

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

MIKELL R. SCARBOROUGH, MASTER IN EQUITY

APPELLATE CASE NO. 2023-000599

Marc K. Knapp

Appellant,

v.

James Douglas Jenkins, IV, Peter Barnwell Jenkins, and
Alicia J. Roy,

Respondents.

RECORD ON APPEAL

October 10, 2023

/s/ F. Miles Adler

F. Miles Adler

SC Bar No.: 70238

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Attorney for Respondent

RECEIVED

OCT 11 2023

SC Court of Appeals

INDEX

I.	ORDERS	
1.	Form 4 Order dated December 12, 2022.....	1
2.	Form 4 Order dated March 13, 2023.....	3
3.	Written Order of January 24, 2023.....	6
4.	Written Order of May 15, 2023.....	16
II.	PLEADINGS	
1.	Complaint and Exhibits including Agreement to Buy/Sell Real Estate.....	23
2.	Answer and Counterclaim.....	43
3.	Plaintiff's Answer to Defendants' Answer and Counterclaim.....	87
4.	Motion to Dismiss.....	89
5.	Motion to Cancel Lis Pendens.....	90
6.	Plaintiff's Response and Memorandum in Opposition to Defendants' Motion to Dismiss.....	92
7.	Plaintiff's Response and Memorandum in Opposition to Defendants' Motion to Cancel Lis Pendens.....	95
8.	Defendants Amended Motion to Dismiss and or for Summary Judgment.....	97
9.	Notice of Filing Exhibits and Attachments dated December 2, 2022.....	129
10.	Affidavit of James Wells.....	153
11.	Notice of Filing Exhibits and Attachments dated December 11, 2022.....	202
12.	Plaintiff's Motion Pursuant to Rule 59, SCRCF.....	253
13.	Defendants' Motion for And Award of Fees, Costs and Sanctions.....	261-259
14.	Plaintiff's Supplement to Motion Pursuant to Rule 59, SCRCF.....	270
15.	Plaintiff's Notice of Motion and Motion to Dismiss for Lack of Subject Matter Jurisdiction.....	277
III.	COUNSELS' COMMUNICATION	
1.	Email of Haller Law Firm to Judge Scarborough's Law Clerk dated 1/9/2023.....	280
2.	Letter of Haller Law Firm to Judge Scarborough dated 2/13/2023.....	281
IV.	HEARING TRANSCRIPT	
1.	Transcript of Hearing of December 12, 2022.....	283
2.	Transcript of Hearing of March 13, 2023.....	304
V.	APPEAL	
1.	Notice of Appeal with Exhibits.....	329
VI.	CERTIFICATE OF COUNSEL.....	349

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1001958

Marc K Knapp
PLAINTIFF(S)

James Douglas Jenkins, IV et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on Defendant's 12(b)(6) Motion to Dismiss. The Court GRANTS the Defendant's Motion pursuant to the terms of the contract and cancels the Lis Pendens from the property. As such, the Motion to Quash Subpoena is rendered moot and hereby withdrawn.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/12/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al
Case Number: 2022CP1001958
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2022-12-12 15:38:20 page 3 of 3

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1001958

Marc K Knapp
PLAINTIFF(S)

James Douglas Jenkins, IV et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on the Plaintiff's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed March 7, 2023. Upon consideration, the Court finds the Plaintiff filed suit rather than seeking mediation and therefore DENIES Plaintiff's Motion to Dismiss.

The Court also heard the Plaintiff's Motion for Reconsideration, filed December 18, 2022, based upon its mistaken belief that the Form 4 order dismissed the case under Rule 12 (b)(6), SCRPC. The Form 4 Order mistakenly checked the box stating the case was ended, although it also stated a formal order was to follow. The Court issued its formal order, after motions, affidavits, and arguments which converted the Motion to a Rule 56, SCRPC summary judgment motion. Accordingly, the Court DENIES the Rule 59(e) Motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al

Case Number: 2022CP1001958

Type: Order/Electronic Form 4

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So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-03-13 15:24:22 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-01958
	)	2022-LP-10-00201
Marc K. Knapp,	)	2022-LP-10-00255
	)	
Plaintiff,	)	
	)	
Versus	)	ORDER GRANTING SUMMARY
	)	JUDGMENT AS TO PLAINTIFF'S
James Douglas Jenkins, IV, Peter Barnwell	)	CLAIMS AND CANCELLING
Jenkins, and Alicia J. Roy,	)	LIS PENDENS
	)	
Defendants.	)	
	)	

THIS MATTER was before the Court for a hearing on December 12, 2022, on Defendants James Jenkins, Peter Jenkins, and Alicia Roy's (hereinafter "the Jenkins") Motion to Dismiss and/or for Summary Judgment¹ on the plaintiff's claims and Motion to Cancel Lis Pendens. Present were Miles Adler, Esq., attorney for the plaintiff, Marc Knapp, and David K. Haller, Esq., counsel for the defendants, with defendant James Jenkins. After reviewing the record before the court and hearing the arguments of counsel, I grant the motions.

FINDINGS OF FACT

On January 5, 2022, Marc Knapp (hereinafter "Knapp") agreed to buy from the Jenkins real property located at 5896 Maybank Highway, Wadmalaw Island, Charleston County (hereinafter "the Property"). The Property consists of approximately 6.69 acres of raw, undeveloped land. Knapp agreed to pay \$285,000.00 in exchange for the Jenkins providing marketable title to the Property. The property was sold, "As-Is." The contract called for closing

¹ Defendants initially filed a Motion to Dismiss pursuant to SCRPC Rule 12(b)(6), but subsequently timely amended their motion to alternatively seek Summary Judgment. Plaintiff filed a formal opposition to the Motion for Summary Judgment and it is this motion that is properly before and decided by the Court.

on or before February 10, 2022. Shortly before the original closing date, the parties agreed to extend closing to February 24, 2022.

Knapp did not close on February 24, 2022, and the Jenkins declined to extend the closing date. The Jenkins were not satisfied that Knapp had financing to purchase the Property. Knapp filed a *lis pendens* on the property on March 24, 2022, and a second *lis pendens* April 14, 2022. He filed suit for declaratory judgment, specific performance, and breach of contract against the Jenkins on April 28, 2022. The Jenkins have answered and asserted counterclaims.

Knapp asserts that the Jenkins breached the contract by not extending the closing date when contingencies in it were not met by the date of closing. Knapp claims title to the property was not marketable. Further, he claims the contract is contingent on a septic permit from the South Carolina Department of Health and Environmental Control for the Property and that he did not have to close until that contingency was completed.

The matter was referred to me with finality by consent order dated September 21, 2022.

STANDARD OF REVIEW

Pursuant to SCRCP Rule 56, the standard for summary judgment for cases with a preponderance of the evidence standard is:

[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must go to the jury. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot

differ, summary judgment should be granted. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.

BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). This is generally referred to as the “scintilla of evidence” standard.

LAW/ANALYSIS

Knapp seeks in his complaint a declaration that, “the Contract has not expired and that the “As-Is” provision in the Contract only applies to improvements on the Jenkins Tract and that “As-Is” does not relate to questions of marketable title generally and specifically the need for a properly set pin, establishment of the graveyard boundary, and the existence and location of an easement across the Jenkins Tract.” He further asks the Court to order specific performance of the contract and/or for judgment on the Jenkins’s breach of contract.

To succeed on any of these claims, however, Knapp must show that he was ready, willing, and able to perform on his own notwithstanding any alleged breach of the contract by the Jenkins. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) (holding that for a party to enforce a contract he must show he was and remains ready, willing, and able to perform his part of the contract.). The Jenkins contend that Knapp was not able to close because he did not, and still does not, have adequate financing as required by the contract terms. “Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests.” *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). The Jenkins contend Knapp breached the contract’s Financing Contingency and cannot now complain of any alleged subsequent nonperformance by them. I find Knapp breached the Financing Contingency and was not ready, willing, and able to purchase the

Property on the date of closing. Accordingly, the Court finds that Knapp was the first to breach and his claims are moot.

1. Financing Contingency

The contract's Financing Contingency provides:

FINANCE: Buyer's obligation under this Contract [X] is [] is not contingent upon obtaining financing of a [] 30 year or [] 15 year or [X] other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80 % of the Purchase Price or Appraisal Value whichever if lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurred when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller Buyer cannot change lender if the closing date agreed up in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Contract, ¶7(emphasis added).

The Jenkins contend Knapp breached the Financing Contingency by:

1. Failing to apply for financing for raw land by January 10, 2022;
2. Failing to provide a pre-approval letter by January 17, 2022;
3. Failing to obtain a loan for 80% of the purchase price by the closing date;
4. Failing to notify the Jenkins that Knapp was changing Lenders;
5. Failing to inform the Jenkins that he had been denied financing by a Lender so they could terminate the contract.

Based on the record before me, including Knapp's deposition testimony, I agree with the Jenkins.

Knapp testified that he applied for financing from four different lenders. The first was a VA lender, who neither approved nor denied Knapp financing. Instead, it stated it would not finance the purchase of raw land, such as the Property. His second application was not actually by him. Knapp testified he asked his daughter to apply for financing and, if she was approved, he would assign the contract to her. The record before me contained an email from a lender with AgSouth Bank dated February 2, 2022, (after the contractual deadline) stating Lauren Knapp was approved for \$145,000.00 in financing, less than the 80% the contract required. The third application was with First Citizens Bank. Knapp was denied financing by it. The last application was with a private lender named Ken Koos. Mr. Koos provided an affidavit stating he was willing to lend Knapp's business \$225,000 and that he had agreed to do so sometime undefined in January. However, in an email from Koos to Knapp dated March 22, 2022—almost a month after the extended closing date—Koos wrote, "Marc, my partner has been out west out backing it with limited reception and internet. I will discuss the proposed deal with him tomorrow, Thursday the latest. However, the deal has my vote." This contemporaneous email indicates, at best, a contingent offer after the contractual deadline.

Knapp further admitted that he changed lenders without informing the Jenkins,² that he did not have a pre-approval of a loan from a lender by January 17, 2022,³ that he was denied financing by a lender (First Citizens) and did not inform the Jenkins,⁴ and that he did not have approved financing for 80% of the purchase price. By these admissions, Knapp acknowledged violating several provisions of the Financing Contingency. The clear intent of the contingency is to allow the buyer an opportunity to obtain financing, while allowing the seller the right to end the contract

² Depo. of Knapp, p. 33, ln. 22- p. 34, ln. 3.

³ Depo. of Knapp, p. 40, ln. 13-18.

⁴ Depo. of Knapp, p. 42, ln. 10-20.

if it became clear that the buyer could not afford to buy the property. The record here is clear based on Knapp's admissions that he was unable to obtain a loan for the 80% value and that his opportunity to obtain financing was, at best, limited. Knapp hid this information from the Jenkins and kept from them the ability to move on from the contract.⁵

The record shows that Knapp had not obtained the financing by the date required in the contract. The record further illustrates that Knapp failed to comply with the time and notice deadlines in it and that he hid this information from the Jenkins. Knapp breached the contract as a result. Being first to breach the contract, Knapp cannot complain of any other nonperformance. *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). Further, he was not ready, willing, and able to perform on the date of closing. Accordingly, he cannot succeed on his specific performance claim. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). Because of the breaches of the Financing Contingency, the Jenkins would be entitled to terminate the contract, so the declaratory judgment claims are moot. As a result, summary judgment is appropriate and I grant the Defendants' motion.

2. Knapp's Assertions of Breaches

Even if I did not find Knapp breached the Finance Contingency, I would still grant summary judgment because I find that no merit to his primary claims. Knapp asserts that 1) title to the property was not marketable and that closing should be delayed until it is; and 2) that the

⁵ After the missed closing date, Knapp through his counsel continued to act disingenuously as to Knapp's ability to pay for the property. "I have a call in to Mr. Knapp to get authorization for you to speak with his loan broker to confirm the loan application. As soon as I hear back from him I will forward you the loan broker's contacts so you can do your diligence." Email of Adler, March 9, 2022. This contemporaneous email was either untrue or some of Knapp's assertions regarding his financing are questionable.

contract was contingent on his obtaining a septic permit and he did not have to close until the permit was obtained. I reject both arguments.

Knapp contends there is a question about the marketability of the title.⁶ “A purchaser of realty cannot be required to take doubtful title and if there is a reasonable probability of litigation with respect to the title, it is unmarketable. To be marketable, a title need not be flawless. Rather, a marketable title is one free from encumbrances and any reasonable doubt as to its validity. It is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept.” *Scalise Dev., Inc. v. Tidelands Invs., LLC*, 392 S.C. 27, 33, 707 S.E.2d 440, 443 (Ct. App. 2011) (internal citations omitted).

First, all parties acknowledge that the title search on the property showed no encroachments or other impediments. In fact, when Knapp claimed title was not marketable, the Jenkins obtained a commitment from a title insurance company to insure the property. Knapp still refused to close.

Knapp asserts that, although there was no formal encroachment found on the Property, a survey from 1969 showed a graveyard on a neighboring property. Knapp claimed there was a question of the boundaries of the graveyard. Knapp’s theory is that if the graveyard is on the Property, S.C. Code Ann. §27-43-310 would require him to give access to it. The statute provides, “An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress or egress to the cemetery, burial ground, or graves...”. S.C. Code Ann. §27-43-310(A) (emphasis added). Since the graveyard is not on the Property, the owner of it cannot be compelled to provide access. Knapp claimed a picture from Google maps (from the internet) showed a path across the Property onto the neighboring property to access the graveyard. Knapp did not obtain

⁶ Knapp frames this issue as the Jenkins contending that because there is an “as-is” clause in the contract, Knapp must take the title to the property as it is. He provides nothing to bolster this assertion. The Jenkins contention is that the title is marketable and they were prepared to close in compliance with the contract.

a survey of his own. Knapp has shown no law that states a map printed from the internet is an encroachment.

However, Knapp acknowledged in his deposition that when he went to the Property, there was no noticeable path across it. In fact, Knapp testified that he had to cut his own path across the Property to stake out his proposed septic plan. After cutting the path, Knapp emailed his real estate agent on February 2, 2022, and said, "We verified today that the graves are not on the property." No showing has been made that a graveyard exists on the Property or that there is any path or other encroachment on it.

There is no genuine issue of material fact as to the marketability of the title and I hold that title to the Property is marketable. That said, if Knapp was concerned about the title, his remedy was to terminate the contract, not hold it hostage.

Second, Knapp asserts the contract was contingent on his obtaining a septic tank permit from SCDHEC which was not issued by closing. Knapp's theory is that the Jenkins must extend the closing date until the permit was issued. However, Knapp did not apply for the permit until February 7, 2022, three days before the initial closing date. The contract states "Time is of the Essence" and, even with an extended time to close, he did not obtain a permit by February 24, 2022. Knapp attributes his failure to close on a missing survey pin on the property which he contends the Jenkins were obligated to fix. However, the contract states that the seller agrees to take the Property as-is.

"As-is means the Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective date through Closing subject to normal wear and tear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon...". Contract, ¶8. Knapp asserts this provision does not apply because he is buying raw land; however,

nothing in the contract supports this contention. The Property is defined as 5895 Maybank Highway, which all parties acknowledge as raw land. I interpret the contract as not requiring the Jenkins to make any repairs or do any work to the Property prior to closing. Again, if Knapp could not obtain a permit by closing, his remedy was to either terminate the contract, because the contingency was not met or negotiate an extension of the closing amenable to the Jenkins. For this reason, Knapp's contention also fails.

Having determined that Knapp no longer has a contract interest in the Property, the *lis pendens* is hereby cancelled.

THEREFORE, IT IS ORDERED that Defendants' Motion to Dismiss and/or for Summary Judgment is GRANTED; and

IT IS FURTHER ORDERED that judgment be entered in favor of the Jenkins on all of plaintiff Marc Knapp's claims; and

IT IS FURTHER ORDERED that plaintiff's *lis pendens* (2022-LP-10-00201 and 2022-LP-10-00255) are CANCELLED; and

IT IS FURTHER ORDERED that the court retains jurisdiction to award attorney's fees and costs pursuant to the contract between the parties. Defendants shall submit a request for fees and costs within ten (10) days of the date of this order; and

IT IS FURTHER ORDERED that this case may continue for the Defendants to pursue their counterclaims.

AND IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al
Case Number: 2022CP1001958
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-01-24 12:25:39 page 10 of 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No.: 2022-CP-10-1958
Marc K. Knapp,	)	
	)	
Plaintiffs,	)	ORDER AWARDING FEES TO
	)	THE DEFENDANTS
v.	)	
	)	
James Douglas Jenkins, IV, Peter Barnwell	)	
Jenkins, and Alicia J. Roy	)	
	)	
Defendants.	)	
	)	

THIS MATTER is before the Court on Defendants James Douglas Jenkins, IV, Peter Barnwell Jenkins, and Alicia J. Roy's Motion for an Award of Fees and Costs. Paragraph 23(A) of the Residential Purchase and Sale Agreement at issue here provides for an award of attorney's fees and costs for the successful party. This Court previously granted summary judgment to the Defendants on all of the Plaintiff's causes of action. The motion is supported by the two Affidavits of Attorney's Fees of defense counsel, David Haller, requesting \$32,866.56 in fees and costs for this matter.

In reviewing the requested fee and cost award, I have fully considered Mr. Haller's affidavit and the record before me as a whole. Further, I have applied: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. Gordon v. Drews, 358 S.C. 598, 613, 595 S.E.2d 864, 872 (Ct. App. 2004). I find the request of 32,866.56 is fair and reasonable considering the issues raised by the Plaintiff in his complaint. The Defendants' attempted to mitigate their damages by entering into a subsequent contract for the property. They accelerated the discovery and prosecution of the case in order to

attempt to close. Mr. Haller's professional background as shown in his affidavit, with 15 years experience in a broad range of cases. The assessed hourly rate is consistent with lawyers in the Charleston area with background's similar to defense counsel. Based on my analysis and consideration of these factors, I believe the requested award is fair and reasonable and award the same.

THEREFORE IT IS ORDERED that judgment be entered in favor of the Defendants against the Plaintiff in the amount of \$32,866.56.

AND IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al
Case Number: 2022CP1001958
Type: Order/Attorney Fees

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-05-08 10:40:58 page 3 of 3

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022 CP-10-01958

MARC K. KNAPP

JAMES DOUGLAS JENKINS, IV, PETER
BARNWELL JENKINS, and ALICIA J. ROY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : ☐ Plaintiff	☐ Defendant
	or	
	☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
JAMES DOUGLAS JENKINS, IV, PETER BARNWELL JENKINS, and ALICIA J. ROY	MARC K. KNAPP	\$32,866.56
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al

Case Number: 2022CP1001958

Type: Order/Judgment and Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-05-16 11:27:01 page 5 of 5

Certificate of Electronic Notification

Recipients

Frederick Adler - Notification transmitted on 05-16-2023 03:58:16 PM.

Roger Giardino - Notification transmitted on 05-16-2023 03:58:17 PM.

David Haller - Notification transmitted on 05-16-2023 03:58:16 PM.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

**JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,**

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022 CP 10 _____

COMPLAINT

The Plaintiff above named, complaining of the Defendants above named alleges:

1. The Plaintiff and Defendants, and all matters and things alleged in this lawsuit, are within the jurisdiction of this Honorable Court.
2. The Plaintiff Marc K. Knapp ("**Knapp**") is a citizen and resident of Charleston County, South Carolina.
3. The Defendant James Douglas Jenkins, IV ("**Jenkins IV**"), on information and belief, is a citizen and resident of Charleston County, South Carolina and is an owner of certain real estate, more fully described below, which is located in Charleston County, South Carolina and is the subject of this action.
4. The Defendant Peter Barnwell Jenkins ("**Jenkins**"), on information and belief, is a citizen and resident of the Commonwealth of Charleston County, South Carolina and is an owner of certain real estate, more fully described below, which is located in Charleston County, South Carolina and is the subject of this action.
5. The Defendant Alicia J. Roy ("**Roy**"), on information and belief, is a citizen and resident of the Commonwealth of Charleston County, South Carolina and is an owner of certain real estate, more fully described below, which is located in Charleston County, South Carolina and is the subject of this action.
6. This Honorable Court has jurisdiction over the parties and the subject matter of this litigation and venue is proper in Charleston County, South Carolina.

FACTUAL BACKGROUND

7. Knapp entered into a contract to buy and sell real estate with Jenkins, IV, Jenkins, and Roy, collectively referred to as the "**Sellers**," dated 05 January 2022 (the "**Contract**"). A copy of the contract is enclosed as **Exhibit A**.

8. The real estate which is subject to the Contract is described as follows:

The property being described as **Part Tract "A" 6.07 Acres** as set forth in the enclosed plat entitled "Plat of 72.11 Acres, Tract "A" Property of J. Douglas Jenkins III, Tract "B" Property of Sarah B. Leland, Wadmalaw Island, Charleston County, SC" made by H. Exo Hilton on December 18, 1968 and recorded on January 28, 1969 in Plat Book Y at Page 42 in the R.M.C. Office for Charleston County with the address of 5896 Maybank Hwy Wadmalaw Island, South Carolina 29487 and described in the Deed recorded in Book R448 at Page 731 in the records of the Office of Register of Deeds for Charleston County, South Carolina as follows:

Of all of that piece, parcel or tract of land on Wadmalaw Island, County of Charleston, State of South Carolina, consisting of 36.08 acres of land, more or less, and known and designated as Tract "A" on a plat entitled "Plat of 72.11 Acres, Tract "A" Property of J. Douglas Jenkins III, Tract "B" Property of Sarah B. Leland, Wadmalaw Island, Charleston County, SC" made by H. Exo Hilton on December 18, 1968 and recorded on January 28, 1969 in Plat Book Y at Page 42 in the R.M.C. Office for Charleston County. Said property having such shape, size, measurements, buttings and boundings as will appear by reference to the said plat.

TMS#: 154-00-00-011

The real estate described above is referred to below as the "**Jenkins Tract.**"

9. Pursuant to the terms of the Contract, Knapp agreed to purchase the Jenkins Tract for \$285,000 (the "**Purchase Price**") contingent on (i) Mr. Knapp obtaining a purchase money loan for the lower of the Purchase Price or appraised value, (ii) the real estate appraising at least equal to the Purchase Price, and (iii) receipt of a preliminary or final septic permit.
10. Pursuant to the terms of the Contract, the Sellers agreed to convey to Knapp marketable title to the Jenkins Tract by general warranty deed free of all encumbrances and liens and subject to all easements, reservations, rights of way, restrictive covenants of record and to all government statutes, ordinances, rules, permits, and regulations, provided they do not make the title unmarketable or adversely affect the use/value of the Jenkins Tract in a material way.
11. The Contract also provided that the Jenkins Tract would be conveyed in "As-Is" condition despite there being no improvements on the Jenkins Tract.
12. Knapp deposited \$5,000 into escrow (the "**Earnest Money**") when he delivered the signed Contract to the Sellers and the Earnest Money is still being held in escrow.
13. Knapp has approval from a lender for at least 80% of the Purchase Price.
14. During the course of his due diligence Knapp discovered the existence of a graveyard located along the southern boundary of the Jenkins Tract and also discovered that a pin marking the

southwestern corner of the Jenkins Tract could not be located. The Sellers were advised accordingly.

15. The inspection required by DHEC to obtain the septic permit could not be conducted until a new pin was properly set and the exact location of the graveyard relative to the Jenkins Tract also could not be determined until a new pin was set. Because of the surveyor and DHEC workload, and through no fault of Knapp's, scheduling the survey to set a new pin and the DHEC inspection prior to the Contract's closing date was impossible. The Sellers were advised accordingly.
16. Knapp brought these issues to the attention of the Sellers multiple times prior to the closing date of the Contract, the issues being the delays getting a surveyor out to the Jenkins Tract to set a new pin and scheduling DHEC for an inspection for septic. The last such communication was via letter dated 02 March 2022, a copy of which is enclosed as **Exhibit B**.
17. Around the time the 02 March 2022 letter was sent, a potential right-of-way was discovered that appeared to cross the Jenkins Tract, terminating at what appears to be the northern edge of the graveyard.
18. The issues described above affected the marketability of the Jenkins Tract and adversely affect the use and value of the Jenkins Tract in a material way. Notwithstanding the foregoing, Knapp was willing to resolve these issues at his own cost and expense and move to close.
19. The Jenkins Tract title was unmarketable and its value adversely affected in a material way without a clearly surveyed southern boundary line and a determination as to whether or not (i) the graveyard encroached on the Jenkins Tract and (ii) the apparent right-of-way was a legally enforceable easement.
20. Prior to the closing date, Knapp advised the Sellers he would pay the costs to resolve the issues described herein that are (i) making title unmarketable and (ii) adversely affecting value even though these issues were the responsibility of the Seller to resolve under the Contract.
21. Subsequent to Knapp's disclosure, Sellers stopped cooperating with Knapp and pursuant to an email sent from Sellers's realtor on 23 March 2022 have taken the position that the Contract has expired and Knapp was further advised he no longer has access to the Jenkins Tract.
22. Knapp has met all the conditions precedent under the terms of the Contract and is ready to resolve the issues described above and move to consummate the purchase of the Jenkins Tract.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

23. Knapp reasserts the above allegations as if set forth herein verbatim.
24. Knapp seeks a declaratory judgment pursuant to S.C. Code Ann. § 15-53-10 *et seq.*, the South Carolina Uniform Declaratory Judgment Act (the "Act").

25. All parties necessary for the issuance of a declaratory judgment in this matter are parties to this action as required by the Act.
25. Knapp is informed and believes that there is no adequate remedy at law, or otherwise, for the matters alleged herein except for the relief set forth under the Act. Pursuant to S.C. Code Ann. § 15-53-30, this Court has authority to resolve questions as to the rights of the parties under the Contract.
26. Pursuant to the terms of the Contract the Sellers were required to convey marketable title and Knapp was required to accept the Jenkins Tract in "As-Is" condition.
27. When Knapp informed the Sellers of (i) the need to set a new pin, (ii) the need to establish the boundary of the graveyard, and (iii) the need to determine whether there is an easement across the Jenkins Tract to access the graveyard and if so, its location, the Sellers responded that they were only required to convey the Jenkins Tract "As-Is" and that these matters did not affect marketable title.
28. As a result of the Sellers's interpretation of the Contract there is actual, justiciable controversy and such controversy presents a question of construction of the Contract.
29. The construction of the Contract affects Knapp's rights, status, and legal relations with the Sellers, by virtue of Knapp and the Sellers being party to the Contract.
30. Knapp requests a judicial determination that the Contract has not expired and that the "As-Is" provision in the Contract only applies to improvements on the Jenkins Tract and that "As-Is" does not relate to questions of marketable title generally and specifically the need for a properly set pin, establishment of the graveyard boundary, and the existence and location of an easement across the Jenkins Tract.

FOR A SECOND CAUSE OF ACTION
(Specific Performance)

31. Knapp reasserts the above allegations as if set forth herein verbatim.
32. Knapp has acted in good faith and comes to this Honorable Court with clean hands.
33. The Contract is valid, binding, and enforceable.
34. Knapp has performed all conditions precedent required under the Contract. Knapp has met all of his contractual obligations to the Sellers. Knapp has endeavored to comply with the Contract, obtain his septic permit and resolve the issues set forth above, but the Sellers have refused to allow Knapp to complete his work to allow resolution of said issues and the issuance of the septic permit.
35. Knapp is ready willing and able to complete the work required to get the septic permit issued and the issues set forth above resolved when Sellers allow same to occur.

36. Knapp has made due demand on the Sellers to perform Sellers's obligations under the Contract and allow Knapp access to the Jenkins Tract to complete inspection for septic permit and resolve the issues set forth above, but the Sellers have not allowed Knapp further access to the Jenkins Tract.
37. The Sellers are obligated by contract to allow Knapp access to the Jenkins Tract to obtain the septic permit and resolve the issues set forth above.
38. The Sellers are obligated to convey marketable title to Knapp once the septic permit is obtained and the issues set forth above are resolved.
39. Knapp requests this Honorable Court to compel the Sellers to allow Knapp access to the Jenkins Tract to complete the work needed to get the septic permit issued and to get the issues set forth above resolved and to compel the Sellers to close pursuant to the terms of the Contract and convey the Jenkins Tract to Knapp.

FOR A THIRD CAUSE OF ACTION
(Breach of Contract)

40. Knapp reasserts the above allegations as if set forth herein verbatim.
41. As set forth above, Knapp and the Sellers entered into the Contract on 05 January 2022 for the purchase and sale of the Jenkins Tract.
42. The terms of the Contract provide that the Sellers would permit Knapp access to the Jenkins Tract to allow Knapp to conduct due diligence, clear the contingencies in the Contract, and resolve any issues discovered in the course of due diligence.
43. All conditions precedent to Knapp's enforcement of the Contract have been satisfied or performed, less and except the matters described herein which remain incomplete because the Sellers have prevented Knapp from completing them.
44. Knapp has acted in good faith, incurring significant cost in the course of due diligence and clearing contingencies, all in reliance on the Sellers meeting their contractual obligations.
45. The Sellers have breached the Contract by preventing Knapp from accessing the Jenkins Tract to complete his due diligence, obtain the septic permit, drop a new pin for the boundary line, determine the boundary of the graveyard, and the confirm the existence and location of an easement on the Jenkins Tract.
46. As a result of the breach of the Contract by the Sellers, Knapp has suffered damages in an amount not yet fully determined, but not less than \$15,000.

*****Prayer for Relief and Signature Block on Following Page*****

WHEREFORE, Knapp prays that this Honorable Court inquire into the matters set forth herein and award Judgment in favor for Knapp as follows: (i) a declaration as to the rights of the parties under the Contract; (ii) judgment against the Defendants jointly and severally for damages to be ascertained at the trial of this action, including actual and punitive damages; (iii) for attorney's fees and costs of this action; for both prejudgment and post-judgment interest; (iv) for specific performance under the Contract; and, (v) for any such relief in law or in equity that this Honorable Court may deem just and proper.

Respectfully submitted,

/s/ F. Miles Adler
F. Miles Adler
SC Bar No.: 70238
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
miles@adlerlaw.partners

28 April 2022
Pawleys Island, South Carolina

Prayer for Relief and Signature Page for Complaint
Knapp v. Jenkins et al.

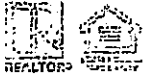
EXHIBIT A

Knapp v. Jenkins et al.

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AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Wendy H. Knapp and Assignee

("Buyer"), and

Seller(s), James Douglas Jenkins Et al

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
 (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
 (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and closing. (22)
 (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and initials and date on this Contract and Delivers Notice to Initially cause this primary Contract to be binding on all Parties.
 (E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
 (F) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance period.

☐ BUYER ☒ SELLER ☐ REAL ESTATE LICENSEE

☒ (Initials) BUYER

Relationships form and is receiving ☒ Client ☐ Customer service in this transaction.

☒ (Initials) SELLER

Relationships form and is receiving ☒ Client ☐ Customer service in this transaction.

7. PURCHASE PRICE: \$25,000.00 (Twenty Five Thousand and No/100ths Dollars)

Payable by transfer of Good Funds via ☐ Finance or ☐ combination of Finance and Cash USD or ☐ Cash USD

Verification of Cash available for Closing is ☐ attached ☐ no attached ☐ to be delivered before

This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCRS04 ☐ is ☐ is not attached.

8. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental ad reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 1895 Mandant Drive Unit #
 City Wachapreague Island State of South Carolina
 Zip 29927 County of Oberlin
 Lot Block Section/Phase Subdivision Kentville Pk
 Owner Tax Map 182-09-08-01
 Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in separate list:

☒ BUYER ☐ BUYER ☐ SELLER ☐ SELLER
☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER
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1/2020 FORM 310 PAGE 1 of 9

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4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before February 5, 2022 ("Closing Date"). Conveyance shall be made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): _____

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ 5,000.00 accompanies this offer and \$ 5,000.00 will be paid by 5 P.M. on January 11, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Miles Adler Esquire as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR510, SCR517, MEDIATION AGREEMENT) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 100.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees) are the ☒ Seller's or ☐ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs. Also, Buyer is solely responsible for any/all rollback taxes.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 2,500.00, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER
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1/2020 FORM 310 PAGE 2 of 9

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7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80.000 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): TBD ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other _____. An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms
☐ are ☒ are not attached.

8. REPAIRS:

CHECK ONLY ONE OF THE FOLLOWING OPTIONS. IF NO BOXES ARE CHECKED THIS CONTRACT WILL BE AN AS-IS CONTRACT IN REGARDS TO REPAIRS. IF MULTIPLE BOXES ARE CHECKED THEN THE FIRST PARAGRAPH WITH A CHECKED BOX WILL DETERMINE REPAIRS.

☐ REPAIR PROCEDURE:

All Repair Procedure Inspections and Requests shall be completed and delivered to the Seller by 6 P.M. on _____ (date). Any and all requests necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests) should be delivered by the deadline above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances. Upon Seller's request the Buyer will provide with a copy of the Inspection Report.

No later than 6 P.M. on _____ (date), Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). Seller Paid Requests DO NOT include the following items: home maintenance, flooring, fogged windows, grandfathered code issues, landscaping, preventive maintenance, cosmetic changes, home improvement, and energy efficiency. If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Calendar Days choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. **IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 CALENDAR DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.**

☐ DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on _____ (date). Any extension to this date must be made in writing and agreed to by both Parties.

☒ BUYER ☐ BUYER ☒ SELLER ☒ SELLER
☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER

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1/2020 FORM 310 PAGE 3 of 9

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During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and ATTORNEYS all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair Estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/properly Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to Inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract

☒ AS-IS

All Parties agree that Property is being sold "As-Is". "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. Buyer retains the right to inspect the Property by 6 P.M. on January 28, 2022 (date) for informational purposes only. The Seller is under no obligation to remedy any issues the Buyer discovers during their inspections, and the Buyer may not terminate the contract based on the results of any inspections conducted.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other _____ ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

[11/1] BUYER [_____] BUYER [11/1] SELLER [11/1] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
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1/2020 FORM 310 PAGE 4 of 9

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10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☐ contingent ☐ not contingent upon the ☐ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☐ Seller. ☐ Buyer ☐ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than _____ calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wellands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by _____ with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and \$_____ will be paid by _____ to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

[21K] BUYER [_____] BUYER [13K] SELLER [103] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [13] SELLER
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1/2020 FORM 310 PAGE 5 of 9

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16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☒ Buyer and Seller agree that Seller will NOT complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

- (i) Deliver Notice of Default to Seller and terminate Contract; and
- (ii) Pursue any remedies available to Buyer at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:

- (i) Deliver Notice of Default to Buyer and terminate Contract; and
- (ii) Pursue any remedies available to Seller at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

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1/2020 FORM 310 PAGE 6 of 9

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(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
 (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation. Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termiles, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 503, 504, 315, 320, 393, 370, 375, 513, 610): Contingent on Receipt of preliminary or final Septic Permit

29. NOTICE AND DELIVERY: Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

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1/2020 FORM 310 PAGE 7 of 9

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30. Acknowledgements: Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank. Parties are also advised and understand that audio/visual surveillance may occur in the property and parties should plan accordingly and comply with all federal, state, and local laws. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

31. **EXPIRATION OF OFFER:** When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 5 ☐ AM ☒ PM on January 6, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline. This offer will expire automatically if no action is taken by either party 30 calendar days after the offer's submittal.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered to the other Party within _____ Calendar Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: Marc Kravitz Date: 01/04/2022 Time: 14/01/2022 1:44:00 AM GMT

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: _____

SELLER: DataSigner: James D Jenkins IV Date: 1/5/2022 | 19:01 PM EST
James Jenkins Time: _____

1/5/2022 | 20:09 PM EST

SELLER: Alicia J Roy Date: _____ Time: _____
Alicia Roy

1/5/2022 | 16:37 PM PST

SELLER: Peter B Jenkins Date: _____ Time: _____
Peter Jenkins

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX: sheyer@carolinaone.com Fax: 643746-4557

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[] BUYER [] BUYER [] SELLER [^{US}] SELLER
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1/2020 FORM 310 PAGE 8 of 9

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Robert Young/The Boulevard Co. LLC.

Robert Young License #114284 Office Code# 9840RR

Buyer's Agent/Company

Buyer's Agent License #/LLR Office Code

ryoungcofc@yahoo.com

(843)906-3684

Buyer's Agent's Email Address

Buyer's Agent Telephone Number

Susan Heyer / Carolina One Real Estate

80767 / 2466

Seller's Agent/Company

Seller's Agent License #/LLR Office Code

sheyer@carolinaone.com

843-901-2428

Seller's Agent's Email Address

Seller's Agent Telephone Number

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1/2020 FORM 310 PAGE 9 of 9

EXHIBIT B

Knapp v. Jenkins et al.

ADLER LAW FIRM LLC

Post Office Box 4743
Pawleys Island, South Carolina 29585

F. Miles Adler

direct 843.314.3204
miles@adlerlaw.partners

02 March 2022

VIA EMAIL SHEYER@CAROLINAONE.COM

Susan Heyer
CAROLINA ONE REAL ESTATE SERVICES
1265 Folly Road
Charleston, SC 29412

Re: Agreement/Contract: To Buy and Sell Real Estate (Residential)
Property: 5896 Maybank Hwy Wadmalaw Island, SC 29487
Buyer: Marc K. Knapp
Seller: James Douglas Jenkins, et al.

Dear Ms. Heyer:

I am writing to you on behalf of my client Mr. Knapp. I understand you represent Mr. Jenkins as his realtor.

I have reviewed recent email correspondence between you and Mr. Knapp's realtor Robert Young regarding Mr. Knapp's performance under the contract to purchase 5896 Maybank Hwy (the "Property"), as referenced above (the "Contract").

I understand your position is that Mr. Knapp agreed to purchase the Property "As-Is" pursuant to paragraph 8 of the Contract. And I agree that the Contract does provide for an "As-Is" sale. However, the Contract requires that the seller convey marketable title and is also contingent on financing and the issuance of a septic permit from DHEC.

The purpose of this letter is to inform you that Mr. Jenkins cannot convey marketable title at this time and that application has been made with DHEC for the septic permit, but the site visit has not been scheduled yet. The schedule for DHEC's site visit and the issues with marketable title are related and do not bear on the "As-Is" provision in the Contract.

Marketable title cannot be conveyed until the exact location of the graveyard is confirmed as not being on the Property. And the inspection by DHEC requires first that a pin be set for the southwestern corner of the property; the setting of the pin is therefore a condition precedent to the DHEC inspection and not an issue related to the "As-Is" provision of the Contract. The setting of the pin is also relevant as it impacts where exactly the graveyard lies relative to the Property. Finally, the fact that there is a graveyard implies there may also be an easement for access, so I will need to investigate – Mr. Jenkins is

LT Heyer
5896 Maybank Contract

p. 2

unable to convey marketable title until the location of the graveyard is confirmed as off Property and the existence of the easement ruled out.

Mr. Knapp is spending money to get these issues resolved as expeditiously as possible and is fully prepared to close once the title issues have been addressed and contingencies met. I trust the Seller will understand and will allow Mr. Knapp to complete the transaction.

If Mr. Jenkins is unwilling to proceed under the Contract, Mr. Knapp is prepared to protect his rights and will move to enforce those rights if Mr. Jenkins attempts to terminate. Hopefully this will not be necessary.

Please contact me if you have any questions or concerns.

Sincerely,



F. Miles Adler

cc: Client *[via email]*
Robert Young *[via email]*

ADLER LAW FIRM LLC
P.O. Box 4743
Pawleys Island, South Carolina 29585

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2022 CP 10 _____

SUMMONS

TO THE DEFENDANTS NAMED ABOVE AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said Complaint on the subscriber at his mailing address P.O. Box 4743 Pawleys Island, South Carolina 29585, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

/s/ F. Miles Adler

F. Miles Adler

SC Bar No.: 70238

ADLER LAW FIRM, LLC

P.O. Box 4743

Pawleys Island, SC 29585

T: 843.314.3204

miles@adlerlaw.partners

___ April 2022

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No. 2022-CP-10-1958
Marc K. Knapp,	)	
	)	
Plaintiffs,	)	ANSWER AND COUNTERCLAIMS
	)	
v.	)	
	)	
James Douglas Jenkins, IV, Peter Barnwell	)	
Jenkins, and Alicia J. Roy	)	
	)	
Defendants.	)	
	)	

TO: THE PLAINTIFF AND ITS COUNSEL

Defendants James Douglas Jenkins, IV, Peter Barnwell Jenkins, and Alicia J. Roy, by and through their undersigned counsel, answer the plaintiff's complaint and counterclaims against him as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the complaint not hereinafter specifically admitted is denied and strict proof thereof demanded.

FOR A SECOND DEFENSE

SCRCP RULE 12(b)(6)

2. Plaintiffs' complaint fails to allege a cause of action for which relief may be granted and should be dismissed pursuant to SCRCP Rule 12(b)(6).

FOR A THIRD DEFENSE

3. Paragraph one of the complaint is admitted.
4. Paragraphs three, four, and five are denied and strict proof thereof demanded.
5. Paragraphs two and six are statements of law to which to response is required.

6. Paragraph 7 is admitted except the exhibit is incomplete and does not contain certain addenda.
7. As to Paragraph 8, defendants crave reference to the records concerning the Subject Property found in the Register of Deeds Office for Charleston County as to the accurate property description and title to the Subject Property. To the extent the complaint alleges otherwise, it is denied, and strict proof thereof demanded.
8. As to Paragraph nine, ten and 11 of the complaint, defendants crave reference to the terms and conditions of the contract as to the agreement between the parties. To the extent the complaint alleges otherwise, it is denied, and strict proof thereof demanded.
9. Paragraph 12 of the complaint is admitted.
10. Paragraph 13 of the complaint is denied, and strict proof thereof demanded.
11. As to paragraph 14 of the complaint, defendants admit a plat shows a graveyard on the neighboring property, not to the Subject Property. They deny any issues with pin placement or any obligation to do anything about the claimed issue if there were a problem. The remainder of the paragraph is denied, and strict proof thereof demanded.
12. Paragraph 15 of the complaint is denied, and strict proof thereof demanded. By way of further answer to the complaint, Knapp did not apply for a DHEC permit until after the initial closing date in breach of the contract. To the extent the complaint alleges otherwise, it is denied, and strict proof thereof demanded.
13. Paragraph 16 of the complaint is denied, and strict proof thereof demanded.
14. Paragraph 17 of the complaint is denied, and strict proof thereof demanded. There is no easement or right of way on the property and no public record showing any right of way exists.

15. Paragraph 18 of the complaint is denied, and strict proof thereof demanded.
16. Paragraph 19 of the complaint is denied, and strict proof thereof demanded. By way of further answer to the complaint, defendants have provided a title insurance binder to the plaintiff showing the title to be marketable and insurable. See Exhibit A. Plaintiff still refuses to close.
17. Paragraph 20 of the complaint is denied, and strict proof thereof demanded.
18. Paragraph 21 of the complaint is denied, and strict proof thereof demanded.
19. Paragraph 22 of the complaint is denied, and strict proof thereof demanded.

AS TO THE FIRST CAUSE OF ACTION

20. Paragraph 24 is a statement of law to which no response is required.
21. Paragraph 25 of the complaint is denied, and strict proof thereof demanded.
22. Defendants deny the second Paragraph 25 of the complaint, and demand strict proof thereof.
23. As to Paragraph 26 of the complaint, defendants crave reference to the complete contract between the parties as to the terms and conditions of the same. To the extent the complaint alleges otherwise, it is denied, and strict proof thereof demanded. Defendants were ready, willing, and able to convey marketable title on the date on which the parties agreed to close and deny Knapp was prepared to accept the property in "As-Is" condition or that he was able to close at the contracted time. Knapp breached the contract as a result of his failure to close on time.
24. As to Paragraph 27, defendants allege they were ready, willing, and able to convey marketable title on the date the parties agreed to close. To the extent the complaint alleges otherwise, it is denied, and strict proof thereof demanded.

25. Paragraph 28 of the complaint is denied, and strict proof thereof demanded.

26. Paragraph 29 of the complaint is denied, and strict proof thereof demanded.

27. Paragraph 30 of the complaint is denied, and strict proof thereof demanded.

AS TO THE SECOND CAUSE OF ACTION

28. Paragraph 32 of the complaint is denied, and strict proof thereof demanded.

29. Paragraph 33 of the complaint is admitted; however, Knapp breached the same by failing to apply for financing on time, failing to apply for a septic permit on time and failing to timely close, among other things, and the contract was properly terminated by the defendants.

30. Paragraph 34 of the complaint is denied, and strict proof thereof demanded.

31. Paragraph 35 of the complaint is denied, and strict proof thereof demanded.

32. Paragraph 36 of the complaint is denied, and strict proof thereof demanded.

33. Paragraph 37 of the complaint is denied, and strict proof thereof demanded.

34. Paragraph 38 of the complaint is denied, and strict proof thereof demanded.

35. Paragraph 39 of the complaint is denied, and strict proof thereof demanded.

AS TO THE THIRD CAUSE OF ACTION

36. Paragraphs 41 and 42 are admitted. Defendants admit they complied with contract and were ready, willing, and able to close.

37. As to Paragraph 43, defendants crave reference to the total Contract as to the terms and conditions thereof. To the extent the paragraph conflicts with the Contract, the paragraph is denied, and strict proof thereof demanded.

38. Paragraph 44 of the complaint is denied, and strict proof thereof demanded.

39. Paragraph 45 of the complaint is denied, and strict proof thereof demanded.

40. Paragraph 46 of the complaint is denied, and strict proof thereof demanded.

**FOR A FOURTH AND AFFIRMATIVE DEFENSE
(UNCLEAN HANDS)**

41. Plaintiff's claims are barred by the doctrine of unclean hands.

**FOR A FIFTH AND AFFIRMATIVE DEFENSE
(ASSUMPTION OF RISK)**

42. Plaintiff's claims are barred by the doctrine of assumption of risk.

**FOR A SIXTH AND AFFIRMATIVE DEFENSE
(DURESS)**

43. Plaintiff's claims are barred by the doctrine of duress.

**FOR A SEVENTH AND AFFIRMATIVE DEFENSE
(FRAUD)**

44. Plaintiff's claims are barred by the doctrine of fraud in the inducement.

**FOR AN EIGHTH AND AFFIRMATIVE DEFENSE
(ILLEGALITY)**

45. These defendants are informed and believe that the plaintiff's conduct may have occurred by some illegal means, thereby nullifying the transaction. Accordingly, the plaintiff's claims are barred by illegality.

**FOR A NINTH AND AFFIRMATIVE DEFENSE
(LACHES)**

46. The plaintiff's claims are barred by the doctrine of laches.

**FOR A TENTH AND AFFIRMATIVE DEFENSE
(MISREPRESENTATION)**

47. The plaintiff's claims are barred by the doctrine of misrepresentation.

FOR AN ELEVENTH AND AFFIRMATIVE DEFENSE

(MISTAKE)

48. The plaintiff's claims are barred by the doctrine of mistake.

FOR A TWELFTH AND AFFIRMATIVE DEFENSE

(WAIVER)

49. The plaintiff's claims are barred by the doctrine of waiver.

FOR A THIRTEENTH AND AFFIRMATIVE DEFENSE

(FAILURE TO MITIGATE)

50. The plaintiff's claims are barred by the doctrine of failure to mitigate.

FOR A FOURTEENTH AND AFFIRMATIVE DEFENSE

(ACCORD & SATISFACTION)

51. Plaintiff's claims are barred by the doctrines of accord and satisfaction.

FOR A FIFTEENTH AND AFFIRMATIVE DEFENSE

(PRIOR BREACH)

52. Plaintiff was the first to breach the contract by, among other things, failing to timely apply for financing, failing to timely apply for the septic permit, and failing to close in accord with the contract. Defendants deny breaching the contract. As a result of the plaintiff's prior breach of the contract, he is not entitled to any relief.

FOR A SIXTEENTH DEFENSE AND BY WAY OF COUNTERCLAIMS

53. Defendants reallege the admissions, denials, and qualifications stated above.

54. Plaintiff and defendants entered into the contract set forth in Exhibit B attached hereto.

55. The Contract required the transaction close on February 3, 2022. The parties entered into an addendum extending closing to February 24, 2022.
56. The Contract required Knapp to apply for financing by January 10, 2022.
57. Knapp did not apply for financing until February 22, 2022, two days before the extended closing date and six weeks after the contract required him to close.
58. The contract was contingent on, "receipt of preliminary or final septic permit." Knapp did not apply for the permit until February 4, 2022, four days after the original closing date.
59. On information and belief, Knapp was unable to obtain a loan for 80% of the value of the property.
60. On information and belief, no one from DHEC told Knapp that a missing corner would prohibit a septic permit being issued:

If only one corner is missing, and the proposed system location is not within that area, then it shouldn't be a problem. However, with that being said, if the only suitable area is within that general area, then the corner may need to be marked. If that were the case, I would notify you so the corner could be marked prior to the evaluation being completed. You would not however be penalized for this. Thank you.

Warm Regards,
Caroline Simpson
Environmental Health Manager

Exhibit C.

61. The recorded plat of the property found at Book X91, Page 29 in the Register of Deeds for Charleston County shows the claimed cemetery clearly located on Tract B; the Subject Property is Tract A. See Exhibit D.
62. The recorded plat also shows no easement, right of way, or other encroachment on the property.

63. Knapp's basis for claiming title is not marketable is a picture obtained allegedly from the webpage Google Maps. Knapp has not presented any legitimate document that the title is sullied in any fashion.
64. As mentioned above, the defendants presented the plaintiff a title insurance binder showing no encroachments or other impediments to the property.
65. Despite having proof of marketable title and refusing to provide any legitimate showing of an encroachment, Knapp still refused to close.
66. On information and belief, Knapp has no present ability to close on the property. Hence, he filed this action to keep the property off the market until either he can buy it or the defendants lower the purchase price so he can afford it, or someone other bad faith reason not derived from the contract or acts of the defendants. Regardless, none of the excuses he articulates impede the title or Knapp closing.
67. In an effort to mitigate the damages defendants have suffered, they have entered into a contract with another buyer. Knapp was made aware of the new contract. Knapp's faulty *lis pendens* interferes with the closing and he refuses to cancel it, even with knowledge of the contract.

BREACH OF CONTRACT

68. Defendants reallege the admissions, denials, qualifications, and allegations of the forgoing paragraphs.
69. Plaintiff and defendants entered into a contract, attached hereto as Exhibit B.
70. The Contract required Knapp to close the sale on or before February 24, 2022.
71. Knapp breached the Contract by, among other things:

- a. Failing to apply for financing in a timely manner;
 - b. Failing to inform the Seller/Defendants he was unable to obtain financing in a timely manner;
 - c. Breaching the covenant of good faith and fair dealing;
 - d. Failing to timely apply for a septic permit;
 - e. Concocting a story regarding the permit to hide his bad faith failure to apply timely;
 - f. Misstating the presence of an easement or right of way to not timely close;
 - g. Misstating the location of the graveyard on the neighboring property to not timely close; and
 - h. Refusing to close when presented with proof of insurable and marketable title.
72. As a direct and proximate result of the plaintiff's breach of contract, defendants have been injured and suffered damages. Defendants are entitled to a judgment against the plaintiff for consequential damages, in an amount to be determined by the trier of fact, attorney's fees, court costs, and interest.

FOR A SEVENTEENTH DEFENSE AND BY WAY OF A COUNTERCLAIM
BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT

73. Defendants reallege the admissions, denials, qualifications, and allegations of the forgoing paragraphs.
74. Plaintiff and defendants entered into a contract, attached hereto as Exhibit B.
75. Plaintiff breached the contract as alleged herein. Plaintiff's breach was accompanied by bad faith or fraudulent conduct, as those terms are defined by South Carolina law. Among other things:

- a. Failing to apply for financing in a timely manner;
- b. Failing to inform the Seller/Defendants he was unable to obtain financing in a timely manner;
- c. Failing to timely apply for a septic permit;
- d. Concocting a story regarding the permit to hide his bad faith failure to apply timely;
- e. Misstating the presence of an easement or right of way to not timely close;
- f. Misstating the location of the graveyard on the neighboring property to not timely close; and
- g. Refusing to close when presented with proof of insurable and marketable title.

76. As a direct and proximate result of the plaintiff's breach of contract, defendants have been injured and suffered damages. Defendants are entitled to a judgment against the plaintiff for actual damages, in an amount to be determined by the trier of fact, attorney's fees, court costs, and interest, and punitive damages in an amount sufficient to deter such similar conduct in the future.

**FOR AN EIGHTEENTH DEFENSE AND BY WAY OF A COUNTERCLAIM
VIOLATION OF THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT**

77. Defendants reallege the admissions, denials, qualifications, and allegations of the forgoing paragraphs.

78. This is a cause of action pursuant to the South Carolina Unfair Trade Practices Act, §39-5-10, et seq. (hereinafter, "the Act")

79. Knapp is a "person" engaged in "trade or commerce" as those terms are defined in the Act.

80. As alleged throughout this complaint, Knapp routinely engaged in unfair and deceptive methods of trade or competition in South Carolina that are declared illegal by the Act.

Among other things, Knapp has brought this action in order to hold the Subject Property off the market until he either can obtain financing or the defendants lower the price so he can afford it. Knapp's conduct is willful.

81. As a direct and proximate result of Knapp's violation of the Act, defendants have been injured and suffered damages. Defendants are entitled to a judgment against Knapp for their actual damages, in an amount to be determined by the trier of fact, and treble damages, attorney's fees, and court costs, for the plaintiff's willful misconduct.

FOR AN NINETEENTH DEFENSE AND BY WAY OF A COUNTERCLAIM

TORTUOUS INTERFERENCE WITH CONTRACT

82. Defendants reallege the admissions, denials, qualifications, and allegations of the forgoing paragraphs.
83. Defendants have a new contract on the Property to mitigate their damages. Knapp's lis pendens interferes with the defendants' ability to close that transaction.
84. Knapp is aware of the new contract. Although demand has been made, and Knapp has refused to close on the contract, Knapp refuses to cancel the lis pendens and is interfering with the contract for an unjustified purpose.
85. As a direct and proximate result of Knapp's tortuous interference with contract, defendants have been injured and suffered damages. Defendants are entitled to a judgment against Knapp for their actual damages, in an amount to be determined by the trier of fact, and treble damages, attorney's fees, and court costs, for the plaintiff's willful misconduct.

Prayer and Signature Block Continue Next Page

WHEREFORE defendants pray for judgment in their favor, for the dismissal of the plaintiff's complaint with prejudice, for actual, punitive, and treble damages, for sanctions against Knapp and his counsel for instigating this frivolous suit, for attorney's fees, court costs, pre-judgment interest, and for such other relief as the court deems just, prudent, and proper.

s/ David K. Haller
David K. Haller, Esq. (Fed. Id. 7088)
HALLER LAW FIRM
604 Savannah Highway
Charleston, South Carolina 29407
(843) 224-7860
dhaller@hallerlawfirm.com
Attorney for the Defendants

October 10, 2022

Charleston, South Carolina

EXHIBIT A

 First American Title™	ALTA Commitment for Title Insurance
	ISSUED BY First American Title Insurance Company
Commitment	

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY**NOTICE**

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

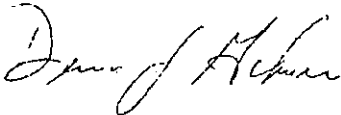
THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACONTRACTUAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

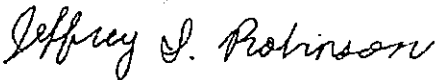
COMMITMENT TO ISSUE POLICY

Subject to the Notice; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, *First American Title Insurance Company*, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

First American Title Insurance Company


Dennis J. Gilmore, President

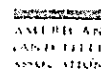


Jeffrey S. Robinson, Secretary

If this jacket was created electronically, it constitutes an original document.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements;
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I—Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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(g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II--Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

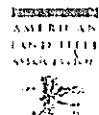
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

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 First American Title™	ALTA Commitment for Title Insurance ISSUED BY First American Title Insurance Company
Schedule A	

Transaction Identification Data for reference only:

Issuing Agent: McLester & Niemiec, LLC
 Issuing Office: 622 Johnnie Dodds Blvd., Mount Pleasant, SC 29464
 Loan ID No.:
 Issuing Office's ALTA® Registry ID:
 Commitment No.: 22-410
 Issuing Office File No.: 22-410
 Property Address: 5896 Maybank Hwy, Wadmalaw Island, SC 29487
 Revision No.:

SCHEDULE A

1. Commitment Date: February 3, 2022 at 08:00 AM
2. Policy to be issued:
 - (a) ☒ ALTA® ALTA Own. Policy (10/17/92)
 Proposed Insured: Marc K. Knapp
 Proposed Policy Amount: \$ 285,000.00
 - (b) ☐ ALTA® ALTA Loan Policy (10/17/92)
 Proposed Insured:
 Proposed Policy Amount:
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.
4. The Title is, at the Commitment Date, vested in:
 James Douglas Jenkins IV and Peter Barnwell Jenkins and Alicia J. Roy
5. The Land is described as follows:
SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
 First Title & Abstract Company, Inc.

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AMERICAN
LAND TITLE
ASSOCIATION



 First American Title™	ALTA Commitment for Title Insurance ISSUED BY First American Title Insurance Company
Schedule BI & BII	

Commitment No.: 22-410

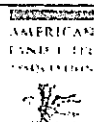
SCHEDULE B, PART I**Requirements**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. We must be furnished with a copy of SCID 3601 executed pursuant to Section 38-75-960 S. C. Code of Laws 1976, as amended, and an executed Notice of Availability of Title Insurance pursuant to S. C. Insurance Department Regulation R-69-18, Vol. 25A of S. C. Code of Laws 1976, as amended.
6. Seller's/Owner's Affidavit Indemnity executed by current owner(s) of the land on a form to be supplied by the Company stating that there have been no improvements to the land within the past 90 days which could give rise to a construction lien and that there are no accounts or claims pending and unpaid which could constitute a lien against the land. The affidavit will also state that affiant has no knowledge of any natural person or legal entity who has or could have a claim of right, interest or lien adverse to the Insured.
7. Receipt of the acknowledged First American Title Insurance Company Privacy Policy.
8. Payoff and release/satisfaction of the following (or, in the alternative, receipt of a duly sworn affidavit from the relevant Seller, confirming that he is not the delinquent taxpayer, judgment debtor, or defendant listed therein):
 - A. SC DOR Tax Lien against James Jenkins – Tax Lien Number 3-51443177-S, File Year – 2012; File Number – 23566;
 - B. Civil Judgment in Charleston County Case No. 12-GS-10-05504 (2014-CP-10-7288) against James Jenkins;
 - C. Civil Judgment in Charleston County Case No. 15-GS-100-2587 (2016-CP-10-4027) against James Jenkins;
 - D. Civil Judgment in Charleston County Case No. 15-GS-100-2587 (2016-CP-10-4028) against James Jenkins;
 - E. Transcript of Judgment in Charleston County Case No. 2017CV1011500563 (2018-CP-10-1686) against James Jenkins; and

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SCHEDULE BI & BII
(Continued)

Commitment No.: 22-410

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
6. Any mineral or mineral rights leased, granted or retained by current or prior owners.

NOTE: Exception Numbered 1 - 7 above will be deleted upon issuance of the Loan Policy Only.

7. Taxes and assessments for the year 2022 and subsequent years, not yet due and payable.
8. Easement to State Rural Electrification Authority recorded in the RMC Office for Charleston County in Book B40, at Page 027.
9. Easement to Berkeley Electric Cooperative, Inc. recorded in the RMC Office for Charleston County in Book K105, at Page 244.
10. Easement to Berkeley Electric Cooperative, Inc. recorded in the RMC Office for Charleston County in Book 0793, at Page 148.
11. All matters shown on plats recorded in the RMC Office for Charleston County in Plat Book Y, at Page 042; and Plat Book C, at Page 013.
12. Any right, title or interest of anyone whomever in any of the land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas, or any tidal area below the mean high water mark, or the spring tide flood water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure title to the portion of the land which lies below the mean high water mark of rivers, creeks or ocean, nor title to any portion of the land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice; the Commitment to Issue Policy; the Commitment Conditions; Schedule A; Schedule B, Part I-Requirements; Schedule B, Part II-Exceptions; and a counter-signature by the Company or its issuing agent that may be in electronic form.

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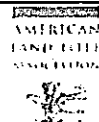
SCHEDULE BI & BII
(Continued)

Commitment No.: 22-410

F. The following liens against James Jenkins: Lien ID Nos. 297629; 330042; 331959; 332593; 409884; 412762; 421408; 436856; 567277; 834348; 842385; 857962; 892302; 918929; 931982; 970152; 3514431775; 3517910130; 3518259890; 3519036557; 790931 20009681 2037021 486139; and 486139.

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SCHEDULE BI & BII
(Continued)

Commitment No.: 22-410

13. Any adverse claim based upon the assertion that any portion of said land was not tideland which was available for disposition by the State of South Carolina, or that any portion thereof has become submerged land by reason of erosion or has become upland by reason of accretion.
14. Riparian and/or littoral rights.
15. Rights of upper and lower riparian owners in and to the waters of Leadenwah Creek crossing or adjoining the land, and the natural flow thereof, free from diminution or pollution.
16. No insurance is afforded as to the exact amount of acreage included in the Property.

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 First American Title™	ALTA Commitment for Title Insurance
Exhibit A	ISSUED BY First American Title Insurance Company

Commitment No.: 22-410

The land referred to herein below is situated in the County of Charleston, State of South Carolina, and is described as follows:

ALL that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying and being on Wadmalaw Island, County of Charleston, State of South Carolina, known and designated as PART TRACT "A," consisting of approximately 6.07 acres, as shown on that certain plat dated December 18, 1968, prepared by J. Exo Hilton, Reg. LS 2552, entitled "PLAT OF 72.11 ACRES TRACT 'A' A PROPERTY OF J DOUGLAS JENKINS III TRACT 'B' PROPERTY OF SARAH B. LELAND WADMALAW ISLAND, CHARLESTON COUNTY, S.C.," and recorded January 22, 1969 in the RMC office for Charleston County in Plat Book Y, at Page 042. Said lot having such size, shape, metes, bounds, courses and distance as will by reference to said plat more fully appear.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice, the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I-Requirements, Schedule B, Part II-Exceptions.

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EXHIBIT B



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (RESIDENTIAL)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Marc K Knapp and Assigns

("Buyer"), and

Seller(s), James Douglas Jenkins Et al

("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
 (B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
 (C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD
 (D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
 (E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
 (F) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ **BUYER** ☐ **SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE**

mk (initials) **BUYER(s)** acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☒ **Client** ☐ **Customer service** in this transaction.

DR JD PB (initials) **SELLER(s)** acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☒ **Client** ☐ **Customer service** in this transaction.

2. **PURCHASE PRICE:** \$ ~~200,000.00~~ \$285,000.00 Eighty Five Thousand ~~Two Hundred Only Thousand~~
 Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.

Verification of Cash available for Closing is ☐ attached ☐ not attached ☐ to be Delivered before
 This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☐ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 5896 Maybank Hwy Unit #
 City Wadmalaw Island State of South Carolina
 Zip 29487 County of Charleston
 Lot Block Section/Phase Subdivision Rockville Rd
 Other Tax Map 154-00-00-011
 Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

mk ☐ **BUYER** ☐ **BUYER** DR ☐ **SELLER** JD ☐ **SELLER**
☐ **BUYER** ☐ **BUYER** ☐ **SELLER** PB ☐ **SELLER**
 HAVE READ THIS PAGE

1/2020 FORM 310 PAGE 1 of 9

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before February 3, 2022 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): _____

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. EARNEST MONEY: Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 5,000.00 will be paid by 6 P.M. on January 6, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Miles Adler Esquire as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, MEDIATION AGREEMENT) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 100.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees) are the ☒ Seller's or ☒ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 2,500.00, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

[mk] BUYER [_____] BUYER [mk] SELLER [mk] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
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1/2020 FORM 310 PAGE 2 of 9

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7. FINANCE: Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80.000 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): TBD ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other _____ . An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms
☐ are ☒ are not attached.

8. REPAIRS:

CHECK ONLY ONE OF THE FOLLOWING OPTIONS. IF NO BOXES ARE CHECKED THIS CONTRACT WILL BE AN AS-IS CONTRACT IN REGARDS TO REPAIRS. IF MULTIPLE BOXES ARE CHECKED THEN THE FIRST PARAGRAPH WITH A CHECKED BOX WILL DETERMINE REPAIRS.

☐ REPAIR PROCEDURE:

All Repair Procedure Inspections and Requests shall be completed and delivered to the Seller by 6 P.M. on _____ (date). Any and all requests necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests) should be delivered by the deadline above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances. Upon Seller's request the Buyer will provide with a copy of the Inspection Report.

No later than 6 P.M. on _____ (date), Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). **Seller Paid Requests DO NOT include the following items: home maintenance, flooring, fogged windows, grandfathered code issues, landscaping, preventive maintenance, cosmetic changes, home improvement, and energy efficiency. If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.**

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within **2 Calendar Days** choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. **IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 CALENDAR DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.**

☐ DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on _____ (date). Any extension to this date must be made in writing and agreed to by both Parties.

[mk] BUYER [_____] BUYER [AK] SELLER [JDH] SELLER
 [_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
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During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/properly Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract

☒ **AS-IS**

All Parties agree that Property is being sold "As-Is". "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. Buyer retains the right to inspect the Property by 6 P.M. on January 28, 2022 (date) for informational purposes only. The Seller is under no obligation to remedy any issues the Buyer discovers during their inspections, and the Buyer may not terminate the contract based on the results of any inspections conducted.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other _____ ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

[MK] BUYER [] BUYER [] SELLER [] SELLER []
[] BUYER [] BUYER [] SELLER [] SELLER []
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1/2020 FORM 310 PAGE 4 of 9

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☐ contingent ☐ not contingent upon the ☐ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☐ Seller. ☐ Buyer ☐ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than _____ calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by _____ with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and \$ _____ will be paid by _____ to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

[mk] BUYER [_____] BUYER [LR] SELLER [JD] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [DS] SELLER
HAVE READ THIS PAGE [PB]

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16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

- (i) Deliver Notice of Default to Seller and terminate Contract; and
- (ii) Pursue any remedies available to Buyer at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:

- (i) Deliver Notice of Default to Buyer and terminate Contract; and
- (ii) Pursue any remedies available to Seller at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

[mk] BUYER [] BUYER [] SELLER [] SELLER
[] BUYER [] BUYER [] SELLER [] SELLER
HAVE READ THIS PAGE [PB]

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service-related issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 503, 504, 315, 320, 393, 370, 375, 513, 610): Contingent on Receipt of preliminary or final Septic Permit

[mk] BUYER [] BUYER [DJR] SELLER [JDM] SELLER
[] BUYER [] BUYER [] SELLER [] SELLER
HAVE READ THIS PAGE [PB]

30. Acknowledgements: Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank. Parties are also advised and understand that audio/visual surveillance may occur in the property and parties should plan accordingly and comply with all federal, state, and local laws. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys' prior to signing Contract.

31. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at, 6 ☐ AM ☒ PM on January 6, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline. This offer will expire automatically if no action is taken by either party 30 calendar days after the offer's submittal.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered to the other Party within _____ Calendar Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: Marc Knapp Date: 01/04/2022 Time: 1/4/2022 1:44:00 AM GMT

BUYER: _____ **Date:** _____ **Time:** _____

BUYER: _____ **Date:** _____ **Time:** _____

BUYER: _____ **Date:** _____ **Time:** _____

NOTICE ADDRESS/EMAIL/FAX: _____

1/5/2022 | 19:01 PM EST

SELLER: James D Jenkins IV Date: _____ Time: _____

James Jenkins 1/5/2022 | 19:00 PM EST

DocuSigned by:
SELLER: Alicia J Roy
Alicia Roy
1/5/2022 | 16:37 PM PST

DocuSigned by:
SELLER: Peter B Jenkins Date: _____ Time: _____
Peter Jenkins

SELLER: _____ **Date:** _____ **Time:** _____

NOTICE ADDRESS/EMAIL/FAX: sheyer@carolinaone.com Fax: 843746-4557

[mk] BUYER [] BUYER [ajr^{DS}] SELLER [JDH^{DS}] SELLER
[] BUYER [] BUYER [] SELLER [^{DS}] SELLER
HAVE READ THIS PAGE [PB^{DS}]

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Robert Young/The Boulevard Co. LLC.

Robert Young License #114294 Office Code# 9040RR

Buyer's Agent/Company

Buyer's Agent License #/LLR Office Code

ryoungcofc@yahoo.com

(843)906-3684

Buyer's Agent's Email Address

Buyer's Agent Telephone Number

Susan Heyer / Carolina One Real Estate

80767 / 2466

Seller's Agent/Company

Seller's Agent License #/LLR Office Code

843-901-2428

sheyer@carolinaone.com

Seller's Agent's Email Address

Seller's Agent Telephone Number

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[] BUYER [_____] BUYER [] SELLER [] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [] SELLER
HAVE READ THIS PAGE

1/2020 FORM 310 PAGE 9 of 9



ADDENDUM/AMENDMENT TO



☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☐ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____
 COVERING THE ☒ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 5896 Maybank Hwy Unit # _____
 City Wadmalaw Island State of South Carolina
 Other _____ TMS 154-00-00-011

The undersigned Parties hereby agree as follows: Sellers and Buyer all agree to extend the closing date to on or before February 24th, 2022.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at _____ AM ☐ PM on _____ unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: _____

Date: _____ Time: _____

Marc Knapp

BUYER: _____

Date: _____ Time: _____

Date: _____ Time: _____

Date: _____ Time: _____

SELLER: James D Jenkins IVDate: 2/10/2022 | Time: 20:17 PM EST

James D Jenkins IV

SELLER: Alicia J RoyDate: 2/10/2022 | Time: 20:04 PM EST

Alicia J Roy

Date: 2/10/2022 | Time: 17:19 PM PSTSeller: Peter B Jenkins

Date: _____ Time: _____

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FORM 390 PAGE 1 of 1

EXHIBIT C

jwells@carolinaoneplus.com

From: jwells@carolinaoneplus.com
Sent: Tuesday, March 1, 2022 1:55 PM
To: ryoungcofc@yahoo.com
Subject: RE: 5896 Maybank Hwy - Expired

Hi Robert,

Susan forwarded me your last email. I know it is upsetting to have a sale fall through, but there have been multiple issues that have made it difficult for the seller to grant an additional extension:

Septic Permit:

The corner marker at the back left of the property was not a seller responsibility. The contract was as-is (see page 4 of the contract). If Dhec requires a mark, then it would be the buyer's responsibility to provide it. I have made two trips out to try to locate the corner pin but have been unsuccessful. It is fairly obvious where it is approximately, but I could not find the pin. The question about Dhec and the septic permit has been problematic. The permit was requested on 2/7/2022 (three days before our original closing date, and four weeks after the contract was ratified), and the inspector went out on 2/23/2022 to do the onsite inspection. On 2/24/22 the inspector emailed the buyer a statement listing four reasons why they could not process the permit. One of which was the property corner. I spoke with the inspector yesterday and asked her specifically about the corner. I asked her to email me her response which I will copy below.

"If only one corner is missing, and the proposed system location is not within that area, then it shouldn't be a problem. However, with that being said, if the only suitable area is within that general area, then the corner may need to be marked. If that were the case, I would notify you so the corner could be marked prior to the evaluation being completed. You would not however be penalized for this. Thank you.

Warm Regards,

Caroline Simpson
 Environmental Health Manager
 BEHS Lowcountry Charleston
 1362 McMillan Ave, Ste. 300
 North Charleston, SC 29405
 (843)-953-0150 (office)
 (843)-953-0151 (fax)
 (843)-202-7050 (fax)"

This indicates to me that if the site were properly prepared the corner marker would probably not have caused a delay, and if it did require a reinspect it would not have caused an additional charge.

There have been several comments from the buyer's side that a septic permit is required to get financing from any lender. This is not accurate. I checked with Drew McClam of AG South, and he confirmed to me that on that size property a septic permit would not be required for financing. I also spoke with Chris Lindamood at First Citizens on 2/28/22. He indicated that a septic permit would not necessarily be required for their loans. There is also no indication that they would dis-allow a permit in which Dhec relied on a private soil consultant to inspect the site. Please note that Dhec inspected the site 16 days after the permit was requested, so the time to inspect was not the hold up.

Loan Application and Lender:

Mr. Lindamood spoke with Susan on 2/22/22, he indicated that he had just received the financials for this loan on that day. This is well beyond the contract date to make application, have loan approval, or close on the original closing date. In my conversation with Mr. Lindamood yesterday, he refused to discuss any of the pertinent details of the loan with me. I reminded him that the contract gives written authorization by the buyer for the lender to discuss the basics of the loan with the listing agent (page 3 paragraph 7 of the Contract). He replied that it did not matter he would require additional written authorization from the buyer.

Graveyard on adjacent lot:

The recorded plat of the property shows the graveyard to be across the two lots to the left of the property being sold. The more recent plat does not show any graveyard on the property. Surveyors do not typically note features which are not on a property. The buyer could have had a surveyor check to ensure that the plats were correct but chose not to. I was under the impression that the buyer had re-inspected the property and determined the graveyard was on the adjacent property.

Again, I understand the aggravation of having to start over in the search for a property.

Thank you,

James T. Wells
Broker Associate
Carolina One Real Estate

843 364 4054

----- Forwarded message -----

From: Robert Young <ryoungcofc@yahoo.com>

Date: Tue, Mar 1, 2022 at 11:31 AM

Subject: Re: 5896 Maybank Hwy - Expired

To: Susan Heyer <sheyer@carolinaone.com>

Susan, He can't do that this man's in good faith pursuing his septic permit but the owner has not placed a corner metal pin that DEHEC will honor. He did not want to do a thing about his ancestors when there was a legitimate concern about location and graves being in unmarked areas. We have been within the contract the whole time because it was contingent on obtaining a septic permit from DEHEC. Does Mr Jenkins not know that they follow the law on Wadmalaw now and DEHEC has guidelines they go by. Nowhere on your listing does it say this lot is for all use other than home construction with septic because the owner has no patience to wait. I did not see that in there. Susan we are almost there please just have Mr Wells place a pin so DEHEC finds it. That's all we are asking here so that we don't get kicked back to the end of the line. It's a simple fix with just a week or two longer patience and it's over. The dead ancestors are just dust in the wind of the rearview mirror then.

Robert Young
The Boulevard Co. LLC.
843-906-3684
ryoungcofc@yahoo.com

Sent from my iPhone

On Mar 1, 2022, at 10:36 AM, Susan Heyer <sheyer@carolinaone.com> wrote:

Robert,
I want to inform you of the seller's decision regarding this property. The closing date has passed and the sellers have decided to not extend this contract. Please advise your buyer and closing attorney.

Best wishes in your search.

Sincerely,
Susan~
Susan Heyer
Carolina One Real Estate Services
[1265 Folly Road | Charleston SC | 29412](https://www.carolinaone.com)
[843.901.2428 cell | 843.795.7810 office](tel:843.901.2428)
www.SusanHeyer.com
Home... where the story begins. Love where you live!

Carolina One Real Estate Services will never initiate a request that you send funds electronically or nonpublic personal information, such as social security numbers, credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an unsolicited email message concerning any transaction involving Carolina One Real Estate Services, and the email requests that you send funds electronically or provide nonpublic personal information, do not respond to the email and immediately contact Carolina One Real Estate Services by phone.

--
Susan~

Susan Heyer

Carolina One Real Estate Services

1265 Folly Road | Charleston SC | 29412

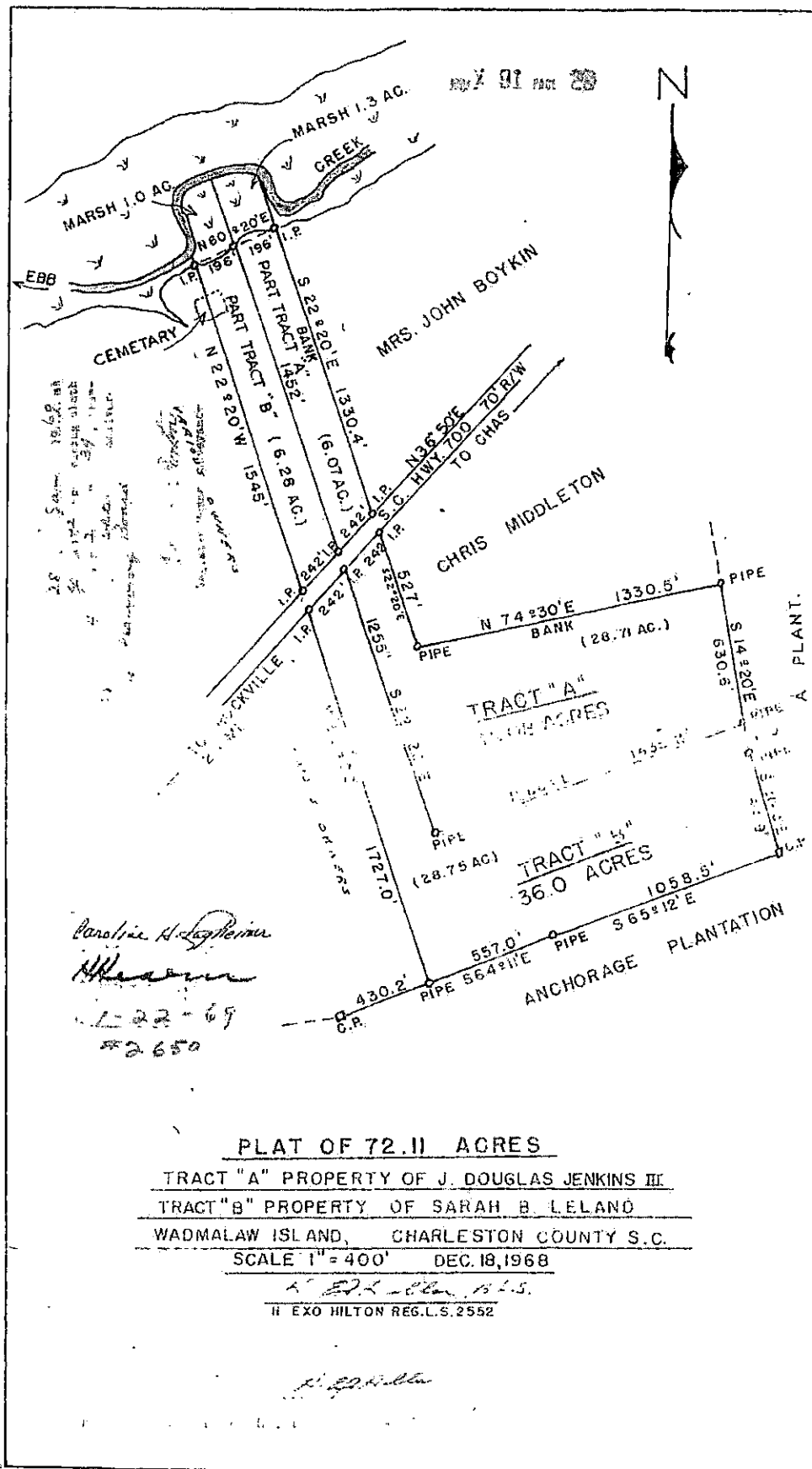
843.901.2428 cell | 843.795.7810 office

www.SusanHeyer.com

Home... where the story begins. Love where you live!

Carolina One Real Estate Services will never initiate a request that you send funds electronically or nonpublic personal information, such as social security numbers, credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an unsolicited email message concerning any transaction involving Carolina One Real Estate Services, and the email requests that you send funds electronically or provide nonpublic personal information, do not respond to the email and immediately contact Carolina One Real Estate Services by phone.

EXHIBIT D



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

**JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,**

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

**OPPOSITION TO DEFENDANT'S MOTION TO
DISMISS AND SUMMARY JUDGMENT**

Counsel for Plaintiff hereby submits the Affidavit of Kenneth Koos attached hereto as **Exhibit A**. This affidavit is filed in support of the Plaintiff and his opposition to the allegations set forth in all of the Defendants' filed pleadings and all relief sought thereunder.

Respectfully submitted,

/s/ F. Miles Adler

F. Miles Adler

SC Bar No.: 70238

ADLER LAW FIRM, LLC

P.O. Box 4743

Pawleys Island, SC 29585

T: 843.314.3204

miles@adlerlaw.partners

Pawleys Island, South Carolina

EXHIBIT A – Affidavit of Kenneth Koos

C/A No.: 22 CP 10 1958

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

AFFIDAVIT OF KENNETH KOOS

PERSONALLY APPEARED BEFORE ME, Kenneth Koos who being duly sworn,
deposes and says:

1. I am a resident of Charleston County, South Carolina.
2. I am self-employed and in the business of private lending, doing business as Capital Business Solutions, LLC. As a private lender I make secured loans to commercial borrowers. Those loans are typically secured by real estate. I regularly make such loans to borrowers located in Charleston County and have done so for more than 7 years.
3. Depending on the amount being borrowed I will fund loans using some combination of my own capital and the capital of my partners.
4. I am responsible for underwriting all loans I originate whether or not I participate in the actual funding. I have final decision on whether a loan is approved.
5. I have had the ability to fund loans of at least \$300,000.00 from 01 January 2022 – to the present.
6. I was contacted by agents of Marc K. Knapp in early January 2022 about funding a purchase money loan for Mr. Knapp to purchase a parcel of undeveloped land with the address of 5896 Maybank Highway Wadmalaw Island, South Carolina.
7. Based on the information shared with me through conversations held with Mr. Knapp's agent I conducted some basic diligence on the property and agreed to fund a purchase money loan to Mr. Knapp's company Charleston Site Utilities, LLC, guaranteed by Mr. Knapp, which included receiving a first mortgage lien on the property being purchased as security for the loan.

8. I was advised by Mr. Knapp's agent that there were issues that needed to be addressed with respect to the property in order for me to receive a first mortgage lien on the property as security for the loan.
9. My recollection is that I had these conversations with Mr. Knapp's agent in mid-January 2022 and that I would be contacted to proceed with the loan closing once the issues I was informed about were resolved.
10. In March I was advised by Mr. Knapp's agent that the issues were expected to be resolved shortly and to start working on getting underwriting completed and the loan closed.
11. In response I began working on getting the loan terms finalized with Mr. Knapp in March. I was willing to fund the loan without an appraisal or survey. And was willing to loan Mr. Knapp's company Charleston Site Utilities, LLC \$225,000.00 to apply to the purchase of the property.
12. As of the date of this affidavit I stand ready to finance Mr. Knapp's purchase of the property up to \$225,000.00.

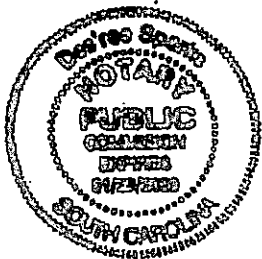
FURTHER DEPONENT SAYETH NOT!

Sworn and Subscribed before me
This 9th day of December, 2022

D.
Notary Public for the State of South Carolina
My Commission Expires: 01/29/29

Print Name: Desree Sparks

Kenneth Koos
Kenneth Koos



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

**PLAINTIFF'S ANSWER TO DEFENDANTS' ANSWER
AND COUNTERCLAIMS**

COMES NOW the Plaintiff, Marc K. Knapp, answering the Defendants' Answer and alleges as follows:

Any and all allegations not specifically admitted herein are denied.

1. The Defendant failed to serve a summons on the Plaintiff when filing their counterclaims and therefore the Defendants' counterclaims should be dismissed, or in the alternative deemed defenses. See Rule 8(c) South Carolina Rules of Civil Procedure.
2. The Plaintiff admits the allegations of paragraph 54, 55, and 56 of the Defendants' answer and counterclaims (referred to as the "Answer").
3. The Plaintiff denies the allegations of paragraph 57 of the Answer.
4. The Plaintiff craves reference to the contract and denies any allegations at variance with the terms set forth therein. All other allegations of paragraph 58 of the Answer are denied.
5. The Plaintiff denies the allegations of paragraph 59, 60 of the Answer.
6. The Plaintiff craves reference to the books and records on file with the Charleston County Register of Deeds and denies all allegations at variance with said files. All other allegations of paragraphs 61 and 62 of the answer are denied.
7. The Plaintiff denies the allegations of paragraph 63 of the Answer.
8. The Plaintiff is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 64 and denies same and demands strict proof.
9. The Plaintiff denies the allegations of paragraphs 65 and 66 of the Answer.
10. The Plaintiff is without information sufficient to form a belief as to the truth or falsity of the existence of a back-up contract although Plaintiff admits he was advised of the existence of the back-up contract. By way of a further response, the Plaintiff would assert his *lis pendens*

is proper as a matter of law. The Plaintiff denies all other allegations of paragraph 67 of the Answer.

11. With respect to paragraphs 66 – 72 of the Answer, the Plaintiff admits the existence of the Contract, but denies he has breached the terms of the Contract. All other allegations of paragraphs 66 – 72 are denied.
12. With respect to paragraphs 73 - 76 of the Answer, the Plaintiff admits the existence of the Contract, but denies he has breached the terms of the Contract. All other allegations of paragraphs 73 - 76 are denied.
13. With respect to paragraphs 77 - 81 of the Answer, the Plaintiff denies all allegations.
14. With respect to paragraphs 82 - 85 of the Answer, the Plaintiff admits he refuses to cancel his *lis pendens* but denies he refuses to close on the Contract, asserts his actions have a justified purpose, and denies his actions have tortuously interfered with any other contract.
15. The remainder of the Answer constitutes the Defendants' "WHEREFORE" clause, to which no response is required, however the Plaintiff denies that the Defendants are entitled to the relief they seek and demands strict proof thereof.
16. The Plaintiff reserves the right to amend his complaint and answer after investigation, discovery and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter, and the Plaintiff is not waiving any claims or defenses that may be discovered or arise during investigation, discovery, and trial of this litigation.

Respectfully submitted,

/s/ F. Miles Adler

F. Miles Adler
SC Bar No.: 70238
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
miles@adlerlaw.partners

Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-01958
Marc K. Knapp,	)	
	)	
Plaintiff,	)	
	)	
Versus	)	MOTION TO DISMISS
	)	
James Douglas Jenkins, IV, Peter Barnwell	)	
Jenkins, and Alicia J. Roy,	)	
	)	
Defendants.	)	

TO: N. MILES ADLER, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the defendants will move, in ten (10) days at the Charleston County Courthouse, for an order pursuant to SCRCP Rule 12(b)(6) dismissing the complaint with prejudice. The grounds for the motion are that the complaint fails to state a claim for which relief may be granted as it fails to allege that plaintiff could close on or before the date of closing set forth in the contract, among other things.

WHEREFORE the Plaintiff prays for the relief requested herein and such other relief as the Court deems just, prudent, and proper.

s/ David K. Haller
David K. Haller, Esq.
HALLER LAW FIRM
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Attorneys for the Plaintiff

June 22, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-01958
Marc K. Knapp,	)	
	)	
Plaintiff,	)	
	)	
Versus	)	MOTION TO CANCEL
	)	LIS PENDENS
James Douglas Jenkins, IV, Peter Barnwell	)	
Jenkins, and Alicia J. Roy,	)	
	)	
Defendants.	)	

TO: N. MILES ADLER, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the defendants will move, in ten (10) days at the Charleston County Courthouse, for an order cancelling the *lis pendens* filed by the plaintiff on or about April 28, 2022. The grounds for the motion are that, although the plaintiff claims he was willing to accept the property with the alleged (and denied) title concerns outlined in the complaint, and was given an opportunity to close the sale of this property after filing suit, he refused to do so and hence, no longer claims an interest in the property. The defendants have mitigated their damages and have a secondary buyer who is ready, willing, and able to buy the property subject to removal or cancelation of the *lis pendens*. S.C. Code Ann. §15-11-40; see also Carolina Park Assocs., LLC v. Marino, 400 S.C. 1, 8–9, 732 S.E.2d 876, 880 (2012).

WHEREFORE the Plaintiff prays for the relief requested herein and such other relief as the Court deems just, prudent, and proper.

s/ David K. Haller
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July 12, 2022

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

**PLAINTIFF'S RESPONSE AND MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION TO
DISMISS**

The Plaintiff, Marc K. Knapp, by and through his undersigned counsel, hereby submits this Memorandum of Law in Opposition to the Defendants' Motion to Dismiss the Plaintiff's Complaint, filed on 22 June 2022.

The Defendants move this Court under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure to dismiss the Plaintiff's Complaint based on the supposition that the Plaintiff failed to allege that the Plaintiff could close on or before the date set forth in the contract, among other things. The Defendants do not identify what constitute the "other things." As such, this memorandum will focus on the argument that the Plaintiff's Complaint "failed to allege that the Plaintiff could close on or before the date set forth in the contract."

STANDARD OF REVIEW

At this stage of the litigation, the Plaintiff is only required to plead a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, a short and plain statement of the facts showing the pleader is entitled to relief, and a prayer for demand for judgment. See SCRCP 8(a). In deciding a motion to dismiss pursuant to 12(b)(6), SCRCP, the trial court should consider only the allegations set forth on the face of the Plaintiff's Complaint and those exhibits attached to the Plaintiff's Complaint. Pyler v. Burns, 373 S.C. 637, 645 (2007); Rule 10(c) SCRCP; Burns v. Gardner, 328 S.C. 608, 614. (Ct. App. 1997). "A 12(b)(6) motion should not be granted in 'facts alleged and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case.'" Pyler v. Burns, 373 S.C. at 645, quoting Stiles v. Onorato, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995). A Rule 12(b)(6) motion is addressed solely to the sufficiency of the allegations in the Complaint. Toussaint v. Ham, 292 S.C. 415, 357 S.E.2d 8 (1987). A motion to dismiss pursuant to Rule 12(b)(6) must be based

solely on the allegations set forth in the Complaint and must presume all well-pled facts to be true. Gressette v. S.C. Elec. & Gas Co., 370 S.C. 377, 379, 635 S.E.2d 538, 538-39 (2006); Overcash v. South Carolina Elec. And Gas Co., 364 S.C. 569, 614 S.E.2d 619 (2005). “[U]nder our current pleading rules only ultimate facts are required to be stated in pleadings. Ultimate facts are those which the evidence upon trial will prove, and not the evidence which will be required to prove those facts.” Brown v. Inv. Mgmt. & Research, Inc., 323 S.C. 395, 400 n. 3, 475 S.E.2d 754, 756 n. 3 (1996).

If the facts and inferences drawn from the facts alleged in the Complaint, viewed in the light most favorable to the Plaintiff, would entitle the Plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. Clearwater Tr. V. Bunting, 376 S.C. 340, 343, 626 S.E.2d 334, 335 (2006); Baird v. Charleston County, 333 S.C. 519, 511 S.E.2d 69 (1999). “Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” Spence v. Spence, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006). “The questions is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). Further, dismissal under Rule 12(b)(6) is inappropriate if the pleadings raise a novel question of law. Chestnut v. AVX Corp., 413 S.C. 224, 228, 776 S.E.2d 82, 84 (2015); Madison v. Am. Home Prod. Corp., 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004).

ARGUMENT

The Plaintiff’s factual allegations in his Complaint clearly state that he has met all of his requirements under the contract to purchase 5896 Maybank Hwy, Wadmalaw Island, SC 29487, a copy of which is enclosed as Exhibit A to the Complaint (referred to herein as the “Contract”). See Complaint ¶ 22. The Plaintiff alleges he had financing. See Complaint ¶ 13. The Plaintiff alleges he has made the \$5,000 earnest money deposit. See Complaint ¶ 12. The Plaintiff alleges he is prepared to resolve any issues affecting the marketability of title at his own cost and move to close. See Complaint ¶ 18.

In the Plaintiff’s Second Cause of Action, which incorporates the Complaint’s factual allegations, the Plaintiff alleges he has performed all conditions precedent required under the Contract. See Complaint ¶ 34.

In the Plaintiff’s Third Cause of Action, which incorporates the Complaint’s factual allegations, the Plaintiff alleges he has met all conditions precedent to the enforcement of his rights under the Contract. See Complaint ¶ 43.

The Plaintiff's Complaint alleges that all of the issues affecting marketability of title were brought to the Defendants' attention prior to the Contract's closing date and that a closing could not occur until all of the issues affecting marketability of title were resolved. See Complaint ¶¶ 14, 15 & 16.

CONCLUSION

The Plaintiff has adequately pled that he was able to close the Contract on or before the Contract's closing date. Based on the foregoing, the Plaintiff respectfully requests that the Court **DENY** the Defendant's Motion to Dismiss.

Respectfully submitted,

/s/ F. Miles Adler

F. Miles Adler

SC Bar No.: 70238

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Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

**JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,**

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

**PLAINTIFF'S RESPONSE AND MEMORANDUM IN
OPPOSITION TO DEFENDANTS' MOTION TO
CANCEL LIS PENDENS**

The Plaintiff, Marc K. Knapp, by and through his undersigned counsel, hereby submits this Memorandum of Law in Opposition to the Defendants' Motion to Dismiss the Plaintiff's *lis pendens*, filed on 12 July 2022.

The Defendants move this Court to cancel the Plaintiff's *lis pendens* on the grounds that the Plaintiff's refusal to close the sale of the property subject to this litigation after suit was filed means the Plaintiff no longer claims an interest in said property. The Plaintiff filed a *lis pendens* in conjunction with the action captioned above which involves claims affecting title to real property. Those claims arise under a contract for the purchase and sale of real estate owned by the Defendants (the "**Contract**").

For the reasons set forth below, the Defendants' motion should be denied.

ARGUMENTS

1. Pursuant to Rule 408, SCRE any evidence regarding settlement discussions between the Plaintiff and Defendants is inadmissible and cannot be used to form the basis of an allegation that the Plaintiff has refused to do anything related to settlement, including the Defendants' assertion that the Plaintiff refused to close on the property after filing suit.

2. The Plaintiff's First Cause of Action is for a Declaratory Judgment as to whether certain defects to the title of the property at issue affect the marketability of title as that term is used in the Contract. A Declaratory Judgment action affects the title to real property where the moving party is asking for a determination of the rights of the parties under a contract for the purchase and sale of real estate, as here. The Plaintiff's Second Cause of Action is for Specific Performance under the Contract. An action for specific performance under a contract for the purchase and sale of real estate is an action affecting

title to real property and therefore a lis pendens is allowed as a matter of law. See *Pond Place Partners, Inc. v. Poole*, 351 S.C. 1, 567 S.E2d 881 (S.C. App. 2002).

CONCLUSION

The Plaintiff has not abandoned its claim for Specific Performance nor his claim for a Declaratory Judgment regarding the marketability of title of certain real property. These causes of action both affect title to real property and therefore the Plaintiff is entitled to file a lis pendens pursuant to S.C. Code Ann. § 15-11-10.

Based on the foregoing, the Plaintiff respectfully requests that the Court **DENY** the Defendant's Motion to Dismiss *lis pendens*.

Respectfully submitted,

/s/ F. Miles Adler

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Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-01958
Marc K. Knapp,	)	
	)	
Plaintiff,	)	
	)	
Versus	)	DEFENDANTS' AMENDED MOTION
	)	TO DISMISS AND/OR FOR SUMMARY
James Douglas Jenkins, IV, Peter Barnwell	)	JUDGMENT
Jenkins, and Alicia J. Roy,	)	
	)	
Defendants.	)	
	)	

TO: N. MILES ADLER, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the defendants will move, in ten (10) days at the Charleston County Courthouse, for an order pursuant to SCRCP Rule 12(b)(6) dismissing the complaint with prejudice and/or for judgment as a matter of law pursuant to SCRCP Rule 56. The grounds for the motion are that the complaint fails to state a claim for which relief may be granted as it fails to allege that plaintiff could close on or before the date of closing set forth in the contract, among other things. Further, there is no genuine issue of material fact that 1) the plaintiff was not able to close on the transaction on the date of closing, and 2) since the contingencies in the contract were not met on the date of closing, neither party was required to close and either party could terminate the same.

WHEREFORE the Plaintiff prays for the relief requested herein and such other relief as the Court deems just, prudent, and proper.

s/ David K. Haller
David K. Haller, Esq.
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(843) 224-7860

dhaller@hallerlawfirm.com
Attorneys for the Plaintiff

December 2, 2022

Charleston, South Carolina

EXHIBIT A



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(RESIDENTIAL)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION, REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Marc K Knapp and Assigns

("Buyer"), and

Seller(s), James Douglas Jenkins Et al

("Seller").

- A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
- B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
- C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD
- D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to Initially cause this primary Contract to be binding on all Parties.
- E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe
- F) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance period

[] BUYER [] SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

[] (Initials, BUYER(S)) acknowledge receipt of the Seller's Disclosure of Brokerage Relationships form and is receiving [] Client [] Consumer service in this trans. action.

[] (Initials, SELLER(S)) acknowledge receipt of the Seller's Disclosure of Brokerage Relationships form and is receiving [] Client [] Consumer service in this trans. action.

attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises hereof), Seller will sell and convey and Buyer will buy for the Purchase Price and all lot or parcel or land, appurtenant interests, improvements, landscape, systems, and fixtures if any (Person and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing, subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financial equipment prior to signing Contract. Leasing issues and items and financial equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 3896 Maybank Hwy Unit #
City Wadsworth State South Carolina
Zip 29387 County Richland
Block Section 1

Other

OS
RJ

OS
JD

OS
PB

1/10/2022 | 12:55 PM PST

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before February 10, 2022 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): _____

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ 5,000.00 accompanies this offer and \$ 5,000.00 will be paid by 6 P.M. on January 11, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Miles Adler Esquire as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, MEDIATION AGREEMENT) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 100.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees) are the ☐ Seller's or ☒ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs. Also, Buyer is solely responsible for any/all rollback taxes. 1-9-22

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 2,500.00, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

[mk] BUYER [_____] BUYER [RJR] SELLER [JD] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [PB] SELLER
HAVE READ THIS PAGE

1/2020 FORM 310 PAGE 2 of 9

7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80,000 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): TBD ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other _____. An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms
☐ are ☒ are not attached.

8. REPAIRS:

CHECK ONLY ONE OF THE FOLLOWING OPTIONS. IF NO BOXES ARE CHECKED THIS CONTRACT WILL BE AN AS-IS CONTRACT IN REGARDS TO REPAIRS. IF MULTIPLE BOXES ARE CHECKED THEN THE FIRST PARAGRAPH WITH A CHECKED BOX WILL DETERMINE REPAIRS.

☐ REPAIR PROCEDURE:

All Repair Procedure Inspections and Requests shall be completed and delivered to the Seller by 6 P.M. on _____ (date). Any and all requests necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests) should be delivered by the deadline above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances. Upon Seller's request the Buyer will provide with a copy of the Inspection Report.

No later than 6 P.M. on _____ (date), Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). Seller Paid Requests DO NOT include the following items: home maintenance, flooring, fogged windows, grandfathered code issues, landscaping, preventive maintenance, cosmetic changes, home improvement, and energy efficiency. If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Calendar Days choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 CALENDAR DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.

☐ DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on _____ (date). Any extension to this date must be made in writing and agreed to by both Parties.

☒ BUYER ☐ BUYER ☒ SELLER ☒ SELLER
☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER
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During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/properly Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to Inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract

☒ **AS-IS**

All Parties agree that Property is being sold "As-Is". "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. Buyer retains the right to inspect the Property by 6 P.M. on January 28, 2022 (date) for informational purposes only. The Seller is under no obligation to remedy any issues the Buyer discovers during their inspections, and the Buyer may not terminate the contract based on the results of any inspections conducted.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

[mk] BUYER [_____] BUYER [AK] SELLER [JDY] SELLER
 [_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
 HAVE READ THIS PAGE [PBJ]

1/2020 FORM 310 PAGE 4 of 9

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☐ contingent ☐ not contingent upon the ☐ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☐ Seller. ☐ Buyer ☐ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than _____ calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by _____ with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and \$ _____ will be paid by _____ to the Home Warranty Company.

Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

[mk] BUYER [_____] BUYER [RSR] SELLER [JDY] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [ES] SELLER
HAVE READ THIS PAGE [PBJ]

16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance; the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

- (i) Deliver Notice of Default to Seller and terminate Contract; and
- (ii) Pursue any remedies available to Buyer at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:

- (i) Deliver Notice of Default to Buyer and terminate Contract; and
- (ii) Pursue any remedies available to Seller at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

[mk] BUYER [_____] BUYER [AK] SELLER [JDJ] SELLER
 [_____] BUYER [_____] BUYER [_____] SELLER [ex] SELLER
 HAVE READ THIS PAGE [PDJ]

1/2020 FORM 310 PAGE 6 of 9

(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
 (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation. Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied, as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 503, 504, 315, 320, 393, 370, 375, 513, 610): Contingent on Receipt of preliminary or final Septic Permit

29. NOTICE AND DELIVERY: Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

☒ BUYER ☐ BUYER ☒ SELLER ☒ SELLER
☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER
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1/2020 FORM 310 PAGE 7 of 9

107

Robert Young/The Boulevard Co. LLC.

Robert Young License #114294 Office Code# 9040RR

Buyer's Agent/Company

Buyer's Agent License #/LLR Office Code

ryoungcofc@yahoo.com

(843)906-3684

Buyer's Agent's Email Address

Buyer's Agent Telephone Number

Susan Heyer / Carolina One Real Estate

80767 / 2466

Seller's Agent/Company

Seller's Agent License #/LLR Office Code

sheyer@carolinaone.com

843-901-2428

Seller's Agent's Email Address

Seller's Agent Telephone Number

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[Signature] BUYER [] BUYER [Signature] SELLER [Signature] SELLER
[] BUYER [] BUYER [] SELLER [] SELLER
HAVE READ THIS PAGE [Signature]

1/2020 FORM 310 PAGE 9 of 9

EXHIBIT B



Abstract—The purpose of this study was to determine the effect of a 10-week training program on the heart rate (HR) and energy expenditure (EE) of sedentary, middle-aged women. The subjects were randomly assigned to a control group (CON) and an exercise group (EX). The EX group performed a 10-week training program consisting of three sessions per week of 30 minutes of moderate-intensity aerobic exercise. The HR and EE were measured at baseline and at the end of the 10-week training program. The EX group showed a significant decrease in HR and a significant increase in EE compared to the CON group. The results of this study suggest that a 10-week training program can improve the cardiovascular fitness and energy expenditure of sedentary, middle-aged women.

Subject: RE: Knapp/Jenkins/5896 Maybank Highway/Order Number 22-00469CJ

I think the location of the cemetery will be resolved once the pin has been set. My understanding is that the pin on the southwest corner of the lot cannot be located and has to be resurveyed. There is also a concern about a potential easement from Maybank Hwy across 5896 to the cemetery. I know there is no easement delineated on the recent survey or the one prior, but if you look on Google maps you will see a depiction of a dedicated road. Whether that is evidence of anything is TBD – but common sense would indicate to me that a cemetery without access is an odd thing. In either event, I think these issues can ultimately be resolved so that marketable title can be conveyed.

F. Miles Adler
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
F. 843.314.3205
M: 843.685.3311

THIS EMAIL DOES NOT CREATE AN ATTORNEY CLIENT RELATIONSHIP

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EXHIBIT C

jwells@carolinaoneplus.com

From: jwells@carolinaoneplus.com
Sent: Wednesday, March 2, 2022 5:59 PM
To: 'Megan Moody'; 'Susan Heyer'; 'Jackie Tucker'
Subject: FW: Property
Attachments: Maybank Tract Survey_Original Map_01DEC20.PDF; Maybank Tract Survey_01DEC20.pdf

Buy the buyer's agent email below, It looks like the cemetery issue was resolved by 2/3/2022.

The older plat showing the marsh and the cemetery on the adjoining lots is the current recorded plat. Book Y Page 042

James

From: Susan Heyer <sheyer@carolinaone.com>
Sent: Thursday, February 3, 2022 2:56 PM
To: Robert Young <ryoungcofc77@gmail.com>
Cc: jwells@carolinaone.com
Subject: Re: Property

Hi Robert. Glad to hear they were able to walk the property and determine for themselves that the cemetery is indeed on the Wetchel parcel.

I have reached out to the Nielson Surveyors but have not received a response at this time. I'm certain the difference is the marsh property. You can see the difference in the earlier original survey and the county parcel 'outline', both outline the property parcel as it goes out into the marsh, the Nielson survey stops at the critical line. The original survey shows 1.3ac as marsh - past the critical line.

Have you submitted the earlier original survey to the lender also? That should clear up the question regarding the parcel size. I have attached both surveys here for your convenience.

I know the surveyors are extremely busy trying to keep up with the demand... I will keep trying them.

Susan~

Susan Heyer
Carolina One Real Estate Services
1265 Folly Road | Charleston SC | 29412
843.901.2428 cell | 843.795.7810 office
www.SusanHeyer.com

Home... where the story begins. Love where you live!

On Thu, Feb 3, 2022 at 10:01 AM Robert Young <ryoungcofc77@gmail.com> wrote:

Good morning Susan hey my guys were out there yesterday and they were able to determine that the Jenkins Cemetery is indeed on the Whelchel property. They did say they still can't locate a pin on that back left side so if someone can help find that would be great. Something else has arisen as there seems to be some error in the real acreage out there. The listing is 7.4 acres that comes off the Charleston County Tax records. The plats we used to determine the graves location had one that was just done as recently as November 2020 by Nielsen and his determination was 6.69 ac. . Obviously that's a sizable difference of .71 ac. My question, is Charleston County Counting the marsh and Mr Nielsen not? Sounds possible but we do need an answer because that affects a lot of things. So the simplest thing would be if you can contact the Nielsen office on behalf of Mr Jenkins and see if indeed this is the difference. Please let me know as soon as you can Susan as Mr Knapp is waiting on that as is his bank just to verify.

: Thank you Susan.

Robert Young
The Boulevard Co.
843-906-3684
ryoungcofc@yahoo.com

Sent from my iPhone

Carolina One Real Estate Services will never initiate a request that you send funds electronically or nonpublic personal information, such as social security numbers, credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an unsolicited email message concerning any transaction involving Carolina One Real Estate Services, and the email requests that you send funds electronically or provide nonpublic personal information, do not respond to the email and immediately contact Carolina One Real Estate Services by phone.

EXHIBIT D



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (LOTS/ACREAGE)

11/21/2022
ELECTRONICALLY FILED - 2022 Dec 02 10:21 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

This Form can also be used for a Boat Slip or similar transaction.

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Elizabeth Marie Rivers, Kenneth Bradley Ross ("Buyer"), and
Seller(s), James Douglas Jenkins IV, Alicia J Roy, Peter B Jenkins ("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing Weeks & Irvine, LLC
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(F) "Time" - all time stated shall be South Carolina local time. **Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.**

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

ER KON (initials) BUYER(s) acknowledge receipt of the SC Disclosure of Brokerage Relationships form and is receiving 7/10/2022 10:42 AM PDT
☒ Client ☐ Customer service in this transaction.

JDY (initials) SELLER(s) acknowledge receipt of the SC Disclosure of Brokerage Relationships form and is receiving 7/10/2022 10:42 AM PDT
☒ Client ☐ Customer service in this transaction.

2. **PURCHASE PRICE:** ~~\$250,000.00 Two Hundred Fifty Thousand Dollars~~ \$285,000.00 Two Hundred Eighty-Five Thousand Dollars
Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.
Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before . This
Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☐ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 5896 Maybank Highway Unit #
City Wadmalaw Island State of South Carolina
Zip 29487 County of Charleston
Lot Block Section/Phase Subdivision Rockville Rd
Other NPT Tr A Tax Map 154-00-00-011

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

ER KON BUYER [] BUYER [JDY] SELLER [ER] SELLER
[KON] BUYER [] BUYER [] SELLER [] SELLER
HAVE READ THIS PAGE

SCR Form 330 4/2021 PAGE 1 of 9

Addendum 1

4. CONVEYANCE/CLOSING/POSSESSION: "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before 06/09/2022, 2022 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): Elizabeth Marie Rivers, Kenneth Bradley Ross

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant Property, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing. Seller will remove all man-made items from the Property unless otherwise agreed upon in writing by the Parties.

5. EARNEST MONEY: Total \$ 1,000.00**(USD) Earnest Money is paid as follows:**

\$ 0.00 accompanies this offer and \$ 1,000.00 will be paid by 6 P.M. on July 11, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Weeks & Irvine, LLC as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. TRANSACTION COSTS: Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named similar fees) are the ☐ Seller's or ☒ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs.

Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ N/A, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

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7. FINANCE: Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other LAND LOAN purchase money loan at reasonable prevailing market terms with loan(s) equal in amount to a maximum 90 % of the Purchase Price or Appraised Value whichever is lower, ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by July 11, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by July 29, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If Buyer changes their Lender during the Financing Period, they must notify the seller in writing within 3 calendar days. Absent written approval by the Seller, Buyer cannot change their lender if the Closing Date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): AgSouth ☐ FHA ☐ VA ☐ Conventional ☐ Seller

☒ Other Land Loan

An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms ☐ are ☒ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other Seller to sign DHEC Authorization Letter ☒ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within five Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wellands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

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SCR Form 330 4/2021 PAGE 3 of 9

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Addendum 2

~~August 26, 2022~~**12. DUE DILIGENCE:**

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on (date). Any extension to this date must be made in writing and agreed to by both Parties.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/property Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to inspect. Until Buyer timely/property terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/property Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ 0.00 USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for fourteen (14) Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than _____ Calendar Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Calendar Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

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SCR Form 330 4/2021 PAGE 4 of 9

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16. DEED RESTRICTIONS: Seller shall provide copy of any deed restrictions [including zoning ordinances, condominium documents (master deed, financial information, etc.)] and a copy of all restrictions and covenants for said property within 3 Calendar Days of the Effective Date. **Seller will provide any of above docs in their possession**

17. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☐ is ☒ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than _____ Calendar Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

18. SOIL AND WATER TESTS AND WATER ISSUES: After the Effective Date, the Buyer and Inspectors shall have the right to conduct Inspections including the rights to go on the property to conduct soil and water tests, including percolations tests, to ascertain whether the property is suitable for the improvements the Buyer desires. All expenses of such tests shall be paid by ☒ Buyer or ☐ Seller. Buyer shall be responsible for the repair, restoration, and any damages caused by such tests and Inspections.

Seller represents that the water supply is described fully here: _____ Private well needed
Seller represents that all waste water is disposed of via waste water systems described fully here: _____ Private septic needed
Seller represents that all isolated wetlands or flood zones touching the property are described fully here: _____

19. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

20. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☒ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

21. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

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22. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

23. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

24. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

25. ROLLBACK TAXES (CHECK ONE OF THE FOLLOWING OPTIONS):

☒ The parties agree that the Seller shall pay any rollback taxes at the closing. No later than five calendar days prior to the closing date, Seller shall provide any and all information and documentation required by the appropriate taxing authority to assess the rollback taxes on the Property. ~~The parties agree that County assessment/estimate for rollback taxes collected on the closing statement represents the final amount for rollback taxes to be paid by Seller; after the closing, neither party shall have any further duties or responsibilities to the other party related to rollback taxes.~~

☒ The parties agree that the Buyer shall pay any rollback taxes whenever the taxes are assessed; Seller has no responsibility for rollback taxes. *ER KBR*

☐ The Parties agree to split agree to pay the rollback taxes as follows. _____ % paid by Buyer and _____ % paid by Seller

26. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by _____ and paid for by _____.

All of these reports or certifications shall be completed no later than _____ Calendar Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than two Calendar Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Calendar Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have two Calendar Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

27. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

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151 SCR Form 330 4/2021 PAGE 6 of 9

28. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel.

29. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

30. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

31. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

32. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

33. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the

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Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/MAY/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

34. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

35. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 390, 391, 503, 504, 393, 513, 610): ~~Solo contingent on sellers removing Lien Deadline by August 26, 2022~~
Addendum 1, Addendum 2

36. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

37. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

38. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 7:00 ☐ AM ☒ PM on July 8, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline:

This offer will expire automatically if no action is taken by either party 30 calendar days after the offer's submittal.

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SCR Form 330 4/2021 PAGE 8 of 9

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within _____ Calendar Days. Parties shall initial and date all page and changes in this Contract.

BUYER: _____ Date: Jul 6, 2022 Time: 7:16 PM

BUYER: _____ Date: Jul 6, 2022 Time: 2:19 PM

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX:

SELLER: _____ DocuSigned by: _____ 7/7/2022 | 15:36 PM PDT
James D Jenkins IV

SELLER: _____ DocuSigned by: _____ 7/7/2022 | 21:19 PM EDT
Alicia J Roy

SELLER: _____ DocuSigned by: _____ 7/8/2022 | 06:23 AM PDT
Peter B Jenkins

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX:

sheyer@carolinaone.com

Maureen Kokolus / NV Realty Group
Buyer's Agent/Company

Maureen.Kokolus@NVRRealtyGroup.com
Buyer's Agent's Email Address

97716 19654
Buyer's Agent License #/ LLR Office Code

843-494-2311
Buyer's Agent Telephone Number

Susan Heyer /Carolina One Real Estate
Seller's Agent/Company

sheyer@carolinaone.com
Seller's Agent's Email Address

80767 2466 20809
Seller's Agent License #/ LLR Office Code

843-901-2428
Seller's Agent Telephone Number

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SCR Form 330 4/2021 PAGE 9 of 9



ADDENDUM/AMENDMENT TO



☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☒ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as: _____

Address 5896 Maybank Hwy Unit # _____
 City Wadmalaw Island State of South Carolina
 Other _____ TMS 154-00-00-011

The undersigned Parties hereby agree as follows: The Buyers will close in 45 days of the Lis Pendens being removed. Due Diligence 30 days after.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 7 ☐ AM ☒ PM on July 8 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: [Signature] Date: Jul 8, 2022 Time: 7:55 PM

BUYER: Kenneth Bradley Ross Date: Jul 8, 2022 Time: 7:55 PM

Date: _____ Time: _____

Date: _____ Time: _____

SELLER: James D Jenkins IV Date: 7/7/2022 | 15:36 PM PDT
DocuSigned by: James D Jenkins IV Time: _____

SELLER: Alicia J Roy Date: 7/7/2022 | 21:19 PM EDT
DocuSigned by: Alicia J Roy Time: _____

Date: 7/8/2022 | 06:23 AM PDT
DocuSigned by: Peter B Jenkins Time: _____

Seller: Peter B Jenkins Date: _____ Time: _____

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FORM 390 PAGE 1 of 1



ADDENDUM/AMENDMENT TO

Carolina One
Real Estate

☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☒ COUNTEROFFER] OR

☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____

COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as: _____

Address 5896 Maybank Hwy Unit # _____
City Wadmalaw Island State of South Carolina
Other _____ TMS 154-00-00-011

The undersigned Parties hereby agree as follows: _____

Sellers and Buyers agree that either party may terminate this contract at anytime while the existing lis pendens is on the property (case number 2022-CP-10-1958). If the contract is terminated as a result of the lis pendens, the earnest money will be returned to the Buyers and they will have no further remedy against the Sellers.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 7 ☐ AM ☒ PM on July 8, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: [Signature] Date: Jul 8, 2022 Time: 7:55 PM

BUYER: Kenneth Bradley Rose Date: Jul 8, 2022 Time: 7:55 PM

Date: _____ Time: _____

Date: _____ Time: _____

SELLER: James D Jenkins IV Date: 7/7/2022 | 15:36 PM PDT

SELLER: James D Jenkins IV Date: 7/7/2022 | 21:19 PM EDT

SELLER: Alicia J Roy Date: 7/8/2022 | 06:23 AM PDT

Seller: Peter B Jenkins Date: _____ Time: _____

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FORM 390 PAGE 1 of 1

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Case No.: 2022-CP-10-1958

Marc K. Knapp,
Plaintiff,

vs.

James Douglas Jenkins, IV,
Peter Barnwell Jenkins, and
Alicia J. Roy,
Defendants.

AFFIDAVIT OF JAMES WELLS

The affiant, James Wells, being duly sworn, deposes and states as follows:

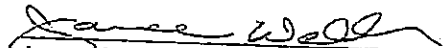
1. I am an adult and am competent to make the statements contained in this affidavit. The statements made herein are of my own personal knowledge and belief.
2. I am one of the real estate agents for James Jenkins, Peter Jenkins, and Alicia Roy for 5869 Maybank Highway, Wadmalaw, South Carolina. The property is an approximately 7 acres tract of empty, marsh front land.
3. The original contract with Marc Knapp dated January 4, 2022, was required to close on February 10, 2022. The contract was amended on February 11, 2022, to extend the closing date to February 24, 2022. A true and correct copy of said contract is attached hereto as Exhibit A.
4. The contract was contingent on Knapp obtaining financing and obtaining a septic tank permit. As to financing, Knapp was required to apply by January 10, 2022 and provide an initial approval letter from a lender by January 17, 2022. We never received an initial approval letter of any sort. In fact, Miles Adler, Knapp's lawyer informed us as late as March 9, 2022, weeks after closing was scheduled, that he had a call in to Mr. Knapp to

get authorization for us to speak with his lender to verify that the loan had been applied for. Exhibit B. On February 23, 2022, I spoke with Chris Lindamood of First Citizens Bank, who we had been informed Knapp had applied for financing. Although by contract Knapp agreed to keep the Sellers informed of the status of his loan application, he refused to speak with me.

5. At approximately 12:31pm on March 9, 2022 (again weeks after closing had been scheduled), Knapp caused a man who identified himself as Desmond from Veterans United to contact me regarding a loan application Knapp allegedly made with it. Desmond told me that Knapp had applied for a VA loan of \$400,000 in late December of 2021, before this property was under contract. He acknowledged to me that the VA does not give loan for vacant land.
6. Issues were also raised regarding a potential cemetery on the property. We provided Knapp two surveys, neither of which showed a graveyard on the property. However, on February 3, 2022, Robert Young, Knapp's agent, emailed to say, "hey my guys were out there yesterday and they were able to determine that the Jenkins Cemetery is indeed on the Whelchel property." Exhibit C.
7. I believe the Buyers were not honoring the terms of the contract and recommended that the Sellers give no further extensions.

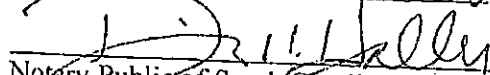
8. The Sellers have been able to obtain another contract on the property, subject to the removal of the lis pendens on it. Exhibit D.

FURTHER THE AFFIANT SAYETH NOT!


James Wells

SWORN TO AND SUBSCRIBED BEFORE ME

This ~~2nd~~ day of December, 2022


Notary Public of South Carolina

My Commission Expires: May 31, 2026

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) Case No.: 2022-CP-10-1958

Marc K. Knapp,)

Plaintiff,)

vs.)

NOTICE OF FILING EXHIBITS

James Douglas Jenkins, IV,)
Peter Barnwell Jenkins, and)
Alicia J. Roy,)

Defendants.)

TO: N. MILES ADLER, ESQ, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the above-named Defendants file the attached
business records as exhibits in support of their motion for summary judgment.

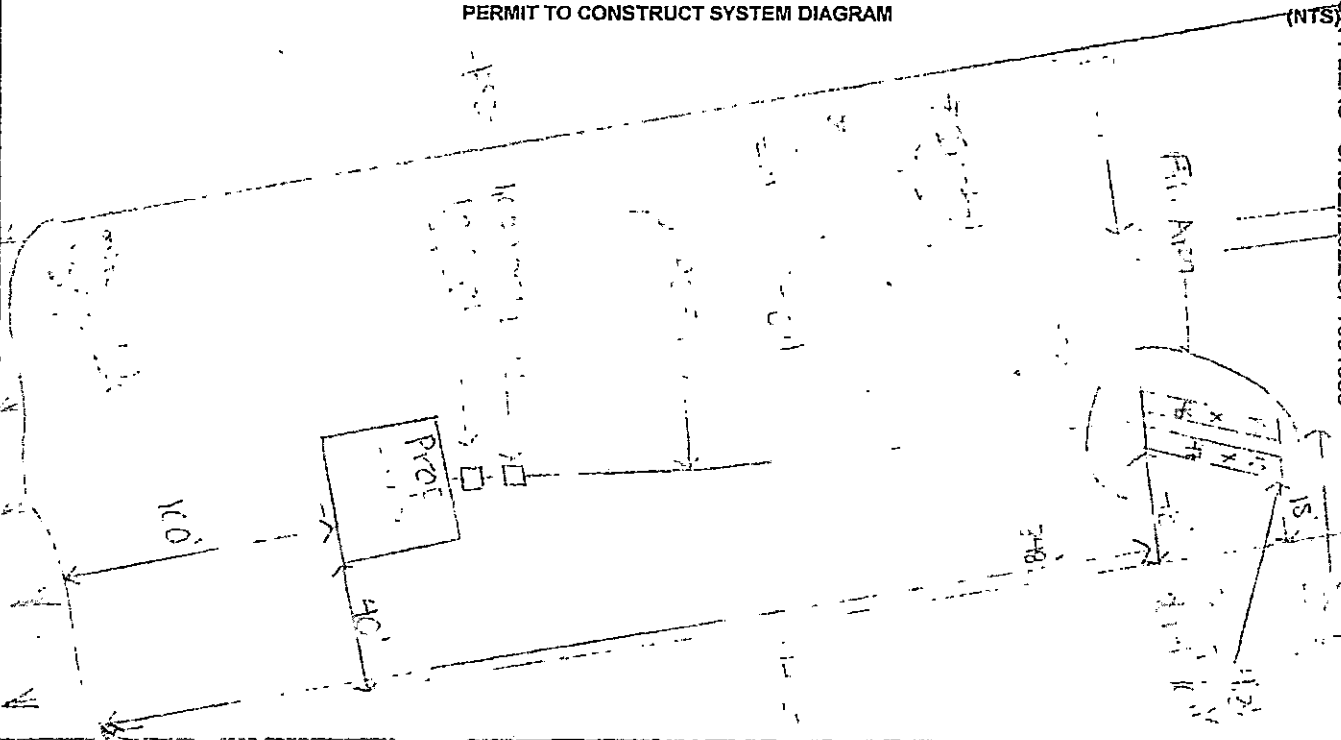
s/ David K. Haller

David K. Haller, Esq.
HALLER LAW FIRM
604 Savannah Highway
Charleston, South Carolina 29407
(843) 224-7860
dhaller@hallerlawfirm.com
Attorneys for the Plaintiff

December 2, 2022

Charleston, South Carolina

EXHIBIT A

		PERMIT TO CONSTRUCT Onsite Wastewater System		File Nbr: 2022020017 County: Charleston	
Name: MARC KNAPP		Address: [REDACTED]		Program Code 362	
Type Facility: HOUSE 3BR				System Code: 271	
Subdivision:		Site: 5896 MAYBANK HWY		TM No.: 154-00-00-011	
Block:		Lot:		Water Supply: PRIVATE	
PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS					
Daily Flow (gpd): 360	Tank Sizes (gal):	Septic Tank: 1000	Pump Chamber: 1000	Grease Trap:	
LTAR: .70	Trenches: Length (ft): 93	Width (in): 120	Max. Depth (in): 16	Agg. Depth (in): 6	
Min Pump Capacity: 10	gpm at 15 ft. of Head Alternative Product:				
SPECIAL INSTRUCTIONS/CONDITIONS					
THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT. <i>Installers must contact the local Environmental Affairs office by 10:00 AM the day before installation to schedule a time for the final inspection. If a Department representative does not arrive within 30 minutes of the schedule time, the installer may complete the final inspection. When a contractor self-inspection occurs, the installer must complete the DHEC form 3978, Approval to Operate Contract Self-Inspection. The installer must submit the DHEC form 3978 to the Department within 2 business days of completion of the installation.</i> • All applicable setbacks set forth in Regulation 61-56 apply. 75' minimum to any well. • Maximum Trench Depth not to exceed 16 inches at high point. Install level. • Do not cut, fill, bulldoze, scrape or change the grade of the natural soils in the septic system area. • Do not install under wet soil conditions. • No parking, driving, building or paving over the area of septic system before or after installation. • Minimum 12" cover over system after installation with 5' buffers and 10' tapers from outside edges of trenches.					
PERMIT TO CONSTRUCT SYSTEM DIAGRAM					
					
Issued/Revised By: 			Date: 3/9/22		

DHEC 1781 (01/2014)

This Permit is Appealable Under the Administrative Procedures Act.

This permit will expire and become null and void five (5) years from the issuance date.

There may be an Additional Fee for Changes in this Permit that Require a Site Reevaluation.

Personal information provided on this form is subject to public scrutiny or release.



APPROVAL TO OPERATE

Department Staff Inspection - Onsite Wastewater System

File Nbr: 2022020017

County: Charleston

Name: MARC KNAPP

Type Facility: HOUSE

Subdivision

Block:

Address:

Lot:

Site: 5896 MAYBANK HWY
WADMALAW, SC 29487

Program Code: 362

System Code:

TM No. 154-00-00-011

Water Supply: PRIVATE

ACTUAL INSTALLATION

(NTS)

FINAL APPROVAL

Installer:

Septic Tank Mfg:

Pump Chbr Mfg:

Pump Mfg:

Pump Model:

Grease Trap Mfg:

Alternative Product:

Aggregate Type:

Aggregate Depth (in):

Trench Width (in):

Trench Depth (in):

Fill Cap:

Fill Cap Depth (in):

Well Installed:

Well Dist (ft):

Building Dist (ft):

Property Dist (ft):

Water Dist (ft):

Tank Size (gal):

Pump Chamber Size (gal):

Elevation Readings:

Plumbing Stubout:

Septic Tank Inlet:

Septic Tank Outlet:

Pump Chamber Inlet:

Line No.

Comments:

Licensed Installer

Printed Name

License No.

I hereby certify the system was installed in accordance with the referenced permit and R.61-56 and is in an exposed condition ready for inspection.

Licensed Installer Signature

Date

Office Use Only

APPROVAL BY DHEC TO OPERATE

THIS CERTIFICATE OF FINAL APPROVAL IN NO WAY GUARANTEES THE LIFE OF THE SYSTEM OR THAT IT WILL FUNCTION PROPERLY
UNDER ANY OR ALL CONDITIONS

Approved By:

Date:

DHEC 1781 (01/2014)

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31/17

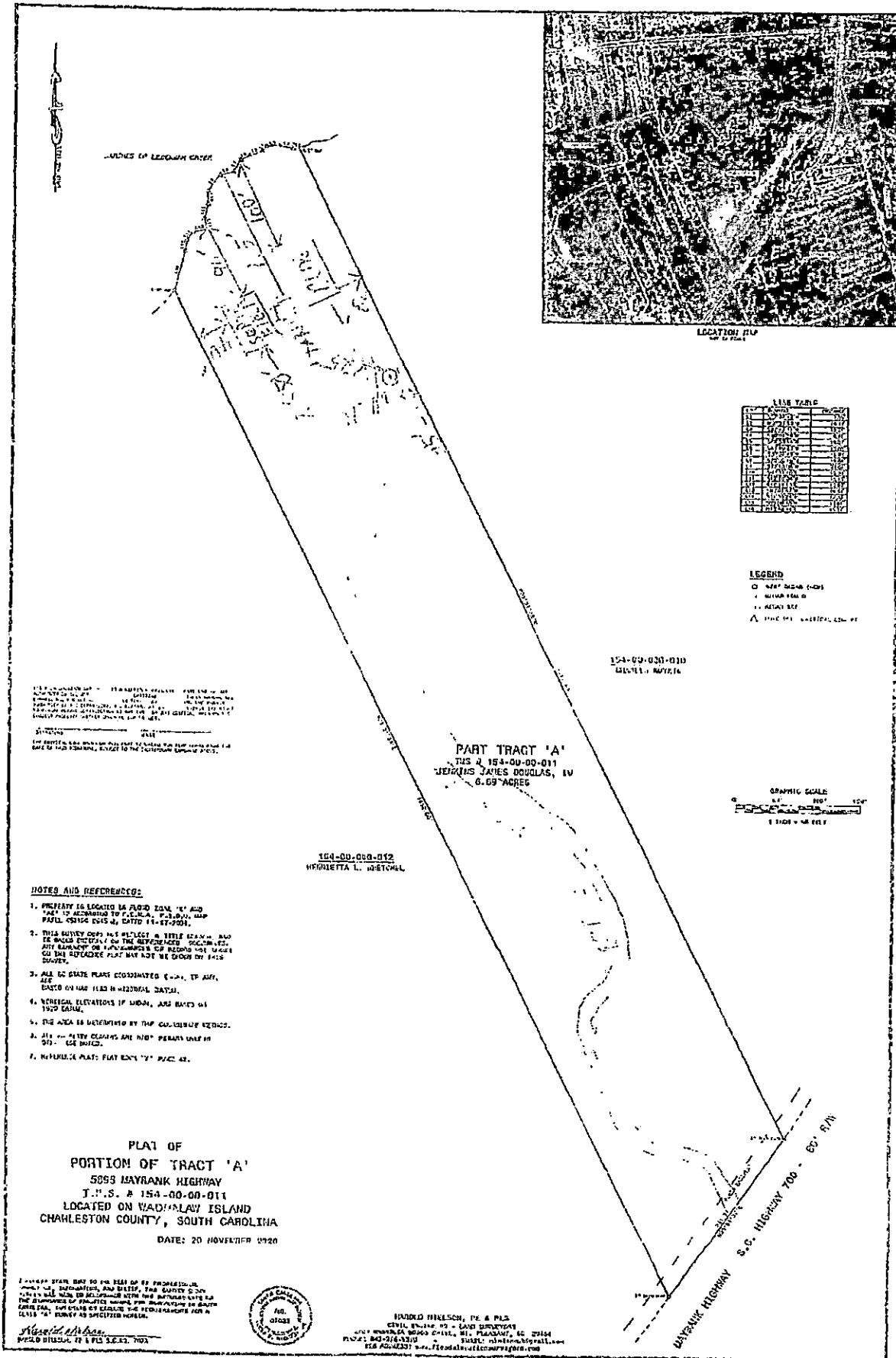
City

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SB	Depth	Hue/Value/Chroma	Concentrations	Depletions	Texture/ LTAR	ZOS
1	0-10	10Y 11/2			1	
	10-15	" 6/4			1	
	15-24	" 5/10			1	
	24-30	" 1/6			1	
	30-38	" 1/6	1.5% 1/6	10 ⁻⁴ 1/2	1	30
2	0-8	10Y 11/2			1	
	8-14	" 6/4			1	
	14-23	" 5/10	1.5% 1/6		1	
	23-28	" 5/6	1.5% 1/6	10 ⁻⁴ 1/2	1	23
3	0-5	5Y 11/4			1	
	5-10	" 6/4			1	
	10-22	" 5/10			1	
	22-30	" 1/6			1	

Date _____





Onsite Wastewater System Application
Bureau of Environmental Health Services

Application #: 110208202001

I, MARC KNAPP

(Name)

(Mailing Address)

(City/Town)

(State)

(Zip Code)

(Email Address)

Phone No.: 843-870-7055

Alternate Phone No.:

☒ Mobile

☐ Home

☐ Work

☐ Mobile

☐ Home

☐ Work

hereby make application for a Permit to Construct an Individual Sewage Disposal System to serve a:

House: ☒ Mobile Home: ☐ Other (Specify): ☐

If in subdivision, give name: _____

Lot #: _____

Property Address: 5896 MAYBANK HWY

City: WADMALAW

County: CHARLESTON

Tax Map/Property Identification #: 1540000011

Check all that apply:

Public Water: ☐

Well: ☒ Public

☐ Private

☐ Existing

☒ Proposed

Public Sewer Accessible: ☐

If residential establishment, answer following:

No. Bedrooms: 3

Basement: ☐ Full ☐ Partial ☒ None

Plumbing in Basement: ☐

If commercial establishment, answer following:

Type of Business: _____

Number of

Occupants: _____

Number of

Employees: _____

Public

Number of Hours

Restrooms: _____

of Daily Operation: _____

Other: _____

(i.e., seating capacity, meals per day)

Lot Identification and Preparation

In order for your application to be processed, stake the corners of the proposed building and property corners with distinctive markers. In clear, sealed bags, place the site location card at the front of the property in a conspicuous location and place the septic location card at the proposed septic location. A legal description (plat, deed, surveyor site plan, etc.) with dimensions of the property must also be submitted with the application. Contact the regional EA office to activate your application when the lot has been staked, house site located, and lot posted. The lot should also be properly prepared by clearing all underbrush, thick vegetation, and any other features that may inhibit the site evaluation within a 150 ft radius of the proposed septic location.

Please give exact directions to lot: Take Maybank Hwy from Folly road. Travel 15 miles on Maybank.

Look for gravel drive on right just past newly cleared land on the left. Property has a large 4X8 for sale on the right just past the gravel drive.

I understand that the property must be properly prepared for evaluation and that I must confirm property preparation to activate the application. I also understand a reevaluation fee may be assessed if the above parameters for lot identification and preparation are not met. I certify to the best of my knowledge that the information submitted in this document is true and accurate. Permission and authority is hereby granted for DHEC representatives to enter the above-described property at reasonable hours for the purpose of onsite wastewater system inspection and/or site evaluation.

Property will be ready for activation/evaluation by DHEC on 02-07-2022

(Date)

02-06-2022

(Date)

(Applicant/Representative Signature)

DHEC 1740 (05/2020)

Personal information provided on this form is subject to public scrutiny or release.

115

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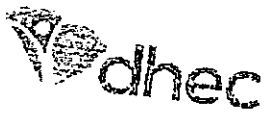


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City

DHEC-2883 (09/2016)

Date _____



Onsite Wastewater System Application

Bureau of Environmental Health Services

Please use this space to sketch a drawing of the property.

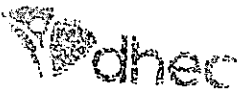
Does not need to be drawn to exact scale but should be legible and drawn clearly.

☒ Check here if the sketch is attached on a separate sheet or on the plat instead of this application.

Sketch must include labelling the location, dimensions, and distance from property lines of existing and/or proposed:

- Primary building
- Septic tank and drain field area
- Wells, including those on adjacent properties
- Underground utility lines, existing drainage pipes, and/or easements
- Driveways, parking areas, or other vehicular traffic or traffic bearing structures
- Porches, decks, pools, garages, carports, out-buildings, and other permanent structures and their dimensions
- Areas of grading or other soil disturbance, changes in drainage patterns, or changes in surface or topographical features on the site

Use note that any changes such as grading, soil disturbances, or site alterations to topography could negatively affect the wastewater system or lead to permit revocation.



Onsite Wastewater System Application
Bureau of Environmental Health Services
Property Owner Permission Letter

Date: 02-07-2022

To: DHEC - Bureau of Environmental Health Services
James Jenkins IV, Peter Jenkins, Alicia Roy

From: _____ - Property Owner

Location

Property Address: 5896 MAYBANK HIGHWAY

Property Town/City: WADMALAW ISLAND

Property Tax Map #: 1540000011

SUBJECT: Site evaluation for purpose of issuing onsite wastewater (OSWW) permit

James Jenkins IV, Peter Jenkins, Alicia Roy

I, _____, property owner for the above listed property, give this local DHEC Staff permission to enter our property to evaluate the site for the purpose of issuing an OSWW (septic) permit.

James D Jenkins IV *James D Jenkins IV*
DocuSigned by: 2781c1b7c9316f

2/6/2022 | 11:42 AM EST

Peter B Jenkins *Peter B Jenkins*
DocuSigned by: 8209f820171421107

2/6/2022 | 09:35 AM PST

Alicia J Roy *Alicia J Roy*
DocuSigned by: 8A40D0C3EE314E3

2/6/2022 | 12:34 PM EST

Property Owner's Signature



**CHARLESTON-CHARLESTON ENV HEALTH EH/EQC
OCRM**

Service Transactions

ENVIRONMENTAL HEALTH						
Client ID :		Date of Service: 02/07/2022		Receipt # 10-843525		
Name : EH CLIENT		Invoice Date : 2/7/2022				
Business Name :		MARC KNAPP 1540000011		Previous Balance : \$0.00		

Program Area	Service Code	Description	Reference	Amount	Adjustment	Extended
EH	SPTCTNK	New Septic Tank Permit Fee	EH10001-6	\$150.00	\$0.00	\$150.00
SubTotal for Service lines :						\$150.00

Payment Details:		
Pay Description	Pay Reference	Pay Amount
Visa	[REDACTED]	150.00
SubTotal for Payment :		\$ 150.00
Current Account Balance :		\$0.00

SC Department of Health and Environmental Control Online Invoice Payments

[Home](#)[Process Payments](#)[Duplicate Receipt](#)[Transaction Report](#)[tolberce \[Logout\]](#)

DHEC Invoice Receipt

Transaction Information

Payment Type: [REDACTED]

TPE Order ID: [REDACTED]

Transaction Date: 02/07/2022 11:49 AM

Payment for product or services

Item	Amount
Invoice# EH100016	\$150.00
Quantity	1
DHEC Invoice(s) Total	\$150.00
Service Fee* SC.GOV	\$1.00
Grand Total	\$151.00

Agency Information

SC DHEC - Bureau of Financial Management

Customer Information

Marc Knapp
1748 Indaba Way
Charleston, SC 29414
843-870-7055
MANUALLY/ENTERED

null, null null

Special Instructions

EH -

Receipt Message

Technical questions: [SC.gov Website](#)
Email: support@portal.sc.gov
Phone: 866.340.7105 (8am-5pm, M-F)

Invoice questions: [SC DHEC Website](#)
Email: receivables@dhec.sc.gov
Phone: 803.898.3460 (8:30am-5pm, M-F)

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Nov. 21/22 PD

Onsite Wastewater Application Administrative Check Sheet (Internal use only)	
Applicant Name KNAPP, MARC	County / File# 10 2022 02 0017

Application Received	Date	Staff Initial
Application Received Email Sent (respond within 24 hrs of receipt) (Print a copy of this email and add to application folder)	2/7/22	CET
Payment Received (copy of receipt added to folder)	↓	↓

Included	Application Completeness	Missing
✓	Application Items	X
✓	Name, Address, Email Address, Phone Numbers	
✓	Type of facility	
✓	Property Info & TMS# or PIN# (Confirm on County GIS website)	
✓	Water Source: Public or Well (Public/Private & Existing/Proposed)	
✓	Residential or Commercial Info	
✓	Complete Directions (with nearest 9-1-1 address or mailbox)	
	Activation Date: The date the site will be marked & ready for eval. Cannot be before the receipt date. <u>To properly prepare your site, the following must be met:</u> • Place both site cards in a clear, sealed plastic bag. Post the Site Location card at the entrance of the property. Post the Septic Location Card at proposed location of septic system. • All property corners and lines are to be clearly marked or cut, and visibly identifiable. • Mark the corners of the proposed home or commercial building with labeled wooden landscape stakes or 24" stake flags. The "footprint" should represent total dimensions and include walkways, flower beds, steps, porches, decks, etc. • Mark the corners of other proposed buildings, pools, or structures that may influence placement and configuration of the wastewater system. • Mark any existing and/or proposed wells. • Clear underbrush, thick vegetation, and any other features that may inhibit the site evaluation. This degree of clearing should expand at least 150 feet in all directions from the proposed building site. Additional clearing may be required. • Any grading or site alteration could lead to site reevaluation fees, negatively impact the wastewater system, or lead to permit revocation.	
✓	Signature of Applicant (Physical or Digital)	
✓	Sketch Attached or draw on the Plat (with distances from 2 fixed points)	
✓	A complete plat, deed, or legal document specifying boundaries and size of the property. It must be legible and include property dimensions (if scaled copy is provided do not reduce). If plat is too large to scan, take a picture of it to print out a smaller copy to scan with the application (Keep both in file).	
✓	Property Owner Permission Letter (On our template only)	
Certification		
This application is administratively complete and is ready for OSWW Technical Review.		Staff Initial Date

Notes:

NEEDS ACT. DATE

THEN... ✓ 2/10/22 JH

Re: Permit application

Tolbert, Connie E. <TolberCE@dhec.sc.gov>

Mon 2/7/2022 11:39 AM

To: Marc Knapp [REDACTED] BEHS-Charleston-Admin <BEHS-Charleston-Admin@dhec.sc.gov>

Cc: joannejknapp [REDACTED] Jennifer [REDACTED] Lauren Mosher [REDACTED]

Our staff have tried contacting you for payment and were not able to reach you. Please call 843-953-0150 to complete payment for this application. Please note, our office hours are M-F 8:30-5:00, except for holidays.

Connie Tolbert

Administrative Specialist

Environmental Affairs Low Country Charleston

1362 McMillan Avenue, Ste. 300

N. Charleston, SC 29405

Office (843) 953-0150

FAX (843) 953-0151

From: Tolbert, Connie E. <TolberCE@dhec.sc.gov>

Sent: Monday, February 7, 2022 9:33 AM

To: Marc Knapp [REDACTED] BEHS-Charleston-Admin <BEHS-Charleston-Admin@dhec.sc.gov>

Cc: joannejknapp [REDACTED]; Jennifer [REDACTED] Lauren Mosher [REDACTED]

Subject: Re: Permit application

Good Morning!

Thank you for contacting the Department of Health and Environmental Control. We have reviewed and accepted your application. **We will** contact you at the phone number provided for payment of the application.

Connie Tolbert

Administrative Specialist

Environmental Affairs Low Country Charleston

1362 McMillan Avenue, Ste. 300

N. Charleston, SC 29405

Office (843) 953-0150

FAX (843) 953-0151

From: Marc Knapp [REDACTED]

Sent: Sunday, February 6, 2022 3:31 PM

To: BEHS-Charleston-Admin <BEHS-Charleston-Admin@dhec.sc.gov>

Cc: Marc Knapp [REDACTED] Jennifer [REDACTED]

EXHIBIT B

 First American TitleTM	ALTA Commitment for Title Insurance
	ISSUED BY First American Title Insurance Company
Commitment	

COMMITMENT FOR TITLE INSURANCE

Issued By

FIRST AMERICAN TITLE INSURANCE COMPANY**NOTICE**

IMPORTANT—READ CAREFULLY: THIS COMMITMENT IS AN OFFER TO ISSUE ONE OR MORE TITLE INSURANCE POLICIES. ALL CLAIMS OR REMEDIES SOUGHT AGAINST THE COMPANY INVOLVING THE CONTENT OF THIS COMMITMENT OR THE POLICY MUST BE BASED SOLELY IN CONTRACT.

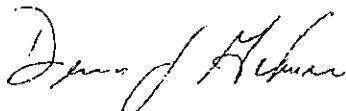
THIS COMMITMENT IS NOT AN ABSTRACT OF TITLE, REPORT OF THE CONDITION OF TITLE, LEGAL OPINION, OPINION OF TITLE, OR OTHER REPRESENTATION OF THE STATUS OF TITLE. THE PROCEDURES USED BY THE COMPANY TO DETERMINE INSURABILITY OF THE TITLE, INCLUDING ANY SEARCH AND EXAMINATION, ARE PROPRIETARY TO THE COMPANY, WERE PERFORMED SOLELY FOR THE BENEFIT OF THE COMPANY, AND CREATE NO EXTRACTIONAL LIABILITY TO ANY PERSON, INCLUDING A PROPOSED INSURED.

THE COMPANY'S OBLIGATION UNDER THIS COMMITMENT IS TO ISSUE A POLICY TO A PROPOSED INSURED IDENTIFIED IN SCHEDULE A IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF THIS COMMITMENT. THE COMPANY HAS NO LIABILITY OR OBLIGATION INVOLVING THE CONTENT OF THIS COMMITMENT TO ANY OTHER PERSON.

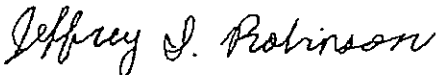
COMMITMENT TO ISSUE POLICY

Subject to the Notice, Schedule B, Part I—Requirements; Schedule B, Part II—Exceptions; and the Commitment Conditions, *First American Title Insurance Company*, a Nebraska Corporation (the "Company"), commits to issue the Policy according to the terms and provisions of this Commitment. This Commitment is effective as of the Commitment Date shown in Schedule A for each Policy described in Schedule A, only when the Company has entered in Schedule A both the specified dollar amount as the Proposed Policy Amount and the name of the Proposed Insured.

If all of the Schedule B, Part I—Requirements have not been met within six months after the Commitment Date, this Commitment terminates and the Company's liability and obligation end.

First American Title Insurance Company


Dennis J. Gilmore, President



Jeffrey S. Robinson, Secretary

If this jacket was created electronically, it constitutes an original document.

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COMMITMENT CONDITIONS

1. DEFINITIONS

- (a) "Knowledge" or "Known": Actual or imputed knowledge, but not constructive notice imparted by the Public Records.
- (b) "Land": The land described in Schedule A and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is to be insured by the Policy.
- (c) "Mortgage": A mortgage, deed of trust, or other security instrument, including one evidenced by electronic means authorized by law.
- (d) "Policy": Each contract of title insurance, in a form adopted by the American Land Title Association, issued or to be issued by the Company pursuant to this Commitment.
- (e) "Proposed Insured": Each person identified in Schedule A as the Proposed Insured of each Policy to be issued pursuant to this Commitment.
- (f) "Proposed Policy Amount": Each dollar amount specified in Schedule A as the Proposed Policy Amount of each Policy to be issued pursuant to this Commitment.
- (g) "Public Records": Records established under state statutes at the Commitment Date for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge.
- (h) "Title": The estate or interest described in Schedule A.

2. If all of the Schedule B, Part I—Requirements have not been met within the time period specified in the Commitment to Issue Policy, this Commitment terminates and the Company's liability and obligation end.

3. The Company's liability and obligation is limited by and this Commitment is not valid without:

- (a) the Notice;
- (b) the Commitment to Issue Policy;
- (c) the Commitment Conditions;
- (d) Schedule A;
- (e) Schedule B, Part I—Requirements;
- (f) Schedule B, Part II—Exceptions; and
- (g) a counter-signature by the Company or its issuing agent that may be in electronic form.

4. COMPANY'S RIGHT TO AMEND

The Company may amend this Commitment at any time. If the Company amends this Commitment to add a defect, lien, encumbrance, adverse claim, or other matter recorded in the Public Records prior to the Commitment Date, any liability of the Company is limited by Commitment Condition 5. The Company shall not be liable for any other amendment to this Commitment.

5. LIMITATIONS OF LIABILITY

- (a) The Company's liability under Commitment Condition 4 is limited to the Proposed Insured's actual expense incurred in the interval between the Company's delivery to the Proposed Insured of the Commitment and the delivery of the amended Commitment, resulting from the Proposed Insured's good faith reliance to:
 - (i) comply with the Schedule B, Part I—Requirements;
 - (ii) eliminate, with the Company's written consent, any Schedule B, Part II—Exceptions; or
 - (iii) acquire the Title or create the Mortgage covered by this Commitment.
- (b) The Company shall not be liable under Commitment Condition 5(a) if the Proposed Insured requested the amendment or had Knowledge of the matter and did not notify the Company about it in writing.
- (c) The Company will only have liability under Commitment Condition 4 if the Proposed Insured would not have incurred the expense had the Commitment included the added matter when the Commitment was first delivered to the Proposed Insured.
- (d) The Company's liability shall not exceed the lesser of the Proposed Insured's actual expense incurred in good faith and described in Commitment Conditions 5(a)(i) through 5(a)(iii) or the Proposed Policy Amount.
- (e) The Company shall not be liable for the content of the Transaction Identification Data, if any.
- (f) In no event shall the Company be obligated to issue the Policy referred to in this Commitment unless all of the Schedule B, Part I—Requirements have been met to the satisfaction of the Company.

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(g) In any event, the Company's liability is limited by the terms and provisions of the Policy.

6. LIABILITY OF THE COMPANY MUST BE BASED ON THIS COMMITMENT

- (a) Only a Proposed Insured identified in Schedule A, and no other person, may make a claim under this Commitment.
- (b) Any claim must be based in contract and must be restricted solely to the terms and provisions of this Commitment.
- (c) Until the Policy is issued, this Commitment, as last revised, is the exclusive and entire agreement between the parties with respect to the subject matter of this Commitment and supersedes all prior commitment negotiations, representations, and proposals of any kind, whether written or oral, express or implied, relating to the subject matter of this Commitment.
- (d) The deletion or modification of any Schedule B, Part II—Exception does not constitute an agreement or obligation to provide coverage beyond the terms and provisions of this Commitment or the Policy.
- (e) Any amendment or endorsement to this Commitment must be in writing and authenticated by a person authorized by the Company.
- (f) When the Policy is issued, all liability and obligation under this Commitment will end and the Company's only liability will be under the Policy.

7. IF THIS COMMITMENT HAS BEEN ISSUED BY AN ISSUING AGENT

The issuing agent is the Company's agent only for the limited purpose of issuing title insurance commitments and policies. The issuing agent is not the Company's agent for the purpose of providing closing or settlement services.

8. PRO-FORMA POLICY

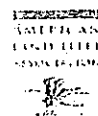
The Company may provide, at the request of a Proposed Insured, a pro-forma policy illustrating the coverage that the Company may provide. A pro-forma policy neither reflects the status of Title at the time that the pro-forma policy is delivered to a Proposed Insured, nor is it a commitment to insure.

9. ARBITRATION

The Policy contains an arbitration clause. All arbitrable matters when the Proposed Policy Amount is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Proposed Insured as the exclusive remedy of the parties. A Proposed Insured may review a copy of the arbitration rules at <http://www.alta.org/arbitration>.

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 First American Title™	ALTA Commitment for Title Insurance
Schedule A	ISSUED BY First American Title Insurance Company

Transaction Identification Data for reference only:

Issuing Agent: McLester & Niemiec, LLC
 Issuing Office: 622 Johnnie Dodds Blvd., Mount Pleasant, SC 29464
 Loan ID No.:
 Issuing Office's ALTA® Registry ID:
 Commitment No.: 22-410
 Issuing Office File No.: 22-410
 Property Address: 5896 Maybank Hwy, Wadmalaw Island, SC 29487
 Revision No.:

SCHEDULE A

1. Commitment Date: February 3, 2022 at 08:00 AM
2. Policy to be issued:
 - (a) ☒ ALTA® ALTA Own. Policy (10/17/92)
 Proposed Insured: Marc K. Knapp
 Proposed Policy Amount: \$ 285,000.00
 - (b) ☐ ALTA® ALTA Loan Policy (10/17/92)
 Proposed Insured:
 Proposed Policy Amount:
3. The estate or interest in the Land described or referred to in this Commitment is Fee Simple.
4. The Title is, at the Commitment Date, vested in:
 James Douglas Jenkins IV and Peter Barnwell Jenkins and Alicia J. Roy
5. The Land is described as follows:
SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF

FIRST AMERICAN TITLE INSURANCE COMPANY

By: _____
 First Title & Abstract Company, Inc.

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 First American Title™	ALTA Commitment for Title Insurance
Schedule BI & BII	ISSUED BY First American Title Insurance Company

Commitment No.: 22-410

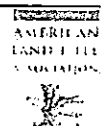
SCHEDULE B, PART I**Requirements**

All of the following Requirements must be met:

1. The Proposed Insured must notify the Company in writing of the name of any party not referred to in this Commitment who will obtain an interest in the Land or who will make a loan on the Land. The Company may then make additional Requirements or Exceptions.
2. Pay the agreed amount for the estate or interest to be insured.
3. Pay the premiums, fees, and charges for the Policy to the Company.
4. Documents satisfactory to the Company that convey the Title or create the Mortgage to be insured, or both, must be properly authorized, executed, delivered, and recorded in the Public Records.
5. We must be furnished with a copy of SCID 3601 executed pursuant to Section 38-75-960 S. C. Code of Laws 1976, as amended, and an executed Notice of Availability of Title Insurance pursuant to S. C. Insurance Department Regulation R-69-18, Vol. 25A of S. C. Code of Laws 1976, as amended.
6. Seller's/Owner's Affidavit Indemnity executed by current owner(s) of the land on a form to be supplied by the Company stating that there have been no improvements to the land within the past 90 days which could give rise to a construction lien and that there are no accounts or claims pending and unpaid which could constitute a lien against the land. The affidavit will also state that affiant has no knowledge of any natural person or legal entity who has or could have a claim of right, interest or lien adverse to the Insured.
7. Receipt of the acknowledged First American Title Insurance Company Privacy Policy.
8. Payoff and release/satisfaction of the following (or, in the alternative, receipt of a duly sworn affidavit from the relevant Seller, confirming that he is not the delinquent taxpayer, judgment debtor, or defendant listed therein):
 - A. SC DOR Tax Lien against James Jenkins – Tax Lien Number 3-51443177-S, File Year – 2012; File Number – 23566;
 - B. Civil Judgment in Charleston County Case No. 12-GS-10-05504 (2014-CP-10-7288) against James Jenkins;
 - C. Civil Judgment in Charleston County Case No. 15-GS-100-2587 (2016-CP-10-4027) against James Jenkins;
 - D. Civil Judgment in Charleston County Case No. 15-GS-100-2587 (2016-CP-10-4028) against James Jenkins;
 - E. Transcript of Judgment in Charleston County Case No. 2017CV1011500563 (2018-CP-10-1686) against James Jenkins; and

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Form 5031500-BI&BII(3-15-18)

ALTA Commitment for Title Insurance (8-1-16)
 South Carolina - Schedule BI & BII
 (22-410.PFD22-410/2)

SCHEDULE BI & BII
(Continued)

Commitment No.: 22-410

F. The following liens against James Jenkins: Lien ID Nos. 297629; 330042; 331959; 332593; 409884; 412762; 421408; 436856; 567277; 834348; 842385; 857962; 892302; 918929; 931982; 970152; 3514431775, 3517910130; 3518259890; 3519036557; 790931 20009681 2037021 486139; and 486139.

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SCHEDULE BI & BII
(Continued)

Commitment No.: 22-410

SCHEDULE B, PART II

Exceptions

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

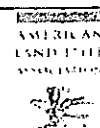
1. Any defect, lien, encumbrance, adverse claim, or other matter that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and the date on which all of the Schedule B, Part I - Requirements are met.
2. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
3. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
4. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records
5. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
6. Any mineral or mineral rights leased, granted or retained by current or prior owners

NOTE: Exception Numbered 1 - 7 above will be deleted upon issuance of the Loan Policy Only.

7. Taxes and assessments for the year 2022 and subsequent years, not yet due and payable.
8. Easement to State Rural Electrification Authority recorded in the RMC Office for Charleston County in Book B40, at Page 027.
9. Easement to Berkeley Electric Cooperative, Inc. recorded in the RMC Office for Charleston County in Book K105, at Page 244.
10. Easement to Berkeley Electric Cooperative, Inc. recorded in the RMC Office for Charleston County in Book 0793, at Page 148.
11. All matters shown on plats recorded in the RMC Office for Charleston County in Plat Book Y, at Page 042, and Plat Book C, at Page 013.
12. Any right, title or interest of anyone whomever in any of the land below the mean high water mark or below the spring tide flood water boundary, marsh (whether salt or fresh), lagoon, man-made canal, swamp areas, or any tidal area below the mean high water mark, or the spring tide flood water boundary, or to any such areas as may be claimed by or over which jurisdiction is asserted by any local, state or national governmental entity or quasi-governmental entity. The Company does not insure riparian rights, nor does it insure title to the portion of the land which lies below the mean high water mark of rivers, creeks or ocean, nor title to any portion of the land that may be accreted as defined in the Coastal Tidelands and Wetlands Act, Section 48-39-10 et seq. of the South Carolina Code of Laws, 1976, as amended.

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SCHEDULE BI & BII
(Continued)

Commitment No.: 22-410

13. Any adverse claim based upon the assertion that any portion of said land was not tideland which was available for disposition by the State of South Carolina, or that any portion thereof has become submerged land by reason of erosion or has become upland by reason of accretion.
14. Riparian and/or littoral rights.
15. Rights of upper and lower riparian owners in and to the waters of Leadenwah Creek crossing or adjoining the land, and the natural flow thereof, free from diminution or pollution.
16. No insurance is afforded as to the exact amount of acreage included in the Property.

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AMERICAN
LAND TITLE
ASSOCIATION



Form 5031500-BI&BII (3-15-18)

ALTA Commitment for Title Insurance (8-1-16)
South Carolina - Schedule BI & BII
(22-410.PFD/22-410/2)

 First American Title™	ALTA Commitment for Title Insurance
Exhibit A	ISSUED BY First American Title Insurance Company

Commitment No.: 22-410

The land referred to herein below is situated in the County of Charleston, State of South Carolina, and is described as follows:

ALL that certain piece, parcel, or lot of land, together with any improvements thereon, situate, lying and being on Wadmalaw Island, County of Charleston, State of South Carolina, known and designated as PART TRACT "A," consisting of approximately 6.07 acres, as shown on that certain plat dated December 18, 1968, prepared by J. Exo Hilton, Reg. LS 2552, entitled "PLAT OF 72.11 ACRES TRACT 'A' PROPERTY OF J DOUGLAS JENKINS III TRACT 'B' PROPERTY OF SARAH B. LELAND WADMALAW ISLAND, CHARLESTON COUNTY, S.C.," and recorded January 22, 1969 in the RMC office for Charleston County in Plat Book Y, at Page 042. Said lot having such size, shape, metes, bounds, courses and distance as will by reference to said plat more fully appear.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice, the Commitment to Issue Policy, the Commitment Conditions: Schedule A, Schedule B, Part I-Requirements: Schedule B, Part II-Exceptions

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AMERICAN
LAND TITLE
ASSOCIATION



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Case No.: 2022-CP-10-1958

Marc K. Knapp,
Plaintiff,

vs.

James Douglas Jenkins, IV,
Peter Barnwell Jenkins, and
Alicia J. Roy,
Defendants.

AFFIDAVIT OF JAMES WELLS

The affiant, James Wells, being duly sworn, deposes and states as follows:

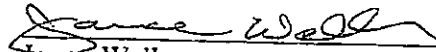
1. I am an adult and am competent to make the statements contained in this affidavit. The statements made herein are of my own personal knowledge and belief.
2. I am one of the real estate agents for James Jenkins, Peter Jenkins, and Alicia Roy for 5869 Maybank Highway, Wadmalaw, South Carolina. The property is an approximately 7 acres tract of empty, marsh front land.
3. The original contract with Marc Knapp dated January 4, 2022, was required to close on February 10, 2022. The contract was amended on February 11, 2022, to extend the closing date to February 24, 2022. A true and correct copy of said contract is attached hereto as Exhibit A.
4. The contract was contingent on Knapp obtaining financing and obtaining a septic tank permit. As to financing, Knapp was required to apply by January 10, 2022 and provide an initial approval letter from a lender by January 17, 2022. We never received an initial approval letter of any sort. In fact, Miles Adler, Knapp's lawyer informed us as late as March 9, 2022, weeks after closing was scheduled, that he had a call in to Mr. Knapp to

get authorization for us to speak with his lender to verify that the loan had been applied for. Exhibit B. On February 23, 2022, I spoke with Chris Lindamood of First Citizens Bank, who we had been informed Knapp had applied for financing. Although by contract Knapp agreed to keep the Sellers informed of the status of his loan application, he refused to speak with me.

5. At approximately 12:31pm on March 9, 2022 (again weeks after closing had been scheduled), Knapp caused a man who identified himself as Desmond from Veterans United to contact me regarding a loan application Knapp allegedly made with it. Desmond told me that Knapp had applied for a VA loan of \$400,000 in late December of 2021, before this property was under contract. He acknowledged to me that the VA does not give loan for vacant land.
6. Issues were also raised regarding a potential cemetery on the property. We provided Knapp two surveys, neither of which showed a graveyard on the property. However, on February 3, 2022, Robert Young, Knapp's agent, emailed to say, "hey my guys were out there yesterday and they were able to determine that the Jenkins Cemetery is indeed on the Whelchel property." Exhibit C.
7. I believe the Buyers were not honoring the terms of the contract and recommended that the Sellers give no further extensions.

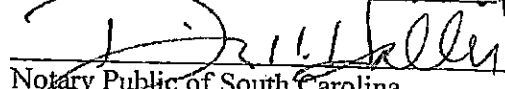
8. The Sellers have been able to obtain another contract on the property, subject to the removal of the lis pendens on it. Exhibit D.

FURTHER THE AFFIANT SAYETH NOT!


James Wells

SWORN TO AND SUBSCRIBED BEFORE ME

This ~~2nd~~ day of December 2022


Notary Public of South Carolina

My Commission Expires: May 31, 2026

EXHIBIT A



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE
(RESIDENTIAL)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Marc K Knapp and Assigns ("Buyer"), and
Seller(s), James Douglas Jenkins Et al ("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.
(F) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

[initials] (initials) BUYER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☒ Client ☐ Customer service in this transaction.

[initials] (initials) SELLER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☒ Client ☐ Customer service in this transaction.

2. **PURCHASE PRICE:** \$ ~~260,000.00~~ \$265,000.00 Eighty Five Thousand
Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.
Verification of Cash available for Closing is ☐ attached ☐ not attached ☐ to be Delivered before _____
This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☐ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll cars).

Address 5896 Maybank Hwy Unit # _____
City Wadmalaw Island State of South Carolina
Zip 29487 County of Charleston
Lot _____ Block _____ Section/Phase _____ Subdivision Rockville Rd
Other _____ Tax Map 154-00-00-011
Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s).

[initials] BUYER [initials] BUYER [initials] SELLER [initials] SELLER
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1/2020 FORM 310 PAGE 1 of 9

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4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before 10/11 February 3 10, 2022 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): _____

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows:
\$ 5,000.00 accompanies this offer and \$ 5,000.00 will be paid by 6 P.M. on
January 6, 2022 11, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire)
to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court
order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize
Miles Adler Esquire as Escrow Agent to deposit and hold and disburse earnest
money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not
guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate
reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not
delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the
Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW
AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE
EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, MEDIATION
AGREEMENT) OR UNTIL COURT ORDER OF A COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHAVA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees) are the ~~Seller's~~ or ☒ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs. Also, Buyer is solely responsible for any/all rollback rates.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 2,500.00, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

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1/2020 FORM 310 PAGE 2 of 9

7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80.000 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): TBD ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other _____. An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms
☐ are ☒ are not attached.

8. REPAIRS:

CHECK ONLY ONE OF THE FOLLOWING OPTIONS. IF NO BOXES ARE CHECKED THIS CONTRACT WILL BE AN AS-IS CONTRACT IN REGARDS TO REPAIRS. IF MULTIPLE BOXES ARE CHECKED THEN THE FIRST PARAGRAPH WITH A CHECKED BOX WILL DETERMINE REPAIRS.

☐ REPAIR PROCEDURE:

All Repair Procedure Inspections and Requests shall be completed and delivered to the Seller by 6 P.M. on _____ (date). Any and all requests necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests) should be delivered by the deadline above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances. Upon Seller's request the Buyer will provide with a copy of the Inspection Report.

No later than 6 P.M. on _____ (date), Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). Seller Paid Requests DO NOT include the following items: home maintenance, flooring, fogged windows, grandfathered code issues, landscaping, preventive maintenance, cosmetic changes, home improvement, and energy efficiency. If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Calendar Days choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 CALENDAR DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.

☐ DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on _____ (date). Any extension to this date must be made in writing and agreed to by both Parties.

[mk] BUYER [_____] BUYER [mk] SELLER [JDJ] SELLER
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1/2020 FORM 310 PAGE 3 of 9

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/property Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to inspect. Until Buyer timely/property terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/property Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract

☒ AS-IS

All Parties agree that Property is being sold "As-Is". "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. Buyer retains the right to inspect the Property by 6 P.M. on January 28, 2022 (date) for informational purposes only. The Seller is under no obligation to remedy any issues the Buyer discovers during their inspections, and the Buyer may not terminate the contract based on the results of any inspections conducted.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the inspections

Other _____ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

[mk] BUYER [_____] BUYER [RJR] SELLER [JDJ] SELLER
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1/2020 FORM 310 PAGE 4 of 9

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☐ contingent ☐ not contingent upon the ☐ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☐ Seller. ☐ Buyer ☐ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than _____ calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by _____ with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and \$ _____ will be paid by _____ to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

[PK] BUYER [_____] BUYER [PK] SELLER [PK] SELLER
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16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☒ Buyer and Seller agree that Seller will NOT complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

- (i) Deliver Notice of Default to Seller and terminate Contract; and
- (ii) Pursue any remedies available to Buyer at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:

- (i) Deliver Notice of Default to Buyer and terminate Contract; and
- (ii) Pursue any remedies available to Seller at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

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1/2020 FORM 310 PAGE 6 of 9

(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
 (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation. Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 503, 504, 315, 320, 393, 370, 375, 513, 610): Contingent on Receipt of preliminary or final Septic Permit

29. NOTICE AND DELIVERY: Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

☐ [mk] BUYER ☐ [] BUYER ☐ [DJR] SELLER ☐ [DJH] SELLER
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1/2020 FORM 310 PAGE 7 of 9

30. Acknowledgements: Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank. Parties are also advised and understand that audio/visual surveillance may occur in the property and parties should plan accordingly and comply with all federal, state, and local laws. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

31. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 6 ☐ AM ☒ PM on January 6, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline. This offer will expire automatically if no action is taken by either party 30 calendar days after the offer's submittal.

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered to the other Party within Calendar Days.

Parties shall initial and date all changes in this Contract and initial all pages.

BUYER: Marc Knapp Date: 01/04/2022 Time:
1/4/2022 1:44:00 AM GMT

BUYER: Date: Time:

BUYER: Date: Time:

BUYER: Date: Time:

NOTICE ADDRESS/EMAIL/FAX:

SELLER: James D Jenkins IV Date: 1/5/2022 | 19:01 PM EST
James Jenkins

SELLER: Alicia J Roy Date: 1/5/2022 | 20:09 PM EST
Alicia Roy

SELLER: Peter B Jenkins Date: 1/5/2022 | 16:37 PM PST
Peter Jenkins

SELLER: Date: Time:

NOTICE ADDRESS/EMAIL/FAX: sheyer@carolinaone.com Fax: 843746-4557

[mk] BUYER [] BUYER [] SELLER [JDJ] SELLER
[] BUYER [] BUYER [] SELLER [] SELLER
HAVE READ THIS PAGE [PBJ]

1/2020 FORM 310 PAGE 8 of 9

Robert Young/The Boulevard Co. LLC.

Robert Young License #114294 Office Code# 9040RR

Buyer's Agent/Company

Buyer's Agent License #/LLR Office Code

ryoungcofc@yahoo.com

(843)906-3684

Buyer's Agent's Email Address

Buyer's Agent Telephone Number

Susan Heyer / Carolina One Real Estate

80767 / 2466

Seller's Agent/Company

Seller's Agent License #/LLR Office Code

sheyer@carolinaone.com

843-901-2428

Seller's Agent's Email Address

Seller's Agent Telephone Number

REALTOR® is the registered collective membership mark which may be used only by those real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its strict professional Code of Ethics. The South Carolina Association of REALTORS® (SCR) owns copyright to the content of this form and expressly prohibits the display, distribution, duplication, transmission, alteration, or reproduction of any part of SCR copyright content as well as the use of the name "South Carolina Association of REALTORS®" in connection with any written or electronic format without the prior written consent of SCR. SCR makes no representation as to the legal adequacy of this form or the information added for a specific transaction and recommends that Parties consult a SC attorney prior to signing to ensure the completed form meets your legal need.

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☐ [mk] BUYER ☐ BUYER ☐ [AJK] SELLER ☐ [JDJ] SELLER
☐ BUYER ☐ BUYER ☐ SELLER ☐ [PB] SELLER
 HAVE READ THIS PAGE

1/2020 FORM 310 PAGE 9 of 9

EXHIBIT B

INSTRUCTIONS.

From: F. Miles Adler <miles@adlerlaw.partners>
Sent: Wednesday, March 9, 2022 3:47 PM
To: Chris Haynes <chaynes@weekslawfirm.net>; mulletlaw@sc.rr.com; giardinolaw@gmail.com
Cc: ryoungcofc77@gmail.com
Subject: RE: Knapp/Jenkins/5896 Maybank Highway/Order Number 22-00469CJ

Chris, I believe Mr. Knapp's realtor Robert has already called you to speak about the concerns raised in your email. I have a call in to Mr. Knapp to get authorization for you to speak with his loan broker to confirm the loan application. As soon as I hear back from him I will forward you the loan broker's contacts so you can do your diligence.

I think the location of the cemetery will be resolved once the pin has been set. My understanding is that the pin on the southwest corner of the lot cannot be located and has to be resurveyed. There is also a concern about a potential easement from Maybank Hwy across 5896 to the cemetery. I know there is no easement delineated on the recent survey or the one prior, but if you look on Google maps you will see a depiction of a dedicated road. Whether that is evidence of anything is TBD – but common sense would indicate to me that a cemetery without access is an odd thing. In either event, I think these issues can ultimately be resolved so that marketable title can be conveyed.

F. Miles Adler
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
F: 843.314.3205
M: 843.685.3311

THIS EMAIL DOES NOT CREATE AN ATTORNEY CLIENT RELATIONSHIP

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and intended solely for the use of the individual(s) or entity to whom they are addressed. If you have received this e-mail in error, please notify the system manager(s). This message contains confidential information and is intended only for the individual(s) named. If you are not the named addressee(s), you should not disseminate, distribute, or copy this e-mail. Please

EXHIBIT C

jwells@carolinaoneplus.com

From: jwells@carolinaoneplus.com
Sent: Wednesday, March 2, 2022 5:59 PM
To: 'Megan Moody'; 'Susan Heyer'; 'Jackie Tucker'
Subject: FW: Property
Attachments: Maybank Tract Survey_Original Map_01DEC20.PDF; Maybank Tract Survey_01DEC20.pdf

Buy the buyer's agent email below, It looks like the cemetery issue was resolved by 2/3/2022.

The older plat showing the marsh and the cemetery on the adjoining lots is the current recorded plat. Book Y Page 042

James

From: Susan Heyer <sheyer@carolinaone.com>
Sent: Thursday, February 3, 2022 2:56 PM
To: Robert Young <ryoungcofc77@gmail.com>
Cc: jwells@carolinaone.com
Subject: Re: Property

Hi Robert. Glad to hear they were able to walk the property and determine for themselves that the cemetery is indeed on the Wetchel parcel.

I have reached out to the Nielson Surveyors but have not received a response at this time. I'm certain the difference is the marsh property. You can see the difference in the earlier original survey and the county parcel 'outline', both outline the property parcel as it goes out into the marsh, the Nielson survey stops at the critical line. The original survey shows 1.3ac as marsh - past the critical line.

Have you submitted the earlier original survey to the lender also? That should clear up the question regarding the parcel size. I have attached both surveys here for your convenience.

I know the surveyors are extremely busy trying to keep up with the demand... I will keep trying them.

Susan~

Susan Heyer
 Carolina One Real Estate Services
 1265 Folly Road | Charleston SC | 29412
 843.901.2428 cell | 843.795.7810 office
www.SusanHeyer.com

Home... where the story begins. Love where you live!

On Thu, Feb 3, 2022 at 10:01 AM Robert Young <ryoungcofc77@gmail.com> wrote:

Good morning Susan hey my guys were out there yesterday and they were able to determine that the Jenkins Cemetery is indeed on the Whelchel property. They did say they still can't locate a pin on that back left side so if someone can help find that would be great. Something else has arisen as there seems to be some error in the real acreage out there. The listing is 7.4 acres that comes off the Charleston County Tax records. The plats we used to determine the graves location had one that was just done as recently as November 2020 by Nielsen and his determination was 6.69 ac. . Obviously that's a sizable difference of .71 ac. My question, is Charleston County Counting the marsh and Mr Nielsen not? Sounds possible but we do need an answer because that affects a lot of things. So the simplest thing would be if you can contact the Nielsen office on behalf of Mr Jenkins and see if indeed this is the difference. Please let me know as soon as you can Susan as Mr Knapp is waiting on that as is his bank just to verify. Thank you Susan.

Robert Young
The Boulevard Co.
843-906-3684
ryoungcofc@yahoo.com

Sent from my iPhone

Carolina One Real Estate Services will never initiate a request that you send funds electronically or nonpublic personal information, such as social security numbers, credit card or debit card numbers or bank account and/or routing numbers, by email. If you receive an unsolicited email message concerning any transaction involving Carolina One Real Estate Services, and the email requests that you send funds electronically or provide nonpublic personal information, do not respond to the email and immediately contact Carolina One Real Estate Services by phone.

EXHIBIT D



AGREEMENT/CONTRACT: TO BUY AND SELL REAL ESTATE (LOTS/ACREAGE)

ELECTRONICALLY FILED - 2022 Dec 02 10:21 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

This Form can also be used for a Boat Slip or similar transaction.

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. **PARTIES:** This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Elizabeth Marie Rivers, Kenneth Bradley Ross

Seller(s), James Douglas Jenkins IV, Alicia J Roy, Peter B Jenkins ("Buyer"), and
James Douglas Jenkins IV, Alicia J Roy, Peter B Jenkins ("Seller").

(A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.

(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.

(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing.
Weeks & Irvine, LLC

(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.

(E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe.

(F) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

ER kon (initials) BUYER(s) acknowledge receipt of the SC Disclosure of Brokerage Relationships form and is receiving
☒ Client ☐ Customer service in this transaction. 7/10/2022 10:42 AM PDT

PBJ (initials) SELLER(s) acknowledge receipt of the SC Disclosure of Brokerage Relationships form and is receiving
☒ Client ☐ Customer service in this transaction. \$285,000.00 Two Hundred Eighty-Five Thousand Dollars ER kon
~~\$275,000.00 Two Hundred Seventy-Five Thousand Dollars~~
~~\$285,000.00 Two Hundred Eighty-Five Thousand Dollars~~

2. **PURCHASE PRICE:** \$ ~~250,000.00 Two Hundred Fifty Thousand Dollars~~ 285,000.00 Two Hundred Eighty-Five Thousand Dollars

Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.

Verification of Cash available for Closing is ☐ attached ☒ not attached ☐ to be Delivered before . This

Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCR504 ☐ is ☐ is not attached.

3. **PROPERTY:** Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 5896 Maybank Highway Unit #

City Wadmalaw Island State of South Carolina

Zip 29487 County of Charleston

Lot Block Section/Phase Subdivision Rockville Rd

Other N Pt Tr A Tax Map 154-00-00-011

Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment(s):

ER kon BUYER [] BUYER [] SELLER [] SELLER []
ER kon BUYER [] BUYER [] SELLER [] SELLER []
 HAVE READ THIS PAGE PBJ

Addendum 1

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before Sept 8, 2022, 2022 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): Elizabeth Marie Rivers, Kenneth Bradley Ross

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant Property, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing. Seller will remove all man-made items from the Property unless otherwise agreed upon in writing by the Parties.

5. **EARNEST MONEY:** Total \$ 1,000.00 (USD) Earnest Money is paid as follows: \$ 0.00 accompanies this offer and \$ 1,000.00 will be paid by 6 P.M. on July 11, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) _____ to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Weeks & Irvine, LLC as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, mediation agreement) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY'S FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ _____ SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHAVA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named similar fees) are the ☐ Seller's or ☒ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs.

Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ N/A, which includes non-allowable costs first and then allowable costs (FHAVA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs

[ER] BUYER [JDY] BUYER [JDY] SELLER [ER] SELLER
[ER] BUYER [JDY] BUYER [JDY] SELLER [JDY] SELLER
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7. FINANCE: Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other LAND LOAN purchase money loan at reasonable prevailing market terms with loan(s) equal in amount to a maximum 90 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by July 11, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by July 29, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If Buyer changes their Lender during the Financing Period, they must notify the seller in writing within 3 calendar days. Absent written approval by the Seller, Buyer cannot change their lender if the Closing Date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): AgSouth ☐ FHA ☐ VA ☐ Conventional ☐ Seller
☒ Other Land Loan

An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms ☐ are ☒ are not attached.

8. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for Inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other Seller to sign DHEC Authorization Letter ☒ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

9. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within five Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

10. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

11. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

[ER] BUYER [] BUYER [JD] SELLER [AK] SELLER
 [CB] BUYER [] BUYER [] SELLER [] SELLER

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SCR Form 330 4/2021 PAGE 3 of 9

ER K32

Addendum 2

August 26, 2022

12. DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on (date). Any extension to this date must be made in writing and agreed to by both Parties.

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/properly Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to inspect. Until Buyer timely/properly terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR330 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/properly Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ 0.00 USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase price unless otherwise agreed upon in writing by the Parties in this Contract.

13. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for fourteen (14) Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

14. BUILDING PERMIT: This Contract ☐ is ☒ is not contingent upon Buyer's ability to acquire all required licenses and permits from the appropriate authorities to build on the Property. No later than _____ Calendar Days after the original Effective Date unless the Parties agree in writing to extend this Building Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property. Should Buyer not Deliver Notice of Termination due to inability to acquire all required licenses and permits from the appropriate authorities to build on the Property to Seller during the Building Permit Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

15. REZONING: This Contract ☐ is ☒ is not contingent upon the Property being rezoned to _____ by full approval (without any appeal during the appeal period) by the appropriate authorities. No later than _____ Calendar Days after the original Effective Date unless the Parties agree in writing to extend this Rezoning Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire rezoning from the appropriate authorities to build on the Property. Should Buyer not Deliver Notice of Termination due to inability to acquire rezoning from the appropriate authorities during the Rezoning Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. The ☐ Buyer or ☐ Seller shall be responsible for pursuing rezoning and paying all associated costs. All rezoning applications shall be submitted to the Seller for Seller's approval prior to filing. Seller shall not unreasonably or untimely withhold approval. All Parties agree to cooperate, sign the necessary documentation, and make efforts to support the rezoning application.

BUYER [] BUYER [] SELLER [] SELLER []
 BUYER [] BUYER [] SELLER [] SELLER []
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SCR Form 330 4/2021 PAGE 4 of 9

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[RJ] [JD] [PB]

ER KBA

16. DEED RESTRICTIONS: Seller shall provide copy of any deed restrictions [including zoning ordinances, condominium documents (master deed, financial information, etc.)] and a copy of all restrictions and covenants for said property within 3 Calendar Days of the Effective Date. **Seller will provide any of above docs in their possession**

17. WELL, SEPTIC, WATER LINE, SEWER AVAILABILITY: This Contract ☐ is ☒ is not contingent upon Buyer's ability to obtain from the South Carolina Department of Health and Environmental Control or other appropriate authorities all required permits for a well and septic system suitable for the Buyer's intended structure in the event a well or septic system is needed on the Property. No later than _____ Calendar Days after the original Effective Date unless the Parties agree in writing to extend this Well and Septic Permit Period, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a conventional well and conventional septic system on the Property. Should Buyer not Deliver Notice of Termination due to inability to acquire all required permits from the appropriate authorities to install a well and septic system on the Property to Seller during the Well and Septic Period, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract. If the Property is connected or capable of being connected to a water and or sewer line maintained by a private or public utility for a customary tap fee not to exceed \$ _____, the Buyer agrees to waive any applicable portion of the Well and Septic Contingency. Seller represents the Property is connected to water system: ☐ county ☐ city ☐ private ☐ corporate ☐ community ☐ well ☐ other _____. Seller represents the Property is connected to water disposal system: ☐ septic ☐ sewer ☐ private ☐ corporate ☐ government ☐ other _____.

18. SOIL AND WATER TESTS AND WATER ISSUES: After the Effective Date, the Buyer and Inspectors shall have the right to conduct Inspections including the rights to go on the property to conduct soil and water tests, including percolations tests, to ascertain whether the property is suitable for the improvements the Buyer desires. All expenses of such tests shall be paid by ☒ Buyer or ☐ Seller. Buyer shall be responsible for the repair, restoration, and any damages caused by such tests and Inspections.

Seller represents that the water supply is described fully here: _____ Private well needed
Seller represents that all waste water is disposed of via waste water systems described fully here: _____ Private septic needed
Seller represents that all isolated wetlands or flood zones touching the property are described fully here: _____

19. CONDITION OF PROPERTY: Seller shall not remove any timber, vegetation, dirt, minerals, or otherwise affect the condition of the property from the Effective Date through Closing. All timber, vegetation, dirt, minerals, or similar shall remain as part of the Property and be conveyed to the Buyer at Closing. The Seller shall not bring any trash, refuse, debris, dirt, fill, medical wastes, hazardous wastes, or other materials onto the Property. Seller shall Deliver Notice of any legal action or condemnation action to the Buyer as soon as possible. If Seller Delivers such Notice, Buyer may unilaterally terminate this Contract by Delivering to the Seller a Notice of Termination. Should Buyer not Deliver this Notice of Termination, Buyer agrees to purchase and Seller agrees to sell the Property in accordance with Contract.

20. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☒ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer or making reasonable repairs prior to Closing). Buyer understands the CDS does not replace Inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers are not responsible nor liable for any information in the CDS and the Brokers have met requirements of SC Code 27-50-70. CDS is not a substitute for the Buyers and Inspectors inspecting the Property, Property issues, and off site conditions for all needs.

☒ Buyer and Seller agree that Seller will **NOT** complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

21. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain Inspections of all Property issues per their needs.

[ER] BUYER [_____] BUYER [JD] SELLER [RJ] SELLER
[KBA] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
HAVE READ THIS PAGE [PB]

22. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

23. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

24. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of the South Carolina laws [e.g. 12-8-580 (as amended)] regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

25. ROLLBACK TAXES (CHECK ONE OF THE FOLLOWING OPTIONS):

☒ The parties agree that the Seller shall pay any rollback taxes at the closing. No later than five calendar days prior to the closing date, Seller shall provide any and all information and documentation required by the appropriate taxing authority to assess the rollback taxes on the Property. The parties agree that County assessment/estimate for rollback taxes collected on the closing statement represents the final amount for rollback taxes to be paid by Seller; after the closing, neither party shall have any further duties or responsibilities to the other party related to rollback taxes.

☒ The parties agree that the Buyer shall pay any rollback taxes whenever the taxes are assessed; Seller has no responsibility for rollback taxes. *ER K/M*

☐ The Parties agree to split agree to pay the rollback taxes as follows: _____ % paid by Buyer and _____ % paid by Seller

26. SPECIAL STUDIES AREA, WETLANDS, AND ENVIRONMENTAL MATTERS: All reports and certifications required by the Lender, Buyer, or any government concerning any special study area, wetlands, or environmental issues shall be ordered by _____ and paid for by _____

All of these reports or certifications shall be completed no later than _____ Calendar Days after the original Effective Date, unless the Parties agree in writing or extend this period ("Environmental Period"). In the event repairs are necessary to address environmental concerns (Repair Requests); the Seller shall be Delivered Notice in writing of the specific defects or deficiencies no later than two Calendar Days after the Environmental Period. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer.

Upon Delivered Notice of the Repair Requests, Seller has five Calendar Days to address the Buyer's Repair Requests. The costs of all repairs to address environmental concerns to be paid by Seller. If the Seller fails to agree to make these repairs within this timeframe, the Buyer shall have two Calendar Days to choose any of the following options (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs or (3) terminate this Contract. The repairs to any other items are the sole responsibility of the Buyer. The obligations of the Seller for repairs terminate upon Closing. If the Seller agrees to make the repairs, the Parties agree to proceed under Contract.

27. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

ER BUYER [] BUYER [] *JDY* SELLER [] SELLER []
K/M BUYER [] BUYER [] SELLER [] SELLER []
 HAVE READ THIS PAGE *PBJ*

28. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel.

29. DEFAULT/BREACH OF CONTRACT:

- (A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:
- (i) Deliver Notice of Default to Seller and terminate Contract and
 - (ii) Pursue any remedies available to Buyer at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.
- (B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:
- (i) Deliver Notice of Default to Buyer and terminate Contract and
 - (ii) Pursue any remedies available to Seller at law or equity and
 - (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.
- (C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
- (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

30. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party/Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System (803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation). Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

31. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

32. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

33. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the

[] BUYER [] BUYER [] SELLER
 [] BUYER [] BUYER [] SELLER
 HAVE READ THIS PAGE

Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid by in accordance with laws and REALTOR® ethics. NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

34. BROKER LIABILITY LIMITATION: Parties agree Brokers provided Parties with benefits, services, assistance, and value in bringing about this Contract. In consideration and recognition of the risks, rewards, compensation and benefits arising from this transaction to Brokers, Parties each agree that they shall pay Brokers' attorneys fees and that Brokers, shall not be liable to either Party or both, either jointly, severally or individually, in an amount exceeding that Broker's Compensation by reason of any act or omission, including negligence, misrepresentation, errors and omissions, or breach of undertaking, except for intentional or willful acts. This limitation shall apply regardless of the cause of action or legal theory asserted against either Broker, unless the claim is for an intentional or willful act. This limitation of liability shall apply to all claims, losses, costs, damages or claimed expenses of any nature from any cause(s), except intentional or willful acts, so that the total liability of either Broker shall not exceed the amount set forth herein. Parties will indemnify and hold harmless and pay attorneys fees for Brokers from breach of contract, any negligent or intentional acts or omissions by any Parties, Inspectors, Professionals, Service Providers, Contractors, etc. including any introduced or recommended by Brokers. Parties each agree that there is valid and sufficient consideration for this limitation of liability and that Brokers are the intended third-party beneficiaries of this provision.

35. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, they are further identified or described here (e.g. SCR 390, 391, 503, 504, 393, 513, 610): Sale contingent on sellers removing Lis Pendens by August 26, 2022
Addendum 1, Addendum 2

36. NOTICE AND DELIVERY: Notice is any unilateral communication (offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

37. Due to potential criminal activity, parties are solely responsible to verify all wiring instructions with law firm/bank and understand that audio/visual surveillance may occur. Parties acknowledge receiving, reading, reviewing, and understanding: this Contract, the SC Disclosure of Real Estate Brokerage Relationships form, any agency agreements, and copies of these documents. Parties acknowledge having time and opportunity to review all documents and receive legal counsel from their attorneys prior to signing Contract.

38. EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 7:00 ☐ AM ☒ PM on July 8, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline:

This offer will expire automatically if no action is taken by either party 30 calendar days after the offer's submittal.

BUYER [] BUYER [] SELLER [] SELLER []
 BUYER [] BUYER [] SELLER [] SELLER []

HAVE READ THIS PAGE

SCR Form 330 4/2021 PAGE 8 of 9

IN WITNESS WHEREOF, this Contract has been duly executed by the Parties as true to the best of their knowledge/belief. If signee is not a Party, appropriate legal documents (e.g. Power of Attorney, Corporate Authorization) are ☐ attached or ☐ to be Delivered within _____ Calendar Days. Parties shall initial and date all page and changes in this Contract.

BUYER: _____ Date: Jul 6, 2022 Time: 7:16 PM

BUYER: _____ Date: Jul 6, 2022 Time: 2:19 PM

BUYER: _____ Date: _____ Time: _____

BUYER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX:

DocuSigned by: _____
SELLER: James D Jenkins IV Date: 7/7/2022 | 15:36 PM PDT

DocuSigned by: _____
SELLER: Alicia J Roy Date: 7/7/2022 | 21:19 PM EDT

DocuSigned by: _____
SELLER: Peter B Jenkins Date: 7/8/2022 | 06:23 AM PDT

SELLER: _____ Date: _____ Time: _____

NOTICE ADDRESS/EMAIL/FAX:

sheyer@carolinaone.com

Maureen Kokolus / NV Realty Group
Buyer's Agent/Company

Maureen.Kokolus@NVRealtyGroup.com
Buyer's Agent's Email Address

97716 19654
Buyer's Agent License #/ LLR Office Code

843-494-2311
Buyer's Agent Telephone Number

Susan Heyer /Carolina One Real Estate
Seller's Agent/Company

sheyer@carolinaone.com
Seller's Agent's Email Address

80767 2466 20809
Seller's Agent License #/ LLR Office Code

843-901-2428
Seller's Agent Telephone Number

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ADDENDUM/AMENDMENT TO



☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☒ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER: _____
 COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER: _____

Further described or commonly known as:

Address 5896 Maybank Hwy Unit # _____
 City Wadmalaw Island State of South Carolina
 Other _____ TMS 154-00-00-011

The undersigned Parties hereby agree as follows: The Buyers will close in 45 days of the Lis Pendens being removed. Due Diligence 30 days after.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 7 ☐ AM ☒ PM on July 8 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: [Signature]

Date: Jul 8, 2022 Time: 7:55 PM

BUYER: Kenneth Bradley Ross

Date: Jul 8, 2022 Time: 7:55 PM

Date: _____ Time: _____

Date: _____ Time: _____

DocuSigned by:
 SELLER: James D Jenkins IV

7/7/2022 | 15:36 PM PDT

DocuSigned by:
 SELLER: Alicia J Roy

Date: 7/7/2022 Time: 21:19 PM EDT

Date: 7/8/2022 Time: 06:23 AM PDT

DocuSigned by:
 Seller: Peter B Jenkins

Date: _____ Time: _____

Date: _____ Time: _____

Seller: Peter B Jenkins

Date: _____ Time: _____

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FORM 390 PAGE 1 of 1



ADDENDUM/AMENDMENT TO



☒ AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE [☐ OFFER OR ☒ COUNTEROFFER] OR
☐ RESIDENTIAL RENTAL AGREEMENT OR ☐ OTHER:
 COVERING THE ☐ REAL PROPERTY ☐ PREMISES ☐ BUSINESS ☐ OTHER:

Further described or commonly known as:

Address 5896 Maybank Hwy Unit # _____
 City Wadmalaw Island State of South Carolina
 Other _____ TMS 154-00-00-011

The undersigned Parties hereby agree as follows:

Sellers and Buyers agree that either party may terminate this contract at anytime while the existing lis pendens is on the property (case number 2022-CP-10-1958). If the contract is terminated as a result of the lis pendens, the earnest money will be returned to the Buyers and they will have no further remedy against the Sellers.

EXPIRATION OF OFFER: When signed by a Party and intended as an offer or counter-offer, this document represents an offer to the other Party that may be rescinded any time prior to or expires at 7 ☐ AM ☒ PM on July 8, 2022 unless accepted or counter-offered by the other Party in written form Delivered prior to such deadline.

Parties are solely responsible for obtaining legal advice prior to entering into this Contract and counsel as required.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Parties.

BUYER: <u>[Signature]</u>	Date: <u>Jul 8, 2022</u>	Time: <u>7:55 PM</u>
BUYER: <u>Kenneth Bradley Ross</u>	Date: <u>Jul 8, 2022</u>	Time: <u>7:55 PM</u>
_____	Date: _____	Time: _____
_____	Date: _____	Time: _____
SELLER: <u>James D Jenkins IV</u>	Date: <u>7/7/2022</u>	Time: <u>15:36 PM PDT</u>
SELLER: <u>Alicia J Roy</u>	Date: <u>7/7/2022</u>	Time: <u>21:19 PM EDT</u>
SELLER: <u>Peter B Jenkins</u>	Date: <u>7/8/2022</u>	Time: <u>06:23 AM PDT</u>
_____	Date: _____	Time: _____

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FORM 390 PAGE 1 of 1

ELECTRONICALLY FILED - 2022 Dec 02 10:21 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

EXHIBIT C

From: Marc Knapp
Sent: Sunday, August 21, 2022 6:33 PM
To: miles.adlerlaw.partners
Subject: Fw: AgSouth Prequalification

Lauren's approval for the lot loan at 5896 Maybank.

Marc K. Knapp
President
Charleston Site Utilities, LLC
843-870-7055

----- Forwarded Message -----
From: L M <lmosher007@gmail.com>
To: Marc Knapp <marckknapp@att.net>
Sent: Sunday, August 21, 2022 at 06:28:37 PM EDT
Subject: Fwd: AgSouth Prequalification

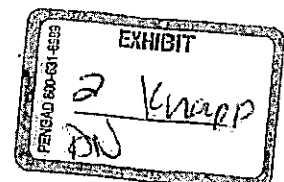
----- Forwarded message -----
From: Lovelace, Sara <SLovelace@agsouthfc.com>
Date: Wed, Feb 2, 2022 at 3:19 PM
Subject: AgSouth Prequalification
To: L M <lmosher007@gmail.com>

Good Afternoon,

Our prequalification scoring and review completed your credit package. AgSouth was able to prequalify you individually up to a \$145,000 purchase price on a residential lot for a 15 year loan. If it was agricultural property that went to the longer 20 year term that purchase amount would increase slightly.

Please let me know if you would like to discuss in more depth or if you have any questions. Our soft pull system may have auto mailed you a disclosure letter with what Equifax shows on your credit report and to disclose the score we pulled.

Warmly,
Sara



Sara Lovelace

Loan Officer

NMLS# 1886982

AgSouth Farm Credit, ACA

PO Box 1590 | Summerville, SC 29484

(843) 821-6758 x2720

Cell 843-562-6682

slovelace@AgSouthFC.com



AgSouthFC.com |

***** NOTICE *****

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EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER
BARNWELL JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 22 CP 10 1958

CERTIFICATE OF SERVICE

I, F. Miles Adler, hereby certify that I served the PLAINTIFF'S THIRD SUPPLEMENTAL RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS TO PRODUCE TO PLAINTIFF via email on 11 December 2022 to:

David K. Haller
HALLER LAW FIRM
1150 Queensborough Boulevard, Suite 201
Mt. Pleasant, SC 29464
Email: dhaller@hallerlawfirm.com


F. Miles Adler

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER
BARNWELL JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Case No.: 22 CP 10 1958

**PLAINTIFF'S THIRD SUPPLEMENTAL RESPONSES TO
DEFENDANTS' FIRST SET OF REQUESTS FOR
PRODUCTION**

TO: DAVID K. HALLER ATTORNEY FOR DEFENDANTS

Plaintiff Marc K. Knapp supplements his response hereafter to the Request for Production by Defendants James Douglas Jenkins, IV, Peter Barnwell Jenkins, and Alicia J. Roy.

1. Produce each and every document in your possession or control which may conceivably be discoverable regarding any claim or defense made by any of the parties to this action. This request is deemed to include, but not be limited to, the following:

- a. witness statements;
- b. all plats, plans, pictures, videos and the like of the property;
- c. expert vitae, reports and all documentation submitted to an expert;
- d. documents obtained from any subpoena you issue;
- e. documents obtained from any public entity;
- f. any statement of any kind from any witness or potential witness;
- g. any documents relied upon or stated in your answers to interrogatories;
- h. all pleadings or other documents discoverable in this matter;
- i. any document or tangible item you may offer into evidence at the trial of this case;
- j. any communications of any kind between any of the parties hereto or agents acting on their behalf;

RESPONSES: See attached Exhibit A.

ADLER LAW FIRM LLC



F. Miles Adler
SC Bar No.: 70238
P.O. Box 4743
Pawleys Island, SC 29585
T: 843-314-3204
F: 843-314-3205
miles@adlerlaw.partners

11 DECEMBER 2022
Pawleys Island, SC

SIGNATURE BLOCK FOR PLAINTIFF'S THIRD SUPPLEMENTAL RESPONSE TO DEFENDANTS' REQUESTS TO PRODUCE

22 CP 10 1958

EXHIBIT A — Plaintiff's Third Supplemental Response to Defendants' Requests to Produce

22 CP 10 1958

From: Ken Koos
Sent: Thursday, December 8, 2022 11:53 AM
To: miles.adler@law.partners
Cc: Ken Koos
Subject: Fwd: 5896 Maybank Hwy - Loan Terms

Let me know if this came through with the term sheet attachment.

Ken Koos
Capital Business Solutions, LLC



www.CapBizSolutions.com
www.HighLineHoldingsllc.com
[LinkedIn](#)
[Facebook](#)

(P) 843.603.5480
(C) 609.922.1499

----- Forwarded message -----
From: Ken Koos <ken.koos@capbizsolutions.com>
Date: Sat, Mar 26, 2022 at 2:27 PM
Subject: Re: 5896 Maybank Hwy - Loan Terms
To: Marc Knapp <marckknapp@att.net>

Marc, here is the term sheet. Please sign and return. We'll get the loan docs together and up to Miles.

Ken Koos
Capital Business Solutions, LLC



www.CapBizSolutions.com
www.HighLineHoldingsllc.com
[LinkedIn](#)

Facebook

(P) 843.603.5480
(C) 609.922.1499

On Thu, Mar 24, 2022 at 4:45 PM Ken Koos <ken.koos@capbizsolutions.com> wrote:
Marc, we want to proceed with the transaction. I can reach out to Miles once you give me the word.

Ken Koos
Capital Business Solutions, LLC



www.CapBizSolutions.com
www.HighLineHoldingsllc.com
LinkedIn

P: 843.603.5480
C: 609.922.1499

On Tue, Mar 22, 2022 at 1:12 PM Ken Koos <ken.koos@capbizsolutions.com> wrote:
Marc, my partner has been out west out backing it with limited reception and internet. I will discuss the proposed deal with him tomorrow, Thursday the latest. However, the deal has my vote.
In the meantime, here are the terms of the transaction. If acceptable I will prepare the term sheet for your signature.

- Loan amount \$225,000
- Your company would be the borrower, you the guarantor with the property as collateral
- Rate would be 15% interest only [\$2812.50/mo] paid monthly 30 days from settlement collected via ACH from a company account
- Six month term w/one six month extension for a 1% fee based off loan amount
- Lender fee of 2% of loan amount paid at settlement
- Three month minimum yield
- All legal, title, loan doc prep paid by borrower

Regards -

Ken Koos
Capital Business Solutions, LLC



www.CapBizSolutions.com
www.HighLineHoldingsllc.com

[LinkedIn](#)
[Facebook](#)

(P) 843.603.5480
(C) 609.922.1499



TERM SHEET

BORROWER: Charlستon Site Utilities, LLC

GUARANTOR: Marc and JoAnne Knapp

SUBJECT PROPERTY: 5896 Maybank Hwy., Wadmalaw Island, SC. 29487

LOAN AMOUNT: \$225,000

TERM: Six Months w/one Six Month Extension – Fee to extend 1% of loan amount.

RATE: 1.25% /Month [Interest Only I/O]

PRE-PAY: 3 Months minimum yield

LOAN FEE: 2% Of loan amount paid at closing

NOTES: Payment to be drafted from a checking account monthly. All legal, title and doc preparation to be paid by borrower.

Marc Knapp Date

JoAnne Knapp Date

520 Folly Road, Suite 299 P Charleston, SC 29412
843-603-5480
ken.koos@CapBizSolutions.com

EXHIBIT E

1 your deposition. Have you seen this document
2 before?

3 A. No, sir.

4 Q. Do you know what it is?

5 A. Reading it, I am guessing it's a
6 Commitment for Title Insurance.

7 Q. If you want to fast forward to the
8 Cliffs Notes version of it, you can turn to the
9 fourth page.

10 A. Schedule A, is that the one you want?

11 Q. Yes, sir.

12 A. I'm there.

13 Q. If you look at the paragraph 2, it says,
14 policy to be issued to the proposed insured,
15 Marc K. Knapp, for \$258,000?

16 A. Yes, sir.

17 Q. Would you agree with me that somebody
18 was willing to give you a title insurance policy
19 for this property?

20 A. Yes, sir.

21 Q. Would you agree with me that if you get
22 a title insurance policy, that means the property
23 is marketable?

24 A. Yes, sir.

25 (Exhibit No. 9 marked for

1 Q. Are you ready, willing, and able to
2 close on the property today?

3 A. Yes.

4 Q. You can close today?

5 A. Yeah, if you can give me -- that title
6 is bull crap.

7 Q. Well, you just told me when I showed you
8 the title insurance that you said that made the
9 property marketable, so you're ready, willing,
10 and able to close today?

11 A. Yes. I will be happy to sue the title
12 company.

13 Q. You're going to sue the title company?

14 A. Yeah. They didn't find it.

15 Q. Well, you haven't told me anybody who
16 has found any kind of encroachment on the
17 property other than a Google Earth picture that
18 you found on the Internet.

19 A. Right.

20 Q. Are you -- how long have you been buying
21 and selling property, Mr. Knapp?

22 A. I don't know.

23 Q. A long time.

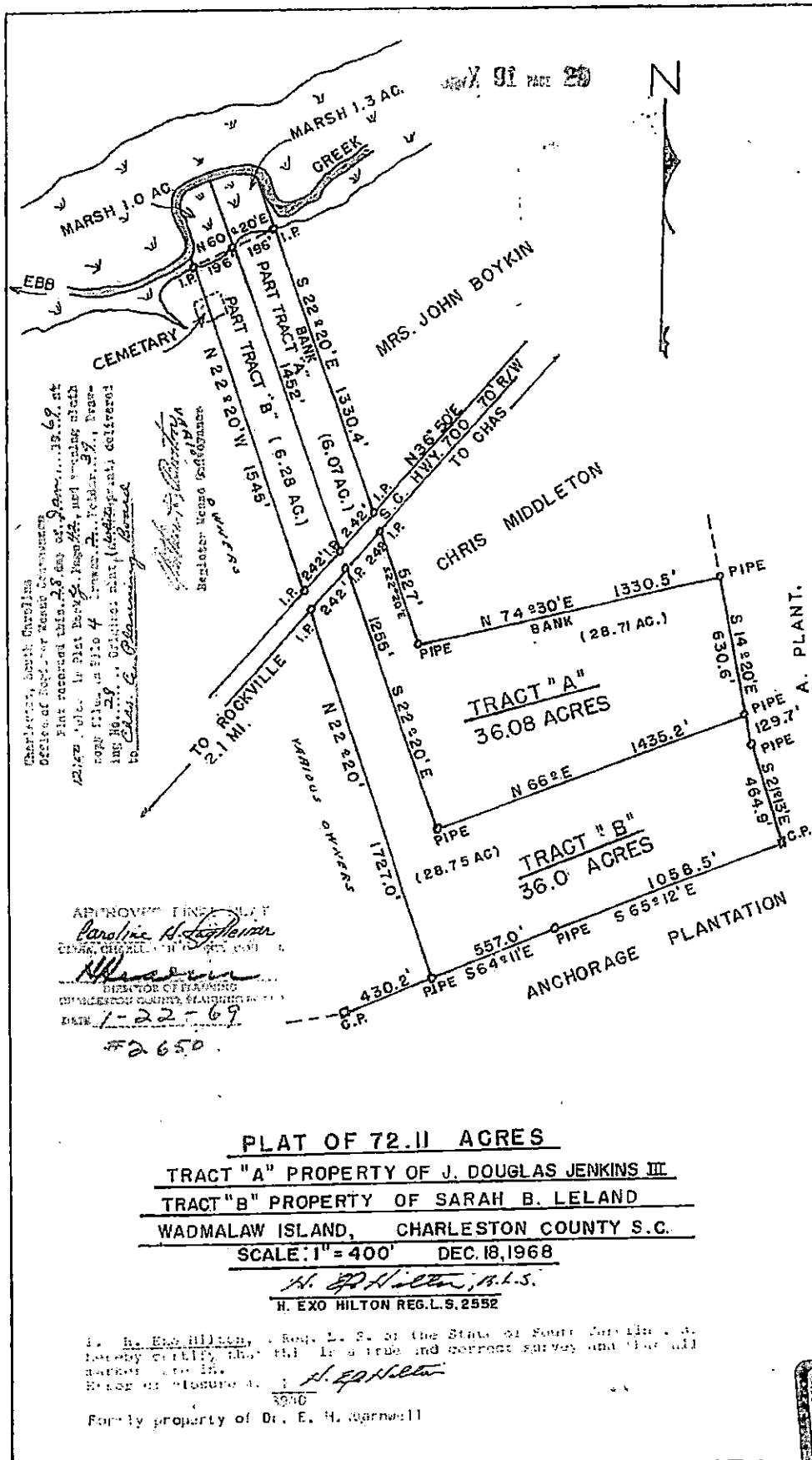
24 A. Right.

25 Q. I mean, you're -- don't take this the

EXHIBIT F



EXHIBIT G



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) Case No.: 2022-CP-10-1958

Marc K. Knapp,
Plaintiff,

vs.

James Douglas Jenkins, IV,
Peter Barnwell Jenkins, and
Alicia J. Roy,
Defendants.

NOTICE OF FILING EXHIBITS

TO: N. MILES ADLER, ESQ, ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that the above-named Defendants file the attached documents exhibits in support of their motion for summary judgment.

<u>EXHIBIT</u>	<u>DESCRIPTION</u>
A	Contract to Purchase Real Estate
B	Deposition of Marc Knapp, pages 23-23, 30-34, 40-42
C	Email dated February 22, 2022 (AgSouth prequalification of Lauren Knapp)
D	Email dated March 26, 2022 (Ken Koos term commitment)
E	Deposition of Marc Knapp, pages 74, 101
F	2020 Survey of Property
G	1968 Survey of Property
H	Email dated February 2, 2022 (Knapp telling Young the graveyard is not on the subject property)
I	Depo of Marc Knapp, page 75
J	Application for Septic Permit dated February 7, 2022

K

Deposition of Marc Knapp, page 98-99, 117-188, 128-129

s/ David K. Haller

David K. Haller, Esq. (Bar No, 13411))

HALLER LAW FIRM

604 Savannah Highway

Charleston, South Carolina 29407

(843) 224-7860

dhaller@hallerlawfirm.com

Attorney for the Defendants

December 11, 2022

Charleston, South Carolina

EXHIBIT H

Re: Graves

From: Robert Young (ryoungcofc77@gmail.com)
To: marckknapp@att.net
Date: Thursday, February 3, 2022 at 09:38 AM EST

Order Septic Please

Sent from my iPhone

On Feb 3, 2022, at 9:38 AM, Robert Young <ryoungcofc77@gmail.com> wrote:

Working on it !!

Sent from my iPhone

On: Feb 2, 2022, at 8:32 PM, Marc Knapp <marckknapp@att.net> wrote:

Robert,
We verified today that the graves are not on the property.
There is one corner pin missing next to the left rear at the marsh. The latest survey dated November of 2020 only shows 6.69 acres. Need to get that nailed down asap.

Marc Knapp

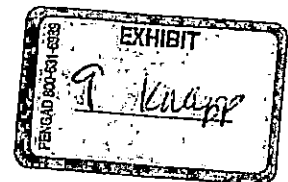


EXHIBIT I

1 identification.)

2 Q. Mr. Knapp, I have handed you Exhibit
3 Number 9, which looks to be an e-mail exchange
4 between you and Robert Young. Who is Robert
5 Young?

6 A. He was my agent.

7 Q. And I note the e-mail address on this
8 e-mail is the same as what you gave me earlier
9 today with the two Ks.

10 A. Yes, sir.

11 Q. At the very bottom is an e-mail dated
12 February 2nd, 2022, at 8:52 from you to Robert,
13 which I guess is Robert Young?

14 A. Yes, sir.

15 Q. Tell me if I read this correctly.
16 Robert, we verified today that the graves are not
17 on the property. There is one corner pin missing
18 next to the left rear at the marsh. The latest
19 survey dated November of 2020 only shows
20 6.69 acres. Need to get that nailed down ASAP.
21 Marc Knapp.

22 Did I read that correctly?

23 A. Yes, sir.

24 Q. Did you write that e-mail?

25 A. Yes, sir.

1 Q. Did you, in fact, verify on or about
2 February the 2nd, 2022, that the graves were not
3 on the same property that you promised to buy?

4 A. Yes, sir.

5 Q. Did something happen between February
6 2nd and today that makes you think that the
7 graves are actually on that property?

8 A. No, sir.

9 Q. Do you know the graves aren't on the
10 property?

11 A. Let me clarify.

12 Q. Answer my question first and then you
13 can explain it. Do you know that the graves are
14 not on the property that you contracted to buy?

15 A. I believe they're not.

16 Q. Have you seen anything that would
17 indicate that they are?

18 A. No. Just the survey, but I don't
19 know -- the problem we have with the cemetery is
20 we needed to figure out how far out the graveyard
21 came. Okay? Because as you get away from the
22 other piece of property, the southwest side of
23 the neighboring property, as you come up, the
24 actual graves and markers kind of disappear.
25 They get more and more absent. So -- and then,

EXHIBIT J

ELECTRONICALLY FILED - 2022 Dec 11 3:55 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

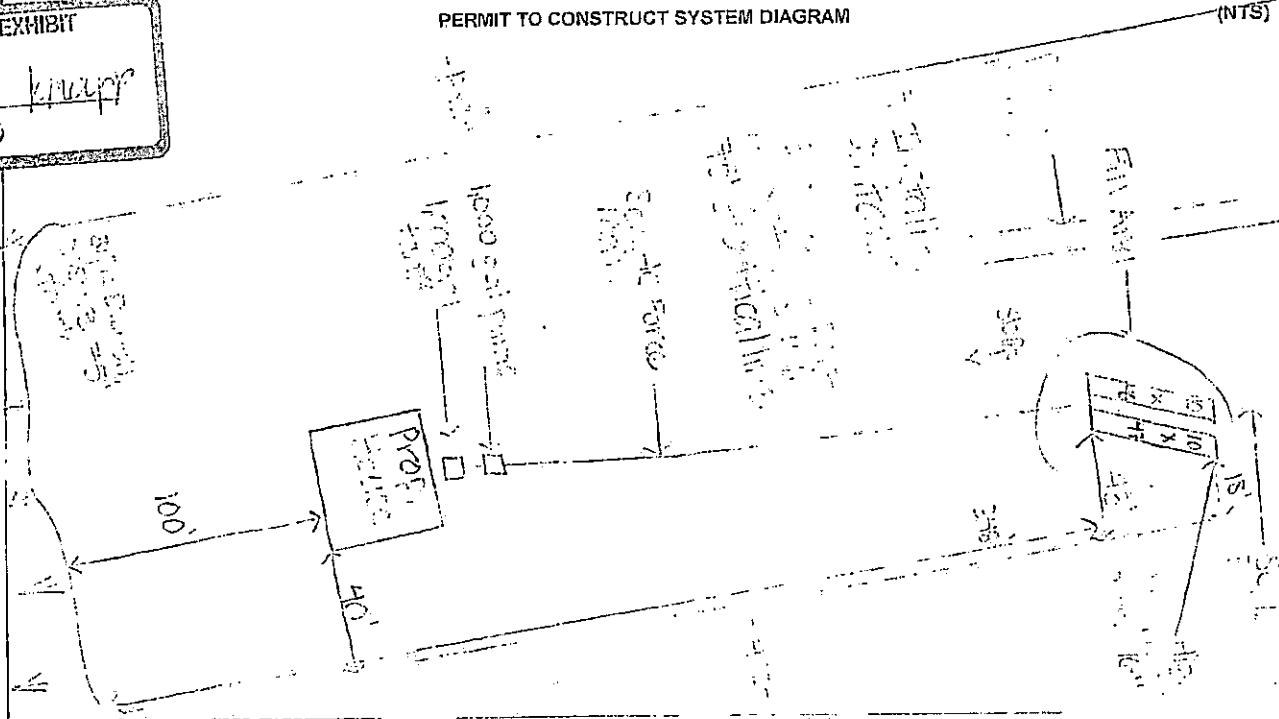
		PERMIT TO CONSTRUCT Onsite Wastewater System		File Nbr: 2022020017 County: Charleston	
Name: MARC KNAPP		Address: [REDACTED]		Program Code: 362	
Type Facility: HOUSE 3BR				System Code: 271	
Subdivision:		Site: 5896 MAYBANK HWY		TM No.: 154-00-00-011	
Block:		WADMALAW, SC 29487		Water Supply: PRIVATE	
PERMIT TO CONSTRUCT SYSTEM SPECIFICATIONS					
Daily Flow (gpd): 360	Tank Sizes (gal): Septic Tank: 1000		Pump Chamber: 1000	Grease Trap:	
LTAR: .70	Trenches: Length (ft): 93		Width (in): 120	Max. Depth (in): 16	Agg. Depth (in): 6
Min Pump Capacity: 10	gpm at 15		ft. of Head Alternative Product:		
SPECIAL INSTRUCTIONS/CONDITIONS					
THIS PERMIT IS SITE SPECIFIC. ANY CHANGES TO THE SYSTEM MUST BE APPROVED BY DHEC. ALTERNATIVE TRENCH PRODUCTS APPROVED UNDER STATE RULES AND REGULATIONS MAY BE SUBSTITUTED. ANY UNAPPROVED CHANGES WILL VOID THIS PERMIT.					
<i>Installers must contact the local Environmental Affairs office by 10:00 AM the day before installation to schedule a time for the final inspection. If a Department representative does not arrive within 30 minutes of the schedule time, the installer may complete the final inspection. When a contractor self-inspection occurs, the installer must complete the DHEC form 3978, Approval to Operate Contractor Self-Inspection. The installer must submit the DHEC form 3978 to the Department within 2 business days of completion of the installation.</i>					
• All applicable setbacks set forth in Regulation 61-56 apply. 75' minimum to any well. • Maximum Trench Depth not to exceed 16 inches at high point. Install level. • Do not cut, fill, bulldoze, scrape or change the grade of the natural soils in the septic system area. • Do not install under wet soil conditions. • No parking, driving, building or paving over the area of septic system before or after installation. • Minimum 12" cover over system after installation with 5' buffers and 10' tapers from outside edges of trenches.					
PERMIT TO CONSTRUCT SYSTEM DIAGRAM (NTS)					
					
Issued/Revised By: [Signature]		Date: [Signature]			

EXHIBIT
10 Knapp
20

DHEC 1781 (01/2014)

This Permit is Appealable Under the Administrative Procedures Act.
This permit will expire and become null and void five (5) years from the issuance date.
There may be an Additional Fee for Changes in this Permit that Require a Site Reevaluation.
Personal information provided on this form is subject to public scrutiny or release.

Department Staff Inspection - Onsite Wastewater System

County: Charleston

Address:

Site: 5896 MAYBANK HWY
WADMALAW, SC 29487

Water Supply: PRIVATE

(NTS)

Line No.

Comments:

Printed Name

License No.

I hereby certify the system was installed in accordance with the referenced permit and R.61-56 and is in an exposed condition ready for inspection.

Licensed Installer Signature

Date _____

APPROVAL BY DHEC TO OPERATE

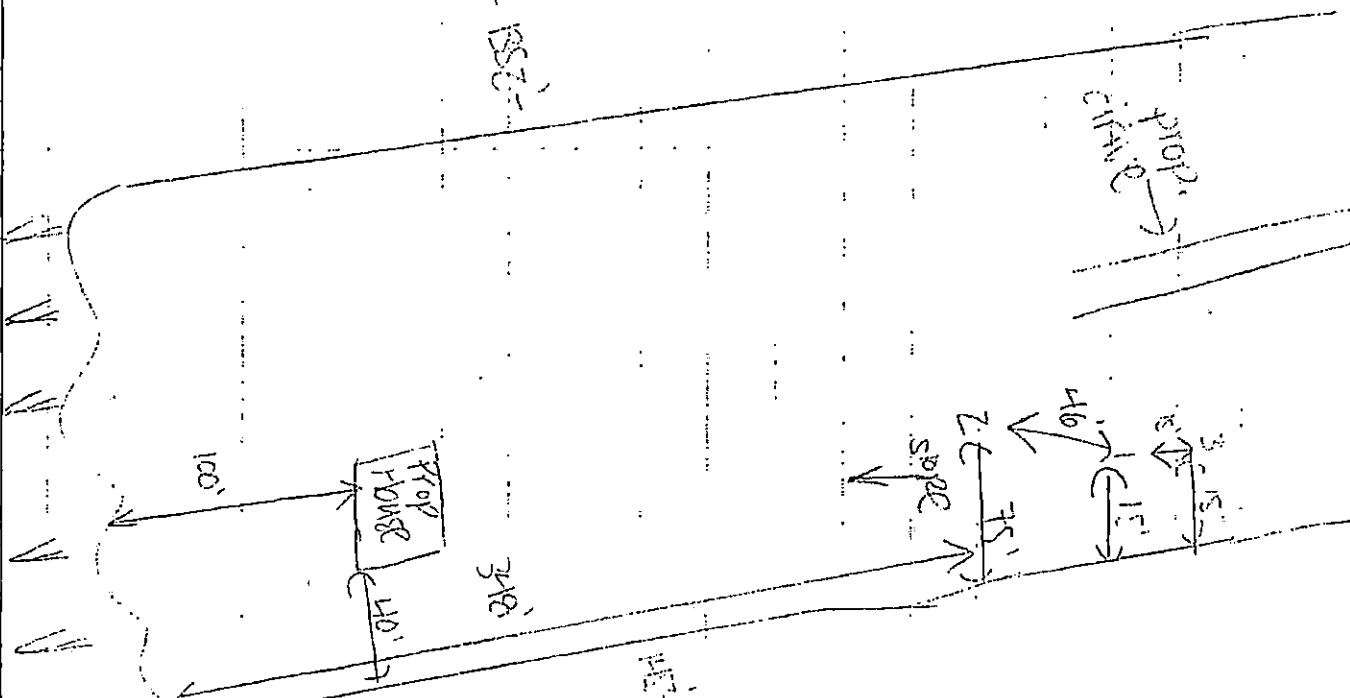
THIS CERTIFICATE OF FINAL APPROVAL IN NO WAY GUARANTEES THE LIFE OF THE SYSTEM OR THAT IT WILL FUNCTION PROPERLY
UNDER ANY OR ALL CONDITIONS

Approved By:

Date:

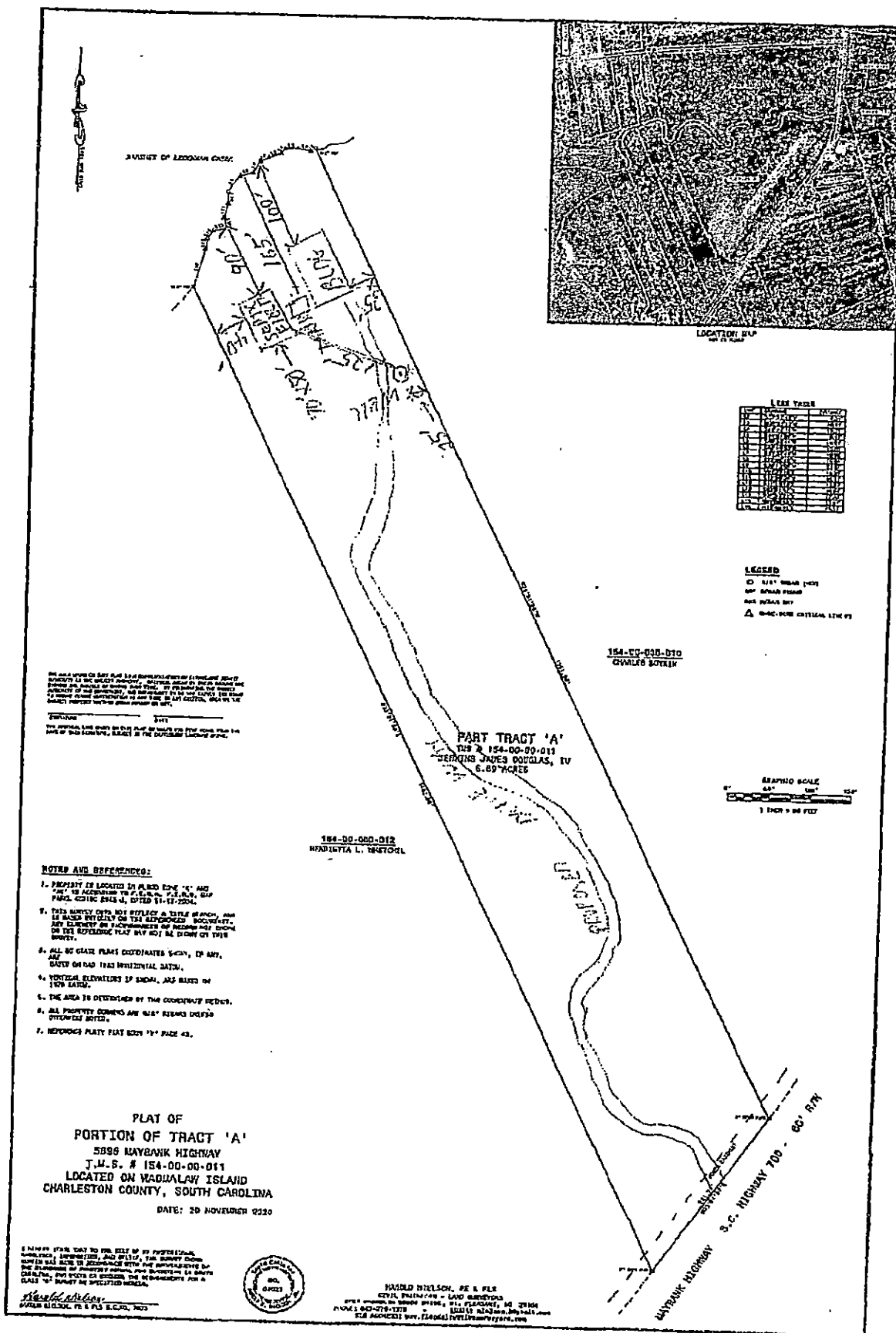


102032 020017	Marc Knappe	586 Ke Nyanhank Hwy	Madison
Application #	Applicant Name	Property Address	City



SB	Depth	Hue/Value/Chroma	Concentrations	Depletions	Texture/ LTAR	ZOS
1	0-10	10YR 4/2			.9	
	10-16	" 6/4			.9	
	16-24	" 5/6			.7	
	24-30	" 5/6	7.5YR 5/8		.7	
	30-38	" 5/6	7.5YR 4/6	10YR 7/2	.7	30"
2	0-8	10YR 4/2			.9	
	8-14	" 6/4			.7	
	14-23	" 5/6	7.5YR 5/6		.7	
	23-28	" 5/6	7.5YR 5/8	10YR 7/2	.7	23"
3	0-6	10YR 4/2			.9	
	6-15	" 6/4			.7	
	15-22	" 5/6			.7	
	22-26	" 5/6	7.5YR 5/8		.7	

Signature: CH Printed Name: ANDRUE SIMPSON Date: 5/3/22



Actv date 2/7/2022

Application #: 102022020017



Onsite Wastewater System Application

Bureau of Environmental Health Services

I, MARC KNAPP

(Name)

(Mailing Address)

(City/Town)

(State)

(Zip Code)

(Email Address)

Phone No.: 843-870-7055

Alternate Phone No.:

☒ Mobile☐ Home☐ Work☐ Mobile☐ Home☐ Work

hereby make application for a Permit to Construct an Individual Sewage Disposal System to serve a:

House: ☒ Mobile Home: ☐ Other (Specify): ☐

If in subdivision, give name: _____ Lot #: _____

Property Address: 5896 MAYBANK HWY City: WADMALAWCounty: CHARLESTON Tax Map/Property Identification #: 1540000011**Check all that apply:**Public Water: ☐ Well: ☒ Public ☐ Private ☐ Existing ☒ Proposed Public Sewer Accessible: ☐**If residential establishment, answer following:**No. Bedrooms: 3 Basement: ☐ Full ☐ Partial ☒ None Plumbing in Basement: ☐**If commercial establishment, answer following:**

Type of Business: _____ Number of Occupants: _____ Number of Employees: _____

Public Restrooms: _____ of Daily Operation: _____ Other: _____
(i.e., seating capacity, meals per day)**Lot Identification and Preparation**

In order for your application to be processed, stake the corners of the proposed building and property corners with distinctive markers. In clear, sealed bags, place the site location card at the front of the property in a conspicuous location and place the septic location card at the proposed septic location. A legal description (plat, deed, surveyor site plan, etc.) with dimensions of the property must also be submitted with the application. Contact the regional EA office to activate your application when the lot has been staked, house site located, and lot posted. The lot should also be properly prepared by clearing all underbrush, thick vegetation, and any other features that may inhibit the site evaluation within a 150 ft radius of the proposed septic location.

Please give exact directions to lot: Take Maybank Hwy from Folly road. Travel 15 miles on Maybank.
Look for gravel drive on right just past newly cleared land on the left. Property has a large 4X8 for sale on the right just past the gravel drive.

I understand that the property must be properly prepared for evaluation and that I must confirm property preparation to activate the application. I also understand a reevaluation fee may be assessed if the above parameters for lot identification and preparation are not met. I certify to the best of my knowledge that the information submitted in this document is true and accurate. Permission and authority is hereby granted for DHEC representatives to enter the above-described property at reasonable hours for the purpose of onsite wastewater system inspection and/or site evaluation.

Property will be ready for activation/evaluation by DHEC on 02-07-2022

(Date)

02-06-2022

(Date)

(Applicant/Representative Signature)

DHEC 1740 (05/2020)

Personal information provided on this form is subject to public scrutiny or release.

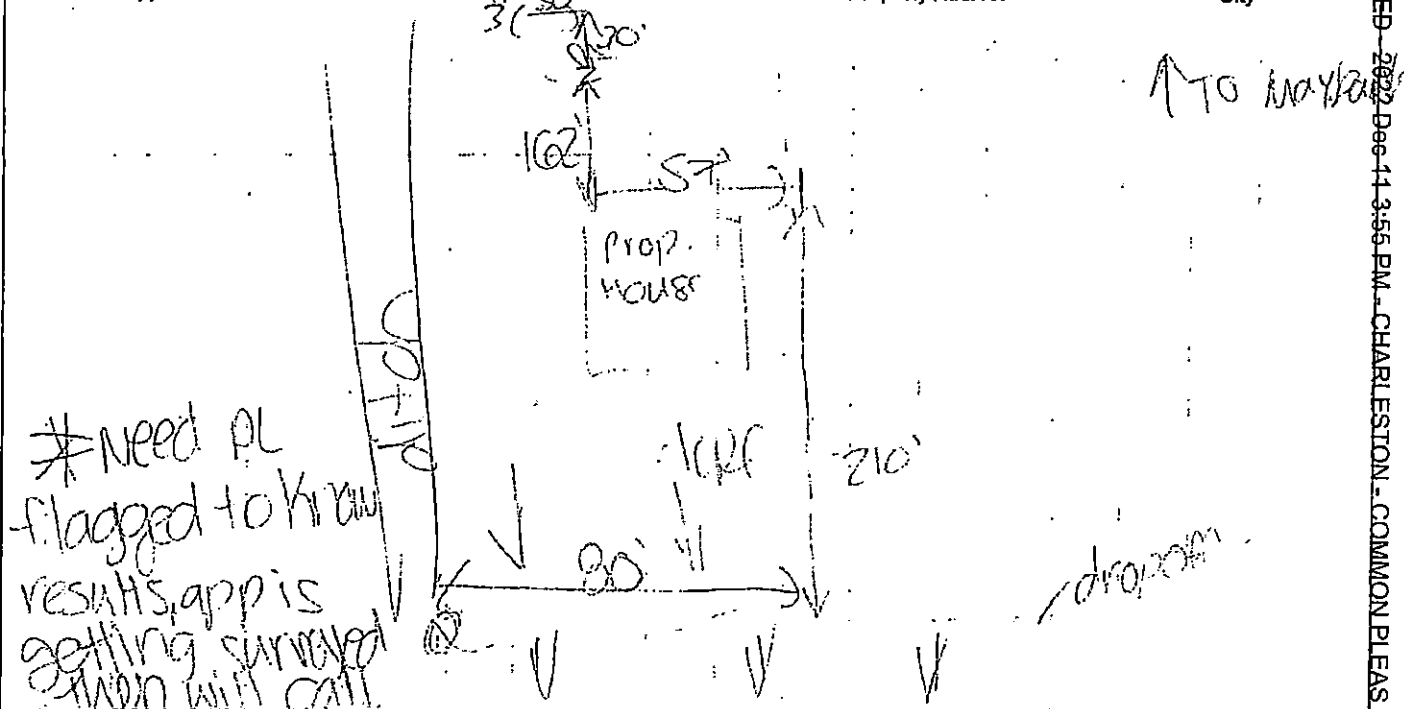
1/5



Onsite Wastewater Site & Soil Evaluation

Bureau of Environmental Health Services

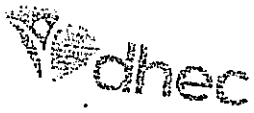
Application # 102002200004 Mac Applicant Name Knapp Property Address 8870 Maybank Blvd City Indiantown



SB	Depth	Hue/Value/Chroma	Concentrations	Depletions	Texture/ LTAR	ZOS
1	0-12	10YR 2/2			5	
	10-17	" 5/3	7.5YR 11/6	10YR 7/2	7	
	17-20	" 2/2			8	
	20-32	7.5YR 5/6	7.5YR 11/6	10YR 7/2	7	<12"
2	0-12	10YR 2/2			8	
	12-18	7.5Y 5/4	7.5YR 11/6	7.5YR 7/2	8	
	18-24	10YR 5/3	7.5YR 5/8	7.5YR 7/2	8	
3	0-12	10YR 5/2			8	
	12-18	10YR 4/3	7.5YR 5/6		8	
	18-24	7.5Y 4/6	7.5YR 5/6	7.5YR 5/2	8	
	24-30	10YR 1/6	7.5YR 5/6	10YR 7/2	7	<12"

Signature GA Printed Name Caroline Smith Date 3/23/22

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Onsite Wastewater System Application

Bureau of Environmental Health Services

Please use this space to sketch a drawing of the property.

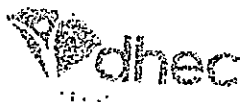
Does not need to be drawn to exact scale but should be legible and drawn clearly.

☒ Check here if the sketch is attached on a separate sheet or on the plat instead of this application.

Sketch must include labelling the location, dimensions, and distance from property lines of existing and/or proposed:

- Primary building
- Septic tank and drain field area
- Wells, including those on adjacent properties
- Underground utility lines, existing drainage pipes, and/or easements
- Driveways, parking areas, or other vehicular traffic or traffic bearing structures
- Porches, decks, pools, garages, carports, out-buildings, and other permanent structures and their dimensions
- Areas of grading or other soil disturbance, changes in drainage patterns, or changes in surface or topographical features on the site

se note that any changes such as grading, soil disturbances, or site alterations to topography could negatively
ict the wastewater system or lead to permit revocation.



Onsite Wastewater System Application
Bureau of Environmental Health Services
Property Owner Permission Letter

Date: 02-07-2022

To: DHEC - Bureau of Environmental Health Services
James Jenkins IV, Peter Jenkins, Alicia Roy

From: _____ - Property Owner

Location

Property Address: 5896 MAYBANK HIGHWAY

Property Town/City: WADMALAW ISLAND

Property Tax Map #: 1540000011

SUBJECT: Site evaluation for purpose of issuing onsite wastewater (OSWW) permit

James Jenkins IV, Peter Jenkins, Alicia Roy

I, _____, property owner for the above listed property, give the local DHEC Staff permission to enter onto my property to evaluate the site for the purpose of issuing an OSWW (septic) permit.

DocuSigned by:
James D Jenkins IV James D Jenkins IV
278F01970C93406

2/6/2022 | 11:42 AM EST

DocuSigned by:
Peter B Jenkins Peter B Jenkins
278F01970C93406

2/6/2022 | 09:35 AM PST

DocuSigned by:
Alicia J Roy Alicia J Roy
278F01970C93406

2/6/2022 | 12:34 PM EST

Property Owner's Signature



**CHARLESTON-CHARLESTON ENV HEALTH EH/EQC
OCRM**

Service Transactions

ENVIRONMENTAL HEALTH	
Client ID :	Date of Service: 02/07/2022 Receipt # 10-843525
Name : EH CLIENT	Invoice Date : 2/7/2022
Business Name :	MARC KNAPP 1540000011 Previous Balance : \$0.00

Program Area	Service Code	Description	Reference	Amount	Adjustment	Extended
EH	SPTCTNK	New Septic Tank Permit Fee	EH10001-6	\$150.00	\$0.00	\$150.00
SubTotal for Service lines :\$150.00						

Payment Details:		
Pay Description	Pay Reference	Pay Amount
Visa		150.00
	SubTotal for Payment :	\$ 150.00
	Current Account Balance :	\$0.00

DHEC 3645 (07/1999) Federal Tax ID:

TOLBERCE

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SC Department of Health and Environmental Control Online Invoice Payments

[Home](#)[Process Payments](#)[Duplicate Receipt](#)[Transaction Report](#)[tolberce \[Logout\]](#)

DHEC Invoice Receipt

Transaction Information

Payment Type: [REDACTED]

TPE Order ID: [REDACTED]

Transaction Date: 02/07/2022 11:49 AM

Payment for product or services

Item	Amount
Invoice# EH100016	\$150.00
Quantity	1
DHEC Invoice(s) Total	\$150.00
Service Fee* SC.GOV	\$1.00
Grand Total	\$151.00

Agency Information

SC DHEC - Bureau of Financial Management

Customer Information

Marc Knapp
1748 Indaba Way
Charleston, SC 29414
843-870-7055
MANUALLY/ENTERED

null, null null

Special Instructions

EH -

Receipt Message

Technical questions: [SC.gov Website](#)
Email: support@portal.sc.gov
Phone: 866.340.7105 (8am-5pm, M-F)

Invoice questions: [SC DHEC Website](#)
Email: receivables@dhec.sc.gov
Phone: 803.898.3460 (8:30am-5pm, M-F)

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ACT. DATE 2/7/22 PP

Onsite Wastewater Application Administrative Check Sheet (Internal use only)	
Applicant Name KNAPP, MARC	County / File# 10 2022 02 0017

	Date	Staff Initial
Application Received	2/7/22	CET
Application Received Email Sent (respond within 24 hrs of receipt) (Print a copy of this email and add to application folder)	↓	↓
Payment Received (copy of receipt added to folder)	↓	↓

Included	Application Completeness	Missing
✓	Application Items	X
✓	Name, Address, Email Address, Phone Numbers	
✓	Type of facility	
✓	Property Info & TMS# or PIN# (Confirm on County GIS website)	
✓	Water Source: Public or Well (Public/Private & Existing/Proposed)	
✓	Residential or Commercial Info	
✓	Complete Directions (with nearest 9-1-1 address or mailbox)	
	Activation Date: The date the site will be marked & ready for eval. Cannot be before the receipt date. To properly prepare your site, the following must be met: - Place both site cards in a clear, sealed plastic bag. Post the Site Location card at the entrance of the property. Post the Septic Location Card at proposed location of septic system. - All property corners and lines are to be clearly marked or cut, and visibly identifiable. - Mark the corners of the proposed home or commercial building with labeled wooden landscape stakes or 24" stake flags. The "footprint" should represent total dimensions and include walkways, flower beds, steps, porches, decks, etc. - Mark the corners of other proposed buildings, pools, or structures that may influence placement and configuration of the wastewater system. - Mark any existing and/or proposed wells. - Clear underbrush, thick vegetation, and any other features that may inhibit the site evaluation. This degree of clearing should expand at least 150 feet in all directions from the proposed building site. Additional clearing may be required. - Any grading or site alteration could lead to site reevaluation fees, negatively impact the wastewater system, or lead to permit revocation.	
✓	Signature of Applicant (Physical or Digital)	
✓	Sketch Attached or drawn on the Plat (with distances from 2 fixed points)	
✓	A complete plat, deed, or legal document specifying boundaries and size of the property. It must be legible and include property dimensions (if scaled copy is provided do not reduce). If plat is too large to scan, take a picture of it to print out a smaller copy to scan with the application (Keep both in file).	
✓	Property Owner Permission Letter (On our template only)	
Certification		Staff Initial
This application is administratively complete and is ready for OSWW Technical Review.		Date

Notes:

NEEDS ACT. DATE

THEN... ✓ 2/10/22 JH

Re: Permit application

Tolbert, Connie E. <TolberCE@dhec.sc.gov>

Mon 2/7/2022 11:39 AM

To: Marc Knapp [REDACTED] BEHS-Charleston-Admin <BEHS-Charleston-Admin@dhec.sc.gov>

Cc: Joannejknapp [REDACTED]; Jennifer [REDACTED] Lauren Mosher [REDACTED]

Our staff have tried contacting you for payment and were not able to reach you. Please call 843-953-0150 to complete payment for this application. Please note, our office hours are M-F 8:30-5:00, except for holidays.

Connie Tolbert

Administrative Specialist

Environmental Affairs Low Country Charleston

1362 McMillan Avenue, Ste. 300

N. Charleston, SC 29405

Office (843) 953-0150

FAX (843) 953-0151

From: Tolbert, Connie E. <TolberCE@dhec.sc.gov>

Sent: Monday, February 7, 2022 9:33 AM

To: Marc Knapp [REDACTED] BEHS-Charleston-Admin <BEHS-Charleston-Admin@dhec.sc.gov>

Cc: Joannejknapp [REDACTED]; Jennifer [REDACTED] Lauren Mosher [REDACTED]

Subject: Re: Permit application

Good Morning!

Thank you for contacting the Department of Health and Environmental Control. We have reviewed and accepted your application. We will contact you at the phone number provided for payment of the application.

Connie Tolbert

Administrative Specialist

Environmental Affairs Low Country Charleston

1362 McMillan Avenue, Ste. 300

N. Charleston, SC 29405

Office (843) 953-0150

FAX (843) 953-0151

From: Marc Knapp [REDACTED]

Sent: Sunday, February 6, 2022 3:31 PM

To: BEHS-Charleston-Admin <BEHS-Charleston-Admin@dhec.sc.gov>

Cc: Marc Knapp [REDACTED]; Jennifer [REDACTED]

EXHIBIT K

1 have the marked -- the pin marked?

2 A. No. Ms. Heyer's -- got an e-mail from
3 her saying she would have them do it the next
4 week, Mr. Nielson.

5 Q. That's different. Would you agree with
6 me that is different than what she is saying on
7 February --

8 A. She's lying.

9 Q. Okay. Let me finish my question.

10 A. Go ahead. I'm sorry.

11 Q. Will you agree with me that what she's
12 saying here on February 23rd is different than
13 what you were telling me that you were relying on
14 earlier in the process?

15 A. Yes.

16 Q. Who came up with the original closing
17 date of February 10th?

18 A. I'm guessing Ms. Heyer.

19 Q. But you agreed to it, right?.

20 A. Yes. But normally when you have a
21 closing date and you start finding problems, you
22 get extensions. Now I'm going to tell you what I
23 think happened.

24 Q. Please.

25 A. I went out and cleared a path to the

1 rear of the property. Charlie Boykin told me
2 that after I had done that, about a week later, a
3 bunch of people showed up, parked their cars at
4 the front, and walked back on the property.

5 So that property had been on the market
6 for over a year at that time. By me clearing it,
7 it gave other people access and they made a
8 better offer, and that's why they started
9 throwing, you know, basically land mines because
10 there's no doubt in my mind that if I or
11 Mr. Adler, if he gets their information on that
12 property, we're going to find that there are
13 other buyers waiting on the wings and everything
14 that I had found out about the property, they
15 would have probably bailed.

16 Q. Are you aware that there's a backup
17 contract on the property now that is contingent
18 on the release of your lis pendens for \$285,000?

19 A. I would think so, yeah.

20 Q. I mean, have you been shown that
21 contract?

22 A. No.

23 Q. It's been sent to your lawyer and we
24 have asked that you remove your lis pendens so
25 that we can --

1 to pin it and the witness post. And if you read
2 their rules, they require four corners.

3 Q. Well, I saw something, an e-mail, that
4 indicated they did not require four corners.

5 A. Yeah.

6 Q. Yeah, they do require four corners or --

7 A. According to their rules.

8 Q. Can I ask you to look at Exhibit 12 one
9 more time, please. Page 3, it's an e-mail from
10 Robert Young to Susan Heyer dated February 23rd.

11 A. Okay.

12 Q. The second paragraph by the first
13 asterisk, do you see that, where it says, Bad
14 weather?

15 A. Right.

16 Q. Tell me if I read this correctly. Bad
17 weather held back one weekend after the 11th of
18 January because we did not want to take heavy
19 equipment back there with it wet.

20 A. Right.

21 Q. Did I read that correctly?

22 A. Yes, sir.

23 Q. Does that indicate that you had
24 permission to cut the path that you discussed
25 before January the 11th?

1 A. I'm guessing, yes. But then of course,
2 you know, again, I have to find time to get out
3 there and do it.

4 Q. Did Mr. Jones, when he went out to
5 resurvey the property, did he find -- did you ask
6 him to find the specific location of the
7 graveyard?

8 A. No. I could have figured that out if I
9 had the pin.

10 Q. Well, how long ago did he put the pin
11 in?

12 A. I will get you the date. I don't
13 remember.

14 Q. Before or after May the 9th?

15 A. Before, because she had to have that to
16 put the septic system.

17 Q. So sitting here today, what issue is it
18 that you believe hinders closing?

19 A. Now?

20 Q. Yes.

21 A. Just make sure we have clear title. I
22 don't care about whoever created that. My
23 attorney is telling me that we don't. Marketable
24 title.

25 Q. But you have seen the title insurance

1 is it not in an account in your name?

2 A. I don't know. I mean, I don't need it.

3 Q. You don't need the money?

4 A. No.

5 Q. Do you have creditors that are trying to
6 collect from you?

7 A. No. Remember, Chapter 7.

8 Q. Well, I mean, in the two accounts that
9 you sent me bank accounts for, there's about
10 \$120,000 in those two accounts. So why not put
11 the money in an account called Not Dad?

12 A. Well, mainly because Jennifer hasn't had
13 time to, I guess, apply for the IRS number.

14 Q. An EIN?

15 A. Yeah, yeah, yeah. Because they've got
16 weird hours, you know, and she's dealing with two
17 children. A full-time job.

18 Q. Is it your contention or belief that the
19 Jenkins had an obligation just to give you
20 extension after extension until you were ready to
21 close?

22 A. Yeah.

23 Q. And what provision of the contract do
24 you --

25 A. It's not in there.

1 Q. Is there any -- let me ask my question
2 and then you can give me the answer. Is there
3 any provision of the contract that says the
4 Jenkins should give you an extension to close
5 until you are ready?

6 A. No. Just the part about contingencies.
7 I mean, there's contingencies and it comes up in
8 every property I have ever seen. You just keep
9 extending until you get all of the problems
10 solved.

11 Q. They don't terminate at the closing
12 date?

13 A. No.

14 Q. Then why do you have a closing date in
15 the contract?

16 A. There's a closing date because that's
17 what we were hoping for, if we had gotten clear
18 title and they had done what they said they were
19 going to do.

20 Q. What does time is of the essence mean to
21 you?

22 A. It means as soon as possible.

23 Q. And you agree that time is of the
24 essence?

25 A. Yes.

EXHIBIT A



AGREEMENT/CONTRACT TO BUY AND SELL REAL ESTATE
(RESIDENTIAL)

PARTIES ARE SOLELY RESPONSIBLE FOR OBTAINING LEGAL ADVICE PRIOR TO SIGNING THIS CONTRACT AND DURING THE TRANSACTION. REAL ESTATE LICENSEES RECOMMEND OBTAINING LEGAL COUNSEL.

1. PARTIES: This legally binding Agreement ("Contract") To Buy and Sell Real Estate is entered into by:

Buyer(s), Warc K Knapp and Assigns ("Buyer"), and

Seller(s), James Douglas Jenkins Et al ("Seller").

- (A) "Party" - defined as either Buyer or Seller, "Parties" defined as both Buyer and Seller.
(B) "Brokers" are licensed South Carolina brokers-in-charge, their associated real estate licensees, and their subagents.
(C) "Closing Attorney" - is the licensed South Carolina attorney selected by Buyer to coordinate the transaction and Closing. TBD
(D) "Effective Date" - the final date upon which a Party to the negotiation places the final and required signatures and/or initials and date on this Contract and Delivers Notice to initially cause this primary Contract to be binding on all Parties.
(E) "Good Funds" - is the transfer of the required amount of United States Dollars (USD) within any required timeframe
(F) "Time" - all time stated shall be South Carolina local time. Time is of the essence with respect to all provisions of this Contract stipulating time, deadline, or performance periods.

☐ BUYER ☐ SELLER IS A SOUTH CAROLINA REAL ESTATE LICENSEE

WKC (Initials) BUYER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☒ Client ☐ Customer service in this transaction.

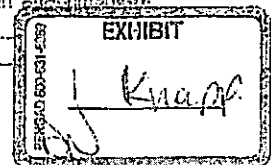
JD (Initials) SELLER(s) acknowledges receipt of the SC Disclosure of Brokerage Relationships form and is receiving ☐ Client ☐ Customer service in this transaction.

2. PURCHASE PRICE \$ 285,000.00 Higher Five Thousand
Payable by transfer of Good Funds via ☐ Finance or ☒ a combination of Finance and Cash USD or ☐ Cash USD.
Verification of Cash available for Closing is ☐ attached ☐ not attached ☐ to be delivered before
This Contract ☐ is ☒ is not contingent upon the sale and closing of Buyer's real property and SCF504 ☐ is ☐ is not attached.

3. PROPERTY: Hereby acknowledging sufficient good Contract consideration (e.g. mutual promises herein), Seller will sell and convey and Buyer will buy for the Purchase Price any and all lot or parcel of land, appurtenant interests, improvements, landscape, systems, and fixtures if any thereon and further described below ("Property"). Seller agrees to maintain in operable condition the Property and any personal property conveying in same operable condition, including any landscaping, grounds and any agreed upon repairs or replacements, from the Effective Date through Closing subject to normal operable wear and tear. Buyer acknowledges opportunity to inquire about owners association issues, common area issues, condominium master deed issues, assigned parking/storage areas, memberships, lease issues and financed equipment prior to signing Contract. Leasing issues and items and financed equipment see Adjustments (e.g. tenants, leases, future vacation renters, SC vacation rental act reservations, rents, deposits, documents, solar panels, fuel tanks with fuel, alarm systems, satellite equipment, roll carts).

Address 3036 Mainbank Hwy Unit #
City Wadmalaw Island State of South Carolina
Zip 29587 County of Charleston
Lot Block Section/Phase Subdivision Footville Rd
Other Yan Map 150-00-00-001
Parties agree that no personal property will transfer as part of this sale, except described below and/or ☐ in attachment:

☒ BUYER ☐ BUYER ☒ SELLER ☐ SELLER
☐ BUYER ☐ BUYER ☐ SELLER ☐ SELLER
HAVE READ THIS PAGE 103



1/2020 FORM 310 PAGE 1 of 9

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1/10/2022 | 12:55 PM PST

ELECTRONICALLY FILED - 2022 Dec 11 3:55 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

4. **CONVEYANCE/CLOSING/POSSESSION:** "Closing" occurs when Seller conveys Property to Buyer and occurs no later than 5 PM on or before February 8, 2022 ("Closing Date"). Conveyance shall be fee simple made subject to all easements, reservations, rights of way, restrictive covenants of record (provided they do not make the title unmarketable or adversely affect the use/value of the Property in a material way) and to all government statutes, ordinances, rules, permits, and regulations. Seller agrees to convey marketable title with a properly recorded general warranty deed free of encumbrances and liens except as herein stated; and in name(s): _____

and ownership type determined by Buyer. The deed shall be delivered to the Closing Attorney's designated place on or before the Closing Date no later than 10 AM. Seller agrees to pay all statutory deed recording fees. Parties agree the Brokers shall have access to the closing and relevant documents; and the Brokers shall be given copies of the settlement statement prior to Closing for review. Parties agree to hire/use licensed Attorney(s). Seller shall convey possession of a vacant and reasonably clean Property, free of debris, along with all keys, codes, any remote controls, available documents (e.g. manuals, equipment warranties, service information) and similar ownership items to Buyer at Closing.

5. **EARNEST MONEY:** Total \$ 5,000.00 (USD) Earnest Money is paid as follows: \$ _____ accompanies this offer and \$ 5,000.00 will be paid by 6 P.M. on January 6, 2022 (date) and Earnest Money is in the form of ☒ check ☐ cash ☐ other (e.g. wire) to be a Credit to Buyer at Closing or disbursed only as Parties agree in writing or by court order or by Contract or as required for Closing by Closing Attorney. Buyer and seller authorize Miles Adler Esquire as Escrow Agent to deposit and hold and disburse earnest money according to the terms of any separate escrow agreement, the law, and any regulations. Broker does not guarantee payment of a check or checks accepted as earnest money. Parties direct escrow agent to communicate reasonable information confirming receipt and status of earnest money upon a Broker request. If Earnest Money is not delivered by the agreed upon date above Seller may terminate the contract by delivering Notice of Termination to the Buyer.

THE PARTIES UNDERSTAND AND AGREE THAT UNDER ALL CIRCUMSTANCES INCLUDING DEFAULT, ESCROW AGENT WILL NOT DISBURSE EARNEST MONEY DEPOSIT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT (e.g. SCR518, SCR517, MEDIATION AGREEMENT) OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT. EARNEST MONEY WILL NOT BE DISBURSED UNTIL DETERMINED TO BE GOOD FUNDS. IF LEGAL ACTIONS OCCUR RELATED TO EARNEST MONEY, PARTY RECEIVING THE LEAST AMOUNT OF EARNEST MONEY IN THE COURT'S DISBURSEMENT ORDER AGREES TO INDEMNIFY ESCROW AGENT'S FEES, COURT COSTS AND ATTORNEY FEES. IF INTERPLEADER IS TO BE UTILIZED, PARTIES AGREE THAT \$ 100.00 SHALL BE PAID TO THE ESCROW AGENT BY THE PARTIES AS COMPENSATION BEFORE ESCROW AGENT INITIATES COURT OF COMPETENT JURISDICTION PROCEEDINGS ON EARNEST MONEY.

6. **TRANSACTION COSTS:** Buyer's transaction costs include all costs and closing costs resulting from selected financing, pre-paid recurring items, insurance (including but not limited to mortgage insurance, title insurance lender/owner, flood, insurance, and hazard insurance) discount points, interest, non-recurring closing costs, title exam, FHA/VA allowable costs, fees and expenses of Buyer's attorney, contractually required real estate broker compensation, and the cost of any inspector, appraiser, or surveyor. Seller's transaction costs include deed preparation, deed recording costs, deed stamps/tax/recording costs calculated based on the value of the Property, all costs necessary to deliver marketable title and payoffs, satisfactions of mortgages/liens and recording, property taxes prorated at Closing, contractually required real estate broker compensation, and fees and expenses of Seller's attorney.

All costs to obtain information from or pertaining to owners' association, private/public transfer fees, and any costs similar to transfer fees (e.g. certificate of assessment, capital contributions, working capital, estoppel fees or otherwise named but similar fees) are the ☐ Seller's or ☒ Buyer's transaction costs. If no box is checked these costs will be added to Seller's transaction costs. Also, Buyer is solely responsible for any/all rollback taxes. 1-7-22

At Closing, Seller will pay Buyer's transaction costs not to exceed \$ 2,500.00, which includes non-allowable costs first and then allowable costs (FHA/VA). Buyer is responsible for any Buyer's transaction costs exceeding this amount. If the amount exceeds the actual amount of those costs or amount allowed by Lender, then any excess funds will revert to Seller. Seller will also provide or pay for all of Seller's transaction costs. If no Closing, Buyer is responsible for Buyer's transaction costs and Seller responsible for Seller's transaction costs.

Unless otherwise agreed upon in writing, Buyer will pay Buyer's transaction costs and Seller pay Seller's transaction costs.

[RJR] BUYER [] BUYER [RJR] SELLER [JDH] SELLER
[] BUYER [] SELLER [PBJ] SELLER
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1/2020 FORM 310 PAGE 2 of 9

7. **FINANCE:** Buyer's obligation under this Contract ☒ is ☐ is not contingent upon obtaining financing of a ☐ 30 year or ☐ 15 year or ☒ other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80.000 % of the Purchase Price or Appraised Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) and shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurs when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller, Buyer cannot change lender if the closing date agreed upon in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Lender (may change): TBD ☐ FHA ☐ VA ☒ Conventional ☐ Seller
☐ Other _____. An FHA VA Financing Addendum ☐ is ☒ is not attached. Additional financing terms
☐ are ☒ are not attached.

8. REPAIRS:

CHECK ONLY ONE OF THE FOLLOWING OPTIONS. IF NO BOXES ARE CHECKED THIS CONTRACT WILL BE AN AS-IS CONTRACT IN REGARDS TO REPAIRS. IF MULTIPLE BOXES ARE CHECKED THEN THE FIRST PARAGRAPH WITH A CHECKED BOX WILL DETERMINE REPAIRS.

☐ REPAIR PROCEDURE:

All Repair Procedure Inspections and Requests shall be completed and delivered to the Seller by 6 P.M. on _____ (date). Any and all requests necessary to place the heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems to be conveyed in operative condition, to make the roof free of leaks, to address environmental concerns and to make the improvements structurally sound (Repair Requests) should be delivered by the deadline above. If the Buyer fails to notify the Seller within this timeframe, Buyer shall have waived any and all rights under terms of this section. If Lender's commitment requires any additional inspections or certifications, these are to be provided by the Buyer. Buyer at Buyer's expense shall have the privilege and responsibility of inspecting the structure, square footage, environmental concerns including but not limited to mold, radon gas, lead based hazards including lead based paints, wetlands study, appurtenant buildings, heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems, as well as, appurtenant equipment or appliances. Upon Seller's request the Buyer will provide with a copy of the Inspection Report.

No later than 6 P.M. on _____ (date), Seller shall Deliver Notice agreeing or not agreeing to make repairs in the Buyer's Repair Requests. The costs of all repairs to heating systems, air conditioning systems, electrical systems, plumbing systems, water supply systems, water waste systems making these systems operable, make roof free of leaks, address environmental concerns, and to make the improvements structurally sound to be paid by Seller ("Seller Paid Repairs"). Seller Paid Requests DO NOT include the following items: home maintenance, flooring, fogged windows, grandfathered code issues, landscaping, preventive maintenance, cosmetic changes, home improvement, and energy efficiency. If the Seller contractually agrees to make all the requested Seller Paid Repairs, the Parties agree to proceed under the amended Contract. The repairs to any other items are the sole responsibility of the Buyer.

If the Seller does not timely respond per above or does not agree to make all the Seller Paid Repairs, the Buyer shall within 2 Calendar Days choose any one of the following options (1) accept the Property in its present condition, (2) negotiate a new/amended Contract with the Seller for the payment of these repairs/price or (3) terminate this Contract by Delivered Notice. IF BUYER FAILS TO ACCEPT, RENEGOTIATE A NEW/AMENDED CONTRACT WITH SELLER, OR TERMINATE CONTRACT BY DELIVERED NOTICE WITHIN 2 CALENDAR DAYS: The Buyer agrees to buy and Seller agrees to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. The obligations of the Seller for repairs terminate upon Closing.

☐ DUE DILIGENCE:

The DUE DILIGENCE PERIOD begins upon the Effective Date and shall expire at 6 P.M. on _____ (date). Any extension to this date must be made in writing and agreed to by both Parties.

[mk] BUYER [_____] BUYER [RJR] SELLER [JDJ] SELLER
 [_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
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1/2020 FORM 310 PAGE 3 of 9

During the Due Diligence Period, Buyer may take timely/prudent steps to help Buyer/Inspectors, Seller/Estimators, and REALTORS® all have adequate time for: Buyer to coordinate Inspections and Repair Requests, Seller to obtain Repair estimates, Buyer and Seller to negotiate Repairs, and Buyer to potentially timely/property Due Diligence terminate or buy.

During the Due Diligence Period, Seller agrees Buyer may rely on the following list of five items in accordance with Contract and laws. Buyer is solely responsible for Inspections. Buyer is not required to inspect. Until Buyer timely/property terminates the Contract or the Parties agree on an amended Contract, the Buyer can rely on #1, #2, #3, #4, and #5. **TIME IS OF THE ESSENCE. Delivering a Repair Request does not extend the Due Diligence Period.**

- (1) Conduct/obtain Inspections [e.g. on site conditions, off site conditions]
- (2) Deliver Repairs Requests Notice to Seller [e.g. SCR525 with all repair requests, all/portions of reports]
- (3) Proceed under amended Contract [e.g. SCR310 and SCR525, SCR390, SCR391]
- (4) Proceed under As Is Contract [e.g. Buyer desires to buy anyway, Buyer wants Property without Repair]
- (5) Terminate Contract by timely/property Delivering "Notice of Termination" and "Termination Fee" to Seller within the Due Diligence Period.

TERMINATION: During the Due Diligence Period, Buyer may unilaterally terminate this Contract only by Delivering to the Seller both Notice of Termination and a Termination Fee of \$ _____ USD Good Funds.

DURING THE DUE DILIGENCE PERIOD, SHOULD BUYER FAIL TO OBTAIN A NEW/AMENDED CONTRACT WITH THE SELLER OR BUYER FAIL TO TIMELY/PROPERLY DUE DILIGENCE TERMINATE THE CONTRACT DURING THE DUE DILIGENCE PERIOD: The Buyer agrees to buy and Seller agree to sell the Property AS IS. Parties agree "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear otherwise without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed in writing by the Parties in this Contract

☒ **AS-IS**

All Parties agree that Property is being sold "As-Is". "As Is" means Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective Date through Closing subject to normal wear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon in writing by the Parties in this Contract. Buyer retains the right to inspect the Property by 6 P.M. on January 28, 2022 (date) for informational purposes only. The Seller is under no obligation to remedy any issues the Buyer discovers during their inspections, and the Buyer may not terminate the contract based on the results of any inspections conducted.

9. INSPECTION/REINSPECTION RIGHTS: Buyer and SC licensed and insured inspectors ("Inspectors") reasonably perform any reasonable ultimately non-destructive examination and make reasonable record of the Property with reasonable Notice to Seller through Closing including investigations of off-site conditions and any issues related to the Property at Buyer Expense ("Inspections"). Buyer and persons they choose may make reasonable visual observations of Property.

Sellers will make the Property accessible for inspection and not unreasonably withhold access, unless otherwise agreed in writing by the Parties. Seller will grant the Buyer the right to perform a final walkthrough inspection of the property within 48 hours prior to the closing date. Seller will keep all utilities operational through Closing unless otherwise agreed:

☒ Seller grants Buyer permission to connect utilities, pay for utilities, and hire professionals (e.g. electricians, plumbers) to safely connect and operate the utilities during the Inspections

Other ☐ see attached.

Buyer will hold harmless, indemnify, pay damages and attorneys fees to Seller and Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Seller will hold harmless, indemnify, pay damages and attorneys fees to Brokers for all claims, injuries, and damages arising out of the exercise of these inspection rights. Brokers recommend that Parties obtain all inspections as soon as possible. Brokers recommend that Parties and Inspectors use insurance to manage risk.

[mk] BUYER [_____] BUYER [AK] SELLER [JD] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [_____] SELLER
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1/2020 FORM 310 PAGE 4 of 9

10. APPRAISED VALUE:

☒ This Contract is contingent upon the Property being valued according to the Lender's appraisal or other appraisal as agreed upon by the Parties ("Appraised Value") for the Purchase Price or higher. If the Parties are made aware that the Appraised Value is less than the Purchase Price and the Seller Delivers Notice to the Buyer within 5 Calendar Days or Closing (whichever earliest) of an amendment to reduce the Purchase Price to the Appraised Value, the Parties agree to proceed to Closing under terms of this Contract with the Purchase Price amended to be the Appraised Value. If Seller is aware and refuses to reduce as stated above, Buyer may proceed to Closing or terminate this Contract by Delivering Notice of Termination to the Seller.

☐ This Contract is not contingent upon the Property being valued at an Appraised Value according to the Lender's appraisal or other appraisal as agreed upon by the Parties for the Purchase Price or more.

11. WOOD INFESTATION REPORT: If the Property to be sold has been previously occupied, this Contract is ☐ contingent ☐ not contingent upon the ☐ Buyer ☐ Seller having the Property inspected at their expense by a qualified/licensed/bonded pest control operator selected by the ☐ Buyer ☐ Seller. ☐ Buyer ☐ Seller shall deliver timely Notice of and shall deliver to Closing a CL100 Wood Infestation Report dated no earlier than 30 calendar days prior to Closing and no later than _____ calendar days prior to Closing. If the Buyer is responsible for having the Property inspected as indicated above, but does not have the Property timely inspected for the report's required Delivery time frame, the Buyer waives any and all rights under the terms of this section. The Seller makes no warranties with regard to matters covered by such infestation report or any other improvement unless specifically stated in this Contract.

If the wood infestation report reveals the presence or indication of or damages by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies and shall furnish the Buyer with a CL100 wood infestation report by a qualified/licensed/bonded pest control operator (dated no earlier than 30 calendar days prior to Closing) that the Property is free from infestation or any damage herein mentioned; or documentation that the infestation has been treated and damage has been repaired as appropriate in a workmanlike manner on or before closing and reported by an appropriate licensee. State law and regulations control CL100 issues. If the Seller does not make the repairs and treatment, the Buyer shall have the option to (1) accept the Property in its present condition, (2) negotiate with the Seller for the payment of these repairs and treatment, or (3) terminate this Contract by Delivering Notice of Termination to the Seller. If the Property to be sold has not been previously occupied, Seller shall certify that the Dwelling has been treated by soil poisoning for the prevention of termites and other wood destroying organisms and shall provide at Closing to the Buyer a written certification from a qualified/licensed/bonded pest control operator. The obligations of the Seller under this Section terminate after the Closing.

12. SURVEY, TITLE EXAMINATION, ELEVATION, INSURANCE: Brokers recommend Buyer have Property surveyed, title examined, elevation/wetlands/beachfront determined, and appropriate insurance (e.g. flood, flood contents, hazard, liability, owner's title) effective at Closing. Unless otherwise agreed upon in writing by Parties, Buyer to obtain new insurance policies by Closing and Seller may cancel existing insurance after Closing. Flood Insurance, if required by Lender or at Buyer's option, shall be assigned to Buyer with permission of carrier and premium prorated to Closing. Buyers are solely responsible to investigate pricing, availability, coverage, and requirements of insurance (e.g. flood, flood contents, hazard, liability) for the property prior to signing Contract.

13. SURVIVAL: If any provision herein contained which by its nature or effect is required to be observed, kept, or performed after Closing, it will survive the Closing and remain binding upon for the parties hereto until fully observed, kept or performed.

14. HOME WARRANTY COMPANY OPTIONAL COVERAGE ("HWC"): Parties agree that a Home Warranty ordered by _____ with at least twelve months of coverage after Closing Date ☐ will ☐ will not be provided by Closing and \$ _____ will be paid by _____ to the Home Warranty Company. Buyer to pay any deficit and surplus reverts to payor. Proposed HWC and type of HWC: _____

NOTICE: THIS IS TO GIVE YOU NOTICE THAT BROKERS HAVE/WILL/MAY RECEIVE COMPENSATION FROM HWC/OTHERS FOR REFERRAL/PROCESSING. YOU ARE NOT REQUIRED TO PURCHASE A HWC OR SIMILAR RESIDENTIAL SERVICE CONTRACT AND IF YOU CHOOSE TO PURCHASE SUCH COVERAGE YOU ARE FREE TO PURCHASE IT FROM ANOTHER PROVIDER.

15. FIRE OR CASUALTY OR INJURY: In case the Property is damaged wholly or partially by fire or other casualty prior to Closing, Parties will have the right for 5 Calendar Days after Notice of damage to Deliver Notice of Termination to other Party. If Party does not Deliver Notice of Termination, the Parties proceed according to the Contract and Seller is to be responsible to (1) repair all damage, (2) remit to Buyer an amount sufficient for repairs, or (3) assign to Buyer the right to all proceeds of insurance and remit any deductible amount applicable to such casualty. If Buyer or Inspections caused the damage, Buyer is responsible for indemnifying Seller for damages. Brokers and Parties should ensure that they are protected by appropriate risk management strategies such as insurance.

[JK] BUYER [_____] BUYER [JK] SELLER [JK] SELLER
[_____] BUYER [_____] BUYER [_____] SELLER [JK] SELLER
HAVE READ THIS PAGE [JK]

1/2020 FORM 310 PAGE 5 of 9

16. SC RESIDENTIAL PROPERTY CONDITION DISCLOSURE STATEMENT ("CDS") [check one]:

☐ Buyer and Seller agree that Seller has Delivered prior to this Contract, a CDS to Buyer, as required by SC Code of Laws Section 27-50-10 et seq. If after delivery, Seller discovers a CDS material inaccuracy or the CDS becomes materially inaccurate due to an occurrence or circumstance, the Seller shall promptly correct this inaccuracy (e.g. delivering a corrected CDS to the Buyer/making reasonable repairs prior to Closing). Buyer understands the CDS does not replace inspections. Buyer understands and agrees the CDS contains only statements made by the Seller. Parties agree the Brokers have met requirements of SC Code 27-50-70 and Brokers are not responsible or liable for any information in the CDS. CDS is not a substitute for the Buyers and Inspectors inspecting the Property (related issues/onsite/offsite) "Property issues" for all needs.

☒ Buyer and Seller agree that Seller will NOT complete nor provide a CDS to Buyer in accordance with SC Code of Law, as amended, Section 27-50-30, Paragraph (13). Buyers have sole responsibility to inspect Property Issues for all their needs.

17. LEAD BASED PAINT/LEAD HAZARDS: If Property was built or contains items created prior to 1978, it may contain lead based hazards and Parties agree to sign "Disclosure of Information of Lead Based Paint and/or Lead Hazards" forms (e.g. SCR315) and give copies to Brokers. Parties acknowledge receiving and understanding the EPA pamphlet "Protect Your Family From Lead in Your Home." For their protection, Buyers should conduct/obtain inspections of all Property issues per their needs.

18. SEX OFFENDER/CRIMINAL INFORMATION: Parties agree that Brokers are not responsible for obtaining or disclosing information in the SC Sex Offender Registry and no course of action may be brought against any Brokers for failure to obtain or disclose sex offender or criminal information. Buyer and Seller agree that they have sole responsibility to obtain their own sex offender, death, psychological stigma, clandestine laboratory, and crime information from sources (e.g. law enforcement, P.I., web). The Buyer may obtain information about the Sex Offender Registry and persons registered with the Registry by contacting the local county Sheriff or other appropriate law enforcement officials.

19. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION: According to the South Carolina Real Estate Commission regulations and South Carolina laws, any interest earned from deposit to Closing on Buyer's earnest money deposit belongs to Buyer. It is understood that Broker ☒ may ☐ may not place deposited earnest monies into an interest bearing trust account. If Buyer's earnest money deposit is deposited into an interest bearing trust account, Parties agree that Broker will retain all interest earned in said account and may contribute some or all to a charitable enterprise.

20. SC INCOME TAX ON NON-RESIDENT GAIN AND COMPLIANCE AND USA FEDERAL INCOME TAX: Seller and Buyer will comply with the provisions of South Carolina laws (e.g. 12-8-580 (as amended)) regarding state income tax withholding requirements if the Seller is not a resident or has not filed South Carolina state income tax returns. Seller and Buyer will comply with United States of America federal income tax laws. Seller and Buyer should discuss tax laws and minimization actions with their qualified tax advisor. Parties will comply with all local, state, federal laws, and any rules.

21. ENTIRE AND BINDING AGREEMENT (MERGER CLAUSE): Parties agree that this Contract expresses the entire agreement between the parties, that there is no other agreement, oral/otherwise, modifying the terms; and this Contract is binding on Parties and principals, heirs, personal representatives, successors, and assigns. Illegal provisions are severable.

22. ADJUSTMENTS: Buyer and Seller agree to settle or prorate, annually or as appropriate; as of Closing Date: (A) utilities and waste fees Issued after Closing which include service for time Property was owned/occupied by Seller (B) real estate taxes and owner association fees/assessments for the calendar year of Closing (C) any rents, deposits, fees associated with leasing (D) insurance, EMS service, fuel/consumables, and assessments. Closing Attorney shall make tax proration based on the available tax information deemed reliable by the Closing Attorney. Should the tax or tax estimate or proration later become inaccurate or change, Buyer and Seller shall make any financial adjustments between themselves once accurate tax information is available and Buyer takes timely reasonable steps to minimize taxes. This section survives Closing. Buyer is solely responsible for timely and reasonably minimizing the Buyer's taxes and obtaining tax minimization procedural information including related legal counsel and financial counsel. Special assessments approved prior to Closing shall be the responsibility of the Seller. Special Assessments approved after Closing shall be the responsibility of the Buyer.

23. DEFAULT:

(A) If Seller defaults in the performance of any of the Seller's obligations under this Contract ("Default"), Buyer may:

- (i) Deliver Notice of Default to Seller and terminate Contract; and
- (ii) Pursue any remedies available to Buyer at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Seller found in default/breach of Contract.

(B) If Buyer defaults in the performance of any of the Buyer's obligations under this Contract ("Default"), Seller may:

- (i) Deliver Notice of Default to Buyer and terminate Contract; and
- (ii) Pursue any remedies available to Seller at law or equity; and
- (iii) Recover attorneys' fees and all other direct costs of litigation if Buyer found in default/breach of Contract.

[mk] BUYER [] BUYER [RS] SELLER [JD] SELLER
 [] BUYER [] BUYER [] SELLER [] SELLER
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1/2020 FORM 310 PAGE 6 of 9

(C) If either/both Parties default, Parties agree to sign an escrow deposit disbursement agreement or release agreement.
 (D) Parties may agree in writing to allow a Cure Period for a default. If within the Cure Period, either Party cures the Default and Delivers Notice, Parties shall proceed under the Contract.

24. MEDIATION: To potentially avoid expensive/lengthy/uncertain litigation, Parties may voluntarily/cooperatively decide which mediator to hire, how to pay the mediator, where to meet for mediation talks, and their own settlement agreement. Mediators do not decide settlement outcomes (Parties decide). Mediators merely facilitate the Parties reaching their own settlement and documenting settlement. Parties agree to attempt mediation for any dispute, claim, breach, representations made by any Party. Broker/other (e.g. concealment, misrepresentation, negligence, fraud) or service issues related to this Contract by using the National Association of REALTORS® Mediation Dispute Resolution System 803-772-5206 or www.NAR.REALTOR/policy/mediation or www.screaltors.org/mediation. Parties agree that the duty to attempt mediation survives closing and any signed mediation settlement agreement is binding. Parties agree some matters may proceed without mediation (e.g. foreclosure, action to enforce a mortgage or deed of trust or "rent to own" agreement, unlawful detainer action, file/enforce mechanic's lien, probate issues, interpleader action on earnest money). Parties agree some matters are not a waiver of mediation nor a breach of duty to attempt mediation (e.g. filing judicial action enabling recording notice of pending action, order for attachment/receivership/injunction or other provisional remedies).

25. NON-RELIANCE CLAUSE (NOT A MERGER CLAUSE NOR EXTENSION OF A MERGER CLAUSE): Parties execute this Contract freely and voluntarily without reliance upon any statements, representations, inducements, promises, or agreements by Brokers or Parties except as expressly stipulated or set forth in this Contract. If not contained herein, such statements, representations, inducements, promises, or agreements shall be of no force or effect. Parties acknowledge that Brokers are being retained solely as licensed real estate agents and not as any attorney, tax/financial advisor, appraiser, surveyor, engineer, mold or air quality expert, home inspector, or other professional service provider.

26. BROKER DISCLAIMER: Parties acknowledge that Brokers give no warranties or representations of any kind, expressed or implied as to: (1) condition of the Property, including but not limited to termites, radon, mold, asbestos, moisture, environmental issues, water, waste, air quality, HVAC, utilities, plumbing, electrical or structure, etc. (2) condition of the Property, survey or legal matters, square footage (3) off site conditions (4) schools (5) title including but not limited to easements, encroachments, projections, encumbrances, restrictions, covenants, setbacks, and the like (6) fitness for a particular purpose of the Property or the improvements (7) zoning ordinances and restrictions (8) projected income, value, marketability, taxes, insurance, or other possible benefits to Buyer. Parties consent that their Brokers may communicate with them via any means; and use or disclose information not made confidential by written instruction of Parties.

27. BROKERS COMPENSATION: Parties direct Closing Attorney to use settlement funds to collect and disburse Brokers Compensation to Brokers in accordance with agreements and document compensation on the settlement statement. If a Party disputes Brokers Compensation, that Party agrees to retain a South Carolina law firm to escrow only the disputed amount of Brokerage Compensation until the dispute is resolved by a written agreement signed by that Party and the Affected Broker, arbitration award, or court order. Party requesting the escrow shall pay all costs for escrow. If the dispute is not resolved within 180 days of Closing, the escrow shall be disbursed to the Broker. Parties agree that Brokers are third party beneficiaries to this Contract and have standing to seek remedies at law and equity. Parties represent that their only enforceable agency and/or non-agency agreements are with the Brokers disclosed in this Contract. Parties consent to Brokers possibly receiving compensation from the HWC and/or others if compensation is paid in accordance with laws and REALTOR® ethics.

28. ATTACHMENTS, OTHER CONTINGENCIES, TERMS, AND/OR STIPULATIONS: There may be attachments to this Contract. The most recent changes, amendments, attachments, contingencies, stipulations, addendum, additions, exhibits, or writings, agreed to by the Parties; is evidence of the Parties' intent and agreement and shall control any Contract language conflicts. Parties shall initial and date Contract changes. If any documents are attached as addenda, amendments, attachments, or exhibits considered part of this Agreement, such documents can be further identified or described here (e.g. SCR 390, 391, 503, 504, 315, 320, 393, 370, 375, 513, 610): Contingent on Receipt of preliminary or final Septic Permit

29. NOTICE AND DELIVERY: Notice is any unilateral communication (e.g. offers, counteroffers, acceptance, termination, unilateral requests for better terms, and associated addenda/amendments) from one Party to the other. Notice to/from a Broker representing a Party is deemed Notice to/from the Party. All Notice, consents, approvals, counterparts, and similar actions required under Contract must be in paper or electronic writing and will only be effective as of delivery to the Notice address/email/fax written below and awareness of receipt by Broker ("Delivered") unless Parties agree otherwise in writing.

[mk] BUYER [] BUYER [AK] SELLER [JDJ] SELLER
 [] BUYER [] BUYER [] SELLER [] SELLER
 HAVE READ THIS PAGE [PBJ]

1/2020 FORM 310 PAGE 7 of 9

237

Robert Young/The Boulevard Co. LLC.

Buyer's Agent/Company

ryoungcofc@yahoo.com

Buyer's Agent's Email Address

Susan Heyer / Carolina One Real Estate

Seller's Agent/Company

sheyer@carolinaone.com

Seller's Agent's Email Address

Robert Young License #114284 Office Code# 8040RR

Buyer's Agent License #/LLR Office Code

(843)806-3684

Buyer's Agent Telephone Number

80767 / 2466

Seller's Agent License #/LLR Office Code

843-901-2428

Seller's Agent Telephone Number

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[MK] BUYER [] BUYER [OK] SELLER [DS] SELLER
[] BUYER [] BUYER [] SELLER [] SELLER
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1/2020 FORM 310 PAGE 9 of 9

EXHIBIT B

Deposition of Marc Knapp

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

DEPOSITION OF MARC KNAPP

MARC K. KNAPP,

Plaintiff,

Case No. 2022-CP-10-1958

vs.

JAMES DOUGLAS JENKINS, IV; PETER BARNWELL
JENKINS; and ALICIA J. ROY,

Defendants.

DEPONENT: MARC KNAPP

DATE: December 7, 2022

TIME: 2:00 p.m.

LOCATION: The Richter Firm, LLC
Mt. Pleasant, SC 29464

REPORTED BY: DARAH BOLEN, RPR, CSR(IA)
CLARK BOLEN
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM
Darah@Clark-Associates.com

1 A. I don't see where it says, after the X
2 is, anything after that would make it, you know,
3 contingent. I mean, I would have -- think that
4 they would have struck out "not," but that's what
5 my understanding was.

6 Q. That the -- your -- I didn't completely
7 understand your answer, so tell me what --

8 A. The X was -- I didn't like the language
9 they used, but the X is that it is contingent
10 even though it doesn't say that.

11 Q. So is it your position that the contract
12 is or is not contingent on --

13 A. It is contingent.

14 Q. When you see the check, do you see that
15 X next to the box that says, Is?

16 A. Right.

17 Q. And so you agree with me that the
18 contract is contingent on financing?

19 A. Yes, sir.

20 Q. On or before February the 24th of 2022,
21 did you obtain a purchase money loan at
22 reasonable prevailing market rates with an 80
23 percent price or appraised value?

24 A. Yes, sir.

25 Q. From whom did you obtain that?

1 A. Well, my daughter was -- had an AgSouth
2 loan, and I also -- at the beginning, I had a
3 backup with Ken Koos.

4 Q. Anybody else?

5 A. Not at that time, no. I was working on
6 two or three different ones.

7 Q. And who are the two or three different
8 ones?

9 A. One was First Citizens and the other
10 was -- what the hell is their name? I can't
11 remember. It's like Veterans --

12 Q. My Veterans United?

13 A. That sounds like it.

14 Q. And you said Ken Koos?

15 A. Yes, sir.

16 Q. So on February 24th, 2022, as I
17 understand it, your approvals for -- the somebody
18 who is going to provide you 80 percent was a loan
19 to your daughter from AgSouth?

20 A. Yes, sir.

21 Q. And then a backup loan from Ken Koos?

22 A. Correct.

23 Q. Let's talk about the AgSouth loan.

24 Mr. Knapp, I'm handing you what has been marked
25 as Exhibit Number 2. Can you tell me what this

1 over the years that I'm the kind of person that
2 just does things, and they told me, Hey, we
3 have -- one of my girls blurted it out. There
4 was something that they thought I was going to
5 do, and they said, Not Dad. And it just stuck.
6 It actually was, you know, viable at the
7 Secretary of State's office.

8 Q. In your responses to our
9 interrogatories, you also -- you mentioned that
10 -- also in our discussion My Veterans United and
11 First Citizens Bank. When did you apply for
12 financing with First Citizens Bank?

13 A. I don't remember.

14 Q. I have seen -- there's been e-mail
15 correspondence that I've seen between the agents
16 for my clients and your agent to the effect of
17 the application was not made until February 22nd.
18 Does that strike a bell?

19 A. Not really without looking at it. I
20 think I've still got the financial forms in my
21 computer, but I just don't really remember
22 exactly when.

23 Q. And your response to the interrogatory
24 is that you applied for a loan with First
25 Citizens and were denied?

1 A. That's my understanding.

2 Q. Did you personally apply for a loan or
3 did somebody else?

4 A. No, I did.

5 Q. How did you come in contact with
6 Mr. Linden [phonetic]?

7 A. Through my attorney.

8 Q. And then let me show you this document.

9 (Exhibit No. 3 marked for
10 identification.)

11 Q. Mr. Knapp, this document was produced to
12 us in discovery as well, and can you tell me what
13 Exhibit 3 is?

14 A. Exhibit 3 looks like a to-do checklist
15 for a purchase.

16 Q. Did you ever receive any kind of
17 preapproval from My Veterans United for purchase
18 of this specific piece of property we're here
19 today about?

20 A. I don't think so.

21 Q. Was your application through My Veterans
22 United for a VA loan?

23 A. Yes, sir.

24 Q. Is it your understanding that VA loans
25 can be used to buy raw land?

1 A. Well, I found out it's not.

2 Q. So this application that you made to My
3 Veterans United, you acknowledge that the
4 property that we're here about today is raw land
5 and this application would not have gotten you a
6 loan?

7 A. Yeah. They led me down the wrong path.

8 Q. I understand. Thank you. Getting back
9 to our contract. I think we should be able to
10 knock this out quickly.

11 I am going to start on the fourth line
12 down. The first -- second full sentence starts
13 with the word, Buyer.

14 A. What page?

15 Q. We're on Exhibit Number 1, page 3,
16 paragraph 7.

17 A. Okay.

18 Q. You see the word buyer there fourth line
19 down?

20 A. Yep.

21 Q. Follow along with me, and tell me if I
22 read this correctly. Buyer must make timely good
23 faith efforts to apply for and obtain financing
24 while refraining from contrary actions. In a
25 timely manner, buyer shall inform seller and

1 brokers of pertinent financing issues and
2 authorize buyer's lender to disclose pertinent
3 loan information to seller and brokers.

4 Buyer shall apply for financing by
5 January the 10th, 2022, and shall deliver notice
6 to seller of a reasonable prefinal loan approval
7 that contains no unreasonable credit, income, or
8 asset conditions by January the 17th, 2022.

9 Did I read that correctly?

10 A. Yes.

11 Q. Did you apply for financing -- did you,
12 Marc Knapp, apply for financing to purchase the
13 property we're here about today on or before
14 January the 10th, 2022?

15 A. Yes.

16 Q. Which -- with whom?

17 A. Ken Koos.

18 Q. And again, you have no written
19 confirmation from him?

20 A. No, but I can get it from him.

21 Q. Again, please let me -- for both of our
22 sakes, let me -- I know this becomes quite
23 conversational, but for both of our sakes, let me
24 finish my questions first.

25 Did you have -- on or before January the

1 17th of 2022, did you have a reasonable prefinal
2 loan approval?

3 A. Yes, sir.

4 Q. Did you provide that to the sellers?

5 A. I don't know whether I did or not.

6 Q. Did you instruct anybody to do that?

7 A. I don't remember.

8 Q. I haven't seen anything. That's why I'm
9 asking. Let me ask you this. Have you produced
10 everything that you have regarding the
11 transaction in your -- either your interactions
12 or the interactions of your attorney or real
13 estate agent in order to provide -- to show
14 that -- your compliance with the terms of the
15 contract that is Exhibit Number 1?

16 A. No. We did it verbally.

17 Q. You did what verbally?

18 A. Verbally. Between Koos and myself and
19 the attorney.

20 Q. That's Mr. Adler?

21 A. Yes, sir.

22 Q. I'm asking you, did you provide to the
23 Jenkins family, the sellers, any preapproval
24 prior to January 17th -- on or before
25 January 17th showing that you had been approved

1 for a loan?

2 A. I don't believe so. I was still working
3 with some folks.

4 Q. Who else were you working with?

5 A. First Citizens. And then of course they
6 let me know that, when I finally got ahold of the
7 guy that was on vacation, that My Veterans was --
8 said, We don't know what we do for raw property.
9 I said, What do you mean?

10 I mean, the thing you gave me says
11 preapproval completed December 30th. That's when
12 he was on vacation and I couldn't get him to call
13 me back, and no one could answer the question.

14 Q. You're talking about the My Veterans
15 United loan application that you made?

16 A. Yes, sir.

17 Q. Did you receive any kind of preapproval
18 from My Veterans?

19 A. Just this one thing saying completed the
20 30th of December.

21 Q. Is it your understanding that Exhibit
22 Number 3 is an actual preapproval?

23 A. No. It said they wanted some more
24 information, but they said it's got check --
25 start your preapproval, and they say completed

1 A. My guess is 640, 670.

2 Q. Do you carry a bunch of debt? Are you
3 currently indebted to other people?

4 A. No. The 11 went to a 7.

5 Q. So that was a Chapter 7 bankruptcy?

6 A. Yes, sir.

7 Q. So total liquidation, as I understand
8 it?

9 A. Yes, sir.

10 Q. Do you own your home?

11 A. No. We're renting right now.

12 Q. Going back to -- so I just want to make
13 sure I'm clear. As of January 17th, 2022, did
14 you have any written preapproval letter from any
15 lender showing that they were ready, willing, and
16 able to provide you the funding to buy the
17 property?

18 A. No written letter, no.

19 Q. Back to paragraph 7 of Exhibit Number 1,
20 the contract, if I can get you to follow along.
21 Ten lines down where the sentence begins with the
22 word, If.

23 A. I must not be looking at the right line.
24 Where is the "if"?

25 Q. It's right under the big bold

1 January 17th.

2 A. Oh, okay. Yes.

3 Q. Are you with me now?

4 A. Yes.

5 Q. Tell me if I read this correctly. If
6 the buyer changes their lender during the
7 financing period, they must notify the seller in
8 writing within seven calendar days.

9 Did I read that correctly?

10 A. Yes, sir.

11 Q. You testified to multiple lenders that
12 you had interactions with. Did you notify the
13 Jenkins that you had changed those lenders during
14 your financing period?

15 A. No, sir.

16 Q. The next sentence, tell me if I read
17 this correctly, Absent written approval by the
18 seller, buyer cannot change lender if the closing
19 date agreed upon in paragraph 4 will change as a
20 direct result.

21 Did you get permission from the sellers
22 to change lenders?

23 A. Well, I didn't have a lender at that
24 point except Ken.

25 Q. Fair enough. The next sentence, tell me

1 if I read this correctly, If a lender
2 subsequently declines or fails to approve
3 financing, the buyer shall notify the seller and
4 brokers as soon as possible. If the seller and
5 brokers are notified of inability to obtain
6 financing during the financing period, either
7 party may terminate this contract by notice.

8 Did I read that correctly?

9 A. Yes, sir.

10 Q. And you testified a few minutes ago that
11 you had been rejected by First Citizens.

12 A. Right.

13 Q. And as I understand it, you also had a
14 rejection by My Veterans United because it was
15 the kind of property they wouldn't lend money on,
16 right?

17 A. Correct.

18 Q. Did you tell the sellers about either of
19 those rejections?

20 A. I don't believe so.

21 Q. Would you agree with me that what you
22 agreed to in paragraph 7 is to tell the sellers
23 about those rejections?

24 A. Yeah, but I told my agent.

25 Q. Well, your agent speaks for you, right?

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

**JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,**

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

**PLAINTIFF'S MOTION PURSUANT
TO RULE 59, SCRPC**

**TO: THE HONORABLE MIKELL R. SCARBOROUGH CHARLESTON COUNTY MASTER IN EQUITY AND
DAVID K. HALLER, COUNSEL FOR THE ABOVE NAMED DEFENDANTS**

On December 12, 2022, this Court filed its Form 4 Order granting the Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure (the "Order"). A filed copy of the Order is attached hereto as **Exhibit A**. Pursuant to Rule 59, SCRPC, the Plaintiff Marc K. Knapp hereby moves this Court to alter or amend its judgment and he specifically raises issues not ruled upon in the Order.

The Order dismisses the Plaintiff's lawsuit pursuant to Rule 12(b)(6) based on a misinterpretation of paragraph 4 and paragraph 8 of the real estate contract attached as Exhibit A to the Plaintiff's Complaint (the "Contract"). Paragraph 4 provides that "Seller agrees to convey marketable title..." and paragraph 8 provides that "All Parties agree that the Property is being sold "As-Is". Under South Carolina law, "marketable title is one free from encumbrances and any reasonable doubt as to its validity." *Gibbs v. G.K.H., Inc.* 311 S.C. 103, 105, 427 S.E.2d 701, 702 (Ct. App. 1993). "It is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept." *Id.* "If there is a reasonable probability of litigation with respect to the title, it is unmarketable." *See Sanders v. Coastal Capital Ventures, Inc.*, 296 S.C. 132, 134, 370 S.E.2d 903, 905 (Ct. App. 1988). There appears to be no precedent in the South Carolina case law as to the application of "As-Is" language in a contract for the purchase and sale of unimproved land, as entered into by the Plaintiff and Defendants.

This motion incorporates the evidence and law previously presented to this Court in the Plaintiff's filing in this case, as well as oral argument (*See Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772 (2004)) and also the following:

ARGUMENTS/LAW

I. The Court Applied the Incorrect Standard of Review for Defendant's Motion to Dismiss Pursuant to SCRCP 12(b)(6).

Respectfully, the Order is founded on a ruling that did not meet the standard of review for a motion to dismiss under SCRCP 12(b)(6). Generally, in considering a Rule 12(b)(6), SCRCP, motion to dismiss, the trial court must base its ruling solely upon allegations set forth on the face of the Complaint. *Doe v. Greenville County School Dist.*, 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). A Rule 12(b)(6) motion is addressed solely to the sufficiency of the allegations in the Complaint. *Toussaint v. Ham*, 292 S.C. 415, 357 S.E.2d 8 (1987). A motion to dismiss pursuant to Rule 12(b)(6) must be based solely on the allegations set forth in the Complaint and must presume all well-pled facts to be true. *Gressette v. S.C. Elec. & Gas Co.*, 370 S.C. 377, 379, 635 S.E.2d 538, 538-39 (2006). "[U]nder our current pleading rules only ultimate facts are required to be stated in pleadings. Ultimate facts are those which the evidence upon trial will prove, and not the evidence which will be required to prove those facts." *Brown v. Inv. Mgmt. & Research, Inc.*, 323 S.C. 395, 400 n. 3, 475 S.E.2d 754, 756 n. 3 (1996).

If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. *Clearwater Tr. V. Bunting*, 367 S.C. 340, 343, 626 S.E.2d 334, 335 (2006); *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999). "Furthermore, the complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Spence v. Spence*, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). Further, dismissal under Rule 12(b)(6) is inappropriate if the pleadings raise novel questions of law. *Chestnut v. AVX Corp.*, 413 S.C. 224, 228, 776 S.E.2d 82, 84 (2015); *Madison v. Am. Home Prod. Corp.*, 358 S.C. 449, 451, 595 S.E.2d 493, 494 (2004). All pleadings shall be so construed as to do substantial justice to all parties, Rule 8(f), SCRCP.

The Court erred in granting the Defendants' motion to dismiss pursuant to Rule 12(b)(6), SCRCP, because the conflicting provisions of paragraph 4 and paragraph 8 of the Contract raise a novel question of law insofar as the conflict of the "As-Is" provision and the Defendants' contractual duty to convey marketable title of a parcel of unimproved land to the Plaintiff. In addition, when the pleadings, and all attachments thereto, are viewed in the light most favorable to the Plaintiff and with every doubt resolved

in his behalf, the complaint states a valid claim for relief and therefore dismissal pursuant to Rule 12(b)(6), SCRCF should not have been ordered, even where the Court doubts the Plaintiff could prevail in the action.

II. The Contract's Terms Are Ambiguous

The general rule states that "[w]hen the language of a contract is clear, explicit, and unambiguous, the language of the contract alone determines the contract's force and effect and the court must construe it according to the plain, ordinary, and popular meaning." *ERIE Ins. Co. v. Winter Const. Co.*, 393 S.C. 455, 461, 713 S.E.2d 318, 321 (Ct. App. 2011). It would appear that in making its Order, the Court did not construe the Contract's language according to its plain, ordinary, and popular meaning. At the hearing on the Defendants' motion to dismiss, paragraph 4 and paragraph 8 of the Contract were read by the Court and the Court found that the "As Is" provision controlled and by its operation nullified the Defendants' obligation to convey marketable title. Based on the Court's reading of the Contract the requirement that the Seller convey marketable title was not in conflict with the "As-Is" provision. And the Contract is unclear as to whether the "As-Is" provision is limited to matters involving improvements to the property subject to the Contract or also contemplates applying to title matters. The ambiguity reveals itself in paragraph 8 as it specifically makes reference to the property being sold "...subject to normal wear without repair or replacement..." which appears to imply that "As-Is" is limited to the condition of improvements on the real estate subject to the Contract. This is material to the determination of contractual ambiguity because the real estate being sold subject to the Contract is unimproved.

The term "As-Is" is reasonably susceptible to more than one interpretation when paragraph 8 is read in conjunction with paragraph 4 of the Contract. "Whether a contract is ambiguous must be determined from the entire contract and not from any isolated clause of the agreement." *Farr v. Duke Power Co.*, 265 S.C. 356, 362, 218 S.E.2d 431, 433 (1975). "A contract is ambiguous when the terms of the contract are susceptible to more than one interpretation." *South Carolina Dept. of Natural Res. V. town of McClellanville*, 345 S.C. 617, 623, 550 S.E.2d 299, 302 (2001). "Whether a contract is ambiguous is a question of law for the court." *Auten v. Snipes*, 370 S.C. 664, 669, 636 S.E.2d 644, 646 (Ct. App. 2006). "The uncertainty in interpretation can arise from the words of the instrument, or in the application of the words to the object they describe." *Hann v. Carolina Cas. Inc. Co.*, 252 S.C. 518, 524, 167 S.E.2d 420, 422 (1969). (Cited precedent taken from *Pee Dee Stores, Inc. v. Doyle*, 672 S.E.2d 799, 803 (S.C. App. 2008).

The Court erred in finding that the Contract was unambiguous because when read in its entirety, there is uncertainty in the application of the words used in the Contract to the object those words describe. There is no language in the Contract that electing to sell the subject property "As-Is" nullifies the Defendants' contractual obligation to convey marketable title. However, the Contract does use

language in paragraph 8 that would indicate "As-Is" relates to improvements, specifically: the use of the terms "repair and replacement" which would seem to indicate the "As-Is" provision is meant to apply to improvements only and does not relate back to paragraph 4 and the Defendants' obligation to convey marketable title.

CONCLUSION

The Contract has terms that clearly conflict with each other and are susceptible to more than one interpretation. It was error for the Court to grant the Defendants' motion to dismiss where the Plaintiff's pleadings allege the Defendants' could not convey marketable title, and raised a novel question of law: the relationship of paragraph 4 and paragraph 8 of the Contract. To resolve the novel question of law would have required looking at the "...parties' intent, the circumstances known to the parties at the time, and all other pertinent extrinsic evidence." See *Pee Dee Stores, Inc.* 672 S.E.2d at 804. To make such inquiry would have been outside the scope of a hearing on a motion to dismiss pursuant to Rule 12(b)(6), SCRPC.

The Plaintiff respectfully request that the Court vacate its Order and allow the parties to go forward with discovery.

Pursuant to Rule 11, SCRPC, counsel certifies that there is no duty of consultation connected with the filing of this motion.

Respectfully submitted,

/s/ F. Miles Adler

F. Miles Adler
SC Bar No.: 70238
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
miles@adlerlaw.partners

Pawleys Island, South Carolina

EXHIBIT A – Form 4 Order

22 CP 10 1958

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1001958

Marc K Knapp
PLAINTIFF(S)

James Douglas Jenkins, IV et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on Defendant's 12(b)(6) Motion to Dismiss. The Court GRANTS the Defendant's Motion pursuant to the terms of the contract and cancels the Lis Pendens from the property. As such, the Motion to Quash Subpoena is rendered moot and hereby withdrawn.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/12/2022.

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No. 2022-CP-10-1958
Marc K. Knapp,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	DEFENDANTS' MOTION FOR
	)	AN AWARD OF FEES, COSTS,
	)	AND SANCTIONS
James Douglas Jenkins, IV, Peter Barnwell	)	
Jenkins, and Alicia J. Roy	)	
	)	
Defendants.	)	
	)	

TO: N. MILES ADLER, ESQ., ATTORNEY FOR THE PLAINTIFF

YOU WILL PLEASE TAKE NOTICE that defendants James Douglas Jenkins, IV, Peter Barnwell Jenkins, and Alicia J. Roy, will move, in ten days at the Charleston County Courthouse, or at such other time and place as the Court deems proper, for an order awarding attorney fees and costs to the defendants. The grounds for the motion are that Paragraph 23(A) of the Residential Purchase and Sale Agreement provides for an award of attorney's fees and costs for the successful party. By the Court's grant of summary judgment on the plaintiff's contract claims, the defendants are the successful party.

Further, defendants seek an award of fees, costs, and sanctions against N. Miles Adler pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-100, et seq. The grounds for the motion are that, summary judgment having been granted, the case is frivolous as a matter of law and no reasonable lawyer would have brought the action for a legitimate purpose. Knapp testified the purpose of this suit was to force the Jenkins to lower the sales price, which matches his inability to find funding for the purchase. Moreover, the record before the court shows that Adler was a willing participant in the plaintiff's breaches of the

contract, including direct involvement in attempting to find financing after the date in the contract, misleading the parties before suit about the status of financing, and taking factual positions related to title to the property that conflicted with the plain face of then public record. The misconduct of plaintiff's counsel caused direct damage to the defendants in the delayed sale of their property. Mr. Adler was warned that continued prosecution of the case would lead to the defendants seeking sanctions against him. Accordingly, sanctions are appropriate against Mr. Adler together with referral of his actions to the South Carolina Commission on Lawyer Conduct to stymie and deter frivolous claims such as this in the future.

WHEREFORE the defendants prays for the relief requested herein and such other relief as the Court deems just, prudent, and proper.

s/ David K. Haller
David K. Haller, Esq.
HALLER LAW FIRM
604 Savannah Highway
Charleston, South Carolina 29407
(843) 224-7860
dhaller@hallerlawfirm.com
Attorneys for the Defendant

January 24, 2023

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	Case No. 2022-CP-10-1958
Marc K. Knapp,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
James Douglas Jenkins, IV, Peter Barnwell	)	
Jenkins, and Alicia J. Roy	)	
	)	
Defendants.	)	

AFFIDAVIT OF ATTORNEYS FEES OF DAVID K. HALLER, ESQ.

PERSONALLY appeared before me David K. Haller who deposes as follows:

1. I am an adult and competent to make the statements contained in this affidavit. The statements made herein are of my own personal knowledge or belief.
2. I graduated from the University of South Carolina in 1994 with a Bachelor of Arts in political science. I am the 1994 recipient of the University's highest student honor, the Algernon Sydney Sullivan Award, which is presented to students who exemplify high character, scholarship, community service, and leadership.
3. I received my law degree from USC in 1997, and was admitted to the South Carolina Bar that year. I am in good standing with the South Carolina Bar, the United States District Court for the District of South Carolina, and the Fourth Circuit Court of Appeals. I served as law clerk for the Honorable Howard P. King, Resident Judge for the South Carolina Third Judicial Circuit (retired) until 1998. Thereafter, I began practicing law in Charleston County with The Richter Firm, P.A. In 2000, I became a principal in Richter & Haller, LLC. I have practiced with The Haller Law Firm since 2007.

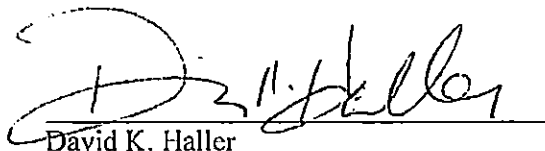
4. I focus my practice on complex business and probate litigation, and have appeared in the courts of South Carolina at each level. Among other cases, I was counsel for the plaintiffs in the case of *Johnson v. Collins Entertainment*, which has been credited with ending video poker in South Carolina. I was also co-class counsel for the plaintiffs in *Doe v. Diocese of Charleston*, a case involving the sexual abuse of minors by agents of the Catholic Church, which yielded a \$12 million settlement. I have successfully represented other clients in a variety of cases involving legal and medical malpractice, personal injury, wrongful death, class action, anti-trust and business tort claims in state and federal courts throughout the southeast United States.
5. I am rated Preeminent by Martindale-Hubbell and have been included in the Legal Elite of the Lowcountry for 2018 through 2022 in business litigation. I am co-author of, *What You Don't Say Can Hurt You: The Duty of Repair and Maintenance in the Commercial Setting*, South Carolina Lawyer Magazine, at 14 (July 2010).
6. I was the first director of Camp Jenny, a summer camp experience for under-privileged children from inner-city Atlanta. Today, Camp Jenny is recognized as the pinnacle community service project in Reform Judaism. I also have served on a number of boards and in volunteer positions in the greater Charleston area.
7. In addition to maintaining my legal practice, I served as an adjunct professor of law at the Charleston School of Law, teaching Legal Writing and Equity and Equitable Remedies.
8. My reported cases include, but are not limited to: *Johnson v. Collins Entertainment Co., Inc.*, 349 S.C. 613, 564 S.E.2d 653 (2002); *Atwood Agency v. Black*, 374 S.C. 68, 646 S.E.2d 882, (2007); *Federal Financial Co. v. Hartley*, 380 S.C. 65, 668 S.E.2d 410, (2008); *Robinson v. Code*, 384 S.C. 582, 682 S.E.2d 495 (Ct. App. 2009); *Ex parte Doe*, 393 S.C.

147, 711 S.E.2d 892 (2011); *Crawford v. Central Mortgage Co.*, 404 S.C. 39, 744 S.E.2d 538 (2012); and *Lyons v. Fidelity National Title Ins. Co.*, 415 S.C. 115, 781 S.E.2d 126 (Ct. App. 2016)(vacated by settlement).

9. I am counsel for the Defendants in the above matter. My normal hourly rate for matters of this type is \$400.00, which I believe is similar for lawyers of like background and experience in the Charleston area. I have spent 62.1 hours of time on this action. In addition, my paralegal time spent 10.8 hours of time at which the Jenkins were billed \$125 per hour.
10. The Jenkins were able to find a back-up contract to mitigate the damage causes by Knapp, which was contingent on cancellation of the *lis pendens* filed by Knapp on the Property. Because of this, the defense of this action was accelerated and aggressive. The value of the property is \$285,000, and the Jenkins wanted to be done with the lawsuit so not to incur more fees than necessary.
11. In support of the court's review of the reasonableness of the award, I call the Court's attention to settlement discussions in this matter. Despite the lawsuit, which is frivolous as a matter of law, the Jenkins family was willing to close on the sale with Knapp at the contract price in June of 2022. In this settlement, the Jenkins family would have been responsible for the fees incurred by them and no further fees would have been incurred by either party. Knapp refused to close. See Exhibit A. But for Knapp's refusal to buy the property in June of 2022, even in the face of his demand for specific performance, the Jenkins would not have incurred the fees and costs they seek now.

12. The Jenkins family has incurred \$1,916.56¹ in court related costs. I believe an award of attorney's fees and costs in the amount of \$28,106.56 is fair and reasonable.

FURTHER THE AFFIANT SAYETH NOT!


David K. Haller

SWORN TO AND SUBSCRIBED BEFORE ME

This 24 day of January, 2023


Notary Public of South Carolina

My Commission Expires: 11/4/2032

¹ The costs incurred were \$85.00 for service of process of a subpoena to First Citizens, \$25.00 for their motion to cancel lis pendens, \$25 for their motion to dismissal, \$25 for their motion for summary judgment, and \$1,456.56 to Veritext for the deposition of the plaintiff and \$300 for the court reporter for the hearing.

EXHIBIT A

From: miles.adlerlaw.partners miles@adlerlaw.partners
Subject: Knapp v Jenkins
Date: June 13, 2022 at 5:52 PM
To: David K. Haller dhaller@hallerlawfirm.com

David, I spoke to my client and he needs to call a family meeting tonight to confirm they are willing to close at the contract price. The issue is the amount of expense incurred to get to this point. The feeling is that it got this far through no fault of the buyer. Just thinking out loud here, but it might make sense to take it out of the realtors' commission.

I did confirm the mortgage lender can close very quickly and is ready and I also confirmed my client has the cash on hand needed to close.

In either event, I was told that tomorrow I will have my marching orders. Stand by for now.

F. Miles Adler
ADLER LAW
T: 843.314.3204
M: 843.685.3311
miles@adlerlaw.partners
www.adlerlaw.partners

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From: David K. Haller dhaller@hallerlawfirm.com
Subject: Re: Knapp v Jenkins
Date: June 13, 2022 at 5:55 PM
To: miles.adlerlaw.partners miles@adlerlaw.partners

Miles:

I will wait to hear from you, but I know my folks will say the same thing about extra costs and fees. If everyone closes quickly, we save money rather than suing over fees.

Thanks for your time today,

David



David K. Haller

604 Savannah Highway, Charleston, South Carolina 29407

843-224-7860

www.dhallerlawfirm.com

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Charleston Business Magazine Legal Elite- Business Litigation 2018, 2019, 2020, 2021

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On Jun 13, 2022, at 5:52 PM, miles.adlerlaw.partners <miles@adlerlaw.partners> wrote:

David, I spoke to my client and he needs to call a family meeting tonight to confirm they are willing to close at the contract price. The issue is the amount of expense incurred to get to this point. The feeling is that it got this far through no fault of the buyer. Just thinking out loud here, but it might make sense to take it out of the realtors' commission.

I did confirm the mortgage lender can close very quickly and is ready and I also confirmed my client has the cash on hand needed to close.

In either event, I was told that tomorrow I will have my marching orders. Stand by for now.

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From: miles.adlerlaw.partners miles@adlerlaw.partners
Subject: Knapp v Jenkins et al
Date: June 20, 2022 at 6:18 AM
To: David K. Haller dhaller@hallerlawfirm.com

David, following up on our conversations from last week. I am confirming that Mr. Knapp has instructed me to withdraw the settlement proposal.

F. Miles Adler
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M: 843.685.3311
miles@adlerlaw.partners
www.adlerlaw.partners

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ELECTRONICALLY FILED - 2023 Jan 24 5:14 PM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Civil Action No.: 2022 CP 10 01958

PLAINTIFF'S SUPPLEMENT TO MOTION
PURSUANT
TO RULE 59, SCRPC

**TO: THE HONORABLE MIKELL R. SCARBOROUGH CHARLESTON COUNTY MASTER IN EQUITY AND
DAVID K. HALLER, COUNSEL FOR THE ABOVE NAMED DEFENDANTS**

The Plaintiff Marc K. Knapp hereby files this Supplement (the "Supplement") to his Motion Pursuant to Rule 59, SCRPC, filed 18 December 2022 (the "Motion to Reconsider") with the Master-in-Equity for Charleston County, South Carolina. The Motion to Reconsider asked the Master-in-Equity to reconsider its Form 4 Order dismissing the Plaintiff's Complaint pursuant to Rule 12(b)(6), *South Carolina Rules of Civil Procedure* (the "First Order"). On 24 January 2023 the Master-in-Equity then signed a detailed order granting Summary Judgment on the same motion addressed by the First Order (the "Second Order"). The Second Order was filed on 24 January 2023. As set forth in more detail below, the First Order and the Second Order conflict in several material and irreconcilable ways. This Supplement is being filed to preserve the issues resulting from the conflict as well as to preserve the issues raised in the Second Order, which go far beyond what was ordered in the First Order and beyond what was argued at the hearing on the Defendants' Motion to Dismiss that resulted in the First Order and Second Order.

The Plaintiff makes reference to its Motion to Reconsider and incorporates all arguments made therein to this Supplement.

Accordingly, the Plaintiff moves the Master-in-Equity for an Order to alter, amend, or reconsider its ruling and grant the relief requested in this Supplement and the Motion to Reconsider.

STANDARD OF REVIEW

Rule 59(e), SCRPC, allows a court to alter or amend a judgment upon a party's timely motion. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to

reconsider or rule on it.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). “A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* (emphasis in original).

PROCEDURAL HISTORY

The relevant filings in this case are as follows. On 28 April 2022, the Plaintiff filed suit against the Defendants James Douglas Jenkins, IV, Peter Barnwell Jenkins, and Alicia J. Roy seeking a declaratory judgment on the interpretation of conflicting provisions in a standard form South Carolina real estate contract (the “Contract”) and specific performance thereunder as well as alleging breach of the Contract. The property subject to the Contract is the “subject property.” On 22 June 2022 the Defendants filed a Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC. On 12 July 2022 the Defendants filed a Motion to Cancel Lis Pendens. On 18 July 2022 the Plaintiff filed his Memorandum in Opposition to the Defendants’ Motion to Dismiss. On 16 August 2022 the Plaintiff filed his Memorandum in Opposition to the Defendants’ Motion to Cancel Lis Pendens. The suit was referred to the Master-in-Equity, Charleston County by Consent Order of Reference filed 21 September 2022. The Defendants then filed an Answer with Counterclaims on 11 October 2022. On 08 November 2022 the Master-in-Equity emailed notice of a hearing on the Defendants’ Motion to Dismiss pursuant to Rule 12(b)(6), docketing it for Monday 12 December 2022. On Friday 02 December 2022 the Defendants filed an Amended Motion to Dismiss and/or for Summary Judgment. The Plaintiff filed an affidavit in opposition to the Defendants’ Motion to Dismiss and Summary Judgment on 09 December 2022 and an Answer to the Defendants’ Answer and Counterclaims on 11 December 2022. On 11 December 2022 the Defendants filed their exhibits for the Hearing.

The Plaintiff served discovery on the Defendants on 01 July 2022 receiving responses on or about 04 October 2022. The Defendants served discovery on the Plaintiff on or about 04 October 2022 and the Plaintiff served his responses to the Defendants’ Requests to Admit on or about 02 November 2022 and served his responses to the Defendants’ Interrogatories and Requests to Produce on or about 30 November 2022. The Plaintiff sat for his deposition by the Defendants’ counsel on 09 December 2022. The Plaintiff has not deposed any parties to this case as of the date of this Supplement.

A hearing on the Defendants’ Motion to Dismiss pursuant to Rule 12(b)(6) was held on 12 December 2022 before the Master-in-Equity for Charleston County, South Carolina (the “Hearing”).

As of the date of the filing of this Supplement the Master-in-Equity has not filed an order or otherwise ruled on the Plaintiff’s pending Motion Pursuant to Rule 59.

ARGUMENTS/LAW

A. Irreconcilable Conflicts Between the First Order and the Second Order

The First Order ordered dismissal pursuant to Rule 12(b)(6), SCRCP and further provided that the order ended the case and was granted pursuant to the terms of the Contract. This is consistent with a 12(b)(6) ruling as the contract the Court references in the First Order is the Contract, it was filed as an exhibit to the Plaintiff's Complaint per Rule 10(c), SCRCP, and therefore the First Order was not based on the Court's consideration of matters outside the pleadings as required by Rule 12(b)(6), SCRCP. *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 603 (1995). The First Order provided that a formal order was to follow. It also cancelled the *lis pendens* and rendered a pending Motion to Quash as moot. The Motion to Quash was filed by the title lawyer representing the Plaintiff in the purchase of the property pursuant to the Contract.

The Second Order, which was prepared by the Defendants' lawyer David H. Haller, ordered dismissal pursuant to Rule 56, SCRCP and without providing any rationale for changing the Court's basis for dismissal from Rule 12(b)(6), SCRCP, to Rule 56, SCRCP, save a reference to the Plaintiff's filing of an affidavit in opposition to the Defendants' Motion to Dismiss and for Summary Judgment. The Second Order also provided for the Court to retain jurisdiction to award attorney's fees and costs and that the case may continue for the Defendants to pursue their counterclaims. The Second Order did not end the case. It is in the Court's discretion as to whether to treat a motion made pursuant to Rule 12(b)(6) as a Rule 56 motion for summary judgment, not counsel. See Rule 12(b)(6), SCRCP. Mr. Haller's assertion in the Second Order is made with no legal foundation and serves, at best, as nothing more than a *non sequitur*. The Plaintiff would respectfully ask the Court to reconcile the conflict between the First Order and the Second Order by vacating the Second Order.

The grounds for vacating the Second Order are (i) that it raises issues not included in the First Order, going far beyond what was argued, and ruled on, at the Hearing insofar as the Second Order does not provide for dismissal based on Rule 12(b)(6) and, unlike the First Order, continues the case. Further, as noted in the procedural history, (ii) the Plaintiff was served the Defendants' Motion for Summary Judgment exactly ten days prior to the hearing set for the Defendants' Motion to Dismiss pursuant to Rule 12(b)(6), SCRCP and the Motion for Summary Judgment was not noticed for 12 December 2022 or otherwise docketed by the Court. As a practical matter, because of the two weekends that fell between 02 December 2022 and 12 December 2022, the Plaintiff only had 5 business days to prepare evidence to rebut the motion for summary judgment. The timing is relevant because the Second Order grants

summary judgment and an entry of summary judgment is proper only after adequate time for discovery. *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). The highly compressed timeline created by Mr. Haller's last minute filing of his motion for summary judgment was prejudicial to the Plaintiff, ultimately resulting in a disposition of the issues on technicalities and not their merits, in contravention of South Carolina policy. *See Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). To get to the merits of the case, at a minimum, the parties would have had to complete discovery and that had not happened prior to the Hearing. It is well settled law that an entry of summary judgment is proper only after adequate time for discovery. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986)). And, per Rule 12(b)(6), SCRCF, after all parties have been given reasonable opportunity to present all material pertinent to a motion for summary judgment. Without discovery it is impossible to present all pertinent information, or to even determine what information is pertinent. As described above, the circumstances leading up to the Hearing rendered it impossible for the Plaintiff to present all pertinent information to the Court at the Hearing.

B. This Case Presents Multiple, Genuine Issues of Material Fact.

B.1. Legal Standard for Summary Judgment

A trial court should not grant a motion for summary judgment when the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any show there is a genuine issue as to any material fact. *Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 58, 518 S.E.2d 301, 304 (1999) (citations omitted). In determining whether any triable issue of fact exists, which will preclude summary judgment, the evidence and all inferences which can be reasonable drawn therefrom must be viewed in the light most favorable to the nonmoving party. *Id.* To be properly supported, a motion for summary judgment must state fully the grounds upon which it is based, and if the motion is to be supported by affidavits, deposition testimony, or other discovery produced, such must be timely noticed to the opposing party. *Rawlinson Road Homeowners Ass'n v. Jackson*, 395 S.C. 25, 716 S.E.2d 337 (Ct. App. 2011).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. *Vermeer Carolina's, Inc.*, 336 S.C. at 58, 518 S.E.2d at 305. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. *Id.* Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. *Id.* "In cases

applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801, 803 (2009).

B.2. The Issues of Material Fact that are in the Record

The following are the disputed factual issues, material to the Plaintiff’s claim:

1. The location of a pin demarcating the northwestern corner of the subject property and the boundary of a cemetery. “[W]hat boundaries are is a matter of law; *where boundaries are is a matter of fact.*” Walther G. Robillard, Donald A. Wilson & Curtis M. Brown, *Evidence and Procedures for Boundary Location* 3 (6th ed. 2011) (emphasis added). South Carolina courts have a lengthy history of treating the location of boundary lines as a matter of fact. See e.g. *Norwood v. Bryant*, 253 S.C. 551, 172 S.E.2d 108 (1970) (“who owned the land between the disputed lines was a jury issue”); *Southern Realty & Inv. Co. v. Keenan*, 99 S.C. 200, 83 S.E. 39 (1914) (weight of evidence of boundary lines); *Manson v. Dempset*, 88 S.C. 193, 70 S.E. 610, 611 (1911) (“The court submitted the following issues to the jury, whose answers appear after each: “(1) How far south from the southern wall of defendant’s residence does the true line between plaintiffs and defendant run?”); *Heyward v. Farmers’ Min. Co.*, 42 S.C. 138, 19 S.E. 963 (1894).

2. The amount of acreage being conveyed as there is a variance between the acreage depicted on the Charleston County tax map, the surveys of the subject property, and the listing for the subject property when it was in MLS.

3. The identity of the persons buried in the cemetery so as to determine whether those descendants claim a right to access the cemetery across the subject property and whether these descendants are related to the Defendants. These facts also bear on whether the Defendants have actual knowledge of the identity of those buried in the cemetery, the boundary of the cemetery, and if the Defendants claimed a legal right to cross the subject property to access the cemetery.

4. What significance, if any, the absence of a cleared path across the subject property to the cemetery bears on the existence of a legally enforceable easement to access the cemetery. This is the position taken by Mr. Haller as argued at the Hearing and as he has written into the Second Order. Mr. Haller is essentially advancing the idea that the absence of an actual path is dispositive as to the legal existence of an easement, conflating facts and law in the process. There is no basis under South Carolina to assert that the absence of a path means there is no legally enforceable easement.

5. Whether the Defendants actively moved to block the Plaintiff’s access to the subject property while the Contract was in force. Any efforts to block the Plaintiff would have caused delay prejudicing the Plaintiff’s ability to obtain information required to identify problems (and resolve them

prior to the Contract closing date) that would impact valuation and to do so within the deadlines stipulated to in the Contract. This is relevant as to who breached the Contract first.

6. What the right of way is that is depicted on a Google Map showing a roadway crossing the subject property and what is the source of the information Google Map drew from to depict the right of way.

7. The testimony of the Defendants regarding the issues set forth above, which is notably absent from the proceedings.

B.3. The Legal Issues that Cannot be Addressed Without Establishing the Facts Enumerated in Section B.2.

1. Whether the Defendants could deliver marketable title to the Plaintiff as required by paragraph 4 of the Contract. "Delivery of marketable title requires title be free of not only defects and encumbrances but also the reasonable probability of litigation." *Jericho State Capital Corp. v. Chi. Title Ins. Co.*, 431 S.C. 437 at 449, 848 S.E.2d 572 at 578 (S.C. App. 2020). An encumbrance is defined "as any weight on the land that lowers its value without conflicting with the passing of the fee." *See Jericho*, 446 citing *Grice v. Scarborough*, 29 S.C.L. (2 Speers) 649, 652-53 (1844). More recent cases have held an encumbrance to be "a right or interest in the land granted 'which may subsist in third persons to the diminution in value of the estate although consistent with the passing of the fee.'" *Truck S., Inc. v. Patel*, 339 S.C. 40, 48, 528 S.E.2d, 424, 428-29 (2000) (quoting *Martin v. Floyd*, 282 S.C. 47, 51, 317 S.E.2d 133, 136 (Ct. App. 1984). The Plaintiff is concerned that the cemetery and access to it may be an encumbrance on the subject property.

2. Whether there was a reasonable probability of litigation concerning access to the cemetery and whether any person has a legally enforceable right to cross the subject property to access the cemetery.

3. Whether there was a reasonable possibility of litigation concerning the proper location of the missing pin marking the northwest corner of the subject property.

4. Whether the Plaintiff or the Defendants breached the Contract first.

5. Whether a title insurance policy, as proffered by Mr. Haller at the Hearing, constitutes evidence of marketable title or insurable title.

6. The relationship of the Defendants' obligation under paragraph 4 of the Contract to convey marketable title to the Plaintiff and the "As-Is" provision of paragraph 8 of the Contract.

7. Paragraph 21 of the Contract limits severability to illegal provisions. Neither paragraph 4 nor paragraph 8 implicate illegality, therefore the severability clause is not triggered. The Court has not

ruled on whether treating the "As Is" provision as controlling, and removing any legally enforceable obligation on the Defendants to convey marketable title to the Plaintiff, invalidates the Contract. Both the First Order and the Second Order fail to take account of the limited scope of the Contract's severability language and the issue of severability was not raised in any pleadings or at the Hearing. If it is found that the Court was correct and that the paragraph 4 obligation to convey marketable title was unenforceable by operation of the "As Is" provision of paragraph 8, then logic and application of South Carolina law requires inquiry into whether the Contract itself was valid and enforceable to begin with, which would mean the First Order cannot end the case, or alternatively, granting summary judgment under the Second Order would not dismiss all of the Plaintiff's claims as the failure to take account of the severability provision in the Contract has given rise to additional claims from the Plaintiff.

8. The application of South Carolina Code Ann. § 27-43-310 to the chain of title of the subject property, the boundary of the cemetery, and the identity of the persons buried in the cemetery who have the right to access the cemetery and whether those holding the right can enforce against the owner of the subject property.

CONCLUSION

The Plaintiff has submitted the Supplement to preserve all issues resulting from the filing of the Second Order after the Plaintiff's Motion to Reconsider was filed. Based on the arguments made in the Motion to Reconsider and the Supplement the Plaintiff would ask the Court to reconsider its rulings and vacate its First Order and Second Order and allow the parties to proceed with discovery or in the alternative vacate either the First Order or the Second Order to resolve the conflicts created in having two materially different orders in the record filed in response to the Hearing.

Respectfully submitted,

/s/ F. Miles Adler

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Pawleys Island, SC 29585
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Pawleys Island, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARC K. KNAPP,

Plaintiff,

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, and ALICIA J. ROY,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

**PLAINTIFF'S NOTICE OF MOTION
AND MOTION TO DISMISS FOR LACK OF SUBJECT
MATTER JURISDICTION**

Civil Action No.: 2022 CP 10 01958

TO: DAVID K. HALLER, COUNSEL FOR THE DEFENDANTS

YOU WILL PLEASE TAKE NOTICE THAT the Plaintiff, Marc K. Knapp, by and through his undersigned counsel, on the tenth day after service hereof or at such time and place as the Court may set, will move before the Court pursuant to Rule 12(b)(1) and 12(h)(3) of the *South Carolina Rules of Civil Procedure* for an order dismissing Civil Action No.: 2022 CP 10 01958 in its entirety (the "**Motion**").

This Motion is based on the following grounds:

1. Pursuant to the contract to buy and sell real estate that is the subject of the above captioned litigation (the "**Contract**") (Complaint Exhibit B, ¶ 24) the Defendants agreed to attempt mediation for any dispute, claim, breach, representations made by any Party (e.g. concealment, misrepresentation, negligence, fraud)...related to this Contract Parties agree that the duty to attempt mediation survives closing" The Contract goes on to further provide that the requirement to mediate is "to potentially avoid expensive/lengthy, uncertain litigation" Under the Contract litigation may proceed "without mediation" in only a select number of scenarios related to foreclosures, liens, probate issues, interpleaders. The claims in this action are not among the allowed exceptions. Instead, the claims in this action are clearly among the matters subject to mediation.
2. In *Huskins v. Mungo Homes, LLC*, Opinion No. 5916 (June 1, 2022) the South Carolina Court of Appeals affirmed dismissal of a home buyer's suit in favor of required ADR. In *Damico v. Lennar Carolinas, LLC*, 430 S.C. 188, 844 S.E.2d 66 (S.C. App. 2020) the South Carolina Court

of Appeals reversed the Circuit Court for failing to compel arbitration of a homeowner's claims against a developer under a purchase agreement with an arbitration clause.

3. The Contract, when read as a whole, as required, expresses a preference for ADR before litigation in order to "potentially avoid expensive/lengthy/uncertain litigation."
4. As with all contracts, an agreement to mediate is to be interpreted as a whole when such interpretation is consistent with the assumed intent of the parties to the contract to have a binding agreement and not read in a manner that renders the contract void or superfluous. *See Herrington v. SSC Seneca Operating Company, LLC*, 435 S.C. 243, 866 S.E.2d 579 (Ct. App. 2021) which interpreted an arbitration clause as part of the whole contract to have greater applicability.
5. The failure of the parties to first mediate has rendered this matter unripe. Accordingly the matter does not present a justiciable controversy for the Court's subject matter jurisdiction. *See Allied World Surplus Lines Insurance Company v. Blue Cross and Blue Shield of South Carolina*, C.A. No.: 3:17-cv-903-RMG, 2017 WL 3328230 (D.S.C. July 3, 2017) (unpublished), where Judge Gergel dismissed the matter for first failing to comply with contractual non-binding ADR requirement. In entering the dismissal, Judge Gergel cited *Sansotta v. Town of Nags Head*, 724 F.3d 533, 548 (4th Cir. 2013), quoting that "ripeness is a question of subject matter jurisdiction." Judge Gergel's ruling in *Allied World* also considered an agreement to pre-litigation ADR (either arbitration or non-binding mediation) in a case where pre-litigation mediation was pursued by the parties but not completed prior to commencing litigation; in that case pre-suit ADR was a condition precedent and the Court dismissed for lack of ripeness due to failure to complete the contractually agreed upon ADR before filing suit. Judge Gergel stated in his order that "withholding judicial review until completion of mediation that is condition precedent to litigation imposes no hardship on the parties."
6. Rule 12(h)(3), *SCRCP* provides that the Court shall dismiss the action whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction over the subject matter.
7. The contractually agreed upon mediation in the Contract is a condition precedent that has to be completed prior to conducting litigation.
8. The Parties' failure to comply with the mediation clause in the Contract is grounds to dismiss all of the claims brought by all of the Parties to the above captioned litigation because the

Court does not have subject matter jurisdiction at present and cannot until mediation has been completed and the matters in dispute remain unsettled.

9. The parties to a lawsuit cannot by agreement or conduct expand the Court's subject matter jurisdiction.

The undersigned counsel for the Plaintiff hereby certifies, pursuant to Rule 11 of the *South Carolina Rules of Civil Procedure*, that consulting with opposing counsel would serve no useful purpose.

WHEREFORE, the Plaintiff respectfully requests the Court enter an order dismissing all claims brought under Civil Action No.: 2022 CP 10 01958 for lack of subject matter jurisdiction, and to award such other and further relief in favor of the Plaintiff as the Court deems just and appropriate.

Respectfully submitted,

Pawleys Island, SC

/s/ F. Miles Adler
F. Miles Adler
SC Bar No.: 70238
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
miles@adlerlaw.partners

Plaintiff's Motion to Dismiss for Lack of Subject Matter Jurisdiction

2022 CP 10 01958

From: David K. Haller
Sent: Monday, January 9, 2023 9:53 AM
To: Martha S. Dennis
Cc: miles.adlerlaw.partners; MIELawClerk
Subject: Re: Knapp v. Jenkins et al. 22 CP 10 1958 - Motion to Reconsider

Good morning:

Attached please find the Defendants' proposed order from the hearings on December 12. Please let me know if I can make any change or revisions to it. Also, should I submit it through efile?

Thank you,

David



David K. Haller

604 Savannah Highway, Charleston, South Carolina 29407

843-224-7860

www.dhallerlawfirm.com

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On Dec 19, 2022, at 3:12 PM, Martha S. Dennis <MDennis@charlestoncounty.org> wrote:

Thank you for your email. I will pass this along to the Judge and once he has reviewed it, I will reach out to set a hearing date if necessary. If you have any questions, please let me know.

Many Thanks,

Martha "Marti" Dennis, Esq.

Roster and Scheduling Clerk/Attorney

Charleston County Master-In-Equity's Office

100 Broad Street

Suite 266

Charleston, SC 29401

MDennis@charlestoncounty.org

843-958-5053 direct

843-958-5077 fax

*****STARTING December 5, 2022: You will need to provide your own COURT REPORTER until further notice**

From: miles.adlerlaw.partners <miles@adlerlaw.partners>

Sent: Monday, December 19, 2022 3:06 PM

To: Martha S. Dennis <MDennis@charlestoncounty.org>; David K. Haller <dkhaller@hallerlawfirm.com>

Subject: Knapp v. Jenkins et al. 22 CP 10 1958 - Motion to Reconsider

CAUTION: This email originated outside of Charleston County. Do not click links or open attachments from unknown senders or suspicious emails. Marti, pursuant to Rule 59(g), SCRPC please find enclosed a filed copy of Plaintiff's Motion to Reconsider for Judge Scarborough.

F. Miles Adler
ADLER LAW FIRM, LLC
P.O. Box 4743
Pawleys Island, SC 29585
T: 843.314.3204
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M: 843.685.3311



David K. Haller
Certified Civil Court Mediator and Arbitrator

February 13, 2023

VIA EMAIL AND E-FILE ONLY

The Honorable Mikell R. Scarborough
100 Broad St Ste 266
Charleston, SC 29401

In re: *Knapp v. Jenkins, et al.*
Case No. 2022-CP-10-01958

Dear Judge Scarborough:

Please accept this letter as the defendants' response to the two motions to alter or amend pending in the above matter.

Plaintiff first makes a procedural argument regarding the impact of the Form 4 entered by the Court on December 12, 2022. On its face, the form order provides that a, "formal order [is] to follow." When a form judgment indicates that a formal order is being prepared and such a formal order is signed by the court, the formal order is the official, final order of the court. *Cheap-O's Truck Stop, Inc. v. Cloyd*, 350 S.C. 596, 605, 567 S.E.2d 514, 518 (Ct. App. 2002) ("If the Form 4 order is NOT efficacious as a final order, the circuit court will specifically and with certitude signify: (1) a more formal order will be filed..."). To the extent there is any claimed ambiguity between the December 12 form order and the formal judgment, the formal judgment controls.

The remainder of the plaintiff's motion consists of bald complaints regarding the transaction as a whole. However, nowhere does the plaintiff point out any legal error or missed factual contention regarding the grounds Your Honor set forth for granting the motion for summary judgment: Mr. Knapp breached the contract on several occasions in regards to financing and he was not ready, willing, or able to close by the contractual date because he did not have appropriate financing on that date. Being first to breach the contract, Knapp cannot complain of any other nonperformance, even if he were able to prove them (which he is not). *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008).

For these reasons we believe both of plaintiff's motions to alter or amend can be denied without a hearing. The defendants do request a hearing on our motion for fees and sanctions.

The Hon. Mikell R. Scarborough
February 13, 2023
Page 2 of 2

Thank you for your time and attention to this matter.

Very truly yours,

s/ David K. Haller

David K. Haller

cc: Miles Adler, Esq.
Clients

ELECTRONICALLY FILED - 2023 Feb 13 11:05 AM - CHARLESTON - COMMON PLEAS - CASE#2022CP1001958

Page 1

Page 3

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

TRANSCRIPT OF:
HEARING PROCEEDINGS
DECEMBER 12, 2022

MARC K. KNAPP,

Plaintiff,
Case No. 2022-CP-10-01958

vs.

JAMES DOUGLAS JENKINS, IV, PETER BARNWELL
JENKINS, AND ALICIA J. ROY,

Defendants.

DATE: DECEMBER 12, 2022

TIME: 2:11 P.M.

LOCATION: Charleston County Judicial Center
100 Broad Street
Charleston, SC 29401

REPORTED BY: ABBY BISHOP

CLARK BOLEN
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARKBOLEN.COM

INDEX

2	EXAMINATIONS	PAGE
3	TRANSCRIPT OF PROCEEDINGS	4
4	CERTIFICATE OF REPORTER	48

EXHIBITS

8 None were marked.

Page 2

Page 4

APPEARANCES

BEFORE THE HONORABLE MIKELL R. SCARBOROUGH

ON BEHALF OF MARC K. KNAPP:

ADLER LAW FIRM
BY: MILES ADLER
P.O. Box 4743
Pawleys Island, SC 29585

ON BEHALF OF JAMES DOUGLAS JENKINS, IV, PETER
BARNWELL JENKINS, AND ALICIA J. ROY:

HALLER LAW FIRM
BY: DAVID K. HALLER
604 Savannah Highway
Charleston, SC 29407

ALSO IN APPEARANCE: ROGER P. GIARDINO, JR.

JUDGE SCARBOROUGH: I know this is

the case of Marc Knapp versus Jenkins -- James
Douglas Jenkins and I think two siblings, maybe.

MR. HALLER: That's correct, Your
Honor.

JUDGE SCARBOROUGH: And I've got
some motions for today. It has to do with the
contract of sell -- to purchase some property on
Wadmalaw, if I'm not mistaken, so.

MR. HALLER: Yes, Your Honor.

JUDGE SCARBOROUGH: And there are
some motions to dismiss, canceled Lis Pendens by
Mr. Haller, and a Motion to Quash a subpoena.
That's by Mr. Giardino?

MR. HALLER: Correct, Your Honor.

JUDGE SCARBOROUGH: All right.

Very good. Let me first hear from you,
Mr. Haller. I'll be glad to hear from you on
that.

MR. HALLER: Thank you, Your Honor.

May it please the Court? Your Honor, I represent

James Jenkins, Alicia Roy, and Peter Jenkins.

And seated with me at the counsel table is

Jim Jenkins, who has come down from Virginia to
be with us today.

Page 5

Page 7

JUDGE SCARBOROUGH: Okay.

MR. HALLER: This case involves a sale of 5896 Maybank Highway on Wadmalaw, which is approximately plus or minus six and a half acres of land -- raw land -- no improvements to it on Wadmalaw. The Jenkins were the sellers, and the buyer was Marc Knapp who is the plaintiff in this case. Mr. Knapp agreed to purchase the property for \$285,000 in the contract that was dated January 5th, 2022, which originally had a closing date of February 10th with an extension to February 24th of 2022.

The contract at issue is the standard South Carolina real estate Association's contract. Even though it's raw land, the agents used a residential contract for it so the provisions, of which I'm sure Your Honor has seen --

JUDGE SCARBOROUGH: A few times.

MR. HALLER: -- more than once or twice. If you need a copy of it, I have a spare copy of the contract handy.

JUDGE SCARBOROUGH: If you have one, hand it up. The copy I had online I was looking at was real faint. Thank you.

Page 6

Page 8

MR. HALLER: We wouldn't be here if on February 24th, 2022, had not come and gone and Mr. Knapp has not closed on the transaction.

JUDGE SCARBOROUGH: Right.

MR. HALLER: After a few weeks, Mr. Knapp filed a Lis Pendens on the property and then filed this suit. In this suit, he claimed that the Jenkins breached the contract and -- or actually, I take that back. He requested a declaratory judgment in the specific performance of the contract and asserted various issues with the transaction.

Number one, that the property was -- there was a marketability issue with the title.

Number two, that there was an issue with a contingency in the contract that a septic permit be obtained through DHEC. And the marketability issue involved a graveyard on a neighboring piece of property and a path nobody has seen except on a picture from the Internet website Google Earth.

There was a third issue that has developed and that is whether or not Mr. Knapp had the financing to close on February 24th,

2022. I'm going to address all of those, and I'm going to start with the financing contingency aspect first because the financing contingency is first in the contract.

JUDGE SCARBOROUGH: Okay.

MR. HALLER: As Your Honor is aware, the financing contingency that has been drafted by the Realtors Association contract had certain steps in it that everybody has to take. And so in this contract, what Mr. Knapp agreed is that he would apply for financing on or before January 10th of 2022 -- that was five days after the contract was entered into -- that he would receive a written pre-approval of that financing by January the 17th and provide that to the Jenkins family; that if he had to change the lender for any reason, he would inform the sellers of that change of lender; that he agreed that he could not change lenders if that changing of lenders resulted in a changing of the closing date and allowed for mutual termination of the contract if the lenders -- if at any time the buyer was denied financing by any lender -- a lender is the specific language. The financing contingency in the contract is paragraph 7, and

the last sentence reads: If the seller and brokers are notified of inability to obtain financing during the financing period, either party may terminate the contract by notice. Whether Mr. Knapp had financing on or before January 17th is still somewhat of a debate. However, it's not in debate that he did not have a written pre-approval on January 17th as for 80 percent of the lending amount. Also, he acknowledged in his deposition, which I took last week, that prior to January 17th, he had applied for a VA loan and had been rejected for that VA loan because it was raw land and VA does not lend to raw land.

And then apparently he asserts that he found a private equity lender, a man by the name of Ken Koos here in town who allegedly was prepared to underwrite the financing of it. Not to him, but to his company. That's in an affidavit that we were provided.

Mr. Koos indicated he'd be willing to lend \$225,000, not \$228,000 is what was being -- 80 percent. And the affidavit conflicts with the commitment e-mail that Mr. Koos sent to them that was produced to us just yesterday. The

Page 9

Page 11

1 commitment is dated March 26th of 2022, a month
2 after the closing date had passed and says, I
3 haven't talked with my partner so I can't tell
4 you the for-sure end, but you have my vote.

5 We still don't have anything from
6 Mr. Koos that says, My company is prepared to
7 lend you the money to close.

8 Subsequent to that, Mr. Knapp had
9 his daughter apply for financing with AgSouth,
10 and he testified it was his intention to assign
11 the contract to his daughter. His daughter's
12 approval for financing was an e-mail, which is in
13 the record, dated February the 2nd, again, now
14 two weeks after -- almost three weeks after when
15 they were supposed to have a paid financing
16 approval. And that approval was for \$145,000.

17 He then subsequently applied
18 apparently through his lawyer with First Citizens
19 Bank out of Pawleys Island on or about February
20 22nd, two days before closing, and he was denied
21 closing. He was denied financing by First
22 Citizens.

23 And so when I took his deposition
24 last week, I asked him: As of January 17th, did
25 you have any written pre-approval letter from any

Page 10

1 lender showing they were ready, willing, and able
2 to provide you the funding to buy the property?

3 His answer was: No written letter.
4 No.

5 I then asked him: You testified to
6 multiple lenders that you had interactions with.
7 Did you notify the Jenkins that you had changed
8 those lenders during your financing period?

9 Answer: No, sir.

10 I then asked him: Did you get
11 permission from the sellers to change lenders?

12 Answer: Well, I didn't have a
13 lender at that point except for Ken. That would
14 be Ken -- Mr. Koos.

15 JUDGE SCARBOROUGH: How do you
16 spell Koos? Is it C --

17 MR. HALLER: K-O-O-S.

18 JUDGE SCARBOROUGH: K-O-O-S? Okay.

19 MR. HALLER: Yes, sir.

20 I then asked him: And you had
21 testified a few moments ago that you had been
22 rejected by First Citizens?

23 Answer: Right.

24 Question: And as I understand it,
25 you've also have been rejected by My Veterans

1 United because it was the kind of property they
2 would lend money on, right?

3 Answer: Correct.

4 Question: Did you tell the sellers
5 about either of those rejections?

6 Answer: I don't believe so.

7 Question: Would you agree with me
8 that what you agreed in paragraph 7 is to tell
9 the sellers about the rejection?

10 Answer: Yeah, but I told my agent.

11 The Jenkins were never informed
12 that there was a -- that Mr. Knapp had been
13 rejected. It's our position today that even
14 today he doesn't have the financing to close this
15 transaction.

16 I'll also add that Mr. Knapp has a
17 recent bankruptcy. He filed for bankruptcy in
18 2017. It was a Chapter 7 total liquidation. The
19 likelihood that anything other than somebody of
20 a -- who is willing to give a high risk loan with
21 finances is very, very slim.

22 In his complaint, he alleged there
23 were issues with marketability of being able to
24 obtain marketable title. So the first thing -- I
25 asked the closing lawyer for the Jenkins -- they

Page 12

1 had separate lawyers -- whether they had found
2 anything in their title search that would
3 indicate that the property was not marketable.
4 And the answer I got back was a no. And, in
5 fact, we then had -- for Mr. Knapp -- issued a
6 title commitment by First American Title
7 Insurance for \$285,000 to be able to insure the
8 property.

9 JUDGE SCARBOROUGH: The seller
10 undertook that?

11 MR. HALLER: Yes, sir.

12 JUDGE SCARBOROUGH: Okay. All
13 right.

14 MR. HALLER: I then asked
15 Mr. Knapp. Question: Would you agree with me
16 that if you get a title insurance policy, that
17 means the property is marketable?

18 Answer: Yes, sir. The claim that
19 -- of why the property was not marketable is
20 because there is a cemetery, not on this piece of
21 property, but neighboring piece of property. And
22 if Your Honor will allow me, I'll approach with a
23 survey for now.

24 JUDGE SCARBOROUGH: Sure.

25 MR. HALLER: And if you will notice

Page 13

1 on Tract B, that's a 1968 survey of the property
2 by Exo Hilton.

3 JUDGE SCARBOROUGH: Okay.

4 MR. HALLER: And if you'll notice
5 on Tract B, there's a mark there -- a box there
6 where the cemetery was supposed to be.

7 JUDGE SCARBOROUGH: Okay. Down by
8 the water?

9 MR. HALLER: Yes, sir.

10 JUDGE SCARBOROUGH: Got it.

11 MR. HALLER: On February 2nd, that
12 is when the issue originally came to fruition or
13 came before the parties, and Mr. Knapp went to
14 the property himself to verify where the location
15 of the cemetery was.

16 And that day, he e-mailed his --
17 Robert Young, who was his real estate agent, and
18 said, Robert, we verified today that the graves
19 are not on the property, Marc Knapp.

20 So this is -- three weeks before
21 closing, Mr. Knapp went out himself and walked
22 the property and verified to himself that the
23 graves were on the neighboring property and not
24 on this property.

25 JUDGE SCARBOROUGH: And what's the

Page 14

1 date again of that?

2 MR. HALLER: February 2nd, Your
3 Honor.

4 JUDGE SCARBOROUGH: February 2nd?

5 MR. HALLER: Yes, sir.

6 JUDGE SCARBOROUGH: Okay. And the
7 closing was supposed to take place on?

8 MR. HALLER: The 24th.

9 JUDGE SCARBOROUGH: The 24th?

10 Okay.

11 MR. HALLER: The 10th extended to
12 the 24th.

13 JUDGE SCARBOROUGH: Got it.

14 MR. HALLER: I then asked him about
15 -- again, there has been no public filing
16 whatsoever about an easement. I asked Mr. Knapp
17 whether he had seen any sort of pathway -- let me
18 back up.

19 The reason that they believe that
20 there was some sort of encroachment is because
21 they found on Google Earth a picture that showed
22 -- I don't think it's a path. I think it's just
23 somebody drew on a squiggly line. It doesn't
24 look like dirt, but that's just my own personal
25 opinion. But they found that, and they wanted to

Page 15

1 find out what was going on with the property.

2 That's what their allegation was.

3 I asked Mr. Knapp: Well, you

4 haven't told anybody -- meaning anybody who has
5 found any kind of encroachment on the property
6 other than a Google Earth picture that you found
7 on the Internet?

8 Answer: Right.

9 And, of course, we now have the
10 marketable title -- I mean, we have the title
11 insurance policy. There is no encroachment on
12 it.

13 What they relied upon, Your Honor,
14 in support of their position is code
15 section 27-43-310, which is titled Cemeteries on
16 Private Property, Persons entitled to access.
17 And what their concern was if there was a
18 cemetery on this property that they might have to
19 give access to the individuals -- to the family
20 members who were buried in that cemetery. But
21 the statute is pretty plain in what it
22 requires.

23 A) An owner of private property on
24 which a cemetery, burial ground, or grave is
25 located must allow ingress and egress to the

Page 16

1 cemetery, burial ground, or grave as provided in
2 the section to the following people. It's
3 essentially the beneficiaries.

4 But the surveys that we provided
5 not just -- we had Mr. Hilton's 1968 survey. The
6 Jenkins family also got a resurvey in 2020, which
7 is a part of the file also. There is no cemetery
8 on this property. Hence, there is no obligation
9 to provide access to it that would make it
10 unmarketable.

11 The last issue that Mr. Knapp
12 focused on was a DHEC permit for a septic tank.
13 And suffice it to say, the due diligence clause
14 expired in this contract on January 28th of 2022.
15 Mr. Knapp did not apply for this permit until
16 February the 7th, which was three days before the
17 original closing was supposed to occur and two
18 and a half weeks until the extending closing was
19 supposed to occur.

20 And when I asked him, at first he
21 kind of hinted on about not being able to have
22 access. But at the end of the day, what I asked
23 him is: Is it your contention or belief that the
24 Jenkins have an obligation to -- just to give you
25 an extension after extension until you are ready

Page 17

Page 19

1 to close?

2 Answer: Yeah.

3 Question: And what provision of
4 the contract do you --

5 Answer: It's not in there.

6 So again -- you know, followed by
7 he just didn't have the time to get out there and
8 do the work that he wanted to do to determine
9 whether or not he wanted to buy it.

10 Here we are now 10 months later --
11 11 months later, he's still not ready, willing,
12 and able to close. My folks have a backup
13 contract with the same amount trying to mitigate
14 their damages with somebody without all the
15 contingencies who's ready to do it.

16 So the un-refuted record before the
17 Court is that Mr. Knapp was not ready, willing,
18 and able to close on the date of the closing,
19 number one, and that he prior breached -- he was
20 the first to breach the contract by not having
21 adequate funding, not informing the Jenkins
22 family that he'd been terminated or had been
23 denied a lender, and moving lenders around.

24 If he'd abided by the contract the
25 first time he had a denial, the Jenkins would

Page 18

1 have been able at that point in time to terminate
2 the contract and re-list it. Thank you, Your
3 Honor.

4 JUDGE SCARBOROUGH: Okay. The
5 language on the lender, that was the paragraph 7?

6 MR. HALLER: Yes, sir.

7 JUDGE SCARBOROUGH: All right.
8 Take me in there to your specific language. I
9 didn't get all the way through it before. So
10 what was it about if he had any lender that
11 denied him? Where's that in there?

12 MR. HALLER: If Your Honor looks at
13 the end of paragraph 7, the third line from the
14 bottom, which begins, If a lender.

15 JUDGE SCARBOROUGH: Okay.

16 MR. HALLER: If a lender
17 subsequently declines or fails to approve
18 financing, the buyer shall notify the seller and
19 brokers as soon as possible. If the seller and
20 brokers are notified of inability to obtain
21 financing during the financing period, either
22 party may terminate the contract by notice.

23 JUDGE SCARBOROUGH: And your basis
24 there is that financing contingency expired on
25 the 17th of January?

1 MR. HALLER: No, sir. The

2 financing contingency -- the third letter up says
3 financing contingency expires at closing.

4 JUDGE SCARBOROUGH: At closing.

5 Okay. Okay. Because there's no -- I don't
6 remember there being -- no lender was named. It
7 with TBD, to be determined, right?

8 MR. HALLER: That's correct.

9 JUDGE SCARBOROUGH: With
10 conventional financing?

11 MR. HALLER: Yes.

12 JUDGE SCARBOROUGH: So what you're
13 telling me that happened was that the VA loan was
14 applied for and denied. They don't give loans on
15 raw land --

16 MR. HALLER: That's correct.

17 JUDGE SCARBOROUGH: Went to Mr.
18 Koos, gave him a loan commitment on March 26th --

19 MR. HALLER: That's correct.

20 JUDGE SCARBOROUGH: -- just after
21 the time period.

22 MR. HALLER: His daughter then went
23 to AgSouth. She got approved for \$145,000, not
24 80 percent of the contract amount --

25 JUDGE SCARBOROUGH: Okay.

Page 20

1 MR. HALLER: -- and then Mr. Knapp
2 went to First Citizens and was denied, period.

3 JUDGE SCARBOROUGH: Denied. Okay.
4 And then you say he's got a representation that
5 there's no graveyard on there?

6 MR. HALLER: Yes, sir. That e-mail
7 dated February 2nd where he said in his e-mail to
8 his agent, there's no graveyard. And I asked him
9 some specifics about that as well and he said
10 even -- when I took his deposition last

11 Wednesday. Even sitting there that day, he'd not
12 heard anybody say that the graveyard -- nobody
13 was going to testify that the graveyard was on
14 that property. Nobody was going to testify that
15 there's a pathway that goes across the property.

16 He talked about how one of the
17 reasons he was delayed in filling out the DHEC
18 application is because he had to go cut his own
19 path to get there -- to get onto the property.
20 It's just an overgrown piece of land.

21 JUDGE SCARBOROUGH: Gotcha. Okay.
22 Six acres -- six and a quarter basically on the
23 -- what creek is that? Is that Leadenwah?

24 MR. HALLER: I don't know. Do you
25 know what it is?

Page 21

Page 23

1 MR. JENKINS: It's a fingerling off
2 of Leadenwah, Your Honor.

3 JUDGE SCARBOROUGH: Okay. Got it.
4 Got it. Interior. Yeah. Okay. All right.
5 Very good.

6 MR. HALLER: Thank you, Your Honor.

7 JUDGE SCARBOROUGH: All right.
8 Mr. Adler, let me hear from you first, sir.

9 MR. ADLER: Your Honor, Miles Adler
10 for the plaintiff. Mr. Haller I think did a
11 pretty good job of giving a recitation of the
12 facts. Of course, we have more we'd like to add.

13 First and foremost --

14 JUDGE SCARBOROUGH: Well, I
15 wouldn't expect you to agree with him.

16 MR. ADLER: No, sir.

17 JUDGE SCARBOROUGH: Tell me how you
18 get around his motion.

19 MR. ADLER: Well, I guess we have
20 to decide if there's a material -- if there's no
21 question of fact in view of the light of most
22 favorable to the non-moving party, that's my
23 client.

24 JUDGE SCARBOROUGH: Okay.

25 MR. ADLER: To begin with, we filed

Page 22

1 a lawsuit because we know there's a conflict in
2 the contract regarding marketability of title and
3 as is. The position of the seller is that we
4 take it the way it is including the title issues.

5 JUDGE SCARBOROUGH: Well, there are
6 more terms in the contract than just that,
7 though. You agree?

8 MR. ADLER: There are two
9 conflicting provisions based on the way the
10 seller interpreted it. I'm not agreeing or
11 disagreeing.

12 JUDGE SCARBOROUGH: Okay.

13 MR. ADLER: I'm asking the Court to
14 tell us what it means.

15 JUDGE SCARBOROUGH: Okay.

16 MR. ADLER: That was the first
17 claim. The second claim was that we stand ready
18 to cure all of the defects we've discovered. We
19 want to close on this once we cure those. I will
20 say that Mr. Haller is going to get a title
21 policy from a law firm. This is the first I've
22 heard of that law firm being involved in this
23 case since I saw that policy. It wasn't the law
24 firm that was representing the seller initially.
25 I don't know the circumstances behind why they

1 elected to issue a title commitment, but it does
2 say in the first sentence on the first page, I
3 think, knowingly -- and there is a graveyard in
4 the chain of title, but there's no survey of the
5 boundary of the graveyard.

6 And the statute is clear. You
7 can't landlock a graveyard. And there's no --
8 and I've looked at all of the plats. There's no
9 path to that graveyard. And what I found on
10 Google Earth, which I know does not set legal
11 precedent, but it does show something -- an
12 access off of Maybank Highway across where --
13 terminating right approximately where the edge of
14 the graveyard appears to be.

15 Now, we don't know where the bodies
16 are buried, Your Honor. And no one that I'm
17 aware of has confirmed where the outlining of the
18 burial site is. However, you've got the edge of
19 the burial site. You have access. Big question
20 mark. And then you have -- there was also a
21 problem getting a pin set on the Leadenwah Creek
22 side of the property probably on the western
23 corner.

24 And so you have like a 5 --
25 600-yard property line where you know -- where

Page 24

1 your point of beginning is on Maybank Highway,
2 but you're not sure where it is on this side. So
3 you have some variance out here that need to be
4 resolved.

5 Now, there was a fair amount of --
6 can't get on the property for various reasons
7 that were not Mr. Knapp's fault. Not just
8 because he was busy at work. There were some
9 disputes I think coming from the seller side. I
10 can tell you that the realtors were not -- and I
11 wasn't involved at this point. I didn't get into
12 this thing until kind of the end of January,
13 beginning of February.

14 And I wrote a letter, which I think
15 is attached to my lawsuit to -- the seller's
16 realtor explaining our situation, and that's when
17 the as-is versus marketability issue became
18 pretty apparent.

19 Mr. Knapp did have a bankruptcy in
20 -- I think it was actually '18. I filed it. I
21 represented him in that case. We got it
22 converted to a 7. We got out of it, and in the
23 course of working in that case, I started working
24 with Mr. Koos, who's a private lender in town.
25 He has very light underwriting requirements, but

Page 25

1 his loans are not 30 -- it's not 30-year money.
2 It's not 20-year money. So we needed to make
3 sure that we understood when we closed on this
4 thing how the construction financing was going to
5 work.

6 And when you're aware of the
7 graveyard and you are aware that there is no
8 apparent access to it, it's incumbent at least to
9 me as an attorney to sort that piece out. So I
10 contacted the lawyer at Weeks and Irvine
11 originally and said, We need to figure this out.
12 He took my call. We spoke. I informed him in an
13 e-mail of what this was about and never heard
14 back from him.

15 Then Mr. Knapp was continuing to
16 try to press on how we're going to work out where
17 the pin goes. He was -- it was pretty
18 bureaucratic working with DHEC because they had
19 to come out and do a site inspection too to get a
20 construction permit for the septic tank.

21 All of that was happening -- the
22 scheduling was very difficult with DHEC at the
23 time. Now, I understand Mr. Haller -- the permit
24 application was dated February the 7th. There's
25 extenuating circumstances as to why it didn't get

Page 26

1 filed until the 7th. Some of that was trying to
2 get the seller, as I understand it, to get their
3 surveyor out there to place that corner pin that
4 we needed to have placed so that we could have
5 the boundaries set. All of that was happening,
6 and we were running out of time.

7 And after we put them on notice of
8 being aware of the graveyard and aware that we
9 couldn't find any access to the graveyard except
10 for this thing that we showed them went right
11 across the property now that we're trying to buy
12 it, we asked him -- we've got to figure this out.
13 And then they terminated the contract.

14 He continued to move forward with
15 the septic permit. He's got that. DHEC gave him
16 the permit. They finally ordered that. Mr. Koos
17 is still ready to loan the money.

18 As it stands right now, I think
19 we'd be ready to close if we could get the
20 cemetery thing worked out. And we haven't gotten
21 any affidavits about who's in the ground. I
22 mean, this feels like a quiet title action if I
23 was going to be thorough and precise about -- I
24 don't suggest we go down that road, but we have
25 to get some assurance that an error isn't going

Page 27

1 to show up at some point later on down the road
2 and say they've got to get over to their cemetery
3 and want to go across Mr. Knapp's land.

4 The other thing is the road that
5 Google shows existing -- which doesn't exist if
6 you're standing on the ground, as I understand
7 it, but it's there -- is sited about where he
8 wants to put his house.

9 These are all things that could be
10 resolved with cooperation. We're not saying we
11 have to have a quiet title action to resolve it,
12 but the owners of the property, based on my
13 reading of the chain of title, it looks like at
14 one time, this was all owned as one continuous
15 piece by one family. I don't know if it was the
16 Jenkins or someone -- predecessor family.

17 However, if you go back far enough,
18 there's a plat that shows the whole parcel -- the
19 larger parcel, no cemetery. So the cemetery
20 doesn't show up until '68. And I don't know the
21 circumstances around that either. I don't know
22 when the first bodies were buried back there,
23 what families, you know, are kin to those folks,
24 and the circumstances around it, given the rest
25 of the --

Page 28

1 JUDGE SCARBOROUGH: When were y'all
2 given notice to terminate by the sellers?

3 MR. ADLER: It seems like it was
4 after February 23rd or 24th, which is the date
5 the contract was extended to.

6 JUDGE SCARBOROUGH: You do have a
7 written extension of the contract to close by --
8 until the 24th? That was given, right?

9 MR. ADLER: Yes, Your Honor.

10 JUDGE SCARBOROUGH: And notice to
11 terminate would've been thereafter, is that
12 right?

13 MR. ADLER: Yes. It didn't come
14 from Mr. Haller. It came from the realtor.
15 There were two realtors; Robert Young on Mr.
16 Knapp's side, and then Susan Heyer from Carolina
17 One.

18 JUDGE SCARBOROUGH: Okay.

19 MR. ADLER: So you've got The
20 Boulevard, and you've got Carolina One. And most
21 of what was going on by trying to get onto the
22 property was between realtors. The contract that
23 they used was decided by the realtors. I don't
24 know why they used a contract that has this
25 language in there assuming there were

Page 29

Page 31

1 improvements on the land. I don't know how that
2 got put in this deal -- why it was used, but it
3 does create a problem because they were relying
4 on the as-is to -- this is coming from Susan
5 Heyer's e-mails. She's relying on that as-is
6 language to justify that they don't have to work
7 with us to make sure that we can get marketable
8 title on our side. They were using that clause.
9 Not that we've got marketable title. This
10 graveyard is a made-up problem or it's actually
11 not a problem. Let me show you why.

12 None of that happened. They just
13 said it's as-is. If you don't like it, we're
14 terminating. And that's why we've asked the
15 Court to tell us how the contract should be read.

16 JUDGE SCARBOROUGH: So the grounds
17 upon which you rely to say that y'all are not the
18 first in breach are what?

19 MR. ADLER: There was the fault of
20 -- well, the delay caused by Mr. Knapp trying to
21 get through due diligence was not caused by him.
22 It was caused by -- I believe he testified at his
23 deposition that he was prevented from going back
24 on the property. Weather prevented him from
25 getting on the property. And the circumstances

Page 30

1 around having to clear and get back -- you know,
2 clear a path. I guess he bush hogged a section
3 of the property to get back there so he could
4 place the pin.

5 Originally -- and I think this is
6 in the e-mails and I believe Mr. Knapp said this
7 in his deposition -- the seller offered and
8 committed to getting that corner pin dropped so
9 they'd have four corners surveyed. And there was
10 a delay on that. And the delay was because their
11 surveyor wouldn't go out there for whatever
12 reason.

13 And so we lost most of January
14 around trying to get the surveyor out there, and
15 I think there was a weather issue. I mean, the
16 contract wasn't signed until the 5th.

17 And then when Mr. Knapp started
18 putting pressure on them that we've got to
19 resolve these issues before we can close, we
20 started getting the as-is -- you know, you agreed
21 to buy this property as is. And that means if
22 you discover a title issue, that's on you.
23 That's not on us -- marketability. And there's a
24 second part in that contract clause --

25 JUDGE SCARBOROUGH: Were y'all

1 given the 2020 survey at the time that you
2 entered into the contract?

3 MR. ADLER: The surveys I think
4 were from -- well, Your Honor that raises the
5 second point. This is why Mr. Giardino -- part
6 of why he's here today. And the title, there's a
7 discrepancy between listing acreage and the
8 amount of acreage that shows up in the surveys.
9 And we couldn't reconcile that. And that's why
10 they wanted that corner pin dropped.

11 JUDGE SCARBOROUGH: Never unusual.

12 MR. ADLER: Well, there's also --
13 let me pull the contract, Your Honor. The
14 contract also says -- it's provided -- excuse me.
15 Paragraph 4, the sentence is, Conveyance shall be
16 fee simple and made subject to all easements,
17 reservations, rights-of-way, restrictive
18 covenants of record, (provided they do not make
19 the title unmarketable or adversely affect the
20 use value of the property in a material way.)

21 And that's -- it's both of those
22 clauses that we were concerned about.

23 Now I also want the Court -- to be
24 clear with the Court that we are not alleging
25 that the sellers have to pay to fix those. We

Page 32

1 stood ready to carry the expense of remediating
2 whatever we discovered and of course working
3 towards closing, but we couldn't with the lender
4 get him a first mortgage subject to only the
5 taxes and the normal exceptions until we have
6 that issue because we knew something was there.
7 We knew that. In a very short timeline, though,
8 and that's where I think they got --

9 JUDGE SCARBOROUGH: Well, isn't
10 that supposed to get negotiated on the front end?
11 Isn't that why -- negotiated the contract?

12 MR. ADLER: Well, Your Honor, I
13 mean, I suppose. But my client didn't know and
14 his position is that they did and they tried to
15 push this through real fast. That's what I
16 believe he said in his deposition the other day.

17 JUDGE SCARBOROUGH: Well, then why
18 did he sign the contract?

19 MR. ADLER: We wanted the property.
20 He wants the property. He said that in the
21 deposition too.

22 JUDGE SCARBOROUGH: Okay. All
23 right. I gotcha. Mr. Giardino, do you want to
24 join in on this one? I know you've got your own
25 motion, but do you want to be heard on this one

Page 33

Page 35

1 as well?

2 MR. GIARDINO: No, Your Honor.

3 JUDGE SCARBOROUGH: You have no dog
4 in that fight?

5 MR. GIARDINO: No.

6 JUDGE SCARBOROUGH: All right.

7 MR. GIARDINO: Just happy to be
8 here, Your Honor.

9 JUDGE SCARBOROUGH: All right.
10 Happy to have you. Mr. Haller?

11 MR. HALLER: Your Honor, I'll try
12 to be brief, but I didn't hear anything about
13 that the first deadline in the contract is to
14 have a pre-approval of financing by January the
15 17th.

16 JUDGE SCARBOROUGH: That, we know
17 we don't have.

18 MR. HALLER: We don't have.

19 JUDGE SCARBOROUGH: As we sit here
20 today, do you have one?

21 MR. HALLER: I have not seen any
22 document that was signed. What I have is an
23 e-mail that was produced to me yesterday. That's
24 that March 26th e-mail that says --

25 JUDGE SCARBOROUGH: Whatever it

Page 34

1 was.

2 MR. HALLER: Yeah. My partners are
3 out on the west coast traveling --

4 JUDGE SCARBOROUGH: Let me see the
5 e-mail. At best, it's a reserved commitment it
6 sounds like. Not a loan commitment.

7 MR. HALLER: I didn't have an
8 opportunity to ask Mr. Knapp questions about this
9 e-mail because I got it yesterday morning. We
10 got that affidavit from Mr. Koos in which he said
11 he didn't commit to lend Mr. Knapp money. He
12 committed to lending his company money.

13 JUDGE SCARBOROUGH: Okay.

14 MR. HALLER: Mr. Knapp's company is
15 not the buyer. The commitment is toward -- to
16 the buyer.

17 JUDGE SCARBOROUGH: Well, he does
18 have the sons on there, right? He could've
19 signed it, right? The buyer is Marc Knapp and
20 the sons?

21 MR. HALLER: Yes, sir, but he's
22 also the plaintiff, and the plaintiff has got to
23 be able to show that he's ready, willing, and
24 able to perform. Not just claim that some
25 strange person out on the street is going to be

1 ready, willing, and able to perform for him.

2 JUDGE SCARBOROUGH: Okay.

3 MR. ADLER: If I may, Your Honor?

4 I just -- to Mr. Haller, the buyer didn't give
5 the notice requirement in the contract and the
6 seller didn't provide any kind of notice of
7 breach or where is it? Where's your proof of
8 financing? So we sat acquiescence to that.

9 JUDGE SCARBOROUGH: I thought you
10 said you did get notice of termination. When was
11 that?

12 MR. HALLER: After February 24th.

13 JUDGE SCARBOROUGH: Right.

14 MR. HALLER: So Mr. Adler took
15 great liberties about talking about e-mails that
16 got exchanged between parties and such, but after
17 the 24th, Mr. Adler was telling everybody that he
18 would talk to Mr. Knapp.

19 The reason no extension was given
20 is because Mr. Knapp refused to provide any proof
21 that he had financing. And what Mr. Adler -- in
22 one of them he says, I have a call in to
23 Mr. Knapp to get authorization for you to speak
24 with his loan broker to confirm the loan
25 application.

Page 36

1 This is on March the 9th, Judge.

2 Not approval. An application.

3 As soon as I hear back from him, I
4 will forward you the loan broker's contact so you
5 can do your diligence.

6 Well, two months before he was
7 supposed to have financing in place. And the
8 reason -- as Your Honor is well aware, the reason
9 this contract, that contingency is drafted the
10 way it is with a denial by any lender giving both
11 parties the opportunity to terminate is so that
12 neither party is holding out there just hanging
13 in the wind waiting for a party who is hoping
14 that they can find somebody who will lend them
15 the money. Because most of the time -- again,
16 this is the residential, not the raw land
17 contract. But most of the time, folks have had
18 their home on the market to sell because they got
19 moved someplace that's either contingent on
20 another piece of property or another transaction
21 -- all various reasons.

22 And the refusal to provide any
23 information about their financing and even as
24 late as March the 9th, almost two weeks after
25 when closing was supposed to have occurred,

Page 37

Page 39

1 they're saying, I'll let you know something --
 2 I'll see if Mr. Knapp will let you speak about
 3 his application, not that anything has been
 4 approved and, of course, by that e-mail, that
 5 e-mail right there says, The only financing that
 6 we've seen of any kind of approval that was close
 7 to the amount of money that Mr. Knapp promised to
 8 pay for this property was a full month after the
 9 last closing date.

10 JUDGE SCARBOROUGH: Okay.

11 MR. ADLER: If it will please Your
 12 Honor. Also, we have shown Mr. Haller that he
 13 had cash on hand. He had the 20 percent cash on
 14 hand. He also had the AgSouth -- AgSouth agreed
 15 to loan \$145,000 to one of his daughters. He had
 16 the money.

17 I think where we're having a
 18 disagreement is Mr. Knapp believed he had title
 19 issues that needed to be resolved before he would
 20 go to that. Mr. Haller was right about the
 21 e-mail. I don't know why Mr. Knapp didn't
 22 disclose or his realtor didn't say to the
 23 seller's side what the situation was with the
 24 financing. I don't understand how that came and
 25 passed.

Page 38

Page 40

1 I think my client's position is
 2 that's not material. The seller couldn't convey
 3 marketable title, and we had this issue that
 4 potentially would diminish value significantly if
 5 we can get it resolved. That's where we stand,
 6 Your Honor.

7 JUDGE SCARBOROUGH: Where's the
 8 as-is language? That's over on page 4? All
 9 parties, due diligence?

10 MR. HALLER: Yes, sir. It's our
 11 position that the title is marketable. And the
 12 title is marketable because we have a marketable
 13 title that's an insurable title, and we provided
 14 a title insurance policy. And there is no
 15 encroachment on the property. Nobody -- even
 16 Mr. Knapp testified that he is not aware of
 17 anybody who can testify that there's any title
 18 issue with the property. Be that as it may, if
 19 there is, the issue becomes either walk away
 20 because the seller can't perform --

21 JUDGE SCARBOROUGH: Or close.

22 MR. HALLER: -- or close. But he
 23 couldn't close. Now as to the as-is language,
 24 they have asked for us -- for my clients to go
 25 back down to the property and have a pin set.

1 The issue with the pin, Your Honor, is that part
 2 of the property line goes below the high
 3 watermark. So there's a king's grant to the
 4 marsh, and the surveyor in this case doesn't put
 5 marsh pins. So he never laid a pin in the marsh
 6 because that's just not what he does. I think
 7 that's also why there's a discrepancy on the
 8 amounts of the acreage.

9 JUDGE SCARBOROUGH: Do you have a
 10 copy of that 2020 survey?

11 MR. HALLER: Yes, sir.

12 JUDGE SCARBOROUGH: How did he mark
 13 the corner at that time?

14 MR. HALLER: It's in the water.

15 JUDGE SCARBOROUGH: He had
 16 something set out there it looks like. It's hard
 17 to read this one. This is the -- is this
 18 described -- yeah, as Tract A, right?

19 MR. HALLER: That's correct, Your
 20 Honor.

21 JUDGE SCARBOROUGH: It's the
 22 northern of the two or maybe the Eastern of the
 23 two on the old plat, right?

24 MR. HALLER: Yes. That's correct.

25 JUDGE SCARBOROUGH: That shows the

1 cemetery on part B. This is part A that's being
 2 sold here, right?

3 MR. HALLER: That's correct. And
 4 the statute -- to the extent there is a cemetery
 5 there, the statute would require the owner of
 6 Tract B to provide access. Mr. Knapp's testimony
 7 was the squiggly line that they call a path that
 8 appears on Google Earth -- this Google Earth
 9 Internet picture starts on a neighboring property
 10 and goes --

11 JUDGE SCARBOROUGH: Along the
 12 (Inaudible) Because that's the only way they
 13 could find to get there probably.

14 MR. HALLER: Again, I don't know if
 15 that's a path or not. It doesn't look -- I mean,
 16 if you look in the Nielson survey -- the 2020
 17 survey, there's a picture -- albeit, in black and
 18 white -- of the property of the tract. And
 19 there's nothing that shows there's a path on it.
 20 Mr. Knapp testified he couldn't find a path and
 21 that's why he had to go cut a path on his own.

22 JUDGE SCARBOROUGH: Okay. He'd
 23 have to do that anyway, wouldn't he, to get to
 24 where he wants to get to?

25 MR. HALLER: At some point.

Page 41

Page 43

1 JUDGE SCARBOROUGH: If there's no
2 driveway, he'd have to build one.
3 MR. HALLER: There's no driveway.
4 JUDGE SCARBOROUGH: All right. I'm
5 looking at the -- I guess it's paragraph 8,
6 page 4. Two things in here that would seem to me
7 to be of note, the very last sentence in that
8 paragraph is talking about -- it's after the box
9 as-is is checked. Basically, they have a right
10 to inspect -- buyer has a right to inspect by
11 January 28th for information purposes only. The
12 seller is under no obligation to remedy any
13 issues the buyer discovers during their
14 inspections. And the buyer may not terminate the
15 contract based on results of any inspections
16 conducted.
17 That's I think trying to define
18 what as-is means. I'm going to go up above that
19 to the termination. And I'm not sure -- in the
20 bold print. During the due diligence period, the
21 buyer may unilaterally terminate the contract
22 only by delivering to the seller both notice and
23 a termination fee of blank dollars.
24 So the buyer clearly didn't send
25 notice to terminate. The seller did sometime in

Page 42

1 March I think it was.
2 MR. HALLER: That's correct, Your
3 Honor.
4 JUDGE SCARBOROUGH: During the due
5 diligence period, should buyer fail to -- and
6 this is bad language in this contract, but should
7 buyer fail to obtain a new/amended contract with
8 the seller -- my understanding is there was an
9 amendment. The amendment was to extend the
10 closing by two weeks --
11 MR. HALLER: That was the only
12 amendment.
13 JUDGE SCARBOROUGH: -- from the 10th
14 to the 14th. If the buyer fails to
15 timely/properly do diligence terminate the
16 contract during the due diligence period -- which
17 again, the buyer did not do that -- the buyer is
18 to buy and seller agrees to sell the property as
19 is. Parties agree as-is means buyer buys the
20 property for the purchase price while the seller
21 maintains the property from the effective date
22 through closing subject to normal wear, otherwise
23 without repair or replacement and sells the
24 property for the purchase price that's otherwise
25 agreed in writing by the parties.

1 I don't think as-is means anything
2 other than if you don't send notice to terminate
3 your time has come to close. That was not done.
4 MR. HALLER: And he didn't have
5 enough money to close.
6 JUDGE SCARBOROUGH: Well, that's a
7 separate issue, and that was not timely done
8 either. I'm reluctant to -- but I think in this
9 instance, I'm going to agree with Mr. Haller.
10 The matter should be dismissed for failure to
11 comply with the terms of the contract.
12 MR. HALLER: Thank you, Your Honor.
13 JUDGE SCARBOROUGH: That would lead
14 to a cancellation of the Lis Pendens and
15 termination of this contract. I rely upon you to
16 prepare an order along those lines.
17 MR. HALLER: Thank you, Your Honor.
18 JUDGE SCARBOROUGH: Run that by
19 Mr. Adler. Mr. Giardino, that might obviate --
20 might obfuscate or obviate your need -- your
21 motion, but anyway, to the extent that it goes
22 on, we might have to address it. You tell me.
23 MR. ADLER: I will. The issue is
24 one for Mr. Giardino as to whether or not his
25 client would waive any privileges. He testified

Page 44

1 that Mr. Giardino was going to be the expert to
2 testify as to the marketability, but I guess
3 that's all moot at this point.
4 JUDGE SCARBOROUGH: I don't think
5 we got there.
6 MR. ADLER: I don't think we did
7 either.
8 JUDGE SCARBOROUGH: I don't think
9 we got there.
10 MR. HALLER: Your Honor, the one
11 request that I'd ask is if you could enter a form
12 order canceling the Lis Pendens so that we can go
13 ahead with the second backup contract. His folks
14 have been waiting very patiently for a number of
15 months, and I think they're ready to go.
16 JUDGE SCARBOROUGH: Okay. I'll do
17 that. Sometimes I'll do that.
18 MR. HALLER: Thank you, Your Honor.
19 JUDGE SCARBOROUGH: Mr. Adler?
20 MR. ADLER: And I'm going to ask
21 the Court for clarification on a point because I
22 think this is going to come up anyway and we
23 might as well get it out now.
24 In deposition, Mr. Haller asked
25 Mr. Knapp about this particular clause and

Page 45

Page 47

1 Mr. Knapp said that he took as-is to have --
2 speak to improvements on the property because of
3 the sentence. It says, Subject to normal wear
4 and tear without repair or replacement.

5 That's how he read it. So I would
6 ask the Court to -- does that have any bearing on
7 the as-is with respect to the other issue?

8 JUDGE SCARBOROUGH: Well, and
9 that's the only reason I backed into that second
10 clause because as-is normally means wear and tear
11 on a house when you go to buy a house under these
12 circumstances, but if you look at the very last
13 sentence, that's where I started. The seller is
14 under no obligation to remedy anything the buyer
15 discovers. In this instance, the buyer
16 discovered no pin in the back corner. They have
17 no requirement to do that. Okay? That's the way
18 I would read that.

19 MR. HALLER: Your Honor, to follow
20 up -- and I don't mean to ping pong you here,
21 Your Honor. But to follow to Mr. Adler's
22 comment, I then asked Mr. Knapp to go to
23 paragraph 3 to see what the definition of
24 property was because as-is in the paragraph -- in
25 the as-is paragraph, property is capitalized,

Page 46

1 meaning it's a defined term. And it's defined as
2 5896 Maybank Highway, Rockville. So you know
3 that doesn't include -- and it says the land and
4 appurtenances/improvements thereto, so it's
5 everything.

6 JUDGE SCARBOROUGH: Right. I think
7 that -- I kept looking at this thing thinking we
8 were discussing Tract B, which clearly shows a
9 cemetery on there. It's not. We're dealing with
10 Tract A, which does not show a cemetery on there.
11 Access to the cemetery can be -- any number of
12 ways. One of the photographs y'all showed me
13 looked like it was a jungle back there. It gets
14 you to a creek -- Leadenwah?

15 MR. HALLER: Yes.

16 JUDGE SCARBOROUGH: Okay. There
17 used to be jungles on James Island. Now they
18 look out over the harbor, and it's called
19 Clearview. Okay? So this may be a Clearview one
20 day too. And maybe Mr. Knapp wants to buy it
21 again.

22 But anyway, it sounds like you've
23 got somebody waiting in the wings, so. All
24 right. I'll grant that. I'll do a form 4 just
25 stating that I granted the motion -- the 12(b)(6)

1 motion to dismiss pursuant to the terms of the
2 contract and that that would cancel the Lis
3 Pendens, and then parties can proceed as they
4 need to. Okay?

5 All right. Gentlemen, thank y'all
6 for coming in.

7 (Hearing concluded at 2:58 P.M.)

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Page 48

CERTIFICATE

2 STATE OF SOUTH CAROLINA
3 COUNTY OF CHARLESTON

4
5 I, Abby Bishop, Notary Public for
6 the State of South Carolina at Large, do hereby
7 certify that the witness in the foregoing
8 deposition was by me duly sworn to testify to the
9 truth, the whole truth and nothing but the truth
10 in the within-entitled cause; that said
11 deposition was taken at the time and location
12 therein stated; that the testimony of the witness
13 and all objections made at the time of the
14 examination were recorded by voice writing by me
15 and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full,
17 complete and true record of the testimony of the
18 witness and of all objections made at the time of
19 the examination; and that the witness was given
20 an opportunity to read and correct said
21 deposition and to subscribe the same.
22 Should the signature of the witness
23 not be affixed to the deposition, the witness
24 shall not have availed himself/herself of the
25 opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.
Witness my hand, I have hereunto
affixed my official seal on May 28th, 2023, at
Charleston, Charleston County, South Carolina.

19
20
21
22
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24
25

ABBY BISHOP
Notary Public for
South Carolina
My Commission expires
December 7, 2028

WORD INDEX

< \$ >

\$145,000 9:16

19:23 37:15

\$225,000 8:22

\$228,000 8:22

\$285,000 5:9 12:7

< 1 >

10 17:10

100 1:14

10th 5:11 7:12

14:11 42:13

11 17:11

12 1:4, 10

12(b)(6 46:25

14th 42:14

17th 7:15 8:6, 9, 11

9:24 18:25 33:15

18 24:20

1968 13:1 16:5

< 2 >

2:11 1:10

2:58 47:7

20 37:13

2017 11:18

2020 16:6 31:1

39:10 40:16

2022 1:4, 10 5:10,

12 6:2 7:1, 12 9:1

16:14

2022-CP-10-01958

1:6

2023 48:17

2028 48:22

20-year 25:2

22nd 9:20

23rd 28:4

24th 5:12 6:2, 25

14:8, 9, 12 28:4, 8

35:12, 17

26th 9:1 19:18

33:24

27-43-310 15:15

28th 16:14 41:11

48:17

29401 1:14

29407 2:10

29415 1:20

29585 2:6

2nd 9:13 13:11

14:2, 4 20:7

< 3 >

3 45:23

30 25:1

30-year 25:1

< 4 >

4 3:3 31:15 38:8

41:6 46:24

4743 2:5

48 3:4

< 5 >

5 23:24

5896 5:3 46:2

5th 5:10 30:16

< 6 >

600-yard 23:25

604 2:10

68 27:20

< 7 >

7 7:25 11:8, 18

18:5, 13 24:22

48:22

73129 1:20

7th 16:16 25:24

26:1

< 8 >

8 41:5

80 8:9, 23 19:24

843-762-6294 1:21

< 9 >

9th 36:1, 24

< A >

ABBY 1:19 48:3,

18

abided 17:24

able 10:1 11:23

12:7 16:21 17:12,

18 18:1 34:23, 24

35:1

access 15:16, 19

16:9, 22 23:12, 19

25:8 26:9 40:6

46:11

acknowledged 8:10

acquiescence 35:8

acreage 31:7, 8

39:8

acres 5:5 20:22

action 26:22 27:11

add 11:16 21:12

address 7:1 43:22

adequate 17:21

ADLER 2:2, 5 21:8,

9, 16, 19, 25 22:8, 13,

16 28:3, 9, 13, 19

29:19 31:3, 12

32:12, 19 35:3, 14,

17, 21 37:11 43:19,

23 44:6, 19, 20

Adler's 45:21

adversely 31:19

affect 31:19

affidavit 8:20, 23

34:10

affidavits 26:21

affixed 48:13, 17

agent 11:10 13:17

20:8

agents 5:15

ago 10:21

agree 11:7 12:15

21:15 22:7 42:19

43:9

agreed 5:8 7:10, 18

11:8 30:20 37:14

42:25

agreeing 22:10

agrees 42:18

AgSouth 9:9 19:23

37:14

ahead 44:13

albeit 40:17

ALICIA 1:8 2:8

4:22

allegation 15:2

alleged 11:22

allegedly 8:17

alleging 31:24

allow 12:22 15:25

allowed 7:21

amendment 42:9, 12

American 12:6

amount 8:9 17:13

19:24 24:5 31:8

37:7

amounts 39:8

answer 10:3, 9, 12,

23 11:3, 6, 10 12:4,

18 15:8 17:2, 5

anybody 15:4

20:12 38:17

anyway 40:23

43:21 44:22 46:22

apparent 24:18

25:8

apparently 8:15

9:18

APPEARANCE

2:12

appears 23:14 40:8

application 20:18

25:24 35:25 36:2

37:3

applied 8:12 9:17

19:14

apply 7:11 9:9

16:15

approach 12:22

approval 9:12, 16

36:2 37:6

approve 18:17

approved 19:23

37:4

approximately 5:4

23:13

appurtenances/impro

vements 46:4

as-is 24:17 29:4, 5,

13 30:20 38:8, 23

41:9, 18 42:19

43:1 45:1, 7, 10, 24,

25

asked 9:24 10:5, 10,

20 11:25 12:14

14:14, 16 15:3

16:20, 22 20:8

26:12 29:14 38:24
 44:24 45:22
 asking 22:13
 aspect 7:3
 asserted 6:11
 asserts 8:15
 assign 9:10
 Association 7:8
 Association's 5:14
 assuming 28:25
 assurance 26:25
 attached 24:15
 attorney 25:9
 authorization 35:23
 availed 48:14
 aware 7:7 23:17
 25:6, 7 26:8 36:8
 38:16
 < B >
 back 6:9 12:4
 14:18 25:14 27:17,
 22 29:23 30:1, 3
 36:3 38:25 45:16
 46:13
 backed 45:9
 backup 17:12 44:13
 bad 42:6
 Bank 9:19
 bankruptcy 11:17
 24:19
 BARNWELL 1:8
 2:8
 based 22:9 27:12
 41:15
 basically 20:22 41:9
 basis 18:23
 bearing 45:6
 beginning 24:1, 13
 begins 18:14
 BEHALF 2:2, 6
 belief 16:23
 believe 11:6 14:19
 29:22 30:6 32:16
 believed 37:18
 beneficiaries 16:3
 best 34:5
 Big 23:19
 BISHOP 1:19 48:3,

18
 black 40:17
 blank 41:23
 bodies 23:15 27:22
 bold 41:20
 BOLEN 1:19
 bottom 18:14
 Boulevard 28:20
 boundaries 26:5
 boundary 23:5
 Box 1:20 2:5 13:5
 41:8
 breach 17:20 29:18
 35:7
 breached 6:8 17:19
 brief 33:12
 Broad 1:14
 broker 35:24
 brokers 8:2 18:19,
 20
 broker's 36:4
 build 41:2
 bureaucratic 25:18
 burial 15:24 16:1
 23:18, 19
 buried 15:20 23:16
 27:22
 bush 30:2
 busy 24:8
 buy 10:2 17:9
 26:11 30:21 42:18
 45:11 46:20
 buyer 5:7 7:23
 18:18 34:15, 16, 19
 35:4 41:10, 13, 14,
 21, 24 42:5, 7, 14, 17,
 19 45:14, 15
 buys 42:19

< C >

call 25:12 35:22
 40:7
 called 46:18
 cancel 47:2
 canceled 4:12
 canceling 44:12
 cancellation 43:14
 capitalized 45:25

CAROLINA 1:1
 5:14 28:16, 20
 48:1, 5, 18, 21
 carry 32:1
 Case 1:6 4:2 5:2,
 8 22:23 24:21, 23
 39:4
 cash 37:13
 cause 48:7, 16
 caused 29:20, 21, 22
 Cemeteries 15:15
 cemetery 12:20
 13:6, 15 15:18, 20,
 24 16:1, 7 26:20
 27:2, 19 40:1, 4
 46:9, 10, 11
 Center 1:10
 certain 7:9
 CERTIFICATE 3:4
 48:1
 certify 48:5, 15
 chain 23:4 27:13
 change 7:16, 18, 19
 10:11
 changed 10:7
 changing 7:19, 20
 Chapter 11:18
 CHARLESTON 1:2,
 10, 14, 20 2:10 48:3,
 18
 checked 41:9
 circumstances
 22:25 25:25 27:21,
 24 29:25 45:12
 Citizens 9:18, 22
 10:22 20:2
 claim 12:18 22:17
 34:24
 claimed 6:7
 clarification 44:21
 CLARK 1:19
 clause 16:13 29:8
 30:24 44:25 45:10
 clauses 31:22
 clear 23:6 30:1, 2
 31:24
 clearly 41:24 46:8
 Clearview 46:19
 client 21:23 32:13

43:25
 clients 38:24
 client's 38:1
 close 6:25 9:7
 11:14 17:1, 12, 18
 22:19 26:19 28:7
 30:19 37:6 38:21,
 22, 23 43:3, 5
 closed 6:3 25:3
 closing 5:11 7:20
 9:2, 20, 21 11:25
 13:21 14:7 16:17,
 18 17:18 19:3, 4
 32:3 36:25 37:9
 42:10, 22
 coast 34:3
 code 15:14
 come 4:24 6:2
 25:19 28:13 43:3
 44:22
 coming 24:9 29:4
 47:6
 comment 45:22
 Commission 48:22
 commit 34:11
 commitment 8:24
 9:1 12:6 19:18
 23:1 34:5, 6, 15
 committed 30:8
 34:12
 COMMON 1:1
 company 8:19 9:6
 34:12, 14
 complaint 11:22
 complete 48:10
 comply 43:11
 computer-aided 48:9
 concern 15:17
 concerned 31:22
 concluded 47:7
 conducted 41:16
 confirm 35:24
 confirmed 23:17
 conflict 22:1
 conflicting 22:9
 conflicts 8:23
 construction 25:4,
 20
 contact 36:4

contacted 25:10	creek 20:23 23:21 46:14	determine 17:8	either 8:3 11:5
contention 16:23	cure 22:18, 19	determined 19:7	18:21 27:21 36:19
contingencies 17:15	cut 20:18 40:21	developed 6:24	38:19 43:8 44:7
contingency 6:17	< D >	DHEC 6:18 16:12	elected 23:1
7:2, 3, 7, 25 18:24	damages 17:14	20:17 25:18, 22	e-mail 8:24 9:12
19:2, 3 36:9	DATE 1:10 5:11	26:15	20:6, 7 25:13
contingent 36:19	7:21 9:2 14:1	difficult 25:22	33:23, 24 34:5, 9
continued 26:14	17:18 28:4 37:9	diligence 16:13	37:4, 5, 21
continuing 25:15	42:21	29:21 36:5 38:9	e-mailed 13:16
continuous 27:14	dated 5:10 9:1, 13	41:20 42:5, 15, 16	e-mails 29:5 30:6
contract 4:8 5:9,	20:7 25:24	diminish 38:4	35:15
13, 15, 16, 22 6:8, 11,	daughter 9:9, 11	dirt 14:24	encroachment
17 7:4, 8, 10, 13, 22,	19:22	disagreeing 22:11	14:20 15:5, 11
25 8:4 9:11 16:14	daughters 37:15	disagreement 37:18	38:15
17:4, 13, 20, 24 18:2,	daughter's 9:11	disclose 37:22	enter 44:11
22 19:24 22:2, 6	DAVID 2:9	discover 30:22	entered 7:13 31:2
26:13 28:5, 7, 22, 24	day 13:16 16:22	discovered 22:18	entitled 15:16
29:15 30:16, 24	20:11 32:16 46:20	32:2 45:16	equity 8:16
31:2, 13, 14 32:11,	days 7:12 9:20	discovers 41:13	error 26:25
18 33:13 35:5	16:16	45:15	essentially 16:3
36:9, 17 41:15, 21	deadline 33:13	discrepancy 31:7	estate 5:14 13:17
42:6, 7, 16 43:11, 15	deal 29:2	39:7	events 48:16
44:13 47:2	dealing 46:9	discussing 46:8	everybody 7:9
conventional 19:10	debate 8:7	dismiss 4:12 47:1	35:17
converted 24:22	DECEMBER 1:4,	dismissed 43:10	examination 48:9, 11
convey 38:2	10 48:22	disputes 24:9	EXAMINATIONS
Conveyance 31:15	decide 21:20	document 33:22	3:2
cooperation 27:10	decided 28:23	dog 33:3	exceptions 32:5
copy 5:21, 22, 24	declaratory 6:10	dollars 41:23	exchanged 35:16
39:10	declines 18:17	DOUGLAS 1:8 2:6	excuse 31:14
corner 23:23 26:3	defects 22:18	4:3	exist 27:5
30:8 31:10 39:13	Defendants 1:8	drafted 7:8 36:9	existing 27:5
45:16	define 41:17	drew 14:23	Exo 13:2
corners 30:9	defined 46:1	driveway 41:2, 3	expect 21:15
correct 4:4, 15	definition 45:23	dropped 30:8 31:10	expense 32:1
11:3 19:8, 16, 19	delay 29:20 30:10	due 16:13 29:21	expert 44:1
39:19, 24 40:3	delayed 20:17	38:9 41:20 42:4, 16	expired 16:14 18:24
42:2 48:12	delivering 41:22	duly 48:6	expires 19:3 48:22
could've 34:18	denial 17:25 36:10	< E >	explaining 24:16
counsel 4:23 48:16	denied 7:23 9:20,	Earth 6:22 14:21	extend 42:9
COUNTY 1:2, 10	21 17:23 18:11	15:6 23:10 40:8	extended 14:11
48:3, 18	19:14 20:2, 3	easement 14:16	28:5
course 15:9 21:12	deposition 8:10	easements 31:16	extending 16:18
24:23 32:2 37:4	9:23 20:10 29:23	Eastern 39:22	extension 5:11
COURT 1:1 4:21	30:7 32:16, 21	edge 23:13, 18	16:25 28:7 35:19
17:17 22:13 29:15	44:24 48:6, 7, 12, 13	effective 42:21	extent 40:4 43:21
31:23, 24 44:21	described 39:18	egress 15:25	extenuating 25:25
45:6			< F >
covenants 31:18			
create 29:3			

fact 12:5 21:21	23:2 27:22 29:18	41:18 43:9 44:1,	26:5
facts 21:12	32:4 33:13	20, 22	happy 33:7, 10
fail 42:5, 7	five 7:12	good 4:17 21:5, 11	harbor 46:18
fails 18:17 42:14	fix 31:25	Google 6:22 14:21	hard 39:16
failure 43:10	focused 16:12	15:6 23:10 27:5	hear 4:17, 18 21:8
faint 5:25	folks 17:12 27:23	40:8	33:12 36:3
fair 24:5	36:17 44:13	Gotcha 20:21 32:23	heard 20:12 22:22
families 27:23	follow 45:19, 21	gotten 26:20	25:13 32:25
family 7:16 15:19	followed 17:6	grant 39:3 46:24	HEARING 1:3
16:6 17:22 27:15,	following 16:2	granted 46:25	47:7
16	foregoing 48:5, 10	grave 15:24 16:1	he'd 8:21 17:22, 24
far 27:17	foremost 21:13	graves 13:18, 23	20:11 40:22 41:2
fast 32:15	form 44:11 46:24	graveyard 6:19	hereunto 48:17
fault 24:7 29:19	for-sure 9:4	20:5, 8, 12, 13 23:3,	Heyer 28:16
favorable 21:22	forward 26:14 36:4	5, 7, 9, 14 25:7 26:8,	Heyer's 29:5
February 5:11, 12	found 8:16 12:1	9 29:10	high 11:20 39:2
6:2, 25 9:13, 19	14:21, 25 15:5, 6	great 35:15	Highway 2:10 5:3
13:11 14:2, 4	23:9	ground 15:24 16:1	23:12 24:1 46:2
16:16 20:7 24:13	four 30:9	26:21 27:6	Hilton 13:2
25:24 28:4 35:12	front 32:10	grounds 29:16	Hilton's 16:5
fee 31:16 41:23	fruition 13:12	guess 21:19 30:2	himself/herself 48:14
feels 26:22	full 37:8 48:10	41:5 44:2	hinted 16:21
fight 33:4	funding 10:2 17:21		hogged 30:2
figure 25:11 26:12	further 48:15	< H >	holding 36:12
file 16:7	< G >	half 5:4 16:18	home 36:18
filed 6:6, 7 11:17	Gentlemen 47:5	HALLER 2:9 4:4,	Honor 4:5, 10, 15,
21:25 24:20 26:1	getting 23:21 29:25	10, 13, 15, 18, 20 5:2,	20, 21 5:17 7:6
filing 14:15	30:8, 20	20 6:1, 5 7:6	12:22 14:3 15:13
filling 20:17	GIARDINO 2:12	10:17, 19 12:11, 14,	18:3, 12 21:2, 6, 9
finally 26:16	4:14 31:5 32:23	25 13:4, 9, 11 14:2,	23:16 28:9 31:4,
finances 11:21	33:2, 5, 7 43:19, 24	5, 8, 11, 14 18:6, 12,	13 32:12 33:2, 8, 11
financing 6:25 7:2,	44:1	16 19:1, 8, 11, 16, 19,	35:3 36:8 37:12
3, 7, 11, 14, 23, 24	give 11:20 15:19	22 20:1, 6, 24 21:6,	38:6 39:1, 20 42:3
8:3, 5, 18 9:9, 12, 15,	16:24 19:14 35:4	10 22:20 25:23	43:12, 17 44:10, 18
21 10:8 11:14	given 27:24 28:2, 8	28:14 33:10, 11, 18,	45:19, 21
18:18, 21, 24 19:2, 3,	31:1 35:19 48:11	21 34:2, 7, 14, 21	HONORABLE 2:2
10 25:4 33:14	giving 21:11 36:10	35:4, 12, 14 37:12,	hoping 36:13
35:8, 21 36:7, 23	glad 4:18	20 38:10, 22 39:11,	house 27:8 45:11
37:5, 24	go 20:18 26:24	14, 19, 24 40:3, 14,	
find 15:1 26:9	27:3, 17 30:11	25 41:3 42:2, 11	< I >
36:14 40:13, 20	37:20 38:24 40:21	43:4, 9, 12, 17 44:10,	improvements 5:5
fingerling 21:1	41:18 44:12, 15	18, 24 45:19 46:15	29:1 45:2
FIRM 2:2, 9 22:21,	45:11, 22	hand 5:24 37:13,	inability 8:2 18:20
22, 24	goes 20:15 25:17	14 48:17	Inaudible 40:12
first 4:17 7:3, 4	39:2 40:10 43:21	handy 5:22	include 46:3
9:18, 21 10:22	going 7:1, 2 15:1	hanging 36:12	including 22:4
11:24 12:6 16:20	20:13, 14 22:20	happened 19:13	incumbent 25:8
17:20, 25 20:2	25:4, 16 26:23, 25	29:12	indicate 12:3
21:8, 13 22:16, 21	28:21 29:23 34:25	happening 25:21	indicated 8:21

individuals 15:19	6:8 7:16 10:7	35:18, 20, 23 37:2, 7,	16 19:6 24:24
inform 7:17	11:11, 25 16:6, 24	18, 21 38:16 40:20	32:3 36:10
information 36:23	17:21, 25 21:1	44:25 45:1, 22	lenders 7:19, 20, 22
41:11	27:16	46:20	10:6, 8, 11 17:23
informed 11:11	Jim 4:24	Knapp's 24:7 27:3	lending 8:9 34:12
25:12	job 21:11	28:16 34:14 40:6	letter 9:25 10:3
informing 17:21	join 32:24	knew 32:6, 7	19:2 24:14
ingress 15:25	JR 2:12	know 4:1 17:6	liberties 35:15
initially 22:24	JUDGE 4:1, 6, 11,	20:24, 25 22:1, 25	light 21:21 24:25
inspect 41:10	16 5:1, 19, 23 6:4	23:10, 15, 25 27:15,	likelihood 11:19
inspection 25:19	7:5 10:15, 18 12:9,	20, 21, 23 28:24	line 14:23 18:13
inspections 41:14, 15	12, 24 13:3, 7, 10, 25	29:1 30:1, 20	23:25 39:2 40:7
instance 43:9 45:15	14:4, 6, 9, 13 18:4, 7,	32:13, 24 33:16	lines 43:16
insurable 38:13	15, 23 19:4, 9, 12, 17,	37:1, 21 40:14 46:2	liquidation 11:18
Insurance 12:7, 16	20, 25 20:3, 21 21:3,	knowingly 23:3	Lis 4:12 6:6 43:14
15:11 38:14	7, 14, 17, 24 22:5, 12,	Koos 8:17, 21, 24	44:12 47:2
insure 12:7	15 28:1, 6, 10, 18	9:6 10:14, 16	listing 31:7
intention 9:10	29:16 30:25 31:11	19:18 24:24 26:16	loan 8:12, 13 11:20
interactions 10:6	32:9, 17, 22 33:3, 6,	34:10	19:13, 18 26:17
interested 48:16	9, 16, 19, 25 34:4, 13,	K-O-O-S 10:17, 18	34:6 35:24 36:4
Interior 21:4	17 35:2, 9, 13 36:1		37:15
Internet 6:21 15:7	37:10 38:7, 21	<L>	loans 19:14 25:1
40:9	39:9, 12, 15, 21, 25	laid 39:5	located 15:25
interpreted 22:10	40:11, 22 41:1, 4	land 5:5, 15 8:13,	LOCATION 1:10
involved 6:19	42:4, 13 43:6, 13, 18	14 19:15 20:20	13:14 48:7
22:22 24:11	44:4, 8, 16, 19 45:8	27:3 29:1 36:16	look 14:24 40:15,
involves 5:2	46:6, 16	46:3	16 45:12 46:18
Irvine 25:10	judgment 6:10	landlock 23:7	looked 23:8 46:13
Island 2:6 9:19	Judicial 1:10	language 7:24 18:5,	looking 5:25 41:5
46:17	jungle 46:13	8 28:25 29:6 38:8,	46:7
issue 5:13 6:14, 16,	jungles 46:17	23 42:6	looks 18:12 27:13
19, 23 13:12 16:11	justify 29:6	Large 48:5	39:16
23:1 24:17 30:15,	<K>	larger 27:19	lost 30:13
22 32:6 38:3, 18, 19	Ken 8:17 10:13, 14	late 36:24	<M>
39:1 43:7, 23 45:7	kept 46:7	LAW 2:2, 9 22:21,	made-up 29:10
issued 12:5	kin 27:23	22, 23	maintains 42:21
issues 6:11 11:23	kind 11:1 15:5	lawsuit 22:1 24:15	man 8:16
22:4 30:19 37:19	16:21 24:12 35:6	lawyer 9:18 11:25	MARC 1:5 2:2
41:13	37:6	25:10	4:2 5:7 13:19
IV 1:8 2:6	king's 39:3	lawyers 12:1	34:19
<J>	KNAPP 1:5 2:2	lead 43:13	March 9:1 19:18
JAMES 1:8 2:6	4:2 5:7, 8 6:3, 6,	Leadenwah 20:23	33:24 36:1, 24 42:1
4:2, 22 46:17	24 7:10 8:5 9:8	21:2 23:21 46:14	mark 13:5 23:20
January 5:10 7:12,	11:12, 16 12:5, 15	legal 23:10	39:12
15 8:6, 8, 11 9:24	13:13, 19, 21 14:16	lend 8:14, 22 9:7	marked 3:8
16:14 18:25 24:12	15:3 16:11, 15	11:2 34:11 36:14	market 36:18
30:13 33:14 41:11	17:17 20:1 24:19	lender 7:17, 18, 23,	marketability 6:14,
JENKINS 1:8 2:6,	25:15 29:20 30:6,	24 8:16 10:1, 13	19 11:23 22:2
8 4:2, 3, 22, 24 5:6	17 34:8, 11, 19	17:23 18:5, 10, 14,	24:17 30:23 44:2

marketable 11:24
 12:3, 17, 19 15:10
 29:7, 9 38:3, 11, 12
marsh 39:4, 5
material 21:20
 31:20 38:2
matter 43:10
Maybank 5:3
 23:12 24:1 46:2
mean 15:10 26:22
 30:15 32:13 40:15
 45:20
meaning 15:4 46:1
means 12:17 22:14
 30:21 41:18 42:19
 43:1 45:10
members 15:20
MIKELL 2:2
MILES 2:5 21:9
minus 5:4
mistaken 4:9
mitigate 17:13
moments 10:21
money 9:7 11:2
 25:1, 2 26:17
 34:11, 12 36:15
 37:7, 16 43:5
month 9:1 37:8
months 17:10, 11
 36:6 44:15
moot 44:3
morning 34:9
mortgage 32:4
Motion 4:13 21:18
 32:25 43:21 46:25
 47:1
motions 4:7, 12
move 26:14
moved 36:19
moving 17:23
multiple 10:6
mutual 7:21

< N >
name 8:17
named 19:6
need 5:21 24:3
 25:11 43:20 47:4
needed 25:2 26:4

37:19
negotiated 32:10, 11
neighboring 6:20
 12:21 13:23 40:9
neither 36:12 48:15
never 11:11 25:13
 31:11 39:5
new/amended 42:7
Nielson 40:16
non-moving 21:22
normal 32:5 42:22
 45:3
normally 45:10
northern 39:22
Notary 48:3, 21
note 41:7
notice 8:4 12:25
 13:4 18:22 26:7
 28:2, 10 35:5, 6, 10
 41:22, 25 43:2
notified 8:2 18:20
notify 10:7 18:18
Number 6:13, 16
 17:19 44:14 46:11

< O >
obfuscate 43:20
objections 48:8, 11
obligation 16:8, 24
 41:12 45:14
obtain 8:2 11:24
 18:20 42:7
obtained 6:18
obviate 43:19, 20
occur 16:17, 19
occurred 36:25
offered 30:7
official 48:17
Okay 5:1 7:5
 10:18 12:12 13:3,
 7 14:6, 10 18:4, 15
 19:5, 25 20:3, 21
 21:3, 4, 24 22:12, 15
 28:18 32:22 34:13
 35:2 37:10 40:22
 44:16 45:17 46:16,
 19 47:4
old 39:23
once 5:20 22:19

online 5:24
opinion 14:25
opportunity 34:8
 36:11 48:12, 14
order 43:16 44:12
ordered 26:16
original 16:17
originally 5:10
 13:12 25:11 30:5
outlining 23:17
overgrown 20:20
owned 27:14
owner 15:23 40:5
owners 27:12

< P >
P.M 1:10 47:7
P.O 1:20 2:5
PAGE 3:2 23:2
 38:8 41:6
paid 9:15
paragraph 7:25
 11:8 18:5, 13
 31:15 41:5, 8
 45:23, 24, 25
parcel 27:18, 19
part 16:7 30:24
 31:5 39:1 40:1
particular 44:25
parties 13:13 35:16
 36:11 38:9 42:19,
 25 47:3
partner 9:3
partners 34:2
party 8:4 18:22
 21:22 36:12, 13
 48:16
passed 9:2 37:25
path 6:20 14:22
 20:19 23:9 30:2
 40:7, 15, 19, 20, 21
pathway 14:17
 20:15
patiently 44:14
Pawleys 2:6 9:19
pay 31:25 37:8
Pendens 4:12 6:6
 43:14 44:12 47:3
pending 48:16
people 16:2

percent 8:9, 23
 19:24 37:13
perform 34:24
 35:1 38:20
performance 6:10
period 8:3 10:8
 18:21 19:21 20:2
 41:20 42:5, 16
permission 10:11
permit 6:18 16:12,
 15 25:20, 23 26:15,
 16
person 34:25
personal 14:24
Persons 15:16
PETER 1:8 2:6
 4:22
photographs 46:12
picture 6:21 14:21
 15:6 40:9, 17
piece 6:20 12:20,
 21 20:20 25:9
 27:15 36:20
pin 23:21 25:17
 26:3 30:4, 8 31:10
 38:25 39:1, 5 45:16
ping 45:20
pins 39:5
place 14:7 26:3
 30:4 36:7
placed 26:4
plain 15:21
Plaintiff 1:6 5:7
 21:10 34:22
plat 27:18 39:23
plats 23:8
PLEAS 1:1
please 4:21 37:11
plus 5:4
point 10:13 18:1
 24:1, 11 27:1 31:5
 40:25 44:3, 21
policy 12:16 15:11
 22:21, 23 38:14
pong 45:20
position 11:13
 15:14 22:3 32:14
 38:1, 11
possible 18:19
potentially 38:4

pre-approval 7:14 8:8 9:25 33:14	provisions 5:17 22:9	record 9:13 17:16 31:18 48:10	15:8 18:7 19:7 21:4, 7 23:13
precedent 23:11	public 14:15 48:3, 21	recorded 48:9	26:10, 18 28:8, 12
precise 26:23	pull 31:13	refusal 36:22	32:23 33:6, 9
predecessor 27:16	purchase 4:8 5:8 42:20, 24	refused 35:20	34:18, 19 35:13
prepare 43:16	purposes 41:11	regarding 22:2	37:5, 20 39:18, 23
prepared 8:18 9:6	pursuant 47:1	rejected 8:12 10:22, 25 11:13	40:2 41:4, 9, 10
press 25:16	push 32:15	rejection 11:9	46:6, 24 47:5
pressure 30:18	put 26:7 27:8 29:2 39:4	rejections 11:5	rights-of-way 31:17
pretty 15:21 21:11 24:18 25:17	putting 30:18	related 48:16	risk 11:20
prevented 29:23, 24	< Q >	relied 15:13	road 26:24 27:1, 4
price 42:20, 24	quarter 20:22	re-list 18:2	Robert 13:17, 18 28:15
print 41:20	Quash 4:13	reluctant 43:8	Rockville 46:2
prior 8:11 17:19	Question 10:24 11:4, 7 12:15 17:3 21:21 23:19	rely 29:17 43:15	ROGER 2:12
private 8:16 15:16, 23 24:24	questions 34:8	relying 29:3, 5	ROY 1:8 2:8 4:22
privileges 43:25	quiet 26:22 27:11	remediating 32:1	Run 43:18
probably 23:22 40:13	< R >	remedy 41:12 45:14	running 26:6
problem 23:21 29:3, 10, 11	raises 31:4	remember 19:6	< S >
proceed 47:3	raw 5:5, 15 8:13, 14 19:15 36:16	repair 42:23 45:4	sale 5:3
PROCEEDINGS	read 29:15 39:17 45:5, 18 48:12	replacement 42:23 45:4	sat 35:8
1:3 3:3	reading 27:13	REPORTED 1:19	Savannah 2:10
produced 8:25 33:23	reads 8:1	REPORTER 3:4	saw 22:23
promised 37:7	ready 10:1 16:25 17:11, 15, 17 22:17 26:17, 19 32:1 34:23 35:1 44:15	represent 4:21	saying 27:10 37:1
proof 35:7, 20	real 5:14, 25 13:17 32:15	representation 20:4	says 9:2, 6 19:2 31:14 33:24 35:22 37:5 45:3 46:3
property 4:8 5:9 6:6, 13, 20 10:2 11:1 12:3, 8, 17, 19, 21 13:1, 14, 19, 22, 23, 24 15:1, 5, 16, 18, 23 16:8 20:14, 15, 19 23:22, 25 24:6 26:11 27:12 28:22 29:24, 25 30:3, 21 31:20 32:19, 20 36:20 37:8 38:15, 18, 25 39:2 40:9, 18 42:18, 20, 21, 24 45:2, 24, 25	realtor 24:16 28:14 37:22	representing 22:24	SC 1:14, 20 2:6, 10
provide 7:15 10:2 16:9 35:6, 20 36:22 40:6	Realtors 7:8 24:10 28:15, 22, 23	request 44:11	SCARBOROUGH 2:2 4:1, 6, 11, 16 5:1, 19, 23 6:4 7:5 10:15, 18 12:9, 12, 24 13:3, 7, 10, 25 14:4, 6, 9, 13 18:4, 7, 15, 23 19:4, 9, 12, 17, 20, 25 20:3, 21 21:3, 7, 14, 17, 24 22:5, 12, 15 28:1, 6, 10, 18 29:16 30:25 31:11 32:9, 17, 22 33:3, 6, 9, 16, 19, 25 34:4, 13, 17 35:2, 9, 13 37:10 38:7, 21 39:9, 12, 15, 21, 25 40:11, 22 41:1, 4 42:4, 13 43:6, 13, 18 44:4, 8, 16, 19 45:8 46:6, 16
provided 8:20 16:1, 4 31:14, 18 38:13	reason 7:17 14:19 30:12 35:19 36:8 45:9	requested 6:9	scheduling 25:22
provision 17:3	reasons 20:17 24:6 36:21	require 40:5 45:17	
	receive 7:14	requirement 35:5 45:17	
	recitation 21:11	requirements 24:25	
	reconcile 31:9	requires 15:22	
		reservations 31:17	
		reserved 34:5	
		residential 5:16 36:16	
		resolve 27:11 30:19	
		resolved 24:4 27:10 37:19 38:5	
		respect 45:7	
		rest 27:24	
		restrictive 31:17	
		resulted 7:20	
		results 41:15	
		resurvey 16:6	
		right 4:16 6:4 10:23 11:2 12:13	

seal 48:17	signed 30:16 33:22	40:4, 5	terminate 8:4 18:1,
search 12:2	34:19	steps 7:9	22 28:2, 11 36:11
seated 4:23	significantly 38:4	stood 32:1	41:14, 21, 25 42:15
second 22:17 30:24	simple 31:16	strange 34:25	43:2
31:5 44:13 45:9	sir 10:9, 19 12:11,	Street 1:14 34:25	terminated 17:22
section 15:15 16:2	18 13:9 14:5 18:6	subject 31:16 32:4	26:13
30:2	19:1 20:6 21:8, 16	42:22 45:3	terminating 23:13
see 34:4 37:2	34:21 38:10 39:11	subpoena 4:13	29:14
45:23	sit 33:19	subscribe 48:12	termination 7:21
seen 5:18 6:21	site 23:18, 19 25:19	Subsequent 9:8	35:10 41:19, 23
14:17 33:21 37:6	sited 27:7	subsequently 9:17	43:15
sell 4:8 36:18	sitting 20:11	18:17	terms 22:6 43:11
42:18	situation 24:16	suffice 16:13	47:1
seller 8:1 12:9	37:23	suggest 26:24	testified 9:10 10:5,
18:18, 19 22:3, 10,	six 5:4 20:22	suit 6:7	21 29:22 38:16
24 24:9 26:2 30:7	slim 11:21	support 15:14	40:20 43:25
35:6 38:2, 20	sold 40:2	suppose 32:13	testify 20:13, 14
41:12, 22, 25 42:8,	somebody 11:19	supposed 9:15 13:6	38:17 44:2 48:6
18, 20 45:13	14:23 17:14 36:14	14:7 16:17, 19	testimony 40:6
sellers 5:6 7:18	46:23	32:10 36:7, 25	48:8, 10
10:11 11:4, 9 28:2	someplace 36:19	sure 5:17 12:24	Thank 4:20 5:25
31:25	somewhat 8:6	24:2 25:3 29:7	18:2 21:6 43:12,
seller's 24:15 37:23	sons 34:18, 20	41:19	17 44:18 47:5
sells 42:23	soon 18:19 36:3	survey 12:23 13:1	thereof 48:16
send 41:24 43:2	sort 14:17, 20 25:9	16:5 23:4 31:1	thereto 46:4
sent 8:24	sounds 34:6 46:22	39:10 40:16, 17	thing 11:24 24:12
sentence 8:1 23:2	SOUTH 1:1 5:14	surveyed 30:9	25:4 26:10, 20
31:15 41:7 45:3, 13	48:1, 5, 18, 21	surveyor 26:3	27:4 46:7
separate 12:1 43:7	spare 5:21	30:11, 14 39:4	things 27:9 41:6
septic 6:17 16:12	speak 35:23 37:2	surveys 16:4 31:3, 8	think 4:3 14:22
25:20 26:15	45:2	Susan 28:16 29:4	21:10 23:3 24:9,
set 23:10, 21 26:5	specific 6:10 7:24	sworn 48:6	14, 20 26:18 30:5,
38:25 39:16	18:8		15 31:3 32:8
short 32:7	specifics 20:9	<T>	37:17 38:1 39:6
show 23:11 27:1,	spell 10:16	table 4:23	41:17 42:1 43:1, 8
20 29:11 34:23	spoke 25:12	take 6:9 7:9 14:7	44:4, 6, 8, 15, 22
46:10	squiggly 14:23 40:7	18:8 22:4	46:6
showed 14:21	stand 22:17 38:5	taken 48:7	thinking 46:7
26:10 46:12	standard 5:14	talk 35:18	third 6:23 18:13
showing 10:1	standing 27:6	talked 9:3 20:16	19:2
shown 37:12	stands 26:18	talking 35:15 41:8	thorough 26:23
shows 27:5, 18	start 7:2	tank 16:12 25:20	thought 35:9
31:8 39:25 40:19	started 24:23 30:17,	taxes 32:5	three 9:14 13:20
46:8	20 45:13	TBD 19:7	16:16
siblings 4:3	starts 40:9	tear 45:4, 10	TIME 1:10 7:22
side 23:22 24:2, 9	STATE 1:1 48:1, 5	tell 9:3 11:4, 8	17:7, 25 18:1
28:16 29:8 37:23	stated 48:8	21:17 22:14 24:10	19:21 25:23 26:6
sign 32:18 48:14	stating 46:25	29:15 43:22	27:14 31:1 36:15,
signature 48:13, 14	statute 15:21 23:6	telling 19:13 35:17	17 39:13 43:3
		term 46:1	

48:7, 8, 11
timeline 32:7
timely 43:7
timely/properly 42:15
times 5:19
title 6:15 11:24
 12:2, 6, 16 15:10
 22:2, 4, 20 23:1, 4
 26:22 27:11, 13
 29:8, 9 30:22 31:6,
 19 37:18 38:3, 11,
 12, 13, 14, 17
titled 15:15
today 4:7, 25 11:13,
 14 13:18 31:6
 33:20
told 11:10 15:4
total 11:18
town 8:17 24:24
Track 40:6 46:10
Tract 13:1, 5 39:18
 40:18 46:8
transaction 6:3, 12
 11:15 36:20
transcribed 48:9
TRANSCRIPT 1:3
 3:3
transcription 48:10
traveling 34:3
tried 32:14
true 48:10
truth 48:6
try 25:16 33:11
trying 17:13 26:1,
 11 28:21 29:20
 30:14 41:17
twice 5:21
two 4:3 6:16 9:14,
 20 16:17 22:8
 28:15 36:6, 24
 39:22, 23 41:6
 42:10

< U >

understand 10:24
 25:23 26:2 27:6
 37:24
understanding 42:8

understood 25:3
undertook 12:10
underwrite 8:18
underwriting 24:25
unilaterally 41:21
United 11:1
unmarketable 16:10
 31:19
un-refuted 17:16
unusual 31:11
use 31:20

< V >

VA 8:12, 13 19:13
value 31:20 38:4
variance 24:3
various 6:11 24:6
 36:21
verified 13:18, 22
verify 13:14
versus 4:2 24:17
Veterans 10:25
view 21:21
Virginia 4:24
voice 48:9
vote 9:4
vs 1:7

< W >

Wadmalaw 4:9 5:3,
 6
waiting 36:13
 44:14 46:23
waive 43:25
waived 48:15
walk 38:19
walked 13:21
want 22:19 27:3
 31:23 32:23, 25
wanted 14:25 17:8,
 9 31:10 32:19
wants 27:8 32:20
 40:24 46:20
water 13:8 39:14
watermark 39:3
way 18:9 22:4, 9
 31:20 36:10 40:12
 45:17
ways 46:12
wear 42:22 45:3, 10

Weather 29:24
 30:15
website 6:22
Wednesday 20:11
week 8:11 9:24
weeks 6:5 9:14
 13:20 16:18 25:10
 36:24 42:10
Well 10:12 15:3
 20:9 21:14, 19
 22:5 29:20 31:4,
 12 32:9, 12, 17 33:1
 34:17 36:6, 8 43:6
 44:23 45:8
went 13:13, 21
 19:17, 22 20:2
 26:10
we're 25:16 26:11
 27:10 29:13 37:17
 46:9
west 34:3
western 23:22
we've 22:18 26:12
 29:9, 14 30:18 37:6
whatsoever 14:16
white 40:18
willing 8:21 10:1
 11:20 17:11, 17
 34:23 35:1
wind 36:13
wings 46:23
within-entitled 48:7
witness 48:5, 8, 11,
 13, 17
work 17:8 24:8
 25:5, 16 29:6
worked 26:20
working 24:23
 25:18 32:2
would've 28:11
writing 42:25 48:9
written 7:14 8:8
 9:25 10:3 28:7
wrote 24:14
WWW.CLARKBOL
EN.COM 1:21

< Y >

y'all 28:1 29:17
 30:25 46:12 47:5

Yeah 11:10 17:2
 21:4 34:2 39:18
yesterday 8:25
 33:23 34:9
Young 13:17 28:15

1 STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
2 COUNTY OF CHARLESTON FOR THE NINTH JUDICIAL CIRCUIT
3
4

5 MARC K. KNAPP,)
6)

7 Plaintiff,)
8)

9 vs.) Case No.
10)

11 JAMES DOUGLAS JENKINS, IV, PETER) 2022-CP-10-1958
12 BARNWELL JENKINS, and ALICIA J.)

13 ROY,)
14)

15 Defendants.)
16
17
18

19 Hearing before the Honorable Mikell R.
20 Scarborough, reported by Josie Allen Boehm, Registered
21 Professional Reporter and Notary Public, at 100 Broad
22 Street, Courtroom 2A, Charleston, South Carolina,
23 March 13th, 2023 commencing at 12:18 p.m.
24
25

APPEARANCES

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1 THE COURT: All right. So we are here. My
2 court reporter is back in action, thank God for
3 everyone, especially her.

4 I moved some things around this morning to
5 get to this case. I think you were originally set
6 earlier. This is the Marc Knapp versus James Jenkins
7 case, 2022-CP-10-1958.

8 All right. Had a motion to reconsider from
9 Mr. Adler. And then I was informed, Mr. Adler, that
10 you had filed a motion to dismiss for lack of subject
11 matter jurisdiction; is that correct?

12 MR. ADLER: I found a case, Your Honor, when
13 I was working on something else that I felt I needed
14 to bring it to the Court's attention and see how the
15 Court wanted to handle that.

16 THE COURT: Well, Mr. Haller, are you
17 prepared to argue the motion for lack of subject
18 matter jurisdiction?

19 MR. HALLER: I think that makes the most
20 sense, Your Honor.

21 THE COURT: Sure. I agree with that. I've
22 had this come up once before, so let's do it again.
23 Go ahead, Mr. Adler.

24 MR. ADLER: Your Honor, in the Federal Court,
25 there's a case out there with an order from Judge

1 Gergel.

2 THE COURT: All right. You first started out
3 in the wrong court, right? We're in federal court?

4 MR. ADLER: Yes, sir. It's a fourth
5 circuit case.

6 THE COURT: But you're not in the fourth
7 circuit right this second. You're in the Court of
8 Common Pleas in Charleston County and Master in Equity
9 Court, but go ahead.

10 Let me cut to the chase. I haven't even read
11 the motion. Are you alleging something in the
12 contract about arbitration or mediation?

13 MR. ADLER: Your Honor, there's a mediation
14 clause in the contract. And if you read the contract,
15 there's a hole. Parties agreed to mediation. There's
16 precedent out there -- I just want to make the Court
17 aware of it -- that stands for the proposition that if
18 the parties agree to mediate or any nonjudicial ADR,
19 that until that's done, the Court doesn't have
20 jurisdiction. The issues that we're litigating here
21 would be moot until the mediation occurs.

22 THE COURT: That's Judge Gergel's opinion?

23 MR. ADLER: Yes, sir.

24 THE COURT: Well, those federal judges, they
25 don't have many cases and they certainly don't like to

1 decide them on the merits. But we've gotten past
2 that. We have now decided the case on the merits,
3 have we not?

4 MR. ADLER: That's the second motion before
5 us.

6 THE COURT: That's actually the first motion.
7 But the one that gets the case out of my court would
8 be the first one we talked about.

9 Let me hear from Mr. Haller.

10 MR. HALLER: Your Honor, I can be quick and
11 brief on this. To your point that Judge Gergel is in
12 a different jurisdiction in the federal system, South
13 Carolina Supreme Court in the case of Ross versus
14 Waccamaw Community Hospital, which is 404 SC 56 744 SE
15 second 547, has already held in interpreting the
16 medical malpractice statute which requires mediation
17 prior to filing has already determined that's not
18 jurisdictional, the mediation is not a jurisdictional
19 requirement. I have a copy of that case if you'd like
20 it.

21 THE COURT: What year is that one?

22 MR. HALLER: 2013.

23 THE COURT: All right.

24 MR. HALLER: And that's the South Carolina
25 Supreme Court saying mediation is not a prerequisite

1 to subject matter jurisdiction.

2 You get inside the Court, the Court has the
3 authority to enforce it within those conflicts.

4 Number two, in the Allied World case
5 Mr. Adler relies on, Judge Gergel writes where
6 mediation occurs, the ADR requires that no judicial
7 proceeding shall be commenced until 120 days have
8 elapsed.

9 In other words, the contract between the
10 parties in that case require that the parties mediate
11 prior to filing suit and the parties specifically
12 agree that they would not file suit until after they
13 had completed mediation.

14 The mediation clause here doesn't say that.
15 What it says is parties agree to attempt mediation for
16 any dispute, claim, breach, representations made by
17 any party, period.

18 But it doesn't say that you must mediate
19 prior to filing suit. And in fact, it goes on to say
20 parties agree some matters are not a waiver of
21 mediation for any breach of duty or attempt at
22 mediation.

23 In other words, the clause anticipates the
24 parties could go ahead and waive that requirement,
25 which is exactly what happened when Mr. Adler and his

1 client filed suit more than almost a year ago, came
2 through here with -- on this contract, on the very
3 contract, with the mediation clause in hand.

4 They filed suit. Didn't ask for mediation.
5 I put in the record yesterday, Your Honor, a copy -- I
6 asked Mr. Adler if prior to me getting involved they
7 had demanded mediation, and Mr. Adler said no. I've
8 got that in here. He went ahead and filed suit.

9 To Your Honor's point, we came here. We
10 filed for summary judgement. Your Honor granted
11 summary judgement. They lost. And now they want to
12 go, oops, you don't have jurisdiction.

13 But that's exactly what this is. This has
14 nothing to do with whether or not the contract
15 requires mediation.

16 This is we didn't like Your Honor's ruling.
17 We want to get out of it. You didn't have
18 jurisdiction. Clearly that's what this is about.

19 THE COURT: Mr. Adler? Certainly smells that
20 way. Did you not waive it by filing suit in lieu
21 of --

22 MR. ADLER: Your Honor, it's a legitimate
23 question. But it's also -- we're sort of in that
24 lane, which I think that's appropriate here, but we're
25 now in the lane of intent.

1 And Mr. Haller, respectfully, is trying to
2 impugn some intent here. It's incumbent to point that
3 out.

4 This is why we're doing this because we don't
5 like the Court's ruling on the motion for summary
6 judgement that the Court ruled on; this is not an
7 attempt to get out of that. This is an attempt to
8 call the Court's attention to an issue that we think
9 is relevant.

10 THE COURT: Well, if you had done that prior
11 to trial, I probably would have sent you to mediation.

12 If you would have done that prior to suit, I
13 think you would have complied with the terms of the
14 contract.

15 I don't think you've done either, so I think
16 you've waived the motion post trial. You cannot waive
17 subject matter jurisdiction, which is why we were here
18 discussing that; however, I do not think it's
19 jurisdictional, and I think the Ross v Waccamaw case
20 says so.

21 So I'm going to deny that motion. Let's get
22 on to the merits of the 59(e) motion. Okay?

23 MR. ADLER: Yes, sir, Your Honor.

24 THE COURT: I'll make a note I denied it on
25 that basis.

1 For the record, the consent order referenced
2 to the Master -- the case didn't start with me.
3 That's the first thing I look at when I see these.
4 That's the one I've had acknowledged.

5 Matter was referred pursuant to 53(b) with
6 finality to make findings of fact and conclusions of
7 law, dispose of any and all issues, enter a final
8 judgement in the case, and decide any and all post
9 trial and post judgement motions in conformity with
10 Rule 53(c), and any appeal would be pursuant to that
11 rule as well.

12 So I think I clearly had jurisdiction to
13 entertain the case. And as you noted, I did grant
14 summary judgement. Go ahead.

15 MR. ADLER: Just a moment, Your Honor.
16 There's a motion and a supplement to the motion. It
17 was originally a Form 4 filed, a 12(b)(6).

18 So we have a Form 4 granting a 12(b)(6),
19 which is insufficiency of the pleadings. The Form 4
20 checked ending the case and said formal order to
21 follow.

22 THE COURT: I think that was a mistake in
23 that checking of the box because we were awaiting a
24 formal order to follow.

25 If I remember right -- again, I'm starting to

1 look at my record. I think your motion was filed
2 pursuant to that Form 4 and before the final order was
3 issued, was it not?

4 MR. ADLER: It was. I assume that because
5 the Form 4 was dismissed based on 12(b)(6,) that was
6 where we were.

7 THE COURT: I think that was done in error.
8 I'll grant you a 60(a) on that one.

9 Let's get to the merits.

10 MR. ADLER: The issue I needed the Court to
11 reconsider and rule on was which order controls, how
12 did we get to a 56, and I also wanted to call the
13 Court's attention to the timing of the motion for 56.

14 We haven't had adequate time for discovery.
15 I went all the way through this case prepared to argue
16 on a 12(b)(6).

17 Literally five business days before the
18 scheduled hearing on that motion, it converts to a 56.
19 We came in and argued 12(b)(6) issues.

20 The Court ruled on what the contract said,
21 which was a 12(b)(6) issue because it was appended to
22 the complaint. It was not submitted to the Court
23 after the fact.

24 We went way beyond the scope in the formal
25 order and what was covered in the hearing. And, Your

1 Honor, we haven't had a chance to look at -- I mean,
2 Mr. Knapp has been deposed, but we haven't had any
3 discovery on the other side except for request to
4 remit were responded to by my side, and I got some
5 interrogatories and some perfunctory requests for
6 production from Mr. Haller.

7 The problem is we had a five-day window to
8 get ready for what was a very large motion hearing. I
9 thought we were going in on a 12(b)(6) hearing, and
10 that's what the Court originally ruled on.

11 So here we are. We haven't had any time for
12 discovery. 56 ruling on a motion for summary
13 judgement is appropriate after discovery has been
14 completed.

15 THE COURT: Have you fully read all of Rule
16 12(b)(6)?

17 MR. ADLER: I know the Court has discretion
18 to convert. We're not questioning anything to do with
19 the Court's authority to take action on this.

20 What we're asking for is clarification on how
21 we got to 56 and then for the Court to please consider
22 the fact, if they're going to rule on a summary
23 judgement motion, to consider that we had five
24 business days to get ready for that after Mr. Haller
25 noticed it or converted the file to this amended

1 motion.

2 And then when we got into court, we didn't
3 get into the evidence. We talked about the lack of
4 evidence, and of course there's lack of evidence. We
5 haven't done any depositions, and we haven't had full
6 opportunity to go through discovery.

7 I want the Court to also please consider that
8 we went in -- this is a \$285,000 contract. We didn't
9 need to blow the file up. We had a question about the
10 contract. The Court read the contract for us, gave a
11 ruling, and that's where we thought we were going to
12 end.

13 We had this flurry of activity right up
14 against the timing of the date of that hearing. We
15 had depositions. We had an amended complaint with
16 counter claims filed. We had this amended motion,
17 affidavit submitted from their side.

18 But we still haven't seen any evidence about
19 the issues. We haven't had the opportunity to explore
20 and do discovery on the issues that we brought to the
21 Court regarding marketability of the title.

22 Of course, granting 12(b)(6) on the contract
23 would kill all that and that would be the end of it.
24 But instead, we're now in a situation where there's a
25 motion for sanctions pending.

1 We've got discovery that hasn't been
2 finished, and we've been dismissed on summary
3 judgement.

4 I don't think the rules allow for that, and I
5 think the case law is pretty clear. The exception
6 would be if a year or two had gone by and we haven't
7 done anything with the case. We're trying to keep
8 this on a tight, narrow focus.

9 The whole reason we ended up coming to court
10 is because the parties stopped talking to each other.
11 We couldn't get any -- there was no discussion about
12 this being marketability versus as-is in my first
13 letter asking for clarification on what was going on.

14 There was no discussion from the original
15 title lawyer. Mr. Haller has put up a title insurance
16 policy saying that that was sufficient. And we have a
17 contract that does not say insurable title; it says
18 marketable title.

19 If we're going to be looking at this through
20 the lens of the evidence and not through the lens of
21 what the contract says, we have to do more discovery.
22 We have to get some opinions about what the contract
23 calls for. I think it was -- I think arguing the
24 merits on the 56 right now is also premature because I
25 don't know how we got to a 56, which is what we we're

1 asking the Court for clarification on.

2 THE COURT: I'll tell you how we got to a 56.
3 If you read rule 12(b)(6), every defense, in law or
4 fact, a pleading shall be asserted in the responsive
5 pleading thereto if one is required, except that the
6 following defenses may at the option of the pleader be
7 made by motion.

8 6, failure to state facts sufficient to
9 constitute a cause of action. Read further down, if
10 on a motion asserting the defense numbered 6 to
11 dismiss for failure of the pleading to state facts
12 sufficient to constitute a cause of action, matters
13 outside the pleading are presented to and not excluded
14 by the Court, the motion shall be treated as one for
15 summary judgement and disposed of as provided in Rule
16 56.

17 It goes on, all parties shall be given
18 reasonable opportunity to present all material made
19 pertinent to such a motion by Rule 56.

20 Is that your argument, that you are not
21 allowed to put forth evidence about that?

22 MR. ADLER: Your Honor, that's the second
23 half of my argument. The first half is in the order
24 granting summary judgement, there's a footnote on page
25 1 which we don't have enough clarification in the

1 formal order as to how we got there.

2 So I would respectfully ask the Court to
3 either clarify that or vacate it for the reasons --

4 THE COURT: All right. I can't get into my
5 queue, so I will have to look at my law clerk's queue.
6 What in the footnote gives you concern?

7 MR. ADLER: It says plaintiff filed a formal
8 opposition of the motion for summary judgement and it
9 is this motion that is properly before and decided by
10 the Court. Which I think that's insufficient, Your
11 Honor.

12 THE COURT: Is that not correct? Is it not a
13 correct statement?

14 MR. ADLER: Well, Your Honor, we filed an
15 affidavit. And upon my filing, I made reference to
16 the entire file, which was in response to. It was not
17 specific to the summary judgement motion.

18 THE COURT: All right.

19 MR. ADLER: Also with respect to what we
20 covered in court, we basically went over the contract.

21 THE COURT: Yeah, that's all we talked about
22 was the terms of the contract and what was done and
23 what was not done, right?

24 MR. ADLER: Yes, Your Honor.

25 THE COURT: Mr. Haller?

1 MR. HALLER: Good afternoon, Your Honor. May
2 it please the Court. As to the form order issue, I
3 previously wrote the Court and brought to your
4 attention the case of Cheap-O's Truck Stop versus
5 Cloyd which says when a form order says formal order
6 to be forthcoming, the formal order is what controls.

7 You may recall at the end of that hearing, I
8 asked Your Honor to enter a form order canceling the
9 lis pendens that day so we could attempt to proceed
10 with closing on the back-up contract that my clients
11 were able to maintain to mitigate their damages. Your
12 Honor was kind enough to do that.

13 I then -- I think a week later, I then went
14 to Europe to go spend two weeks with my daughter and I
15 asked the Court for 30 days to finish the order, and
16 that's what we came to.

17 I filed an amended motion to dismiss and/or
18 for summary judgement ten days before the hearing.

19 Mr. Adler does not dispute that he had ten
20 days notice of the motion. He didn't ask for any
21 continuance of that. And in fact, he readily and
22 willingly participated as a summary judgement motion.

23 He filed a motion and affidavit in opposition
24 to it. And had he wanted to come forward with some
25 issue that there was additional discovery that needed

1 to be done, he could have provided additional
2 information.

3 He never raised any of these issues of "I am
4 concerned of matters outside the pleadings are coming
5 before the Court." He has waited until after he has
6 lost to come up with a new issue as to why that order
7 should not have been drafted.

8 The grounds for summary judgement, the
9 grounds -- our grounds for summary judgement had
10 nothing to do with their complaint necessarily.

11 It was that the plaintiff had an obligation
12 to come forward ten days after entering into the
13 contract by the terms of contract with proof that he
14 had financing, and he did not have it.

15 In fact, what Mr. Knapp admitted in his
16 deposition was that he had applied to three different
17 lenders and it wasn't until he got to the fourth that
18 he actually had somebody who had applied it.

19 The contract requires when you are turned
20 down for financing by any lender, you're obligated to
21 let the seller know and the seller then has the right
22 to terminate the contract. Mr. Knapp acknowledged in
23 his deposition that he had been turned down more than
24 once, not only him but also his daughter had gotten
25 turned down more than once and that he had not turned

1 that information over.

2 As the first party to breach, he cannot
3 complain about anything that happens afterwards. As
4 Your Honor is well aware, these real estate contracts
5 are more contracts to agree to agree.

6 They give the parties -- the seller agrees to
7 take the property off the market for a period of time
8 so that the buyer can do the due diligence to satisfy
9 himself or herself of the suitability of that piece of
10 property.

11 Among the things they're required to do is
12 can they actually afford it? And if you can't afford
13 it, then you don't have any business being in a
14 contract with them, which is why the financing
15 contingency provides that either party, if the
16 seller -- if the buyer is turned down for financing,
17 either party can cancel the contract then.

18 Had Mr. Knapp been honest with the sellers in
19 January of 2022 then he would have -- then the sellers
20 would have terminated well before then, and all of
21 this hubbub about the title, none of which is -- none
22 of which has been shown by anything. It's just let me
23 continue to yell that there's a marketability issue.
24 None of that would have ever come up. That's why
25 we're here.

1 If he wants -- now, we can talk about
2 discovery, Your Honor, because I would like to bring
3 this to your attention. One of the questions --
4 Mr. Adler submitted the affidavit of Ted Cous (ph).

5 Mr. Cous (oh) provided an affidavit saying my
6 partner and I were prepared to provide financing. And
7 all we had from that -- and what we had followed up
8 was an e-mail from Mr. Cous (ph) to Mr. Knapp saying I
9 haven't been able to formally speak with my partner
10 about this, but here are the terms I will recommend
11 to him.

12 We had nothing else. And then Your Honor
13 asked me specifically do you have a term sheet, and I
14 said no, sir, I do not. Well, in fact, there was a
15 term sheet. That term sheet had not been turned over
16 in discovery.

17 Mr. Adler had that term sheet because I
18 issued a subpoena to Mr. Cous (ph) after the hearing
19 and Mr. Cous (ph) came to my office on Friday and
20 brought those documents with him.

21 May I approach, Your Honor?

22 THE COURT: Well, we're getting way outside
23 the record.

24 MR. ADLER: I object, Your Honor. This is my
25 motion for reconsideration, and it's really just to

1 get clarification on how we got to Rule 56.

2 THE COURT: I already read to you how I got
3 there.

4 MR. ADLER: Right. And that was all we're
5 here for. So this is a different issue, and it's
6 also -- I just need an order clarifying how we got to
7 56 or if the 12(b) is it. Because when you look at
8 the file, it's not clear how you got there.

9 THE COURT: I think I've answered that.

10 MR. ADLER: This is all irrelevant to what
11 we're here for today, Your Honor. And Mr. Haller
12 wants to relitigate something. I don't want to
13 relitigate anything today. I just want to know what
14 the Court's order --

15 THE COURT: If you're going to appeal, you
16 want to know if you're going to appeal from a 12(b)(6)
17 Form 4 or a 56.

18 MR. ADLER: I would just like to have the
19 parameters of where we are clearly defined from where
20 the bench sits, Your Honor.

21 And, respectfully, these are all issues that
22 should have come out before. I have no idea what
23 Mr. Haller is talking about. Again, I would also have
24 the Court reflect on the fact that five days is not
25 enough time to get ready for a hearing for summary

1 judgement.

2 And if I didn't bring it up during the
3 hearing, I brought it up after the fact.

4 THE COURT: Let me stop you there. You filed
5 the action in January?

6 MR. ADLER: April or May.

7 THE COURT: April of '22? And when was our
8 hearing?

9 MR. ADLER: I never got the e-mail asking for
10 30 days, about needing 30 days to file an order. I
11 never got that. First I've heard about that.

12 THE COURT: Had a hearing in December. I
13 issued the order in January. Okay. All right. Okay.

14 Well, I think that covers it. All right?
15 That's what got us here, Rule 56.

16 MR. ADLER: So are you going to file a Form
17 4, or can we rely on the order that was filed?

18 THE COURT: I'll file a Form 4 denying your
19 motion to dismiss for lack of subject matter
20 jurisdiction. If you want, I'll deny your motion to
21 reconsider if you like.

22 MR. ADLER: Could you put some language in
23 there saying explicitly that the motion for summary
24 judgement was granted and vacate the Form 4 that
25 brings 12(b)(6)?

1 MR. HALLER: Again, Your Honor --

2 THE COURT: I think the order says that. It
3 says formal order to follow.

4 MR. ADLER: I'm just asking, Your Honor. I
5 just want to make sure the file is complete.

6 THE COURT: The only mistake I saw when I
7 looked at this initially was it should not have
8 dismissed the action on the Form 4 because a formal
9 order was to follow. That was noted on there.

10 I think the clerk filed all this stuff, did
11 they not?

12 MR. HALLER: Yes, sir.

13 THE COURT: So I think it had everything to
14 do with y'all following the terms of the contract,
15 which was that you were going to get financing within
16 whatever short time period was. And I didn't see a
17 need to drag this thing out needlessly.

18 What's the status of the property? Is it
19 sold now?

20 MR. HALLER: We can't get -- the title
21 carrier won't bind the title --

22 THE COURT: Well, you file a motion for me to
23 determine a bond, I'll post a bond so your client is
24 protected while they go on appeal. But you're not
25 going to wait for an appeal.

1 MR. HALLER: We also have a motion -- as
2 Mr. Adler mentioned, I have filed a motion for an
3 award of attorney's fee under the contract and also
4 for sanctions.

5 So Mr. Adler asked for 30 days from today --
6 from the time -- at least 30 days to be able to --
7 whenever Your Honor has time to hear us.

8 THE COURT: On the motion for attorney's
9 fees, just file your motion and accompanying
10 affidavit, and I'll entertain it that way.

11 I don't usually take testimony on that. And
12 I may -- I sincerely doubt I'm going to award
13 sanctions just to let you know.

14 MR. ADLER: The motion that was filed does
15 not say with particularity. I've never had notice. I
16 would ask for relief to have depositions to find out
17 what they're talking about.

18 THE COURT: Attorney's fees?

19 MR. ADLER: No, the sanction motions.

20 THE COURT: I just told him I'm going to deny
21 the motion for sanctions. I'll probably grant the
22 motion for attorney's fees.

23 That would have been the terms of the
24 contract, right?

25 MR. HALLER: Yes, Your Honor.

1 THE COURT: Do that. Run that by Mr. Adler.
2 Mr. Adler, you can object to attorney's fees
3 if you like.

4 All right. Okay. Gentlemen.

5 (Off the record at 12:43 p.m. on March 13th,
6 2023.)

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1 COURT REPORTER'S CERTIFICATE
2

3 I DO HEREBY CERTIFY THAT THE TESTIMONY
4 CONTAINED IN SAID HEARING WAS, BY ME, REDUCED TO
5 WRITING IN THE PRESENCE OF SAID WITNESS BY MEANS OF A
6 COMPUTERIZED TRANSCRIPTION. THE SAID HEARING IS A
7 TRUE AND ACCURATE TRANSCRIPT OF THE WHOLE OF THE
8 TESTIMONY GIVEN BY SAID WITNESS, AS AFORESAID.

9 I DO FURTHER CERTIFY THAT I AM NOT CONNECTED
10 BY BLOOD OR MARRIAGE WITH ANY OF THE PARTIES OR THEIR
11 ATTORNEYS OR AGENTS, AND THAT I AM NOT AN EMPLOYEE OF
12 EITHER OF THEM, NOR INTERESTED DIRECTLY OR INDIRECTLY
13 IN THE MATTER OF CONTROVERSY EITHER AS COUNSEL,
14 ATTORNEY, AGENT, OR OTHERWISE.

15 SIGNED THIS THE 27th DAY OF APRIL 2023.
16

17 _____
JOSIE ALLEN BOEHM

18 My Commission Expires 10/18/32
19
20
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22
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough

Case No. 2022 CP 10 01958

Marc K. Knapp,

Appellant,

v.

James Douglas Jenkins, IV, Peter
Bamwell, and Alicia J. Roy,

Respondents.

NOTICE OF APPEAL

Marc K. Knapp appeals the Orders of the Honorable Mikell R. Scarborough, copies of which are attached hereto as **Exhibit A**, dated March 13, 2023, January 24, 2023, and December 12, 2022 respectively. Appellant received written notice of entry of the order denying his Motion to Reconsider on March 13, 2022. (23

Pawleys Island, SC
April 11, 2023



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F. Miles Adler

direct 843.314.3204
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012 April 2023

VIA UPS

The Honorable Jenny Abbott Kitchings
South Carolina court of Appeals
1220 Senate Street
Columbia, SC 29211

Re: *Marc K. Knapp v. James Douglas Jenkins, IV, Peter Barnwell, and Alicia J. Roy*
C/A No.: 2022 CP 10 01958

Dear Ms. Kitchings:

Enclosed please find an original and one (1) copy of the following in the above-referenced matter:

1. Notice of Appeal with attached Orders of The Honorable Mikell R. Scarborough.
2. Proof of Service.
3. My firm's check in the amount of \$250.00 for the filing fee.

Please file the original and return the file-stamped copies to me in the enclosed envelope. By copy of this letter I am serving The Honorable Mikell R. Scarborough, Master in Equity for Charleston County, The Honorable Julie Armstrong, Clerk of Court for Charleston County, and opposing counsel, David K. Haller.

Should you have any questions, please feel free to contact me at 843.685.3311.

Sincerely,



F. Miles Adler

Enclosures

cc: David K. Haller
The Honorable Mikell R. Scarborough
The Honorable Julie Armstrong (Via SC E Filing Portal)

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1001958

Marc K Knapp
 PLAINTIFF(S)

James Douglas Jenkins, IV et al
 DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on the Plaintiff's Motion to Dismiss for Lack of Subject Matter Jurisdiction, filed March 7, 2023. Upon consideration, the Court finds the Plaintiff filed suit rather than seeking mediation and therefore DENIES Plaintiff's Motion to Dismiss. The Court also heard the Plaintiff's Motion for Reconsideration, filed December 16, 2022, based upon its mistaken belief that the Form 4 order dismissed the case under Rule 12 (b)(6), SCRCP. The Form 4 Order mistakenly checked the box stating the case was ended, although it also stated a formal order was to follow. The Court issued its formal order, after motions, affidavits, and arguments which converted the Motion to a Rule 56, SCRCP summary judgment motion. Accordingly, the Court DENIES the Rule 59(e) Motion.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/13/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al
Case Number: 2022CP1001958
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-03-13 15:24:22 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2022-CP-10-01958
	)	2022-LP-10-00201
Marc K. Knapp,	)	2022-LP-10-00255
	)	
Plaintiff,	)	
	)	
Versus	)	ORDER GRANTING SUMMARY
	)	JUDGMENT AS TO PLAINTIFF'S
James Douglas Jenkins, IV, Peter Barnwell	)	CLAIMS AND CANCELLING
Jenkins, and Alicia J. Roy,	)	LIS PENDENS
	)	
Defendants.	)	

THIS MATTER was before the Court for a hearing on December 12, 2022, on Defendants James Jenkins, Peter Jenkins, and Alicia Roy's (hereinafter "the Jenkins") Motion to Dismiss and/or for Summary Judgment¹ on the plaintiff's claims and Motion to Cancel Lis Pendens. Present were Miles Adler, Esq., attorney for the plaintiff, Marc Knapp, and David K. Haller, Esq., counsel for the defendants, with defendant James Jenkins. After reviewing the record before the court and hearing the arguments of counsel, I grant the motions.

FINDINGS OF FACT

On January 5, 2022, Marc Knapp (hereinafter "Knapp") agreed to buy from the Jenkins real property located at 5896 Maybank Highway, Wadmalaw Island, Charleston County (hereinafter "the Property"). The Property consists of approximately 6.69 acres of raw, undeveloped land. Knapp agreed to pay \$285,000.00 in exchange for the Jenkins providing marketable title to the Property. The property was sold, "As-Is." The contract called for closing

¹ Defendants initially filed a Motion to Dismiss pursuant to SCRCP Rule 12(b)(6), but subsequently timely amended their motion to alternatively seek Summary Judgment. Plaintiff filed a formal opposition to the Motion for Summary Judgment and it is this motion that is properly before and decided by the Court

on or before February 10, 2022. Shortly before the original closing date, the parties agreed to extend closing to February 24, 2022.

Knapp did not close on February 24, 2022, and the Jenkins declined to extend the closing date. The Jenkins were not satisfied that Knapp had financing to purchase the Property. Knapp filed a *lis pendens* on the property on March 24, 2022, and a second *lis pendens* April 14, 2022. He filed suit for declaratory judgment, specific performance, and breach of contract against the Jenkins on April 28, 2022. The Jenkins have answered and asserted counterclaims.

Knapp asserts that the Jenkins breached the contract by not extending the closing date when contingencies in it were not met by the date of closing. Knapp claims title to the property was not marketable. Further, he claims the contract is contingent on a septic permit from the South Carolina Department of Health and Environmental Control for the Property and that he did not have to close until that contingency was completed.

The matter was referred to me with finality by consent order dated September 21, 2022.

STANDARD OF REVIEW

Pursuant to SCRCP Rule 56, the standard for summary judgment for cases with a preponderance of the evidence standard is:

[S]ummary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must go to the jury. Summary judgment is appropriate where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot

differ, summary judgment should be granted. The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. Because it is a drastic remedy, summary judgment should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.

BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). This is generally referred to as the "scintilla of evidence" standard.

LAW/ANALYSIS

Knapp seeks in his complaint a declaration that, "the Contract has not expired and that the "As-Is" provision in the Contract only applies to improvements on the Jenkins Tract and that "As-Is" does not relate to questions of marketable title generally and specifically the need for a properly set pin, establishment of the graveyard boundary, and the existence and location of an easement across the Jenkins Tract." He further asks the Court to order specific performance of the contract and/or for judgment on the Jenkins's breach of contract.

To succeed on any of these claims, however, Knapp must show that he was ready, willing, and able to perform on his own notwithstanding any alleged breach of the contract by the Jenkins. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000) (holding that for a party to enforce a contract he must show he was and remains ready, willing, and able to perform his part of the contract.). The Jenkins contend that Knapp was not able to close because he did not, and still does not, have adequate financing as required by the contract terms. "Where a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." *Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). The Jenkins contend Knapp breached the contract's Financing Contingency and cannot now complain of any alleged subsequent nonperformance by them. I find Knapp breached the Financing Contingency and was not ready, willing, and able to purchase the

Property on the date of closing. Accordingly, the Court finds that Knapp was the first to breach and his claims are moot.

1. Financing Contingency

The contract's Financing Contingency provides:

FINANCE: Buyer's obligation under this Contract [X] is [] is not contingent upon obtaining financing of a [] 30 year or [] 15 year or [X] other _____ purchase money loan at reasonable prevailing market terms with loan(s) equal in amounts to a maximum 80 % of the Purchase Price or Appraisal Value whichever is lower. ("Financing Contingency"). Financing Contingency expires at Closing ("Financing Period"). Buyer must make timely good faith efforts to apply for and obtain financing while refraining from contrary actions ("Financing Effort"). In a timely manner, Buyer shall inform Seller and Brokers of pertinent financing issues and authorize Buyer's Lender to disclose pertinent loan information to Seller and Brokers ("Financing Disclosure"). Buyer shall apply for financing by January 10, 2022 (date) shall Deliver Notice to Seller of reasonable pre-final loan approval (e.g. pre-approval letter, initial approval letter) that contains no unreasonable credit, income, or asset conditions by January 17, 2022 (date) (no repairs required prior to this Notice). Final loan approval occurred when Lender funds loan(s). If the Buyer changes their Lender during the Financing Period they must notify the seller in writing within 7 calendar days. Absent written approval by the Seller Buyer cannot change lender if the closing date agreed up in Paragraph 4 will change as a direct result. If a Lender subsequently declines or fails to approve financing, the Buyer shall notify the Seller and Brokers as soon as possible. If the Seller and Brokers are notified of inability to obtain financing during the Financing Period, either Party may terminate this Contract by Notice.

Contract, ¶7(emphasis added).

The Jenkins contend Knapp breached the Financing Contingency by:

1. Failing to apply for financing for raw land by January 10, 2022;
2. Failing to provide a pre-approval letter by January 17, 2022;
3. Failing to obtain a loan for 80% of the purchase price by the closing date;
4. Failing to notify the Jenkins that Knapp was changing Lenders;
5. Failing to inform the Jenkins that he had been denied financing by a Lender so they could terminate the contract.

Based on the record before me, including Knapp's deposition testimony, I agree with the Jenkins.

Knapp testified that he applied for financing from four different lenders. The first was a VA lender, who neither approved nor denied Knapp financing. Instead, it stated it would not finance the purchase of raw land, such as the Property. His second application was not actually by him. Knapp testified he asked his daughter to apply for financing and, if she was approved, he would assign the contract to her. The record before me contained an email from a lender with AgSouth Bank dated February 2, 2022, (after the contractual deadline) stating Lauren Knapp was approved for \$145,000.00 in financing, less than the 80% the contract required. The third application was with First Citizens Bank. Knapp was denied financing by it. The last application was with a private lender named Ken Koos. Mr. Koos provided an affidavit stating he was willing to lend Knapp's business \$225,000 and that he had agreed to do so sometime undefined in January. However, in an email from Koos to Knapp dated March 22, 2022—almost a month after the extended closing date—Koos wrote, "Marc, my partner has been out west out backing it with limited reception and internet. I will discuss the proposed deal with him tomorrow, Thursday the latest. However, the deal has my vote." This contemporaneous email indicates, at best, a contingent offer after the contractual deadline.

Knapp further admitted that he changed lenders without informing the Jenkins,² that he did not have a pre-approval of a loan from a lender by January 17, 2022,³ that he was denied financing by a lender (First Citizens) and did not inform the Jenkins,⁴ and that he did not have approved financing for 80% of the purchase price. By these admissions, Knapp acknowledged violating several provisions of the Financing Contingency. The clear intent of the contingency is to allow the buyer an opportunity to obtain financing, while allowing the seller the right to end the contract

² Depo. of Knapp, p. 33, ln. 22- p. 34, ln. 3

³ Depo. of Knapp, p. 40, ln. 13-18.

⁴ Depo. of Knapp, p. 42, ln. 10-20.

if it became clear that the buyer could not afford to buy the property. The record here is clear based on Knapp's admissions that he was unable to obtain a loan for the 80% value and that his opportunity to obtain financing was, at best, limited. Knapp hid this information from the Jenkins and kept from them the ability to move on from the contract.⁵

The record shows that Knapp had not obtained the financing by the date required in the contract. The record further illustrates that Knapp failed to comply with the time and notice deadlines in it and that he hid this information from the Jenkins. Knapp breached the contract as a result. Being first to breach the contract, Knapp cannot complain of any other nonperformance. *Silver v. Abstract Pools & Spas, Inc.*, 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct. App. 2008). Further, he was not ready, willing, and able to perform on the date of closing. Accordingly, he cannot succeed on his specific performance claim. *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 106, 531 S.E.2d 287, 291 (2000). Because of the breaches of the Financing Contingency, the Jenkins would be entitled to terminate the contract, so the declaratory judgment claims are moot. As a result, summary judgment is appropriate and I grant the Defendants' motion.

2. Knapp's Assertions of Breaches

Even if I did not find Knapp breached the Finance Contingency, I would still grant summary judgment because I find that no merit to his primary claims. Knapp asserts that 1) title to the property was not marketable and that closing should be delayed until it is; and 2) that the

⁵ After the missed closing date, Knapp through his counsel continued to act disingenuously as to Knapp's ability to pay for the property. "I have a call in to Mr. Knapp to get authorization for you to speak with his loan broker to confirm the loan application. As soon as I hear back from him I will forward you the loan broker's contacts so you can do your diligence." Email of Adler, March 9, 2022. This contemporaneous email was either untrue or some of Knapp's assertions regarding his financing are questionable.

contract was contingent on his obtaining a septic permit and he did not have to close until the permit was obtained. I reject both arguments.

Knapp contends there is a question about the marketability of the title.⁶ "A purchaser of realty cannot be required to take doubtful title and if there is a reasonable probability of litigation with respect to the title, it is unmarketable. To be marketable, a title need not be flawless. Rather, a marketable title is one free from encumbrances and any reasonable doubt as to its validity. It is a title which a reasonable purchaser, well-informed as to the facts and their legal significance, is ready and willing to accept." *Scalise Dev., Inc. v. Tideland Invs., LLC*, 392 S.C. 27, 33, 707 S.E.2d 440, 443 (Ct. App. 2011) (internal citations omitted).

First, all parties acknowledge that the title search on the property showed no encroachments or other impediments. In fact, when Knapp claimed title was not marketable, the Jenkins obtained a commitment from a title insurance company to insure the property. Knapp still refused to close.

Knapp asserts that, although there was no formal encroachment found on the Property, a survey from 1969 showed a graveyard on a neighboring property. Knapp claimed there was a question of the boundaries of the graveyard. Knapp's theory is that if the graveyard is on the Property, S.C. Code Ann. §27-43-310 would require him to give access to it. The statute provides, "An owner of private property on which a cemetery, burial ground, or grave is located must allow ingress or egress to the cemetery, burial ground, or graves...". S.C. Code Ann. §27-43-310(A) (emphasis added). Since the graveyard is not on the Property, the owner of it cannot be compelled to provide access. Knapp claimed a picture from Google maps (from the internet) showed a path across the Property onto the neighboring property to access the graveyard. Knapp did not obtain

⁶ Knapp frames this issue as the Jenkins contending that because there is an "as-is" clause in the contract, Knapp must take the title to the property as it is. He provides nothing to bolster this assertion. The Jenkins contention is that the title is marketable and they were prepared to close in compliance with the contract.

a survey of his own. Knapp has shown no law that states a map printed from the internet is an encroachment.

However, Knapp acknowledged in his deposition that when he went to the Property, there was no noticeable path across it. In fact, Knapp testified that he had to cut his own path across the Property to stake out his proposed septic plan. After cutting the path, Knapp emailed his real estate agent on February 2, 2022, and said, "We verified today that the graves are not on the property." No showing has been made that a graveyard exists on the Property or that there is any path or other encroachment on it.

There is no genuine issue of material fact as to the marketability of the title and I hold that title to the Property is marketable. That said, if Knapp was concerned about the title, his remedy was to terminate the contract, not hold it hostage.

Second, Knapp asserts the contract was contingent on his obtaining a septic tank permit from SCDHEC which was not issued by closing. Knapp's theory is that the Jenkins must extend the closing date until the permit was issued. However, Knapp did not apply for the permit until February 7, 2022, three days before the initial closing date. The contract states "Time is of the Essence" and, even with an extended time to close, he did not obtain a permit by February 24, 2022. Knapp attributes his failure to close on a missing survey pin on the property which he contends the Jenkins were obligated to fix. However, the contract states that the seller agrees to take the Property as-is.

"As-is means the Buyer buys the Property for the Purchase Price while Seller maintains the Property from the Effective date through Closing subject to normal wear and tear without repair or replacement and sells the Property for the Purchase Price unless otherwise agreed upon...". Contract, ¶8. Knapp asserts this provision does not apply because he is buying raw land; however,

nothing in the contract supports this contention. The Property is defined as 5895 Maybank Highway, which all parties acknowledge as raw land. I interpret the contract as not requiring the Jenkins to make any repairs or do any work to the Property prior to closing. Again, if Knapp could not obtain a permit by closing, his remedy was to either terminate the contract, because the contingency was not met or negotiate an extension of the closing amenable to the Jenkins. For this reason, Knapp's contention also fails.

Having determined that Knapp no longer has a contract interest in the Property, the *lis pendens* is hereby cancelled.

THEREFORE, IT IS ORDERED that Defendants' Motion to Dismiss and/or for Summary Judgment is GRANTED; and

IT IS FURTHER ORDERED that judgment be entered in favor of the Jenkins on all of plaintiff Marc Knapp's claims; and

IT IS FURTHER ORDERED that plaintiff's *lis pendens* (2022-LP-10-00201 and 2022-LP-10-00255) are CANCELLED; and

IT IS FURTHER ORDERED that the court retains jurisdiction to award attorney's fees and costs pursuant to the contract between the parties. Defendants shall submit a request for fees and costs within ten (10) days of the date of this order; and

IT IS FURTHER ORDERED that this case may continue for the Defendants to pursue their counterclaims.

AND IT IS SO ORDERED!



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al
Case Number: 2022CP1001958
Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2023-01-24 12:25:39 page 10 of 10

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022CP1001958

Marc K Knapp
PLAINTIFF(S)

James Douglas Jenkins, IV et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on Defendant's 12(b)(6) Motion to Dismiss. The Court GRANTS the Defendant's Motion pursuant to the terms of the contract and cancels the Lis Pendens from the property. As such, the Motion to Quash Subpoena is rendered moot and hereby withdrawn.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 12/12/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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



Charleston Common Pleas

Case Caption: Marc K Knapp VS James Douglas Jenkins IV , defendant, et al
Case Number: 2022CP1001958
Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2022-12-12 15:38:20 page 3 of 3

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough

Case No. 2022 CP 10 01958

Marc K. Knapp,

Appellant,

v.

James Douglas Jenkins, IV, Peter
Barnwell, and Alicia J. Roy,

Respondents.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on James Douglas Jenkins, IV, Peter Barnwell, and Alicia J. Roy by depositing a copy of it in the United States Mail, postage prepaid, on April 11, 2023, addressed to their attorney of record, David K. Haller at 604 Savannah Highway Charleston, SC 29407.

Pawleys Island, SC
April 11, 2023



F. Miles Adler
ADLER LAW FIRM, LLC
Post Office Box 4743
Pawleys Island, SC 29585
T: (843) 314-3204
F: (843) 314-3205
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough

Case No. 2022 CP 10 01958

Marc K. Knapp,

Appellant,

v.

James Douglas Jenkins, IV, Peter
Barnwell, and Alicia J. Roy,

Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Notice of Appeal by depositing a copy of same via UPS delivery, addressed to The Honorable Mikell R. Scarborough, Charleston County Master in Equity, 100 Broad Street, Suite 266, Charleston, SC 29401 and David K. Haller 604 Savannah Highway Charleston, SC 29407. I certify that I have also served Appellant's Notice of Appeal on David K. Haller by depositing a copy of same via SC E-filing Portal.

Pawleys Island, SC
April 12, 2023



F. Miles Adler
ADLER LAW FIRM, LLC
Post Office Box 4743
Pawleys Island, SC 29585
T: (843) 314-3204
F: (843) 314-3205
miles@adlerlaw.partners
Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/ F. Miles Adler

F. Miles Adler

SC Bar No.: 70238

Adler Law Firm, LLC

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