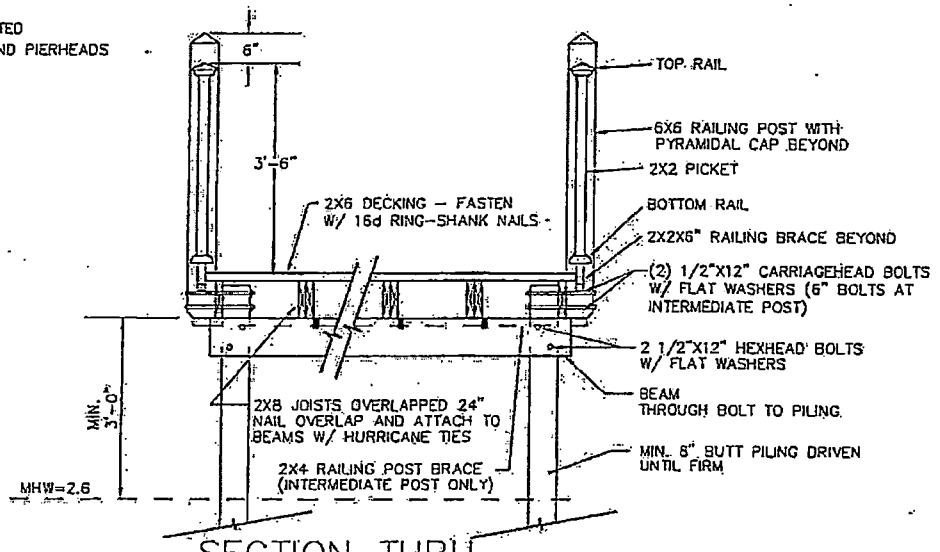
FILE NAME: T:\3303\DWG\3303OCRM.DWG PLOT VIEW: VP_PROF PLOTTING SCALE: 1=20

DATUM: MSL, 1929 NGVD SCALE: AS NOTED	I'ON BOAT RAMP PLAN AND PROFILE APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION SHEET 8 OF 14 DATE: 8/10/99



SIDE ELEVATION
NOT TO SCALE

NOTE:
RAILINGS MAY BE OMITTED AT SOME WALKWAYS AND PIERHEADS



SECTION THRU
NOT TO SCALE

FILE NAME: T:\3303\LDWG\33030CRM.DWG PLOT VIEW: VFIXED PLOTTING SCALE: 1=2.67

I'ON

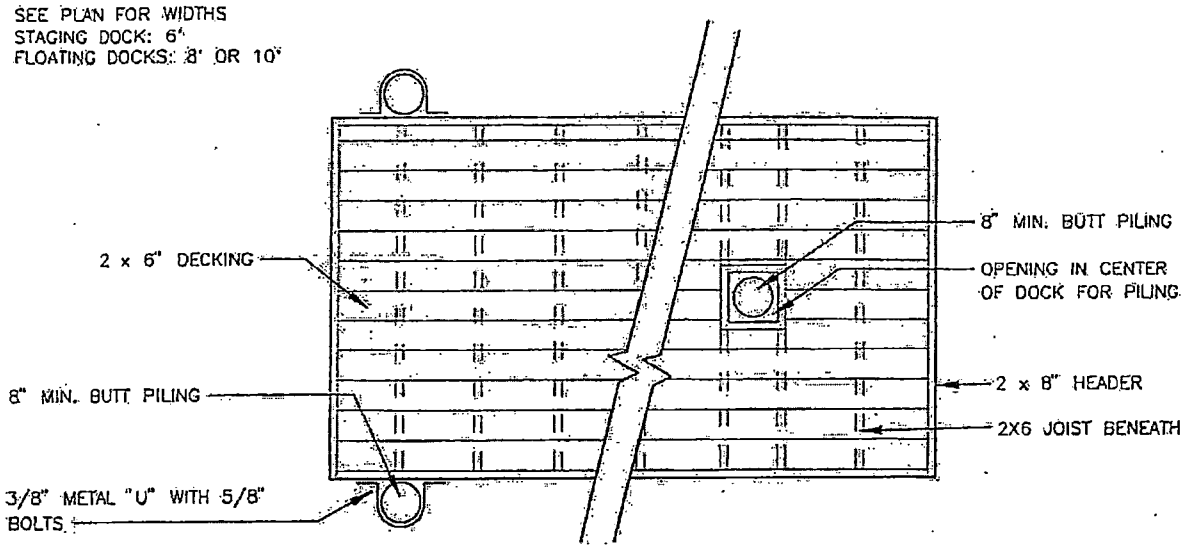
FIXED DOCK/ BOARDWALK

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

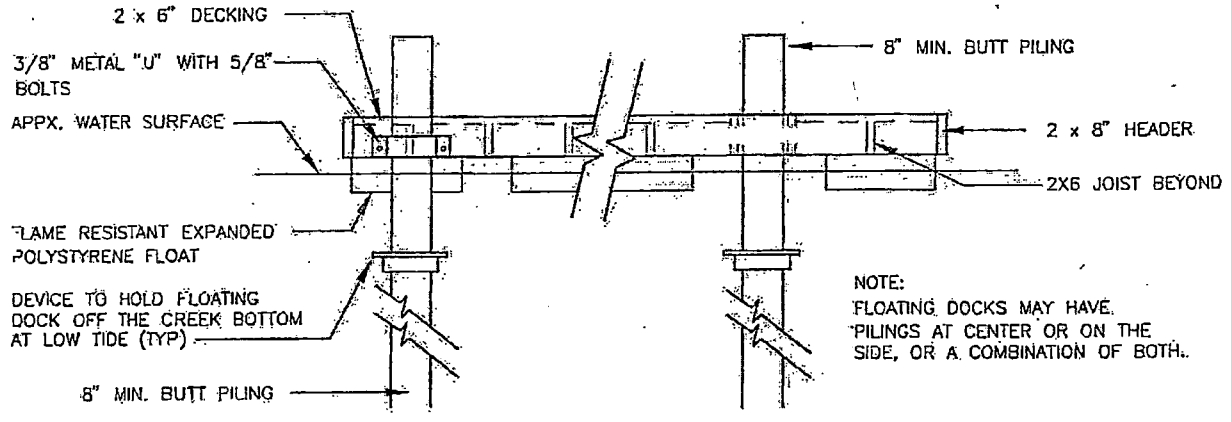
DATUM: MSL, 1929 NGVD
SCALE: AS NOTED

SHEET 9 OF 14 DATE: 8/10/99



PLAN VIEW

NOT TO SCALE

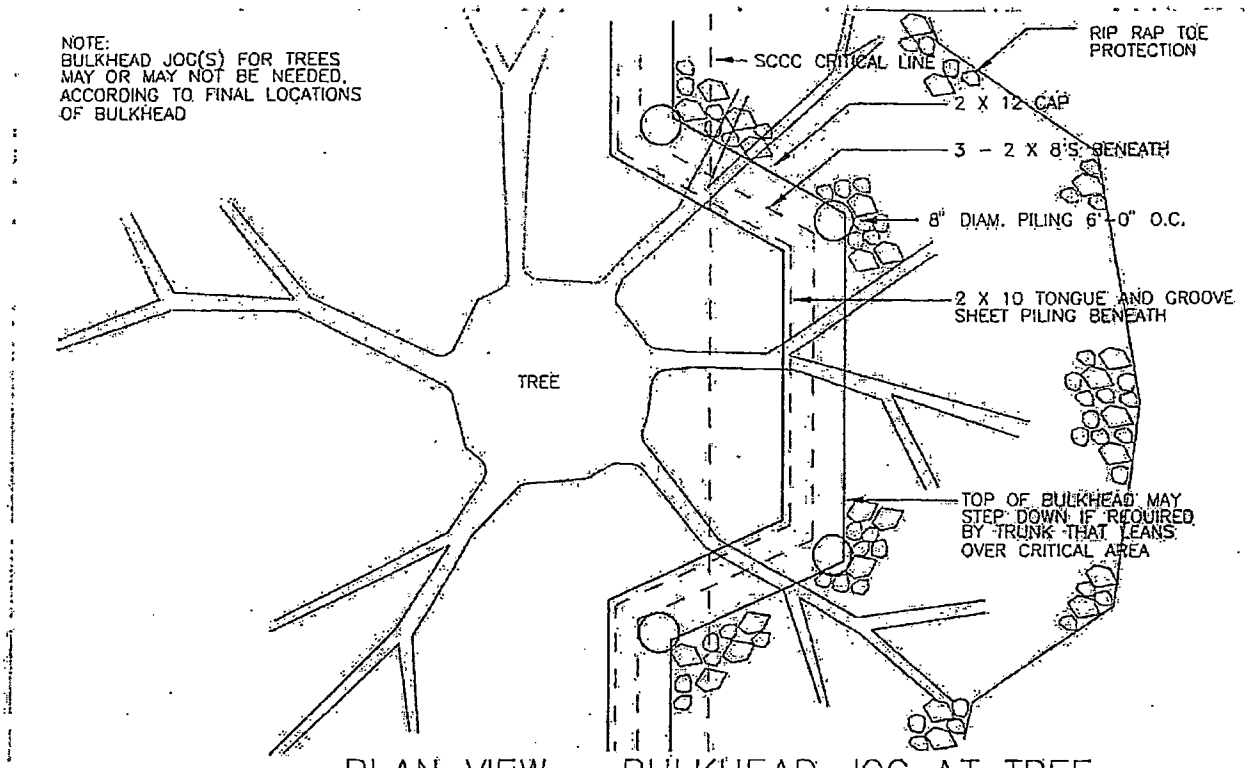


SIDE ELEVATION

NOT TO SCALE

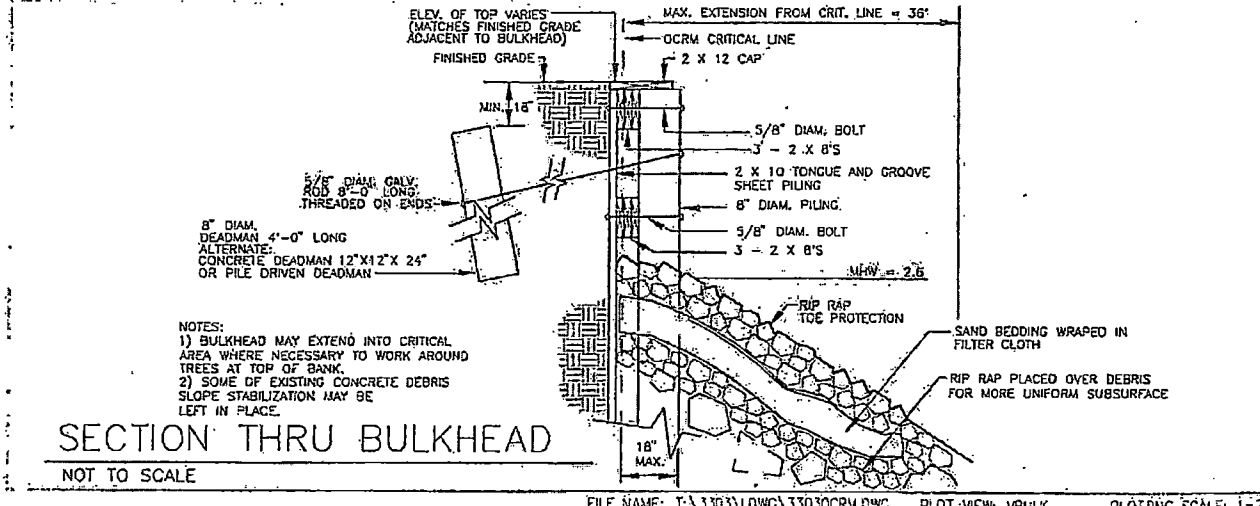
FILE NAME: T:\3303\LOWG\3303OCRM.DWG PLOT VIEW: VFLOAT PLOTTING SCALE: 1=2.67

DATUM: MSL, 1929 NGVD SCALE: AS NOTED	I'ON FLOATING/STAGING DOCK APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION SHEET 10 OF 14 DATE: 8/10/99



PLAN VIEW – BULKHEAD JOG AT TREE

NOT TO SCALE



SECTION THRU BULKHEAD

NOT TO SCALE

FILE NAME: T:\3303\LDWG\33030CRM.DWG PLOT VIEW: VBULK PLOTTING SCALE: 1=2.67

I'ON

BULKHEAD

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464

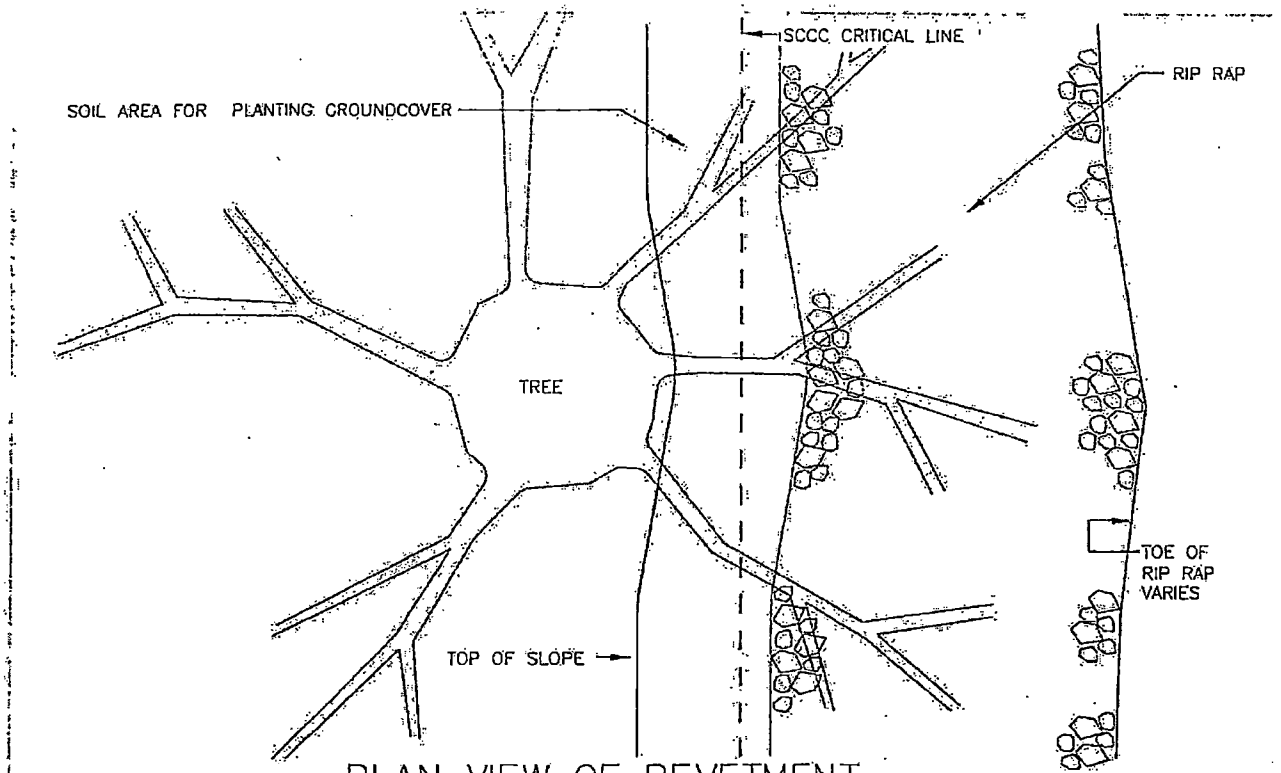
CHARLESTON COUNTY, S.C.

PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

DATUM: MSL, 1929 NGVD

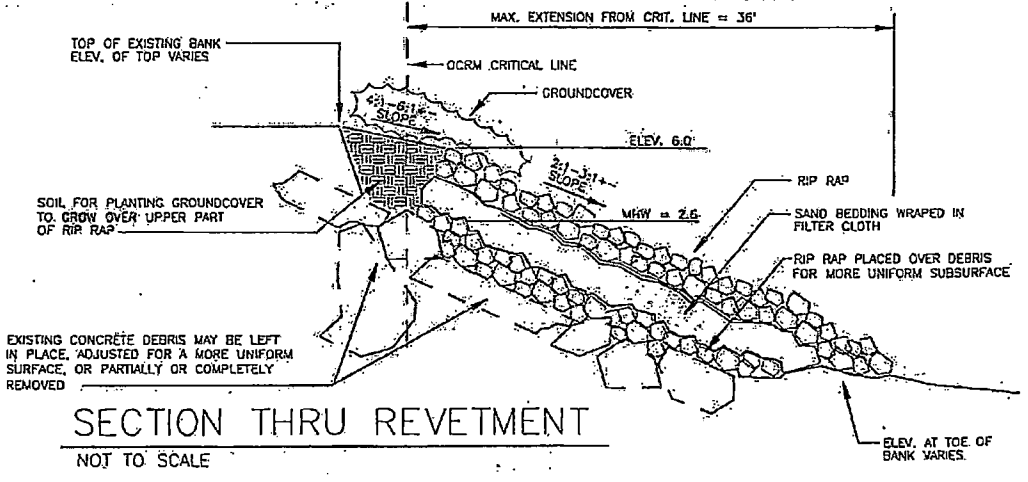
SCALE: AS NOTED

SHEET 11 OF 14 DATE: 8/10/99



PLAN VIEW OF REVETMENT

NOT TO SCALE



SECTION THRU REVETMENT

NOT TO SCALE

FILE NAME: C:\3303\DWG\3303OCRM.DWG PLOT VIEW: VREVET PLOTTING SCALE: 1=2.67

I'ON

RIP RAP REVETMENT

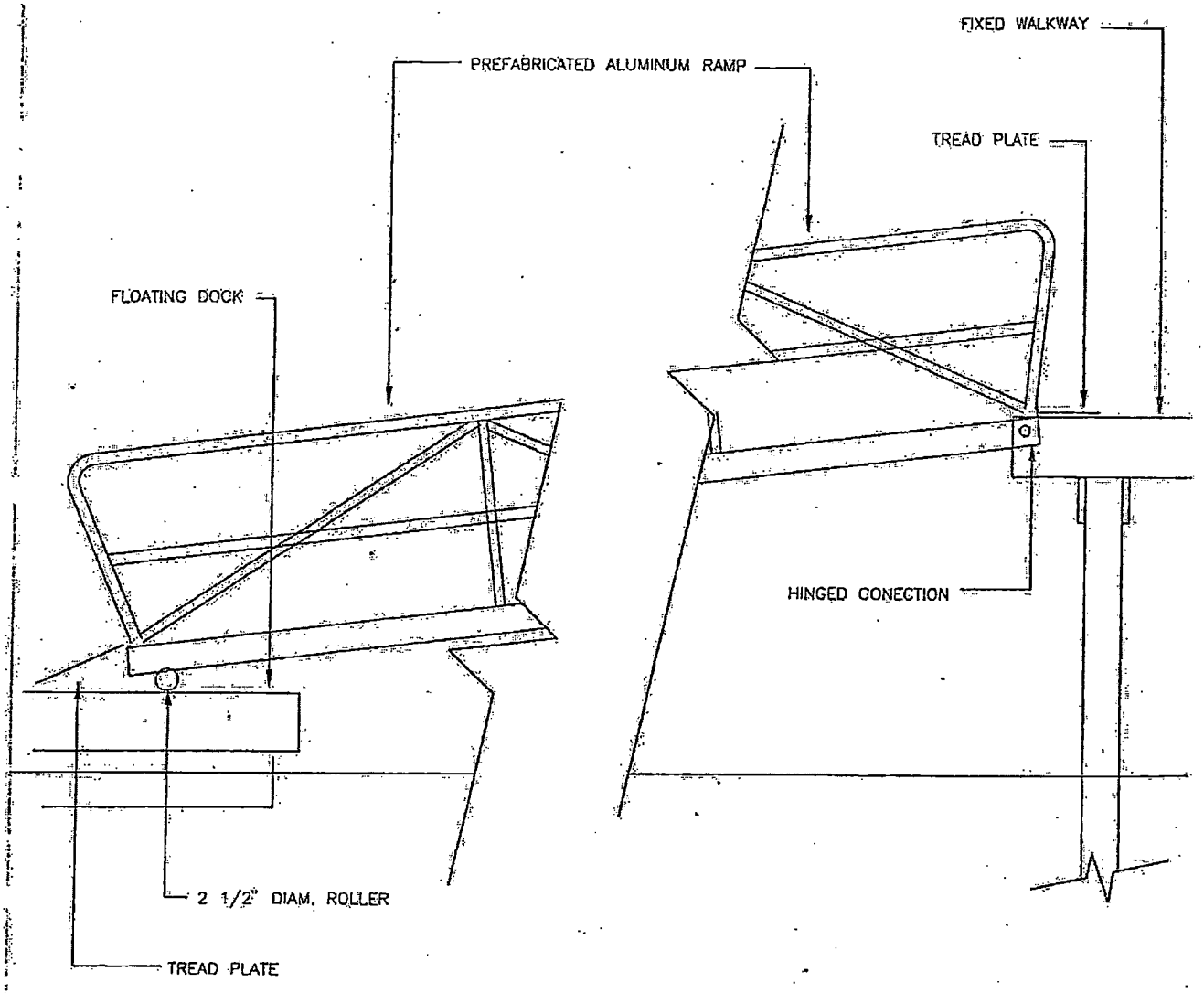
PROPOSED ACTIVITY:
COMMUNITY WATERFRONT RECREATION

APPLICANT: THE I'ON COMPANY
P.O. BOX 986
MOUNT PLEASANT, S.C. 29464
CHARLESTON COUNTY, S.C.

DATUM: MSL, 1929 NGVD

SCALE: AS NOTED

SHEET 12 OF 14 DATE: 8/10/99

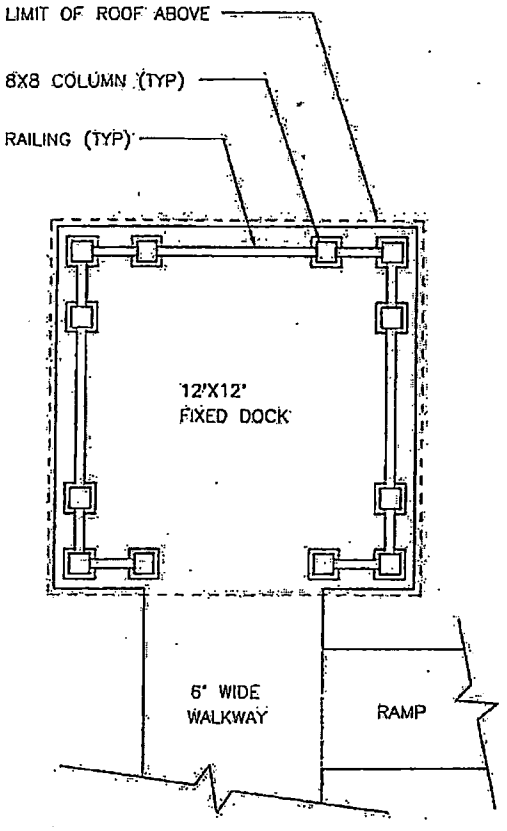


ELEVATION OF RAMP

NOT TO SCALE

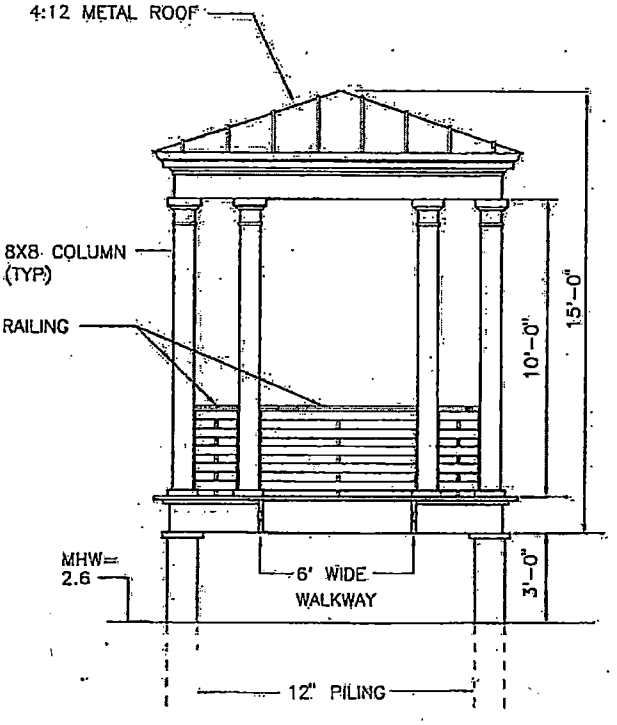
FILE NAME: T:\3303\LDWG\3303OCRM.DWG PLOT VIEW: VRAMP PLOTTING SCALE: 1=2.67

	I'ON RAMP APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION
DATUM: MSL, 1929 NGVD SCALE: AS NOTED		SHEET 13 OF 14 DATE: 8/10/99



PLAN VIEW OF PAVILION
NOT TO SCALE

NOTE:
THIS PAVILION IS INTENDED AS AN ARCHITECTURAL FEATURE. THE HEIGHT AND PROPORTIONS SHOWN ARE ESSENTIAL FACTORS IN IT'S AESTHETIC APPEAL.



ELEVATION OF PAVILION
NOT TO SCALE

FILE NAME: T:\3303\LDWG\3303OCRM.DWG PLOT VIEW: VPAV PLOTTING SCALE: 1=5.1

	I'ON PAVILION	PROPOSED ACTIVITY: COMMUNITY WATERFRONT RECREATION.
DATUM: MSL, 1929 NGVD SCALE: AS NOTED	APPLICANT: THE I'ON COMPANY P.O. BOX 986 MOUNT PLEASANT, S.C. 29464 CHARLESTON COUNTY, S.C.	SHEET 14 OF 14 DATE: 8/10/99

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
334 Meeting Street
P.O. BOX 919
CHARLESTON, SOUTH CAROLINA 29402-0919

REPLY TO
ATTENTION OF

October 21, 1999

Regulatory Branch

The I'On Company
Mr. Geoff Graham
c/o Newkirk Environmental, Inc.
192 East Bay Street, Suite 201
Charleston, South Carolina 29401

Dear Mr. Graham:

This is in response to your application for a Department of the Army permit to construct six (6) community docks, a boat ramp and staging dock, a bulkhead or riprap revetment, and remove existing pilings in Hobcaw Creek, in I'On development, off of Mathis Ferry Road, Mt. Pleasant, Charleston County, South Carolina (P/N 99-1G-322).

As you are aware, a public notice advertising this application was issued on 3 September 1999, wherein written comments of parties interested or affected by this work were solicited. The purpose of this public notice was to gain the views of the various State and Federal agencies and affected parties so that the Corps could better determine whether to approve or deny the proposed project. In response to the public notice, comments were received from the South Carolina Department of Natural Resources, the South Carolina Archives and History Center, and two adjacent property owners. Copies of these letters are enclosed for your review and consideration.

After reviewing the above referenced letters, you should provide me with your views so that they can be given full consideration in the decision-making process. If no response is received by November 5, 1999, I will conclude that you have either elected not to actively pursue this application or have elected to pursue the requisite State authorizations and certifications prior to requesting a sequential final decision by this office. In either event, your application will be placed in an inactive status. However, our Project Manager will retain your application for one (1) year to facilitate reinstatement of processing upon your request.

If you have any questions concerning this matter, please contact me at A/C 843-727-4330.

Respectfully,

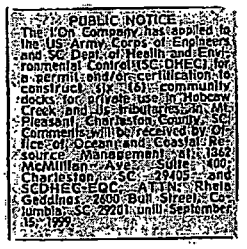
Mary Hope Glenn
Project Manager

Enclosure



AFFIDAVIT
OF
PUBLICATION

The Post and Courier


PUBLIC NOTICE
The I'On Company has applied to the US Army Corps of Engineers and SC Dept of Health and Environmental Control (SCDHEC) for a permit and/or certification to construct six (6) community docks for private use in Hobcaw Creek and its tributaries on Mt. Pleasant, Charleston County, SC. Comments will be received by Office of Ocean and Coastal Resource Management, 1362 McMillan Ave, Suite 400, Charleston, SC 29405 and SCDHEC-EQC, ATTN: Rhett Geddings, 2600 Bull Street, Columbia, SC 29201 until September 15, 1999.

State of South Carolina }
County of Charleston }

Personally appeared before me the undersigned advertising Clerk of the above indicated newspaper published in the City of Charleston, County and State aforesaid, who, being duly sworn, says that the advertisement of

(copy attached)

appeared in the issues of said newspaper

on the following day(s): September 1, 1999

Subscribed and sworn to before me this 1st day of September A.D. 19 99

Karen V. Simmons
(Advertising clerk)

Kay S Howerton
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires June 14, 2000
Form f3030A

PLAINTIFF'S EXHIBIT 90

U.S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

NOV 3 1998

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

Vincent G. Graham, Manager
The I'On Company, L.L.C., a
South Carolina Limited Liability Company
516 Mathis Ferry Road
P.O. Box 986
Mt. Pleasant, SC 29464

Dear Mr. Graham:

SUBJECT: OILSR NO. 0-07555-46; The I'On Company, L.L.C., a South Carolina Limited Liability Company; I'On; Initial file received October 8, 1998, Amendment received November 2, 1998

The initial Statement of Record you submitted for the captioned subdivision was received and accepted as a filing under the Interstate Land Sales Full Disclosure Act(15 U.S.C. 1701 et seq.). The date of this letter is the effective date for this Statement of Record.

This material was not subjected to a complete examination by the Department. Acceptance of this material as meeting all the requirements specified in the implementing Rules and Regulations (24 CFR 1700 et seq.) is based solely on your affirmation that the material submitted is full, true, complete and correct.

In the event that a subsequent examination reveals any material omission, inaccuracy, misrepresentation or fraudulent statement, you may be subject to a civil money penalty not to exceed $1,000 for each violation. Furthermore, each violation will constitute a separate violation with respect to each sale or lease or offer to sell or lease. In the case of a continuing violation, each day will constitute a separate violation.

You are reminded that two copies of the final printed version of the Property Report as well as two copies of the final printed version of the sales contract form are to be submitted to the Department not later than twenty (20) days after the above effective date. The effective date stated above is to appear on the cover page as well as both copies of the Receipt, Agent Certification and Cancellation Page of the final printed version of the Property Report.



You are further reminded that, within thirty days of each anniversary of the initial effective date, you are to submit to the Department an Annual Report of Activity accompanied by the prescribed fee, if required, (see 24 CFR 1710.310). Failure to submit the Annual Report of Activity and fee, if required, will result in the suspension of this Statement of Record.

Please note: Effective, November 9, 1998, the Annual Report of Activity fee and all other Land Sales Registration Fees will be required to be mailed to HUD'S Lockbox at the following address: HUD, Interstate Land Sales/RESPA Division, P.O. Box 100655; Atlanta, GA 30384-0655. All registrations and other documents will continue to mailed to the program office.

Within one hundred twenty days after the close of the developer's fiscal year, financial statements are to be submitted to the Department. These financial statements are to meet the standards of 24 CFR 1710.212(c).

If a change occurs in any representation of a material fact required in this Statement of Record, an amendment reflecting that change is to be filed within fifteen days after the developer knows, or should have known, that a change has, or will, occur.

Any questions with regard to the subject matter of this letter should be addressed to Mrs. Mattie Akins, whose telephone number (202) 708-0502.

Sincerely,

Rebecca J. Holtz

Rebecca J. Holtz, Director
RESPA/Interstate Land Sales Division
Office of Consumer and Regulatory Affairs

cc: Jo Anne P. Stubblefield
1200 Peachtree Center South Tower
225 Peachtree Street, N.E.
Atlanta, GA 30303

UNITED STATES OF AMERICA
before the
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF RESPA/INTERSTATE LAND SALES

REQUEST FOR VOLUNTARY SUSPENSION OF EFFECTIVENESS OF STATEMENT OF RECORD

In the matter of: I'On

ILS Number: 30264
Initial Effective Date: 11/03/98
# of Registered Lots Unsold: 5

Developer: The I'On Company, L.L.C.
159 Civitas Street
Mt. Pleasant, SC 29464
(843) 284-2129

On this 10th day of December, 2009, the Developer of the above captioned subdivision hereby requests the suspension of the effectiveness of its Statement of Record filed pursuant to the Interstate Land Sales Full Disclosure Act, and all amendments and/or consolidations filed pursuant thereto. The reason for this request is that the Developer expects all remaining lots in the subdivision to be sold under transactions which are statutorily exempt from the registration requirements of the Act.

It is agreed that no sales or leases or offers to sell or lease lots in the above captioned subdivision, including resales or leases of lots reacquired, will be made unless such transactions are statutorily exempt from the registration requirements of the Act or until proper amendments have been filed and made effective by the Office of RESPA/Interstate Land Sales Registration. It is agreed that until this Request has been executed by the Secretary it shall not operate as a suspension of the subject Statement of Record but that upon such execution it shall so operate as of the date this Request is signed by the developer.

Developer: The I'On Company, L.L.C.

By _____
Printed name VINCENT GRIMES
Title: Manager

ATTEST:
Sworn and subscribed before me this 15th day of December, 2009.

Notary Public Pamela L. Martin

My Commission Expires 8/28/2018

Instructions to Developer: Attach, where applicable, a certified copy of the Board of Directors Resolution and/or Power of Attorney authorizing execution of this Request.

The effectiveness of the Statement of Record of the above-captioned subdivision is hereby voluntarily suspended as of the date last above subscribed until a reactivating amendment is filed and made effective by the Office of RESPA/Interstate Land Sales Registration.

By _____ Date 1/22/2010
Authorized Designee of the Secretary

PLAINTIFF'S EXHIBIT 103

CONFIDENTIAL

Tom C. Graham To: <mac_martin@ionvillage.com>
10/06/99 04:23 PM
cc:
Subject: Re: Club

I received no attachment.

Ph 4 A&D loan closed yesterday.

Club loan closing awaits completion of appraisal by Jodi Bishop, Atlantic Appraisal. He originally planned to complete that by October 8. I don't know where he stands. I'll call him and check. 2 MORE WKS

Requisions for Club will be same as other phases. Loan Amount will be $1,050,000. $300,000 cash is forthcoming from GR, LLC as follows: $100,000 upon Agreement execution (expect by the end of October), $100,000 upon their ground disturbance permit issue (should be within the month, as well), $100,000 upon 50% complete with swim/tennis. CLUB

CLUB? OR PHASE 2?

GR will pay an additional $100,000 upon completion of Creek Club, Dock and Boat Ramp. We'll apply that $100K against Creek Club Cost.

GR, LLC is also conveying to TIC approximately 1 acre of land that we have valued at $50,000. This land enables us to create an additional 3 lots (195A, 195B & 195C) plus enhance several other lots). NOT EQUITY

All of their cash contributions shall apply as offset to site development costs.

Mac Martin

Mac Martin To: Tom C. Graham/ION_VILLAGE@ION_VILLAGE
10/06/99 03:38 PM
cc: Joe Barnes/ION_VILLAGE@ION_VILLAGE

Subject: Club

Tom, I'm attaching a Loan Disbursement Request form for the CLUB, which I have partially put together based on estimates I have, and development bills received. However, I have not been involved with initiating one of these forms, and am at a loss as to completion of the remainder of the form as needed by you and the bank. Also, was the CLUB loan closed yesterday? I have not seen any documentation. I guess I need your help on completion of this request form. Thanks.

PLAINTIFF'S EXHIBIT 108

CONFIDENTIAL



STATE OF SOUTH CAROLINA)
) **AGREEMENT**
COUNTY OF CHARLESTON)

Agreement made this 22 day of December, 1999, by and between THE I'ON COMPANY, L.L.C., a South Carolina limited liability company ("I'On") and GR, LLC, a South Carolina limited liability company ("GR").

RECITALS

I'On is the Owner of a certain tract of land known as the I'On Development on Mathis Ferry Road, Mount Pleasant, South Carolina and is presently engaged in the development of the residential community designated as "I'On" (the "I'On Development").

GR has acquired a 90.381 acre tract of land described on Exhibit A which is adjacent to the I'On Development for the purpose of developing a residential community to be known as "Olde Park" (the "Olde Park Development").

I'On has constructed or will construct a road and sewer collection system for the use and benefit of the residents of the I'On Development.

I'On plans to provide its residents with the opportunity to utilize certain recreational amenities including, but not limited to tennis courts, swimming pools, community dock, boat ramp and a club house to be located on Hobcaw Creek through a commercially operated for profit club to be called "The I'On Club".

GR desires (i) to construct a road to provide access between the I'On Development and the Olde Park Development, (ii) to tie into the I'On sewer collection system and lift station, and (iii) provide homeowners in Olde Park Development with access to membership in The I'On Club.

I'On has agreed to permit GR to construct said access road, tie into said sewer collection system and to make membership in The I'On Club available to property owners in the Olde Park Development on the terms and conditions set forth herein.

NOW, THEREFORE, for One Dollar ($1.00) and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties agrees as follows:

I. SEWER SYSTEM

1. Access to the Sewer Collection System. Once I'On has completed construction of its sewer system, GR shall have the right, at GR's sole cost and expense, to tie into the I'On sewer collection system at the access point designated on a drawing prepared by Seaman, Whiteside & Associates, Inc. (the "Engineer") attached as Exhibit "B" hereto and incorporated herein by reference. I'On agrees to execute such easement agreement as may be reasonably necessary to reflect of record the right to access the sewer collection system.

2. Specifications. The proposed sewer main shall be designed by Engineer and shall be constructed by a reputable contractor in a good and workmanlike manner in accordance with plans and specifications prepared by Engineer and all requirements of the Town of Mt. Pleasant and Mt.

Pleasant Waterworks. The proposed sewer main shall be stubbed out of sewer manhole #14 a minimum of 15 feet. Manhole #14 shall be set approximately 4' from the common property line on the I'On property. The sewer main shall extend into the GR tract not less than 10', nor more than 15'. The sewer main shall be 8" in (inside) diameter. The end of the 8" sewer main on the GR Tract shall be set at an invert elevation of 0.81', as depicted on the construction plans prepared for I'On Phase II, by Seamon Whiteside and Associates dated October 7, 1998, latest revision of May 24, 1999 and on Exhibit B. The capacity utilized by GR shall be limited to 114 REUs. The sewer main shall be installed in accordance with the Mt. Pleasant Waterworks specifications for sanitary sewer systems and shall be conveyed to Mt. Pleasant Waterworks upon completion.

II. ROADS

1. Access to I'On Roads. Subject to applicable governmental approval, GR shall be permitted to construct an access road to intersect Eastlake Road in I'On Development as more fully described on Exhibit "C" attached hereto and incorporated by reference.

2. Specifications. The proposed road connection shall be constructed as depicted on the attached Exhibit C. The roadway shall be comprised of a minimum of 6" of base course with a minimum of 2" of asphalt surface course, as required by subdivision construction standards established by the Town of Mt. Pleasant. The roadway width shall be not more than 20', for two way traffic, with the possibility of the addition of curb and gutter on each side of the road as needed to facilitate roadway drainage and/or meet the requirements of the Town of Mt. Pleasant. Upon completion, said road shall be publicly dedicated and conveyed to the Town of Mt. Pleasant.

3. Access Date. Such access point will become available to GR and will be open to residential traffic only until such time as all of the platted roads serving the Olde Park Development have been constructed, paved, and dedicated and accepted by the Town of Mt. Pleasant (the "Access Date"). GR may request and receive approval for limited construction access for development in order to reach two (2) lots on the waterfront to be developed for the principals of GR.

4. Construction Traffic. Contractors, sub-contractors and their agents and employees working in the I'On Development shall only use the I'On Development road system. Contractors, sub-contractors and their agents and employees working in the Olde Park Development shall only utilize Olde Park Development roads. Both I'On and GR will take the steps necessary to insure that third parties working in each development will comply with this provision.

5. Landscaping. GR at its expense shall, on or prior to the Access Date, landscape along the Access Road with such continuous plantings as shall be reasonably agreeable to I'On, it being understood and agreed that the plantings will consist of wax myrtles, yaupon holly and/or live oak indigenous, specimen, large shrubs and canopy trees. GR shall maintain said landscaped areas in a clean and attractive condition, and shall further obligate any homeowners association established for Olde Park Development to maintain landscaped areas. GR shall install an opaque vegetative buffer at the rear of Olde Park Development lots 15 through 18.

III. THE I'ON CLUB

1. Club Facilities. I'On, through I'On Club, L.L.C., a South Carolina limited liability company, proposes to develop tennis and swimming and boating facilities within or adjacent to the

I'On Development. In the initial phase of development, I'On Club, LLC will construct six (6) lighted clay tennis courts, an eight lane by twenty-five (25) yard swimming pool, children's pool, locker and bathing facilities, a Creek Club containing not less than 3,600 square feet under roof, to be located on Hobcaw Creek, a community boat ramp and dock and a driveway and parking area to serve them (collectively, "The Phase I I'On Club Facilities"). The terms of membership, dues schedule, and amenity packages will be set forth in the club plan documents to be prepared by I'On.

2. Memberships and Advisory Board. I'On Club, L.L.C. will issue up to 850 memberships in The I'On Club. I'On will reserve 114 initial memberships for property owners of the Olde Park Development. Olde Park Development property owners electing to become members of The I'On Club will pay the same initiation fees and will be subject to the same dues schedule and membership policies as property owners in the I'On Development who are members'. Positions on The I'On Club's member advisory board of directors shall be made available to club members invited from Olde Park Development as determined by GR, LLC and The I'On Company, L.L.C..

3. Not Yet Determined. GR acknowledges that The I'On Club has not yet been formed and there may be some changes in the ultimate amenities established, the dues structure and other matters which are not capable of being finally determined as of the date hereof. Notwithstanding the foregoing, I'On agrees that the 114 memberships to be made available to Olde Park Development property owners shall be made available on the same basis as made available to property owners in the I'On Development. Similarly, the boat ramp and community dock will be made available for use by club members who own property in the Olde Park Development subject to the same rules and regulations for use established by the I'On Assembly that apply to club members who own property in I'On Development. In the event that elements of The I'On Club that are actually completed are less than those described above, then GR's payment obligation shall be proportionally reduced according to Exhibit D, attached hereto and made a part of this Agreement. The reduction due GR shall be based upon construction cost as well as reduced land area, if the proposed amount of acreage is not conveyed to The I'On Club.

IV. CONSIDERATION

1. Amount. GR will pay to I'On a total of Four Hundred Fifty Thousand and No/100 Dollars ($450,000.00) for access to the sewer system, road access, and the eligibility for membership by Olde Park Development property owners in The I'On Club. Payment shall be in the form of Four Hundred Thousand and No/100 Dollars ($400,000.00) in cash and the conveyance by GR to I'On of .94 acres of land (valued at $50,000.00) as shown on a plat prepared by F. Elliotte Quinn, III, R.L.S. and attached hereto as Exhibit "E".

2. Payment Terms. Payment will be made as follows: Upon execution of this Agreement, One Hundred Thousand and No/100 Dollars ($100,000.00); upon the issuance of a land disturbance permit by the Town of Mount Pleasant to GR for development of Olde Park Development, One Hundred Thousand and No/100 Dollars ($100,000.00); upon fifty (50%) percent completion of the swimming pool, six tennis courts and locker and bathing facility by I'On, One Hundred Thousand and No/100 Dollars ($100,000.00); upon completion of the Creek Club building, boat ramp, and community dock by I'On, One Hundred Thousand and No/100 Dollars ($100,000.00). All of said payments shall be nonrefundable at the time of payment, except that in the event that facilities actually completed by I'On fall short of those specified above, then GR shall be entitled to a proportionate refund according to Exhibit D. If said payments are not made as set forth herein, then I'On shall have the right to terminate this Agreement and GR and the property owners in

the Olde Park Development shall not be entitled to access the sewer system, roads, and club facilities as described herein.

3. Transfer of Land. With respect to the transfer of land, GR shall convey good and marketable fee simple title to said property by general warranty deed upon execution of this Agreement pursuant to a subdivision plat prepared by F. Elliott Quinn, R.L.S. at the expense of GR. GR shall pay deed stamps based on a value of $50,000 at the time of closing.

V. TIMING.

1. I'On will provide GR preliminary plans (Phase I) for The I'On Club facilities, community boat dock and ramp, and a construction schedule for the completion of such facilities upon execution of this Agreement.

2. The sewer tie-in facilities provided in Section I SEWER SYSTEM shall be completed within twelve (12) months from the date this Agreement is last signed by both parties.

3. The Phase 1 I'On Club Facilities will be completed within eighteen (18) months from the date this Agreement is last signed by both parties.

VI. GENERAL CONDITIONS.

1. Further Assurances. The parties hereby agree from time to time to execute and deliver such further documents and do all matters and things which may be convenient or necessary to more effectively and completely carry out the intentions of this Agreement.

2. Default. The following event or conditions shall be an event of default (hereinafter called an "Event of Default"):

(a) If there is a material default in the due and punctual observance of performance of any of the obligations, covenants, terms, or provisions contained herein or in any other document or agreement related hereto; or

(b) If any warranty, covenant, or representation made herein or otherwise in writing in connection herewith proves to have been false or misleading in any material respect when so made; or

(c) If a party commits, or there is committed as to such party, an Event of Bankruptcy. An "Event of Bankruptcy" shall mean any event under applicable bankruptcy law for which a party has had an involuntary petition of bankruptcy filed against it, for which a party has filed a voluntary petition for bankruptcy, and/or for which a party has been adjudged a bankrupt.

Upon the occurrence of each and every Event of Default, the non-defaulting party ("Non-Defaulting Party") may give the defaulting party ("Defaulting Party") notice of default ("Notice of Default") setting forth the nature of the obligation that the Defaulting Party has not performed. The Defaulting Party shall immediately take all necessary action to correct such Event of Default. The Defaulting Party shall cure such Event of Default within thirty (30) days; provided, however, that the cure period for a party having an involuntary petition of bankruptcy filed against it

shall be the applicable statutory period for contesting such filing. If such Event of Default cannot be cured within the applicable time period, the Defaulting Party shall commence to cure within the applicable time period and thereafter diligently proceed to complete the cure. Anything herein to the contrary notwithstanding, any Event of Bankruptcy other than the filing of an involuntary petition of bankruptcy against a party shall constitute an incurable Event of Default; the filing of an involuntary petition of bankruptcy against a party shall constitute an incurable Event of Default upon the expiration of the applicable statutory period for contesting such filing.

If the Defaulting Party has not completed such cure as provided above, then the Non-Defaulting Party shall have the right, in its sole discretion, to determine which rights or remedies it shall pursue, without modifying or affecting any of its other rights or remedies, including but not limited to: (a) pursuing any rights or remedies provided pursuant to the terms of this Agreement; (b) terminating this Agreement; and (c) pursuing any other rights and remedies provided under statute, common law and/or equity, including, but not limited to, an injunction.

3. Enforcement Costs. If any legal action or other proceeding is brought for the enforcement of this Agreement, or in connection with the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses even if not taxable as court costs (including, without limitation, all such fees, costs, and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

4. Specific Performance. Each of the parties acknowledge that the parties will be irreparably damaged (and damages at law would be an inadequate remedy) if this Agreement is not specifically enforced. Therefore, in the event of a breach or threatened breach by any party or of any provision of this Agreement, then the other party shall be entitled, in addition to all other rights or remedies, to injunction restraining such breach, without being required to show any actual damage or to post any bond or other security, and/or to a decree for specific performance of the provisions of this Agreement.

5. Notices. All notices, requests, consents, and other communications required or permitted under this Agreement shall be in writing (including telex and telegraphic communication and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, telecommunicated, or mailed (airmail, if international), by registered or certified mail (postage prepaid), return receipt requested, or sent by overnight delivery such as Federal Express, addressed to:

If to The I'On Company:	c/o Mr. Joseph E. Barnes Post Office Box 986 Mt. Pleasant, South Carolina 29464
If to GR, LLC:	c/o Mr. Joseph P. Griffith 310 Meeting Street, First Floor Charleston, South Carolina 29401

or to such other address as any party may designate by such notice complying with the terms of this Section. Each such notice shall be deemed delivered: (a) on the date delivered if by personal delivery; (b) on the date telecommunicated **if by telegraph or other telecommunication;** (c) on the date of transmission with confirmed answer back **if by telex or other telecommunication;** and (d)

on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable as the case may be, if mailed.

6. Entire Agreement. This Agreement, together with the other written agreements and instruments executed concurrently herewith or pursuant to the provisions hereof, contains the entire Agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between them respecting such matters.

7. Counterparts. This Agreement may be executed to in two or more counterparts, each of which should be deemed an original, but all of which together constitute one in the same instrument.

8. Headings. Paragraph headings are for purposes of convenience and identification only and shall not be used to interpret and construe this Agreement.

9. Waiver. The failure of any party hereto to demand performance of any acts required hereunder shall not be deemed a waiver of right to enforce such performance or any other performance required later. A waiver can only be made if it is in writing and signed by the party excusing performance. Any attempted oral waiver shall not be valid.

10. Gender in Number. Whenever the singular or plural number or the masculine, feminine or neuter gender, is used herein, it shall equally include the others.

11. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of South Carolina.

12. Binding Effect. This Agreement shall be binding upon, and inure to benefit of, the parties, respective heirs, representatives, successors and assigns.

13. Modification. This Agreement may be modified only be a written document signed by representatives of both parties. A propertied oral modification shall not be effective.

CONFIDENTIAL

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

WITNESSES:

THE I'ON COMPANY, L.L.C.

By: _____

Its: Manager

GR, LLC

By: _____

Its: Manager

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I'On Assembly
Board of Trustees Meeting Minutes
September 24, 2008

Members Present	Bruce Kinney, Sheri Cooper, Barbara Fry, Ward Mundy, and Matt Walsh
Members Absent	John Powers
AMCS	Cheryl L. Wilson
Guests	Chad Besenfelder, Dave Rosengren, Ed Clem, Tim Eble, Catherine Templeton, Amy Sage, Ted Webb, Jim Mahoney, Stella Harmon, M.P. Wilkerson, Peter Perera, Chuck Avera

Bruce Kinney called the meeting to order.

Homeowner Forum
The Board of Trustees opened the floor to residents in attendance to express their concerns regarding the potential sale of the Creek Club from the I'On Company to a private buyer. Some of those comments were as follows.

Tim Eble of 171 East Shipyard Road expressed his concern regarding the potential sale of the Creek Club and the promises made to him regarding community amenities when he purchased his property.

Catherine Templeton of 34 Saturday Road expressed her concern regarding the potential sale of the Creek Club as it has always been a community amenity and should remain as such. She further suggested that restrictions be placed on the property if it is in fact sold.

Peter Perera of 59 Rialto Road asked for clarification as to what property is included when referring to the sale of the Creek Club. Matt Walsh advised that it is the building, floating dock, gazebo, marsh path, and everything surrounded by the white fence. Matt Walsh further advised that the I'On Assembly, while run by a developer appointed Board of Trustees, entered into an agreement with the I'On Creek Club that allows access to the parking lot next to the Creek Club to gain access to the boat ramp.

Creek Club
Mike Russo presented the Board of Trustees with the proposed plan for the Creek Club. The three partners that are looking to purchase the Creek Club are Donovan Glassburn of [redacted], Stephen Speer [redacted], and Mike Russo of [redacted]. Mr. Russo advised that since each partner owns property in I'On they have an invested interest in the community. The key points to Mr. Russo's presentation were:

- The usage of the Creek Club for special events, like weddings, will not increase.
- The boat dock easements will not be dissolved however, any I'On Assembly suggested modifications would be considered.
- Donovan Glassburn, Stephen Speer, and Mike Russo own the bed and breakfast at the corner of Civitas Street and North Shelmore Boulevard and will run the Creek Club in conjunction with the bed and breakfast.



- The sale of the Creek Club includes the building, the docks and parking lot on lot CV-6 and the parking lot on lot CV-5.
- Valet parking will be required to reserve the Creek Club, which will help alleviate traffic and disturbance to the community, by event guests. Valet parking will also be used at the bed and breakfast.
- Outside security will be required at special events.
- The Creek Club would be kept in better shape to attract higher end special events.
- Lot 275 is currently under a separate contract for sale from the I'On Company. The plans for this lot would be to expand the Creek Club by adding a three-story building which would have six rooms for the bed and breakfast (three suites on the third and three suites on the second floor) and recreation areas for the community with gathering space and permanent office space on the first floor.
- They would not apply for a liquor license.
- The I'On Assembly would still have the right to reserve the Creek Club as they do now.

Mr. Russo's group is still in an extended due diligence period. Once a more definitive plan is in place, details will be presented to the Board of Trustees.

Minutes

Barbara Fry made a motion to accept the August 27, 2008 Board of Trustees meeting minutes as presented. Sherri Cooper seconded the motion. All in favor. Motion carried.

I'On Company Update

Chad Besenfelder advised that he is certain the I'On Company will receive permission for the fourth entrance at the I'On Club.

The I'On Company is still working for approval for landscaping at the Mathis Ferry roundabout. The Board of Trustees asked Mr. Besenfelder to present a landscape plan showing irrigation and a separate landscape plan without irrigation to the Landscape Committee to review.

Mr. Besenfelder advised that he is working with the I'On Square Association to add additional signage for parking in the I'On Square.

Mr. Besenfelder advised that the owners of [redacted] have installed their approved fence but not their landscape plan.

The paths around the lakes are to be enhanced by the I'On Company.

AMCS Report

AMCS reported the following account balances as of September 18, 2008:

Operating Account $13,748.68

Fidelity Investment Account

Capital Reserve Funds $391,828.98

Operating Funds in Reserves $178,190.73

CD #2000343 $31,819.39

CD #2000343 $31,775.93

AMCS stated that the Board of Trustees meeting packet was sent out on September 19, 2008 to the Board of Trustees giving them a chance to review the operating statement, twelve month trend, balance sheet, open and closed work orders. AMCS asked the Board of Trustees if there were any questions regarding these reports. There were no questions from the Board of Trustees. The violation report, collection report, and lien report were discussed in executive session.

AMCS advised that a member of the Board of Trustees would need to sign the required paperwork for liens to be filed on eleven homeowner accounts. Sheri Cooper volunteered to handle this on behalf of the Board of Trustees.

AMCS advised that the new swing set for the Ramble playground would be installed in approximately four to six weeks and that all the playground equipment is scheduled to be inspected within the next few weeks.

AMCS advised that a meeting with Estate Management had been scheduled for later in the week to discuss the continuing problem with the floating pipes in Eastlake, the aerator motor noise in the Boathouse and the 2009 contract amount.

AMCS advised that the off duty police schedule for the remaining part of the year has been submitted to the Mount Pleasant Police Department. The Board of Trustees has asked that AMCS contact Mr. Besenfelder about reimbursing the I'On Assembly for the patrols of the Creek Club and the I'On Club.

AMCS advised that they are working on obtaining proposals based on the 2009 infrastructure maintenance schedule.

AMCS advised the Board of Trustees that several of the "Beware Alligator May Be In Lake" signs have gone missing. The Board of Trustees authorized AMCS to purchase four more signs.

AMCS advised that the refund has not been received from the I'On Club for the repairs to the irrigation systems on Maybank Green caused by the set up of a jump castle. The Board of Trustees asked AMCS to continue to follow up with the I'On Club on this matter.

President's Report
The Board of Trustees reviewed the President report prepared by Mr. Kinney.

The Board of Trustees reviewed the proposed amendments to the I'On Assembly governing documents. The governing documents for the I'On Assembly would be amended by adding D-108 Landscaping of Premises and D-109 Common Area Use. The proposed amendments will be mailed to each owner in the community to give them ample noticed of the proposed amendments. Sherri Cooper will draft a letter to include in the mailing that speaks of the proxy and transfer fee.

Transfer Fee
AMCS advised that they have received about 371 proxies in favor of the transfer fee. The Board of Trustees discussed their strategy for trying to pass the transfer fee. The Board of Trustees will re-evaluate the transfer fee strategy at the next Board of Trustees meeting.

Treasurer's Report
The Board of Trustees reviewed the Treasurer's report prepared by Mrs. Cooper.

Communications Report
The Board of Trustees reviewed the Communications Committee report prepared by Mrs. Fry.

The Board of Trustees agreed to provide Mrs. Fry administrative rights to www.ioncommunity.net.

Landscape Report
The Board of Trustees reviewed the Infrastructuree Committee report prepared by Mr. Rosengren.

The Board of Trustees discussed putting the landscape maintenance contract out to bid. The Board of Trustees agreed to keep the 2009 landscape maintenance contract with Lawn-O-Green.

Mr. Rosengren gave an update on the Landscape Committee's progress on researching the well system at the soccer field. He asked the Board of Trustees for $1,000.00 to $1,500.00 to modify the soccer field irrigation system so that a lower well production is required.

Matt Walsh made a motion to grant Mr. Rosengren $1,000.00 to $1,500.00 to modify the soccer field irrigation system so that a lower well production is required. Ward Mundy seconded the motion. All in favor. Motion carried.

After the soccer field irrigation has been addressed, the Landscape Committee will begin researching a well system for Maybank Green.

The Board of Trustees reviewed the request to install tabby shell concrete along the driveway easement off Grace Lane. The Board of Trustees agreed that once rule D-109 Common Area Use is passed, the residents can seek approval of the Board of Trustees to do the work themselves.

Next meeting will be held on October 30, 2008 at 6:00 PM at the I'On Company Upstairs Conference Room.

Barbara Fry, Secretary

CONFIDENTIAL

From: mrusso7465@aol.com
Sent: Tuesday, April 14, 2009 10:01 AM
To: Chad Besenfelder
Subject: Creek Club

Follow Up Flag: Follow up
Flag Status: Flagged

Dear Chad

Steve Speer went Friday and Monday and spoke with our potential lenders. There is good news and bad news. They are both still interested in doing the deal. Bad news is they have convinced Steve that any price agreed upon back in Sept of 2008 is too high. Values have come down all over the country and are reflected here in all the recent Ion sales of homes and lots. We will not be able to proceed at the old price as I had hoped. To get us back and for us to have a good chance of getting the financing we will need a 20% reduction across the board. I know this will more than likely kill the deal but the reality is everything is worth less now. It would probably make more sense for them to operate for a few more years and wait for the values to come back up. Hope you understand.

Thanks
Mike Russo

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!



PLAINTIFF'S EXHIBIT 115a

PRE-SALE LOTS CONTRACTED BETWEEN NOVEMBER 3, 1998 PROPERTY REPORT AND APRIL 10, 2000 PR, SHOULD HAVE RECEIVED 1998 PROPERTY REPO

In "LotContracted, LotClosed, Lot#" order.

SALES REPORT As of 1-Aug-07

Phase	Lot#	Street#	ToSeller	Agent	Type	Builder	Resident	LotContracted	LotClosed	HouseContracted	Co-Broker name	LotContract Yr
1	037	[redacted]	40,279	Bill	PreSale	Peris Company	Haddock, Salli	17-Nov-98	3-Mar-99			1998
1	050		41,360	Brett	PreSale	Southcoast	Lewandowski, Andrezj	4-Nov-98	30-Mar-99			1998
1	058		44,650	Bill	PreSale	Mike Hill Constructio	Acker, Tom & Duval	17-Nov-98	6-May-99		Poore-ReMax	1998
1	061		86,950	Bill	PreSale	Wilson & Associates	Schneider, Rick	5-Apr-99	28-Dec-99		Barton W., ReMax Realty	1999
1	067		45,590	Brett	PreSale	Peris Company	Ferrell, Ray	3-Dec-98	15-Mar-99			1998
1	070		97,760	Bill	PreSale	Southcoast	Folk, Jeff	7-Dec-98	25-Feb-99		Farmer-Coldwell	1998
1	078		101,520	Bill	PreSale	Southcoast	Boggs, Dick	13-Apr-99	30-Apr-99		John Cox- Realty Exec	1999
1	079		111,850	Laurie	PreSale	Burton Company	Brumleve, Gary	20-Jul-99	23-Nov-99			1999
1	080		93,812	Bill	PreSale	Hager Construction	Herrin, Mark	6-Oct-99	28-Oct-99		LoRoach - Poston & Co	1999
1	081		93,530	Bill	PreSale	Jenks Witte, Inc.	Bonk, Anne	7-Feb-99	7-Jul-99		Linda Witte-Prudential	1999
1	084		87,138	Bill	PreSale	Marlowe/Chandler	Vale, Rick and Lorraine	22-Jan-99	31-Aug-99			1999
1	085		117,500	Peggy	PreSale	Southcoast	Orange, Bill	27-Aug-99	20-Jan-00			1999
1	087		92,590	Bill	PreSale	Southcoast	Weavil, Steve	16-Feb-99	1-Jul-99		Weavil - Home Store	1999
1	089		84,130	Brett	PreSale	Meredith Projects	Headen, Gary & Paulett	9-Feb-99	19-May-99		Headon	1999
1	090		107,630	Brett	PreSale	Marlowe/Chandler	Wilson, John	8-Mar-99	7-Sep-99			1999
1	092		48,880	Brett	PreSale	Hager Construction	Graham, Vince	15-Feb-99	15-Jun-99			1999
1	097		91,086	Bill	PreSale	Hager Construction	Clem, Jo and Ed	23-Nov-98	6-Apr-99			1998
1	098	[redacted]yat	94,564	Brett	PreSale	Hager Construction	Rainis, Albert & Louise	5-Oct-99	19-Nov-99		Ashley-Island realty-refer	1999
1	099		102,648	Peggy	PreSale	Mike Hill Constructio	Dorozlak, Jeff	4-Oct-99	28-Oct-99			1999
1	102		79,430	Peggy	PreSale	Southcoast	Bishop, Pam	22-Dec-99	20-Jan-00		Bishop-Prudential	1999
1	103		63,920	Laurie	PreSale	Hager Construction	Maguire, Mark & Vicki	2-Dec-99	24-Mar-00			1999
1	104		63,920	Peggy	PreSale	Jenks Witte, Inc.	Lenes, Elizabeth	30-Jul-99	31-Jan-00		E. Lenes - Campson	1999
1	105		65,800	Peggy	PreSale	Jenks Witte, Inc.	Mosteller, Rick and Cin	24-Aug-99	3-Feb-00		Mosteller	1999
1	106		63,920	Laurie	PreSale	Southcoast	Rob DeMoura	31-Aug-99	10-Nov-99			1999
1	109		87,890	Laurie/BO	PreSale	Hager Construction	Janoff, Alan	28-Oct-99	8-Feb-00		Jeanne Cordes-Wild Dunes	1999
1	117		81,009	NA	PreSale	Hager Construction	Graham Holdings, LLC	15-Feb-99	17-Apr-01			1999
1	132		65,800	House	PreSale	Marlowe/Chandler	Anderson, Chris	1-Feb-99	28-Feb-00			1999
1	134		71,440	Peggy	PreSale	Southcoast	DuPre, Lucy	8-Dec-99	29-Dec-99		Bishop-Prudential	1999
1	135		182,830	Peggy	PreSale	NA	Ralford, Rich	10-Jan-00	10-May-00		Carrol., Carroll Realty	2000
1	142		47,000	Laurie	PreSale	Southcoast	Henkel, Jason	20-Mar-00	21-Jul-00		Hinkel, Jason - Coydell	2000

APPENDIX 2823

PODefendants 000987

CONFIDENTIAL

PRE-SALE RESIDENTIAL LOTS CONTRACTED BETWEEN APRIL 10, 2000 AND JAN. 1, 2002, SHOULD HAVE RECEIVED PROPERTY REPORT DATED EITHER APRIL 10, 2000 O

SALES REPORT As of 1-Aug-07

Phase	Lot#	Street#	ToSeller	Agent	Type	Builder	Resident	LotContracted	LotClosed	Property Report DATE	Property Report Receipt Date	LotContract Yr
1	042	[redacted]	79,430	Bill	PreSale	Marlowe/Chandler	Devine, Diane & Dennis	12-Jun-00	10-Oct-00	10-Apr-00	9-Jun-00	2000
2	191	[redacted]	74,730	Peggy	PreSale	Kalman Construction	O'Neil, Gary & Jane	10-Apr-00	21-Aug-00	3-Nov-98	8-Apr-00	2000
2	192	[redacted]	77,250	Peggy	PreSale	Kalman Construction	O'Neil, Gary & Jane	10-Apr-00	21-Aug-00	3-Nov-98	8-Apr-00	2000
2	194	[redacted]	87,890	Peggy	PreSale	Historic Traditions	Firestone, Benny & Mel	25-Sep-00	20-Dec-00		no file	2000
2	205	[redacted]	74,730	Tara	PreSale	Wilson & Associates	LoCicero, Paul & Karen	3-May-00	21-Jul-00	10-Apr-00	8-May-00	2000
2	227	[redacted]	77,550	Peggy	PreSale	Wilson & Associates	Baker, Elizabeth	14-Jun-00	12-Oct-00	10-Apr-00	14-Jun-00	2000
2	232	[redacted]	74,730	House	PreSale	Historic Traditions	Kendrick, Steve	7-Jun-00	10-Oct-00	10-Apr-00	7-Jun-00	2000
2	237	[redacted]	77,785	Bill	PreSale	Wilson & Associates	Lyon, Jim	14-Jun-00	23-Oct-00	10-Apr-00	14-Jun-00	2000
2	247	[redacted]	108,100	Bill	PreSale	NA	Wise, Micael & Kay	10-May-00	8-Sep-00	10-Apr-00	10-May-00	2000
2	249	[redacted]	68,150	Peggy	PreSale	Jenks Witte, Inc.	Rawlin, Samuel	14-Apr-00	31-Jul-00	3-Nov-98	12-Apr-00	2000
2	250	[redacted]	70,406	Peggy	PreSale	Meredith Projects	Foley, Rion & Tate, Eliz	18-Apr-00	25-Aug-00	3-Nov-98	17-Apr-00	2000
2	251	[redacted]	121,260	Peggy	PreSale	Daly & Sawyer	Job, Matthew & Cindy	17-Jul-00	18-Sep-00	10-Apr-00	17-Jul-00	2000
2	252	[redacted]	154,630	Peggy	PreSale	Marlowe/Chandler	Webb, Ted & Cynthia	17-May-00	19-Sep-00	10-Apr-00	10-May-00	2000
2	266	[redacted]	81,310	Bill	PreSale	Ilderton Contractors	Huge, Theodore & Cath	14-Jun-00	24-Oct-00	10-Apr-00	14-Jun-00	2000
2	267	[redacted]	102,460	Bill	PreSale	Burton Company	Harmon, Stella	21-Jul-00	27-Oct-00	10-Apr-00	21-Jul-00	2000
2	269	[redacted]	98,230	Laurie	PreSale	Daly & Sawyer	Hile, Jason M.	7-Feb-01	6-Apr-01	10-Apr-00	6-Feb-01	2001
2	271	[redacted]	132,540	Laurie	PreSale	Headdon/Halsey	Headdon, Donald	18-Sep-00	22-Nov-00	10-Apr-00	18-Sep-00	2000
2	284	[redacted]	135,360	Bill	PreSale	Daly & Sawyer	Wahoo Partners Limite	6-Oct-00	4-Dec-00	10-Apr-00	5-Oct-00	2000
2	290	[redacted]	111,860	Tara	PreSale	Na	Hale, Jeremy & Thomas	24-Apr-01	23-Aug-01	29-Dec-00	26-Apr-01	2001
2	296	[redacted]	205,860	Laurie	PreSale	Marlowe/Chandler	Wilkerson, OA & MP	13-Feb-01	16-Apr-01	10-Apr-00	8-Feb-01	2001
4	307	[redacted]	67,210	Peggy	PreSale	Jenks Witte, Inc.	McIntosh, James & Bet	18-Jun-00	25-Sep-00	10-Apr-00	17-Jun-00	2000
4	316	[redacted]	51,700	Laurie	PreSale	NA	Brumleve, Gary	21-Sep-00	12-Dec-00	10-Apr-00	14-Sep-00	2000
4	317	[redacted]	74,025	Laurie	PreSale	Meredith Projects	Holmsenback, Russell	28-Nov-00	9-Feb-01	10-Apr-00	27-Nov-00	2000
4	318	[redacted]	56,870	Bill/Peggy	PreSale	Marlowe Chandler	Lowcountry Marketing	24-Aug-00	16-Nov-00	10-Apr-00	24-Aug-00	2000
4	329	[redacted]	70,500	Peggy	PreSale	Headdon/Halsey	Ballister, Diane & Micha	26-Sep-01	21-Nov-01	10-Apr-00	none	2001

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Phase	Lot#	Street#	ToSeller	Agent	Type	Builder	Resident	LotContracted	LotClosed	Property Report DATE	Property Report Receipt Date	LotContract Yr
4	334	2 [redacted] e	74,260	Laurie	PreSale	Marlowe/Chandler	Minor, Robert	27-Sep-00	1-Dec-00	10-Apr-00	27-Sep-00	2000
4	336	3 [redacted]	70,500	Tara	PreSale	Meredith Projects	Meredith, Christopher	5-Sep-00	10-Nov-00	10-Apr-00	1-Sep-00	2000
4	340	2 [redacted] e	58,750	Peggy	PreSale	Binya Builders	Boone, Kathleen	7-Nov-00	8-Jan-01	10-Apr-00	6-Nov-00	2000
4	341	2 [redacted] e	56,870	Peggy	PreSale	Marlowe/Chandler	Whitfield, Miles	28-Oct-00	15-Feb-01	10-Apr-00	26-Oct-00	2000
4	342	3 [redacted] e	52,405	NA	PreSale	NA	Graham Holdings, LLC	21-Feb-01	17-Apr-01	10-Apr-00	none	2001
4	344	1 [redacted] e	53,392	House	PreSale	Tanis Construction	Tanis Grandfather	23-Aug-00	23-Oct-00	NIC	Bldr Contr	2000
4	347	3 [redacted] e	51,935	Bill	PreSale	Marlowe/Chandler	Santrizos, Nichole & Pa	28-Aug-00	1-Nov-00	10-Apr-00	31-Aug-00	2000
4	348	3 [redacted] e	54,990	Bill	PreSale	Marlowe/Chandler	Naiman, Lucille C	12-Oct-00	23-Feb-01	10-Apr-00	12-Oct-00	2000
4	356	1 [redacted] e	82,720	Laurie	PreSale	Marlowe/Chandler	Minor, Robert	27-Sep-00	1-Dec-00	10-Apr-00	27-Sep-00	2000
2	195A	5 [redacted]	88,360	Peggy	PreSale	Wilson & Associates	Bailey, Tina	10-Oct-00	18-Jan-01	10-Apr-00	6-Oct-00	2000
5AB	5-006	8 [redacted] e	135,360	Tara	PreSale	Phillip W. Smith	Gary, Kevin & Sandra	16-Aug-01	12-Nov-01	NIC	Rev 4/18/01	2001
5AB	5-118	1 [redacted] e	82,250	Tara	PreSale	Headdon/Halsey	Aichele, Eric	29-May-01	27-Jul-01	NIC	Rev 5/11/01	2001
5AB	5-123	4 [redacted] o	75,200	Tara	PreSale	NA	Russell, Harold. S	8-Oct-01	10-Dec-01	NIC	Rev 4/18/01	2001
5AB	5-124	3 [redacted] o	112,800	Tara	PreSale	NA	Russell, Harold. S	8-Oct-01	10-Dec-01	NIC	Rev 4/18/01	2001
5AB	5-125	3 [redacted] o	74,730	Peggy	PreSale	Meredith Projects	Meredith, Emily & Andr	29-May-01	27-Jul-01	NIC	Rev 4/18/01	2001
5AB	5-126	3 [redacted] o	122,200	Peggy	PreSale	Hager Construction	Craig, Lisa	10-Jul-01	7-Sep-01	NIC	Rev 4/18/01	2001
5AB	5-140	3 [redacted] o	65,330	Bill	PreSale	NA	Schneider, Rick	4-Jun-01	7-Sep-01	NIC	Rev 4/18/01	2001
5C	5-150	1 [redacted]	83,660	Laurie	PreSale	Headdon/Halsey	Dorsey, e. Sikes	1-Nov-01	24-Jan-02	NIC	Rev 4/18/01	2001
5C	5-151	2 [redacted]	59,126	Laurie	PreSale	Headdon/Halsey	Minges, Philip & Patricl	1-Nov-01	15-Jan-02	NIC	Rev 4/18/01	2001
5C	5-152	2 [redacted]	70,500	Rick	PreSale	Headdon/Halsey	Anglin, Gloria Jean	1-Nov-01	21-Dec-01	NIC	Rev 4/18/01	2001
5AB	5-153	7 [redacted] R	92,590	Laurie	PreSale	Headdon/Halsey	Wichmann, F.C.	29-May-01	1-Aug-01	NIC	Rev 4/18/01	2001
5AB	5-154	7 [redacted] R	76,610	Laurie	PreSale	NA	Waddington, Peter & S	11-Jun-01	20-Aug-01	NIC	Rev 4/18/01	2001
5AB	5-155	8 [redacted] R	76,900	House	PreSale	Tanis Construction	Tanis, Kirk & Susan	31-May-01	1-Aug-01	NIC	Rev 4/18/01	2001
5C	5-162	1 [redacted] d	164,030	Tara	PreSale	Marlowe-Chandler	Medlin, Diana & Georg	1-Nov-01	29-Nov-01	NIC	Rev 4/18/01	2001
5C	5-163	1 [redacted] d	159,330	Rick	PreSale	Binya Builders	Rosengren, David & Cy	5-Nov-01	3-Dec-01	NIC	Rev 4/18/01	2001
5AB	5-165	1 [redacted] d	202,194	Peggy	PreSale	Daly & Sawyer	Joye, Dr. Todd P.	5-Jul-01	5-Sep-01	NIC	Rev 4/18/01	2001
5AB	5-167	1 [redacted] d	101,097	Rick	Presale	Hager Construction	Duffy, John & Rita	28-Nov-01	24-Jan-02	NIC	Rev 4/18/01	2001
5AB	5-171	1 [redacted]	65,330	Laurie	Presale	Structures	Hansen, Martin & Joye	28-Nov-01	8-Apr-02	NIC	Rev 4/18/01	2001

Phase	Lot#	Street#	ToSeller	Agent	Type	Builder	Resident	LotContracted	LotClosed	Property Report DATE	Property Report Receipt Date	LotContract Yr
5AB	5-176	[redacted]	235,000	Laurie	Presale	NA	Daen, Matt and Kirsten	30-Nov-01	29-Jan-02	NIC	Rev 4/18/01	2001

APPENDIX 2826

CONFIDENTIAL

From: - MRUSSO7465@aol.com
Sent: Monday, August 11, 2008 4:11 PM
To: Chad Besenfelder
Subject: Re: Creek Club Offer

The revisions are correct I suggested doing a contract now that calls for $5,000 with the other $25000 on August 30 and starting the clock for due diligence,extentions etc on August 30 this way we do not need to waste the money with a binding letter of intent. Let me know if you agree.

Thanks...Russo

In a message dated 8/11/2008 3:02:18 P.M. Eastern Daylight Time, chad@iongroup.com writes:

Mike,

Please review the latest offer revisions. I can create an official contract for your review this week.

Creek Club:

1. A Purchase and Sale Agreement shall be executed on or before August 30. 2008.
2. Purchase price for the Creek Club and overflow parking area (CV-5 and CV-6) to be $1,750,000.
3. Earnest money: Initial deposit to be $25,000, refundable at any time prior to satisfactory conclusion of 60 days Inspection Period. At end of Inspection Period, earnest money to become non-refundable, and closing to take place within 30 days. Seller is willing to grant two additional 30-day extension periods beyond initial closing date, with Buyer paying Seller additional $10,000 non-refundable earnest payment for each extension. Earnest money is applicable to purchase price.
4. The I'On Club will disclose pertinent Creek Club business documents to be mutually agreed in a Purchase and Sale Agreement.
5. The Buyer will agree to honor Creek Club rental commitments and Seller agrees to pay renter deposits to the Buyer at closing.
6. The Buyer may access for building inspections during normal business hours with reasonable prior notice and not to interfere with events.
7. Boat ramp and dock to remain I'On Company property and will allow Creek Club buyer access. Subject to HOA approval, The I'On Company plans convey the docks and boat ramp to the HOA retaining continued easement access for both I'On Club and Creek Club events.
8. Cross use easement changes will probably be required and both parties must review and agree upon these changes – preferably during the Inspection Period.
9. The I'On Company and I'On Club have agreements with the I'On Assembly, and Olde Park and will provide those agreements to Buyer within 5-days of completion of Contract. We expect that parties must agree to changes, if any, prior to conclusion of Inspection Period.

Lot 275:



CONFIDENTIAL

1. Purchase and Sale Contract to be executed on or before August 30, 2008.
2. The P&S Contract shall be contingent upon prior Closing of the Creek Club.
3. Purchase price for residential Lot 275 is $250,000.
4. Earnest Money: $5,000. The l'On Company will allow up to 180 day due diligence period to obtain rezoning approval. Closing to take place the earlier of 210 days from contract date or 30 days from date of re-zoning.
5. The l'On Company will allow Buyer to use a non-guild builder and no build time required.

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SALES REPORT

Non-Builder Bot Purchase Contracts executed or closed between November 03, 2011 and April 06, 2000 are expected to contain a receipt for September 03, 1994 HUD Property Report; earlier contracts are expected to have pre HUD Property Report receipts; later etc expected to have April 10, 2000 HUD Property Report receipts.

tabbies

PLAINTIFF'S EXHIBIT

1169

APPENDIX 2830

