

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry Hyman, Circuit Court Judge

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SC Court of Appeals

Civil Action No.: 2018-CP-26-2183; 2018-CP-26-2184; 2018-CP-26-2185; 2018-CP-26-2187
Appellate Case No.: 2020-000391

Anaptyx, LLC Appellant

v.

Golf Colony Resort II at Deer Track Homeowners' Association, Inc., Respondent

AND

Anaptyx, LLC Appellant

v.

Golf Colony Resort IV at Deer Track Homeowners' Association, Inc., Respondent

AND

Anaptyx, LLC Appellant

v.

Deerfield Plantation Community Services Association, Inc., Respondent

AND

Anaptyx, LLC Appellant

v.

Tradewinds Homeowners' Association, Inc., Respondent

Of Which Anaptyx, LLC is the Appellant.

RECORD ON APPEAL

Robert W. Maring
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PO Box 478
Georgetown, SC 29442
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Attorney for Appellant

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602183

Anaptyx LLC
PLAINTIFF(S)

Deerfield Plantation Community Services Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Alter and/or Amend was resolved.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/16/2019 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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

ELECTRONICALLY FILED - 2019 Jul 16 2:02 PM - Horry - COMMON PLEAS - CASE#2018CP2602183



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-07-16 12:07:15 page 3 of 3

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602184

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort II At Deertrack Homeowners Association In
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602185

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort IV Deer Track Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners
Association Inc
Case Number: 2018CP2602185
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602187

Anaptyx LLC
PLAINTIFF(S)

Tradewinds Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
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Defendant's Motion/Alter and/or Amend was resolved.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

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Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc
Case Number: 2018CP2602187
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602183

Anaptyx LLC
PLAINTIFF(S)

Deerfield Plantation Community Services Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **STAYED DUE TO BANKRUPTCY**
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☐ Other

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

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

Defendant's Motion/Summary Judgment is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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Willard D. Hanna, Jr. for Deerfield Plantation Community Services Association Inc
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Deerfield Plantation Community Services Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:12:45 page 3 of 3

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Deerfield Plantation Community Services
Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:13:10 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602184

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort II At Deertrack Homeowners Association In
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

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For Clerk of Court Office Use Only

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Willard D. Hanna, Jr. for Golf Colony Resort II At Deertrack Homeowners Association In
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Golf Colony Resort II At Deertrack Homeowners Association
In

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:12:46 page 3 of 3

ELECTRONICALLY FILED - 2019 Oct 07 3:51 PM - HORRY - COMMON PLEAS - CASE#2018CP2602184

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

**ORDER GRANTING
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SUMMARY JUDGMENT**

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FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:14:41 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602185

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort IV Deer Track Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/07/2019 .

Willard D. Hanna, Jr. for Golf Colony Resort IV Deer Track Homeowners Association Inc
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Golf Colony Resort IV Deer Track Homeowners Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners Association Inc
Case Number: 2018CP2602185
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:13:11 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners
Association Inc
Case Number: 2018CP2602185
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:14:53 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602187

Anaptyx LLC
PLAINTIFF(S)

Tradewinds Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/07/2019.

Willard D. Hanna, Jr. for Tradewinds Homeowners Association Inc
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Tradewinds Homeowners Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc

Case Number: 2018CP2602187

Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:13:13 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc

Case Number: 2018CP2602187

Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:15:05 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602183

Anaptyx LLC
PLAINTIFF(S)

Deerfield Plantation Community Services Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:21:31 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602184

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort II At Deertrack Homeowners Association In
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:22:05 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602185

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort IV Deer Track Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners Association Inc
Case Number: 2018CP2602185
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:22:15 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602187

Anaptyx LLC
PLAINTIFF(S)

Tradewinds Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc
Case Number: 2018CP2602187
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:22:45 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

Anaptyx, LLC,

Plaintiff,

vs.

Deerfield Plantation Community Services
Association, Inc.

Defendant.

**CONSENT ORDER ALLOWING
AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT**

UPON MOTION of Willard D. Hanna, Jr., attorney for the Defendant, and with the written consent of Robert W. Maring, attorney for Plaintiff, the Defendant is hereby allowed to amend its Answer and Counterclaim in accordance with the proposed Amended Answer and Counterclaim attached to the Motion to Amend Answer previously filed.

AND IT IS SO ORDERED.

Circuit Court Judge
Fifteenth Judicial Circuit

_____, 2019

Murrells Inlet, South Carolina

[Signature page to follow]

WE SO MOVE:

HANNA LAW, P.A.
Attorney for Defendant

By: s/ Willard D. Hanna, Jr.
Willard D. Hanna, Jr. (S.C. Bar # 2710)

WE SO CONSENT:

MARING & MOYER, LLC
Attorney for Plaintiff

By: s/ Robert W. Maring
Robert W. Maring (S.C. Bar # 8810)



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Consent Order

Resident Circuit Court Judge, 15th Judicial Circuit
s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-07-19 12:57:35 page 3 of 3

ELECTRONICALLY FILED - 2019 Jul 19 4:19 PM - HORRY - COMMON PLEAS - CASE#2018CP2602183

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

**CONSENT ORDER ALLOWING
AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT**

UPON MOTION of Willard D. Hanna, Jr., attorney for the Defendant, and with the written consent of Robert W. Maring, attorney for Plaintiff, the Defendant is hereby allowed to amend its Answer and Counterclaim in accordance with the proposed Amended Answer and Counterclaim attached to the Motion to Amend Answer previously filed.

AND IT IS SO ORDERED.

Circuit Court Judge
Fifteenth Judicial Circuit

_____, 2019

Murrells Inlet, South Carolina

[Signature page to follow]

WE SO MOVE:

HANNA LAW, P.A.

Attorney for Defendant

By: s/ Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (S.C. Bar # 2710)

WE SO CONSENT:

MARING & MOYER, LLC

Attorney for Plaintiff

By: s/ Robert W. Maring

Robert W. Maring (S.C. Bar # 8810)



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Consent Order

Resident Circuit Court Judge, 15th Judicial Circuit
s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-07-19 12:58:07 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

**CONSENT ORDER ALLOWING
AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT**

UPON MOTION of Willard D. Hanna, Jr., attorney for the Defendant, and with the written consent of Robert W. Maring, attorney for Plaintiff, the Defendant is hereby allowed to amend its Answer and Counterclaim in accordance with the proposed Amended Answer and Counterclaim attached to the Motion to Amend Answer previously filed.

AND IT IS SO ORDERED.

Circuit Court Judge
Fifteenth Judicial Circuit

_____, 2019
Murrells Inlet, South Carolina

[Signature page to follow]

WE SO MOVE:

HANNA LAW, P.A.

Attorney for Defendant

By: s/ Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (S.C. Bar # 2710)

WE SO CONSENT:

MARING & MOYER, LLC

Attorney for Plaintiff

By: s/ Robert W. Maring

Robert W. Maring (S.C. Bar # 8810)



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners Association Inc
Case Number: 2018CP2602185
Type: Order/Consent Order

Resident Circuit Court Judge, 15th Judicial Circuit
s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2019-07-19 09:44:09 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

**CONSENT ORDER ALLOWING
AMENDED ANSWER AND
COUNTERCLAIM OF DEFENDANT**

UPON MOTION of Willard D. Hanna, Jr., attorney for the Defendant, and with the written consent of Robert W. Maring, attorney for Plaintiff, the Defendant is hereby allowed to amend its Answer and Counterclaim in accordance with the proposed Amended Answer and Counterclaim attached to the Motion to Amend Answer previously filed.

AND IT IS SO ORDERED.

Circuit Court Judge
Fifteenth Judicial Circuit

_____, 2019

Murrells Inlet, South Carolina

[Signature page to follow]

WE SO MOVE:

HANNA LAW, P.A.

Attorney for Defendant

By: s/ Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (S.C. Bar # 2710)

WE SO CONSENT:

MARING & MOYER, LLC

Attorney for Plaintiff

By: s/ Robert W. Maring

Robert W. Maring (S.C. Bar # 8810)



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc
Case Number: 2018CP2602187
Type: Order/Consent Order

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-07-22 11:03:14 page 3 of 3

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

Anaptyx, LLC,

Plaintiff,

vs.

Deerfield Plantation Community Services
Association, Inc.

Defendant.

CONSENT ORDER

WHEREAS, the original Complaint in this matter was filed on April 3, 2018 naming "Golf Colony Resort at Deertrack Community Services Association, Inc." as Defendant; and

WHEREAS, subsequent to filing the original Complaint, it was determined that the incorrect entity was named as Defendant; and

WHEREAS, an Amended Complaint was then filed on June 6, 2018, substituting "Deerfield Plantation Community Services Association, Inc." as the named Defendant; and

WHEREAS, the original named Defendant was never formally dismissed;

NOW, THEREFORE, upon motion of Robert W. Maring, Attorney for the Plaintiff; and with the consent of Willard D. Hanna, Jr., attorney for the Defendant,

IT IS HEREBY ORDERED that the original named Defendant, "Golf Colony Resort at Deertrack Community Services Association, Inc.", shall be dismissed from this action without prejudice; and "Deerfield Plantation Community Services Association, Inc." shall be substituted in its place as the properly named Defendant in this matter.

AND IT IS SO ORDERED.

Presiding Circuit Court Judge

Conway, South Carolina

July _____, 2018

I SO MOVE:

s/Robert W. Maring

Robert W. Maring (SC Bar No.: 8810)

MARING & MOYER, LLC

P.O. Box 478

Georgetown SC 29442-0478

Attorney for Plaintiff

I SO CONSENT:

s/ Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar No. 2672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

(843) 651-9000

Attorney for Defendant



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Consent Order

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-07-27 09:46:37 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	SUMMONS
	)	(JURY TRIAL DEMANDED)
GOLF COLONY RESORT	)	
AT DEERTRACK COMMUNITY	)	
SERVICES ASSOCIATION, INC.	)	
	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 April 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	COMPLAINT
	)	(Breach of Contract)
GOLF COLONY RESORT	)	
AT DEERTRACK COMMUNITY	)	
SERVICES ASSOCIATION, INC.	)	
	)	
	)	
DEFENDANT.	)	
_____	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Golf Colony Resort at Deertrack Community Services Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
3. On or about October 1, 2012, the Plaintiff and Defendant entered into a written agreement for the Plaintiff to provide the Defendant with certain internet WiFi service, wireless equipment used for such accounts, and hardware used for mounting and installing network and cabling and for the operations of the Wifi network, all at great expense to the Plaintiff. A copy of the written agreement is attached hereto as Exhibit A and incorporated herein by reference.
4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that the initial term

would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of One Hundred Fifty-One Thousand and Nine Hundred Eighty and 00/100 (\$151,980.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for One Hundred Fifty-One Thousand and Nine Hundred Eighty and 00/100 (\$151,980.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for One Hundred Fifty-One Thousand and Nine Hundred Eighty and 00/100 (\$151,980.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

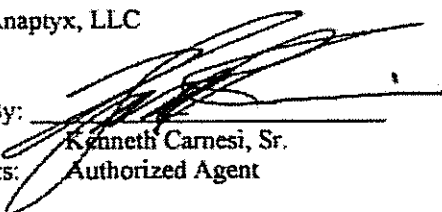
Georgetown, SC
April 3, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

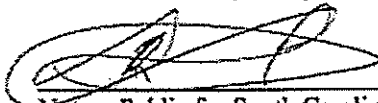
VERIFICATION

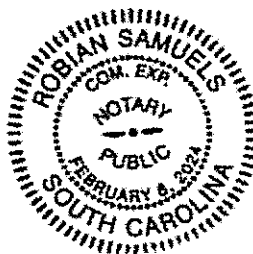
PERSONALLY appeared before me, Kenneth Carnesi, Sr., as authorized agent of Anaptyx, LLC, who after being duly sworn, deposes and says that Anaptyx, LLC, is the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, he believes to be true also.

Anaptyx, LLC

By: 
Its: Kenneth Carnesi, Sr.
Authorized Agent

Sworn to me this 21st day of March, 2018


Notary Public for South Carolina
My commission expires: 02/06/2024



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02183
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED SUMMONS
	)	(JURY TRIAL DEMANDED)
DEERFIELD PLANTATION	)	
COMMUNITY SERVICES	)	
ASSOCIATION, INC.	)	
	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 June 6, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02183
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(Breach of Contract)
DEERFIELD PLANTATION	)	
COMMUNITY SERVICES	)	
ASSOCIATION, INC.	)	
	)	
	)	
DEFENDANT.	)	
	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Deerfield Plantation Community Services Association, Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
3. On or about October 1, 2012, the Plaintiff and Defendant entered into a written agreement for the Plaintiff to provide the Defendant with certain internet WiFi service, wireless equipment used for such accounts, and hardware used for mounting and installing network and cabling and for the operations of the Wifi network, all at great expense to the Plaintiff. A copy of the written agreement is attached hereto as Exhibit A and incorporated herein by reference.
4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that the initial term

would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of One Hundred Fifty-One Thousand and Nine Hundred Eighty and 00/100 (\$151,980.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for One Hundred Fifty-One Thousand and Nine Hundred Eighty and 00/100 (\$151,980.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for One Hundred Fifty-One Thousand and Nine Hundred Eighty and 00/100 (\$151,980.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 June 6, 2018

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

Owner or Authorized AGENT:
Golf Colony CSA
c/o: Myrtle Beach Realty
1105 Glenns Bay Road
Surfside Beach, SC 29575

Location: Golf Colony CSA
Autumn Drive & Bentgrass Drive
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dtr1@frontier.com

PROPERTY:

Number of Units at Location: 296
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dtr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 **Services.** Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse

change to the Service, Owner shall be deemed to have accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 **Installation of System.** Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 **Maintenance of System; Restoration of Property.** At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade

AMENDED

EXHIBIT

A

such items during the Term; provided that the Owner grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operator's equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operator's equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment

Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information

Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured

Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights

Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The initial Term will be automatically extended

for another Term equal to the initial Term years unless either party notifies the other at least 121 days before the expiration of the initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents of behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties.

Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability;**Disclaimer; Service Outage Credits.**

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants.

Owner acknowledges that use of the service and access to the Internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the Internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the Internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the Internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charges payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and/or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners

shareholders, members, partner, directors, managers, officers, employees, contractors, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (d) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use the proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assign this agreement to (a) and parent, affiliates, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the

Operator's overall network System serving the property. Upon the new Operator's written assumption of all of Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigns the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance caused by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from

fully complying with Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supercedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC ("Operator")

X

by: Anthony P. Camarillo, Jr.

Title: CEO

("Owner")

X

by: [Signature]

Title: Prof. M. J.

EXHIBIT A:

Number of Units (Coverage): 298
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$2,533.00

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) SCInitial (Owner) L

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

Anaptyx, LLC,

Plaintiff,

vs.

ANSWER AND COUNTERCLAIM

Deerfield Plantation Community Services
Association, Inc.

Defendant.

The Defendant, answering the Plaintiff's Amended Complaint, states as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).

3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.

4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

August 20, 2018

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02183
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Reply to Counterclaim
vs.	)	
	)	
DEERFIELD PLANTATION	)	
COMMUNITY SERVICES	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded hereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.

9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.

10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.

11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.

12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

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

13. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.

14. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire.
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
August 30, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

Anaptyx, LLC,

Plaintiff,

vs.

**AMENDED ANSWER AND
COUNTERCLAIM**

Deerfield Plantation Community Services
Association, Inc.

Defendant.

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).
3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.
4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

FOR A FOURTH DEFENSE
(Failure to Provide Notice)

15. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

16. Section 14.3 of the contract states, "[t]his agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions."

17. New York General Obligations Law § 5-903, entitled "Automatic renewal provision of contract for service or repair unenforceable by contractor unless notice thereof given to recipient of services", requires that Plaintiff provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him (A copy of said statute is attached hereto as "Exhibit A").

18. Plaintiff failed to provide notice to Defendant, either personally or by certified mail, as required by New York General Obligations § 5-903, and therefore the automatic renewal provision is unenforceable.

19. Section 14.5 of the contract states, "[i]f either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement." By virtue

of the same, Defendant believes it is entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

FOR A FIFTH DEFENSE

(Motion to Dismiss)

20. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

21. The Defendant would allege, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, that Plaintiff has failed to state a cause of action upon which relief can be granted.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; for its reasonable attorney's fees and other costs accompanying the enforcement of the contract; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02183
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Reply to Amended Counterclaim
vs.	)	
	)	
DEERFIELD PLANTATION	)	
COMMUNITY SERVICES	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded hereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.

9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.

10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.

11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.

12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

13. Paragraph 15 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

14. The Plaintiff denies the allegations contained in paragraph 16 and demands strict and absolute proof thereof.

15. The Plaintiff denies the allegations contained in paragraph 17 and demands strict and absolute proof thereof.

16. The Plaintiff denies the allegations contained in paragraph 18 and demands strict and absolute proof thereof.

17. The Plaintiff denies the allegations contained in paragraph 19 and demands strict and absolute proof thereof.

18. Paragraph 20 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

19. The Plaintiff denies the allegations contained in paragraph 21 and demands strict and absolute proof thereof.

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

20. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.

21. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring

Robert W. Maring, Esquire

SC Bar No. 8810

Maring & Moyer, LLC

1130 Highmarket Street

Post Office Box 478

Georgetown, SC 29442

Telephone: 843-545-9544

Facsimile: 843-545-9735

Robert@maringmoyer.com

Counsel for the Plaintiff

Georgetown, SC
August 21, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	SUMMONS
	)	(JURY TRIAL DEMANDED)
GOLF COLONY RESORT II	)	
AT DEERTRACK	)	
HOMEOWNERS' ASSOCIATION	)	
INC.	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 April 03, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	COMPLAINT
	)	(Breach of Contract)
GOLF COLONY RESORT II	)	
AT DEERTRACK	)	
HOMEOWNERS' ASSOCIATION	)	
INC.	)	
	)	
DEFENDANT.	)	
_____	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Golf Colony Resort II at Deertrack Homeowners' Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
3. On or about October 1, 2012, the Plaintiff and Defendant entered into a written agreement for the Plaintiff to provide the Defendant with certain internet WiFi service, wireless equipment used for such accounts, and hardware used for mounting and installing network and cabling and for the operations of the Wifi network, all at great expense to the Plaintiff. A copy of the written agreement is attached hereto as Exhibit A and incorporated herein by reference.

4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

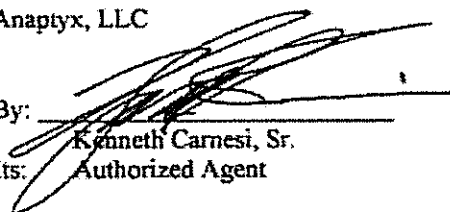
s/Robert W. Maring
 Robert W. Maring, Esquire
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 Telephone: 843-545-9544
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 Robert@maringmoyer.com
Counsel for the Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

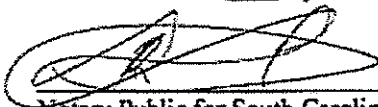
VERIFICATION

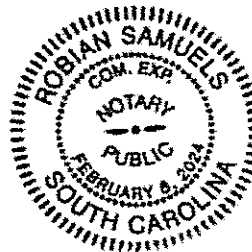
PERSONALLY appeared before me, Kenneth Carnesi, Sr., as authorized agent of Anaptyx, LLC, who after being duly sworn, deposes and says that Anaptyx, LLC, is the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, he believes to be true also.

Anaptyx, LLC

By: 
Its: Kenneth Carnesi, Sr.
Authorized Agent

Sworn to me this 21st day of March, 2018


Notary Public for South Carolina
My commission expires: 02/06/2024



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02184
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED SUMMONS
	)	(JURY TRIAL DEMANDED)
GOLF COLONY RESORT II	)	
AT DEERTRACK	)	
HOMEOWNERS' ASSOCIATION	)	
INC.	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

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MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
June 8, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02184
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(Breach of Contract)
GOLF COLONY RESORT II	)	
AT DEERTRACK	)	
HOMEOWNERS' ASSOCIATION	)	
INC.	)	
	)	
DEFENDANT.	)	
	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Golf Colony Resort II at Deertrack Homeowners' Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
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4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

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12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

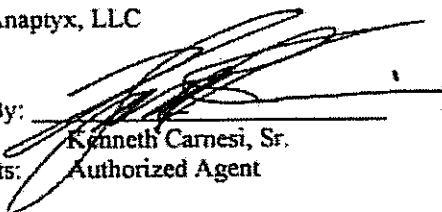
s/Robert W. Maring

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Counsel for the Plaintiff

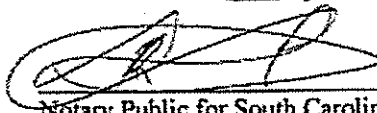
STATE OF SOUTH CAROLINA)
COUNTY OF HORRY) VERIFICATION

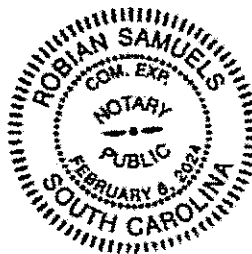
PERSONALLY appeared before me, Kenneth Carnesi, Sr., as authorized agent of Anaptyx, LLC, who after being duly sworn, deposes and says that Anaptyx, LLC, is the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, he believes to be true also.

Anaptyx, LLC

By: 
Its: Kenneth Carnesi, Sr.
Authorized Agent

Sworn to me this 21st day of March, 2018


Notary Public for South Carolina
My commission expires: 02/06/2024



Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

* **Owner or Authorized AGENT:**
Golf Colony 4 HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: 1880 Colony Drive, Buildings 10-12
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 40
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.
1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have

accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during Installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner



grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless Internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operators equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operators equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment

Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information

Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured

Owner will add Operator's equipment on site to their Insurance policies as an additional Insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights

Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The Initial Term will be automatically extended for another Term equal to the initial Term years unless

either party notifies the other at least 121 days before the expiration of the Initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The Initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties.

Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners shareholders, members, partner, directors, managers, officers, employees, contractors, agents,

representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owners such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the Operator's overall network System serving the property. Upon the new Operators written assumption of all of

Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from fully complying with Laws and Regulations, including any consents, agreements, orders or other

requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and super cedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC, ("Operator")

X

by: Kenneth B. Perry, Jr.

Title: CEO

("Owner")

X

by: Prop m/j

Title: Prop m/j

EXHIBIT A:

Number of Units (Coverage): 40
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$340

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide Instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) 

Initial (Owner) _____

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

*** Owner or Authorized AGENT:**

Golf Colony 2 HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: 1851 Colony Drive, Buildings 4-6
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 40
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 **Services.** Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have

accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless Internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner

AMENDED

EXHIBIT

A

grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operators equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operators equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment
Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information
Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured
Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights
Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term
The initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The initial Term will be automatically extended for another Term equal to the initial Term years unless

either party notifies the other at least 121 days before the expiration of the initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties. Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners shareholders, members, partner, directors, managers, officers, employees, contractors, agents,

representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the Operator's overall network System serving the property. Upon the new Operators written assumption of all of

Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from fully complying with Laws and Regulations, including any consents, agreements, orders or other

requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and super cedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC. ("Operator")

X

by: Henry B. Perry, Jr.

Title: CEO

("Owner")

X

by: _____

Title: Prop. mfr

EXHIBIT A:

Number of Units (Coverage): 40
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$340.00

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) AP

Initial (Owner) h

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

ANSWER AND COUNTERCLAIM

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).

3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.

4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

August 9, 2018

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02184
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Reply to Counterclaim
vs.	)	
	)	
GOLF COLONY RESORT II AT	)	
DEERTRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded thereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.
9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.
10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.
11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.
12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

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

13. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.
14. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring

Robert W. Maring, Esquire

SC Bar No. 8810

Maring & Moyer, LLC

1130 Highmarket Street

Post Office Box 478

Georgetown, SC 29442

Telephone: 843-545-9544

Facsimile: 843-545-9735

Robert@maringmoyer.com

Counsel for the Plaintiff

Georgetown, SC
August 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

**AMENDED ANSWER AND
COUNTERCLAIM**

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).

3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.

4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

FOR A FOURTH DEFENSE
(Failure to Provide Notice)

15. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

16. Section 14.3 of the contract states, "[t]his agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions."

17. New York General Obligations Law § 5-903, entitled "Automatic renewal provision of contract for service or repair unenforceable by contractor unless notice thereof given to recipient of services", requires that Plaintiff provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him (A copy of said statute is attached hereto as "Exhibit A").

18. Plaintiff failed to provide notice to Defendant, either personally or by certified mail, as required by New York General Obligations § 5-903, and therefore the automatic renewal provision is unenforceable.

19. Section 14.5 of the contract states, "[i]f either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement." By

virtue of the same, Defendant believes it is entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

FOR A FIFTH DEFENSE

(Motion to Dismiss)

20. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

21. The Defendant would allege, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, that Plaintiff has failed to state a cause of action upon which relief can be granted.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; for its reasonable attorney's fees and other costs accompanying the enforcement of the contract; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02184
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Reply to Amended Counterclaim
vs.	)	
	)	
GOLF COLONY RESORT II AT	)	
DEERTRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded thereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.

8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.

9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.

10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.

11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.

12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

13. Paragraph 15 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

14. The Plaintiff denies the allegations contained in paragraph 16 and demands strict and absolute proof thereof.

15. The Plaintiff denies the allegations contained in paragraph 17 and demands strict and absolute proof thereof.

16. The Plaintiff denies the allegations contained in paragraph 18 and demands strict and absolute proof thereof.

17. The Plaintiff denies the allegations contained in paragraph 19 and demands strict and absolute proof thereof.

18. Paragraph 20 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

19. The Plaintiff denies the allegations contained in paragraph 21 and demands strict and absolute proof thereof.

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

20. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.

21. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
August 21, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	SUMMONS
	)	(JURY TRIAL DEMANDED)
GOLF COLONY RESORT IV	)	
DEER TRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 April 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	COMPLAINT
	)	(Breach of Contract)
GOLF COLONY RESORT IV	)	
DEER TRACK HOMEOWNERS'	)	
ASSOCIATION INC.	)	
	)	
DEFENDANT.	)	
_____	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Golf Colony Resort IV Deer Track Homeowners' Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
3. On or about October 1, 2012, the Plaintiff and Defendant entered into a written agreement for the Plaintiff to provide the Defendant with certain internet WiFi service, wireless equipment used for such accounts, and hardware used for mounting and installing network and cabling and for the operations of the Wifi network, all at great expense to the Plaintiff. A copy of the written agreement is attached hereto as Exhibit A and incorporated herein by reference.
4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that

the initial term would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

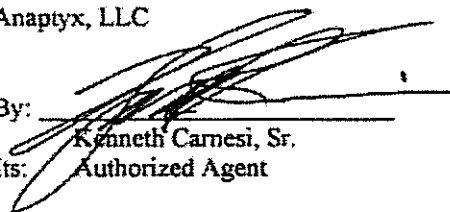
Georgetown, SC
 April 3, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

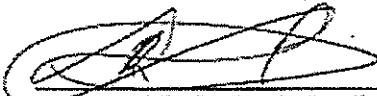
VERIFICATION

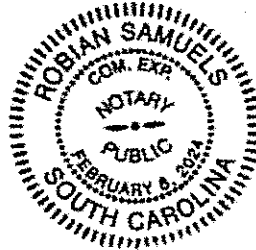
PERSONALLY appeared before me, Kenneth Carnesi, Sr., as authorized agent of Anaptyx, LLC, who after being duly sworn, deposes and says that Anaptyx, LLC, is the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, he believes to be true also.

Anaptyx, LLC

By: 
Its: Kenneth Carnesi, Sr.
Authorized Agent

Sworn to me this 21st day of March, 2018


Notary Public for South Carolina
My commission expires: 02/06/2024



Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

* **Owner or Authorized AGENT:**
Golf Colony 4 HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: 1880 Colony Drive, Buildings 10-12
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 40
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have

accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless Internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in Invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner



grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operators equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operators equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment
Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information
Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured
Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights
Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The Initial Term will be automatically extended for another Term equal to the Initial Term years unless

either party notifies the other at least 121 days before the expiration of the Initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The Initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties. Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners shareholders, members, partner, directors, managers, officers, employees, contractors, agents,

representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the Operator's overall network System serving the property. Upon the new Operators written assumption of all of

Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from fully complying with Laws and Regulations, including any consents, agreements, orders or other

requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supercedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC, ("Operator")

X

by: Kenneth B. (Ken) J.

Title: CEO

("Owner")

X

by: Prop m/j

Title: Prop m/j

EXHIBIT A:

Number of Units (Coverage): 40
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$340

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide Instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide vary adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) KE

Initial (Owner) _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02185
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED SUMMONS
	)	(JURY TRIAL DEMANDED)
GOLF COLONY RESORT IV AT	)	
DEER TRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 June 6, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02185
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(Breach of Contract)
GOLF COLONY RESORT IV AT	)	
DEER TRACK HOMEOWNERS'	)	
ASSOCIATION INC.	)	
	)	
DEFENDANT.	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Golf Colony Resort IV At Deer Track Homeowners' Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
3. On or about October 1, 2012, the Plaintiff and Defendant entered into a written agreement for the Plaintiff to provide the Defendant with certain internet WiFi service, wireless equipment used for such accounts, and hardware used for mounting and installing network and cabling and for the operations of the Wifi network, all at great expense to the Plaintiff. A copy of the written agreement is attached hereto as Exhibit A and incorporated herein by reference.

4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for Twenty Thousand Four Hundred and 00/100 (\$20,400.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
June 6, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

ANSWER AND COUNTERCLAIM

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).
3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.
4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

August 9, 2018

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02185
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Reply to Counterclaim
vs.	)	
	)	
GOLF COLONY RESORT IV AT	)	
DEER TRACK HOMEOWNERS'	)	
ASSOCIATION., INC.,	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded thereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.
9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.
10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.
11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.
12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

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

13. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.
14. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
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Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
August 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

**AMENDED ANSWER AND
COUNTERCLAIM**

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).
3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.
4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

FOR A FOURTH DEFENSE
(Failure to Provide Notice)

15. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

16. Section 14.3 of the contract states, "[t]his agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions."

17. New York General Obligations Law § 5-903, entitled "Automatic renewal provision of contract for service or repair unenforceable by contractor unless notice thereof given to recipient of services", requires that Plaintiff provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him (A copy of said statute is attached hereto as "Exhibit A").

18. Plaintiff failed to provide notice to Defendant, either personally or by certified mail, as required by New York General Obligations § 5-903, and therefore the automatic renewal provision is unenforceable.

19. Section 14.5 of the contract states, "[i]f either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement." By virtue

of the same, Defendant believes it is entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

FOR A FIFTH DEFENSE

(Motion to Dismiss)

20. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

21. The Defendant would allege, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, that Plaintiff has failed to state a cause of action upon which relief can be granted.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; for its reasonable attorney's fees and other costs accompanying the enforcement of the contract; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02185
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Reply to Amended Counterclaim
vs.	)	
	)	
GOLF COLONY RESORT IV AT	)	
DEER TRACK HOMEOWNERS'	)	
ASSOCIATION., INC.,	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded thereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.

8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.

9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.

10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.

11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.

12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

13. Paragraph 15 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

14. The Plaintiff denies the allegations contained in paragraph 16 and demands strict and absolute proof thereof.

15. The Plaintiff denies the allegations contained in paragraph 17 and demands strict and absolute proof thereof.

16. The Plaintiff denies the allegations contained in paragraph 18 and demands strict and absolute proof thereof.

17. The Plaintiff denies the allegations contained in paragraph 19 and demands strict and absolute proof thereof.

18. Paragraph 20 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

19. The Plaintiff denies the allegations contained in paragraph 21 and demands strict and absolute proof thereof.

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

20. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.

21. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
August 21, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	Summons
	)	(Jury Demanded)
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
 April 3, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-_____
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	COMPLAINT
	)	(Breach of Contract)
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
_____	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Tradewinds Homeowners' Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
3. On or about October 1, 2012, the Plaintiff and Defendant entered into a written agreement for the Plaintiff to provide the Defendant with certain internet WiFi service, wireless equipment used for such accounts, and hardware used for mounting and installing network and cabling and for the operations of the Wifi network, all at great expense to the Plaintiff. A copy of the written agreement is attached hereto as Exhibit A and incorporated herein by reference.
4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that

the initial term would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of Ninety-Seven Thousand Nine Hundred Twenty and 00/100 (\$97,920.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for Ninety-Seven Thousand Nine Hundred Twenty and 00/100 (\$97,920.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for Ninety-Seven Thousand Nine Hundred Twenty and 00/100 (\$97,920.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
 Robert W. Maring, Esquire
 SC Bar No. 8810
 Maring & Moyer, LLC
 1130 Highmarket Street
 Post Office Box 478
 Georgetown, SC 29442
 Telephone: 843-545-9544
 Facsimile: 843-545-9735
 Robert@maringmoyer.com
Counsel for the Plaintiff

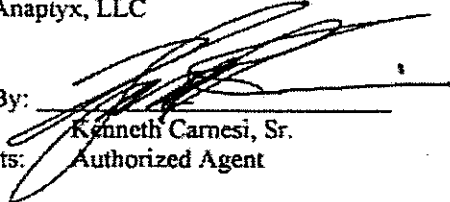
Georgetown, SC
 April 3, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

VERIFICATION

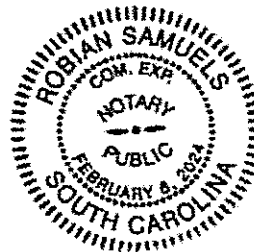
PERSONALLY appeared before me, Kenneth Carnesi, Sr., as authorized agent of Anaptyx, LLC, who after being duly sworn, deposes and says that Anaptyx, LLC, is the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, he believes to be true also.

Anaptyx, LLC

By: 
Kenneth Carnesi, Sr.
Its: Authorized Agent

Sworn to me this 21st day of March, 2018


Notary Public for South Carolina
My commission expires: 02/06/2024



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02187
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	Amended Summons
	)	(Jury Demanded)
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which was filed in the Court of Common Pleas in Horry County, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on Plaintiff's Attorney Robert W. Maring of Maring & Moyer, LLC at his office located at 1130 Highmarket Street, P.O. Box 478, Georgetown, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
SC Bar No. 8810
Maring & Moyer, LLC
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442
Telephone: 843-545-9544
Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
June 8, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2018-CP-26-02187
ANAPTYX, LLC	)	
	)	
PLAINTIFF,	)	
	)	
vs.	)	AMENDED COMPLAINT
	)	(Breach of Contract)
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

Plaintiff Anaptyx, LLC alleges as follows:

1. Plaintiff Anaptyx, LLC (hereinafter referred to as "Anaptyx"), is a corporation organized and existing pursuant to the laws of the State of Delaware with its principal place of business in Horry County, South Carolina.
2. Defendant Tradewinds Homeowners' Association Inc. is a non-profit corporation organized and existing pursuant to the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina.
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4. The initial term of the Agreement was for a term of five (5) years from the date of execution or effective date of the agreement. The contract further provided that the

initial term would be automatically extended for another five (5) year term unless either party notified the other at least 121 days before the expiration of the initial term.

5. That the Defendant did not provide written notice to the Plaintiff at least 121 days before the expiration of the contract.

6. That after the contract had been extended for an additional five years, the Defendant notified the Plaintiff that they had hired the services of another provider of services.

7. That the Plaintiff gave notice to the Defendant of their breach of the contract to allow the Defendant to remedy their breach contract.

8. That on or about January 1, 2018, in violation and in breach of the above referenced agreement, the Defendant, disconnected or assisted in the disconnection of all of the Plaintiff's equipment located at the Defendant property, all constituting a breach of the agreement.

9. That the Defendant has failed to pay the sums due under the contract since January 1, 2018, which constitutes a breach of the agreement.

10. The Defendant's breach of the agreement is material.

11. That as a result of the breach of the agreement, the Plaintiff has been damaged and is entitled to the remedies for the Defendant's breach as provided for in the written agreement.

12. As a result of the breach, the Plaintiff is entitled to receive as liquidated damages, the amount of Ninety-Seven Thousand Nine Hundred Twenty and 00/100 (\$97,920.00) Dollars as provided for the Agreement between the parties.

13. In addition, the Plaintiff has been forced to hire an attorney for the collection of this matter and is entitled to attorney's fees and costs of collection as provided for in the written agreement.

14. That as a result of the breach of the agreement, Plaintiff Anaptyx is informed and believes that it is entitled to a judgment against Defendant for Ninety-Seven Thousand Nine Hundred Twenty and 00/100 (\$97,920.00) Dollars as well as attorney's fees and costs of this action.

WHEREFORE, Plaintiff Anaptyx prays unto this honorable court the following:

A. For a judgment against Defendant for Ninety-Seven Thousand Nine Hundred Twenty and 00/100 (\$97,920.00) Dollars as well as attorney's fees and costs of this action; and

B. Further, Plaintiff Anaptyx is entitled to recovery of its costs and attorney's fees in this action; and

C. For such other and further relief as this Court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring
Robert W. Maring, Esquire
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Maring & Moyer, LLC
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Counsel for the Plaintiff

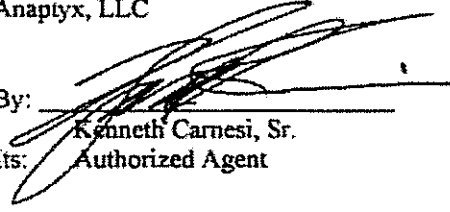
Georgetown, SC
June 8, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

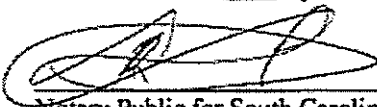
VERIFICATION

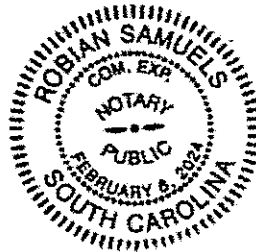
PERSONALLY appeared before me, Kenneth Carnesi, Sr., as authorized agent of Anaptyx, LLC, who after being duly sworn, deposes and says that Anaptyx, LLC, is the Plaintiff in the foregoing Complaint, and as such, that he has read the allegations contained therein and knows the same to be true to the best of his own knowledge, excepting such matters and things which are based upon information and belief, and as to those, he believes to be true also.

Anaptyx, LLC

By: 
Its: Kenneth Carnesi, Sr.
Authorized Agent

Sworn to me this 21st day of March, 2018


Notary Public for South Carolina
My commission expires: 02/06/2024



Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

*** Owner or Authorized AGENT:**
Golf Colony 4 HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: 1880 Colony Drive, Buildings 10-12
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 40
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have

accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party. In which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner



grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operator's equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operator's equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment

Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information

Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured

Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights

Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The Initial Term will be automatically extended for another Term equal to the Initial Term years unless

either party notifies the other at least 121 days before the expiration of the Initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The Initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties.

Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charges payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners shareholders, members, partner, directors, managers, officers, employees, contractors, agents,

representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use any proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the Operator's overall network System serving the property. Upon the new Operators written assumption of all of

Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from fully complying with Laws and Regulations, including any consents, agreements, orders or other

requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and super cedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

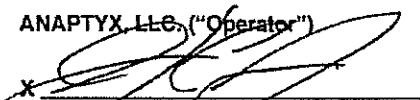
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14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

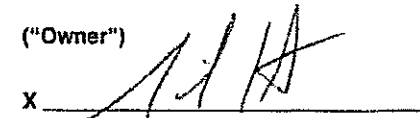
ANAPTIX, LLC, ("Operator")

X 

by: Kenneth B. Penney, Jr.

Title: CEO

("Owner")

X 

by: _____

Title: Proprietor

EXHIBIT A:

Number of Units (Coverage): 40
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$340

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) KEInitial (Owner) _____

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

***Owner or Authorized AGENT:**

Tradewinds I HOA
c/o: Myrtle Beach Realty
1106 Glens Bay Road
Surfside Beach, SC 29575

Location:
Tradewinds I
2nd Avenue North
Surfside Beach, SC 29575

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 192
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to

Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the

AMENDED

EXHIBIT

A

exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless Internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless Internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless Internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operators equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operators equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment
Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information
Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured
Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights
Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless Internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January

1, 2018. The initial Term will be automatically extended for another Term equal to the initial Term years unless either party notifies the other at least 121 days before the expiration of the initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties. Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners

shareholders, members, partner, directors, managers, officers, employees, contractors, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term
After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owners such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the

Operator's overall network System serving the property. Upon the new Operator's written assumption of all of Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from

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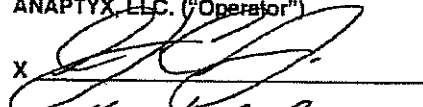
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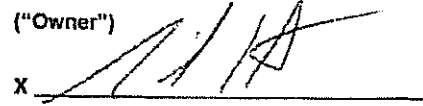
ANAPTYX, LLC. ("Operator")

X 

by: Kenneth B. Grier, Jr.

Title: CEO

("Owner")

X 

by: _____

Title: prop m/jr

EXHIBIT A:

Number of Units (Coverage): 192
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$1,632.00

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
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Disclaimers

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The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) HC

Initial (Owner) _____

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

ANSWER AND COUNTERCLAIM

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).
3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.
4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

August 9, 2018

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02187
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	REPLY TO COUNTERCLAIM
vs.	)	
	)	
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.,	)	
	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded thereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.
9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.
10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.
11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.
12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

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

13. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.
14. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring

Robert W. Maring, Esquire

SC Bar No. 8810

Maring & Moyer, LLC

1130 Highmarket Street

Post Office Box 478

Georgetown, SC 29442

Telephone: 843-545-9544

Facsimile: 843-545-9735

Robert@maringmoyer.com

Counsel for the Plaintiff

Georgetown, SC
August 17, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

**AMENDED ANSWER AND
COUNTERCLAIM**

The Defendant, answering the Plaintiff's Complaint, states and alleges as follows:

1. Each and every allegation of Plaintiff's Complaint not specifically admitted herein is denied.

FOR A FIRST DEFENSE

2. Defendant admits Paragraphs One (1) and Two (2).

3. With regard to Paragraphs Three (3) and Four (4), Defendant would pray reference to the Agreement itself and deny all allegations inconsistent therewith.

4. Defendant denies Paragraphs Five (5), Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14) and demands strict proof thereof.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

(Breach of Contract)

5. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

6. Plaintiff failed to provide services as required by the contract which caused limited to no service by many members of the HOA on a regular basis. As a result of the failure to provide adequate equipment to deliver the services required under the contract, many residents experienced "time outs."

7. The failure of the Plaintiff to provide said services resulted in many homeowners resorting to contract with third parties at an additional expense to provide these services even though their dues paid for said service.

8. The actions of the Plaintiff constituted a breach in the agreement which resulted in damages to the Defendant and its members.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(Unfair Trade Practices)

9. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

10. Plaintiff has made intentional, false and deceptive statements throughout the term of the contract saying that it would improve services and upgrade equipment to prevent the failures in services that were being experienced by its members when, in fact, it had no intention of doing so. Said representations were made solely to persuade the Defendant not to cancel the contract at an earlier date.

11. Plaintiff's conduct as described herein constitutes unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce; and such conduct, therefore, violates the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-20, *et seq.* (the "Unfair Trade Practices Act").

12. Plaintiff's violation of the Unfair Trade Practices Act was willful and knowing.

13. By virtue of the Plaintiff's unfair and deceptive methods of competition and practices in trade or commerce, the Defendant has suffered actual damages.

14. Defendant prays for judgment under the Unfair Trade Practices Act for actual and treble damages.

FOR A FOURTH DEFENSE
(Failure to Provide Notice)

15. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

16. Section 14.3 of the contract states, "[t]his agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions."

17. New York General Obligations Law § 5-903, entitled "Automatic renewal provision of contract for service or repair unenforceable by contractor unless notice thereof given to recipient of services", requires that Plaintiff provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him (A copy of said statute is attached hereto as "Exhibit A").

18. Plaintiff failed to provide notice to Defendant, either personally or by certified mail, as required by New York General Obligations § 5-903, and therefore the automatic renewal provision is unenforceable.

19. Section 14.5 of the contract states, "[i]f either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement." By virtue

of the same, Defendant believes it is entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

FOR A FIFTH DEFENSE
(Motion to Dismiss)

20. Each and every allegation set forth in the preceding paragraphs is hereby realleged and reiterated as if fully repeated herein.

21. The Defendant would allege, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, that Plaintiff has failed to state a cause of action upon which relief can be granted.

WHEREFORE, having fully answered the Plaintiff's Complaint and having set forth its Counterclaim, the Defendant prays that Plaintiff's claims be dismissed; for judgment against the Plaintiff; for its reasonable attorney's fees and other costs accompanying the enforcement of the contract; and for such other and further relief as this Court may deem just and proper.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)
HANNA LAW, P.A.
3401 Highway 17 Business
P.O. Box 1149
Murrells Inlet, SC 29576
843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02187
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	REPLY TO AMENDED
vs.	)	COUNTERCLAIM
	)	
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.,	)	
	)	
DEFENDANT.	)	
	)	

The Plaintiff would fully answer the counterclaim of the Defendant as follow:

1. Each and every allegation not hereinafter admitted, denied or qualified is hereinafter denied and strict and absolute proof is demanded thereof.
2. Paragraphs 1-4 do not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
3. Paragraph 5 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.
4. The Plaintiff denies the allegations contained in paragraph 6 and demands strict and absolute proof thereof.
5. The Plaintiff denies the allegations contained in paragraph 7 and demands strict and absolute proof thereof.
6. The Plaintiff denies the allegations contained in paragraph 8 and demands strict and absolute proof thereof.

7. Paragraph 9 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded thereof.

8. The Plaintiff denies the allegations contained in paragraph 10 and demands strict and absolute proof thereof.

9. The Plaintiff denies the allegations contained in paragraph 11 and demands strict and absolute proof thereof.

10. The Plaintiff denies the allegations contained in paragraph 12 and demands strict and absolute proof thereof.

11. The Plaintiff denies the allegations contained in paragraph 13 and demands strict and absolute proof thereof.

12. The Plaintiff denies the allegations contained in paragraph 14 and demands strict and absolute proof thereof.

13. Paragraph 15 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

14. The Plaintiff denies the allegations contained in paragraph 16 and demands strict and absolute proof thereof.

15. The Plaintiff denies the allegations contained in paragraph 17 and demands strict and absolute proof thereof.

16. The Plaintiff denies the allegations contained in paragraph 18 and demands strict and absolute proof thereof.

17. The Plaintiff denies the allegations contained in paragraph 19 and demands strict and absolute proof thereof.

18. Paragraph 20 is a reiteration of previous paragraphs that does not require a response, but if a response is required the Plaintiff denies same and strict and absolute proof is demanded hereof.

19. The Plaintiff denies the allegations contained in paragraph 21 and demands strict and absolute proof thereof.

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

20. The Counterclaim Defendant incorporates each and every allegation hereinabove written as if verbatim.

21. The Counterclaimant has failed to allege a cause of action and accordingly, the matter should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

WHEREFORE, Plaintiff prays for the following relief:

- A. That the Defendants Counterclaim be dismissed from this action;
- B. That the Plaintiff be awarded attorney's fees and costs;
- C. For such further relief as this court deems just and proper.

MARING & MOYER, LLC

s/Robert W. Maring

Robert W. Maring, Esquire

SC Bar No. 8810

Maring & Moyer, LLC

1130 Highmarket Street

Post Office Box 478

Georgetown, SC 29442

Telephone: 843-545-9544

Facsimile: 843-545-9735

Robert@maringmoyer.com

Counsel for the Plaintiff

Georgetown, SC
August 21, 2019

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

Anaptyx, LLC,

Plaintiff,

vs.

MOTION TO AMEND ANSWER

Deerfield Plantation Community Services
Association, Inc.

Defendant.

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to amend its Answer in accordance with the proposed Amended Answer and Counterclaim attached hereto. This Motion is made on the grounds that such amendment shall be allowed in the furtherance of justice.

I hereby certify that prior to filing this motion, I have communicated, orally or in writing, with opposing counsel and have attempted in good faith to resolve this matter. I am therefore filing this motion.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

MOTION TO AMEND ANSWER

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to amend its Answer in accordance with the proposed Amended Answer and Counterclaim attached hereto. This Motion is made on the grounds that such amendment shall be allowed in the furtherance of justice.

I hereby certify that prior to filing this motion, I have communicated, orally or in writing, with opposing counsel and have attempted in good faith to resolve this matter. I am therefore filing this motion.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

MOTION TO AMEND ANSWER

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to amend its Answer in accordance with the proposed Amended Answer and Counterclaim attached hereto. This Motion is made on the grounds that such amendment shall be allowed in the furtherance of justice.

I hereby certify that prior to filing this motion, I have communicated, orally or in writing, with opposing counsel and have attempted in good faith to resolve this matter. I am therefore filing this motion.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

MOTION TO AMEND ANSWER

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through its undersigned counsel, will move before the Presiding Judge of the Fifteenth Judicial Circuit at the Horry County Courthouse, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order allowing the Defendant to amend its Answer in accordance with the proposed Amended Answer and Counterclaim attached hereto. This Motion is made on the grounds that such amendment shall be allowed in the furtherance of justice.

I hereby certify that prior to filing this motion, I have communicated, orally or in writing, with opposing counsel and have attempted in good faith to resolve this matter. I am therefore filing this motion.

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

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P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

May 31, 2019

Murrells Inlet, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

Anaptyx, LLC,

Plaintiff,

vs.

Deerfield Plantation Community Services
Association, Inc.,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant will move before the Circuit Court for Horry County for an Order granting summary judgment in its favor as to Plaintiff's breach of contract cause of action asserted in its Complaint dated April 3, 2018.

FACTS

On October 1, 2012, Defendant and Plaintiff entered into a written agreement for the Plaintiff to provide the Defendant with internet services. A copy of the written agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.

The initial term of the contract was for a period of five (5) years from the date of execution. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the initial term. Defendant received no written notice, served either personally or by certified mail, which called attention to the existence of the automatic renewal

clause, between fifteen (15) and thirty (30) days before the contract would be deemed renewed for another period of five (5) years.

SUMMARY JUDGMENT STANDARD

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

ARGUMENT

The Plaintiff’s breach of contract cause of action fails as a matter of law because no written notice calling Defendant’s attention to the existence of the automatic renewal provision was provided to Defendant through personal service or certified mailing as required by New York

General Obligations Law § 5-903, a copy of which is attached hereto as Exhibit B and is incorporated herein by reference. As set forth in section 14.3 of the contract, the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.” Under New York General Obligations Law § 5-903, Plaintiff was required to provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen (15) days and not more than thirty (30) days prior to the time specified for Defendant to serve such notice upon Plaintiff requesting a termination of service. This is a requirement for all contracts for services exceeding one (1) month.

Section 14.1 of the contract states that notice may be given at the address listed “at the head of this agreement.” Defendant’s address was listed as Golf Colony CSA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC 29575. Notice was never served upon the Defendant, and the representative for the Defendant has sworn in an affidavit, a copy of which is attached hereto as Exhibit C and is incorporated by reference, that there was no notice by personal service or certified mail during the time period required by New York law. Because no notice was sent pursuant to New York law, the contract shall not be deemed renewed. Therefore, the Plaintiff’s breach of contract cause of action fails as a matter of law, and the Defendant should be granted summary judgment accordingly.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court enter summary judgment in its favor as to the Plaintiff’s breach of contract cause of action.

[Signature Page to Follow]

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

August 7, 2019

Murrells Inlet, South Carolina

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

***Owner or Authorized AGENT:**
Golf Colony CSA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: Golf Colony CSA
Autumn Drive & Bengrass Drive
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 295
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 **Services.** Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse

change to the Service, Owner shall be deemed to have accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 **Installation of System.** Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 **Maintenance of System; Restoration of Property.** At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade

EXHIBIT

A

such items during the Term; provided that the Owner grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operator's equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operator's equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment
Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information
Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured
Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights
Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The Initial Term will be automatically extended

for another Term equal to the initial Term years unless either party notifies the other at least 121 days before the expiration of the Initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The Initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner; (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties. Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability;**Disclaimers; Service Outage Credits.**

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants.

Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and/or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners

shareholders, members, partner, directors, managers, officers, employees, contractors, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the

Operator's overall network System serving the property. Upon the new Operator's written assumption of all of Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigns the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from

fully complying with Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supercedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTIX, LLC. ("Operator")

X

By: Anthony P. Camar, Jr.

Title: CEO

("Owner")

X

By: _____

Title: Paul M. JA

EXHIBIT A:

Number of Units (Coverage): 208
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$2,533.00

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) SCInitial (Owner) h

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Deerfield Plantation Community Services
Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AS TO
PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

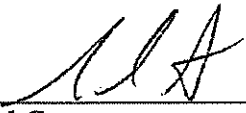
PERSONALLY APPEARED before me the undersigned Michael Couture who, after being fully sworn, deposes and states as follows:

1. I am the owner, manager and operator of Myrtle Beach Realty. My company acted as the property manager for the above-named defendant, Deerfield Plantation Community Services Association, Inc. for the duration of the contract that was entered into on October 1, 2012, which is the subject matter of the above-captioned case.

2. Pursuant to the contract, the required contact is: Golf Colony CSA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC, 29575.

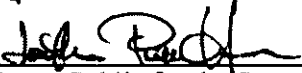
3. I have thoroughly reviewed my office records between the dates of September 1, 2017 and September 16, 2017.

4. I have no personal knowledge, and nothing appears in my office records, to indicate that Myrtle Beach Realty received notice of an automatic renewal provision in the contract, either by personal service or by certified mail, between the dates of September 1, 2017 and September 16, 2017.



Michael Couture

SWORN TO before me this
7th day of August, 2019.



Notary Public for the State of South Carolina
My Commission Expires: 6/27/28

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant will move before the Circuit Court for Horry County for an Order granting summary judgment in its favor as to Plaintiff's breach of contract cause of action asserted in its Complaint dated April 3, 2018.

FACTS

On October 1, 2012, Defendant and Plaintiff entered into a written agreement for the Plaintiff to provide the Defendant with internet services. A copy of the written agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.

The initial term of the contract was for a period of five (5) years from the date of execution. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the initial term. Defendant received no written notice, served either personally or by certified mail, which called attention to the existence of the automatic renewal

clause, between fifteen (15) and thirty (30) days before the contract would be deemed renewed for another period of five (5) years.

SUMMARY JUDGMENT STANDARD

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

ARGUMENT

The Plaintiff’s breach of contract cause of action fails as a matter of law because no written notice calling Defendant’s attention to the existence of the automatic renewal provision was provided to Defendant through personal service or certified mailing as required by New York

General Obligations Law § 5-903, a copy of which is attached hereto as Exhibit B and is incorporated herein by reference. As set forth in section 14.3 of the contract, the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.” Under New York General Obligations Law § 5-903, Plaintiff was required to provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen (15) days and not more than thirty (30) days prior to the time specified for Defendant to serve such notice upon Plaintiff requesting a termination of service. This is a requirement for all contracts for services exceeding one (1) month.

Section 14.1 of the contract states that notice may be given at the address listed “at the head of this agreement.” Defendant’s address was listed as Golf Colony 2 HOA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC 29575. Notice was never served upon the Defendant, and the representative for the Defendant has sworn in an affidavit, a copy of which is attached hereto as Exhibit C and is incorporated by reference, that there was no notice by personal service or certified mail during the time period required by New York law. Because no notice was sent pursuant to New York law, the contract shall not be deemed renewed. Therefore, the Plaintiff’s breach of contract cause of action fails as a matter of law, and the Defendant should be granted summary judgment accordingly.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court enter summary judgment in its favor as to the Plaintiff’s breach of contract cause of action.

[Signature Page to Follow]

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

August 7, 2019

Murrells Inlet, South Carolina

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

* **Owner or Authorized AGENT:**
Golf Colony 2 HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: 1851 Colony Drive, Buildings 4-6
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 40
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have

accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner



grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless Internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless Internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless Internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operator's equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operator's equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment

Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information

Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured

Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights

Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The initial Term will be automatically extended for another Term equal to the initial Term years unless

either party notifies the other at least 121 days before the expiration of the initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties.

Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants. Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners shareholders, members, partner, directors, managers, officers, employees, contractors, agents,

representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the Operator's overall network System serving the property. Upon the new Operators written assumption of all of

Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from fully complying with Laws and Regulations, including any consents, agreements, orders or other

requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supercedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC. ("Operator")

X

by: Henry B. Perry, Jr.

Title: CEO

("Owner")

X

by: Prop. mfg

Title: Prop. mfg

EXHIBIT A:

Number of Units (Coverage): 40
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$340.00

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) SPInitial (Owner) h

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AS TO
PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

PERSONALLY APPEARED before me the undersigned Michael Couture who, after being fully sworn, deposes and states as follows:

1. I am the owner, manager and operator of Myrtle Beach Realty. My company acted as the property manager for the above-named defendant, Golf Colony Resort II at Deertrack Homeowners' Association, Inc. for the duration of the contract that was entered into on October 1, 2012, which is the subject matter of the above-captioned case.

2. Pursuant to the contract, the required contact is: Golf Colony 2, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC, 29575.

3. I have thoroughly reviewed my office records between the dates of September 1, 2017 and September 16, 2017.

4. I have no personal knowledge, and nothing appears in my office records, to indicate that Myrtle Beach Realty received notice of an automatic renewal provision in the contract, either by personal service or by certified mail, between the dates of September 1, 2017 and September 16, 2017.



Michael Couture

SWORN TO before me this
7th day of August, 2019.



Notary Public for the State of South Carolina
My Commission Expires: 6/27/28

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant will move before the Circuit Court for Horry County for an Order granting summary judgment in its favor as to Plaintiff's breach of contract cause of action asserted in its Complaint dated April 3, 2018.

FACTS

On October 1, 2012, Defendant and Plaintiff entered into a written agreement for the Plaintiff to provide the Defendant with internet services. A copy of the written agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.

The initial term of the contract was for a period of five (5) years from the date of execution. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the initial term. Defendant received no written notice, served either personally or by certified mail, which called attention to the existence of the automatic renewal

clause, between fifteen (15) and thirty (30) days before the contract would be deemed renewed for another period of five (5) years.

SUMMARY JUDGMENT STANDARD

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

ARGUMENT

The Plaintiff’s breach of contract cause of action fails as a matter of law because no written notice calling Defendant’s attention to the existence of the automatic renewal provision was provided to Defendant through personal service or certified mailing as required by New York

General Obligations Law § 5-903, a copy of which is attached hereto as Exhibit B and is incorporated herein by reference. As set forth in section 14.3 of the contract, the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.” Under New York General Obligations Law § 5-903, Plaintiff was required to provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen (15) days and not more than thirty (30) days prior to the time specified for Defendant to serve such notice upon Plaintiff requesting a termination of service. This is a requirement for all contracts for services exceeding one (1) month.

Section 14.1 of the contract states that notice may be given at the address listed “at the head of this agreement.” Defendant’s address was listed as Golf Colony 4 HOA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC 29575. Notice was never served upon the Defendant, and the representative for the Defendant has sworn in an affidavit, a copy of which is attached hereto as Exhibit C and is incorporated by reference, that there was no notice by personal service or certified mail during the time period required by New York law. Because no notice was sent pursuant to New York law, the contract shall not be deemed renewed. Therefore, the Plaintiff’s breach of contract cause of action fails as a matter of law, and the Defendant should be granted summary judgment accordingly.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court enter summary judgment in its favor as to the Plaintiff’s breach of contract cause of action.

[Signature Page to Follow]

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

August 7, 2019

Murrells Inlet, South Carolina

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

* **Owner or Authorized AGENT:**
Golf Colony 4 HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location: 1880 Colony Drive, Buildings 10-12
Surfside Beach, SC

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 40
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.
1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have

accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner



grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operators equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operators equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment
Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information
Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured
Owner will add Operator's equipment on site to their insurance policies as an additional Insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights
Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January 1, 2018. The Initial Term will be automatically extended for another Term equal to the Initial Term years unless

either party notifies the other at least 121 days before the expiration of the Initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The Initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents on behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties. Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and full payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no a representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants. Owner acknowledges that use of the service and access to the internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charged payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners shareholders, members, partner, directors, managers, officers, employees, contractors, agents,

representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owners such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the Operator's overall network System serving the property. Upon the new Operators written assumption of all of

Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from fully complying with Laws and Regulations, including any consents, agreements, orders or other

requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and super cedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC, ("Operator")

X

by: Kenneth B. Perna, Jr.

Title: CEO

("Owner")

X

by: Prop m n

Title: Prop m n

EXHIBIT A:

Number of Units (Coverage): 40
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$340

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) KE

Initial (Owner) _____

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AS TO
PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

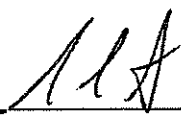
PERSONALLY APPEARED before me the undersigned Michael Couture who, after being fully sworn, deposes and states as follows:

1. I am the owner, manager and operator of Myrtle Beach Realty. My company acted as the property manager for the above-named defendant, Golf Colony Resort IV at Deer Track Homeowners' Association, Inc. for the duration of the contract that was entered into on October 1, 2012, which is the subject matter of the above-captioned case.

2. Pursuant to the contract, the required contact is: Golf Colony 4 HOA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC, 29575.

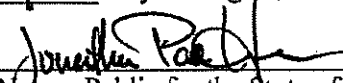
3. I have thoroughly reviewed my office records between the dates of September 1, 2017 and September 16, 2017.

4. I have no personal knowledge, and nothing appears in my office records, to indicate that Myrtle Beach Realty received notice of an automatic renewal provision in the contract, either by personal service or by certified mail, between the dates of September 1, 2017 and September 16, 2017.



Michael Couture

SWORN TO before me this
7th day of August, 2019.



Notary Public for the State of South Carolina
My Commission Expires: 6/27/29

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
AS TO PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

TO: ROBERT W. MARING, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant will move before the Circuit Court for Horry County for an Order granting summary judgment in its favor as to Plaintiff's breach of contract cause of action asserted in its Complaint dated April 3, 2018.

FACTS

On October 1, 2012, Defendant and Plaintiff entered into a written agreement for the Plaintiff to provide the Defendant with internet services. A copy of the written agreement is attached hereto as **Exhibit A** and is incorporated herein by reference.

The initial term of the contract was for a period of five (5) years from the date of execution. The contract further provided that the initial term would be automatically extended for another five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the initial term. Defendant received no written notice, served either personally or by certified mail, which called attention to the existence of the automatic renewal clause, between fifteen (15) and thirty (30) days before the contract would be deemed renewed for

another period of five (5) years.

SUMMARY JUDGMENT STANDARD

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

ARGUMENT

The Plaintiff’s breach of contract cause of action fails as a matter of law because no written notice calling Defendant’s attention to the existence of the automatic renewal provision was provided to Defendant through personal service or certified mailing as required by New York General Obligations Law § 5-903, a copy of which is attached hereto as Exhibit B and is

incorporated herein by reference. As set forth in section 14.3 of the contract, the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.” Under New York General Obligations Law § 5-903, Plaintiff was required to provide written notice, served personally or by certified mail, of an automatic renewal provision at least fifteen (15) days and not more than thirty (30) days prior to the time specified for Defendant to serve such notice upon Plaintiff requesting a termination of service. This is a requirement for all contracts for services exceeding one (1) month.

Section 14.1 of the contract states that notice may be given at the address listed “at the head of this agreement.” Defendant’s address was listed as Tradewinds I HOA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC 29575. Notice was never served upon the Defendant, and the representative for the Defendant has sworn in an affidavit, a copy of which is attached hereto as Exhibit C and is incorporated by reference, that there was no notice by personal service or certified mail during the time period required by New York law. Because no notice was sent pursuant to New York law, the contract shall not be deemed renewed. Therefore, the Plaintiff’s breach of contract cause of action fails as a matter of law, and the Defendant should be granted summary judgment accordingly.

CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court enter summary judgment in its favor as to the Plaintiff’s breach of contract cause of action.

[Signature Page to Follow]

s/Willard D. Hanna, Jr.

Willard D. Hanna, Jr. (SC Bar #02672)

HANNA LAW, P.A.

3401 Highway 17 Business

P.O. Box 1149

Murrells Inlet, SC 29576

843.651.9000

Attorney for Defendant

August 7, 2019

Murrells Inlet, South Carolina

Effective Date: October 1, 2012

PARTIES:

Operator:
Anaptyx, LLC.
2513 N. Oak Street
Suite 209
Myrtle Beach, SC 29577
800.454.5202
www.anaptyx.com

***Owner or Authorized AGENT:**
Tradewinds I HOA
c/o: Myrtle Beach Realty
1106 Glenns Bay Road
Surfside Beach, SC 29575

Location:
Tradewinds I
2nd Avenue North
Surfside Beach, SC 29575

Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

PROPERTY:

Number of Units at Location: 192
On-Site Contact Person: Michael Couture
Telephone: 843.238.5185
E-Mail: dfr1@frontier.com

RECITALS:

- Owner owns the property referred to above (including all buildings, improvements, and the underlying land, the "Property")
- Owner and Operator desire to make the Service available to occupants at the Property ("Occupants") in accordance with the terms and conditions of this agreement.

TERMS AND CONDITIONS:

Owner and Operator agree as follows:

1. Operator's Service Obligations.

1.1 Services. Upon completion of construction of the System (as defined hereafter), Operator shall make the Service available to the Occupants during the Term. "Services" means Operator's Bulk Wi-Fi and Internet access services delivered over the Operator's System. Services will be for Internet Access only. Operator shall use its commercially reasonable efforts to make the services available to end-users 24 hours per day, 7 days per week, excluding scheduled maintenance and required repairs. Subject to compliance with Laws and Regulations (as defined in Section 13.3), Operator shall have the right at any time to change or discontinue any aspect or feature of the services, including, but not limited to, the content and applications accessible through or provided via the services. Operator will notify Owner at least 30 days prior to any material adverse change to the service by delivering written or electronic notice to the Owner. Unless Owner notifies Operator within 30 days of its receipt of notice that it desires to

Terminate this agreement due to a material adverse change to the Service, Owner shall be deemed to have accepted such change. Operator reserves the right to cancel this contract by providing 60 days written notice to Owner.

1.2 Installation of System. Contract is contingent upon serviceability of property. Operator shall, at its sole expense, design, construct, install and/or upgrade the System in accordance with the statement of work (exhibit a), industry standards, Laws and Regulations, and the applicable construction plans and schedule agreed upon by Owner and Operator. "System" means Operators wi-fi System, that is comprised of all equipment, wiring (including internal building wiring and external distribution wiring), conduit, molding and other facilities that the Operator owns or installs or that Operator otherwise uses to deliver the services to the property. In the event Operator exits the business of wireless internet access, Owner will have the option to purchase all cable at the property/location.

1.3 Maintenance of System; Restoration of Property. At Operators sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage. Operator will provide Owner with a telephone number for services use inquiries, service disruption reports and remote problem support for services disruptions, which support line shall be provided 24x7. Live support will be available on this telephone line during standard business hours, and automated or limited support and/or problem reporting will be available after standard business hours or when all agents are busy. On site support will occur Monday-Friday between the hours of 9AM to 6PM. Operator reserves the right to outsource on site support.

2. Services Fee

Owner shall pay to Operator the fee as set forth on Exhibit A (the "Fee"). Owner acknowledges that Operator (and its designated affiliates) is the sole provider of the services under the Terms of this Agreement, and that Owner is not a reseller or provider of the services. Although Owner is entitled in its sole discretion to determine charges to occupants for use of the services, Owner shall now reference the amount payable by Owner or occupants for the services in any materials provided to occupants or prospective occupants (e.g. charges for services shall not be specified in invoices, bills, rental documentation, etc.). Without specifying the amount, Owner may state that charges for the services are included as part of an occupants room/rental charges. Based on having a modem in each apartment, Owner may advertise that units are "powered by" Anaptyx. All advertising and use of the Anaptyx name must be approved in writing by the Operator.

3. Ownership and Use of System During Term

During the Term, Operator will own and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the



exclusive right to access, use, maintain and upgrade such items during the Term; provided that the Owner grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service or service offering to the property. The Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range" of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operator's equipment that is located on the property.

4. Owners obligations

4.1 Right of Entry. Owner hereby grants to Operator a right of entry on and about the Property for the purposes of permitting Operator and its affiliates and contractors to design, construct, operate, install, maintain, upgrade, repair, replace and remove the System for delivery of services. Furthermore, Owner must provide Operator with the key and/or access codes necessary to access Operator's equipment 24x7.

4.2 Cooperation with Government Authorities. To the extent not prohibited by Laws and Regulations, Owner shall fully cooperate with operate and any appropriate government legislative, judicial or enforcement agency in responding to court orders, search warrants, subpoenas, discovery demands, investigations and other similar requests, including providing testimony, information, names, addresses, telephone numbers, location and other information about current or previous occupants.

4.3 Lost or Stolen Equipment

Operator reserves the right to charge Owner for lost or stolen equipment after the first replacement.

4.4 Contact Information

Owner will provide Operator with all necessary contact information for Owner's direct contacts in order to deal with billing, service and maintenance issues as well as any other issues that may arise on property.

4.5 Additional Insured

Owner will add Operator's equipment on site to their insurance policies as an additional insured for proper coverage against theft, vandalism, fire, flood, natural disasters and any and all other coverages typically provided for the Property.

4.6 Roof Rights

Owner agrees to grant Operator exclusive rights to mount and operate Operator's wireless internet equipment on the roof at service location for contract Term. Additionally, right to entry clause will apply to the roof as specified in Section 4.1

5. Term

The Initial Term of this Agreement commences on the Effective Date and shall continue in effect until January

1, 2018. The initial Term will be automatically extended for another Term equal to the Initial Term years unless either party notifies the other at least 121 days before the expiration of the initial Term or any renewal Term, as the case may be, that it does not wish to extend the agreement. The initial Term and any extensions thereof are collectively referred to as the "Term". Early Termination of this agreement for reasons other than business closure or moving to a non-serviceable area shall result in payment in full for the remaining months in the Term.

6. Representations and Warranties

6.1 Owners Representations and Warranties. Owner represents and warrants to Operator that (a) Owner is the sole legal and equitable Owner in fee simple of the property; (b) no purchase contracts exist with respect to the property; (c) the Property is not part of a bankruptcy proceeding, foreclosure action, deed-in-lieu-of-foreclosure transaction, or similar proceeding; (d) Owner has the full power and authority to negotiate, execute, deliver and perform this agreement; (e) the party signing this agreement is duly authorized to execute and deliver such documents of behalf of the Owner (f) Owner owns and/or has rights to grant the Operator hereunder exclusive rights to use all parts of the System not owned by the Operator (including any third party wiring, molding, conduit, penetrations, or components), if any; and (g) there are no agreements, understandings or intentions with or between Owner and any other party that conflict with this agreement.

6.2 Operators Representations and Warranties.

Operator represents and warrants to Owner that (a) Operator has the full power and authority to negotiate, execute, deliver and perform this agreement; (b) the party signing this agreement is duly authorized to execute and deliver the agreement on behalf of the Operator; (c) Operator currently has, and will maintain during the Term, all required licenses, permits and approvals necessary to permit Operator to operate the System and provide the services and (d) there are no agreements, understandings, or intentions with or between Operator and any other party that conflict with this agreement.

7. Default and Remedies

If (a) party breaches any Term of this agreement and fails to cure such breach within 45 days after receiving notice from the non-breaching party reasonably detailing the breach, or (b) Owner fails to pay any invoices provided by the Operator when due and payable more than two times in any 12-month period (which shall be deemed a material breach of this agreement by Owner), then, without any further requirement of notice or cure, the non-breaching party may Terminate this agreement, bring an action against the breaching party for damages, or seek any other available legal or equitable remedy, and such rights and remedies shall be cumulative. In the case of a material breach by Owner, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services. Notwithstanding any other terms of this agreement, in case of default by Owner to make timely and continuous payment, Operator will induce a 7 day period for Owner to cure such breach; if it is not cured within this timeframe, Operator shall be entitled to immediate and fully payment for remainder of the Term without requirement for the continuation of services.

8. Limitation of Warranties and Liability; Disclaimers; Service Outage Credits.

8.1 Limitation of Warranties and Liability. Except as expressly stated in this agreement, Operator makes no representations or warranties - express or implied - regarding the System or the services including, but not limited to, any implied warranty of merchantability, fitness for a particular purpose, or that the service will be uninterrupted or error-free and all such warranties are hereby disclaimed by Operator and waived by Owner to the extent permitted by Laws and Regulations. Owner acknowledges that the performance of the services will vary from time to time based on network usage and other factors, and that no minimum transmission speed is guaranteed at any time. Operator makes no representation, warranty, or guarantee regarding the accuracy or reliability of any information, service or merchandise advertised, purchased or provided through the service. Neither party shall be liable to the other party or to any third party for any indirect, special, exemplary, punitive, incidental, or consequential damages. In no event shall Operators aggregate liability to Owner or any third party under this agreement, regardless of the basis for such liability, exceed the amounts paid by the Owner to Operator during the previous three month period under this agreement.

8.2 Use of the Internet and Services by Occupants.

Owner acknowledges that use of the service and access to the Internet is at the occupants and Owners sole risk and that Operator shall not be liable in any way in connection with any use of the service by occupants, Owner or any third party, including circumstances where the use of the service results in file or data loss or hardware or software loss or destruction (e.g. where such loss or destruction is caused by viruses contracted over the Internet or network). Owner shall be responsible for protecting the confidentiality of its passwords, access codes and other security mechanisms for accessing the service. Owner shall not provide access codes, passwords to, or otherwise allow any parties located outside of the property to access the Internet through the network provided by the Operator; doing such shall be considered a material breach of the agreement by Owner. As such, Operator shall, at its discretion, be allowed to (a) Terminate the agreement and collect full and immediate payment for the remainder of the Term or (b) charge Owner, per occurrence, a penalty fee equivalent to the amounts due by the Owner to Operator during the previous three month period under this agreement.

Owner acknowledges that the services may provide occupants with a connection to the Internet that may be unfiltered and that occupants may access via the services certain content, merchandise and services that are not controlled by the Operator and for which there are charges payable to third parties (which may include Operator). Owner agrees that Operator shall not be responsible or liable in any way for such content, services or charges.

8.3 Acceptable Use. Operator will provide Owner with a standard acceptable use policy to be signed as part of the lease and or rental agreement.

9. Indemnification

9.1 From Operator. Operator will defend, indemnify, and hold harmless Owner and, as applicable, Owners

shareholders, members, partner, directors, managers, officers, employees, contractors, agents, representatives and affiliates (collectively, "Related Parties") from and against all claims, liabilities, losses, costs or damages, including reasonable attorney and other fees and costs relating to the investigation and defense of such matters (collectively, "Losses"), incurred by Owner or its related parties that result from Operators design, construction, installation, operation or maintenance of the System.

9.2 From Owner. Owner will defend, indemnify, and hold harmless Operator and, as applicable, Operator's Related Parties from and against all losses incurred by Operator or its related parties that result from (a) damage to any part of the System caused by Owner or its related parties, (b) access to or use of the services (or any content or other services available through the services) by any end-user at the property, including Owners employees, occupants and their guests or invitees.

10. Ownership and Removal of System after Term

After this Agreement has expired or been properly Terminated as permitted hereby, Operator shall retain Ownership of, and for 90 days after such expiration or Termination, be entitled at the Operator's option to remove, abandon, disable, all of the respective components of, the System, unless Owner Owns such components or such components are owned by a third party, in which case (as between Owner and Operator) Owner shall retain Ownership of such components and Operator shall not be entitled to remove or disturb such components. Operator will pay its removal costs unless the Agreement was Terminated because of Owner's uncured default or breach, in which case Owner will bear Operator's reasonable removal costs.

11. Confidentiality

Except as specifically provided in this agreement, and except for disclosures required by Laws and Regulations, Owner and Operator will (a) keep this agreement and its Terms confidential, (b) keep confidential and not disclose to any other party and information that is provided by one party to the other and that is marked or implied as confidential, (c) not disclose or use any such confidential information for any purpose other than performance of this Agreement, and (D) not make any public announcement or press release about this Agreement without the other's prior approval. Notwithstanding the foregoing, each party shall be entitled to disclose the Terms of this Agreement to its financial, legal, and other advisors and consultants, and to prospective lenders or purchasers of the property, in each case on a need-to-know basis and provided that such recipients are obligated to maintain the confidentiality of the Terms of this agreement without further disclosure to any other party.

12. Proprietary Names

Neither party will use and proprietary or trade name of the other except as specifically permitted in writing by the Owner of the name.

13. Assignment

13.1 Assignment by Operator. Operator may assigned this agreement to (a) and parent, affiliate, successor, business partner or subsidiary the the Operator may have or (b) any entity that purchases the

Operator's overall network System serving the property. Upon the new Operator's written assumption of all of Operator's obligations and duties under this agreement, Operator will be relieved of any further liability or obligations to Owner attributable to periods from and after the effective date of such assumption.

13.2 Assignment by Owner. If Owner transfers or assigned the property, Owner promptly will provide Operator with the name, address, telephone, facsimile, electronic mail and contact name of the new Owner. Owner is responsible for (a) transferring Ownership of this agreement in transfer with the sale, transfer or assignment of the property to the new Owner, or (b) paying in full the remainder balance for the Term of this agreement to Operator. In other words, this agreement survives and transfers any sale, transfer or assignment of the Property. Upon new Owner's written assumption of all Owner's obligations and duties under this Agreement, Owner will be relieved of any further liability or obligations to Operator attributable to periods from and after the effective date of such assumption. Owner shall also be responsible for paying any past monies due prior to assignment of agreement to new Owner.

14. Miscellaneous Provisions

14.1 Notices. All notices, requests, approvals, demands, consents and other communications that are required to be or may be given under this Agreement shall be in writing and shall be deemed to have been duly given if sent by facsimile, courier, registered or certified mail (postage prepaid), overnight delivery or in person to a party's address stated at the head of this agreement. Such notice shall be effective/dated, (a) if sent by facsimile, when confirmation of transmission is received, or (b) otherwise, upon actual receipt or rejection by the intended recipient. Either party may change its address by giving notice to the other party in accordance with this Section.

14.2 Force Majeure. Despite anything to the contrary in this agreement, neither party will be liable or in breach of or default under this agreement for any delay or failure of performance resulting directly from anything beyond the reasonable control of the non-performing party (a "Force Majeure Event"), including, but not limited to, acts of God; acts of civil or military authority; acts of a public enemy; war; terrorism; severe weather; earthquakes; or floods; fires or explosions; governmental action or regulation; strikes, lockouts or other work interruptions or labor shortages; supplier shortages; transportation and delivery delays; or blocked access rights. Payment of monies due shall not be subject to Force Majeure Events. So long as the non-performing party diligently and continuously attempts to cure the nonperformance cause by the Force Majeure Event (with consideration to the effect of the Force Majeure Event on such party's overall business operations), the time for performance shall be extended commensurate with the duration of the Force Majeure Event.

14.3 Compliance with Laws and Regulations; Choice of Law. This Terms of this agreement shall be subject to, and in the performance of their respective obligations under this agreement the parties shall comply with, all applicable federal, state and local Laws and Regulations (including the rules and regulations of government and regulatory authorities with jurisdiction over the parties) (collectively, "Laws and Regulations"). Nothing in this agreement shall prohibit Operator from

fully complying with Laws and Regulations, including any consents, agreements, orders or other requirements mandated by or entered into with the federal communications commission or other governmental authority, and such compliance shall be deemed not to constitute a breach of or default under this agreement. This agreement is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.

14.4 Scope of Agreement; Modification. This Agreement constitutes the entire agreement between Owner and Operator with respect to, and supercedes all other agreements relating to, the subject matter contained herein. This agreement can be modified or changes only by a written instrument signed by both parties. A party's waiver of enforcement of any of the Terms or conditions of this agreement will be effective only if in writing. The relationship between Owner and Operator is that of independent contractors, and not one of principal and agent, joint venture or partnership.

14.5 Enforcement Costs. If either party sues or brings any other type of enforcement action in regards to this agreement, then the prevailing party shall be entitled to recover its reasonable attorney's fees and other costs accompanying such enforcement.

14.6 Headings; Exhibits. Headings are for reference only and do not affect the interpretation of this agreement. All exhibits are fully incorporated into this agreement by their reference herein.

14.7 Survival. The Terms of Articles 6 through 11 and Sections 14.3 and 14.5 will survive the expiration or Termination of this agreement for any reason.

14.8 Counterparts. This agreement may be executed in any number of counterparts, each of which is considered an original.

The parties have caused their duly authorized representatives to sign this Agreement effective of the Effective Date.

ANAPTYX, LLC. ("Operator")

X

by: Heather B. Ginn, Jr.

Title: CEO

("Owner")

X

by: _____

Title: prop mfr

EXHIBIT A:

Number of Units (Coverage): 192
 Aggregate Operator Bandwidth Provided: 50Mbps
 Price Per Unit: \$8.50
 Total Cost per Month: \$1,632.00

Operator Obligations:

- Provide complete project planning, installation management, and project management of the solution to be implemented.
- Give 7 day notice to property for pole locations and power requirements if required.
- Install equipment to provide internet access to all areas required per Exhibit A above.
- Test three randomly selected rooms per floor to confirm internet access.
- Provide instructions (PDF Form) along with one instructions magnet per room.

Owner Obligations:

- Provide adequate electrical power in all locations where equipment will be installed. This includes power on the poles required for mounting the wireless access points if needed. 20 AMP circuit is usually required.
- If requested, provide for the purchase, installation and any required permitting for mounting poles or other hardware that will allow the installation of wireless access points to be completed. The poles must be installed to obtain a minimum height of 18 feet.
- Maintain a secure room for equipment components with ambient air temperature within the equipment specifications for both temperature and humidity. A temperature below 95 degrees Fahrenheit in locations where equipment is installed is required.
- Provide any necessary network and/or telephone wiring required except for Operator specified work as part of installation.
- Provide a staff person to coordinate access for Operator's installers into rooms that are rented for the installation and testing of equipment.
- Designate a technical contact to coordinate installation and project management with Operator.

Disclaimers

If ambient air temperature of wiring closets remains above 95 degrees Fahrenheit for a period of time, networking equipment will be operating outside its recommended environmental conditions. Any failure of equipment due to excessive heat will result in replacement of equipment at the expense of the customer. Any damages (including power surges or acts of God), theft, removal, or alteration of installed equipment in these designated and locked/secured equipment rooms will result in replacement at customer expense.

The actual Operator's aggregate bandwidth speed is provided as a best effort and is not service-level guaranteed. Users internet access speed is contingent upon the estimated user demand for internet bandwidth at each individual location, at the time of execution of this agreement. In rare instances, a single user (or several users) may take a significant portion of the supplied bandwidth, leaving other users with a slower

connection. The bandwidth provided with the standard solution should provide very adequate user speeds for normal internet access. If unsatisfactory user internet access speeds consistently occur over time, the customer should consider and increase in provisioned bandwidth of the Operator's internet connection. If the customer decide to upgrade their internet access speed in response to user demands for additional bandwidth then an increase in the contracted monthly fee will be negotiated.

The location and number of requires wireless access points for wireless internet coverage is based upon a site survey conducted by Operator's engineers and is designed to provide wireless coverage in excess of ninety percent of the designated areas on the property. Actual wireless coverage will not be known until the network has been installed, activated, tested and accepted by the customer. In the event that wireless internet coverage proves limited in some areas, at customer additional wireless equipment may be needed and an increase in monthly service charges to the customer may be negotiated.

Any changes made by the customer to this statement of work will result in the generation of a change order and, perhaps, subsequent change in the agreed monthly fee.

Initial (Operator) AC

Initial (Owner) _____

Section 5-903

Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to rec...

General Obligations (GOB)

SHARE



Automatic renewal provision of contract for service, maintenance or repair unenforceable by contractor unless notice thereof given to recipient of services. 1. As used in this section, "person" means an individual, firm, company, partnership or corporation.

2. No provision of a contract for service, maintenance or repair to or for any real or personal property which states that the term of the contract shall be deemed renewed for a specified additional period unless the person receiving the service, maintenance or repair gives notice to the person furnishing such contract service, maintenance or repair of his intention to terminate the contract at the expiration of such term, shall be enforceable against the person receiving the service, maintenance or repair, unless the person furnishing the service, maintenance or repair, at least fifteen days and not more than thirty days previous to the time specified for serving such notice upon him, shall give to the person receiving the service, maintenance or repair written notice, served personally or by certified mail, calling the attention of that person to the existence of such provision in the contract.

3. Nothing herein contained shall be construed to apply to a contract in which the automatic renewal period specified is one month or less.

Retrieved from <https://www.nysenate.gov/legislation/laws/GOB/5-903>

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2018-CP-26-02187

**AFFIDAVIT IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AS TO
PLAINTIFF'S BREACH OF
CONTRACT CAUSE OF ACTION**

PERSONALLY APPEARED before me the undersigned Michael Couture who, after being fully sworn, deposes and states as follows:

1. I am the owner, manager and operator of Myrtle Beach Realty. My company acted as the property manager for the above-named defendant, Tradewinds Homeowners' Association, Inc. for the duration of the contract that was entered into on October 1, 2012, which is the subject matter of the above-captioned case.

2. Pursuant to the contract, the required contact is: Tradewinds I HOA, c/o: Myrtle Beach Realty, 1106 Glenns Bay Road, Surfside Beach, SC, 29575.

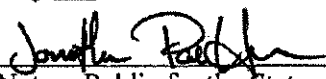
3. I have thoroughly reviewed my office records between the dates of September 1, 2017 and September 16, 2017.

4. I have no personal knowledge, and nothing appears in my office records, to indicate that Myrtle Beach Realty received notice of an automatic renewal provision in the contract, either by personal service or by certified mail, between the dates of September 1, 2017 and September 16, 2017.



Michael Couture

SWORN TO before me this
7th day of August, 2019.



Notary Public for the State of South Carolina
My Commission Expires: 6/27/28

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02183
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	MOTION FOR RECONSIDERATION
vs.	)	
	)	
DEERFIELD PLANTATION	)	
COMMUNITY SERVICES	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	

TO: DEFENDANT AND ITS COUNSEL WILLIAM D. HANNA, JR., ESQUIRE

PLEASE TAKE NOTICE that, pursuant to Rule 59(e), South Carolina Rules of Civil Procedure (SCRCP), ten (10) days hereafter, or as soon thereafter as the matter may be heard, Plaintiff will move before the Court for an Order reconsidering the Order Granting Summary Judgment in favor of the Defendant signed by the Honorable Larry B. Hyman and filed on October 8, 2019.

Said motion is based on the fact that the Court erred in finding that New York General Obligations Law Article 5, § 903 was applicable to the case, thereby requiring the Plaintiff to provide notice to the Defendant of the automatic extension within 15 to 30 days prior to the automatic extension date in the contract in dispute. The Plaintiff will supplement with arguments of counsel and a memorandum of law.

MARING & MOYER, LLC

s/Robert W. Maring

Robert W. Maring, Esquire

SC Bar No. 8810

Maring & Moyer, LLC

1130 Highmarket Street

Post Office Box 478

Georgetown, SC 29442

Telephone: 843-545-9544

Facsimile: 843-545-9735

Robert@maringmoyer.com

Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02184
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	MOTION FOR RECONSIDERATION
vs.	)	
	)	
GOLF COLONY RESORT II	)	
AT DEERTRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
_____	)	

TO: DEFENDANT AND ITS COUNSEL WILLIAM D. HANNA, JR., ESQUIRE

PLEASE TAKE NOTICE that, pursuant to Rule 59(e), South Carolina Rules of Civil Procedure (SCRCP), ten (10) days hereafter, or as soon thereafter as the matter may be heard, Plaintiff will move before the Court for an Order reconsidering the Order Granting Summary Judgment in favor of the Defendant signed by the Honorable Larry B. Hyman and filed on October 8, 2019.

Said motion is based on the fact that the Court erred in finding that New York General Obligations Law Article 5, § 903 was applicable to the case, thereby requiring the Plaintiff to provide notice to the Defendant of the automatic extension within 15 to 30 days prior to the automatic extension date in the contract in dispute. The Plaintiff will supplement with arguments of counsel and a memorandum of law.

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 Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02185
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	MOTION FOR RECONSIDERATION
vs.	)	
	)	
GOLF COLONY RESORT IV AT	)	
DEERTRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
_____	)	

TO: DEFENDANT AND ITS COUNSEL WILLIAM D. HANNA, JR., ESQUIRE

PLEASE TAKE NOTICE that, pursuant to Rule 59(e), South Carolina Rules of Civil Procedure (SCRCP), ten (10) days hereafter, or as soon thereafter as the matter may be heard, Plaintiff will move before the Court for an Order reconsidering the Order Granting Summary Judgment in favor of the Defendant signed by the Honorable Larry B. Hyman and filed on October 8, 2019.

Said motion is based on the fact that the Court erred in finding that New York General Obligations Law Article 5, § 903 was applicable to the case, thereby requiring the Plaintiff to provide notice to the Defendant of the automatic extension within 15 to 30 days prior to the automatic extension date in the contract in dispute. The Plaintiff will supplement with arguments of counsel and a memorandum of law.

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Robert@maringmoyer.com
Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02187
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	MOTION FOR RECONSIDERATION
vs.	)	
	)	
TRADEWINDS HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

TO: DEFENDANT AND ITS COUNSEL WILLIAM D. HANNA, JR., ESQUIRE

PLEASE TAKE NOTICE that, pursuant to Rule 59(e), South Carolina Rules of Civil Procedure (SCRCP), ten (10) days hereafter, or as soon thereafter as the matter may be heard, Plaintiff will move before the Court for an Order reconsidering the Order Granting Summary Judgment in favor of the Defendant signed by the Honorable Larry B. Hyman and filed on October 8, 2019.

Said motion is based on the fact that the Court erred in finding that New York General Obligations Law Article 5, § 903 was applicable to the case, thereby requiring the Plaintiff to provide notice to the Defendant of the automatic extension within 15 to 30 days prior to the automatic extension date in the contract in dispute. The Plaintiff will supplement with arguments of counsel and a memorandum of law.

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 Facsimile: 843-545-9735
Robert@maringmoyer.com
Counsel for the Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02183
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Memorandum in Opposition of Motion
vs.	)	For Summary Judgment
	)	
DEERFIELD PLANTATION	)	
COMMUNITY SERVICES	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

FACTUAL ALLEGATIONS

This is an action for breach of contract filed by the plaintiff against the defendant. The agreement is an agreement whereby the plaintiff was providing bulk wifi services to the defendant. The defendant would in turn charge a fee to its homeowners for the use of the Wi-Fi Bandwidth at a rate that was totally in the discretion of the defendant. The effective date of the agreement was October 1, 2012 for and during a term of five years. The contract had an automatic renewal provision that provided for a renewal unless the defendant gave notice, as provided in the contract, to the plaintiff prior to 121 days of the expiration of the agreement. The plaintiffs allege in its complaint that the defendant failed to provide timely notice of cancellation, thereby extending that agreement for another term.

As an industry-standard bulk Wi-Fi provider, the plaintiff is responsible for providing its own equipment and broadband to create a Wi-Fi network that is accessible to the ultimate end user. Nothing contained in this particular agreement or within the industry standard requires any user to utilize the bulk Wi-Fi provided by the plaintiff as its primary source of internet

connectivity. Simply put, the plaintiff created, through its own equipment a Wi-Fi signal available to any homeowner.

LEGAL ARGUMENT

A. Standard for Summary Judgment pursuant to Rule 56 SCRPC.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; Adamson v. Richland Cnty. Sch. Dist. One, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1998). "To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Further, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

B. Defendants are attempting to portray a bulk Wi-Fi agreement as a services, repair or maintenance contract under New York's General Obligation Law, Article 5, § 903.

Defendants argue that they should not be held to the auto renewal clause of the contract because of their contention that the contract is for "service, repair or maintenance to or for any real or personal property" under New York's General Obligation Law, Article 5, § 903. This statute requires notice be provided by registered mail between 15 and 30 days before the deadline for opting out of the renewal period under any automatic contract-renewal clause in such a service contract. The problem for Defendants is fairly obvious: This is a contract for Wi-Fi internet services, not services of their personal or real property.

The history and purpose of GOL § 903 has already been aptly summarized by the New York courts. As the Appellate Division's First Department explained in *Donald Rubin, Inc. vs. Schwartz*, 160 A.D.2d 53, 56, 559 N.Y.S.2d 307, 309 (N.Y. App. Div. 1990):

Restrictions on automatic renewal clauses were first applied to leases of real property. Former RPL § 230. (L.1936, Ch. 702). Former Section 399 of the General Business Law ("GBL"), enacted in 1953 (L.1953, Ch. 701), extended this restriction to leases of personal property. [See, *Peerless Towel Supply Co. v Triton Press*, 3 A.D.2d 249, 160 N.Y.S.2d. 163 (1st Dept. 1957) voiding renewal of towel and soap supply contract as within this remedial provision]. The provisions of GOL § 903 related to "contracts for service, maintenance or repair to or for any real or personal property" were first adopted in 1961 as GBL §399-a (L.1961, Ch. 507). A supporting memorandum by the Attorney General, who endorsed the bill, described the legislation as applying to "automatic renewal provisions, contained in service-type contracts" and to a "contractor furnishing maintenance, or repair services." The memorandum refers to the measure as one designed to protect "small businessmen" who unwittingly find themselves 'married' to contracts for sign maintenance, laundry and linen supplies and a variety of other services." *Telephone Secretarial Service v. Sherman*, 49 Misc2d 802, 804, 268 N.Y.S.2d 453 (District Court of Nassua, 1966) (citing N.Y.Legis. Ann 1961 p. 52), *aff'd*, 28 A.D.2d 1010, 284 N.Y.S.2d. 384 (1967).

Similarly, explaining the application and scope of "services" provided under GOL § 903, that same court observed that the Legislature never intended to extend them to contracts for every type of personal services, regardless of how unlike those contemplated by the statute:

We agree with the trial court that GOL § 903 is not applicable in the instant situation. That statute is addressed to contracts who furnish "services, maintenance or repair to or for any real or personal property . . .", and provides that when such services are performed pursuant to a contract that contains an automatic renewal clause, the party receiving the service must be given a timely written notice calling his attention to the renewal provision in the contract. It was enacted to protect small businessmen who unwittingly find themselves "married" to self renewal maintenance or service-type contracts (N.Y. Legis. Ann., 1961, p. 52, 451), and may not reasonably be construed to encompass the personal service agreement at bar.

Prial v. Supreme Court Uniformed Officers Ass'n, 91 Misc. 2d 115, 117, 397 N.Y.S.2d 528, 530 (N.Y. App. Term. 1997) (agreement for legal services). It is appropriate, then, to apply these characteristics to the agreements at issue in this case.

Unfortunately, defendants do nothing of the sort. Ignoring what the Agreement says, defendants argue that the contracts constitute a contract for “service, repair or maintenance to or for personal property” as defined in GOL § 903 because as they state in their motion that Plaintiff was to provide “internet services.” Furthermore, the defendants do not in either their motion or in the affidavit, suggest that the agreement is for services, maintenance or repair of real or personal property. Therefore, there are no factual allegations that the court can rely on in granting a motion for Summary Judgment. The reason for this omission is the fact that this contract is for neither.

C. The services to be provided under the contracts here are not “service, repair or maintenance contract” under New York’s General Obligation Law, Article 5, § 903.

Defendants are attempting to squeeze the agreement in this case into the category of service contracts under GOL § 903 without looking to the agreement to determine if the agreement is subject to statute all together.

There are three provisions of the agreement that the defendants are failing to recognized it its application to the GOL § 903. The first is Paragraph 1.3:

1.3 Maintenance of System; Restoration of Property.

At *Operators* (emphasis added) sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage.

The key words here are “At Operators sole Expense.” The contract is explicit that the equipment used to provide the Wi-Fi signal were at all times required, at the plaintiff’s sole expense, to be maintained, repaired and operated by the plaintiff. The next two guiding provision can be found in paragraph 3.

3. Ownership and Use of System During Term.

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to any other third party clearly shows that the agreement fall outside the application to the GOL § 903.

CONCLUSION

The defendant has failed to allege any facts that the contract that is subject to this action is an agreement for services, maintenance or repair of real or personal property that would trigger the application of GOL § 903. The defendants simply state that this is an internet service agreement and GOL § 903 is applicable. Furthermore, a more detailed reading of the contract makes it clear that the bulk Wi-Fi services provided by the plaintiff to defendant are outside of the GOL § 903. The contract explicitly states that the system that provides the service is owned by the plaintiff, is required to be repaired and maintained by the plaintiff at its sole expense, and that the plaintiff may sell bulk Wi-Fi services to any third party at its discretion. Clearly, this contract falls outside the application of the GOL § 903.

Based upon the forgoing reasons, Defendant's Motion for Summary Judgment should be dismissed.

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Georgetown, SC
September 30, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02184
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Memorandum in Opposition of Motion
vs.	)	For Summary Judgment
	)	
GOLF COLONY RESORT II	)	
AT DEERTRACK HOMEOWNERS'	)	
ASSOCIATION, INC.	)	
	)	
DEFENDANT.	)	
	)	

FACTUAL ALLEGATIONS

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As an industry-standard bulk Wi-Fi provider, the plaintiff is responsible for providing its own equipment and broadband to create a Wi-Fi network that is accessible to the ultimate end user. Nothing contained in this particular agreement or within the industry standard requires any user to utilize the bulk Wi-Fi provided by the plaintiff as its primary source of internet

connectivity. Simply put, the plaintiff created, through its own equipment a Wi-Fi signal available to any homeowner.

LEGAL ARGUMENT

A. Standard for Summary Judgment pursuant to Rule 56 SCRPC.

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; Adamson v. Richland Cnty. Sch. Dist. One, 332 S.C. 121, 124, 503 S.E.2d 752, 753 (Ct. App. 1998). "To determine if any genuine issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party." Sauner v. Pub. Serv. Auth. of S.C., 354 S.C. 397, 404, 581 S.E.2d 161, 165 (2003). Further, "in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." Hancock v. Mid-South Mgmt., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

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Georgetown, SC
 September 30, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02185
ANAPTYX, LLC,	)	
	)	
PLAINTIFF,	)	Memorandum in Opposition of Motion
vs.	)	For Summary Judgment
	)	
GOLF COLONY RESORT IV AT	)	
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September 30, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2018-CP-26-02187
ANAPTYX, LLC,	)	
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PLAINTIFF,	)	Memorandum in Opposition of Motion
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TRADEWINDS HOMEOWNERS'	)	
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Prial v. Supreme Court Uniformed Officers Ass’n, 91 Misc. 2d 115, 117, 397 N.Y.S.2d 528, 530 (N.Y. App. Term. 1997) (agreement for legal services). It is appropriate, then, to apply these characteristics to the agreements at issue in this case.

Unfortunately, defendants do nothing of the sort. Ignoring what the Agreement says, defendants argue that the contracts constitute a contract for “service, repair or maintenance to or for personal property” as defined in GOL § 903 because as they state in their motion that Plaintiff was to provide “internet services.” Furthermore, the defendants do not in either their

motion or in the affidavit, suggest that the agreement is for services, maintenance or repair of real or personal property. Therefore, there are no factual allegations that the court can rely on in granting a motion for Summary Judgment. The reason for this omission is the fact that this contract is for neither.

C. The services to be provided under the contracts here are not “service, repair or maintenance contract” under New York’s General Obligation Law, Article 5, § 903.

Defendants are attempting to squeeze the agreement in this case into the category of service contracts under GOL § 903 without looking to the agreement to determine if the agreement is subject to statute all together.

There are three provisions of the agreement that the defendants are failing to recognized it its application to the GOL § 903. The first is Paragraph 1.3:

1.3 Maintenance of System; Restoration of Property.

At *Operators* (emphasis added) sole expense, the Operator will (a) maintain, repair and operate the System in accordance with industry standards and Laws and Regulations and (b) repair and restore all portions of the property damaged by Operator (Regardless of whether such damage occurred during installation, upgrading, repair, or removal of the System) to its condition immediately prior to such damage.

The key words here are “At Operators sole Expense.” The contract is explicit that the equipment used to provide the Wi-Fi signal were at all times required, at the plaintiff’s sole expense, to be maintained, repaired and operated by the plaintiff. The next two guiding provision can be found in paragraph 3.

3. Ownership and Use of System During Term.

During the Term, *Operator will own* (emphasis added) and have the exclusive right to access, control and operate the System, except for any wiring, equipment, or other facilities owned by Owner or a third party, in which case (as between Owner and Operator) Owner shall own such items and Owner hereby grants Operator the exclusive right to access, use, maintain and upgrade such items during the term; provided that the

Owner grants the Operator exclusive rights to use any conduit, risers, spacers or other common areas within the building owned by Owner or a third party. Owner shall not, and Owner shall not permit any third party to access, move, use or interfere with any part of the System. Additionally, the Owner shall not permit any third party to use any wiring, riser, conduit or other common areas for provision, or future provision of the wireless internet (or similar) service while the contract is in effect. That is, Operator is to be the exclusive wireless internet provider on site, and no third party shall be allowed to install, construct, prepare or otherwise operate a wireless internet System intended for bulk service offering to the property. The *Operator shall be allowed, at its sole discretion, to offer "paid" access to the network to third parties within "range"* (emphasis added) of the equipment operated on site by Operator. Owner, at its sole cost, will provide the power necessary to operate any of Operators equipment that is located on the property.

The first part of paragraph 3 specifically deals with the ownership of the Wi-Fi system. Again, the contract is crystal clear that the plaintiffs own the Wi-Fi system. Of course, this makes complete sense inasmuch as the plaintiffs were required, at their own expense, to repair and maintain the system as shown in paragraph 1.3 of the contract. If this was a contract appurtenant to personal or real property, the plaintiffs would have entered into the worst contract in history by being required to repair and maintain the system.

The last portion of paragraph 3 allows the plaintiff to offer the Wi-Fi network, at its sole discretion, to allow access to the network to third parties that may be in range of the equipment that is owned and operated by the plaintiff. Again this does make sense in that the Wi-Fi services are created by the plaintiff's equipment and it is simply the Wi-Fi signal that is being used by the ultimate consumer. The fact that the agreement allows the plaintiff to sell its signal to any other third party clearly shows that the agreement fall outside the application to the GOL § 903.

CONCLUSION

The defendant has failed to allege any facts that the contract that is subject to this action is an agreement for services, maintenance or repair of real or personal property that would trigger

the application of GOL § 903. The defendants simply state that this is an internet service agreement and GOL § 903 is applicable. Furthermore, a more detailed reading of the contract makes it clear that the bulk Wi-Fi services provided by the plaintiff to defendant are outside of the GOL § 903. The contract explicitly states that the system that provides the service is owned by the plaintiff, is required to be repaired and maintained by the plaintiff at its sole expense, and that the plaintiff may sell bulk Wi-Fi services to any third party at its discretion. Clearly, this contract falls outside the application of the GOL § 903.

Based upon the forgoing reasons, Defendant's Motion for Summary Judgment should be dismissed.

MARING & MOYER, LLC

s/Robert W. Maring
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Robert@maringmoyer.com
Counsel for the Plaintiff

Georgetown, SC
September 30, 2019

1 STATE OF SOUTH CAROLINA

2 COURT OF COMMON PLEAS

3 COUNTY OF HORRY

4 -----x

5 ANAPTYX, LLC,)

6 Plaintiff,)

7 vs.)

Transcript of Record
2018-CP-26-02183

8 DEERFIELD PLANTATION)

9 COMMUNITY SERVICES)

ASSOCIATION, INC., et al,)

10 Defendants.)

11 -----x

ANAPTYX, LLC,)

12 Plaintiff,)

13 vs.)

Transcript of Record
2018-CP-26-02184

14 GOLF COLONY RESORT II AT)

15 DEERTRACK HOA, INC.,)

Defendant.)

16 -----x

17 ANAPTYX, LLC,)

18 Plaintiff,)

19 vs.)

Transcript of Record
2018-CP-26-02185

20 GOLF COLONY RESORT IV)

21 DEER TRACK HOA, INC.,)

Defendant.)

22 -----x

1 ANAPTYX, LLC,)
2)
3 Plaintiff,)
4)
5 vs.)
6)
7 TRADEWINDS HOMEOWNERS)
8 ASSOCIATION, INC.,)
9)
10 Defendant.)
11 -----x

Transcript of Record
2018-CP-26-02186

October 1, 2019

7 B E F O R E:

8 The Honorable Larry B. Hyman, Jr., Presiding Judge

9 A P P E A R A N C E S:

10 Robert W. Maring, Esq.
11 Attorney for the Plaintiff

12 William Hanna, Esq.
13 Attorney for the Defendants

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25 Court Reporter: Bobbi Fisher, RPR, CET

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I N D E X

Motions

PAGE

4

E X H I B I T S

(None.)

P R O C E E D I N G S

(Whereupon, the following proceedings started at 9:41 a.m.)

THE COURT: This looks like a summary judgment motion, and it would appear that it would be Mr. Hanna's motion; right?

MR. HANNA: Yes, Your Honor.

THE COURT: Okay. Tell me a little bit about the case, what it involves, and why you moved for summary judgment.

MR. HANNA: Yes, Your Honor. There's four cases, actually, under this, and they all involve similar facts, the same contract. What we have is a contract for Wi-Fi services for four different HOAs from the same company, Anaptyx. The initial term of the contract was for five years. It was signed October 1st of 2012. It had an auto-renewal provision in the contract. The plaintiffs brought a breach of contract because after the renewal --

THE COURT: You cancelled.

MR. HANNA: Cancelled after the renewal provision.

The contracts all have a choice-of-law provision that these are to be under New York law. New York law has a general obligations law that deals specifically with auto-renewal provisions in contracts for services for real property. That requires the person providing the service to give written notice by certified mail or personal service of the auto-renewal provision in a 15-day window about 30 days

1 before it would run. The plaintiffs did not provide that to
2 the defendants. And these facts are not in dispute. If you
3 don't provide that window or that notice in that window --

4 THE COURT: Is his only claim one for breach of contract?

5 MR. HANNA: Mm-hmm, correct.

6 THE COURT: All right. Mr. Maring, tell me about this.
7 Tell me why your choice-of-law provision would not apply or
8 tell me why Mr. Hanna is mistaken as to the law of the State
9 of New York.

10 MR. MARING: Your Honor, if I will. I filed one online.
11 I wasn't sure if it got uploaded to the file yet.

12 THE COURT: I have been in Georgetown for about the last
13 month. I probably didn't see it, and I'm sorry.

14 MR. MARING: Your Honor, I'll admit that the
15 choice-of-law provision in the contract is clear that New York
16 law applies. But, Your Honor, I would bring to the Court's
17 attention that the plaintiffs -- excuse me, the defendants in
18 this case are relying solely on the provision under the
19 general obligations law of 903. They provided you a copy with
20 it. I mean, Mr. Hanna's representation of the law is pretty
21 clear that, if it is a service, repair or maintenance to real
22 or personal property, that the person providing such service
23 needs to give notice before -- and that's not in dispute.
24 It's also not in dispute that my clients did not provide that
25 notice.

1 THE COURT: Okay.

2 MR. MARING: It is our position that the general
3 obligations law does not apply to this particular case. And
4 the general obligations law -- and that's what my memorandum
5 is basically saying.

6 Now, we had to go back and look at New York law. I have
7 struggled enough with South Carolina; I had to go to New York.
8 But New York law basically says that it does not apply in
9 every circumstance. As my memorandum outlines, it basically
10 started out as -- the history of it is a landlord/tenant deal
11 where they have auto-renewals in tenants -- or landlord-tenant
12 law. They brought in the general obligations law. Then they
13 brought it in for certain service contracts for real property:
14 Trash pickup, that type of stuff.

15 In this case, which I --

16 THE COURT: Is your position that Wi-Fi is not a service
17 as contemplated by the statute?

18 MR. MARING: That's exactly what I was going to say, Your
19 Honor. And there's three provisions of the contract that I
20 brought to your attention in the memorandum. First being that
21 the property -- that there is no property or there's no -- the
22 devices are actually owned by my client, and anything -- what
23 we're basically doing is providing this -- and I'm not
24 technical, Your Honor; I wish I was. But we're basically
25 providing this Wi-Fi service in the area in which the

1 homeowners associations are. And we have the ability to
2 actually sell our Wi-Fi to other people outside of or that are
3 within our Wi-Fi signal base.

4 Secondly --

5 THE COURT: Let me ask you this: What do they pay for,
6 then, under your contract?

7 MR. MARING: Here's what the homeowners -- the Homeowners
8 Association pays for the right to access our network. They
9 then charge whomever they want to whatever they want to, to
10 utilize the services -- the bulk Wi-Fi services that we're
11 providing.

12 You know, these homeowners have the right to go get their
13 own internet service. They have the right to go to Spectrum.
14 They have a right to go to HTC or whomever else provides their
15 own, if they want it. This is, basically, this orb of Wi-Fi
16 that covers the area that they are entitled, and we do provide
17 that service to them, but the distinction is they then sell it
18 to each one of their homeowners and can charge whatever they
19 want to charge. That's what the contract says. You have the
20 right to do that.

21 THE COURT: And I understand that. But if the Homeowners
22 Association is responsible for common areas and the providing
23 of those types of services, you deal with the Homeowners
24 Association. They can do with it as they please, I would
25 suppose, like a trash pickup. Probably have dumpsters outside

1 of the -- or somewhere on the property, and they charge the
2 individual condo owners or homeowners a fee to use those or
3 utilize those. Wouldn't it be the same thing type of
4 situation?

5 MR. MARING: Well, Your Honor, the distinction that we're
6 making here is the fact that it's -- I mean, I hate to say
7 it -- it's coming out of thin air. I mean, it's not
8 contemplated by the statute. It says that it's a service for
9 -- it's a service provided to real or personal property, and I
10 don't believe that they've met the burden on that. Even in
11 their own affidavit, all they said was is that we have an
12 agreement for internet services.

13 THE COURT: But would you agree that that would be a
14 matter of law?

15 MR. MARING: Yes, I do agree with that.

16 THE COURT: All right. Mr. Hanna?

17 MR. HANNA: As far as whether it's services to or for a
18 real property, I don't think you need to look much farther
19 than the recitals of the contract, which -- I'll just read
20 them out real fast. The owner owns the property referred to
21 above, and the owner and operator desire to make the service
22 available to the occupants of the property.

23 The statute reads that no provision of a contract for
24 service, maintenance, or repair to or for any real or personal
25 property shall be deemed auto-renewed unless they give the

1 specific things.

2 THE COURT: Mr. Maring, I look at this, and as we spoke a
3 minute ago, I think the issue of whether it is a service is a
4 matter for the Court, and I do not believe that there's any
5 material issue of fact for a jury to determine. I think that
6 this is a case that is -- in which summary judgment would be
7 appropriate, and I'm going to grant it on those grounds.

8 Would you prepare an order, Mr. Hanna?

9 MR. MARING: Thank you, Your Honor.

10 MR. HANNA: Thank you, Your Honor.

11 THE COURT: Colony Resort at Deerfield versus -- oh,
12 excuse me.

13 MR. MARING: All four these.

14 THE COURT: All four of them. Okay.

15 MR. MARING: Yes, sir.

16 THE COURT: It's the same facts. I'll grant it, then, on
17 all four.

18 MR. MARING: Thank you, Your Honor.

19 (At 9:49 a.m., the above hearing was concluded.)
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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of Horry)

I, Bobbi J. Fisher, Registered Professional Reporter
(RPR) and Official Court Reporter for the Fifteenth Judicial
Circuit of the State of South Carolina, do hereby certify that
the foregoing is a true, accurate and complete Transcript of
Record of the proceedings had and evidence introduced in the
hearing of the captioned case in the Court of Common Pleas for
Horry County, South Carolina, on the 1st of October, 2019.

March 31, 2020

Bobbi Fisher

Bobbi J. Fisher, RPR
Official Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

Anaptyx LLC,)

Plaintiff,)

versus)

Deerfield Plantation Community)

Services Association, Inc.,)

et al.,)

Defendants.)

2018CP2602183

Anaptyx LLC,)

Plaintiff,)

versus)

Golf Colony Resort II at)

Deertrack Homeowners)

Association, Inc.,)

Defendant.)

2018CP2602184

Anaptyx LLC,)

Plaintiff,)

versus)

Golf Colony Resort IV)

Deer Track Homeowners)

Association, Inc.,)

Defendant.)

2018CP2602185

Anaptyx LLC,	)	
	)	
Plaintiff,	)	
	)	
versus	)	
	)	2018CP2602187
Tradewinds Homeowners	)	
Association, Inc.,	)	
	)	
Defendant.	)	
_____	)	

January 27, 2020

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

A P P E A R A N C E S:

Robert Wade Maring, Esquire
Attorney for Plaintiffs

Jonathan Patrick Hanna, Esquire
Attorney for Defendants

Grace L. Hurley, CVR-CM-M
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)
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1 (On the record, January 27, 2020.)

2 THE COURT: All right. Motion to reconsider. That
3 looks like your motion, Mr. Maring?

4 MR. MARING: It is, Your Honor.

5 THE COURT: Okay. And looks like there's a motion to
6 reconsider from both sides or is that the same motion?

7 MR. MARING: Your Honor, there's four cases.

8 THE COURT: Okay.

9 MR. MARING: They're all identical. They're just
10 basically -- it's -- it was four different associations that
11 were all together in one motion.

12 THE COURT: Okay. Tell me what your position is. Okay.

13 MR. MARING: Thank you, Your Honor.

14 Well, first of all, Your Honor, we have an opportunity
15 here, I know you've had a very long and illustrious career on
16 the bench, to actually reconsider a case and grant that
17 motion, Your Honor, before you, before you ride off to the
18 sunset of hunting because I know that's what you'll be doing.
19 So in, in essence, Your Honor, let me briefly go back on what
20 happened was we had a motion for summary judgment back in
21 November. Mr. Hanna represents four separate homeowners
22 associations. The issue was a contract for Wi-Fi services,
23 and the Wi-Fi services were provided by my client. Mr. Hanna
24 filed a motion for summary judgment under a general
25 obligations law Section 903 of the New York Code as a basis

1 for his summary judgment under the section --

2 THE COURT: And the choice of law was New York as I
3 recall?

4 MR. HANNA: That's correct.

5 MR. MARING: There was a choice of law provision in the
6 contract that did indicate New York, Your Honor, and Mr. Hanna
7 cited Section 903 of the code which is a general obligation
8 law is what they basically say you have to give notice for
9 certain types of service, maintenance or repair contracts for
10 -- in order to -- for the auto-renew to come into play.

11 THE COURT: Okay.

12 MR. MARING: So we, we did have the opportunity to have
13 that motion, and pursuant to your order you found that the
14 general obligation law, in fact, was applicable and that the
15 notice needed to be provided by my client. I just wanted to
16 --

17 THE COURT: The prerequisite to an action on a, a
18 automatic renewal; was it not?

19 MR. MARING: It was, Your Honor.

20 THE COURT: What I remember.

21 MR. MARING: It was, Your Honor.

22 THE COURT: Okay.

23 MR. MARING: And you indicated that the general
24 obligation law was, in fact -- was, in fact, applicable.

25 We did talk a little bit about it, and it was a long day

1 and we had a bunch of motions, and I filed this motion for
2 reconsideration just to bring up a couple of things that we --
3 I don't think that I did service to --

4 THE COURT: All right

5 MR. MARING: -- in the case, and the first one is is that
6 the obligations law under the State of New York was a law that
7 was passed for services to real or personal property, linen
8 services, a maintenance to -- a maintenance contract for your
9 kitchen equipment, these types of, these types of, of
10 contracts.

11 THE COURT: How would this one be exempt from that?

12 MR. MARING: Okay. This one's different in that this one
13 does not provide services to personal or real property. This
14 is a bulk Wi-Fi. We are basically a wholesaler of Wi-Fi,
15 whereas these HOAs are retailers.

16 THE COURT: Okay. But didn't, didn't the, the -- not the
17 master deed but the -- if, if you were in the homeowners
18 association didn't the -- it was a bulk thing, everybody had
19 it; right?

20 MR. MARING: No. That's not -- well, that's the
21 difference. That's what -- I think that's where the
22 clarification came --

23 THE COURT: Okay.

24 MR. MARING: -- needs to be, needs to be made.

25 THE COURT: Well, talk to me about that.

1 MR. MARING: What my client provides this particular --
2 these Defendants is a bulk Wi-Fi for them, in fact, for them
3 then to go sell. There is no contract between the actual
4 homeowners and the service. The homeowners are the ultimate
5 users of the Wi-Fi. What we're providing them with -- we're
6 basically a wholesaler. They are a retailer of the product,
7 and that's the distinction that I was trying to bring up and I
8 don't think I did a very good job of it.

9 THE COURT: So the individual homeowners have the right
10 to opt out?

11 MR. MARING: Yes.

12 THE COURT: Okay. All right. Go ahead.

13 MR. MARING: So they -- in, in essence, Your Honor, they
14 are a retailer of our product. The other issue is is that we
15 have the right to sell it to anybody who can pick it up. It's
16 -- I'm going to put this in terms of this is like a cable line
17 that goes through, that goes through their real property in
18 that --

19 THE COURT: All right. So you're arguing intent of the
20 statute?

21 MR. MARING: I am. Yeah. I am, Your Honor.

22 THE COURT: Okay. Is, is there any language in the
23 statute that would indicate the intent of the New York
24 Legislature to exclude this type of service from the broad
25 requirement that there be a notice provision for renewal?

1 MR. MARING: Well, there is, Your Honor, and I think that
2 if you go back and read the -- if you read the -- and I think
3 the distinction, I think the distinction is clearly as to what
4 the services to be -- is to be provided to. One of the things
5 that they talk about in the statute is service to your
6 personal or real property. In this case the obligation to
7 maintain the equipment is actually on my client, not on the
8 Defendant. There is no servicing. We're simply providing a
9 Wi-Fi signal for the homeowners associations to then go out
10 and retail, and that's the distinction here. It's not that
11 we're providing -- I believe that if the services were
12 provided by contract to the, to the actual homeowner, that
13 makes it -- I don't think that it was -- it would make it
14 dispositive, but I think it would make it more in line of what
15 the statute was talking about.

16 THE COURT: Well, let me hear from Mr. Hanna. Mr. Hanna.

17 MR. HANNA: Yes, Your Honor.

18 THE COURT: What do you think about my prior order?

19 MR. HANNA: I think you were correct. If, if we're going
20 to -- there's a case on point, it lists a bunch of different
21 examples of, of contracts --

22 THE COURT: A New York case?

23 MR. HANNA: A New York case, Your Honor. We've got --
24 this was held to apply to the installation and servicing of a
25 coin-operated laundry machine, jukeboxes, I could see this

1 being like a jukebox where, and, "I'm going to put the jukebox
2 in here and everyone can opt out of in a restaurant, but you
3 know, you're going to get the coins out of it," if that's the
4 argument. I don't really buy that argument.

5 The recitals for the contract are that they're going to
6 make services available to the occupants at the property and
7 the owner owns the property and runs the property, and I think
8 that the, the language of the statute is pretty clear that it
9 applies to contracts for services, maintenance or repairs to
10 or for any real or personal property. I can't imagine why
11 providing an internet service, whether bulk or individually,
12 why an individual or a bulk would make a difference in this
13 instance.

14 MR. MARING: Well, and Your Honor, I'm going to, I'm
15 going to bring this into almost a utilities. This is a
16 utility service. When this law was enacted in the seventies
17 certainly there were no -- there was no such thing as Wi-Fi.
18 All they had was telephone lines, but they did have telephone
19 lines. They did have utility services, which would have been
20 put in the statute if, in fact, it was the intent of the New
21 York Legislature to indicate or to say that utility services
22 are going to be put into this, into this --

23 THE COURT: What does the contract between the parties
24 say?

25 MR. MARING: Your Honor, the contract says that my client

1 provides them at our expense a broadband Wi-Fi signal that
2 they can then -- that would be equivalent for them to be able
3 to sell to every one of their -- to every one of their
4 homeowners. It also says that we're able to sell it to
5 anybody else who can actually get the signal.

6 THE COURT: Let me, let me just throw this out, is a Wi-
7 Fi signal personal property? You sell it. Why would it not
8 be personalty?

9 MR. HANNA: Sure. And I think that, that the more the
10 statute is, is referring to the services that you provide for
11 a real property, this internet, providing an internet for the
12 real property is the service, and you know, that, that's our
13 position. So this, this statute would apply for that, and I
14 don't disagree with you about internet being real property or,
15 or not. It's hard wires and electricity in the same way
16 telephone answering service, I'm not sure.

17 MR. MARING: Well, and, and if I could --

18 THE COURT: You know, I understand that, that there was
19 no internet when the New York statute was enacted, but the
20 fact that it is not then -- it's the same type of thing, but
21 it has not been amended. It sort of gives credence to Mr.
22 Hanna's position that that's what they -- that they intended
23 that it be part of it --

24 MR. HANNA: Obviously --

25 THE COURT: -- that this type of thing. Otherwise,

1 there would certainly be an amendment or case law.

2 MR. MARING: Well, well, Your Honor, here's what I would
3 say, here's what I would say to counter that argument is that
4 telephone lines, a telephone service would be considered under
5 your -- personal property under your argument. Utilities,
6 electricity would be considered no different from a Wi-Fi
7 signal.

8 THE COURT: But, you know, it --

9 MR. MARING: And these are specifically excluded under
10 the New York statute and that's all I'm trying to say is
11 there's a distinction between --

12 THE COURT: Can you show me some case law where telephone
13 service would be excluded, and, and, and telephone service, I
14 can see, you know, is Wi-Fi, the providing of broadband Wi-Fi
15 does that include all the information on the internet and is
16 that different from providing a service for a telephone line
17 where information may be transmitted?

18 MR. HANNA: Well, I believe just like a telephone
19 contract, if the telephone line went out, the telephone
20 company has to come out and fix that. That's a -- in, in this
21 case if, if the internet went out and, and they did, they
22 maintained this system, they're providing a service to, to
23 give internet access to everyone at the property. There's a
24 -- many, many, and I've got the contract here. It's part of
25 the complaint, but --

1 THE COURT: What does the contract say about automatic
2 renewal? I'm sure there's something in there. How did the
3 parties contract?

4 MR. HANNA: The, the contract states that 121 days before
5 the end of the five-year initial period that there needed to
6 be I think it was maybe something by registered mail sent by
7 the -- our client, the, the people serving the contract.

8 THE COURT: Okay. Then, then let's talk about what the
9 parties agreed to. Okay. We look at the New York statute,
10 and the New York statute if we agree that this type of
11 broadband internet services is contemplated under the New York
12 statute is the New York statute specific as to the form and
13 time of notice?

14 MR. HANNA: Yes, Your Honor.

15 MR. MARING: No, Your Honor, I, I mean I'll concede that
16 the statute does -- I mean, I could read the statute but it
17 does.

18 THE COURT: Okay. All right. So the statute is
19 specific. All right. Can the parties contract to provide an
20 alternative method of notice?

21 MR. HANNA: I don't believe so, Your Honor. I think it
22 has to adhere to the New York law because it states that
23 contracts with that type of provision in it are invalid with,
24 with -- that don't adhere to --

25 THE COURT: Well, what about this? Could the parties

1 expand, expand the notice requirement? Say if the notice
2 requirement under the statute, and there again, let's just
3 speculate, say the notice requirement is 90 days. Do you take
4 issue with the fact that the parties could contract to expand
5 that to 180 days?

6 MR. HANNA: I'm not sure, but the, the contract -- the,
7 the, the statute is more giving notice that this period's
8 coming up. So you know to within a two-week period say
9 whether or not you want to renew it, and --

10 THE COURT: Okay. So Mr. Maring's position is is that no
11 notice was given; is that correct?

12 MR. MARING: Well, I mean, Your Honor, I think that the
13 -- that the -- getting back into the facts of the case that
14 what we have is a situation where the Defendants were going to
15 -- they were going to renew, and then later on down the road
16 after emails saying, "We're going to renew," they say, "No.
17 We're not going to renew." So that's where this -- that's
18 where the, that's where the whole lawsuit was filed was
19 because everything was fine. They were renegotiating and
20 rebuilding, rebuilding the system to it -- because of the --
21 you know, because of over time rebuilding, retooling the Wi-Fi
22 network to provide more broadband because now kids are
23 watching movies on their iPads. They weren't five years prior
24 to that. The way technology goes that within that time period
25 everything was fine. "We're going to renew." We start

1 rebuilding the system and then 30 days at the end of the
2 contract they pull the plug.

3 THE COURT: Your compliant is that under the contract
4 they had was it 180 --

5 MR. HANNA: 121 days.

6 THE COURT: -- 121 days, they had to let you know within
7 121 days, and you're saying, "They only let us know within 30
8 days," and the homeowners association is saying, "You had to
9 tell us if this was coming up." Right?

10 MR. HANNA: That's correct.

11 MR. MARING: And we have, of course, well, what they're
12 -- no. What they're saying is is that we had to give them a,
13 a writing of that. They knew it was coming up. I mean, the
14 deposition testimony says they knew it was coming up but that
15 they did not get a notice certified mail is what they're
16 saying.

17 THE COURT: And that's what's required under New York
18 statute.

19 MR. MARING: Which is what they're saying is required by
20 the New York statute.

21 THE COURT: All right. I'm going to rule. I'm going to
22 deny the motion. I'm going to say the New York statute
23 applies and this applies to the -- is covered under New York
24 statute. I'm going to deny the motion to reconsider as to
25 each case, and let's just see what our courts -- our appellate

1 courts have to say about that New York statute. I'm sure
2 they're going to certify the question in New York, but we'll
3 see, rather than use this Court's resources to try a case
4 that's going to be appealed anyway. Okay.

5 MR. HANNA: Thank you, Your Honor.

6 MR. MARING: Thank you, Your Honor.

7 THE COURT: All right. Thank you very much.

8 (Adjourned.)

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1 C E R T I F I C A T E

2

3 I, the undersigned, Grace L. Hurley, Official Court
4 Reporter for the State of South Carolina, do hereby certify
5 that the foregoing is a true, accurate and complete transcript
6 of the hearing held in the cases of Anaptyx LLC versus
7 Deerfield Plantation Community Services Association, Inc., et
8 al.; Anaptyx LLC versus Golf Colony Resort II at Deertrack
9 Homeowners Association, Inc.; Anaptyx LLC versus Golf Colony
10 Resort IV Deer Track Homeowners Association, Inc.; and Anaptyx
11 LLC versus Tradewinds Homeowners Association, Inc., held in
12 the Court of Common Pleas for Horry County, Horry County
13 Courthouse, Conway, South Carolina, on January 27, 2020. I do
14 hereby certify that I am neither of kin, counsel, nor interest
15 to any party hereto.

16

17

18

19

20

Grace L. Hurley, CVR-CM-M

21

Official Reporter

22

23

24

25 March 29, 2020.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02183

Anaptyx, LLC, ...Appellant.

v.

Deerfield Plantation Community Services Association, Inc.....Respondent.

NOTICE OF APPEAL

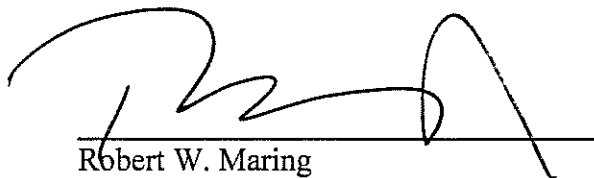
RECEIVED

MAR 03 2020

SC Court of Appeals

Anaptyx, LLC appeals the order of The Honorable Larry B. Hyman, dated October 8, 2019, Order Granting Defendant's Motion for Summary Judgment and the Order was received by Appellant on October 8, 2019 and Order dated January 29, 2020, denying Appellant's Motion for Reconsideration and received by Appellant on January 29, 2020.

Maring & Moyer, LLC



Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

Other Counsel of Record:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02183

Anaptyx, LLC, ...Appellant.

v.

Deerfield Plantation Community Services Association, Inc.....Respondent.

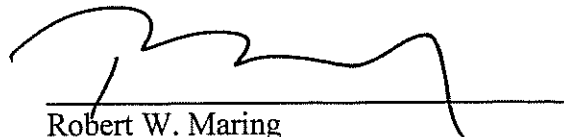
Proof of Service

RECEIVED
MAR 03 2020
SC Court of Appeals

I certify that on this 21 day of February, 2020, a copy of the Notice of Appeal was served on Deerfield Plantation Community Services Association by deposition the said Notice of Appeal in the U.S. Mail, postage prepaid, addressed to counsel of record as follows:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576

Maring & Moyer, LLC


Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Deerfield Plantation Community Services
Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02183

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

RECEIVED

MAR 03 2020

SC Court of Appeals

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:13:10 page 5 of 5

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602183

Anaptyx LLC
PLAINTIFF(S)

Deerfield Plantation Community Services Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/07/2019 .

Willard D. Hanna, Jr. for Deerfield Plantation Community Services Association Inc
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Deerfield Plantation Community Services Association Inc

RECEIVED
MAR 03 2020
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:12:45 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602183

Anaptyx LLC
PLAINTIFF(S)

Deerfield Plantation Community Services Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

RECEIVED

MAR 03 2020

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Deerfield Plantation Community Services
Association Inc , defendant, et al
Case Number: 2018CP2602183
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:21:31 page 3 of 3

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02184

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MAR 03 2020
SC Court of Appeals

Anaptyx, LLC, ...Appellant.

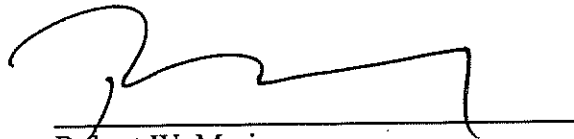
v.

Golf Colony Resort II at Deertrack Homeowners Association, Inc.....Respondent.

NOTICE OF APPEAL

Anaptyx, LLC appeals the order of The Honorable Larry B. Hyman, dated October 8, 2019, Order Granting Defendant's Motion for Summary Judgment and the Order was received by Appellant on October 8, 2019 and Order dated January 29, 2020, denying Appellant's Motion for Reconsideration and received by Appellant on January 29, 2020.

Maring & Moyer, LLC



Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

Other Counsel of Record:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02184

RECEIVED
MAR 03 2020
SC Court of Appeals

Anaptyx, LLC, ...Appellant.

v.

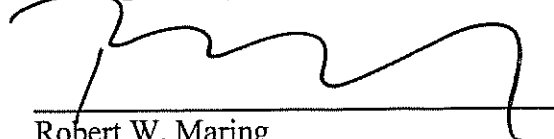
Golf Colony Resort II at Deertrack Homeowners Association, Inc.....Respondent.

Proof of Service

I certify that on this 27 day of February, 2020, a copy of the Notice of Appeal was served on Golf Colony Resort II at Deertrack HOA, Inc. by deposition the said Notice of Appeal in the U.S. Mail, postage prepaid, addressed to counsel of record as follows:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576

Maring & Moyer, LLC



Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort II at Deertrack
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02184

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

RECEIVED
MAR 03 2020
SC Court of Appeals

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In

Case Number: 2018CP2602184

Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:14:41 page 5 of 5

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602184

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort II At Deertrack Homeowners Association In
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.

RECEIVED

MAR 03 2020

SC Court of Appeals

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/07/2019.

Willard D. Hanna, Jr. for Golf Colony Resort II At Deertrack Homeowners Association In
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Golf Colony Resort II At Deertrack Homeowners Association In

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:12:46 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602184

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort II At Deertrack Homeowners Association In
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

RECEIVED
MAR 03 2020
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort II At Deertrack Homeowners Association In
Case Number: 2018CP2602184
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:22:05 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

MAR 03 2020

SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02185

Anaptyx, LLC, ...Appellant.

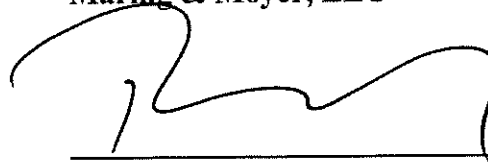
v.

Golf Colony Resort IV Deer Track Homeowners Association, Inc.....Respondent.

NOTICE OF APPEAL

Anaptyx, LLC appeals the order of The Honorable Larry B. Hyman, dated October 8, 2019, Order Granting Defendant's Motion for Summary Judgment and the Order was received by Appellant on October 8, 2019 and Order dated January 29, 2020, denying Appellant's Motion for Reconsideration and received by Appellant on January 29, 2020.

Maring & Moyer, LLC



Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

Other Counsel of Record:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

RECEIVED

MAR 03 2020

SC Court of Appeals

Case Number 2018-CP-26-02185

Anaptyx, LLC, ...Appellant.

v.

Golf Colony Resort IV Deer Track Homeowners Association, Inc.....Respondent.

Proof of Service

I certify that on this 27 day of February, 2020, a copy of the Notice of Appeal was served on Golf Colony Resort IV Deer Track Homeowners Association, Inc. by deposition the said Notice of Appeal in the U.S. Mail, postage prepaid, addressed to counsel of record as follows:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576

Maring & Moyer, LLC

Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544

Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Golf Colony Resort IV at Deer Track
Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02185

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

RECEIVED

MAR 03 2020

SC Court of Appeals

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners Association Inc
Case Number: 2018CP2602185
Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:14:53 page 5 of 5

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602185

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort IV Deer Track Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.

RECEIVED
MAR 03 2020
SC Court of Appeals

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/07/2019.

Willard D. Hanna, Jr. for Golf Colony Resort IV Deer Track Homeowners Association Inc
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Golf Colony Resort IV Deer Track Homeowners Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners Association Inc
Case Number: 2018CP2602185
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:13:11 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602185

Anaptyx LLC
PLAINTIFF(S)

Golf Colony Resort IV Deer Track Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

RECEIVED

MAR 03 2020

SC Court of Appeals

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Golf Colony Resort IV Deer Track Homeowners Association Inc
Case Number: 2018CP2602185
Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:22:15 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02187

RECEIVED

MAR 03 2020

SC Court of Appeals

Anaptyx, LLC, ...Appellant.

v.

Tradewinds Homeowners Association, Inc.....Respondent.

NOTICE OF APPEAL

Anaptyx, LLC appeals the order of The Honorable Larry B. Hyman, dated October 8, 2019, Order Granting Defendant's Motion for Summary Judgment and the Order was received by Appellant on October 8, 2019 and Order dated January 29, 2020, denying Appellant's Motion for Reconsideration and received by Appellant on January 29, 2020.

Maring & Moyer, LLC



Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

Other Counsel of Record:

Willard D. Hanna, Jr., Esquire
HANNA LAW FIRM, P.A.
PO Box 1149
Murrells Inlet, SC 29576
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry B. Hyman, Circuit Court Judge

Case Number 2018-CP-26-02187

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MAR 03 2020

SC Court of Appeals

Anaptyx, LLC, ...Appellant.

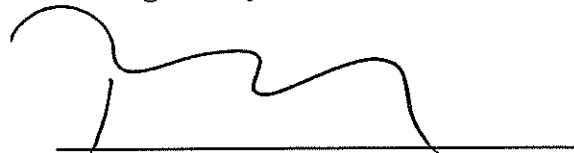
v.

Tradewinds Homeowners Association, Inc.....Respondent.

Proof of Service

I certify that on this 27 day of February, 2020, a copy of the Notice of Appeal was served on Tradewinds Homeowners Association, Inc. by deposition the said Notice of Appeal in the U.S. Mail, postage prepaid, addressed to counsel of record as follows:

Maring & Moyer, LLC



Robert W. Maring
PO Box 478
Georgetown, SC 29442
843-545-9544
Attorney for Appellant

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Anaptyx, LLC,

Plaintiff,

vs.

Tradewinds Homeowners' Association, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2018-CP-26-02187

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

RECEIVED
MAR 03 2020
SC Court of Appeals

THIS MATTER came before me for a hearing on October 1, 2019 pursuant to Defendant's Motion for Summary Judgment. Appearing for the Defendant were Willard D. Hanna, Jr., Esquire and Jonathan Patrick Hanna, Esquire; and appearing for the Plaintiff was Robert W. Maring, Esquire. Having duly considered the pleadings in this matter, including the affidavit of Michael Couture, Property Manager for the Defendant, as well as case law; and after listening to the arguments of counsel, I hereby issue the following Order.

FINDINGS OF FACT

1. On October 1, 2012, Plaintiff and Defendant entered into a contract for the Plaintiff to provide Wi-Fi internet service to the occupants of property owned by the Defendant for an initial term of five (5) years.
2. The contract provided, in Section 5, that the initial term would be automatically extended for an additional five (5) year term unless either party notified the other at least one hundred twenty-one (121) days before the expiration of the contract.

3. The contract contained a choice of law provision in Section 14.3, which stated that the agreement “is governed by and shall be interpreted under the laws of the state of New York, without regard to its choice-of-law provisions.”
4. Under New York General Obligations Law (“NY GOL”) § 5-903, a contract for service to or for any real or personal property which automatically renews for a period of longer than one month requires that the party providing the service give notice to the party receiving the service, served personally or by certified mail, calling attention to the existence of the automatic renewal provision in the contract, otherwise the contract shall not automatically renew. Such notice shall be given at least fifteen (15) days, and not more than thirty (30) days prior to the time notice is required for cancellation of the automatic renewal under the contract.
5. Plaintiff did not give notice to the Defendant at least fifteen (15) days, and not more than thirty (30) days, before the one hundred twenty-one (121) day notice requirement of the contract, either served personally or by certified mail.
6. Plaintiff brought this action for breach of contract after Defendant notified the Plaintiff that it had hired the services of another provider of Wi-Fi internet service and did not pay the sums Plaintiff alleged were due under the renewed contract.

STANDARD FOR SUMMARY JUDGMENT

“Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001) (citing Baughman v. Am. Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991)). The purpose of summary judgment is to expedite disposition of cases that do not require the services of a fact finder. George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). The Court must view the facts in the light most favorable to the non-moving party. Id. Under South Carolina Rules of Civil Procedure 56(c), the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 821 (Ct. App. 2004). Where the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party’s case. Lanham v. Blue Cross & Blue Shield of S.C., Inc., 349 S.C. 356, 361-362, 563 S.E.2d 331, 363 (2002). Once the party moving for summary judgment meets this initial burden, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Ellis, at 518, 595 S.E.2d at 821. Rather, the non-moving party must come forward with specific facts showing there is a genuine issue for trial. Id. At 518-519, 595 S.E.2d at 821.

DECISION

Plaintiff’s counsel, at the hearing, conceded to every fact laid out above. The only issue before me was whether the contract was for services which would be covered under NY GOL § 5-903. I hereby find that the contract between the Plaintiff and Defendant is a contract for services to or for real property as contemplated by NY GOL § 5-903. Because the contract was for services

to or for real property and contained an automatic renewal provision which would renew the agreement for a period of longer than one month, the Plaintiff was required under NY GOL § 5-903 to provide the Defendant with notice of the automatic renewal provision in the contract fifteen (15) days, and not more than thirty (30) days prior to the one hundred twenty-one (121) day notice requirement of the contract. Because notice was not given by the Plaintiff, the contract did not renew for an additional five-year term, and therefore there was no breach of contract.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion for Summary Judgment filed on August 7, 2019 is granted pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

IT IS SO ORDERED.

Larry B. Hyman, Jr., Circuit Court Judge
Fifteenth Judicial Circuit

Conway, South Carolina

_____, 2019



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc

Case Number: 2018CP2602187

Type: Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:15:05 page 5 of 5

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602187

Anaptyx LLC
PLAINTIFF(S)

Tradewinds Homeowners Association Inc
DEFENDANT(S)

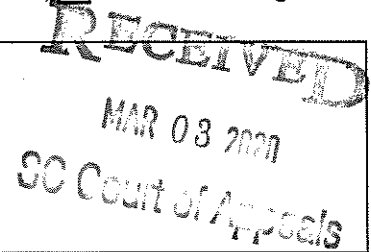
DISPOSITION TYPE (CHECK ONE)

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

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

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

Defendant's Motion/Summary Judgment is Granted.



ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 10/07/2019 .

Willard D. Hanna, Jr. for Tradewinds Homeowners Association Inc
Robert Wade Maring for Anaptyx LLC
Jonathan Patrick Hanna for Tradewinds Homeowners Association Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc

Case Number: 2018CP2602187

Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2019-10-07 14:13:13 page 3 of 3

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2018CP2602187

Anaptyx LLC
PLAINTIFF(S)

Tradewinds Homeowners Association Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plt's Motion/Reconsider is Denied.

RECEIVED

MAR 03 2020

SC Court of Appeals

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/29/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Horry Common Pleas

Case Caption: Anaptyx LLC VS Tradewinds Homeowners Association Inc

Case Number: 2018CP2602187

Type: Order/Electronic Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2020-01-29 12:22:45 page 3 of 3

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Larry Hyman, Circuit Court Judge

RECEIVED

Sep 09 2020

SC Court of Appeals

Civil Action No.: 2018-CP-26-2183; 2018-CP-26-2184; 2018-CP-26-2185; 2018-CP-26-2187
Appellate Case No.: 2020-000391

Anaptyx, LLC Appellant

v.

Golf Colony Resort II at Deer Track Homeowners' Association, Inc., Respondent

AND

Anaptyx, LLC Appellant

v.

Golf Colony Resort IV at Deer Track Homeowners' Association, Inc., Respondent

AND

Anaptyx, LLC Appellant

v.

Deerfield Plantation Community Services Association, Inc., Respondent

AND

Anaptyx, LLC Appellant

v.

Tradewinds Homeowners' Association, Inc., Respondent

Of Which Anaptyx, LLC is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR.

s/Robert W. Maring
Robert W. Maring, Bar No. 8810
PO Box 478 (29442)
1130 Highmarket St.
Georgetown, SC 29440
843-545-9544
robert@maringmoyer.com
Attorney for the Appellant

Georgetown, SC
September 9, 2020