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BARBADOS

SUPREME COURT OF BARBADOS

BETWEEN

**LAMBCHOP PROPERTIES LLC
RMJE PROPERTIES LLC
CHARLES WILLIAM PATTISON
YVONNE LANKRY**

**FIRST CLAIMANT
SECOND CLAIMANT
THIRD CLAIMANT
FOURTH CLAIMANT**

AND

**APES HILL CLUB HOMEOWNERS ASSOCIATION
CHRISTOPHER ANTHONY AUDAIN
SUNIL CHATRANI
RODDY JAMES CARR
APES HILL (BARBADOS) INC
GARDEN WALL VILLA ASSOCIATION**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT
FOURTH DEFENDANT
FIFTH DEFENDANT
SIXTH DEFENDANT**

**AFFIDAVIT OF
CHRISTOPHER ANTHONY AUDAIN**

I, **CHRISTOPHER ANTHONY AUDAIN** of "Airy Hill", Moncrieffe in the parish of Saint Philip in this Island **MAKE OATH** and **SAY AS FOLLOWS:**

1. I am the Second named Defendant and I am a Director of the First and Fifth named Defendants. I make this Affidavit on my behalf and I am authorised to make this Affidavit on behalf of the First named Defendant, Apes Hill Club Homeowners Association Inc..
2. I am enabled to make this Affidavit from matters within my personal knowledge and from examining the documents of the First Defendant of which I am a Director. Insofar as the facts and matters deposed to herein are within my knowledge they are true and correct. Insofar as the facts and matters deposed to in this Affidavit are not within my personal knowledge they are true to the best of my information, knowledge and belief having been derived during the course of my duties and from documents and records which I have seen and verily believe to be authentic and from advice received from my Attorney-at-Law.
3. I have read the affidavit of Mr. Paul Lawrence Lamb filed herein on the 12th of April 2023 (hereinafter called "the Affidavit") and served on the 21st day of April, 2023 in support of the Fixed Date Claim Form filed on the 12th day of April, 2023 and served on the 21st day of April, 2023 (the "Affidavit").
4. I have no knowledge of the facts and matters set out in paragraph 1 and 3 of the Affidavit and as such I cannot admit or deny the allegations contained therein.
5. I admit the matters stated in paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 19, 20, 22, 24, 26, 29, 30, 31, 32, 34, 43, 55, 56, 57, 58, 62, 64, 65, 66, 67, 71, 72, 74, 77, 78, 83, 84, 85, 87, 90, 91, 92, 93, 94, 96, 97, 98, 122, 126, 151, 162 hereof.
6. I am advised by my Attorney-at-Law and verily believe that the matters contained in paragraphs 23, 38, 39, 44, 46, 48, 60, 70, 73, 79, 81, 86, 99, 103, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 123, 124, 127, 128, 129, 130, 131, 133, 135, 138, 139, 140, 141, 142, 144, 145, 146, 153, 156, 157, 159, 162, 165, 169, 172 and 176 do not constitute evidence on the grounds that some

matters contained therein are: (1) matters of law to be determined by a Court, (2) opinion not consistent with section 64 (1) of the Evidence Act Cap 121 of the Laws of Barbados, (3) argument, (4) conclusions based on evidence which is in dispute, (5) hearsay contrary to sections 50 and 51 of the Evidence Act and/or the evidence is confusing and/or the prejudicial value outweighs the probative value of the evidence.

7. In respect of the "Purchase of the Remaining Property at the Development by Apes Hill Inc" to which reference is made at paragraphs 55 to 60, 99 and 100 of the Affidavit, I am advised by my Attorney-at-Law and verily believe that the Assignment is and was enforceable and effective to assign to the Fifth Defendant all rights of the previous Developer in that it was the intention of the parties to the Assignment that it would be so effective and the Parties conducted their affairs on that basis. I am also advised by my Attorneys-at-Law and verily believe that the Association nor its members were not a party to the Assignment and as such have neither rights nor obligations under the said Assignment. I have seen a Deed of Assignment dated the 3rd of February 2020 and I am advised by the parties to the Assignment that they acted pursuant to this Deed of Assignment which differs from the Deed of Assignment which was exhibited to the Affidavit of Mr. Paul Lamb. I exhibit hereto marked "**CA-1**", a copy of the Assignment which was prepared by the firm LEX Caribbean which now represents the Claimants.

8. In respect of paragraphs 62 to 82, I am advised by my Attorneys-at-Law and verily believe that it was the intent that Section 12.2 of the Bylaws of the First Defendant is that in the event of any vacancy amongst the First Directors (as defined in the Bylaws of the First Defendant) of the First Defendant, such vacancy may be filled by the remaining first directors of the Company. I am further advised by my Attorneys-at-Law and verily believe that pursuant to Section 10 of the Bylaws of the First Defendant that the aforementioned first directors shall continue to act as directors of the First Defendant until they are removed by resolution of the members to be passed at the first meeting of members after the Turnover Date.

The Turnover Date is defined in the Bylaws of the First Defendant as the date on which the Developer completes the sale of the last residential lot in the Development and further defined in Section 3.5 of the Rules of the Association dated February 24th, 2006 (the "2006 Rules") as "*the earliest of the following dates: (a) the date that all of the Expansion Association Area has become part of the Association Area and the last Privately Owned Site within the Association Area has been sold and conveyed by Developer to a non-Developer Owner; or (b) the date that Developer has relinquished its rights, whether voluntarily or otherwise, to elect two of the Directors and its right to appoint the Members of the Architectural Review Committee in accordance with Section 10.1 hereof.*" To the extent that the Developer has not yet completed the sale of the last residential lot in the Development then the first directors, as the term is used in the Bylaws of the Association, are entitled to appoint individuals to fill vacancies in the Board of Directors of the Association.

9. In respect of paragraphs 83 to 95 of the Affidavit, I am aware that by letter dated the 9th of December 2022, the Third Defendant, wrote to the members of the association and advised that the Amendment had been revoked. I attach hereto marked "**CA-2**", a copy of the said letter.

10. In respect of the matters contained in paragraphs 104 et seq [Claimant's Claims Against the Association et al] and 122 [Provisions empowering Apes Hill Inc to appoint and control directors of Association], I am advised by Attorney-At-Law and verily believe that the Turnover Date, as set out in the Bylaws, has not yet arrived and as such the right to appoint directors to fill vacancies on the Board of the Association can only be exercised by the first directors of the Association and any director appointed by the first directors to fill a vacancy on the Board of Directors of the Association until the Turnover Date. I am further advised by my Attorneys-at-Law that the said amendments to the Rules of the Association were already contained in section 3.5 of the 2006 Rules which are included as Exhibit PAL-10 to the Affidavit. Section 3.5 of the 2006 Rules provides that "**The directors**

appointed at incorporation of the Association shall have a fiduciary duty solely to the Developer and will act solely on behalf of the Developer.....The document by which Developer voluntarily relinquishes its right to appoint directors and its right to appoint the members of the Architectural Review Committee, as described in subsection (b)**in the immediately preceding sentence, may allow Developer to reserve the right to require Developer's prior written approval of certain actions by the Board of Directors including, by way of illustration but not limitation, the following: (i) any action that increases the Base Assessment only on Developer's property or imposes a Special Assessment only on Developer's property, and (ii) any action that, in Developer's opinion, impairs or restricts Developer's ability to develop and market its property with the Association Area.**" (emphasis added).

11. In respect of the matters contained in paragraphs 126 – 137 [Mandatory membership to Apes Hill Club], as mentioned in paragraph 9 herein, the said amendment has been rescinded and members have been given notice of the same. Further, by letter dated the 9th of December, the Attorney-at-Law of the First Defendant wrote to the Attorney-at-Law for the Claimant and advised him to the effect that the said amendment was rescinded.

12. In respect of the matters contained in paragraphs 138 to 147 – [Association cannot exempt Apes Hill Inc from payment of fees], I am advised by my Attorney-At-Law and verily believe that the First Defendant is indebted to the Fifth Defendant for work undertaken in the Development which is the responsibility of the Association to complete and maintain. I am further advised by my Attorneys-at-Law that pursuant to Section 7.4.2 of the 2006 Rules that prior to the Turnover Date, the Developer may elect to pay the Base Assessments on Privately Owned Sites owned by the Developer or in lieu thereof, not pay such Base Assessments and pay any deficit incurred in operating the Association and the Association properties. There are works which have been undertaken within the Development by the Fifth Defendant that are the financial responsibility of the Association and

the Association is unable to fund the cost of the same, the Fifth Defendant has paid the costs of works and continues to fund the costs of such works as the Association is unable to fund the same and would create a deficit in the operation of the Association if the Association was required to.

13. In respect of the matters contained in paragraphs 157 to 162 [Association and Directors have failed to keep and disclose adequate corporate records], I am advised by Attorney-At-Law that the Fifth Defendant it is not an ordinary member of the First Defendant. I am also advised by my Attorney-at-Law and verily believe that the Fifth Defendant is a Developer with rights and obligations which were given to it by the Deed of Assignment mentioned in paragraph 7 hereof.

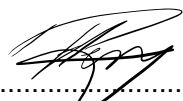
14. In respect of the matters contained in paragraphs 167 to 172 of the Affidavit [Association and Directors have failed to ensure the conveyance of the common areas to the Association], the First Defendant states that it has been given no consideration for the transfer of the property and that there was a common intention between the Fifth Defendant, the Developer, and the First Defendant, the Association, that the common property should belong to the First Defendant. Moreover, the First Defendant has expended funds in maintaining the common property on the understanding that it was the owner of the said common property. At no time has the First Defendant ever challenged the ownership of the common property by the Fifth Defendant. In the event that the First Defendant was the owner of the common property then the Fifth Defendant would be indebted to the First Defendant in respect of monies so expended by the First Defendant on the common property. Moreover, Section 4.2 of the Rules of the Association dated February 24th, 2006 provides that "*Developer **may** hereafter convey certain areas of land to the Association as Common Areas intended for common use by the Owners in the Association Area...*". Further, Section 1.1 of the Bylaws of the Association provides the definition of Common Property to be "*all of the land comprised in the Development (other than the hotel, golf courses, club house and facilities related thereto, the recreational facilities and residential lots shown on the*

Key Plan) comprising inter alia, the grounds, road and the car parks which are to be vested in and owned by the Company for the benefit of all owners of Lots the Development". Additionally, Section 24(1) of the Agreements for Sale relied upon by the Claimants specifically provides "Whenever it is, in the opinion of the Vendor, feasible to do so the Vendor shall endeavour to convey to the Garden Wall Association those lands forming part of the common areas, road, gullies, water courses and open spaces (but not including the hotel, golf courses, recreational facilities or club house) comprised in the Parcel or as defined in the Garden Wall Villas Building Association Inc. Rules ("the Parcel B Common Areas") within the development within three months of the date of the completion of the sale of the last residential lot within the Parcel.....The Vendor shall in its sole discretion (subject to relevant planning requirements) alter vary or change any such areas from Common Areas to saleable lots. It has always been the intention of the parties that the Fifth Defendant would own the common property and the Association and its members would have the right of access and use of the property.

SWORN to by the deponent the said)
CHRISTOPHER ANTHONY AUDAIN)
on the 28th day of September 2023)
at the Offices of Aâstra Law, Aâstra)
House, St Matthias, Christ Church.)
)



Before me:


.....
Attorney-at-Law

Vasco A Perry
Attorney-at-Law
#70 Circular Road
Farm Road Terrace
St Philip
Barbados

EXHIBIT – “CA-1”

DEED OF ASSIGNMENT OF DEVELOPER RIGHTS, TITLE, AND INTERESTS

FOR APES HILL CLUB DEVELOPMENT

THIS DEED OF ASSIGNMENT OF DEVELOPER RIGHTS, TITLE, AND INTERESTS FOR APES HILL CLUB DEVELOPMENT is made the 3rd day of February 2020 (the "Assignment"), **BY AND AMONG AH DEVELOPMENT SRL** a Society with Restricted Liability formed under the Laws of Barbados as **APES HILL DEVELOPMENT SRL** and which by a Certificate of Amendment dated the 28th day of November 2019 changed its name to **AH DEVELOPMENT SRL** and having its registered office situate at Worthing Corporate Centre, Worthing in the parish of Christ Church in this Island (the "Seller") of the **FIRST PART** and **REPUBLIC BANK (BARBADOS) LIMITED**, an amalgamated company registered under the provisions of the Companies Act, Chapter 308 of the Laws of Barbados as Company Number 35718 and being an amalgamation of: (1) **BARBADOS NATIONAL BANK INC.** Company No. 26464 by virtue of a Certificate of Amalgamation issued by the Registrar of Companies on 28th December 2005 as successor entity to Barbados National Bank Inc. Company No. 19285 and Barbados National Bank a body incorporated by Act of Parliament, and (2) **BARBADOS MORTGAGE FINANCE COMPANY LIMITED** a Company incorporated and registered in Barbados and continued under the Companies Act Chapter 308 of the Laws of Barbados as Company Number 2155, by virtue of a Certificate of Amalgamation dated the 1st day of April 2012 and which by Special Resolution dated 9th December 2011 changed its name to **REPUBLIC BANK (BARBADOS) LIMITED** effective from 1st July 2012 by virtue of a Certificate of Amendment dated July 1, 2012 and having its registered office situate at Independence Square in the City of Bridgetown in this Island in its capacity as Trustee under the Trust Deed made between Apes Hill Development SRL and Republic Bank (Barbados) Limited (formerly Barbados National Bank Inc.) as trustee dated the 16th day of November, 2011 (hereinafter called "the Trust Deed", which expression includes any amendments thereto) (hereinafter called the "Trustee") of the **SECOND PART** and **PLANTATION SANCTUARY INC.**, a company incorporated pursuant to the provisions of the Companies Act, Chapter 308 of the laws of Barbados and having its registered office situate at CGI Tower 2nd Floor, Warrens, St. Michael, Barbados (hereinafter called the "Purchaser") of the **THIRD PART**.

RECITALS:

WHEREAS, Seller is the "Developer" under those certain By-Laws and those certain Rules of Apes Hill Club Homeowners Association Inc., a non-profit company incorporated pursuant to the provisions of the Companies Act Chapter 308 of the laws of Barbados as Company Number 26562 (the "HOA"), as such Bylaws and Rules may be amended or supplemented from time to time (the "HOA Documents"), which govern the use of certain real property situate at Apes Hill Club development defined in the HOA Documents as the Development and which is commonly known as Apes Hill (the "Development");

Stamp Duty paid at the Land Registry Department
Stamp Duty: <u>\$50.00</u>
Amount Paid: <u>\$50.00</u>
Receipt No: <u>166327</u>
Date: <u>12 FEB 2020</u>
Signature: <u>[Signature]</u>
For Registrar of Titles

AND WHEREAS, as of the Effective Date, Turnover Date (as defined in the HOA Documents) has not occurred; and

AND WHEREAS, the Trustee as mortgagee and in exercise of its power of sale is selling and Purchaser is acquiring the property owned by the Seller in and related to the Development pursuant to that certain Purchase and Sale Agreement made of even date herewith (the "Property Agreement") made between the Trustee and Purchaser for the sale of the Property (as defined in the Property Agreement) inclusive of unsold lots within the Development and to that certain Purchase and Sale Agreement made of even date herewith (the "Inventory Agreement") made by Seller, Trustee and Purchaser for the sale of the inventory owned by Seller in connection with the Development.

AND WHEREAS, Seller is entitled to certain rights and reservations with respect to the HOA and the Development, and Purchaser has agreed to acquire, except as otherwise provided herein, any and all of Seller's right, title and interest, privileges, benefits, powers, and authority as the Developer, granted or reserved in and under the HOA Documents, of every kind, nature, character and description, whether personal or mixed, whether accrued, contingent or otherwise, including without limitation, the right to appoint directors of the HOA and all rights arising under the HOA Documents, the Articles of Incorporation, Code of Regulations and Design Guidelines (each as defined in the HOA Documents) and any other documents governing the development and use of all or any lots or sub-association areas (such as Garden Walls) in the Development (collectively the "Developer Rights") from and after the Effective Date.

NOW, THEREFORE, in consideration of One Barbados dollar (BDS\$1.00) inclusive of any value added tax and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, Seller, Trustee and Purchaser agree as follows:

1. RECITALS. The Recitals are true and correct and incorporated herein by this reference. Any capitalized terms used but not defined herein shall have the same meaning as set forth in the HOA Documents.

2. ASSIGNMENT. Except as otherwise provided herein, the Seller does hereby transfer, convey and assign to Purchaser each of Seller's right, title and interest, privileges, benefits, and powers in and to the Developer Rights as of the date hereof subject to the terms, conditions, and reservations set forth herein and the Trustee to the extent that its security creates a charge over the Developer's Rights and in exercise of its power of sale does hereby transfer, convey and assign to the Purchaser any interest that the Trustee has as mortgagee in the Developer's Rights

3. ASSUMPTION. Except as otherwise provided herein, Purchaser hereby accepts such assignment and conveyance of the Developer Rights, and assumes all of the Developer Rights from and after the Effective Date hereof. Seller hereby acknowledges and agrees that all duties, obligations and liabilities of Seller as Developer under the HOA Documents arising before or otherwise related to events, omissions, occurrences and other items which occurred before the Effective Date hereof shall remain solely those of Seller and not Purchaser. Seller acknowledges, for itself and its successors and assigns, that Purchaser did not develop the Development and acceptance of this Assignment of the Developer Rights shall not act to impose any liability on Purchaser related to the development or construction of the Development infrastructure or the Common Property (as defined in the HOA Documents) prior to the Effective Date.

4. OFFICERS AND DIRECTORS. Simultaneously herewith, Seller shall deliver the resignations of those officers and members of the Board of Directors of the HOA who are appointed by, employed by, controlled by, or otherwise related to Seller.

5. RECORDING OF ASSIGNMENT. In so far as such may be required under law or the HOA Documents, the Purchaser shall as soon as reasonably practicable hereafter, have this Assignment recorded at the Land Registry, Barbados.

6. GENERAL PROVISIONS.

(a) This Assignment shall be binding upon and inure to the benefit of Seller, Trustee and Purchaser and their respective successors and assigns.

(b) From time to time after the Completion (as defined in the Property Agreement), without additional consideration, each of the Seller and Purchaser shall (or, if appropriate, use its commercially reasonable efforts to cause its affiliates to) execute and deliver such further instruments and take such other action as may be necessary to make effective the transactions contemplated by this Assignment.

(c) This Assignment shall be construed under and enforced according to the laws of Barbados.

(d) Seller represents to Purchaser, for themselves and their successors and assigns, as follows: (a) Seller is currently the Developer under the HOA Documents; (b) Seller has good, right, power, and authority to assign and convey the foregoing rights as the Developer under the HOA Documents to Purchaser; and (c) this Assignment has been executed by a duly authorized representative of Seller .

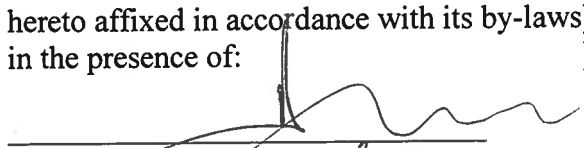
(e) Any provisions of this Assignment which may be found or proven to be invalid, void or illegal shall in no way impair or invalidate any other term or provision hereof and such remaining provisions shall remain in full force and effect.

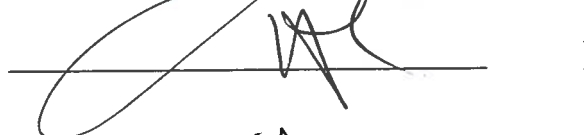
7. COUNTERPARTS. This Assignment may be executed in counterparts each of which when executed and delivered shall constitute an original but all such counterparts together shall constitute one and the same instrument.

8. EFFECTIVE DATE. This Assignment shall be valid and enforceable upon being executed by Seller, Trustee and Purchaser (the "Effective Date").

IN WITNESS WHEREOF, Seller, Trustee and Purchaser have executed this Assignment as of the date first above written by the following:


THE COMMON SEAL of)
REPUBLIC BANK (BARBADOS) LIMITED)
as Trustee and Mortgagee was)
hereto affixed in accordance with its by-laws)
in the presence of:)









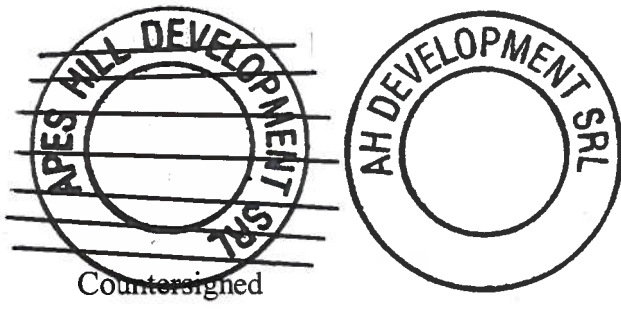
) Directors

Witness: 
Name: **Vidisha K. Hathiramani**
Attorney-at-Law
Abode: **No. 5 South Ridge**
Christ Church
Description: **Barbados**

THE COMMON SEAL of AH)
DEVELOPMENT SRL was hereto set and)
affixed by the Secretary Caribbean Corporate)
Services Ltd. thereof by order of the Board)
of Managers in the presence of:-)







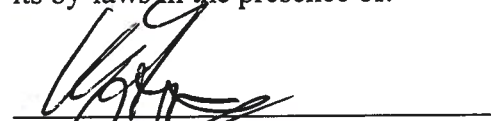
) Manager


) Secretary

CARIBBEAN CORPORATE SERVICES LTD.
ACTING BY ITS DULY APPOINTED
OFFICER ON RECORD.

Witness: 
Name: **RUTH J. HENRY**
Address: **DASH VALLEY**
ST. GEORGE
Occupation: **ATTORNEY-AT-LAW**

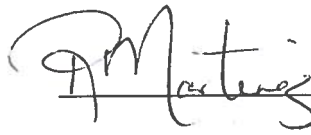
THE COMMON SEAL of)
PLANTATION SANCTUARY INC.)
was hereto affixed in accordance with)
its by-laws in the presence of:)







) Directors

Witness: 
Name: **RUAN CAMELLE MARTINEZ**
Address: **APT. A, #32 ELIZABETH PARK**
CHRIST CHURCH
Description: **BARBADOS**
ATTORNEY-AT-LAW

DATED February 3rd, 2020

AH DEVELOPMENT SRL

And

REPUBLIC BANK (BARBADOS) LIMITED

TO

PLANTATION SANCTUARY INC.

DEED OF ASSIGNMENT OF
DEVELOPER RIGHTS, TITLE & INTEREST

LEX CARIBBEAN
ATTORNEYS-AT-LAW

EXHIBIT – “CA-2”



9th December 2022

Dear Homeowner,

Further to our correspondence dated 6th September 2021, we have extended the deadline for submission of completed membership applications in the Apes Hill Club (the "**Club**"), from 1st October 2021 to 23rd December 2022. Additionally, it has been decided that Club membership shall no longer be mandatory. You will now have the opportunity to make your choice on your membership status.

The Club shall include the following facilities:

- an 18-hole championship course;
- a 9-hole par 3 course;
- golf performance centre & practice facilities;
- the Clubhouse;
- racquet sports & tennis centre;
- health & fitness facilities; and
- swimming facilities.

While some of the afore-mentioned facilities are now complete and available for your enjoyment; others are still under construction but shall become available for use throughout the time of your membership. We continue to evolve, delivering new experiences over time, and therefore the list of Club facilities is not exhaustive and may be enhanced and/or amended from time to time. Your



enjoyment of the Club is of great value to us, and we strive to provide you with ample accessibility to our amenities. Therefore, with our Vertical Family Membership Program and the high number of membership applications received from homeowners, we foresee the need to determine a maximum limit for Club memberships. This should ensure adequate access for members to the Club's facilities.

As you are aware, the initiation fee for the Club is US\$125,000.00 (VAT inclusive) with an annual membership fee of US\$20,000.00 (VAT inclusive). Persons who apply for Club membership, with lot ownership represented by conveyance documentation recorded at the Barbados Land Registry prior to 1st July 2021, shall have the initiation fee waived and the said lot shall be indefinitely entitled to Club membership. In the same circumstance, persons who decide not to apply for Club membership, shall have no access to the above-mentioned facilities and their lot shall no longer be entitled to Club membership, currently or in the future.

On the other hand, persons who purchased lots subsequent to 1st July 2021 and apply for Club membership, must pay the initiation fee and those lots shall also indefinitely be entitled to Club membership. In the event that such a person does not wish to apply for membership in the Club, their lot shall not be entitled to Club membership going forward and there shall be no current or future access to the previously mentioned facilities.



Based on the above, we offer you the opportunity to select your preference and notify us of your decision by 23rd December 2022, by way of email correspondence to membership@apeshill.com. Kindly note that persons who have previously applied for membership, need not apply again in this instance.

We look forward to hearing from you.

Yours Sincerely,


Sunil Chatrani

BARBADOS

SUPREME COURT OF BARBADOS

BETWEEN

**LAMBCHOP PROPERTIES LLC
RMJE PROPERTIES LLC
CHARLES WILLIAM PATTISON
YVONNE LANKRY**

**FIRST CLAIMANT
SECOND CLAIMANT
THIRD CLAIMANT
FOURTH CLAIMANT**

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GARDEN WALL VILLA ASSOCIATION**

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SIXTH DEFENDANT**

**AFFIDAVIT OF
CHRISTOPHER ANTHONY AUDAIN**

**ROGER C FORDE, K.C
ATTORNEY-AT-LAW**