

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

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Case No. 2010-CP-10-10108

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*MARIO S. INGLESE and MARIO S. INGLESE, PC,*  
*Appellants,*

v.

*LINDA ERICKSON, RUSSELL S. STEMPE and CARL H. BEAL, JR., Defendants,*

*of whom Carl H. Beal, Jr. is,*  
*Respondent.*

---

RECORD ON APPEAL

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451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
*Attorney for the Appellants*

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**RECEIVED**  
JUN 29 2012  
**SC Court of Appeals**

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-10108

MARIO S. INGLESSE AND MARIO S. INGLESSE, PC

LINDA ERICKSON, RUSSELL S. STEMPEKE, AND CARL H. BEAL, JR.

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: DEFENDANT CARL H. BEAL'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

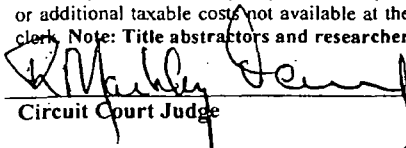
INFORMATION FOR THE PUBLIC INDEX

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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                          | N/A                                      | \$N/A                                                    |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2060  
Judge Code

12/07/2011  
Date

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
MARIO S. INGLESE and MARIO S.,  
INGLESE, PC,  
Plaintiffs,

vs.

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

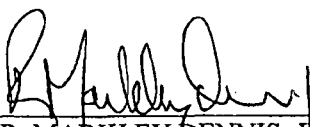
CASE NO. 2010-CP-10-10108

**ORDER**

FILE  
2012 JAN 20 PM 4:  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

This matter comes before me upon Motion for Reconsideration filed by Charles M. Feeley, Esquire, Attorney for Plaintiff, Mario S. Inglese, on December 19, 2011. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is respectfully **DENIED**;

**AND IT IS SO ORDERED!**

  
R. MARKLEY DENNIS, JR.  
Presiding Judge, Ninth Judicial Circuit

FILED  
2012 JAN 20 PM 4:12  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

January 13, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARIO S. INGLESE, MARIO S. INGLESE, PC

Plaintiff(s)

vs.

LINDA ERICKSON, RUSSELL S. STEMPKE,  
CARL H. BEAL, JR.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 10- 10108

(Please Print)

Submitted By: Charles M. Feeley, Esq.

Address: 451 Folly Road, Charleston, SC 29412

SC Bar #: 70559

Telephone #: (843) 324-8763

Fax #: (843) 795-0668

Other:

E-mail: cmfeeley@feeleylaw.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

**DOCKETING INFORMATION (Check all that apply)**

*\*If Action is Judgment/Settlement do not complete*

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

**NATURE OF ACTION (Check One Box Below)**

- |                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20____-CP-_____<br><input type="checkbox"/> Notice/ File Med Mal (230)<br><input type="checkbox"/> Other (299)                                                                                                           | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)                                                                                                               |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)                                                                                                       | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights<br><input type="checkbox"/> Other (799) | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899)                                          | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Comm (991) |
| <b>Special/Complex /Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input type="checkbox"/> Medical (620)<br><input type="checkbox"/> Other (699)                                                                                      | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (610)                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <input checked="" type="checkbox"/> Other (999)<br><b>Declaratory Judgment/Equity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                           |

Submitting Party Signature: \_\_\_\_\_

Date: 12-8-10

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,  
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE  
DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

C/A Number: 2010-CP-10-10108

v.

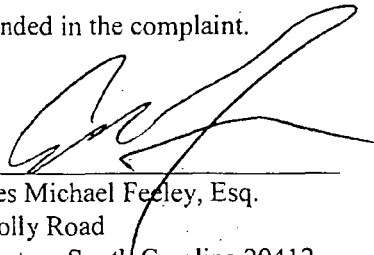
LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

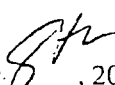
SUMMONS

FILED  
2010 DEC -9 PM 2:46  
JULIE J. ARMSTRONG  
CLERK OF COURT

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said complaint upon the Attorney for Plaintiff, Charles M. Feeley, Esq., at 451 Folly Road, Charleston, South Carolina 29412, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the complaint within such time, judgment by default will be rendered against you for the relief demanded in the complaint.

  
Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
ATTORNEY FOR THE PLAINTIFF

December , 2010  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,

) C/A Number: 2010-CP-10-10108  
)

) Plaintiffs,  
)

) v.  
)

COMPLAINT

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.)

FILED  
2010 DEC -9 PM 2:46  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

The Plaintiffs, above-named, would respectfully show:

PARTIES

1. That the Plaintiff Mario S. Inglese (hereinafter "Inglese") is an attorney authorized and licensed to practice law in the State of South Carolina, and is citizen and resident of Charleston County, South Carolina.
2. The Plaintiff Mario S. Inglese, PC (hereinafter "Inglese PC") is a professional corporation, organized and existing under the laws of the State of South Carolina, with its principle place of business being in Charleston County, South Carolina.
3. That upon information and belief, the Defendant Linda Erickson (hereinafter "Erickson") is a citizen and resident of Dorchester County, South Carolina, and is the judgment creditor of a civil judgment against the below-identified Defendant Carl H. Beal, Jr., among others, arising out of the case captioned, *Linda Erickson v. Karen Winner, et al*, C/A No. 2001-CP-10-2967 (hereinafter "the Judgment").
4. That upon information and belief, the Defendant Russell S. Stempke (hereinafter "Stempke") is a citizen and resident of Charleston County, South Carolina, and was/is the attorney and agent for Erickson with regards to the Judgment.

5. That upon information and belief, the Defendant Carl H. Beal, Jr. (hereinafter "Beal") is a citizen and resident of Dorchester County, South Carolina, and is one of several judgment debtors with regards to the Judgment.

#### JURISDICTION AND VENUE

6. That the allegations set forth above are incorporated herein by reference.

7. That the Plaintiffs are informed and believe that jurisdiction and venue in this action are proper.

#### FACTS

8. That the allegations set forth above are incorporated herein by reference.

9. That in late October 2006, the Plaintiffs herein were requested to conduct a real estate closing transaction between the Defendant Beal, as the proposed seller, and John A. Harper and Amy E. Harper, as the proposed buyers, for a lot and home located in Dorchester County, South Carolina, and commonly known as 77 Cross Timbers Drive, Summerville, South Carolina 29485 (hereinafter "the subject property").

10. That on or about October 30, 2006, following an examination of the public records for Dorchester County, South Carolina, the Plaintiffs became aware of the Judgment lien in favor of the Defendant Erickson and against the Defendant Beal.

11. That prior to closing the proposed real estate transaction, Plaintiff Inglese contacted the Defendant Stempke, in his capacity as the attorney and agent for the Defendant Erickson, to discuss the status of the Judgment lien, and the effect of the Judgment with regard to the proposed real estate transaction between Beal and the Harpers.

12. That the Defendant Stempke informed the Plaintiff Inglese that the underlying case from the Judgment was on appeal and under a stay of execution, and the Plaintiff Inglese and the

Defendant Stempke, with the consent of the Defendant Beal, agreed that the proposed transaction should proceed forward, with the net proceeds from the transaction to be held in escrow by the Plaintiff Inglese PC, pending outcome of the appeal, and that the subject property would transfer to the Harpers unencumbered by the Judgment lien, and that the escrowed proceeds would be distributed to the prevailing party (either Erickson or Beal) based on the outcome of the appeal.

13. That the Plaintiffs, relying on the representations of the Defendant Stempke, proceeded to close the proposed real estate transaction. The closing was conducted on November 13, 2006.

14. That the full net proceeds from the real estate transaction were escrowed at closing by the Plaintiff Inglese PC.

15. That, further resulting from the closing, a first mortgage on the subject property, which the Plaintiffs are informed and believe held a first priority status before the closing transaction, was paid-in-full and satisfied in the public records, and a new purchase-money mortgage from the Harpers was recorded following the closing.

16. That the Defendants Stempke and Erickson are now refusing to release the subject property from the Judgment lien and are attempting to enforce the Judgment.

FOR A FIRST CAUSE OF ACTION  
(Promissory Estoppel)

17. That the allegations set forth above are incorporated herein by reference.

18. That the Defendant Stempke, in his capacity as the attorney and agent for the Defendant Erickson, made clear and unambiguous representations and promises to the Plaintiff Inglese, concerning the closing, the escrow of proceeds, and the release of the Judgment as to the subject property.

19. That the Plaintiffs had a right to, and did, reasonably rely on the representations and promises of the Defendant Stempke in proceeding with the closing transaction for the subject property, and that such reliance by the Plaintiffs was both expected and foreseeable under the circumstances.

20. That the Plaintiffs have suffered actual injuries and damages as a direct and proximate result of their reliance on these said representations and promises.

21. That the Plaintiffs are informed and believe that they are entitled to an order of the court declaring that the subject property is not encumbered by the Judgment and/or declaring that the Defendants Stempke and Erickson are permanently estopped from attempting to enforce the Judgment with respect to the subject property.

FOR A SECOND CAUSE OF ACTION  
(Equitable Subrogation)

22. That the allegations set forth above are incorporated herein by reference.

23. That the Plaintiffs are informed and believe that the closing transaction between the Defendant Beal and the Harpers for the purchase of the subject property was an arms length transaction, wherein the Harpers paid fair market value for their interests in the property, using funds obtained through a new purchase-money mortgage to be secured by the subject property, for the express purpose of purchasing the subject property free-and-clear of any other liens or claims, and that all of the costs and fees paid in connection with the closing transaction were reasonable, necessary and customary.

24. That prior to closing, the subject property was encumbered by a mortgage from the Defendant Beal to Decision One Mortgage Company, LLC, dated October 28, 2005, and recorded in Book 5011, Page 216, which the Plaintiffs are informed and believe held a first lien,

priority status against the subject property at the time of closing.

25. That the Plaintiffs are informed and believe that the funds used to payoff and satisfy the prior first mortgage to Decision One Mortgage Company, LLC, referenced above, were the same funds obtained by the Harpers from their new purchase-money mortgage.

26. In the alternative, the Plaintiffs are informed and believe that they are entitled to an order of the court declaring that the new purchase-money mortgage obtained by the Harpers for the purchase of the subject property is equitably subrogated to the position of the prior Decision One Mortgage Company, LLC mortgage lien.

FOR A THIRD CAUSE OF ACTION  
(Unjust Enrichment/Plea in Equity)

27. That the allegations set forth above are incorporated herein by reference.

28. That in the alternative, the Plaintiffs are informed and believe that as a consequence of the closing, the Defendants Stempke and Erickson have received a benefit the retention of which would be unjust if not paid for, in that the prior Decision One Mortgage Company, LLC mortgage lien was paid-in-full at closing, thus seemingly advancing the lien priority positioning of all junior lien-holders.

29. That the Defendants Stempke and Erickson are/have been attempting to enforce the Judgment as a first priority lien against the subject property.

30. That in the alternative, the facts and circumstances of this case are such that the Defendants Stempke and Erickson knew or reasonably should have known that the Plaintiffs were expecting the subject property to be released from the Judgment lien.

31. That in the alternative, the Plaintiffs are informed and believe that the overall result of allowing the Defendants Stempke and Erickson to claim first priority lien status for the Judgment

at this time would amount to a windfall in favor of these Defendants, and would result in a substantial inequity in this case.

FOR A FOURTH CAUSE OF ACTION  
(Equitable Indemnification)

32. That the allegations set forth above are incorporated herein by reference.

33. That the Plaintiffs are informed and believe that they are entitled, under the theory of equitable indemnification, to a judgment for actual damages equal to the value of any losses suffered by the Plaintiffs as a result of this transaction, against the Defendant Beal.

WHEREFORE, the Plaintiffs pray for judgment:

A. Declaring that the subject property is not encumbered by the Judgment and/or declaring that the Defendants Stempke and Erickson are permanently estopped from attempting to enforce the Judgment with respect to the subject property;

B. In the alternative, declaring that the new purchase-money mortgage obtained by the Harpers for the purchase of the subject property is equitably subrogated to the position of the prior Decision One Mortgage Company, LLC lien;

C. In the alternative, declaring that the Plaintiffs are entitled to an off-setting judgment for the value of the performance sought from the Defendants;

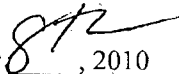
D. In the alternative, declaring that the Judgment is unenforceable with respect to the subject property as a matter of equity;

E. Under the theory of equitable indemnification, for actual damages against the Defendant Beal equal to the value of any losses suffered by the Plaintiffs as a result of this transaction, including a reasonable attorney's fee; and,

F. For such other and further relief as the Court deems equitable and proper.



Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
*ATTORNEY FOR THE PLAINTIFF*

December , 2010  
Charleston, South Carolina

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

NINTH JUDICIAL CIRCUIT

MARIO INGLESE and MARIO  
INGLESE S. INGLESE, PC, )

CASE NO. 2010-CP-10108

Plaintiff, )

v. )

LINDA ERICKSON, RUSSELL S.  
STEMPKKE and CARL H. BEAL, JR., )

Defendant. )

ANSWER  
JURY TRIAL REQUESTED

FILED  
2011 MAR -2 PM 3:46  
JULIE J. ARMSTRONG  
CLERK OF COURT

The Defendant Carl H. Beal, Jr., hereby, answer the Complaint. Except as specifically admitted below, the Defendant expressly denies each and every allegation in the Complaint.

**FOR A FIRST DEFENSE**

1. On information and belief, Defendant admits the allegations of paragraph one of the Plaintiff's Complaint.
2. The allegations of paragraph two are also admitted on information and belief.
3. The allegation as to the current status of Carl Beal is denied. The remaining allegations are admitted.
4. The allegations of paragraph four of the Complaint are admitted.
5. Defendant admits paragraph five of the Complaint as to residency but denies the remaining allegations of said paragraph.
6. In response to paragraph six, the Defendant, reasserts his responses as if fully stated herein.

7. Paragraph seven of the complaint sets forth matters of law which neither require an admission or a denial and are therefore denied

8. In response to paragraph eight, the Defendant reasserts his responses as if set forth fully herein.

9. Defendant has insufficient information to form a belief as to the actions of the Plaintiffs or Co-Defendants so he can neither admit or deny the allegations of paragraphs nine to thirty-one, so they are denied.

10. In response to paragraph thirty-two, the Defendant, reasserts his responses as if fully stated herein.

11. Defendant denies the allegations of paragraph 33 of the complaint.

#### **FOR A SECOND DEFENSE**

12. The Complaint fails to state a cause of action for which relief may be granted.

#### **FOR A THIRD DEFENSE**

13. Plaintiff has failed to give notice and opportunity to cure, if any defect exists as required by law, thereby barring this lawsuit.

#### **FOR A FOURTH DEFENSE**

14. Plaintiff lacks standing to bring this action against this Defendant.

CORRIGAN & CHANDLER LLC



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Charleston, South Carolina 29401  
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(843) 577-5650 (fax)  
rick@corriganhandler.com

ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina

February 25, 2011

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

) C/A Number: 2010-CP-10-10108  
)

v.

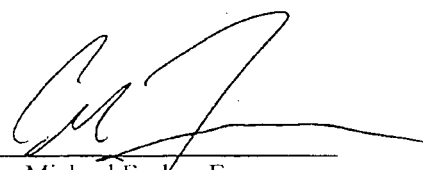
AMENDED SUMMONS

LINDA ERICKSON, RUSSELL S.  
STEMPKKE, and CARL H. BEAL, JR.,  
Defendants.

FILED  
2011 JUN 17 PM 3:13  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the amended complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said amended complaint upon the Attorney for Plaintiff, Charles M. Feeley, Esq., at 451 Folly Road, Charleston, South Carolina 29412, within fifteen (15) days after the service hereof, exclusive of the day of such service, and if you fail to answer the amended complaint within such time, judgment by default will be rendered against you for the relief demanded in the amended complaint.

  
Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
ATTORNEY FOR THE PLAINTIFF

June 17, 2011  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

) C/A Number: 2010-CP-10-10108  
)  
)

v.

) AMENDED COMPLAINT  
)  
)

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

BY

JULIE J. ARMSTRONG  
CLERK OF COURT

2011 JUN 17 PM 3:13

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The Plaintiffs, above-named, would respectfully show:

PARTIES

1. That the Plaintiff Mario S. Inglese (hereinafter "Inglese") is an attorney authorized and licensed to practice law in the State of South Carolina, and is citizen and resident of Charleston County, South Carolina.

2. The Plaintiff Mario S. Inglese, PC (hereinafter "Inglese PC") is a professional corporation, organized and existing under the laws of the State of South Carolina, with its principle place of business being in Charleston County, South Carolina.

3. That upon information and belief, the Defendant Linda Erickson (hereinafter "Erickson") is a citizen and resident of Dorchester County, South Carolina, and was the judgment creditor of a civil judgment against the below-identified Defendant Carl H. Beal, Jr., among others, arising out of the case captioned, *Linda Erickson v. Karen Winner, et al*, C/A No. 2001-CP-10-2967 (hereinafter "the Judgment").

4. That upon information and belief, the Defendant Russell S. Stempke (hereinafter "Stempke") is a citizen and resident of Charleston County, South Carolina, and was/is the attorney and agent for Erickson with regards to the Judgment.

5. That upon information and belief, the Defendant Carl H. Beal, Jr. (hereinafter "Beal") is a citizen and resident of Dorchester County, South Carolina, and was one of several judgment debtors with regards to the Judgment.

#### FACTS

6. That the allegations set forth above are incorporated herein by reference.

7. That in late October 2006, the Plaintiffs herein were requested to conduct a real estate closing transaction between the Defendant Beal, as the proposed seller, and John A. Harper and Amy E. Harper, as the proposed buyers, for a lot and home in Dorchester County, South Carolina, and commonly known as 77 Cross Timbers Drive, Summerville, South Carolina 29485 (hereinafter "the subject property").

8. That on or about October 30, 2006, following an examination of the public records for Dorchester County, South Carolina, the Plaintiffs became aware of the Judgment lien in favor of the Defendant Erickson and against the Defendant Beal.

9. That prior to closing the proposed real estate transaction, the Plaintiff Inglese contacted the Defendant Stempke, in his capacity as the attorney and agent for the Defendant Erickson, to discuss the status of the Judgment lien, and the effect of the Judgment with regards to the proposed real estate transaction between Beal and the Harpers.

10. That the Defendant Stempke informed the Plaintiff Inglese that the underlying case from the Judgment was on appeal and under a stay of execution, and the Plaintiff Inglese and the Defendant Stempke, with the consent of the Defendant Beal, agreed that the proposed transaction should proceed forward, with the net proceeds from the transaction to be held in escrow by the Plaintiff Inglese PC, pending outcome of the appeal, and that the subject property would transfer to the Harpers unencumbered by the Judgment lien, and that the escrowed proceeds would be

distributed to the prevailing party (either Erickson or Beal) based on the outcome of the appeal.

11. That the Plaintiffs, relying on the representations of the Defendant Stempke, on behalf of the Defendant Erickson, and with the understanding of the Defendant Beal, proceeded to close the proposed real estate transaction. The closing was conducted on November 13, 2006.

12. That the full net proceeds from the real estate transaction were escrowed at closing by the Plaintiff Inglese PC.

13. That the Defendants Stempke and Erickson subsequently refused to release the subject property from the Judgment lien.

14. That as a result of the Judgment, the Plaintiff Inglese's title insurance company, Investor's Title Insurance Company, Inc. (hereinafter "Investor's Title"), settled the claim by the Defendant Erickson to remove the cloud-on-title created by the Judgment lien, and the Judgment was satisfied as to the Defendant Beal.

15. That as a result of the above-referenced claim, the Plaintiff Inglese's status as an approved attorney and title insurance agent for Investor's Title was revoked, and Investor's Title then proceeded with its own claim for subrogation against the Plaintiffs herein, and that claim was just recently settled by the Plaintiff's for \$10,000.00.

FOR A FIRST CAUSE OF ACTION  
(Promissory Estoppel)

16. That the allegations set forth above are incorporated herein by reference.

17. That the Defendant Stempke, in his capacity as the attorney and agent for the Defendant Erickson, made clear and unambiguous representations and promises to the Plaintiff Inglese, concerning the closing, the escrow of proceeds, and the release of the Judgment as to the subject property.

18. That the Plaintiffs had a right to, and did, reasonably rely on the representations and promises of the Defendant Stempke in proceeding with the closing transaction for the subject property, and that such reliance by the Plaintiffs was both expected and foreseeable under the circumstances.

19. That the Plaintiffs have suffered actual injuries and damages as a direct and proximate result of their reliance on these said representations and promises.

20. That the Plaintiffs are informed and believe that they are entitled, under the theory of promissory estoppel, to a judgment for all actual damages suffered by the Plaintiffs as a result of their settlement with Investor's Title, against the Defendants Stempke and Erickson.

FOR A SECOND CAUSE OF ACTION  
(Unjust Enrichment)

21. That the allegations set forth above are incorporated herein by reference.

22. That as a consequence of the Investor's Title settlement, the Defendant Beal received a benefit the retention of which would be unjust if not paid for, in that the Judgment lien was satisfied as to the Defendant Beal as a result of the Investor's Title settlement.

23. That the Defendant Beal knew or should have known at closing that a jury verdict had been rendered against him, thereby creating the Judgment, and that the Plaintiffs were expecting the Defendant Beal to come to closing prepared to pass clear title.

24. That the Plaintiffs made a payment to Investor's Title in the amount of \$10,000.00, as a result of it's claim against the Plaintiffs for satisfying the Judgment lien.

25. That as a result of the Plaintiffs' settlement with Investor's Title, the Plaintiffs are subrogated to all rights and interests held by Investor's Title for it's settlement of the Judgment, and the Plaintiffs herein are entitled to be compensated by the Defendant Beal.

26. That the Defendant Beal has been unjustly enriched by the Plaintiffs payment, in the amount of \$10,000.00.

27. That the Plaintiffs have demanded payment from the Defendant Beal, and the Defendant Beal has failed and refused to make such payment.

28. That the Plaintiffs are informed and believe that they are entitled, under the theory of unjust enrichment, to a judgment for all actual damages suffered by the Plaintiffs as a result of the Plaintiffs' settlement with Investor's Title, against the Defendant Beal.

FOR A THIRD CAUSE OF ACTION  
(Equitable Indemnification)

29. That the allegations set forth above are incorporated herein by reference.

30. That the Plaintiffs herein were compelled to pay damages to Investor's Title as a result of its settlement of the Judgment claim against the Defendant Beal.

31. That the Plaintiffs' subsequent settlement with Investor's Title 1) was bona fide, with no fraud or collusion between the parties, 2) that the decision to settle was a reasonable means of protecting the Plaintiffs' interests, and 3) that the amount of the Plaintiffs' settlement with Investor's Title was reasonable in light of the underlying circumstances.

32. That the Plaintiffs are informed and believe that they are entitled, under the theory of equitable indemnification, to a judgment for actual damages suffered by the Plaintiffs as a result of the Plaintiffs' settlement with Investor's Title, including reasonable attorney's fees, against the Defendant Beal.

WHEREFORE, the Plaintiffs pray for judgment:

A. Under the theory of promissory estoppel, for all actual damages suffered by the Plaintiffs as a result of the Plaintiffs' settlement with Investor's Title, against the Defendants Stempke and Erickson;

B. Under the theory of unjust enrichment, for all actual damages suffered by the Plaintiffs as a result of their settlement with Investor's Title, against the Defendant Beal;

C. Under the theory of equitable indemnification, for actual damages suffered by the Plaintiffs as a result of their settlement with Investor's Title, including reasonable attorney's fees, against the Defendant Beal, and;

D. For such other and further relief as the Court deems equitable and proper.



Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
*ATTORNEY FOR THE PLAINTIFF*

June 17<sup>th</sup>, 2011  
Charleston, South Carolina

|                                                            |   |                              |
|------------------------------------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA                                    | ) | IN THE COURT OF COMMON PLEAS |
|                                                            | ) |                              |
| COUNTY OF CHARLESTON                                       | ) | NINTH JUDICIAL CIRCUIT       |
|                                                            | ) |                              |
| MARIO S. INGLESE and MARIO S. INGLESE, PC,                 | ) | CASE NO. 10-CP-10-10108      |
|                                                            | ) |                              |
| Plaintiff,                                                 | ) |                              |
|                                                            | ) |                              |
| v.                                                         | ) | ANSWER TO AMENDED COMPLAINT  |
|                                                            | ) |                              |
| LINDA ERICKSON, RUSSELL S. STEMPKE, and CARL H. BEAL, JR., | ) |                              |
|                                                            | ) |                              |
| Defendant.                                                 | ) |                              |

FILED  
JUL -6 PM 3:15  
CLERK OF COURT  
J. ARMSTRONG

TO: CHARLES M. FEELEY, ESQ., ATTORNEY FOR THE PLAINTIFF.

The Defendant, Carl H. Beal, Jr., answers the Plaintiffs' Amended Complaint as follows:

**FOR A FIRST DEFENSE**

1. Defendant admits the allegations contained in Paragraphs One and Two of the Complaint.
2. Defendant denies the allegations contained in Paragraph Three to the extent that the matter was under appeal and not finalized.
3. Defendant admits the allegations contained in Paragraph Four except as to the term "Judgment."
4. Defendant denies the allegations contained in Paragraph Five of the Complaint.
5. Responding to Paragraph Six of the Complaint, Defendant reasserts the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.
6. Defendant admits the allegations contained in Paragraph Seven of the Complaint.
7. Defendant lacks knowledge or information sufficient to form a belief as to the truth of what Plaintiff knew and when as contained in Paragraphs Eight through Eleven.
8. Defendant admits the allegations contained in Paragraph Twelve.

9. Defendant admits the allegations of Paragraph Thirteen, on information and belief.

10. Defendant admits the allegations of Paragraph Fourteen except to the extent that allegations skip the actions of the Plaintiff in creating the need for such actions.

11. Defendant denies the allegations contained in Paragraph Fifteen of the Complaint.

12. Responding to Paragraph Sixteen of the Complaint, Defendant reasserts the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

13. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Seventeen through Twenty of the Complaint, and, therefore, denies the allegations.

14. Responding to Paragraph Twenty-One of the Complaint, Defendant reasserts the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

15. Defendant denies the allegations contained in Paragraph Twenty-Two of the Complaint.

16. Defendant denies the allegations contained in Paragraph Twenty-Three of the Complaint.

17. Defendant lacks knowledge or information sufficient to form a belief as to the truth of allegations contained in Paragraph Twenty-Four of the Complaint and, therefore, denies the same.

18. Defendant denies the allegations contained in Paragraph Twenty-Five through Twenty-Eight of the Complaint.

19. Responding to Paragraph Twenty-Nine of the Complaint, Defendant reasserts the responses contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

20. Defendant denies the allegations contained in Paragraph Thirty of the Complaint.

21. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraphs Thirty-One of the Complaint, and, therefore, denies the allegations.

22. Defendant denies the allegations contained in Paragraph Thirty-Two of the Complaint.

#### **FOR A SECOND DEFENSE**

23. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant.

#### **FOR A THIRD DEFENSE**

24. The Plaintiffs' claims are in equity and, therefore, are barred by the Doctrine of Unclean Hands.

#### **FOR A FOURTH DEFENSE**

25. Plaintiffs' claims are based on subrogation through a Title Policy issued on behalf of beneficiaries for the sale of this property and subrogation against the beneficiaries is not possible under the laws of this state. Title Insurance is not sold by an attorney at the sale of property for his benefit but the benefit of his clients who in this matter included Defendant Beal.

#### **FOR A FIFTH DEFENSE**

26. Plaintiffs' claims are barred, in whole or in part, by the voluntary payment doctrine.

CORRIGAN & CHANDLER LLC



Eugene P. Corrigan III  
12 Exchange Street  
Charleston, South Carolina 29401  
(843) 577-5450 (phone)  
(843) 577-5650 (fax)  
rick@corriganhandler.com

ATTORNEYS FOR DEFENDANT CARL H.  
BEAL, JR.

Charleston, South Carolina  
July 1, 2011

|                          |   |                         |
|--------------------------|---|-------------------------|
| STATE OF SOUTH CAROLINA  | ) |                         |
|                          | ) | COURT OF COMMON PLEAS   |
| COUNTY OF CHARLESTON     | ) |                         |
| Mario S. Inglese, et al, | ) |                         |
|                          | ) |                         |
| Plaintiffs,              | ) |                         |
|                          | ) |                         |
| vs.                      | ) | Case No. 10-CP-10-10108 |
|                          | ) |                         |
| Linda Erickson, et al,   | ) |                         |
|                          | ) |                         |
| Defendant.               | ) |                         |

## TRANSCRIPT OF HEARING

The within Hearing in the above-captioned action was held on December 7, 2011, before The Honorable R. Markley Dennis, Jr. in Courtroom 4C of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by Counsel, as follows:

### APPEARANCES:

Charles M. Feeley, Esq.  
 451 Folly Road  
 Charleston, SC 29401  
 Appearing for Plaintiff

Eugene P. Corrigan, III  
 12 Exchange Street  
 Charleston, SC 29401  
 Appearing for Carl H. Beal, Jr.

**DEBORAH GARRISON**  
*Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit*  
 Post Office Box 901  
 Johns Island, South Carolina 29457  
[dGarrison@sccourts.org](mailto:dGarrison@sccourts.org)

1 THE COURT: Good morning, Gentlemen.

2 MR. FEELEY: Your Honor, I have a memo  
3 that was just filed in opposition to the Motion  
4 for ---

5 THE COURT: Okay, that's fine. All  
6 memoranda filed in conjunction with this Motion  
7 are incorporated for purposes of review. Each  
8 of you may rely on your respective memorandum.  
9 Your Motion, Mr. Corrigan?

10 MR. CORRIGAN: Good morning, Your  
11 Honor.

12 THE COURT: Good morning, sir.

13 MR. CORRIGAN: Yes, sir, it is my  
14 Motion. This is a case that you have seen  
15 before.

16 THE COURT: (Affirmative nod), it is.

17 MR. CORRIGAN: I am Rick Corrigan  
18 and I represent Mr. Beal as the only remaining  
19 defendant at this time. Carl Beal is with us in  
20 the courtroom behind me. As a slight aside,  
21 usually when you see me there is insurance money  
22 but in this case Mr. Beal is paying. I just  
23 wanted to get that out in the open.

24 THE COURT: Thank you, sir.

25 MR. CORRIGAN: This Motion for

1 summary judgment was difficult in several ways  
2 because I, quite frankly, don't know how or why  
3 we are being sued.

4 We've tried to respond to two causes of  
5 action, but -- as Your Honor is well aware, the  
6 attorney's relationship with a client is one of  
7 total loyalty and unbending fiduciary trust.

8 THE COURT: Sure.

9 MR. CORRIGAN: The plaintiff in  
10 this case has tried to downplay, I think, and I  
11 don't blame him, that he was in fact Mr. Beal's  
12 attorney for the closing. We have attached to  
13 our brief the mutual attorney-client  
14 relationship between the buyer and seller for  
15 the closing. It is signed by both the  
16 purchasers and Mr. Beal. So there is no  
17 question whatsoever that in this transaction  
18 which forms the basis of this lawsuit that the  
19 plaintiffs -- of course, an attorney and the  
20 business entity, the P.C., that Mr. Inglese uses  
21 in his practice. So we are dealing then with a  
22 different situation than the other defendants,  
23 because he was the only one who was sued who was  
24 actually a party -- excuse me, who was actually  
25 a client of the plaintiff.

1           The two causes of action that have been  
2       stated against Mr. Beal are -- that I understand  
3       are still active -- unjust enrichment and  
4       equitable indemnity.

5           Your Honor, it's a little confusing  
6       because there was a question concerning --  
7       between the attorneys about a request for  
8       admissions. Requests for admission that we have  
9       indicated that we are not going to argue as  
10      admitted because of whatever paperwork problem  
11      happened there. But what is important is that  
12      all the other requests for admissions are  
13      admitted and they outline the process of what  
14      occurred at what time.

15          As briefly as possible, the plaintiff  
16      handled the closing. He commissioned a search  
17      of the title. He found that there was a  
18      judgment lien. In the Erickson case, which  
19      you're familiar with that part of the case.

20          THE COURT:     I am.

21          MR. CORRIGAN:     And then proceeded  
22      -- talked to Mr. Stemke, proceeded to go forward  
23      with the closing. Obviously my client is aware  
24      of this. He was there to sign some of the  
25      documents, including documents where the

1 plaintiff marked out the part about judgments  
2 and liens, initialed, and that's attached to our  
3 Motion as well.

4 So they proceed. Then -- we have gone  
5 as far as -- I am not sure whether the court is  
6 aware of this or not, but we attached an  
7 affidavit of Sidney McDowell, who is a old real  
8 estate lawyer -- I shouldn't say that he is old,  
9 but he's been doing it for a long time.

10 THE COURT: I know.

11 MR. CORRIGAN: --- about what is  
12 proper or what is not as far as this process.  
13 But beyond that, he on his own knows the law.  
14 The fact that -- basically our attorney is suing  
15 us for what he did. His if title company told  
16 him that he did wrong and settled the claim and  
17 now is suing Mr. Beal to pay him back because he  
18 had to pay the bond company back. It all goes  
19 back to the closing that this attorney handled.

20 My client is not an attorney. My  
21 client sold his property, put the money in  
22 equity because of the judgment situation. There  
23 are huge judgments that have been whittled down.  
24 Now there's an argument now however that because  
25 Mr. Beal somehow benefitted from this mistake

1 made by his attorney, that that affected  
2 whatever happened in this completely different  
3 case as far as the judgment.

4 That is basically -- that's the core of  
5 the argument, Judge. I can go into the law of  
6 unjust enrichment, and ---

7 THE COURT: That's ---

8 MR. CORRIGAN: Obviously on the  
9 equity indemnity, we're dealing with the -- I  
10 have raised the issue of unclean hands and  
11 issues of why we think that even if you got to  
12 those causes of action that they would not apply  
13 here. Thank you.

14 THE COURT: Thank you. Mr. Feeley,  
15 be happy to hear from you.

16 MR. FEELEY: Thank you, Your Honor.  
17 There are three things to keep in mind:

18 Mr. Beal had a judgment against  
19 him before he even met Mr. Inglese.

20 Mr. Beal signed the contract to  
21 sell a piece of real estate which he owned,  
22 which contract by its terms said that he would  
23 provide a clean title at the closing -- before  
24 me ever met Mr. Inglese.

25 And the ---

1 THE COURT: Well, what was the  
2 purpose of your client being present then, if  
3 your client was to do nothing other than to  
4 handle the closing? And if Mr. Beal is not an  
5 attorney, what is his purpose?

6 MR. FEELEY: Your Honor, they  
7 attempted to resolve the judgment.

8 THE COURT: No, sir. You didn't  
9 answer my question, Mr. Feeley. I was a lawyer  
10 for twenty-one years and practiced law in  
11 Berkeley County, so I did tons of closing. I  
12 know what the responsibility is for a closing  
13 attorney. You do, too. It is to certify title.  
14 That's what he is there for, Mr. Feeley.

15 Clients tell you all the time, 'Oh, my  
16 title is good. No problem.' But that's what we  
17 do. So ---

18 MR. FEELEY: Your Honor, if I could be  
19 heard ---

20 THE COURT: I am just asking you to  
21 address my -- the issues. I'll be happy to hear  
22 from you but you -- you blame Mr. Beal and Mr.  
23 Beal is not a lawyer. He can't certify the  
24 title, can he?

25 MR. FEELEY: No.

1                   THE COURT:     Well, let me ask you a  
2     question.   Could Mr. Beal have written your  
3     title company and signed a letter, said it's  
4     good and you'all would have issued title  
5     insurance?

6                   MR. FEELEY:   Of course not.

7                   THE COURT:   Of course not.   Thank  
8     you, sir.

9                   MR. FEELEY:   The attorney's role is  
10    to, as you say, to conduct the closing, sign the  
11    documents, and to search the title to make sure  
12    that good title passes to the buyer.   What is  
13    what was attempted to be done here.   What  
14    happened here is that there was a judgment.   Mr.  
15    Beal signed the contract knowing that there was  
16    a judgment and that he was going to have to pass  
17    a good title ---

18                  THE COURT:     Did your client except to  
19    the judgment in his certification?

20                  MR. FEELEY:   (No verbal response).

21                  THE COURT:     Didn't he, as the  
22    attachment shows, cross that out and initial it?

23                  MR. FEELEY:   Of course, Your Honor.

24    But I ---

25                  THE COURT:     Of course?   Of course.

1 Well, why he do that?

2 MR. FEELEY: Because, Your Honor, they  
3 crossed that out in the affidavit because  
4 everybody understood, they thought that they had  
5 a resolution to the judgment.

6 THE COURT: No, sir. Mr. Feeley,  
7 you're preaching to the wrong person. Maybe if  
8 I had never practiced law, I may be inclined to  
9 listen to you. But I did.

10 I used to tell people this about title  
11 insurance, and I wrote it too. I had a company,  
12 too. It was great, I -- I'm glad that lawyers  
13 have a chance to do that, it helps the business.  
14 But I honestly used to say, 'You know, the only  
15 person who -- the bottom line is, you're paying  
16 me a fee and you're getting a letter from me  
17 saying that I'm certifying title.' I said it,  
18 and here's a classic example of what I said was  
19 absolutely true. If my letter is wrong, you  
20 know who is going to pay for this? They are  
21 going to pay you and then they are going to get  
22 it back from me. Because I'm the -- the buck  
23 stops here. The buck stops with the closing  
24 attorney.

25 MR. FEELEY: Respectfully, Your Honor,

1 I disagree with that.

2 THE COURT: Well, you can disagree  
3 with me all you want, sir. You have your  
4 memorandum and it's incorporated, Mr. Feeley.  
5 That's why I do that. You don't have a case, in  
6 my humble opinion. Take it up to Columbia. If  
7 you'all get me reversed, hurray, good for you.  
8 We will make some new law for lawyers who do  
9 title work. Thank you, sir.

10 Motion for summary judgment is granted.  
11 It's over until Columbia says otherwise.

12 (HEARING CONCLUDED)

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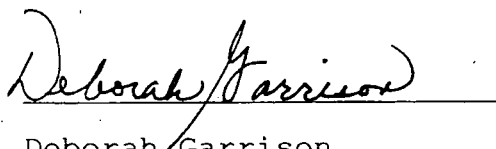
24

25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,  
official court reporter for the 9<sup>th</sup> Judicial  
Circuit of the State of South Carolina, do  
hereby certify that the foregoing is a true,  
accurate and complete transcript of the hearing  
held before The Honorable R. Markley Dennis,  
Jr., on December 7, 2011;

I further certify that I am neither kin nor  
counsel to any of the parties and have no  
interest in the outcome of this action.

A handwritten signature in cursive script, reading "Deborah Garrison", is written over a horizontal line.

Deborah Garrison

Circuit Court Reporter

9<sup>th</sup> Judicial Circuit

Charleston, South Carolina

March 2, 2012

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

MARIO S. INGLESE and MARIO S.  
INGLESE, PC )

Plaintiff, )

vs. )

LINDA ERICKSON, RUSSELL S. )  
STEMPKE, and CARL H. BEAL, JR. )

Defendant. )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO.: 10-CP-10-10108

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney: Charles Michael Feeley, Esq.  
Bar No.  
Address: 4512 Folly Road, Charleston, SC 29412  
Phone: (843) 324-8763 Fax: (843) 795-0668  
E-Mail: cmfeeley@feeleylaw.net

Defendant's Attorney: Harry V. Ragsdale  
Bar No. 75917  
Address: Corrigan & Chandler LLC  
P.O. Box 547, Charleston, SC 29402  
Phone: (843) 577-5410 Fax: (843) 577-5650  
E-mail: harry@corriganchandler.com

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)  
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)  
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached  
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Harry V. Ragsdale  
Signature of Attorney for ☐ Plaintiff / ☒ Defendant

October 31, 2011

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT: ow Cause in Child or Spousal Support

(check reason) Abuse or Abuse and Neglect

- ☐ Indigent Status ☐ State Agency v. Indigent Party  
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief  
☐ Motion for Stay in Bankruptcy  
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)  
☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE

Date:

CLERK'S VERIFICATION

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_

☐ MOTION FEE COLLECTED: \$

☐ CONTESTED - AMOUNT DUE: \$

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC, )

CASE NO. 10-CP-10-10108

Plaintiff, )

v. )

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR., )

Defendant. )

NOTICE OF MOTION AND MOTION  
FOR SUMMARY JUDGMENT BY  
DEFENDANT CARL H. BEAL, JR.

FILED  
2011 OCT 31 PM 4:29  
CLERK OF COURT  
JULIE J. ARSHENOFF  
BY 2

**TO: CHARLES M. FEELEY, ESQ., ATTORNEY FOR THE PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that the Defendant Carl H. Beal, Jr. (hereinafter "Beal") will, within ten (10) days of the service of this notice, or as soon thereafter as possible move before the Court for an Order granting Summary Judgment as to the Plaintiff's claims. This motion is being made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

#### **FACTS**

In a summary judgment motion, the Court may take into consideration evidence beyond the allegations in the pleadings. In this case, Plaintiffs represented Defendant Beal in his capacity as a seller in a real estate closing. (See Disclosure of Attorney – Multiple Client Representation, Nov. 13, 2006) (attached as Exhibit "A"). At closing, Defendant Beal was required to execute an Owner's Affidavit wherein he certified to Plaintiff's title insurance company that there were no outstanding mechanics liens attached to his property. (See Owner's Affidavit, Nov. 13, 2006) (attached as Exhibit "B"). Although this Owner's Affidavit would typically require Defendant Beal to certify that there are no pending suits, proceeds or judgments against him at the time of closing, this provision was crossed out of

the affidavit and contained Plaintiff Inglese's initials, "MSI," next to the deleted paragraph.

(Id.) Next, Defendant Beal was also required to execute an Affidavit of Ownership at closing. (See Affidavit of Ownership) (attached as Exhibit "C"). Paragraph 9 of the

Affidavit of Ownership required Defendant Beal to swear "[t]hat no judgment, decree or lien exists against [him], or against [his property], and no actions exist which may lead to such a judgment, decree or lien." (Id. at ¶ 9). However, this paragraph was crossed out of the affidavit and contained the initials "MSI" next to the deleted paragraph. Finally, Plaintiffs held the real estate closing on November 13, 2006. On September 6, 2006, Plaintiffs issued a title insurance commitment. (See Title Insurance Commitment, Sept. 6, 2006) (attached as Exhibit "D"). Under Schedule B, Section 1 of the Commitment, Plaintiffs acknowledged that a judgment, filed on April 4, 2006, existed against Defendant Beal in the amount of \$6 million. (Id. at 2). Under this title commitment, Plaintiffs were required to obtain a Satisfaction of Judgment from the judgment holder to be filed prior to the deed and mortgage. (See McDowell Aff. at ¶¶ 3-4, June 28, 2011) (attached as Exhibit "E"). Plaintiff failed to do so. Because of Plaintiffs' actions, their title insurance company settled with Defendant Beal's judgment holder and the Judgment against Beal was satisfied. (Am. Compl. at ¶ 14, June 17, 2011). Plaintiffs' title insurance company then revoked Plaintiff Inglese's status as an approved attorney and title insurance agent and proceeded with a subrogation claim against Plaintiffs, which was settled for \$10,000.00. (Id. at ¶ 15). Plaintiffs now seek to collect these funds from Defendant Beal.

## ARGUMENT

### **A. PLAINTIFFS ADMIT THAT THEY ARE BARRED FROM RECOVERY IN THIS LAWSUIT.**

On July 19, 2011, the undersigned attorneys served Requests for Admissions upon the Plaintiffs' attorney. (See First Set of Requests for Admissions to the Plaintiff, July 19, 2011) (attached as Exhibit "F"). Request number 9 asks Plaintiffs to admit or deny "[t]hat [they] are not entitled to equitable indemnification." (Id. at ¶ 9). Similarly, Request number 12 asks Plaintiffs to admit or deny "that Defendant Carl H. Beal was not unjustly enriched as a result of [Plaintiffs'] actions." (Id. at ¶ 12). Over three (3) months have passed and Plaintiffs have failed to serve answers to these Requests. (See Ragsdale Aff. at ¶¶ 4-5, Oct. 31, 2011) (attached as Exhibit "G"). Because the Plaintiff failed to serve answers to these Requests, the matters contained therein are deemed admitted. S.C.R.C.P. 36. Thus, because Plaintiffs admit that they are not entitled to equitable indemnity and because Plaintiffs admit that Defendant Beal was not unjustly enriched, there is no genuine issue as to any material fact in this case and Defendant Beal is entitled to summary judgment as a matter of law.

### **B. PLAINTIFFS ARE BARRED FROM RECOVERY UNDER THE VOLUNTARY PAYMENT DOCTRINE.**

Under the voluntary payment doctrine, when money is paid with full knowledge of all the facts and circumstances upon which it is demanded, or with the means of such knowledge, it cannot be recovered. South Carolina courts have previously recognized the voluntary payment doctrine. See Baker v. Allen, 220 S.C. 141, 149-53 (1951).

In this case, Plaintiffs received notification of a claim from their title insurance company. (See Notice of Claim, Mar. 10, 2008) (attached as Exhibit "H"). Because of

Plaintiffs' actions, their title insurance company settled with the judgment holder and brought a subrogation claim against them. (Am. Compl. at ¶¶ 14-15). Plaintiffs voluntarily paid \$10,000.00 to settle the subrogation claim. Plaintiffs made this payment after they certified clear title on the subject property although they had actual notice that a judgment existed against Beal. (See Exhibit "D" at 2). Nonetheless, armed with this information, Plaintiffs chose to make a voluntary payment to their title insurance company to settle all claims against them. Therefore, Plaintiffs are barred from recovering from Defendant Beal in this action under the voluntary payment doctrine.

**C. PLAINTIFFS ARE BARRED FROM RECOVERY UNDER THE DOCTRINE OF UNCLEAN HANDS.**

The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant. Ingram v. Kasey's Associates, 328 S.C. 399, 493 S.E.2d 856 (Ct. App. 1997).

In this case, Plaintiffs admit that they had notice of a judgment lien in favor of Erickson and against Beal. (Am. Compl. at ¶ 8; see Exhibit "D" at 2; Exhibit "F" at 1). Next, regardless of any alleged agreements between the parties, Plaintiffs admit that they closed the proposed real estate transaction on November 13, 2006 with actual notice that the Erickson judgment against Beal had not been satisfied of record. (Am. Compl. at ¶ 11). By conducting this real estate closing with actual notice that there was a cloud on title to the subject property, the Erickson judgment enjoyed priority over any subsequent deeds or mortgages filed on the property. See S.C. Code Ann. § 15-35-810; S.C. Code Ann. § 30-7-10; Atlas Supply Co. v. Davis, 273 S.C. 392, 393-95 (1979). Thereafter, as a result of the Erickson judgment, Plaintiffs admit that their title insurance company, Investor's Title, settled the claim with Erickson to remove the cloud on title and the

judgment was satisfied as to Beal. (Am. Compl. at ¶ 14). Finally, Investor's Title proceeded with a subrogation claim against Plaintiffs, which they settled for \$10,000.00. (Am. Compl. at ¶ 15).

Because Plaintiffs paid Investor's Title to settle the subrogation claim, they now come to this Court asking their client, Defendant Beal to compensate them for their loss. Essentially, however, Plaintiffs are asking Beal to compensate them for their own wrongdoing at closing. Ultimately, however, Plaintiffs admit that they engaged in inequitable conduct by certifying title to the property with actual knowledge that a judgment existed against Defendant Beal and by failing to obtain authorization from Plaintiffs' title insurance company to issue an owner's and lender's title policy that took exception to any valid judgment existing against Defendant Beal. (See Exhibit F at ¶¶ 1, 7, 8). Thus, because of Plaintiffs' own inequitable conduct, they come to this Court with unclean hands and are barred from recovering in this action.

Finally, it is irrelevant that Plaintiffs escrowed funds to be paid to Mr. Stemke and Mrs. Erickson at closing because of the independent legal issues between Erickson and Beal. (Am. Compl. at ¶ 12). Although Plaintiffs may have escrowed these funds based on an alleged agreement they had with Mr. Stemke, their actions at closing were improper. The proper procedure would have been to secure an executed Satisfaction of Judgment from Mr. Stemke prior to closing to be held in trust until such time as the escrowed funds were disbursed, at which time the satisfaction could be filed simultaneously with the deed and mortgage. (See McDowell Aff. at ¶¶ 3-4). By failing to do so, Plaintiffs completed the closing with actual knowledge of the judgment against Beal, thus causing a cloud on title that would prevent Investor's Title from issuing its title

policy. (Id. at ¶¶ 5-6). Finally, this is not the first time Plaintiffs have been reprimanded by the title insurance company for actions they took related to real estate closings and issuing title insurance policies. (See Exhibit F at ¶¶ 3-4). As a result of their improper conduct, Plaintiffs are barred from recovery. In the alternative, Plaintiffs are barred from recovery as a matter of law as they admit that Defendant Beal was not unjustly enriched as a result of their actions. (See Exhibit F at ¶ 12).

**D. PLAINTIFFS' CLAIM FOR EQUITABLE INDEMNIFICATION FAILS AS A MATTER OF LAW BECAUSE THEIR OWN CONDUCT CAUSED THEIR DAMAGES.**

"A plaintiff may maintain an equitable indemnification action if he was compelled to pay damages because of negligence imputed to him as the result of another's tortious act." Fowler v. Hunter, 388 S.C. 355, 363, 697 S.E.2d 531 (2010). "A plaintiff asserting an equitable indemnification cause of action may recover damages if he proves: (1) the indemnitor was liable for causing the plaintiff's damages; (2) the indemnitee was exonerated from any liability for those damages; and (3) the indemnitee suffered damages as a result of the plaintiff's claims against it, which were eventually proven to be the fault of the indemnitor." "Equitable indemnity cases involve a fact pattern in which the first party is at fault, but the second party is not." Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307 (Ct. App. 1999). "If the second party is also at fault, he comes to court without equity and has no right to indemnity." Id. In this case, for Plaintiffs to prevail on their claim of equitable indemnity, they must show that their damages were "the natural and necessary consequence of [Defendant Beal's] act." Town of Winnsboro v. Wiedeman-Singleton, Inc., 307 S.C. 128, 132, 414 S.E.2d 118, 121 (1992).

Here, Plaintiffs' claim for equitable indemnification fails as a matter of law because they admit that they are not entitled to equitable indemnification. (See Exhibit F at ¶ 9) and because they are not an "innocent party." Plaintiffs had actual knowledge of the judgment against Defendant Beal over two (2) months prior to the closing, yet they did nothing to obtain and file a Satisfaction of Judgment prior to closing. (Id. at ¶ 1). Indeed, the Plaintiffs' own actions caused their title insurance company to file the subrogation action against them. (Id. at ¶¶ 1-2, 7-8, 10-11). Because of the Plaintiffs' own inequitable conduct in failing to properly close the real estate transaction, their claim for equitable indemnification fails as a matter of law.

#### CONCLUSION

Ultimately, there is no genuine issue of material fact. The Plaintiffs' inequitable conduct caused their harm. Further, Plaintiffs admit that they are not entitled to recovery from Defendant Beal in this action. Thus, as a matter of law, summary judgment should be granted in favor of Defendant Beal and the Plaintiffs' claims should be dismissed, with prejudice.

*[SIGNATURE PAGE TO FOLLOW]*

CORRIGAN & CHANDLER LLC

*Harry V. Ragsdale*

Eugene P. Corrigan III  
Harry V. Ragsdale  
12 Exchange Street  
Charleston, South Carolina 29401  
(843) 577-5450 (phone)  
(843) 577-5650 (fax)  
rick@corriganhandler.com

ATTORNEYS FOR DEFENDANT CARL H.  
BEAL, JR.

Charleston, South Carolina

October 31, 2011

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,

CASE NO. 10-CP-10-10108

Plaintiff,

**CERTIFICATE OF SERVICE**

v.

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,

Defendant.

FILED  
2011 OCT 31 PM 4:29  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

This is to certify that the undersigned served the **NOTICE OF MOTION FOR SUMMARY JUDGMENT BY DEFENDANT CARL H. BEAL, JR.** upon the attorneys of record listed below by mailing a copy of the same to the address listed below, postage prepaid, on this 31st day of October 2011.

Charles Michael Feeley, Esq.  
4512 Folly Road  
Charleston, SC 29412

Russell S. Stemke, Esq.  
Law Office of Russell S. Stemke, Attorney at Law  
P.O. Box 1100  
Isle of Palms, SC 29451

CORRIGAN & CHANDLER LLC

*Harry V. Ragsdale*

Harry V. Ragsdale  
12 Exchange Street  
Charleston, South Carolina 29401  
(843) 577-5450 (phone)  
(843) 577-5650 (fax)  
rick@corriganhandler.com

ATTORNEYS FOR DEFENDANT CARL H.  
BEAL, JR.

Charleston, South Carolina

October 31, 2011

# **EXHIBIT A**

DISCLOSURE OF ATTORNEY  
MULTIPLE CLIENT REPRESENTATION

In the real estate transaction of Carl H. Beal, Jr. as Seller, and John Harper and Amy Harper, as purchaser(s) dated November 13, 2006, MARIO INGLESE, PC will be involved in a degree of representation of some or all of the following clients:

- ( ) Purchaser. The Attorney has been chosen by Purchaser to represent him/her/them and to protect all of his/her/their interests. Purchaser is the Attorney's primary client under this transaction.

Seller is also represented by Attorney as to the preparation of a Deed and other documents involved in the transaction.

WHEN THERE IS MULTIPLE REPRESENTATION OF CLIENTS THERE EXISTS THE POTENTIAL FOR A CONFLICT OF INTEREST FOR THE ATTORNEY.

If an actual conflict of interest arises (before, during, or after the closing) that cannot be settled in a amicable manner, the Attorney will be obligated to:

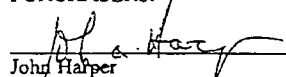
- 1.) Inform all clients of the conflict, and
- 2.) Withdraw representation from ALL clients.

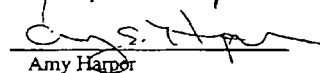
Each client will have to seek his own separate attorney to resolve the conflict.

I have been informed of the multiple representations and I agree for the Attorney to undertake such multiple representations.

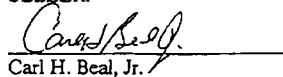
My consent for Attorney, MARIO INGLESE, PC to represent me in this transaction is given voluntarily, intelligently, and I am knowingly informed.

PURCHASERS:

  
John Harper

  
Amy Harper

SELLER:

  
Carl H. Beal, Jr.



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# **EXHIBIT B**



**Investors Title Insurance Company**

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

)  
)

OWNER'S AFFIDAVIT

PERSONALLY appeared before me, Carl H. Beal, Jr., who after being duly sworn, depose(s) and say(s):

That the following described property is owned by deponent(s), to wit:

SEE SCHEDULE C ATTACHED HERETO

That no one other than said owner, or the party purchasing the captioned property as part of this transaction has the right of possession of said property.

That there is no outstanding indebtedness for equipment, appliances or other fixtures attached to said property.

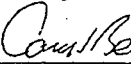
That the lines and corners of said property are clearly marked, that there are no disputes concerning the location of the lines and corners, that the property is free from easement, or claims of easements, not shown by the public records, and that an undisputed right of access to said property exists from a public road.

That deponent has no knowledge of any street, sidewalk, drainage or utility improvements which are either proposed, under construction or recently completed, which pass through, abut or will pass through or abut the property.

That there are no pending suits, proceedings, judgments, bankruptcies, liens or executions, against said owner either in the aforesaid county or any other county in the State of South Carolina.

That no improvements or repairs have been made on the above-described property during the three months immediately preceding this date and that there are no outstanding bills incurred for labor or materials used in making improvements or repairs on said premises, or for services of architects, surveyors or engineers incurred in connection therewith.

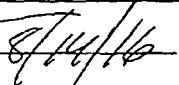
The Purchaser (if any) and the Lender are relying on the validity of this Affidavit as an inducement to and part consideration for purchasing said property; and for making a loan secured by the above described property.

  
\_\_\_\_\_  
Carl H. Beal, Jr. , Owner of Property

Subscribed and sworn to before me  
this 13th day of November, 2006

Notary Public

(Seal)

My Commission Expires: 

(HARPER, JOHN AND AMY, PFD/06-484/16)



---

# EXHIBIT C

STATE OF SOUTH CAROLINA. )

COUNTY OF CHARLESTON )

AFFIDAVIT OF OWNERSHIP

Personally appeared before me Carl H. Beal, Jr., who, having been duly sworn and on oath, deposed and said as follows:

1. That Carl H. Beal, Jr. (hereinafter referred to as "Owner") owns the property known as 77 Cross Timbers Drive Summerville SC 29485 (the "Property").
2. That the undersigned is the owner in fee simple and is in actual possession of the Property as Owner, and there are no other persons or entities known to the undersigned in possession of any part of the Property; and possession has been undisturbed and has never been disputed or questioned; there are no tenancies or leases, oral or written.
3. That the lines and corners of the Property are clearly marked and there are no disputes concerning the location of said lines and corners; that the title to the Property is free and unencumbered and there are no liens or other objections to the same, except the lien of any mortgage to be paid off at the sale or mortgaging of the Property which is simultaneous with the execution hereof.
4. That the improvements to the Property consist of a single-family home/condominium, or other. The Property is located on the aforesaid street, which is a dedicated public access and the Property has actual pedestrian and vehicular access base on a legal right of access to the Property. No separate building, garage or apartment is used as a second residence.
5. That the title to said Property is free and unencumbered and there are no liens or objections to the same, except as follows: Homecomings Financial.

That the payoff and satisfaction of the mortgage and liens noted herein are supplied to Mario Inglese, PC by third parties and are subject to confirmation upon tender of payment. In the event of a shortage in the payoff, the undersigned agree to immediately pay any shortages that may occur.

That there are no other unpaid taxes, utility charges or bills for stated improvements against the Property.

6. That the undersigned have not allowed and have no knowledge of any violations of any covenants, restrictions, agreements, conditions or zoning ordinances affecting the Property.
7. That there is no bankruptcy or arrangement proceeding pending by or against the undersigned, and there are no suits or judgments of any kind pending against the owners of the Property in the County or State which would in any way affect the Property or be a lien thereon.
8. The undersigned is not insolvent, nor will the conveyance or mortgage of the subject Property cause the undersigned to be insolvent.
9. ~~That no judgment, decree or lien exists against the undersigned, or against the Property, and no actions exist which may lead to such a judgment, decree or lien.~~
10. That there are no unpaid bills, either for labor, fixtures, or materials furnished or placed upon the Property within the last 90 days, out of which any such claims might arise, and that the undersigned has not employed a general contractor to make improvements upon the Property either by labor, fixtures, or materials within the past 90 days, and the Property is free and clear of all lienable claims.
11. That there are no association or property owners assessments upon the Property or if any exist, The same are current and paid in full to date.
12. That the undersigned are over the age of 18, and have never been declared incompetent.
13. That to the best of the undersigned's knowledge, (i) the Property is in compliance with all

environmental laws and does not contain any hazardous or toxic substances (as defined by state or federal law); (ii) the Property is not located adjacent to any site containing any toxic and/or hazardous substances; and (iii) the Property is not listed on, or subject to being listed on, the National Priorities List or any similar list published by any state or federal governmental agency responsible for regulating toxic and/or hazardous substances. (42 USC 9601 CERCLA)

14. That Mario S. Inglese is the attorney for the Purchaser in connection with the Purchaser's acquisition of the Property, and Deponent acknowledges that Mario S. Inglese does not represent Deponent although it is preparing the deed for Deponent at Deponent's request.
15. That the undersigned is aware of the provisions of the Deficit Reduction Act of 1984, 26 USCA 1445, et. Seq. (the "Act") and the IRS Regulations referring to the withholding tax on the disposition of United States real property interests by foreign persons and foreign corporations; and

That the undersigned is not a foreign person as defined by said Act and said regulations.

That the Social Security Number/Federal Identification Number of the undersigned is as set forth below.

That the undersigned understands and acknowledges that the information on this form is true and correct and portions may be reported to the Internal Revenue Service as required by Federal Law, and further certifies that said information is true and correct to the best of his/her knowledge and belief. (12 USC 1445 FIRPTA)

16. The undersigned further certifies that they/she/he are (is) not a non-resident alien or a foreign corporation under the Foreign Investment in Real Property Tax Act of 1980.
17. The undersigned has not required, directly or indirectly, as a condition of the purchase or sale of the Property noted above, that the purchaser thereof purchase title insurance from any particular title company. (12USC2608)
18. The undersigned CONSENTS to an audit of the trust account of Mario Inglese, PC by any title insurance company to insure that all funds paid to Mario Inglese, PC, are properly disbursed; said audit being limited to verify receipts and disbursements (SC Bar Ethics Opinion 89-03)
19. That the undersigned represents that the smoke detector(s) meeting the requirements of S.C. Code Ann. Section 5-25-1310, et seq, has/have been installed and is/are functioning at the Property on the day of closing.
20. The undersigned for a valuable consideration, the receipt of which is hereby acknowledged, hereby agrees and guarantees, warrants and indemnifies the purchaser, any current lender, any title insurance company which may issue title insurance in reliance of this instrument, and Mario Inglese, PC, who are relying upon the truthfulness and completeness of this instrument in rendering an opinion of title, against any lien, claim or suits and agrees to hold all such parties free from any loss, cost, damage or expense of any kind which may be suffered arising out of or on account of any misrepresentation or misstatement of fact contained herein.
21. By signing this Owner's Affidavit, the owner(s) hereby agree(s) that a duplicate of this affidavit will be admissible in the court in lieu of the original.

Witness:

\_\_\_\_\_

Seller:

Carl H. Beal, Jr.

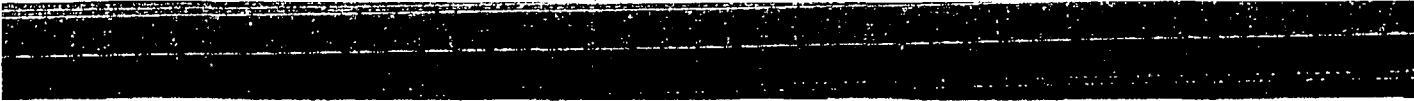
Carl H. Beal, Jr.

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November, 2006, by  
Carl H. Beal, Jr.

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES \_\_\_\_\_



# **EXHIBIT D**



## Investors Title Insurance Company

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

### Commitment

File Number:

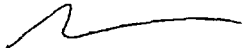
Commitment Number: 06-484

#### Schedule A

Effective Date and Time: September 6, 2006 at 11:09 AM

1. Policy (or Policies) to be issued:
  - (a) ALTA LOAN POLICY ( ALTA Loan Policy (10/17/92) )  
Policy Amount: \$ 178,000.00  
Proposed Insured: Southern Community Bank and Trust, its successors and/or assigns as their respective interests may appear.
  - (b) ALTA OWNER'S POLICY ( ALTA Own. Policy (10/17/92) )  
Policy Amount: \$ 266,000.00  
Proposed Owner: John Harper and Amy Harper
2. The estate or interest in the land described or referred to in this Commitment and covered herein is Fee Simple, and title thereto is at the effective date hereof vested in:  
Carl H. Beal, Jr.
3. The land referred to in this Commitment is described in the attached Schedule C.

MARIO S. INGLESE, PC

By:   
MARIO S. INGLESE, PC

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY.PFD/06-484/7)

## Commitment

File Number:

Commitment Number: 06-484

### Schedule B - Section 1 Requirements

The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premium, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured, must be signed, delivered and recorded. After above documents have been recorded, title will be vested in John Harper and Amy Harper.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. Mortgagor Certification, RESPA Acknowledgment and Financial Interest Disclosure (Form No. SC-305), Affidavit Regarding Liens (Form No. SC-311), and the Borrower Acknowledgement Regarding Survey (Form No. SC-312), if applicable, to be executed prior to issuance of final policy(ies).
6. Deed from seller herein vesting fee simple title in buyer herein.
7. Mortgage from borrower herein to lender herein, securing your loan.
8. If this transaction meets the following criteria, you may qualify for a reduced premium:
  - (a) ☐ Refinance transactions: Title Insurance has been issued on the same property and the same owner within the last 10 years.
  - (b) ☐ Purchaser/Sale Transactions: Title Insurance has been issued on the same property within the last 10 years. This rate is available only when the new loan is to be a first lien. NOTE: In the case of lot development, this reduced rate is not available to a developer purchasing multiple lots.
9. If you meet these criteria, please contact the issuing Agent.
9. Satisfaction and release of record of mortgage from Carl H. Beal, Jr. to Decision One Mortgage Company, LLC, recorded November 1, 2005, Book 5011, Page 216, to secure \$202,825.00.
10. 2006 County Taxes in the amount of \$4312.46 due and payable by December 31, 2006.
11. Judgement against Carl Beal, et al, filed on April 4, 2006 in the amount of \$6 million dollars,

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY, PFD/06-484/7)

## Commitment

File Number:

Commitment Number: 06-484

### Schedule B - Section 2 Exceptions

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction:

1. Taxes for the year 2006, now due and payable.
2. Rights or claims of parties in possession.
3. Restrictions filed for record in Book 2732 at Page 79 and in Book 2788 at Page 253, Page ,but this policy insures that a violation thereof will not cause a forfeiture or reversion of title.
4. Easement to SCEG recorded in Book 2560 at Page 33, Dorchester County records.
5. Easement to Bell South Telephone recorded in Book 2644 at page 216, Dorchester County records.
6. Easement to CPW recorded in Book 2752 at page 333, Book 2758 at Page 5, Book 2779 at Page 289, Book 2779 at Page 296, Book 2809 at Page 193, Book 2849 at page 232, Book 3084 at Page 12, Book 3084 at Page 26, Book 3137 at page 241, all in Dorchester County records.

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY,PFD/06-484/7)

## Commitment

File Number:

Commitment Number: 06-484

### Schedule C

ALL that certain piece, parcel or lot of land, situate, lying and being in The Bridges of Summerville Subdivision, County of Dorchester, Town of Summerville, State of South Carolina, shown and designated as Lot 8Z, on a plat entitled: "SUBDIVISION PLAT SHOWING PHASE 2, FOX & JACOBS AT THE BRIDGES OF SUMMERVILLE, A 14.055 ACRE TRACT OF LAND, A PORTION OF TRACT "B-2", PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE OAKBROOK AREA, IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA," by Trico Engineering Consultants, Inc., dated May 13, 2002, and recorded May 15, 2002, in the RMC Office for Dorchester County in Plat Cabinet K, Page 28. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear

BEING the same property conveyed to Carl H. Beal, Jr. by Deed from Robert L. Radcliff and Karla L. Beal dated October 28, 2005 and recorded in the RMC Office for Dorchester County, South Carolina on November 1, 2005 in Book 5011 at Page 212.

TMS # 154-10-17-008

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY.PFD/06-484/7)

# EXHIBIT E

|                                                             |   |                                       |
|-------------------------------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA                                     | ) | IN THE COURT OF COMMON PLEAS          |
|                                                             | ) |                                       |
| COUNTY OF CHARLESTON                                        | ) | NINTH JUDICIAL CIRCUIT                |
|                                                             | ) |                                       |
| MARIO S. INGLESE and MARIO S. INGLESE, PC,                  | ) | CASE NO. 10-CP-10-10108               |
|                                                             | ) |                                       |
| Plaintiff,                                                  | ) |                                       |
|                                                             | ) | <b>AFFIDAVIT OF G. SIMMS MCDOWELL</b> |
| v.                                                          | ) |                                       |
|                                                             | ) |                                       |
| LINDA ERICKSON, RUSSELL S. STEMPEKE, and CARL H. BEAL, JR., | ) |                                       |
|                                                             | ) |                                       |
| Defendant.                                                  | ) |                                       |

PERSONALLY APPEARED before me, G. Simms McDowell, III, who, being duly sworn, deposes and says as follows:

1. I, G. Simms McDowell, III, am an attorney licensed to practice law in the State of South Carolina. I have been practicing law since 1969.

2. A substantial portion of my law practice involves conducting real estate closings. I have served as a licensed title insurance agent for several title insurance companies since 1981. I have been a licensed title insurance agent for Old Republic National Title Insurance Company since April 2, 2009.

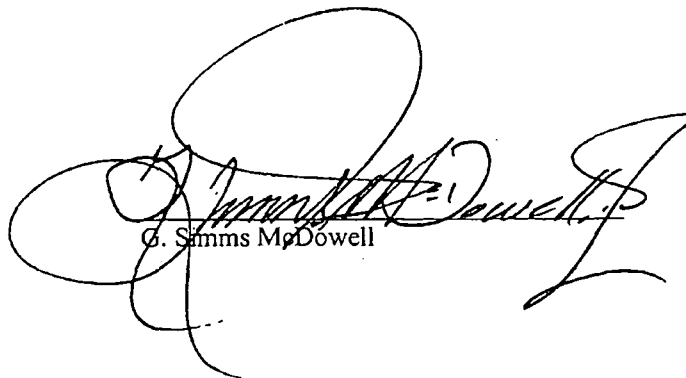
3. When conducting any real estate closing, if a closing attorney becomes aware of an outstanding judgment as to one of the parties to the closing, the closing attorney should resolve the judgment before proceeding to closing.

4. A closing attorney could resolve an outstanding judgment by obtaining an executed Satisfaction of Judgment from the judgment holder to be filed prior to the deed and mortgage. Additionally, a closing attorney could resolve an outstanding judgment by ensuring the judgment holder files a Satisfaction of Judgment prior to closing.

5. It is not proper for an attorney to conduct a real estate closing with actual knowledge of a judgment against a party to the closing without first resolving and satisfying the outstanding judgment.

6. By failing to resolve and satisfy an outstanding judgment prior to filing the deed and mortgage, a cloud would exist on the property title and would cause the judgment, if properly recorded, to have priority over the subsequently filed deed and mortgage.

FURTHER AFFIANT SAYETH NOT.

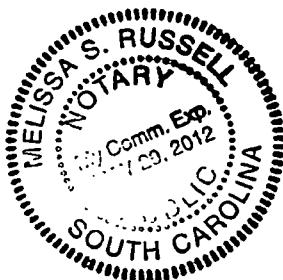
  
G. Simms McDowell

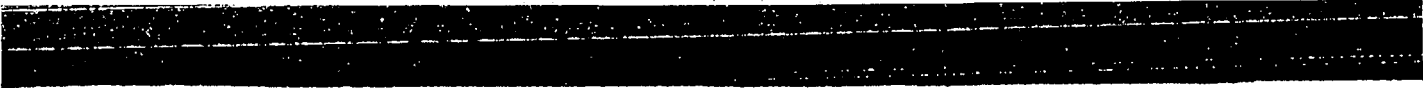
SWORN TO BEFORE THIS

28<sup>th</sup> day of June, 2010.

  
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 05/29/2012





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# **EXHIBIT F**

CORRIGAN & CHANDLER LLC

ATTORNEYS AT LAW

Harry V. Ragsdale  
(843) 577-5420 (direct)  
harry@corriganchandler.com

July 19, 2011

VIA U.S. MAIL

Charles Michael Feeley, Esq.  
4512 Folly Road  
Charleston, SC 29412

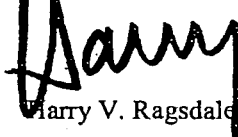
Re: *Mario Inglese and Mario S. Inglese, PC v. Linda Erickson, Russell S. Stempke and Carl H. Beal, Jr.*  
Case No. 10-CP-10-10108  
Our File No. C1052.M0175

Dear Mr. Feeley:

Enclosed for service upon you, please find Defendant Carl H. Beal, Jr.'s *First Set of Requests for Admissions to Plaintiff*.

With best regards, I am

Yours very truly,



Harry V. Ragsdale

Enclosure

cc: Russell S. Stemke, Esq. (w/enclosure)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,

Plaintiff,

v.

LINDA ERICKSON, RUSSELL S.  
STEMPKKE, and CARL H. BEAL, JR.,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 10-CP-10-10108

**FIRST SET OF REQUESTS FOR  
ADMISSIONS TO THE PLAINTIFF**

**TO: CHARLES MICHAEL FEELEY, ESQ., ATTORNEY FOR PLAINTIFFS:**

Defendant Carl H. Beal, Jr., by and through his undersigned attorney, requests and requires the Plaintiffs within 30 days to admit, for the purposes of the pending action only, the following described information, documents and things pursuant to Rule 36 of the South Carolina Rules of Civil Procedure. Please do not send your answers until they have been checked for accuracy.

**INSTRUCTIONS**

A. These Requests to Admit are directed towards all information known or available to Plaintiffs, including information contained in the records and documents in their custody or control or available to them upon reasonable inquiry.

B. Each Request to Admit is deemed a continuing one. If, after serving an answer to any Request to Admit, you obtain or become aware of any further information pertaining to that Request to Admit, you are requested to serve a supplemental answer setting forth such information.

C. If you cannot admit or deny the requested admission, you must set forth reasons why you cannot respond and you must show that you are acting in good faith and have utilized due

diligence in attempting to discover information which would allow you to either admit or deny the same.

D. If you dispute a part, but not all of the requested admission, you must admit the part you do not dispute and deny only the part in controversy.

E. PLEASE TAKE NOTICE that you may not give lack of information of knowledge as a reason for failure to admit or deny unless you state that you have made a reasonable inquiry into the information known or readily obtainable by you and it is insufficient to enable you to admit or deny.

F. You will hereby take notice that if you fail to admit these Requests to Admit or any part thereof, and if the undersigned thereafter proves the truth of the matter, the undersigned shall apply to the Court for an order requiring the party to pay the reasonable expenses incurred in making such proof, which shall include reasonable attorney's fees.

#### DEFINITIONS

A. The term "Subject Property" shall mean:

All that certain piece, parcel or lot of land, situate, lying and being in The Bridges of Summerville Subdivision, County of Dorchester, Town of Summerville, State of South Carolina, shown and designated as Lot 8Z, on a plat entitled: "SUBDIVISION PLAT SHOWING PHASE 2, FOX & JACOBS AT THE BRIDGES OF SUMMERVILLE, A 14.055 ACRE TRACT OF LAND, A PORTION OF TRACT "B-2", PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE OAKBROOK AREA, IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA," by Trico Engineering Consultants, Inc., dated May 13, 2002, and recorded May 15, 2002, in the RMC Office for Dorchester County in Plat Cabinet K, Page 28. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

REQUESTS TO ADMIT THE GENUINNESS OF DOCUMENTS

1. That the document entitled "Dissolution of Attorney Issuing Agency Contract Agreement" dated February 23, 2009 and attached hereto as Exhibit "A" is a true and accurate copy of the original document.

2. That the "Loan Policy of Title Insurance" (Policy No. M-A 205669), dated January 17, 2007 and attached as Exhibit "B," is a true and accurate copy of the original document.

REQUESTS TO ADMIT STATEMENTS AND OPINIONS OF FACTS

1. That you certified title to the Subject Property with actual knowledge that a valid judgment existed against Carl H. Beal, Jr.

2. That under the terms and conditions of the Attorney Issuing Agency Contract by and between you and Investors Title Insurance Company, it was improper for you to certify title to the Subject Property with actual knowledge that a valid judgment existed against Carl H. Beal, Jr.

3. That you have been reprimanded by Investors Title Insurance Company on more than one occasion for actions you took related to real estate closings.

4. That you have been reprimanded by Investors Title Insurance Company on more than one occasion for actions you took related to the issuance of title insurance policies.

5. That you did not inform Investors Title Insurance Company that a judgment existed against Carl H. Beal, Jr. prior to issuing an owner's title policy to John A. Harper and Amy E. Harper.

6. That you did not inform Investors Title Insurance Company that a judgment existed against Carl H. Beal, Jr. prior to issuing an lender's title policy to Southern Community Bank and Trust.

7. That you did not obtain authorization from Investors Title Insurance Company to issue an owner's title insurance policy to John A. Harper and Amy E. Harper that took exception to any valid judgment existing against Carl H. Beal, Jr.

8. That you did not obtain authorization from Investors Title Insurance Company to issue a lender's title insurance policy to Southern Community Bank and Trust that took exception to any valid judgment existing against Carl H. Beal, Jr.

9. That you are not entitled to equitable indemnification in this action.

10. That the owner's title insurance policy you issued to John A. Harper and Amy E. Harper does not take exception to any judgment against Carl H. Beal, Jr.

11. That the lender's title insurance policy you issued to Southern Community Bank and Trust does not take exception to any judgment against Carl H. Beal, Jr.

12. That Defendant Carl H. Beal, Jr. was not unjustly enriched as a result of your actions.

CORRIGAN & CHANDLER LLC



Eugene P. Corrigan III

Harry V. Ragsdale

P.O. Box 547

Charleston, South Carolina 29402

(843) 577-5410 (phone)

(843) 577-5650 (fax)

harry@corriganchandler.com

ATTORNEYS FOR DEFENDANT CARL H.  
BEAL, JR.

Charleston, South Carolina  
July 19, 2011

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,

Plaintiff,

v.

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Case No. 10-CP-10-10108

**CERTIFICATE OF SERVICE**

I certify that I have served the foregoing **FIRST SET OF REQUESTS FOR ADMISSIONS TO THE PLAINTIFF** on all parties of record by depositing copies of the same in the United States Mail, postage prepaid, addressed to the following on July 19, 2011:

Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, SC 29412

Russell S. Stemke, Esq.  
Law Office of Russell S. Stemke, Attorney at Law  
P.O. Box 1100  
Isle of Palms, SC 29451

CORRIGAN & CHANDLER LLC



Harry V. Ragsdale  
P.O. Box 547  
Charleston, South Carolina 29402  
(843) 577-5410 (phone)  
(843) 577-5650 (fax)  
harry@corriganhandler.com

ATTORNEYS FOR DEFENDANT CARL H.  
BEAL, JR.

Charleston, South Carolina  
July 19, 2011

# EXHIBIT A

**DISSOLUTION OF ATTORNEY ISSUING AGENCY CONTRACT AGREEMENT**

This DISSOLUTION OF ATTORNEY ISSUING AGENCY CONTRACT AGREEMENT (the "Agreement") is made as of the 28<sup>th</sup> day of February, 2009 by and between INVESTORS TITLE INSURANCE COMPANY, a North Carolina corporation ("Principal") and MARIO S. INGLESE, of the State of South Carolina ("Agent").

WHEREAS, Company and Agent entered into an Attorney Issuing Agency Contract dated as of September 9, 2004, (the "AIAC") that sets forth the terms and conditions of Agent's appointment as an agent of Company for the purpose of issuing title insurance policies; and

WHEREAS, Company and Agent deem it appropriate, necessary, and in the mutual best interest of each party to dissolve the AIAC, subject to all the terms, conditions, obligations, and rights defined therein.

NOW, THEREFORE, in consideration of the mutual covenants and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Dissolution of Attorney Issuing Agency Contract. Effective March 6, 2009, the appointment of Mario S. Inglese as an Agent of Investors Title Insurance Company will be terminated and his authority under said AIAC shall terminate.
2. Effect of Agreement. Except as set forth in this Agreement, the AIAC shall remain in full force and effect and references in the AIAC to "this Agreement", "hereunder", "herein", "hereof", and words of like effect shall mean the AIAC as amended by this Agreement.

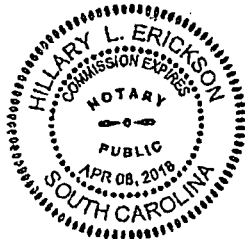
The parties hereto have executed this DISSOLUTION OF THE ATTORNEY ISSUING AGENCY CONTRACT AGREEMENT as of the day and year first above written.

INVESTORS TITLE INSURANCE COMPANY

By: [Signature]  
Name: TERI K. CALLEN  
Title: SC STATE COUNSEL

Hillary L. Erickson  
Notary Public for South Carolina

Printed Name: Hillary L. Erickson  
My Commission Expires: April 8, 2018



MARIO S. INGLESE

[Signature]

[Signature]  
Notary Public for South Carolina

Printed Name: S. CHRISTOPHER SNELSON  
My Commission Expires: 12/27/17

SAMUEL C. SNELSON  
Notary Public  
State of South Carolina  
Commission Expires Dec. 27, 2017

# **EXHIBIT B**

MAR. 7. 2008 1:14PM RECEIVED WELLS FARGO

MAR 7 2008 02:09PM

NO. 5126 P. 32

156588154

# Investors Title Insurance Company.

MA-A 205669

## POLICY OF TITLE INSURANCE

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B AND THE CONDITIONS AND STIPULATIONS, INVESTORS TITLE INSURANCE COMPANY, a North Carolina corporation, herein called the Company, insures, as of Date of Policy shown in Schedule A, against loss or damage, not exceeding the Amount of Insurance stated in Schedule A, sustained or incurred by the insured by reason of:

1. Title to the estate or interest described in Schedule A being vested other than as stated therein;
2. Any defect in or lien or encumbrance on the title;
3. Unmarketability of the title;
4. Lack of a right of access to and from the land;
5. The invalidity or unenforceability of the lien of the insured mortgage upon the title;
6. The priority of any lien or encumbrance over the lien of the insured mortgage;
7. Lack of priority of the lien of the insured mortgage over any statutory lien for services, labor or material:
  - (a) arising from an improvement or work related to the land which is contracted for or commenced prior to Date of Policy; or
  - (b) arising from an improvement or work related to the land which is contracted for or commenced subsequent to Date of Policy and which is financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance;
8. The invalidity or unenforceability of any assignment of the insured mortgage, provided the assignment is shown in Schedule A, or the failure of the assignment shown in Schedule A to vest title to the insured mortgage in the named insured assignee free and clear of all liens.

The Company will also pay the costs, attorneys' fees and expenses incurred in defense of the title or the lien of the insured mortgage, as insured, but only to the extent provided in the Conditions and Stipulations.

IN WITNESS WHEREOF, Investors Title Insurance Company has caused this Policy to be signed and sealed, to be valid when Schedule A is countersigned by an authorized officer or agent of the Company.

*David A. Benington*  
Secretary



*V. Thomas Fike*  
President

Form No. 110-92-J

ALTA LOAN POLICY (10-17-92)

## STIPULATIONS

## 1. DEFINITION OF TERMS

[illegible]

(b) "sexual harassment" is defined as "any unwelcome or insulting conduct or conduct of a sexual nature that is based on the sex of the victim, and that is severe or pervasive enough to create a hostile or abusive work environment for the victim or to result in a tangible employment action against the victim";

[illegible][illegible][illegible][illegible]

CC-7 0716 001

Conditions and Separation

## STIPULATIONS

[illegible]

(4) If the Company shall be brought in an action or threatened a defense as required or permitted by the provisions of this policy, the Company may pursue any litigation to final determination by a court of competent jurisdiction and expressly reserves the right to seek recovery of the costs of such litigation from the insured. Moreover the right to seek recovery is preserved from any defense judgment or order. The Company shall not be deemed liable or under any provision of this policy, if the Company shall determine to refuse such litigation or defense judgment or order to do otherwise.

[illegible][illegible][illegible]

**(d) To Pay or Tender Payment of the amount of insurance to the beneficiary.**

[illegible]

MAR. 7. 2008 1:15PM Received:  
WELLS FARGO

Mar 7 2008 02:10pm NO. 5126 P. 34



**Investors Title Insurance Company**

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

**Mortgage Policy of Title Insurance**

Policy Number: M-A 205669

**Schedule A**

File Number: 06-484

Date of Policy: January 17, 2007 at 03:12 PM

Amount of Insurance: \$ 178,000.00

1. Name of Insured:  
Southern Community Bank and Trust, its successors and/or assigns as their respective interests may appear.
2. The estate or interest in the land which is encumbered by the insured mortgage is:  
Fee Simple
3. Title to the estate or interest in the land is vested in:  
Warranty Deed from Carl H. Beal, Jr. to John A. Harper and Amy E. Harper, dated November 13, 2006, filed for record on January 17, 2007 at 3:12 p.m. in Book 5806, Pages 280-283 in the RMC Office for Dorchester County, SC.
4. The insured mortgage, and the assignments thereof, if any, are described as follows:  
Mortgage from John A. Harper and Amy E. Harper to Southern Community Bank and Trust, dated November 13, 2006, filed for record on January 17, 2007 in Book 5806, Pages 284-305, in the RMC Office for Dorchester County, SC, in the principal sum of \$178,000.00.
5. The land referred to in this Policy is described in the attached Schedule C.

MARIO S. INGLESSE, PC

By:   
MARIO S. INGLESSE, PC

Note: This Policy consists of insert pages labeled as Schedule A, Schedule B-Part 1, Schedule B-Part 2, and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY, FPO/06-484/ZZ)

Received:  
MAR. 7. 2008 1:15PM WELLS FARGO.

Mar 7 2008 02:10pm NO. 5126 P. 35

### Mortgage Policy of Title Insurance

Policy Number: M-A 205869

#### Schedule B - Part 1

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes for the year 2006, now due and payable.
2. Rights or claims of parties in possession.
3. Restrictions filed for record in Book 2732 at Page 79 and in Book 2788 at Page 253, Page ,but this policy insures that a violation thereof will not cause a forfeiture or reversion of title.
4. Easement to SCEG recorded in Book 2560 at Page 33, Dorchester County records.
5. Easement to Bell South Telephone recorded in Book 2644 at page 216, Dorchester County records.
6. Easement to CPW recorded in Book 2752 at page 333, Book 2758 at Page 5, Book 2779 at Page 280, Book 2779 at Page 298, Book 2809 at Page 193, Book 2849 at page 232, Book 3084 at Page 12, Book 3084 at Page 26, Book 3137 at page 241, all in Dorchester County records.

Note: This Policy consists of seven pages labeled as Schedule A, Schedule B-Part 1, Schedule B-Part 2, and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER JOHN AND AMY, PFDA06-484/22)

Received:  
MAR. 7. 2008 1:15PM WELLS FARGO

Mar 7 2008 02:10pm NO. 5126 P. 36

### Mortgage Policy of Title Insurance

Policy Number: M-A 205669

#### Schedule B - Part 2

In addition to the matters set forth in Part 1 of this Schedule, the title to the estate or interest in the land described or referred to in Schedule A is subject to the following matters, if any be shown, but the company insures that these matters are subordinate to the lien or charge or the insured mortgage upon the estate or interest:

Note: This Policy consists of insert pages labeled as Schedule A, Schedule B-Part 1, Schedule B-Part 2, and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY, PFD, 06-484/22)

Attachments

Page 34

MAR. 7. 2008 1:15PM RECEIVED WELLS FARGO

Mar 7 2008 02:10pm

NO. 5126 P. 37

### Mortgage Policy of Title Insurance

Policy Number: M-A 205889

#### Schedule C

The land referred to in this Policy is described as follows:

ALL that certain piece, parcel or lot of land, situate, lying and being in The Bridges of Summerville Subdivision, County of Dorchester, Town of Summerville, State of South Carolina, shown and designated as Lot 82, on a plat entitled: "SUBDIVISION PLAT SHOWING PHASE 2, FOX & JACOBS AT THE BRIDGES OF SUMMERVILLE, A 14.055 ACRE TRACT OF LAND, A PORTION OF TRACT "B-2", PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE OAKBROOK AREA, IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA," by Trico Engineering Consultants, Inc., dated May 13, 2002, and recorded May 15, 2002, in the RMC Office for Dorchester County in Plat Cabinet K, Page 28. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Carl H. Beal, Jr. by Deed from Robert L. Raddiff and Karla L. Beal dated October 28, 2005 and recorded in the RMC Office for Dorchester County, South Carolina on November 1, 2005 in Book 5011 at Page 212.

TMS # 154-10-17-008

Note: This Policy consists of insert pages labeled as Schedule A, Schedule B-Part 1, Schedule B-Part 2, and Schedule C. This Policy is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY, FFD06-464/22)

MAR. 7. 2008 1:15PM WELLS FARGO

Mar 7 2008 02:10pm

NO. 5126 P. 38



## Investors Title Insurance Company

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

### ALTA 5 - PLANNED UNIT DEVELOPMENT ENDORSEMENT

This endorsement is made a part of the Policy to which it is attached.

The Company insures the insured against loss or damage sustained by reason of:

- (1) Present violations of any restrictive covenants referred to in Schedule B which restrict the use of the land except violations relating to environmental protection unless a notice of a violation thereof has been recorded or filed in the public records and is not excepted in Schedule B. The restrictive covenants do not contain any provisions which will cause a forfeiture or reversion of title.
- (2) The priority of any lien for charges and assessments at Date of Policy in favor of any association of homeowners which are provided for in any document referred to in Schedule B over the lien of any insured mortgage identified in Schedule A.
- (3) The enforced removal of any existing structure on the land (other than a boundary wall or fence) because it encroaches onto adjoining land or onto any easements.
- (4) The failure of title by reason of a right of first refusal to purchase the land which was exercised or could have been exercised at Date of Policy.

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that insurance afforded by this endorsement is not subject to paragraph 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

MARIO S. INGLESE, PC

By: 

MARIO S. INGLESE, PC

Executed on behalf of  
Investors Title Insurance Company  
by J. Allen Fine, President (SEAL)

Authorized Countersignature required for validation.

ALTA Endorsement Form 5  
(Planned Unit Developments) (1-27-92)

(HARPER, JOHN AND AMY, PF/D/06-484/22)

MAR. 7. 2008 1:15PM Received: WELLS FARGO

Mar 7 2008 02:10pm NO. 5126 P. 39



**Investors Title Insurance Company**

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

**ALTA ENDORSEMENT FORM 8.1 - ENVIRONMENTAL PROTECTION LIEN**

This endorsement is made a part of the Policy to which it is attached.

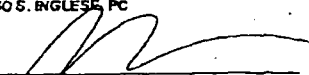
The insurance afforded by this endorsement is only effective if the land is used or is to be used primarily for residential purposes.

The Company insures the insured against loss or damage sustained by reason of lack of priority of the lien of the insured mortgage over:

- (a) any environmental protection lien which, at Date of Policy, is recorded in those records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without knowledge, or filed in the records of the clerk of the United States district court for the district in which the land is located, except as set forth in Schedule B; or
- (b) any environmental protection lien provided for by any state statute in effect at Date of Policy, except environmental protection liens provided for by the following state statutes:

This endorsement is made a part of the policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto, except that insurance afforded by this endorsement is not subject to paragraph 3(d) of the Exclusions From Coverage. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the policy and any prior endorsements, nor does it extend the effective date of the policy and any prior endorsements, nor does it increase the face amount thereof.

MARIO S. INGLESE, PC

By: 

MARIO S. INGLESE, PC

Executed on behalf of  
Investors Title Insurance Company  
by J. Allen Fine, President (SEAL)

Authorized Countersignature required for validation.

ALTA Endorsement Form 8.1  
Environmental Protection Lien (3-12-88)

(HARPER, JOHN AND AMY, PFD04-48422)



NO. 5126 P. 41

Mar 7 2008 02:13pm

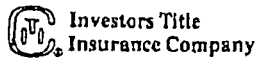
Received: MAR. 7. 2008 1:16PM. WELLS FARGO

EXCLUSIONS FROM COVERAGE.

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
  - (a) created, suffered, assumed or agreed to by the insured claimant;
  - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
  - (c) resulting in no loss or damage to the insured claimant;
  - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or materials); or

Loan Policy  
of  
Title Insurance



P.O. Drawer 2887  
Chapel Hill  
North Carolina 27515-2887  
(919) 958-2200  
www.invtitle.com

EXCLUSIONS FROM COVERAGE (cont'd)

- (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to the Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgage insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
  - (a) the transaction creating the interest of the insured mortgage being deemed a fraudulent conveyance or fraudulent transfer; or
  - (b) the subordination of the interest of the insured mortgage as a result of the application of the doctrine of equitable subordination; or
  - (c) the transaction creating the interest of the insured mortgage being deemed a preferential transfer except where the preferential transfer results from the failure:
    - (i) to timely record the instrument of transfer; or
    - (ii) of such recordation to impact notice to a purchaser for value or a judgment or lien creditor.



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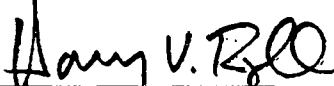
# **EXHIBIT G**

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT  
MARIO S. INGLESE and MARIO S. )  
INGLESE, PC, ) CASE NO. 10-CP-10-10108  
Plaintiff, )  
v. ) **AFFIDAVIT OF HARRY V. RAGSDALE**  
LINDA ERICKSON, RUSSELL S. )  
STEMPKE, and CARL H. BEAL, JR., )  
Defendant. )

PERSONALLY APPEARED before me, Harry V. Ragsdale, who, being duly sworn,  
deposes and says as follows:

1. I, Harry V. Ragsdale, am an attorney licensed to practice law in the State of South Carolina. I have been practicing law since 2007.
2. I am one of the attorneys representing Defendant Carl H. Beal in this action.
3. On July 19, 2011, I served a copy of Defendant Beal's First Set of Requests for Admissions and cover letter on Plaintiffs' attorney at his last known address by depositing the same in the United States Mail, postage prepaid, addressed to Charles Michael Feeley, Esq., 4512 Folly Road, Charleston, South Carolina 29412.
4. As of October 31, 2011, I have not received a copy of Plaintiffs' Answers to Defendant Beal's First Set of Requests for Admissions.
5. A review of my file shows that as of October 31, 2011, Plaintiff has not answered Defendant Beal's First Set of Requests for Admissions.

FURTHER AFFIANT SAYETH NOT.

  
Harry V. Ragsdale

SWORN TO BEFORE THIS  
31st day of October, 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: My Commission Expires  
May 17, 2016

# EXHIBIT H



**Investors Title Insurance Company**

INNOVATIVE BY INSTINCT

Claims Department  
121 North Columbia Street (27614)  
P.O. Drawer 2687  
Chapel Hill, NC 27515-2687  
919/968-2200, 800/328-ITIC (4642)  
Fax: 919/968-2235, 800/611-8316

## NOTICE OF CLAIM

To: Inglese, Mario S.

From: Missy for Stephen Brown, Vice President and Senior Claims Manager

Fax: (843)795-0668

Date: March 10, 2008

CLAIM NO.: 0800517

POLICY NUMBER: SC101320070239

OWNER NAME: Amy Harper & John Harper

Dear: Mario S. Inglese,

A claim has been made on the above-referenced policy. You or your agency may have searched the title, closed the transaction and/or issued the policy. I am in the initial stages of evaluating the merits of the claim and am accumulating information necessary to respond to the claimant.

I welcome your assistance in evaluating the claim. A copy of the claim letter is attached. Please review it and, if you deem necessary, review your closing file.

I will contact you within the next few days. Your input and cooperation will be greatly appreciated. All information and documents you provide will remain confidential and will be used solely for the resolution of the claim.

Sincerely,

Stephen Brown  
Vice President and Senior Claims Manager

---

## CORRIGAN & CHANDLER LLC

---

Harry V. Ragsdale  
(843) 577-5420 (direct)  
harry@corriganchandler.com

ATTORNEYS AT LAW

---

October 31, 2011

**VIA HAND DELIVERY**

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad St., Suite 106  
Charleston, SC 29401

Re: *Mario Inglese and Mario S. Inglese, PC v. Linda Erickson, Russell S.  
Stempke and Carl H. Beal, Jr.*  
Case No. 10-CP-10-10108  
Our File No. C1052.M0175

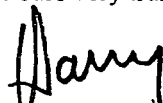
Dear Ms. Armstrong:

Enclosed for filing, please find an original and a copy of Defendant Carl H. Beal's *Motion for Summary Judgment* in the above-referenced case. I am also enclosing a check payable to your office in the amount of \$25.00 for filing fees. Please file the original and return a file-stamped copy to my office in the enclosed self-addressed stamped envelope.

Should you have any questions, please do not hesitate to contact me.

With best regards, I am

Yours very truly,



Harry V. Ragsdale

Enclosure

cc: Charles M. Feeley, Esq. (w/enclosures)  
Russell S. Stemke, Esq. (w/enclosures)  
Mr. Carl H. Beal, Jr. (w/enclosures)

12 EXCHANGE STREET • POST OFFICE BOX 547 (29402) • CHARLESTON, SOUTH CAROLINA 29401  
PHONE 843-577-5410 • FAX 843-577-5650

10-10108

---

CORRIGAN & CHANDLER LLC

---

ATTORNEYS AT LAW

Harry V. Ragsdale  
(843) 577-5420 (direct)  
harry@corriganhandler.com

November 16, 2011

FILED  
2011 NOV 17 AM 3:32  
JULIE J. ARMSTRONG  
CLERK OF COURT

VIA U.S. MAIL

The Honorable Julie J. Armstrong  
Charleston County Clerk of Court  
100 Broad St., Suite 106  
Charleston, SC 29401

Re: *Mario Inglese and Mario S. Inglese, PC v. Linda Erickson, Russell S.  
Stempke and Carl H. Beal, Jr.*  
Case No. 10-CP-10-10108  
Our File No. C1052.M0175

Dear Ms. Armstrong:

Enclosed for filing, please find a copy of correspondence that was mailed to Charles M. Feeley, Esq. today.

Should you have any questions, please do not hesitate to contact me.

With best regards, I am

Yours very truly,

  
Harry V. Ragsdale

Enclosure

cc: Charles M. Feeley, Esq. (w/o enclosure)

12 EXCHANGE STREET • POST OFFICE BOX 547 (29402) • CHARLESTON, SOUTH CAROLINA 29401  
PHONE 843-577-5410 • FAX 843-577-5650

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## CORRIGAN & CHANDLER LLC

---

ATTORNEYS AT LAW

Harry V. Ragsdale  
(843) 577-5420 (direct)  
harry@corriganhandler.com

November 16, 2011

**VIA U.S. MAIL**

Charles Michael Feeley, Esq.  
4512 Folly Road  
Charleston, SC 29412

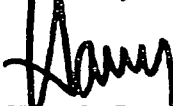
Re: *Mario Inglese and Mario S. Inglese, PC v. Linda Erickson, Russell S.  
Stempke and Carl H. Beal, Jr.*  
Case No. 10-CP-10-10108  
Our File No. C1052.M0175

Dear Mr. Feeley:

Pursuant to our recent discussions, this letter shall confirm that we are accepting your answers to our Requests to Admit dated September 2, 2011. When our Motion for Summary Judgment is heard, we will not argue that you failed to answer our Requests to Admit.

With best regards, I am

Yours very truly,



Harry V. Ragsdale

Enclosure

cc: The Honorable Julie J. Armstrong

12 EXCHANGE STREET • POST OFFICE BOX 547 (29402) • CHARLESTON, SOUTH CAROLINA 29401  
PHONE 843-577-5410 • FAX 843-577-5650

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

) C/A Number: 2010-CP-10-10108  
)

)  
) v.  
)

MEMORANDUM IN OPPOSITION TO  
SUMMARY JUDGMENT

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

FILED  
2011 DEC -7 AM 9:11  
JULIE L. HASTRONG  
CLERK OF COURT  
BY

The Plaintiffs file this memorandum in opposition to the Defendant Beal's motion for summary judgment. The relevant facts are as follows:

- On March 31, 2006, a civil judgment was entered against the Defendant Beal and in favor of the Defendant Erickson. The underlying cause of action in that case sounded in slander, and the Plaintiffs herein had nothing to do with that action. *See*, Erickson, etal, v. Winner, etal, C/A No. 2001-CP-10-2967.
- On September 5, 2006, Mr. Beal, as seller, entered into a contract for sale of real estate with John E. Harper and Amy E. Harper, as buyers, for the property known as 77 Cross Timbers Drive, Summerville, South Carolina 29485. *See*, Contract for Sale of Real Estate, Exhibit A.
- Sometime in October 2006, the contract for sale of real estate was forwarded to the Plaintiffs herein for closing. The Plaintiffs commissioned a title examination of the subject property and discovered the civil judgment against Mr. Beal. *See*, Affidavit of Mr. Inglese, Exhibit B.
- That prior to closing, Mr. Inglese attempted, in good faith, to resolve the issue of Mr. Beal's judgment obligation by arranging to escrow Mr. Beal's net proceeds at closing in exchange for a release of the subject property from the judgment. *See*, Affidavit of Mr. Inglese, Exhibit B, and HUD-1 Closing Stmt., Exhibit C.
- That after closing, this proposed resolution of Mr. Beal's judgment obligation failed when the judgment creditor's attorney, Mr. Stemke, denied the existence of said agreement and refused to release the property from the judgment. *See*, Affidavit of Mr. Inglese, Exhibit B.
- That as a result of Mr. Beal's judgment obligation, the Plaintiffs herein were required to indemnify their title insurance company, for amounts paid by the title insurance company to satisfy Mr. Beal's judgment obligation. *See*, Affidavit of Mr. Inglese, Exhibit B.

## STANDARD OF REVIEW

Summary judgment is only appropriate if the pleadings and other supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" Rule 56(c), S.C.R.C.P. "In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). "In determining whether a triable issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the nonmoving party. Even if 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." Keith v. River Consulting, Inc., et al, 365 S.C. 500, 618 S.E. 2d. 302, 304 (SC App. 2005).

### A. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS ADMIT THAT THEY ARE BARRED FROM RECOVERY IN THIS LAWSUIT"

This is no longer an issue in this case. The Plaintiffs had a copy of the Responses to the Requests for Admission in their file, together with a letter indicating that the responses were mailed on September 2, 2011; however, apparently, the Defendant did not have the Responses. Upon receipt of the Defendant's Motion for Summary Judgment, the Plaintiffs promptly provided the Defendant with the Responses, which in fact, did deny Requests Nos. 9 and 12, and the parties have agreed that this issue is resolved.

### B. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS ARE BARRED FROM RECOVERY UNDER THE VOLUNTARY PAYMENT DOCTRINE"

The Defendant Beal argues that the Plaintiffs are barred from recovery under the voluntary payment doctrine. *According to the Defendant*, "when money is paid with full knowledge of all of the facts and circumstances upon which it is demanded, [under the voluntary

payment doctrine, such money] cannot be recovered." (Defendant Beal's Motion for Summary Judgment, ¶ "B"). Respectfully, the Defendant misinterprets the voluntary payment doctrine.

Voluntary payment cases always involve a specific fact pattern, which is:

- 1) A payment made by Party A to Party B;
- 2) Full knowledge of all relevant facts by Party A at the time of payment to Party B; and
- 3) An attempt by Party A to undo his payment *to Party B*.

See, Baker v. Allen, 220 S.C. 141, 66 S.E.2d 618 (S.C. 1951); Shockley v. Wickliffe, 150 S.C. 476, 148 S.E. 476 (S.C. 1929); Farmers and Merchants Bank v. People's First National Bank of Charleston, 161 S.C. 286, 159 S.E. 617 (S.C. 1931); and, Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (S.C. 1948). The rationale behind the doctrine is obvious -- to bar a party from attempting to renegotiate or change his barter. At its core, the doctrine upholds the principle that, once a fair meeting-of-minds has been made, parties should be bound by their bartered-for agreement.

The voluntary payment doctrine simply does not apply in the present case, because the fact pattern here is not that of an attempt by Party A to recoup from Party B (with whom he reached a meeting-of-minds), but rather to recoup from a *third-party* under indemnity.

Obviously, with any indemnity claim, the rationale underlying the voluntary payment doctrine will not exist because the parties would not have had a prior bartered-for agreement. If you really think about it, if the voluntary payment doctrine worked as the Defendant suggests, there could *never* be a proper case for indemnity under our jurisprudence; but of course, that is not correct.

In the alternative, if the Court determines that the voluntary payment doctrine does apply in this case, the Plaintiffs would note that a payment under duress or coercion negates the voluntary payment doctrine, and that "the modern tendency is toward a relaxation as to what is essential to constitute duress [for purposes of the voluntary payment doctrine]." Baker v. Allen,

220 S.C. 141, 150, 66 S.E.2d 618, 622 (S.C. 1951). The Court goes on to state that the question of duress or coercion "must be determined by the trier of the case." *Id.* In this case, the Plaintiffs payment was made under the shadow of a lawsuit that had been filed and served upon them by the title insurance carrier and the impending potential of a resulting judgment. (*See*, Affidavit of Mr. Inglese, Exhibit B). As such, summary judgment on the basis of the voluntary payment doctrine would be inappropriate as the issue of duress or coercion is a question of fact to be determined at trial.

C. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS ARE BARRED FROM RECOVERY UNDER THE DOCTRINE OF UNCLEAN HANDS"

The Defendant next argues that the Plaintiffs are barred from recovery under the doctrine of unclean hands. Again, the Defendant misapplies the doctrine. First, it is important to remember that the underlying judgment in this case was Mr. Beal's obligation, resulting from his own tortious conduct. Furthermore, it was Mr. Beal who entered into a contract for the sale of real estate (which by its terms, required that he pass clear title), and with full knowledge of the underlying judgment against him. The Plaintiffs' great "wrongdoing" (to quote the Defendant) in all of this was that he attempted, in good faith, to resolve the judgment issue.

As our Supreme Court has noted, "[t]he expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others."

Wachovia Bank, NA v. Coffey, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (S.C. App. 2010).

Furthermore, as the Court explains, "[unclean hands] must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity." *Id.* Here, the Plaintiffs had nothing to do with the underlying tort case against the Defendant Beal creating the judgment lien, nor were the Plaintiffs involved in the negotiation or ratification of the contract for sale of real estate, so the problem in

this case already existed before the Plaintiffs had ever even heard of Mr. Beal.

The Defendant confuses the issue in this case by suggesting that, because the attempted resolution of *Mr. Beal's problem* fell through (a problem which the Plaintiffs attempted in good faith to rectify), that Mr. Beal can now somehow ignore his own responsibility *for his judgment lien* and that the Plaintiffs should now bear the sole burden for Mr. Beal's judgment obligation and tortious conduct. To paraphrase the principle stated in Wachovia Bank, NA v. Coffey, how can Mr. Beal, "in good conscience, complain in a court of equity" of the Plaintiffs' conduct in this case. The Plaintiffs have clearly not acted with unclean hands in this case. Furthermore, it is axiomatic that "prejudice to the defendant is a necessary element of the 'unclean hands' defense." Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (S.C.App. 1984). For the reasons already discussed, the Defendant Beal cannot claim prejudice, where the underlying "problem" in this whole case was the fact that he signed a contract to sell real estate while he was under a substantial judgment obligation -- an obligation that the Plaintiffs herein ultimately had to bear.

The Plaintiffs would also note that "unclean hands" is a highly fact-specific defense, and as such, it is only in the rarest of circumstances that it would be appropriate to resolve a case based upon unclean hands at summary judgment. In the present case, Mr. Inglese has averred that at all times he acted in good faith and with fair intentions (*See*, Affidavit of Mr. Inglese, Exhibit B), and taking the facts in the light most favorable to the Plaintiffs, as this Court must do, at the very least, the question of unclean hands should be decided by the trier of fact.

D. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS' CLAIM FOR  
EQUITABLE INDEMNIFICATION FAILS AS A MATTER OF LAW BECAUSE  
THEIR OWN CONDUCT CAUSED THEIR DAMAGES"

Finally, the Defendant argues that the Plaintiffs' claim for equitable indemnification fails as a matter of law because their own conduct caused their damages. Once again, the Defendant

misapplies the doctrine at hand. Equitable indemnification lies "whenever the relationship between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." Toomer v. Norfolk Southern Railway Company, 344 S.C. 486, 491, 544 S.E.2d 634, 636 (S.C. App. 2001). "Equitable indemnification cases involve a fact pattern in which the first party is at fault, but the second party is not." Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307.

In this case, once again, it is important to keep the relevant facts clear -- namely, that the problem in this case was the judgment against Mr. Beal and the fact that he entered into a contract to sell real estate while under a substantial judgment obligation -- and that is the relevant "fault" issue for purposes of applying equitable indemnification. Keeping that in mind, it is undisputed that the Plaintiffs had absolutely nothing to do with the underlying tort action and subsequent judgment against Mr. Beal, and yet, because the attempted resolution *of Mr. Beal's problem* failed, the Plaintiffs were clearly exposed to liability in that they were effectively required to satisfy the judgment (standing in the shoes of the title company). The Defendant cites the Vermeer's Carolina's Inc. case for the proposition that, "If the second party is also at fault, he...has no right to indemnity;" however, the Defendant's application of this case is misplaced -- the relevant "fault" that the Court is referring to is fault as to the underlying obligation for which indemnity is sought. So again, as the Plaintiffs clearly had nothing to do with the underlying judgment case, they were not "[a] second party...also at fault" for the obligation for which indemnity is being sought. Once again, Mr. Beal essentially seems to believe that because he showed up at closing with a title problem, and, although the closing attorney attempted in good faith to rectify the problem, Mr. Beal's entire judgment obligation is somehow wholly assigned to

the closing attorney. Unfortunately for Mr. Beal, he is simply incorrect in this assumption -- the judgment obligation resulting from his "wrongful conduct" was still *his obligation*, and the Plaintiffs were forced to bear the burden of that obligation in ultimately paying the judgment -- equitable indemnification is precisely for this case.



Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
*ATTORNEY FOR THE PLAINTIFF*



December 6<sup>th</sup>, 2011  
Charleston, South Carolina

Oct 26 06 01:20p

Matt Bullock

843-871-2598

p.2



# AGREEMENT TO BUY AND SELL REAL ESTATE RESIDENTIAL

1. PARTIES: This legally binding Agreement entered into on Sept. 4, 2006  
between, Buyer(s) John & Amy Harper, (hereinafter called "BUYER"), and  
Seller(s) Carl Beal, (hereinafter called "SELLER"). The  
property shall be deeded in the name(s) of \_\_\_\_\_

**THE BUYER/SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE**

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the  
following described property with improvements and fixtures thereon:

Lot 8 Block 2 Section \_\_\_\_\_ Subdivision Bridges at Summerville, Carriage Park  
Address 77 Cross Timbers Dr  
Tax Map # 154-10-17-008 City Summerville Zip 29485  
County of Dorchester State of South Carolina.

Seller represents that the property is connected to ☒ public sewer system or to ☐ septic tank or to ☒ public water  
or to ☐ well system or to ☐ other \_\_\_\_\_

No personal property will convey as a part of this sale, except as described: Refrigerator to convey.

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record  
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations.  
Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances,  
except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated  
place of closing, and transaction closed on or before Dec. 15, 2006, not later than 9:00 p.m. Time is  
of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing  
Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to  
closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property  
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained  
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear  
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a  
separate agreement to be executed prior to closing or occupancy.

5. PURCHASE PRICE shall be \$ 262,000  
two hundred sixty-two thousand dollars.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☐ Cash; or ☒ Subject to Financing. Financing to  
be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: \_\_\_\_\_

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 1,000.00  
Buyer and Seller authorize RE/MAX Professional Realty, as Escrow Agent, to hold and  
disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash ☒ Check, or ☐ Other.  
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be  
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the  
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

☒ BUYER ☒ BUYER ☐ SELLER ☐ SELLER HAVE READ THIS PAGE

FORM 310 PAGE 1 of 6



Oct 26 06 01:20p

Matt Bullock

843-871-2598

p. 3

THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

8. **LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 100 % loan (loan-to-value ratio) within 7 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 14 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16. FHA Mortgage Insurance [ ] will [ ] will not be added to the mortgage. VA funding fee [ ] will [ ] will not be added to the mortgage.

9. **CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.  
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms:

10. **HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan [ ] will [ ] will not be issued at closing. If applicable, the warranty premium will be paid at closing by the [ ] Buyer or [ ] Seller not to exceed \$\_\_\_\_\_.

11. **EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5 o'clock P M. on Sept 5, 2006 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

12. **EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 14 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

13. **ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, Insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorrations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS:** The [ ] Buyer or the [ ] Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorrations at closing shall be final.

14. **NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

15. **RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

ALL BUYER ALL BUYER ALL SELLER ALL SELLER HAVE READ THIS PAGE

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

19. **CONDITION OF PROPERTY:**

(A) Seller's Property Condition Disclosure Statement: (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents has fully met the requirements of Section 27-50-10 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** 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 paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by Sept. 30, 2006. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before closing 2006. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report

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reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

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 the Buyer, at closing, a written certification from a licensed pest control operator.

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these 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 Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on \_\_\_\_\_, 20\_\_\_\_. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; if the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced

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price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

**21. DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty on warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

**22. COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at [ ] Buyer's [X] Seller's expense.

**23. MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

**24. SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

**25. ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

**26. FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. It is understood that Broker [X] 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, Broker will retain all interest earned in said account.

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

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**28. NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

**29. CONTINGENCIES:** These stipulations shall preempt printed matter herein (attach and reference addendum if necessary) Contingent on sale of Buyer's home at 503 Beverly Dr., Summerville

THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.

ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.

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

|                                 |                    |                  |
|---------------------------------|--------------------|------------------|
| BUYER: <u>[Signature]</u>       | Date <u>9-4-06</u> | Time <u>5:30</u> |
| WITNESS: <u>Matthew Bullock</u> | Date <u>9-4-06</u> | Time _____       |
| BUYER: <u>[Signature]</u>       | Date <u>9-4-06</u> | Time <u>5:30</u> |
| WITNESS: <u>Matthew Bullock</u> | Date <u>9-4-06</u> | Time _____       |
| SELLER: _____                   | Date _____         | Time _____       |
| WITNESS: _____                  | Date _____         | Time _____       |
| SELLER: _____                   | Date _____         | Time _____       |
| WITNESS: _____                  | Date _____         | Time _____       |

LISTING AGENT AND COMPANY \_\_\_\_\_

SELLING AGENT AND COMPANY Matthew Bullock for RE/MAX Professional Realty

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Matthew Bullock

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# COUNTEROFFER TO AGREEMENT TO BUY AND SELL REAL ESTATE (SELLER)

IN RESPONSE TO THE COUNTEROFFER MADE BY JOHN + AMY HARPER  
DATED SEPT 4, 2006 TO PURCHASE THE REAL PROPERTY COMMONLY KNOWN AS:  
Lot 8 Block 2 Section \_\_\_\_\_ Subdivision BRIDGE OF SUMMERHILL  
Address 77 CROSS TIMBERS DR  
Tax Map # 154-10-17-008 City SUMMERHILL Zip 29406  
County of Durham, State of South Carolina, the following counteroffer is hereby submitted:  
(Counteroffer terms)  
SEC 5 - PURCHASE PRICE SHALL BE \$266,000.00  
SEC 7 - FURNISH MONEY SMALL OR 5000.00  
SEC 29 - SELLER WILL CONTINUE TO SHAW PROPERTY, AND IN THE EVENT  
ANOTHER ACCEPTABLE OFFER IS MADE, BUYER WILL HAVE 5 DAYS TO REMAIN  
CONTINUOUS.

OTHER TERMS: All other terms remain the same and are binding on all the parties.

RIGHT TO ACCEPT OTHER OFFERS: Buyer reserves the right to accept any other offer prior to Buyer's acceptance of this counteroffer and Seller's agent being so advised in writing.

EXPIRATION: This counteroffer shall expire unless a copy hereof with Buyer's written acceptance is delivered to Seller or Seller's agent by WEDNESDAY (day) 9-6-2006 (date) 5PM (time). TIME IS OF THE ESSENCE

Witness Matt Bullock Seller Carol J. Bell

Witness \_\_\_\_\_ Seller \_\_\_\_\_

DATE 9/5/06 TIME 12:18 PM

The undersigned Buyer accepts the above counteroffer.

Witness Matt Bullock Buyer Heather 95-06

Witness Matt Bullock Buyer Carol Harper 9-5-06

RECEIPT OF ACCEPTANCE IS HEREBY ACKNOWLEDGED:

Seller \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_

THIS AGREEMENT UPON ITS EXECUTION BY BOTH PARTIES IS HEREIN MADE AN INTEGRAL PART OF THE ABOVE REFERENCED AGREEMENT TO BUY AND SELL REAL ESTATE.

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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SEP. 5. 2006 12:23PM

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS  
THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

C/A Number: 2010-CP-10-10108

v.

AFFIDAVIT OF MARIO S. INGLESE, ESQ.

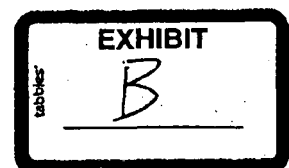
LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

2011 DEC -5 PM 3:00  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

FILED

PERSONALLY APPEARED BEFORE ME the undersigned affiant, Mario S. Inglese  
who upon being duly sworn deposes and states:

- 1) My name is Mario S. Inglese. I am over the age of eighteen years, I am an attorney licensed to practice law in the State of South Carolina, and I am competent to make this affidavit.
- 2) I have read the amended complaint in this matter, filed 6/17/2011, and I know the contents thereof.
- 3) That with regards to the amended complaint, the contents thereof are all true and correct, based upon my own knowledge, saving and excepting those matters and things therein alleged to be on information and belief, and as to those matters, that I believe them to be true and correct, and I hereby incorporate by reference each and every factual allegation contained in the amended complaint into this affidavit.
- 4) That I was not involved in any way with the negotiation or ratification of the underlying contract for sale of real estate between the Defendant Beal, as seller, and John E. Harper and Amy E. Harper, as buyers, dated September 5, 2006 for the property known as 77 Cross Timbers Drive, Summerville, South Carolina 29485.



- 5) That at all times leading up to and after the closing of the above-referenced contract for sale of real estate, I acted in good faith and with the intention of fair dealing with the parties to said contract, including:
- a.) That prior to closing, I commissioned a title examination of the subject property and discovered a civil judgment against Mr. Beal, which was a judgment in excess of six million dollars from Case No. 2001-CP-10-2967.
  - b.) That upon discovery of the judgment lien, I contacted Mr. Beal about this issue and with Mr. Beal's consent, I then contacted Mr. Stemke, the judgment creditor's attorney, and we all three agreed upon a method to resolve the judgment lien, which was that I would escrow Mr. Beal's entire net proceeds from the sale and that the subject property would be released from the judgment lien, pending the outcome of the ongoing appeal of the matter.
  - c.) That I believe that the agreed upon resolution of the judgment lien was a reasonable and customary method of resolving a judgment lien.
  - c.) That I proceeded to closing in full reliance upon this agreed resolution of the judgment lien, and that I did, in fact, escrow the full net proceeds from closing. Mr. Beal's attorney at that time, John Blincow, was aware of the escrow of the proceeds.
  - d.) That it was not until after closing that the creditor's attorney refused to honor the prior judgment resolution agreement and refused to release the subject property from the judgment lien.
  - e.) That as a result of the judgment lien not being released, my title insurance company, Investor's Title, negotiated and paid a claim by the judgment creditor,

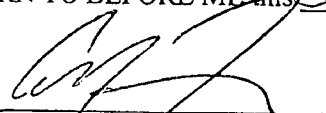
which resulted in the full satisfaction of the judgment lien as to Mr. Beal.

Investor's Title then proceeded to bring an action against me for subrogation of the amount they paid to satisfy Mr. Beal's judgment obligation.

- g.) That I, in turn, was compelled to pay Investor's Title's claim against me.
  - h.) That my payment of this claim inured directly from the monetary benefit bestowed on Mr. Beal through the payment of his judgment obligation.
- 7) I have never been reprimanded by Investor's Title Insurance Company.

  
\_\_\_\_\_  
MARIO S. INGLESE

SWORN TO BEFORE ME this 5<sup>th</sup> day of December 2011.

  
\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 3-8-2014

|                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                               |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| A<br><b>U.S. DEPARTMENT OF HOUSING &amp; URBAN DEVELOPMENT</b>                                                                                                                                                                                                                                                               |  | B TYPE OF LOAN                                                                                                                                                                                |  |
| <b>SETTLEMENT STATEMENT</b>                                                                                                                                                                                                                                                                                                  |  | 1 <input type="checkbox"/> FHA    2 <input type="checkbox"/> FmHA    3 <input checked="" type="checkbox"/> CONV UNINS    4 <input type="checkbox"/> VA    5 <input type="checkbox"/> CONV INS |  |
| 6 FILE NUMBER<br>06-484                                                                                                                                                                                                                                                                                                      |  | 7 LOAN NUMBER<br>0156588154                                                                                                                                                                   |  |
| 8 MORTGAGE INS CASE NUMBER                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                                                                               |  |
| C NOTE This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing, they are shown here for informational purposes and are not included in the totals.<br>1C 368 (HARPER, JOHN AND AMY PFD006-484/13) |  |                                                                                                                                                                                               |  |
| D NAME AND ADDRESS OF BORROWER                                                                                                                                                                                                                                                                                               |  | E NAME AND ADDRESS OF SELLER                                                                                                                                                                  |  |
| John A Harper and<br>Amy E Harper<br>77 Cross Timbers Drive<br>Summerville, SC 29485                                                                                                                                                                                                                                         |  | Carl H Beal, Jr<br>77 Cross Timbers Drive<br>Summerville, SC 29485                                                                                                                            |  |
|                                                                                                                                                                                                                                                                                                                              |  | F NAME AND ADDRESS OF LENDER                                                                                                                                                                  |  |
|                                                                                                                                                                                                                                                                                                                              |  | Southern Community Bank<br>4625 CountryClub Road<br>Winston-Salem, NC 27104                                                                                                                   |  |
| G PROPERTY LOCATION                                                                                                                                                                                                                                                                                                          |  | H SETTLEMENT AGENT                                                                                                                                                                            |  |
| 77 Cross Timbers Drive<br>Summerville, SC 29485<br>Dorchester County, South Carolina<br>Bridges of Summerville                                                                                                                                                                                                               |  | 04-3776262<br>Mario S Ingles, PC                                                                                                                                                              |  |
|                                                                                                                                                                                                                                                                                                                              |  | I SETTLEMENT DATE                                                                                                                                                                             |  |
|                                                                                                                                                                                                                                                                                                                              |  | November 13, 2006                                                                                                                                                                             |  |
| J SUMMARY OF BORROWER'S TRANSACTION                                                                                                                                                                                                                                                                                          |  | K SUMMARY OF SELLER'S TRANSACTION                                                                                                                                                             |  |
| 100. GROSS AMOUNT DUE FROM BORROWER:                                                                                                                                                                                                                                                                                         |  | 400. GROSS AMOUNT DUE TO SELLER:                                                                                                                                                              |  |
| 101 Contract Sales Price 266,000 00                                                                                                                                                                                                                                                                                          |  | 401 Contract Sales Price 266,000 00                                                                                                                                                           |  |
| 102 Personal Property                                                                                                                                                                                                                                                                                                        |  | 402 Personal Property                                                                                                                                                                         |  |
| 103 Settlement Charges to Borrower (Line 1400) 3,939 98                                                                                                                                                                                                                                                                      |  | 403                                                                                                                                                                                           |  |
| 104                                                                                                                                                                                                                                                                                                                          |  | 404                                                                                                                                                                                           |  |
| 105                                                                                                                                                                                                                                                                                                                          |  | 405                                                                                                                                                                                           |  |
| Adjustments For Items Paid By Seller in advance                                                                                                                                                                                                                                                                              |  | Adjustments For Items Paid By Seller in advance                                                                                                                                               |  |
| 106 City/Town Taxes to                                                                                                                                                                                                                                                                                                       |  | 406 City/Town Taxes to                                                                                                                                                                        |  |
| 107 County Taxes 11/14/06 to 01/01/07 567 12                                                                                                                                                                                                                                                                                 |  | 407 County Taxes to                                                                                                                                                                           |  |
| 108 Assessments 11/14/06 to 01/01/07 34 19                                                                                                                                                                                                                                                                                   |  | 408 Assessments 11/14/06 to 01/01/07 34 19                                                                                                                                                    |  |
| 109                                                                                                                                                                                                                                                                                                                          |  | 409                                                                                                                                                                                           |  |
| 110                                                                                                                                                                                                                                                                                                                          |  | 410                                                                                                                                                                                           |  |
| 111                                                                                                                                                                                                                                                                                                                          |  | 411                                                                                                                                                                                           |  |
| 112                                                                                                                                                                                                                                                                                                                          |  | 412                                                                                                                                                                                           |  |
| 120 GROSS AMOUNT DUE FROM BORROWER 270,541 29                                                                                                                                                                                                                                                                                |  | 420 GROSS AMOUNT DUE TO SELLER 266,034 19                                                                                                                                                     |  |
| 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:                                                                                                                                                                                                                                                                               |  | 500. REDUCTIONS IN AMOUNT DUE TO SELLER:                                                                                                                                                      |  |
| 201 Deposit or earnest money 5,000 00                                                                                                                                                                                                                                                                                        |  | 501 Excess Deposit (See Instructions)                                                                                                                                                         |  |
| 202 Principal Amount of New Loan(s) 178,000 00                                                                                                                                                                                                                                                                               |  | 502 Settlement Charges to Seller (Line 1400) 22,814 20                                                                                                                                        |  |
| 203 Existing loan(s) taken subject to                                                                                                                                                                                                                                                                                        |  | 503 Existing loan(s) taken subject to                                                                                                                                                         |  |
| 204                                                                                                                                                                                                                                                                                                                          |  | 504 Payoff of first Mortgage to Homecomings Financial 205,534 77                                                                                                                              |  |
| 205                                                                                                                                                                                                                                                                                                                          |  | 505 Payoff of second Mortgage                                                                                                                                                                 |  |
| 206                                                                                                                                                                                                                                                                                                                          |  | 506 Deposit retained by broker 5,000 00                                                                                                                                                       |  |
| 207                                                                                                                                                                                                                                                                                                                          |  | 507 Escrow to Russell S Stemke/Linda Erickson 28,939 88                                                                                                                                       |  |
| 208                                                                                                                                                                                                                                                                                                                          |  | 508                                                                                                                                                                                           |  |
| 209                                                                                                                                                                                                                                                                                                                          |  | 509                                                                                                                                                                                           |  |
| Adjustments For Items Unpaid By Seller                                                                                                                                                                                                                                                                                       |  | Adjustments For Items Unpaid By Seller                                                                                                                                                        |  |
| 210 City/Town Taxes to                                                                                                                                                                                                                                                                                                       |  | 510 City/Town Taxes to                                                                                                                                                                        |  |
| 211 County Taxes to                                                                                                                                                                                                                                                                                                          |  | 511 County Taxes 01/01/06 to 11/14/06 3,745 34                                                                                                                                                |  |
| 212 Assessments to                                                                                                                                                                                                                                                                                                           |  | 512 Assessments to                                                                                                                                                                            |  |
| 213                                                                                                                                                                                                                                                                                                                          |  | 513                                                                                                                                                                                           |  |
| 214                                                                                                                                                                                                                                                                                                                          |  | 514                                                                                                                                                                                           |  |
| 215                                                                                                                                                                                                                                                                                                                          |  | 515                                                                                                                                                                                           |  |
| 216                                                                                                                                                                                                                                                                                                                          |  | 516                                                                                                                                                                                           |  |
| 217                                                                                                                                                                                                                                                                                                                          |  | 517                                                                                                                                                                                           |  |
| 218                                                                                                                                                                                                                                                                                                                          |  | 518                                                                                                                                                                                           |  |
| 219                                                                                                                                                                                                                                                                                                                          |  | 519                                                                                                                                                                                           |  |
| 220 TOTAL PAID BY/FOR BORROWER 183,000 00                                                                                                                                                                                                                                                                                    |  | 520 TOTAL REDUCTION AMOUNT DUE SELLER 266,034 19                                                                                                                                              |  |
| 300. CASH AT SETTLEMENT FROM/TO BORROWER:                                                                                                                                                                                                                                                                                    |  | 600. CASH AT SETTLEMENT TO/FROM SELLER:                                                                                                                                                       |  |
| 301 Gross Amount Due From Borrower (Line 120) 270,541 29                                                                                                                                                                                                                                                                     |  | 601 Gross Amount Due To Seller (Line 420) 266,034 19                                                                                                                                          |  |
| 302 Less Amount Paid By/Fo Borrower (Line 220) ( 183,000 00)                                                                                                                                                                                                                                                                 |  | 602 Less Reductions Due Seller (Line 520) ( 266,034 19)                                                                                                                                       |  |
| 303 CASH ( X FROM ) ( TO ) BORROWER 87,541 29                                                                                                                                                                                                                                                                                |  | 603 CASH ( TO ) ( FROM ) SELLER 0 00                                                                                                                                                          |  |

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



| L. SETTLEMENT CHARGES                                                             |                                             |                           |           |          |           |
|-----------------------------------------------------------------------------------|---------------------------------------------|---------------------------|-----------|----------|-----------|
| 700. TOTAL COMMISSION Based on Price                                              |                                             | \$ 266,000 00 @ 10 0000 % | 26,600 00 |          |           |
| Division of Commission (line 700) as Follows                                      |                                             |                           |           |          |           |
| 701 \$ 18,620 00                                                                  | to Realty Executives                        |                           |           |          |           |
| 702 \$ 7,960 00                                                                   | to RE/MAX Professional Realty               | Less Deposit Retained     | 5,000 00  |          |           |
| 703 Commission Paid at Settlement                                                 |                                             |                           |           |          | 21,600 00 |
| 704                                                                               | to                                          |                           |           |          |           |
| 800. ITEMS PAYABLE IN CONNECTION WITH LOAN                                        |                                             |                           |           |          |           |
| 801 Loan Origination Fee                                                          | % to                                        |                           |           |          |           |
| 802 Loan Discount                                                                 | % to                                        |                           |           |          |           |
| 803 Appraisal Fee                                                                 | to Fairway Appraisals, Inc.                 | POC \$300 00 B            |           | 50 00    |           |
| 804 Credit Report                                                                 | to CBC                                      |                           |           | 14 79    |           |
| 805 Flood Cert                                                                    | to Stewart Flood Provider                   |                           |           | 12 00    |           |
| 806 Commitment Fee                                                                | to Southern Community Bank                  |                           |           | 350 00   |           |
| 807 Assumption Fee                                                                | to                                          |                           |           |          |           |
| 808                                                                               |                                             |                           |           |          |           |
| 809                                                                               |                                             |                           |           |          |           |
| 810                                                                               |                                             |                           |           |          |           |
| 811                                                                               |                                             |                           |           |          |           |
| 900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE                               |                                             |                           |           |          |           |
| 901 Interest From 11/13/06 to 12/01/06                                            | @ \$ 30 480000/day ( 18 days %)             |                           |           | 548 64   |           |
| 902 Mortgage Insurance Premium for                                                | months to                                   |                           |           |          |           |
| 903 Hazard Insurance Premium for                                                  | 10 years to Craig R. Brown Agency, Inc      |                           |           | 734 00   |           |
| 904 Flood Insurance Premium                                                       | 10 years                                    |                           |           |          |           |
| 905                                                                               |                                             |                           |           |          |           |
| 1000. RESERVES DEPOSITED WITH LENDER                                              |                                             |                           |           |          |           |
| 1001 Hazard Insurance                                                             | 4 000 months @ \$ 61 16 per month           |                           |           | 244 64   |           |
| 1002 Mortgage Insurance                                                           | months @ \$ per month                       |                           |           |          |           |
| 1003 City/Town Taxes                                                              | months @ \$ per month                       |                           |           |          |           |
| 1004 County Taxes                                                                 | 3 000 months @ \$ 186 49 per month          |                           |           | 559 47   |           |
| 1005 Assessments                                                                  | months @ \$ per month                       |                           |           |          |           |
| 1006 Flood Insurance Premium                                                      | months @ \$ per month                       |                           |           |          |           |
| 1007                                                                              | months @ \$ per month                       |                           |           |          |           |
| 1008 Aggregate Adjustment                                                         | months @ \$ per month                       |                           |           | -61 06   |           |
| 1100. TITLE CHARGES                                                               |                                             |                           |           |          |           |
| 1101 Settlement or Closing Fee                                                    | to Mario S. Ingles, PC                      |                           |           | 390 00   |           |
| 1102 Abstract or Title Search                                                     | to Charles M. Feeley                        |                           |           | 175 00   |           |
| 1103 Title Examination                                                            | to Title Update                             |                           |           |          |           |
| 1104 Title Insurance Binder                                                       | to Mario S. Ingles, PC                      |                           |           | 75 00    |           |
| 1105 Document Preparation                                                         | to Mario S. Ingles, PC                      |                           |           |          | 175 00    |
| 1106 Satisfaction Processing Fee                                                  | to Mario S. Ingles, PC \$5 per satisfaction |                           |           |          | 5 00      |
| 1107 Attorney's Fees                                                              | to                                          |                           |           |          |           |
| (includes above item numbers)                                                     |                                             |                           |           |          |           |
| 1108 Title Insurance                                                              | to Investors Title Insurance Company        |                           |           | 640 50   |           |
| (includes above item numbers)                                                     |                                             |                           |           |          |           |
| 1109 Lender's Coverage                                                            | \$ 178,000 00                               | 75 00                     |           |          |           |
| 1110 Owner's Coverage                                                             | \$ 266,000 00                               | 565 50                    |           |          |           |
| 1111 Courier Fee                                                                  | to Mario S. Ingles, PC                      |                           |           | 25 00    | 25 00     |
| 1112 E-Mail Package Fee                                                           | to Mario S. Ingles, PC                      |                           |           | 25 00    |           |
| 1113 Wire Fee                                                                     | to Mario S. Ingles, PC                      |                           |           | 15 00    |           |
| 1200. GOVERNMENT RECORDING AND TRANSFER CHARGES                                   |                                             |                           |           |          |           |
| 1201 Recording Fees Deed \$ 10 00, Mortgage \$ 25 00, Releases \$                 |                                             |                           |           | 35 00    |           |
| 1202 City/County Tax/Stamp Deed                                                   | Mortgage                                    |                           |           |          |           |
| 1203 State Tax/Stamp Revenue Stamps                                               | 984 20, Mortgage                            |                           |           |          | 984 20    |
| 1204 Assignment of Mortgage                                                       | to Dorchester County Register of Deeds      |                           |           | 7 00     |           |
| 1205                                                                              |                                             |                           |           |          |           |
| 1300. ADDITIONAL SETTLEMENT CHARGES                                               |                                             |                           |           |          |           |
| 1301 Survey                                                                       | to                                          |                           |           |          |           |
| 1302 Pest Inspection                                                              | to                                          |                           |           |          |           |
| 1303 Administrative Fee                                                           | to Ravenel & Associates                     |                           |           | 100 00   |           |
| 1304 HOA Late Fee                                                                 | to Ravenel & Associates                     |                           |           |          | 25 00     |
| 1305                                                                              |                                             |                           |           |          |           |
| 1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K) |                                             |                           |           | 3,939 98 | 22,814 20 |

Certified to be a true copy

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein. I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT

Borrower

John A. Harper

Amy E. Harper

Seller

Carl H. Beal, Jr.

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION

Mario S. Ingles, PC  
Settlement Agent

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

CASE NO. 10-CP-10-10108

MARIO S. INGLESE and MARIO  
S. INGLESE, PC )

Plaintiff, )

vs. )

LINDA ERICKSON, RUSSELL S.  
STEMPKE and CARL H. BEAL, JR., )

Defendants. )

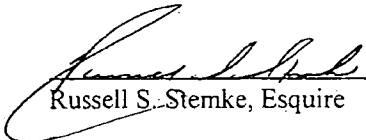
AFFIDAVIT

2011 OCT 31 PM 3:13  
JULIE G. HARRIS  
CLERK OF COURT

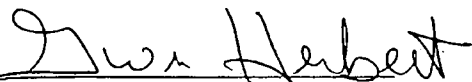
PERSONALLY APPEARED before me Russell S. Stempke, who, being duly sworn, deposes and says as follows:

1. That there is no written contract or agreement, letter, memorandum or other written document memorializing any alleged agreement concerning the sale of 77 Cross Timbers Drive, Summerville, SC 29485, or the judgment lien, or any other interest in said property, as alleged in paragraph 12 of Plaintiff's Complaint and paragraph 10 of Plaintiff's Amended Complaint.

Further Affiant saith naught.

  
Russell S. Stempke, Esquire

SWORN to before me this  
28 day of October, 2011.



Notary Public for South Carolina

My Commission Expires: 6-27-2015

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

CASE NO. 10-CP-10-10108

MARIO S. INGLESE and MARIO  
S. INGLESE, PC )

Plaintiff, )

vs. )

LINDA ERICKSON, RUSSELL S.  
STEMPKE and CARL H. BEAL, JR., )

Defendants. )

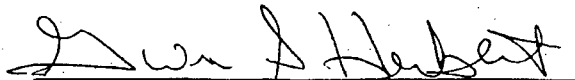
**CERTIFICATE OF SERVICE**

FILED  
2011 OCT 31 PM 3:13  
JULIE A. HIGHTS  
CLERK OF COURT

I, the undersigned, hereby certify that a copy of the Affidavit in the above-captioned matter has been served on the below named parties and/or their respective counsel and/or agents by depositing the same with the U.S. Mail, properly addressed with sufficient postage affixed, this 28<sup>th</sup> day of October, 2011:

Charles Michael Feeley, Esquire  
451 Folly Road  
Charleston, SC 29412  
ATTORNEY FOR THE PLAINTIFFS

Harry V. Ragsdale, Esquire  
Corrigan & Chandler, LLC  
P. O. Box 547  
Charleston, SC 29402  
ATTORNEY FOR CARL H. BEAL, JR.



Gwen S. Herbert, Legal Assistant to  
Russell S. Stemke, Esquire

LAW OFFICES OF  
**RUSSELL S. STEMKE, ATTORNEY AT LAW**

P.O. Box 1100  
Isle of Palms, SC 29451

Telephone: (843) 886-0340  
Facsimile: (843) 886-0341

October 28, 2011

Clerk of Court for Charleston County  
100 Broad Street, Suite 106  
Charleston, SC 29401

RE: *Mario S. Inglese and Mario S. Inglese, PC v. Linda Erickson, et al.*  
C.A. No.: 2010-CP-10-10108  
Our File No.: 30-747

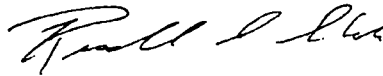
Dear Clerk:

Enclosed please find the original and two (2) copies of the Affidavit and the Certificate of Service for the same in the above referenced matter. Please file the original and return filed-stamped copies in the enclosed, self-addressed, stamped envelope.

Thank you for your courtesies and cooperation with this matter.

With kindest regards, I remain

Very truly yours,



Russell S. Stemke

RSS:gh

Enclosures

cc w/encl.: Charles Michael Feeley, Esquire  
Harry V. Ragsdale, Esquire

DISCLOSURE OF ATTORNEY  
MULTIPLE CLIENT REPRESENTATION

In the real estate transaction of Carl H. Beal, Jr. as Seller, and John Harper and Amy Harper, as purchaser(s) dated November 13, 2006, MARIO INGLESE, PC will be involved in a degree of representation of some or all of the following clients:

- ( ) Purchaser. The Attorney has been chosen by Purchaser to represent him/her/them and to protect all of his/her/their interests. Purchaser is the Attorney's primary client under this transaction.

Seller is also represented by Attorney as to the preparation of a Deed and other documents involved in the transaction.

WHEN THERE IS MULTIPLE REPRESENTATION OF CLIENTS THERE EXISTS THE POTENTIAL FOR A CONFLICT OF INTEREST FOR THE ATTORNEY.

If an actual conflict of interest arises (before, during, or after the closing) that cannot be settled in a amicable manner, the Attorney will be obligated to:

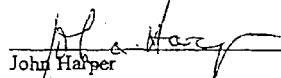
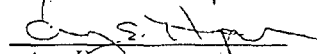
- 1.) Inform all clients of the conflict, and
- 2.) Withdraw representation from ALL clients.

Each client will have to seek his own separate attorney to resolve the conflict.

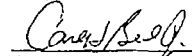
I have been informed of the multiple representations and I agree for the Attorney to undertake such multiple representations.

My consent for Attorney, MARIO INGLESE, PC to represent me in this transaction is given voluntarily, intelligently, and I am knowingly informed.

PURCHASERS:

  
John Harper  
  
Amy Harper

SELLER:

  
Carl H. Beal, Jr.



**Investors Title Insurance Company**

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

STATE OF SOUTH CAROLINA )  
COUNTY OF DORCHESTER )

OWNER'S AFFIDAVIT

PERSONALLY appeared before me, Carl H. Beal, Jr., who after being duly sworn, depose(s) and say(s):

That the following described property is owned by deponent(s), to wit:

SEE SCHEDULE C ATTACHED HERETO

That no one other than said owner, or the party purchasing the captioned property as part of this transaction has the right of possession of said property.

That there is no outstanding indebtedness for equipment, appliances or other fixtures attached to said property.

That the lines and corners of said property are clearly marked, that there are no disputes concerning the location of the lines and corners, that the property is free from easement, or claims of easements, not shown by the public records, and that an undisputed right of access to said property exists from a public road.

That deponent has no knowledge of any street, sidewalk, drainage or utility improvements which are either proposed, under construction or recently completed, which pass through, abut or will pass through or abut the property.

That there are no pending suits, proceedings, judgments, bankruptcies, liens or executions, against said owner either in the aforesaid county or any other county in the State of South Carolina.

That no improvements or repairs have been made on the above-described property during the three months immediately preceding this date and that there are no outstanding bills incurred for labor or materials used in making improvements or repairs on said premises, or for services of architects, surveyors or engineers incurred in connection therewith.

The Purchaser (if any) and the Lender are relying on the validity of this Affidavit as an inducement to and part consideration for purchasing said property; and for making a loan secured by the above described property.

Carl H. Beal, Jr.

, Owner of Property

Subscribed and sworn to before me  
this 13th day of November, 2006.

Notary Public

(Seal)

My Commission Expires: 8/14/16

(HARPER, JOHN AND AMY.PFD06-484/16)

STATE OF SOUTH CAROLINA )

COUNTY OF CHARLESTON )

AFFIDAVIT OF OWNERSHIP

Personally appeared before me Carl H. Beal, Jr., who, having been duly sworn and on oath, deposed and said as follows:

1. That Carl H. Beal, Jr. (hereinafter referred to as "Owner") owns the property known as 77 Cross Timbers Drive Summerville SC 29485 (the "Property").
2. That the undersigned is the owner in fee simple and is in actual possession of the Property as Owner, and there are no other persons or entities known to the undersigned in possession of any part of the Property; and possession has been undisturbed and has never been disputed or questioned; there are no tenancies or leases, oral or written.
3. That the lines and corners of the Property are clearly marked and there are no disputes concerning the location of said lines and corners; that the title to the Property is free and unencumbered and there are no liens or other objections to the same, except the lien of any mortgage to be paid off at the sale or mortgaging of the Property which is simultaneous with the execution hereof.
4. That the improvements to the Property consist of a single-family home/condominium, or other. The Property is located on the aforesaid street, which is a dedicated public access and the Property has actual pedestrian and vehicular access base on a legal right of access to the Property. No separate building, garage or apartment is used as a second residence.
5. That the title to said Property is free and unencumbered and there are no liens or objections to the same, except as follows: Homecomings Financial.

That the payoff and satisfaction of the mortgage and liens noted herein are supplied to Mario Inglese, PC by third parties and are subject to confirmation upon tender of payment. In the event of a shortage in the payoff, the undersigned agree to immediately pay any shortages that may occur.

That there are no other unpaid taxes, utility charges or bills for stated improvements against the Property.

6. That the undersigned have not allowed and have no knowledge of any violations of any covenants, restrictions, agreements, conditions or zoning ordinances affecting the Property.
7. That there is no bankruptcy or arrangement proceeding pending by or against the undersigned, and there are no suits or judgments of any kind pending against the owners of the Property in the County or State which would in any way affect the Property or be a lien thereon.
8. The undersigned is not insolvent, nor will the conveyance or mortgage of the subject Property cause the undersigned to be insolvent.
9. ~~That no judgment, decree or lien exists against the undersigned, or against the Property, and no Actions exist which may lead to such a judgment, decree or lien.~~
10. That there are no unpaid bills, either for labor, fixtures, or materials furnished or placed upon the Property within the last 90 days, out of which any such claims might arise, and that the undersigned has not employed a general contractor to make improvements upon the Property either by labor, fixtures, or materials within the past 90 days, and the Property is free and clear of all lienable claims.
11. That there are no association or property owners assessments upon the Property or if any exist, The same are current and paid in full to date.
12. That the undersigned are over the age of 18, and have never been declared incompetent.
13. That to the best of the undersigned's knowledge, (i) the Property is in compliance with all

environmental laws and does not contain any hazardous or toxic substances (as defined by state or federal law); (ii) the Property is not located adjacent to any site containing any toxic and/or hazardous substances; and (iii) the Property is not listed on, or subject to being listed on, the National Priorities List or any similar list published by any state or federal governmental agency responsible for regulating toxic and/or hazardous substances. (42 USC 9601 CERCLA)

14. That Mario S. Inglese is the attorney for the Purchaser in connection with the Purchaser's acquisition of the Property, and Deponent acknowledges that Mario S. Inglese does not represent Deponent although it is preparing the deed for Deponent at Deponent's request.
15. That the undersigned is aware of the provisions of the Deficit Reduction Act of 1984, 26 USCA 1445, et. Seq. (the "Act") and the IRS Regulations referring to the withholding tax on the disposition of United States real property interests by foreign persons and foreign corporations; and

That the undersigned is not a foreign person as defined by said Act and said regulations.

That the Social Security Number/Federal Identification Number of the undersigned is as set forth below.

That the undersigned understands and acknowledges that the information on this form is true and correct and portions may be reported to the Internal Revenue Service as required by Federal Law, and further certifies that said information is true and correct to the best of his/her knowledge and belief. (12 USC 1445 FIRPTA)

16. The undersigned further certifies that they/she/he are (is) not a non-resident alien or a foreign corporation under the Foreign Investment in Real Property Tax Act of 1980.
17. The undersigned has not required, directly or indirectly, as a condition of the purchase or sale of the Property noted above, that the purchaser thereof purchase title insurance from any particular title company. (12USC2608)
18. The undersigned CONSENTS to an audit of the trust account of Mario Inglese, PC by any title insurance company to insure that all funds paid to Mario Inglese, PC, are properly disbursed; said audit being limited to verify receipts and disbursements (SC Bar Ethics Opinion 89-03)
19. That the undersigned represents that the smoke detector(s) meeting the requirements of S.C. Code Ann. Section 5-25-1310, et seq, has/have been installed and is/are functioning at the Property on the day of closing.
20. The undersigned for a valuable consideration, the receipt of which is hereby acknowledged, hereby agrees and guarantees, warrants and indemnifies the purchaser, any current lender, any title insurance company which may issue title insurance in reliance of this instrument, and Mario Inglese, PC, who are relying upon the truthfulness and completeness of this instrument in rendering an opinion of title, against any lien, claim or suits and agrees to hold all such parties free from any loss, cost, damage or expense of any kind which may be suffered arising out of or on account of any misrepresentation or misstatement of fact contained herein.
21. By signing this Owner's Affidavit, the owner(s) hereby agree(s) that a duplicate of this affidavit will be admissible in the court in lieu of the original.

Witness:

Seller:

Carl H. Beal, Jr.

Carl H. Beal, Jr.

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this \_\_\_\_ day of November, 2006, by  
Carl H. Beal, Jr.

NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES \_\_\_\_\_



## Investors Title Insurance Company

INNOVATIVE BY INSTINCT

A Stock Company • P.O. Drawer 2687 • Chapel Hill, NC 27515-2687

### Commitment

File Number:

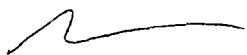
Commitment Number: 06-484

#### Schedule A

Effective Date and Time: September 6, 2006 at 11:09 AM

1. Policy (or Policies) to be issued:
  - (a) ALTA LOAN POLICY ( ALTA Loan Policy (10/17/92) )  
Policy Amount: \$ 178,000.00  
Proposed Insured: Southern Community Bank and Trust, its successors and/or assigns as their respective interests may appear.
  - (b) ALTA OWNER'S POLICY ( ALTA Own. Policy (10/17/92) )  
Policy Amount: \$ 266,000.00  
Proposed Owner: John Harper and Amy Harper
2. The estate or interest in the land described or referred to in this Commitment and covered herein is Fee Simple, and title thereto is at the effective date hereof vested in:  
Carl H. Beal, Jr.
3. The land referred to in this Commitment is described in the attached Schedule C.

MARIO S. INGLESE, PC

By: 

MARIO S. INGLESE, PC

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY.PFD/06-484/7)

## Commitment

File Number:

Commitment Number: 06-484

### Schedule B - Section 1 Requirements

The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premium, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured, must be signed, delivered and recorded. After above documents have been recorded, title will be vested in John Harper and Amy Harper.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.
5. Mortgagor Certification, RESPA Acknowledgment and Financial Interest Disclosure (Form No. SC-305), Affidavit Regarding Liens (Form No. SC-311), and the Borrower Acknowledgement Regarding Survey (Form No. SC-312), if applicable, to be executed prior to issuance of final policy(ies).
6. Deed from seller herein vesting fee simple title in buyer herein.
7. Mortgage from borrower herein to lender herein, securing your loan.
8. If this transaction meets the following criteria, you may qualify for a reduced premium:
  - (a) ☐ Refinance transactions: Title Insurance has been issued on the same property and the same owner within the last 10 years.
  - (b) ☐ Purchaser/Sale Transactions: Title Insurance has been issued on the same property within the last 10 years. This rate is available only when the new loan is to be a first lien. NOTE: In the case of lot development, this reduced rate is not available to a developer purchasing multiple lots.If you meet these criteria, please contact the issuing Agent.
9. Satisfaction and release of record of mortgage from Carl H. Beal, Jr. to Decision One Mortgage Company, LLC, recorded November 1, 2005, Book 5011, Page 216, to secure \$202,825.00.
10. 2006 County Taxes in the amount of \$4312.46 due and payable by December 31, 2006.
11. Judgement against Carl Beal, et al, filed on April 4, 2006 in the amount of \$6 million dollars.

Note. This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY, PFD/06-484/7)

## Commitment

File Number:

Commitment Number: 06-484

### Schedule B - Section 2 Exceptions

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction:

1. Taxes for the year 2006, now due and payable.
2. Rights or claims of parties in possession.
3. Restrictions filed for record in Book 2732 at Page 79 and in Book 2788 at Page 253, Page ,but this policy insures that a violation thereof will not cause a forfeiture or reversion of title.
4. Easement to SCEG recorded in Book 2560 at Page 33, Dorchester County records.
5. Easement to Bell South Telephone recorded in Book 2544 at page 216, Dorchester County records.
6. Easement to CPW recorded in Book 2752 at page 333, Book 2758 at Page 5, Book 2779 at Page 289, Book 2779 at Page 296, Book 2809 at Page 193, Book 2849 at page 232, Book 3084 at Page 12, Book 3084 at Page 26, Book 3137 at page 241, all in Dorchester County records.

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY.PFD/06-484/7)

## Commitment

File Number:

Commitment Number: 06-484

### Schedule C

ALL that certain piece, parcel or lot of land, situate, lying and being in The Bridges of Summerville Subdivision, County of Dorchester, Town of Summerville, State of South Carolina, shown and designated as Lot 8Z, on a plat entitled: "SUBDIVISION PLAT SHOWING PHASE 2, FOX & JACOBS AT THE BRIDGES OF SUMMERVILLE, A 14.055 ACRE TRACT OF LAND, A PORTION OF TRACT "B-2", PROPERTY OF CENTEX HOMES, A NEVADA GENERAL PARTNERSHIP, LOCATED IN THE OAKBROOK AREA, IN THE TOWN OF SUMMERVILLE, DORCHESTER COUNTY, SOUTH CAROLINA," by Trico Engineering Consultants, Inc., dated May 13, 2002, and recorded May 15, 2002, in the RMC Office for Dorchester County in Plat Cabinet K, Page 28. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear

BEING the same property conveyed to Carl H. Beal, Jr. by Deed from Robert L. Radcliff and Karla L. Beal dated October 28, 2005 and recorded in the RMC Office for Dorchester County, South Carolina on November 1, 2005 in Book 5011 at Page 212.

TMS # 154-10-17-008

Note: This Commitment consists of insert pages labeled as Schedule A, Schedule B-Section 1, and Schedule B-Section 2, and Schedule C. This Commitment is of no force and effect unless all schedules are included, along with any added pages incorporated herein.

(HARPER, JOHN AND AMY.PFD/06-484/7)

|                                                             |   |                                       |
|-------------------------------------------------------------|---|---------------------------------------|
| STATE OF SOUTH CAROLINA                                     | ) | IN THE COURT OF COMMON PLEAS          |
|                                                             | ) |                                       |
| COUNTY OF CHARLESTON                                        | ) | NINTH JUDICIAL CIRCUIT                |
|                                                             | ) |                                       |
| MARIO S. INGLESE and MARIO S. INGLESE, PC,                  | ) | CASE NO. 10-CP-10-10108               |
|                                                             | ) |                                       |
| Plaintiff,                                                  | ) |                                       |
|                                                             | ) |                                       |
| v.                                                          | ) | <b>AFFIDAVIT OF G. SIMMS MCDOWELL</b> |
|                                                             | ) |                                       |
| LINDA ERICKSON, RUSSELL S. STEMPEKE, and CARL H. BEAL, JR., | ) |                                       |
|                                                             | ) |                                       |
| Defendant.                                                  | ) |                                       |

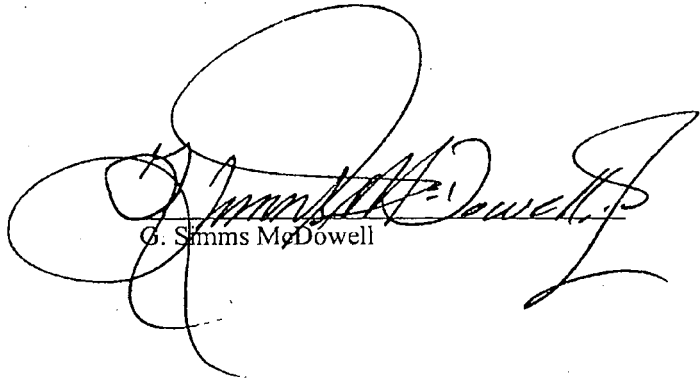
PERSONALLY APPEARED before me, G. Simms McDowell, III, who, being duly sworn, deposes and says as follows:

1. I, G. Simms McDowell, III, am an attorney licensed to practice law in the State of South Carolina. I have been practicing law since 1969.
2. A substantial portion of my law practice involves conducting real estate closings. I have served as a licensed title insurance agent for several title insurance companies since 1981. I have been a licensed title insurance agent for Old Republic National Title Insurance Company since April 2, 2009.
3. When conducting any real estate closing, if a closing attorney becomes aware of an outstanding judgment as to one of the parties to the closing, the closing attorney should resolve the judgment before proceeding to closing.
4. A closing attorney could resolve an outstanding judgment by obtaining an executed Satisfaction of Judgment from the judgment holder to be filed prior to the deed and mortgage. Additionally, a closing attorney could resolve an outstanding judgment by ensuring the judgment holder files a Satisfaction of Judgment prior to closing.

5. It is not proper for an attorney to conduct a real estate closing with actual knowledge of a judgment against a party to the closing without first resolving and satisfying the outstanding judgment.

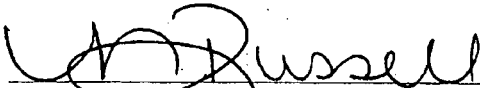
6. By failing to resolve and satisfy an outstanding judgment prior to filing the deed and mortgage, a cloud would exist on the property title and would cause the judgment, if properly recorded, to have priority over the subsequently filed deed and mortgage.

FURTHER AFFIANT SAYETH NOT.

  
G. Simms McDowell

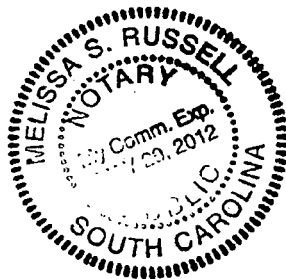
SWORN TO BEFORE THIS

28<sup>th</sup> day of June, 2010.



NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 05/29/2012



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Mario S. Inglese and Mario S. Inglese, PC

Plaintiffs,

vs.

Linda Erickson, Russell S. Stemke and Carl H. Beal, Jr.

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

CASE NO.: 2010-CP-10-10108

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                                                                                                                                                                                                        |  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br><u>Charles M. Feeley, Bar No. 70559</u><br>Address:<br><u>451 Folly Road, Charleston, SC 29412</u><br>Phone: <u>843-324-8763</u> Fax <u>843-795-0668</u><br>E-mail: <u>cmfeeley@feeleylaw.net</u> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  | <b>Defendant's Attorney:</b><br><u>Rick Corrigan, Esq., Bar No. _____</u><br>Address:<br><u>12 Exchange Street, Charleston, SC 29401</u><br>Phone: <u>843-577-5450</u> Fax <u>843-577-5650</u><br>E-mail: <u>rick@corriganhandler.com</u> Other: _____ |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III)<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                                                                                                        |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |  |                                                                                                                                                                                                                                                        |  |
| Nature of Motion: <u>Motion to Reconsider Order Granting Summary Judgment</u><br>Estimated Time Needed: <u>15 Mins.</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                        |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  |                                                                                                                                                                                                                                                        |  |
| <input type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief of action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                                                                                                        |  |
| Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  | Date submitted <u>12-19-2011</u>                                                                                                                                                                                                                       |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                                                                                                                                        |  |
| <input checked="" type="checkbox"/> <b>PAID – AMOUNT: \$25.00</b><br><input type="checkbox"/> <b>EXEMPT:</b> (check reason)<br><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or,<br>reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                                                                                                                                        |  |
| <b>JUDGE'S SECTION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  |                                                                                                                                                                                                                                                        |  |
| <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  | JUDGE CODE _____<br>Date: _____                                                                                                                                                                                                                        |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                                                                                                        |  |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED – AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |                                                                                                                                                                                                                                                        |  |

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,

) C/A Number: 2010-CP-10-10108

) Plaintiffs,

) v.

) NOTICE OF MOTION AND MOTION  
) TO RECONSIDER ORDER GRANTING  
) SUMMARY JUDGMENT

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

PLEASE TAKE NOTICE that ten (10) days after the service hereof, or as soon thereafter  
as they may be heard, the Plaintiffs, through their undersigned counsel, will move before the  
Honorable R. Markley Dennis, Charleston County Circuit Court Judge, pursuant to Rules 22 and  
59 of the South Carolina Rules of Civil Procedure, for an order reconsidering the Court's Order  
filed on December 8, 2011, granting the Defendant Beal's Motion for Summary Judgment.

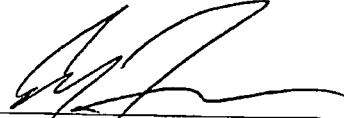
This motion is made pursuant to the affidavits, memoranda of law and argument  
presented at hearing, and upon such additional law and argument to be presented at the hearing  
on this motion. In further support of this motion, the Plaintiffs would respectfully suggest the  
following errors and request:

1. That the Court revise its order or submit a further order to include specific findings of  
fact and conclusions of law, pursuant to Rule 52, S.C.R.C.P.

2. That the Court reconsider its decision and deny the motion for summary judgment,  
based upon the arguments set forth in the Memorandum in Opposition to Summary Judgment  
filed by the Plaintiffs, a copy of which is attached hereto and incorporated herein by reference.

For the reasons set forth above, and upon such additional law and argument as to be  
presented at a hearing on this motion, the Plaintiffs respectfully request that the Court reconsider

its decision and deny the Defendant Beal's Motion for Summary Judgment in this matter, and  
that this matter be set for trial.



Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
ATTORNEY FOR THE PLAINTIFF

December 19<sup>th</sup> 2011  
Charleston, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,

) C/A Number: 2010-CP-10-10108

) Plaintiffs,

) v.

MEMORANDUM IN OPPOSITION TO  
SUMMARY JUDGMENT

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,

) Defendants.

The Plaintiffs file this memorandum in opposition to the Defendant Beal's motion for

summary judgment. The relevant facts are as follows:

- On March 31, 2006, a civil judgment was entered against the Defendant Beal and in favor of the Defendant Erickson. The underlying cause of action in that case sounded in slander, and the Plaintiffs herein had nothing to do with that action. *See, Erickson, etal, v. Winner, etal, C/A No. 2001-CP-10-2967.*
- On September 5, 2006, Mr. Beal, as seller, entered into a contract for sale of real estate with John E. Harper and Amy E. Harper, as buyers, for the property known as 77 Cross Timbers Drive, Summerville, South Carolina 29485. *See, Contract for Sale of Real Estate, Exhibit A.*
- Sometime in October 2006, the contract for sale of real estate was forwarded to the Plaintiffs herein for closing. The Plaintiffs commissioned a title examination of the subject property and discovered the civil judgment against Mr. Beal. *See, Affidavit of Mr. Inglese, Exhibit B.*
- That prior to closing, Mr. Inglese attempted, in good faith, to resolve the issue of Mr. Beal's judgment obligation by arranging to escrow Mr. Beal's net proceeds at closing in exchange for a release of the subject property from the judgment. *See, Affidavit of Mr. Inglese, Exhibit B, and HUD-1 Closing Stmt., Exhibit C.*
- That after closing, this proposed resolution of Mr. Beal's judgment obligation failed when the judgment creditor's attorney, Mr. Stemke, denied the existence of said agreement and refused to release the property from the judgment. *See, Affidavit of Mr. Inglese, Exhibit B.*
- That as a result of Mr. Beal's judgment obligation, the Plaintiffs herein were required to indemnify their title insurance company, for amounts paid by the title insurance company to satisfy Mr. Beal's judgment obligation. *See, Affidavit of Mr. Inglese, Exhibit B.*

## STANDARD OF REVIEW

Summary judgment is only appropriate if the pleadings and other supporting documents "show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law" Rule 56(c), S.C.R.C.P. "In determining whether to grant summary judgment, a court must view the evidence and its reasonable inferences in the light most favorable to the nonmoving party." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 439 (2003). "In determining whether a triable issue of fact exists, the evidence and all factual inferences drawn from it must be viewed in a light most favorable to the nonmoving party. Even if 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." Keith v. River Consulting, Inc., et al, 365 S.C. 500, 618 S.E. 2d. 302, 304 (SC App. 2005).

### A. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS ADMIT THAT THEY ARE BARRED FROM RECOVERY IN THIS LAWSUIT"

This is no longer an issue in this case. The Plaintiffs had a copy of the Responses to the Requests for Admission in their file, together with a letter indicating that the responses were mailed on September 2, 2011; however, apparently, the Defendant did not have the Responses. Upon receipt of the Defendant's Motion for Summary Judgment, the Plaintiffs promptly provided the Defendant with the Responses, which in fact, did deny Requests Nos. 9 and 12, and the parties have agreed that this issue is resolved.

### B. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS ARE BARRED FROM RECOVERY UNDER THE VOLUNTARY PAYMENT DOCTRINE"

The Defendant Beal argues that the Plaintiffs are barred from recovery under the voluntary payment doctrine. *According to the Defendant*, "when money is paid with full knowledge of all of the facts and circumstances upon which it is demanded, [under the voluntary

payment doctrine, such money] cannot be recovered." (Defendant Beal's Motion for Summary Judgment, ¶ "B"). Respectfully, the Defendant misinterprets the voluntary payment doctrine.

Voluntary payment cases always involve a specific fact pattern, which is:

- 1) A payment made by Party A to Party B;
- 2) Full knowledge of all relevant facts by Party A at the time of payment to Party B; and
- 3) An attempt by Party A to undo his payment to Party B.

See, Baker v. Allen, 220 S.C. 141, 66 S.E.2d 618 (S.C. 1951); Shockley v. Wickliffe, 150 S.C. 476, 148 S.E. 476 (S.C. 1929); Farmers and Merchants Bank v. People's First National Bank of Charleston, 161 S.C. 286, 159 S.E. 617 (S.C. 1931); and, Moody v. Stem, 214 S.C. 45, 51 S.E.2d 163 (S.C. 1948). The rational behind the doctrine is obvious -- to bar a party from attempting to renegotiate or change his barter. At its core, the doctrine upholds the principle that, once a fair meeting-of-minds has been made, parties should be bound by their bartered-for agreement.

The voluntary payment doctrine simply does not apply in the present case, because the fact pattern here is not that of an attempt by Party A to recoup from Party B (with whom he reached a meeting-of-minds), but rather to recoup from a *third-party* under indemnity. Obviously, with any indemnity claim, the rational underlying the voluntary payment doctrine will not exist because the parties would not have had a prior bartered-for agreement. If you really think about it, if the voluntary payment doctrine worked as the Defendant suggests, their could *never* be a proper case for indemnity under our jurisprudence; but of course, that is not correct.

In the alternative, if the Court determines that the voluntary payment doctrine does apply in this case, the Plaintiffs would note that a payment under duress or coercion negates the voluntary payment doctrine, and that "the modern tendency is toward a relaxation as to what is essential to constitute duress [for purposes of the voluntary payment doctrine]." Baker v. Allen,

220 S.C. 141, 150, 66 S.E.2d 618, 622 (S.C. 1951). The Court goes on to state that the question of duress or coercion "must be determined by the trier of the case." *Id.* In this case, the Plaintiffs payment was made under the shadow of a lawsuit that had been filed and served upon them by the title insurance carrier and the impending potential of a resulting judgment. (See, Affidavit of Mr. Inglese, Exhibit B). As such, summary judgment on the basis of the voluntary payment doctrine would be inappropriate as the issue of duress or coercion is a question of fact to be determined at trial.

C. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS ARE BARRED FROM RECOVERY UNDER THE DOCTRINE OF UNCLEAN HANDS"

The Defendant next argues that the Plaintiffs are barred from recovery under the doctrine of unclean hands. Again, the Defendant misapplies the doctrine. First, it is important to remember that the underlying judgment in this case was Mr. Beal's obligation, resulting from his own tortious conduct. Furthermore, it was Mr. Beal who entered into a contract for the sale of real estate (which by its terms, required that he pass clear title), and with full knowledge of the underlying judgment against him. The Plaintiffs' great "wrongdoing" (to quote the Defendant) in all of this was that he attempted, in good faith, to resolve the judgment issue.

As our Supreme Court has noted, "[t]he expression 'clean hands' means a clean record with respect to the transaction with the defendants themselves and not with respect to others."

Wachovia Bank, NA v. Coffey, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (S.C. App. 2010).

Furthermore, as the Court explains, "[unclean hands] must be understood to refer to some misconduct concerning the matter in litigation of which the opposing party can, in good conscience, complain in a court of equity." *Id.* Here, the Plaintiffs had nothing to do with the underlying tort case against the Defendant Beal creating the judgment lien, nor were the Plaintiffs involved in the negotiation or ratification of the contract for sale of real estate, so the problem in

this case already existed before the Plaintiffs had ever even heard of Mr. Beal.

The Defendant confuses the issue in this case by suggesting that, because the attempted resolution of *Mr. Beal's problem* fell through (a problem which the Plaintiffs attempted in good faith to rectify), that Mr. Beal can now somehow ignore his own responsibility for *his judgment lien* and that the Plaintiffs should now bear the sole burden for Mr. Beal's judgment obligation and tortious conduct. To paraphrase the principle stated in Wachovia Bank, NA v. Coffey, how can Mr. Beal, "in good conscience, complain in a court of equity" of the Plaintiffs' conduct in this case. The Plaintiffs have clearly not acted with unclean hands in this case. Furthermore, it is axiomatic that "prejudice to the defendant is a necessary element of the 'unclean hands' defense." Wilson v. Landstrom, 281 S.C. 260, 315 S.E.2d 130 (S.C.App. 1984). For the reasons already discussed, the Defendant Beal cannot claim prejudice, where the underlying "problem" in this whole case was the fact that he signed a contract to sell real estate while he was under a substantial judgment obligation -- an obligation that the Plaintiffs herein ultimately had to bear.

The Plaintiffs would also note that "unclean hands" is a highly fact-specific defense, and as such, it is only in the rarest of circumstances that it would be appropriate to resolve a case based upon unclean hands at summary judgment. In the present case, Mr. Inglese has averred that at all times he acted in good faith and with fair intentions (*See*, Affidavit of Mr. Inglese, Exhibit B), and taking the facts in the light most favorable to the Plaintiffs, as this Court must do, at the very least, the question of unclean hands should be decided by the trier of fact.

**D. AS TO DEFENDANT'S ARGUMENT THAT "PLAINTIFFS' CLAIM FOR  
EQUITABLE INDEMNIFICATION FAILS AS A MATTER OF LAW BECAUSE  
THEIR OWN CONDUCT CAUSED THEIR DAMAGES"**

Finally, the Defendant argues that the Plaintiffs' claim for equitable indemnification fails as a matter of law because their own conduct caused their damages. Once again, the Defendant

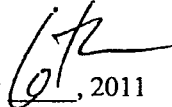
misapplies the doctrine at hand. Equitable indemnification lies "whenever the relationship between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person is exposed to liability by the wrongful act of another in which he does not join." Toomer v. Norfolk Southern Railway Company, 344 S.C. 486, 491, 544 S.E.2d 634, 636 (S.C. App. 2001). "Equitable indemnification cases involve a fact pattern in which the first party is at fault, but the second party is not." Vermeer Carolina's Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 63, 518 S.E.2d 301, 307.

In this case, once again, it is important to keep the relevant facts clear -- namely, that the problem in this case was the judgment against Mr. Beal and the fact that he entered into a contract to sell real estate while under a substantial judgment obligation -- and that is the relevant "fault" issue for purposes of applying equitable indemnification. Keeping that in mind, it is undisputed that the Plaintiffs had absolutely nothing to do with the underlying tort action and subsequent judgment against Mr. Beal, and yet, because the attempted resolution of *Mr. Beal's problem* failed, the Plaintiffs were clearly exposed to liability in that they were effectively required to satisfy the judgment (standing in the shoes of the title company). The Defendant cites the Vermeer's Carolina's Inc. case for the proposition that, "If the second party is also at fault, he...has no right to indemnity;" however, the Defendant's application of this case is misplaced -- the relevant "fault" that the Court is referring to is fault as to the underlying obligation for which indemnity is sought. So again, as the Plaintiffs clearly had nothing to do with the underlying judgment case, they were not "[a] second party...also at fault" for the obligation for which indemnity is being sought. Once again, Mr. Beal essentially seems to believe that because he showed up at closing with a title problem, and, although the closing attorney attempted in good faith to rectify the problem, Mr. Beal's entire judgment obligation is somehow wholly assigned to

the closing attorney. Unfortunately for Mr. Beal, he is simply incorrect in this assumption -- the judgment obligation resulting from his "wrongful conduct" was still *his obligation*, and the Plaintiffs were forced to bear the burden of that obligation in ultimately paying the judgment -- equitable indemnification is precisely for this case.



Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
*ATTORNEY FOR THE PLAINTIFF*

December , 2011  
Charleston, South Carolina



# AGREEMENT TO BUY AND SELL REAL ESTATE RESIDENTIAL

1. PARTIES: This legally binding Agreement entered into on Sept. 4, 20 06  
between, Buyer(s) John & Amy Harper, (hereinafter called "BUYER"), and  
Seller(s) Carl Beal, (hereinafter called "SELLER"). The  
property shall be deeded in the name(s) of \_\_\_\_\_

THE BUYER SELLER IS LICENSED UNDER THE LAWS OF SOUTH CAROLINA AS A REAL ESTATE LICENSEE

2. PROPERTY TO BE SOLD: Subject to terms and conditions herein, Seller agrees to sell and Buyer agrees to buy the  
following described property with improvements and fixtures thereon:

Lot 8 Block 2 Section \_\_\_\_\_ Subdivision Bridges of Summerville, Carrigoe Park  
Address 77 Cross Timbers Dr  
Tax Map # 154-10-17-008 City Summerville Zip 29485  
County of Dorchester, State of South Carolina.

Seller represents that the property is connected to ☒ public sewer system or to ☐ septic tank or to ☒ public water  
or to ☐ well system or to ☐ other \_\_\_\_\_

No personal property will convey as a part of this sale, except as described: Refrigerator to convey.

3. CONVEYANCE SHALL BE MADE: Conveyance shall be made subject to all easements as well as covenants of record  
(provided they do not make the title unmarketable) and to all governmental statutes, ordinances, rules and regulations.  
Seller agrees to convey by marketable title and deliver a proper general warranty deed, if applicable, free of encumbrances,  
except as herein stated. Seller agrees to pay all statutory deed recording fees. The deed shall be delivered at the stipulated  
place of closing, and transaction closed on or before Dec. 15, 20 06, not later than 9:00 p.m. Time is  
of the essence. Seller and Buyer authorize their respective attorneys and the settlement agent to furnish to Listing  
Broker and Selling Broker copies of the final HUD-1 settlement statement for the transaction for their review prior to  
closing.

4. POSSESSION: Possession of said property will be given to Buyer at the time of closing. Seller agrees to deliver property  
free of debris and in a clean condition. The property, including but not limited to, landscaping and lawn, shall be maintained  
in the same condition from the effective date of this agreement until possession is delivered, ordinary wear and tear  
excepted. Possession by Buyer before closing or by Seller after closing shall be subject to the terms and conditions of a  
separate agreement to be executed prior to closing or occupancy.

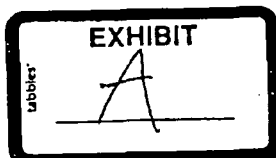
5. PURCHASE PRICE shall be \$ 262,000  
two hundred sixty-two thousand. dollars.

6. METHOD OF PAYMENT: Purchase price shall be paid as follows: ☐ Cash; or ☒ Subject to Financing. Financing to  
be obtained by ☒ Conventional ☐ Seller ☐ VA ☐ FHA ☐ Other terms: \_\_\_\_\_

7. EARNEST MONEY: This offer is accompanied by an earnest money deposit of \$ 1,000.00  
Buyer and Seller authorize REIMAX Professional Realty, as Escrow Agent, to hold and  
disburse earnest money according to the terms of this agreement. Earnest money paid by ☐ Cash, ☒ Check, or ☐ Other.  
Broker does not guarantee payment of a check or checks accepted as earnest money. All escrow money received shall be  
deposited as required by South Carolina law and South Carolina Real Estate Commission Rules and Regulations. At the  
consummation of this sale, the earnest money deposit shall be credited to the Buyer.

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THE PARTIES UNDERSTAND THAT, UNDER ALL CIRCUMSTANCES, INCLUDING DEFAULT, THE ESCROW AGENT HOLDING THE EARNEST MONEY DEPOSIT WILL NOT DISBURSE IT TO EITHER PARTY UNTIL BOTH PARTIES HAVE EXECUTED AN AGREEMENT AUTHORIZING THE DISBURSEMENT OR UNTIL A COURT OF COMPETENT JURISDICTION HAS DIRECTED A DISBURSEMENT.

**8. LOAN PROCESSING AND APPLICATION:** Buyer's obligation under this agreement is contingent on Buyer obtaining said loan. Buyer shall apply for a maximum 100 % loan (loan-to-value ratio) within 7 consecutive days from the execution of this Agreement and shall provide Seller with written satisfactory loan approval within 14 consecutive days that contains no credit, income, or asset conditions, unless otherwise set forth in this contract. Time is of the essence. Should the Buyer fail to make loan application or receive approval within said period, and to diligently pursue the application, the Seller shall have the option to terminate this Agreement, with written notice. Buyer also agrees to provide all documents or information requested by the lending company in a prompt and timely manner. Buyer will take any action that is needed or requested by Lender to process the loan application. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s). If Buyer fails to comply with these above contingencies, Buyer shall be in default of this agreement subject to the terms of paragraph 16. FHA Mortgage Insurance ☐ will ☒ will not be added to the mortgage. VA funding fee ☐ will ☒ will not be added to the mortgage.

**9. CLOSING COSTS:** Unless otherwise agreed, closing costs, including all loan charges and prepaid recurring items, shall be paid as follows:

(a) SELLER shall provide or pay for preparation of deed, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing.  
(b) BUYER shall pay, unless otherwise agreed herein, the cost of the Buyer's credit report, property insurance, appraisal, survey, cost of obtaining loan, discount points, title examination, escrow deposits, and prepaid expenses. The Buyer shall also pay, if applicable, interim interest and mortgage insurance premium or VA funding fee. Buyer's hazard insurance policy shall provide coverage as required by lender. Other terms: \_\_\_\_\_

**10. HOME PROTECTION PLAN COVERAGE:** Both parties understand that a third party home warranty Plan ☐ will ☒ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ Buyer or ☐ Seller not to exceed \$ \_\_\_\_\_.

**11. EXPIRATION OF OFFER:** The offer from Buyer shall be withdrawn at 5 o'clock P M. on Sept 5, 2006 unless accepted or countered by Seller in written form prior to such time. Time is of the essence.

**12. EXTENSION AGREEMENT:** If the transaction has not closed within the stipulated time limit because a contingency has not been satisfied through no fault of either party, then both parties agree to extend this agreement for a period not to exceed 14 consecutive days from the original closing date. Closing shall occur within this time extension, but in no event shall closing occur later than the above extension date. Time is of the essence.

**13. ADJUSTMENTS:** Taxes, water, all sewer assessments, sewer charges, fuel oil, rents as when collected, insurance premiums, if applicable, and other assessments, including homeowner's association fees, shall be adjusted as of the date of closing. Tax prorations pursuant to this Agreement are to be based on the tax information available on the date of closing, and are to be prorated on that basis. **BUYER TO BE RESPONSIBLE FOR APPLYING FOR ANY APPLICABLE TAX EXEMPTIONS.** The ☐ Buyer or the ☐ Seller shall pay for the cost of any Certificate of Assessment, or other similar document, made available, if applicable. Property taxes and rent, as well as other expenses and income of the property, if applicable, shall be apportioned to the date of closing. Annual expenses or income shall be apportioned using 365 days. Monthly property expenses or income shall be apportioned by the number of days in month of closing. Prorations at closing shall be final.

**14. NON-RESIDENT TAX:** Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-8-580 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

**15. RISK OF LOSS OR DAMAGE:** In case the property herein referred to is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Buyer or Seller shall have the option for ten (10) days thereafter of proceeding hereunder, or of terminating this Agreement.

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16. **DEFAULT:** If Buyer or Seller fails to perform any covenant of this Agreement, the other may elect to seek any remedy provided by law, including but not limited to attorney fees and actual costs incurred (as defined in paragraph 17), or terminate this Agreement with a five day written notice. If terminated, both parties shall execute a written release of the other from this contract and both shall agree to hold the Escrow Agent harmless. If either Buyer or Seller refuses to execute release, Escrow Agent will hold the earnest money in trust until said releases are executed or until a court of competent jurisdiction dictates legal disposition.

17. **ACTUAL COST INCURRED** shall include all costs and expenses incurred or obligated for by Buyer, Seller or Broker in an effort to consummate this sale. Such costs shall include, but are not limited to, cost of credit report, appraisal, survey, inspections and reports, title examination, and Broker's fee or commission for this sale.

18. **SURVEY, TITLE EXAMINATION, AND INSURANCE:** The Listing and Cooperating Broker(s) and their Agent(s) recommend that Buyer have a survey of the subject property made, have examination as to the title to the property, obtain owner's title insurance, and that Buyer obtain appropriate hazard insurance coverage effective with the time of closing. All hazard insurance to be canceled and new policies furnished by Buyer at closing unless otherwise stipulated in this Agreement. Flood insurance, if required by Lender at Buyer's option, shall be assigned to Buyer with permission of carrier, and premium prorated to date of closing.

**19. CONDITION OF PROPERTY:**

(A) **Seller's Property Condition Disclosure Statement:** (check one)

☐ Buyer and Seller agree that Seller will not complete nor provide Buyer a Seller's Property Condition Disclosure statement in accordance with South Carolina Code of Laws, as amended, Section 27-50-30, Paragraph (13).

☒ Buyer and Seller agree that a Seller's Property Condition Disclosure statement, as required by South Carolina Code of Laws, as amended, Section 27-50-10, et seq., has been provided to Buyer by Seller prior to the ratification of this agreement. If the Seller discovers, after his delivery of a disclosure statement to a Buyer, a material inaccuracy in the disclosure statement or the disclosure is rendered inaccurate in a material way by the occurrence of some event or circumstance, the Seller shall correct promptly the inaccuracy by delivering a corrected disclosure statement to the Buyer or make reasonable repairs necessitated by the occurrence before closing. Buyer understands that the Seller's Property Condition Disclosure statement is not intended to replace a professional home inspection. Buyer understands and agrees that the Seller's Property Condition Disclosure statement contains statements made solely by the Seller. The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure statement. The Buyer and Seller understands and agrees that the Listing and Selling Broker and all affiliated agents has fully met the requirements of Section 27-50-10 of the South Carolina Code of Laws, as amended.

(B) **Inspection:** 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 paint and lead-based paint hazards, wetlands study, appurtenant buildings, heating, air conditioning, electrical and plumbing systems as well as built-in appurtenant equipment or appliances. All inspections shall be completed by Sept. 30, 2006. In the event repairs are necessary to place the heating system, air conditioning, plumbing, and electrical system to be conveyed in operative condition and to make the roof free of leaks, and the dwelling structurally sound, the Seller shall be notified in writing of the specific defects or deficiencies within 48 hours after the inspection date mentioned above. Time is of the essence. If Buyer fails to notify Seller within this time, Buyer shall have waived any and all rights under the terms of this paragraph. If Lender's commitment requires any additional inspections or certifications, these are to be provided by Buyer.

(C) **Maintenance:** After any inspection by Buyer and after repairs, if any, made as a result of any such inspection, the Seller agrees to maintain the heating, air conditioning, plumbing, and electrical systems, as well as all appliances to be conveyed in operative condition, normal wear and tear excepted, until the day of closing or the day possession is given, whichever occurs first. Seller agrees to maintain the property, including lawn, shrubbery and grounds until the day of closing or possession, whichever occurs first.

(D) **Wood Infestation Report:** If the property to be sold has been previously occupied, ☐ The Buyer ☒ The Seller shall, at their expense, have the property inspected and shall obtain a current Wood Infestation Report (CL100) from a licensed and bonded pest control operator, on or before closing, 2006. Time is of the essence. If Buyer is responsible for having the property inspected as indicated above, but fails to have the property inspected by this date, Buyer shall have waived any and all rights under the terms of this paragraph. The Seller makes no warranties with regard to matters covered by such report or any other improvement unless specifically stated in this agreement. If the infestation report

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reveals the presence of or damage by termite infestation or other wood destroying organisms, Seller shall remedy such deficiencies subject to section (E) below, and shall furnish Buyer with a report of a qualified inspector that property is free from infestation or damage herein mentioned or that infestation or damage has been treated and/or repaired as appropriate in a workmanlike manner on or before closing.

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 the Buyer, at closing, a written certification from a licensed pest control operator.

(E) Repairs: The cost of all repairs to heating system, air conditioning, plumbing, and electrical system to be conveyed, and to make the roof free of leaks, to address environmental concerns and to make the dwelling structurally sound and provide wood infestation treatment, if any, required by section (B) and (D) above, to be paid by Seller. If the Seller refuses to make these 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 Agreement, subject to paragraph 7. The repairs to any other items are the sole responsibility of Buyer. The obligations of Seller under paragraph 19 terminate on the day of closing or on the day possession is given, whichever occurs first.

(F) Residential Dwellings Built before 1978: (check one of the following)

☐ This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards which shall be done, at the Buyer's expense, by midnight on the tenth day after ratification of this contract or by midnight on \_\_\_\_\_, 20\_\_\_\_. (Intact lead-based paint that is in good condition is not necessarily a hazard. See EPA pamphlet "Protect Your Family From Lead in Your Home" for more information). This contingency will terminate at the above predetermined deadline unless the Buyer (or Buyer's agent) delivers to the Seller (or Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within \_\_\_\_\_ days after Delivery of the addendum, elect in writing whether to correct the condition(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Buyer with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the Seller does not elect to make the repairs or if the Seller makes a counter-offer, the Buyer shall have \_\_\_\_\_ days to respond to the counter-offer or remove this contingency and take the property in "as-is" condition or this contract shall become void. Upon such termination, the earnest money deposit of Buyer shall be returned to Buyer and neither party shall have any further rights hereunder. The Buyer may remove this contingency at any time without cause; or

☒ Buyer waives the opportunity to conduct a risk assessment or inspection for lead-based paint and/or lead-based paint hazards.

(G) Megan's Law: The Buyer and Seller agree that the Listing and Selling Broker and all affiliated agents are not responsible for obtaining or disclosing any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that no course of action may be brought against the Listing and Selling Broker and all affiliated agents for failure to obtain or disclose any information contained in the South Carolina Sex Offender Registry. The Buyer and Seller agree that the Buyer and Seller have the sole responsibility to obtain any such information. The Buyer and Seller understand that Sex Offender Registry information may be obtained from the local sheriff's department or other appropriate law enforcement officials.

(H) Disclaimer: The Buyer acknowledges the Seller, except as provided in subparagraphs (B), (C), (D), and (E) of this section, gives no guarantee or warranty of any kind, expressed or implied, as to the physical condition of the property or to the conditions of or existence of improvements, services, appliances or system thereto, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the Seller. Neither Buyer nor Seller will hold Cooperating or Listing Broker responsible for any act of negligence or intent by any inspection or repair company employed by Seller or Buyer for the purposes of this agreement. The Seller is not required to make any repairs under any circumstances until Purchaser's financing has been approved.

20. APPRAISED VALUE: (check one)

☐ This agreement is not contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price.

☒ This agreement is contingent on the lot or parcel with building and improvements thereon, if any, appraising, according to the lender's appraisal or other appraisal as agreed, for the selling price or more; If the lot or parcel with building and improvements thereon appraises for less than the selling price, the seller may elect to sell for the appraised value. In such case, the Buyer agrees to proceed with the consummation of this sale at the reduced

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price. However, if Seller does not agree to sell at the appraised value, the Buyer shall have the option of proceeding with the consummation of the Agreement without regard to the amount of the appraised valuation, or terminate the agreement without penalty.

**21. DISCLAIMER BY BROKERS AND AGENTS:** The parties acknowledge that the Listing and Cooperating Broker(s) and their Agent(s): (1) Give no guaranty or warranty of any kind, express or implied, as to the physical condition of the property or as to condition of or existence of improvement services or systems, thereto, included but not limited to termite damage, roof, basement, appliances, heating and air conditioning systems, plumbing, sewage, electric systems, and to the structure; (2) Give no warranty, express or implied, as to the merchantability or fitness for a particular purpose as to the property or such improvements thereto and any implied warranty hereby disclaimed; (3) Give no warranty as to title; (4) Give no guaranty or warranty concerning (a) any certification or inspection concerning the condition of the property, (b) any matters which would be reflected by current survey of the property, and (c) the accuracy of the published square footage of the property; (5) Buyer acknowledges that Seller and Seller's Agents have not made any oral or written commitments to Buyer regarding (a) projected income or economic benefit for Buyer from rentals; (b) rental arrangements except that Buyer may rent the unit if Buyer so desires or (c) other economic benefits to the Buyer.

**22. COASTAL TIDELANDS & WETLANDS ACT:** In the event the property is affected by the provisions of the South Carolina Coastal Tidelands & Wetlands Act (Section 48-39-10, et seq., South Carolina Code of Laws), an Addendum will be attached to this Agreement incorporating the required disclosures at [ ] Buyer's ☒ Seller's expense.

**23. MEDIATION CLAUSE.** Any dispute or claim arising out of or relating to this Agreement, the breach of this Agreement or the services provided in relation to this Agreement, shall be submitted to mediation in accordance with the Rules and Procedures of the Dispute Resolution System of the NATIONAL ASSOCIATION OF REALTORS®. Disputes shall include representations made by the Buyer(s), Seller(s) or any real estate broker or other person or entity in connection with the sale, purchase, financing, condition or other aspect of the property to which this Agreement pertains, including without limitation allegations of concealment, misrepresentation, negligence and/or fraud. Any agreement signed by the parties pursuant to the mediation conference shall be binding.

This mediation clause shall survive for a period of 120 days after the date of the closing. The following matters are excluded from mediation hereunder: (a) judicial or non-judicial foreclosure or other action or proceeding to enforce a deed of trust, mortgage, or land contract; (b) an unlawful detainer action; (c) the filing or enforcement of a mechanic's lien; (d) any matter which is within the jurisdiction of a probate court; (e) the filing of a interpleader action to resolve earnest money disputes. The filing of a judicial action to enable the recording of a notice of pending action, for order of attachment, receivership, injunction, or other provisional remedies, shall not constitute a waiver of the right to mediate under this provision, nor shall it constitute a breach of the duty to mediate.

**24. SURVIVAL:** If any provision herein contained which by its nature and effect is required to be observed, kept or performed after the closing, it shall survive the closing and remain binding upon and for the benefit of the parties hereto until fully observed, kept or performed.

**25. ENTIRE BINDING AGREEMENT:** This written instrument, including the additional terms and conditions set forth on any documents intended by the parties to be included, expresses the entire agreement and all promises, covenants, and warranties between the Buyer and Seller. It can be changed only by a subsequently written instrument signed by both parties. Both Buyer and Seller hereby acknowledge that they have not received or relied upon any statements or representations by either Broker or their agents which are not expressly stipulated herein. The benefits and obligations shall inure to and bind the parties hereto and their heirs, assigns, successors, executors, or administrators. Whenever used, singular includes plural, and use of any gender shall include all.

**26. FACSIMILE AND OTHER ELECTRONIC MEANS:** The parties agree that the offer, any counteroffer and/or acceptance of any offer or counteroffer may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials and handwritten or typewritten modifications were present on the documents in the handwriting of each party.

**27. TRUST ACCOUNT INTEREST/CHARITABLE CONTRIBUTION:** According to the rules and regulations of the South Carolina Real Estate Commission and the Code of Laws of South Carolina, 1976, as amended, any interest earned on Buyer's earnest money deposit would belong to Buyer until the closing of the transaction referenced in this agreement. 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, Broker will retain all interest earned in said account.

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**28. NON-RELIANCE CLAUSE:** Both Buyer and Seller hereby acknowledge that they have not received or relied nor could have relied upon any statements or representations or promises or agreements or inducements by either Broker or their agents which are not expressly stipulated herein. If not contained herein, such statements, representations, promises, or agreements shall be of no force or effect. This general non-reliance clause shall not prevent recovery in tort for fraud or negligent misrepresentation or intentional misrepresentation unless specific non-reliance language is included in this agreement. This is a non-reliance clause and is neither a merger clause nor an extension of a merger clause. The parties execute this agreement freely and voluntarily without reliance upon any statements or representations by parties or agents except as set forth herein. Parties have fully read and understand this Agreement and the meaning of its provisions. Parties are legally competent to enter into this agreement and to fully accept responsibility. Parties have been advised to consult with counsel before entering into this agreement and have had the opportunity to do so.

**29. CONTINGENCIES:** These stipulations shall preempt printed matter herein: (attach and reference addendum if necessary) Contingent on sale of Buyer's home at 503 Beverly Dr., Summerville

**THIS IS A LEGALLY BINDING AGREEMENT. BOTH BUYER AND SELLER SHALL SEEK FURTHER ASSISTANCE IF THE CONTENTS ARE NOT UNDERSTOOD. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS AGREEMENT. BOTH BUYER AND SELLER ACKNOWLEDGE RECEIVING, READING, AND UNDERSTANDING THE SOUTH CAROLINA REAL ESTATE COMMISSION'S AGENCY DISCLOSURE FORM.**

**ALL TERMS AND CONDITIONS OF THIS AGREEMENT DO NOT SURVIVE CLOSING UNLESS OTHERWISE SPECIFIED.**

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

|                                 |                    |                  |
|---------------------------------|--------------------|------------------|
| BUYER: <u>[Signature]</u>       | Date <u>9-4-06</u> | Time <u>5:30</u> |
| WITNESS: <u>Matthew Bullock</u> | Date <u>9-4-06</u> | Time _____       |
| BUYER: <u>[Signature]</u>       | Date <u>9-4-06</u> | Time <u>5:30</u> |
| WITNESS: <u>Matthew Bullock</u> | Date <u>9-4-06</u> | Time _____       |
| SELLER: _____                   | Date _____         | Time _____       |
| WITNESS: _____                  | Date _____         | Time _____       |
| SELLER: _____                   | Date _____         | Time _____       |
| WITNESS: _____                  | Date _____         | Time _____       |

LISTING AGENT AND COMPANY \_\_\_\_\_

SELLING AGENT AND COMPANY Matthew Bullock for RE/MAX Professional Realty

SELLING AGENT IS PRESENTING THIS OFFER AS A ☒ BUYER'S AGENT OR ☐ SUBAGENT OF THE SELLER.

ESCROW AGENT ACKNOWLEDGMENT Matthew Bullock

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# COUNTEROFFER TO AGREEMENT TO BUY AND SELL REAL ESTATE (SELLER)

IN RESPONSE TO THE COUNTEROFFER MADE BY JOHN + AMY HARPER  
 DATED SEPT 4, 2006 TO PURCHASE THE REAL PROPERTY COMMONLY KNOWN AS:  
 Lot 8 Block 2 Section \_\_\_\_\_ Subdivision BRIDGE OF SUMMITVILLE  
 Address 77 CROSS TIMBERS DR  
 Tax Map # 154-10-17-008 City SUMMITVILLE Zip 29485  
 County of DURHAM, State of South Carolina, the following counteroffer is hereby submitted:  
 (Counteroffer terms)  
SEC 5 - PURCHASE PRICE SHALL BE \$266,000.00  
SEC 7 - CASH MONEY SMALL AMT 5000.00  
SEC 29 - SELLER WILL CONTINUE TO SHOW PROPERTY, AND IN THE EVENT  
ANOTHER ACCEPTABLE OFFER IS MADE BUYER WILL HAVE 5 DAYS TO REMAIN  
CONTINGENCY.

OTHER TERMS: All other terms remain the same and are binding on all the parties.

RIGHT TO ACCEPT OTHER OFFERS: Buyer reserves the right to accept any other offer prior to Buyer's acceptance of this counteroffer and Seller's agent being so advised in writing.

EXPIRATION: This counteroffer shall expire unless a copy hereof with Buyer's written acceptance is delivered to Seller or Seller's agent by WEDNESDAY (day) 9-6-2006 (date) 5PM (time). TIME IS OF THE ESSENCE

Witness Matt Bullock Seller Paul J. Bullock

Witness \_\_\_\_\_ Seller \_\_\_\_\_

DATE 9/5/06 TIME 12:18 AM

The undersigned Buyer accepts the above counteroffer.

Witness Matt Bullock Buyer Heather 95.06

Witness Matt Bullock Buyer Chris 9-5-06

RECEIPT OF ACCEPTANCE IS HEREBY ACKNOWLEDGED:

Seller \_\_\_\_\_

DATE \_\_\_\_\_ TIME \_\_\_\_\_

THIS AGREEMENT UPON ITS EXECUTION BY BOTH PARTIES IS HEREIN MADE AN INTEGRAL PART OF THE ABOVE REFERENCED AGREEMENT TO BUY AND SELL REAL ESTATE.

The foregoing form is available for use by the entire real estate industry. The use of the form is not intended to identify the user as a REALTOR®. REALTOR® is the registered collective membership mark which may be used only by real estate licensees who are members of the NATIONAL ASSOCIATION OF REALTORS® and who subscribe to its Code of Ethics. Expressly prohibited is the duplication or reproduction of such form or the use of the name "South Carolina Association of REALTORS®" in connection with any written form without the prior written consent of the South Carolina Association of REALTORS®. The foregoing form may not be edited, revised, or changed without the prior written consent of the South Carolina Association of REALTORS®.

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Form 507

PAGE 1 OF 1

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STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

) C/A Number: 2010-CP-10-10108  
)

v.

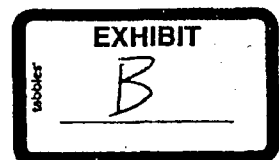
) AFFIDAVIT OF MARIO S. INGLESE, ESQ.  
)

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,  
Defendants.

FILED  
2011 DEC -5 PM 3:00  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

PERSONALLY APPEARED BEFORE ME the undersigned affiant, Mario S. Inglese, who upon being duly sworn deposes and states:

- 1) My name is Mario S. Inglese. I am over the age of eighteen years, I am an attorney licensed to practice law in the State of South Carolina, and I am competent to make this affidavit.
- 2) I have read the amended complaint in this matter, filed 6/17/2011, and I know the contents thereof.
- 3) That with regards to the amended complaint, the contents thereof are all true and correct, based upon my own knowledge, saving and excepting those matters and things therein alleged to be on information and belief, and as to those matters, that I believe them to be true and correct, and I hereby incorporate by reference each and every factual allegation contained in the amended complaint into this affidavit.
- 4) That I was not involved in any way with the negotiation or ratification of the underlying contract for sale of real estate between the Defendant Beal, as seller, and John E. Harper and Amy E. Harper, as buyers, dated September 5, 2006 for the property known as 77 Cross Timbers Drive, Summerville, South Carolina 29485.



- 5) That at all times leading up to and after the closing of the above-referenced contract for sale of real estate, I acted in good faith and with the intention of fair dealing with the parties to said contract, including:
- a.) That prior to closing, I commissioned a title examination of the subject property and discovered a civil judgment against Mr. Beal, which was a judgment in excess of six million dollars from Case No. 2001-CP-10-2967.
  - b.) That upon discovery of the judgment lien, I contacted Mr. Beal about this issue and with Mr. Beal's consent, I then contacted Mr. Stemke, the judgment creditor's attorney, and we all three agreed upon a method to resolve the judgment lien, which was that I would escrow Mr. Beal's entire net proceeds from the sale and that the subject property would be released from the judgment lien, pending the outcome of the ongoing appeal of the matter.
  - c.) That I believe that the agreed upon resolution of the judgment lien was a reasonable and customary method of resolving a judgment lien.
  - c.) That I proceeded to closing in full reliance upon this agreed resolution of the judgment lien, and that I did, in fact, escrow the full net proceeds from closing. Mr. Beal's attorney at that time, John Blincow, was aware of the escrow of the proceeds.
  - d.) That it was not until after closing that the creditor's attorney refused to honor the prior judgment resolution agreement and refused to release the subject property from the judgment lien.
  - e.) That as a result of the judgment lien not being released, my title insurance company, Investor's Title, negotiated and paid a claim by the judgment creditor,

which resulted in the full satisfaction of the judgment lien as to Mr. Beal.

Investor's Title then proceeded to bring an action against me for subrogation of the amount they paid to satisfy Mr. Beal's judgment obligation.

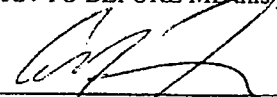
g.) That I, in turn, was compelled to pay Investor's Title's claim against me.

h.) That my payment of this claim inured directly from the monetary benefit bestowed on Mr. Beal through the payment of his judgment obligation.

7) I have never been reprimanded by Investor's Title Insurance Company.

  
MARIO S. INGLESE

SWORN TO BEFORE ME this 5<sup>th</sup> day of December 2011.

  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 3-8-2014

|                                                                                                                                                                                                                                                                                                                |  |                                                                                                                                                                                     |  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| A. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT                                                                                                                                                                                                                                                              |  | B. TYPE OF LOAN                                                                                                                                                                     |  |
| SETTLEMENT STATEMENT                                                                                                                                                                                                                                                                                           |  | 1 <input type="checkbox"/> FHA 2 <input type="checkbox"/> FmHA 3 <input checked="" type="checkbox"/> CONV. UNINS 4 <input type="checkbox"/> VA 5 <input type="checkbox"/> CONV. INS |  |
| 6 FILE NUMBER<br>06-484                                                                                                                                                                                                                                                                                        |  | 7 LOAN NUMBER<br>0156588154                                                                                                                                                         |  |
| 8 MORTGAGE INS CASE NUMBER.                                                                                                                                                                                                                                                                                    |  |                                                                                                                                                                                     |  |
| C. NOTE This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "POC" were paid outside the closing, they are shown here for informational purposes and are not included in the totals. (Borrower, John and Amy Harper) |  |                                                                                                                                                                                     |  |
| D. NAME AND ADDRESS OF BORROWER                                                                                                                                                                                                                                                                                |  | E. NAME AND ADDRESS OF SELLER                                                                                                                                                       |  |
| John A. Harper and<br>Amy E. Harper<br>77 Cross Timbers Drive<br>Summerville, SC 29485                                                                                                                                                                                                                         |  | Carl H. Beal, Jr.<br>77 Cross Timbers Drive<br>Summerville, SC 29485                                                                                                                |  |
|                                                                                                                                                                                                                                                                                                                |  | F. NAME AND ADDRESS OF LENDER                                                                                                                                                       |  |
|                                                                                                                                                                                                                                                                                                                |  | Southern Community Bank<br>4625 Country Club Road<br>Winston-Salem, NC 27104                                                                                                        |  |
| G. PROPERTY LOCATION                                                                                                                                                                                                                                                                                           |  | H. SETTLEMENT AGENT                                                                                                                                                                 |  |
| 77 Cross Timbers Drive<br>Summerville, SC 29485<br>Dorchester County, South Carolina<br>Bridges of Summerville                                                                                                                                                                                                 |  | 04-3776262<br>Miano S. Inglese, PC                                                                                                                                                  |  |
|                                                                                                                                                                                                                                                                                                                |  | I. SETTLEMENT DATE                                                                                                                                                                  |  |
|                                                                                                                                                                                                                                                                                                                |  | November 13, 2006                                                                                                                                                                   |  |
| J. SUMMARY OF BORROWER'S TRANSACTION                                                                                                                                                                                                                                                                           |  | K. SUMMARY OF SELLER'S TRANSACTION                                                                                                                                                  |  |
| 100. GROSS AMOUNT DUE FROM BORROWER:                                                                                                                                                                                                                                                                           |  | 400. GROSS AMOUNT DUE TO SELLER:                                                                                                                                                    |  |
| 101 Contract Sales Price 266,000.00                                                                                                                                                                                                                                                                            |  | 401 Contract Sales Price 256,000.00                                                                                                                                                 |  |
| 102 Personal Property                                                                                                                                                                                                                                                                                          |  | 402 Personal Property                                                                                                                                                               |  |
| 103 Settlement Charges to Borrower (Line 1400) 3,939.98                                                                                                                                                                                                                                                        |  | 403                                                                                                                                                                                 |  |
| 104                                                                                                                                                                                                                                                                                                            |  | 404                                                                                                                                                                                 |  |
| 105                                                                                                                                                                                                                                                                                                            |  | 405                                                                                                                                                                                 |  |
| Adjustments For Items Paid By Seller in advance                                                                                                                                                                                                                                                                |  | Adjustments For Items Paid By Seller in advance                                                                                                                                     |  |
| 106 City/Town Taxes to                                                                                                                                                                                                                                                                                         |  | 406 City/Town Taxes to                                                                                                                                                              |  |
| 107 County Taxes 11/14/06 to 01/01/07 567.12                                                                                                                                                                                                                                                                   |  | 407 County Taxes to                                                                                                                                                                 |  |
| 108 Assessments 11/14/06 to 01/01/07 34.19                                                                                                                                                                                                                                                                     |  | 408 Assessments 11/14/06 to 01/01/07 34.19                                                                                                                                          |  |
| 109                                                                                                                                                                                                                                                                                                            |  | 409                                                                                                                                                                                 |  |
| 110                                                                                                                                                                                                                                                                                                            |  | 410                                                                                                                                                                                 |  |
| 111                                                                                                                                                                                                                                                                                                            |  | 411                                                                                                                                                                                 |  |
| 112                                                                                                                                                                                                                                                                                                            |  | 412                                                                                                                                                                                 |  |
| 120 GROSS AMOUNT DUE FROM BORROWER 270,541.29                                                                                                                                                                                                                                                                  |  | 420 GROSS AMOUNT DUE TO SELLER 266,034.19                                                                                                                                           |  |
| 200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:                                                                                                                                                                                                                                                                 |  | 500. REDUCTIONS IN AMOUNT DUE TO SELLER:                                                                                                                                            |  |
| 201 Deposit or earnest money 5,000.00                                                                                                                                                                                                                                                                          |  | 501 Excess Deposit (See Instructions)                                                                                                                                               |  |
| 202 Principal Amount of New Loan(s) 178,000.00                                                                                                                                                                                                                                                                 |  | 502 Settlement Charges to Seller (Line 1400) 22,814.20                                                                                                                              |  |
| 203 Existing loan(s) taken subject to                                                                                                                                                                                                                                                                          |  | 503 Existing loan(s) taken subject to                                                                                                                                               |  |
| 204                                                                                                                                                                                                                                                                                                            |  | 504 Payoff of first Mortgage to Homecomings Financial 205,534.77                                                                                                                    |  |
| 205                                                                                                                                                                                                                                                                                                            |  | 505 Payoff of second Mortgage                                                                                                                                                       |  |
| 206                                                                                                                                                                                                                                                                                                            |  | 506 Deposit retained by broker 5,000.00                                                                                                                                             |  |
| 207                                                                                                                                                                                                                                                                                                            |  | 507 Escrow to Russell S. Sternke/Linda Erickson 28,939.88                                                                                                                           |  |
| 208                                                                                                                                                                                                                                                                                                            |  | 508                                                                                                                                                                                 |  |
| 209                                                                                                                                                                                                                                                                                                            |  | 509                                                                                                                                                                                 |  |
| Adjustments For Items Unpaid By Seller                                                                                                                                                                                                                                                                         |  | Adjustments For Items Unpaid By Seller                                                                                                                                              |  |
| 210 City/Town Taxes to                                                                                                                                                                                                                                                                                         |  | 510 City/Town Taxes to                                                                                                                                                              |  |
| 211 County Taxes to                                                                                                                                                                                                                                                                                            |  | 511 County Taxes 01/01/06 to 11/14/06 3,745.34                                                                                                                                      |  |
| 212 Assessments to                                                                                                                                                                                                                                                                                             |  | 512 Assessments to                                                                                                                                                                  |  |
| 213                                                                                                                                                                                                                                                                                                            |  | 513                                                                                                                                                                                 |  |
| 214                                                                                                                                                                                                                                                                                                            |  | 514                                                                                                                                                                                 |  |
| 215                                                                                                                                                                                                                                                                                                            |  | 515                                                                                                                                                                                 |  |
| 216                                                                                                                                                                                                                                                                                                            |  | 516                                                                                                                                                                                 |  |
| 217                                                                                                                                                                                                                                                                                                            |  | 517                                                                                                                                                                                 |  |
| 218                                                                                                                                                                                                                                                                                                            |  | 518                                                                                                                                                                                 |  |
| 219                                                                                                                                                                                                                                                                                                            |  | 519                                                                                                                                                                                 |  |
| 220 TOTAL PAID BY/FOR BORROWER 183,000.00                                                                                                                                                                                                                                                                      |  | 520 TOTAL REDUCTION AMOUNT DUE SELLER 266,034.19                                                                                                                                    |  |
| 300. CASH AT SETTLEMENT FROM/TO BORROWER:                                                                                                                                                                                                                                                                      |  | 600. CASH AT SETTLEMENT TO/FROM SELLER:                                                                                                                                             |  |
| 301 Gross Amount Due From Borrower (Line 120) 270,541.29                                                                                                                                                                                                                                                       |  | 601 Gross Amount Due To Seller (Line 420) 266,034.19                                                                                                                                |  |
| 302 Less Amount Paid By/FOR Borrower (Line 220) ( 183,000.00)                                                                                                                                                                                                                                                  |  | 602 Less Reductions Due Seller (Line 520) ( 266,034.19)                                                                                                                             |  |
| 303 CASH ( X FROM ) ( TO ) BORROWER 87,541.29                                                                                                                                                                                                                                                                  |  | 603 CASH ( TO ) ( FROM ) SELLER 0.00                                                                                                                                                |  |

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



| L. SETTLEMENT CHARGES                                                             |                                        |                       |          | PAID FROM<br>BORROWER'S<br>FUNDS AT<br>SETTLEMENT | PAID FROM<br>SELLER'S<br>FUNDS AT<br>SETTLEMENT |
|-----------------------------------------------------------------------------------|----------------------------------------|-----------------------|----------|---------------------------------------------------|-------------------------------------------------|
| 700. TOTAL COMMISSION Based on Price                                              | \$ 266,000.00 @ 10.0000 %              | 28,600.00             |          |                                                   |                                                 |
| Division of Commission (line 700) as Follows                                      |                                        |                       |          |                                                   |                                                 |
| 701 \$ 18,620.00                                                                  | to Realty Executives                   |                       |          |                                                   |                                                 |
| 702 \$ 7,980.00                                                                   | to RE/MAX Professional Realty          | Less Deposit Retained | 5,000.00 |                                                   |                                                 |
| 703. Commission Paid at Settlement                                                |                                        |                       |          |                                                   | 21,600.00                                       |
| 704                                                                               | to                                     |                       |          |                                                   |                                                 |
| 800. ITEMS PAYABLE IN CONNECTION WITH LOAN                                        |                                        |                       |          |                                                   |                                                 |
| 801 Loan Origination Fee                                                          | % to                                   |                       |          |                                                   |                                                 |
| 802 Loan Discount                                                                 | % to                                   |                       |          |                                                   |                                                 |
| 803. Appraisal Fee                                                                | to Fairway Appraisals, Inc.            | POC \$300.00 B        |          | 50.00                                             |                                                 |
| 804 Credit Report                                                                 | to CBC                                 |                       |          | 14.79                                             |                                                 |
| 805 Flood Cert                                                                    | to Stewart Flood Provider              |                       |          | 12.00                                             |                                                 |
| 806 Commitment Fee                                                                | to Southern Community Bank             |                       |          | 350.00                                            |                                                 |
| 807 Assumption Fee                                                                | to                                     |                       |          |                                                   |                                                 |
| 808                                                                               |                                        |                       |          |                                                   |                                                 |
| 809                                                                               |                                        |                       |          |                                                   |                                                 |
| 810                                                                               |                                        |                       |          |                                                   |                                                 |
| 811                                                                               |                                        |                       |          |                                                   |                                                 |
| 900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE                               |                                        |                       |          |                                                   |                                                 |
| 901 Interest From 11/13/06 to 12/01/06 @ \$ 30.480000/day ( 18 days %)            |                                        |                       |          | 548.64                                            |                                                 |
| 902 Mortgage Insurance Premium for months to                                      |                                        |                       |          |                                                   |                                                 |
| 903 Hazard Insurance Premium for 10 years to Craig R. Brown Agency, Inc.          |                                        |                       |          | 734.00                                            |                                                 |
| 904 Flood Insurance Premium 10 years                                              |                                        |                       |          |                                                   |                                                 |
| 905                                                                               |                                        |                       |          |                                                   |                                                 |
| 1000. RESERVES DEPOSITED WITH LENDER                                              |                                        |                       |          |                                                   |                                                 |
| 1001 Hazard Insurance                                                             | 4 000 months @ \$ 61.16 per month      |                       |          | 244.64                                            |                                                 |
| 1002 Mortgage Insurance                                                           | months @ \$ per month                  |                       |          |                                                   |                                                 |
| 1003 City/Town Taxes                                                              | months @ \$ per month                  |                       |          |                                                   |                                                 |
| 1004 County Taxes                                                                 | 3 000 months @ \$ 185.49 per month     |                       |          | 559.47                                            |                                                 |
| 1005 Assessments                                                                  | months @ \$ per month                  |                       |          |                                                   |                                                 |
| 1006 Flood Insurance Premium                                                      | months @ \$ per month                  |                       |          |                                                   |                                                 |
| 1007                                                                              | months @ \$ per month                  |                       |          |                                                   |                                                 |
| 1008 Aggregate Adjustment                                                         | months @ \$ per month                  |                       |          | -61.06                                            |                                                 |
| 1100. TITLE CHARGES                                                               |                                        |                       |          |                                                   |                                                 |
| 1101 Settlement or Closing Fee                                                    | to Mario S. Inglesse, PC               |                       |          | 390.00                                            |                                                 |
| 1102 Abstract or Title Search                                                     | to Charles M. Feeley                   |                       |          | 175.00                                            |                                                 |
| 1103 Title Examination                                                            | to Title Update                        |                       |          |                                                   |                                                 |
| 1104 Title Insurance Binder                                                       | to Mario S. Inglesse, PC               |                       |          | 75.00                                             |                                                 |
| 1105 Document Preparation                                                         | to Mario S. Inglesse, PC               |                       |          |                                                   | 175.00                                          |
| 1106 Satisfaction Processing Fee                                                  | to Mario S. Inglesse, PC               | \$5 per satisfaction  |          |                                                   | 5.00                                            |
| 1107 Attorney's Fees                                                              | to                                     |                       |          |                                                   |                                                 |
| (includes above item numbers)                                                     |                                        |                       |          |                                                   |                                                 |
| 1108 Title Insurance                                                              | to Investors Title Insurance Company   |                       |          | 640.50                                            |                                                 |
| (includes above item numbers)                                                     |                                        |                       |          |                                                   |                                                 |
| 1109 Lender's Coverage                                                            | \$ 178,000.00                          | 75.00                 |          |                                                   |                                                 |
| 1110 Owner's Coverage                                                             | \$ 266,000.00                          | 565.50                |          |                                                   |                                                 |
| 1111 Courier Fee                                                                  | to Mario S. Inglesse, PC               |                       |          | 25.00                                             | 25.00                                           |
| 1112 E-Mail Package Fee                                                           | to Mario S. Inglesse, PC               |                       |          | 25.00                                             |                                                 |
| 1113 Wire Fee                                                                     | to Mario S. Inglesse, PC               |                       |          | 15.00                                             |                                                 |
| 1200. GOVERNMENT RECORDING AND TRANSFER CHARGES                                   |                                        |                       |          |                                                   |                                                 |
| 1201 Recording Fees. Deed \$ 10.00, Mortgage \$ 25.00, Releases \$                |                                        |                       |          | 35.00                                             |                                                 |
| 1202 City/County Tax/Slamps Deed                                                  |                                        |                       |          |                                                   |                                                 |
| 1203 State Tax/Slamps Revenue Slamps                                              | 984.20, Mortgage                       |                       |          |                                                   | 984.20                                          |
| 1204 Assignment of Mortgage                                                       | to Dorchester County Register of Deeds |                       |          | 7.00                                              |                                                 |
| 1205                                                                              |                                        |                       |          |                                                   |                                                 |
| 1300. ADDITIONAL SETTLEMENT CHARGES                                               |                                        |                       |          |                                                   |                                                 |
| 1301 Survey                                                                       | to                                     |                       |          |                                                   |                                                 |
| 1302 Pest Inspection                                                              | to                                     |                       |          |                                                   |                                                 |
| 1303 Administrative Fee                                                           | to Ravenel & Associates                |                       |          | 100.00                                            |                                                 |
| 1304 HOA Late Fee                                                                 | to Ravenel & Associates                |                       |          |                                                   | 25.00                                           |
| 1305                                                                              |                                        |                       |          |                                                   |                                                 |
| 1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K) |                                        |                       |          | 3,939.98                                          | 22,814.20                                       |

Certified to be a true copy.

The undersigned hereby acknowledge receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein. I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT

Borrower

John A. Harper

Amy E. Harper

Seller

Carl H. Beal, Jr.

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION

Mario S. Inglesse, PC

Settlement Agent

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010.

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS  
) THE NINTH JUDICIAL CIRCUIT

MARIO S. INGLESE and MARIO S.  
INGLESE, PC,  
Plaintiffs,

) C/A Number: 2010-CP-10-10108  
)

v.

) CERTIFICATE OF SERVICE  
)

LINDA ERICKSON, RUSSELL S.  
STEMPKÉ, and CARL H. BEAL, JR.,  
Defendants.

I, Charles M. Feeley, hereby certify that I served a copy of the attached Notice of Motion and Motion to Reconsider Order Granting Summary Judgment on the below-named Defendant by mailing a copy of same via First Class U.S. Mail, with proper postage affixed thereto, to the said Defendant's counsel of record, addressed as follows:

Eugene P. Corrigan, III  
Corrigan & Chandler, LLC  
12 Exchange Street  
Charleston, SC 29401

FILED  
2011 DEC 19 PM 5:34  
JULIE J. ARMSTRONG  
CLERK OF COURT



Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
ATTORNEY FOR THE PLAINTIFF

December 19, 2011  
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-10108

*Mario S. Inglese and Mario S. Inglese, PC,*

*Appellants,*

v.

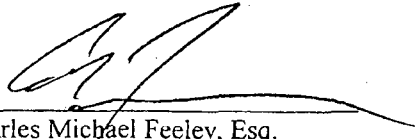
*Linda Erickson, Russell S. Stempke and Carl H. Beal, Jr., Defendants,*

*of whom Carl H. Beal, Jr. is,*

*Respondent.*

NOTICE OF APPEAL

Mario S. Inglese and Mario S. Inglese, PC appeal the order of the Honorable R. Markley Dennis, dated December 7, 2011. Appellants received written notice of entry of this order on December 12, 2011, and filed a motion to reconsider on December 19, 2011. Appellant received written notice of entry of the order denying the motion to reconsider on January 24, 2012.

  
Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
ATTORNEY FOR THE APPELLANTS

February 21, 2012  
Charleston, South Carolina

FILED  
2012 FEB 22 PM 4:02  
JULIE J. ARNSTROM  
CLERK OF COURT  
BY 

Other Counsel of Record:  
Eugene P. Corrigan, III, Esq.  
Harry V. Ragsdale, Esq.  
Corrigan & Chandler, LLC  
PO Box 547  
Charleston, SC 29402  
Telephone: (843) 577-5410  
*ATTORNEYS FOR THE RESPONDENT*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-10108

*Mario S. Inglese and Mario S. Inglese, PC,*

*Appellants,*

v.

*Linda Erickson, Russell S. Stempke and Carl H. Beal, Jr., Defendants,*

*of whom Carl H. Beal, Jr. is,*

*Respondent.*

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, Carl H. Beal, Jr., by depositing a copy of it in the United States Mail, postage prepaid, on February 21, 2012, addressed to his attorneys of record, Eugene P. Corrigan, III, Esq. and Harry V. Ragsdale, Esq., Corrigan & Chandler, LLC, PO Box 547, Charleston, SC 29402.

  
Charles Michael Feeley, Esq.  
451 Folly Road  
Charleston, South Carolina 29412  
Telephone: (843) 324-8763  
ATTORNEY FOR THE APPELLANTS

February 21, 2012  
Charleston, South Carolina

FILED  
2012 FEB 22 PM 4:02  
JULIE J. ARMSTRONG  
CLERK OF COURT

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-10-10108

MARIO S. INGLESSE AND MARIO S. INGLESSE, PC

LINDA ERICKSON, RUSSELL S. STEMPEKE, AND CARL H.  
BEAL, JR.

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 HERE):  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: DEFENDANT CARL H. BEAL'S MOTION FOR SUMMARY JUDGMENT IS GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.  
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC 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<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
| N/A                                          | N/A                                      | \$N/A                                                    |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]*  
Circuit Court Judge

2060  
Judge Code

12/07/2011  
Date

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
MARIO S. INGLESE and MARIO S.,  
INGLESE, PC,

Plaintiffs,

vs.

LINDA ERICKSON, RUSSELL S.  
STEMPKE, and CARL H. BEAL, JR.,

Defendants.

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

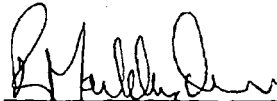
CASE NO. 2010-CP-10-10108

**ORDER**

FILE  
2012 JAN 20 PM 4:  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY

This matter comes before me upon Motion for Reconsideration filed by Charles M. Feeley, Esquire, Attorney for Plaintiff, Mario S. Inglese, on December 19, 2011. After fully considering said Motion, this Court finds no need for oral argument in this matter and therefore the Motion for Reconsideration is respectfully **DENIED**;

**AND IT IS SO ORDERED!**

  
R. MARKLEY DENNIS, JR.  
Presiding Judge, Ninth Judicial Circuit

BY  
JULIE J. ARMSTRONG  
CLERK OF COURT  
2012 JAN 20 PM 4:12

FILED

January 13, 2012

Charleston, South Carolina

CHARLES MICHAEL FEELEY  
ATTORNEY AT LAW  
451 FOLLY ROAD  
CHARLESTON, SOUTH CAROLINA 29484  
TELEPHONE (843) 324-8763  
FAX (843) 795-0666

February 21, 2012

Hon. Tanya Gee, Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

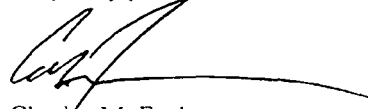
Charleston County Clerk of Court ✓  
100 Broad Street, Suite 106  
Charleston, SC 29401

RE: NOTICE OF APPEAL  
Inglese, et al, v. Erickson, et al / Case No. 2010-CP-10-10108

Dear Ms. Gee:

In reference to the above-captioned action, please find enclosed an original and one copy of the Notice of Appeal. Please file the original of record with your office and return to me the copy stamped "filed", via the enclosed envelope. A check in the amount of \$100.00 made payable to the South Carolina Court of Appeals is enclosed for the filing fee. Thank you for your attention and assistance in this matter.

Very truly yours,



Charles M. Feeley

Encl.

cc: Eugene P. Corrigan, III, Esq.  
Harry V. Ragsdale, Esq.  
Corrigan & Chandler, LLC  
PO Box 547  
Charleston, SC 29402  
Attorneys for the Respondent

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

---

Case No. 2010-CP-10-10108

---

*MARIO S. INGLESE and MARIO S. INGLESE, PC,*  
*Appellants,*

v.

*LINDA ERICKSON, RUSSELL S. STEMPE and CARL H. BEAL, JR., Defendants,*

*of whom Carl H. Beal, Jr. is,*

*Respondent.*

---

*CERTIFICATE OF COUNSEL*

---

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



---

Charles Michael Feeley, Esq.  
*Attorney for the Appellants*

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable R. Markley Dennis, Jr., Circuit Court Judge

Case No. 2010-CP-10-10108

*MARIO S. INGLESE and MARIO S. INGLESE, PC,*  
*Appellants,*

v.

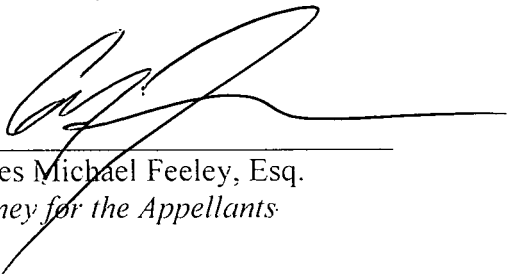
*LINDA ERICKSON, RUSSELL S. STEMPKE and CARL H. BEAL, JR., Defendants,*

*of whom Carl H. Beal, Jr. is,*

*Respondent.*

*PROOF OF SERVICE*

I hereby certify that a true copy of the *RECORD ON APPEAL* in the above-captioned case was served upon the Respondent, by mailing a copy of same to his counsel of record, Eugene P. Corrigan, III, Esq. and Harry V. Ragsdale, Esq., via First-Class U.S. Mail, addressed as indicated below and with proper postage affixed, on June 7, 2012.

  
Charles Michael Feeley, Esq.  
*Attorney for the Appellants*

*As to the Respondent:*  
Eugene P. Corrigan, III, Esq.  
Harry V. Ragsdale, Esq.  
Corrigan & Chandler, LLC  
PO Box 547  
Charleston, SC 29402

**RECEIVED**  
JUN 6 8 2012  
**SC Court of Appeals**