

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC, *et al.*

Plaintiffs

v.

MAURICE B. TOSE, *et ux.*

Defendants

And

All Property Owners in Arundel on the Bay

Counter Defendants

}
} IN THE CIRCUIT COURT
} FOR ANNE ARUNDEL COUNTY


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} Case No. C-02-CV-19-3640
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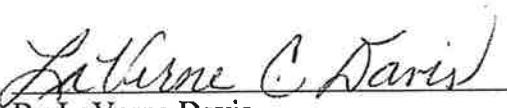
MOTION TO DISMISS


Counter Defendants, the Trustees of the John C. and LaVerne C. Davis Family Trust and the Trustees of the John and April Moses Irrevocable Trust, pursuant to Maryland Rule 2-322, file this Motion to Dismiss them as Counter Defendants, stating for cause as follows:


1. The rights of the Counter Defendants were resolved in prior litigation against Plaintiffs in the matter of *Sherry Bellamy et al. v. Property Owner Association of Arundel on the Bay*, Case # C-06-115184 by Order of Judge Philip T. Caroom issued February 6, 2008, and by the terms of a partial Settlement Agreement among the parties dated September 19, 2007.

WHEREFORE for reasons more fully set forth in the accompanying Memorandum, the Counter Defendants respectfully request that the Court dismiss them as necessary parties to this action and for such other and further relief as may be required.


By John Davis
Trustee of the John C. and LaVerne C. Davis
Family Trust, Appearing Pro Se


By LaVerne Davis
Trustee of the John C. and LaVerne C. Davis
Family Trust, Appearing Pro Se


By Melanie E. Moses
Trustee of the John and April Moses
Irrevocable Trust, Appearing Pro Se


By John R. Moses, Jr.
Trustee of the John and April Moses
Irrevocable Trust, Appearing Pro Se

PROPERTY OWNERS ASSOCIATION
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**MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS
THE CHESAPEAKE WALK PROPERTY OWNERS
AS NECESSARY PARTIES**

1. On or about October 12, 2021, a Writ of Summons issued August 19, 2021, was found on the doorstep of 3406 Chesapeake Walk addressed individually to John Davis and LaVerne Davis, Trustees for the John C. and LaVerne C. Davis Family Trust, which owns 3406 Chesapeake Walk.

2. Similarly, on or about October 18, 2021, a Writ of Summons was found on the doorstep of 3440 Chesapeake Walk by April Moses, predecessor in interest to the John and April Moses Irrevocable Trust.

3. Accompanying the Writ of Summons was a document from the Property Owners Association of Arundel on the Bay (the "Association") regarding an Order of the Court issued June 14, 2021, in this matter. The Association document titled, "Notification of Order of Court to Join Necessary Parties" and states that it is from counsel for the Association and counsel for Mr. Tose, is attached. (Attachment A).

4. The Notification states that all property owners in Arundel on the Bay are “necessary parties” to this matter and that such owners will be bound by the outcome of this case. As discussed below, however, the Association should have informed the Court that the Chesapeake Walk Owners are *not* necessary parties to this current litigation. The rights of the Chesapeake Walk Owners have been resolved by prior final order of this Court that was not appealed and by a binding Settlement Agreement among the parties.

5. The owners of 3402 Chesapeake Walk, 3406 Chesapeake Walk and 3440 Chesapeake Walk (the Chesapeake Walk Owners) have previously successfully sued the Association in this Court in a case that sought injunctive and other relief to settle ownership rights to our lots *and* to the adjoining platted but undeveloped streets.

6. In the case of *Sherry Bellamy et al v. Property Owners Association of Arundel on the Bay*, Case No. 02-C-06-115184 (Bellamy v. AOTB), in Anne Arundel County Circuit Court, the plaintiffs included Sherry Bellamy and George Bumbray, then owners of 3402 Chesapeake Walk, LaVerne and John Davis, then owners of 3406 Chesapeake Walk, and John and April Moses, then owners of 3440 Chesapeake Walk.

7. By Order of the Court issued by Judge Philip T. Caroom on February 6, 2008 (Judge Caroom’s Order) a copy of which is attached (Attachment B), the Court granted the Chesapeake Walk Owners’ Motion for Summary Judgment, finding that each of the Chesapeake Walk Owners “*have absolute ownership and right of disposition*” of all of Chesapeake Walk adjoining their properties and to the center of the adjoining streets, in accordance Maryland Real Property Article Section 2-114. *See* Judge Caroom’s Order, at paragraph 1. a) through g).

8. The Chesapeake Walk Owners argued, and the Court agreed, that under Section 2-114 of the Real Property Article of the Annotated Code of Maryland and Maryland common law

ownership in the platted and undeveloped streets had vested when each lot in Arundel on the Bay (AOTB) was sold, and that such ownership was passed as each deed of ownership was passed. As was noted in the Chesapeake Walk Owners' Memorandum in Support of the Motion of Summary Judgment:

Plaintiffs base their claim on Section 2-114 . . . which provides that any deed that grants land binding on a street shall be construed to pass to the grantee all rights, title and interest of the grantor in the street for that portion on which it binds. Plaintiffs' predecessors acquired their lots between 1891 and 1935 from the original developers of Arundel on the Bay, who had neither reserved title to the abutting streets nor conveyed title in the streets to any other person. Therefore, at the time they purchased their lots, Plaintiffs' predecessors also acquired fee simple title to the abutting streets.

The Association also claims title to the roads in dispute, relying on a deed dated September 11, 1951 from certain Trustees of the Commissioners of Arundel-on-the-Bay, Inc., a municipality created by Act of the General Assembly of Maryland in 1898 and subsequently dissolved in 1949. Although the 1951 deed does purport to convey title to the Association of certain platted streets within the subdivision, . . . ***there is no evidence that the Commissioners ever held good title to the streets they sought to convey.*** Like a deed to the Brooklyn Bridge, the Trustees' deed to the Association of roads they did not own conveyed nothing. Memorandum at 1-2, emphasis added.

9. The Motion for Summary Judgment relied upon the testimony of two expert witnesses each of whom concluded that the individual property owners held fee simple title to the platted streets abutting their property and to the middle of adjoining streets, and that the Association did not own such platted streets under prevailing Maryland law. A copy of the Motion for Summary Judgment and the expert opinions that were included with the motion is attached. (Attachment C).¹

10. The expert witnesses noted that the purported 1951 deed upon which the Association has asserted ownership of the platted but undeveloped streets was of no effect as the

¹ To avoid overburdening the Court, the entirety of the motion papers, which are voluminous and include the relevant maps, the original deeds, and several plats is not included in Attachment C but can be provided if the Court desires.

purported deed was created *sua sponte* by the Association several decades after fee simple ownership of the platted but undeveloped streets had already vested in the adjoining property owners.

11. The Association has been aware that it does not own the platted streets since at least 1994 when its own expert witness, Edward J. Albert, provided a memorandum detailing the results of an extensive title search performed “in an attempt to determine ownership to the streets . . .” The Albert Memorandum, which was annexed to the Motion for Summary Judgment in *Bellamy v. AOTB* is attached here as Attachment D. The Albert Memorandum reported his research in which he traced all conveyances from the developers of Arundel on the Bay to purchasers of lots within the development. As Mr. Albert advised the Association in 1994, ***in none of those conveyances was any right to ownership of the streets reserved to the developers or withheld from the purchasers.***

12. Mr. Albert also advised the Association that through his very extensive title search, “no evidence was found of a connection between Arundel on the Bay Properties, Inc. and The Commissioners of Arundel-on-the-Bay.” Albert Memorandum at 1. Thus, the Chesapeake Walk Owners argued, and Judge Caroom found that the Association had no basis by which to claim fee simple title to the platted streets. As Judge Caroom’s Order states, the Association “***does not own fee simple title in the aforementioned streets in Arundel on the Bay. . .***” Judge Caroom’s Order at paragraph 2 (emphasis added).

13. Finally, while the Court found that the Association had an easement in the streets adjoining the lots owned by the Chesapeake Walk Owners, the easement was pursuant to the terms provided in the parties’ partial settlement dated September 19, 2007. A copy of the Settlement Agreement, which was signed by all parties, is attached as Attachment E.

14. The attempt by the Association to include the Chesapeake Walk Owners or their successors as Counter Defendants in the present action or to change any terms of the Settlement Agreement between the Chesapeake Walk Owners and the Association due to the outcome of this case would be a violation of Judge Caroom's Order.

15. The Association's First Amended Complaint to Quiet Title, for Declaratory Relief and for Injunctive Relief for Wrongful Interference with Easement Rights, which was served upon the Chesapeake Walk Owners with the Writ of Summons, states at page 5 that "Except with respect to platted streets in Arundel on the Bay . . . the title of which has been previously determined by Court order, the Association claims title to all platted streets in Arundel on the Bay..." The Association's First Amended Complaint further asserts that "The Association's title to the platted streets stems from a Deed dated September 11, 1951..." First Amended Complaint at 5, emphasis added. It makes this assertion in spite of the evidence of its own expert and that of the experts in *Bellamy v. AOTB* that the purported 1951 deed is of no effect because *the parties to the deed did not own the platted streets at the time the deed was executed.*

16. In light of Judge Caroom's Order that gave no effect to the purported 1951 deed, the Association attempts to evade the effect of prior Court orders by claiming that "The Association, at the very least, claims title to the platted streets . . . under adverse possession by color of title pursuant to the 1951 deed." First Amended Complaint, at pages 5-6 emphasis added.

17. It is notable that the law firm that represented the Association in the 2006 suit that the Association lost on Summary Judgment is the same firm that is representing the Association in this current proceeding. It is the same law firm that in 1994 received the Albert Memorandum that concluded that "It is unknown what ownership of roads vested in the Commissioners." Albert Memorandum at 1.

18. The Association should have informed the Court that the Chesapeake Walk Owners are *not* necessary parties to this current litigation as these parties rights have been resolved by Judge Caroom's Order and the Settlement Agreement among the parties.

19. Based on Judge Caroom's Order and the Settlement Agreement, the Chesapeake Walk Owners request that the Court dismiss the Chesapeake Walk Owners as necessary parties to the current proceeding.

Signed,



John Davis

Trustee of the John C. and LaVerne C. Davis Family Trust
Owner of 3406 Chesapeake Walk
Appearing Pro-Se



LaVerne Davis

Trustee of the John C. and LaVerne C. Davis Family Trust
Owner of 3406 Chesapeake Walk
Appearing Pro-Se



Melanie E. Moses

Trustee of the John and April Moses Irrevocable Trust
Owner of 3440 Chesapeake Walk
Appearing Pro-Se



John R. Moses, Jr.

Trustee of the John and April Moses Irrevocable Trust
Owner of 3440 Chesapeake Walk
Appearing Pro-Se

Copies mailed to:

N. Tucker Meneely
Council, Baradel, Kosmerl & Nolan
125 West Street, 4th Floor
Annapolis MD 21401

Barbara J. Palmer
Hyatt & Weber, P.A.
200 Westgate Circle, Suite 500
Annapolis MD 21401

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC, *et al.*

Plaintiffs

v.
MAURICE B. TOSE, *et ux.*

Defendants

And

All Property Owners in Arundel on the Bay

Counter Defendants

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL COUNTY

Case No. C-02-CV-19-3640

ORDER

Upon consideration of the Motion to Dismiss filed by Counter Defendants the Trustees of the John C. and LaVerne C. Davis Family Trust and the Trustees of the John and April Moses Irrevocable Trust (the Chesapeake Walk Owners) and the responses thereto filed by the Plaintiffs, the Property Owners Association of Arundel on the Bay, et al. and Defendants, Maurice Tose, et ux., it is this _____ day of _____, 2021, by the Circuit Court for Anne Arundel County,

ORDERED that pursuant to the Order of the Court issued ----- and the Settlement Agreement dated ---- between the Plaintiffs and the Chesapeake Walk Owners:

1. The Order of the Court dated February 6, 2008 by Judge Philip T. Caroom in Bellamy et al. v. Property Owners Association of Arundel on the Bay, Case #C-06-115184, finding that pursuant to Maryland Real Property Article Section 14-108, the plaintiffs in that proceeding

and their successors in interest have absolute ownership and the right of disposition to the platted streets adjoining their properties in accordance with Maryland Real Property Article Sec. 2-114.

2. Judge Caroom's February 6, 2008 Order found that the Property Owners Association of Arundel on the Bay, Inc. does not own fee simple title in the aforementioned streets, but does hold an easement to the streets adjoining the lots owned by the Chesapeake Walk Owners;

3. The Settlement Agreement dated September 19, 2007, referenced in Judge Caroom's February 6, 2008 Order established the limits of the easement owned by the Property Owners Association of Arundel on the Bay, the Plaintiffs in this proceeding, and no action in this proceeding will affect that Settlement Agreement;

4. Judge Caroom's February 6, 2008 Order having resolved all matters regarding the fee simple ownership of the streets adjoining the property owned by the plaintiffs in Bellamy v. AOTB and having established the limits of the easement owned by the Plaintiffs in this proceeding, the Chesapeake Walk Owners are not necessary parties to this action.

AND IT IS FURTHER ORDERED that this action as to the Chesapeake Walk Owners as Counter Defendants is hereby DISMISSED with prejudice.

JUDGE

CERTIFICATE OF SERVICE

This certifies that on the 22nd of November, 2021, a copy of the Counter-Defendants' Motion to Dismiss was served by first class mail on:

Tucker Meneely
Council, Baradel, Kosmerl & Nolan
125 West Street, 4th Floor
Annapolis MD 21401
Counsel for Plaintiff, Property Owners Association of Arundel on the Bay et al.

Barbara J. Palmer
Hyatt & Weber, P.A.
200 Westgate Circle, Suite 500
Annapolis MD 21401
Counsel for Defendant, Maurice Tose et ux.



By April Moses

Attachment A

Notification of Order of Court to Join Necessary Parties

Notification of Order of Court to Join Necessary Parties

To: The Property Owners of Arundel on the Bay

From: N. Tucker Meneely, Esquire
Attorney for Plaintiffs, Property Owners Association of Arundel on the Bay, Inc.,
David Delia and Lori Strom

And Barbara J. Palmer, Esquire
Attorney for Defendants, Maurice Tose' and Teresa Layden

RE: Property Owners Association of Arundel on the Bay, Inc., et al. v. Tose' et ux.
Circuit Court for Anne Arundel County, MD Case No. C-02-19-003640

On November 8, 2019, the Plaintiffs filed an action to Quiet Title against Defendants, to address issues related to the paper road located on Magnolia Avenue, near its intersection with Saratoga Avenue. Plaintiffs sought an order declaring that the Plaintiffs and all lot owners within Arundel on the Bay have an implied easement to use this Disputed Street. On February 6, 2020, Defendants filed a Counter-Complaint to Quiet Title, seeking a declaration of title to the paper road and a limitation on the rights of use. Copies of the pleadings filed by the parties are available on the Association website. You may also request copies of pleadings by contacting the attorneys for the parties at the emails and phone numbers listed below.

On June 14, 2021, the Circuit Court for Anne Arundel County entered the attached Order, finding that *all property owners in the community of Arundel on the Bay are necessary parties in the litigation*. The Order also provides that if you do not wish to individually participate in the action, but instead are willing to be bound by the resolution of the action through a decision rendered by the Court or by the negotiated agreement of the participating parties, you are entitled to do so. The Plaintiffs and Defendants have each filed amended pleadings adding all property owners in the community of Arundel on the Bay as additional parties to the case.

If you would prefer NOT to be involved in the lawsuit, please review and complete the attached form and return it via mail to either address listed below or via e-mail to: Meneely@CouncilBaradel.com and/or bpalmer@hwlaw.com. If you do wish to participate in the lawsuit, or if you do not promptly complete and return the attached form to opt out of the lawsuit, you will need to file an answer to the amended pleadings filed by Plaintiffs and Defendants within the time set forth on the enclosed Summons.

If you have any questions, we encourage you to contact an attorney. You may also contact either Mr. Meneely, at 410-268-6600 or Ms. Palmer, at 410-266-0626, but please note that they may not give you legal advice.

N. Tucker Meneely
Council, Baradel, Kosmerl & Nolan
125 West Street, Fourth Floor
Annapolis, Maryland 21401

Barbara J. Palmer
Hyatt & Weber, P.A.
200 Westgate Cir. Suite 500
Annapolis, Maryland 21401

Exhibit A

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC. *et al.*

Plaintiffs/Counter-Defendants

v.

MAURICE B. TOSE', *et ux.*

Defendants/Counter-Plaintiffs

* IN THE
* CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY
* Case No. C-02-CV-19-003640

* * * * *

LINE

Mr. Clerk:

The undersigned individual is a property owner in the community of Arundel on the Bay. I have been informed that the Court entered an Order on June 14, 2021 in this action, finding that the individual property owners in the community of Arundel on the Bay are necessary parties to the litigation. I am also aware that the Order provides that I have a right to opt out of participating in the litigation, as long as I provide my consent to be bound by the outcome of this action. I have been given the opportunity to review the papers filed by the parties in this case.

By my signature, below I indicate my assent to opt out of this litigation and I affirmatively agree to be bound by, and not offer any objection to, its outcome.

Signature: _____

Printed Name: _____

Address: _____

Exhibit B

Attachment B

February 6, 2008, Order of Judge Philip T. Caroom

SHERRY BELLAMY, et al.,

IN THE CIRCUIT COURT
FOR ANNE ARUNDEL

COUNTY

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY

Case # C-06-115184

CORRECTED AMENDED ORDER

For the reasons stated in the Amended Opinion dated January 8, 2008, the Motion to Correct Clerical Error filed by the Plaintiffs and ^{filed at} any response filed thereto, it is this 6th day of ~~January~~^{Feb.}, 2008, ORDERED

1. That, pursuant to Maryland Real Property Article § 14-108, a decree be and is hereby entered, that Plaintiffs have absolute ownership and the right of disposition of the following properties, in accordance with Maryland Real Property Article § 2-114:


- a) John and April Moses, owners of Lot D, Block 6 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot D, Block 6;
- b) John and April Moses, owner of Lots E and F, Block 6 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lots E and F, and to the center of Redwood that binds on Lot F;
- c) John and April Moses, owners of Lot G, Block 6 in Arundel on the Bay, hold fee simple title to the center of Redwood Avenue that binds on Lot G;
- d) Sherry Bellamy and George Bumbray, owners of Lot D, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot D;

- e) Sherry Bellamy and George Bumbray, owners of Lot E, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot E, and to the center of Cedar Avenue that binds on Lot E;
- f) John and LaVerne Davis, owners of Lot B, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot B;
- g) John and LaVerne Davis, owners of Lot A, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot A and the center of Walnut Avenue that binds on Lot A;

2. That the Property Owners Association of Arundel on the Bay, Inc. does not own fee simple title in the aforementioned streets in Arundel on the Bay, but does hold an easement to the streets adjoining the aforementioned lots on terms provided in the parties partial settlement agreement dated September 19, 2007 and filed herein,

3. That this court found the other relief requested herein moot in light of the parties' partial settlement agreement, and

4. That this amended order constitutes a final judgment based upon which an appeal may be filed.



Judge Philip T. Caroom

Attachment C

Memorandum in Support of the Motion of Summary Judgment filed August 10,
2007 in Bellamy et al. v. AOTB

BLUMENTHAL, DELAVAN & WILLIAMS, P.A.

ATTORNEYS AT LAW

SUITE 240

170 JENNIFER ROAD

ANNAPOLIS, MARYLAND 21401

HARRY C. BLUMENTHAL*
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COUNSEL
EILEEN E. POWERS
BARBARA J. PALMER
JOHN GREGORY SMITH

August 10, 2007

VIA HAND DELIVERY

Robert P. Duckworth, Clerk
Circuit Court for Anne Arundel County, Maryland
7 Church Circle
Annapolis, Maryland 21401

Re: *Sherry Bellamy, et al. v. Property Owners Associations
of Arundel on the Bay, Inc., et al.*
Case No. C-06-115184-IJ

Dear Mr. Duckworth:

Enclosed please find for filing Plaintiffs' Motion for Summary Judgment, Memorandum of Law in Support of Motion for Summary Judgment, attached exhibits, and proposed Order.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours



Eileen E. Powers

Enclosures

cc: Ava Lias-Booker, Esq.
Robert T. Johnson, Esq.
Susan T. Ford, Esq.

SHERRY BELLAMY, *et al.*

Plaintiffs

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., *et al.*

Defendants

* IN THE CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY,
* MARYLAND
* Case No. C-06-115184

* * * * *

MOTION FOR SUMMARY JUDGMENT

Plaintiffs, Sherry Bellamy, George Bumbray, John and Laverne Davis, and John and April Moses, by their undersigned attorneys, pursuant to Maryland Rule 2-501, move for summary judgment against the Defendant, Property Owners Association of Arundel on the Bay, Inc., stating for cause as follows:

1. There is no dispute as to any material fact; and
2. Plaintiffs are entitled to judgment as a matter of law.

WHEREFORE, for reasons more fully set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request that declaratory judgment be entered in their favor, that costs be awarded against the Defendant, and for such other and further relief as the nature of the cause may require.



Eileen E. Powers
Blumenthal, Delavan & Williams, P.A.
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Annapolis, Maryland 21401
(410-573-2900)

Ava Lias Booker/esq
Ava Lias-Booker
Robert T. Johnson
MCGUIREWOODS LLP
7 Saint Paul Street, Suite 1000
Baltimore, Maryland 21202
(410) 659-4400

REQUEST FOR HEARING

Plaintiffs request a hearing on their Motion for Summary Judgment, which is currently scheduled on September 5, 2007.

Eileen E. Powers
Eileen E. Powers

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2007, a copy of the foregoing Motion for Summary Judgment and Memorandum of Law in Support of Motion for Summary Judgment were delivered by first class regular mail, postage prepaid, to:

Susan T. Ford, Esquire
Council Baradel Kosmerl & Nolan, P.A.
125 West Street, 4th Floor
Annapolis, Maryland 21404

Eileen E. Powers
Eileen E. Powers

SHERRY BELLAMY, *et al.*

Plaintiffs

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., *et al.*

Defendants

* IN THE CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY,
* MARYLAND
* Case No. C-06-115184
*

* * * * *

MEMORANDUM OF LAW
IN SUPPORT OF PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

This is a quiet title action brought by residential lot owners in the subdivision of Arundel on the Bay against the Property Owners Association of Arundel on the Bay, Inc. ("Association"). Plaintiffs seek a declaration that they hold fee simple title, as a matter of law, to portions of certain platted roads within Arundel on the Bay that abut their properties. Plaintiffs base their claim on Section 2-114 of the Real Property Article of the Annotated Code of Maryland and Maryland common law, which provides that any deed that grants land binding on a street shall be construed to pass to the grantee all right, title and interest of the grantor in the street for that portion on which it binds. Plaintiffs' predecessors acquired their lots between 1891 and 1935 from the original developers of Arundel on the Bay, who had neither reserved title to the abutting streets nor conveyed title in the streets to any other person. Therefore, at the time they purchased their lots, Plaintiffs' predecessors also acquired fee simple title to the abutting streets.

The Association also claims title to the roads in dispute, relying on a deed dated September 11, 1951 from certain Trustees of the Commissioners of Arundel-on-the-Bay, Inc., a municipality created by Act of the General Assembly of Maryland in 1898 and subsequently dissolved in 1949. Although the 1951 deed does purport to convey title to the Association of certain platted streets within the subdivision, including those involved in this action, there is no evidence that the Commissioners ever held good title to the streets they sought to convey. Like a deed to the Brooklyn Bridge, the Trustees' deed to the Association of roads they did not own conveyed nothing.¹

The Association acknowledges the lack of foundation for its 1951 deed. Over the years, however, the Association has espoused a number of theories to supply the missing links in its chain of title. Historically, the Association has claimed that the 1898 Act of the General Assembly conveyed ownership of private roads to the Commissioners. More recently, the Association has argued that the courts should "presume" a missing deed in the chain of title so as to legitimize the 1951 deed. Despite the novelty of the Association's theories, recognized title experts agree that Plaintiffs have superior title to the streets that abut their properties and the Association does not have good title. (See Exhibit A, Affidavit of John J. Dowling, and Exhibit B, Affidavit of Royal G. Shannonhouse). Therefore, Plaintiffs seek a declaratory judgment affirming their fee simple ownership of title to the streets that abut their properties.

¹ See *Wikipedia. Brooklyn Bridge*. http://en.wikipedia.org/wiki/Brooklyn_Bridge at 5 (accessed Aug. 7, 2007) ("References to 'selling the Brooklyn Bridge' abound in American culture, sometimes as examples of rural gullibility but more often in connection with an idea that strains credibility."); see also, *The Straight Dope*, "Has anybody really 'sold' the Brooklyn Bridge?" <http://www.straightdope.com/mailbag/mbrooklynbridge.htm>. (June 14, 2007).

Although there is a dispute between Plaintiffs and the Association as to who holds superior title to the platted streets in Arundel on the Bay that abut Plaintiffs' properties, there is no disagreement between the parties regarding the *use* of those streets. Both parties agree that all lot owners in Arundel on the Bay have a right of way in common over the disputed roads in order to access platted lots and the Chesapeake Bay for normal waterfront activities, including walking, swimming and fishing, in accordance with well-established principles of property law. By seeking a determination of title, Plaintiffs do not intend to challenge or interfere with the rights of lot owners in Arundel on the Bay to use the disputed streets as they have for more than a century. Therefore, the right of other lot owners to use the disputed streets is not in question.²

The only issue pending in this case is whether Plaintiffs or the Association hold fee simple title to the platted roads in Arundel on the Bay that bind Plaintiffs' properties. That question is squarely presented to the Court in this motion for summary judgment.

FACTS

For purposes of this motion, the following material facts are assumed to be true and undisputed. Viewed in the light most favorable to the Association (the non-moving party), the facts make clear that Plaintiffs hold absolute title to the roads in Arundel on the Bay that abut their properties as a matter of law.

² In partial settlement of this case, the parties have reached an agreement that will govern the future use and maintenance of the portions of the roads in dispute upon resolution of the title issue presented in this motion. As a result, Plaintiffs have voluntarily dismissed their claim for injunctive relief against the Association, and the Association has voluntarily dismissed its counterclaim for a declaration of easement, both of which claims relate to the use of the disputed roads.

A. Plaintiffs' Properties

Plaintiffs are three couples who own a total of eight lots within the subdivision of Arundel on the Bay, upon which their three residential dwellings are located. Plaintiffs' properties face the Chesapeake Bay and abut a platted right of way known as Chesapeake Walk. Plaintiffs' properties are shown on Exhibit C, and are further described as follows:

1. Bellamy/Bumbray Property: Lots D and E, Block 3. Plaintiffs Sherry Bellamy and her husband, George Bumbray ("Bellamy/Bumbray"), own two adjacent lots identified as Lots D and E, Block 3, as shown on a plat entitled "Arundel on the Bay," which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book S.H. 37, folio 509 ("AOTB Plat") (Exhibit D) and commonly known as 3402 Chesapeake Walk, Annapolis, Maryland 21403, which they acquired by deed dated March 1, 1999 and recorded in Liber 9027, folio 556 ("Bellamy/Bumbray Property," highlighted on Exhibit C in pink). The Bellamy/Bumbray Property is bounded by Chesapeake Walk and abuts the remaining part of Cedar Avenue not lost to erosion.

2. Davis Properties: Lots A and B, Block 3. Plaintiffs John and Laverne Davis ("Davis") own two adjacent lots acquired separately but used as a single residential dwelling lot ("Davis Properties"). The Davis Properties are described as follows:

(a) First Davis Property, Lot B, Block 3. The First Davis Property is identified as *Lot B, Block 3* as shown on the AOTB Plat (Exhibit D), and is commonly known as 3406 Chesapeake Walk, Annapolis, Maryland 21403, which was acquired by deed dated December 15, 1994 and recorded in Liber 6871, folio 73 (the "First Davis Property," highlighted on Exhibit B in rose). It is bounded by Chesapeake Avenue.

(b) Second Davis Property, Lot A, Block 3. The Second Davis Property is identified as *Lot A, Block 3* as shown on the AOTB Plat (Exhibit D), and is commonly known as 3408 Chesapeake Walk, Annapolis, Maryland 21403, which was acquired by deed dated September 1, 2006, and recorded in Liber 17880, folio 753 (“Second Davis Property,” highlighted on Exhibit C in blue). The Second Davis Property is bounded by Chesapeake Walk and Walnut Avenue.

3. Moses Property: Lots D, E, F and G, Block 6. Plaintiffs John and April Moses (“Moses”) own four adjacent lots identified as Lots D, E, F and G, Block 6 as shown on the AOTB Plat (Exhibit D), and known together as 3440 Chesapeake Walk, Annapolis, Maryland 21403, which were acquired by deed dated May 21, 1971 and recorded in Liber 2407, folio 361 (the “Moses Property,” highlighted on Exhibit C in yellow). The Moses Property is bounded by Chesapeake Walk and Redwood Avenue.

B. The Disputed Roads

Chesapeake Walk, which is common to all Plaintiffs’ properties, runs parallel to and hugs the shoreline of the Chesapeake Bay. (See Exhibit E, Vicinity Map). Although originally platted in 1890 as an 80-foot right-of way called Chesapeake Avenue, the road has eroded substantially over the years. (Exhibit D, AOTB Plat). This is particularly evident in front of the Bellamy/Bumbray Property, where less than 5-feet of platted road remains at its narrowest point and approximately 20-feet remains at its widest. (Exhibit F, Rogers Plat of Bellamy/Bumbray Property). Known as Chesapeake Walk for as long as Plaintiffs can remember, the platted road has never been developed or used for vehicular traffic. Instead, it has remained a grassy path, open and accessible for

pedestrian use by lot owners in Arundel on the Bay to access and enjoy the Chesapeake Bay. The attached photographs depict those portions of Chesapeake Walk that abut the Plaintiffs' properties. (Exhibit G-1, Photographs of Chesapeake Walk)

Redwood, Walnut and Cedar Avenues run perpendicular to the Chesapeake Bay and intersect with Chesapeake Walk. (Exhibit C, Dowling Plat; Exhibit D, AOTB Plat) Although portions of Redwood and Walnut Avenues on the east side of Narragansett Avenue have been paved and are open to vehicular traffic, the portions of both roads located adjacent to the Moses and Davis Properties have remained in grassy condition or have been maintained in gravel by the adjacent property owners, and are used to access Plaintiffs' properties and for pedestrian use by lot owners in Arundel on the Bay to access Chesapeake Walk and the Chesapeake Bay. (Exhibit G-2, Photographs of Redwood Avenue and Walnut Avenue) Cedar Avenue also runs perpendicular to the Chesapeake Bay. Although Cedar Avenue is shown to intersect with Chesapeake Walk on early plats, it has eroded to such a significant extent that it no longer does. (Exhibit D, Rogers Plat) Cedar Avenue is used to access the Bellamy/Bumbray Property, as well as other lots that abut it in Block 3 of Arundel on the Bay. (Exhibit G-2, Photographs of Cedar Avenue)

C. Relevant History

1. The Subdivision of Arundel on the Bay

The property that now comprises Arundel on the Bay was originally part of a 273-acre tract of land owned by Richard M. Chase ("Chase") and conveyed to the Chesapeake and Columbia Investment Company ("Chesapeake and Columbia") by deed dated September 19, 1890 and recorded in Liber SH 37, folio 507. (Exhibit A, Dowling

Affidavit, ¶ 12) Chesapeake and Columbia subdivided the raw land it acquired from Chase into approximately 600 lots, the vast majority of the lots being 50-feet wide and laid out in grids by block number and lot letter. (Exhibit D, AOTB Plat) The subdivision of Arundel on the Bay was created by a deed and a plat, both recorded among the land records of Anne Arundel County on September 17, 1890 in Liber SH 37, folio 507 and Liber SH 37, folio 509. (Exhibit D, AOTB Plat). Chesapeake and Columbia began selling lots in the new subdivision almost immediately, and continued selling lots for approximately 35 years. (Exhibit A, Dowling Affidavit, ¶ 14)

Plaintiffs own some of the earliest lots sold in Arundel on the Bay. In the first seven years after the subdivision was created, Chesapeake and Columbia sold what is now the Bellamy/Bumbray Property (Lots D and E, Block 3), the First Davis Property (Lot B, Block 3) and the Moses Property (Lots D, E, F and G, Block 6) to private owners.³ Although the lots were not in the same ownership configuration as they are today, the chain of title from these early conveyances can be traced directly from Chesapeake and Columbia to the Plaintiffs. (Exhibit A, Dowling Affidavit, ¶¶ 17-19) The deeds from the original developer to Plaintiffs' predecessors are as follows:

- April 1, 1891, Lot D, Block 6 (Moses Property), from Chesapeake and Columbia to Minnie M. Wilson, Liber SH 38, folio 502.
- August 15, 1891, Lots E and F, Block 6 (Moses Property), from Chesapeake and Columbia to Timothy D. Kalaher, Liber SH 39, folio 358.

³ Only one of the eight lots currently owned by Plaintiffs – the Second Davis Property (Lot A, Block 3) – is not derived directly from a conveyance by Chesapeake and Columbia between 1890 and 1897. That property will be discussed later in this Memorandum.

- October 8, 1893, Lot G, Block 6 (Moses Property), from Chesapeake and Columbia to Charles Gassford, Liber SH 45, folio 31.
- October 11, 1893, Lot D, Block 3 (Bellamy/Bumbray Property), from Chesapeake and Columbia to Laura A. Douglass, Liber SH 45, folio 61.
- September 23, 1895, Lot E, Block 3 (Bellamy/Bumbray Property), from Chesapeake and Columbia to Jeremiah Brosman, Liber GW 26, folio 288.
- April 29, 1897, Lot B, Block 3 (First Davis Property), from Chesapeake and Columbia to M. G. Harrison and William H. Harrison, Liber GW 115, folio 246.

(Exhibit H, copies of original deeds to all of Plaintiffs properties) The seven lots sold to Plaintiffs' predecessors in the 1890's have remained in private ownership through the current time. (Exhibit A, Dowling Affidavit, ¶18, 19, 20)

In 1926, the charter for Chesapeake and Columbia was forfeited and the balance of all unsold property in Arundel on the Bay was transferred by the Anne Arundel County Circuit Court to certain trustees, who in turn conveyed the property to Carey L. Meredith and William G. Meredith, trading as The Meredith Lumbar Company ("Meredith"). (Exhibit A, Dowling Affidavit, ¶ 15) A revised plat of Arundel on the Bay was recorded in May 1927. (Exhibit I, 1927 Plat) Meredith sold lots in Arundel on the Bay from 1926 to 1933. (Exhibit A, Dowling Affidavit, ¶ 15, 16)

In June 1933, Meredith conveyed the balance of all unsold lots in the subdivision to Arundel on the Bay Properties, Inc. ("AOB, Inc."). (Exhibit A, Dowling Affidavit ¶ 16) AOB, Inc. continued to sell lots in the subdivision from June 1933 through March 1953. (Exhibit A, Dowling Affidavit, ¶ 16)

The Second Davis Property (Lot A, Block 3) was one of the lots that moved through the hands of the early developers of Arundel on the Bay, from Chesapeake and

Columbia, to Meredith, and finally to AOB, Inc. The first relevant sale of Lot A, Block 3 to a private owner occurred in the following transaction:

- July 25, 1935, Lot A, Block 3 (Second Davis Property), from AOB, Inc. to Jesse and Josephine Ellis, Liber FAM 139, Book 507) (Exhibit H)⁴

By 1935, all of the lots presently owned by Plaintiffs had been purchased from the developers of the subdivision of Arundel on the Bay by private owners. Each of the eight lots owned by Plaintiffs has remained in private ownership to the present time.

2. The Town of Arundel on the Bay

Eight years after the subdivision of Arundel on the Bay was created by plat, a Legislative Act of the General Assembly of Maryland incorporated the Town of Arundel on the Bay (“Town”) as an independent municipality, effective April 7, 1898. Md. Laws 1898, Ch. 349. (Exhibit J-1) The boundary of the Town was defined to be the tract of land that comprised the subdivision of Arundel on the Bay, further defined by the 1890 deed from Chase to Chesapeake and Columbia. Md. Laws 1898, Ch. 349, §2. The Legislature authorized the Town to elect Commissioners (§ 3), make regulations and ordinances (§ 12), issue certain licenses (§ 13), make certain arrests (§14), levy and collect taxes (§ 16), abate nuisances (§25), construct and maintain sewers, water reservoirs, electric power supplies, structures to protect the water front (§§ 28, 29, 30, 31), and to take various other acts relating to the health, safety and welfare of the residents of the Town.

⁴ The Second Davis Property was first sold by Chesapeake and Columbia to M. G. Harrison in the late 1890’s, but it was conveyed back to Chesapeake and Columbia in April 1897 and then remained with the balance of unsold lots in the subdivision until its sale in 1935. (Exhibit A, Affidavit of John Dowling ¶ 18[b]). Its early sale is not relevant to this motion.

The 1898 Act authorized the Town to exercise certain municipal and police powers over the streets within its jurisdiction. Among the powers granted to the Town was the power “to establish the limit and width of the streets of said town and to improve the same, and remove obstructions therefrom, and [to] open new streets, lanes and alleys.” Md. Laws 1898, Ch. 349, §17. Hand in hand with the grant of municipal power over the streets to the Town was the grant of authority to pay “damages and expenses of opening, widening, and laying out” the streets and levying assessments for the same. Id. Most important for purposes of this motion, the Town was granted the power of eminent domain to enable it to acquire private property for public use as streets, as follows:

That, if in opening or laying out any new street or alley, the said commissioners *cannot agree with the owner* or owners of any land or property wanted for the purpose, for the purchase, use or occupation of the same...application may be made to any justice of the peace...who shall...summon a jury of twenty inhabitants...[who] will justly and *impartially value the damages* the owner will sustain by the use or occupation of the property for the uses hereinbefore mentioned. That the jury in estimating the damages, shall take into consideration the benefits resulting to the owner from the opening and laying out of said streets and alleys, through, along or near to the property of said owner; and the jury shall reduce their inquisition to writing...

Md. Laws 1898, Ch. 349, §18 (emphasis added). Finally, the Legislature authorized the Town to exercise municipal and police powers over its public lands, as follows:

That all the streets, alleys, lanes, parks and public grounds of said town of Arundel on the Bay shall be subject, however, at all times, *for municipal and police purposes*, to the control of the Commissioners of Arundel on the Bay, who may establish, maintain, alter and repair, such improvements thereof and thereon, as may from time to time be necessary, as herein provided.

Id. §32 (emphasis added).

The Town of Arundel on the Bay was governed as an independent municipality pursuant to the 1898 Legislative Act for the following fifty years. However, in 1949, the General Assembly repealed the charter for the Town, effective June 1, 1949, and the municipality ceased to exist. Md. Laws 1949, Ch. 527 (House Bill 191). (Exhibit J-2)

3. The Streets in Arundel on the Bay

The streets in Arundel on the Bay were laid out on paper in the AOTB Plat of 1890. (Exhibit D, AOTB Plat) From 1890 through 1926, Chesapeake and Columbia, the original developer, sold a number of lots in the subdivision, including seven of the eight lots involved in this action by reference to the AOTB Plat. During that time, Chesapeake and Columbia neither reserved title to the platted streets in the subdivision, nor granted title in the streets to any other person. (Exhibit A, Dowling Affidavit, ¶ 14) By law, each deed of an individual lot is construed to pass title to the buyer of all of Chesapeake and Columbia's right, title and interest in the street that binds the lot. *See Argument, infra.* Therefore, lots in Arundel on the Bay that were sold from 1890 through 1926 also passed title to the buyers to the adjacent platted streets, or to the center of the street if the grantor also owned land on the opposite side of the street.

From 1926 to 1933, Meredith owned property in Arundel on the Bay that had not been sold previously by Chesapeake and Columbia, and Meredith proceeded to sell additional lots in the subdivision. During that time, Meredith neither reserved title to the platted streets in the subdivision, nor did it grant title in the streets to any other person. (Exhibit A, Dowling Affidavit, ¶ 15) From 1933 to 1953, AOB, Inc. owned the remainder of the unsold property in Arundel on the Bay. Like its predecessors, AOB,

Inc. sold additional lots in the subdivision. During that time, AOB, Inc. neither reserved title in the platted streets in the subdivision, nor granted title to the streets to any other person. (Exhibit A, Dowling Affidavit, ¶ 16) By operation of law, the lots sold by these successor developers between 1926 and 1953 also passed title to the buyers to the adjacent platted streets.

Although title to many of the streets in Arundel on the Bay had already passed to adjoining lot owners during the preceding 60 years that lots were sold by its developers, on May 28, 1949, three days before the charter for the Town was repealed, the Commissioners of Arundel on the Bay executed and delivered a deed that purported to convey *in fee simple* “all of the lands included in the streets and avenues in said Town” to certain Town Trustees. (Exhibit K, Trustee’s Deed) Included among the streets named in the deed are Chesapeake Avenue, and those portions of Redwood, Walnut and Cedar Avenue in dispute in this action. The Trustees Deed directed the Trustees to hold the streets in trust for the property owners in Arundel on the Bay, and authorized the Trustees to convey the streets “to any properly organized corporation which may be organized by the aforesaid property owners of Arundel-on-the-Bay, and as directed by the aforesaid property owners....” (Exhibit K) The Trustees Deed does not contain a “being clause” referring back to a prior deed by which the Commissioners acquired the fee simple title to the streets they purported to convey to the Trustees. In fact, the Trustees Deed does not recite any means by which the Commissioners claimed title to the streets that were specifically identified in their deed to the Trustees.

Despite the absence of an antecedent deed in their chain of title, or any other valid claim of ownership, on September 11, 1951 the Town Trustees executed a deed to the Property Owners Association of Arundel-on-the-Bay, Inc. conveying *in fee simple* “all of the lands comprising the streets or avenues in the Town known as Arundel-on-the-Bay, received by the Trustees” in the Trustees Deed in 1949. (Exhibit L, 1951 Deed) The 1951 Deed identifies specific streets intended to be conveyed to the Association, including among them the streets at issue in this action. The “being clause” recited in the 1951 deed relates back to the 1949 Trustees Deed. The 1951 Deed does not recite any prior conveyance by which the Trustees are believed to have acquired title to the streets. The 1951 Deed was recorded in Liber 825, folio 32. (Exhibit L)

The Association rests its claim of title to the disputed streets on the 1951 Deed and its 1949 antecedent Trustees Deed. The Association alleges that the validity of the 1951 Deed has not been challenged for more than 50 years. (Association Counterclaim at ¶ 13) Plaintiffs dispute that claim. In recent years, the Association has become increasingly more assertive in its claim of ownership to the “paper” streets in Arundel on the Bay. By way of example, and not by limitation, the Association has removed trees from grassy walkways; required lot owners on Chesapeake Walk to obtain its written permission to apply for permits from Anne Arundel County to build piers on the Chesapeake Bay; contracted to pave the disputed portions of Cedar and Redwood Avenues; and portrayed Chesapeake Walk as “Community Recreation Area” on maps published by the Association on the community website. Perhaps most alarming, the Association has initiated litigation, albeit unsuccessfully, against other property owners based on its claim

of superior title to the platted streets in Arundel on the Bay. (See, e.g., Property Owners Association of Arundel on the Bay, Inc. v. McManus, Civil Action No. C-05-105032).

While Plaintiffs do not dispute that the Association, as an owner of property in Arundel on the Bay, has the same right to *use* the disputed streets as any other lot owner in the community, they do dispute the Association's claim to hold *fee simple title* to the streets. Because the Plaintiffs hold superior title to the streets that abut their properties, they seek to quiet title and thereby resolve continuing disputes with the Association over their respective rights and interests.

ARGUMENT

I. STANDARD OF REVIEW

Maryland Rule 2-501(a) provides that a party may file a motion for summary judgment at any time “on the ground that there is no dispute as to any material fact and that the party is entitled to judgment as a matter of law.” Maryland. Rule 2-501(a). The court examines the pleadings, depositions, admissions, answers to interrogatories, and affidavits to determine “whether a material fact exists and, if not, what the ruling of law should be...resolving all inferences...against the moving party.” Gross v. Sussex, 332 Md. 247, 256, 630 A.2d 1156 (1993). “When the moving party has provided the court with sufficient grounds for summary judgment, the opposing party must demonstrate that there is a genuine dispute of material fact by presenting facts that would be admissible in evidence.” Id., at 255. “[T]he purpose of the summary judgment is not to determine factual issues, but rather to determine whether there is a dispute over material facts that should be tried.” Russo v. Ascher, 76 Md. App. 465, 473, 545 A.2d 714 (1988).

Questions of fact alone will not preclude summary judgment; rather, a disputed fact is significant only when it is material to the outcome of the case. Keesling v. State, 288 Md. 579, 420 A.2d 261 (1980). Mere formal denials, or general allegations, which do not show facts in detail and with precision, are insufficient to prevent an award of summary judgment. Id.

II. PLAINTIFFS HOLD TITLE TO THE DISPUTED ROADS PURSUANT TO MARYLAND REAL PROPERTY ARTICLE, § 2-114 AND MARYLAND COMMON LAW.

Plaintiffs seek to quiet title to those portions of Chesapeake Avenue, Redwood Avenue, Walnut Avenue and Cedar Avenue that abut their respective properties in the subdivision of Arundel on the Bay. The statutory authority for their quiet title claim is set forth in Maryland Real Property Article § 14-108 (Quieting Title), as follows:

(a) *Conditions.* Any person in actual peaceable possession of property, or, if the property is vacant and unoccupied, in constructive and peaceable possession of it, either under color of title or claim of right by reason of his or his predecessor's adverse possession for the statutory period, *when his title to the property is denied or disputed, or when any other person claims, of record or otherwise to own the property, or any part of it,* or to hold any lien encumbrance on it, regardless of whether or not the hostile outstanding claim is being actively asserted, and if an action at law or proceeding in equity is not pending to enforce or test the validity of the title, lien, encumbrance, or other adverse claim, *the person may maintain a suit in equity in the county where the property lies to quiet or remove any cloud from the title, or determine any adverse claim.*

(b) *Proceeding.* The proceeding shall be deemed in rem or quasi in rem *so long as the only relief sought is a decree that the plaintiff has absolute ownership and the right of disposition of the property,* and an injunction against the assertion by the person named as the party defendant, of his claim by any action at law or otherwise. Any person who appears of record, or claims to have a hostile outstanding right, shall be made a defendant in the proceedings.

MD. REAL PROP. CODE ANN. § 14-108 (emphasis added). Plaintiffs seek a decree that they have absolute ownership of the portions of the disputed streets on which their properties bind.

Plaintiffs base their claim of title on Real Property Article, § 2-114 (Title to Street or Highway Where Land Binding on it is Granted), which provides as follows:

(1) *In general.* Except as otherwise provided, *any deed*, will or other instrument *that grants land binding on any street or highway*, or that includes any street or highway as one or more of the lines thereof, *shall be construed to pass* to the devisee, donee, or grantee *all the right, title and interest* of the deviser, donor, or grantor (hereinafter referred to as the transferor) *in the street or highway for that portion on which it binds.*

(2) *Property on opposite sides of street.* If the transferor owns other land on the opposite side of the street or highway, the deed, will or other instrument shall be conveyed to pass the right, title and interest of the transferor *only to the center* of that portion of the street or highway upon which the two or more tracts coextensively bind.

(3) *Exception.* The provisions of subsections (a) and (b) of this section do not apply if the transferor *in express terms in the writing* by which the devise, gift or grant is made, either *reserves to the transferor or grants to the transferee* all the right, title and interest to the street or highway.

MD. REAL PROP. CODE ANN. § 2-114 (emphasis added). According to the statute, absent an express *reservation of title* in the grantor or *grant of title* to the grantee, any deed that grants land binding on a street *passes title to grantee* to the street on which it binds. § 2-114(a). (See Exhibit B, Shannonhouse Affidavit, ¶ 20). Where a street is bound on one side by a body of water, as is the case with Chesapeake Walk in Arundel on the Bay, the statute operates to transfer title to the grantee of the entire portion of the street that binds the land conveyed, not merely to the centerline of the street. (Exhibit B, Shannonhouse

Affidavit, ¶ 21) If the grantor owns land on the opposite side of the street, the deed passes title to the grantee to the center of the street on which it binds. § 2-114(b). The statute is consistent with the general rule. See C.J.S. *Highways* § 136 (1976) (“Generally, the public acquires only an easement in highways and, subject to such easement, the fee of the land remains in the owner. In the absence of evidence to the contrary, title to the fee is presumed to be in the abutting landowner, and this title extends to the center of the way.”)

The Maryland Legislature first enacted this statute in 1892. As enacted, the law provided as follows:

Any devise, gift, grant or conveyance of land in this State, binding on any street or highway, or when any street or highway shall be one or more of the lines thereof, the same *shall be construed to pass* to the devisee, donee or grantee therein, *all the right, title and interest* of the deviser, donor or grantor of the land, to the center of the street or highway on which the same is located or binding as aforesaid, unless the deviser, donor or grantor shall, *in express terms* in the writing by which the devise, gift or conveyance is made *reserve to himself*, all the right, title and interest to the street or highway.

Md. Laws 1892, Ch. 684 (emphasis). The law was later codified in MD. ANN. CODE ART. 21, § 107 (1951), and revised with minor amendments until its present enactment in MD. REAL PROP. CODE ANN. § 2-114 (1984).

Section 2-114 merely codified and extended a presumption that was recognized at common law. Callahan v. Clemens, 184 Md. 520, 526, 41 A.2d 473, 476 (1945). At common law, there was a presumption that a conveyance of property binding on a street or highway would convey all of the grantor’s title and interest in the roadbed between the property and the centerline of the highway. The seminal case in this regard is Peabody

Heights Co. v. Sadtler, 63 Md. 533 (1885). Citing Chancellor Kent in describing the common law rule, the Court stated as follows:

The established inference of law is that a conveyance of land bounded on a public highway *carries with it the fee to the center of the road, as part and parcel of the grant*. The idea of an intention in the grantor to withhold his interest in a road to the middle of it, after parting with all his right and title to the adjoining land, is never to be presumed. It would be contrary to universal practice...that there was no instance where the fee of a highway, as distinct from the adjoining land, was ever retained by the vendor. It would require an express declaration, or something equivalent thereto, to sustain such an inference....

Id. at 536 (emphasis added). The Court clarified further, that “[i]f the soil under the highway passes by a deed of the adjoining land, it passes as a parcel of land, and not as an appurtenant.” Id. at 537 (quoting 3 Kent 433). See also Hunt v. Brown, 75 Md. 481, 23 A. 1029 (1892) (strongly recommending that the common law be codified).

A review of these authorities makes clear that under Maryland law, absent an express reservation of title, a deed to property binding on a street passes fee simple title to the street on which it binds, or, if the grantor owns land on the opposite side, to the center of the street, as part of the property conveyed. The reason for the rule is explained in the early cases. It defies common sense that a grantor would sell a parcel of property, yet retain title to the road that binds it. Because all lot owners in a subdivision acquire an easement or right of way in the platted roads in a subdivision, it is reasonable to presume that the fee of the roadbed remains in the adjacent owner, subject to the easement. Without this presumption, the original developer would continue to hold title to platted roads long after its interest in the platted lots had been sold.

In the present case, application of the common law presumption and its subsequent statutory enactment leads to the inevitable conclusion that fee simple title to the adjacent roads passed to Plaintiffs' predecessors in title when they purchased their original lots from the developer of Arundel on the Bay. Each deed described the property conveyed by lot letter and block number in reference to the AOTB Plat, which shows the identified lots binding on platted roads within the subdivision. No deed includes an express reservation of title to the adjacent streets to the developer, and nowhere in the chain of title is an express grant of title to the streets in Arundel on the Bay to any other person. (Exhibit A, Dowling Affidavit).

Therefore, by operation of law, the following streets were conveyed to Plaintiffs' predecessors in title as part of their purchase of lots from the original developers of Arundel on the Bay:

- April 1, 1891, Lot D, Block 6 (Moses Property), with all of Chesapeake Avenue binding on Lot D,
- August 15, 1891, Lots E and F, Block 6 (Moses Property), with all of Chesapeake Avenue binding on Lots E and F, and to the center of Redwood Avenue.
- October 8, 1893, Lot G, Block 6 (Moses Property), and to the center of Redwood Avenue.
- October 11, 1893, Lot D, Block 3 (Bellamy/Bumbray Property), with all of Chesapeake Avenue binding on Lot D.
- September 23, 1895, Lot E, Block 3 (Bellamy/Bumbray Property), with all of Chesapeake Avenue and to the center of Cedar Avenue.
- April 29, 1897, Lot B, Block 3 (First Davis Property), with all of Chesapeake Avenue binding on Lot B.

- July 25, 1935, Lot A, Block 3 (Second Davis Property), with all of Chesapeake Walk binding on Lot A, and to the center of Walnut Avenue.

Title to the adjacent roads that bind Plaintiffs' lots vested in the original owners of these lots upon the initial purchase of their properties, and fee simple interest in the roads continued in unbroken chains of titles up to and including the Plaintiffs. This is the conclusion of John J. Dowling, recognized expert in disputes involving titles to real property, and Royal G. Shannonhouse, a recognized expert in title analysis and technical property law issues. (Exhibit A, Dowling Affidavit ¶ 6; Exhibit B, Shannonhouse Affidavit, ¶ 7) Plaintiffs have good title to the streets that abut their properties, and the Court should enter a decree declaring them the absolute owners of the streets.

III. THE ASSOCIATION DOES NOT HAVE GOOD TITLE TO THE ROADS IN DISPUTE.

The Association claims color of title to the disputed roads by virtue of the 1951 Deed. (Counterclaim ¶ 12, 27). As the Court of Special Appeals recently explained, “[c]olor of title is that which in appearance is title, but which in reality is not good and sufficient title,” as in “an instrument that appears to convey title, but actually does not.” Yourik v. Mallonee, 174 Md. App. 415, 424, 921 A.2d 869, 875 (2007), cert. denied, 2007 Md. LEXIS 448 (June 15, 2007)(citations omitted).

1. The 1951 Deed

The 1951 Deed purports to give title to Chesapeake, Redwood, Walnut and Cedar Avenues from the Town Trustees to the Association. However, its antecedent deed, the 1949 Trustees Deed from the Commissioners to the Town Trustees, does not include a

“being” clause and the public records contain no instrument that conveys title in the streets to the Commissioners. In fact, title to those portions of Chesapeake, Redwood, Walnut and Cedar Avenues that bind seven of Plaintiffs’ lots had been conveyed along with the original deeds to those properties more than 50 years before the Commissioners attempted to deed those same streets to the Town Trustees, and the eighth of Plaintiffs’ lots was conveyed 14 years before the Trustees Deed. Absent some record that Plaintiffs’ predecessors had divested themselves of title to the adjacent streets, there is no way to close the gap in the Association’s chain of title.

2. The Acts of 1898

The Association claims there is a “presumption that the original developer in Arundel on the Bay granted the streets to the Town in 1898 upon its incorporation by statute.” (Counterclaim, ¶ 22) The Association argues that the Legislative Acts of 1898 incorporating Arundel on the Bay as a municipality somehow gave title to the streets within the subdivision to the Town Commissioners.

The Association’s claim is contrary to the facts and the law. The facts make clear that at the time the Town was incorporated in 1898, seven of the lots presently held by Plaintiffs had been sold to Plaintiffs’ predecessors in title. Pursuant to Maryland Real Property Article 2-114, fee simple title to the roadbeds of the adjacent streets passed to the new lot owners as an inherent part of the conveyances. The disputed roads, therefore, were privately owned well before the effective date of Chapter 349. The eighth lot, which is the Second Davis Property, remained titled to Chesapeake and Columbia and its successors until 1935. A search of the land records revealed that Chesapeake and

Columbia did not convey title to that lot or to the adjacent streets before the municipality was created. (Exhibit A, Dowling Affidavit). Therefore, that lot and the streets on which it was bound were also privately owned well before the effective date of Chapter 349.

The suggestion that a legislative act creating a municipality somehow divested Plaintiffs' predecessors of their fee simple title interest in the streets runs seriously afoul of the Maryland Constitution. Article III, § 40 of the Maryland Constitution provides that "the General Assembly shall enact no Law authorizing private property to be taken for public use, without just compensation...." See also Maryland Declaration of Rights, Art. 24. Although the 1898 Act gave the Town of Arundel on the Bay the *authority* to exercise eminent domain and take private property for public purpose, the Act specifically prescribed the process by which property could be taken and the means by which just compensation would be paid to a property owner. It did not grant private property to the Town.

The 1898 Act did not divest Plaintiffs' predecessors of title to the roads, which they held in fee simple. It is abundantly clear that private property cannot be transferred by legislative act. See Maryland Department of Nat. Resources v. Hirsch, 42 Md. App. 457, 476, 401 A.2d 491, 502 (1979), rev'd. on other grounds, 288 Md. 95, 416 A.2d 10 (1980) ("It is the *deed* that must be recorded. A statute is not a deed; nor is an administrative order or rule or regulation issued pursuant to a statute a deed.") (emphasis original); Ass'n. of Independent Taxi Operators, Inc. v. Yellow Cab Co., 198 Md. 181, 192, 82 A.2d 106 (1951) ("A statute cannot effectually declare that title to property now vested in A shall be vested in B"); United Finance Corp. v. Royal Realty Corp., 172 Md.

138, 143, 191 A. 81 (1937) (“The mere location of streets on the plat did not itself make them public highways, because it was beyond the power of the municipality to take from the owners thereof without their consent and without compensation [for] the land within the boundaries of the street.”); Maryland v. The Consolidated Coal Co., 46 Md. 1 (1877) (legislative act incorporating a public company is nonetheless subordinate to the Maryland Constitution prohibiting the taking of private property without agreement of owner or just compensation).

The 1898 Legislative Act simply created a municipality with its boundary defined to be the same as the subdivision of Arundel on the Bay as shown in the AOTB Plat of 1890. While the Legislature gave the Town Commissioners authority to *govern* the residents of Arundel on the Bay, it did not and could not give them *title* to the private property located within the jurisdiction of the Town’s authority. The Association’s claim that title in the streets of Arundel on the Bay vested in the Town Commissioners by virtue of the 1898 Legislative Act is without basis.

3. Presumption of Deed

The Association finally argues that the Court may presume a deed to the Town Commissioners to supply the missing link from the 1890’s in its historical chain of title, relying on Baltimore Chemical Manufacturing Company’s Lessee v. Dobbin, 23 Md. 210 (1865), and Elizabeth Casey’s Lessee v. Inloes, 1 Gill 430 (1844). While the Association argues that the public policy underpinnings of the doctrine of presumption of deed should apply in this case, the facts of the cited cases do not support its argument. In Dobbin, claimant argued that a transfer of title to real property had occurred notwithstanding that

the “last link in the chain of paper title was altogether missing.” Dobbin at 216. Although there was evidence from which to conclude that a deed had been intended, the court rejected claimant’s plea to apply the doctrine of presumption of deed. Id. In Inloes, there was a missing link in Plaintiff’s claim of title, and the court held that “[t]o supply this defect, by way of presumption, all that was requisite was to prove to the jury a continuous possession of twenty years or more.” Inloes at 490.

In this case, there is no evidence to suggest that a deed to the disputed streets was executed but has somehow been lost. Further, the Association makes no claim of adverse possession. Instead, the Association argues, without basis, that if the Court presumes a missing deed the interests of justice would be promoted. The Association clearly overlooks Plaintiffs’ interest in protecting their private property against an unconstitutional taking, or in protecting themselves from the overreaching arm of the community association. There is no reason, in law or equity, for the court to “presume” the Association has a deed to the disputed streets in its chain of title, and, even if it did, there is no basis from which the Court could reasonably determine where and when the missing link occurred.

John J. Dowling and Royal G. Shannonhouse, Plaintiffs’ expert witnesses on title disputes, have reviewed the grounds for the Association’s claim of title to the disputed streets, and have found them to be without merit. (Exhibit A, Dowling Affidavit, ¶¶ 22-29; Exhibit B, Shannonhouse Affidavit, ¶¶ 24-28) The analysis of these experts is sound. The Association’s claims are specious, at best. The Association’s insistence on asserting and exercising its claim of title over the streets adjacent to Plaintiffs’ properties, in the

face of clear evidence that actual title is held by Plaintiffs, raises questions about the Association's motives and concerns about its potential for further encroaching upon the rights and interests of other private property owners in Arundel on the Bay.

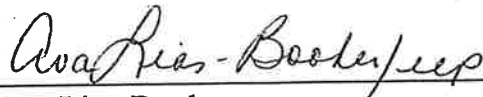
CONCLUSION

Plaintiffs have good title to the streets that abut their properties. Plaintiffs request the Court to enter a decree declaring them the absolute owners of the streets, in accordance with their respective interests in their properties.

Respectfully submitted,



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SHERRY BELLAMY, *et al.*

Plaintiffs

v.

PROPERTY OWNERS ASSOCIATION
OF ARUNDEL ON THE BAY, INC., *et al.*

Defendants

* IN THE CIRCUIT COURT
* FOR
* ANNE ARUNDEL COUNTY,
* MARYLAND
* Case No. C-06-115184
*

* * * * *

ORDER

Upon consideration of the Motion for Summary Judgment filed by Plaintiffs, and the response thereto filed by the Defendant, Property Owners Association of Arundel on the Bay, Inc., it is this ____ day of _____, 2007, by the Circuit Court for Anne Arundel County,

ORDERED, that pursuant to Maryland Real Property Article, § 14-108, a decree be and is hereby entered, that Plaintiffs have absolute ownership and the right of disposition of the following properties, in accordance with Maryland Real Property Article, § 2-114:

(1) John and April Moses, owners of Lot D, Block 6 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot D, Block 6;

(2) John and April Moses, owners of Lots E and F, Block 6 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lots E and F, and to the center of Redwood that binds on Lot F;

(3) John and April Moses, owners of Lot G, Block 6 in Arundel on the Bay, hold fee simple title to the center of Redwood Avenue that binds on Lot G;

(4) Sherry Bellamy and George Bumbray, owners of Lot D, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot D;

(5) Sherry Bellamy and George Bumbray, owners of Lot E, Block 3 in Arundel on the Bay, hold fee simple title to the center of Cedar Avenue that binds on Lot E;

(6) John and LaVerne Davis, owners of Lot B, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Avenue binding on Lot B;

(7) John and LaVerne Davis, owners of Lot A, Block 3 in Arundel on the Bay, hold fee simple title to all of Chesapeake Walk binding on Lot A, and to the center of Walnut Avenue that binds on Lot A.

AND IT IS FURTHER ORDERED, that the Property Owners Association of Arundel on the Bay, Inc. does not have fee simple title or any other ownership interest in the aforementioned streets in Arundel on the Bay.

JUDGE

SHERRY BELLAMY, <i>et al.</i> ,	*	IN THE CIRCUIT COURT
Plaintiffs,	*	FOR
v.	*	ANNE ARUNDEL COUNTY,
PROPERTY OWNERS ASSOCIATION	*	MARYLAND
OF ARUNDEL ON THE BAY, INC.,	*	Case No. C-06-115184 IJ
<i>et al.</i> ,	*	
Defendants.	*	
* * * * *		

AFFIDAVIT OF JOHN J. DOWLING

1. I am over 18 years old and am not a party to this action.
2. I was admitted as an attorney to practice before the Maryland Court of Appeals on June 21, 1978 and have been in good standing with the Court since that time.
3. I was licensed by the State of Maryland as a property line surveyor on August 6, 1980 and have been in good standing with the state since that time.
4. Prior to and since my admission to the Maryland bar, I have been engaged in the abstracting and examination of real property titles and have continued to be so engaged to the present time in Anne Arundel County and throughout the State of Maryland. I am familiar with the professional and industry standards and legal requirements involved in abstracting and examining real property titles in those jurisdictions.
5. I am familiar with the requirements involved in rendering an opinion on the ownership of real property based on county land and court records, including the purpose of the grantor and grantee indexes, legal effect on titles of subdivision plats, deeds and other documents maintained or described in the land records, and the effect that law and equity actions and Maryland statutes have on a title to real property. I am also familiar with the effect real property descriptions, boundaries and location have on titles.
6. During the past twenty-five (25) years, I have been qualified as an expert witness and have testified in numerous court cases involving titles to real property. My testimony regarding abstracting and examination of real property titles and in surveying has been accepted as that of an expert witness by the Circuit Courts for Anne Arundel, Baltimore, Carroll, Allegany and Garrett Counties.
7. My experience in and knowledge of title abstracting and examination and surveying has been supplemented by continuing education courses I have taken in those subjects over the past twenty-nine (29) years.

8. The title abstracts and examinations I prepare and the opinions and conclusion I express based on information maintained in the land and court records are regularly accepted and used by attorneys, title companies, mortgage lenders and title insurance companies for their determination of ownership status of real property.
9. I am familiar with the Arundel on the Bay subdivision located in Anne Arundel County. I have abstracted and examined and rendered opinions on title ownership of approximately fifteen (15) properties located within that subdivision. Based upon my abstracts and examinations, I am familiar with the plat that created the subdivision in 1890 as well as the history of the plat's creator, Chesapeake and Columbia Investment Company, in conveying away ownership of lots, streets, alley and avenues located within Arundel on the Bay Subdivision.
10. Based on such title abstracting and examination, I am familiar with the history of ownership of Chesapeake Avenue, Walnut Avenue, Redwood Avenue, and Cedar Avenue, which are located within the Arundel-On-The-Bay Subdivision, from the time they were created by plat in 1890 until the present time.
11. Based on my examination of the Land Records of Anne Arundel County and my knowledge and experience with abstracting real property titles and surveying, I have determined that the following information is contained in the Land Records concerning the title ownership of Chesapeake Avenue, Walnut Avenue, Redwood Avenue and Cedar Avenue.
12. The land that is now Arundel on the Bay originally was owned by Richard M. Chase, who conveyed 273- $\frac{1}{4}$ acres to the Chesapeake and Columbia Investment Company, a corporation, by deed dated September 19, 1890 and recorded in Liber SH 37, folio 507.
13. The Chesapeake and Columbia Investment Company subdivided the raw land conveyed by Chase and created the Arundel on the Bay subdivision on or about September 17, 1890 when it recorded both a deed at Liber SH 37 at Page 507 of the Anne Arundel County Land Records and a subdivision plat of Arundel on the Bay at Liber SH 37 at Page 509 (hereinafter the "AOTB Plat"). The plat was subsequently revised in a Revised Plat prepared by J. Revel Carr in 1927.
14. Over the subsequent period of approximately thirty-five (35) years, the Chesapeake and Columbia Investment Company made out-conveyances by deed of some of the lots it had created within the subdivision of Arundel on the Bay. I reviewed all of the conveyances from the Chesapeake and Columbia Investment Company in Arundel on the Bay to determine whether the Chesapeake and Columbia Investment Company made any disposition of the roads, streets, alleys or avenues within the subdivision. None of the instruments from the Chesapeake and Columbia Investment Company included:
 - (a) A *reservation* of title to the streets, alleys, or avenues in the subdivision;
 - (b) A *grant* of rights, title or interest in the roads, streets, alleys, or avenues in the subdivision to any party, or

16. Pursuant to an order issued by the Anne Arundel Circuit Court in Equity Case No. 4988, the ownership interests of Chesapeake and Columbia Investment Company in the balance of the then unsold lots in the Arundel on the Bay subdivision were transferred by court-appointed Trustees to Carey L. Meredith, et al in 1926.
15. Carey L. Meredith and William G. Meredith, trading as The Meredith Lumber Company, sold property within Arundel on the Bay for the period July 23, 1926 to June 16, 1933. I reviewed all of the conveyances to determine whether Carey L. Meredith and William G. Meredith, trading as The Meredith Lumber Company, made any disposition of the roads, streets, alleys or avenues within the subdivision. None of the instruments from Carey L. Meredith and William G. Meredith, trading as The Meredith Lumber Company, included:
 - (a) A *reservation* of title to the streets, alleys, or avenues in the subdivision;
 - (b) A *grant* of rights, title or interest in the roads, streets, alleys, or avenues in the subdivision to any party, or
16. Carey L. Meredith and William G. Meredith, trading as The Meredith Lumber Company, conveyed their interests in the unsold lots in Arundel on the Bay to an entity known as Arundel on the Bay Properties, Inc. by deed dated June 24, 1933 and recorded in Liber FSR 111 at Page 261. Arundel on the Bay Properties, Inc. continued to sell property within Arundel on the Bay from 1933 through March 2, 1953. I reviewed all of these conveyances to determine whether Arundel on the Bay Properties, Inc. made any disposition of the roads, streets, alleys or avenues within the subdivision. None of the instruments from Arundel on the Bay Properties, Inc. included:
 - (a) A *reservation* of title to the streets, alleys, or avenues in the subdivision;
 - (b) A *grant* of rights, title or interest in the roads, streets, alleys, or avenues in the subdivision to any party, or
17. I examined the title to the Bellamy/Bumbray Property known as 3402 Chesapeake Walk, Annapolis, Maryland 21403, which is identified as **Lots D and E, Block 3**, as shown on a the "AOTB Plat." A copy of my summary report is attached as *Exhibit 1*. The property was acquired by Sherry Bellamy and George Bumbray by virtue of a deed dated March 1, 1999 and recorded among the Land Records in Liber 9027, folio 556. Title to the property can be traced from the Chesapeake and Columbia Investment Company to the current owners, as follows:
 - (a) Title to Lot D, Block 3, was originally conveyed by the Chesapeake and Columbia Investment Company to Laura A. Douglas by deed dated **October 11, 1893** and recorded in Liber SH 45, folio 61. The chain of title leads directly from this conveyance to the current deed to the Bellamy/Bumbray Property.
 - (b) Title to Lot E, Block 3, was originally conveyed by the Chesapeake and Columbia Investment Company to Jeremiah J. Brosman by deed dated **September 23,**

1895 and recorded in Liber GW 26, folio 288. The chain of title leads directly from this conveyance to the current deed to the Bellamy/Bumbray Property.

18. I examined title to the First Davis Property known as 3406 Chesapeake Walk, Annapolis, Maryland 21403, which is identified as **Lot B, Block 3** as shown on the AOTB Plat. A summary of my title report is attached as *Exhibit 2*. The property was acquired by John and LaVerne Davis by virtue of a deed dated December 15, 1994 and recorded among the Land Records in Liber 6871, folio 73. Title to the properties can be traced from the Chesapeake and Columbia Investment Company to the current owners, as follows:

(a) Title to Lot B, Block 3 was originally conveyed by the Chesapeake and Columbia Investment Company to M. G. Harrison and William H. Harrison by deed dated **January 8, 1897** and recorded in Liber GW 115, folio 244. The chain of title leads from this conveyance to the current deed to the Second Davis Property.

I also examined title the Second Davis Property, which is identified as **Lot A, Block 3** as shown on the AOTB Plat. A summary of my title report is attached as *Exhibit 2*. The property was acquired by John and LaVerne Davis by virtue of a deed dated September 1, 2006, and recorded among the Land Records in Liber 17880, folio 753.

(b) Title to Lot A, Block 3 was originally conveyed by the Chesapeake and Columbia Investment Company to M. G. Harrison, but shortly thereafter was conveyed by M. G. Harrison back to the Chesapeake and Columbia Investment Company by indenture dated April 29, 1897 and recorded in Liber GW 115, folio 244. Lot A, Block 3 was one of the unsold lots acquired by Arundel on the Bay Properties, Inc. in 1933. Title to Lot A, Block 3 subsequently was conveyed by Arundel on the Bay Properties, Inc. to Jesse and Josephine Ellis by deed dated **July 25, 1935** and recorded in Liber FAM 139, folio 507. The chain of title leads from this conveyance to the current deed to the Second Davis Property.

19. I examined the title to the Moses Property known as 3440 Chesapeake Walk, Annapolis, Maryland 21403, which is identified as **Lots D, E, F and G, Block 6** as shown on the AOTB Plat. A copy of my summary report is attached as *Exhibit 3*. The property was acquired by John and April Moses by virtue of a deed dated May 21, 1971 and recorded among in Liber 2407, folio 361. Title to the property can be traced from the Chesapeake and Columbia Investment Company to the current owners, as follows:

(a) Title to **Lot D**, Block 6 was originally conveyed by the Chesapeake and Columbia Investment Company to Minnie M. Wilson by deed dated **April 1, 1891** and recorded in Liber SH 38, folio 502. The chain of title leads from the conveyance to the current deed to the Moses Property.

(b) Title to **Lots E and F**, Block 6 were originally conveyed by the Chesapeake and Columbia Investment Company to Timothy D. Kalcher by deed dated **August 15, 1891** and recorded in Liber SH 39, folio 358. The chain of title leads from the conveyance to the current deed to the Moses Property.

(b) Title to **Lot G**, block 6 was originally conveyed by the Chesapeake and Columbia Investment Company to Charles Gassford by deed dated **October 8, 1893** and recorded in Liber SH 45, folio 31. The chain of title leads from the conveyance to the current deed to the Moses Property.

20. I examined all of the documents in the chain of title in the aforesaid transfers and find that no owner prior to the Plaintiffs reserved any ownership interest in the streets, alleys or avenues of Arundel on the Bay subdivision, or granted any ownership interest in the streets, alleys or avenues.

21. Because none of the previous owners of the Bellamy/Bumbray Property, the Davis Properties, or the Moses Property reserved or granted any interest in the streets, alleys and avenues incident to its out-conveyances of lots, ownership of the of the streets, alleys and avenues is, under accepted title and examination and abstracting practices, considered to be vested in the owners of lots abutting them pursuant to Maryland Code Real Property Article, Section 2-114 and the common law that preceded it, as follows:

(a) Because ownership of Chesapeake Avenue was not reserved by the original developer, the Chesapeake and Columbia Land Investment Company, nor by any successor owner, nor was title conveyed by the Chesapeake and Columbia Land Investment Company or any successor owner to any other person prior to the conveyances to the Plaintiffs' predecessors in title, accepted title examination practice based on Maryland Real Property Article, Section 2-114 and the common law that preceded it, leads me to conclude that all portions of Chesapeake Avenue that bind on the Bellamy/Bumbray Property, the Davis Properties, and the Moses Property are owned by Sherry Bellamy and George Bumbray, John and LaVerne Davis, and John and April Moses, respectively, in fee simple.

(b) Because ownership of Walnut Avenue was not reserved by the original developer, the Chesapeake and Columbia Land Investment Company, nor by any successor owner, nor was title conveyed by the Chesapeake and Columbia Land Investment Company nor any successor owner to any other person prior to the conveyances to the Davis's predecessors in title, accepted title examination practice based on Maryland Real Property Article, Section 2-114 and the common law that preceded it, leads me to conclude that the portion of Walnut Avenue that binds on the Davis Properties is owned by John and LaVerne Davis to the center of Walnut Avenue.

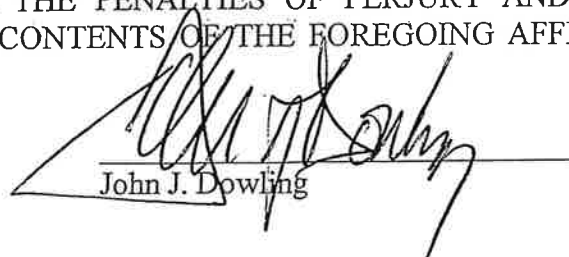
(c) Because ownership of Redwood Avenue was not reserved by the original developer, the Chesapeake and Columbia Land Investment Company, nor by any successor owner, nor was title conveyed by the Chesapeake and Columbia Land Investment Company to other person prior to the conveyances to the Moses' predecessors in title, accepted title examination practice based on Maryland Real Property Article, Section 2-114 and the common law that preceded it, leads me to conclude that the portion of Redwood Avenue that binds on the Moses Property is owned by John and April Moses to the center of Redwood Avenue.

(d) Because ownership of Cedar Avenue was not reserved by the original developer, the Chesapeake and Columbia Land Investment Company, nor by any successor owner, nor was title conveyed by the Chesapeake and Columbia Land Investment Company to any other person prior to the conveyances to the Bellamy/Bumbray's predecessors in title, accepted title examination practice based on Maryland Real Property Article, Section 2-114 and the common law that preceded it, leads me to conclude that the portion of Cedar Avenue that binds on the Bellamy/Bumbray Property is owned by Sherry Bellamy and George Bumbray to the center of Cedar Avenue.

22. I have reviewed the Counterclaim filed in this case by the Property Owners Association of Arundel on the Bay, Inc. ("POAAB"), including its claim of ownership of platted streets in Arundel on the Bay, including Chesapeake Avenue, Redwood Avenue and Walnut Avenue pursuant to a deed dated September 11, 1951 and recorded in Book 825 at Page 32 of the Land Records of Anne Arundel County.
23. The deed upon which the POAAB relies purports to be a conveyance from "Trustees" of the Commissioners of "Arundel on the Bay, a municipality" to POAAB. However, in researching the source of the Trustees' authority to convey the property described in that deed, I found no evidence in the Land Records or Court Records of the County which supports any claim of ownership in the Trustees of streets, alleys or avenues within the Arundel on the Bay subdivision. Nor did I find any evidence in those records that the "Commissioners of Arundel on the Bay" or the municipality they governed possessed any ownership rights in streets, alleys or avenues or had any authority to convey them.
24. I have researched the Land and Court Records for evidence to support the chain of title through which POAAB claims ownership of the streets and alleys in Arundel on the Bay subdivision by the above deed. My research included going back in time through the Land Records to search for documents in the chain of title leading up to their deed and then going forward from the date of the deed to the present time. I found no documents that support the validity of the transfer of land purported to take place by deed recorded in Book 825 at page 32.
25. Based on the documentary evidence maintained in the County Land and Court Records, I conclude there are no public records to support the claim by POAAB that it owns Chesapeake Avenue, Redwood Avenue and Walnut Avenue. However, there is ample evidence, including the deeds described above held by the Plaintiffs, to lead me to conclude that, based on accepted title examination and abstracting practices, the portion of Chesapeake Avenue, Redwood Avenue, Walnut Avenue and Cedar Avenue that abut the properties owned by Sherry Bellamy and George Bumbray, John and LaVerne Davis, and John and April Moses, are owned in fee simple by them.
26. I am familiar with the Legislative Act of the General Assembly of Maryland of 1898 which created the entity known as "Arundel on the Bay, a municipality." I have read and reviewed its language and considered how the Act might affect ownership of the streets, alleys and avenues within the Arundel on the Bay subdivision.

27. Based on my review of both the above Legislative Act and the County land records, the subdivision named "Arundel on the Bay" and the municipality also named "Arundel on the Bay" are two distinct and different entities created for different purposes. The subdivision is a division of a large parcel of raw land into individual lots by a private landowner in 1890, while the municipality was a political creation in 1896 established to govern an area that is, coincidentally, the same area that is depicted on the subdivision plat.
28. Based on my knowledge of the origin and ownership of the Plat entitled "Arundel on the Bay," the aforesaid Legislative Act did nothing to change ownership of the land situated within the "Arundel on the Bay" subdivision. I found no documents or other evidence in the County Land or Court Records showing that the original owner and private developer of the Arundel on the Bay subdivision, The Chesapeake and Columbia Investment Company, relinquished ownership or control of the streets, alleys or avenues to the politically created municipality called "Arundel on the Bay."
29. At the time of the enactment of that Legislative Act, the Land Records for Anne Arundel County showed that the streets, alleys and avenues within the subdivision were privately owned by the the Chesapeake and Columbia Investment Company. The Company continued to own the streets, alleys and avenues subsequent to the enactment of the Legislative Act according to the documents maintained in the County Land Records.
30. When the Chesapeake and Columbia Investment Company conveyed title to the predecessors in title to the Bellamy/Bumbray Property, the First Davis Property, and the Moses Property, title to the streets on which those properties bind was conveyed in fee simple along with the land.
31. When Arundel on the Bay Properties, Inc. conveyed title to the precessor in title to the Second Davis Property, title to the streets on which that property binds was conveyed in simple along with the land.
32. Based upon the above facts, it is my opinion that Sherry Bellamy and George Bumbray, John and LaVerne Davis, and John and April Moses, hold title in fee simple to all of Chesapeake Walk that binds their respective properties, and to the center of those portions of Redwood Avenue, Walnut Avenue and Cedar Avenue that bind their respective properties.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE.


John J. Dowling

JOHN J. DOWLING
115 CATHEDRAL STREET
ANNAPOLIS, MD 21401
410.269.1053 FAX 410.269.5260

FILE NO. McGW, 1 of 3
COUNTY: Anne Arundel

ADDRESS: No. 3402 Chesapeake Walk

DESCRIPTION: Lots D & E, Blk. 3, Arundel on the Bay, "Revised Plat" Plat Book 9 Page 25*

FEE SIMPLE TITLE: Sherry F. Bellamy & George A. Bumbray

LEGAL DESCRIPTION: LIBER 9027 FOLIO 556

BEING CLAUSE: Being the same lot of ground by deed 9027-556 dated 01-21-99 granted and conveyed by Robert A. Durant & Lisa A. Portner aka Lisa Durant unto Sherry F. Bellamy & George A. Bumbray.

OPEN MORTGAGE / DEED OF TRUST: 15423-295

JUDGEMENTS: Property Insight attached, 02-C-06-115184 II, 02-C-95-024605

TAX ACCOUNT: 02-002-0304-2250

LIEN ORDERED: NO

TAX MAP 57 BLOCK 21 PARCEL 15

MAINTENANCE CHARGES:

RESTRICTIONS: SH 45-61, GW 26-288

EASEMENTS: 9589-664

POLE AGREEMENTS:

PUBLIC UTILITY AGREEMENTS:

*OTHER: The original conveyances from the developer, at deed SH 45-61 & GW 26-288 was by reference to the plat at SH 37-509, conveyances from 2955-848 to date refer to the "Revised Plat".

REMARKS: REMARKS: Facts and conditions plat of Arundel on the Bay, "Revised Plat" Plat Book 9 Page 25, # 492, formerly plat book FSR 3-82 and #11 cab 1 rod A-3, see also the plat of Arundel on the Bay recorded among the Land Records of Anne Arundel County in Liber SH 37-509. A interest in Chesapeake Ave would pass under Real Property 2-114, to the centerline if there was land beyond the right-of-way as it appears on SH 37-509. The entire area if no land beyond the right-of-way. See also memorandum opinion case C-95-24605 as to Chesapeake Ave., 8743-618

BY:

TITLE REPORTED THRU 09-12-2006
SUBMITTED 10-31-2006

This report consists of a cover page, indices, plat or plattings and a summary of title.
3402chesapeake.tr.wpd

JD 0223

JOHN J. DOWLING
115 CATHEDRAL STREET
ANNAPOLIS, MD 21401
410.269.1053 FAX 410.269.5260

FILE NO. McGW, 2 of 3
COUNTY: Anne Arundel

ADDRESS: No. 3406 Chesapeake Walk

DESCRIPTION: Lot B, Blk. 3, Arundel on the Bay, "Revised Plat", Plat Book 9 Page 25*

FEE SIMPLE TITLE: John C. Davis & LaVerne C. Davis

LEGAL DESCRIPTION: LIBER 6871 FOLIO 073

BEING CLAUSE: Being the same lot of ground by deed 6871-073 dated 11-14-94 granted and conveyed by June Yvonne Johnson unto John C. Davis & LaVerne C. Davis.

OPEN MORTGAGE / DEED OF TRUST: 14749-647, 15105-579, 15862-271, 17014-793 & 17771-246

JUDGEMENTS: Property Insight attached, 02-C-06-115184 II, see also Equity # 3110588

TAX ACCOUNT: 02-002-0376-3200

LIEN ORDERED: NO

TAX MAP 57 BLOCK 21 PARCEL 15

MAINTENANCE CHARGES:

RESTRICTIONS: GW 115-244

EASEMENTS: FAM 139-507, 6871-70, 7087-15

POLE AGREEMENTS: GW 53-327

PUBLIC UTILITY AGREEMENTS: 7179-671

*OTHER: The original conveyance from the developer in 1897, recorded 04-21-1915, at deed GW 115-244 was by reference to the plat at SH 37-509, conveyances from 3597-377 to date refer to the "Revised Plat". Note, also that a predecessor in title conveyed lot B before they acquired lot B, see summary attached.

REMARKS: Facts and conditions plat of Arundel on the Bay, "Revised Plat" Plat Book 9 Page 25, # 492, formerly plat book FSR 3-82 and #11 cab 1 rod A-3, see also the plat of Arundel on the Bay recorded among the Land Records of Anne Arundel County in Liber SH 37-509. A interest in Chesapeake Ave would pass under Real Property 2-114, to the centerline if there was land beyond the right-of-way as it appears on SH 37-509. The entire area if no land beyond the right-of-way.

BY: 
TITLE REPORTED THRU 09-12-2006
SUBMITTED 10-31-2006

This report consists of a cover page, indices, plat or plattings and a summary of title.
3406chesapeake.ir.wpd

JD 0118

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115 CATHEDRAL STREET
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410.269.1053 FAX 410.269.5260

FILE NO. McGW, 3 of 3
COUNTY: Anne Arundel

ADDRESS: No. 3440 Chesapeake Walk

DESCRIPTION: Lots D,E,F, & G, Blk. 6, Arundel on the Bay, "Revised Plat" Plat Book 9 Page 25*

FEE SIMPLE TITLE: John R. Moses & April H. Moses

LEGAL DESCRIPTION: LIBER 2407 FOLIO 361

BEING CLAUSE: Being the same lots of ground by deed 2407-361 dated 05-20-71 granted and conveyed by Ruth Savoy Lattimore unto John R. Moses & April H. Moses.

OPEN MORTGAGE / DEED OF TRUST: 13991-540, 15058-402

JUDGEMENTS: Property Insight attached, 02-C-06-115184 U

TAX ACCOUNT: 02-002-0848-8803

LIEN ORDERED: NO

TAX MAP 57 BLOCK 21 PARCEL 15

MAINTENANCE CHARGES:

RESTRICTIONS: SH 38-502, SH 39-358 & SH 45-31

EASEMENTS: 583-268

POLE AGREEMENTS:

PUBLIC UTILITY AGREEMENTS:

*OTHER: The original conveyances from the developer, at deed SH 38-502, SH 39-358 & SH 45-31 was by reference to the plat at SH 37-509, conveyances from 583-268 to date refer to the "Revised Plat".

REMARKS: REMARKS: Facts and conditions plat of Arundel on the Bay, "Revised Plat" Plat Book 9 Page 25, # 492, formerly plat book FSR 3-82 and #11 cab 1 rod A-3, see also the plat of Arundel on the Bay recorded among the Land Records of Anne Arundel County in Liber SH 37-509. An interest in Chesapeake Ave would pass under Real Property 2-114, to the centerline if there was land beyond the right-of-way as it appears on SH 37-509. The entire area if no land beyond the right-of-way.

BY:

TITLE REPORTED THRU 09-12-2006

SUBMITTED 10-31-2006

This report consists of a cover page, indices, plat or drawings and a summary of title.
3440chesapeake.tr.wpd

JD 0176

EXHIBIT 3

SHERRY BELLAMY, <i>et al.</i> ,	*	IN THE CIRCUIT COURT
	*	
Plaintiffs,	*	FOR
	*	
v.	*	ANNE ARUNDEL COUNTY,
	*	
PROPERTY OWNERS ASSOCIATION	*	MARYLAND
OF ARUNDEL ON THE BAY, INC.,	*	
<i>et al.</i> ,	*	Case No. C-06-115184 IJ
	*	
Defendants.	*	
	*	
* * * * *		

AFFIDAVIT OF ROYAL G. SHANNONHOUSE

I, Royal G. Shannonhouse, hereby state as follows:

1. I am over the age of eighteen (18) years, am competent to testify as to the matters and facts set forth herein, and am not a party to this action.

2. I have been an attorney for more than forty (40) years and am admitted to practice in Maryland, North Carolina, the United States District Court, E.D.N.C. and D. Md., the U.S. Court of Appeals, Fourth Circuit and the U.S. Court of Military Appeals. I maintain an inactive status in all jurisdictions except Maryland, but remain in good standing in all jurisdictions in which I have been licensed.

3. I have served as appellate counsel in two reported cases before the Maryland Court of Special Appeals and one reported case in the U.S. Court of Appeals, Fourth Circuit, which cases have the following citations: (1) *Johnson v. Baker*, 84 Md.App. 521, 581 A.2d 48 (1990); (2) *Steuber v. Arrowhead Farm Estate Ltd. Part*, 69 Md.App. 775, 519 A.2d 816 (1987); and (3) *United States v. James*, 417 F.2d 826 (4th Cir. 1969).

4. My numerous publications include the Maryland Property Law Survey, which I privately published and updated annually from 1989-1993.

5. I served as an Adjunct Professor of Law at the University of Baltimore School of Law from 1983-1993 and as an Associate Professor and Professor of Law at the University of Baltimore School of Law from 1969-1983, teaching courses in real property law. I also served as an Assistant Professor of Law at the University of Georgia School of Law from 1960-1964. Additionally, I served as Assistant Professor of Public Law and Government and Assistant Director, Institute of Government for the University of North Carolina at Chapel Hill from 1955-1960.

6. Through my prior experience in real property law, as detailed above, I am familiar with MD. CODE ANN., REAL PROP. § 2-114 ("Maryland Real Property Code, Section 2-114"), which concerns title to streets or highways where land binding on it is granted, together with relevant Maryland case law and relevant Maryland common law that predates Maryland Real

Property Code, Section 2-114. I also am familiar with the requirements involved in rendering an opinion on the ownership of real property based on county land and court records, including the legal effect on titles of subdivision plats, deeds and other documents maintained or described in the land records, and the affect that law and equity actions and Maryland statutes have on title to real property.

7. During my career, I have served as an expert witness, consultant or co-counsel in cases involving, by way of example, title analysis and technical property law issues, adverse possession, easements, including prescriptive easements, reciprocal servitudes, equitable servitudes and zoning issues. My testimony regarding title and land use issues has been accepted as that of an expert by the Circuit Courts for Anne Arundel, Frederick and Worcester Counties and for Baltimore City.

8. My legal analyses and consultations regarding title and land use issues are regularly accepted and relied upon by attorneys throughout Maryland.

9. I have reviewed the Complaint and Counterclaim filed in this matter, and all documents attached thereto, together with several other pleadings in this matter, and have also reviewed the title abstract and title and plat documents generated by John J. Dowling, Esq., whom Plaintiffs' have also retained as an expert in this matter, together with the Affidavit prepared by Mr. Dowling in this matter. I have also reviewed the deed of conveyance from Richard M. Chase to Chesapeake and Columbia Investment Company ("Chesapeake"), recorded at Liber SH 37, folio 507 (the "Chase Deed"), by which deed Richard M. Chase conveyed the raw land that eventually became known as the community of Arundel on the Bay in Anne Arundel County, Maryland. The Chase Deed is attached as **Exhibit B** to the Defendants' Counterclaim. Additionally, I have reviewed the Act by which the Maryland General Assembly established the municipality of Arundel on the Bay (the "1898 Act"), Md. Laws 1898, Ch. 349, together with the repeal by the Maryland General Assembly of the 1898 Act (the "1949 Act"). The 1898 and 1949 Acts are attached as **Exhibits C** and **E**, respectively, to the Counterclaim. Lastly, I have reviewed a deed from the Town Commissioners of Arundel on the Bay (the "Commissioners") to Willa Gallagher, George E. Terrell, and Clarence W. Gosnell (collectively, the "Trustees"), dated May 28, 1949 and recorded at Liber 523, folio 598 (the "1949 Deed") (**Exhibit F** to the Counterclaim), and a deed from the Trustees to the Property Owners Association of Arundel on the Bay, Inc. (the "Association"), dated September 11, 1951 and recorded at Liber 825, folio 32 (the "1951 Deed") (**Exhibit G** to the counterclaim), together with all other deeds produced by the Association in this matter in connection with the Counterclaim.

10. Based on such review, I am familiar with the history of ownership of the real property presently owned by the Plaintiffs in this matter, together with the relevant history of Arundel on the Bay and of the Association and have made the following determinations.

11. By way of the Chase Deed, Richard M. Chase conveyed to Chesapeake all the raw, unsubdivided land that is presently known as Arundel on the Bay, as reflected on a plat entitled "Arundel on the Bay," which plat is recorded among the Land Records of Anne Arundel County, Maryland in Liber SH 37, folio 509 (hereinafter, the "AOTB Plat"). The Chase Deed evidences that all of the real property shown in the AOTB Plat was conveyed to Chesapeake with no reservation by Richard M. Chase of title to any portion of such property. The Chase Deed was recorded on September 19, 1890.

12. Pursuant to an Order of the Circuit Court for Anne Arundel County, Maryland in Equity Case No. 4988, Chesapeake's charter was forfeited. Thereafter, the ownership interests of Chesapeake in the balance of the then unsold lots in Arundel on the Bay were transferred by court-appointed trustees to Carey Meredith, et al. ("Meredith"), in 1926. By deed dated January 24, 1933 and recorded in Liber FSR 111, folio 261, Meredith conveyed such interests to Arundel on the Bay Properties, Inc. ("AOB Properties").

13. Pursuant to deeds dated April 1, 1891, August 15, 1891 and October 8, 1893, and recorded in Liber SH 38, folio 502, Liber SH 39, folio 358 and Liber SH 45, folio 31, respectively (the "Moses Predecessor Deeds"), Chesapeake conveyed the real property located in Anne Arundel County, Maryland presently known as 3440 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lots D, E, F and G, Block 6, as shown on the AOTB Plat (the "Moses Property"), to the first predecessors in title of Plaintiffs John and April Moses.

14. Pursuant to deeds dated October 11, 1893 and September 23, 1895, and recorded at Liber SH 45, folio 61 and Liber GW 26, folio 288, respectively (the "Bumbray/Bellamy Predecessor Deeds"), Chesapeake conveyed the real property located in Anne Arundel County, Maryland presently known as 3402 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lots D and E, Block 3, as shown on the AOTB Plat (the "Bumbray/Bellamy Property"), to the first predecessors in title of Plaintiffs George Bumbray and Sherry Bellamy.

15. Pursuant to a deed dated January 8, 1897 and recorded at Liber GW 115, folio 244 (the "First Davis Predecessor Deed"), Chesapeake conveyed the real property located in Anne Arundel County, Maryland presently known as 3406 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lot B, Block 3, as shown on the AOTB Plat (the "First Davis Property"), to the first predecessors in title of one of the two properties presently owned by Plaintiffs John and LaVerne Davis.

16. The real property located in Anne Arundel County, Maryland, and identified as Lot A, Block 3 as shown on the AOTB Plat, which property is also owned in fee simple by Plaintiffs John and LaVerne Davis (the "Second Davis Property"), was originally conveyed by Chesapeake to M. G. Harrison. M. G. Harrison, however, conveyed title back to Chesapeake by indenture dated April 29, 1897. The Second Davis Property thus became one of the unsold lots acquired by AOB Properties in 1933 (*see* para. 12, *supra*). AOB Properties outconveyed the Second Davis Property pursuant to a deed dated July 25, 1935 and recorded at Liber FAM 139, folio 507 (the "Second Davis Predecessor Deed").

17. Neither of the Moses Predecessor Deeds, the Bumbray/Bellamy Predecessor Deeds, nor the First and Second Davis Predecessor Deeds evidence any reservation by Chesapeake or, in the case of the Second Davis Predecessor Deed, AOB Properties, of title to the platted streets binding the respective lots identified in paragraphs 13 through 16, above.

18. Further, Mr. Dowling's examination of all conveyances by Chesapeake and AOB Properties of properties owned by the same in Arundel on the Bay revealed no deeds in the Anne Arundel County, Maryland land records that evidence a prior transfer of title to such platted streets by Chesapeake or AOB Properties to any person or entity other than Plaintiffs' predecessors in title.

19. The chains of title to the Moses Property, the Bumbray/Bellamy Property and the First and Second Davis Properties are unbroken.

20. Maryland Real Property Code, Section 2-114, which is a codification of Maryland common law, provides, in relevant part, that, absent an express reservation of title to the grantor or an express transfer of title from such grantor to the grantee, any deed that grants land binding on any street or highway, or that includes any street or highway as one or more of the lines thereof, passes to the grantee all the right, title and interest of the grantor to the centerline of the portion of such street or highway that binds the land so conveyed.

21. Where a street or highway is bound on one side by a body of water, as is the case with Chesapeake Walk in Arundel on the Bay, Maryland Real Property Code, Section 2-114, together with relevant Maryland case law, operates to transfer to the grantee all the right, title and interest of such grantor to the entire portion of such street or highway that binds the land so conveyed, and not merely to the centerline of such street or highway.

22. The Moses Property binds Chesapeake Walk and Redwood Avenue, the Bumbray/Bellamy Property binds Chesapeake Walk and Cedar Avenue, the First Davis Property binds Chesapeake Walk and Walnut Avenue, and the Second Davis Property binds Chesapeake Walk.

23. Thus, under Maryland Real Property Code, Section 2-114, relevant Maryland case law and relevant Maryland common law, Plaintiffs hold all the right, title and interest to the entire roadbed of Chesapeake Walk in Anne Arundel County, Maryland, insofar as Chesapeake Walk binds the Plaintiffs' respective properties, and all the right title and interest to the centerline of Walnut, Redwood and Cedar Avenues in Anne Arundel County, Maryland, insofar as Walnut, Redwood and Cedar Avenues bind the Plaintiffs' respective properties. The portions of Chesapeake Walk, Redwood Avenue, Walnut Avenue and Cedar Avenue that bind Plaintiffs' respective lots are hereafter referred to as the "Disputed Streets".

24. The 1898 Act, in Section 18, grants the Commissioners the power to exercise eminent domain over the roadbeds in Arundel on Bay, upon provision of just compensation to the residents of Arundel on the Bay who possess fee simple title to the portions of such roadbeds that bind such residents' lots.

25. The 1898 Act, which postdates each of the Moses Predecessor Deeds, the Bumbray/Bellamy Predecessor Deeds and the First Davis Predecessor Deed, could not operate as a transfer of fee simple title of the Disputed Streets from Chesapeake, which possessed fee simple title to certain remaining land represented by the AOTB Plat, to the Commissioners because, having transferred such title to Plaintiffs' predecessors in title, Chesapeake no longer had such title to convey. Moreover, the 1898 Act could not have operated as a transfer of fee simple title to the Disputed Streets that bind the Second Davis Property, which Chesapeake possessed fee simple title to at the time of enactment of the 1898 Act, because the 1898 Act did not, and could not operate as an exercise of the Commissioners' eminent domain power and could not, under Maryland law, otherwise operate to transfer title to the Second Davis Property from Chesapeake to the Commissioners.

26. Likewise, the 1898 Act did not and could not operate as an exercise of the Commissioners' eminent domain power over any portion of the lots in Arundel on the Bay owned by Plaintiffs' predecessors in title and could not, under Maryland law, otherwise operate to transfer title to any portion of Plaintiffs' lots from Plaintiffs' predecessors in title to the Commissioners.

27. The record is devoid of any evidence that the Commissioners ever exercised eminent domain over any portion of the Moses Property, the Bumbray/Bellamy Property, or the First and Second Davis Properties. Further, the record is devoid of any evidence that Plaintiffs' predecessors in title, each of whom held fee simple title to the Disputed Streets by operation of Maryland law, transferred title to such roadbeds to the Commissioners or to the Maryland General Assembly prior to, contemporaneously with or following the enactment of the 1898 Act.

28. Accordingly, by virtue of Maryland law and their respective unbroken chains of title, Plaintiffs – not the Association – hold fee simple title to the Disputed Streets.

I SOLEMNLY AFFIRM UNDER THE PENALTIES OF PERJURY AND UPON PERSONAL KNOWLEDGE THAT THE CONTENTS OF THE FOREGOING AFFIDAVIT ARE TRUE.



Royal G. Shannonhouse

Attachment D

Memorandum of Edward J. Albert

MEMORANDUM

1-18-94

TO: Wayne T. Kosmerl, Esquire
FROM: Edward J. Albert
RE: Arundel-on-the-Bay
Title Search
Your File No. 7030.01

Pursuant to your request, title work was performed in an attempt to determine ownership to the streets located within the subdivision known as Arundel on the Bay. Please note the following:

- 1) See the enclosed Summary which indicates the devolution of title to the subdivision of Arundel on the Bay. By deed FSR 111/261, in 1933, Arundel on the Bay Properties, Inc. became vested with title. Subsequently, there appears a deed from The Commissioners of Arundel-on-The-Bay to Willa Gallagher, et al, JHH 523/598. As we discussed, the legislative history of the creation of Arundel on the Bay as a town is to be investigated by your office. From the land records no evidence was found of a connection between Arundel on the Bay Properties, Inc. and The Commissioners of Arundel-on-the-Bay. It is unknown what ownership of roads vested in the Commissioners.
- 2) In an attempt to determine in whom title to the street beds is vested, the following work was performed:
 - a) All conveyances by The Chesapeake and Columbia Investment Co. for the period 9-17-1890 to 6-5-1928 were read. None of the instruments contained:
 - 1) a mention of reservation of title to street beds
 - 2) a grant of rights to use the streets
 - 3) a grant of reparation privileges.
 - b) All conveyances by Carey L. Meredith and William G. Meredith, trading as The Meredith Lumber Company, for the period 7-23-1926 to 6-16-1933 were read with the same results as 1), 2), 3) above.

CONFIDENTIAL

c) All conveyances by Arundel on the Bay Properties, Inc. for the period 6-24-1933 to 3-2-1953 were read with the same results as 1), 2), 3) above.

d) All conveyances by Willa Gallagher, George E. Terrell and Clarence W. Gosnell were read for the period 5-28-1949 to 4-17-1954. Two applicable instruments were found: JHH 613/485 and JHH 825/32, copies of which are enclosed.

e) The Property Owners' Association of Arundel-on-the-Bay, Inc. was checked on the land records from 9-11-51 to 7-22-1957. The only applicable instruments found were deed JHH 840/525 to the County Commissioners, and deed JHH 825/32 referred to above. See the enclosed copies. In addition deed GTC 1136/471 was found (re lots I, K, L, M). A copy of that deed is enclosed. Further, the grantor and grantee indexes of The Property Owners' Association of Arundel-on-the-Bay, Inc. were run for the period from 7/22/1957 to 10/30/1993. The following instruments of note were found and copied and are enclosed: GTC 1333/309, LNP 1757/371, WGL 2810/214, HES 4339/656 and MMR 5873/583.

It is requested that you review the enclosed indexes, since there are entries, in addition to the ones noted hereinabove, that you may wish to discuss.

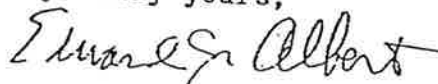
Conclusions:

In all, approximately 272 instruments were reviewed in an attempt to determine if any specific reservation of title to streets was made, and if any ownership of streets was granted. The only items relating to these questions were identified hereinabove, and are as indicated on the enclosed index sheets. Please review the same so that we can discuss them further.

No set of restrictions was found reserving title to street beds, nor was any such reservation made on the record plats (copies enclosed).

It is also noted that Maryland law generally extends an owner's title to the center of street beds which bind along property lines, unless title to the street beds is reserved in the grantor. However, street beds are often subject to the rights of others to use same even though ownership is vested in others.

Very truly yours,



Edward J. Albert
P.O. Box 1908
Annapolis, Maryland
21401
(410) 268-2439

Attachment E

September 19, 2007, Settlement Agreement between the Chesapeake Walk Owners
and the Property Owners Association of Arundel on the Bay, Inc.

BLUMENTHAL, DELAVAN & WILLIAMS, P.A.

ATTORNEYS AT LAW

SUITE 240

170 JENNIFER ROAD

ANNAPOLIS, MARYLAND 21401

HARRY C. BLUMENTHAL*
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* ADMITTED IN MD & DC
** AMERICAN INSTITUTE OF
CERTIFIED PLANNERS

COUNSEL
EILEEN E. POWERS
BARBARA J. PALMER
JOHN GREGORY SMITH

September 19, 2007

VIA HAND DELIVERY

Robert P. Duckworth, Clerk
Circuit Court for Anne Arundel County, Maryland
7 Church Circle
Annapolis, Maryland 21401

Re: *Sherry Bellamy, et al. v. Property Owners Associations of Arundel on the Bay, Inc., et al.*
Civil Action No. C-06-115184-IJ

Dear Mr. Duckworth:

Enclosed please find for filing a Stipulation of Partial Voluntary Dismissal with Prejudice of certain counts in Plaintiffs' complaint and Defendants' counterclaim, and a copy of a Settlement Agreement between the parties relating to the claims that are being dismissed. Please note that photographs intended to be included as Exhibit C to the Settlement Agreement are being re-labeled and will be filed under separate cover.

This case is pending before Judge Caroom on cross-motions for summary judgment.

Please do not hesitate to contact me if you have any questions. Thank you for your assistance in this matter.

Very truly yours



Eileen E. Powers


Enclosures

cc: Hon. Philip T. Caroom
Wayne T. Kosmerl, Esq.
Ava Lias-Booker, Esq.
Sherry Bellamy and George Bumbray
John and April Moses
John and Laverne Davis

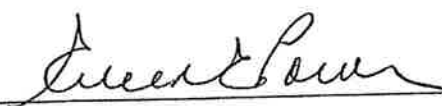
SHERRY BELLAMY, <i>et al.</i> ,	*	IN THE CIRCUIT COURT
	*	FOR
Plaintiffs	*	ANNE ARUNDEL COUNTY,
v.	*	MARYLAND
PROPERTY OWNERS ASSOCIATION	*	Case No. C-06-115184 IJ
OF ARUNDEL ON THE BAY, INC.,	*	
<i>et al.</i> ,	*	
Defendants	*	
	*	
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**STIPULATION OF
PARTIAL VOLUNTARY DISMISSAL WITH PREJUDICE**

Pursuant to Maryland Rule 2-506(a), all parties to this proceeding, by and through their undersigned counsel, hereby stipulate that Counts V and VI of Plaintiffs' Second Amended Complaint, and Count III of the Defendants' Counterclaim be, and hereby are, dismissed with prejudice. The remaining counts in the Second Amended Complaint and the Counterclaim remain pending.

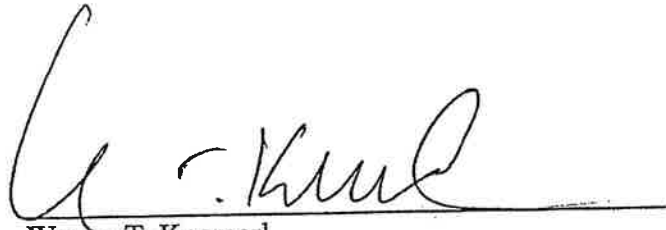


 Ava Lias-Booker
 Robert T. Johnson
 MCGUIREWOODS LLP
 7 Saint Paul Street, Suite 1000
 Baltimore, Maryland 21202
 (410) 659-4400



 Eileen E. Powers
 BLUMENTHAL DELAVAN & WILLIAMS, P.A.
 170 Jennifer Road
 Annapolis, Maryland 21401
 (410) 573-2900

ATTORNEYS FOR PLAINTIFF

A handwritten signature in black ink, appearing to read "Wayne T. Kosmerl", written over a horizontal line.

Wayne T. Kosmerl
Susan T. Ford
125 West Street, 4th Floor
P.O. Box 2289
Annapolis, Maryland 21404-2289
(410) 268-6600

ATTORNEYS FOR DEFENDANTS

SETTLEMENT AGREEMENT

This Settlement Agreement is made as of the 19th day of Sept., 2007, by and between Sherry Bellamy, George Bumbray, John Moses, April Moses, John Davis and Laverne Davis, on the one hand, and the Property Owners Association of Arundel on the Bay, Inc., Frank A. Florentine, Michael Merrigan, R. Rebecca Morris, Barry Dempsey and David Zeman, on the other hand.

RECITALS

WHEREAS, Sherry Bellamy and George Bumbray own real property located in Anne Arundel County, Maryland known as 3402 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lots D and E, Block 3 (the "Bellamy/Bumbray Property"), as shown on a plat entitled "Arundel on the Bay," which plat is recorded among the Land Records of Anne Arundel County, Maryland in Plat Book S.H. 34, folio 509 (hereinafter, the "AOTB Plat"), by virtue of a deed dated March 1, 1999 and recorded among the Land Records in Liber 9027, folio 556; and

WHEREAS, John and April Moses own real property located in Anne Arundel County, Maryland known as 3440 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lots D, E, F and G, Block 6 (the "Moses Property"), as shown on the AOTB Plat, by virtue of a deed dated May 21, 1971 and recorded among the Land Records in Liber 2407, folio 361; and

WHEREAS, John and Laverne Davis own real property located in Anne Arundel County, Maryland known as 3406 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lot B, Block 3 (the "First Davis Property"), as shown on the AOTB Plat, by virtue of a deed dated December 15, 1994 and recorded among the Land Records in Liber 6871, folio 73; and

WHEREAS, John and Laverne Davis also own real property located in Anne Arundel County, Maryland known as 3408 Chesapeake Walk, Annapolis, Maryland 21403, and identified as Lot A, Block 3 (the "Second Davis Property"), as shown on the AOTB Plat, by virtue of a deed dated September 1, 2006, and recorded among the Land Records in Liber 17880, folio 753; and

WHEREAS, the Bellamy/Bumbray Property is bound by Chesapeake Walk and Cedar Avenue, the Moses Property is bound by Chesapeake Walk and Redwood Avenue, the First Davis Property is bound by Chesapeake Walk, and the Second Davis Property is bound by Chesapeake Walk and Walnut Avenue; and

WHEREAS, Defendant, Property Owners Association of Arundel on the Bay, Inc., is a Maryland corporation, maintains its principal place of business in Anne Arundel County, Maryland, and is organized and exists to promote and protect the general interest, welfare, and property of the members of the community of Arundel on the Bay, as shown on the AOTB Plat; and

WHEREAS, the Property Owners Association of Arundel on the Bay, Inc., Grantee, owns real property located in Anne Arundel County, Maryland known as Lots C-I, Block 13, and Lots I, K, L and M, Block 32, as shown on the AOTB Plat; and

WHEREAS, Frank A. Florentine, Barry Dempsey, R. Rebecca Morris, David Zeman and Michael Merrigan, are, or at all times relevant to the events giving rise to this Agreement were, agents of the Association and residents of Anne Arundel County, Maryland; and

WHEREAS, the Property Owners filed a complaint styled as *Bellamy, et al. v. Property Owners Association of Arundel on the Bay, Inc., et al.*, Case No. C-06-115184 IJ, in the Circuit Court for Anne Arundel County, Maryland, seeking to quiet title to the portions of Chesapeake Walk, Redwood Avenue and Walnut Avenue that abut their respective properties (collectively, the "Disputed Streets" and each individually, a "Disputed Street"; for purposes of this Agreement, the portion of Cedar Ave that binds the Bellamy/Bumbray Property shall be deemed a Disputed Street); and

WHEREAS, the Quiet Title Action seeks to determine ownership of and access rights to the Disputed Streets; and

WHEREAS, the Property Owners, the Association and the Association Officers desire to settle fully and finally any and all claims, known and unknown, with regard to rights of access to the Disputed Streets, leaving the Title Issue to be decided by the Circuit Court for Anne Arundel County, Maryland (the "Circuit Court"), on cross motions for summary judgment.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, and agreements stated herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. *Incorporation of Recitals and Definitions:* The foregoing Recitals and all Definitions stated herein are integral parts of this Agreement and are not mere surplusage.

2. *Definitions:*

(A) The terms "Agreement" and "Settlement Agreement," as used herein, shall mean the final version of this Settlement Agreement executed by all Parties hereto.

(B) The term "Quiet Title Action," as used herein, means that civil action styled as *Bellamy, et al. v. Property Owners Association of Arundel on the Bay, Inc., et al.*, in the Circuit Court for Anne Arundel County, Maryland, Case No. C-06-115184 IJ, as well as all

subsequent or related proceedings, of whatsoever kind or nature, arising therefrom, except for proceedings instituted to enforce this Agreement.

(C) The term "Title Issue," as used herein, means the question raised in Counts I, II, III and IV of the Property Owners' Second Amended Complaint and in Counts I and II of the Association's Counterclaim, filed in the Quiet Title Action, regarding whether the Property Owners or the Association holds fee simple title to the Disputed Streets.

(D) The term "Final Judgment," as used herein, means the final resolution of the Title Issue, as reflected by the issuance of a judgment from a Circuit or Appellate Court in Maryland upon exhaustion of all appeals to which the Parties are legally entitled.

(E) The term "Effective Date," as used herein, means the date on which the Parties complete execution of the Agreement, as evidenced by the latest date that a Party to the Agreement signs and dates the Agreement.

(F) The term "Property Owners," as used herein, shall mean Sherry Bellamy, George Bumbray, John Moses, April Moses, John Davis and Laverne Davis, together with their heirs, assigns, agents, representatives, insurers, and the successors in title to their properties in Arundel on the Bay; the term "Property Owner," as used herein, shall mean either of the Property Owners.

(G) The term "Properties," as used herein, shall mean, collectively, the Bellamy/Bumbray Property, the Moses Property, the First Davis Property and the Second Davis Property; the term "Property," as used herein, shall mean either of the Properties.

(H) The term "Association," as used herein, shall mean the Property Owners Association of Arundel on the Bay, Inc., its predecessors, successors, assigns, and past and present parents, subsidiaries and affiliates, and their respective directors, officers, agents, employees, and insurers.

(I) The term "Association Officers," as used herein, shall mean Frank A. Florentine, Michael Merrigan, R. Rebecca Morris, David Zeman and Barry Dempsey, together with their heirs, assigns, agents and representatives.

(J) The term "Parties," as used herein, shall mean the Property Owners, the Association Officers and the Association, collectively, and each individually; the term "Party," as used herein, shall mean either of the Parties.

(K) The terms "repair," "repairing," "maintain," "maintaining," and "maintenance," whether used together or separately herein, shall mean and be limited to any action

necessary to either return a Disputed Street to its present state as described in subparagraph 4(D), *infra*, or to ensure that the condition of a Disputed Street does not deviate from such present state, except as set forth in paragraph 5(A).

(L) The term "Disputed Streets," as used herein, shall mean the portions of Chesapeake Walk, Redwood Avenue, Walnut Avenue and Cedar Avenue that abut the Property Owners' Properties; the term "Disputed Street," as used herein, shall mean either of the Disputed Streets.

3. *Consideration:*

(A) The Association shall publish the statements set forth in paragraph 14, *infra*, as provided therein.

(B) In consideration of the action to be taken in paragraph 3(A), *supra*, the Parties shall, within three (3) business days after the Execution of the Settlement Agreement, cause their counsel to file an executed Stipulation of Partial Voluntary Dismissal with Prejudice (the "Stipulation"), in the form attached hereto as Exhibit A, in the Quiet Title Action. The Association shall simultaneously publish the Settlement Agreement on the Association's web page.

(C) Should Final Judgment on the Title Issue in the Quiet Title Action be entered in favor of the Property Owners, the Association shall, within fifteen (15) calendar days of Final Judgment, make a lump sum payment to the Property Owners of Fifteen Thousand Dollars (\$15,000) (the "Settlement Payment"). Such payment shall be hand delivered to Eileen Powers of Blumenthal, Delevan & Williams, P.A., the Property Owners' counsel of record in the Quiet Title Action.

4. *Easement Agreement:*

(A) The Parties stipulate and agree that, without regard to whether the Property Owners or the Association ultimately succeeds on the Title Issue, all persons who own real property within Arundel on the Bay, as reflected on the AOTB Plat, together with their guests, have a right of ingress and egress and a right of passage over the Disputed Streets for access to platted lots on the Disputed Streets and the Chesapeake Bay, reflecting the historic use of the Disputed Streets, including for walking, fishing, and enjoying the waterfront.

(B) The Parties further stipulate and agree that, without regard to whether the Property Owners or the Association ultimately succeeds on the Title Issue, either the Association or each Property Owner shall have the right, subject to paragraph 5, *infra*, to repair and maintain the portions of the Disputed Streets that bind the Property Owners' Properties.

(C) The agreement between the Parties with regard to rights of ingress and egress to Chesapeake Walk and the right to maintain and repair the Disputed Streets is more particularly set forth in the Confirmatory Deed of Easement and Agreement attached hereto as **Exhibit B** (the "Easement Agreement"). (Exhibit B contains two alternative Easement Agreements: Exhibit B(1) shall be recorded if the Property Owners prevail on the Quiet Title Action; Exhibit B(2) shall be recorded if the Association prevails on the Quiet Title Action.) The Easement Agreement is hereby incorporated into, and shall become a part of, this Agreement, by this reference.

(D) The Parties hereby declare and affirm that their intent in entering this Agreement and the Easement Agreement is to preserve the Disputed Streets in their present state (i.e., natural (grassy) with regard to Chesapeake Walk and graveled and/or grassy with regard to the relevant portions of Redwood Avenue, Walnut Avenue and Cedar Avenue) in perpetuity. Attached hereto as **Exhibit C** are photographs of the portions of the Disputed Streets that bind the Properties, which photographs have been taken for the purpose of depicting the present state of the relevant portions of the Disputed Streets. Such photographs are hereby incorporated into, and shall become a part of, this Agreement, by this reference. The Parties hereby stipulate and agree that they shall not undertake, or participate in any way in the undertaking of, any repair, maintenance, or other action with regard to any Disputed Street that has the effect of altering the present state of such Disputed Street unless such repair, maintenance, or other action is deemed necessary and, in such event, only after utilizing the Notification and Dispute Resolution procedures set forth herein, up to and including mediation.

5. *Notification of Intent to Repair or Maintain:* The Parties understand and agree that both the Association and the Property Owners have the right to maintain and repair the Disputed Streets. No such repair or maintenance, however, can be undertaken without at least thirty (30) calendar days prior written notice, as follows:

(A) Neither the Association nor any Property Owner, as applicable, shall be required to give notice prior to undertaking any of the following routine maintenance and/or repair actions on the Disputed Streets: (1) cutting, trimming, fertilizing, weeding, aerating and watering the grass; (2) repairing potholes; (3) removing ice and snow; (4) removing junk and debris; and (5) maintaining existing trees, shrubs, plants or other vegetation.

(B) If the Association otherwise intends to conduct "repair" and/or "maintenance" of a Disputed Street, or of the bulkhead and/or rip rap abutting such Disputed Street, such notice shall be generally communicated by publishing such intent, at least thirty (30) calendar days prior to the occurrence of such repair and/or maintenance, in either: (1) an issue of The Pier (the Association's current periodical newsletter to Arundel on the Bay property owners) or of any successor publication to The Pier; (2) an annual budget of the Association or of Arundel on the Bay's Special Community Benefit District and/or Shore Erosion Control District; or (3) minutes of a meeting of either the Board of Directors of the Association or of the General Body of the

Association. Such notice shall also be sent, via first class mail, postage prepaid, or by hand-delivery, to the Property Owner whose Property lies adjacent to the portion of the Disputed Street intended for "repair" or "maintenance." The notification methods set forth in this paragraph 5(A) shall be the only acceptable methods of notice by the Association under paragraph 5.

(C) If a Property Owner otherwise intends to conduct repair and/or maintenance of a Disputed Street, or of the bulkhead and/or rip rap abutting such Disputed Street, such notice shall be communicated by sending written notice, via first class mail, postage prepaid, to the Association at least thirty (30) calendar days prior to the occurrence of such "repair" and/or "maintenance."

(D) If the Party(ies) to whom such notice was sent object(s) to such repair and/or maintenance in writing during the notice period, the Association and the affected Property Owner shall submit to dispute resolution, as set forth in paragraph 6, *infra*.

(E) If the Association or a Property Owner intends to repair and/or maintain the bulkhead and/or rip rap abutting any Disputed Street, its notice to the other Party must include the name and business address of the entity with whom the Party has contracted to undertake such repair and/or maintenance, together with a listing of all materials to be used in effecting such repair and/or maintenance, a copy of any plans, blueprints, or other drawings depicting the repair and/or maintenance to be undertaken, and a copy of any permit applications submitted or required to be submitted to any governmental entity or agency regarding such repair and/or maintenance.

6. *Dispute Resolution:* If either the Association or a Property Owner objects (the "Objecting Party"), during the notice period set forth in paragraph 5, *supra*, to proposed repair and/or maintenance of a Disputed Street, such Objecting Party shall send written notice to the Party proposing to undertake such repair and/or maintenance (the "Proposing Party" and, together with the Objecting Party, the "Disputing Parties") via first class mail, postage prepaid. Upon receipt of the Objecting Party's objection, the Disputing Parties shall make a good faith effort to resolve the objection. If, after thirty (30) calendar days from the date of notice of the objection, the Disputing Parties cannot resolve the objection on their own, they shall submit their dispute to mediation before a mutually agreeable mediator. Such mediator must satisfy the requirements of Maryland Rules 17-104(a) and (c) and must also be neither a present or former property owner in Arundel on the Bay nor a present or former officer or director of the Association. The Disputing Parties may use the Maryland People's Law Library's "Maryland Directory of Dispute Resolution Practitioners", currently available at <http://adr.mdjustice.org/search/index.asp>, or any other mutually agreeable source, to find a mediator meeting the above qualifications. If the Disputing Parties cannot agree on a mediator, they shall jointly request that the Anne Arundel Conflict Resolution Center, currently located at 2666 Riva Road, Suite 130, Annapolis, MD 21401, (410) 266-9033, appoint a mediator for them. The Disputing Parties shall each bear fifty percent (50%) of the cost of such mediation. If, after a period of sixty (60) calendar days following the date of the initial mediation session the

Disputing Parties are still unable to resolve the dispute, either the Proposing Party or the Objecting Party may pursue any and all legal remedies available to such Party.

7. *Redesignation of Chesapeake Walk:* Within thirty (30) days of the Effective Date, the Association shall cease to designate Chesapeake Walk as a "Community Recreation Area" on any map of Arundel on the Bay published by the Association. To the extent other platted but undeveloped roads in Arundel on the Bay are designated "greenspace" on all current and future maps published by the Association, Chesapeake Walk shall also be designated as "greenspace."

8. *No Additional Discovery:* The Parties hereby stipulate and agree that, except as expressly provided in paragraph 9(B), *infra*, upon the Effective Date, they will cease all further discovery, including, without limitation, deposition discovery, in this matter. The Parties understand and agree that the Title Issue can be submitted to the Circuit Court without the need for additional discovery. The Parties further expressly agree to waive any and all defenses, objections and/or motions which are based on failure to provide discovery and/or lack of adequate discovery. The Parties further agree to withdraw any interrogatories, requests for production of documents, requests for inspection, or notices of deposition that have not yet been responded to by the Party receiving such discovery requests. Notwithstanding any language to the contrary in this paragraph 8, any Party shall be entitled to discovery of any and all documents relied upon by another Party in connection with any motions filed pursuant to paragraph 9(A), *infra*, and/or in connection with any trial in this matter, to the extent that such documents have not previously been produced.

9. *Resolution of Title Issue:*

(A) The Parties hereby agree to file cross-motions for summary judgment with regard to the Title Issue on the 10th day of August, 2007. The Parties may also file cross-oppositions to such motions for summary judgment pursuant to the applicable Maryland Rules. Further, the Parties may file sur-replies if the Parties deem such additional briefing necessary and if the Circuit Court permits such additional briefing.

(B) In connection with the motions contemplated by subparagraph 9(A), *supra*, the Parties may attach affidavits from any person, including expert witnesses, to any motion for summary judgment and may also attach counter-affidavits from any person, including expert witnesses, to any opposition to a motion for summary judgment. Any Party shall be entitled to discovery of any and all documents relied upon by another Party's expert in connection with such affidavit, to the extent that such documents have not previously been produced.

(C) Upon entry of a final judgment by the Circuit Court with regard to the Title Issue, the Party(ies) against whom such final judgment is/are issued shall be permitted, but not required, to note any available appeals of the Circuit Court's judgment to appellate courts in Maryland, as set forth in applicable Maryland law. If the Party(ies) entitled to such appeals fail(s) to

note any such appeal within the timeframe allowed by the applicable Maryland Rules, the final judgment entered by the Circuit Court (or by any appellate court that has rendered a final judgment in the Quiet Title Action, should such Party(ies) seek any appeal) shall be deemed a Final Judgment, thereby triggering the Settlement Payment set forth in subparagraph 3(C), *supra*, if applicable.

10. *No Admissions of Liability or Fault:* The Parties stipulate and agree that this Agreement is made in compromise of disputed claims and that neither this Agreement nor actions undertaken pursuant hereto shall be construed as or deemed to be an admission of liability or fault by any Party.

11. *Representations and Warranties of Association:* The Association represents and warrants that it has all required power and authority to enter into and perform this Settlement Agreement.

12. *Representations and Warranties of the Parties:* The Parties understand and agree that the purposes of this Agreement are to: (1) fully resolve and settle all present disputes with regard to use of the Disputed Streets, as reflected in Count VI of the Property Owners' Complaint and Count III of the Association's Counterclaim filed in the Quiet Title Action, and with regard to ownership of the Bellamy/Bumbray Property, as reflected in Count V of the Property Owners' Complaint; and (2) litigate only the Title Issue, as presently before the Court, until Final Judgment is rendered in the Quiet Title Action. The Parties further understand and agree that, (1) should Final Judgment be rendered in favor of the Property Owners, the Property Owners shall, pursuant to paragraph 3(C), *supra*, be paid in settlement the sum of \$15,000, and no other monetary damages of any nature shall be recoverable by the Property Owners or their insurers arising out of issues or claims of any kind which were or could have been raised and/or brought in the litigation filed in the above-captioned matter; and (2) should Final Judgment be rendered in favor of the Association, the Association is not entitled to any damages and there shall be no monetary recovery of any nature by the Association or its insurer arising out of issues or claims of any kind which were or could have been raised and/or brought in the litigation filed in the above-captioned matter against the Property Owners. The Parties represent and warrant that only the Title Issue as presently before the Court will be litigated by the Parties and that, upon entry of a Final Judgment, the Parties shall enter into a release as set forth in **Exhibit D** to ensure that neither Party may bring any subsequent action asserting any claims or issues that could have been brought and/or litigated in the Quiet Title Action, regardless of whether the availability of such claims or issues are known or unknown as of the date of Final Judgment.

13. *Special Release:* In consideration of the covenants set forth in this Settlement Agreement, the receipt and sufficiency of which are hereby acknowledged, and except as otherwise expressly provided in this Settlement Agreement, the Property Owners George Bumbray and Sherry Bellamy, the Association Officers and the Association for themselves and their heirs, successors, legal representatives and assigns and insurers, expressly releases the other, and their heirs,

and assigns, from any and all claims, charges, suits, debts, dues, demands, grievances, sums of money, rights, damages, liabilities, proceedings, actions and causes of action of any kind, nature or character which relate to and/or arise out of Count V (Slander of Title) of the Property Owners' Complaint.

14. *Public Statements:*

(A) The Parties agree to disclose the substance of this agreement by publishing the following statement verbally at the next general body and board of directors meeting of the Association, and in writing in the next issue of The Pier (or any successor publication to The Pier) following the Effective Date: "The Parties announce a partial resolution of the Chesapeake Walk Litigation. The Settlement Agreement and related exhibits can be found on the Association's website at <http://poaaotb.googlepages.com/index2.html> under 'Chesapeake Avenue Litigation.' All members of the Association and their guests have the right to ingress and egress and a right of passage over the Disputed Streets for access to platted lots on the Disputed Streets and the Chesapeake Bay, reflecting the historic use of the Disputed Streets, including for walking, fishing and enjoying the waterfront." The Settlement Agreement and associated exhibits shall be made available to all members of the Association by publication on the website and as otherwise required under the Association's rules and regulations. The Association shall not otherwise summarize or characterize the Settlement Agreement in the written disclosures set forth in this Paragraph (A).

(B) The Association shall publish, in next issue of The Pier (or any successor publication to The Pier) following the Effective Date, and on the current website for the Association, within fifteen (15) days of the Effective Date, the following statement relating to the Bellamy/Bumbray Property: "The Association does not have or claim any rights to or interest in the property known as 3402 Chesapeake Walk, Lots D and E, Block 3 Arundel on the Bay as shown on the record plat recorded among the Land Records for Anne Arundel County at Liber SH 37 folio 509 and as amended in 1927, currently owned by Sherry Bellamy and George Bumbray, including any portion of their front yard adjoining Chesapeake Walk or any portion of their side yard and bulkhead adjoining the water, as shown on the plat prepared by Graden A. Rogers, which plat is attached as Exhibit E to the Settlement Agreement. Chesapeake Walk no longer intersects with Cedar Avenue, since a portion of both roads has been lost to erosion."

15. *Responsibility for Costs:* The Parties stipulate and agree that, except as otherwise expressly provided in this Settlement Agreement, each Party shall be responsible for its own costs, expenses and legal fees incurred in connection with the prosecution, defense and settlement of the Quiet Title Action, or of any portion thereof, including, without limitation, the negotiation of this Settlement Agreement.

16. *Expenses incurred in Enforcement of this Agreement:* If any litigation is instituted for the purpose of enforcing or interpreting any provision of this Agreement, the prevailing

Party or Parties, as determined by the Court having jurisdiction thereof, which Court is expressly set forth in paragraph 25 hereof, shall be entitled to recover, in addition to all other relief, an amount equal to all reasonable attorney's fees, costs and expenses incurred in such litigation. Engaging in the Dispute Resolution procedures pursuant to paragraph 6, *supra*, shall not entitle any Party to recover their attorney's fees, costs and expenses from the other Party.

17. *Entire Agreement:* This Agreement sets forth the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and shall supersede all prior discussions, agreements, and understandings of every kind and nature between them, whether written or oral.

18. *Headings:* The headings contained in this Agreement have been inserted for convenience of reference only and shall not constitute a part of or be given any effect in the construction or interpretation of this Agreement.

19. *Advice of Counsel:* The Parties acknowledge that they and their respective legal counsel actively participated in the negotiation and drafting of this Agreement. In the event that any ambiguity or question of intent or interpretation arises, or in the event of any dispute between the Parties with respect to the provisions hereof, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions hereof.

20. *Read and Understood:* The Parties acknowledge that (a) they have read this Agreement in its entirety and understand all of its terms and conditions and have had an opportunity to reflect upon and consider the terms and conditions of this Agreement; (b) they have had the opportunity to consult with any individuals of their choice regarding their agreement to the provisions contained herein, including legal counsel of their choice; (c) they are entering into this Agreement of their own free will, without coercion from any source; and (d) they have determined that this Agreement is fair and reasonable, is not the result of any fraud, duress, or undue influence exercised by any of the Parties or by any other person, and has been voluntarily executed.

21. *Binding:* The rights and obligations of the Parties under this Agreement shall be binding upon and inure to the benefit of their agents, servants, employees, shareholders, officers, directors, assigns, attorneys and insurers.

22. *Alteration:* This Agreement may not be altered, amended, modified, or terminated except by an instrument in writing executed by the Parties.

23. *Reliance:* Each of the Parties represents and acknowledges that, in executing this Agreement, no reliance has been placed upon any representation or statement made by or on behalf of any other Party with regard to the subject matter, basis, or effect of this Agreement.

24. *Execution/Originals:* This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

25. *Applicable Law:* This Agreement is made in the State of Maryland and shall be interpreted and construed in accordance with the laws of the State of Maryland without regard to principles of conflicts of laws. The venue of any legal proceeding brought in connection with this Agreement or any aspect of the relationship between the Parties shall be the Circuit Court of Maryland for Anne Arundel County.

IN WITNESS WHEREOF, the Parties hereto have executed, or caused their duly authorized representatives to execute this Agreement, as of the day and year indicated below.

WITNESS:

Tim Power

Tim Power

Elizabeth Arcus

Tim Power

Elizabeth Arcus

Elizabeth Arcus

Sherry Bellamy
Sherry Bellamy

George Bumbrey
George Bumbrey

John Moses
John Moses

April Moses
April Moses

John C Davis
John Davis

Laverne C. Davis
Laverne Davis

WITNESS

PROPERTY OWNERS ASSOCIATION OF
ARUNDEL ON THE BAY, INC.

Robert Merrill

[Signature]

By:

Robert Merrill

[Signature]

Frank A. Florentine

Robert Merrill

[Signature]

Barry Dempsey

Robert Merrill

[Signature]

R/Rebecca Morris

Robert Merrill

[Signature]

David Zeman

Robert Merrill

[Signature]

Michael Merrigan