

The State Of South Carolina
In The Court Of Appeals

Appeal from Beaufort County
Court Of Common Pleas
The Honorable Marvin H. Dukes, III,
Master-In-Equity

Civil Action No. 2008-CP-07-00517

Gregory M. Gottschlich and Donald L. McNeil,

Appellants,

versus

Strimpfel Custom Homes, Inc., Joseph A. Reeve,
Jerry L. Richardson, Coastal Surveying Co., Inc.,
Thomas N. Dye, Jan H. Dye, Ken Oliver,
The Byrne Corporation d/b/a Dunes Marketing Group,
Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman,

Defendants,

Of whom

Ken Oliver, The Byrne Corporation d/b/a Dunes Marketing Group,
Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman
are the

Respondents.

**RECORD ON APPEAL
VOLUME I OF III (pp. 1-488)**

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**GOTTSCHLICH and McNEIL v. KEN OLIVER, THE BYRNE
CORPORATION d/b/a DUNES MARKETING GROUP, LAURICH & DEEB,
P.A., ROBERT M. DEEB, JR. and CHARLES H. WISEMAN**

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

GREGORY M. GOTTSCHLICH AND) C/A No.: 2008-CP-07-00517
DONALD L. MCNEIL,)

PLAINTIFFS,)

vs.)

STRIMPFEL CUSTOM HOMES, INC.;)
JOSEPH A. REEVE; JERRY L.)
RICHARDSON; COASTAL SURVEYING)
CO., INC.; THOMAS N. DYE; JAN H. DYE;)
KEN OLIVER; THE BYRNE CORPORATION)
D/B/A DUNES MARKETING GROUP;)
LAURICH & DEEB, P.A.; ROBERT M.)
DEEB, JR. AND CHARLES H. WISEMAN,)

DEFENDANTS.)

ORDER GRANTING SUMMARY
JUDGMENT ON ALL LEGAL CLAIMS
TO DEFENDANTS THOMAS N. AND
JAN H. DYE, KEN OLIVER, THE
BYRNE CORPORATION D/B/A DUNES
MARKETING GROUP, AND LAURICH
& DEEB, P.A., ROBERT M. DEEB, JR.
AND CHARLES H. WISEMAN
(NOT DISMISSING EQUITABLE
CLAIMS AGAINST DYE)

THIS MATTER CAME BEFORE THE COURT by way of separate Motions for Summary Judgment filed by Defendants Thomas N. Dye and Jan H. Dye ("Dyes"), Defendants Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman (collectively "Laurich & Deeb")¹ and Defendants Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group (collectively, "Dunes Marketing"). After due notice, a hearing was held on December 16, 2009 in Beaufort County, South Carolina. Present at the hearing were counsel for all interested parties: John D. Hudson, Jr., Esq. and Austin Smith, Esq., for Plaintiffs, Katherine E. Graham, Esq. for the Dyes, Susan Taylor Wall, Esq. and Amanda C. Williams, Esq., for Laurich & Deeb, and Max G. Mahaffee, Esq., for Dunes Marketing. The Court has carefully considered the motions, arguments of counsel, memoranda submitted in support of the parties' respective positions, and the law.

¹ Laurich & Deeb moved for summary judgment on three separate grounds. The Court has only considered the statute of limitations basis for summary judgment and reserves argument and ruling on the additional grounds should that be necessary.

LEGAL STANDARD

Rule 56, SCRPC, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). While viewing the evidence in a light most favorable to Plaintiffs, under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

FACTS

Plaintiffs purchased a vacation home at 48 Sea Lane in Hilton Head Island, South Carolina on December 2, 2003. The Dyes were the sellers, Laurich & Deeb served as Plaintiffs' closing attorneys, and Dunes Marketing served as Plaintiffs' real estate agent. On February 18, 2008, Plaintiffs filed a Complaint asserting claims against the Dyes, Dunes Marketing, and other Defendants, but not including Laurich & Deeb. On March 20, 2009, Plaintiffs filed an Amended Complaint adding Laurich & Deeb as a defendant. Plaintiffs contend that the home has an elevation that falls below the government's fourteen foot base flood elevation requirement, and they seek damages arising from this elevation issue. Plaintiffs have asserted causes of action against the Dyes and Dunes Marketing for negligent misrepresentation, violation of S.C. Code Ann. § 27-50-10 *et seq.*, negligence, breach of contract, breach of contract accompanied by fraudulent act, civil conspiracy, fraud, and constructive fraud. Plaintiffs have also asserted a cause of action against the Dyes for rescission and against Dunes Marketing for violation of Unfair Trade Practices Act and breach of fiduciary duty. As to Laurich & Deeb, Plaintiffs have

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asserted claims for professional negligence/legal malpractice, breach of contract, breach of fiduciary duty, and equitable indemnification. Plaintiffs' claims against these Defendants fail as a matter of law because the claims are barred by the statute of limitations.

DISCUSSION

The applicable three year statute of limitations relevant to the various causes of action are found under S.C. Code Ann. § 15-3-530. The law in South Carolina on statute of limitations is well developed and holds that the statute of limitations begins to run three years from when, through the exercise of reasonable diligence, a person knew or should have known that he might have a cause of action. *Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005); *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998). "The statute is not delayed until the injured party seeks advice of counsel or develops a full-blown theory of recovery; instead, reasonable diligence requires a plaintiff to 'act with some promptness.'" *Kelly v. Logan, Jolley, & Smith, L.L.P.*, 383 S.C. 626, 682 S.E.2d 1, 5 (Ct. App. 2009). "The date on which discovery should have been made is an objective, not subjective, question." *Kreutner v. David*, 320 S.C. 283, 285, 465 S.E.2d 88, 90 (1995). The statute of limitations is a question of law for the court "when only one reasonable inference can be deduced from the evidence." *Small v. Pioneer Machinery, Inc.*, 329 S.C. 448, 461, 494 S.E.2d 835, 842 (Ct. App. 1997).

A. Actual Knowledge

Plaintiffs argue that they did not have actual knowledge of the elevation issue until they sought excess flood insurance from their insurance agent in April 2006. Plaintiffs misapprehend the law when they contend that only upon actually knowing and appreciating the ramifications does the statute of limitations begin to run. In a case on point, the court recognized that the statutory period of limitations begins to run, not when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto, but rather when the person, through

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the exercise of reasonable diligence, knew or should have known that he might have a cause of action. *See Dorman v. Campbell*, 331 S.C. 179, 500 S.E.2d 786 (Ct. App. 1998). Plaintiffs should have known they might have a claim when they were faxed a copy of the 2001 elevation certificate, when Plaintiffs contacted their insurance agency for flood insurance, and an application based upon the elevation certificate was completed stating the house had a negative elevation, all of which occurred in November and December 2003. Although there is evidence that Plaintiffs knew of the negative elevation in December 2003, and again in 2004, because actual knowledge is not the sole test, a denial by Plaintiffs that they had actual knowledge in 2003 is not dispositive.

B. Inquiry Notice

In this case, Plaintiffs were on inquiry notice of the negative elevation on or before closing on December 2, 2003. Plaintiffs were faxed a copy of the elevation certificate on November 26, 2003. The elevation certificate stated that the elevation was less than the required fourteen feet. In addition, Plaintiffs prepared a pro forma stating that they thought their flood insurance would cost approximately \$500. In fact, they paid more than five times that amount in December 2003. In addition, Plaintiffs received their 2003 flood policy declaration page stating that the home had an elevation difference of negative one. Thereafter, Plaintiffs received on an annual basis renewal declaration pages providing the same negative elevation information. These are factors requiring that Plaintiffs exercise reasonable diligence in assessing whether a cause of action might exist. *See Dorman v. Campbell*, 331 S.C. 179, 183, 186, 500 S.E.2d 786, 788-90 (Ct. App. 1998) (upholding trial court's grant of summary judgment on statute of limitations grounds under similar factual circumstances). Plaintiffs had a duty to read and understand these documents, which were all part of their flood insurance contract. *See Regions*

Bank v. Schmauch, 354 S.C. 648, 663-64, 582 S.E.2d 432, 440 (Ct. App. 2003). A party to a contract cannot avoid the effect of the document's contents by claiming he did not read it. *Id.*

Because Plaintiffs, through the exercise of reasonable diligence, should have known that the home had a negative elevation in November 2003, again in December 2003, and annually thereafter, and Plaintiffs did not file suit against the Dyes and Dunes Marketing until February 18, 2008 and against Laurich & Deeb until March 20, 2009, Plaintiffs' claims are barred by the statute of limitations and must be dismissed as a matter of law.

Plaintiffs assert that Defendants are estopped from asserting the statute of limitations as a defense because one or all of them acted in a manner that induced plaintiff to delay in timely filing a claim. There is no evidence that Plaintiffs lacked the means of obtaining the knowledge of the truth of the facts in question; thus, the legal principle is inapplicable. *See Kelly v. Logan, Jolley, & Smith, L.L.P.*, 383 S.C. 626, 682 S.E.2d 1, 7. Plaintiffs had the means of obtaining knowledge of the negative elevation through the elevation certificate they received in 2003, the flood policy declaration pages they received annually, and through their insurance agent. Accordingly, Plaintiffs' claims are not tolled under a theory of equitable estoppel.

C. Imputed Knowledge

Even if Plaintiffs contend that their flood insurance agent did not inform them of the home's negative elevation in December 2003 or in 2004, they are imputed with the knowledge of their insurance agent, who obtained the elevation certificate and noted the negative elevation in filling out the flood application before closing on December 2, 2003, and in December 2004, attempted on their behalf to obtain a better premium, citing to the negative elevation as the basis for their inability to do so. It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309,

257 S.E.2d 496, 497 (1979). Plaintiffs cite *Pitts v. Jackson National Life Insurance Co.*, 352 S.C. 319, 331, 574 S.E.2d 502, 508 (Ct. App. 2002), for the proposition that an insurance agent cannot impute knowledge to an insured because there is no fiduciary relationship. The *Pitts* case, however, addresses the relationship between a customer and an insurance carrier, not an insurance agency. "An 'independent' insurance agent who represents several insurers is generally, like an insurance broker, characterized as the insured's agent in procuring or applying for insurance." See Restatement (Third) of Agency § 3.14 cmt. c (2006). Consequently, as a matter of law, the actual knowledge of Plaintiffs' insurance agent before December 2, 2003 and again in December 2004 is imputed to Plaintiffs. Thus, Plaintiffs had knowledge of the negative elevation in December 2003 and again in 2004 yet did not file suit against the Dyes, Dunes Marketing, or Laurich & Deeb within the three-year statute of limitations, and thus, their claims are barred.

D. Plaintiffs' equitable claims for rescission.

Plaintiffs have asserted a cause of action against the Defendants Dye for rescission. As statutes of limitations do not apply to actions in equity, this claim survives the motion. Dixon v. Dixon, 362 S.C. 388, 400, 608 S.E.2d 849, 855 (2005).

CONCLUSION

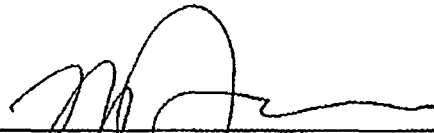
NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the statute of limitations on all legal claims as to the Dyes, Dunes Marketing, and Laurich & Deeb has run, and the case against Dunes Marketing, and Laurich & Deeb is dismissed, with prejudice. The claims of negligent misrepresentation, violation of S.C. Code Ann. § 27-50-10 *et seq.*, negligence, breach of contract, breach of contract accompanied by fraudulent act, civil conspiracy, fraud, and constructive fraud asserted against the Dyes are dismissed. The claim of rescission is not dismissed.

(signature next page)

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AND IT IS SO ORDERED.


MARVIN H. DUKES, III
Master-in-Equity

Monday, January 11, 2010
Beaufort, South Carolina

08-00517
SI order

COPY

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STATE OF SOUTH CAROLINA 10 MAY -3 PM IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) FOURTEENTH JUDICIAL CIRCUIT

GREGORY M. GOTTSCHLICH AND
DONALD L. MCNEIL,

PLAINTIFFS,

vs.

STRIMPFEL CUSTOM HOMES, INC.;
JOSEPH A. REEVE; JERRY L.
RICHARDSON; COASTAL SURVEYING
CO., INC.; THOMAS N. DYE; JAN H. DYE;
KEN OLIVER; THE BYRNE CORPORATION)
D/B/A DUNES MARKETING GROUP;
LAURICH & DEEB, P.A.; ROBERT M.
DEEB, JR. AND CHARLES H. WISEMAN,

DEFENDANTS.

C/A No.: 2008-CP-07-00517

ORDER DENYING PLAINTIFFS'
MOTION TO RECONSIDER AND/OR
ALTER OR AMEND ORDER
GRANTING SUMMARY JUDGMENT
TO DEFENDANTS THOMAS N. DYE,
JAN H. DYE, KEN OLIVER, THE
BYRNE CORPORATION D/B/A DUNES
MARKETING GROUP, LAURICH &
DEEB, P.A., ROBERT M. DEEB, JR.,
AND CHARLES H. WISEMAN

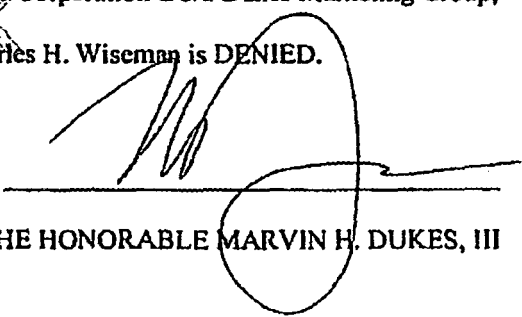
THIS MATTER CAME BEFORE THE COURT by way of Plaintiffs' Motion to Reconsider and/or Alter or Amend Order Granting Summary Judgment to Defendants Thomas N. Dye, Jan H. Dye, Ken Oliver, The Byrne Corporation d/b/a Dunes Marketing Group, Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman. After due notice, a hearing was held on March 16, 2010 in Beaufort County, South Carolina. Present at the hearing were counsel for all interested parties: Wesley Few, Esq., for Plaintiffs, Katherine E. Graham, Esq. for Thomas N. Dye and Jan H. Dye, Susan Taylor Wall, Esq. for Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman, and Max G. Mahaffee, Esq. for The Byrne Corporation d/b/a Dunes Marketing Group. The Court has carefully considered the motion, arguments of counsel, memoranda submitted in support of the parties' respective positions, and the law.

A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised, but was not, prior to judgment. *Dixon v. Dixon*, 362 S.C. 388, 400, 608 S.E.2d 849, 854 (2005); *Kiawah Prop. Owners Group v. Public Serv. Comm'n of South*

Carolina, 359 S.C. 105, 597 S.E.2d 145, 149 (2004). Accordingly, Plaintiffs are barred from asserting that their equitable indemnification claim against Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman was not subject to a statute of limitations defense because they failed to assert such an argument prior to filing their Rule 59(e) Motion. Furthermore, the Motion to Reconsider and accompanying arguments do not change the applicability of South Carolina statute of limitations law to this matter. Accordingly, for the reasons set forth in its Order Granting Summary Judgment to Defendants, the Court finds that it properly granted Defendants' Motion for Summary Judgment.

CONCLUSION

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' Motion to Reconsider and/or Alter or Amend Order Granting Summary Judgment to Defendants Thomas N. Dye, Jan H. Dye, Ken Oliver, The Byrne Corporation d/b/a Dunes Marketing Group, Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman is DENIED.
AND IT IS SO ORDERED.


THE HONORABLE MARVIN H. DUKES, III

May 7, 2010

Beaufort, South Carolina

292

2

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2008 CP07005

Gregory M. Gottschlich and
Donald L. McNeil,

Plaintiffs,

v.

Strimpfel Custom Homes, Inc.; Jerry L.
Richardson; Coastal Surveying Co. Inc.;
Thomas N. Dye and Jan H. Dye; Ken
Oliver; and The Byrne Corporation d/b/a
Dunes Marketing Group,

Defendants.

SUMMONS

2008 FEB 18 PM 12:56
ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

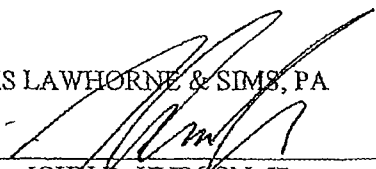
TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend within thirty (30) days from the date of service hereof and 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 the said Complaint upon the subscribers at their offices located at 1501 Main Street, Fifth Floor, Post Office Box 2285, Columbia, South Carolina 29202, within thirty (30) days after the service upon you, exclusive of the day of such service. If you fail to appear and defend and answer

~~the Complaint within the time aforesaid, judgment by default may be rendered against you~~

for the relief demanded in the Complaint.

ELLIS LAWHORNE & SIMS, PA

BY: 

JOHN D. HUDSON, JR.

WESLEY D. FEW

Post Office Box 2285

Columbia, South Carolina 29202

803-254-4190

Columbia, South Carolina

2/11, 2008

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL CIRCUIT

Gregory M. Gottschlich and
Donald L. McNeil,

Plaintiffs,

v.

Strimpfel Custom Homes, Inc.; Jerry L.
Richardson; Coastal Surveying Co. Inc.;
Thomas N. Dye and Jan H. Dye; Ken Oliver;
and The Byrne Corporation d/b/a Dunes
Marketing Group,

Defendants.

CIVIL ACTION NO. 2008CP070057

COMPLAINT

(Jury Trial Demanded)

2008 FEB 18 PM 12:56
ELIZABETH M. SMITH
BEAUFORT COUNTY S.C.
CLERK OF COURT

Plaintiffs Gregory M. Gottschlich and Donald L. McNeil (hereinafter "Plaintiffs"),
complaining of the Defendants above-named, would show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are citizens and residents of the State of Ohio. Plaintiffs are the legal owners of the real property and residential dwelling at 48 Sea Lane, Hilton Head Island, South Carolina 29928 (hereinafter "dwelling" or "property").

2. Upon information and belief, Defendant Strimpfel Custom Homes, Inc. (hereinafter "Defendant Strimpfel") is a South Carolina corporation with its principal place of business in Beaufort County, South Carolina. At all relevant times relevant hereto, Defendant Strimpfel was engaged in the business of, among other things, building residential dwellings in Beaufort County, South Carolina.

3. Upon information and belief, Defendant Jerry L. Richardson (hereinafter "Defendant Richardson") is a citizen and resident of Beaufort County, South Carolina. At all times relevant hereto, Defendant Richardson was a licensed surveyor engaged in the business of providing residential property surveying services in Beaufort County, South Carolina.

4. Upon information and belief, Defendant Coastal Surveying Co., Inc. (hereinafter "Defendant Coastal Surveying") is a South Carolina corporation with its principal place of business in Beaufort County, South Carolina. At all times relevant hereto, Defendant Coastal Surveying was engaged in the business of, among other things, providing residential property surveying services in Beaufort County, South Carolina.

5. Upon information and belief, Defendants Thomas N. Dye and Jan H. Dye (hereinafter "Defendants Dye") are citizens and residents of the state of Georgia. At all times relevant hereto, Defendants Dye were the legal owners of the real property and residential dwelling at 48 Sea Lane, Hilton Head Island, South Carolina 29928 immediately prior to the sale of the property to Plaintiffs.

6. Upon information and belief, Defendant Ken Oliver (hereinafter "Defendant Oliver") is a citizen and resident of Beaufort County, South Carolina. At all times relevant hereto, Defendant Oliver was a licensed real estate agent engaged in the business of, among

~~other things, marketing and selling residential real estate in Beaufort County, South Carolina. At~~
all times relevant hereto, Defendant Oliver was the real estate agent for Defendants Dye.

7. Upon information and belief, Defendant The Byrne Corporation d/b/a Dunes Marketing Group (hereinafter "Defendant Dunes Marketing") is a South Carolina corporation with its principal place of business in Beaufort County, South Carolina. At all times relevant

hereto, Defendant Dunes Marketing was engaged in the business of, among other things, marketing and selling residential property in Beaufort County, South Carolina.

FACTUAL BACKGROUND

8. On or about November 14, 1987, Defendant Strimpfel applied to the Town of Hilton Head Island for a building permit to construct a residential dwelling in the Palmetto Dunes subdivision at 48 Sea Lane, Hilton Head Island, South Carolina 29928.

9. The building permit application denoted the location of the dwelling to be in "FLOOD ZONE A7," consequently requiring a building elevation of fourteen (14) feet. A copy of the said building permit application is attached hereto as **Exhibit A** and incorporated herein by reference.

10. At all times relevant hereto, the residential building guidelines of the Federal Emergency Management Association (hereinafter "FEMA") National Flood Insurance Program (hereinafter "NFIP") and corresponding building code for Hilton Head Island required the bottom floor of the dwelling to be above the base flood elevation of fourteen (14) feet in the designated zone encompassing 48 Sea Lane.

11. On or about November 24, 1987, Defendant Richardson, in his capacity as an agent, servant or employee of Defendant Coastal Surveying, issued an elevation certificate on a ~~form provided by the FEMA-NFIP certifying that the dwelling at 48 Sea Lane "has the lowest~~ floor (including basement) at an elevation of 14.16 feet..." A copy of the said elevation certificate is attached hereto as **Exhibit B** and incorporated herein by reference.

12. Defendant Richardson knew when he issued the elevation certificate that the lowest floor of the dwelling was in fact at an elevation of less than fourteen (14) feet but, upon information and belief, issued the erroneous, falsified certification indicating an elevation level

of 14.16 feet based upon Defendant Strimpfel's representation that 24.75 inches would be added to the dwelling's base elevation level in order to bring the dwelling into compliance with the applicable FEMA elevation guidelines and the applicable Hilton Head Island building code. A copy of Defendant Coastal Surveying's "work order" to Defendant Strimpfel is attached hereto as **Exhibit C** and incorporated herein by reference.

13. Defendant Strimpfel never performed the elevation modification work as represented to Defendants Richardson and Coastal Surveying to bring the dwelling into compliance with the applicable FEMA guidelines and building codes; nevertheless, on or about May 23, 1988, Defendant Strimpfel obtained a certificate of occupancy for the dwelling based on, among other documentation, a false and an inaccurate elevation certificate. A copy of the said certificate of occupancy is attached hereto as **Exhibit D** and incorporated herein by reference.

14. Upon information and belief, Defendants Dye purchased the dwelling from Mr. and Mrs. Joseph Reeve in early 2001.

15. On or about March 23, 2001, Defendants Dye obtained a new elevation certificate from registered surveyor Jack Stuart Jones, Jr. The elevation certificate prepared by Jones dated March 28, 2001 certified that the lowest floor of the home (excluding a basement or enclosure)

~~was only 13.3 feet. The Jones elevation certificate also confirmed the base flood elevation (the~~
aforementioned minimum elevation as required by FEMA) for the dwelling to be fourteen (14) feet, nearly a foot higher than the actual, newly certified elevation of the dwelling. A copy of the Jones elevation certificate is attached hereto as **Exhibit E** and incorporated herein by reference.

16. In 2003 Defendants Dye contracted with Defendants Oliver and Dunes Marketing to list the dwelling for sale.

17. On or about November 6, 2003, Plaintiffs signed an "Exclusive Buyer Agency Agreement" with Defendant Dunes Marketing (a copy of which is attached hereto as Exhibit F and incorporated herein by reference) pursuant to which Defendant Dunes Marketing agreed to aid Plaintiffs in their search for a vacation home in the Hilton Head Island area. Greg Merrill, in his capacity as an agent, servant or employee of Defendant Dunes Marketing, eventually initiated negotiations on Plaintiffs' behalf regarding their potential purchase of the dwelling at 48 Sea Lane.

18. On or about October 5, 2003, Plaintiffs were provided by or on behalf of Defendants Dye a 24 point South Carolina Residential Property Condition Disclosure Statement (hereinafter "disclosure statement") from Defendant Dunes Marketing as required by S.C. Code Ann. § 27-50-10 *et seq.* In the disclosure statement, item 17 ("Violations or variances of building codes or Zoning ordinances") was checked as "No." A copy of the said disclosure statement is attached hereto as Exhibit G and incorporated herein by reference.

19. On or about November 6, 2003, Plaintiffs, relying on the representations in the disclosure statement made by or on behalf of Defendants Dye, executed a contract of sale with Defendants Dye for the dwelling. A copy of the said contract is attached hereto as Exhibit H and incorporated herein by reference.

~~20. The law firm of Laurich & Deeb, P.A., by and through its agent Robert M. Deeb, Jr., represented Plaintiffs with regard to the purchase of the dwelling. Plaintiffs, as part of the purchase process, granted specific power of attorney to Robert M. Deeb, Jr. and Laurich & Deeb, P.A. for the purchase and financing of the dwelling.~~

21. On or about December 2, 2003, Robert M. Deeb, Jr. conducted the closing for the property at 48 Sea Lane, and in the process made no mention of or inquiry into the adequate

insurability of the property as required by the closing instructions of the lender, Wells Fargo Home Mortgage, Inc.

22. Plaintiffs tendered to Defendants Dye during the course of the closing funds sufficient to satisfy the agreed upon \$1,395,000.00 purchase price.

23. In 2006 - in the wake of the destruction caused by Hurricane Katrina in the Gulf Coast states of Louisiana and Mississippi - Plaintiffs endeavored to increase the amount of flood insurance on the dwelling in order make sure it was sufficiently protected in the event a comparable natural disaster should befall the coast of South Carolina. In the process of doing so, Plaintiffs were informed by their insurance company that the dwelling was ineligible for increased coverage because it was non-compliant with FEMA guidelines due to its insufficient elevation.

24. Despite their efforts to date to locate and secure adequate flood insurance for the dwelling, Plaintiffs have been unable, and upon information and belief will remain unable, to procure flood insurance coverage in excess of the \$300,000 in mandated coverage.

FOR A FIRST CAUSE OF ACTION

**(Negligent Misrepresentation as to Defendants Strimpfel, Richardson, Coastal Surveying,
Thomas & Jane Dye, Oliver, and Dunes Marketing)**

25. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged
~~and incorporated herein by reference.~~

26. The above-named Defendants erroneously, inaccurately and falsely represented to Plaintiffs that the dwelling's elevation level was compliant with all applicable building code(s) and FEMA guidelines prior to and at the time of sale.

27. The above-named Defendants had a pecuniary interest in making the erroneous, inaccurate and false representation to Plaintiffs; moreover, upon information and belief, each of the above-named Defendants benefited financially from the sale of the dwelling to Plaintiffs.

28. The above-named Defendants owed a duty of care to Plaintiffs to convey and disclose truthful information about the condition of the dwelling, including but not limited to its elevation level.

29. The above-named Defendants breached their respective duties of care by failing to disclose to Plaintiffs the fact that the dwelling's elevation failed to comply with applicable building codes and FEMA guidelines.

30. Plaintiffs justifiably relied on the above-named Defendants' representations concerning the dwelling's elevation, and would not have agreed to purchase the dwelling had they been made aware of the dwelling's elevation deficiencies.

31. Plaintiffs suffered and continue to suffer a pecuniary loss as a direct and proximate result of their reliance on the above-named Defendants' false statements and misrepresentation of material fact.

32. Plaintiffs are entitled to a judgment against the above-named Defendants, jointly and severally, for actual damages in an amount to be proven at trial as well as punitive damages

~~due to the above-referenced Defendants' grossly negligent, wanton and reckless conduct.~~

FOR A SECOND CAUSE OF ACTION

(Violation of S.C. Code §27-50-10 *et seq.* (a/k/a "The Residential Property Condition Disclosure Act") as to Defendants Dye, Oliver and Dunes Marketing)

33. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

34. The above-named Defendants agreed to transfer the dwelling to Plaintiffs for good and valuable consideration pursuant to a valid and binding residential real estate contract.

35. Pursuant to South Carolina's Residential Property Condition Disclosure Act, the above-named Defendants made or caused to be made specific written representations on the owner's/seller's disclosure statement. In filling out or causing to be filled out the said disclosure statement, the above-named Defendants affirmatively represented that they had no knowledge of "[v]iolations or variances of building codes or zoning ordinances." The above-named Defendants made the said affirmative representation(s) despite knowing that the dwelling's elevation level was insufficient to comply with the applicable building codes and FEMA guidelines.

36. By affirmatively misrepresenting their knowledge of the dwelling's insufficient elevation, the above-named Defendants disclosed material information to Plaintiffs on the disclosure statement that they knew to be false, incomplete, or misleading, and in doing so violated one or more provision of the South Carolina Residential Property Condition Disclosure Act.

37. Plaintiffs are entitled judgment against the above-named Defendants, jointly and severally, for actual damages, the costs of this action, and attorney fees.

FOR A THIRD CAUSE OF ACTION

(Negligence as to Defendants Strimpfel, Richardson, Coastal Surveying, Dye, Oliver and Dunes Marketing)

38. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

39. The above-named Defendants had a duty to convey truthful and accurate material information to Plaintiffs during the course of the negotiation and sale of the dwelling.

40. The above-named Defendants breached their respective duties insofar as they either provided untruthful, inaccurate material information or failed to provide truthful, accurate information concerning the dwelling's insufficient elevation and non-compliance with applicable building codes and FEMA guidelines.

41. As a direct and proximate result of the above-named Defendants' acts and/or omissions, Plaintiffs have suffered damage in the form of:

- a. increased premium payments for the mandated \$300,000 flood insurance coverage on the dwelling;
- b. inability/ineligibility to purchase flood insurance in an amount in excess of \$300,000 in flood coverage for the dwelling;
- c. diminution in value of the dwelling given its lack of adequate insurability;
- d. potential costs, expenses, time and adverse consequential effects associated with having to increase the base elevation level of the dwelling to make it FEMA and local code compliant; and
- e. attorneys' fees and costs.

42. Plaintiffs are entitled to a judgment against the above-named Defendants, jointly and severally, for actual damages in an amount to be proven at trial.

~~FOR A FOURTH CAUSE OF ACTION~~

(Breach of Contract as to Defendants Dye, Dunes Marketing, and Oliver)

43. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

44. The above-named Defendants entered into (or as agents facilitated the formation of) a binding real estate contract with Plaintiffs for the purchase of the dwelling pursuant to which the said Defendants agreed to deliver the property defined therein as represented.

45. The above-named Defendants unjustifiably breached the contract by failing to deliver the dwelling to Plaintiffs in accordance with the terms and conditions of the contract.

46. Plaintiffs have incurred damages proximately caused by the above-named Defendants' breach of the contract.

47. As a result of the above-named Defendants' breach, Plaintiffs are entitled to a judgment for actual, consequential and special damages in an amount to be proven at trial.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act as to Defendants Dye, Dunes Marketing and Oliver)

48. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

49. The above-named Defendants entered into (or as agents facilitated the formation of) a binding real estate contract with Plaintiffs for the purchase of the dwelling pursuant to which the said Defendants agreed to deliver the property defined therein as represented.

50. The above-named Defendants unjustifiably breached the contract by failing to deliver the dwelling to Plaintiffs in accordance with the terms and conditions of the contract; moreover, the above-named Defendants acted with fraudulent intent relating to the said breach insofar as the said Defendants knew of the dwelling's insufficient elevation level.

~~51. The above-named Defendants knew or should have known that the dwelling's~~
elevation was insufficient and failed to comply with local building codes and FEMA guidelines, and the above-named Defendants' failure to inform Plaintiffs of this fact constitutes a fraudulent act.

52. As a direct and proximate result of the above-named Defendants' fraudulent breach of the contract, Plaintiffs are entitled to judgment and an award of actual, special and consequential damages as well as punitive damages in an amount to be proven at trial.

FOR A SIXTH CAUSE OF ACTION

(Violation of Unfair Trade Practices Act as to Defendants Stimpfel, Richardson, Coastal Surveying, Dunes Marketing and Oliver)

53. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

54. The above-named Defendants' conduct, individually and collectively, is unfair and deceptive and in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10, *et seq.*

55. The above-named Defendants' unfair and deceptive conduct affects the public interest and is capable of repetition by the said Defendants.

56. The above-named Defendants knew or should have known that their conduct was a violation of the South Carolina Unfair Trade Practices Act and therefore willfully and knowingly violated that Act.

57. The unfair and deceptive conduct of the above-named Defendants proximately caused the Plaintiffs actual damages.

~~58. Plaintiffs are entitled to a judgment and an award of actual damages trebled, the costs of this action, and attorneys' fees in an amount to be proven at trial.~~

FOR A SEVENTH CAUSE OF ACTION

(Civil Conspiracy as to Defendants Stimpfel, Richardson, Coastal Surveying, Dye, Oliver and Dunes Marketing)

59. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

60. The above-named Defendants combined and conspired to deceive purchasers of the dwelling, including but not limited to Plaintiffs, by not only failing to construct the dwelling to an adequate elevation level, but also by generating erroneous, inaccurate and false documentation, and making material misrepresentations of fact to Plaintiffs to induce Plaintiffs to purchase a home that they would not have purchased but for the material misrepresentation(s) of fact made by the above-named Defendants.

61. The above-named Defendants' conspiracy was done in a willful and wanton manner and with a reckless and total disregard for Plaintiffs' rights.

62. The above named Defendants' conspiracy has caused Plaintiffs to suffer special damages.

63. Plaintiffs are entitled to a judgment and an award of actual damages, special damages, punitive damages and the costs of this action in an amount to be proven at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendants Dunes Marketing)

64. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

65. Plaintiffs entrusted the above-named Defendants to represent, aid and assist them in the negotiation, purchase and closing of the property at 48 Sea Lane.

66. The above-named Defendants represented to Plaintiffs that they were experienced and capable of managing the transaction in accordance with the related fiduciary obligations of a licensed real estate agent and/or broker.

67. The above-named Defendants, as fiduciaries, were duty-bound to look out for and protect Plaintiffs' interests in handling above-described aspects of the purchase transaction, and

to advise Plaintiffs of material issues related to the transaction, including the obligation to inform and disclose to Plaintiffs known obstacles to adequately insuring their future home.

68. The above-named Defendants breached their fiduciary obligations to Plaintiffs.

69. As a direct and proximate result of the breach(es), Plaintiffs are entitled to a judgment against these defendants and actual, special and punitive damages in an amount to be proven at trial.

FOR A NINTH CAUSE OF ACTION

(Fraud as to Defendants Strimpfel, Richardson, Coastal Surveying, Thomas & Jane Dye,
Oliver, and Byrne Corporation d/b/a Dunes Marketing)

70. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

71. The above-named Defendants, individually and collectively, made material misrepresentations of existing fact to Plaintiffs insofar as said Defendants concealed from Plaintiffs the fact that the dwelling's elevation level failed to conform to applicable building code provisions and FEMA guidelines.

72. The above-referenced misrepresentations were false when made insofar as the dwelling's elevation was in fact well below the minimum elevation level required by FEMA guidelines and the applicable building code.

~~73. The above-referenced misrepresentations were material to Plaintiffs' decision to~~
purchase the dwelling in that it induced Plaintiffs to consummate their offer to purchase the dwelling for a significant amount of money.

74. The above-referenced Defendants knew that the misrepresentations were false when made or made the misrepresentations in reckless disregard of their truth or falsity.

75. The above-referenced Defendants intended that Plaintiffs act on the misrepresentations.

76. Plaintiffs did not know the misrepresentations were false when made.

77. Plaintiffs relied on the accuracy and veracity of the misrepresentations in their purchase of the dwelling.

78. Plaintiffs had the right to rely on the misrepresentations and were justified in their reliance.

79. Plaintiffs have suffered damage as a direct and proximate result of Defendants' misrepresentations.

80. Plaintiffs are entitled to a judgment against the above-named Defendants for actual, special and consequential damages, attorneys' fees and costs, and punitive damages in an amount to be proven at trial.

FOR A TENTH CAUSE OF ACTION

(Constructive Fraud as to Defendants Strimpfel, Richardson, Coastal Surveying, Thomas & Jane Dye, Oliver, and Byrne Corporation d/b/a Dunes Marketing)

81. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

82. The above-named Defendants, individually and collectively, made material misrepresentations of existing fact to Plaintiffs insofar as said Defendants concealed from Plaintiffs the fact that the dwelling's elevation level failed to conform to applicable building code provisions and FEMA guidelines.

83. The above-referenced misrepresentations were false when made insofar as the dwelling's elevation was in fact well below the minimum elevation level required by FEMA guidelines and the applicable building code.

84. The above-named Defendants should have known the misrepresentations were false when made.

85. The misrepresentations were material to Plaintiffs' decision to purchase the dwelling; moreover, Plaintiffs would not have purchased the dwelling had they been aware of the misrepresented information.

86. The above-named Defendants intended that Plaintiffs act upon the misrepresentations.

87. Plaintiffs were ignorant of the falsity of the above-named Defendants' misrepresentations.

88. Plaintiff's justifiably relied on the above-named Defendants' misrepresentations.

89. Plaintiffs, as good faith purchasers, had a right to rely upon the above-named Defendants' misrepresentations.

90. Plaintiffs have suffered damage as a direct and proximate result of the above-named Defendants' misrepresentations.

91. Plaintiffs are entitled to a judgment against the above-named Defendants for actual, special and consequential damages, attorneys' fees and costs, and punitive damages in an amount to be proven at trial.

FOR AN ELEVENTH CAUSE OF ACTION
(Rescission as to Defendants Dye and Dunes Marketing)

92. The foregoing paragraphs, to the extent not inconsistent herewith, are re-alleged and incorporated herein by reference.

93. Upon information and belief, the above-named Defendants knew prior to marketing and selling the property that its elevation level was insufficient and failed to comply with FEMA guidelines and applicable building codes. Despite this awareness, Defendants Dye and Dunes Marketing failed to disclose this material information to Plaintiffs during the purchase process.

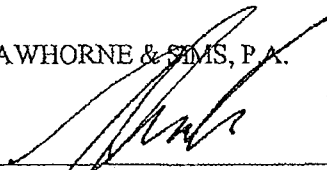
94. The above-named Defendants knowing and intentional failure to disclose the dwelling's insufficient elevation level to Plaintiffs constitutes fraudulent conduct sufficient to constitute a substantial and material breach of the real estate contract.

95. Upon information and belief, Plaintiffs will never receive the full benefit of their bargain with the above-named Defendants, and the status quo ante can be restored only if the sale transaction is abrogated and undone completely so as to return the parties to their pre-contract positions.

96. Based on the above, Plaintiffs are entitled to the equitable remedy of rescission of the contract, title and deed, the refund of the purchase price, and compensation for the additions and improvements they have made to the property after the closing.

WHEREFORE, Plaintiffs pray for actual, special, consequential and punitive damages as allowed by law, the rescission-based remedies set forth above, attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

JOHN D. HUDSON, JR.

WESLEY D. FEW

~~1701 Main Street, Fifth Floor~~

Post Office Box 2285

Columbia, South Carolina 29202

TEL: (803) 254-4190

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

2/7, 2008

Jul. 18. 2007 3:49PM PECTIONS DEPT.

054+04 No. 2679 P. 4# 2/ 5

TOWN OF HILTON HEAD ISLAND

GEN CONTR. BUS LIC. # 70953

DEPARTMENT OF PLANNING AND INSPECTION

GEN CONTR. STATE LIC. # IF APPLICABLE

APPLICATION FOR BUILDING PERMIT

4014

RECEIVED 5-20-12A-168

LOCATION OF BUILDING LOT 27 STREET SEA LANE BLOCK ELEVATION PALMETTO DUNES
FLOOD ZONE A7 ELEVATION REQUIRED 14

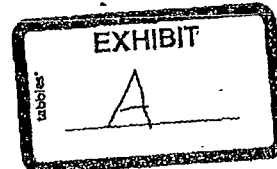
OWNER	NAME	MAILING ADDRESS, NO. ST.	CITY & STATE	ZIP CODE	TELEPHONE
OWNER	M/M JOSEPH REEVE	48 SEA LANE, HILTON HEAD	S.C.	29928	842-2195
GEN CONTR. ELECT	STRIMPFEL CUSTOM HOMES	P.O. BOX 6195 HILTON HEAD	S.C.	29938	785-8286
PLUMB	JOSEPH A. REEVE	Town Trade Certi # 195	P.O. BOX 6195 HILTON HEAD, S.C.	29938	785-8286
MECH	UNDERWOOD PLUMBING	Town Trade Certi # 062	RT.1 BOX 332 RINCON, GA.	31326	(712) 626-2091
ARCH-ITCT.	A-I HEATING	Town Trade Certi # 19	P.O. BOX 758 BLUESTON, S.C.	29910	842-5600
ARCH-ITCT.	JOSEPH A. REEVE	48 SEA LANE, HILTON HEAD	S.C.	29928	842-2195

BUILDING \$ 124,305.00 Construction Cost Data
PLUMBING \$ 9,475.00
TOTAL COST OF CONSTRUCTION \$ 145,860.00
ELECT. MECH. \$ 3,500.00
HVAC \$ 8,500.00
156,600.00

TYPE IMPROVEMENT NEW RESIDENCE CONSTRUCTION
PROPOSED USE SINGLE FAMILY
FRAME TYPE FRAME WOOD FRAME
TYPE SEWAGE CITY/COUNTY
NUMBER BEDROOMS 4
NUMBER BATHROOMS 4
NUMBER STORES 2
TOTAL FLOOR SQ FT 4,176 SQ. FT.
CENTRAL A/C YES
ELEVATOR NO
OUTSIDE WALLS SHEETROCK
TYPE FLOORING WOOD, CERAMIC TILE, VINYL, CARPET

Signature *Strimpfel Custom Homes, Inc.*
Charles J. Lane

Date 11/14/07



16477

Permit # 7653



FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

OMB 5907-0077
Rev. 1/14/01

ELEVATION CERTIFICATE

This form is to be used for: 1) New Emergency Program construction in Special Flood Hazard Areas; 2) Pre-FIRM construction after September 30, 1982; 3) Post-FIRM construction; and, 4) Other buildings listed as Post-FIRM rules.

BUILDING OWNER'S NAME ADDRESS
Lot 27 Sea Lane - Palmetto Dunes
PROPERTY LOCATION (Lot and Block numbers and address if applicable)
Hilton Road Island, 9C

I certify that the information on this certificate represents my best effort to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

SECTION I ELIGIBILITY CERTIFICATION (Certified by Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

COMMUNITY NO.	PARCEL NO.	PARCEL	DATE OF INFO	FIRM ZONE	DATE OF CONSTR.	BASE FLOOD ELEVATION (feet and inches)	BUILDING IS
							☐ New Emergency ☐ Pre-FIRM Reg. ☐ Post-FIRM Reg.

YES NO It is intended that the building described above will be constructed in compliance with the community's flood plain ordinance. The certifier may rely on community records. The lowest floor (including basement) will be at an elevation of _____ feet NGVD. Failure to construct the building at this elevation may place the building in violation of the community's flood plain management ordinance.

YES NO The building described above has been constructed in compliance with the community's flood plain management ordinance based on elevation data and visual inspection or other reasonably means. If NO is checked, attach copy of evidence issued by the community.

YES NO The mobile home located at the address described above has been tied down (anchored) in compliance with the community's flood plain management ordinance, or in compliance with the NFIP Specifications.

MOBILE HOME MAKE	MODEL	YR OF MANUFACTURE	SERIAL NO.	DIMENSIONS

(Community Permit Official or Registered Professional Engineer, Architect, or Surveyor)

NAME ADDRESS

TITLE CITY STATE ZIP

SIGNATURE DATE PHONE

SECTION II ELEVATION CERTIFICATION (Certified by a Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

FIRM ZONE A1-A30 I certify that the building at the property location described above has the lowest floor (including basement) at an elevation of 14.18 feet NGVD (mean sea level), and the average grade of the building site is at an elevation of 6.2 feet NGVD.

FIRM ZONES V, VI-V30. I certify that the building at the property location described above has the bottom of the lowest floor beam at an elevation of _____ feet NGVD (mean sea level), and the average grade of the building site is at an elevation of _____ feet NGVD.

FIRM ZONES A, A1-A30, AND EMERGENCY PROGRAM: I certify that the building at the property location described above has the lowest floor elevation of _____ feet NGVD. The elevation of the highest adjacent grade next to the building is _____ feet NGVD.

FIRM ZONE AO: I certify that the building at the property location described above has the lowest floor elevation of _____ feet NGVD. The elevation of the highest adjacent grade next to the building is _____ feet NGVD.

SECTION III FLOODPROOFING CERTIFICATION (Certification by a Registered Professional Engineer or Architect)

I certify to the best of my knowledge, information, and belief, that the building is designed so that the building is resistant, with walls substantially impervious to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy that would be caused by the flood depths, pressures, velocities, impact and uplift forces associated with the base flood.

YES ☐ NO ☐ In the event of flooding, will the degree of floodproofing be achieved with human intervention? (Human intervention means that water will enter the building which floods up to the base flood level, but within minutes are taken prior to the flood to prevent entry of water (e.g., bolting metal shields over doors and windows).)

YES ☐ NO ☐ Will the building be occupied as a residence? If the answer to both questions is YES, the floodproofing cannot be credited for rating purposes and the actual floor must be completed and certified within. Complete both the elevation and floodproofing certificates.

FIRM ZONES A, A1-A30, VI-V30, AO and AH. Certified Floodproofed Elevation is _____ feet NGVD.

THIS CERTIFICATION IS FOR ☐ SECTION II ☐ BOTH SECTIONS II AND III (Check One)

CERTIFIER'S NAME COMPANY NAME ADDRESS (or A/E/C Firm)

Jerry L. Richardson Coastal Surveying & Engineering Co., Inc.

TITLE ADDRESS ZIP

Registered S.C. Surveyor P.O. Box 1427 29924

SIGNATURE DATE CITY STATE PHONE

11/24/07 Hilton Road SC 601-4365

The insurance agent should attach the original copy of the completed form to the flood insurance policy application. The second copy should be supplied to the policyholder and the third copy retained by the agent.

INSURANCE AGENTS MAY ORDER THIS FORM
FEMA Form 01-31, SEP 84 REPLACES FEMA FORM 01-31, APR 82, WHICH IS OBSOLETE.

EXHIBIT

B

May Jul. 18. 2007 3:50PM

No. 2679 P. 111



DATE 11/23/87

WORK ORDER

NAME OF CLIENT Strimpfel

BILLING ADDRESS _____

WORKING INSTRUCTIONS _____

FFEC. add 24 3/4" to 9th course
lot 27 Sec 2N. P.D.

JOB NO. (Client) _____

C-JOB NO. 16477

RATE _____ FLAT RATE _____

PERSON REQUESTING WORK Ron

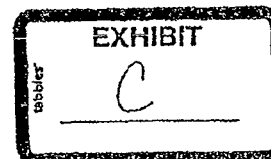
DATE COMPLETED

FIELD WORK _____

COMPUTATIONS _____

DRAFTING _____

BILLING _____



Jul. 18. 2007 3:49PM INSPECTIONS DEPT.

1884+8 No. 2679 P. 5 # 5/5

4



Date: 7/18/07

Single family bldg permit: # 7777 Amt 5777 Rec'd by C.C. Rec # 14853
Single family misc permit: # Amt Rec'd by Rec #
Cm./M1-for bldg permit: # Amt Rec'd by Rec # Auth:

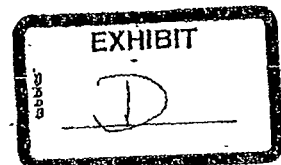
CERTIFICATE OF OCCUPANCY
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

THIS IS TO CERTIFY THAT THE STRUCTURE SITUATED AT LOT 37 DOG LANE
STREET, DIST. 100, MAP 12 A, PARCEL 161, HAS BEEN
CONSTRUCTED, ALTERED, MOVED IN ACCORDANCE WITH THE STANDARD BUILDING CODE
AND/OR THE ZONING ORDINANCE FOR HILTON HEAD ISLAND INCLUDING ANY AND ALL RELATED CODES OR
ORDINANCES ADOPTED BY THE TOWN IT IS FURTHER DECLARED THAT THE STRUCTURE HAS BEEN
INSPECTED AND IS PHYSICALLY SOUND AND STRUCTURALLY AND MECHANICALLY SAFE FOR HUMAN OCCUPANCY.

OWNER: M.H. & G. Brown CONTRACTOR: Stringfellow Custom Homes
OCCUPANCY: Residence TO BE USED AS: Residence
DATE: 5/23/07 BUILDING PERMIT NO.: 7653

NOTE: TOWN SEAL REQUIRED FOR APPROVAL

FILE COPY



Jul. 18. 2007 3:49PM

02/01 DP:48 FAX 8438865801

BETHA JORDAN GRIFFIN

No. 2679 P. 7

O.M.B. No. 3087-0077
Expires July 31, 2002FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM
ELEVATION CERTIFICATE

Job No 01096

SECTION A - PROPERTY OWNER INFORMATION			For Insurance Company Use
BUILDING OWNER'S NAME Thomson, M. and Jan H. Dye			Policy Number
BUILDING STREET ADDRESS (including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO. 48 Sea Lane			Company NAFO Number
CITY Hilton Head Island	STATE SC	ZIP CODE 29928	
PROPERTY DESCRIPTION (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) Lot 27, Tract B, Parcel 3, Block C, Palmetto Dunes Resort, Tax 620-12A-168			
BUILDING USE (e.g., Residential, Non-residential, Addition, Accessory, etc. Use Comments section if necessary.) Residential			
LATITUDE/LONGITUDE (OPTIONAL) (#° #'- ##" or #° ##' ##") N/A	HORIZONTAL DATUM ☐ NAD 1983 ☐ NAD 1983 N/A	SOURCE ☐ GPS (Type) ☐ USGS Quad Map ☐ Other	

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. FIRM COMMUNITY NAME & COMMUNITY NUMBER Hilton Head 450250		B2. COUNTY NAME Beaufort		B3. STATE SC	
B4. MAP AND PANEL NUMBER D014	B5. SURVEY D	B6. FIRM INDEX DATE 09/28/88	B7. FIRM PANEL EFFECTIVE/REVISED DATE N/A	B8. FLOOD ZONE (S) A7	B9. BASE FLOOD ELEVATION (Zone A0, use depth of flooding) 14.0

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in B9.
☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other (Describe):
 B11. Indicate the elevation datum used for the BFE in B9: ☒ NGVD 1989 ☐ NAVD 1988 ☐ Other (Describe):
 B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No Designation Code:

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building Elevations are based on: ☐ Construction Drawings ☐ Building Under Construction ☒ Finished Construction
 *A new Elevation Certificate will be required when construction of the building is complete.

C2. Building Diagram Number 8 (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7; if no diagram accurately represents the building, provide a sketch or photograph.)

C3. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, ARAE, AR/A1-A30, AR/AH, AR/A0
 Complete items C3a) below according to the building diagram specified in item C2. State the datum used. If the datum is different from the datum used for the BFE in Section B, convert the datum to that used for the BFE. Show field measurements and datum conversion calculation. Use the space provided or the Comments area of Section D or Section G, as appropriate, to document the datum conversion.
 Datum NGVD Conversion Comments: N/A

Elevation reference mark used 1929. Does this elevation reference mark used appear on the FIRM? ☐ Yes ☒ No

☐ a) Top of bottom floor (including basement or enclosure) 7.0 ft(m)
☐ b) Top of next higher floor 13.0 ft(m)
☐ c) Bottom of lowest horizontal structural member (V zones only) N/A ft(m)
☐ d) Attached garage (top of slab) 7.0 ft(m)
☐ e) Lowest elevation of machinery and/or equipment servicing the building 9.0 ft(m)
☐ f) Lowest adjacent grade (LAG) 6.0 ft(m)
☐ g) Highest adjacent grade (HAG) 7.0 ft(m)
☐ h) No. of permanent openings (flood vents) within 1 ft. above adjacent grade 0
☐ i) Total area of all permanent openings (flood vents) in C3h 95.602 sq. in. (sq. cm)

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information in Sections A, B, and C on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

CERTIFIER'S NAME Jack Stuart Jones, Jr. LICENSE NUMBER 19852

TITLE Land Surveyor COMPANY NAME Sea Island Land Survey

ADDRESS 40 Mathews Court CITY Hilton Head Island STATE SC ZIP CODE 29928

SIGNATURE *Jack Jones* DATE 28, March 2001 TELEPHONE (843) 881-3248

FEMA Form 81-31, AUG 99

SEE REVERSE SIDE FOR CONTINUATION

REPLACES AL

PLAINTIFF'S
EXHIBIT
E

IN THESE SPACES, COPY THE CORRESPONDING INFORMATION FROM SECTION A.

10003 STREET ADDRESS (OPTIONAL) _____

CITY _____ STATE _____ ZIP CODE _____

Hilton Head Island SC 29928

For Insurance Company Use:

Policy Number _____

Company/NAIC Number _____

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

COMMENTS

☐ Check here if attachment(s)

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zone AO and Zone A (without BFE), complete items E1 through E4. If the Elevation Certificate is intended for use as supporting information for a LOMA or LOMAF, Section C must be completed.

E1. Building Diagram Number _____ (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

E2. The top of the bottom floor (including basement or enclosure) of the building is _____ ft (m) _____ in (cm) ☐ above or ☐ below (check one) the highest adjacent grade.

E3. For Building Diagrams 6-8 with openings (see page 7), the next higher floor or elevated floor (elevation b) of the building is _____ ft (m) _____ in (cm) above the highest adjacent grade.

E4. For Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance?
☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here.

PROPERTY OWNER'S OR OWNER'S AUTHORIZED REPRESENTATIVE'S NAME

ADDRESS _____ CITY _____ STATE _____ ZIP CODE _____

SIGNATURE _____ DATE _____ TELEPHONE _____

COMMENTS

☐ Check here if attachment(s)

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below.

G1. ☐ The information in Section C was taken from other documentation that has been signed and embossed by a licensed surveyor, engineer, or architect who is authorized by state or local law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.G3. ☐ The following information (items G4-G9) is provided for community floodplain management purposes.

G4. PERMIT NUMBER _____	G5. DATE PERMIT ISSUED _____	G6. DATE CERTIFICATE OF COMPLIANCE/OCCUPANCY ISSUED _____

G7. This permit has been issued for: ☐ New Construction ☐ Substantial Improvement

G8. Elevation of as-built lowest floor (including basement) of the building is: _____ ft (m) _____ in (cm) Datum: _____

G9. BFE or (in Zone AO) depth of flooding at the building site is: _____ ft (m) _____ in (cm) Datum: _____

LOCAL OFFICIAL'S NAME _____ TITLE _____

COMMUNITY NAME _____ TELEPHONE _____

SIGNATURE _____ DATE _____

COMMENTS

☐ Check here if attachment(s)

11/08/2003 14:19 FAX 844 846 8604

MIDWEST ALLERGY CLINIC

0008

**DUNES MARKETING GROUP
EXCLUSIVE BUYER AGENCY AGREEMENT**

This EXCLUSIVE BUYER AGENCY AGREEMENT (the "Agreement") by and between GREGORY M. GOTTENLICH (the "Buyer"), and Dunes Marketing Group, a division of The Byrns Corporation ("Dunes"),

1. Purpose of Agency. Buyer hereby appoints Dunes as Buyer's exclusive agent for the purpose of representing Buyer in finding and buying real property in Beaufort/Jasper County.

2. Effect of Exclusive Buyer Agency. By appointing Dunes as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the property described above in Section 1 through Dunes, and to refer to Dunes all inquiries received in any form from brokers, salespersons, prospective sellers or any other source, during the time this Agreement is in effect.

3. Term. The term of this Agreement shall begin 11-4 2003 and shall continue through 11-4 2003.

4. Compensation of Dunes. In consideration of the services to be performed by Dunes, Buyer agrees to pay Dunes a brokerage fee at 0 % of 0 or \$ 0.

In the alternative, Dunes and Buyer have agreed that the brokerage fee shall be paid to Dunes totally from the Listing Broker, as agreed to through the Listing Broker's offer to cooperate (i.e. M.L.S. flyer, etc.) (Buyer's initials here).

Dunes's fee will be deemed earned when Buyer is under contract to purchase any property presented by Dunes or found by the Buyers themselves. The term "purchase" in the Agreement shall include any purchase, option, exchange, lease or trade entered into. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due to Dunes will be due and payable immediately in cash from the Buyer.

In addition, such brokerage fee described in this Section 4 shall be earned, due and payable to Dunes by the Buyer if property of the nature contemplated herein is purchased by the Buyer within 90 days after the termination of the Agreement or any extension thereof, if such property was introduced to the Buyer during the term of this Agreement by Dunes or any third party.

5. Other Potential Buyers. Buyer understands that other prospective purchasers may be represented by Dunes and that such other prospective purchasers may seek property, submit offers and contract to purchase property through Dunes, including the same or similar property as Buyer seeks to purchase. Buyer acknowledges, understands and consents to such representation of other prospective purchasers by Dunes through its agents.

6. Description of Services. Dunes shall:

a. Use professional knowledge and skills to locate real properties which may be available for purchase through the Multiple Listing Service ("MLS") or any other source the Agent may be aware of.

b. Show real property to the Buyer that meets Buyer's needs.

c. Represent the Buyer throughout the entire transaction in the purchase of real property which may include the following:

- (i) Provide assistance with financing opportunities.
- (ii) Provide information, facts, advantages and disadvantages.
- (iii) Negotiate all details of the Purchase Agreement.
- (iv) Assist attorneys, lenders, etc. in the closing of the property.



101232.11

BTA 1000 PM
XTD / R001 BTHIS AGREEMENT IS THE PROPERTY OF THE BYRNS CORPORATION
IT IS TO BE KEPT IN THE FILE OF THE BUYER AND NOT DESTROYED

11/06/2003 14:18 FAX 614 846 6304

MIDWEST ALLERGY CLINIC

0009

DUNES MARKETING GROUP
Page 7

7. Prohibition of Dual Agency. Buyer acknowledges that the Dunes also enters into contracts with persons (the "Seller") who wish to sell property. Such property is commonly known as a "Company Listing". If the Buyer wishes to view a Company Listing, Dunes may, with both Buyer's and Seller's consent, serve as a dual agent, after Dunes fully discloses the consequences of dual agency status. Since both Seller and Buyer have different interests in the negotiation process, certain differences or conflicts may arise. Accordingly, Dunes will represent both the Buyer and the Seller only with their written consent.

8. Miscellaneous. No assignment of rights obtained for Buyer pursuant to this Agreement shall operate to defeat any of Dunes' rights under this Agreement. Buyer acknowledges that Dunes is being retained solely as a real estate agent and recommends that Buyer seek independent professional advice concerning the condition of the property and legal and tax matters. Buyer shall hold harmless and indemnify Dunes from any liability caused by latent, undisclosed, pre-existing conditions, if any, arising from property purchased by Buyer under this Agreement, including but not limited to, structural and/or mechanical deficiencies which existed up until the time of closing. The parties hereto shall not discriminate in regard to any prospective Seller because of the race, creed, color, sex, marital status, national origin, familial or handicapped status of such person. This Agreement constitutes the entire agreement between the parties relating to the subject thereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including attorney's fees and court costs, from the non-prevailing party.

9. Additional Provisions

IN WITNESS WHEREOF, this Agreement is hereby signed to and duly executed.

Witness:

Witness:

Dunes Marketing Group
Post Office Box 21326
Hilton Head Island, SC 29925

Buyer:

Buyer:

Dunes:

By:

Date 11/6/03

Date 11/6/03

Date

710/0000

710/0000 710/0000 710/0000 710/0000 710/0000 710/0000 710/0000 710/0000 710/0000 710/0000

SELLER OF THE PROPERTY HEREBY CERTIFIES THAT YOU HAVE NO KNOWLEDGE OF ANY PROBLEM OR DEFECT WITHIN ANY OF THE FOLLOWING:

	Yes	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components, including any modifications? a. Siding: masonry _____ wood _____ composition/hardwood _____ vinyl _____ synthetic stucco _____ b. Approximate age of structure <u>13 years</u>	☒	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering <u>13 years</u>	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace _____ hot pump _____ baseboard _____ b. Cooling source: central _____ wall/window unit(s) _____ c. Fuel source: electricity _____ natural gas _____ propane _____ oil _____ d. Approximate age of heating unit _____ and cooling unit <u>11-13 years</u> & <u>2.5 years</u> & <u>1 year</u>	☐	☒	☐
7. Water supply (including water supply, quantity and water pressure)? a. Water supply is: city/county _____ community system _____ private well _____ b. Water pipes are: copper _____ galvanized _____ PVC/CPVC _____ polybutylene _____	☐	☒	☐
8. Septic system? a. Type system: septic tank _____ community system _____ connected to city/county system _____ city/county system available _____ b. Does the system require a pump? Yes _____ No ☒ c. Has the septic system been serviced/pumped during your ownership? ☐	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	☐	☒	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes _____ No ☒	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures: central vacuum _____ pool _____ hot tub _____ spa _____ attic fan _____ exhaust fan _____ ceiling fan _____ sump pump _____ irrigation system _____ cable tv wiring or satellite dish _____ security system _____ or other systems _____	☐	☒	☐

Full Name: John J. Miller Date: 3-14-03 Buyer: 10-25-03 Date: 10-25-03

Page 2 of 4



PAGE 10/12

[illegible]

Owner Signature: [Signature] Date: 8-04-03

Purchaser Signature: _____ Date: _____

Page 4 of 4

FORWARDING TO THE PROPERTY, BEING IDENTIFIED, INCLUDING THE LIST OF OTHER
IMPROVEMENTS AND UTILITIES LOCATED THEREON DO YOU HAVE KNOWLEDGE OF
ANY OTHER FACTS THAT COULD AFFECT THE PROPERTY?

	Yes	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substance, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, judgments, tax or other liens, proposed assessments or notice from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☒	☐	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage or garbage services provided to the property?	☐	☒	☐

PROPERTY OWNER'S REPRESENTATIVE, BY SIGNING ABOVE, REPRESENTS THAT THE
FOLLOWING INFORMATION IS TRUE AND CORRECT TO THE BEST OF HIS OR HER
KNOWLEDGE AND BELIEF.

#1 - Hand-poured floor in Dining Room, Entry, Kitchen, and Water Closet
from the main waterline - floor is being replaced with all standard
tiles will be replaced.

#13 - Converted 1/2 Bath into a full Bath in last 12 months.

Initials: _____ Seller _____ Date _____
Rev. 1/03

Buyer _____ Date _____

10-8-07
GMD
H. H. GUYER

Page 3 of 4

11/06/2003 14:18 FAX 814 848 8504

MIDWEST ALLERGY CLINIC

002

Post Office Box 21326
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(843) 842-1111
(800) 258-5202
Fax Number (843) 842-4748

CONTRACT OF SALE - OFFER AND ACCEPTANCE

Dr. Gregory M. Gottschlich and Dr. Don McNeil

whose address is: 3619 Vineyard Ridge, Cincinnati, OH 45241
2341 Kane Road, Columbus, OH 43220

Hereby agrees to purchase from:

Thomas N. and Jan E. Dye

whose address is: 210 Riverbush Place, Duluth, GA 30097

1. **PROPERTY DESCRIPTION.** Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in South Carolina and being described as follows:

Legal: 27 TA/21/80

Mailing: 48 Sea Lane

(the "Property")

2. **PURCHASE PRICE.** The total Purchase Price for the Property is \$ 1,395,000.00 to be paid by Purchaser as follows:

a.	Exact Money deposited herewith ("Deposit")	\$ 10,000.00
b.	Additional Deposit to be paid by _____	\$ _____
c.	A First Mortgage for at least _____ years at prevailing interest rates and terms	\$ 1,116,000.00
d.	Balance in cash at Closing	\$ 269,000.00

3. **FINANCING CONTINGENCY.** If referred to in Section 1-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County and the surrounding area. Purchaser shall use best efforts to obtain such a loan and shall supply the prospective lender(s) with all requisite information. The timing of this financing contingency is as follows:

a. Purchaser's loan application must be submitted within 4 days.
b. Purchaser shall obtain a comfort letter from the lender within 6 days.
c. Purchaser shall obtain a loan commitment within 10 days.

All time periods run from the date of this Contract. The "comfort letter" is to be in a form customarily used by lenders in Beaufort County.

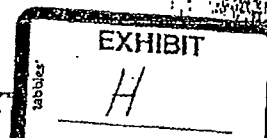
If Purchaser's bona fide application does not result in a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's Agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to terminate this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than five (5) days after the financing contingency expiration date. Upon receipt of notice and execution of any required release forms, the Lending Agency (or other Borrow Agent holding the funds) shall return to the Purchaser any sums heretofore paid as earnest money, and upon such payment this Contract shall have no force and effect and neither party hereto shall have any rights against the other hereunder. Notwithstanding the right to cure time period contained in Section 3, the parties acknowledge and agree that time is of the essence with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any requisite action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.

WITNESSED

Initials: Purchaser DM Date 11/6/03 Seller _____ Date _____

(Page 1)

270/2000



11/06/2003 14:18 FAX 814 846 6504

MIDWEST ALLERGY CLINIC

0003

11

12

4. **FURNISHINGS, SYSTEMS.** The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property and all plumbing and other equipment, and shall additionally include without limitation the following:

☒ Refrigerator ☒ Freezer ☒ Washer ☒ Dryer ☒ Stove/Oven ☒ Microwave ☒ Cook Top
☒ Dishwasher ☒ Ceiling Fans ☒ Irrigation System ☒ Pool Equipment ☐ Septic System ☐ Furnished
☐ Other _____

If sold furnished, all furniture & furnishings is included unless specifically excepted by an attached list of excluded items. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and the roof free of leaks at time of Closing.

5. **WOOD INFESTATION REPORT.** Seller agrees to provide at its expense at Closing an "Official South Carolina Wood Infestation Report (CI-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 45 days of the Closing and shall be provided to Purchaser's closing attorney not less than seven (7) days prior to closing. If infestation or sufficient damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds at Closing in an amount equal to the costs of such repair.

6. **OTHER TERMS.** Other terms and conditions of this Contract are:

INSPECTION ADDENDUM

7. **DATE OF CLOSING.** The closing of this Contract shall take place on or before December 2, 2003 (the "Closing") at the office of Purchaser's attorney or other offices stipulated by Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing. Seller and Purchaser 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.

8. **CONDITION OF PROPERTY.** Purchaser has viewed the premises and, subject to the terms set forth in Section 4, Section 5 or Section 10, is purchasing the Property in its present condition "as is," except for:

The parties understand that "as is" means that the property is being conveyed in the condition in which it is presently found subject to the aforementioned sections. Purchaser shall be permitted to have an inspection of the property performed to insure that all heating, air-conditioning, electrical and plumbing systems, fireplace, and appliances are in good working order and that the home is structurally sound and free from leaks in accordance with the requirements of Section 4. At Closing, the Property shall be delivered in the same condition as existing at the time of this Contract except for those required improvements or agreed upon repairs. The Selling Agent recommends that Purchaser obtain an inspection.

9. **DEPOSITS/DEFAULT.** All money deposited by Purchaser hereunder shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the terms hereof within the stipulated time, and after receipt of notice of said default with a ten (10) day right to cure, it is understood and agreed by and between the parties hereto that either party may proceed with all rights and remedies at law or in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Broker Agent shall not disburse the Deposit until Seller and Purchaser have executed a release form authorizing the disbursement or until a court of competent jurisdiction has directed a disbursement. In the event of a forfeiture of the Deposit, it shall be divided equally between Seller and the Listing Agency; provided, however, that the amount to be received by the Listing Agency shall not exceed the amount of the commission it would have earned had this sale been completed. In the event of any litigation commenced because of a default hereunder, the prevailing parties in such litigation shall be entitled to recover attorney fees and court costs, from the non-prevailing parties.

[Signature]

Witness: Purchaser [Signature] Date 11/6/03 Seller [Signature] Date _____

(Page 2)

210/0000

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED
DATE 11/06/03 BY 60322 UCBAW/BA/IT

11/06/2003 14:18 FAX 814 846 6504

MIDWEST ALLERGY CLINIC

0004

The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its attorney fees, cost disbursements, and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending resolution of the disposition of said funds, and Escrow Agent shall bear no further responsibility for said Deposit. The Purchaser hereby acknowledges that the Deposit shall be held in escrow by the Escrow Agent, Dunes Marketing Group.

10. **RISK OF LOSS AND DAMAGE.** In case the Property is wholly or partially damaged by fire, storm or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder. In the event the Property is damaged by the Purchaser, or by any person upon the Property as the Purchaser's behalf (i.e., inspector), such damage shall be repaired by Purchaser.

11. **PROVISIONS; CLOSING COSTS; ASSESSMENTS.** All expenses of ownership (and rent, if any) shall be prorated to the date of Closing. Purchaser is responsible for any applicable real estate transfer fees. Seller shall be responsible for the South Carolina deed recording fee required by SC Code §12-24-10. Purchaser shall be responsible for County recording fees for the deed and any mortgage. Purchaser shall pay the cost of securing a title commitment, title insurance, and a survey (except a Beach Protection Act survey, which is the responsibility of Seller); each party shall pay its own attorney fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any region or property owner association special assessment approved by its Board of Directors or similar body prior to closing; provided, however, a special assessment to cover insurable premises, whenever assessed prior to closing, shall be prorated based on ownership over the period covered by the premium.

12. **BROKER DISCLAIMER.** Seller and Purchaser agree that the Selling Agency & Listing Agency are acting only as real estate agents in this transaction and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, terms of the sale or title to the Property, nor are they responsible or accountable for payment of the Purchase Price or for any other funds, except the Deposit. Neither Agency guarantees payment of any check received as deposit money hereunder. Seller and Purchaser acknowledge that the Agencies: (1) give no guaranty or warranty of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the merchantability or fitness for a particular purpose regarding the Property; (3) give no guaranty or warranty concerning any inspection or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no guarantee or warranties regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guarantees or warranties regarding any region or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure Statement.

13. **TITLE.** Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments. If an owner's title block can be issued by an ALTA title insurance company at standard rates with standard exceptions for the Beaufort County area, title shall be deemed to be marketable. Purchaser acknowledges that Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all region and property owner regular or special assessments.

14. **NON-RESIDENT TAX WITHHOLDING.** Seller shall comply with the provisions of South Carolina Code §12-9-310 and U.S. Internal Revenue Code §1445 (as amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.

PRINTED

Signature: Purchaser

Date

11/6/03

Seller

Date

(Page 3)

210/0005

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MIDWEST ALLERGY CLINIC

11/08/2003 14:29 FAX 814 848 6504

MIDWEST ALLERGY CLINIC

0005

15. STATUTORY AND OTHER ADDENDA.

- a. The South Carolina Real Estate Agency Disclosure form is attached hereto and incorporated herein.
- b. The Beach Management Act is ☐ is not ☒ applicable to this Contract. If applicable, attached hereto and incorporated herein is the requisite Beach Management Act Disclosure Addendum.
- c. The Purchaser has ☒ has not ☐ reviewed a South Carolina Property Condition Disclosure Statement.
- d. The South Carolina Vacation Rental Act does ☐ does not ☒ apply to this transaction.
- e. This Contract applies ☐ does not apply ☒ to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.
- f. Flood Insurance is required ☒ is not required ☐ for any federally insured mortgage on the Property.
- g. An Inspection Report Addendum is ☒ is not ☐ attached to this Contract and incorporated herein by reference.
- h. Also attached hereto and incorporated herein are the following Addenda:

16. MISCELLANEOUS. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be executed in counterparts, each of which shall be deemed to be an original. The parties agree that any offer, counteroffer, and/or acceptance may be communicated by the use of facsimile (FAX) and that the signature, 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 originals were present on the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right granted hereunder or to insist upon strict compliance with any obligation specified herein, and no practice at variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that: (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if required by the lender. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

WITNESSES

[Signature] Purchaser *[Signature]* Date 11/6/03 Seller _____ Date _____

[Signature] 11/6/03

(Page 4)

210/9000

THIS INSTRUMENT BEING THE FIRST OF TWO PAGES OF THE ENTIRE INSTRUMENT, THE PARTIAL INSTRUMENT BEING THE FIRST OF TWO PAGES OF THE ENTIRE INSTRUMENT.

Jul. 18. 2007 3:51PM

No. 2679 P. 21

11/06/2003 14:18 FAX 614 846 6504

MIDWEST ALLERGY CLINIC

0006

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The later date shall be the date of this Contract for purposes of all time periods set forth herein.

WITNESSES:

[Signature]
Purchaser Dr. Gregory M. Gottschlich

Date _____

[Signature]
Purchaser Dr. Don McNeil

Date _____

WITNESSES:

Seller Thomas H. Dye

Date _____

Seller Jam H. Dye

Date _____

Listing Agent: Ken Oliver

Company: Dunes Marketing Group

Selling Agent: Greg Marshall

Company: DUNES MARKETING GROUP, a Division of The Byrne Corporation

(The foregoing form may be used only by members in good standing of the Hilton Head Area Association of REALTORS®.)

Revised 7/28/03

_____ This is the unmodified Hilton Head Area Association of REALTORS® recommended contract form.

_____ This form has been modified from that recommended by the Hilton Head Area Association of REALTORS®.

(Initials) Purchaser *[Signature]* Date 11/6/03 Seller _____ Date _____ (Page 5)

NYA 1000000

11/06/2003 14:18 FAX 614 846 6504

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL CIRCUIT

Gregory M. Gottschlich and
Donald L. McNeil,

Plaintiffs,

v.

Strimpfel Custom Homes, Inc.; Joseph A.
Reeve; Jerry L. Richardson; Coastal
Surveying Co. Inc.; Thomas N. Dye; Jan H.
Dye; Ken Oliver; The Byrne Corporation
d/b/a Dunes Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb, Jr. and Charles
H. Wiseman.

Defendants.

CIVIL ACTION NO. 2008-CP-07-00517

AMENDED SUMMONS

(Jury Demand)

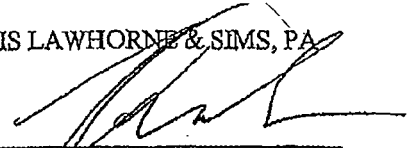
2009 MAR 20 PM 2:51
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint

herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this Amended Complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the days of such service, and if you fail to answer the Amended Complaint, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

ELLIS LAWHORNE & SIMS, PA


JOHN D. HUDSON, JR.
WESLEY D. FEW
Post Office Box 2285
Columbia, South Carolina 29202
803-254-4190

Columbia, SC
March 12, 2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOR THE
FOURTEENTH JUDICIAL CIRCUIT

Gregory M. Gottschlich and
Donald L. McNeil,

Plaintiffs,

v.

Strimpfel Custom Homes, Inc.; Joseph A.
Reeve; Jerry L. Richardson; Coastal
Surveying Co. Inc.; Thomas N. Dye; Jan H.
Dye; Ken Oliver; The Byrne Corporation
d/b/a Dunes Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb, Jr. and Charles
H. Wiseman.

Defendants.

CIVIL ACTION NO. 2008-CP-07-00517

AMENDED COMPLAINT

(Jury Demand)

2009 MAR 20 PM 2:51
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Plaintiffs Gregory M. Gottschlich and Donald L. McNeil (hereinafter "Plaintiffs"),
complaining of the Defendants above-named, would show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiffs are citizens and residents of the State of Ohio. Plaintiffs are the legal owners of the real property and residential dwelling at 48 Sea Lane, Hilton Head Island, South Carolina 29928 (hereinafter "subject dwelling" or "subject property").

2. Upon information and belief, Defendant Strimpfel Custom Homes, Inc. (hereinafter "Defendant Strimpfel") is a South Carolina corporation with its principal place of business in Beaufort County, South Carolina. At all relevant times relevant hereto, Defendant Strimpfel was engaged in the business of, among other things, building residential dwellings in Beaufort County, South Carolina.



3. Upon information and belief, Defendant Joseph A. Reeve (hereinafter "Defendant Reeve") is a resident of Beaufort County, South Carolina. Upon further information and belief, at all relevant times relevant hereto, Defendant Reeve was a principal, agent and/or employee of Defendant Strimpfel and played some role in constructing the subject dwelling, as well as others, in Beaufort County, South Carolina.

4. Upon information and belief, Defendant Jerry L. Richardson (hereinafter "Defendant Richardson") is a citizen and resident of Beaufort County, South Carolina. At all times relevant hereto, Defendant Richardson was a licensed surveyor engaged in the business of providing residential property surveying services in Beaufort County, South Carolina.

5. Upon information and belief, Defendant Coastal Surveying Co., Inc. (hereinafter "Defendant Coastal Surveying") is a South Carolina corporation with its principal place of business in Beaufort County, South Carolina. At all times relevant hereto, Defendant Coastal Surveying was engaged in the business of, among other things, providing residential property surveying services in Beaufort County, South Carolina.

6. Upon information and belief, Defendants Thomas N. Dye and Jan H. Dye (hereinafter "Defendants Dye") are citizens and residents of the State of Georgia. At all times relevant hereto, Defendants Dye were the legal owners of the real property and residential dwelling at 48 Sea Lane, Hilton Head Island, South Carolina 29928 immediately prior to the sale of the subject property to Plaintiffs.

7. Upon information and belief, Defendant Ken Oliver (hereinafter "Defendant Oliver") is a citizen and resident of Beaufort County, South Carolina. At all times relevant hereto, Defendant Oliver was a licensed real estate agent engaged in the business of, among

other things, marketing and selling residential real estate in Beaufort County, South Carolina. At all times relevant hereto, Defendant Oliver was the real estate agent for Defendants Dye.

8. Upon information and belief, Defendant The Byrne Corporation d/b/a Dunes Marketing Group (hereinafter "Defendant Dunes Marketing") is a South Carolina corporation with its principal place of business in Beaufort County, South Carolina. At all times relevant hereto, Defendant Dunes Marketing was engaged in the business of, among other things, marketing and selling residential property in Beaufort County, South Carolina.

9. Upon information and belief, Defendant Laurich & Deeb, P.A., which is now known as Laurich & Wiseman, P.A. (hereinafter "Defendant Laurich & Deeb" or "Firm"), is a former South Carolina professional association that maintained its principal place of business in Beaufort County, South Carolina. At all relevant times relevant hereto, Defendant Laurich & Deeb was the professional association through which various licensed South Carolina attorneys, including attorneys Robert M. Deeb, Jr. and Charles H. Wiseman in particular as well as other

non-attorney agents, servants and employees acting at the attorneys' direction, engaged in the practice of law and provided legal services to clients, Plaintiffs in particular, including but not limited to representation and services related to residential real estate closings in Beaufort County, South Carolina. At all times relevant hereto, Defendant Laurich & Deeb acted through its agents, servants and employees, including but not limited to attorneys Robert M. Deeb, Jr. and Charles H. Wiseman, during the Firm's representation of Plaintiffs.

10. Upon information and belief, Defendant Robert M. Deeb, Jr. (hereinafter "Defendant Deeb") is a resident of Beaufort County, South Carolina, and is a former principal of Defendant Laurich & Deeb. At all relevant times relevant hereto, Defendant Deeb, in his capacity as a principal and agent of Defendant Laurich & Deeb, acted as Plaintiffs' closing

attorney during Plaintiffs' purchase of the subject dwelling and also provided other legal counsel and assistance to Plaintiffs thereafter. At all times relevant hereto, Defendant Deeb acted as an agent for both Defendant Laurich & Deeb and Charles H. Wiseman.

11. Upon information and belief, Defendant Charles H. Wiseman (hereinafter "Defendant Wiseman") is a resident of Beaufort County, South Carolina, and is a former principal or associate of Defendant Laurich & Deeb. At all relevant times relevant hereto, Defendant Wiseman, in his capacity as a principal/associate and agent of Defendant Laurich & Deeb, acted as Plaintiffs' closing attorney during Plaintiffs' purchase of the subject dwelling. At all time relevant hereto, Defendant Wiseman acted as an agent for both Defendant Laurich & Deeb and Defendant Deeb.

FACTUAL BACKGROUND

12. On or about November 14, 1987, Defendant Strimpfel applied to the Town of Hilton Head Island for a building permit to construct the subject dwelling in the Palmetto Dunes subdivision at 48 Sea Lane, Hilton Head Island, South Carolina 29928.

13. The building permit application denoted the location of the subject dwelling to be in "FLOOD ZONE A7," consequently requiring a minimum finished floor elevation of fourteen (14) feet. A copy of the said building permit application is attached hereto as Exhibit A and incorporated herein by reference.

14. At all times relevant hereto, the applicable residential elevation requirements mandated by the Federal Emergency Management Association's (hereinafter "FEMA") National Flood Insurance Program (hereinafter "NFIP") and the corresponding ordinance and building code for Hilton Head Island required the bottom floor of the subject dwelling to meet or exceed

the fourteen (14) foot base flood elevation level for the designated zone encompassing 48 Sea Lane.

15. On or about November 24, 1987, Defendant Richardson, in his capacity as an agent, servant or employee of Defendant Coastal Surveying, issued an elevation certificate on a form provided by the FEMA NFIP certifying that the subject dwelling at 48 Sea Lane "has the lowest floor (including basement) at an elevation of 14.16 feet..." A copy of the said elevation certificate is attached hereto as **Exhibit B** and incorporated herein by reference.

16. Defendant Richardson knew when he issued the elevation certificate that the lowest finished floor elevation of the subject dwelling was in fact at a level of less than fourteen (14) feet but, upon information and belief, issued the erroneous, falsified certification indicating an elevation level of 14.16 feet based upon Defendant Strimpfel's representation that 24.75 inches would be added to the subject dwelling's foundation in order to bring the subject dwelling into compliance with the applicable FEMA elevation requirements and the applicable Hilton Head Island ordinance and building code. A copy of Defendant Coastal Surveying's "work order" to Defendant Strimpfel is attached hereto as **Exhibit C** and incorporated herein by reference.

17. Defendant Strimpfel never performed the elevation modification work as represented to Defendants Richardson and Coastal Surveying to bring the subject dwelling into compliance with the applicable FEMA requirements and the applicable Town of Hilton Head Island ordinance and building code; nevertheless, on or about May 23, 1988, Defendant Strimpfel obtained a certificate of occupancy for the subject dwelling based on, among other documentation, a false and inaccurate elevation certificate. A copy of the said certificate of occupancy is attached hereto as **Exhibit D** and incorporated herein by reference.

18. Upon information and belief, Defendant Reeve and his wife, Claudette Reeve, sold the subject dwelling to Ben and Myra Muldong. Upon further information and belief, Defendants Dye purchased the subject dwelling from Ben and Myra Muldong in early 2001.

19. On or about March 23, 2001, Defendants Dye obtained a new elevation certificate from registered surveyor Jack Stuart Jones, Jr. The elevation certificate prepared by Jones dated March 28, 2001 certified that the lowest finished floor of the subject dwelling (excluding a basement or enclosure) was only 13.3 feet. The Jones elevation certificate also confirmed the base flood elevation (the aforementioned minimum elevation as required by FBMA) for the subject dwelling to be fourteen (14) feet, nearly a foot higher than the actual, newly certified elevation of the subject dwelling. A copy of the Jones elevation certificate is attached hereto as **Exhibit E** and incorporated herein by reference.

20. In 2003 Defendants Dye contracted with Defendants Oliver and Dunes Marketing to list the subject dwelling for sale.

21. On or about November 6, 2003, Plaintiffs signed an "Exclusive Buyer Agency Agreement" with Defendant Dunes Marketing pursuant to which Defendant Dunes Marketing agreed to aid Plaintiffs in their search for a vacation home in the Hilton Head Island area. Greg Merrill, in his capacity as an agent, servant or employee of Defendant Dunes Marketing, eventually initiated negotiations on Plaintiffs' behalf regarding their potential purchase of the subject dwelling at 48 Sea Lane. A copy of the Exclusive Buyer Agency Agreement is attached hereto as **Exhibit F** and incorporated herein by reference.

22. On or about October 5, 2003, Plaintiffs were provided by or on behalf of Defendants Dye a 24 point South Carolina Residential Property Condition Disclosure Statement (hereinafter "disclosure statement") from Defendant Dunes Marketing as required by S.C. Code

Ann. § 27-50-10 *et seq.* In the disclosure statement, item 17 ("Violations or variances of building codes or Zoning ordinances") was checked as "No." A copy of the said disclosure statement is attached hereto as **Exhibit G** and incorporated herein by reference.

23. On or about November 6, 2003, Plaintiffs, relying on the representations in the disclosure statement made by or on behalf of Defendants Dye, executed a contract of sale with Defendants Dye for the dwelling. A copy of the said contract is attached hereto as **Exhibit H** and incorporated herein by reference.

24. Defendant Laurich & Deeb provided legal representation to Plaintiffs and acted as Plaintiffs' closing attorney during their purchase of the subject dwelling. Plaintiffs, as part of the purchase process, executed separate specific powers of attorney in favor of Defendant Deeb and/or Defendant Wiseman to facilitate their purchase and financing of the subject dwelling. Both powers of attorney were recorded on December 4, 2003 by Defendant Laurich & Deeb. ~~Copies of the said powers of attorney are attached as Exhibits I and J respectively, the terms and~~ conditions of which are incorporated herein by reference.

25. On or about December 2, 2003, Defendant Deeb and/or Defendant Wiseman conducted the closing for the loan financing Plaintiffs' purchase of the subject dwelling, and in the process, nor at any other time prior thereto, made no mention of or inquiry into the subject dwelling's ineligibility to be fully insured against the peril of flood.

26. Plaintiffs tendered to Defendants Dye during the course of the closing funds sufficient to satisfy the agreed upon purchase price of \$1,395,000.00, and Plaintiffs thereafter became the legal owners of the subject dwelling.

27. In 2006 - in the wake of the catastrophic destruction caused by Hurricane Katrina in the Gulf Coast states of Louisiana and Mississippi - Plaintiffs sought to increase the amount of

flood insurance coverage on the subject dwelling and its contents to make sure their investment and property located therein was sufficiently protected in the event a comparable natural disaster should befall the coast of South Carolina. However, in the process of seeking increased flood coverage, Plaintiffs were informed by their insurance agent and/or company that the subject dwelling and contents, insofar as the dwelling's lowest finished floor was at an elevation of less than fourteen (14) feet as evidenced by the Sea Island Land Survey elevation certificate (Exhibit E), was ineligible for excess flood coverage because it was non-compliant with applicable FEMA requirements and the applicable Town of Hilton Head Island ordinance and building code.

28. On or about December 1, 2006, Plaintiffs contacted Defendant Deeb to discuss their concerns with the subject dwelling and contents' apparent ineligibility for excess flood insurance coverage. Subsequently, on or about December 8, 2006, Defendant Deeb authored a letter to Plaintiffs informing them of additional action he would be taking on their behalf to investigate further the potential elevation problem; moreover, the letter also informed Plaintiffs that the statute of limitations for various claims they might have had against any third parties " ... expired on December 2, 2006." A copy of the said letter is attached hereto as Exhibit K and incorporated herein by reference.

29. Now, despite their periodic good faith efforts to date to locate and/or secure excess flood insurance for the subject dwelling and contents, Plaintiffs have been unable - and upon information and belief will remain unable - to procure flood insurance coverage in excess of the \$350,000 in FEMA-mandated coverage currently in effect for the subject dwelling and its contents. Additionally, Plaintiffs now run the increased risk of being compelled by the Town of Hilton Head Island or other governmental agencies to remedy the existing elevation deficiency to

render the subject dwelling compliant the applicable FEMA requirements and the applicable Town of Hilton Head Island ordinance and building code.

FOR A FIRST CAUSE OF ACTION

(Negligent Misrepresentation as to Defendants Strimpfel, Reeve, Richardson, Coastal Surveying, Thomas & Jane Dye, Merrill, Oliver, and Dunes Marketing)

30. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

31. The above-named Defendants erroneously, inaccurately and falsely represented to Plaintiffs that the subject dwelling's elevation level was compliant with all applicable building code(s) and FEMA requirements prior to and at the time of sale.

32. The above-named Defendants had a pecuniary interest in making the erroneous, inaccurate and false representation to Plaintiffs; moreover, upon information and belief, each of the above-named Defendants benefited financially from the sale of the subject dwelling to Plaintiffs.

33. The above-named Defendants owed a duty of care to Plaintiffs to convey and disclose truthful information about the condition of the subject dwelling, including but not limited to its elevation level.

34. The above-named Defendants breached their respective duties of care by failing to disclose to Plaintiffs the fact that the subject dwelling's elevation failed to comply with the applicable building code and FEMA requirements.

35. Plaintiffs justifiably relied on the above-named Defendants' representations concerning the dwelling's elevation, and would not have agreed to purchase the subject dwelling had they been made aware of the subject dwelling's elevation deficiencies.

36. Plaintiffs suffered and continue to suffer a pecuniary loss as a direct and proximate result of their reliance on the above-named Defendants' false statements and misrepresentation of material fact.

37. Plaintiffs are entitled to a judgment against the above-named Defendants, jointly and severally, for actual damages in an amount to be proven at trial as well as punitive damages due to the above-referenced Defendants' grossly negligent, wanton and reckless conduct.

FOR A SECOND CAUSE OF ACTION

(Violation of S.C. Code §27-50-10 *et seq.* (a/k/a "The Residential Property Condition Disclosure Act") as to Defendants Dye, Oliver, Merrill and Dunes Marketing)

38. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

39. The above-named Defendants agreed to transfer the subject dwelling to Plaintiffs for good and valuable consideration pursuant to the residential real estate contract executed by and between the parties.

40. Pursuant to South Carolina's Residential Property Condition Disclosure Act, the above-named Defendants made or caused to be made specific written representations on the owner's/seller's disclosure statement. In filling out or causing to be filled out the said disclosure statement, the above-named Defendants affirmatively represented that they had no knowledge of "[v]iolations or variances of building codes or zoning ordinances." The above-named Defendants made the said affirmative representation(s) despite knowing that the subject dwelling's elevation level was insufficient to comply with the applicable building code and FEMA requirements.

41. By affirmatively misrepresenting their knowledge of the subject dwelling's insufficient elevation, the above-named Defendants disclosed material information to Plaintiffs

on the disclosure statement that they knew to be false, incomplete, or misleading, and in doing so violated one or more provision of the South Carolina Residential Property Condition Disclosure Act.

42. Plaintiffs are entitled judgment against the above-named Defendants, jointly and severally, for actual damages, the costs of this action, and attorney fees.

FOR A THIRD CAUSE OF ACTION

(Negligence as to Defendants Strimpfel, Reeve, Richardson, Coastal Surveying, Dye, Merrill, Oliver and Dunes Marketing)

43. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

44. The above-named Defendants had a duty to convey truthful and accurate material information to Plaintiffs during the course of the negotiation and sale of the subject dwelling.

45. The above-named Defendants breached their respective duties insofar as they ~~either provided untruthful, inaccurate material information or failed to provide truthful, accurate~~ information concerning the dwelling's insufficient elevation and non-compliance with the applicable building code and applicable FEMA requirements.

46. As a direct and proximate result of the above-named Defendants' acts and/or omissions, Plaintiffs have suffered damage in the form of:

- a. increased premium payments for the mandated \$350,000 flood insurance coverage on the subject dwelling and its contents;
 - b. inability/ineligibility to purchase flood insurance in an amount in excess of \$350,000 in flood coverage for the subject dwelling and its contents;
 - c. diminution in value of the subject dwelling given its lack of adequate insurability;
- and

d. attorneys' fees and costs.

47. Plaintiffs are entitled to a judgment against the above-named Defendants, jointly and severally, for actual damages in an amount to be proven at trial.

FOR A FOURTH CAUSE OF ACTION

(Breach of Contract as to Defendants Dye, Dunes Marketing, Merrill and Oliver)

48. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

49. The above-named Defendants entered into (or as agents facilitated the formation of) a binding real estate contract with Plaintiffs for the purchase of the subject dwelling pursuant to which the said Defendants agreed to deliver the property defined therein as represented.

50. The above-named Defendants unjustifiably breached the contract by failing to deliver the subject dwelling to Plaintiffs in accordance with the terms and conditions of the contract.

51. Plaintiffs have incurred damages proximately caused by the above-named Defendants' breach of the contract.

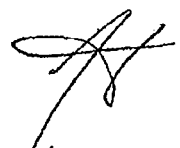
52. As a result of the above-named Defendants' breach, Plaintiffs are entitled to a judgment for actual, consequential and special damages in an amount to be proven at trial.

FOR A FIFTH CAUSE OF ACTION

(Breach of Contract Accompanied by Fraudulent Act as to Defendants Dye, Dunes Marketing, Merrill and Oliver)

53. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

54. The above-named Defendants entered into (or as agents facilitated the formation of) a binding real estate contract with Plaintiffs for the purchase of the subject dwelling pursuant



to which the said Defendants agreed to deliver the subject property defined therein as represented.

55. The above-named Defendants unjustifiably breached the contract by failing to deliver the subject property to Plaintiffs in accordance with the terms and conditions of the contract; moreover, the above-named Defendants acted with fraudulent intent relating to the said breach insofar as the said Defendants knew of the subject dwelling's insufficient elevation level.

56. The above-named Defendants knew or should have known that the dwelling's elevation was insufficient and failed to comply with the applicable local building code and ordinance and the applicable FEMA requirements, and the above-named Defendants' failure to inform Plaintiffs of this fact constitutes a fraudulent act.

57. As a direct and proximate result of the above-named Defendants' fraudulent breach of the contract, Plaintiffs are entitled to judgment and an award of actual, special and consequential damages as well as punitive damages in an amount to be proven at trial.

FOR A SIXTH CAUSE OF ACTION

(Violation of Unfair Trade Practices Act as to Defendants Stimpfel, Reeve, Richardson, Coastal Surveying, Dunes Marketing, Merrill and Oliver)

58. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

59. The above-named Defendants' conduct, individually and collectively, is unfair and deceptive and in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §39-5-10, *et seq.*

60. The above-named Defendants' unfair and deceptive conduct affects the public interest and is capable of repetition by the said Defendants.



61. The above-named Defendants knew or should have known that their conduct was a violation of the South Carolina Unfair Trade Practices Act and therefore willfully and knowingly violated that Act.

62. The unfair and deceptive conduct of the above-named Defendants proximately caused the Plaintiffs actual damages.

63. Plaintiffs are entitled to a judgment and an award of actual damages trebled, the costs of this action, and attorneys' fees in an amount to be proven at trial.

FOR A SEVENTH CAUSE OF ACTION

(Civil Conspiracy as to Defendants Strimpfel, Reeve, Richardson, Coastal Surveying, Dye, Merrill, Oliver and Dunes Marketing)

64. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

65. The above-named Defendants combined and conspired to deceive purchasers of the subject dwelling, including but not limited to Plaintiffs, by not only failing to construct the subject dwelling to an adequate elevation level, but also by generating erroneous, inaccurate and false documentation, and making material misrepresentations of fact to Plaintiffs to induce Plaintiffs to purchase a home that they would not have purchased but for the material misrepresentation(s) of fact made by the above-named Defendants.

66. The above-named Defendants' conspiracy was done in a willful and wanton manner and with a reckless and total disregard for Plaintiffs' rights.

67. The above named Defendants' conspiracy has caused Plaintiffs to suffer special damages.

68. Plaintiffs are entitled to a judgment and an award of actual damages, special damages, punitive damages and the costs of this action in an amount to be proven at trial.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendants Dunes Marketing and Merrill)

69. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

70. Plaintiffs entrusted the above-named Defendants to represent, aid and assist them in the negotiation, purchase and closing of the subject property at 48 Sea Lane.

71. The above-named Defendants represented to Plaintiffs that they were experienced and capable of managing the transaction in accordance with the related fiduciary obligations of a licensed real estate agent and/or broker.

72. The above-named Defendants, as fiduciaries, were duty-bound to look out for and protect Plaintiffs' interests in handling above-described aspects of the subject purchase transaction and to advise Plaintiffs of material issues related to the transaction, including the obligation to inform and disclose to Plaintiffs known obstacles to adequately insuring their future home.

73. The above-named Defendants breached their fiduciary obligations to Plaintiffs.

74. As a direct and proximate result of the breach(es), Plaintiffs are entitled to a judgment against these defendants and actual, special and punitive damages in an amount to be proven at trial.

FOR A NINTH CAUSE OF ACTION
(Fraud as to Defendants Strimpfel, Reeve, Richardson, Coastal Surveying, Thomas & Jane Dye, Merrill, Oliver, and Byrne Corporation d/b/a Dunes Marketing)

75. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

76. The above-named Defendants, individually and collectively, made material misrepresentations of existing fact to Plaintiffs insofar as said Defendants concealed from

Plaintiffs the fact that the subject dwelling's elevation level failed to conform to the applicable local ordinance and building code and the applicable FEMA requirements.

77. The above-referenced misrepresentations were false when made insofar as the subject dwelling's elevation was in fact well below the minimum elevation level mandated by the applicable FEMA requirement and the applicable local ordinance and building code.

78. The above-referenced misrepresentations were material to Plaintiffs' decision to purchase the dwelling in that it induced Plaintiffs to consummate their offer to purchase the subject dwelling for a significant amount of money.

79. The above-referenced Defendants knew that the misrepresentations were false when made or made the misrepresentations in reckless disregard of their truth or falsity.

80. The above-referenced Defendants intended that Plaintiffs act on the misrepresentations.

81. ~~Plaintiffs did not know the misrepresentations were false when made.~~

82. Plaintiffs relied on the accuracy and veracity of the misrepresentations in their purchase of the dwelling.

83. Plaintiffs had the right to rely on the misrepresentations and were justified in their reliance.

84. Plaintiffs have suffered damage as a direct and proximate result of Defendants' misrepresentations.

85. Plaintiffs are entitled to a judgment against the above-named Defendants for actual, special and consequential damages, attorneys' fees and costs, and punitive damages in an amount to be proven at trial.

FOR A TENTH CAUSE OF ACTION

(Constructive Fraud as to Defendants Strimpfel, Reeve, Richardson, Coastal Surveying,
Thomas & Jane Dye, Merrill, Oliver, and Byrne Corporation d/b/a Dunes Marketing)

86. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

87. The above-named Defendants, individually and collectively, made material misrepresentations of existing fact to Plaintiffs insofar as said Defendants concealed from Plaintiffs the fact that the subject dwelling's elevation level failed to conform to the applicable local ordinance and building code and the applicable FEMA requirements.

88. The above-referenced misrepresentations were false when made insofar as the subject dwelling's elevation was in fact well below the minimum elevation level mandated by the applicable local ordinance and building code and the applicable FEMA requirements.

89. The above-named Defendants should have known the misrepresentations were false when made.

90. The misrepresentations were material to Plaintiffs' decision to purchase the subject dwelling; moreover, Plaintiffs would not have purchased the subject dwelling had they been aware of the misrepresented information.

91. The above-named Defendants intended that Plaintiffs act upon the misrepresentations.

92. Plaintiffs were ignorant of the falsity of the above-named Defendants' misrepresentations.

93. Plaintiff's justifiably relied on the above-named Defendants' misrepresentations.

94. Plaintiffs, as good faith purchasers, had a right to rely upon the above-named Defendants' misrepresentations.

95. Plaintiffs have suffered damage as a direct and proximate result of the above-named Defendants' misrepresentations.

96. Plaintiffs are entitled to a judgment against the above-named Defendants for actual, special and consequential damages, attorneys' fees and costs, and punitive damages in an amount to be proven at trial.

FOR AN ELEVENTH CAUSE OF ACTION
(Rescission as to Defendants Dye)

97. The foregoing, to the extent not inconsistent herewith, are incorporated herein by reference.

98. Upon information and belief, the above-named Defendants knew prior to marketing and selling the subject property that its elevation level was insufficient and failed to comply with the applicable local ordinance and building code and the applicable FEMA requirements. Despite this awareness, Defendants Dye failed to disclose this material information to Plaintiffs during the purchase process.

99. The above-named Defendants knowing and intentional failure to disclose the subject dwelling's insufficient elevation level to Plaintiffs constitutes fraudulent conduct sufficient to constitute a substantial and material breach of the real estate contract.

100. Upon information and belief, Plaintiffs will never receive the full benefit of their bargain with the above-named Defendants, and the status quo ante can be restored only if the sale transaction is abrogated and undone completely so as to return the parties to their pre-contract positions.

101. Based on the above, Plaintiffs are entitled to the equitable remedy of rescission of the contract, title and deed, the refund of the purchase price, and compensation for the additions and improvements they have made to the property after the closing.

FOR A TWELFTH CAUSE OF ACTION
(Professional Negligence/Legal Malpractice as to Defendants Laurich & Deeb, Deeb
and Wiseman)

102. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

103. The above-named Defendants had an attorney-client relationship with Plaintiffs and, consequently, owed Plaintiffs a duty to properly and adequately represent and protect Plaintiffs' interests during, as well as subsequent to, Plaintiffs' purchase of the subject dwelling.

104. The above-named Defendants breached their/its professional duty in one or more of the following particulars, to wit:

- a. in failing to discover and inform Plaintiffs of the finished floor elevation information contained in the Sea Island Land Survey elevation certificate and the potential negative implications of the same;
- b. in failing to inform Plaintiffs that the subject dwelling and its contents was not eligible for flood insurance coverage in excess of the maximum coverage potentially available through FEMA.
- c. in failing to take appropriate, meaningful steps to protect Plaintiffs' legal interests prior to the statute of limitations potentially expiring against third parties, including but not necessarily limited to the other Defendant named in this litigation, potentially responsible for the problems associated with and arising out of the subject dwelling's elevation defect;
- d. in failing to inform Plaintiffs of any possible consequences the statute of limitations potentially expiring; and

e. in such other and further particulars as may become evident during the course of discovery and/or at trial.

105. Defendants' negligent, grossly negligent and reckless breach of duty, in one or more of the above-referenced particulars, directly and proximate caused Plaintiffs damage.

106. Plaintiffs are entitled to an award of actual damages, compensatory damages and, if so warranted by the evidence, punitive damages, in an amount to be proven at trial, plus pre-judgment interest, attorneys' fees and the costs of this action.

FOR A THIRTEENTH CAUSE OF ACTION

(Breach of Contract as to Defendants Laurich & Deeb, Deeb and Wiseman)

107. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

108. The above-named Defendants entered into a valid and binding agreement with Plaintiffs pursuant to which Defendants agreed to act as Plaintiffs' closing attorney and/or settlement agent and/or title insurance agent for the purchase of the subject dwelling.

109. The above-named Defendants breached their/its agreement in one or more of the followings ways:

- a. in failing to discover and inform Plaintiffs of the finished floor elevation information contained in the Sea Island Land Survey elevation certificate and the potential negative implications of the same;
- b. in failing to inform Plaintiffs that the subject dwelling and its contents was not eligible for flood insurance coverage in excess of the maximum coverage potentially available through FEMA.
- c. in failing to take appropriate, meaningful steps to protect Plaintiffs' legal interests prior to the statute of limitations potentially expiring against third

parties, including but not necessarily limited to the other Defendant named in this litigation, potentially responsible for the problems associated with and arising out of the subject dwelling's elevation defect;

- d. in failing to inform Plaintiffs of any possible consequences the statute of limitations potentially expiring; and
- e. in such other and further particulars as may become evident during the course of discovery and/or at trial.

110. Plaintiffs have suffered damage as a direct and proximate result of Defendants' breach.

111. Plaintiffs are entitled to an award of actual, special and consequential damages in an amount to be proven at trial.

FOR A FOURTEENTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendants Laurich & Deeb, Deeb and Wiseman)

112. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

113. The above-named Defendants, as Plaintiffs' attorneys, served as fiduciaries and owed Plaintiffs a duty of care, good faith and loyalty.

114. The above-named Defendants breached their fiduciary duty in one or more of the following particulars, to wit:

- a. in failing to discover and inform Plaintiffs of the finished floor elevation information contained in the Sea Island Land Survey elevation certificate and the potential negative implications of the same;



- b. in failing to inform Plaintiffs that the subject dwelling and its contents was not eligible for flood insurance coverage in excess of the maximum coverage potentially available through FEMA.
- c. in failing to take appropriate, meaningful steps to protect Plaintiffs' legal interests prior to the statute of limitations potentially expiring against third parties, including but not necessarily limited to the other Defendant named in this litigation, potentially responsible for the problems associated with and arising out of the subject dwelling's elevation defect;
- d. in failing to inform Plaintiffs of any possible consequences the statute of limitations potentially expiring; and
- e. in such other and further particulars as may become evident during the course of discovery and/or at trial.

115. The above-named Defendants directly and proximately caused damage to Plaintiffs.

116. Plaintiffs are entitled to an award of actual, special, consequential damages, and, if so warranted by the evidence, punitive damages, in an amount to be proven at trial, plus pre-judgment interest, attorneys' fees and the costs of this action.

FOR A FIFTEENTH CAUSE OF ACTION
(Equitable Indemnification as to Defendants Laurich & Deeb, Deeb and Wiseman)

117. The foregoing paragraphs, to the extent not inconsistent herewith, are incorporated herein by reference.

118. A sufficient special relationship exists between Plaintiffs and these Defendants to entitle Plaintiffs to equitable indemnification from these Defendants.

119. Upon information and belief, Plaintiffs now are in jeopardy of being forced to take remedial action on the subject dwelling to render the subject dwelling's base flood elevation level compliant with the Town of Hilton Head Island's applicable ordinance and building code and the applicable FEMA requirements. If Plaintiffs are forced to take such remedial action at their expense - the cost and expenses of which will likely be substantial - the said costs and expenses incurred by Plaintiffs will be solely due to the wrongful actions and/or inactions of these Defendants.

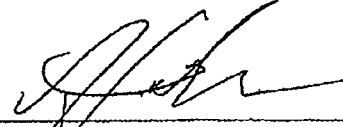
120. No wrongful actions or inactions of Plaintiffs caused any of the above-described damage or potential damage, directly or proximately.

121. If Plaintiffs are required, or, in the alternative, choose in good faith to take remedial action to elevate the subject dwelling to render it compliant with the applicable local ordinance and building code and the applicable FEMA requirements, Plaintiffs will be entitled to equitable indemnification from these Defendants for all costs and expenses associated with such remedial action, in addition to reimbursement for the costs and expense of this lawsuit and all attorneys' fees associated with the same, as well as such other and further relief as this Court may deem just and proper.

122. In accordance with the requirements of S.C. Code Ann. § 15-36-100, Plaintiffs attach the affidavit of C. Joseph Roof, Esquire as Exhibit L (INCLUDE BEFORE FILING).

WHEREFORE, Plaintiffs pray for actual, special, consequential and punitive damages as allowed by law, the rescission-based remedies set forth above, equitable indemnification as allowed by law, attorneys' fees, costs, and such other and further relief as may be deemed just and proper.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

JOHN D. HUDSON, JR.
WESLEY D. FEW
1501 Main Street, Fifth Floor
Post Office Box 2285
Columbia, South Carolina 29202
TEL: (803) 254-4190

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

March 19, 2009

Jul. 18. 2007 3:49PM ON5 DEPT.

1004+04 No. 2679 P. 4 2/ 5

TOWN OF HILTON HEAD ISLAND

GEN CONTR. BUS LIC. #
20953

DEPARTMENT OF PLANNING AND INSPECTION

GEN CONTR. STATE LIC
IF APPLICABLE

APPLICATION FOR BUILDING PERMIT

4014

RECEIVED

SEP 20 - 12A - 168

LOCATION OF LOT 27 BLOCK SEA LANE SUBDIVISION PALMETTO DUNES

FLOOD ZONE A7 ELEVATION REQUIRED 14

OWNER	NAME	MAILING ADDRESS, NO. ST.	CITY & STATE	ZIP CODE	TELEPHONE
OWNER	M/M JOSEPH REEVE	48 SEA LANE HILTON HEAD	S.C.	29928	842-2195
CONTRACTOR	STRIMPFEL CUSTOM HOMES	P.O. BOX 6195 HILTON HEAD	S.C.	29938	785-8286
ELECT	JOSEPH A. REEVE	Town Trade Cert # 155 P.O. BOX 6195 HILTON HEAD	S.C.	29938	785-8286
PLUMB	UNDERWOOD PLUMBING	Town Trade Cert # 082 RT. 1 BOX 332 RINCON, GA.		31326	(012)826-2091
MECH	A-1 HEATING	Town Trade Cert # RT. 1 BOX 768 BLUFFTON, S.C.		29910	802-5600
ARCHITECT	JOSEPH A. REEVE	48 SEA LANE HILTON HEAD	S.C.	29928	842-2195

BUILDING \$ 124,385.00 Construction Cost Data

PLUMBING \$ 9,475.00

ELECTRICAL \$ 3,500.00

HVAC \$ 8,500.00

TOTAL COST OF CONSTRUCTION \$ 145,860.00

156,600.00

TYPE IMPROVEMENT	NEW RESIDENCE CONSTRUCTION	TYPE RAMP	PRIVATE
PROPOSED USE	SINGLE FAMILY	NUMBER UNITS	1
FRAME TYPE FRAME	WOOD FRAME	TYPE OF HEATER	HEAT PUMP
TYPE SEWAGE	CITY/COUNTY	SEPTIC TANK NO.	
NUMBER BEDROOMS	4	NUMBER BATHROOMS	4
NUMBER STORIES	2	TOTAL FLOOR SQ. FT.	4,176 SQ. FT.
CENTRAL A/C	YES	ELEVATOR	NO
INTERIOR WALLS	SHEETROCK	TYPE FLOORING	WOOD, CERAMIC TILE, VINYL, CARPET

Signature: *Strimpfel Custom Homes, Inc.*
Charles J. Rose

Date 11/14/07



16477

Permit # 7653



FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

OMB 5067-0077
Revised Feb. 2001

ELEVATION CERTIFICATE

This form is to be used for: 1) New Emergency Program construction in Special Flood Hazard Areas; 2) Pre-FIRM construction after September 30, 1982; 3) Post-FIRM construction; and 4) Other buildings (also as Post-FIRM rules).

BUILDING OWNER'S NAME ADDRESS
Lot 27 Sea Lane - Palmetto Dunes
PROPERTY LOCATION (Lot and Block numbers and address if available)

Milton Road Island, SC

I certify that the information on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S.C. 1001.

SECTION I ELIGIBILITY CERTIFICATION (Completed by Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

CONSTRUCTION NO.	PARCEL NO.	SUBMIT	DATE OF INFO	FIRM ZONE	DATE OF CONSTRUCTION	BASE FLOOD ELEVATION (in feet above sea level)	BUILDING IS
							☐ New/Replacement ☐ Existing ☐ Pre-FIRM

YES NO Is it intended that the building described above will be constructed in compliance with the community's flood plain ordinance? The certificate may rely on community records. The lowest floor (including basement) will be at an elevation of _____ feet NGVD. Failure to construct the building at this elevation may place the building in violation of the community's flood plain management ordinance.

YES NO The building described above has been constructed in compliance with the community's flood plain management ordinance based on elevation data and visual inspection of other reasonably reliable data. NO is checked when copy of variance issued by the community.

YES NO The mobile home located at the address described above has been tied down (anchored) in compliance with the community's flood plain management ordinance, or in compliance with the NFIP Regulations.

MOBILE HOME MAKE	MODEL	YR OF MANUFACTURE	SERIAL NO.	DIMENSIONS
				X

(Community Permit Official or Registered Professional Engineer, Architect, or Surveyor)

NAME ADDRESS
TITLE CITY STATE ZIP

SIGNATURE DATE PHONE

SECTION II ELEVATION CERTIFICATION (Completed by a Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

FIRM ZONE A1-A30 I certify that the building at the property location described above has the lowest floor (including basement) at an elevation of _____ feet NGVD (mean sea level) and the average grade of the building also is at an elevation of _____ feet NGVD.

FIRM ZONE V, VI-T30 I certify that the building at the property location described above has the bottom of the lowest floor below at an elevation of _____ feet NGVD (mean sea level) and the average grade of the building also is at an elevation of _____ feet NGVD.

FIRM ZONE A, A1-A30, and EMERGENCY PROGRAM I certify that the building at the property location described above has the lowest floor elevation of _____ feet NGVD. The elevation of the highest adjacent grade next to the building is _____ feet NGVD.

FIRM ZONE A2 I certify that the building at the property location described above has the lowest floor elevation of _____ feet NGVD. The elevation of the highest adjacent grade next to the building is _____ feet NGVD.

SECTION III FLOODPROOFING CERTIFICATION (Completed by a Registered Professional Engineer or Architect)

I certify to the best of my knowledge, information, and belief, that the building is designed so that the building is watertight, able to resist substantially impervious to the passage of water and suspended components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy that would be caused by the flood depths, pressures, velocities, impact and uplift forces associated with the base flood.

YES NO In the event of flooding, will the degree of floodproofing be achieved with human intervention? (Human intervention means that water will enter the building when floods up to the base flood level occur unless measures are taken prior to the flood to prevent entry of water (e.g., bolting metal shields over doors and windows).)

YES NO Will the building be occupied as a residence? If the answer to both questions is YES, the floodproofing should be certified for living purposes and the actual lowest floor must be completed and certified sealed. Complete both the elevation and floodproofing certificates.

FIRM ZONE A, A1-A30, VI-T30, A2 and A30 Certified Floodproofed Elevation: _____ feet NGVD.

THIS CERTIFICATION IS FOR SECTION II: ☐ BOTH SECTIONS II AND III (Check One)

CERTIFIER'S NAME COMPANY NAME ADDRESS CITY STATE ZIP

Jeffrey L. Richardson Coastal Surveying & Engineering, Inc. 19923

REGISTERED S.C. SURVEYOR P.O. Box 1427 29923

SIGNATURE DATE CITY STATE PHONE

11/14/87 Milton Road SC 803-4266

The insurance agent should attach the original copy of the certificate form to the flood insurance policy application; the second copy should be supplied to the policyholder and the third copy retained by the agent.

INSURANCE AGENTS MAY OBTAIN THIS FORM

FEMA Form 15-31, SEP 88

REPLACES FEMA FORM 15-31, APR 82, WHICH IS OBSOLETE.



Mar Jul. 18. 2007 3:50PM

No. 2679 P. 11a



DATE 11/23/87

WORK ORDER

NAME OF CLIENT Schumpel

BILLING ADDRESS _____

WORKING INSTRUCTIONS _____

FFEC. add 24 3/4" to 9th course
lot 27 Sea Ln. P.D.

JOB NO. (Client) _____ C-JOB NO. 16477

RATE _____ FLAT RATE _____

PERSON REQUESTING WORK Ron

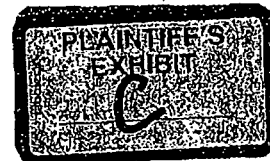
DATE COMPLETED _____

FIELD WORK _____

COMPUTATIONS _____

DRAFTING _____

BILLING _____





Date: 11-21

Single family bldg permit: # 1234 Amt \$5,000.00 Rec'd by C.O. Rec # 14813
Single family misc permit: # 5678 Amt Rec'd by Rec #
Com./Mlt-fam bldg permit: # 9012 Amt Rec'd by Rec # Auth:

CERTIFICATE OF OCCUPANCY
TOWN OF HILTON HEAD ISLAND, SOUTH CAROLINA

THIS IS TO CERTIFY THAT THE STRUCTURE SITUATED AT LOT 37 FOR LANE
STREET, DIST. 352, MAP 12 A, PARCEL 16F, HAD BEEN
 CONSTRUCTED NOW, ALTERED NO, MOVED IN ACCORDANCE WITH THE STANDARD BUILDING CODE
 AND/OR THE ZONING ORDINANCE FOR HILTON HEAD ISLAND INCLUDING ANY AND ALL RELATED CODES OR
 ORDINANCES ADOPTED BY THE TOWN IT IS FURTHER DECLARED THAT THE STRUCTURE HAS BEEN
 INSPECTED AND IS PHYSICALLY SOUND AND STRUCTURALLY AND MECHANICALLY SAFE FOR HUMAN OCCUPANCY.

OWNER W/1 JAMES BEVER CONTRACTOR STANDARD CURTAIN HOOKS
OCCUPANCY RESIDENTIAL TO BE USED AS RESIDENCE
DATE 5/23/82 BUILDING PERMIT NO. 7653

NOTE: TOWN SEAL REQUIRED FOR APPROVAL

FILE COPY



Jul. 18. 2007 3:49PM

02/01 09:48 FAX 8438865881

BETHA JORDAN GRIFFIN

No. 2679 P. 7
14 C-11

Elevated 0002

FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAMO.M.B. No. 3087-0077
Expires July 31, 2002

ELEVATION CERTIFICATE

Job No 01096

SECTION A - PROPERTY OWNER INFORMATION		For Insurance Company Use
BUILDING OWNER'S NAME Thomas H. and Jan H. Dye		Policy Number
BUILDING STREET ADDRESS (including Apt, Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO. 48 Sea Lane		Company/NAIC Number
CITY Hilton Head Island	STATE SC	ZIP CODE 29928
PROPERTY DESCRIPTION (Lot and Block Number, Tax Parcel Number, Legal Description, etc.) Lot 27, Tract B, Parcel 3, Block C, Palmetto Dunes Resort, Trac 620 - 12A - 168		
BUILDING USE (e.g., Residential, Non-Residential, Addition, Accessory, etc. Use Comments section if necessary.) Residential		
LATITUDE (OPTIONAL) (#.#° - #.#° or #.#° #.#°)	HORIZONTAL DATUM NAD 1983 ☐ NAD 1983 ☐ Other	SOURCE ☐ GPS (Type) ☐ USGS Quad Map ☐ Other

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. FIRM COMMUNITY NAME & COMMUNITY NUMBER Hilton Head 450280	B2. COUNTY NAME Beaufort	B3. STATE SC			
B4. MAP AND PANEL NUMBER 0014	B5. SURFID D	B6. FIRM INDEX DATE 09/28/86	B7. FIRM PANEL EFFECTIVE/REVISED DATE N/A	B8. FLOOD ZONE(S) A7	B9. BASE FLOOD ELEVATIONS (Zone A0, use depth of flooding) 14.0

- B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in B9.
☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other (Describe):
 B11. Indicate the elevation datum used for the BFE in B9: ☒ NGVD 1929 ☐ NAVD 1988 ☐ Other (Describe):
 B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No. Designation Date

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)	
C1. Building elevations are based on: ☐ Construction Drawings ☐ Building Under Construction ☒ Finished Construction *A new Elevation Certificate will be required when construction of the building is complete.	
C2. Building Diagram Number 8 (Select the building diagram most similar to the building for which this certificate is being completed) - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.	
C3. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AE Complete items C3a) below according to the building diagram specified in item C2. State the datum used. If the datum is different from the datum used for the BFE in Section B, convert the datum to that used for the BFE. Show field measurements and datum conversion calculation. Use the space provided or the Comments area of Section D or Section G, as appropriate, to document the datum conversion. Datum: NGVD Conversion/Comments: N/A Elevation reference mark used: 1929 Does the elevation reference mark used appear on the FIRM? ☐ Yes ☒ No ☐ a) Top of bottom floor (including basement or enclosure) 7.0 ft (m) ☐ b) Top of next higher floor 13.0 ft (m) ☐ c) Bottom of lowest horizontal structural member (V zones only) N/A ft (m) ☐ d) Attached garage (top of slab) 7.0 ft (m) ☐ e) Lowest elevation of machinery and/or equipment servicing the building 8.0 ft (m) ☐ f) Lowest adjacent grade (LAG) 6.0 ft (m) ☐ g) Highest adjacent grade (HAG) 7.0 ft (m) ☐ h) No. of permanent openings (flood vents) within 1 ft. above adjacent grade 0 ☐ i) Total area of all permanent openings (flood vents) in C3h 95.602 sq. in. (sq. cm)	

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION			
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information in Sections A, B, and C on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.			
CERTIFIER'S NAME: Jack Stuart Jones, Jr.	LICENSE NUMBER: 19852		
TITLE: Land Surveyor	COMPANY NAME: Sea Island Land Survey		
ADDRESS: 4-D Mathews Court	CITY: Hilton Head Island	STATE: SC	ZIP CODE: 29928
SIGNATURE: <i>Jack Stuart Jones, Jr.</i>	DATE: 28, March 2001	TELEPHONE: (843) 687-3748	

FEMA Form 81-31, AUG 98

SEE REVERSE SIDE FOR CONTINUATION

REPLACES AL



IN THESE SPACES, COPY THE CORRESPONDING INFORMATION FROM SECTION A.

For Insurance Company Use:

CITY Hilton Head Island	STATE SC	ZIP CODE 29928	Policy Number
			Company NAIC Number

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

COMMENTS

☐ Check here if attachment.

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zone AO and Zone A (without BFE), complete Items E1 through E4. If the Elevation Certificate is intended for use as supporting information for a LOMA or LOMAF, Section C must be completed.

E1. Building Diagram Number (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

E2. The top of the bottom floor (including basement or enclosure) of the building is ___ ft (m) ___ in (cm) ☐ above or ☐ below (check one) the highest adjacent grade.

E3. For Building Diagrams 6-8 with openings (see page 7), the next higher floor or elevated floor (elevation b) of the building is ___ ft (m) ___ in (cm) above the highest adjacent grade.

E4. For Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance?

☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here.

PROPERTY OWNER'S OR OWNER'S AUTHORIZED REPRESENTATIVE'S NAME

ADDRESS	CITY	STATE	ZIP CODE
SIGNATURE	DATE	TELEPHONE	

COMMENTS

☐ Check here if attachment.

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below.

G1. ☐ The information in Section C was taken from other documentation that has been signed and embossed by a licensed surveyor, engineer, or architect who is authorized by state or local law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.G3. ☐ The following information (Items G4-G9) is provided for community floodplain management purposes.

G4. PERMIT NUMBER	G5. DATE PERMIT ISSUED	G6. DATE CERTIFICATE OF COMPLIANCE/OCCUPANCY ISSUED

G7. This permit has been issued for: ☐ New Construction ☐ Substantial Improvement

G8. Elevation of so-built lowest floor (including basement) of the building is:

G9. BFE or (in Zone AO) depth of flooding at the building site is:

LOCAL OFFICIAL'S NAME

COMMUNITY NAME

SIGNATURE

COMMENTS

☐ Check here if attachment.

11/08/2003 14:19 FAX 844 545 6804

MIDWEST ALLERGY CLINIC

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DUNES MARKETING GROUP EXCLUSIVE BUYER AGENCY AGREEMENT

This EXCLUSIVE BUYER AGENCY AGREEMENT (the "Agreement") by and between GREGORY M. GOTTENLICH (the "Buyer"), and Dunes Marketing Group, a division of The Bynno Corporation ("Dunes").

1. Purpose of Agency. Buyer hereby appoints Dunes as Buyer's exclusive agent for the purpose of representing Buyer in finding and buying real property in Beaufort/Jasper County.

2. Effect of Exclusive Buyer Agency. By appointing Dunes as Buyer's exclusive agent, Buyer agrees to conduct all negotiations for the property described above in Section 1 through Dunes, and to refer to Dunes all inquiries received in any form from brokers, salespersons, prospective sellers or any other source, during the time this Agreement is in effect.

3. Term. The term of this Agreement shall begin 11-4 2003 and shall continue through June 4, 2007.

4. Compensation of Dunes. In consideration of the services to be performed by Dunes, Buyer agrees to pay Dunes a brokerage fee of 0 % of 0 or 3.

In the alternative, Dunes and Buyer have agreed that the brokerage fee shall be paid to Dunes totally from the Listing Broker, as agreed to through the Listing Broker's offer to cooperate (i.e. MLS, flyers, etc.) (Buyer's initials here).

Dunes's fee will be deemed earned when Buyer is under contract to purchase any property presented by Dunes or found by the Buyers themselves. The term "purchase" in the Agreement shall include any purchase, option, exchange, lease or trade entered into. This fee will be due and payable at closing or upon Buyer's default. If Buyer defaults, the total compensation that would have been due to Dunes will be due and payable immediately in cash from the Buyer.

In addition, such brokerage fee described in this Section 4 shall be earned, due and payable to Dunes by the Buyer if property of the nature contemplated herein is purchased by the Buyer within 90 days after the termination of the Agreement or any extensions thereof, if such property was introduced to the Buyer during the term of this Agreement by Dunes or any third party.

5. Other Potential Buyers. Buyer understands that other prospective purchasers may be represented by Dunes and that such other prospective purchasers may seek property, submit offers and contract to purchase property through Dunes, including the same or similar property as Buyer seeks to purchase. Buyer acknowledges, understands and consents to such representation of other prospective purchasers by Dunes through its agents.

6. Description of Services. Dunes shall:

a. Use professional knowledge and skills to locate real properties which may be available for purchase through the Multiple Listing Service ("MLS") or any other source the Agent may be aware of.

b. Show real property to the Buyer that meets Buyer's needs.

c. Represent the Buyer throughout the entire transaction in the purchase of real property which may include the following:

- (i) Provide assistance with financing opportunities.
- (ii) Provide information, facts, advantages and disadvantages.
- (iii) Negotiate all details of the Purchase Agreement.
- (iv) Assist attorneys, lenders, etc. in the closing of the property.



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NORTHWEST ALLERGY CLINIC

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DUNES MARKETING GROUP

Page 2

7. Possibility of Dual Agency. Buyer acknowledges that the Dunes also enters into contracts with persons (the "Seller") who wish to sell property. Such property is commonly known as a "Company Listing". If the Buyer wishes to view a Company Listing, Dunes may, with both Buyer's and Seller's consent, serve as a dual agent, after Dunes fully discloses the consequences of dual agency status. Since both Seller and Buyer have different interests to protect in the negotiation process, certain differences or conflicts may arise. Accordingly, Dunes will represent both the Buyer and the Seller only with their written consent.

8. Miscellaneous. No assignment of rights obtained for Buyer pursuant to this Agreement shall operate to defeat any of Dunes' rights under this Agreement. Buyer acknowledges that Dunes is being retained solely as a real estate agent and recommends that Buyer seek independent professional advice concerning the condition of the property and legal and tax matters. Buyer shall hold harmless and indemnify Dunes from any liability caused by latent, undisclosed, pre-existing conditions, if any, arising from property purchased by Buyer under this Agreement, including but not limited to, structural and/or mechanical deficiencies which existed up until the time of closing. The parties hereto shall not discriminate in regard to any prospective Seller because of the race, creed, color, sex, marital status, national origin, familial or handicapped status of such person. This Agreement constitutes the entire agreement between the parties relating to the subject thereof and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including attorney's fees and other costs, from the non-prevailing party.

9. Additional Provisions.

IN WITNESS WHEREOF, this Agreement is hereby agreed to and duly executed.

Witness:

Witness:

Dunes Marketing Group
Post Office Box 21326
Hilton Head Island, SC 29925

Dunes:

By:

Date 11/6/03

Date 11/6/03

Date

1034741

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NORTHWEST ALLERGY CLINIC

AS SELLER OF THE PROPERTY, I HEREBY REPRESENT AND WARRANT THAT I HAVE NO KNOWLEDGE OF ANY PROBLEM OR DEFECT WITH ANY OF THE FOLLOWING:

	Yes	No	No Representation
1. Foundation, slab, fireplace/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry _____ wood _____ composition/hardwood _____ vinyl _____ synthetic stucco _____ b. Approximate age of structure <u>13 years</u>	☒	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering <u>13 years</u>	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace _____ hot pump ☒ baseboard _____ b. Cooling source: central _____ wall/window unit(s) _____ c. Fuel source: electricity ☒ natural gas _____ propane ☒ oil _____ d. Approximate age of heating unit _____ /cooling unit <u>10/13 years & 2.5 years & 3-4 years</u>	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county _____ community system _____ private well _____ b. water pipes are: copper _____ galvanized _____ PVC/CPVC _____ polybutylene _____	☐	☒	☐
8. Septic system? a. Type system: septic tank _____ community system _____ connected to city/county system _____ city/county system available _____ b. Does the system require a pump? Yes _____ No ☒ c. Has the septic system been serviced/pumped during your ownership? ☐	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	☐	☒	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes _____ No ☒	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum _____ pool _____ hot t. b. _____ spa _____ attic fan _____ exhaust fan _____ ceiling fan _____ sump pump _____ irrigation system _____ cable tv wiring or satellite dish _____ security system _____ or other systems _____	☐	☒	☐

Initials
Rev. 10/3

Seller 20 Date 3-11-03 Buyer 10-25-03 Date

BUYER
CE/MONIE

Page 2 of 4



PAGE 10/12

"Yes" explanations continued:

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Owner(s) Acknowledgment
Property Address: 48 Leasure, Wilson Road Dr., S.C.
The property is currently: owner-occupied ☒ leased ☐ in on consignment ☐ in foreclosure ☐
vacant (If vacant how long?)
Owner's Name(s): John & Janice
Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.
Owner Signature: John N. Ogle Date: 3-04-03
Owner Signature: Janice N. Ogle Date: 3-04-03

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: *[Signature]* Date: 10-25-03

Purchaser Signature: _____ Date: _____

(This form is improved by the South Carolina New Estate Commission.)

REGARDING THE PROPERTY, HEREIN IDENTIFIED, INCLUDING THE LOT TO OTHER IMPROVEMENTS AND UTILITIES LOCATED THEREON, DO YOU ACKNOWLEDGE:

	Yes	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold, or other hazardous or toxic material (whether buried or covered), contaminated soil or water, or any environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Liens, judgments, mortgages, tax liens, judgments, or other liens, proposed assessments or notices from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☒	☐	☐
23. Rental, regular management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage or garbage services provided to the property?	☐	☒	☐

DO YOU HAVE ANY OTHER INFORMATION THAT MAY AFFECT THE ABOVE QUESTIONS, PERMISSIBLE FOR DISCLOSURE TO THE BUYER?

#1 - Hardwood floor in Dining Room, Kitchen, Breakfast Room, and Living Room is being replaced by water damage. The water damage is being repaired and all the wood will be replaced.

#13 - Located in Bath apartment. Bath is being repaired.

X Initials _____ Date _____ Buyer _____
 Rev. 1/03

11/06/2003 14:18 FAX 814 848 8504

MIDWEST ALLERGY CLINIC

0002

Post Office Box 21326
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(843) 842-1111
(800) 258-5202
Fax Number (843) 842-4748

CONTRACT OF SALE - OFFER AND ACCEPTANCE

Dr. Gregory M. Gottschlich and Dr. Don McNeil

whose address is: 3619 Vineyard Ridge, Cincinnati, OH 45241
2341 Kane Road, Columbus, OH 43220
Hereby agree to purchase from

Thomas M. and Jan R. Dye

whose address is: 210 Riverbriar Place, Duluth, GA 30097
(Purchaser)
(Seller)

1. **PROPERTY DESCRIPTION.** Seller hereby agrees to sell all that lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in South Carolina and being described as follows:

Legal: 27 TA/P1/80

Mailing: 45 Sea Lane (the "Property")

2. **PURCHASE PRICE.** The total Purchase Price for the Property is \$ 1,395,000.00
to be paid by Purchaser as follows:

a.	Earnest Money deposited herewith ("Deposit")	\$ 10,000.00
b.	Additional Deposit to be paid by	\$
c.	A First Mortgage for at least _____ years at prevailing interest rates and terms	\$ 1,116,000.00
d.	Balance in cash at Closing	\$ 269,000.00

3. **FINANCING CONTINGENCY.** If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing referenced above from a lender customarily making such loans in Beaufort County and the surrounding area. Purchaser shall use best efforts to obtain such a loan and shall supply the prospective lender(s) with all requisite information. The timing of this financing contingency is as follows:

a. Purchaser's loan application must be submitted within 4 days.
b. Purchaser shall obtain a comfort letter from the lender within 6 days.
c. Purchaser shall obtain a loan commitment within 10 days.

All time periods run from the date of this Contract. The "comfort letter" is to be in a form customarily used by lenders in Beaufort County.

If Purchaser's loan application does not result in a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's Agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to terminate this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than five (5) days after the financing contingency expiration date. Upon receipt of notice and execution of any required release forms, the Lending Agency (or other Escrow Agent holding the funds) shall return to the Purchaser any funds heretofore paid as earnest money, and upon such payment this Contract shall have no force and effect and neither party hereto shall have any rights against the other heretofore. Notwithstanding the right to cure time period contained in Section 9, the parties acknowledge and agree that time is of the essence with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any requisite action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.

Witnessed by: Handwritten Signature Date 11/6/03 Seller: Handwritten Signature Date 11/6/03

(Page 1)



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MIDWEST ALLERGY CLINIC

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The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its attorney fees, costs, disbursements, and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending resolution of the disposition of said funds, and Escrow Agent shall bear no further responsibility for said Deposit. The Purchaser hereby acknowledges that the Deposit shall be held in escrow by the Escrow Agent, Dunes Marketing Group.

10. **RISK OF LOSS AND DAMAGE.** In case the Property is wholly or partially damaged by fire, storm or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or terminate this Contract and receive back all money deposited hereunder. In the event the Property is damaged by the Purchaser, or by any person upon the Property or the Purchaser's behalf (i.e., an Inspector), such damage shall be repaired by Purchaser.

11. **EXORATIONS; CLOSING COSTS; ASSESSMENTS.** All expenses of ownership (and rent, if any) shall be prorated to the date of Closing. Purchaser is responsible for any applicable real estate transfer tax. Seller shall be responsible for the South Carolina deed recording fee required by SC Code §12-24-10. Purchaser shall be responsible for County recording fees for the deed and any mortgage. Purchaser shall pay the cost of securing a title accumulation, title insurance, and a survey (except a Beach Protection Act survey, which is the responsibility of Seller); each party shall pay its own attorney fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any regular or property owner association special assessment approved by its Board of Directors or similar body prior to closing; provided, however, a special assessment to cover liabilities premium, whenever assessed prior to closing, shall be prorated based on ownership over the period covered by the premium.

12. **BROKER DISCLAIMER.** Seller and Purchaser agree that the Selling Agency & Listing Agency are acting only as real estate agents in this transaction and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, terms of the sale or title to the Property, nor are they responsible or accountable for payment of the Purchase Price or for any other funds except the Deposit. Neither Agency guarantees payment of any check received as deposit money hereunder. Seller and Purchaser acknowledge that the Agencies: (1) give no guarantee or warranty of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the marketability or fitness for a particular purpose regarding the Property; (3) give no guarantee or warranty containing any inspection or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no guarantee or warranties regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guarantee or warranties regarding any regular or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure Statement.

13. **TITLE.** Seller shall convey marketable title to the Property to Purchaser in fee simple by proper deed in recordable form with covenants of general warranty, subject to normal utility easements, applicable restrictive covenants, governmental regulations and assessments. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for the Beaufort County area, title shall be deemed to be marketable. Purchaser acknowledges that Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all regular and property owner regular or special assessments.

14. **NON-RESIDENT TAX WITHHOLDING.** Seller shall comply with the provisions of South Carolina Code §12-9-310 and L.R. Internal Revenue Code §1445 (as amended) regarding withholding requirements for a seller who is not South Carolina or U.S. resident.

PDMW

Signature Purchaser

Date

11/6/03

Seller

Date

(Page 3)

KTD/0005

DATA MANAGEMENT GROUP AND ITS AFFILIATES ARE NOT RESPONSIBLE FOR THE CONTENTS OF THIS DOCUMENT OR THE RESULTS OF ANY TRANSACTION THEREFROM.

11/06/2003 14:19 FAX 814 848 6504

MIDWEST ALLERGY CLINIC

Q 005

15. STATUTORY AND OTHER ADDENDA.

- a. The South Carolina Real Estate Agency Disclosure form is attached hereto and incorporated herein.
- b. The Beach Management Act is ☐ is not ☒ applicable to this Contract. If applicable, attached hereto and incorporated herein is the regular Beach Management Act Disclosure Addendum.
- c. The Purchaser has ☒ has not ☐ reviewed a South Carolina Property Condition Disclosure Statement.
- d. The South Carolina Vacation Rental Act does ☐ does not ☒ apply to this transaction.
- e. This Contract applies ☐ does not apply ☒ to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.
- f. Flood Insurance is required ☒ is not required ☐ for any federally insured mortgage on the Property.
- g. An Inspection Report Addendum is ☒ is not ☐ attached to this Contract and incorporated herein by reference.
- h. Also attached hereto and incorporated herein are the following Addenda:

16. MISCELLANEOUS. The invalidity or unenforceability of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be executed in counterparts, each of which shall be deemed to be an original. The parties agree that any offer, acceptance, and/or acceptance may be communicated by the use of facsimile (FAX) and that 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 originals were present on the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right granted hereunder or to insist upon strict compliance with any obligation specified herein, and no practice at variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that: (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if required by the lender. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

Purchaser

Initials

Date 11/6/03

Seller

Date

(Page 4)

710/900 B

THIS INSTRUMENT BEING THE FIRST OF TWO FIRST DEED CONVEYANCE
 MADE BY THE SELLER TO THE BUYER ON THE DATE HEREIN

Jul. 18. 2007 3:51PM

No. 2679 P. 21

11/08/2003 14:18 FAX 614 846 8804

NIDWEST ALLERGY CLINIC

@008

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

[Signature]
Purchaser Dr. Gregory M. Guttschlich

Date

[Signature]
Purchaser Dr. Don McNeill

Date

WITNESSES:

[Signature]
Seller Thomas H. Dye

Date

[Signature]
Seller Jan H. Dye

Date

Listing Agent Ken Oliver

Company Dunes Marketing Group

Selling Agent Greg Merrill

Company DUNES MARKETING GROUP, a Division of The Byrne Corporation

(The foregoing form may be used only by members in good standing of the Hilton Head Area Association of REALTORS®.)

Revised 7/22/03

 This is the unmodified Hilton Head Area Association of REALTORS® recommended contract form.

 This form has been modified from that recommended by the Hilton Head Area Association of REALTORS®

Printed

[Signature] Purchaser
[Signature] Seller

Date 11/6/03

Seller

Date

(Page 5)

THIS CONTRACT IS VOID IF THE SIGNATURES ARE NOT SIGNED BY THE PURCHASER AND SELLER.

BEAUFORT COUNTY SC - ROD
BK 01880 PGS 1093-1094
FILE NUM 2003095502
12/04/2003 11:08:41 AM
REC'D BY V GARVIN RCPT# 203464
RECORDING FEES 15.00
SPECIFIC POWER OF ATTORNEY

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a Specific Power of Attorney, that Gregory M. Gottschlich, of 3619 Vineyard Ridge, Cincinnati, OH 45241, has made, constituted and appointed by these Presents does make, constitute and appoint Robert M. Deeb, Jr. and/or Charles H. Wiseman, of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head, SC 29938, his true and lawful Attorney-in-fact to handle the transaction set out below:

The purchase and financing of the real property known as 48 Sea Lane, Palmetto Dunes Resort, Hilton Head Island, Beaufort County, South Carolina. This Specific Power of Attorney expires December 31, 2003. First Mortgage with Wells Fargo Home Mortgage, Inc. in the amount of \$716,000.00. Second Mortgage with Wells Fargo Bank in the amount of \$400,000.00.

Giving and Granting unto the said Attorney-in-fact full power and authority to do so and perform all and every act, deed, matter and thing with respect to the above transaction, in my name, place, and stead, as fully and effectively for all intent and purposes as I might or could do in my own person if personally present, and I hereby ratify all that my said Attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

This Specific Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is



L&D-00096
ELS #79-58118

the intent of the undersigned that the authority conferred upon the above named Attorney-in-fact shall be exercisable notwithstanding my physical disability or mental incompetence in accordance with the South Carolina Probate Code which provides that Powers of Attorney shall not be terminated by the disability or mental incompetence of the principal whenever the document creating the Power of Attorney so provides and established certain safeguards.

I declare that any act or thing lawfully done hereunder shall bind my personal representatives and assigns. I further grant full and unqualified authority to my Attorney-in-fact to delegate any and all of the foregoing powers to any person(s) who my Attorney-in-fact shall select.

IN WITNESS WHEREOF, I have set my Hand and Seal this 20th day of November, 2003.

WITNESSES:

[Signature]
Signature of first witness

[Signature]
Gregory M. Gottschlich

[Signature]
signature of 2nd witness/Notary

STATE OF OHIO

COUNTY OF HAMILTON

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above named Gregory M. Gottschlich did personally appear before me this day and duly acknowledge the execution of the foregoing instrument.

Witness my hand and seal this 20th day of November, 2003.

[Signature]
Notary Public for Ohio
My commission expires: 9/2/2004

** TOTAL PAGE.03 **

L&D-00097
ELS #79-58118

BEAUFORT COUNTY, SC - ROD
BK 01880 PGS 1081-1082
FILE NUM 2003086501
12/04/2003 11:08:41 AM
REC'D BY V. GARVIN ROFT# 203484
RECORDING FEES 16.00

75
P. 15
4770
4790
03.20 5/47
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

SPECIFIC POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a Specific Power of Attorney, that Donald L. McNeil, of 2341 Lane Road, Columbus, OH 43220, has made, constituted and appointed by these Presents does make, constitute and appoint Robert M. Deeb, Jr. and/or Charles H. Wiseman, of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head, SC 29938, his true and lawful Attorney-in-fact to handle the transaction set out below:

The purchase and financing of the real property known as 48 Sea Lane, Palmetto Dunes Resort, Hilton Head Island, Beaufort County, South Carolina. This Specific Power of Attorney expires December 31, 2003. First Mortgage with Wells Fargo Home Mortgage, Inc. in the amount of \$716,000.00. Second Mortgage with Wells Fargo Bank in the amount of \$400,000.00.

Giving and Granting unto the said Attorney-in-fact full power and authority to do so and perform all and every act, deed, matter and thing with respect to the above transaction, in my name, place, and stead, as fully and effectively for all intent and purposes as I might or could do in my own person if personally present, and I hereby ratify all that my said Attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

This Specific Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is the intent of the undersigned that the authority conferred upon the



L&D-00094
ELS #79-58113

above named Attorney-in-fact shall be exercisable notwithstanding my physical disability or mental incompetence in accordance with the South Carolina Probate Code which provides that Powers of Attorney shall not be terminated by the disability or mental incompetence of the principal whenever the document creating the Power of Attorney so provides and established certain safeguards.

I declare that any act or thing lawfully done hereunder shall bind my personal representatives and assigns. I further grant full and unqualified authority to my Attorney-in-fact to delegate any and all of the foregoing powers to any person(s) who my Attorney-in-fact shall select.

IN WITNESS WHEREOF, I have set my Hand and Seal this 21st day of November, 2003.

WITNESSES:

[Signature]
Signature of first witness

[Signature]
Donald L. McNeil

[Signature]
Signature of 2nd witness/Notary

STATE OF OHIO)

ACKNOWLEDGEMENT

COUNTY OF Franklin)

I, the undersigned Notary Public, do hereby certify that the above named Donald L. McNeil did personally appear before me this day and duly acknowledge the execution of the foregoing instrument.

Witness my hand and seal this 21st day of November, 2003.



DAVID F. CAINS
Notary Public - State of Ohio
My Commission Expires July 20, 2008

[Signature]
Notary Public for Ohio
My commission expires:

L&D-00095
ELS #79-58118

** TOTAL PAGE.03 **

LAURICH, DEEB & WISEMAN, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1040 WILLIAM HILTON PARKWAY

CIRCLE BUILDING, SUITE 200

POST OFFICE DRAWER 6868

HILTON HEAD ISLAND, SC 29938-6868

PHONE: (843) 785-6868

FAX: (843) 842-2552

www.laurichdeeb.com

EMAIL: bobd@laurichdeeb.com

December 8, 2006

ATTORNEYS

EUGENE J. LAURICH
ROBERT M. DEEB, JR.
CHARLES H. WISEMAN
PAULA M. KILGORE

BLUFFTON OFFICE:

104 BOCKWALTER PARKWAY
SUITE 1 F
BLUFFTON, SC 29910
PHONE: (843) 815-5522
FAX: (843) 815-2568

Via Mail

Dr. Donald L. McNeil
2341 Lane Road
Columbia, OH 43220

Via Fax 513-769-2769 and Mail

Dr. Gregory M. Gottschlich
3619 Vineyard Ridge
Cincinnati, OH 45241

Re: 48 Sea Lane, Hilton Head Island, SC

Dear Dr. McNeil and Dr. Gottschlich:

It was a pleasure speaking with both of you over the telephone recently. As I discussed in depth with Greg, I will speak with Strimpfel Builders and the Town of Hilton Head Island to determine what can be done with regard to the elevation of your Palmetto Dunes property. From the Town's perspective, we want to ensure that the Town will not obligate you to take any corrective action to raise the residence's minimum elevation. From Strimpfel Builder's perspective, we would like to determine what, if anything, Strimpfel Builders will do to rectify the improper elevation.

Also as I discussed with Greg, Closing on your purchase occurred on December 2, 2003. Accordingly, the statute of limitations for any claims you may have had against your Seller expired on December 2, 2006. I spoke with both of you on Friday, December 1, 2006. However, it was late in the day before I was able to pull the three year old file from our storage. I did not have an opportunity to review the file thoroughly until Monday, December 4, 2006.

I do not practice litigation and never have. I answer many phone calls from clients every day regarding real property issues that are not related to litigation. I did not anticipate the December 1 telephone call would require the need to file an immediate lawsuit to avoid a statute of limitation expiration.



L&D-00005
ELS #79-58118

LAURICH, DEEB & WISEMAN, P.A.

Page 2

I have given Greg the names and telephone numbers of three litigation attorneys you may wish to consult regarding any possible claims you may have against the Seller, our firm, your insurance company, Strimpel Builders, or other parties which may have a role in this situation. Those attorneys are:

Stephen Carter, Esq., McNair Law Firm, Phone 843-785-2171

Richard Wieters, Esq., Wieters Law Firm, Phone 843-341-7000

Rick Haight, Esq., Minor, Haight and Arundell Law Firm, Phone 843-785-8040

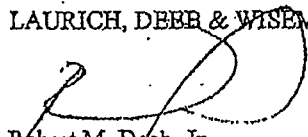
I will gladly assist with the Town and Strimpel Builders. If you do not wish me to proceed with this assistance, please let me know. Please note that our closing responsibilities include abstracting and reviewing title to the property to ensure that purchasers attain clear title to the property. We also receive all closing funds and disburse those funds to agents, lenders, South Carolina, Beaufort County and other parties at closing. Afterwards, we record all documents in the Beaufort County Register of Deeds Office, and subsequently forward the original, recorded documents back to the appropriate parties.

A review of the legal documentation does not customarily include elevation certificates. Insurance policies are usually obtained by purchasers directly from insurance agents and it appears that our paralegal Leslee Thomas obtained an elevation certificate from the Seller's attorney and forwarded the same on to Dr. McNeil prior to Closing to price insurance premiums. I will keep you updated as to my progress with this unique issue. Of course, call me at any time should you have any questions regarding the residence's elevation or any of the issues raised in this correspondence.

With best regards, I am.

Very truly yours,

LAURICH, DEEB & WISEMAN, P.A.


Robert M. Deeb, Jr.

RMD:dc

M:\RMD\Correspondence 2006\McNeil-Gottschalk\00-1023.wpd

L&D-00006
ELS #79-58113

3283.3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BRAUFORT) FOR THE
FOURTEENTH JUDICIAL CIRCUIT

Gregory M. Gottschlich and
Donald L. McNeil,

Plaintiffs,

vs.

Strimpfel Custom Homes, Inc., Joseph A.
Reeve; Jerry L. Richardson; Coastal
Surveying Co., Inc., Thomas N. Dye,
Jan H. Dye; Ken Oliver; The Byrne
Corporation d/b/a Dunes Marketing Group;
Laurich & Deeb, P. A.; Robert M. Deeb, Jr.
and Charles H. Wiseman,

Defendants.

CIVIL ACTION NO. 2008-CP-07-00517

AFFIDAVIT AND OPINION
OF
C. JOSEPH ROOF

PERSONALLY APPEARED before me C. Joseph Roof, who, first being duly sworn,

deposes and says:

1. I am an attorney licensed to practice in the State of South Carolina and a partner in the firm of Sherrill Roof Millender, LLP, in Columbia. I was born in Columbia on January 10, 1938; educated in the Columbia public schools; graduated from the University of South Carolina in 1960 with a Bachelor of Science in Business Administration (major - marketing); and from the University of South Carolina School of Law in January of 1963. Admission to the South Carolina Bar occurred April 8, 1963. I am also admitted to practice in the United States District Courts of South Carolina and the Supreme Court of the United States. I have served on a number of committees of the South Carolina Bar, serving as chairman of the Public Relations and the Ethics Advisory Opinions Committees. I also served as a member of the South Carolina Bar House of Delegates from 1986 to 1988. As a contributor to the South Carolina Lawyer, I have had articles published on a number of subjects, most relating to residential real estate closings and the role of the closing attorney in those transactions. I also served as a regular columnist to the South Carolina Bar News and its predecessor, The Transcript, with an article entitled "Notes from the Yellow Pad" and have been a faculty participant and a moderator of South Carolina Bar sponsored and approved Continuing Legal Education programs. I have served as an adjunct professor of law at the University of South Carolina, teaching a course on real estate transactions.

#1



2. My other activities include the presidency of the Richland County Bar Association in 1987, past chairman of the Richland County March of Dimes, past president of Carolina Land Title Association (a two-state organization of title attorneys and underwriters), and past director of the Palmetto Land Title Association. I am past Chairman of the Board of Directors of the Columbia Action Council and past Chairman of the Board of Directors of the Carolina Carillon. I have served as Justice of District XXV (North and South Carolina) of Phi Alpha Delta Law Fraternity, International. In the Spring of 2007, under the auspices of the Center for International Studies ("CILS"), I served as visiting professor at Warsaw School of Law in Warsaw, Poland, teaching a course in American Business Law after a one-week orientation in Salzburg, Austria. In October, 2008, I served in Salzburg as a guest lecturer during the CILS orientation of United States senior attorneys.

3. My local activities include community theater, serving as president of the Irmo High School Choral Booster Club and on the Lexington County School District Number Five Parents Advisory Council. I previously served as Chairman of the Greater Columbia Chamber of Commerce Transportation Committee and served on a joint transportation committee of the Greater Columbia Chamber of Commerce and the Columbia County (Georgia) Chamber. I am an active member of the National Association of Rail Passengers and past South Carolina Vice President of The Carolinas Association for Passenger Trains.

4. As a practicing attorney since April 8, 1963, the emphasis of my professional effort has been in the area of real property, real property litigation, business and banking matters, conservatorships, and frequently ethical issues. This experience has included prosecuting foreclosure proceedings and Department of Veterans Affairs conservatorships on a statewide basis for more than forty years. I have both defended cases and successfully prosecuted a case involving disciplinary proceedings of South Carolina attorneys. My practice is presently concentrated in banking, business, and related real estate and transactional law. This practice includes the review and interpretation of documents affecting real property.

5. In the case of McNair v. Rainsford, et al., 330 S.C. 332, 499 S.E.2d 488 (Ct. App. 1998), the South Carolina Court of Appeals recognized me as "a real estate closing expert" witness and as of September, 2008, I have served as a consulting or testifying expert witness in more than 110 matters.

6. The opinions contained in this affidavit are based upon copies of the materials and information provided to me to date, which are a part of the pleadings, exhibits and documents in the captioned proceeding and include items dated and described as follows:

- (1) Deed dated March 9, 1973, from Palmetto Dunes Resort, Inc., to Lena S. Wilmer recorded in the Office of Register of Mesne Conveyance on March 14, 1973, in Volume 207 at Page 993 (1st and 4th pages only)
- (2) Deed dated August 5, 1985, from Lena S. Wilmer to William J. Byrne recorded August 14, 1985, in the Office of Register of Mesne Conveyance

in Bok 427 at Page 754

- (3) Deed dated March 10, 1987 from William J. Byrne to Joseph A. Reeve and Claudette F. Reeve recorded in the Office of Register of Mesne Conveyances for Beaufort County on March 24, 1987, in Book 472 at Page 1577
- (4) Quitclaim Deed dated October 30, 1987, from Greenwood Development Corporation to Joseph A. Reeve and Claudette F. Reeve recorded in the Office of Register of Mesne Conveyance for Beaufort County on November 5, 1987, in Book 489 at Page 902
- (5) Application for Building Permit dated November 19, 1987
- (6) Work Order of Coastal Surveying Co. dated November 23, 1987
- (7) Elevation Certificate dated November 24, 1987
- (8) Elevation certificate dated November 24, 1987
- (9) Town of Hilton Head Island Subcontractors Post dated December 1, 1987
- (10) Building Permit dated May 23, 1988, issued by Town of Hilton Head Island
- (11) Deed dated February 17, 1992, from Joseph A. Reeve and Claudette F. Reeve to Ben D. Muldong and Myra Muldong recorded in the Office of Register of Mesne Conveyances for Beaufort County on March 24, 1992, in Book 595 at Page 334
- (12) Certificate of Occupancy dated May 23, 1998
- (13) Elevation Certificate dated March 28, 2001
- (14) Survey dated March 28, 2001, prepared by Sea Island Land Survey by Jack Jones
- (15) Title to Real Estate from Ben D. Muldong and Myra Muldong to Thomas N. Dye and Jan H. Dye dated April 2, 2001 and recorded in the Office of the Register of Deeds for Beaufort County on April 9, 2001 in Book 1404 at Page 792 (This deed fails to properly identify the grantees and this could be a fatal error. The title insurer should be put on notice.)
- (16) Mortgage dated August 24, 2001, from Thomas N. Dye and Jan H. Dye to Southtrust Mortgage Corporation and recorded August 31, 2001 in the Office of the Register of Deeds for Beaufort County in Book 1466 at Page 1723

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(incomplete - pages 2, 4, and Exhibit "A")

- (17) Sellers Disclosure signed by Sellers March 4, 2003, signed by Purchasers on October 25, 2003
- (18) Notice of Hazard and Flood Policy Changes from Wells Fargo Home Mortgage effective October 6, 2003
- (19) Incoming Wire Acknowledgment dated October 27, 2003, reflecting wire of \$5,000.00 from Gregory M. Gottschlich to DMG Trust Account
- (20) Incoming Wire Acknowledgment dated October 27, 2003, reflecting wire of \$5,000.00 from Donald L. McNeil to Dunes Marketing Real Estate Trust
- (21) Fax dated November 5, 2003, from Scott Malaney of Wells Fargo Home Mortgage requesting title commitment and tax information
- (22) Lender Title Insurance Requirements dated November 5, 2003
- (23) Tax Information Form dated November 5, 2003
- (24) Dunes Marketing Group Contract of Sale - Offer and Acceptance signed by Purchaser on November 6, 2003, and by Seller on November 8, 2003
- (25) Dunes Marketing Group Exclusive Buyer Agency Agreement dated November 6, 2003
- (26) Contract of Sale - Offer and Acceptance dated November 6, 2003
- (27) Consent to Dual Agency signed by Purchasers on November 6, 2003, and by Sellers on November 8, 2003
- (28) Wells Fargo Home Mortgage Commitment Letter dated November 6, 2003 (1st lien)
- (29) Fax transmittal cover dated November 6, 2003, from Benjamin Thompson of Sales Delivery Connection to Matt Topping of Wells Fargo
- (30) Dunes Marketing Group Exclusive Buyer Agency Agreement dated November 6, 2003
- (31) Wells Fargo Home Equity Commitment Letter dated November 8, 2003 (2nd lien)

- (32) Wells Fargo Home Mortgage Attorney/Client Information Sheet dated November 10, 2003
- (33) Approval Letter dated November 10, 2003, from Matt Topping
- (34) Fax transmittal cover dated November 10, 2003, from Matt of Wells Fargo Home Mortgage to Heather, transmitting contract, commitment and attorney client information
- (35) Memorandum dated November 10, 2003, from Liz Forshee, Dunes Marketing Group to "Whom It May Concern" transmitting fully executed contract
- (36) Request for Copy of Transcript or Tax Form dated November 11, 2003, for Gregory M. Gottschlich
- (37) Request for Copy of Transcript or Tax Form dated November 11, 2003, for Donald L. McNeil and Trudy A. McNeil
- (38) Letter dated November 13, 2003, to Dr. Donald McNeil and Dr. Gregory Gottschlich from Robert M. Deeb, Jr.
- (39) Title Insurance Request dated November 13, 2003 from Leslee at Laurich & Deeb
- (40) Sales History dated November 14, 2003
- (41) Real Property View Screen dated November 14, 2003
- (42) Title Search Page dated November 14, 2003
- (43) Title Search Worksheet dated November 14, 2003
- (44) Letter dated November 16, 2003, from Cary S. Griffin, attorney for sellers, to Robert M. Deeb, Jr., transmitting deed recording information, mortgage information and recent survey
- (45) Earnest Money Release Form dated November 18, 2003, signed by Leslee P. Thomas
- (46) Request for Waiver of Right of Repurchase from Leslee Thomas to Greenwood Development Corporation dated November 18, 2003
- (47) Letter dated November 19, 2003, from Dunes Marketing Group to Laurich

& Deeb transmitting earnest money deposit in the form of check nos. 7548 and 7549 for \$5,000.00 each

- (48) Fax transmittal to Christine at Wells Fargo from Leslee dated November 20, 2003, transmitting title commitment
- (49) Specific Power of Attorney dated November 20, 2003, Gregory M. Gottschlich naming Robert M. Deeb, Jr. or Charles H. Wiseman as Attorney-in-fact, recorded in the Office of the Register of Deeds for Beaufort County on December 4, 2003, in Book 1880 at Page 1093
- (50) First American Title Insurance Company Commitment issued November 20, 2003
- (51) Specific Power of Attorney dated November 21, 2003, Donald L. McNeil naming Robert M. Deeb, Jr. or Charles H. Wiseman as Attorney-in-fact, recorded in the Office of the Register of Deeds for Beaufort County on December 4, 2003, in Book 1880 at Page 1092
- (52) UPS shipping label to Wells Fargo Home Equity dated November 25, 2003 with instruction sample
- (53) Bill from Atlantic Pest Control, Inc., dated November 26, 2003
- (54) Fax transmittal cover dated November 26, 2003, from Erin (for Leslee) to Dr. McNeil transmitting copy of elevation certificate
- (55) Fax transmittal cover dated November 26, 2003, from Erin (for Leslee) at Laurich & Deeb, P. A. To Dr. McNeil transmitting first 2 pages of the appraisal and note about elevation certificate
- (56) Fax transmittal cover from Erin from J. Blackshear (for Matt Topping) of Wells Fargo Home Mortgage transmitting first 2 pages of appraisal
- (57) Official South Carolina Wood Infestation Report dated November 26, 2003
- (58) File notes dated November 26, 2003
- (59) Payoff Statement dated November 26, 2003, from SouthTrust Mortgage to Thomas N. Dye
- (60) Title Insurance Financial Interest Disclosure dated December 1, 2003
- (61) HUD-1 Settlement Statement dated December 2, 2003

- (62) Title to Real Estate dated December 2, 2003, from Thomas N. Dye and Jan H. Dye to Gregory M. Gottschlich and Donald L. McNeil recorded in the Office of the Register of Deeds for Beaufort County on December 4, 2003, in Book 1880 at Page 1090
- (63) Waiver Agreement between Greenwood Development Corporation and Donald L. McNeil and Gregory M. Gottschlich dated December 2, 2003, and recorded in the Office of the Register of Deeds for Beaufort County on December 12, 2003, in Book 1883 at Page 2550
- (64) Fax transmittal cover dated December 2, 2003, from Teena Farrell of Seacoast Insurance to Leslee
- (65) Single Ledger Balance Report showing settlement date of December 2, 2003
- (66) Certification Regarding Federal Income Tax Information Report dated December 2, 2003
- (67) E-mail dated December 2, 2003, originating from The South Group to Erin Otten with forward to Leslee Thomas regarding incoming wire in the amount of \$716,000.00
- (68) E-mail dated December 2, 2003, originating from The South Group to Erin Otten regarding incoming wire in the amount of \$146,001.00
- (69) E-mail dated December 2, 2003, originating from The South Group to Erin Otten regarding incoming wire in the amount of \$20,000.00
- (70) First American Title Insurance Company Residential Loan Policy Schedule A dated December 2, 2003 insuring Wells Fargo Home Mortgage
- (71) E-mail dated December 2, 2003, originating from The South Group to Erin Otten with forward to Leslee Thomas regarding incoming wire in the amount of \$148,002.81
- (72) E-mail dated December 2, 2003, originating from The South Group to Erin Otten with forward to Leslee Thomas regarding incoming wire in the amount of \$399,244.40
- (73) Mortgage dated December 2, 2003, from Donald L. McNeil and Gregory M. Gottschlich to Wells Fargo Home Mortgage, Inc., recorded in the Office of the Register of Deeds for Beaufort County in Book 1880 at Page 1095 on December 4, 2003

- (74) Second Home Rider and Fixed/Adjustable Rate Rider, both dated December 2, 2003, as riders to first mortgage
 - (75) Seller's Affidavit dated December 2, 2003
 - (76) Affidavit of No Construction and/or Improvements dated December 2, 2003
 - (77) Notification of Property Transfer dated December 2, 2003, from Lawton Ellis of Bethea, Jordan & Griffin, P. A.
 - (78) Buyer/Seller Certification dated December 2, 2003
 - (79) Letter of December 2, 2003, from Chris Dooling of Wells Fargo Home Mortgage to Donald L. McNeil
-
- (80) Initial Escrow Account Disclosure Statement dated December 2, 2003
 - (81) Certification of Non-foreign Status dated December 2, 2003
 - (82) Wells Fargo Loan Closing Instructions dated December 2, 2003
 - (83) Truth in Lending Disclosure Statement dated December 2, 2003
 - (84) Property Bill Information Worksheet (undated)
-
- (85) Loan Payment Information dated December 2, 2003
 - (86) Servicing Disclosure Statement dated December 2, 2003
 - (87) Affiliated Business Arrangement Disclosure dated December 2, 2003
 - (88) Name Affidavit (for Donald L. McNeil) dated December 2, 2003
 - (89) Name Affidavit (for Gregory M. Gottschlich) dated December 2, 2003
 - (90) Request for Copy of Transcript or Tax Form (for Donald L. McNeil) dated December 2, 2003
 - (91) Request for Copy of Transcript or Tax Form (for Gregory M. Gottschlich) dated December 2, 2003
 - (92) General Authorization dated December 2, 2003
 - (93) Notice of Special Flood Hazards dated December 2, 2003

#8 

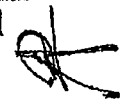
- (94) Uniform Residential Loan Application for Donald L. McNeil dated December 2, 2003
- (95) Uniform Residential Loan Application for Gregory M. Gottschlich dated December 2, 2003
- (96) Buyer/Seller Certification signed by sellers dated December 2, 2003
- (97) Correction Agreement - Limited Power of Attorney dated December 2, 2003
- (98) Broad Creek PSD Water Billing Closings dated December 2, 2003
- (99) Palmetto Electric Cooperative Service Order dated December 2, 2003
- ~~(100) Single Ledger Balance Report reflecting settlement date of December 2, 2003~~
- (101) Mortgage dated December 2, 2003, from Donald L. McNeil and Gregory M. Gottschlich to Wells Fargo Bank, N.A. recorded in the Office of the Register of Deeds for Beaufort County in Book 1880 at Page 1120 on December 4, 2003
- (102) Closing Instructions (2nd lien) dated December 2, 2003
- (103) HUD-1 Settlement Statement dated December 2, 2003 (2nd lien only)
- ~~(104) Acknowledgment of Receipt of Settlement showing settlement date of December 2, 2003~~
- (105) Home Equity Access Line of Credit Agreement dated December 2, 2003
- (106) Request for Taxpayer Identification Number and Certification for McNeil dated December 2, 2003
- (107) Request for Copy or Transcript of Tax Form (McNeil and Gottschlich) dated December 2, 2003
- (108) Settlement Statement reflecting settlement date of December 2, 2003
- (109) Agreement to Provide Property/Flood Insurance dated December 2, 2003
- (110) Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance dated December 2, 2003
- (111) South Carolina Application Disclosure dated December 2, 2003

- (112) Letter of December 2, 2003, from Wells Fargo Home Equity to Donald L. McNeil
 - (113) Schedules A and B of First American Title Insurance Company commitment dated December 2, 2003 (2nd lien)
 - (114) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Dr. Donald L. McNeil
 - (115) Notice of Ownership Change dated December 3, 2003, from Laurich & Deeb to Palmetto Dunes Resort
 - (116) Notice of Change in Ownership dated December 3, 2003, from Laurich & Deeb to Palmetto Electric
-
- (117) Commitment Letter dated December 3, 2003
 - (118) Single Ledger Balance Report showing transaction date of December 3, 2003
 - (119) Hazard Insurance Requirements dated December 3, 2003
 - (120) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Wells Fargo Home Mortgage, Inc.
 - (121) Letter dated December 3, 2003, from Leslee Thomas to Dr. Gregory M. Gottschlich transmitting copies of closing documents
-
- (122) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Dr. Gregory M. Gottschlich
 - (123) Letter dated December 3, 2003, from Leslee Thomas to Dr. Donald L. McNeil transmitting copies of closing documents
 - (124) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to Dr. Donald L. McNeil
 - (125) Letter of December 3, 2003, from Leslee Thomas to Beaufort County Treasurer transmitting check in the amount of \$8,055.63 for 2003 Beaufort County taxes
 - (125) Notice of Change in Ownership dated December 3, 2003, from Laurich & Deeb to Broad Creek PSD
 - (127) Copies of the following check stub numbers (all disbursed December 3,

#10


2003): 24792 payable to Laurich & Deeb in the amount of \$398,189.40 (also have copy of this check); 24793 payable to Laurich & Deeb in the amount of \$785.00; 24790 payable to Beaufort County Register of Deeds in the amount of \$15.00; 24791 payable to Coastal Title Insurance Agency in the amount of \$240.00; 24794 payable to Wells Fargo in the amount of \$15.00; 24769 payable to Atlantic Pest Control in the amount of \$115.00; 24770 payable to Beaufort County Register of Deeds in the amount of \$8,720.00; 24771 payable to Beaufort County Register of Deeds in the amount of \$10.00; 24772 payable to Bethea, Jordan & Griffin, P. A. in the amount of \$750.00; 24773 payable to Broad Creek PSD in the amount of \$148.15; 24774 payable to Coastal Title Insurance Agency in the amount of \$752.75; 24775 payable to Donald L. McNeil in the amount of \$2,343.23; 24776 payable to Dunes Marketing Group in the amount of \$78,000.00; 24777 payable to Greenwood Development Corp. in the amount of \$50.00; 24778 payable to Gregory M. Gottschlich in the amount of \$2,343.23; 24779 payable to Johnson & Son in the amount of \$65.00; 24789 payable to Wells Fargo Home Mortgage in the amount of \$3,969.70; 24780 payable to Joy Logan, Treasurer in the amount of \$8,055.63; 24781 payable to Laurich & Deeb in the amount of \$2,819.75; 24782 payable to PD - Community Services Division in the amount of \$1,058.85; 24783 payable to S. C. Tax Commission in the amount of \$4,900.28; 24784 payable to Sea Coast Insurance in the amount of \$2,305.50; 24785 payable to Sea Coast Insurance in the amount of \$2,800.00; 24786 payable to Sea Coast Insurance in the amount of \$3,529.00; 24787 payable to SouthTrust Mortgage in the amount of \$943,382.32; 24788 payable to Thomas N. Dye and Jan H. Dye in the amount of \$353,369.82

- (128) Letter of December 3, 2003, from Leslee Thomas to Greenwood Development Corp., transmitting Waiver Agreement to be executed
- (129) Letter of December 3, 2003, from Leslee Thomas to Payoff Department of SouthTrust Mortgage Corp., transmitting check in the amount of \$943,382.32
- (130) UPS shipment receipt dated December 3, 2003, from Laurich & Deeb to SouthTrust Mortgage Corp.
- (131) First American Title Insurance Company owner's title policy dated December 4, 2003
- (132) First American Title Insurance Company Short Form Residential Loan Policy dated December 8, 2003
- (133) Letter from Anne Gregg, of Laurich & Deeb, P. A. dated December 12, 2003, and Laurich & Deeb, P. A. check number 24783 in the amount of \$4,900.28 to the South Carolina Department of Revenue

#11 

- (134) First Page of Satisfied Mortgage from Thomas N. Dye and Jan H. Dye to Southtrust Mortgage Corporation recorded in the Office of the Register of Deeds for Beaufort County on January 6, 2004, in Book 1893 at Page 2419
- (135) Transmittal letter dated January 22, 2004, from Leslee Thomas to Wells Fargo Home Mortgage transmitting a copy of the title policy, the original recorded mortgage and the copy of the recorded powers of attorney
- (136) Letter of February 9, 2004 from Leslee Thomas of Laurich & Deeb, P. A., to Mr. Donald L. McNeil and Mr. Gregory M. Gottschlich
- (137) Fax cover dated December 1, 2006, from Greg Gottschlich to Bob Deeb transmitting 5 pages

- (138) Fax transmittal cover dated December 8, 2006, from Bob Deeb, to Dr. Gregory M. Gottschlich
- (139) Letter of December 8, 2006, from Robert M. Deeb, Jr., to Dr. Donald L. McNeil and Dr. Gregory M. Gottschlich
- (140) E-mails between Diane Conner, Greg Gottschlich, Robert Deeb and Jack Qualey dated February 6, 2007

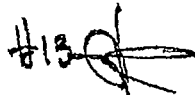
- (141) Fax transmittal cover sheet to Carol at First American from Laurich & Wiseman, P. A., dated July 18, 2007

- (142) Summons and Complaint dated February 7, 2008 and drafts of the Amended Summons and the Amended Complaint
- (143) Letter from Robert M. Deeb to John D. Hudson, Jr., dated February 11, 2008
- (144) Information List (undated)
- (145) Attorney/Insurance Preference Check List (undated)
- (146) Home Equity Address Verification Request (undated)
- (147) Authorization for Automatic Transfer (ACH) (unsigned and undated)
- (148) Instructions to the Customer and Notary (undated)
- (149) Telephone message from McNeil to Leslee (undated)

- (150) Notice of Wells Fargo Home Mortgage mortgagee clause change (undated)
 - (151) Rider to Loan Application (unsigned and undated)
 - (152) Palmetto Dunes Resort - Property Owner Division - Closing Information (Association Statement)
 - (153) Flood Insurance Requirements (undated)
 - (154) Substitute Form 1099 for Thomas N. Dye and Jan H. Dye
 - (155) Contract of Sale between Thomas N. Dye and Jan H. Dye, as seller and Dr. Gregory M. Gottschlich and Dr. Don McNeil, as Purchaser (unsigned and undated)
-
- (156) Consumer Information - Consent to Dual Agency (unsigned and undated)
 - (157) Addendum to Contract of Sale - Inspection Report (unsigned and undated)
 - (158) Dunes Marketing Group Contract Information Sheet and Sales Agents Checklist (undated)
 - (159) Closing Checklist (undated)
 - (160) Note in file referencing cost of title insurance and various phone numbers (undated)
-
- (161) Laurich Title Abstract Worksheets (5) (undated)
 - (162) Wiring Instructions for Laurich & Deeb, P. A., referencing McNeil Closing (undated)

These are among the materials I would usually review and consider as an expert in reviewing a matter for possible lawyer malpractice in the setting of real estate closing transaction and to determine the duties and standard of care which should be exhibited by an attorney representing one or more of the parties therein and to form an opinion as to where duties existed and whether a breach of duty has occurred. My review of these materials varied in degree, depending upon my perception of necessity.

7. In submitting this affidavit, I have assumed the accuracy and completeness of the materials and documents listed above. It is noted that some of the items reviewed reflected no dates or signatures and were otherwise incomplete. As to incomplete items, I have assumed they were ultimately completed and executed as presented.



8. The South Carolina Rules of Professional Conduct ("the Rules") succinctly summarize an attorney's minimal ethical duties, and our Supreme Court has adopted the standards of these Rules as a measure of lawyer conduct. Smith v. Haynesworth, Marion McKay & Guerard, 322 S.C. 433, 472 S.E.2d 612 (1996). While failure of an attorney to comply with the Rules is not evidence of negligence *per se*, it is a circumstance (along with other facts and circumstances) to be considered in determining whether an attorney acted with reasonable care in fulfilling duties to a client. The Rules were amended effective October 1, 2005, and the opinions expressed herein are predicated upon the Rules prior to that date.

9. While a lawyer is obligated to provide competent representation to a client (Rule 1.1), this does not require that a lawyer have special training or prior experience to handle unfamiliar problems. Some important skills, such as drafting, are required in all legal problems. The most fundamental legal skill consists of determining the character of a legal problem. Competent representation includes inquiry into and analysis of the factual and legal elements. The required attention and preparation are determined by what is at stake. Complex transactions require more attention, preparation and communication.

10. While a lawyer must abide by a client's decisions concerning the objectives of representation and may limit the objectives of the representation if the client consents after consultation, the lawyer must discuss with a client the legal consequences of any proposed course of conduct (Rule 1.2). A matter must be explained to the extent reasonably necessary to permit the client to make informed decisions (Rule 1.4). The adequacy of communication depends in part upon the kind of advice and assistance which the client can reasonably expect.

11. "While in many situations an attorney's representation of both a buyer and seller in a real estate transaction may create a conflict of interest . . . if the parties have already agreed on the basic terms of the agreement and the attorney acts primarily as a 'scrivener' the attorney may normally represent both parties after obtaining their consent." Beal v. Mars Larsen Ranch Corp., 586 P.2d 1378 (Idaho 1978). Cited in McNair v. Rainsford, *supra*. It is my opinion that communication of this nature could not be considered adequate unless it is in writing. The case of Darby v. The Furman Co., Inc., 334 S.C. 343, 513 S.E.2d 848 (1999) supports and Rule 1.7 (b) (4), confirms this opinion.

12. An attorney in a real estate transaction owes duties to several parties, especially when the attorney undertakes the preparation of documents for the party's protection. In the Matter of H. Jackson Gregory, 332 S.C.13, 503 S.E.2d 735 (1998).

13. The duties of a closing attorney were generally summarized in the 1987 case of State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987). These obligations were re-enforced in Doe v. Condon, 341 S.C. 22, 532 S.E.2d 879 (2000); Doe v. Condon, 351 S.C. 158, 568 S.E.2d 356 (2002); Doe v. McMaster, 355 S.C. 306, 585 S. E.2d 773 (2003) and

Doe Law Firm v. Richardson, 371 S.C. 14, 636 S.B.2d 866 (2006).

14. Although the representation of multiple clients in a single transaction is permissible under the logic of Rule 1.7(b), it can only be undertaken when each client, after consultation, consents. This consultation must include an explanation of all the implications of common representation with the advantages and risks involved. The Rules define consultation: as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." If a disinterested lawyer would conclude that a client should not consent to the multiple representation, the involved lawyer cannot seek such consent. Obviously a lawyer cannot represent a client if that representation will be directly adverse to another client or if representation will be materially limited by responsibility to the other client [Rule 1.7(a) and (b)]. Under the revised Rules, it is expressed that the consents must be confirmed in writing.

15. As a counselor, an attorney must exercise independent (of the client and others) judgement and render candid advice and refer not only to the law, but also to other considerations. These other considerations include moral, economic, social and political factors relevant to the client's situation (Rule 2.1).

16. I have been asked to render an expert opinion upon the conduct of attorneys Robert M. Deeb ("Deeb"), Charles H. Wiseman ("Wiseman") and their professional association, Laurich & Deed, P. A. (the "Law Firm"), in their representation of Gregory M. Gottschlich and Donald L. McNeil ("Plaintiffs"). The representation occurred in connection with the purchase by Plaintiffs of the real property in Beaufort County, South Carolina, known as #48 Sea Lane, Hilton Head Island, South Carolina, also known as Lot 27, Block C, Tract A Palmetto Dunes Development ("the Real Property"); and the financing of that purchase ("the Transaction"). The Transaction involved and included the granting by Plaintiffs to Deeb and Wiseman, of Specific Powers of Attorney ("the Power of Attorney") to handle the purchase and financing of the Real Property including first and second mortgage financing and the Transaction is fairly represented by the documents listed in paragraph 6. I must, however, challenge the concept that two attorneys of and from the same firm, both given a Power of Attorney by a purchaser of real property, can conduct a transaction in which one acts as a closing attorney and the other acts as attorney-in-fact for the buyer without creating irreconcilable conflicts of interest. It is my opinion that the closing attorney at law cannot avoid assumptions that his partner, purchasing attorney-in-fact, knows and understands the documents he might otherwise explain to a present purchaser. It is my further opinion that the attorney-in-fact cannot know questions to ask of the closing attorney at law. There is an abundance of self-dealing that disclosures and waivers cannot effectively overcome.

17. I understand and am of the opinion that Deeb, Wiseman and the Law Firm were retained by and had duties to Plaintiffs in this Transaction, and also had duties to other parties in the Transaction.

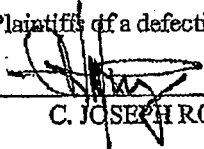
18. After reviewing the documentation and applicable law, it is my opinion that Deeb,

#150

Wiseman and the Law Firm breached the duty and standard of care generally required of reasonably competent attorneys in the following particulars:

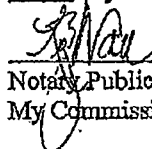
- (1) Failing, in general, to provide competent representation in the protection of the interest of Plaintiffs (Rule 1.1);
- (2) Failing to give independent, candid advice, referring not only to the law, but also to other considerations, particularly economic considerations; specifically in failing to recognize that the improvements upon the real property were constructed in a manner that violated mandated elevations and that this would adversely affect Plaintiffs' ability to obtain insurance reasonably needed by Plaintiffs (Rule 2.1);
- (3) Failing to advise Plaintiffs of issues related to recognized flood plain levels and protective laws, ordinances, rules and regulations related thereto;
- (4) Failing to recognize duties in the Transaction, that if recognized, advised about and acted upon, would enable Plaintiffs to protect their investment in the Real Property;
- (5) Failing to reasonably inform Plaintiffs about the elevation issue and in failing to explain the matter to the extent necessary to permit Plaintiffs to make informed decisions (Rule 1.4);
- (6) Failing to recognize duties to specifically advise Plaintiffs about the nature and effect of a Statute of Limitation and the need to protect themselves from its consequences;
- (7) Failing to recognize a duty to conduct the Transaction in a manner that would assure Plaintiffs sufficient information to understand limitations related to acting through the Power-of-Attorney and their not being physically present at an actual closing and personally reviewing the documentation; and
- (8) Failing to determine and advise Plaintiffs of a defective deed in the chain of title.

#16



C. JOSEPH ROOF

SWORN TO before me this
16th day of March, 2009.



(L.S.)

Notary Public for South Carolina

My Commission Expires 01-22-2018

28049

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
2009 MAR 25 FOR THE NINTH JUDICIAL CIRCUIT

GREGORY M. GOTTSCHLICH &
DONALD L. MCNEIL,

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.
CASE NO. 2008-CP-07-00517

Plaintiffs,

v.

ANSWER OF DEFENDANTS OLIVER
AND THE BYRNE CORPORATION
(CONTAINING MOTIONS)
(JURY TRIAL DEMANDED)

STRIMPFEL CUSTOM HOMES, INC;
JOSEPH A. REEVE; JERRY L.
RICHARDSON; COASTAL SURVEYING,
CO. INC.; THOMAS N. DYE; JANET
H. DYE; KEN OLIVER; THE BYRNE
CORPORATION D/B/A DUNES
MARKETING GROUP; LAURICH &
DEEB, P.A.; ROBERT M. DEEB, JR.;
AND CHARLES H. WISEMAN,

Defendants.

TO THE PLAINTIFFS AND THEIR ATTORNEY JOHN D. HUDSON, JR.

The Defendants Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group ("these Defendants"), by and through their undersigned attorney, answer, move and otherwise plead to the Plaintiffs' Amended Complaint as follows:

FOR A FIRST DEFENSE

1. Upon information and belief, these Defendants admit paragraphs 1-6; 9, 10, 11, 12, 13, 15, 18 and 24 of the Plaintiffs' Amended Complaint.
2. These Defendants admit the allegations in paragraphs 7, 8, 22, 26 and 122 of the Plaintiffs' Amended Complaint.

3. As to paragraph 14, it alleges law, rather than of fact, to which no response is needed or necessary; however, to the extent that a response is needed or necessary, these Defendants would deny paragraph 14 and put the Plaintiffs their required burden of proof.

4. These Defendants lack knowledge and information sufficient to form a belief and thus deny paragraphs 16, 17, 19, 25, 27 and 29 of the Plaintiffs' Amended Complaint, putting the Plaintiffs to their required burden of proof.

5. As to paragraph 20, it is denied as alleged, because the Dye Defendants contracted with The Byrne Corporation d/b/a Dunes Marketing to list their dwelling for sale, never contracting with Defendant Oliver.

6. As to paragraph 21, it is admitted as alleged; however, that portion which is denied is that Greg Merrill, who is now deceased, was an independent contractor of Defendant Dunes Marketing and not "an agent, servant or employee."

7. As to paragraph 23, it is admitted only that representations were made in a disclosure statement only by the Dye Defendants and not by any other person or entity. It is further admitted that on November 6, 2003 that the Plaintiffs executed a contract of sale with the Dye Defendants for the dwelling, such contract being attached as exhibit H to the Plaintiffs' Amended Complaint. These Defendants deny anything not specifically admitted regarding paragraph 23, putting the Plaintiffs to their required

burden of proof.

8. As to paragraph 28, it is admitted that on or about December 8, 2006 that the Defendant Deeb sent a letter to the Plaintiffs informing them of certain other things, including the fact that "the statute of limitations for various claims they might have had against any third parties....expired on December 2, 2006," with a copy of that letter being attached as exhibit K and incorporated by the Plaintiffs into their Amended Complaint. As to the rest and remainder of paragraph 28, these Defendants lack knowledge and information sufficient to form a belief and thus deny the remainder, putting the Plaintiffs to their required burden of proof.

9. Because the Plaintiffs in paragraph 30, 38, 43, 48, 53, 58, 64, 69, 75, 86, 97, 102, 107, 112 and 117 of the Plaintiffs' Amended Complaint attempt to repeat and re-allege other matters to which a response has, or will be, given, no further response is needed or necessary; however, to the extent that any response is needed or necessary, these numbered paragraphs are denied, putting the Plaintiffs to their required burden of proof.

10. These Defendants deny paragraphs 31-37, 39-42, 44-47, 49-52, 54-57, 59-63, 65-68, 70-74, 76-85, 87-96, 98-101, 103-106, 108-111, 113-116 and 118-121 of the Plaintiffs' Amended Complaint, putting the Plaintiffs to their required burden of proof as to those numbered paragraphs and the remainder of their Amended

Complaint.

11. These Defendants deny each and every allegation of the Plaintiffs' Amended Complaint not specifically and expressly admitted above.

FOR A SECOND DEFENSE
(BY WAY OF MOTION)

12. These Defendants move this court pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure for an Order dismissing one or both of these Defendants due to the failure of one or both of the Plaintiffs to state facts sufficient to constitute a cause or cause(s) action against these Defendants.

FOR A THIRD DEFENSE
(BY WAY OF MOTION)

13. These Defendants move this court pursuant to Rule 12(c) of the South Carolina Rules of Civil Procedure for judgment on the pleadings based upon the admitted statute of limitations problems by the Plaintiffs and based upon other matters, including those which are attached to the Plaintiffs' Amended Complaint including, without limitation, that these Defendants were not a party to the contract with the Plaintiffs nor did they issue the property disclosure statement which was issued only by "Tom and Jan Dye" and acknowledged as having been received by only one of the Plaintiffs.

FOR A FOURTH DEFENSE
(BY WAY OF MOTION)

14. These Defendants would move this court pursuant to Rule 12(f) of the South Carolina Rules of Civil Procedure for an Order striking certain matters from the Plaintiffs' Amended Complaint including, without limitation, any indication or allegation that Greg Merrill, who is deceased, is a Defendant in this case, that attorney's fees are not recoverable against these Defendants and such other matters as will occur at the hearing on these matters.

FOR A FIFTH DEFENSE

15. These Defendants would crave attention to the documents regarding the building of the house and anything alleged in the Plaintiffs' Complaint, including without limitation those documents attached to the Plaintiffs' Complaint, and would deny anything inconsistent with such documents.

FOR A SIXTH DEFENSE

16. The Plaintiffs and the Dye Defendants signed the "Contract of Sale-Offer and Acceptance" ("contract") which precludes any litigation and/or recovery against these Defendants including, without limitations, paragraph 12 which states, in part, that these Defendants "have no responsibility for and make no oral or written representation concerning the condition of the premises."

FOR A SEVENTH DEFENSE

17. The Dye Defendants alone signed the property disclosure statement and thus made any representations, and not these Defendants.

FOR AN EIGHTH DEFENSE

18. These Defendants had no notice or knowledge of any alleged problems with the elevation level of the house.

FOR A NINTH DEFENSE

19. These Defendants acted appropriately and in compliance with industry standards.

FOR A TENTH DEFENSE

20. These Defendants did not construct the home and did not occupy the position of Sellers of the house and thus are not proper parties to the Plaintiffs seeking the equitable remedy of Rescission.

FOR AN ELEVENTH DEFENSE

21. The Plaintiffs acknowledged in writing that these Defendants made no representation, warranty or guarantee.

FOR A TWELFTH DEFENSE

22. These Defendants are informed, after the closing and at the time of this litigation, that only the foyer of the home is under the asserted elevation level, with two steps going from that foyer up to the main level, which upon information and belief is at or above the required elevation level.

FOR A THIRTEENTH DEFENSE

23. These Defendants had no notice or knowledge regarding the allegations as to the surveyors' elevation certificates at the time and had no notice or knowledge as to any construction or other deficiencies alleged by the Plaintiffs.

FOR A FOURTEENTH DEFENSE

24. Defendant Oliver and Greg Merrill, the latter of whom is now deceased, are, and were, independent contractors of the Defendant Dunes Marketing.

FOR A FIFTEENTH DEFENSE

25. The Plaintiffs purchased the property "as is."

FOR A SIXTEENTH DEFENSE

26. These Defendants move this Court pursuant to S.C. Code §15-36-10, et seq., commonly referred to as the South Carolina Frivolous Civil Proceedings Sanctions Act, once these Defendants have met the required burden of proof under that Act, allowing these Defendants to collect from the Plaintiffs the attorney's fees and costs incurred, or to be incurred, by these Defendants, with an appropriate judgment being entered against the Plaintiffs.

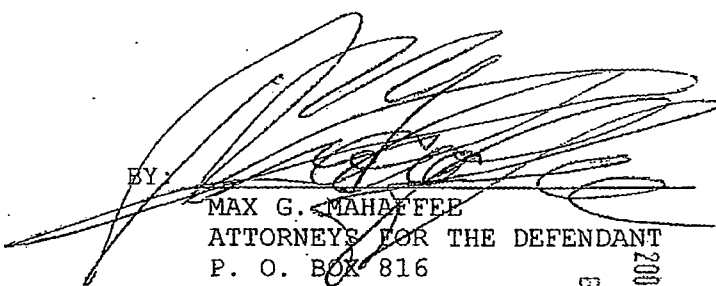
FOR A SEVENTEENTH DEFENSE

27. These Defendants assert as complete defenses laches and the applicable statute of limitations.

WHEREFORE, having fully responded to the Plaintiffs' Amended

Complaint, these Defendants Ken Oliver and the Byrne Corporation d/b/a Dunes Marketing Group prays that the same be dismissed against them and for such other and further relief as this Court deems just and proper, including the award of attorney's fees and costs to these Defendants.

GRIMBALL & CABANISS, L.L.C.

BY: 

MAX G. MAHAFFEE
ATTORNEYS FOR THE DEFENDANT
P. O. BOX 816
CHARLESTON, SC 29402
Tel: (843) 722-0316
Fax: (843) 722-1376

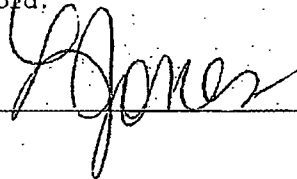
Charleston, South Carolina

March 23, 2009

2009 MAR 25 PM 1:16
CLERK OF COURT
BEAUFORT COUNTY
S.C.

CERTIFICATE OF SERVICE

I certify that on March 23, 2009
I mailed or delivered a true copy of the
foregoing pleading(s) to each counsel
of record.



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Gregory M. Gottschlich and Donald L. McNeil

Plaintiffs,

-vs-

Strimpfel Custom Homes, Inc.; Joseph A.
Reeve; Jerry L. Richardson; Coastal
Surveying Co., Inc.; Thomas N. Dye; Jan H. Dye;
Ken Oliver; and The Byrne Corporation d/b/a
Dunes Marketing Group; Laurich & Deeb, P.A.;
Robert M. Deeb, Jr. and Charles H. Wiseman

Defendants.

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO.: 08-CP-07-00517

DEFENDANTS THOMAS N.
DYE AND JAN H. DYE
AMENDED ANSWER

2009 APR 14 PM 2:10
CLERK OF COURT
BEAUFORT COUNTY S.C.

TO: JOHN D. HUDSON, JR., ESQUIRE AND WESLEY D. FEW, ESQUIRE,
ATTORNEYS FOR PLAINTIFFS:

NOW COMES the Defendants Thomas N. Dye and Jan H. Dye (hereinafter collectively referred to as "Defendant Dye") who issues its answer to the allegations contained against it in the Plaintiffs' Complaint as follows:

1. Any allegation contained in the Plaintiffs' Complaint not specifically admitted herein is to be denied.

PARTIES AND JURISDICTION

2. Upon information and belief, Defendant Dye admits the allegations contained in paragraph 1 of the Plaintiffs' Complaint.

3. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 2 of the Plaintiffs' Complaint, and therefore denies the same

and demands strict proof thereof.

4. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 3 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

5. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 4 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

6. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 5 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

7. Defendant Dye admits the allegations contained in paragraph 6 of the Plaintiffs' Complaint.

8. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 7 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

9. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 8 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

10. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 9 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

11. Defendant Dye lacks sufficient information with which to admit or deny the

allegations contained in paragraph 10 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

12. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 11 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

FACTUAL BACKGROUND

13. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

14. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 12 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

15. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 13 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

16. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 14 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

17. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 15 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

18. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 16 of the Plaintiffs' Complaint, and therefore denies the same

and demands strict proof thereof.

19. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 17 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

20. Defendant Dye admits only so much of the allegations contained in paragraph 18 of the Plaintiff's Complaint which can be construed to allege that Defendant Dye purchased the dwelling from Mr. And Mrs. Ben D. Muldong in 2001. Defendant Dye lacks sufficient information with which to admit or deny the remaining allegations contained in paragraph 18 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

21. Defendant Dye is informed and believes that the best evidence as to the allegations contained in paragraph 19 of the Plaintiff's Complaint is the Jones' Elevation Certificate. The Jones' Certificate of Elevation speaks for itself and therefore, no response is required from Defendant Dye. As to the remaining allegations, and to the extent a further response is required, Defendant Dye denies any and/or all allegations contained in paragraph 19 of the Plaintiffs' Complaint and demands strict proof thereof.

22. Defendant Dye admits only so much of the allegations contained in paragraph 20 of the Plaintiffs' Complaint which can be construed to allege that Defendant Dye contracted with Defendant Dunes Marketing. Defendant Dye lacks sufficient information with which to admit or deny the remaining allegations contained in paragraph 20 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

23. Defendant Dye admits only so much of the allegations contained in paragraph 21 of the Plaintiffs' Complaint which can be construed to allege that on or about November 6, 2003,

Plaintiff signed an "Exclusive Buyer Agency Agreement" with Defendant Dunes Marketing. Defendant Dye lacks sufficient information with which to admit or deny the remaining allegations contained in paragraph 21 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

24. Defendant Dye admits only so much of the allegations contained in paragraph 22 of the Plaintiffs' Complaint which can be construed to allege that this Defendant checked "no" with regard to the presence of any violation or variance of the building code. In further and affirmatively respond that the Defendant Dye would state that as of the date of the disclosure statement, they were not aware of any violation or variance of the building code as relates to the subject property. Defendant Dye denies the remaining allegations contained in paragraph 22 of the Plaintiff's Complaint and demands strict proof thereof.

25. Defendant Dye admits only so much of the allegations contained in paragraph 23 of the Plaintiffs' Complaint which can be construed to allege that on or about November 6, 2003, Defendant Dye and Plaintiffs executed a contract of sale for the dwelling. Defendant Dye denies the remaining allegations contained in paragraph 23 of the Plaintiffs' Complaint and demands strict proof thereof.

26. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 24 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

27. Defendant Dye admits only so much of the allegations contained in paragraph 25 of the Plaintiffs' Complaint which can be construed to allege that on or about December 2, 2003, Robert M. Deeb conducted the closing for the property at 48 Sea Lane. Defendant Dye lacks

sufficient information with which to admit or deny the remaining allegations contained in paragraph 25 of the Plaintiffs' Complaint.

28. Defendant Dye admits only so much of the allegations contained in paragraph 26 of the Plaintiffs' Complaint which can be construed to allege that Plaintiffs tendered to Defendants Dye during the course of the closing funds sufficient to satisfy the agreed upon \$1,395,000.00 purchase price. Defendant Dye lacks sufficient information with which to admit or deny the remaining allegations contained in paragraph 26 of the Plaintiffs' Complaint.

29. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 27 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

30. Defendant Dye admits only so much of the allegations contained in paragraph 28 of the Plaintiffs' Complaint which can be construed to allege that Defendant Deeb authored the letter attached as Exhibit K. Defendant Dye lacks sufficient information with which to admit or deny the remaining allegations contained in paragraph 28 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

31. Defendant Dye lacks sufficient information with which to admit or deny the allegations contained in paragraph 29 of the Plaintiffs' Complaint, and therefore denies the same and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' FIRST CAUSES OF ACTION
(Negligent Misrepresentation)**

32. In response to paragraph 30 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response

was set forth verbatim herein.

33. Defendant Dye denies the allegations contained in paragraph 31 of the Plaintiffs' Complaint and demands strict proof thereof.

34. Defendant Dye denies the allegations contained in paragraph 32 of the Plaintiffs' Complaint and demands strict proof thereof.

35. Defendant Dye is informed and believes that the allegations contained in paragraph 33 of the Plaintiffs' Complaint constitute conclusions of law and as such, no response is required from this defendant. To the extent a response is required, Defendant Dye denies each and every allegation contained in paragraph 33 of Plaintiffs' Complaint and demands strict proof thereof.

36. Defendant Dye denies the allegations contained in paragraph 34 of the Plaintiffs' Complaint and demands strict proof thereof.

37. Defendant Dye denies the allegations contained in paragraph 35 of the Plaintiffs' Complaint and demands strict proof thereof.

38. Defendant Dye denies the allegations contained in paragraph 36 of the Plaintiffs' Complaint and demands strict proof thereof.

39. Defendant Dye denies the allegations contained in paragraph 37 of the Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' SECOND CAUSE OF ACTION
(Violation of S.C. Code § 27-50-10 *et seq.*
(a/k/a "The Residential Property Condition Disclosure Act"))**

40. In response to paragraph 38 of the Plaintiffs' Complaint, Defendant Dye repeats

its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

41. Defendant Dye is informed and believes that the best evidence as to the allegations contained in paragraph 39 of the Plaintiff's Complaint is the residential real estate contract. The residential real estate contract speaks for itself and therefore, no response is required from Defendant Dye. As to the remaining allegations, and to the extent a further response is required, Defendant Dye denies any and/or all allegations contained in paragraph 39 of the Plaintiffs' Complaint and demands strict proof thereof.

42. Defendant Dye admits only so much of the allegations contained in paragraph 40 of the Plaintiffs' Complaint which can be construed to allege that Defendant Dye affirmatively represented that they had no knowledge "[v]iolation of variances of building codes or zoning ordinances.] Defendant Dye denies the remaining allegations contained in paragraph 40 of the Plaintiffs' Complaint and demands strict proof thereof.

43. Defendant Dye denies the allegations contained in paragraph 41 of the Plaintiffs' Complaint and demands strict proof thereof.

44. Defendant Dye denies the allegations contained in paragraph 42 of the Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' THIRD CAUSE OF ACTION
(Negligence)**

45. In response to paragraph 43 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

46. Defendant Dye is informed and believes that the allegations contained in paragraph 44 of the Plaintiffs' Complaint constitute conclusions of law and as such, no response is required from this defendant. To the extent a response is required, Defendant Dye denies each and every allegation contained in paragraph 44 of Plaintiffs' Complaint and demands strict proof thereof.

47. Defendant Dye denies each and every allegation contained in paragraph 45 of Plaintiffs' Complaint and demands strict proof thereof.

48. Defendant Dye denies each and every allegation contained in paragraph 46, including sub paragraphs a-d, of Plaintiffs' Complaint and demands strict proof thereof.

49. Defendant Dye denies each and every allegation contained in paragraph 47 of Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' FOURTH CAUSES OF ACTION
(Breach of Contract)**

50. In response to paragraph 48 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

51. Defendant Dye admits only so much of the allegations contained in paragraph 49 of the Plaintiffs' Complaint which can be construed to allege that the Plaintiffs and Defendant Dye entered into a real estate contract for the purchase of dwelling located at 48 Sea Lane. Defendant Dye denies the remaining allegations contained in paragraph 49 of the Plaintiffs' Complaint and demands strict proof thereof.

52. Defendant Dye denies each and every allegation contained in paragraph 50 of

Plaintiffs' Complaint and demands strict proof thereof.

53. Defendant Dye denies each and every allegation contained in paragraph 51 of Plaintiffs' Complaint and demands strict proof thereof.

54. Defendant Dye denies each and every allegation contained in paragraph 52 of Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' FIFTH CAUSES OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)**

55. In response to paragraph 53 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

56. Defendant Dye admits only so much of the allegations contained in paragraph 54 of the Plaintiffs' Complaint which can be construed to allege that the Plaintiffs and Defendant Dye entered into a real estate contract for the purchase of dwelling located at 48 Sea Lane. Defendant Dye denies the remaining allegations contained in paragraph 49 of the Plaintiffs' Complaint and demands strict proof thereof.

57. Defendant Dye denies each and every allegation contained in paragraph 55 of Plaintiffs' Complaint and demands strict proof thereof.

58. Defendant Dye denies each and every allegation contained in paragraph 56 of Plaintiffs' Complaint and demands strict proof thereof.

59. Defendant Dye denies each and every allegation contained in paragraph 57 of Plaintiffs' Complaint and demands strict proof thereof.

FOR A DEFENSE

TO PLAINTIFFS' SIXTH CAUSES OF ACTION
(Violation of Unfair Trade Practices Act)

60. In response to paragraph 58 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

61. Defendant Dye is informed and believes that the allegations contained in paragraphs 59-63 of the Plaintiffs' Complaint are directed to parties other than this Defendant. However, to the extent that a response can be construed to be required from Defendant Dye, Defendant Dye denies the allegations contained therein as they pertain to it, and demand strict proof thereof.

FOR A DEFENSE
TO PLAINTIFFS' SEVENTH CAUSES OF ACTION
(Civil Conspiracy)

62. In response to paragraph 64 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

63. Defendant Dye denies each and every allegation contained in paragraph 65 of Plaintiffs' Complaint and demands strict proof thereof.

64. Defendant Dye denies each and every allegation contained in paragraph 66 of Plaintiffs' Complaint and demands strict proof thereof.

65. Defendant Dye denies each and every allegation contained in paragraph 67 of Plaintiffs' Complaint and demands strict proof thereof.

66. Defendant Dye denies each and every allegation contained in paragraph 68 of

Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' EIGHTH CAUSES OF ACTION
(Breach of Fiduciary Duty)**

67. In response to paragraph 69 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

68. Defendant Dye is informed and believes that the allegations contained in paragraphs 70-74 of the Plaintiffs' Complaint are directed to parties other than this Defendant. However, to the extent that a response can be construed to be required from Defendant Dye, Defendant Dye denies the allegations contained therein as they pertain to it, and demand strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' NINTH CAUSES OF ACTION
(Fraud)**

69. In response to paragraph 75 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

70. Defendant Dye denies each and every allegation contained in paragraph 76 of Plaintiffs' Complaint and demands strict proof thereof.

71. Defendant Dye denies each and every allegation contained in paragraph 77 of Plaintiffs' Complaint and demands strict proof thereof.

72. Defendant Dye denies each and every allegation contained in paragraph 78 of Plaintiffs' Complaint and demands strict proof thereof.

73. Defendant Dye denies each and every allegation contained in paragraph 79 of Plaintiffs' Complaint and demands strict proof thereof.

74. Defendant Dye denies each and every allegation contained in paragraph 80 of Plaintiffs' Complaint and demands strict proof thereof.

75. Defendant Dye denies each and every allegation contained in paragraph 81 of Plaintiffs' Complaint and demands strict proof thereof.

76. Defendant Dye denies each and every allegation contained in paragraph 82 of Plaintiffs' Complaint and demands strict proof thereof.

77. Defendant Dye denies each and every allegation contained in paragraph 83 of Plaintiffs' Complaint and demands strict proof thereof.

78. Defendant Dye denies each and every allegation contained in paragraph 84 of Plaintiffs' Complaint and demands strict proof thereof.

79. Defendant Dye denies each and every allegation contained in paragraph 85 of Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' TENTH CAUSES OF ACTION
(Constructive Fraud)**

80. In response to paragraph 86 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

81. Defendant Dye denies each and every allegation contained in paragraph 87 of Plaintiffs' Complaint and demands strict proof thereof.

82. Defendant Dye denies each and every allegation contained in paragraph 88 of

Plaintiffs' Complaint and demands strict proof thereof.

83. Defendant Dye denies each and every allegation contained in paragraph 89 of Plaintiffs' Complaint and demands strict proof thereof.

84. Defendant Dye denies each and every allegation contained in paragraph 90 of Plaintiffs' Complaint and demands strict proof thereof.

85. Defendant Dye denies each and every allegation contained in paragraph 91 of Plaintiffs' Complaint and demands strict proof thereof.

86. Defendant Dye denies each and every allegation contained in paragraph 92 of Plaintiffs' Complaint and demands strict proof thereof.

87. Defendant Dye denies each and every allegation contained in paragraph 93 of Plaintiffs' Complaint and demands strict proof thereof.

88. Defendant Dye denies each and every allegation contained in paragraph 94 of Plaintiffs' Complaint and demands strict proof thereof.

89. Defendant Dye denies each and every allegation contained in paragraph 95 of Plaintiffs' Complaint and demands strict proof thereof.

90. Defendant Dye denies each and every allegation contained in paragraph 96 of Plaintiffs' Complaint and demands strict proof thereof.

**FOR A DEFENSE
TO PLAINTIFFS' ELEVENTH CAUSES OF ACTION
(Rescission)**

91. In response to paragraph 97 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

92. Defendant Dye denies each and every allegation contained in paragraph 98 of Plaintiffs' Complaint and demands strict proof thereof.

93. Defendant Dye denies each and every allegation contained in paragraph 99 of Plaintiffs' Complaint and demands strict proof thereof.

94. Defendant Dye denies each and every allegation contained in paragraph 100 of Plaintiffs' Complaint and demands strict proof thereof.

95. Defendant Dye denies each and every allegation contained in paragraph 101 of Plaintiffs' Complaint and demands strict proof thereof.

FOR A DEFENSE
TO PLAINTIFFS' TWELFTH CAUSE OF ACTION
(Professional Negligence/Legal Malpractice as to Defendants Laurich & Deeb, Deeb and Wiseman)

96. In response to paragraph 102 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

97. Defendant Dye is informed and believes that the allegations contained in paragraphs 103-106 of the Plaintiffs' Complaint are directed to parties other than this Defendant. However, to the extent that a response can be construed to be required from Defendant Dye, Defendant Dye denies the allegations contained therein as they pertain to it, and demand strict proof thereof.

FOR A DEFENSE
TO PLAINTIFFS' THIRTEENTH CAUSE OF ACTION
(Breach of Contract as to Defendants Laurich & Deeb, Deeb and Wiseman)

98. In response to paragraph 107 of the Plaintiffs' Complaint, Defendant Dye repeats

its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

99. Defendant Dye is informed and believes that the allegations contained in paragraphs 108-111 of the Plaintiffs' Complaint are directed to parties other than this Defendant. However, to the extent that a response can be construed to be required from Defendant Dye, Defendant Dye denies the allegations contained therein as they pertain to it, and demand strict proof thereof.

FOR A DEFENSE
TO PLAINTIFFS' FOURTEENTH CAUSE OF ACTION
(Breach of Fiduciary Duty as to Defendants Laurich & Deeb, Deeb and Wiseman)

100. In response to paragraph 112 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

101. Defendant Dye is informed and believes that the allegations contained in paragraphs 113-116 of the Plaintiffs' Complaint are directed to parties other than this Defendant. However, to the extent that a response can be construed to be required from Defendant Dye, Defendant Dye denies the allegations contained therein as they pertain to it, and demand strict proof thereof.

FOR A DEFENSE
TO PLAINTIFFS' FIFTEENTH CAUSE OF ACTION
(Equitable Indemnification as to Defendants Laurich & Deeb, Deeb and Wiseman)

102. In response to paragraph 117 of the Plaintiffs' Complaint, Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response

was set forth verbatim herein.

103. Defendant Dye is informed and believes that the allegations contained in paragraphs 118-121 of the Plaintiffs' Complaint are directed to parties other than this Defendant. However, to the extent that a response can be construed to be required from Defendant Dye, Defendant Dye denies the allegations contained therein as they pertain to it, and demand strict proof thereof.

104. Defendant Dye admits the allegations contained in paragraph 122 of the Plaintiffs' Complaint.

**FOR A FIRST AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Comparative Negligence)**

105. Defendant Dye repeats its answers to the allegations contained in Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

106. Defendant Dye is informed and believes that the damages as alleged by Plaintiff, the existence of which have been denied, were due to and caused by the negligent, grossly negligent, careless, reckless, wilful and wanton, negligent acts and conduct of the Plaintiff.

107. Defendant Dye is informed and believes that the Plaintiffs' acts, errors and omissions contributed to and combined with the Defendants' acts of negligence (the existence of any negligence on behalf of Defendant Dye having been expressly denied), so as to result in the Plaintiffs' alleged damages.

108. Defendant Dye is informed and believes that in the event that the Plaintiffs' own acts of negligence exceed fifty percent (50%) of the total negligence attributable to all of the parties herein (the existence of any negligence on behalf of Defendant Dye having been expressly

denied), the Plaintiff herein is barred from recovery. Additionally, any damages claimed against Defendant Dye must be reduced by the amount of negligence attributable to the Plaintiffs.

**FOR A SECOND AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Open and Obvious Condition)**

109. Defendant Dye repeats its answers to the allegations contained in Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

110. Defendant Dye alleges that all risks and dangers, if any, connected with the circumstances at the time and place of the Plaintiffs' alleged injury and damages were open, obvious and apparent and were known to, or should have been known to, the Plaintiffs.

111. Defendant Dye alleges that Plaintiffs were competent to judge the appropriateness of the circumstances and conditions at the time and place alleged in the Complaint and, therefore, by his actions assumed the risk of being injured in such manner on said occasion.

112. Defendant Dye is informed and believes that the Plaintiffs are therefore barred from recovery against this Defendant.

**FOR A THIRD AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Lack of Notice)**

113. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

114. Defendant Dye is informed and believes that Plaintiffs are barred from recovery because they failed to give proper notice to Defendant Dye of any defective condition, the existence of which Defendant Dye specifically denies.

**FOR A FOURTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Negligence of Another)**

115. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

116. Defendant Dye is informed and believes that the damages alleged in Plaintiffs' Complaint, if any, were directly and proximately caused by the negligent acts, errors and omissions of a party other than this Defendant and over whom this Defendant has no control.

117. Defendant Dye is informed and believes that the Plaintiffs are therefore barred from recovery against this Defendant.

**FOR A FIFTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Superseding Negligence)**

118. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

119. Defendant Dye is informed and believes that the claims alleged against it are barred, or severely limited, by the concurring, contributing, intervening, superseding or insulating fault and breach by persons or entities other than this Defendant.

120. Any fault or negligence by this Defendant, the existence of such negligence having been denied, was passive and secondary in light of the primary and active fault or breach of others.

121. Defendant Dye is informed and believes that the Plaintiffs are therefore barred from recovery from this Defendant.

**FOR A SIXTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Mitigation of Damages)**

122. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

123. Defendant Dye is informed and believes that the Plaintiffs have breached their duty to mitigate their damages and accordingly, the damages claimed must be barred or reduced.

**FOR A SEVENTH AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Spoilation of Evidence)**

124. Defendant Dye repeats each and every answer to the allegations contained in Plaintiffs' Complaint as if set forth verbatim herein.

125. Defendant Dye is informed and believes that Plaintiffs' claims for damages are barred based upon the spoilation of evidence.

**FOR AN EIGHTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Waiver and/or Estoppel)**

126. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

127. The damages claimed in the Plaintiffs' Complaint are barred based on the doctrines of waiver and estoppel.

**FOR A NINTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Statute of Limitation/Statute of Repose)**

128. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

129. The damages claimed in the Plaintiffs' Complaint are barred based on any and all applicable statutes of limitations and statutes of repose.

**FOR A TENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Failure to State a Claim)**

130. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

131. The allegations of the Plaintiffs' Complaint fail to state facts sufficient to constitute a cause of action against this Defendant and accordingly, the Complaint must be dismissed.

**FOR AN ELEVENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Laches)**

132. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

133. That this Defendant would show that the Plaintiffs claims are barred by the doctrine of laches.

**FOR A TWELFTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Unclean Hands)**

134. The Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

135. The Plaintiffs' claims as against this Defendant are barred by the doctrine of unclean hands.

**FOR A THIRTEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Assumption of Risk)**

136. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Fifth as if each and every response was set forth verbatim herein.

137. Defendant Dye would show that the Plaintiffs, by and through their own actions and/or inactions regarding the property which is the subject of this suit, have assumed the risk and/or accepted all portions of any damages alleged by his Complaint, and such assumption of risk and/or acceptance is a bar to the claims against this Defendant.

**FOR A FOURTEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Economic Loss Rule)**

138. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

139. The Plaintiffs' claims for damages are barred by the economic loss rule.

**FOR A FIFTEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Exclusion/Modification/Limitation of Remedies)**

140. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

141. Defendant Dye would show that the available remedies have been properly and effectively excluded, modified and/or limited by this Defendant.

**FOR A SIXTEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Exclusion/Modification/Limitation of Warranty)**

142. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs'

Complaint as if each and every response was set forth verbatim herein.

143. Defendant Dye is informed and believes that any and/or all applicable warranties have been properly and effectively excluded, modified and/or limited by this Defendant.

**FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Completion & Acceptance)**

144. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

145. Defendant Dye is informed and believes that the Plaintiffs' claims against this Defendant are barred by the doctrines of completion and acceptance.

**FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Failure to Make a Claim within Applicable Warranty Period)**

146. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

147. Defendant Dye is informed and believes that the Plaintiffs' claims against this Defendant are barred as a result of the Plaintiffs' failure to make a claim within the applicable warranty period.

**FOR A NINETEENTH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Right to Cure)**

148. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

149. Defendant Dye is informed and believes that the Plaintiffs' claims against this Defendant are barred as a result of the Plaintiffs' failure to provide Defendant Dye with the

opportunity to cure.

**FOR A TWENTIETH AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Violation of the S.C. Notice and Opportunity to Cure
Construction Dwelling Defects Act, S.C. Code Ann. § 40-59-810, *et seq.*)**

150. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

151. Defendant Dye is informed and believes that the Plaintiffs failed to provide notice to this Defendant of any and all alleged construction defects, in accordance with S.C. Code Ann. § 40-59-810, *et seq.*

152. Defendant Dye is informed and believes that the Plaintiffs are therefore barred from recovery against this Defendant.

**FOR A TWENTY-FIRST AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Unconstitutionality of Punitive Damages)**

153. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

154. The Plaintiffs' claim for punitive damages, and any award thereof, violates the due process clause of the Fifth and Fourteenth Amendments to the United States Constitution and the due process clause of Article I, Section 3 of the South Carolina Constitution and accordingly, should be barred.

**FOR A TWENTY-SECOND AFFIRMATIVE DEFENSE
TO ALL CAUSES OF ACTION
(Reservation and Non-Waiver of Contribution/Indemnity Claim)**

155. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

156. Defendant Dye reserves the right and does not waive it's right to raise a claim for indemnity and/or contribution as to any co-defendant pursuant to S.C. Code Ann. §15-38-10, *et seq.*

**FOR A TWENTY-THIRD AFFIRMATIVE DEFENSE
TO ALL PLAINTIFFS' CAUSES OF ACTION
(Reservation and Non-Waiver)**

157. Defendant Dye repeats its answers to the allegations contained in the Plaintiffs' Complaint as if each and every response was set forth verbatim herein.

158. Defendant Dye reserves the right and does not waive any additional or further defenses as may be revealed by additional information that may be acquired during the course of discovery or otherwise in this action.

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WHEREFORE having fully answered the allegations contained in the Plaintiffs' Complaint, Defendant Dye prays this Honorable Court inquire into the matters set forth herein, and enter its Order dismissing the Plaintiffs' Complaint and enter a finding on behalf of this Defendant, including the award of the fees and costs of this action.

TUPPER, GRIMSLEY & DEAN, P.A.

By: Katherine E. Graham

Ralph E. Tupper
Katherine E. Graham
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

Attorneys for Defendants Thomas and Jan H. Dye

Beaufort, South Carolina
Dated: April 14, 2009

CERTIFICATE OF SERVICE

This is to certify that I have served counsel for all parties in the foregoing matter with a copy of this pleading by:

☒ depositing in the U.S. Mail a copy of same in properly addressed envelope with adequate postage thereon

☐ handing counsel a copy thereof
☐ by facsimile and depositing in the U.S. Mail a copy of same in a properly addressed envelope with adequate postage thereon.

This 14 day of April 20 09
By: P. P. [Signature]

2009 APR 14 PM 2:10
ELEAZAR V. SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
GREGORY M. GOTTSCHLICH AND)
DONALD L. MCNEIL,)
PLAINTIFFS,)
VS:)
STRIMPFEL CUSTOM HOMES, INC.;)
JOSEPH A. REEVE; JERRY L.)
RICHARDSON; COASTAL SURVEYING)
CO., INC.; THOMAS N. DYE; JAN H. DYE;)
KEN OLIVER; THE BYRNE CORPORATION)
D/B/A DUNES MARKETING GROUP;)
LAURICH & DEEB, P.A.; ROBERT M.)
DEEB, JR. AND CHARLES H. WISEMAN,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2009 APR 30 4:06
BEAUFORT COUNTY
CLERK OF COURT
C/A No.: 2008-CP-07-00517
S.C.

ANSWER OF DEFENDANTS
LAURICH & DEEB, P.A.,
ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN TO
AMENDED COMPLAINT

Defendants, Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman (together referred to herein as "Laurich & Deeb"), by and through their undersigned counsel, submit this Answer in response to the Amended Complaint of Plaintiffs and state as follows:

1. Defendants deny each and every allegation of the Amended Complaint not hereinafter specifically admitted.

FOR A FIRST DEFENSE

2. Laurich & Deeb admits, upon information and belief, the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of the Amended Complaint.

3. Laurich & Deeb admits the first sentence of Paragraph 9 of the Amended Complaint. As to the second sentence of said Paragraph, Laurich & Deeb admits only that it was a professional association through which Robert M. Deeb, Jr. and Charles H. Wiseman engaged in the practice of law and provided legal services to clients, including Plaintiffs, related to

residential real estate closings in Beaufort County, South Carolina, and deny all remaining allegations of said Paragraph not fully consistent therewith. As to the third sentence of said Paragraph, Laurich & Deeb admits only that Defendant Laurich & Deeb acted through attorneys Robert M. Deeb, Jr. and Charles H. Wiseman during the Firm's representation of Plaintiffs for a specific closing and denies all remaining allegations of said Paragraph not fully consistent therewith.

4. As to the allegations in the first sentence of Paragraph 10 of the Amended Complaint, Laurich & Deeb admits only that Defendant Deeb is a resident of Beaufort County, South Carolina. The remaining allegations of the first sentence of said Paragraph constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof. As to the allegations in the second sentence of said Paragraph, Laurich & Deeb admits only that it acted as Plaintiffs' closing attorney during Plaintiffs' purchase of the subject dwelling, was contacted by Plaintiffs several years later regarding the subject dwelling, and denies all remaining allegations of said sentence not fully consistent therewith. The allegations in the third sentence of Paragraph 10 constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof.

5. As to the allegations in the first sentence of Paragraph 11 of the Amended Complaint, Laurich & Deeb admits only that Defendant Wiseman is a resident of Beaufort County, South Carolina. The remaining allegations of the first sentence of said Paragraph constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof. As to the allegations in the second sentence of said Paragraph, Laurich & Deeb admits only that it acted as Plaintiffs' closing attorney during Plaintiffs' purchase of the subject dwelling and denies all

remaining allegations of said sentence not fully consistent therewith. The allegations in the third sentence of Paragraph 11 constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof.

6. Laurich & Deeb admits, upon information and belief, the allegations of Paragraph 12 of the Amended Complaint.

7. As to the allegations of Paragraph 13 of the Amended Complaint, Laurich & Deeb craves reference to the referenced Exhibit A, which speaks for itself and is the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 13 of the Amended Complaint not fully consistent therewith.

8. As to the allegations of Paragraph 14 of the Amended Complaint, Laurich & Deeb craves reference to the referenced residential elevation requirements mandated by the Federal Emergency Management Association's National Flood Insurance Program and the ordinance and building code for Hilton Head Island, which speak for themselves and are the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 14 of the Amended Complaint not fully consistent therewith.

9. The allegations of Paragraphs 15 through 23 are asserted against Defendants other than Laurich & Deeb; therefore, no response is required. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

10. As to the allegations of Paragraph 24, Laurich & Deeb admits only that it provided legal representation to Plaintiffs in connection with the purchase of the subject dwelling and that Plaintiffs executed separate powers of attorney in favor of Defendant Deeb and/or Defendant Wiseman. As to the remaining allegations of said Paragraph, Laurich & Deeb craves reference to the referenced powers of attorney executed by Plaintiffs in favor of Defendant Deeb

and/or Wiseman, which speak for themselves and are the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 24 of the Amended Complaint not fully consistent therewith.

11. As to the allegations of Paragraph 25 of the Amended Complaint, Laurich & Deeb admits only that it conducted the closing for the loan financing of Plaintiffs' purchase of the subject dwelling and denies all remaining allegations of said Paragraph not fully consistent therewith.

12. Laurich & Deeb admits the allegations of Paragraph 26 of the Amended Complaint.

13. As to the allegations of Paragraph 27 of the Amended Complaint, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

14. Laurich & Deeb admits the allegations in sentence one of Paragraph 28 of the Amended Complaint. As to the remaining allegations of said Paragraph, Laurich & Deeb craves reference to the referenced letter, which speaks for itself and is the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 28 of the Amended Complaint not fully consistent therewith.

15. As to the allegations of Paragraph 29 of the Amended Complaint, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligent Misrepresentation)

16. Responding to the allegations of Paragraph 30 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

17. The allegations of Paragraphs 31 through 37 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Violation of S.C. Code Ann. § 27-50-10, et seq.)

18. Responding to the allegations of Paragraph 38 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

19. The allegations of Paragraphs 39 through 42 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE THIRD CAUSE OF ACTION
(Negligence)

20. Responding to the allegations of Paragraph 43 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

21. The allegations of Paragraphs 44 through 47 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Contract)

22. Responding to the allegations of Paragraph 48 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

23. The allegations of Paragraphs 49 through 52 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

24. Responding to the allegations of Paragraph 53 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

25. The allegations of Paragraphs 54 through 57 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE SIXTH CAUSE OF ACTION
(Violation of Unfair Trade Practices Act)

26. Responding to the allegations of Paragraph 58 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

27. The allegations of Paragraphs 59 through 63 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

28. Responding to the allegations of Paragraph 64 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

29. The allegations of Paragraphs 65 through 68 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

30. Responding to the allegations of Paragraph 69 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

31. The allegations of Paragraphs 70 through 74 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE NINTH CAUSE OF ACTION
(Fraud)

32. Responding to the allegations of Paragraph 75 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

33. The allegations of Paragraphs 76 through 85 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE TENTH CAUSE OF ACTION
(Constructive Fraud)

34. Responding to the allegations of Paragraph 86 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

35. The allegations of Paragraphs 87 through 96 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE ELEVENTH CAUSE OF ACTION
(Rescission)

36. Responding to the allegations of Paragraph 97 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

37. The allegations of Paragraphs 98 through 101 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE TWELFTH CAUSE OF ACTION
(Professional Negligence/Legal Malpractice)

38. Responding to the allegations of Paragraph 102 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

39. As to the allegations of Paragraph 103 of the Amended Complaint, Laurich & Deeb admits only that Laurich & Deeb had an attorney-client relationship with Plaintiffs for a specific purpose. The remaining allegations of said Paragraph constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof.

40. Laurich & Deeb denies the allegations of Paragraphs 104 through 106 of the Amended Complaint, including subparts.

AS TO THE THIRTEENTH CAUSE OF ACTION
(Breach of Contract)

41. Responding to the allegations of Paragraph 107 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

42. As to the allegations of Paragraph 108 of the Amended Complaint, Laurich & Deeb admits only that it agreed to represent Plaintiffs in the purchase of the subject house and denies any characterization of the relationship not fully consistent therewith.

43. Laurich & Deeb denies the allegations of Paragraph 109 through 111 of the Amended Complaint, including subparts.

AS TO THE FOURTEENTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

44. Responding to the allegations of Paragraph 112 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

45. The allegations of Paragraph 113 of the Amended Complaint constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb admit only those duties imposed by law for the subject closing on the subject property.

46. Laurich & Deeb denies the allegations of Paragraph 114 through 116 of the Amended Complaint, including subparts.

AS TO THE FIFTEENTH CAUSE OF ACTION
(Equitable Indemnification)

47. Responding to the allegations of Paragraph 117 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

48. Laurich & Deeb denies the allegations of Paragraphs 118 through 121 of the Amended Complaint.

49. The allegations of Paragraph 122 of the Amended Complaint require no response.

50. Laurich & Deeb denies the allegations of the WHEREFORE clause of the Amended Complaint and the Prayer for Relief therein and specifically alleges that Laurich & Deeb has no liability to Plaintiffs and denies all damages claimed.

FOR A SECOND DEFENSE
(Failure to State a Claim)

51. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that the Amended Complaint fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Failure to Mitigate)

52. Further answering the Amended Complaint, and as and for a further defense thereto, upon information and belief, Plaintiffs have failed to mitigate their damages, which are expressly denied, and their failure to do so constitutes a bar and/or limitation of Plaintiffs' ability to recover against Laurich & Deeb.

FOR A FOURTH DEFENSE
(Comparative Negligence)

53. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb would allege and show that even if Laurich & Deeb was negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Laurich & Deeb, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Laurich & Deeb, which is denied, which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

FOR A FIFTH DEFENSE
(Negligence of Third Parties)

54. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that any injuries and damages allegedly suffered by Plaintiffs, which are denied, were due to or caused by third persons over whom Laurich & Deeb had no control, whose actions caused the alleged damages, if any, which are denied.

FOR A SIXTH DEFENSE
(Intervening/Superseding Acts)

55. Further answering the Amended Complaint, and as and for a further defense thereto, any damages sustained by Plaintiffs, which are denied, were solely caused by the acts or omissions of parties or persons other than Laurich & Deeb, over whom Laurich & Deeb had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiffs' alleged damages, if any, which are denied, and bar Plaintiffs' claims in the Amended Complaint.

FOR A SEVENTH DEFENSE
(Estoppel and Waiver)

56. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that Plaintiffs are estopped from their own conduct from asserting a claim for the recovery sought herein and also alleges that Plaintiffs waived any claims against Laurich & Deeb by and through their conduct so as to bar recovery herein.

FOR AN EIGHTH DEFENSE
(Statute of Limitations and/or Laches)

57. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or doctrine of laches.

FOR A NINTH DEFENSE
(Assumption of the Risk)

58. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that the Plaintiffs' claims in the Amended Complaint are barred by the doctrine of assumption of the risk.

FOR A TENTH DEFENSE
(Unclean Hands)

59. Further answering the Amended Complaint and as and for a further defense thereto, Plaintiffs' claims against Laurich & Deeb are barred by the doctrine of unclean hands.

FOR AN ELEVENTH DEFENSE
(Failure to Join a Necessary Party)

60. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb assert that Plaintiffs have failed to join a party necessary for just adjudication pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

FOR A TWELFTH DEFENSE
(Incorporation of Defenses Raised by Others)

61. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb hereby incorporates the defenses of any other Defendant as said defenses may be applicable to Laurich & Deeb.

FOR A THIRTEENTH DEFENSE
(No Basis for Punitive Damages)

62. Further answering the Amended Complaint, and as and for a further defense thereto, Plaintiffs fail to state any basis upon which punitive damages are recoverable against Laurich & Deeb and accordingly, Plaintiffs' prayer for such damages should be dismissed and/or stricken from the Complaint pursuant to Rules 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure.

FOR A FOURTEENTH DEFENSE
(Constitution)

63. Further answering the Amended Complaint, and as and for a further defense thereto, Plaintiffs' claim for recovery of punitive damages is barred by the South Carolina Constitution and the Constitution of the United States, because no reasonable and well-defined limits are placed on such punitive damages award; because the award and payment of punitive damages would constitute an imposition of punishment on Laurich & Deeb without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

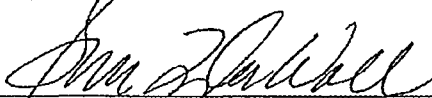
FOR A FIFTEENTH DEFENSE
(Reservation of Rights)

64. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb hereby gives notice that it reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information acquired

during discovery or otherwise, and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered the Amended Complaint herein, Laurich & Deeb prays that the same be dismissed and the relief demand by Plaintiffs be denied and that costs and fees be awarded to Laurich & Deeb and for such other relief as this Court deems just and proper.

Respectfully submitted,



Susan Taylor Wall

Email: susanwall@parkerpoe.com

Amanda C. Williams

Email: amandawilliams@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN L.L.P.

200 Meeting Street, Suite 301

Charleston, SC 29401

Phone: 843-727-2650

Fax: 843-727-2680

ATTORNEYS FOR DEFENDANTS LAURICH
& DEEB, P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN

April 28, 2009
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)	FOURTEENTH JUDICIAL CIRCUIT
GREGORY M. GOTTSCHLICH)	09 OCT 15 PM 2:19
AND DONALD L. MCNEIL,)	CIVIL ACTION NUMBER: 08-CP-07-00517
Plaintiffs)	CLERK OF COURT
)	BEAUFORT, S.C.
-versus-	
STRIMPFEL CUSTOM HOMES)	DEFENDANTS, THOMAS N. DYE AND
INC; JOSEPH A. REEVE;)	JAN H. DYE'S NOTICE OF MOTION AND
JERRY L. RICHARDSON;)	MOTION FOR SUMMARY JUDGMENT
COASTAL SURVEYING CO.,)	
INC.; THOMAS N. DYE; JAN)	
H. DYE; KEN OLIVER; THE)	
BYRNE CORPORATION D/B/A)	
DUNES MARKETING GROUP;)	
LAURICH & DEEB, P.A.;)	
ROBERT M. DEEB, JR. AND)	
CHARLES H. WISEMAN,)	
Defendants)	

TO: JOHN D. HUDSON, ATTORNEY FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that Defendants Thomas N. Dye and Jan H. Dye, will move before the Court as such time and place as the Court may designate, for an Order of Judgment pursuant to Rule 56(b), South Carolina Rules of Civil Procedure, dismissing the Plaintiffs cause of action as against the Defendants Thomas N. Dye and Jan H. Dye.

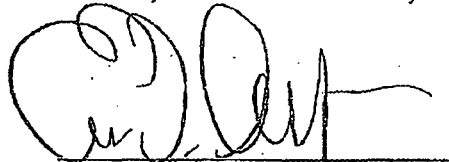
This motion shall be based upon the grounds that there are no genuine issues of material fact, and judgment should be granted to the Defendants, Thomas N. Dye and Jan H. Dye, as a matter of law. Additionally, Plaintiff's claims as against the Defendants, Thomas N. Dye and Jan H. Dye, were filed in violation of the applicable statute of limitations and must be dismissed.

This motion shall be further based upon the statutory and common laws of the State of South Carolina, the South Carolina Rules of Civil Procedure, the pleadings heretofore filed, and

any and all affidavits, memorandums and supporting material which may be served on or before the date of service hereon.

The undersigned affirms pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation with opposing counsel is not required prior to the filing of this motion.

TUPPER, GRIMSLEY & DEAN, P.A.



Katherine E. Graham
Attorney for Defendants
Thomas N. Dye and Jan H. Dye
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

Beaufort, South Carolina
Dated: October 15, 2009

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the above and foregoing to counsel of record in said proceeding to his office address with sufficient postage affixed hereto, this 15 day of October, 2009.



C. Teresa Dean

09 OCT 15 PM 3:50
RECEIVED
CLERK OF COURT
JUDICIAL BRANCH 1

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH AND
DONALD L. MCNEIL,

PLAINTIFFS,

VS.

STRIMPFEL CUSTOM HOMES, INC.;
JOSEPH A. REEVE; JERRY L.
RICHARDSON; COASTAL SURVEYING
CO., INC.; THOMAS N. DYE; JAN H. DYE;
KEN OLIVER; THE BYRNE CORPORATION)
D/B/A DUNES MARKETING GROUP;
LAURICH & DEEB, P.A.; ROBERT M.
DEEB, JR. AND CHARLES H. WISEMAN,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C/A No.: 2008-CP-07-00517

DEFENDANTS LAURICH & DEEB,
P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN'S
NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT

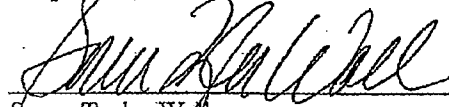
TO: JOHN D. HUDSON, JR., ESQ. AND WESLEY D. FEW, ESQ., ATTORNEYS FOR
PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE THAT Defendants Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman (together referred to herein as "Laurich & Deeb"), pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, hereby move the Court, by and through their undersigned counsel, for an Order granting summary judgment to Laurich & Deeb on the claims asserted by Plaintiffs in the Amended Complaint. The specific grounds for this Motion include, without limitation, that the Amended Complaint should be dismissed under Rule 56, SCRPC, because Plaintiffs' claims are barred by the applicable statute of limitations, Plaintiffs have no competent evidence of any breach in the standard of care by these Defendants, and Plaintiffs' damages are speculative.

This Motion is based upon the pleadings, deposition testimony and exhibits, the controlling law, a Memorandum of Law to be filed, and such other and further material as the Court may deem appropriate.

WHEREFORE, Laurich & Deeb respectfully requests that the Court issue an Order granting its Motion for Summary Judgment and dismissing Plaintiffs' Amended Complaint and the claim asserted against Laurich & Deeb therein, *with prejudice*.

Respectfully submitted,



Susan Taylor Wall

Email: susanwall@parkerpoe.com

Amanda C. Williams

Email: amandawilliams@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN L.L.P.

200 Meeting Street, Suite 301

Charleston, SC 29401

Phone: 843-727-2650

Fax: 843-727-2680

ATTORNEYS FOR DEFENDANTS LAURICH
& DEEB, P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN

December 1, 2009

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	
	)	CASE NO. 2008-CP-07-00517
GREGORY M. GOTTSCHLICH &	)	
DONALD L. MCNEIL,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	OF DEFENDANTS THE BYRNE
	)	CORPORATION AND OLIVER
STRIMPFEL CUSTOM HOMES, INC;	)	
JOSEPH A. REEVE; JERRY L.	)	
RICHARDSON; COASTAL SURVEYING,	)	
CO. INC.; THOMAS N. DYE; JANET	)	
H. DYE; KEN OLIVER; THE BYRNE	)	
CORPORATION D/B/A DUNES	)	
MARKETING GROUP; LAURICH &	)	
DEEB, P.A.; ROBERT M. DEEB, JR;	)	
AND CHARLES H. WISEMAN,	)	
	)	
Defendants.	)	

The Defendants Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group ("these Defendants"), by and through their undersigned attorney, moves this court pursuant to Rule 56, SCRPC and the other applicable law and rules:

GENERAL BACKGROUND FACTS

This case involves a house at 48 Sea Lane on Hilton Head Island in Beaufort County, SC. On November 14, 1987, a building permit application by Defendant Strimpfel Custom Homes, Inc. in "Flood Zone A7" which requires an elevation, per the Town of Hilton Head and per FEMA, of 14 feet was submitted. It was on November 24, 1987 that a survey of the property by former Defendant Coastal

Surveying, Co. Inc., was issued under seal stating that the elevation was at 14.16 feet, which was above the required Base Flood Elevation ("BFE"). On May 23, 1988, the Certificate of Occupancy was issued by the building inspector for the house, whose first owner was Defendant Joseph A. Reeve, a licensed engineer who worked for the residential home builder Strimpfel Custom Homes, Inc. Defendant Reeve sold the house to others, who then in 2001 sold the home to the Defendants Thomas N. and Janet H. Dye.

It was on November 6, 2003 that the Plaintiffs signed a Contract of Sale, at \$1,395,000 for the subject house at 48 Sea Lane, Hilton Head Island, SC. The Defendants Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group were involved in the listing for sale of the house by the Dye Defendants, when it was sold to the Plaintiffs. The Byrne Corporation d/b/a Dunes Marketing Group was also involved as the real estate agent for the Plaintiffs when they purchased the house from the Dye Defendants.

ARGUMENT

Despite the allegations of the Plaintiffs, these Defendants did not know, nor have any suspicion or idea that the subject house was below BFE. After all, the house was approved by the proper governmental authorities who, years before the sale to the Plaintiffs, issued a Certificate of Occupancy based upon the (former) Defendant surveyor's certification that the house was above BFE.

Further, in paragraph 28 of the Plaintiffs' Amended Complaint and Exhibit K which the Plaintiffs attached, the statute of limitations "expired on December 2, 2006." This also are grounds for the Motion for Summary Judgment by these Defendants.

In the depositions of these Defendants, there was not any notice or knowledge by them of the subject house being below BFE. Thus, there was not any ability to convey such to the Plaintiffs, nor was there any duty to investigate such or to convey any information along those lines to the Plaintiffs or the Plaintiffs' representatives (including attorneys). Without such a duty, there can be no negligence by these Defendants (paragraphs 44-47 of Amended Complaint), nor can there be any breach of fiduciary duty as alleged by the Plaintiffs (paragraphs 70-74 of Amended Complaint).

In addition, although the Plaintiffs allege that there was some violation by these Defendants of S. C. Code § 27-50-10, et seq. regarding the Residential Property Condition Disclosure, that disclosure specifically states that the statements are those of the sellers (here, the Dye Defendants) and not those of the real estate agent or company (here, these Defendants). The Plaintiffs also have alleged that there was a breach of contract by these Defendants, (see paragraphs 49-52 and 54-57 of Amended Complaint); however, the contract conveying the property to the Plaintiffs was not a contract to which these Defendants were a party (see Exhibit H to

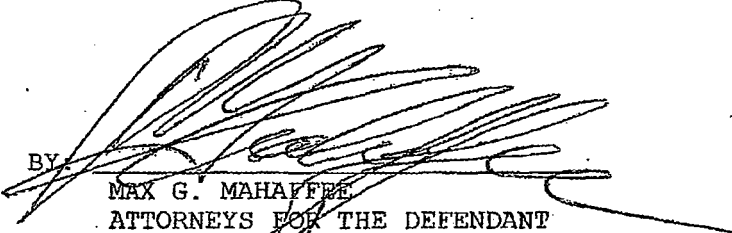
Plaintiffs' Amended Complaint).

These Defendants reserve the right to supplement these motions with a Memorandum of Law and such other documents as are applicable.

The undersigned attorney, certifies that, pursuant to Rule 11 of the South Carolina Rules of Civil Procedure that consultation would have not have obviated the necessity for the filing of this motion.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.

GRIMBALL & CABANISS, L.L.C.

BY: 

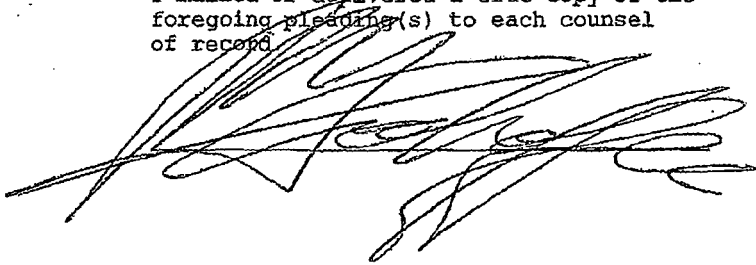
MAX G. MAHAFFEE
ATTORNEYS FOR THE DEFENDANT
P. O. BOX 816
CHARLESTON, SC 29402-0816
Tel: (843) 722-0311
Fax: (843) 722-1374

Charleston, South Carolina

December 4, 2009

CERTIFICATE OF SERVICE

I certify that on December 4, 2009
I mailed or delivered a true copy of the
foregoing pleading(s) to each counsel
of record.



Index

Defendants.

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the required fourteen feet base flood elevation. As a result, Plaintiffs filed suit on February 18, 2008 against the Dyes, and others, for causes of action of negligent misrepresentation, violation of S.C Code 27-50-10, *et seq.*, negligence, breach of contract, breach of contract accompanied by a fraudulent act, civil conspiracy, fraud, constructive fraud and rescission of the contract. See Exhibit A (“underlying complaint”). The underlying complaint alleges that the Dyes were, among other things, negligent in failing to inform the Plaintiffs that the home had a negative elevation and this negative elevation failed to comply with the applicable building code and FEMA requirements. The Dyes filed an Answer denying all allegations and asserted certain affirmative defenses to include failure to state a claim.

The Dyes sold the home to the Plaintiffs on December 2, 2003. Although the underlying complaint was filed on February 18, 2008, more than four years after the closing of the home, the Plaintiffs filed an Amended Complaint on March 20, 2009 to add in their closing attorneys, Laurich & Deeb and Joseph A. Reeve as additional defendants. See Exhibit B (“amended complaint”).

STANDARD OF REVIEW

“Summary judgement is appropriate when it is clear that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Café Associates Limited v. Genrgross, 305 S.C. 6, 9, 406 SE2d 162, 164 (1991). In determining whether any triable issues of fact exist, the evidence and all the inferences that can be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Redwend Limited Partnership v. Edwards, 354 S.C. 459, 468, 581 S.E.2d 496, 501 (Ct. App. 2003).

FACTS

The home was built in 1987 by Strimpfel Custom Home, Inc. ("Strimpfel") and Joseph A. Reeve ("Reeve"), who was an employee of Strimpfel at that time. On or about November 24, 1987, Strimpfel and/or Reeve contracted with Coastal Surveying Co. Inc. ("Coastal Surveying") and, as a result, Coastal Surveying issued an elevation certificate for the home, certifying that the home at 48 Sea Lane "has the lowest floor (including basement) at an elevation of 14.16 feet...". A copy of elevation certificate is attached as Exhibit C. On or about May 23, 1988, Strimpfel and/or Reeve obtained a certificate of occupancy for the home based upon the elevation certificate and other documentation. Thereafter, Reeve lived in the home for several years and then sold the home to Ben and Myra Muldong ("Muldong").

In early spring of 2001, the Dyes purchased the home from the Muldongs. Prior to closing, the Dyes obtained a new elevation certificate from Sea Island Land Surveying. The new elevation certificate prepared by Sea Island Land Surveying certified that the lowest finished floor of the home was only 13.3 feet, which indicated that the home had a negative elevation. A copy of the 2001 elevation certificate is attached as Exhibit D. Thereafter, the Dyes contracted with Seacoast Insurance Inc. ("Seacoast") to obtain homeowner's insurance, wind and hail insurance as well as flood insurance for the home.

On November 6, 2003, the Dyes entered into a contract with the Plaintiffs for the purchase of the home. Purchase contract is attached as Exhibit E. Prior to executing the contract, a South Carolina Residential Property Condition Disclosure Form ("Seller Disclosure Form") was provided on behalf of the Dyes to the Plaintiffs. Seller Disclosure Form is attached as Exhibit F. In the Seller Disclosure Form, the Dyes represented that they had no knowledge of

"violations or variances of building codes or zoning ordinances". However, the Plaintiffs clearly did not review the Seller Disclosure Form prior to entering in the contract because neither of the Plaintiffs signed said form. In fact, the wife of Dr. McNeil was the only one who signed the Seller Disclosure form prior to entering into the contract as evidenced by her signature and initials at the bottom of the page dated October 25, 2003. The Seller Disclosure Form also reflected that a question mark was made next to Line 22 stating "[f]lood hazards or that the property is in a federally designated flood plain?" The Plaintiffs asked no questions regarding same.

In addition, before closing on the purchase of the home, Plaintiffs received a copy of the 2001 elevation certificate, certifying an elevation of 13.3 feet (Fax dated 11/26/03 is attached as Exhibit G). In order for the Plaintiffs to obtain quotes on flood insurance on the home, they then forwarded the 2001 elevation certificate to their insurance agent at Seacoast. As a result, Seacoast filled out an application for flood insurance stating the house had a negative elevation. (Flood Ins. App attached as Exhibit H). The 30(b)(6) representative of Seacoast testified that the policy and procedure of an insurance agency is to explain to an insured any and all negative consequences, if any, when a home has a negative elevation. (Lyons Dep. P68 is attached as Exhibit I). Furthermore, the Dyes' attorney also sent the Plaintiffs' closing attorney and the real estate agents a copy of the 2001 survey. (Letter dated 11/16/03 with 2001 Survey is attached as Exhibit J). The survey listed the base flood elevation as 13.3 feet. The Plaintiffs also hired a professional home inspector.

Furthermore, before closing, Dr. Gottschlich created a Pro Forma spreadsheet setting forth the estimates of the costs to maintain the home. (Pro Forma spreadsheet is attached as

Exhibit K). In his estimates, Dr. Gottschlich testified that he estimated an amount of \$592.00 as the annual flood insurance premium. Dr. Gottschlich testified as follows:

Q: Were you aware that the flood insurance premium for 48 Sea Lane would cost you \$2,620 before closing?

A: I believe so because I believe on the Truth in Lending statement that it may have been called out separately ...

Q: Did you question anyone about this difference of the estimate of \$592 as noted on your Hilton Head Pro Forma and the quoted premium of \$2,620 as noted on the Traveler's Flood Insurance Application, which is marked as Exhibit 22?

A: I don't recall doing that, but there were so many different – no, I don't recall doing that. (Gottschlich De. P214-215 is attached as Exhibit L).

Clearly, the difference in the pro forma calculation of flood insurance versus the actual premium would have put a reasonable person on notice that a problem may exist regarding the flood insurance. However, the Plaintiffs asked no questions.

The Plaintiffs received a copy of their flood insurance policy within days of the closing and each year thereafter received renewal declaration pages. These documents clearly state that the home had an elevation difference of negative one. (Declaration pages attached as Exhibit M). In addition, Seacoast's activity log for December 14, 2004 states that it [c]alled the surveyor today regarding the fact that the home was built below the base flood elevation... There is nothing that we can do to re-underwrite and improve the premium amount for the insured." (Activity log for December 14, 2004 is attached as Exhibit N). Under Seacoast's policies and procedures, an agent would have discussed with Plaintiffs again in 2004 the negative elevation certificate.

ARGUMENT

Plaintiffs' claims against Defendant Dye are barred because Plaintiffs did not file and serve Defendant Dye with the Complaint within the applicable three year statute of limitations. S.C. Code Ann. Section 15-3-530. "In determining when a cause of action other than for recovery of real property arose, the discovery rule is applied." *Rumpf v. Massachusetts Mutual Life Insurance Co.*, 357 S.C. 386, 593 S.E.2d 183 (Ct.App. 2004). Determining the date on which a cause of action should have been discovered is an objective, rather than subjective, question. *Rumpf*. A party must act with reasonable diligence and promptness where facts and circumstances would place a reasonable person on notice that a claim against another party may exist. *Rumpf*. "Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable due diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto". *Burgess v. American Cancer Society*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). "Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial". *Dorman v. Campbell*, 331 S.C 179, 185, 500 S.E.2d 786, 789 (Ct. App 1998) (citing *Dean v. Ruscon Corporation*, 321 S.C. 360, 468 S.E.2d 645 (1996)).

In a very similar case to the one at hand, *Dorman v. Campbell*, 331 S.C 179, 185, 500 S.E.2d 786, 789 (Ct. App 1998) , the Dormans filed an action against the seller of their home for fraud, constructive fraud, civil conspiracy and unfair trade practices, and against the realtor for negligence, breach of fiduciary duty and unfair trade practices. The claims arose from facts that the ground floor of house was below base flood elevation as prescribed by FEMA. The Court granted summary judgment on all causes of action, ruling that the applicable three year statute of

limitations began to run when the Dormans, through exercise of reasonable diligence, should have known of existence of their claims by closing date. In *Dorman*, the Dormans received a plat as well as an elevation certificate for the purchase of flood insurance clearly indicating that the property was located in a special flood hazard and the property had a negative elevation. The Dormans also hired a professional home inspector. Lastly, in the closing package sent from the seller's attorney to the Dormans' closing attorney, the cover letter indicated that the home had a negative elevation. The Dormans denied that they had any actual knowledge of the claims until well after the closing date.

Dormans tried to avoid the statute of limitations argument by contending that they did not have actual knowledge of the injury and there was an issue of material fact as to whether a reasonable person in their position should have known of the existence of a possible claim against the purchaser and realtor at the closing of the property. However, the Court pointed out that, although a question of fact clearly existed as to whether the Dormans had actual knowledge of the existing claims, the Dormans clearly, by the exercise of reasonable due diligence, should have known of the existence of these claims by the closing date due to the following: Dormans viewed the house several times before the closing; Dormans hired several professionals to inspect the home; Dormans received a plat and elevation certificate that clearly indicated the negative elevation; and they received a letter via their attorney indicating that part of the home was below the base flood elevation. The Court further held that although the Dormans maintain that they never received the letter from the seller's attorney, the knowledge from the letter was imputed to them through their agent, their closing attorney. *Dorman*, citing *Crystal Ice Co. Of Columbia, Inc., v. First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979) ("It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives

notice while acting within the scope of his authority”). *Faulkner v. Millar*, 319 S.C. 216, 460 S.E.2d 378 (1995) (notice to an attorney is notice to the client). Thus, Dormans’ causes of action against the seller and realtor arose on the closing date.

Here, Plaintiff knew or should have known of any possible claims they may have had regarding the home’s elevation issue by December 2003. In fact the Plaintiffs admit that they had actual knowledge of the elevation issue in April of 2006 which was within the three year limitations period. However, the Plaintiffs failed to file this suit until February 2008 - almost two years after the Plaintiffs claim they had actual knowledge of the negative elevation issue.

Prior to closing, the Plaintiffs and their agents received a copy of the elevation certificate and survey clearly indicating the negative elevation. They were told by their flood insurance agent about the negative flood elevation at the time the flood policy application was filled out and received an excessively higher flood quote than what they anticipated based upon their Pro Forma spreadsheet. The Plaintiffs received the policy declarations page. Clearly, all of these facts combined, put the Plaintiffs on sufficient notice at the time of closing that some problem may have existed with the elevation of the home.

Furthermore, after the closing, the Plaintiffs received their flood insurance renewal form each and every year indicating the negative elevation. The Plaintiffs had a duty to read their renewal form. These documents in conjunction with the other information that the Plaintiffs received prior to closing, would also have provided sufficient notice that some problem may have existed with the home’s elevation. Lastly, Seacoast’s activity log for December 14, 2004 clearly stated that the Plaintiffs’ insurance agent had the knowledge that there was a potential problem regarding the home’s elevation and the agent should have informed the Plaintiffs’ of same. South Carolina law is clear that knowledge of this information is imputed to the Plaintiffs through their

agent, the insurance agent. At a minimum, this would trigger the running of the statute of limitations, and Plaintiff did not file the underlying complaint until February 2008 - again more than three years from December 14, 2004. Since Defendant Dye was not served within the applicable three year statute of limitations, Defendant Dye is entitled to summary judgment.

As an additional ground for summary judgment, Defendant Dye states that there is no evidence that the Dyes knew or should have known that the negative elevation constituted a building code violation. In fact, the Dyes were in the same shoes as the Plaintiffs. However, the Plaintiffs request that this Court to not impute knowledge to them but to impute the knowledge to the Dyes where there is no evidence of such knowledge. Therefore, Defendant Dye is entitled to summary judgment.

CONCLUSION

Plaintiffs clearly did not file and serve their complaint against Defendant Dye within the applicable three year statute of limitations. Thus, based on the above and forgoing reasons, Defendant Dye is entitled to an order for summary judgment.

TUPPER, GRIMSLEY & DEAN, P.A.

By: 
Katherine E. Graham
Attorneys for Defendant Thomas and Jan Dye
Post Office Box 2055
Beaufort, South Carolina 29901-2055
(843) 524-1116

Beaufort, South Carolina
Dated: December 15, 2009

EXHIBIT A
Underlying Complaint

EXHIBIT B
Amended Complaint

EXHIBIT C
1987 Elevation Certificate

16477

Permit # 7653

2



FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

OMB 3087-0077
Expires Feb. 1987

ELEVATION CERTIFICATE

This form is to be used for: 1) New Emergency Program construction in Special Flood Hazard Areas; 2) Pre-FIRM construction after September 30, 1982; 3) Post-FIRM construction; and, 4) Other buildings rated as Post-FIRM buildings.

BUILDING OWNERS ADDRESS
NAME
Lot 27 Sea Lane - Palmetto Dunes

PROPERTY LOCATION (Lot and Block numbers and address if available)

Hilton Head Island, SC

I certify that the information on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

SECTION I ELIGIBILITY CERTIFICATION (Completed by Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

COMMUNITY NO.	FIRM NO.	DATE	DATE OF FIRM	FIRM ZONE	DATE OF CONSTRUCTION	BASE FLOOD ELEVATION (in AC Zone and Depth)	BUILDING IS:
							☐ New Emergency Program ☐ Pre-FIRM Reg ☐ Post-FIRM Reg

YES NO It is intended that the building described above will be constructed in compliance with the community's flood plain ordinance. The contractor may rely on community records. The lowest floor (including basement) will be at an elevation of _____ feet, NGVD. Failure to construct the building at this elevation may place the building in violation of the community's flood plain management ordinance.

YES NO The building described above has been constructed in compliance with the community's flood plain management ordinance based on elevation data and visual inspection or other reasonable means. If NO is checked, attach copy of variance issued by the community.

YES NO The mobile home located at the address described above has been tied down (anchored) in compliance with the community's flood plain management ordinance, or in compliance with the NFIP Specifications.

MOBILE HOME MAKE	MODEL	YEAR OF MANUFACTURE	SERIAL NO.	DIMENSIONS
				X

(Community Permit Official or Registered Professional Engineer, Architect, or Surveyor)

NAME ADDRESS

TITLE CITY STATE ZIP

SIGNATURE DATE PHONE

SECTION II ELEVATION CERTIFICATION (Certified by a Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

FIRM ZONE A1-A30 I certify that the building at the property location described above has the lowest floor (including basement) at an elevation of 14.16 feet, NGVD (mean sea level) and the average grade of the building site is at an elevation of 6.1 feet, NGVD.

FIRM ZONES V, VI-V30 I certify that the building at the property location described above has the bottom of the lowest floor beam at an elevation of _____ feet, NGVD (mean sea level), and the average grade of the building site is at an elevation of _____ feet, NGVD.

FIRM ZONES A, A99, AH and EMERGENCY PROGRAM: I certify that the building at the property location described above has the lowest floor elevation of _____ feet, NGVD. The elevation of the highest adjacent grade next to the building is _____ feet, NGVD.

FIRM ZONE AO: I certify that the building at the property location described above has the lowest floor elevation of _____ feet, NGVD. The elevation of the highest adjacent grade next to the building is _____ feet, NGVD.

SECTION III FLOODPROOFING CERTIFICATION (Certification by a Registered Professional Engineer or Architect)

I certify to the best of my knowledge, information, and belief, that the building is designed so that the building is watertight, with walls substantially impervious to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy that would be caused by the flood depths, pressures, velocities, impact and uplift forces associated with the base flood.

YES NO In the event of flooding, will this degree of floodproofing be achieved with human intervention? (Human intervention means that water will enter the building which floods up to the base flood level occur unless measures are taken prior to the flood to prevent entry of water (e.g., bolting metal shields over doors and windows).)

YES NO Will the building be occupied as a residence?

If the answer to both questions is YES, the floodproofing cannot be credited for rating purposes and the actual first floor must be completed and certified sealed. Complete both the elevation and floodproofing certificates.

FIRM ZONES A, A1-A30, V1-V30, AO and AH: Certified Floodproofed Elevation is _____ feet, (NGVD).

THIS CERTIFICATION IS FOR ☒ SECTION II ☐ BOTH SECTIONS II AND III (Check One)

CERTIFIER'S NAME COMPANY NAME LICENSE NO. (or Aff. Seal)

Jerry L. Richardson Coastal Surveying & Engineering Co., Inc.

TITLE ADDRESS ZIP

Registered S.C. Surveyor P.O. Box 1427 29925

SIGNATURE DATE CITY STATE PHONE

[Signature] 11/24/87 Hilton Head SC 681-4366

The insurance agent should attach the original copy of the completed form to the flood insurance policy application. The second copy should be supplied to the policyholder and the third copy retained by the agent.

INSURANCE AGENTS MAY ORDER THIS FORM

FEMA Form B1-37, SEP 85

REPLACES FEMA FORM #131, APR 82 WHICH IS OBSOLETE

I&D-00070
ELS #79-58113

EXHIBIT D
2001 Elevation Certificate

FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAMO.M.B. No. 3087-0077
Expires July 31, 2002

ELEVATION CERTIFICATE

Job No 01096

SECTION A - PROPERTY OWNER INFORMATION		For Insurance Company Use
BUILDING OWNER'S NAME Thomas N. and Jan H. Dye		Policy Number
BUILDING STREET ADDRESS (including Apt, Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO. 48 Sea Lane		Company NAIC Number
CITY Hilton Head Island	STATE SC	ZIP CODE 29928
PROPERTY DESCRIPTION (Lot and Block Number, Tax Parcel Number, Legal Description, etc.) Lot 27, Tract B, Parcel 3, Block C, Palmetto Dunes Resort, Trac 620 - 12A - 168		
BUILDING USE (e.g., Residential, Non-residential, Addition, Accessory, etc. Use Comments section if necessary) Residential		
LATITUDE/LONGITUDE (OPTIONAL) (#-#-## or ##-###-###) NA	HORIZONTAL DATUM ☐ NAD 1983 ☐ NAD 1983 NA	SOURCE ☐ GPS (Type) _____ ☐ USGS Quoted Map ☐ Other _____ NA

SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION

B1. FIRM COMMUNITY NAME & COMMUNITY NUMBER Hilton Head 480260		B2. COUNTY NAME Beaufort		B3. STATE SC	
B4. MAP AND PANEL NUMBER 0014	B5. SD/FIX D	B6. FIRM INDEX DATE 09/29/86	B7. FIRM PANEL EFFECTIVE/REVISED DATE N/A	B8. FLOOD ZONE(S) A7	B9. BASE FLOOD ELEVATION(S) (Zone A0, less depth of flooding) 14.0

B10. Indicate the source of the Base Flood Elevation (BFE) data or base flood depth entered in B9.

☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other (Describe): _____B11. Indicate the elevation datum used for the BFE in B9: ☒ NGVD 1929☐ NAVD 1988 ☐ Other (Describe): _____B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Other/Vol Protected Area (OPA)? ☐ Yes ☒ No Designation Date: _____

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)

C1. Building elevations are based on: ☐ Construction Drawings ☐ Building Under Construction ☒ Finished Construction

*A new Elevation Certificate will be required when construction of the building is complete.

C2. Building Diagram Number 8 (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

C3. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, AR/A, AR/AE, AR/A1-A30, AR/AH, AR/AO

Complete items C3a-f below according to the building diagram specified in item C2. State the datum used. If the datum is different from the datum used for the BFE in Section B, convert the datum to that used for the BFE. Show field measurements and datum conversion calculation. Use the space provided or the Comments area of Section D or Section G, as appropriate, to document the datum conversion.

Datum NGVD Conversion/Comments: N/A

Elevation reference mark used 1929. Does the elevation reference mark used appear on the FIRM? ☐ Yes ☒ No☐ a) Top of bottom floor (including basement or enclosure) 2.0 ft(m)☐ b) Top of next higher floor 13.3 ft(m)☐ c) Bottom of lowest horizontal structural member (V zones only) N/A ft(m)☐ d) Attached garage (top of slab) 7.0 ft(m)☐ e) Lowest elevation of machinery and/or equipment servicing the building 9.2 ft(m)☐ f) Lowest adjacent grade (LAG) 8.7 ft(m)☐ g) Highest adjacent grade (HAG) 7.0 ft(m)☐ h) No. of permanent openings (flood vents) within 1 ft. above adjacent grade: 8☐ i) Total area of all permanent openings (flood vents) in C3h: 35.682 sq. ft. (sq. cm)

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION

This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information.

I certify that the information in Sections A, B, and C on this certificate represents my best efforts to interpret the data available.

I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

CERTIFIER'S NAME: Jack Stuart Jones, Jr.

LICENSE NUMBER: 13862

TITLE: Land Surveyor

COMPANY NAME: Sea Island Land Survey

ADDRESS: 4-D Mathews Court

CITY: Hilton Head Island

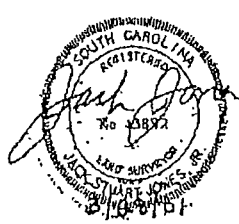
STATE: SC

ZIP CODE: 29928

SIGNATURE: *Jack Jones*

DATE: 28, March 2001

TELEPHONE: (843) 881-3248

PLAINTIFF'S
EXHIBIT
9License Number, Embossed Seal,
Signature, and Date

IMPORTANT: In these spaces, copy the corresponding information from Section A.			For Insurance Company Use:
BUILDING STREET ADDRESS (including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO. 48 Sea Lane			Policy Number
CITY Hilton Head Island	STATE SC	ZIP CODE 29928	Company NAIC Number

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

COMMENTS

☐ Check here if attachments

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zone AO and Zone A (without BFE), complete items E1 through E4. If the Elevation Certificate is intended for use as supporting information for a LOMA or LOMRF, Section C must be completed.

E1. Building Diagram Number. (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

E2. The top of the bottom floor (including basement or enclosure) of the building is ___ ft.(m) ___ in.(cm) ☐ above or ☐ below (check one) the highest adjacent grade.

E3. For Building Diagrams B-8 with openings (see page 7), the next higher floor or elevated floor (elevation b) of the building is ___ ft.(m) ___ in.(cm) above the highest adjacent grade.

E4. For Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinances?

☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here.

PROPERTY OWNER'S OR OWNER'S AUTHORIZED REPRESENTATIVE'S NAME

ADDRESS	CITY	STATE	ZIP CODE
SIGNATURE	DATE	TELEPHONE	
COMMENTS			

☐ Check here if attachments

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below.

G1. ☐ The information in Section C was taken from other documentation that has been signed and embossed by a licensed surveyor, engineer, or architect who is authorized by state or local law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.G3. ☐ The following information (Items G4-G9) is provided for community floodplain management purposes.

G4. PERMIT NUMBER	G5. DATE PERMIT ISSUED	G6. DATE CERTIFICATE OF COMPLIANCE/OCCUPANCY ISSUED

G7. This permit has been issued for: ☐ New Construction ☐ Substantial Improvement

G8. Elevation of as-built lowest floor (including basement) of the building is:

___ ft.(m) Datum: ___

G9. BFE or (in Zone AO) depth of flooding at the building site is:

___ ft.(m) Datum: ___

LOCAL OFFICIAL'S NAME	TITLE
COMMUNITY NAME	TELEPHONE
SIGNATURE	DATE
COMMENTS	

☐ Check here if attachments

EXHIBIT E
Purchase Contract

11/06/2003 14:18 FAX 814 840 8504

MIDWEST ALLERGY CLINIC

Q002

Post Office Box 21326
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(843) 842-1111
(800) 258-5203
Fax Number (843) 842-6748

CONTRACT OF SALE - OFFER AND ACCEPTANCE

Dr. Gregory M. Gottschlich and Dr. Don McNeil

whose address is: 3619 Vinward Ridge, Cincinnati, OH 45241
2341 Yank Road, Columbus, OH 43220
Hereby agree to purchase from:

Thomas M. and Jan H. Dye

whose address is: 210 Riverbush Place, Duluth, GA 30091

1. **PROPERTY DESCRIPTION.** Seller hereby agrees to sell all or a lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto situated in South Carolina and being described as follows:

27 TA/FI/AC

Legal

Mailing: 48 Sea Lane

(the "Property")

2. **PURCHASE PRICE.** The total fixed net Price for the Property is \$ 1,395,000.00 to be paid by Purchaser as follows:

a.	Escrow Money deposited here with ("Deposit")	\$ 10,000.00
b.	Additional Deposit to be paid by	\$
c.	A First Mortgage for at least _____ years at prevailing interest rates and points	\$ 1,116,000.00
d.	Balance in cash at Closing	\$ 269,000.00

3. **FINANCING CONTINGENCY.** If the Buyer is in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing set out above from a lender customarily making such loans in Beaufort County and the surrounding areas. Purchaser shall use best efforts to obtain such a loan and shall supply the prospective lender(s) with all required information. The time for this financing contingency is as follows:

a.	Purchaser's loan application must be submitted within 4 days.
b.	Purchaser shall obtain a loan offer better than the lender within 10 days.
c.	Purchaser shall obtain a loan commitment within 10 days.

All time periods run from the date of this Contract. The "calendar letter" is to be in a form customarily used by lenders in Beaufort County.

If Purchaser's loan application does not set forth a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to terminate this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than 10 days after the financing contingency expiration date. Upon receipt of notice and execution of any required release forms, the Listing Agency (or other Real Estate Agent holding the funds) shall return to the Purchaser any funds so far as they are paid as earnest money, and upon such payment this Contract shall have no force and effect and neither party herein shall have any claim against the other hereunder. Notwithstanding the right to terminate this contract as provided in Section 3, the parties acknowledge and agree that none of the above with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any required action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.

(1000) (10)

Substantive Purchase Offer No. 11/6/03 Date 11-7-03 (Page 1)

L&D-00117
ELS #79-58113

DEFENDANT'S
EXHIBIT 9
RECEIVED

11/06/2003 16:18 FAX 814 846 8504

MIDWEST ALLERGY CLINIC

Q000

4. **FURNISHINGS, SYSTEMS.** The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property, and all plumbing and other equipment, and shall additionally include without limitation the following:

☒ Refrigerator ☒ Stove ☒ Dishwasher ☒ Washing Machine ☒ Dryer ☒ Microwave ☒ Cook Top
☒ Central Air Conditioning System ☒ Furnace ☒ Septic System ☐ Other

If sold furnished, all furniture to be included unless specifically excepted by an attached list of excluded items. All appliances, heating, air conditioning, electrical and plumbing systems and fixtures shall be in good working order subject to reasonable wear and tear, which does not adversely affect the normal and regular use thereof. Further, the structure shall be reasonably sound and free of leaks at time of Closing.

5. **WOOD INFESTATION REPORT.** Seller agrees to provide at its expense at Closing an "Official South Carolina Wood Infestation Report (CL-100)" in which no infestation or damage is reported or if there is damage observed, that it is insufficient to require its repair. Such report must be dated within 45 days of the Closing and shall be provided to Purchaser's closing attorney at least seven (7) days prior to closing. If infestation or material damage is observed, Seller shall cause the same to be repaired prior to closing or permit Purchaser's closing attorney to recover funds from the sale proceeds at Closing in an amount equal to the cost of such repair.

6. **OTHER TERMS.** Other (print) and conditions of this Contract are:

INSPECTION ADDENDUM

7. **DATE OF CLOSING.** The date of this Contract shall take effect on or before December 2, 2003 (the "Closing") at the office of Buyer's attorney or other office designated by Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing. Seller and Purchaser warrant 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.

8. **CONDITION OF PROPERTY.** I, Purchaser, have viewed the premises and, subject to the terms set forth in Section 4, Section 5 or Section 10, is purchasing the Property in its present condition "as is," except for:

The parties understand that "as is" means that the property is being conveyed in the condition in which it is presently found, subject to the aforementioned exceptions. Purchaser shall be permitted to have an inspection of the property prior to Closing to know that all heating, air conditioning, electrical and plumbing systems, fireplace, and appliances are in good working order and that the home is in no way sound and free from all risks in accordance with the requirements of Section 4. At Closing, the Property shall be sold in the best condition as existing at the time of this Contract except for those required improvements or repairs which are reported. The Selling Agent recommends that Purchaser obtain an inspection.

9. **DEPOSIT/DEFAULT.** All monies deposited by Purchaser hereunder shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the terms hereof within the stipulated time, and after receipt of notice of said default with a ten (10) day right to cure, if it has occurred and agreed by and between the parties herein that either party may proceed with this and remedies at law or in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Escrow Agent shall not disburse the Deposit until Seller and Purchaser have submitted a release from the title and disbursement or until a court of competent jurisdiction has directed a disbursement. In the event of a Seller's default of the Deposit, it will be divided equally between Seller and the Listing Agency; provided, however, that the amount to be received by the Listing Agency shall not exceed the amount of the commission it would have earned had the sale been completed. In the event of any litigation, threatened breach of a default hereunder, the prevailing party, if such litigation shall be applied to recover attorney fees and court costs, from the non-prevailing party.

(SIGNED)

Seller: [Signature] Date: 11/6/03 Buyer: [Signature] Date: 11-08-03 (Page 2)

L&D-00118
ELS #79-58113

210/C0002

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11/06/2003 14:23 FAX 814 446 8504

MIDWEST ALLERGY CLINIC

0004

The Escrow Agent shall not be required to insure or maintain any title insurance unless indicated in its satisfaction for its attorney fees, costs, disbursements, and all of her expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all claims, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending resolution of the disposition of said funds, and the Escrow Agent shall bear no further responsibility for said Deposit. The Purchaser hereby acknowledges that the Deposit shall be held in escrow by the Escrow Agent.

DANIEL M. HAYES, III, ESQ.

10. **RISK OF LOSS AND DAMAGE.** In case the Property is wholly or partially damaged by fire, storm or other casualty, Purchaser shall be responsible for the (10) days after receiving written notice thereof to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or recede from this Contract and receive back all money deposited hereunder. In the event the Property is damaged by the Purchaser, or by any person upon the Property on the Purchaser's behalf (i.e., - Inspector), such damage shall be repaired by the Purchaser.

11. **PROBATIONS; CLOSING COSTS; ASSESSMENTS.** All expenses of ownership (and title, if any) shall be prorated to the date of Closing. Purchaser is responsible for any applicable real estate transfer taxes. Seller shall be responsible for the South Carolina deed recording fee required by SC Code §12-24-10. Purchaser shall be responsible for County recording fees for this deed and all mortgages. Purchaser shall pay the cost of obtaining a title commitment, title insurance, and a survey (except a boundary survey, which is the responsibility of Seller); each party shall pay its own attorney fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any request or property owner association special assessment approved by its Board of Directors or similar body prior to closing; provided, however, a special assessment to pay or reimburse premiums, or to cover expenses prior to closing, shall be prorated based on ownership over the period covered by the premium.

12. **BROKER DISCLOSURE.** Seller and Purchaser agree that the Selling Agency & Listing Agency are acting only as real estate agents in this contract and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, nature of the sale or title to the Property, nor are they responsible or accountable for the payment of any real estate taxes or for any other funds, except the Deposit. Neither party guarantees payment of any check, note, or deposit money hereunder. Seller and Purchaser acknowledge that the Agencies: (1) give no warranty or guarantee of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the marketability or fitness for a particular purpose regarding the Property; (3) give no warranty or guarantee of any kind, express or implied, or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no guarantee or warranty regarding any rental income or other economic benefit of the Property to Purchaser; (5) give no guarantee or warranty regarding any repairs or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in Seller's Property Condition Disclosure Statement.

13. **TITLE.** Seller shall convey and let title to the Property to Purchaser in fee simple by proper deed to recordable form with covenants of general warranty, subject to normal and by easements, applicable restrictive covenants, governmental regulations and encumbrances. If a owner's title block can be issued by an ALTA title insurance company at standard rates with standard exceptions for this jurisdiction, the title shall be deemed to be marketable. The Seller acknowledges that Selling Agency has not indicated that an attorney is retained that title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all rights and property owner rights to a special assessment.

14. **NON-RESIDENT TAX WITHHOLDING.** Seller shall comply with the provisions of South Carolina Code §12-6-310 and U.S. Internal Revenue Code §1445 (as amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.

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11/6/03 11/6/03 11/6/03
 L&D-00119
 ELS #79-58113
 (Page 3)

KTA/000000

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P. 07

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15. STATUTORY AND OTHER ADDENDA.

- a. The South Carolina Real Estate Agency Disclosure Form is attached hereto and incorporated herein.
- b. The Beach Management Act is ☐ is not ☒ applicable to this Contract. If applicable, attached hereto and incorporated herein is the required Beach Management Act Disclosure Addendum.
- c. The Purchaser has ☒ has not ☐ reviewed a South Carolina Property Condition Disclosure Statement.
- d. The South Carolina Vacation Rental Act does ☐ does not ☒ apply to this transaction.
- e. This Contract applies ☐ does not apply ☒ to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint, Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.
- f. Flood Insurance is required ☒ is not required ☐ for any federally insured mortgages on the Property.
- g. An Inspection Report Addendum is ☒ is not ☐ attached to this Contract and incorporated herein by reference.
- h. Also attached hereto and incorporated herein are the following Addenda:

16. MISCELLANEOUS. The force of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such lawful and enforceable provisions were omitted. This Contract may be amended in writing, each of which shall be deemed to be an original. The parties agree that any offer, counteroffer, or acceptance may be communicated by the use of electronic (E-MAIL) and that 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 they were originals. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right or to insist upon strict compliance with any obligation specified herein, and no practice or acquiescence with the power herein, shall constitute a waiver of said power or right without expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if requested by the lender. This Contract shall be binding upon and have in the benefit of the parties hereto and their respective heirs, devisees, personal representatives, executors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

L&D-00120
ELS #79-58113

Initiate Purchase Order Date 11/6/03 Seller 20 Date 11/8/03 (Page 2)

11/6/03 11/8/03

X10/8000

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DUNES MARKETING GROUP
FAX NO. 5928014

PAGE 07
P. 08

11/06/2003 16:29 FAX 014 698 8804

MIDWEST ALLERGY CLINIC

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THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth hereon their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth hereon.

WITNESSES:

[Signature]
Purchaser, Mr. Gregory M. Gonschick
Date _____

[Signature]
Purchaser, Mr. Don McFall
Date _____

WITNESSES:

[Signature]
Seller, Thomas H. Dyk
Date 11-8-03

[Signature]
Seller, Ken H. Dye
Date 11-8-03

Listing Agent: Ken Oliver

Company: Dunes Marketing Group

Selling Agent: Greg Marshall

Company: DUNES MARKETING GROUP, a Division of The Hyman Corporation

(The foregoing form may be used only by members in good standing of the Illinois Real Estate Association of REALTORS®.)

Revised 7/2003

_____ This is the unmodified Illinois Real Estate Association of REALTORS® recommended contract form.

_____ This form has been modified from the recommended by the Illinois Real Estate Association of REALTORS®.

_____ [Signature] [Signature] Date 11/6/03 Seller [Signature] Date 11-8-03 (Page 5)

L&D-00121
ELS #79-58118

210/2003

REAL ESTATE BOARD FOR THE STATE OF ILLINOIS 2002/03/11

EXHIBIT F
Seller Disclosure Form

AS SELLER OF THE PROPERTY HEREIN IDENTIFIED, DO YOU HAVE KNOWLEDGE OF ANY PROBLEM OR MALFUNCTION IN DEFECT WITH ANY OF THE FOLLOWING:

	Yes	No	No Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry ___ wood ___ composition/hardwood ___ vinyl ___ synthetic stucco ___ b. Approximate age of structure: <u>13 years</u>	☒	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering: <u>13 years</u>	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace ___ heat pump ___ baseboard ___ b. Cooling source: central ___ wall/window unit(s) ___ c. Fuel source: electricity ___ natural gas ___ propane ___ oil ___ d. Approximate age of heating unit ___ / cooling unit <u>13 years</u> <u>25 years</u> <u>3-1 year</u>	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure?) a. water supply is: city/county ___ community system ___ private well ___ b. water pipes are: copper ___ galvanized ___ PVC/CPVC ___ polybutylene ___	☐	☒	☐
8. Septic system? a. Type system: septic tank ___ community system ___ connected to city/county system ___ city/county system available ___ b. Does the system require a pump? Yes ___ No ___ c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	☐	☒	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes ___ No ___	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum ___ pool ___ hot tub ___ spa ___ attic fan ___ exhaust fan ___ ceiling fan ___ sump pump ___ irrigation system ___ cable tv wiring or satellite dish ___ security system ___ or other systems ___	☐	☒	☐

Initials: Seller 20 Date 3-4-03 Buyer: ___ Date ___
Rev. 1/03

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02/26/2003 15:08 8438424788

DUNES MARKETING GROUP

PAGE 08/12

AS SELLER OF THE PROPERTY HEREIN, I CERTIFY TO YOU HAVE KNOWLEDGE OF ANY
PROBLEM OR DEFECT WITH ANY OF THE FOLLOWING:

	Yes	No	Representation
1. Foundation, slab, fireplaces/chimneys, floors, windows (including storm windows and screens), doors, ceilings, interior and exterior walls, attached garage, patio, deck or other structural components including any modifications? a. Siding: masonry wood composition/hardwood vinyl synthetic stucco b. Approximate age of structure: 13 years	☒	☐	☐
2. Roof (leakage or other problem)? a. Approximate age of roof covering 13 years	☐	☒	☐
3. Water seepage, leakage, dampness or standing water or water intrusion from any source in any area of the structure?	☐	☒	☐
4. Electrical system (outlets, wiring, panel, switches, fixtures, etc)?	☐	☒	☐
5. Plumbing system (pipes, fixtures, water heater, etc)?	☐	☒	☐
6. Heating and/or air conditioning? a. Heat source: furnace heat pump baseboard b. Cooling source: central wall/window unit(s) c. Fuel source: electricity natural gas propane oil d. Approximate age of heating unit /cooling unit 11-13 years 12.5 years 1 year	☐	☒	☐
7. Water supply (including water quality, quantity and water pressure)? a. water supply is: city/county community system private well b. water pipes are: copper galvanized PVC/CPVC polybutylene	☐	☒	☐
8. Septic system? a. Type system: septic tank community system connected to city/county system city/county system available b. Does the system require a pump? Yes No c. Has the septic system been serviced/pumped during your ownership?	☐	☒	☐
9. Appliances (range/oven, attached microwave, hood/fan, dishwasher, disposal, etc)?	☐	☒	☐
10. Present infestation, or damage WHICH HAS NOT BEEN REPAIRED from past infestation of wood destroying insects or organisms? a. Is there a transferable termite bond? Yes No	☐	☒	☐
11. Drainage, grading or stability of soil or retaining structure?	☐	☒	☐
12. Other built-in systems and fixtures? central vacuum pool hot tub spa attic fan exhaust fan ceiling fan air pump irrigation system cable tv wiring or satellite dish security system or other systems	☐	☒	☐

Initials: Seller Date 3-4-03 Buyer Date 10-25-03
Rev. 1/03

Page 2 of 4

02/26/2003 16:00

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DUNES MARKETING GRPQ

PAGE 09/12

**REGARDING THE PROPERTY HEREIN IDENTIFIED, INCLUDING THE LOT, OTHER
IMPROVEMENTS, AND FIXTURES LOCATED THEREON, DO YOU HAVE KNOWLEDGE OF**

	Yes ¹	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic materials (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed assessments or notices from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards or that the property is in a federally-designated flood plain?	☒	☐	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☒	☐

**IF YOU HAVE ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, PLEASE SET FORTH
THE FOLLOWING FACTS FOR YOUR REPRESENTATION AND THAT OF ANY OTHER
PROFESSIONAL REPRESENTATIVE:**

*1 - Hardwood floors in Dining Room Recently Re-finished from water damage from V.C. Maple Waterline - floor is being repaired & all structural damage will be repaired.

*13 - Converted 1/2 Bath upstairs into Full Bath in last 12 months.

X Initials: _____ Seller _____ Date _____ Buyer _____ Date _____
Rev. 1/03

Page 3 of 4

REGARDING THE PROPERTY HEREIN IDENTIFIED INCLUDING THE LOT, OTHER IMPROVEMENTS, AND ETC., ARE LOCATED THEREON DO YOU HAVE KNOWLEDGE OF:

	Yes	No	No Representation
13. Room additions or other structural changes?	☒	☐	☐
14. Environmental hazards (substances, materials or products) including asbestos, formaldehyde, radon gas, methane gas, lead-based paint, underground storage tank, toxic mold or other hazardous or toxic material; (whether buried or covered), contaminated soil or water, or other environmental contamination?	☐	☒	☐
15. Nuisances (noise, odor, smoke, etc.) affecting the property?	☐	☒	☐
16. Previous damage caused by fire?	☐	☒	☐
17. Violations or variances of building codes or zoning ordinances?	☐	☒	☐
18. Restrictions to property use? (covenants or deed)	☐	☒	☐
19. Utility or other easements, shared driveways, party walls or encroachments from or on adjacent property?	☐	☒	☐
20. Lawsuits, foreclosures, bankruptcy, tenancies, judgments, tax or other liens, proposed easements or notice from any governmental agency that could affect title to the property?	☐	☒	☐
21. Owners' association fees or "common area" expenses or assessments?	☐	☒	☐
22. Flood hazards on that the property is in a federally-designated flood plain?	☒	☐	☐
23. Rental, rental management, vacation rental or other lease contracts in place on the property at the time of closing?	☐	☒	☐
24. Any outstanding charges owed by the tenant for gas, electric, water, sewerage, or garbage services provided to the property?	☐	☒	☐

IF YOU ANSWERED YES TO ANY OF THE ABOVE QUESTIONS, PLEASE USE THE FOLLOWING SPACE TO PROVIDE ADDITIONAL INFORMATION AND EXPLANATIONS TO YOUR RESPONSES.

#1 - Hardwood floor in Denim, currently covered with carpet. Large floor tile under the carpet. Floor joists are in good condition. Will be replaced with the carpet.

#13 - Converted 1/2 bath system into full bath in back of main house.

X Initials: Seller Date Buyer 10-25-07 Date
Rev. 1/03 *GM Duval*
HT Sayer

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DUNE'S MARKETING GROUP

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"Yes" explanations continued:

Owner(s) Acknowledgement

Property Address: 48' Seaboard, Hillcrest Dr., S.C.

The property is currently: owner-occupied ☒ leased ☐ in an estate ☐ in foreclosure ☐
vacant (if vacant, how long?) _____

Owner's Name(s) Tom & Jan Dye

Owner(s) acknowledge having examined this statement before signing and that all information is true and correct as of the date signed.

Owner Signature: Jan Dye Date: 3-04-03

Owner Signature: Tom Dye Date: 3-04-03

Purchaser(s) Acknowledgement

Purchaser(s) acknowledge receipt of a copy of this disclosure statement; that he/she has examined it before signing; that he/she understands that this is not a warranty by owner or owner's agent; that it is not a substitute for any inspections he/she may wish to obtain; and that the representations are made by the owner and not the owner's agent(s) or subagent(s). Purchaser(s) are encouraged to obtain his/her own inspection by a licensed home inspector or other professional.

Purchaser Signature: [Signature] Date: 10-25-03

Purchaser Signature: _____ Date: _____

(This form is approved by the South Carolina Real Estate Commission.)

EXHIBIT G
Facsimile Transmission
dated November 26, 2003

PLAINTIFF'S
EXHIBIT

25 CC

LAURICH & DEEB, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1040 WILLIAM HILTON PARKWAY

CIRCLE BUILDING, SUITE 104

POST OFFICE DRAWER 6868

HILTON HEAD ISLAND, SC 29938-6868

PHONE (843) 785-6868

FAX (843) 842-2552

EMAIL: bob@laurichdeeb.com

ATTORNEYS

EUGENE J. LAURICH
ROBERT M. DEEB, JR.
CHARLES H. WISEMAN
CATHERINE WEST OLIVETTI
BYRON A. HAMMOND

BLUFFTON OFFICE

LIBERTY SAVINGS BANK BUILDING
9 OAK FOREST ROAD, SUITE 200
BLUFFTON, SC 29910
PHONE (843) 815-5522
FAX (843) 815-2568

PLEASE DELIVER THE FOLLOWING IMMEDIATELY:

TO: Dr. McNeil
DATE: 11/26/03
FAX NUMBER: (614) 846-6504 **FAXED**
FROM: Erin for Leslie 3 pages
RE: See attached

Copy of Elevation Cert which
you Ins. Co will need to
give you a quote on the
Flood Ins.

Dr. Gattalella
(Fax 513-733-8677)

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY-PRIVILEGED AND CONFIDENTIAL. IT IS
INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE
IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR
COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN
ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, COLLECT, AND RETURN THE ORIGINAL MESSAGE TO

L&D-00079
ELS #79-58113

EXHIBIT H
FLOOD INSURANCE
Application

FLOOD INSURANCE APPLICATION

**Travelers**

Travelers Flood Insurance Program

GENERAL INFORMATION

Quote ID: 206187893

Application Status: SUBMITTED
Policy Type: Standard
Effective Date: 12/03/2003
Waiting Period: Loan Activity
Payer: First Mortgage - WELLS FARGO MORTGAGE #708
Agency Name: SEACOAST INSURANCE INC
Agency ID: 571112265

POLICY HOLDER INFORMATION

Insured Name: Donald McNeil
Additional Name: Gregory M Gottschlich
Mailing Address:
2341 LANE RD
COLUMBUS, OH 43220
Home Phone:
Social Security Number:

Property Address:
48 SEA LN
HILTON HEAD, SC 29928
Work Phone:

MORTGAGEE INFORMATION

Mortgage Type: First Mortgage
Mortgage Name: WELLS FARGO MORTGAGE #708
Clause: ITS SUCCESSORS AND OR ASSIGNS
Loan Number: 0133761288
Lender 1 Address:
PO BOX 5708
SPRINGFIELD, OH 45501-5708

Second Mortgage
WELLS FARGO BANK NA
ITS SUCCESSORS AND OR ASSIGNS
6540954551
Lender 2 Address:
PO BOX 49069
COLORADO SPRINGS, CO 80949-9069



<https://www.travelersflood.com/travelersagency2/ObjectDisplayServlet?formid=s10703875...> 12/2/2003

Insured Name: Donald McNeil
 Additional Name: Gregory M
 Gotschlich
 Quote ID: 206187893
 Travelers Agency ID: 571112265

RATING INFORMATION

Community-Panel Number:	450250 0014 D	State Govt. Owned:	No
Program Type:	Regular	Bulldozers Risk:	No
FIRM Zone:	A07	Principle Residence:	No
Hazard Area:	Yes	Elevated Building:	Yes
Building Occupancy:	Single Family	Post FIRM:	Yes
Basement:	None	Date Built:	01/01/1989
Building Type:	Two Floors	Condo Type:	Not a condo
Obstruction:			

ELEVATION INFORMATION

Lowest Floor:	13.3	Source of Certificate:	Elevation Certificate
Base Flood:	14.0	Prior Policy Number:	6004611874
Lowest Adjacent Grade:	9.2	Certificate Date:	03/28/2001
Diagram Number:	8	Certificate Type:	Elevation/Survey

CONTENTS INFORMATION

Contents Location: Lowest Floor Above Ground Level and Higher
 Contents Household: Yes
 Contents Description:

RCBAP INFORMATION

Total Number of Units:

COVERAGE AND RATING DETAIL

	Basic Limits		Additional Limits		Deductible	Basic and Additional Insurance	Total Premium
	Amount of Insurance	Rate	Amount of Insurance	Rate	Premium Reduction/Increase		
Building	\$50,000.00	1.97	\$200,000.00	0.86	\$0.00	\$250,000.00	\$2,705.00
Contents	\$20,000.00	1.77	\$30,000.00	0.58	\$0.00	\$50,000.00	\$528.00
Building Deductible:	\$500.00					Annual Subtotal:	\$3,233.00
Contents Deductible:	\$500.00					ICC Premium:	\$4.00
						CRS Discount:	\$647.00
Deductible Credit:	1.0					Subtotal:	\$2,590.00
Policy Term:	One Year					Probation Surcharge:	\$0.00
Replacement Cost:	\$000000.00					Expense Constant:	\$0.00
						Federal Policy Fee:	\$30.00
						Total Premium Due:	\$2,620.00

<https://www.travelersfood.com/travelersagency2/ObjectDisplayServlet?formid=s10703875...> 12/2/2003

PART 2 Section 1

Insured Name: Donald McNeil
Additional Name: Gregory M
Gottschlich
Quote ID: 206187893
Travelers Agency ID: 571112265

BASEMENT INFORMATION

Units:Feet Above Floor:

Furnace:
Heat Pump:
Elevator Equipment:
Oil Tank:
Hot Water Heater:
Air Conditioner:
Washer:
Dryer:
Food Freezer:
Other:
Other Description:

GARAGE INFORMATION

Attached Garage: Yes
Openings to Code: Yes
Used for Parking/Storage/Access: Yes
Garage Use Description:
Garage Floor below floor of building: 6.0
Garage Floor Elevation: 7.0

Units:Feet Above Floor:

Furnace:
Heat Pump:
Elevator Equipment:
Oil Tank:
Hot Water Heater:
Air Conditioner:
Washer:
Dryer:
Food Freezer:
Other:
Other Description:

PART 2 Section 2

Insured Name: Donald McNeil
Additional Name: Gregory M
Gottschlich
Quote ID: 206187893
Travelers Agency ID: 571112265

ELEVATED BUILDING

Building Constructed On:	Piles, Posts, or Piers	Elevated Floor Feet above Ground:	7.0
Is there Enclosure:	true	Enclosure Type:	
Enclosure Square Feet:	2500	Enclosure Floor Elevation:	13.3
Enclosure Wall/Type:	Masonry Walls	Openings to Code:	true
Used for		Enclosure Use Description:	
Parking/Storage/Access:	true		

Units:Feet Above Floor:

Furnace:
Heat Pump:
Elevator Equipment:
Oil Tank:
Hot Water Heater:
Air Conditioner:
Washer:
Dryer:
Food Freezer:
Other:
Other Description:

PART 2 Section 3

MOBILE HOME INFORMATION

Make:		Model Number:	
Serial Number:		Manufacture Date:	
Dimensions (Length X Width):	X	Permanent Additions or Extensions:	
Properly Anchored:		Type of Anchor:	
Located in a		Date Placed on Foundation:	
Park/Subdivision:			

AGENCY INFORMATION

Insured Name: Donald McNeil
Additional Name: Gregory M
Gottschlich
Quote ID: 206187893
Travelers Agency ID: 571112265

Agency: SEACOAST INSURANCE INC
Address: PO BOX 7048
HILTON HEAD ISL, SC 29938

Phone: 843-681-4340

The above statements are correct to the best of my knowledge. The property owner and I understand that any false statements may be punishable by fine or imprisonment under applicable federal law.

Agent Signature _____ Date _____

PAYMENT / SUBMISSION INFORMATION

TOTAL PREMIUM: 2620.00

If paying by check, please make
check payable to: Travelers

Mail checks or supporting
documentation, if any, to: Travelers Flood Insurance Program
PO Box 34272
Bethesda, MD 20827

12/02/2003 12:29:22 PM

EXHIBIT I
Page 68 Lyons Deposition

 COPY

Page 1

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF BEAUFORT) Case No. 08-CP-07-0517

3

4 GREGORY M. GOTTSCHLICH and DONALD
5 L. McNEIL,

6 Plaintiffs,

7 vs.

8 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH
9 A. REEVE; JERRY L. RICHARDSON; COASTAL
10 SURVEYING CO., INC.; THOMAS N. DYE;
11 JAN H. DYE; KEN OLIVER; THE BYRNE
CORPORATION d/b/a DUNES MARKETING GROUP;
LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.;
and CHARLES H. WISEMAN,

12 Defendants.

13

14 30(b)(6) DEPOSITION OF
SEACOAST INSURANCE, INC.

15 (Tommy Faye Lyons, Corporate Designee)

16

17 DATE: SEPTEMBER 21, 2009

18 TIME: 10:22 a.m. - 1:15 p.m.m

19 LOCATION: Tupper, Grimsley & Dean, P.A.
20 611 Bay Street
Beaufort, South Carolina

21 REPORTED BY: Beth Walters Kornuta

22 *****



PALMETTO STATE COURT REPORTERS
P. O. Box 50488
Summerville, SC 29485
843.670.1637 Fax: 843.486.0064
Palmettostatecr@yahoo.com

25

 COPY

1 procedures in discussing flood elevation -- excuse
2 me -- flood certificates indicating a negative
3 elevation, with insureds?

4 A Repeat that for me?

5 Q What is the policy and procedure of
6 Seacoast in discussing negative elevation
7 certificates with its customers?

8 A Normally we'll explain to the insured
9 that homes located in a negative flood area, first
10 of all. And the rates will be higher versus being
11 someone who's not in a negative area.

12 Q Now is an A area a negative area?

13 A No. It can be the same or it can be a
14 positive or it can be a negative, depending on the
15 area.

16 Q All right. How does Seacoast
17 determine a negative area?

18 A We don't determine a negative. NFIP
19 sets the area. When the surveyor goes out and he
20 makes that survey, he's the one who's going to
21 tell us whether it's a negative or it's a
22 positive.

23 Q Was there a discussion with the
24 Plaintiffs in this case with regard to this
25 property at 48 Sea Lane being in a negative area?

EXHIBIT J
Letter dated
November 16, 2003
with 2001 Survey



BETHEA, JORDAN & GRIFFIN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

PLAINTIFF'S
EXHIBIT

6. cf

November 16, 2003

Robert M. Deeb, Jr., Esq.
Laurich and Deeb, P.A.
P.O. Box 6868
Hilton Head Island, SC 29938

Re: Gottschlich and McNeil Acquisition 48 Sea Lane

Dear Bob:

I understand you represent the purchasers in the above captioned transaction. I represent the sellers. To assist you in your title examination, please note that the deed was recorded in Deed Book 1404 at Page 792. I show a mortgage in favor of Lighthouse at Book 1404, Page 795. I also pulled our file and I am enclosing a copy of the recent survey that was completed. Hopefully, this will be of some help to your client.

René Serrato will be working with me here at the office.

With best wishes, I am

Very truly yours,

BETHEA, JORDAN & GRIFFIN, P.A.

Cary S. Griffin

CSG:YI
Enclosure

c: Mr. and Mrs. Thomas N. Dye
Mr. Ken Oliver
Mr. Greg Merrill

(318290.1)

SHELTER COVE EXECUTIVE PARK
23-B SHELTER COVE LANE, SUITE 400
HILTON HEAD ISLAND, SC 29928-3588

www.bjglaw.com

P.O. DRAWER 3
HILTON HEAD ISLAND, SC 29938-0003
843.785.2171
FAX: 843.686.5991

MAINLAND OFFICE:
5 BELFAIR VILLAGE DRIVE
BLUFFTON, SC 29910-2605
843.815.2171
FAX: 843.815.5991

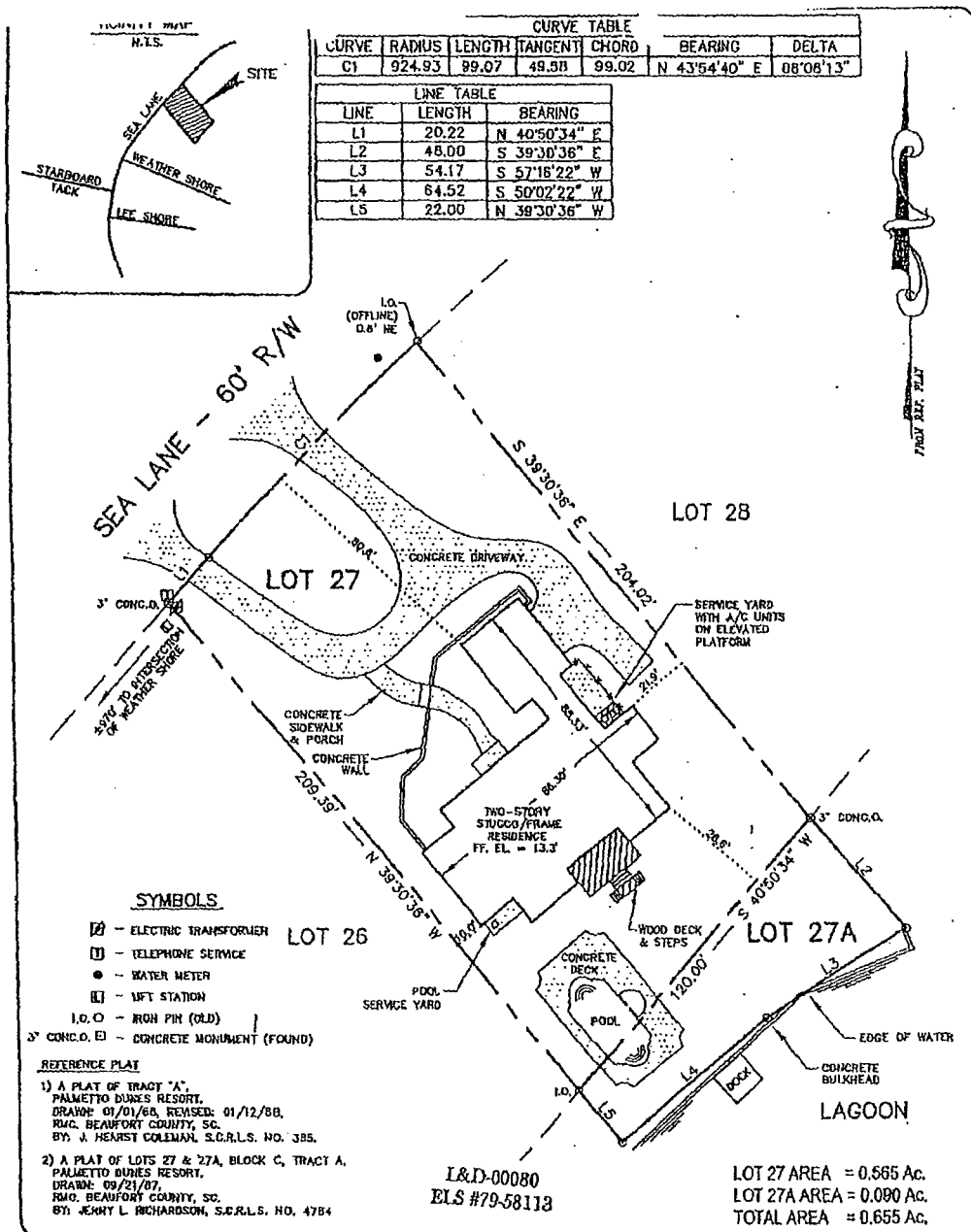
JOSEPH R. PARKER
WILLIAM L. BETHEA, JR.
STEPHEN E. CARTER
HUTSON S. DAVIS, JR.
R. NICHOLAS FELEX
CARY S. GRIFFIN
MICHAEL L. M. JORDAN, CFP
WALTER J. NESTER, III
KEITH M. PARRELLA
SARAH F. ROBERTSON
TONYA L. SAYERS
DAVID J. TIGGES

OF COUNSEL:
JOHN C. WEST

cgriffin@bjglaw.com

old one

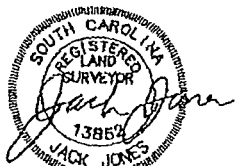
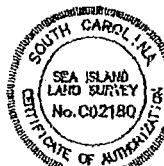
L&D-00081
ELS #79-58113



SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.

ADDRESS: 848 SEA LANE
 DIST: 520, MAP: 12A, PARCEL: 168
 THIS PROPERTY LIES IN F.E.M.A. ZONE A7
 BASE ELEVATION = 14.0'

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STANDARD MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

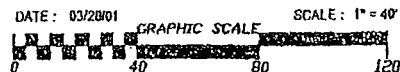


NOT VALID UNLESS EMBOSSED.

ASBUILT SURVEY OF:

LOT 27 & LOT 27A, TRACT A, PARCEL 3, BLOCK C, PALMETTO DUNES RESORT, HILTON HEAD ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:
 THOMAS N. & JAN H. DYE



SILS Sea Island Land Survey
 P.O. Box 21568, Hilton Head Island, SC 29925
 4-D Mathews Court, Hilton Head Island, SC 29928
 Tel (843) 681-3248
 Fax (843) 689-3871

JOB No: 01096
 FILE: 3-744

EXHIBIT K

Pro Forma Spreadsheet

Gottschlich 14
slr 7/28/09

How Many Are Foreign?

Home	3	2,800,000.00	3	1,400,000.00
Surplus	5	.	5	.

[illegible]

EXHIBIT L
PAGES 214-215
Gottschlich Deposition

214

1 or the Dyes to Mr. Oliver. I don't know where I got
2 the information, but they were best guess estimates
3 and, obviously, in the case of the flood insurance
4 didn't reflect the true cost.

5 Q Did you receive this Flood Insurance
6 Application which is now marked as Exhibit 22 prior
7 to the closing?

8 A I don't recall seeing that.

9 Q Were you aware that the flood
10 insurance premium -- annual flood insurance premium
11 for 48 Sea Lane would cost you \$2,620 before
12 closing?

13 A I believe so because I believe on the
14 Truth In Lending statement that it may have been
15 called out separately, but I'd have to look at that
16 to be certain. My recollection would be that it was
17 probably included on that Truth In Lending form.

18 Q Did you question anyone about this
19 difference of the estimate of \$592 as noted on your
20 Hilton Head Pro Forma and the quoted premium of
21 \$2,620 as noted on the Travelers Flood Insurance
22 Application, which is marked as Exhibit 22?

23 A I don't recall doing that, but there
24 were so many different -- no, I don't recall doing
25 that.

**DEPONET**

Nationwide Scheduling
Toll Free: 1.800.337.6638
Facsimile: 1.973.355.3094
www.deponet.com

215

1 Q Did this not concern you?

2 A I would say I wasn't aware -- I may
3 have missed the significance of the difference, and
4 I may have created the Pro Forma -- the Pro Forma
5 was created before we bought the house or before we
6 made an offer on the house. And after -- and as you
7 see on the Pro Forma, there were three or four
8 individuals potentially going in on it. So by the
9 time we ultimately -- and I'm speculating. By the
10 time we ultimately placed the offer, I don't -- I
11 probably didn't go back and look at this again to
12 verify if the numbers were accurate or not. I
13 thought I had a good rough idea of what the costs
14 might be, but since we were inheriting the costs
15 that the Dyes had paid previously we assumed that
16 they were proper and that they were based on the
17 house conforming to whatever local statutes might be
18 and/or federal statutes.

19 Q Would you agree with me that the
20 difference between \$2,620 and your estimate of \$592
21 would be a concern to a reasonable person?

22 MR. HUDSON: Object to the form.

23 THE WITNESS: Well, as I said yesterday,
24 the Truth In Lending statement I believe there was a
25 footnote that it estimated the flood insurance to be

**DEPONET**

Nationwide Scheduling
Toll Free: 1.800.337.6638
Facsimile: 1.973.355.3094
www.deponet.com

EXHIBIT M
Declaration Pages



Travelers Flood
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DOUG MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2005 to 12/03/2006 Policy Term: ONE YEAR
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938
Payor: 1ST MORTGAGEE	Agent Phone: 843-681-4340

The building covered by this policy is located at the above mailing address unless otherwise stated below.

INSURED

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.40/00.90	\$ 0.00	\$ 2,830.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,343.00
CRS DISCOUNT					\$ -669.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,704.00

THIS IS NOT A BILL

Attachments:

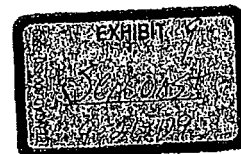
FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA 708
PO BOX 5708
SPRINGFIELD, OH 45501-5708

SECOND MORTGAGEE
WELLS FARGO BANK NA
PO BOX 850
MINNEAPOLIS, MN 55480-0850

Issue Date: 01/27/2006

Agent Copy



000156(10:10):218.138



Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT

Named Insured and Mailing Address: DR DON MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2005 to 12/03/2006 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/03/2005
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III, Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION	
Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1	

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.40/00.90	\$ 0.00	\$ 2,830.00
Contents	\$ 46,400	\$ 500	01.70/00.50	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,343.00
CRS DISCOUNT					\$ -669.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,704.00

THIS IS NOT A BILL

Policy Changes:

INSURED'S NAME CORRECTED

FIRST MORTGAGEE WELLS FARGO BANK NA 708 PO BOX 5708 SPRINGFIELD, OH 45501-5708	SECOND MORTGAGEE WELLS FARGO BANK NA PO BOX 850 MINNEAPOLIS, MN 55480-0850

Issue Date: 11/20/2006

Agent Copy

Your Insurer is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183



Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DR DON MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2006 to 12/03/2007
	Policy Term: ONE YEAR
Payor: 1ST MORTGAGEE	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938
	Agent Phone: 843-681-4340

The building covered by this policy is located at the above mailing address unless otherwise stated below.

W-F 0 4 2006

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 450250001410
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.64/01.00	\$ 0.00	\$ 3,131.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,644.00
CRS DISCOUNT					\$ -729.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,945.00

THIS IS NOT A BILL

Attachments

FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA 708
PO BOX 5708
SPRINGFIELD, OH 45501-5708

SECOND MORTGAGEE
WELLS FARGO BANK NA
PO BOX 850
MINNEAPOLIS, MN 55480-0850

Issue Date: 11/24/2006

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183



Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHELCH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2006 to 12/03/2007 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/03/2006
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payer: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION
Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION						
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium	
Building	\$ 231,100	\$ 500	02.64/01.00	\$ 0.00	\$	3,131.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$	509.00
					ICC PREMIUM	\$ 4.00
					ANNUAL SUBTOTAL	\$ 3,644.00
					CRS DISCOUNT	\$ -729.00
					FEDERAL POLICY FEE	\$ 30.00
					TOTAL PREMIUM	\$ 2,945.00

THIS IS NOT A BILL

Policy Changes:

INSURED'S NAME CHANGED

FIRST MORTGAGEE WELLS FARGO BANK NA 708 PO BOX 5708 SPRINGFIELD, OH 45501-5708	SECOND MORTGAGEE WELLS FARGO BANK NA PO BOX 850 MINNEAPOLIS, MN 55480-0850

Issue Date: 01/02/2007

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

0010701356572 614

TRAVELERSFlood Program
PO Box 29103
Shawnee Mission, KS 66201-1403Policy Number
6004878572**FLOOD DWELLING POLICY ENDORSEMENT DECLARATION**

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2006 to 12/03/2007 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/03/2006
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.64/01.00	\$ 0.00	\$ 3,131.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,644.00
CRS DISCOUNT					\$ -729.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,945.00

THIS IS NOT A BILL

Policy Changes:

SECOND MORTGAGEE CHANGED
FIRST MORTGAGEE CHANGEDFIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708

Issue Date: 10/03/2007

Agent Copy

Your Insurer is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-904-8348. You may also request a written copy from Marketing at One Tower Square, 20SA, Hartford, Connecticut 06183.

000171(9:17):22083.137

TRAVELERS

Insurer: The Standard Fire Insurance Company
Flood Service Center
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2007 to 12/03/2008 Policy Term: ONE YEAR SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938
Payor: 1ST MORTGAGEE	Agent Phone: 843-681-4340

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.90/01.10	\$ 0.00	\$ 3,442.00
Contents	\$ 46,400	\$ 500	01.96/00.58	\$ 0.00	\$ 545.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,991.00
CRS DISCOUNT					\$ -798.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 3,223.00

THIS IS NOT A BILL

Attachments:

FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708

Issue Date: 11/14/2007

Agent Copy

Your Insurer is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-804-8348. You may also request a written copy from Marketing at One Tower Square, 2GSA, Hartford, Connecticut 06183.

001033(2:6)24240.592

TRAVELERS

Insurer: The Standard Fire Insurance Company
Flood Service Center
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT DECLARATION

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2007 to 12/03/2008 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/31/2007
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938
	Payor: 1ST MORTGAGEE Agent Phone: 843-681-4340

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION	
Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1	

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.90/01.10	\$ 0.00	\$ 3,442.00
Contents	\$ 46,400	\$ 500	01.96/00.58	\$ 0.00	\$ 545.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,991.00
CRS DISCOUNT					\$ -798.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 3,223.00

THIS IS NOT A BILL

Policy Changes:

SECOND MORTGAGEE CHANGED

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA - ATTN: FLOOD INS TRACKING
PO BOX 850
MINNEAPOLIS, MN 55480-0850
LOAN NUMBER: 0067519599

Issue Date: 01/02/2008

Agent Copy

Your Insurer is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

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000972(5;7):26579,530



Insurer: The Standard Fire Insurance
Company
Flood Service Center
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2008 to 12/03/2009 Policy Term: ONE YEAR Agent No: 571112265000 SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

4B SEA LN

HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION
Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	03.34/01.21	\$ 0.00	\$ 3,861.00
Contents	\$ 46,400	\$ 500	02.11/00.50	\$ 0.00	\$ 575.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 4,440.00
FEDERAL POLICY FEE					\$ 35.00
TOTAL PREMIUM					\$ 4,475.00

THIS IS NOT A BILL

Policy Changes:

Attachments:
FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243610

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA - ATTN: FLOOD INS TRACKING
PO BOX 850
MINNEAPOLIS, MN 55480-0850
LOAN NUMBER: 0067519599

Issue Date: 11/14/2008

Agent Copy

Your Insurer is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

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000380(015):42275.350

EXHIBIT N

Activity Log

Activity List
1/1/1999 to 12/15/2010

Action	Date/Time	By	Policy	Claim/Loss Date	Co	Policy Term	Exec	Tran	Effective	System Date
Description: [Category]=Memos [Title]=Check Request										
g Form Letter	12/7/2004	FRIDA	8004878572		Travelers Flood Insuran	12/3/2003 - 12/3/2004	TEENA	PCH	12/03/2004	12/7/2004 12:11:37PM

Type of Bus: Personal Lines

Description: [Category]=Memos
[Title]=Check Request

12/14/2004

Center: Customer Name: McNeil Gregory M Gottschlich and Dr Don

Notes	12/14/2004	COOK	8004878572	Travelers Flood Insuran	12/3/2003 - 12/3/2004	TEENA	PCH	12/03/2004	12/14/2004 10:55:41AM

Type of Bus: Personal Lines

Description: Called surveyor today regarding the fact that the home was built below the base flood elevation. At the time the home was built (1988), the bfe was 14ft. There is nothing that we can do to re-underwrite the policy and improve the premium amount for the insured. The base flood elevation changed from 12ft to 14ft in 1986. KJ 12/14/2004

Policy Memo	12/14/2004	HOVER	005667400	South Carolina Wind &	12/26/2003 - 12/26/2004	TEENA	PCH	12/03/2004	12/14/2004 5:28:27PM

Type of Bus: Personal Lines

Description: Policy Change Request, First Request, Correct Name & 1st Mortgagee

Policy Memo	12/14/2004	HOVER	005667400	South Carolina Wind &	12/26/2003 - 12/26/2004	TEENA	PCH	12/03/2004	12/14/2004 5:28:53PM

Type of Bus: Personal Lines

Description: Policy Change Request, First Request, Change Mailing Address

Policy Change	12/14/2004	HOVER	8004878572	Travelers Flood Insuran	12/3/2003 - 12/3/2004	TEENA	PCH	12/03/2004	12/14/2004 5:30:01PM

Type of Bus: Personal Lines

Description: Change 1st & 2nd Mortgagee

Policy Memo	12/14/2004	HOVER	8004878572	Travelers Flood Insuran	12/3/2003 - 12/3/2004	TEENA	PCH	12/03/2004	12/14/2004 5:30:28PM

Type of Bus: Personal Lines

Description: Policy Change Request, First Request, Change Mailing Address

Policy Change	12/14/2004	HOVER	8004878572	Travelers Flood Insuran	12/3/2003 - 12/3/2004	TEENA	PCH	12/03/2004	12/14/2004 5:37:54PM

Type of Bus: Personal Lines

Description: Correct Name & 1st Mortgagee

12/20/2004

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT

RECEIVED 16 PM 3:04

GREGORY M. GOTTSCHLICH AND JERRI ANN ROSENBERG No.: 2008-CP-07-00517
DONALD L. MCNEIL, BEAUFORT COUNTY, S.C.
CLERK OF COURT

PLAINTIFFS,

VS.

STRIMPFEL CUSTOM HOMES, INC.;
JOSEPH A. REEVE; JERRY L.
RICHARDSON; COASTAL SURVEYING
CO., INC.; THOMAS N. DYE; JAN H. DYE;
KEN OLIVER; THE BYRNE CORPORATION
D/B/A DUNES MARKETING GROUP;
LAURICH & DEEB, P.A.; ROBERT M.
DEEB, JR. AND CHARLES H. WISEMAN,

DEFENDANTS.

) MEMORANDUM OF LAW IN
) SUPPORT OF DEFENDANTS
) LAURICH & DEEB, P.A., ROBERT M.
) DEEB, JR. AND CHARLES H.
) WISEMAN'S MOTION FOR
) SUMMARY JUDGMENT

Defendants Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman (together referred to herein as "Laurich & Deeb"), by and through their undersigned counsel, respectfully submit this Memorandum of Law in Support of Laurich & Deeb's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

L INTRODUCTION

This case arises out of Dr. Gregory M. Gottschlich and Dr. Donald L. McNeil's (collectively, "Plaintiffs") alleged inability to obtain *excess* flood insurance on their million dollar vacation home located in the Palmetto Dunes subdivision on Hilton Head Island, South Carolina. Plaintiffs contend that their home was built below the Federal Emergency Management Association's ("FEMA") fourteen foot base flood elevation requirement, and as a result, they cannot obtain excess flood insurance and/or *may* be subject to fines by the Town of Hilton Head Island if they do not raise their house to the required fourteen foot base flood



elevation. Plaintiffs have filed this action against the construction company that built the home, the original owner/contractor of the home, the original surveyor of the home, the sellers, the real estate agent and real estate company, and their closing attorney, Laurich & Deeb. Plaintiffs have asserted causes of action against Laurich & Deeb for professional negligence/legal malpractice, breach of contract, breach of fiduciary duty, and equitable indemnification. Plaintiffs' claims against Laurich & Deeb fail as a matter of law for three reasons: (1) Plaintiffs have no competent evidence of a breach in the standard of care by Laurich & Deeb; (2) their claims are barred by the statute of limitations; and (3) Plaintiffs' damages are speculative as a matter of law.

II. PROCEDURAL BACKGROUND

On February 18, 2008, Plaintiffs filed their initial Complaint against Strimpfel Custom Homes, Inc, Jerry L. Richardson, Coastal Surveying Co., Inc., Thomas N. Dye, Jan H. Dye, Ken Oliver, and The Byrne Corporation d/b/a Dunes Marketing Group. On March 20, 2009, over a year later, Plaintiffs filed their Amended Complaint adding Laurich & Deeb and Joseph A. Reeve as additional named defendants. (*See* Am. Compl., Exh. 1.) On April 30, 2009, Laurich & Deeb filed its Answer to the Amended Complaint with affirmative defenses. (*See* Answer, Exh. 2.)

III. STATEMENT OF FACTS

On November 6, 2003, Plaintiffs entered into a contract with Thomas N. and Jan H. Dye ("Dyes") for the purchase of the home located at 48 Sea Lane, Hilton Head Island, South Carolina. (*See* Purchase Contract, Exh. 3.) The house was built in 1987 by Joseph A. Reeve ("Reeve"), the original owner/contractor, who was working for Strimpfel Custom Homes, Inc. ("Strimpfel") at the time. (Strimpfel Dep. p. 11, Exh. 4.) Prior to the issuance of the building permit in 1987, Reeve and/or Strimpfel obtained an elevation certificate issued by Jerry Richardson of Coastal Surveying Co., Inc. ("Coastal") which measured the height of the home

prior to vertical construction. (1987 Elevation Certificate, Exh. 5.) Coastal certified that the lowest finished floor of the home was 14.16 feet. (*Id.*) This 1987 elevation certificate is the only one on record with the Town of Hilton Head Island. (Johnson Dep. pp. 23, 49-50, Exh. 6.) Approximately fourteen years later, the Dyes purchased the home at 48 Sea Lane from Ben and Myra Muldong. At the time of purchase, the Dyes obtained an updated elevation certificate and survey, which were both prepared by Sea Island Land Survey. (2001 Elevation Certificate, Exh. 7; 2001 Survey, Exh. 8.) The 2001 Sea Island elevation certificate and survey reflect a finished floor elevation of 13.3 feet, which is .7 feet below FEMA's required fourteen foot base flood elevation for this area. (*Id.*)

Before closing on the purchase of 48 Sea Lane in December 2003, Plaintiffs received a copy of the 2001 elevation certificate, reflecting an elevation of 13.3 feet. (Fax dated 11/26/03, Exh. 9.) Plaintiffs forwarded the elevation certificate to their insurance agent Seacoast Insurance, Inc. ("Seacoast") in order to obtain quotes on flood insurance as required by the lender.

After signing the purchase contract and obtaining financing, Plaintiffs hired Laurich & Deeb to serve as their closing attorney. (Engagement Letter dated 11/13/03, Exh. 10.) Plaintiffs, who are both doctors in Ohio, chose not to travel to Hilton Head for the closing. (Deeb Dep. pp. 37-38, 192, Exh. 11.) Instead, they executed a limited power of attorney in favor of Robert M. Deeb, Jr. and/or Charles H. Wiseman, both attorneys at Laurich & Deeb. (*See* Powers of Attorney, Exh. 12.)

Laurich & Deeb received closing instructions from the lender and a copy of the contract of sale. (Lender's Instructions, Exh. 13; Purchase Contract, Exh. 3.) The seller's attorney sent to Laurich & Deeb and to the real estate agents a copy of the 2001 survey. (Letter dated 11/16/03 with 2001 Survey, Exh. 14.) Laurich & Deeb reviewed the survey for title purposes only, that is,

to assess the presence of any setbacks, easements, or encroachments. (Deeb Dep. pp. 127-28, Exh. 11.).

The purchase closed on December 2, 2003 (*See* Settlement Statement, Exh. 15.) Though Plaintiffs chose not to attend the closing, Laurich & Deeb sent them documents prior to the closing and gave them an opportunity to review the documents and to ask questions. (Deeb Dep., pp. 192, 197-98, Exh. 11.) Plaintiffs did not ask any questions. (*Id.*)

After closing, Plaintiffs received a copy of their flood insurance policy and each year thereafter received renewal declaration pages. These documents clearly stated that the home had an elevation difference of negative one. (Declaration Pgs., Exh. 16.) Nevertheless, Plaintiffs now contend that they were unaware of the elevation issue until early Spring 2006, when they discussed with their insurance agent the possibility of obtaining excess flood insurance. (Gottschlich Dep. p. 14, Exh. 17.) Although Plaintiffs' insurance agent could not place excess insurance, Plaintiffs did obtain quotes from two different companies to increase their flood insurance limits, even with the negative elevation. (Insurance Quotes, Exh. 18; Gottschlich Dep. pp. 17-18, Exh. 17; McNeil Dep. pp. 34, 56, Exh. 19.)

In an effort to create damages where none exist, Plaintiffs now seek to be paid the cost to bring their home into compliance with FEMA's fourteen foot base flood elevation requirement. They contend in their Amended Complaint that Laurich & Deeb should have discovered the negative elevation, should have informed Plaintiffs that their dwelling was not eligible for excess flood insurance, should have taken appropriate, meaningful steps to protect Plaintiffs' legal interests prior to the expiration of the statute of limitations, and should have informed Plaintiffs of the consequences of the statute of limitations expiring. (Am. Compl., Exh. 1.) Not only is there no basis in the law for asserting these claims because Plaintiffs cannot prove a breach in the

standard of care, Plaintiffs' claims are also barred by the applicable statute of limitations, and, their claimed damages are speculative as a matter of law.

IV. LEGAL STANDARD

Rule 56, SCRPC, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original); *Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, "as would be admissible in evidence," to show that a true jury issue exists. *See* S.C. R. Civ. P. 56(e).

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 580 S.E.2d 433 (2003); *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001). Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

V. DISCUSSION

A. ALL CLAIMS AGAINST LAURICH & DEEB FAIL BECAUSE THERE WAS NO BREACH IN THE STANDARD OF CARE.

Plaintiffs seek to prove that Laurich & Deeb breached the standard of care for residential real estate closing attorneys through testimony of their expert, C. Joseph Roof, Esq. ("Roof"). Rule 702, SCRE, provides that "if...specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert, by knowledge, skill, experience, training or education, may testify...." Mr. Roof's qualification as an expert in residential real estate closing is suspect at best; he admits that he has closed only a handful of homes in the last fifteen years, all for family and friends and none in Beaufort County or in coastal South Carolina. (Roof Dep. pp. 77-78, Exh. 20.) He gave up residential closings in 1995 and his practice is primarily transactional, representing banks. (Roof Dep. p. 78-79, Exh. 20.) Thus, Mr. Roof is not qualified to opine with regard to the standard of care of residential real estate closing attorneys with regard to elevation issues in surveys. In addition to Mr. Roof's lack of expertise, there is no basis in the law for his assertion that Laurich & Deeb breached the standard of care.

1. There is No Material Issue of Fact that Laurich & Deeb Had No Duty to Review the Survey for Elevation Purposes.

All claims fail as a matter of law because Plaintiffs have no evidence to support their claim that Laurich & Deeb breached the standard of care. In addition, Mr. Roof admits that closing attorneys only have a duty to review surveys for elevation purposes if they "understand" that elevation is an issue.

a. *There is no law to support Plaintiffs' argument that an attorney has a duty to review a survey for elevation purposes, and Plaintiffs' expert cannot create new law through his testimony.*

There is no law in South Carolina that states residential real estate closing attorneys have a duty to review surveys for elevation issues and to advise purchasers regarding the same. “[A]ssertions as to liability must be more than mere bald allegations made by the non-moving party in order to create a genuine issue of material fact.” *Jackson v. Bermuda Sands, Inc.*, 383 S.C. 11, 17, 677 S.E.2d 612, 616 (Ct. App. 2009).

Several South Carolina cases speak generally to the duties of a residential real estate closing attorney. Those cases hold that the duties involve four steps: title search, review of loan documents prepared by a lender (if applicable), closing under a licensed attorney’s supervision, and the recordation of documents. *Doe Law Firm v. Richardson*, 371 S.C. 14, 17, 636 S.E.2d 866, 868 (2006); *Doe v. McMaster*, 355 S.C. 306, 312-16, 585 S.E.2d 773, 776-78 (2003); *State v. Buyers Serv. Co., Inc.*, 292 S.C. 426, 430-34, 357 S.E.2d 15, 17-19 (1987). These cases support the testimony of Mr. Deeb, Mr. Wiseman, and Laurich & Deeb’s expert, Herbert L. Novit, Esq. (“Novit”), that the primary focus and duty of a residential real estate closing attorney is to pass clear title, which is the sole reason for reviewing a survey. (Deeb Dep. pp. 127-28, 185, Exh. 11; Wiseman Dep. pp. 23-24, Exh. 21; Novit Dep. p. 52, Exh. 22.)

Plaintiffs’ attempt to use the testimony of Mr. Roof to support their allegation of duty fails because Mr. Roof admitted several times in his sworn testimony that he is not aware of any treatise, case law, rule, regulation or even CLE handout material that states a closing attorney in South Carolina has a duty to advise a buyer with regard to the flood elevation of a home or to review a survey for elevation issues. (Roof Dep. pp. 65, 101-02, Exh. 20.) An expert cannot create new law and must base his opinion on established standards. *Dawkins v. Fields*, 354 S.C.

58, 66, 580 S.E.2d 433, 437 (2003) (holding that “[i]n general, expert testimony on issues of law is inadmissible”).

Unlike Roof, Defendants’ expert, Mr. Novit, is a seasoned expert in the field of residential real estate closings in Beaufort County. (Novit Dep. p. 15, Exh. 22.) Mr. Novit unequivocally testified, consistent with the law, that South Carolina residential real estate closing attorneys have no duty to review surveys for elevation issues. (Novit Dep. pp. 103-04, Exh. 22.) Because all of the experts in this case agree that there is no law or regulation imposing a duty on residential real estate closing attorneys to review surveys for elevation and to advise purchasers regarding the same, Plaintiffs’ claims fail. “[W]hen only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court.” *Jackson*, 383 S.C. at 17, 677 S.E.2d at 616 (quoting *Small v. Pioneer Mach., Inc.*, 329 S.C. 448, 494 S.E.2d 835 (Ct. App. 1997)). Plaintiffs’ bald assertion as to Laurich & Deeb’s liability when there is no basis in the law for such assertion does not create a material issue of fact, and Plaintiffs’ claims against Laurich & Deeb must be dismissed as a matter of law.

b. *Roof admits that any alleged duty to review a survey for elevation arises only when a closing attorney “understands” that elevation is an issue, which Laurich & Deeb did not.*

Not only is there no case law or regulation providing that a residential real estate closing attorney has a duty to review a survey for elevation issues, even Plaintiffs’ own expert claims that such a duty arises only when a closing attorney “understands” that elevation is an issue. Roof admits that “understanding” means “[u]nderstanding that there is an issue.” (Roof Dep. p. 62, Exh. 20.) He further admits “[a]n attorney [does not have] a general obligation to ferret out elevation issues and to disclose those.” (Roof Dep. p. 57, Exh. 20.) Thus, in order to advise as to issues related to elevation, the attorney must first know that there is an issue. (Roof Dep. pp. 64– 65, 155, Exh. 20.)

Neither Mr. Deeb nor Mr. Wiseman “understood” that elevation was an issue in this closing; they did not understand the significance of the elevation number and did not understand the references to elevation on the 2001 survey. (Deeb Dep. pp. 52, 100, 141, Exh. 11; Wiseman Dep. p. 30, Exh. 21.) Furthermore, Laurich & Deeb did not know when the house was built or whether it had received special allowance by the Town; therefore, the elevation number was meaningless to them. (Deeb Dep. pp. 159-60, Exh. 11; Wiseman Dep. pp. 23-24, 30, Exh. 21.)

The only evidence in this case is that Laurich & Deeb did not “understand” the significance of the survey elevation number. Therefore, by Mr. Roof’s own admission, Laurich & Deeb had no duty to advise Plaintiffs regarding the same. Thus, because there is no issue of material fact, Plaintiffs’ professional negligence, breach of contract, breach of fiduciary duty, and equitable indemnification claims against Laurich & Deeb must be dismissed as a matter of law.

2. There is No Evidence that Laurich & Deeb Breached any Alleged Duty to Instruct Plaintiffs on the Statute of Limitations.

In the Amended Complaint, Plaintiffs also assert that Laurich & Deeb breached duties to Plaintiffs “in failing to take appropriate, meaningful steps to protect Plaintiffs’ legal interests prior to the statute of limitations potentially expiring against third parties...” and “in failing to inform Plaintiffs of any possible consequences [sic] the statute of limitations potentially expiring.” This claim is based upon Plaintiffs’ call to Mr. Deeb in December 2006 informing him for the first time of an elevation issue with the home.

The assertion is spurious on its face. First, Laurich & Deeb had three years earlier ended the attorney-client relationship with Plaintiffs, and thus, owed no duty to Plaintiffs in December 2006. Second, any issue concerning the statute of limitations and claims against third parties in December 2006 was wholly of Plaintiffs own making. Plaintiffs knew or should have known of

the home's elevation issue in December 2003 when they received the elevation certificate (Fax dated 11/26/03, Exh. 9; Lyons Dep. pp. 73-74, Exh. 23.); when they were told by their flood insurance agent about the negative elevation at the time the flood policy application was filled out (Flood Ins. App., Exh. 24.); and when their insurance carrier sent to them the policy declaration pages stating the house had a negative elevation. (Declaration Pgs., Exh. 16.) Furthermore, Plaintiffs admit they had actual notice of the negative elevation issue in early Spring 2006 when they contacted their insurance agent for excess flood insurance. (Gottschlich Dep. p. 14, Exh. 17.) Despite receiving repeated information, Plaintiffs waited until Friday, December 1, 2006, the day before the three year anniversary of the closing, to contact Laurich & Deeb regarding their elevation concerns. (See Letter dated 12/8/06, Exh. 25.) Upon receiving the call, Mr. Deeb pulled Plaintiffs' three year old file from storage late Friday afternoon and reviewed it on the next business day, Monday, December 4, 2006. Prior to his review of the file, however, Mr. Deeb informed Plaintiffs, on December 1, 2006, that there may be a potential statute of limitations issue. (Deeb Dep. pp. 206-08, Exh. 11.) Thus, Plaintiffs' contention that Laurich & Deeb failed to inform them of the potential statute of limitations issue is false on its face.

Plaintiffs have produced no evidence of what more Laurich & Deeb reasonably could have done beyond communications via telephone and letter. Mr. Roof merely testified that Laurich & Deeb should have had a "greater sense of urgency," but could not articulate how the outcome would have been any different. (Roof Dep. p. 131, Exh. 20.) If there was a statute of limitations problem, any fault lies squarely with Plaintiffs because they knew of the elevation issue in 2003, and further discussed the issue with their insurance agent in early Spring of 2006. Plaintiffs chose to wait until December 1, 2006 to inform Laurich & Deeb, and they cannot be

heard to criticize Laurich & Deeb for their own dilatory behavior. Accordingly, their claims fail as a matter of law and should be dismissed.

3. Plaintiffs' Equitable Indemnification Claim Fails as a Matter of Law Because There was No Breach in the Standard of Care and Such a Claim Cannot be Asserted by a Plaintiff.

Where there is no breach, there can be no claim for equitable indemnification. Furthermore, the equitable indemnification claim necessarily fails because such a claim cannot be asserted in this context. "Indemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party." *Toomer v. Norfolk S. Ry. Co.*, 344 S.C. 486, 490, 544 S.E.2d 634, 636 (Ct. App. 2001). In order to assert an equitable indemnification claim, a party must prove, among other things, that he suffered damages as a result of claims against him which were eventually proven to be the fault of the indemnitor. *Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp.*, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999). No claims have been asserted against Plaintiffs, nor have Plaintiffs been found liable to another party for a loss or damage that party incurred to another.

In addition, the case law speaks to equitable indemnification claims in the context of claims brought against a *defendant* (not a plaintiff) when a third party is liable for damages owed to the plaintiff. See *Toomer*, 344 S.C. 486, 544 S.E.2d 634; *Vermeer*, 336 S.C. 53, 518 S.E.2d 301; *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445 S.E.2d 446 (1994). Thus, not only does Plaintiffs' equitable indemnification claim fail as a matter of law because they have not been found liable to pay damages to another, there is also no basis in the law for such a claim to be asserted by a plaintiff against a defendant.

B. THE CLAIMS FOR PROFESSIONAL NEGLIGENCE, BREACH OF CONTRACT, AND BREACH OF FIDUCIARY DUTY ARE BARRED BY THE STATUTE OF LIMITATIONS.

Plaintiffs' professional negligence, breach of contract, and breach of fiduciary duty claims are also barred by the statute of limitations and must be dismissed as a matter of law. A cause of action for professional negligence and for breach of fiduciary duty begins to run three years from when, through the exercise of reasonable diligence, a person knew or should have known that he might have a cause of action. S.C. Code Ann. §§ 15-3-530(5), 15-3-535; *see also Epstein v. Brown*, 363 S.C. 372, 376, 610 S.E.2d 816, 818 (2005); *Dorman v. Campbell*, 331 S.C. 179, 184, 500 S.E.2d 786, 789 (Ct. App. 1998). A cause of action for breach of contract must be asserted within three years of the alleged breach. S.C. Code Ann. § 15-3-530(1).

1. Plaintiffs Had Knowledge of the Negative Elevation.

Plaintiffs knew or should have known they might have a claim against the seller in December 2003, when they received the elevation certificate. It is undisputed that Plaintiffs were faxed a copy of the 2001 elevation certificate in November 2003. (Fax dated 11/26/03, Exh. 9.) It is also undisputed that before closing, Plaintiffs contacted their insurance agency, Seacoast, for flood insurance, and that Seacoast filled out an application for flood insurance stating the house had a negative elevation. (Flood Ins. App., Exh. 24.) The 30(b)(6) representative of Seacoast testified that the policy and procedure of the insurance agency is to explain to an insured when a home has a negative elevation. (Lyons Dep. p. 68, Exh. 23.) Thus, Plaintiffs' insurance agent would have told Plaintiffs in 2003, prior to the closing, that their home was below the base flood elevation.

Furthermore, Seacoast's activity log for December 14, 2004 states that it "[c]alled the surveyor today regarding the fact that the home was built below the base flood elevation....There is nothing that we can do to re-underwrite and improve the premium amount for the insured."

(Seacoast Activity Log, Exh. 26.) Under Seacoast's policies and procedures, an agent would have discussed with Plaintiffs again in 2004 the negative elevation issue. Thus, there is overwhelming evidence that Plaintiffs knew or should have known of the negative elevation in December 2003, and again in 2004 through their insurance agency Seacoast.

Even if Plaintiffs contend that Seacoast did not inform them of the negative elevation in December 2003 or 2004, they are imputed with the knowledge of their insurance agent, Seacoast, who obtained the elevation certificate, noted the negative elevation, and filled out the flood application before December 2, 2003. (Lyons Dep. pp. 45, 72-73, Exh. 23; Farrell Dep. p. 22, Exh. 27.) "It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority." *Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979). Consequently, Seacoast's knowledge before December 2, 2003 is imputed to Plaintiffs.

Plaintiffs had knowledge of the negative elevation in December 2003 and in 2004 and did not file suit against Laurich & Deeb within the three year statute of limitations. Instead, Plaintiffs filed suit against Laurich & Deeb in March 2009, and thus, their claims are barred.

2. Plaintiffs Annually Received Policy Statements Setting Forth the Negative Elevation.

In addition to Plaintiffs' knowledge of the negative elevation before December 2, 2003, Plaintiffs' annually received flood policy declaration pages clearly stating that the 48 Sea Lane home had an elevation difference of negative one. (Declaration Pgs., Exh. 16; Lyons Dep. pp. 60-63, 65, Exh. 23; Farrell Dep. p. 115, Exh. 27.) As a matter of law, Plaintiffs had a duty to read and understand these documents, which were all part of their flood insurance contract. See *Regions Bank v. Schmauch*, 354 S.C. 648, 663-64, 582 S.E.2d 432, 440 (Ct. App. 2003); *Burwell*

v. South Carolina Nat'l Bank, 288 S.C. 34, 39, 340 S.E.2d 786, 789 (1986); *Doub v. Weathersby-Breeland Ins. Agency*, 268 S.C. 319, 326, 233 S.E.2d 111, 114 (1977). A party to a contract cannot avoid the effect of the document's contents by claiming he did not read it. *Regions Bank*, 354 S.C. at 663, 582 S.E.2d at 440; *Burwell*, 288 S.C. at 40, 340 S.E.2d at 789; *Doub*, 268 S.C. at 326, 233 S.E.2d at 114.

Because Plaintiffs had an independent duty to read and understand their flood insurance application and the corresponding policy endorsements and declaration pages, which were all part of the contract for which they continued to pay premiums, they were responsible for asking their insurance agent any questions they may have had about the stated negative elevation or the amount of their premiums. Insurance is a matter for the insurance agency, not the closing attorney. It was not the closing attorney's duty to explain or advise on elevation issues because those issues were related to insurance, not to passing clear title. (Novit Dep. pp. 35-36, 42-43, 50-51, Exh. 22.)

Because Plaintiffs, through the exercise of reasonable diligence, knew or should have known that the home at 48 Sea Lane home had a negative elevation in December 2003, again in 2004, and again in 2005, and Plaintiffs did not file suit against Laurich & Deeb until March 20, 2009, Plaintiffs' claims are barred by the statute of limitations and must be dismissed as a matter of law.

C. ALL CLAIMS FAIL BECAUSE PLAINTIFFS' DAMAGES ARE SPECULATIVE AS A MATTER OF LAW.

Plaintiffs allege various related damages claims, all of which fail because there is no evidence to support the claims, and the claims are speculative as a matter of law. First, Plaintiffs have presented no evidence to prove that their cost for flood insurance was affected in any particular amount by the negative elevation. Therefore, the claim is speculative as a matter of

law and is not recoverable. Furthermore, the evidence proves that excess flood insurance is available to Plaintiffs.

Plaintiffs' damages expert, Thomas Hartnett, testified that the only cost related to the elevation issue is the cost related to raise the house, which he testified falls somewhere between the two estimates to raise the house which were obtained during the course of discovery. (Hartnett Dep. pp. 41-42, 44, Exh. 28; Email dated 10/15/09, Exh. 29.) Despite this testimony, because there is no evidence that Plaintiffs are required to raise the house, this claimed damage element fails as a matter of law.

To recover damages, plaintiffs must prove by the greater weight or preponderance of the evidence the existence of the damages alleged. *Hanselmann v. McCardle*, 275 S.C. 46, 48-49, 267 S.E.2d 531, 533 (1980); *Gunnels v. Roach*, 243 S.C. 248, 251-52, 133 S.E.2d 757, 759 (1963). Damages which are remote and speculative cannot be recovered. *Mali v. Odom*, 295 S.C. 78, 367 S.E.2d 166, 170-71 (Ct. App. 1988). No recovery is allowed when resort to speculation or conjecture is necessary to determine whether the alleged damage resulted from the negligent act described in the complaint or from some other source. *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85-86 (Ct. App. 2008); *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 391-92, 162 S.E.2d 705, 708 (1968).

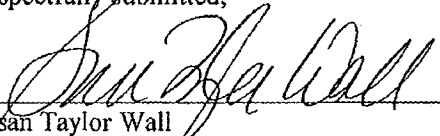
Plaintiffs cannot prove the existence of any damages in this case. Plaintiffs' claim for the costs associated with raising their house to bring it into compliance with FEMA's regulations is based upon the speculation that the Town *may* order them to raise the house and/or subject to them to fines. (Am. Compl., Exh. 1.) In the 30(b)(6) deposition of the Town of Hilton Head Island, Trudie Johnson admitted that the Town has no knowledge that the home at 48 Sea Lane in fact has a negative elevation. (Johnson Dep. pp. 22, 128, Exh. 6.) The Town issued a building permit and certificate of occupancy on the home in 1987, evidencing that the home was in

compliance with the applicable Town codes. The only legal record in the Town records is the 1987 elevation certificate stating that the home is code compliant at an elevation of 14.16 feet. (Johnson Dep. pp. 23, 49-50, Exh. 6.) The Town has no evidence that this certificate is incorrect. (Johnson Dep pp. 48-50, Exh. 6.) Thus, there is no basis to allow the Town to move forward with any corrective action, or a notice of violation. (*Id.*) Because there is no evidence proving Plaintiffs' claim of damages, all causes of action must fail.

VI. CONCLUSION

For all the foregoing reasons and any others in the record, Laurich & Deeb respectfully requests that the Court issue an Order GRANTING Laurich & Deeb's Motion for Summary Judgment and dismissing Plaintiffs' Amended Complaint as to it, *with prejudice*.

Respectfully submitted,



Susan Taylor Wall

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Amanda C. Williams

Email: amandawilliams@parkerpoe.com

PARKER POE ADAMS & BERNSTEIN L.L.P.

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Phone: 843-727-2650

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ATTORNEYS FOR DEFENDANTS LAURICH
& DEEB, P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN

December 14, 2009

Charleston, South Carolina

EXH. 1

EXH. 2

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
GREGORY M. GOTTSCHLICH AND)
DONALD L. MCNEIL,)
PLAINTIFFS,)
VS:)
STRIMPFEL CUSTOM HOMES, INC.;)
JOSEPH A. REEVE; JERRY L.)
RICHARDSON; COASTAL SURVEYING)
CO., INC.; THOMAS N. DYE; JAN H. DYE;)
KEN OLIVER; THE BYRNE CORPORATION)
D/B/A DUNES MARKETING GROUP;)
LAURICH & DEEB, P.A.; ROBERT M.)
DEEB, JR. AND CHARLES H. WISEMAN,)
DEFENDANTS.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

2008 APR 22 17:40
BEAUFORT COUNTY
CLERK OF COURT
C/A No.: 2008-CP-07-00517
S.C.

ANSWER OF DEFENDANTS
LAURICH & DEEB, P.A.,
ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN TO
AMENDED COMPLAINT

Defendants, Laurich & Deeb, P.A., Robert M. Deeb, Jr. and Charles H. Wiseman (together referred to herein as "Laurich & Deeb"), by and through their undersigned counsel, submit this Answer in response to the Amended Complaint of Plaintiffs and state as follows:

1. Defendants deny each and every allegation of the Amended Complaint not hereinafter specifically admitted.

FOR A FIRST DEFENSE

2. Laurich & Deeb admits, upon information and belief, the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, and 8 of the Amended Complaint.

3. Laurich & Deeb admits the first sentence of Paragraph 9 of the Amended Complaint. As to the second sentence of said Paragraph, Laurich & Deeb admits only that it was a professional association through which Robert M. Deeb, Jr. and Charles H. Wiseman engaged in the practice of law and provided legal services to clients, including Plaintiffs, related to

residential real estate closings in Beaufort County, South Carolina, and deny all remaining allegations of said Paragraph not fully consistent therewith. As to the third sentence of said Paragraph, Laurich & Deeb admits only that Defendant Laurich & Deeb acted through attorneys Robert M. Deeb, Jr. and Charles H. Wiseman during the Firm's representation of Plaintiffs for a specific closing and denies all remaining allegations of said Paragraph not fully consistent therewith.

4. As to the allegations in the first sentence of Paragraph 10 of the Amended Complaint, Laurich & Deeb admits only that Defendant Deeb is a resident of Beaufort County, South Carolina. The remaining allegations of the first sentence of said Paragraph constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof. As to the allegations in the second sentence of said Paragraph, Laurich & Deeb admits only that it acted as Plaintiffs' closing attorney during Plaintiffs' purchase of the subject dwelling, was contacted by Plaintiffs several years later regarding the subject dwelling, and denies all remaining allegations of said sentence not fully consistent therewith. The allegations in the third sentence of Paragraph 10 constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof.

5. As to the allegations in the first sentence of Paragraph 11 of the Amended Complaint, Laurich & Deeb admits only that Defendant Wiseman is a resident of Beaufort County, South Carolina. The remaining allegations of the first sentence of said Paragraph constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof. As to the allegations in the second sentence of said Paragraph, Laurich & Deeb admits only that it acted as Plaintiffs' closing attorney during Plaintiffs' purchase of the subject dwelling and denies all

remaining allegations of said sentence not fully consistent therewith. The allegations in the third sentence of Paragraph 11 constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof.

6. Laurich & Deeb admits, upon information and belief, the allegations of Paragraph 12 of the Amended Complaint.

7. As to the allegations of Paragraph 13 of the Amended Complaint, Laurich & Deeb craves reference to the referenced Exhibit A, which speaks for itself and is the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 13 of the Amended Complaint not fully consistent therewith.

8. As to the allegations of Paragraph 14 of the Amended Complaint, Laurich & Deeb craves reference to the referenced residential elevation requirements mandated by the Federal Emergency Management Association's National Flood Insurance Program and the ordinance and building code for Hilton Head Island, which speak for themselves and are the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 14 of the Amended Complaint not fully consistent therewith.

9. The allegations of Paragraphs 15 through 23 are asserted against Defendants other than Laurich & Deeb; therefore, no response is required. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

10. As to the allegations of Paragraph 24, Laurich & Deeb admits only that it provided legal representation to Plaintiffs in connection with the purchase of the subject dwelling and that Plaintiffs executed separate powers of attorney in favor of Defendant Deeb and/or Defendant Wiseman. As to the remaining allegations of said Paragraph, Laurich & Deeb craves reference to the referenced powers of attorney executed by Plaintiffs in favor of Defendant Deeb

and/or Wiseman, which speak for themselves and are the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 24 of the Amended Complaint not fully consistent therewith.

11. As to the allegations of Paragraph 25 of the Amended Complaint, Laurich & Deeb admits only that it conducted the closing for the loan financing of Plaintiffs' purchase of the subject dwelling and denies all remaining allegations of said Paragraph not fully consistent therewith.

12. Laurich & Deeb admits the allegations of Paragraph 26 of the Amended Complaint.

13. As to the allegations of Paragraph 27 of the Amended Complaint, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

14. Laurich & Deeb admits the allegations in sentence one of Paragraph 28 of the Amended Complaint. As to the remaining allegations of said Paragraph, Laurich & Deeb craves reference to the referenced letter, which speaks for itself and is the best evidence of the information and allegations contained therein, and denies any allegations contained in Paragraph 28 of the Amended Complaint not fully consistent therewith.

15. As to the allegations of Paragraph 29 of the Amended Complaint, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE FIRST CAUSE OF ACTION
(Negligent Misrepresentation)

16. Responding to the allegations of Paragraph 30 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

17. The allegations of Paragraphs 31 through 37 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE SECOND CAUSE OF ACTION
(Violation of S.C. Code Ann. § 27-50-10, et seq.)

18. Responding to the allegations of Paragraph 38 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

19. The allegations of Paragraphs 39 through 42 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE THIRD CAUSE OF ACTION
(Negligence)

20. Responding to the allegations of Paragraph 43 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

21. The allegations of Paragraphs 44 through 47 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Contract)

22. Responding to the allegations of Paragraph 48 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

23. The allegations of Paragraphs 49 through 52 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE FIFTH CAUSE OF ACTION
(Breach of Contract Accompanied by Fraudulent Act)

24. Responding to the allegations of Paragraph 53 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

25. The allegations of Paragraphs 54 through 57 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE SIXTH CAUSE OF ACTION
(Violation of Unfair Trade Practices Act)

26. Responding to the allegations of Paragraph 58 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

27. The allegations of Paragraphs 59 through 63 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE SEVENTH CAUSE OF ACTION
(Civil Conspiracy)

28. Responding to the allegations of Paragraph 64 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

29. The allegations of Paragraphs 65 through 68 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE EIGHTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

30. Responding to the allegations of Paragraph 69 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

31. The allegations of Paragraphs 70 through 74 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE NINTH CAUSE OF ACTION
(Fraud)

32. Responding to the allegations of Paragraph 75 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

33. The allegations of Paragraphs 76 through 85 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE TENTH CAUSE OF ACTION
(Constructive Fraud)

34. Responding to the allegations of Paragraph 86 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

35. The allegations of Paragraphs 87 through 96 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE ELEVENTH CAUSE OF ACTION
(Rescission)

36. Responding to the allegations of Paragraph 97 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

37. The allegations of Paragraphs 98 through 101 of the Amended Complaint are asserted against a Defendant other than Laurich & Deeb; therefore, no response is necessary. To the extent a response is required, Laurich & Deeb is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

AS TO THE TWELFTH CAUSE OF ACTION
(Professional Negligence/Legal Malpractice)

38. Responding to the allegations of Paragraph 102 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

39. As to the allegations of Paragraph 103 of the Amended Complaint, Laurich & Deeb admits only that Laurich & Deeb had an attorney-client relationship with Plaintiffs for a specific purpose. The remaining allegations of said Paragraph constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb denies the same and demands strict proof thereof.

40. Laurich & Deeb denies the allegations of Paragraphs 104 through 106 of the Amended Complaint, including subparts.

AS TO THE THIRTEENTH CAUSE OF ACTION
(Breach of Contract)

41. Responding to the allegations of Paragraph 107 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

42. As to the allegations of Paragraph 108 of the Amended Complaint, Laurich & Deeb admits only that it agreed to represent Plaintiffs in the purchase of the subject house and denies any characterization of the relationship not fully consistent therewith.

43. Laurich & Deeb denies the allegations of Paragraph 109 through 111 of the Amended Complaint, including subparts.

AS TO THE FOURTEENTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

44. Responding to the allegations of Paragraph 112 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

45. The allegations of Paragraph 113 of the Amended Complaint constitute conclusions of law and, therefore, require no response; to the extent a response is required, Laurich & Deeb admit only those duties imposed by law for the subject closing on the subject property.

46. Laurich & Deeb denies the allegations of Paragraph 114 through 116 of the Amended Complaint, including subparts.

AS TO THE FIFTEENTH CAUSE OF ACTION
(Equitable Indemnification)

47. Responding to the allegations of Paragraph 117 of the Amended Complaint, Laurich & Deeb repeats and realleges as if set forth verbatim herein the responses set forth above.

48. Laurich & Deeb denies the allegations of Paragraphs 118 through 121 of the Amended Complaint.

49. The allegations of Paragraph 122 of the Amended Complaint require no response.

50. Laurich & Deeb denies the allegations of the WHEREFORE clause of the Amended Complaint and the Prayer for Relief therein and specifically alleges that Laurich & Deeb has no liability to Plaintiffs and denies all damages claimed.

FOR A SECOND DEFENSE
(Failure to State a Claim)

51. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that the Amended Complaint fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Failure to Mitigate)

52. Further answering the Amended Complaint, and as and for a further defense thereto, upon information and belief, Plaintiffs have failed to mitigate their damages, which are expressly denied, and their failure to do so constitutes a bar and/or limitation of Plaintiffs' ability to recover against Laurich & Deeb.

FOR A FOURTH DEFENSE
(Comparative Negligence)

53. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb would allege and show that even if Laurich & Deeb was negligent in any respect, which is denied, Plaintiffs were comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Laurich & Deeb, which is denied, and which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiffs were comparatively negligent and/or otherwise at fault in an amount equal to or less than any fault of Laurich & Deeb, which is denied, which fault proximately caused Plaintiffs' alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

FOR A FIFTH DEFENSE
(Negligence of Third Parties)

54. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that any injuries and damages allegedly suffered by Plaintiffs, which are denied, were due to or caused by third persons over whom Laurich & Deeb had no control, whose actions caused the alleged damages, if any, which are denied.

FOR A SIXTH DEFENSE
(Intervening/Superseding Acts)

55. Further answering the Amended Complaint, and as and for a further defense thereto, any damages sustained by Plaintiffs, which are denied, were solely caused by the acts or omissions of parties or persons other than Laurich & Deeb, over whom Laurich & Deeb had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiffs' alleged damages, if any, which are denied, and bar Plaintiffs' claims in the Amended Complaint.

FOR A SEVENTH DEFENSE
(Estoppel and Waiver)

56. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that Plaintiffs are estopped from their own conduct from asserting a claim for the recovery sought herein and also alleges that Plaintiffs waived any claims against Laurich & Deeb by and through their conduct so as to bar recovery herein.

FOR AN EIGHTH DEFENSE
(Statute of Limitations and/or Laches)

57. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that some or all of Plaintiffs' claims are barred by the applicable statute of limitations and/or doctrine of laches.

FOR A NINTH DEFENSE
(Assumption of the Risk)

58. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb alleges that the Plaintiffs' claims in the Amended Complaint are barred by the doctrine of assumption of the risk.

FOR A TENTH DEFENSE
(Unclean Hands)

59. Further answering the Amended Complaint and as and for a further defense thereto, Plaintiffs' claims against Laurich & Deeb are barred by the doctrine of unclean hands.

FOR AN ELEVENTH DEFENSE
(Failure to Join a Necessary Party)

60. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb assert that Plaintiffs have failed to join a party necessary for just adjudication pursuant to Rule 19 of the South Carolina Rules of Civil Procedure.

FOR A TWELFTH DEFENSE
(Incorporation of Defenses Raised by Others)

61. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb hereby incorporates the defenses of any other Defendant as said defenses may be applicable to Laurich & Deeb.

FOR A THIRTEENTH DEFENSE
(No Basis for Punitive Damages)

62. Further answering the Amended Complaint, and as and for a further defense thereto, Plaintiffs fail to state any basis upon which punitive damages are recoverable against Laurich & Deeb and accordingly, Plaintiffs' prayer for such damages should be dismissed and/or stricken from the Complaint pursuant to Rules 12(b)(6) and/or 12(f) of the South Carolina Rules of Civil Procedure.

FOR A FOURTEENTH DEFENSE
(Constitution)

63. Further answering the Amended Complaint, and as and for a further defense thereto, Plaintiffs' claim for recovery of punitive damages is barred by the South Carolina Constitution and the Constitution of the United States, because no reasonable and well-defined limits are placed on such punitive damages award; because the award and payment of punitive damages would constitute an imposition of punishment on Laurich & Deeb without adequate notice of the substantive rules governing the conduct giving rise to such punitive damages.

FOR A FIFTEENTH DEFENSE
(Reservation of Rights)

64. Further answering the Amended Complaint, and as and for a further defense thereto, Laurich & Deeb hereby gives notice that it reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information acquired

during discovery or otherwise, and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered the Amended Complaint herein, Laurich & Deeb prays that the same be dismissed and the relief demand by Plaintiffs be denied and that costs and fees be awarded to Laurich & Deeb and for such other relief as this Court deems just and proper.

Respectfully submitted,



Susan Taylor Wall

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Amanda C. Williams

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ATTORNEYS FOR DEFENDANTS LAURICH
& DEEB, P.A., ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN

April 28, 2009
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH AND
DONALD L. MCNEIL,

PLAINTIFFS,

VS.

STRIMPFEL CUSTOM HOMES, INC.;
JOSEPH A. REEVE; JERRY L.
RICHARDSON; COASTAL SURVEYING
CO., INC.; THOMAS N. DYE; JAN H. DYE;
KEN OLIVER; THE BYRNE CORPORATION)
D/B/A DUNES MARKETING GROUP;
LAURICH & DEEB, P.A.; ROBERT M.
DEEB, JR. AND CHARLES H. WISEMAN,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, SC

C/A No.: 2008-CP-07-00517

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing **ANSWER OF DEFENDANTS LAURICH & DEEB, P.A., ROBERT M. DEEB, JR. AND CHARLES H. WISEMAN TO AMENDED COMPLAINT** has been served upon the following counsel of record by mailing a copy of the same to them, postage prepaid, in the United States Mail, addressed as shown below this 28th day of April, 2009:

John D. Hudson, Jr., Esq.
Wesley D. Few, Esq.
Ellis, Lawhorne & Sims, P.A.
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Columbia, SC 29202

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Mathison & Mathison
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Co, Inc.

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Jan H. Dye

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Attorneys for Defendants Ken Oliver and The
Byrne Corporation d/b/a Dunes Marketing
Group


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Charleston, South Carolina 29401
Phone: 843-727-2650

EXH. 3

NOV-06-2003 THU 01:05 PM BUSINESS CENTER

FAX NO. 5928014

P. 04

11/06/2003 14:18 FAX 814 848 8504

MIDWEST ALLERGY CLINIC

Q002

Post Office Box 21326
Hilton Head Island
South Carolina 29925

DUNES MARKETING GROUP

(413) 542-1111
(800) 258-5202
Fax Number (413) 542-6783

DEFENDANT'S
EXHIBIT 9
1007

CONTRACT OF SALE - OFFER AND ACCEPTANCE

Dr. Gregory M. Gottschlich and Dr. Don McGill

whose address is: 3619 Vinyard Ridge, (Purchaser)
Cincinnati, OH 45241
2341 Kane Road, Columbus, OH 43220

Hereby agree to purchase from:

Thomas M. and Jan H. Dye

whose address is: 220 Riverbend Place (Seller)
Duluth, GA 30097

1. **PROPERTY DESCRIPTION.** Seller hereby agrees to sell all that interest of land, with all improvements thereon, and any fixtures and equipment thereto situated in South Carolina and being described as follows:

Legal: 27 TA/P1/AC

Mapping: 48 Sea Lane (the "Property")

2. **PURCHASE PRICE.** The total Purchase Price for the Property is \$ 1,395,000.00 to be paid by Purchaser as follows:

a.	Escrow Money deposited with ("Deposit")	\$ 10,000.00
b.	Additional Deposits to be paid by	\$
c.	A First Mortgage for at least _____ years at prevailing interest rates and terms	\$ 1,115,000.00
d.	Balance in cash at Closing	\$ 249,000.00

3. **FINANCING CONTINGENCY.** If it is agreed in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing indicated above from a lender customarily making such loans in Beaufort County and the surrounding area. Purchaser shall make best efforts to obtain such a loan and shall supply the prospective lender(s) with all required information. The time of this financing contingency is as follows:

a.	Purchaser's loan application must be submitted within 4 days.
b.	Purchaser shall obtain a loan offer better than the lender within 6 days.
c.	Purchaser shall obtain a loan commitment within 10 days.

All time periods run from the date of this Contract. The "loan offer letter" is to be in a form customarily used by lenders in Beaufort County.

If Purchaser's loan application does not meet it is a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to be released from this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than five (5) days after the financing contingency expiration date. Upon receipt of notice and execution of any required release forms, the Listing Agency (or other Broker/Agent holding the funds) shall release to the Purchaser any monies paid as earnest money, and upon such payment this Contract shall have no force and effect and neither party hereto shall have any rights against the other hereunder. Notwithstanding the right to cure time periods contained in Section 3, the parties acknowledge and agree that time is of the essence with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any required action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.

Signature: Purchaser: [Signature] Date: 11/6/03 [Signature] Date: 11-8-03 (Page 1)

I&D-00117
ELS #79-58113

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FAX NO. 5928014

P. 05

11/08/2003 14:18 FAX 614 846 4504

MIDWEST ALLERGY CLINIC

0000

4. **FURNISHINGS, SYSTEMS.** The property to be sold hereunder includes all heating and air conditioning systems, all fixtures attached to the Property, and all plumbing and other equipment, and shall additionally include without limitation the following:

☒ Refrigerator ☒ Freezer ☒ Dishwasher ☒ Microwave ☒ Cook Top
☒ Dishwasher ☒ Ceiling Fans ☒ Irrigation System ☒ Pool Equipment ☐ Septic System ☐ Furnished
☐ Other _____

If sold furnished, all furniture & furnishings is included unless specifically excepted by an attached list of excluded items. All appliances, heating, air conditioning, electrical and plumbing systems and fireplace shall be in good working order subject to reasonable wear and tear, which does not adversely affect the present and regular use thereof. Further, the structure shall be reasonably sound and free of leaks at time of Closing.

5. **WOOD INFESTATION REPORT.** Seller agrees to provide at its expense at Closing an "Official" South Carolina Wood Infestation Report (CI-100) in which no infestation or damage is reported or if there is damage observed, that it is insufficient to recommend repair. Such report must be dated within 45 days of the Closing and shall be provided to Purchaser's closing attorney not less than seven (7) days prior to closing. If infestation or subsequent damage is observed, Seller shall cause the same to be repaired prior to closing or permit Purchaser's closing attorney to recover funds from the sales proceeds at Closing in an amount equal to the costs of such repair.

6. **OTHER TERMS.** Other terms and conditions of this Contract are:

Inspection Addendum

7. **DATE OF CLOSING.** The closing of this Contract shall take place on or before December 2, 2003, 20 (the "Closing") at the office of Purchaser's attorney or other office stipulated by Purchaser. Unless otherwise provided herein, Seller shall deliver possession of the Property to Purchaser at Closing. Seller and Purchaser warrant their respective warranties and the settlement is to be used to furnish to Listing Broker and Selling Broker copies of the final HUD-1 Settlement Statement for the transaction.

8. **CONDITION OF PROPERTY.** I, Seller, have viewed the premises and, subject to the terms set forth in Section 4, Section 5 or Section 10, is hereby selling the Property in its present condition "as is," except for:

The parties understand that "as is" means that the property is being conveyed in the condition in which it is presently found, subject to the aforementioned sections. Purchaser shall be permitted to have an inspection of the property performed to insure that all heating, air-conditioning, electrical and plumbing systems, fireplace, and appliances are in good working order and that the home is in no way structurally sound and free of leaks in accordance with the requirements of Section 4. At Closing, the Property shall be sold in the same condition as existing at the time of this Contract except for those required improvements or agreed upon repairs. The Selling Agent represents that Purchaser obtains an inspection.

9. **DEPOSIT/DEFAULT.** All moneys deposited by Purchaser hereunder shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the terms hereof within the stipulated time, and after receipt of notice of said default with a ten (10) day right to cure, if it is not cured and agreed by and between the parties herein that either party may proceed with all this and remedies allowed in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Escrow Agent shall not disburse the Deposit until Seller and Purchaser have entered a release form in the state the disbursement is made to a court of competent jurisdiction has directed a disbursement. In the event of a default of the Deposit, it shall be divided equally between Seller and the Listing Agency; provided, however, that the amount to be received by the Listing Agency shall not exceed the amount of the commission it would have earned had the sale been completed. In the event of any litigation commenced because of a default hereunder, the prevailing party in such litigation shall be entitled to recover attorney fees and court costs from the non-prevailing party.

(SIGNED)

Signed: Purchaser [Signature] Date 11/6/03 [Signature] Date 11-08-03 (Page 2)
[Signature] 11/6/03 [Signature] 11-8-03
 L&D-00118
 ELS #79-58113

T10/C0002

2003 11/08/03 14:18 FAX 614 846 4504

The Bureau Agent shall not be required to be there or maintain any bid or unless indicated to its satisfaction for its attorney fees, cost of disbursement, and a 1% bid fee. The Seller and Purchaser shall be all to use bid amount. In its judgment, the bid amount shall be the basis for the determination of the bid. The Seller and Purchaser shall be all to use bid amount. In its judgment, the bid amount shall be the basis for the determination of the bid.

10. RISK OF LOSS AND DAMAGE. In case the Property is wholly or partially damaged by fire, flood or other casualty, the Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage.

11. PROBATIONARY PERIOD. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage.

12. PURCHASER'S OBLIGATIONS. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage.

13. TITLE. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage.

14. NON-RESIDENT TAX WITHHOLDING. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage.

15. OTHER PROVISIONS. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage. The Seller shall be responsible for the loss or damage.

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P. 07

11/06/2003 14:19 FAX 814 848 8504

MIDWEST ALLERGY CLINIC

0003

15. STATUTORY AND OTHER ATTENDANCE.

- a. The South Carolina Real Estate Agency Disclosure Form is attached hereto and incorporated herein.
- b. The Beach Management Act is ☐ is not ☒ applicable to this Contract. If applicable, attached hereto and incorporated herein is the original Beach Management Act Disclosure Addendum.
- c. The Purchaser has ☒ has not ☐ reviewed a South Carolina Property Condition Disclosure Statement.
- d. The South Carolina Vacation Rental Act does ☐ does not ☒ apply to this transaction.
- e. This Contract applies ☐ does not apply ☒ to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint, Contingency Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.
- f. Flood Insurance is required ☒ is not required ☐ for any federally insured mortgage on the property.
- g. An Inspection Report Addendum is ☒ is not ☐ attached to this Contract and incorporated herein by reference.
- h. Also attached hereto and incorporated herein are the following Addenda:

16. MISCELLANEOUS. The validity or enforceability of any provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be executed in counterparts, each of which shall be deemed to be an original. The parties agree that any filing, counteroffer, use for acceptance may be communicated by the use of Electronic (E-MAIL) and that the signatures, initials, and handwriting or typewritten modification to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original were present on the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right or to comply with any obligation specified herein, and no practical variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that: (i) the persons executing this Contract are authorized to act on behalf of the entity, and (ii) the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally underwrite any financing described above if required by the lender. This Contract shall be binding upon and have the benefit of the parties hereto and their respective heirs, devisees, personal representatives, executors and assigns. This Contract may not be assigned by purchaser without seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

I&D-00120
ELS #79-58113

Handwritten signatures and dates: 11/6/03, 11/8/03, 11/6/03, 11/8/03.

X10/8000

11/06/2003 15:04 843-785-3233

DUNES MARKETING GROUP

PAGE 07

NOV-06-2003 THU 01:06 PM BUSINESS CENTER

FAX NO. 5928014

P. 08

11/06/2003 14:19 FAX 514 848 8804

MIDWEST ALLERGY CLINIC

0008

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. BUYER, CHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

[Signature]
Purchaser: Dr. Gregory M. Gonczchick

Date: _____

[Signature]
Purchaser: Dr. Don McGill

Date: _____

WITNESSES:

[Signature]
Seller: Thomas H. Dye

Date: 11-8-03

[Signature]
Seller: Ken M. Dye

Date: 11-8-03

Listing Agent: Ken Oliver

Company: Dunes Marketing Group

Selling Agent: Greg Maxwell

Company: DUNES MARKETING GROUP, a
Division of The Byrne Corporation

(The foregoing form may be used only by members in good standing of the Hilton Head Area Association of REALTORS®.)

Revised 7/28/00

_____ This is the unmodified Hilton Head Area Association of REALTORS® recommended contract form.

_____ This form has been modified from the recommended by the Hilton Head Area Association of REALTORS®

_____ (Initials) Purchaser: [Signature] Date: 11/8/03 Seller: [Signature] Date: 11-8-03 (Page 5)

L&D-00121
ELS #79-58113

HYO/80024

EXH. 4

1
2 IN THE COURT OF COMMON PLEAS
3 FOURTEENTH JUDICIAL CIRCUIT
4 STATE OF SOUTH CAROLINA
5 COUNTY OF BEAUFORT

6 GREGORY M. GOTTSCHLICH AND DONALD L. McNEIL,
7 Plaintiffs,

8
9 vs.

CIVIL ACTION NUMBER
2008-CP-00517

10
11 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE;
12 JERRY L. RICHARDSON; COASTAL SURVEYING CO.,
13 INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE
14 BYRNE CORPORATION d/b/a DUNES MARKETING GROUP,
LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. AND
CHARLES H. WISEMAN,

15 Defendants.
16 -----

COPY

17 The deposition of RONALD STRIMPFEL, a
18 witness in the above-entitled cause, taken
19 pursuant to Notice and agreement, before Cathy
20 M. Knoettner, Certified Court Reporter and
21 Notary Public, at the Offices of Coastal Court
22 Reporting & Video Services, 107 Executive
23 Center, Hilton Head Island, South Carolina, on
24 the 1st day of July, 2009, commencing at or
25 about the hour of 10:00 a.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SOUTH CAROLINA 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 HUDSON - STRIMPFEL (DIRECT EXAMINATION)

2 Q Have you read all 15 of those topics
3 prior to today?

4 A Yes.

5 Q Do you feel like you are the most
6 appropriate individual on behalf of Strimpfel
7 Custom Homes to answer questions on those
8 various topics?

9 A Yes and no. The person as far as the
10 construction of the dwelling, that was designed
11 by Joseph Reeve who was the vice president, at
12 the time, of Strimpfel Custom Homes. He
13 designed -- he was also an electrician, a
14 licensed electrician at the time. So a couple
15 of those items he would be more knowledgeable
16 in.

17 Q Identify for me the number of items or
18 the item numbers on which someone other than you
19 would be the appropriate designee to provide
20 testimony.

21 A I was involved with a lot of them.
22 Probably every one but 14.

23 Q As I understand your testimony, someone
24 other than you would be the more appropriate
25 person to provide testimony other than item 14;

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EXH. 5

16477

Permit # 7653



FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAM

OMB 5067-0077
Expires Feb. 1987

ELEVATION CERTIFICATE

This form is to be used for: 1) New Emergency Program construction in Special Flood Hazard Areas; 2) Pre-FIRM construction after September 30, 1982; 3) Post-FIRM construction, and, 4) Other buildings noted as Post-FIRM rules.

BUILDING OWNER'S NAME: Lot 27 Sea Lane - Palmetto Dunes
ADDRESS: _____
PROPERTY LOCATION (Lot and Block numbers and address if available): _____

Hilton Head Island, SC

I certify that the information on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.

SECTION I ELIGIBILITY CERTIFICATION (Completed by Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

COMPLIANT NO.	FIRM NO.	SURV.	DATE OF FIRM	FIRM ZONE	DATE OF CONSTR.	BASE FLOOD ELEV.	BUILDING IS
						(in ft. Zone 1 or 2)	☐ New Emergency ☐ Pre-FIRM Reg. ☐ Post-FIRM Reg.

YES NO It is intended that the building described above will be constructed in compliance with the community's flood plain ordinance. The certifier may rely on community records. The lowest floor (including basement) will be at an elevation of _____ ft. NGVD. Failure to construct the building at this elevation may place the building in violation of the community's flood plain management ordinance.

YES NO The building described above has been constructed in compliance with the community's flood plain management ordinance based on elevation data and visual inspection or other reasonable means.

(If NO is checked, attach copy of variance issued by the community.)

YES NO The mobile home located at the address described above has been tied down (anchored) in compliance with the community's flood plain management ordinance, or in compliance with the NFIP Specifications.

MOBILE HOME MAKE	MODEL	YR OF MANUFACTURE	SERIAL NO.	DIMENSIONS
				X

(Community Permit Official or Registered Professional Engineer, Architect, or Surveyor)

NAME: _____ ADDRESS: _____
TITLE: _____ CITY: _____ STATE: _____ ZIP: _____
SIGNATURE: _____ DATE: _____ PHONE: _____

SECTION II ELEVATION CERTIFICATION (Certified by a Local Community Permit Official or a Registered Professional Engineer, Architect, or Surveyor)

FIRM ZONE A1-A30 I certify that the building at the property location described above has the lowest floor (including basement) at an elevation of 14.16 feet, NGVD (mean sea level), and the average grade at the building site is at an elevation of 6.1 feet, NGVD.

FIRM ZONES V, VI-V30 I certify that the building at the property location described above has the bottom of the lowest floor beam at an elevation of _____ feet, NGVD (mean sea level), and the average grade at the building site is at an elevation of _____ feet, NGVD.

FIRM ZONES A, A99, AH and EMERGENCY PROGRAM: I certify that the building at the property location described above has the lowest floor elevation of _____ feet, NGVD. The elevation of the highest adjacent grade next to the building is _____ feet, NGVD.

FIRM ZONE AD: I certify that the building at the property location described above has the lowest floor elevation of _____ feet, NGVD. The elevation of the highest adjacent grade next to the building is _____ feet, NGVD.

SECTION III FLOODPROOFING CERTIFICATION (Certification by a Registered Professional Engineer or Architect)

I certify to the best of my knowledge, information, and belief, that the building is designed so that the building is watertight, with walls substantially impermeable to the passage of water and structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy that would be caused by the flood depths, pressures, velocities, impact and uplift forces associated with the base flood.

YES ☐ NO ☐ In the event of flooding, will this degree of floodproofing be achieved with human intervention? (Human intervention means that water will enter the building when floods up to the base flood level occur unless measures are taken prior to the flood to prevent entry of water (e.g., bolting metal shields over doors and windows).)

YES ☐ NO ☐ Will the building be occupied as a residence?

If the answer to both questions is YES, the floodproofing cannot be credited for rating purposes and the actual lowest floor must be completed and certified instead. Complete both the elevation and floodproofing certificates.

FIRM ZONES A, A1-A30, VI-V30, AO and AH: Certified Floodproofed Elevation is _____ feet, (NGVD).

THIS CERTIFICATION IS FOR ☐ SECTION II ☐ BOTH SECTIONS II AND III (Check One)

CERTIFIER'S NAME: Jerry L. Richardson COMPANY NAME: Coastal Surveying & Engineering Co., Inc.
TITLE: _____ ADDRESS: _____ ZIP: _____

Registered S.C. Surveyor P.O. Box 1427 29925
SIGNATURE: _____ DATE: 11/24/87 CITY: Hilton Head STATE: SC PHONE: 601-4366

The insurance agent should attach the original copy of the completed form to the flood insurance policy application, the second copy should be supplied to the policyholder and the third copy retained by the agent.

INSURANCE AGENTS MAY ORDER THIS FORM

FEMA Form 81-37, SEP 85

REPLACES FEMA FORM 81-37, APR 82 WHICH IS OBSOLETE

L&D-00070
ELS #79-58113

EXH. 6

1
2 IN THE COURT OF COMMON PLEAS
3 STATE OF SOUTH CAROLINA
4 COUNTY OF BEAUFORT

5 GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,
6 Plaintiffs,
7

8 vs.

CIVIL ACTION NUMBER
2008-CP-07-00517

9
10 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE,
11 JERRY L. RICHARDSON; COASTAL SURVEYING CO.,
12 INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER;
13 THE BYRNE CORPORATION d/b/a DUNES MARKETING
GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB
JR.; and CHARLES H. WISEMAN,

14 Defendants.
15 -----/

COPY

16 The 30(b)(6) deposition FOR HILTON HEAD
17 ISLAND OF TRUDIE JOHNSON, a witness in the
18 above-entitled cause, taken pursuant to Notice
19 and Subpoena, before Ceil Weser, Certified Court
20 Reporter and Notary Public, at the Offices of
21 Coastal Court Reporting & Video, Inc., 1 Corpus
22 Christie, 107 Executive Center, Hilton Head,
23 South Carolina, on the 20th day of October,
24 2009, commencing at or about the hour of 3:05
25 p.m.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SOUTH CAROLINA 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 HUDSON - JOHNSON (DIRECT EXAMINATION)

2 Q Did you bring your records with you? I
3 should have asked you.

4 A No, I didn't bring my Daytimer with me.
5 But I do remember you came to see me, and I do
6 have several phone records in my phone log.

7 Q Do you recall having any conversations
8 with a Greg Gottschlich probably in 2007 about
9 there possibly being a problem with the
10 elevation certificate that was issued for the
11 house in 1987?

12 A No, to tell you the truth I don't. I
13 don't remember that name, but that doesn't mean
14 it didn't happen.

15 Q Maybe it did; maybe it didn't? You
16 just don't have any independent recollection of
17 that being the case?

18 A No.

19 Q Sitting here today do you know if the
20 house at 48 Sea Lane has a negative elevation?

21 A No, I have only been told that.

22 Q Do you intend to take any steps to
23 verify that the house at 48 Sea Lane does or
24 does not have a negative elevation?

25 A Please tell me what you mean by take

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HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 HUDSON - JOHNSON (DIRECT EXAMINATION)

2 any steps.

3 Q If the town has not taken any action to
4 verify the as-built elevation level of 48 Sea
5 Lane, how is it able to move forward under the
6 assumption that the house may in fact have a
7 negative elevation level?

8 MS. WALL: Object to the form.

9 BY MR. HUDSON:

10 Q You can still answer.

11 A I can still answer?

12 MS. WALL: Yes.

13 BY MR. HUDSON:

14 Q You can still answer.

15 A I don't know how we would move forward.
16 We have two surveyors; one says one thing and
17 one says another. I don't know how we would
18 move forward. I would have to consult with
19 legal staff.

20 Q You mentioned you had two. You said
21 surveys or elevation certificates?

22 A I have one elevation certificate in my
23 permanent record at the Town of Hilton Head.

24 Q You said two surveyors; one says one
25 was --

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HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 HUDSON - JOHNSON (DIRECT EXAMINATION)

2 MS. WALL: Is this the material
3 that you brought with you?

4 THE WITNESS: No.

5 MR. HUDSON: No. But it is in
6 Article 1 of Administration, Town Code,
7 Section 15-1-110.

8 BY MR. HUDSON:

9 Q Given this language that I just read to
10 you specifying various parties that are eligible
11 to be served with a Notice of Violation for a
12 problem, how does the town determine the
13 appropriate party to serve the notice upon?

14 MS. WALL: Object to the form.

15 THE WITNESS: I would have to
16 consult with the town attorney.

17 BY MR. HUDSON:

18 Q Sitting here today do you intend to
19 serve a Notice of Violation on my clients if the
20 problem is not remedied?

21 MR. MAHAFFEE: Objection.

22 MR. HAIGHT: Objection.

23 MS. WALL: Objection.

24 THE WITNESS: I would have to
25 consult with my attorney, the town

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1 HUDSON - JOHNSON (DIRECT EXAMINATION)

2 attorneys.

3 BY MR. HUDSON:

4 Q Sitting here today do you intend to
5 serve a Notice of Violation upon any parties in
6 any way involved with the construction or the
7 ownership of 48 Sea Lane if the problem is not
8 remedied?

9 MS. WALL: Object to the form.

10 THE WITNESS: After consultation
11 with my attorney.

12 BY MR. HUDSON:

13 Q When do you intend to have this
14 consultation with your attorney?

15 A After voluntary compliance is denied.
16 If cooperation and voluntary compliance are
17 denied, then Brian Hulbert and I will have a
18 conversation about our course of action.

19 Q Why have you not taken any action with
20 regard to 48 Sea Lane before now?

21 MR. MAHAFFEE: Objection.

22 THE WITNESS: I don't know. I
23 have a legal record from the Town of
24 Hilton Head Island that has been
25 attested to by a licensed surveyor, and

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HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 HUDSON - JOHNSON (DIRECT EXAMINATION)

2 I have not been presented any evidence
3 to the contrary that that is wrong. I
4 have never seen another survey. I have
5 only been told.

6 So I have to accept that as the
7 legal record until I have some other
8 proof that what I have is wrong.

9 BY MR. HUDSON:

10 Q Do you intend to seek out such proof or
11 does the town intend to seek out such proof
12 hence forth?

13 MS. WALL: Objection.

14 MR. MAHAFFEE: Objection.

15 THE WITNESS: We would, yes, we
16 would pursue it.

17 BY MR. HUDSON:

18 Q How?

19 A If there was no voluntary compliance
20 between the parties, then we would pursue it,
21 yes.

22 Q But again that presupposes a problem
23 with the elevation does in fact exist?

24 A It does. Our first step would be to
25 confirm that there is a problem with the

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POST OFFICE BOX 7349 HILTON HEAD, SOUTH CAROLINA 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 WALL - JOHNSON (CROSS-EXAMINATION)

2 has been modified, if it was never in
3 compliance, once I have hard evidence to that
4 fact I am required to do that.

5 And in fact the town itself can be put
6 on suspension by the National Flood Insurance
7 Program for not doing that. That is what we
8 agree to do when we join the NFIP, and that is a
9 requirement to keep us in good standing. So I
10 can't simply say now that I know there is a
11 problem, I can't simply say oh, it will all be
12 okay.

13 Q But in fact you don't know there is a
14 problem, do you?

15 A I don't know yet, do I?

16 Q You don't, do you?

17 A No, I don't.

18 Q Now, you say the National Flood
19 Insurance Program, let us just take as a
20 hypothetical based on what you said earlier that
21 there may be 600 homes with various issues that
22 FEMA is not happy about, and they gave you a
23 list of those homes and we are not going to ask
24 for any more information on that; but just
25 assuming that there is a list out there?

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EXH. 7

FEDERAL EMERGENCY MANAGEMENT AGENCY
NATIONAL FLOOD INSURANCE PROGRAMO.M.B. No. 3067-0077
Expires July 31, 2002

ELEVATION CERTIFICATE

Job No 01096

SECTION A - PROPERTY OWNER INFORMATION			For Insurance Company Use
BUILDING OWNER'S NAME Thomas N. and Jan H. Dye			Policy Number
BUILDING STREET ADDRESS (including Apt., Unit, Suite, and/or Bldg. No.) OR P.O. ROUTE AND BOX NO. 48 Sea Lane			Company NAIC Number
CITY Hilton Head Island	STATE SC	ZIP CODE 29928	
PROPERTY DESCRIPTION (Lot and Block Numbers, Tax Parcel Number, Legal Description, etc.) Lot 27, Tract B, Parcel 3, Block C, Palmetto Dunes Resort, Tax 620 - 12A - 188			
BUILDING USE (e.g., Residential, Non-residential, Addition, Accessory, etc. Use Comments section if necessary.) Residential			
LATITUDE/LONGITUDE (OPTIONAL) (##-##-#### or ##-####)		HORIZONTAL DATUM ☐ NAD 1983 ☐ NAD 1983	SOURCE ☐ GPS (Type): ☐ USGS Quad Map ☐ Other, _____
N/A		N/A	N/A

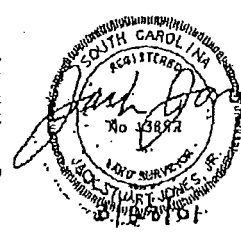
SECTION B - FLOOD INSURANCE RATE MAP (FIRM) INFORMATION					
B1. FIRM COMMUNITY NAME & COMMUNITY NUMBER Hilton Head 450250		B2. COUNTY NAME Beaufort		B3. STATE SC	
B4. MAP AND PANEL NUMBER 0014	B5. BU:FD D	B6. FIRM INDEX DATE 09/29/88	B7. FIRM PANEL EFFECTIVE/REVISED DATE N/A	B8. FLOOD ZONE(S) A7	B9. BASE FLOOD ELEVATION(S) (Zone A7, use depth of flooding) 14.0

B10. Indicate the source of the Base Flood (Elevation (BFE) data or base flood depth entered in B9.

☐ FIS Profile ☒ FIRM ☐ Community Determined ☐ Other (Describe): _____B11. Indicate the elevation datum used for the BFE in B9: ☒ NGVD 1929 ☐ NAVD 1983 ☐ Other (Describe): _____B12. Is the building located in a Coastal Barrier Resources System (CBRS) area or Otherwise Protected Area (OPA)? ☐ Yes ☒ No Designation Date _____

SECTION C - BUILDING ELEVATION INFORMATION (SURVEY REQUIRED)	
C1. Building elevations are based on: ☐ Construction Drawings ☐ Building Under Construction ☒ Finished Construction *A new Elevation Certificate will be required when construction of the building is complete.	
C2. Building Diagram Number 8 (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)	
C3. Elevations - Zones A1-A30, AE, AH, A (with BFE), VE, V1-V30, V (with BFE), AR, ARIA, AR/AE, ARIA/A30, ARIA/H, ARIA/O Complete items C3a-d below according to the building diagram specified in item C2. State the datum used. If the datum is different from the datum used for the BFE in Section B, convert the datum to that used for the BFE. Show field measurements and datum conversion calculation. Use the space provided or the Comments area of Section D or Section G, as appropriate, to document the datum conversion. Datum NGVD Conversion/Comments N/A Elevation reference mark used 1929. Does the elevation reference mark used appear on the FIRM? ☐ Yes ☒ No	
☐ a) Top of bottom floor (including basement or enclosure)	7.0 ft(m)
☐ b) Top of next higher floor	19.3 ft(m)
☐ c) Bottom of lowest horizontal structural member (V zones only)	N/A ft(m)
☐ d) Attached garage (top of slab)	7.0 ft(m)
☐ e) Lowest elevation of machinery and/or equipment servicing the building	9.2 ft(m)
☐ f) Lowest adjacent grade (LAG)	8.7 ft(m)
☐ g) Highest adjacent grade (HAG)	7.0 ft(m)
☐ h) No. of permanent openings (flood vents) within 1 ft. above adjacent grade	8
☐ i) Total area of all permanent openings (flood vents) in C3h	35.682 sq. ft. (sq. cm)

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION			
This certification is to be signed and sealed by a land surveyor, engineer, or architect authorized by law to certify elevation information. I certify that the information in Sections A, B, and C on this certificate represents my best efforts to interpret the data available. I understand that any false statement may be punishable by fine or imprisonment under 18 U.S. Code, Section 1001.			
CERTIFIER'S NAME: Jack Stuart Jones, Jr.		LICENSE NUMBER: 13862	
TITLE: Land Surveyor		COMPANY NAME: Sea Island Land Survey	
ADDRESS: 4-D Matthews Court		CITY: Hilton Head Island	STATE: SC ZIP CODE: 29928
SIGNATURE: <i>Jack Stuart Jones</i>		DATE: 28, March 2001	TELEPHONE: (843) 681-3248

PLAINTIFF'S
EXHIBITLicense Number, Embossed Seal,
Signature, and Date

IMPORTANT: In these spaces, copy the corresponding information from Section A.			For Insurance Company Use:
BUILDING STREET ADDRESS (including Apt., Unit, Suite, and/or Bldg. No.) 48 Sea Lane			Policy Number
CITY Hilton Head Island	STATE SC	ZIP CODE 29928	Company NAIC Number

SECTION D - SURVEYOR, ENGINEER, OR ARCHITECT CERTIFICATION (CONTINUED)

Copy both sides of this Elevation Certificate for (1) community official, (2) insurance agent/company, and (3) building owner.

COMMENTS

☐ Check here if attachments

SECTION E - BUILDING ELEVATION INFORMATION (SURVEY NOT REQUIRED) FOR ZONE AO AND ZONE A (WITHOUT BFE)

For Zone AO and Zone A (without BFE), complete items E1 through E4. If the Elevation Certificate is intended for use as supporting information for a LOMA or LOMR-F, Section C must be completed.

E1. Building Diagram Number ____ (Select the building diagram most similar to the building for which this certificate is being completed - see pages 6 and 7. If no diagram accurately represents the building, provide a sketch or photograph.)

E2. The top of the bottom floor (including basement or enclosure) of the building is ____ ft(m) ____ in.(cm) ☐ above or ☐ below (check one) the highest adjacent grade.

E3. For Building Diagrams 6-8 with openings (see page 7), the next higher floor or elevated floor (elevation b) of the building is ____ ft(m) ____ in.(cm) above the highest adjacent grade.

E4. For Zone AO only: If no flood depth number is available, is the top of the bottom floor elevated in accordance with the community's floodplain management ordinance?

☐ Yes ☐ No ☐ Unknown. The local official must certify this information in Section G.

SECTION F - PROPERTY OWNER (OR OWNER'S REPRESENTATIVE) CERTIFICATION

The property owner or owner's authorized representative who completes Sections A, B, and E for Zone A (without a FEMA-issued or community-issued BFE) or Zone AO must sign here.

PROPERTY OWNER'S OR OWNER'S AUTHORIZED REPRESENTATIVE'S NAME

ADDRESS	CITY	STATE	ZIP CODE
SIGNATURE	DATE	TELEPHONE	
COMMENTS			

☐ Check here if attachments

SECTION G - COMMUNITY INFORMATION (OPTIONAL)

The local official who is authorized by law or ordinance to administer the community's floodplain management ordinance can complete Sections A, B, C (or E), and G of this Elevation Certificate. Complete the applicable item(s) and sign below.

G1. ☐ The information in Section C was taken from other documentation that has been signed and embossed by a licensed surveyor, engineer, or architect who is authorized by state or local law to certify elevation information. (Indicate the source and date of the elevation data in the Comments area below.)G2. ☐ A community official completed Section E for a building located in Zone A (without a FEMA-issued or community-issued BFE) or Zone AO.G3. ☐ The following information (Items G4-G9) is provided for community floodplain management purposes.

G4. PERMIT NUMBER	G5. DATE PERMIT ISSUED	G6. DATE CERTIFICATE OF COMPLIANCE/OCCUPANCY ISSUED

G7. This permit has been issued for: ☒ New Construction ☐ Substantial Improvement

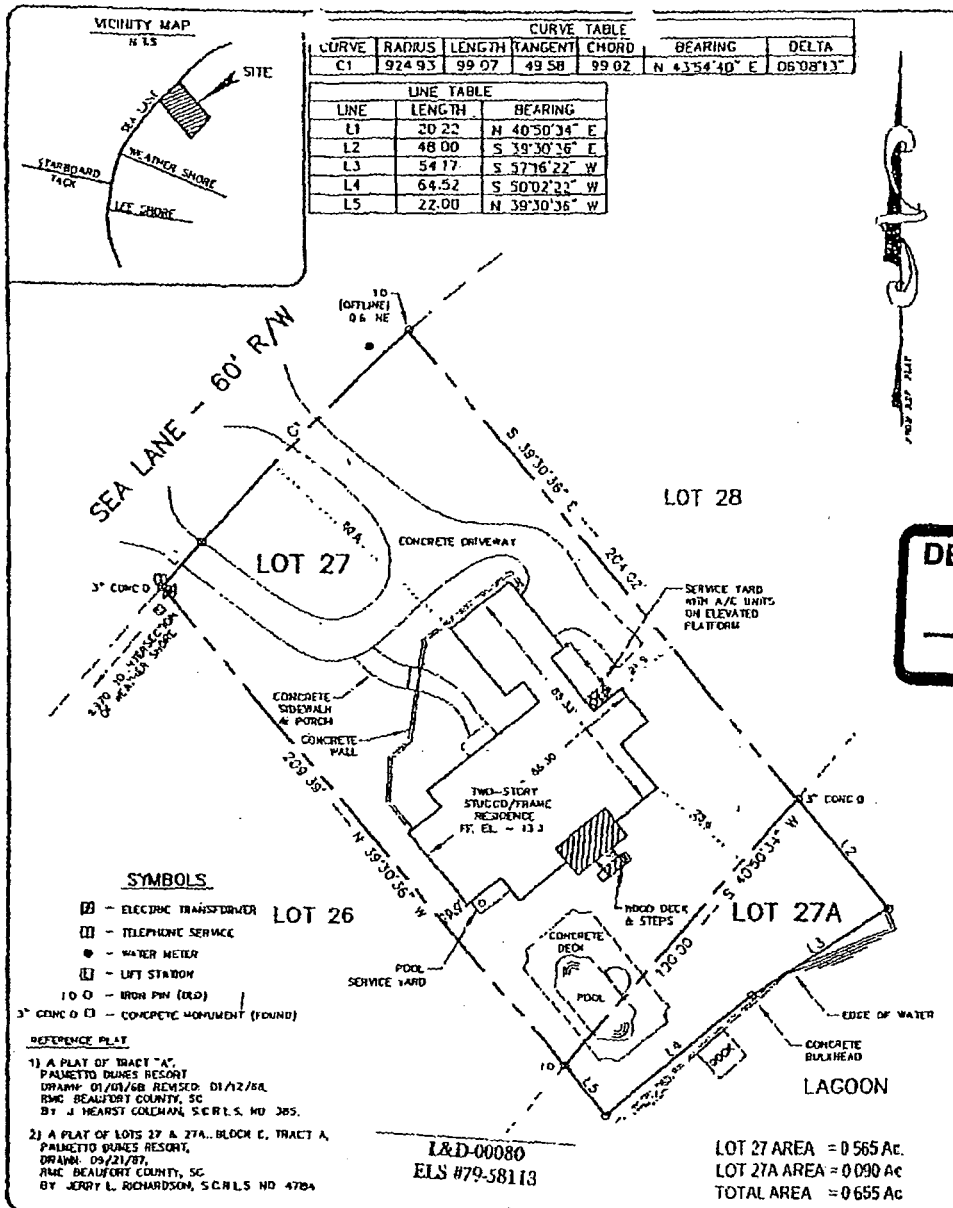
G8. Elevation of as-built lowest floor (including basement) of the building is: ____ ft(m) Datum: ____

G9. BFE or (in Zone AO) depth of flooding at the building site is: ____ ft(m) Datum: ____

LOCAL OFFICIAL'S NAME	TITLE
COMMUNITY NAME	TELEPHONE
SIGNATURE	DATE
COMMENTS	

☐ Check here if attachments

EXH. 8



SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988

ADDRESS #48 SEA LANE
DIST: 520, MAP: 12A, PARCEL: 168
THIS PROPERTY LIES IN F.M.A. ZONE A7
BASE ELEVATION = 14.0'

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, THE SURVEY SHOWN HEREIN WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MAPPING STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.

ASBUILT SURVEY OF
LOT 27 & LOT 27A, TRACT A, PARCEL 3, BLOCK C,
PALMETTO DUNES RESORT HILTON HEAD ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA
PREPARED FOR
THOMAS N & JAN H DYE

DATE 03/28/01
GRAPHIC SCALE: SCALE 1" = 40'

SIS Sea Island Land Survey
P.O. Box 21568, Hilton Head Island, SC 29925
4-D Matthews Court, Hilton Head Island, SC 29926
Tel (843) 681-3248
Fax (843) 689-3011
JOB No 01096
FILE 3-744

SOUTH CAROLINA
SEA ISLAND LAND SURVEY
No. 002180
JACK JONES
13857
NOT VALID UNLESS ENCLOSED

EXH. 9

PLAINTIFF'S
EXHIBIT

25 CC

LAURICH & DEEB, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1040 WILLIAM HILTON PARKWAY

CIRCLE BUILDING, SUITE 104

POST OFFICE DRAWER 6868

HILTON HEAD ISLAND, SC 29938-6868

PHONE (843) 785-6868

FAX (843) 842-2552

EMAIL: bob@laurichdeeb.com

ATTORNEYS

EUGENE J. LAURICH
ROBERT M. DEEB, JR.
CHARLES H. WISEMAN
CATHERINE WEST OLIVETTI
BYRON A. HAMMOND

BLUFFTON OFFICE

LIBERTY SAVINGS BANK BUILDING
9 OAK FOREST ROAD, SUITE 200
BLUFFTON, SC 29910
PHONE (843) 815-5522
FAX (843) 815-2568

PLEASE DELIVER THE FOLLOWING IMMEDIATELY:

TO: Dr. McNeil
DATE: 11/26/03
FAX NUMBER: (614) 846-6504
FROM: Erin for Leslie
RE: See attached

FAXED

3 pages

Copy of Elevation Cert which
you Ins. Co will need to
give you a quote on the
Flood Ins.

Mr. Gattalelli
(513-733-8677)

THE INFORMATION CONTAINED IN THIS TRANSMISSION IS ATTORNEY-PRIVILEGED AND CONFIDENTIAL. IT IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE, COLLECT, AND RETURN THE ORIGINAL MESSAGE TO

L&D-00079
ELS #79-58113

EXH. 10

LAURICH & DEEB, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1040 WILLIAM HILTON PARKWAY

CIRCLE BUILDING, SUITE 104

POST OFFICE DRAWER 6868

HILTON HEAD ISLAND, SC 29938-6868

PHONE: (843) 785-6868

FAX: (843) 842-2552

EMAIL: bob@laurichdeeb.com

ATTORNEYS

EUGENE J. LAURICH
ROBERT M. DEEB, JR.
CHARLES H. WISEMAN
CATHERINE WEST OLIVETTI
BYRON A. HAMMOND

BLUFFTON OFFICE:

LIBERTY SAVINGS BANK BUILDING
9 OAK FOREST ROAD, SUITE 200
BLUFFTON, SC 29910
PHONE: (843) 815-5522
FAX: (843) 815-2568

November 13, 2003

Dr. Donald McNeil
Dr. Gregory Gottschlich
2341 Lane Road
Columbus, OH 43220

PLAINTIFF'S
EXHIBIT

2 ck

In Re: Purchase of 48 Sea Lane
Hilton Head Island, South Carolina

Dear Drs. McNeil and Gottschlich:

Congratulations on your purchase of 48 Sea Lane in Palmetto Dunes. I am pleased to have this opportunity to work with you. Please take the time to review this correspondence, complete the enclosed data sheet, and forward the completed data sheet to me by fax or in the self-addressed envelope enclosed for your convenience.

Reviewing your Contract of Purchase, I note the following issues:

1. Property. As you know, the property is within Palmetto Dunes. Palmetto Dunes is a planned unit development within the Town of Hilton Head Island. Palmetto Dunes is a covenant controlled community administered by the Palmetto Dunes Property Owners' Association, Inc. There are annual assessments which every property owner pays to operate Palmetto Dunes and its amenities. The annual assessments are due at the beginning of each year and will be prorated at Closing. Your annual assessment offsets the costs of the private security force, roadways, common areas, and amenities within Palmetto Dunes. If you do not have a copy of the Covenants and would like one, contact me and I will have a copy made from the Beaufort County records with your title search for a copying cost of \$30.00.

2. Purchase Price. The purchase price for the property is \$1,395,000.00. \$10,000.00 is to be held in escrow as an earnest money deposit. You are financing through Wells Fargo Home Mortgage, Inc. and I believe all is in order with your financing. We will need certified funds by wire or certified check at closing for the balance of the purchase price.

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ELS #79-58113

AURICH & DEEB, P.A.

Dr. Donald McNeil
Dr. Gregory Gottschlich
November 13, 2003
Page 2

3. Date of Closing. The date of closing is scheduled for December 2, 2003. Please indicate on the enclosed data sheet whether you intend on being on Hilton Head Island for closing. If not, we can arrange to have the funds necessary for closing wired to our escrow account, or you may forward the funds by certified check through the mail.
4. Inspection. Under the terms of the contract, the Seller must convey the property with all the plumbing, HVAC, appliances, and electrical systems in good working order. Other repairs would fall under the Inspection Report Addendum. The Addendum allows you ten days from the date of the execution of your contract to provide the Seller with a copy of an inspection report. In the Addendum, the Seller agreed to a maximum contribution of \$2,500.00 for repairs identified in the inspection report. Please let me know if I can assist you with any matters that arise in this regard.
5. Title. The contract does not state the manner in which you plan to take title to the property. I have enclosed a Memorandum outlining the differences between holding title as tenants in common and joint tenants with the right of survivorship in South Carolina. Generally, holding title as tenants in common will insure that each of you will pass your undivided fifty percent (50%) interest in the property according to the terms of each of your wills. Holding title as joint tenants with the right of survivorship will mean that upon a co-tenant's death your fifty (50%) undivided ownership interest will pass to the surviving co-tenant regardless of the terms of your wills. Please verify whether you wish to hold title as joint tenants with the right of survivorship or tenants in common and let me know your decision. Of course, I will gladly answer any questions you may have in this regard.
6. Title Insurance. Since your purchase is being financed, Wells Fargo Home Mortgage will require title insurance for its mortgage interest in your real property. Our firm writes title insurance with First American Title Insurance Company and Stewart Title Insurance Company. We will provide Wells Fargo Home Mortgage with a Mortgagee's policy and will provide you with a policy should you require the same.
7. Legal Costs. Attached is a sheet itemizing some of the issues our law firm will perform on your behalf as your attorney. Our legal fee for this transaction will be \$650.00. In addition there is a title search fee of \$260.00. Please enclose a check in the amount of \$260.00 payable to Laurich & Deeb, P.A. with your data sheet. When we receive your check, we will order the

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LAURICH & DEEB, P.A.

Dr. Donald McNeil

Dr. Gregory Gottsohlich

November 13, 2003

Page 3

title search on the property. The title search is necessary to insure that we are aware of all the Seller's mortgages, liens and encumbrances and to process any financing of your purchase. Your \$260.00 payment will be reflected as a credit against your costs on your settlement statement at Closing.

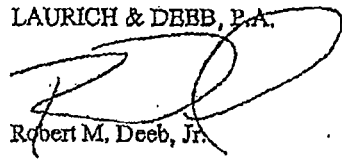
8. Utilities. We will coordinate the transfer of your water, sewer and electrical utilities; however, telephone and cable television will be your responsibility. Enclosed is a Palmetto Electric form for your completion. Please return this form along with your data sheet. You may reach Hargray telephone company at (843) 686-5000 to set up your local telephone service and Adelphia Communications at (843) 785-5175 to set up your cable television service.

If you should have any questions or requests regarding this transaction, please call and ask for Leslie Thomas, who will be the paralegal assisting with your purchase.

With best regards, I am

Very truly yours,

LAURICH & DEEB, P.A.


Robert M. Deeb, Jr.

Enclosures: Purchaser's Data Sheet
Palmetto Electric Purchaser Form
Joint Tenancy Memo
Law Firm Services
Privacy Statement

c: Greg Merrill/Dunes Marketing Group
MAV\cathy\2000\INTRO LETTERS\merrill-gottsohlich pur intro.wpd

PLF-159
ELS #79-58113

MULTIPLE PURCHASERS OF PROPERTY IN SOUTH CAROLINA
JOINT TENANCY WITH THE RIGHT OF SURVIVORSHIP (JTWROS)
V.
TENANCY IN COMMON

A common question arises at the time of the purchase of real property located in South Carolina as to the manner of holding title. There are two ways in which co-tenants may hold real property jointly in South Carolina:

- (1) as "joint tenants with rights of survivorship (JTWROS)"; or
- (2) as "tenants in common"

JOINT TENANCY

The majority of people are familiar with the principles of a joint tenancy through their experience with joint banking accounts. In a joint tenancy with a right of survivorship, the co-tenants own the property as a whole. When one co-tenant dies, his interest passes automatically to the other co-tenant without the need for any formal probate proceedings in South Carolina, and regardless of any claims which creditors may have against the estate of the deceased co-tenant. The existence of a will does not affect the ownership of the land.

A joint tenancy with survivorship rights can, therefore, be a form of estate planning. There are four necessary "unities" in a joint tenancy:

- (1) Unity of Interest (the co-tenant's interest are the same)
- (2) Unity of Title
- (3) Unity of Time
- (4) Unity of Possession

Whenever a co-tenant acts in a way that one of these essential unities is destroyed, the joint tenancy is automatically severed. For example, if a co-tenant pledges his interest in property thus held as a security to a loan, or attempts to sell his interest, the joint tenancy is severed. A divorce between the two co-tenants does not, however, in and of itself, necessarily sever the tenancy. In other words, the property will need to be disposed of in the settlement process or by the divorce decree in order to effect a severance.

TENANCY IN COMMON

When co-tenants hold property as "tenants in common", each owns an undivided, equal interest. Thus, with two co-tenants, each has an undivided one-half (1/2) interest; if there are three co-tenants, each has an undivided one-third (1/3) interest; etc. When one co-tenant dies, his or her interest, unlike that under a joint tenancy, does not pass automatically to the surviving co-tenant, but rather according to the terms of the will or by laws of intestate succession. In addition, the deceased co-tenant's interest is subject to the claims of creditors. A will is very important in determining the distribution of the estate.

Tenancy in common is characterized by only a single essential unity - that of possession or of the right to possession of the common property. A tenant in common who conveys an interest to a third party ceases to be a co-tenant, and the one who purchases the undivided share of a tenant in common becomes a co-tenant with the remaining owner(s).

IMPORTANCE OF WILLS

The existence or non-existence of a valid Will has no effect on land held under joint tenancy. Under the right of survivorship, the land automatically is given to the surviving co-tenant(s). However, a valid Will is very important in the distribution of land held as tenants in common.

A valid Will provides several advantages. The most important is that it gives the Testator control of the distribution of his possession. If the owner dies intestate (without a will), a court will appoint an Executor for the Estate. The Executor follows South Carolina's statute of descent and distribution in allocating property. A Will allows the Testator to decide who will distribute the possession and to whom they will be distributed. A Will also enables tax planning which can provide for the minimization of estate taxes. Dying intestate can have the effect of maximizing taxes to be paid.

SUMMARY

This memorandum is not intended to imply any preference for one form of ownership over the other. It is intended to stress the importance of estate planning and of choosing a form of ownership consistent with that plan. Lawrie & Deeb, P.A. will be happy to discuss the probate and tax ramifications of such a choice with you or your estate and/or tax advisor.

PLF-180
ELS #79-58113

LAURICH & DEEB, P.A.

We recognize and respect the privacy expectations of today's consumers and the requirements of applicable federal and state privacy laws. We believe that making you aware of how we use your non-public personal information ("Personal Information"), and to whom it is disclosed, will form the basis for a relationship of trust between us and the public that we serve. This Privacy Statement provides that explanation. We reserve the right to change this Privacy Statement from time to time consistent with applicable privacy laws.

In the course of our business, we may collect Personal Information about you from the following sources:

- From applications or other forms we receive from you or your authorized representative;
- From your transactions with, or from the services being performed by, us, our affiliates, or others;
- From our internet web sites;
- From the public records maintained by governmental entities that we either obtain directly from those entities, or from our affiliates or others; and
- From consumer or other reporting agencies.

Our Policies Regarding the Protection of the Confidentiality and Security of Your Personal Information

We maintain physical, electronic and procedural safeguards to protect your Personal Information from unauthorized access or intrusion. We limit access to the Personal Information only to those employees who need such access in connection with providing products or services to you or for other legitimate business purposes.

Our Policies and Practices Regarding the Sharing of Your Personal Information

We may share your Personal Information with our affiliates, such as insurance companies, agents, and other real estate settlement service providers. We also may disclose your Personal Information:

- * to agents, brokers or representatives to provide you with services you have requested;
- * to third-party contractors or service providers who provide services or perform marketing or other functions on our behalf.

In addition, we will disclose your Personal Information when you direct or give us permission, when we are required by law to do so, or when we suspect fraudulent or criminal activities. We also may disclose your Personal Information when otherwise permitted by applicable privacy laws such as, for example, when disclosure is needed to enforce our rights arising out of any agreement, transaction or relationship with you.

* One of the important responsibilities of some of our affiliated companies is to record documents in the public domain. Such documents may contain your Personal Information.

Right to Access Your Personal Information and Ability To Correct Errors Or Request Changes Or Deletion

Certain states afford you the right to access your Personal Information and, under certain circumstances, to find out to whom your Personal Information has been disclosed. Also, certain states afford you the right to request correction, amendment or deletion of your Personal Information. We reserve the right, where permitted by law, to charge a reasonable fee to cover the costs incurred in responding to such requests.

All requests must be made in writing to the following address: Betty Parks, Laurich & Decb, P.A. PO Drawer 6868, Hilton Head Island, SC 29938.

Multiple Products or Services: If we provide you with more than one financial product or service, you may receive more than one privacy notice from us. We apologize for any inconvenience this may cause you.

McVee 12/2003 INTRO LETTERS ENCLOSURE SPISpracy.statemal.wpd

PLF-161
ELS #79-58113

Regarding the purchase of real property:

The services to be performed by my office will include, ~~as set forth in the attached~~ the following:

- 1) Review of the Contract of Sale to determine the Purchaser's rights and obligations.
- 2) Determination with the Purchaser as to the exact manner in which title to the property is desired to be taken.
- 3) Review of the proposed Deed presented by the Seller's attorney, as well as, all other necessary Seller Affidavits so as to insure the transfer of good marketable title to the Purchaser.
- 4) Examination of the title abstract reflecting the public records at the Beaufort County Courthouse to determine any material defects in the title to the property, as well as, the status of judgments against the Seller and any property taxes or other assessments relative to the subject property which may adversely affect the title.
- 5) Insuring that the recording of the appropriate documentation in the Register of Mesne Conveyances Office for Beaufort County has been accomplished to insure that good title has passed to the Purchaser, including a re-examination of an updated title report of the public records subsequent to the actual settlement so as to verify that all of the closing documentation, as well as, satisfaction of prior liens have been properly entered of public record.
- 6) Coordination of the various aspects of the actual settlement, including the disbursement and distribution of all sales proceeds to the appropriate parties.
- 7) Insuring compliance on the part of the Purchaser as to the specific contractual obligations necessary to close in accordance with the loan commitment issued by the lender.
- 8) Preparation of all necessary documentation to close the loan transaction with the commercial lender, including the rendering of a preliminary legal opinion as to the status of the title, if so required by the lender.

EXH. 11

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,

Plaintiffs,

vs. CIVIL ACTION NUMBER
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE;
JERRY L. RICHARDSON; COASTAL SURVEYING CO.,
INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER; THE
BYRNE CORPORATION d/b/a DUNES MARKETING GROUP,
LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR. and
CHARLES H. WISEMAN,

Defendants.

-----/

The deposition of ROBERT M. DEEB, JR.,
ESQUIRE, a witness in the above-entitled cause,
taken pursuant to Notice and agreement, before
Cathy M. Knoettner, Certified Court Reporter and
Notary Public, at the Law Offices of Parker,
Poe, Adams & Bernstein, L.L.P., 200 Meeting
Street, Suite 301, Charleston, South Carolina,
on the 4th day of November, 2009, commencing at
or about the hour of 11:20 a.m.

1 HUDSON - DEEB (DIRECT EXAMINATION)

2 Q All right.

3 A The law firm leased space from the LLC.

4 Q This closing that was performed for my
5 clients in December of 2003, how would you
6 characterize it; for instance, would you
7 characterize it as a mail away closing --

8 MS. WALL: Object.

9 BY MR. HUDSON:

10 Q -- a dry closing, something else?

11 A It would not have been a mail away
12 closing.

13 Q Why not?

14 A A mail away closing is when you take
15 all the loan documents and mail them to the
16 client and they execute them wherever they are
17 and then mail them back to you.

18 Q All right. So we know it's not a mail
19 away closing?

20 A Correct.

21 Q How would you characterize the closing?

22 MS. WALL: Object

23 THE WITNESS: A standard closing,
24 an uneventful closing by power of
25 attorney.

COASTAL COURT REPORTING & VIDEO SERVICES
POST OFFICE BOX 7349 HILTON HEAD, SOUTH CAROLINA 29938
HILTON HEAD - BEAUFORT - SAVANNAH
843-785-7739 - FAX 843-785-5837

1 HUDSON - DEEB (DIRECT EXAMINATION)

2 BY MR. HUDSON:

3 Q In 2003, was it common practice for
4 Laurich and Deeb to close residential real
5 estate transactions for clients using a power of
6 attorney?

7 A If the client requested that, yes.

8 Q All right. Is that what happened in
9 this case; did my clients request that the
10 closing be conducted via power of attorney?

11 A Yes.

12 Q All right. Which one made that
13 request, do you recall?

14 A I don't recall.

15 Q Is there a record we could look to that
16 would help us answer that question?

17 A I don't know.

18 Q What percentage of Laurich and Deeb's
19 closings in 2003 were conducted through the use
20 of a power of attorney?

21 A I don't know the exact percentage. I
22 would imagine around 20 percent.

23 Q Had you closed any closings prior to
24 closing this loan for my clients in which Ken
25 Oliver represented either the buyer or the

1 HUDSON - DEEB (DIRECT EXAMINATION)

2 house is not built at or above the 14-foot base
3 flood elevation level?

4 A I imagine the insurance agent could
5 tell you, but I'm sure it has ramifications with
6 insurance.

7 Q But that's it?

8 A Yes.

9 Q In 2003, were you aware that the base
10 flood elevation level for the Town of Hilton
11 Head was 14 feet?

12 A I don't recall if I did in 2003. I
13 certainly do now.

14 Q All right. Do you think you should
15 have known in 2003?

16 A I don't -- no, no, I don't.

17 Q So you don't know if you knew in 2003,
18 and it's your testimony that you don't believe
19 you should have known that information in 2003;
20 is that correct?

21 A That's correct, it was not an issue
22 that I focused on in 2003.

23 Q I didn't ask you if it was an issue
24 that you focused on. I asked you did you know
25 and should you have known?

1 HUDSON - DEEB (DIRECT EXAMINATION)

2 like quitclaim deeds from heirs that had not
3 been obtained, you know, something like that
4 that was very unusual, I'd discuss it with the
5 client this is going to take us hours to resolve
6 and we may have to charge you for that.

7 Q If you had in fact discovered that the
8 house at 48 Sea Lane had a negative elevation
9 prior to closing, would you have advised my
10 clients of that fact?

11 MS. WALL: Object to the --

12 THE WITNESS: I wouldn't have --
13 no, no.

14 BY MR. HUDSON:

15 Q You would not have?

16 A No.

17 Q Why not?

18 A Because I don't understand the
19 significance of a negative elevation. The house
20 was built years before. I don't know exactly
21 when it was built, and a negative elevation
22 could have conformed at the time it was built
23 and probably did, in my mind.

24 Q Had you been aware of the negative
25 elevation, would you have taken any additional

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 A No, I don't and from the date indicated
3 here, it was pretty quickly after we opened the
4 file so I think -- I know Cary Griffin
5 personally, and as a matter of fact, he would
6 have forwarded a copy of the survey -- most of
7 the attorneys do that -- that the sellers have
8 in their file. When I have a seller
9 representation file opened up, I ask the seller
10 can I have a copy of the survey you have so I
11 can forward that on to the purchaser's attorney.

12 Q Did you need the survey for any
13 particular reason in this case?

14 A Sure.

15 Q What for?

16 A We look at the survey so we can
17 determine if there are any title matters that we
18 need to either take exception to in the title
19 insurance policy or write the client about.

20 Q Is that the only reason you look at a
21 survey, for title matters?

22 A Yes.

23 Q Why is that the case?

24 A Because I have to make the sure that
25 the title doesn't show any kind of encumbrances

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 which would adversely affect title. It
3 certainly shows any kind of encumbrances which
4 adversely affect title to the property.

5 Q Why don't you look at a survey for
6 anything in addition to title matters?

7 A Because that's not my job.

8 Q Says who?

9 MS. WALL: Object.

10 THE WITNESS: Says I. I do
11 closings all the time and we've never
12 looked in the title. My job is to make
13 sure the contract is complied with and
14 clear title is conveyed to the client
15 kind of in a nutshell. And if we go
16 back to the exhibit which is the
17 purchase contract, you will see there's
18 a paragraph in there defining, again,
19 what marketable title is; and in
20 connection with making sure that they
21 have marketable title, I have to review
22 the survey to make sure that there's no
23 matters on the survey which would make
24 me write an exception to it in the
25 title insurance policy.

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 Q So the fact that it's an insurance
3 issue was not the only determinant factor in
4 your not disclosing it to my clients; correct?

5 MS. WALL: Object.

6 THE WITNESS: It doesn't matter
7 whether there was a loan or whether
8 there wasn't a loan and whether they
9 wanted insurance or didn't want
10 insurance, I still would not have
11 looked at the elevation and seen any
12 significance to it.

13 BY MR. HUDSON:

14 Q You wouldn't have known it was a code
15 violation; correct?

16 A Correct.

17 Q Had you appreciated the fact that it
18 was a code violation, then would you have
19 disclosed it?

20 MS. WALL: Object to the form.

21 THE WITNESS: If someone told me,
22 Bob, there's a code violation over
23 there, I certainly would have noted
24 that and pulled the plug on the
25 transaction.

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1 HUDSON - DEEB (DIRECT EXAMINATION)
2 correct?
3 A It is defined --
4 MS. WALL: Object to the form.
5 THE WITNESS: -- it's defined in
6 the attachment, the scope of services.
7 BY MR. HUDSON:
8 Q Well, does it specify that you will not
9 be advising the clients at all as to insurance
10 or insurance-related issues?
11 A I can't tell you what I'm not going to
12 do. I mean, there's so much out there that I
13 don't do in a real estate transaction. So
14 you're asking that -- you're implying that I
15 should have had a letter saying here are the
16 things we don't cover. Find one real estate
17 closing attorney in the United States that
18 writes a letter of what we're not doing.
19 Q Well, how about the fact --
20 A You won't.
21 Q -- that the elevation defect also
22 constitutes a code violation?
23 MS. WALL: Object.
24 THE WITNESS: Looking at the
25 survey you cannot determine there's a

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 code violation.

3 BY MR. HUDSON:

4 Q But if you have an understanding of
5 what the applicable Town ordinances were at the
6 time, you would have that understanding;
7 correct?

8 MS. WALL: Object.

9 THE WITNESS: No, it could have
10 been grandfathered in.

11 BY MR. HUDSON:

12 Q But you didn't know and you didn't
13 investigate; isn't that correct?

14 A I didn't investigate, that's correct.
15 I had no need to. If it wouldn't have
16 conformed, the insurance agent would have told
17 us.

18 Q You would agree with me, would you not,
19 that you had more information than the insurance
20 agent ever had with regard to the dwelling's
21 elevation level?

22 MS. WALL: Object to the form.

23 THE WITNESS: No.

24 BY MR. HUDSON:

25 Q Didn't you have a copy of the elevation

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1 HUDSON - DEEB (DIRECT EXAMINATION)
2 requirements all the time, too, in closings. So
3 they may have some closings -- they have closing
4 instructions and then it can't be met when you
5 get a dec page and the lender goes talks to the
6 underwriter, and the underwriter waives the
7 requirement.

8 Q Did they waive it in this case?

9 A I don't know. I don't know that -- it
10 closed so obviously it conformed to the lender's
11 requirements at closing.

12 Q And that's really what the goal is
13 here, right, to get the loan closed?

14 MS. WALL: Object to the form.

15 THE WITNESS: No, the goal is much
16 more than that.

17 BY MR. HUDSON:

18 Q What is the goal?

19 A The goal from my rule is to make sure
20 that clear marketable title is conveyed to the
21 client and that the seller has performed as
22 obligated under the terms of the contract.

23 (Whereupon, Plaintiffs' Exhibit
24 Number 17 was marked for
25 identification.)

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 A No, it appears to be it was an
3 uneventful, very smooth closing, and the doctors
4 are working doctors and weren't interested in
5 seeing the file -- the closing occur. They
6 didn't ask me specifics on every page in the
7 closing document.

8 (Whereupon, Plaintiffs' Exhibit
9 Number 18 was marked for
10 identification.)

11 BY MR. HUDSON:

12 Q All right. Take a look at 18, please.
13 And this appears to be the settlement statement
14 for the primary loan; is that correct?

15 A Yes.

16 Q Did you review this statement prior to
17 closing?

18 A I'm sure I did.

19 Q Do you remember reviewing it or is that
20 just something you know you would have done in
21 the ordinary course of --

22 A That's something I would have done in
23 the ordinary course. The paralegals would
24 present it to me and say, Bobby, take a look at
25 this before I send it out to the doctors.

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 is that correct?

3 A That's correct.

4 Q Does the closing attorney have a duty
5 to explain mortgage documents to a buyer if a
6 buyer asks no questions?

7 MS. WALL: Object to the form.

8 BY MR. HUDSON:

9 Q In other words, are the duties
10 dependent on what a buyer does or does not do?

11 MS. WALL: Object to the form.

12 THE WITNESS: Yes, they have an
13 obligation to explain loan documents to
14 the buyer to the extent that the buyer
15 has questions about them.

16 BY MR. HUDSON:

17 Q What questions did my clients have
18 about the loan documents in this case?

19 A I don't think they had any.

20 Q And you base that on what?

21 A On our standard procedure of sending
22 out the note and a truth and lending and
23 settlement statement for approval and giving
24 them an opportunity then to respond and ask if
25 they have any questions about the numbers or if

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 they seem inaccurate or if the loan seems like
3 it has the wrong interest rate, then we go back
4 and find out what the inconsistencies arise out
5 of.

6 Q But you don't know that, do you,
7 because you weren't present at the closing?

8 MS. WALL: Object to the form.

9 THE WITNESS: No, I wasn't present
10 at the closing.

11 BY MR. HUDSON:

12 Q You're just assuming that they didn't
13 have any questions; isn't that true?

14 A Yes.

15 Q Have you talked to Mr. Wiseman to ask
16 him if my clients had any questions about the
17 closing documents?

18 A No.

19 Q Then how can you sit there and testify
20 that you think they had no questions?

21 MS. WALL: Object to the form.

22 THE WITNESS: Just from my review
23 of the file.

24 BY MR. HUDSON:

25 Q You mentioned something earlier when we

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 A Yes, it's a fax that was sent over to
3 to me in December 1, 2006.

4 Q You and Greg Gottschlich had at least
5 one phone conversation prior to this fax being
6 sent to you; is that correct?

7 A Yes, I recall that.

8 Q Do you recall if the two of you had
9 more than one phone conversation?

10 A Before this?

11 Q Yes.

12 A I don't recall.

13 Q All right. What can you tell me about
14 the at least one conversation that would have
15 taken place before your receiving this document?

16 A Again, it was six years ago. I just
17 recall he called me and said there was a problem
18 with the elevation, and I said I don't
19 understand what you mean. So he said I'll fax
20 you the elevation certificates and some other
21 documents. So he faxed them to me.

22 Q Did you ask him how he came to have the
23 documents that he was faxing to you or did you
24 ask him any questions out of curiosity?

25 A Yes, I recall him saying that there

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 were two elevation certificates -- I have never
3 heard of two elevation certificates -- that were
4 inconsistent with each another. And so he said
5 I'll fax it over and so he faxed this over.

6 Q And upon receipt what did you do with
7 the information?

8 A Well, I pulled the file and I'm sure I
9 called the doctor back. We must have had at
10 least one more conversation after this.

11 Q What did you and Dr. Gottschlich
12 discuss in that follow-up conversation?

13 A I don't recall exactly. That was a
14 long time ago. I'm sure we talked about a
15 builder and Strimpfel Builders because I recall
16 he was -- I just don't recall the exact
17 conversation.

18 Q Before calling Dr. Gottschlich back,
19 did you make any calls to either Coastal
20 Surveying or Strimpfel to just let them know
21 what you were seeing and inquire as to what
22 might be going on?

23 A I don't recall ever talking to
24 Strimpfel or Coastal Surveying.

25 Q How did you and Dr. Gottschlich leave

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1 HUDSON - DEEB (DIRECT EXAMINATION)

2 things after the follow-up conversation?

3 A I said at this point you need to get a
4 litigator and you need to get one fast because
5 we got a statute of limitations issue -- or at
6 least I thought. I'm not a litigator but I knew
7 that three years had passed since the closing.

8 Q But during that telephone conversation
9 you told Dr. Gottschlich to get a litigator fast
10 because the statute of limitations was
11 approaching?

12 A Yes. And I wrote him a letter to that
13 effect, too, several days later, naming three
14 different litigators.

15 Q During that telephone conversation did
16 you tell him specifically when the statute of
17 limitations was going to run in your opinion?

18 A I believe I said three years.

19 Q Had you verified the closing date by
20 the time you called Dr. Gottschlich back?

21 A I don't know.

22 Q If you hadn't of verified the closing
23 date, how would you have told him that the
24 statute of limitations was about to run?

25 A I just don't recall, but I'm sure when

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EXH. 12

15
477003 2025/LT
47790
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a Specific Power of Attorney, that Gregory M. Gottschlich, of 3619 Vineyard Ridge, Cincinnati, OH 45241, has made, constituted and appointed by these Presents does make, constitute and appoint Robert M. Deeb, Jr. and/or Charles H. Wiseman, of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head, SC 29938, his true and lawful Attorney-in-fact to handle the transaction set out below:

The purchase and financing of the real property known as 48 Sea Lane, Palmetto Dunes Resort, Hilton Head Island, Beaufort County, South Carolina. This Specific Power of Attorney expires December 31, 2003. First Mortgage with Wells Fargo Home Mortgage, Inc. in the amount of \$716,000.00. Second Mortgage with Wells Fargo Bank in the amount of \$400,000.00.

Giving and Granting unto the said Attorney-in-fact full power and authority to do so and perform all and every act, deed, matter and thing with respect to the above transaction, in my name, place, and stead, as fully and effectively for all intent and purposes as I might or could do in my own person if personally present, and I hereby ratify all that my said Attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

This Specific Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is

PLAINTIFF'S
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L&D-00096
ELS #79-58113

the intent of the undersigned that the authority conferred upon the above named Attorney-in-fact shall be exercisable notwithstanding my physical disability or mental incompetence in accordance with the South Carolina Probate Code which provides that Powers of Attorney shall not be terminated by the disability or mental incompetence of the principal whenever the document creating the Power of Attorney so provides and established certain safeguards.

I declare that any act or thing lawfully done hereunder shall bind my personal representatives and assigns. I further grant full and unqualified authority to my Attorney-in-fact to delegate any and all of the foregoing powers to any person(s) who my Attorney-in-fact shall select.

IN WITNESS WHEREOF, I have set my Hand and Seal this 20th day of November, 2003.

WITNESSES:

[Signature]
Signature of first witness

[Signature]
Gregory M. Gottschlich

[Signature]
signature of 2nd witness/Notary

STATE OF OHIO)
COUNTY OF HAMILTON)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above named Gregory M. Gottschlich did personally appear before me this day and duly acknowledge the execution of the foregoing instrument.

Witness my hand and seal this 20th day of November, 2003.

[Signature]
Notary Public for Ohio
My commission expires: 8/2/04

** TOTAL PAGE.03 **

L&D-00097
ELS #79-58113

FILE NUM 2003095501
12/04/2003 11:08:41 AM
REC'D BY V GARVIN RCPT# 203484
RECORDING FEES 15.00

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) SPECIFIC POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, which are intended to constitute a Specific Power of Attorney, that Donald L. McNeil, of 2341 Lane Road, Columbus, OH 43220, has made, constituted and appointed by these Presents does make, constitute and appoint Robert M. Deeb, Jr. and/or Charles H. Wiseman, of Laurich & Deeb, P.A., Post Office Drawer 6868, Hilton Head, SC 29938, his true and lawful Attorney-in-fact to handle the transaction set out below:

The purchase and financing of the real property known as 48 Sea Lane, Palmetto Dunes Resort, Hilton Head Island, Beaufort County, South Carolina. This Specific Power of Attorney expires December 31, 2003. First Mortgage with Wells Fargo Home Mortgage, Inc. in the amount of \$716,000.00. Second Mortgage with Wells Fargo Bank in the amount of \$400,000.00.

Giving and Granting unto the said Attorney-in-fact full power and authority to do so and perform all and every act, deed, matter and thing with respect to the above transaction, in my name, place, and stead, as fully and effectively for all intent and purposes as I might or could do in my own person if personally present, and I hereby ratify all that my said Attorney-in-fact shall lawfully do or cause to be done by virtue of these Presents.

This Specific Power of Attorney shall not be affected by physical disability or mental incompetence of the principal which renders the principal incapable of managing his own estate. It is the intent of the undersigned that the authority conferred upon the

PLAINTIFF'S
EXHIBIT

13 ct

L&D-00094
ELS #79-58113

above named Attorney-in-fact shall be exercisable notwithstanding my physical disability or mental incompetence in accordance with the South Carolina Probate Code which provides that Powers of Attorney shall not be terminated by the disability or mental incompetence of the principal whenever the document creating the Power of Attorney so provides and established certain safeguards.

I declare that any act or thing lawfully done hereunder shall bind my personal representatives and assigns. I further grant full and unqualified authority to my Attorney-in-fact to delegate any and all of the foregoing powers to any person(s) who my Attorney-in-fact shall select.

IN WITNESS WHEREOF, I have set my Hand and Seal this 21st day of November, 2003.

WITNESSES:

[Signature]
Signature of first witness

[Signature]
Donald L. McNeil

[Signature]
Signature of 2nd witness/Notary

STATE OF OHIO)
COUNTY OF Franklin)

ACKNOWLEDGEMENT

I, the undersigned Notary Public, do hereby certify that the above named Donald L. McNeil did personally appear before me this day and duly acknowledge the execution of the foregoing instrument.

Witness my hand and seal this 21st day of November, 2003.



DAVID F. CAINS
Notary Public - State of Ohio
My Commission Expires July 20, 2008

[Signature]
Notary Public for Ohio
My commission expires:

L&D-00095
ELS #79-58113

** TOTAL PAGE.03 **

EXH. 13

Loan Closing Instructions

To			
LAURICH AND DEEB, PA 1040 WM HILTON PKWY 104 HILTON HEAD ISLAND, SC 29938			
From		Date	
TARSHA, CLINTON		12/02/03	
Telephone Number		FAX Number	
1-800-696-2301		1-866-226-3019	
Loan Number	Case Number	Escrow Number	
0133761288		MCNBIL	
Closing Date	Disbursement Date	Commitment Expiration Date	Interest Rate Expiration Date
12/02/03	12/02/03	12/05/03	12/05/03
Lender			
WELLS FARGO HOME MORTGAGE, INC.			
Borrower(s)			
DONALD L. MCNBIL GREGORY M. GOTTSCHLICH			
Property Address (the "Property")			
48 SEA LANE HILTON HEAD ISLAND, SC 29928			

Flanine
LOAN TERMS

The following loan terms have been approved by the Lender. No changes are allowed. If circumstances differ from the stated terms, call the Mortgage Counselor immediately.

Loan Amount	Loan Term	Sales Price
\$716,000.00	360 MONTHS	\$1,395,000.00
First Payment Date	Earnest Money	Maturity Date
02/01/04		01/01/34
Loan Type	Loan Purpose	Secondary Financing
CONVENTIONAL	PURCHASE	\$400,000.00
Loan Product	Initial Interest Rate	Initial Monthly P&I Payment
ARM71	5.750%	\$4,178.39
Index	First Change Date	Margin
1.3000%	01/01/11	2.750%
Maximum First Interest Rate Change	Maximum Periodic Interest Rate Change	Maximum Lifetime Interest Rate Change
5.0000%	2.0000%	5.0000%

PERTINENT ADDRESSES

LENDER'S CONTACT:

CONTACT: TARSHA, CLINTON, TEAM SD2
PH: 800-696-2301 Ext
FAX: 866-226-3019 *X66086*

**PLAINTIFF'S
EXHIBIT**

14 *ck*

RETURN THIS CLOSING PACKAGE BY OVERNIGHT MAIL WITHIN 24 HOURS OF LOAN DISBURSEMENT TO:

NEW LOAN MGMT, X3906-011
5325 SPECTRUM DRIVE
FREDBRICK, MD 21703

THE HAZARD INSURANCE MORTGAGEE CLAUSE MUST READ:

WELLS FARGO HOME MORTGAGE, INC.
ITS SUCCESSORS AND/OR ASSIGNS
LOAN NUMBER: 0133761288
P.O. BOX 5708 (CPI #708)
SPRINGFIELD OH 45501

RETURN THE FINAL TITLE POLICY AND CERTIFIED, RECORDED DOCUMENTS TO:

FINAL DOCUMENTS X4701-022
3601 MINNESOTA DRIVE
BLOOMINGTON, MN 55435

I&D-00185
ELS #79-58113

CLOSING REQUIREMENTS

The following requirements must be satisfied prior to disbursement of loan proceeds. Any deviations from the requirements must be specifically approved prior to disbursement.

IDENTIFICATION OF SIGNATURES

You are required to establish the identity of all parties executing closing documents. Photo identification such as a driver's license, passport, or employer identification is required.

ATTN: CLOSING AGENTS - SPECIAL NOTE ON HAZARD AND FLOOD REQUIREMENTS

Effective October 6, 2003, the lender's hazard and flood requirements have changed as stated below. However, there may be borrowers in the interim who have been disclosed with the previous set of hazard and flood requirements. At the consumer's request, the lender will honor the older requirements in lieu of the stated requirements below.

HAZARD INSURANCE

At closing, the following evidence of insurance is required covering the Property:

The original hazard insurance policy or binder and evidence that the first year's premium has been paid.

The hazard insurance policy must be in effect on or before the date of disbursement. The amount of coverage must be 100% of the insurable value of the improvements (also called 100% Replacement Cost), as determined by the hazard insurance provider. The insurance policy must indicate "replacement" or an equivalent statement. Separate requirements apply to condominium and cooperative units.

See page 1 for the hazard insurance mortgagee clause and pertinent address.

FLOOD INSURANCE

At closing, the Lender will require the original flood insurance policy or an application for flood insurance covering the Property and a receipt for the first year's premium.

The flood insurance coverage must equal 100% of the insurable value of the improvements (also called 100% Replacement Cost), as determined by the hazard insurance provider up to the maximum coverage available under the NFIP. Separate requirements apply to condominium and cooperative units.

REAL ESTATE TAXES

If escrows are collected, you must provide evidence that all real estate taxes due and payable within 60 days from the date of closing, including any levied or pending special assessments that constitute a lien on the Property, have been paid in full.

TITLE REQUIREMENTS

At the time of disbursement, you must provide written evidence that a binding mortgagee's policy of title insurance meeting the requirements listed below and prepared on a current ALTA form, TLTA form, or ALTA short form is or will be in force and effect as of the later of the date of disbursement or the date of recordation of the Security Instrument.

Either of the following is acceptable: a binding ALTA Commitment or preliminary report prior to disbursement, together with the Policy within 30 days of disbursement; or the Policy at the time of disbursement.

RETURN THE FINAL COMMITMENT OR TITLE POLICY TO THE ADDRESS IDENTIFIED ON PAGE 1 IN THE PERTINENT ADDRESS SECTION.

L&D-00186
ELS #79-58113

EC088Rev.04/15/92

You are not authorized to accept any type of indemnity or affirmative title insurance coverage over liens or encumbrances that will remain outstanding after disbursement without prior written consent specifying the exact form of such indemnity or coverage. Nevertheless, removal of exceptions for Security Instruments still of record are permitted when the removal of the exception is based on a letter of indemnity to the title insurer.

A copy of the HUD-1 showing the lien as paid or a copy of a canceled check constitutes proof of payoff.

The Policy must evidence the following items:

The Lender has a valid, enforceable first priority lien encumbering the Property in an amount equal to or greater than the original principal balance of the Security Instrument.

The name of the insured is:

"WELLS FARGO HOME MORTGAGE, INC., its successors and/or assigns."

As of the effective date of the policy, the Lender's lien must be superior to the rights of any individuals who hold title to the Property or have an actual or potential interest in the Property.

The legal description of the Property which is the subject of the Policy is identical to the legal description of the Property shown in the Security Instrument.

The Policy provides extended coverage with no general (or "standard") exceptions (preprinted or in Schedule B) for rights of parties in possession, survey matters, or statutory liens for labor, materials or service.

The title insurer has agreed to delete all exceptions that will appear in Schedule B of the Policy, unless the Lender has expressly agreed to permit specific exceptions to remain or affirmative coverage is provided.

All of the title insurer's requirements for issuance of the Policy have been satisfied within the time period required in the title commitment.

The Policy must include the following endorsements:

ALTA Form 6 or 6.1 - Variable Rate Endorsement

ALTA Form 8.1 - Environmental Lien Protection Endorsement

* COMMITMENT LETTER CONDITIONS

The following conditions must be fax to Lender and reviewed as satisfactory by Underwriting prior to signing the Closing documents. Fax to: 866-226-3019

LENDER TO RECEIVE THE SIGNED SPECIAL FLOOD HAZARD NOTICE SIGNED BY ALL BORROWERS.

PROOF OF ADEQUATE FLOOD INSURANCE FOR THE SUBJECT PROPERTY MUST BE RECEIVED AND REVIEWED PRIOR TO CLOSING.

Evidence of satisfaction of the following Commitment Letter Conditions must be returned to the Lender with the closed loan package.

- o Borrower to provide an acceptable Flood Insurance Policy or acceptable Application for Flood Insurance.
- o Lender to receive an original, signed General Authorization form.
- o Tax Returns to be signed by all applicants.
- o Lender to receive an original, completed and signed Residential Loan Application form.

* POWER OF ATTORNEY

If the borrower(s) on this transaction will be using a Power of Attorney in accordance with applicable state laws, the Power of Attorney document must be recorded prior to the recordation of any documents executed by the attorney-in-fact. RETURN A COPY OF THE EXECUTED POWER OF ATTORNEY DOCUMENT TO THE LENDER IN THE CLOSED LOAN PACKAGE.

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■ AUTOMATIC MORTGAGE PAYMENT

Automatic Mortgage Payment Authorization forms may be returned in the same envelope as the closed loan documents (if applicable). If the borrower elects to use the Automatic Mortgage Payment Program, please place the completed Authorization Form (with an attached voided check or savings withdrawal slip) on top of the closed loan documents when returning the package to us to facilitate the set-up process.

■ PRE-CLOSING HUD-1 REVIEW

THE CLOSING AGENT MUST FAX A COPY OF THE FINAL HUD-1 TO THE CLOSING DEPARTMENT AT 775-855-6739 AND RECEIVE APPROVAL TO DISBURSE THE LOAN PROCEEDS WITHIN 48 HOURS PRIOR TO CONDUCTING THE CLOSING OF THIS LOAN. Failure to comply with this request by the time of the scheduled closing will result in funds being pulled from the table. Any changes to the HUD-1 must be initialed and approved by the Closing Department.

■ ITEMS PAYABLE IN CONNECTION WITH THE LOAN

Any Origination Fee(s) listed on HUD Line 801 must be shown on the HUD Settlement Statement as both a percentage and dollar amount.

Any Discount(s) listed on HUD Line 802 must be shown on the HUD Settlement Statement as both a percentage and dollar amount.

Any Mortgage Broker Compensation listed on Line 08__ must be shown on the HUD Settlement Statement as a P.O.C. from the Lender's funds. Do not collect this amount from the buyer or seller. Do not list this amount as a buyer or seller paid item on the HUD Settlement Statement. COMPENSATION LISTED ON THE HUD-1 SETTLEMENT STATEMENT SHOULD BE IDENTIFIED AS "MORTGAGE BROKER COMPENSATION."

■ LENDER CREDITS AND POC ITEMS

You may receive additional funds in the form of a separate wire for Lender Credits. See Line 0207 of the HUD-1 Fee Grid for the Lender Credit amount, if applicable.

Credits to the borrower for escrow reserves should be deducted from the Lender's check. See Line 0209 of the HUD-1 Fee Grid for the authorized Escrow Balance Transfer amount, if applicable.

Items Paid Outside of Closing, such as Application Fee Deposits, should be noted on the corresponding line of the HUD-1 Settlement Statement as "POC." POC amounts are listed on the HUD-1 Fee Grid on the next page, if applicable.

■ ADDITIONAL CLOSING REQUIREMENTS

- *Attach Legal Description to Security Instrument.
- *Add loan number to any new documentation (e.g., intervening assignments, power of attorney, etc.)
- *Copy both sides of all duplex documents (i.e., all pages, 2 sides).

*ORIGINAL TITLE COMMITMENT WITH SIGNED JACKET MUST BE RETURNED TO WELLS FARGO HOME MORTGAGE WITH AND LOAN POLICY AMOUNT TO MATCH LOAN AMOUNT.

*WELLS FARGO HOME MORT MUST BE IN FIRST LIEN POSITION ON FINAL TITLE POLICY.

*COMPLY WITH AND OMIT ALL TITLE REQUIREMENTS.

*OMIT ALL SURVEY EXCEPTIONS OR PROVIDE AFFIRMATIVE COVERAGE.

*SATISFY AND RELEASE ALL LIENS OF RECORD.

*PAY CURRENT ALL TAXES AND ASSESSMENT.

*ENSURE THAT BORROWERS SIGN THE SECURITY INSTRUMENT AS NAMES AS SHOWN.

*PLEASE RETURN ALL PREPRINTED FEES ON THE ENCLOSED HUD IN ONE CHECK MADE PAYABLE TO WELLS FARGO HOME MORTGAGE.

****PLEASE FAX THE CONFIRMATION OF DISBURSEMENT FORM PRIOR TO FUNDING****

***PLEASE CALL ME WITH ANY QUESTIONS AT (866)226-3019 EXT.66086

*ESCROWS FOR TAXES AND INSURANCE ARE REQUIRED. ANY TAXES/INSURANCE DUE WITHIN 60 DAYS OF SETTLEMENT MUST BE COLLECTED AT CLOSING.

**TAX AND INSURANCE ESCROW AMOUNTS ARE ESTIMATES. PLEASE CALL WITH ACTUAL FIGURES AND DUE DATES PRIOR TO CLOSING.

*THE APPRAISAL WILL BE MAILED TO BORROWER UNDER SEPARATE COVER

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*THERE IS A 2ND TRUST. YOU MUST TREAT THE 2 FILES AS SEPARATE TRANSACTIONS, INCLUDING THE HUD. A COPY OF BOTH HUDS MUST BE RETURNED WITH THE PACKAGE. REFER TO THE RESPECTIVE INSTRUCTIONS FOR RETURNING PACKAGES AND DETAILS REGARDING FUNDING. FUNDS FOR EACH WILL ARRIVE SEPARATELY. IF YOU HAVE ANY QUESTIONS REGARDING THE 2ND FROM WELLS FARGO HOME EQUITY CALL 800-443-3486, SELECT OPTION 2.

FAX A HUD/SETTLEMENT STATEMENT TO YOUR CLOSER PRIOR TO CLOSING. THE ENTIRE CLOSING PACKAGE WILL BE SENT ONCE A HUD/SETTLEMENT STATEMENT IS RECEIVED, REVIEWED AND APPROVED.**

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HUD-1 Instructions

You are responsible for providing and completing a HUD-1 Settlement Statement using the following information. All fees in the POC column will be paid outside of closing. However, the amount of the fee and the designation POC must be shown on the description lines of the HUD-1. Notify the Lender immediately if you become aware that any portion of the closing costs or down payment was borrowed, waived, or paid in a form other than cash, cashier's or certified check or personal check.

Lender	WELLS FARGO HOME MORTGAGE, INC.		
Appraiser	VALUE IT	Flood Co	WELLS FARGO FLOOD SERVICE
Credit Agency	RBSL	Tax Service Co	WELLS FARGO REAL ESTATE TAX SERV
Broker		Mortgage Ins	

FAX PRELIMINARY HUD WITH LEGIBLE FINAL FIGURES TO CLOSING DEPARTMENT FOR APPROVAL
WITHIN 48 HOURS PRIOR TO SIGNING.

Items Payable in Connection with the Loan

[illegible]

[illegible]

¹¹ Must show Fee Percent on HUD-1 Settlement Statement.

Reserves Deposited with Lender

HUD-1 Fee	Required	Months	Per Month	Total
1001 Hazard Insurance				
1002 Mortgage Insurance				
1003 City Property Taxes				
1004 County Property Taxes				
1005 Annual Assessments				
1006 Flood Insurance				
1007				
1008				
1009 Aggregate Adjustment				0.00

Reflect Zero (\$0) on HUD-1 Settlement Statement if Aggregate Adjustment is zero.

EC008L Rev.11/22/02

DISBURSEMENT OF LOAN PROCEEDS

The Lender will send a check or money wire to you in the amount of \$716,000.00, which includes lender's tax, if applicable.

Do not disburse any loan proceeds until you have complied with all title requirements included in the Instructions and the rescission period, if applicable, has expired.

Return to the Lender in the closed loan package a copy of all disbursement checks and all other documentation necessary to prove disbursement in accordance with the Lender's and title insurer's requirements.

Please attach your check to the signed HUD-1 and include it in the closed loan package. The check should be payable to the Lender for all items in connection with the loan and any reserves (minus the aggregate accounting adjustment) deposited with the Lender.

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Closing Document Matrix

Following this description is a matrix of closing documents. All closing documents with an "X" in the "Required" column are required by the Lender for this loan. Except for the Notice of Right to Cancel, one copy of each of the closing documents marked with an "X" in the "Provided" column is enclosed in this closing package. The Lender will rely upon you to make additional copies in order to furnish the Borrower(s) with the appropriate number of copies.

Any document that is not included in the list, but which is required by you or the title insurer, must be noted in the blank spaces at the end of the list and returned as part of the closed loan package. You should place an "X" in the "Returned" column opposite all documents which you are returning in the closed loan package. (See Closing Package Return Address on Page 1 of this Closing Instructions document.)

You are responsible for ensuring that: (1) all documents are properly executed and acknowledged, if required, and (2) the Lender has a valid and enforceable lien against the Property.

Returned	Provided	Required	Closing Documents
	X	X	Loan Closing Instructions
			Closing Attorney's Fee Certification (Maryland)
	X	X	Truth-in-Lending Disclosure Statement - Return original and 2 copies
			Relationship ARM Allonge and Addendum to Note
			Notice of Right to Cancel - Provide each party entitled to rescind with two copies of the Notice of Right to Cancel and the Truth-in-Lending Disclosure Statement. Each party entitled to rescind must sign the Notice and a Truth-in-Lending Disclosure Statement. Do not disburse any loan proceeds prior to the expiration of the rescission period.
	X	X	HUD-1 Settlement Statement - Return original and 2 copies. The HUD-1 Settlement Statement must accurately reflect all charges and payees in connection with the loan in accordance with the Real Estate Settlement Procedures Act, including costs paid outside of closing.
	X	X	Commitment Letter
			Balloon Loan Commitment Letter Addendum
	X	X	Note - Return original and two certified true copies
			Land Trust Rider to the Mortgage Note
			Balloon Note Addendum
			Security Instrument - A licensed Kentucky attorney must approve the Security Instrument and endorse on it "prepared by" language as required by Kentucky Rev. Stat. Section 382.335. Attach legal description and all riders prior to recording. Return 2 certified true copies.
	X	X	Security Instrument - Attach legal description and all riders prior to recording. Return 2 certified true copies.
			Security Instrument - Add the county tax assessment parcel identification number in a conspicuous place. Attach legal description and all riders prior to recording. Return 2 certified true copies.
			Balloon Rider - Return 2 certified true copies.
			Condominium Rider - Return 2 certified true copies.
	X	X	Second Home Rider - Return 2 certified true copies.
			1-4 Family Rider - Return 2 certified true copies.
			PUD Rider - Complete recording information and return 2 certified true copies.
			Manufactured Home Rider - Return 2 certified true copies.
			Statement of Borrower Benefits
			Property Improvement Rider - Return 2 certified true copies.
			Land Trust Rider to the Mortgage - Return 2 certified true copies.
	X	X	Adjustable Rate Rider - Return 2 certified true copies.
			Renewal and Extension Rider - Complete and return 2 certified true copies
			Security Assignment of Beneficial Interest in Land Trust
			Interest Subsidy Agreement and Subsidy Schedule
			Adjustable Rate Mortgage Disclosure
			Balloon Disclosure Statement
			General Authorization
	X	X	Servicing Disclosure Statement

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Returned	Provided	Required	
			Closing Documents
			Rate Lock-In Agreement
	X	X	Notice to Borrower of Special Flood Hazards
	X	X	Initial Escrow Account Disclosure Statement
			Tax Escrow Option Election
			Escrow Account Disclosure Agreement
			Tax Collector Letter
	X	X	Tax Certification Form
	X	X	1099 Certification - You must sign the 1099 Certification and file the IRS form 1099-S in accordance with Section 6045(e) of the Internal Revenue Code of 1986, as amended.
	X		Authorization to Release Tax Forms and Information
			W-9 Form
	X	X	Loan Payment Information and Confirmation of Disbursement
	X	X	Residential Loan Application
	X	X	Rider to Residential Loan Application
			Rhode Island Acknowledgment
			Mortgage Subordination Agreement
	X	X	Name Affidavit
			Escrow for Completion Agreement
			Power of Attorney - A Power of Attorney may not be used without Lender's and title insurer's prior approval.
			Property Inspection Certification
N/A			Appraisal - Give to the Borrower(s). Do not return.
			Consolidation, Extension and Modification (CEM) Documents including: CEM Agreement and all exhibits (record as one document) - Return 2 certified true copies.
			Assignment(s) of Underlying Mortgage(s) to Wells Fargo Home Mortgage - Return 2 certified true copies.
			Original Underlying Note(s)
			Original Recorded Underlying Mortgage(s)
			Copy of Assignment(s) of Underlying Mortgage(s)
			Buydown Agreement
			Interest Rate Forbearance Agreement
			Assignment of Interest Endorsement
			Request for Mine Subsidence Insurance Information
			Acceptance of Assignment and Assumption of Proprietary Lease, if applicable, as determined by closing attorney/agent
			Assignment of Proprietary Lease - In blank, signed by Borrower(s).
			Assignment of Proprietary Lease - From seller(s) to Borrower(s) if applicable as determined by the closing attorney/agent.
			Consent of Corporation; Estoppel Letter; Proprietary Lease
			Recognition Agreement; Stock Certificate
			Prepayment Rider - Return 2 certified true copies.
			Prepayment Addendum to Note - Return 2 certified true copies.
			Prepayment Penalty Disclosure/Waiver (Minnesota)
			Stock Power - Return original with signatures notarized.
			UCC Financing Statements
			UCC Search (to include legal description) and Name Searches
			Loan Security Agreement
			Limited Power of Attorney - The Limited Power of Attorney is being provided in connection with the assignment of the Security Instrument.
			Assignment - Attach legal description prior to recording. Return 2 certified copies.
			Voluntary Escrow Prepayment Designation
			Welcome Letter
			Temporary Payment Coupon
			Notice of Assignment, Sale, or Transfer of Servicing Rights
			Escrow Balance Transfer Authorization
	X	X	Other - LIMITED CORRECTION AGREEMENT
			Other -
			Other -

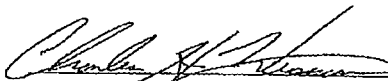
L&D-00194
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EC0881Rev.07/25/02

Closing Agent Certification

The undersigned closing agent hereby certifies that: 1) all required documents have been prepared, executed and/or recorded as necessary; 2) to the best of my knowledge, the loan has been closed and disbursed in strict accordance with federal and state laws; 3) the loan has been closed and disbursed in strict accordance with the requirements set forth in the Instructions and the title commitment (and, if you are a member of the closing agent network, the Closing Agent Manual); 4) no changes to the Loan Terms or to the Closing Documents have been made without the prior approval of the Lender; and 5) no additional disbursements to the Borrower(s) or the Seller(s) have been made without the prior approval of the Lender.

Date: 12/2/03



Charles H. Wiseman

L&D-00195
ELS #79-58113

EC088L Rev 10/27/93

EXH. 14



BETHEA, JORDAN & GRIFFIN, P.A.
ATTORNEYS AND COUNSELORS AT LAW

PLAINTIFF'S
EXHIBIT

6. cf

November 16, 2003

Robert M. Deeb, Jr., Esq.
Laurich and Deeb, P.A.
P.O. Box 6868
Hilton Head Island, SC 29938

Re: Gottschlich and McNeil Acquisition 48 Sea Lane

Dear Bob:

I understand you represent the purchasers in the above captioned transaction. I represent the sellers. To assist you in your title examination, please note that the deed was recorded in Deed Book 1404 at Page 792. I show a mortgage in favor of Lighthouse at Book 1404, Page 795. I also pulled our file and I am enclosing a copy of the recent survey that was completed. Hopefully, this will be of some help to your client.

René Serrato will be working with me here at the office.

With best wishes, I am

Very truly yours,

BETHEA, JORDAN & GRIFFIN, P.A.

Cary S. Griffin

CSG:YI

Enclosure

c: Mr. and Mrs. Thomas N. Dye
Mr. Ken Oliver
Mr. Greg Merrill

(318290.1)

SHELTER COVE EXECUTIVE PARK
23-B SHELTER COVE LANE, SUITE 400
HILTON HEAD ISLAND, SC 29928-3588

www.bjglaw.com

P.O. DRAWER 3
HILTON HEAD ISLAND, SC 29938-0003
843.785.2171
FAX: 843.686.5991

MAINLAND OFFICE:
5 BELFAIR VILLAGE DRIVE
BLUFFTON, SC 29910-2605
843.815.2171
FAX: 843.815.5991

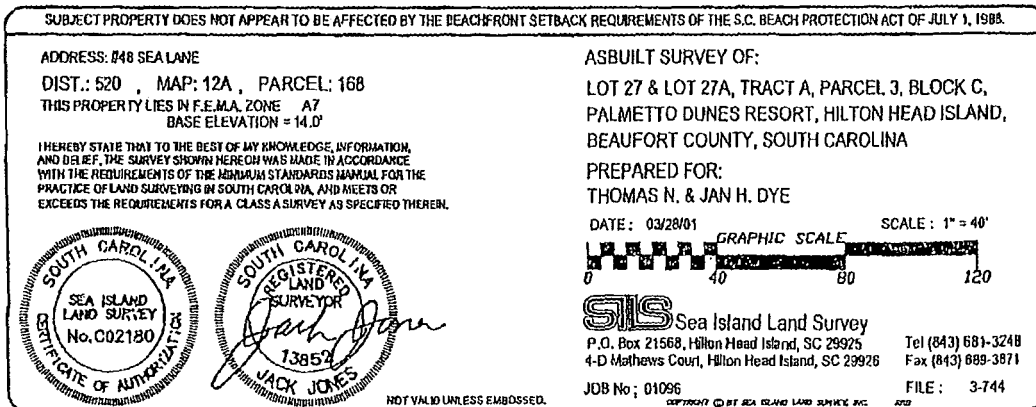
JOSEPH R. BARKER
WILLIAM L. BETHEA, JR.
STEPHEN E. CARTER
HUTSON S. DAVIS, JR.
R. NICHOLAS FELIX
CARY S. GRIFFIN
MICHAEL L. M. JORDAN, CFP
WALTER J. NESTER, III
KEITH M. PARRELLA
SARAH F. ROBERTSON
TONYA L. SAYERS
DAVID J. TIGGES

OF COUNSEL:
JOHN C. WEST

cgriffin@bjglaw.com

old one

L&D-00081
ELS #79-58113



EXH. 15

A U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT		B TYPE OF LOAN 1 ☐ FHA 2 ☐ FmHA 3 ☒ CONV UNINS 4 ☐ VA 5 ☐ CONV INS	
6 FILE NUMBER 03-2025		7 LOAN NUMBER 0133781288	
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 "TPOCI" were paid outside the closing. They are shown here for informational purposes and are not included in the totals.

D NAME AND ADDRESS OF BORROWER Donald L. McNeil Gregory M. Gotschlich 2341 Lane Road Columbus, OH 43220	E NAME AND ADDRESS OF SELLER Thomas N. Dye and Jan H. Dye	F NAME AND ADDRESS OF LENDER Wells Fargo Home Mortgage, Inc. 51 New Orleans Road, Suite 2 Hilton Head Island, SC 29928
G PROPERTY LOCATION 48 Sea Lane Hilton Head Island, SC 29928 Beaufort County, South Carolina	H SETTLEMENT AGENT 57-0995297 Launch & Deeb, PA. PLACE OF SETTLEMENT P. O. Drawer 6868 Hilton Head Island, SC 29938-6868	I SETTLEMENT DATE December 2, 2003

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		1,395,000.00		401 Contract Sales Price		1,395,000.00	
102 Personal Property				402 Personal Property			
103 Settlement Charges to Borrower (Line 1400)		19,715.20		403			
104 Water/Sewer Charges to Broad Creek PSD		60.00		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	12/03/03 to 01/01/04	640.04		407 County Taxes	12/03/03 to 01/01/04	640.04	
108 Assessments	12/03/03 to 01/01/04	71.51		408 Assessments	12/03/03 to 01/01/04	71.51	
109				409			
110				410			
111				411			
112				412			
120 GROSS AMOUNT DUE FROM BORROWER		1,415,508.75		420. GROSS AMOUNT DUE TO SELLER		1,395,711.55	
200 AMOUNTS PAID BY OR IN BEHALF OF BORROWER:				600. REDUCTIONS IN AMOUNT DUE TO SELLER:			
201 Deposit or earnest money		10,000.00		501 Excess Deposit (See Instructions)			
202 Principal Amount of New Loan(s)		716,000.00		502 Settlement Charges to Seller (Line 1400)		85,870.35	
203 Existing loan(s) taken subject to				503 Existing loan(s) taken subject to			
204 Proceeds from Second Mortgage		398,189.40		504 Payoff of first Mortgage to SouthTrust Mortgage		943,382.32	
205				505 Payoff of second Mortgage			
206				506 S.C. Withholding		4,800.28	
207				507 (Deposit or as proceeds) to S.C. Tax Commis			
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	to		
212 Assessments	to			512 Assessments	to		
213				513			
214				514			
215				515			
216				516 2003 County Taxes		8,055.63	
217				517 Water/Sewer to Broad Creek PSD		68.16	
218				518 C.L. 100 Inspection to Johnson & Son		65.00	
219				519			
220 TOTAL PAID BY/FOR BORROWER		1,124,189.40		520 TOTAL REDUCT AMT DUE SELLER		1,042,341.73	
300 CASH AT SETTLEMENT FROM/TO BORROWER:				600. CASH AT SETTLEMENT TO/FROM SELLER:			
301 Gross Amount Due From Borrower (Line 120)		1,415,508.75		601 Gross Amount Due To Seller (Line 420)		1,395,711.55	
302 Less Amount Paid By/FOR Borrower (Line 220)		(1,124,189.40)		602 Less Reductions Due Seller (Line 620)		(1,042,341.73)	
303 CASH (X FROM) () TO BORROWER		291,317.35		603 CASH (X TO) () FROM SELLER		353,369.82	

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L. SETTLEMENT CHARGES				PAID FROM BORROWERS FUNDS AT SETTLEMENT	PAID FROM SELLER'S FUNDS AT SETTLEMENT
700 TOTAL COMMISSION Based on Price	\$ 1,355,000.00 @ 6.0000 %	83,700.00			
Division of Commission (line 700) as Follows					
701 \$78,700.00	to Dunes Marketing Group				
702 \$	to Dunes Marketing Group				
703 Commission Paid at Settlement					78,700.00
704	to				
Note: Line 701 Includes Adjustment of -5,000.00 For per agents					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801 Loan Origination Fee	% to				
802 Loan Discount	% to				
803 Appraisal Fee	to Value It		500.00		
804 Credit Report	to				
805 Flood Lite of Loan	to Wells Fargo Flood Service		18.00		
806 Tax Service Fee	to Wells Fargo RETS		70.00		
807 Assumption Fee	to				
808					
809					
810					
811					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901 Interest From 12/02/03 to 01/01/04 @ \$ 112,790,000/day (30 days 5.7500%)			3,383.70		
902 Mortgage Insurance Premium	months to				
903 Hazard Insurance Premium	10 years to Sea Coast Insurance		2,305.50		
904 Flood Insurance	10 years to Sea Coast Insurance		2,800.00		
905 Wind & Hail Ins	to Sea Coast Insurance		3,529.00		
1000. RESERVES DEPOSITED WITH LENDER					
1001 Hazard Insurance	months @ \$ per month				
1002 Mortgage Insurance	months @ \$ per month				
1003 City/Town Taxes	months @ \$ per month				
1004 County Taxes	months @ \$ per month				
1005 Assessments	months @ \$ per month				
1006 Flood Insurance	months @ \$ per month				
1007	months @ \$ per month				
1008 Aggregate Escrow Adjustment	months @ \$ per month				
1100. TITLE CHARGES					
1101 Settlement or Closing Fee	to				
1102 Abstract or Title Search	to Coastal Title Insurance Agency		260.00		
1103 Title Examination	to				
1104 Title Insurance Binder	to Coastal Title Insurance Agency		75.00		
1105 Document Preparation	to				
1106 Notary Fees	to				
1107 Attorney's Fees	to Launch & Deeb, PA		550.00		
(includes above item numbers)					
1108 Title Insurance	to		2,392.50		
(includes above item numbers)					
1109 Lender's Coverage	\$ 716,000.00 75.00				
1110 Owner's Coverage	\$ 1,395,000.00 2,317.50				
1111 Seller Attorney Fees	to Belhea, Jordan & Shilin, P.A.			750.00	
1112 Prep & Sign by POA	to Launch & Deeb, PA		125.00		
1113 Account Balance	to PD-Community Services Division				1,058.85
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201 Recording Fees Deed \$ 10.00, Mortgage \$ 31.00 Releases \$ 5.00			41.00	5.00	
1202 City/County Tax/Stamp Deed Mortgage					
1203 State Tax/Stamp Revenue Stamp 5,161.50 Mortgage				5,161.50	
1204 Hilton Head Transfer Fee	to Beaufort County Register of Deeds		3,487.50		
1205 Record 2 POA's/Waiver	to Beaufort County Register of Deeds		30.00	10.00	
1300. ADDITIONAL SETTLEMENT CHARGES					
1301 Survey	to				
1302 Pest Inspection	to Atlantic Pest Control			115.00	
1303 Id, copies, fax, ups	to Launch & Deeb, PA		50.00	20.00	
1304 Seller Information Fee	to Greenwood Development Corp			50.00	
1305					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)			19,715.50	85,870.35	

Certified to be a true copy

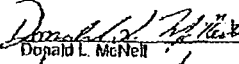
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ELS #79-58113

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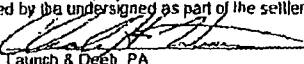
ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Donald L. McNeil
Gregory M. Gottschlich
Seller: Thomas N. Dye and Jan H. Dye
Lender: Wells Fargo Home Mortgage, Inc.
Settlement Agent: Laurich & Deeb, PA
(843)785-6868
Place of Settlement: P O Drawer 6868
Hilton Head Island, SC 29928
Settlement Date: December 2, 2003
Property Location: 48 Sea Lane
Hilton Head Island, SC 29928
Beaufort County, South Carolina

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.

 By CHARLES H. WISEMAN
Donald L. McNeil ATTORNEY-IN-FACT Thomas N. Dye
 By CHARLES H. WISEMAN
Gregory M. Gottschlich ATTORNEY-IN-FACT Jan H. Dye

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.


Laurich & Deeb, PA
Settlement Agent

L&D-00084
ELS #79-58113

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 and Section 1010.

(01/20/05) (1/20/05) (1/20/05)

Received at: 11:56AM, 12/2/2003

DEC 02 2003 11:54 FR

TO 8865991

P.02/02

OMB NO. 2502-0265

U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT		1 ☐ FHA 2 ☐ FmHA 3 ☐ RECONV. UNINS 4 ☐ VA 5 ☐ CONV. INS	
SETTLEMENT STATEMENT		6 ☐ FILE NUMBER 03-2025	7 ☐ LOAN NUMBER 0133761288
		8 ☐ MORTGAGE INS CASE NUMBER	
C NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts due to you 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.			
D NAME AND ADDRESS OF BORROWER		E NAME AND ADDRESS OF SELLER	F NAME AND ADDRESS OF LENDER
Donald L. McNeil Gregory M. Gottschlich 2341 Lane Road Columbus, OH 43220		Thomas N. Dye and Jan H. Dye PLACE OF SETTLEMENT P. O. Drawer 8888 Hilton Head Island, SC 29928-6888	Wells Fargo Home Mortgage, Inc 51 New Orleans Road, Suite 2 Hilton Head Island, SC 29928
G. PROPERTY LOCATION		H SETTLEMENT AGENT	I SETTLEMENT DATE
48 Sea Lane Hilton Head Island, SC 29928 Beaufort County, South Carolina		67-0888797 Launch & Durb, PA	December 2, 2003
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	1,395,000.00	401. Contract Sales Price	1,395,000.00
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (Line 1400)	15,819.30	403.	
104. Water/Sewer Charges to Broad Creek PSD	80.00	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 12/03/03 to 01/01/04	840.04	407. County Taxes 12/03/03 to 01/01/04	840.04
108. Assessments 12/03/03 to 01/01/04	71.61	408. Assessments 12/03/03 to 01/01/04	71.61
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	1,411,819.35	420. GROSS AMOUNT DUE TO SELLER	1,395,711.55
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit of earnest money	10,000.00	501. Excess Deposit (See Instructions)	
202. Principal Amount of New Loan(s)	718,000.00	502. Settlement Charges to Seller (Line 1400)	85,870.56
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Proceeds from Second Mortgage	388,189.40	504. Payoff of 1st Mortgage to SouthTrust Mortgage	643,387.32
205.		505. Payoff of second Mortgage	
206.		506. S.C. Withholding	4,900.28
207.		507. (Deposit disb. as proceeds) to S.C. Tax Commis	
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 to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516. 2003 County Taxes	0,055.83
217.		517. Water/Sewer to Broad Creek PSD	68.15
218.		518. CL100 inspection to Johnson & Son	85.00
219.		519.	
220. TOTAL PAID BY FOR BORROWER	1,124,189.40	520. TOTAL REDUCT. AMT DUE SELLER	1,042,341.73
300. CASH AT SETTLEMENT FROM TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (Line 120)	1,411,819.35	601. Gross Amount Due To Seller (Line 420)	1,395,711.55
302. Less Amount Paid By/For Borrower (Line 220)	(1,124,189.40)	602. Less Reductions Due Seller (Line 520)	(1,042,341.73)
303. CASH (X FROM) (TO) BORROWER	287,629.95	603. CASH (X TO) (FROM) SELLER	353,369.82

1101 11-03-03 02 EPA 1000007
 ** TOTAL PAGE 02 **

L&D-00218
 ELS #79-58113

L. SETTLEMENT CHARGES				PAY FROM BORROWERS FUNDS AT SETTLEMENT	PAY FROM SELLER'S FUNDS AT SETTLEMENT
700. TOTAL COMMISSION Based on Price	\$ 1,395,000.00 @ 6.0000 %		83,700.00		
Division of Commission (line 700) as Follows:					
701. \$78,700.00	to Dunes Marketing Group				
702. \$	to Dunes Marketing Group				
703. Commission Paid at Settlement					78,700.00
704.	to				
Note: Line 701 includes Adjustment of -5,000.00 For per agency					
800. ITEMS PAYABLE IN CONNECTION WITH LOAN					
801. Loan Origination Fee	% to				
802. Loan Discount	% to				
803. Appraisal Fee	to Value It		600.00		
804. Credit Report	to Credit Agency		14.00		
805. Flood Life of Loan	to Wells Fargo Flood Service		18.00		
806. Tax Service Fee	to Wells Fargo RETG		70.00		
807. Commitment Fee	to Wells Fargo Home Mortgage, Inc		297.60		
808.					
809.					
810.					
811.					
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE					
901. Interest From 12/02/03 to 01/01/04	@ \$ 112.750000/day (30 days 8.7500%)		3,383.70		
902. Mortgage Insurance Premium	months				
903. Hazard Insurance Premium	years				
904.					
905.					
1000. RESERVES DEPOSITED WITH LENDER					
1001. Hazard Insurance	4,000 months @ \$ 583.00 per month		2,332.00		
1002. Mortgage Insurance	months @ \$ per month				
1003. City/Town Taxes	months @ \$ per month				
1004. County Taxes	3,000 months @ \$ 738.43 per month		2,215.29		
1005. Assessments	months @ \$ per month				
1006.	months @ \$ per month				
1007. Flood Insurance	4,000 months @ \$ 83.33 per month		333.32		
1008. Aggregate Escrow Adjustment	months @ \$ per month		-688.36		
1100. TITLE CHARGES					
1101. Settlement or Closing Fee	to				
1102. Abstract or Title Search	to Coastal Title Insurance Agency		260.00		
1103. Title Examination	to				
1104. Title Insurance Binder	to Coastal Title Insurance Agency		75.00		
1105. Document Preparation	to				
1106. Notary Fees	to				
1107. Attorney's Fees	to Laurich & Deeb, PA		850.00		
(includes above item numbers)					
1108. Title Insurance	to		2,392.50		
(includes above item numbers)					
1109. Lender's Coverage	\$ 718,000.00	75.00			
1110. Owner's Coverage	\$ 1,395,000.00	2,317.50			
1111. Seller Attorney Fees	to Balbas, Jordan & Griffin, P.A.				750.00
1112. Prep & Sign by POA	to Laurich & Deeb, PA		125.00		
1113. Account Balance	to P.D. Community Services Division				1,058.65
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES					
1201. Recording Fees: Deed \$ 10.00, Mortgage \$ 34.00; Release \$ 5.00			41.00		5.00
1202. City/County Tax/Stamp: Deed	Mortgage				
1203. State Tax/Stamp: Revenue Stamp	5,181.50, Mortgage				5,181.50
1204. Hilton Head Transfer Fee	to Beaufort County Registrar of Deeds		3,487.50		
1205. Record 2 POA's/Waiver	to Beaufort County Registrar of Deeds		30.00		10.00
1300. ADDITIONAL SETTLEMENT CHARGES					
1301. Survey	to				
1302. Pest Inspection	to Atlantic Pest Control				115.00
1303. Id. copies, fax, ups	to Laurich & Deeb, PA		50.00		20.00
1304. Seller Information Fee	to Greenwood Development Corp				50.00
1305.					
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Settlement)			15,508.46		85,870.35

Copied to be a true copy

103-2026 / 03-2026 / 17)

I&D-00219
ELS #79-58113

Received at: 4.03PM, 12/1/2003

DEC 01 2003 16:01 FR

TO 6865991

P.04/05

ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT STATEMENT

Borrower: Donald L. McNeil
Gregory M. Gotschlich
Seller: Thomas N. Dye and Jan H. Dye
Lender: Wells Fargo Home Mortgage, Inc.
Settlement Agent: Laurich & Deeb, PA
(843)785-8888
Place of Settlement: P O Drawer 0060
Hilton Head Island, SC 29928-0060
Settlement Date: December 2, 2003
Property Location: 48 Sea Lane
Hilton Head Island, SC 29928
Beaufort County, South Carolina

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.

Donald L. McNeil

Gregory M. Gotschlich

Thomas N. Dye

Jan H. Dye

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.

Laurich & Deeb, PA
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 may include a fine and imprisonment. For details see: Title 18 U.S. Code Sections 1001 and 1003.

103-2025 (Rev. 10-1-2025/14)

L&D-00220
FIS #79-58113

EXH. 16



Travelers Flood
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DOUG MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2005 to 12/03/2006 Policy Term: ONE YEAR SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

INSURED

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III, Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.40/00.90	\$ 0.00	\$ 2,830.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,343.00
CRS DISCOUNT					\$ -669.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,704.00

THIS IS NOT A BILL

Attachments:

FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA 708
PO BOX 5708
SPRINGFIELD, OH 45501-5708

SECOND MORTGAGEE
WELLS FARGO BANK NA
PO BOX 850
MINNEAPOLIS, MN 55480-0850

Issue Date: 01/27/2006

Agent Copy



000156(10:10):218.138



Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT

Named Insured and Mailing Address: DR DON MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2005 to 12/03/2006 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/03/2005
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938
Payor: 1ST MORTGAGEE	Agent Phone: 843-681-4340

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION						
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium	
Building	\$ 231,100	\$ 500	02.40/00.90	\$ 0.00	\$	2,830.00
Contents	\$ 46,400	\$ 500	01.76/00.58	\$ 0.00	\$	509.00
				ICC PREMIUM	\$	4.00
				ANNUAL SUBTOTAL	\$	3,343.00
				CRS DISCOUNT	\$	-669.00
				FEDERAL POLICY FEE	\$	30.00
				TOTAL PREMIUM	\$	2,704.00

THIS IS NOT A BILL

Policy Changes:

INSURED'S NAME CORRECTED

FIRST MORTGAGEE
WELLS FARGO BANK NA 708
PO BOX 5708
SPRINGFIELD, OH 45501-5708

SECOND MORTGAGEE
WELLS FARGO BANK NA
PO BOX 850
MINNEAPOLIS, MN 55480-0850

Issue Date: 11/20/2006

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183



Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DR DON MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2006 to 12/03/2007 Policy Term: ONE YEAR
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938
Payor: 1ST MORTGAGEE	Agent Phone: 843-681-4340

The building covered by this policy is located at the above mailing address unless otherwise stated below.

01/04/2006

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION

Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 45025000140
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION

Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.64/01.00	\$ 0.00	\$ 3,131.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,644.00
CRS DISCOUNT					\$ -729.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,945.00

THIS IS NOT A BILL

Attachments

FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA 708
PO BOX 5708
SPRINGFIELD, OH 45501-5708

SECOND MORTGAGEE
WELLS FARGO BANK NA
PO BOX 850
MINNEAPOLIS, MN 55480-0850

Issue Date: 11/24/2006

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

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Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2006 to 12/03/2007 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/03/2006 SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION

Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION

Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.64/01.00	\$ 0.00	\$ 3,131.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
				ICC PREMIUM	\$ 4.00
				ANNUAL SUBTOTAL	\$ 3,644.00
				CRS DISCOUNT	\$ -729.00
				FEDERAL POLICY FEE	\$ 30.00
				TOTAL PREMIUM	\$ 2,945.00

THIS IS NOT A BILL.

Policy Changes:

INSURED'S NAME CHANGED

FIRST MORTGAGEE
WELLS FARGO BANK NA 708
PO BOX 5708
SPRINGFIELD, OH 45501-5708

SECOND MORTGAGEE
WELLS FARGO BANK NA
PO BOX 850
MINNEAPOLIS, MN 55480-0850

Issue Date: 01/02/2007

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

001070135E8572614

TRAVELERS

Flood Program
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT DECLARATION

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2006 to 12/03/2007 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/03/2006
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.64/01.00	\$ 0.00	\$ 3,131.00
Contents	\$ 46,400	\$ 500	01.78/00.58	\$ 0.00	\$ 509.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,644.00
CRS DISCOUNT					\$ -729.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 2,945.00

THIS IS NOT A BILL

Policy Changes:

SECOND MORTGAGEE CHANGED
FIRST MORTGAGEE CHANGED

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708

Issue Date: 10/03/2007

Agent Copy

Your Insurer is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-904-8348. You may also request a written copy from Marketing at One Tower Square, 2GSA, Hartford, Connecticut 06183.

000171(9:17):22083.137

TRAVELERS

Insurer: The Standard Fire Insurance Company
Flood Service Center
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2007 to 12/03/2008 Policy Term: ONE YEAR SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION

Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III, Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION

Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.90/01.10	\$ 0.00	\$ 3,442.00
Contents	\$ 46,400	\$ 500	01.96/00.58	\$ 0.00	\$ 545.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,991.00
CRS DISCOUNT					\$ -798.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 3,223.00

THIS IS NOT A BILL

Attachments:

FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708

Issue Date: 11/14/2007

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-904-8348. You may also request a written copy from Marketing at One Tower Square, 2GSA, Hartford, Connecticut 06183.

001033(2:6):24240.592

TRAVELERS

Insurer: The Standard Fire Insurance Company
Flood Service Center
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY ENDORSEMENT DECLARATION

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2007 to 12/03/2008 Policy Term: ONE YEAR EFFECTIVE DATE OF CHANGE: 12/31/2007
	SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.

JAN 07 2008

48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION

Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION

Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	02.90/01.10	\$ 0.00	\$ 3,442.00
Contents	\$ 46,400	\$ 500	01.96/00.58	\$ 0.00	\$ 545.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 3,991.00
CRS DISCOUNT					\$ -798.00
FEDERAL POLICY FEE					\$ 30.00
TOTAL PREMIUM					\$ 3,223.00

THIS IS NOT A BILL

Policy Changes:

SECOND MORTGAGEE CHANGED

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA - ATTN: FLOOD ENS TRACKING
PO BOX 850
MINNEAPOLIS, MN 55480-0850
LOAN NUMBER: 0067519599

Issue Date: 01/02/2008

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183

For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-904-8348. You may also request a written copy from Marketing at One Tower Square, 2GSA, Hartford, Connecticut 06183.

000972(5:7):26579.530

TRAVELERS

Insurer: The Standard Fire Insurance
Company
Flood Service Center
PO Box 29103
Shawnee Mission, KS 66201-1403

Policy Number
6004878572

FLOOD DWELLING POLICY DECLARATION - RENEWAL

Named Insured and Mailing Address: DR DONALD MCNEIL GREGORY M GOTTSCHLICH 3319 VINEYARD RIDGE LN CINCINNATI, OH 45241-2914	Policy Period: 12/03/2008 to 12/03/2009 Policy Term: ONE YEAR
	Agent No: 571112265000 SEACOAST INSURANCE INC PO BOX 7048 HILTON HEAD ISL, SC 29938 Agent Phone: 843-681-4340
Payor: 1ST MORTGAGEE	

The building covered by this policy is located at the above mailing address unless otherwise stated below.
48 SEA LN
HILTON HEAD, SC 29928-5269

RATING DESCRIPTION	
Property/Building	Contents Location
SINGLE FAMILY TWO FLOORS NO ENCLOSURE	LOWEST FLOOR ONLY ABOVE GROUND LEVEL AND HIGHER FLOORS Subject to, III. Property Covered, Paragraph B.

Date of construction or substantial improvement was on 01/01/1989

LOCATION INFORMATION

Community Name: HILTON HEAD ISLAND, TOWN OF No: 4502500014D
Status: REGULAR CRS Class: 6 FIRM Zone: A07 Elevation Difference: -1

COVERAGE AND RATING INFORMATION					
Coverage Type	Coverage Limit	Deductible	Rate	Deductible Adjustment	Premium
Building	\$ 231,100	\$ 500	03.34/01.21	\$ 0.00	\$ 3,861.00
Contents	\$ 46,400	\$ 500	02.11/00.50	\$ 0.00	\$ 575.00
ICC PREMIUM					\$ 4.00
ANNUAL SUBTOTAL					\$ 4,440.00
FEDERAL POLICY FEE					\$ 35.00
TOTAL PREMIUM					\$ 4,475.00

THIS IS NOT A BILL

Policy Changes:

Attachments:

FD0002 (05-03)

FIRST MORTGAGEE
WELLS FARGO BANK NA
ISAOA
PO BOX 5708
SPRINGFIELD, OH 45501-5708
LOAN NUMBER: 0141243618

SECOND MORTGAGEE
WELLS FARGO BANK NA
ISAOA - ATTN: FLOOD INS TRACKING
PO BOX 850
MINNEAPOLIS, MN 55480-0850
LOAN NUMBER: 0067519599

Issue Date: 11/14/2008

Agent Copy

Your Insurer Is The Standard Fire Insurance Company, One Tower Square, Hartford, CT 06183
For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-904-8348. You may also request a written copy from Marketing at One Tower Square, 2GSA, Hartford, Connecticut 06183.

000388(6-15):42275.350

EXH. 17

Certified Copy

STATE OF SOUTH CAROLINA IN THE COURT
OF COMMON PLEAS
COUNTY OF BEAUFOR FOR THE
FOURTEENTH JUDICIAL
CIRCUIT

Gregory M. Gottschlich
and Donald L. McNeil,

Plaintiffs,

-vs-

CIVIL ACTION NO. 2008-CP-07-00517

Strimpfel Custom Homes,
Inc.; Joseph A. Reeve;
Jerry L. Richardson;
Coastal Surveying Co. Inc.;
Thomas N. Dye; Jan H. Dye;
Ken Oliver; and The Byrne
Corporation d/b/a Dunes
Marketing Group, Laurich &
Deeb, P.A.; Robert M. Deeb,
Jr. and Charles H. Wiseman.

Defendants.
~~~~~

**TELEPHONIC DEPOSITION OF GREGORY M.**

**GOTTSCHLICH, M.D.**

July 27, 2009  
9:03 a.m.

4260 Glendale-Milford Road,  
Suite 201, Cincinnati, Ohio



**DEPONET**

**Nationwide Scheduling**

Toll Free: 1.800.337.6638  
Facsimile: 1.973.355.3094  
[www.deponet.com](http://www.deponet.com)

14

1 about five years. Four to five years.

2 Q And I assume that since you've been  
3 with Island Getaway approximately five years that  
4 you're happy with their services?

5 A Yes.

6 Q And, well, let me ask you this.  
7 What's the first time that you saw anything or had  
8 any idea that the elevation on 48 Sea Lane was less  
9 than what it should be?

10 A When I saw it or when I became aware  
11 of it?

12 Q Oh, either one. Any idea when you  
13 actually saw a document?

14 A Okay. I was going to say visually  
15 looking at the house you wouldn't know. But I  
16 became aware that there was a deficiency around  
17 Easter of 2006.

18 Q And how did you become aware?

19 A I called our insurance agent. This  
20 was after Katrina had struck Louisiana, and I  
21 discussed with Dr. McNeil that we should increase  
22 our insurance. I called our agent, Teena Farrell,  
23 when I was on vacation with my kids on Spring Break,  
24 made an appointment, went over and spoke with her.  
25 And that's when I was made aware of the elevation



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17

1 happened that week.

2 Q Okay. And did you ever check with  
3 any other insurance agents or any other insuring  
4 agencies or municipalities to see whether or not you  
5 could obtain further flood insurance with the 13.3  
6 feet instead of 14 feet?

7 A Well, I asked, firstly -- since she  
8 had been our agent and she was a broker, she  
9 indicated she could get insurance from any provider,  
10 and she said she would explore that. And as I  
11 recall, a week or two later she called back and said  
12 it wasn't insurable because of the -- the aftermath  
13 of Katrina that insurance companies were wary of  
14 writing insurance on homes which were not  
15 FEMA-compliant. Subsequently -- I can't remember  
16 who I spoke with, but I got a friend who has a  
17 house. He gave me his agent. I called his agent  
18 and did the same exercise in trying to get insurance  
19 from him. So that's what happened back in 2006.

20 Q At any time after that have you  
21 spoken with any insurance agent or broker other than  
22 Miss Farrell or this friend's agent that you've just  
23 described?

24 A Yes. And I can't -- I don't recall  
25 the name, but we did find someone last -- within the

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Facsimile: 1.973.355.3094  
[www.deponet.com](http://www.deponet.com)

18

1 past ten to 12 months that had a policy they could  
2 write as supplemental to the coverage we currently  
3 have.

4 Q And you do not remember that person's  
5 name?

6 A I'd have to get the file. No, I  
7 don't recall the name.

8 Q Okay.

9 A I remember the premium approximately,  
10 but I don't remember the name.

11 Q What was the approximate premium?

12 A I believe it was around -- I think  
13 there were several different permutations based on  
14 different insurance parameters ranging from about  
15 ten to \$13,000 for supplemental insurance up to, I  
16 believe, the vicinity of \$800,000, which wouldn't  
17 cover even the full replacement of the house should  
18 it be a total disaster. And we recently have asked  
19 them to requote that so we can -- you know, we're  
20 still concerned about that. So we're still looking  
21 into that.

22 Q When you say you're concerned about  
23 it, you're concerned about the cost that they  
24 originally gave you or what is your concern?

25 A No. We're concerned about having a



**DEPONET**

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[www.deponet.com](http://www.deponet.com)

EXH. 18

---

Filters Used:  
1 Tagged Record

## Email Report

Form Format

Date Printed: 8/12/2009  
Time Printed: 10:37AM  
Printed By: JOHNH

|           |                                                                          |      |        |        |          |              |           |                                |
|-----------|--------------------------------------------------------------------------|------|--------|--------|----------|--------------|-----------|--------------------------------|
| Date      | 8/08/2008                                                                | Time | 2:09PM | 2:09PM | Duration | 0.00 (hours) | Code      | Case Docs.                     |
| Subject   | 48 Sea Lane Excess Flood                                                 |      |        |        |          |              | Staff     | John D Hudson                  |
| Client    |                                                                          |      |        |        |          |              | MatterRef | Gottschlich, Greg & Don McNeil |
| From      | tlyell@alasc.com                                                         |      |        |        |          |              | MatterNo  | 000079-58113                   |
| To        | John Hudson                                                              |      |        |        |          |              |           |                                |
| CC To     |                                                                          |      |        |        |          |              |           |                                |
| BCC To    |                                                                          |      |        |        |          |              |           |                                |
| Reminders | (days before) Follow N Done N Notify N Hide N Trigger N Private N Status |      |        |        |          |              |           |                                |
| User1     |                                                                          |      |        |        | User3    |              |           |                                |
| User2     |                                                                          |      |        |        | User4    |              |           |                                |

I was actually fortunate enough to find a broker and got a quote (attached) for the excess flood coverage you requested. Please let me know if the client is interested after viewing the quote and we can go from there.

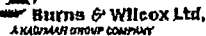
Please let me know if I can be of further assistance.

Tommye Lyell

Anderson Insurance Associates  
PO Box 1858  
Pawleys Island, SC 29585

843.235.3383  
843.235.3385 FAX

tlyell@alasc.com



## Insurance Services

8160 SW 87 Avenue, Suite 200 Miami FL 33178

## EXCESS FLOOD/ RISK REVIEW

ATTN: Anderson Insurance DATE: 8/8/2008  
RE: Gregory M. Gottschilch CARRIER: Clayton

| REQUESTED COVERAGES: |              | RATES          | LAYER I    | LAYER II | LAYER III |
|----------------------|--------------|----------------|------------|----------|-----------|
| BUILDING:            | \$550,000.00 | 1.10           | \$6,050.00 |          |           |
|                      |              |                |            |          |           |
| CONTENTS:            |              |                | \$0.00     |          |           |
|                      |              |                |            |          |           |
|                      |              | PREMIUM:       | \$6,050.00 |          |           |
|                      |              | POLICY FEE     | \$25.00    |          |           |
|                      |              | INSPECTION FEE | \$0.00     |          |           |
|                      |              | BRANCH FEE     | \$150.00   |          |           |
|                      |              | TAXES          | \$373.50   |          |           |
|                      |              | TOTAL PREMIUM  | \$6,598.50 |          |           |

**1. EXCESS FLOOD APPLICATION -FULLY COMPLETED & SIGNED**

## 2. CURRENT PRIMARY FLOOD APPLICATION OR DECLARATION PAGE

**3. SURPLUS LINES AFFIDAVIT - FULLY COMPLETED AND SIGNED (FORM F NC)**

**4. COMPLETED PRODUCERS AGREEMENT/ COPY OF AGENCY'S E & O POLICY & AGENT'S LICENSE (IF NOT ON FILE)**

**6. PLEASE NOTE THIS QUOTE IS VALID OF THIRY (30) DAYS.**

Anderson Insurance Associates 7  
ELS #79-58113

Filters Used:  
1 Tagged Record

## Email Report

Form Format

Date Printed: 8/12/2008  
Time Printed: 11:02AM  
Printed By: JOHNNH

Date 8/11/2008 Time 11:36AM 11:36AM Duration 0.00 (hours) Code Email  
Subject RE: 48 Sea Lane Excess Flood Staff John D Hudson  
Client MatterRef Gottschlich, Greg & Don McNeil MatterNo 000079-58113  
From tlyell@alasc.com  
To John Hudson  
CC To  
BCC To  
Reminders (days before) Follow N Done N Notify N Hide N Trigger N Private N Status  
User1 User3  
User2 User4

I asked the underwriter if the company was aware of the negative elevation when they issued the quote and she said they had all the information prior to quoting. I look forward to hearing from your client.

Tommye Lyell

843.235.3383

843.235.3385 FAX

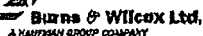
---

From: John Hudson [mailto:jhudson@ellislawhorne.com]  
Sent: Monday, August 11, 2008 9:25 AM  
To: Tommye Lyell  
Subject: RE: 48 Sea Lane Excess Flood

I do need to confirm that they are aware of the elevation deficiency, as that has been a deal breaker with every quote we've tried to get. I'd be surprised if they simply overlooked it in reviewing the flood certificate, but you never know. I've asked either of my clients to give you a call today or tomorrow to discuss the quote in more detail. I suspect you'll probably be hearing from Greg Gottschlich at some point.

Thanks for your help.

John



## Insurance Services

8150 SW 87 Avenue, Suite 200 Miami FL 33176

## EXCESS FLOOD/ RISK REVIEW

ATTN:

DATE:

8/11/2008

RE:

**Gregory Gottschlich**

**CARRIER:**

| REQUESTED COVERAGES: |              | RATES          | LAYER I     | LAYER II   | LAYER III |
|----------------------|--------------|----------------|-------------|------------|-----------|
| BUILDING:            | \$990,000.00 | 1.10           | \$10,890.00 | (neg elev) |           |
|                      |              |                |             |            |           |
| CONTENTS:            |              |                | \$0.00      |            |           |
|                      |              |                |             |            |           |
|                      |              | PREMIUM:       | \$10,890.00 |            |           |
|                      |              | POLICY FEE     | \$25.00     |            |           |
|                      |              | INSPECTION FEE | \$0.00      |            |           |
|                      |              | BRANCH FEE     | \$150.00    |            |           |
|                      |              | TAXES          | \$663.90    |            |           |
|                      |              | TOTAL PREMIUM  | \$11,728.90 |            |           |

**REQUIRED ITEMS FOR AN EXCESS FLOOD POLICY:**

1. **EXCESS FLOOD APPLICATION - FULLY COMPLETED & SIGNED**
2. **CURRENT PRIMARY FLOOD APPLICATION OR DECLARATION PAGE**
3. **SURPLUS LINES AFFIDAVIT - FULLY COMPLETED AND SIGNED (FORM F NC)**
4. **COMPLETED PRODUCERS AGREEMENT/ COPY OF AGENCY'S E & O POLICY & AGENT'S LICENSE (IF NOT ON FILE)**
5. PLEASE NOTE THIS QUOTE IS VALID OF THIRY (30) DAYS.

Anderson Insurance Associates 14  
ELS #79-58113

Filters Used:  
1 Tagged Record

## Email Report

Form Format

Date Printed: 8/12/2009  
Time Printed: 11:25AM  
Printed By: JOHNNH

---

From: Schultz, Catherine  
Sent: September 10, 2008 4:35 PM  
To: 'mcneil.2@osc.edu'  
Subject: 48 Sea Lane Gottschlich quotes  
Importance: High

Mr. McNeil,

Attached please find your quotes for 48 Sea Lane. The dwelling coverage on these quotes is \$850,000 which is based on the square footage of the home being 5087 square feet. Please keep in mind that many of our carriers do inspections and require 100% insurance to value.

<<Gottschlich- McNeil Lex 3% NS quote.pdf>>

The first and best option when insuring a coastal home is to take a wind included homeowner policy. The most competitive wind included quote was offered by Lexington (broker is Southern Risk). This quote includes wind coverage with a 3% (\$25,500) Wind/Hail deductible. Policies with a Wind/Hail deductible will pay the deductible whenever there is a wind loss. This quote does not include earthquake coverage. A major advantage to this policy is that it provides replacement cost for both the structure and the contents. This quote also includes excess flood coverage. This is optional coverage that, if removed, would reduce premium by approximately \$1000.

Another option, when insuring coast home is to take a wind excluded homeowner policy and a separate wind policy with the South Carolina Wind Hail Underwriting Association (SCWHUA). The most competitive quotes for this option total \$8597.74 in annual premium.

<<gottschlich JJ xwind 3475.74.pdf>>

Attachment 2 page 1- This homeowner's policy is offered by Johnson & Johnson (Lloyds) with a total premium of \$3475.74. This policy excludes wind coverage and requires separate wind and excess flood policies. This policy pays replacement cost for the covered perils (wind is not a covered peril).

<<Gottschlich SCWHUA quote.pdf>>

Attachment 2 Page 2- This is your separate wind quote (\$5122- premium) written independently with SCWHUA. You should know the following about this policy:

This policy covers ONLY the perils of wind and/or hail. The lowest available deductible is a 3% Wind/Hail. This deductible applies separately on building (\$25500) & contents (\$3000).

AS A NON PRIMARY RESIDENCE - SCWHUA will not include replacement cost for the structure or the contents. This means that in a claim situation, the property would be actual cash value (depreciated value). This is a significant consideration with older homes.

There is 16 day waiting period which only starts after the applications, money, and pictures are received at the office in Columbia (we overnight them).

We will need to have this policy in effect upon the expiration of your current policy. Otherwise you risk



## STANDARD FLOOD NON-BINDING QUOTE



FIDELITY

NATIONAL PROPERTY &amp; CASUALTY INSURANCE COMPANY

## AGENCY INFORMATION

|                  |                                   |                |                     |
|------------------|-----------------------------------|----------------|---------------------|
| Agency Number    | 130455                            | Applicant      | GOTTSCHECH, GREGORY |
| Agency           | BB&T OARSWELL                     | Current Date   | 09/30/2008          |
| Address          | PO BOX 6169,                      | Effective Date | 10/05/2008          |
| City, State, Zip | HILTON HEAD ISLAND, SC 29928-5169 |                |                     |
| Phone Number     | (843) 785-6101                    |                |                     |

## COMMUNITY INFORMATION

|                  |                                    |                           |                      |
|------------------|------------------------------------|---------------------------|----------------------|
| Community Number | 450260 HILTON HEAD ISLAND, TOWN OF | Zone Determination Number | DRP00000000003174020 |
| Program Type     | Flood Regular Policies             | Zone Reference Number     | 2072338470           |
| Flood Zone       | AE                                 |                           |                      |

## BUILDING INFORMATION

|                        |                                                   |                           |                      |
|------------------------|---------------------------------------------------|---------------------------|----------------------|
| Property Address       | 48 SEA LN                                         | Condominium Coverage      | None                 |
| City, State, Zip       | HILTON HEAD ISLAND, SC 29928-5289                 | Construction Date         | 01/01/1988           |
| Occupancy Type         | Single Family                                     | Building Replacement Cost | \$850,000.00         |
| Building Type          | Two Floors                                        | Building Elevated         | Building is elevated |
| Location of Contents   | Lowest Floor Above Ground Level and Higher Floors | Elevation Difference      | -1 foot              |
| Building Flood Proofed | No                                                | Elevation Certificate     | Yes                  |
| Lowest Floor Elevation | 13.3 feet                                         | Enclosure                 | Enclosure            |
| Basement               | Unfinished                                        |                           |                      |

## COVERAGE PREMIUM INFORMATION

| Coverage | Limits       | Deductible | RPH Basic | RPH Additional |
|----------|--------------|------------|-----------|----------------|
| Building | \$250,000.00 | \$500.00   | 3.34      | 1.21           |
| Contents | \$100,000.00 | \$500.00   | 2.11      | 0.58           |

|                    |            |
|--------------------|------------|
| Discount/Surcharge | \$0.00     |
| 1 Year Premium     | \$5,015.00 |

## IMPORTANT NOTES

THIS IS NOT AN OFFER FOR INSURANCE.  
THIS QUOTE IS NON-FIRM AND NON-BINDING AND SUBJECT TO REVIEW AND ADJUSTMENT.

The online application process must be completed,  
Please do not submit this form with your payment.

Please submit the required documentation listed on your application summary for review and approval. If additional information is required to actuarially rate the risk, you will be contacted.

20080830153856

BB&T 28  
ELS #79-58113

EXH. 19

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State of South Carolina, ) SS:  
County of Beaufort. )

IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

GREGORY M. GOTTSCHLICH and )  
DONALD L. McNEIL, )  
 )  
Plaintiffs, ) Civil Action No.:  
 ) 2008-CP-07-00517  
vs. )  
 )  
STRIMPFEL CUSTOM HOMES, )  
INC., et al., )  
 )  
Defendants. )

THE DEPOSITION OF DONALD L. McNEIL, M.D.

FRIDAY, JULY 31, 2009

The deposition of DONALD L. McNEIL, M.D.,  
called by the Defendants for examination pursuant  
to the South Carolina Rules of Civil Procedure,  
taken before me, the undersigned, Elaine S. Newlin,  
Registered Professional Reporter and Notary Public  
within and for the State of Ohio, taken at the  
offices of Midwest Asthma & Allergy Associates,  
8080 Ravines Edge Court, 2nd Floor, Columbus, Ohio,  
commencing at 8:35 a.m., the day and date above set  
forth.

1 Dr. Gottschlich to cover the cost of  
2 replacement of the structures there at 48 Sea  
3 Lane; am I correct?

4 MR. HUDSON: Object to the  
5 form.

6 A Yes.

7 Q And why did you and Dr. Gottschlich not have  
8 that kind of replacement coverage from the very  
9 beginning?

10 A I can't answer that question. I would have to  
11 go back and reconstruct that. I'm not sure  
12 that I can say why that is the case.

13 Q But anyway, after Hurricane Katrina hit New  
14 Orleans and of course the Gulf Coast, it was  
15 then that you and Dr. Gottschlich, and only  
16 then, that you wanted to have full replacement  
17 coverage on flood insurance on 48 Sea Lane? Am  
18 I correct?

19 A I believe that's correct.

20 Q And have you and/or Dr. Gottschlich ever been  
21 able to find anyone who would handle 48 Sea  
22 Lane for the full replacement value?

23 A Neither Greg nor I found anybody, but my  
24 attorney did.

25 Q And have you reviewed the cost of that?

1 of doing that right now.

2 Q Is Seacoast Insurance involved in that search?

3 A No.

4 Q Who are you getting to do the searching for you  
5 then?

6 A Well, I've made a couple of calls, my attorney  
7 provided some names, and I've got -- I've got  
8 at least one quote.

9 Q And the quote that you, yourself, got was from  
10 whom?

11 A I think the company's called Anderson if that's  
12 correct, Anderson and something, and that's the  
13 best of my knowledge right now, but I'd have to  
14 go to my records to check it.

15 Q And do you remember how much Anderson was going  
16 to cost?

17 A It was in the range of 11 1/2 thousand dollars.

18 Q And if you would, take a look at Exhibit 13,  
19 please, Dr. McNeil.

20 A I'm getting close. Okay.

21 - - - - -

22 (Defendants' Deposition Exhibit No. 13  
23 was previously marked.)

24 - - - - -

25 Q It says up there at the top "Standard flood

EXH. 20

---

 COPY

Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

3  
4 GREGORY M. GOTTSCHLICH and DONALD  
5 L. McNEIL,

6 Plaintiff,

7 vs.

8 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH  
9 A. REEVE; JERRY L. RICHARDSON; COASTAL  
10 SURVEYING CO., INC.; THOMAS N. DYE;  
11 JAN H. DYE; KEN OLIVER; THE BYRNE  
CORPORATION d/b/a DUNES MARKETING GROUP;  
LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.;  
and CHARLES H. WISEMAN,

12 Defendants.

13  
14 DEPOSITION OF  
15 C. JOSEPH ROOF, ESQUIRE

16 DATE: OCTOBER 13, 2009

17 TIME: 10:31 a.m. - 3:49 p.m.

18 LOCATION: Parker Poe Adams & Bernstein, LLP  
19 1201 Main Street, Suite 1450  
Columbia, South Carolina

20 REPORTED BY: Beth Walters Kornuta

21

22 \*\*\*\*\*



PALMETTO STATE COURT REPORTERS  
P. O. Box 50488  
Summerville, SC. 29485  
843.670.1637 Fax: 843.486.0064  
Palmettostatecr@yahoo.com

25

 COPY

1 occurred in the closing of this transaction in  
2 2003?

3 A What is my opinion about what problem  
4 occurred?

5 Q If any?

6 A Well, I've already stated my opinion  
7 that the procedure that was followed with the use  
8 of the power of attorney and the manner in which  
9 the power of attorney was used was not up to the  
10 standards of reasonably competent attorneys.  
11 That's one problem.

12 In addition to that, there was  
13 information with and in the hands of, and  
14 available to with due diligence, the closing  
15 attorney, that was not shared with the client,  
16 that being the elevation and the failure of the  
17 property to meet the required elevation at this  
18 point and in this area.

19 Q Upon what do you base your opinion  
20 that a closing attorney in 2003 had a duty to  
21 advise a client with regard to elevation matters?

22 A I don't think an attorney has a  
23 general obligation to ferret out elevation issues  
24 and to disclose those. It's when that information  
25 is available to the attorney with the exercise of



1 attorneys have with regard to understanding  
2 elevations of a house in a particular region of  
3 the state?

4 A With respect to understanding it?

5 Q Yes.

6 A I don't think that -- "understanding."  
7 I don't know whether you mean how it happened or  
8 what to do?

9 Q You used the term "understanding."

10 A Okay. Well --

11 Q So I'm exploring your term.

12 A Understanding that there is an issue.  
13 That's all. That this and this create an issue  
14 for my client who's buying this property.

15 Q And what issue is that?

16 A The issue is that the elevation is  
17 13.3 and the FEMA base elevation is 14.

18 Q And what issue arises from that?

19 A The house doesn't -- it's not  
20 constructed in accordance with the elevation  
21 requirements of FEMA.

22 Q The house is constructed and allowed  
23 and does get basic flood insurance, so where is  
24 the issue?

25 A Well, I think you still have a duty to

1 title insurance and hazard insurance, but down the  
2 road somewhere it may become an issue for you.  
3 And when you get ready to sell this property, or  
4 if you get ready to re-fi even, some issues may  
5 arise about this, you know. You need to be aware  
6 of it; this is what the problem is, this is how I  
7 have dealt with it, and you need to know about it.

8 Q In this case, it was not a problem in  
9 re-fi, was it?

10 A The re-fi was accomplished, yes.

11 Q So there was no problem with regard to  
12 the elevation, correct, with the re-fi?

13 A With the re-fi, right.

14 Q In your Affidavit and Opinion that  
15 we've marked as Exhibit No. 2, you state that the  
16 Defendants Deeb and Wiseman failed to advise  
17 Plaintiffs of issues related to recognized flood  
18 plain levels and protective laws, ordinances,  
19 rules and regulations related thereto.

20 What in your opinion should Deeb and  
21 Wiseman have known, as closing attorneys,  
22 regarding protective laws, ordinances, rules and  
23 regulations related to recognized flood plain  
24 levels?

25 A Well, first of all they had to

1 recognize the problem, and then did just what I  
2 was testifying to a minute ago. Then give the  
3 buyer advise that this is an issue, recognizing  
4 the issue, being aware that there may or may not  
5 be areas that you can go into to solve the issue,  
6 and letting the buyer come into this transaction,  
7 acquire this property, eyes opened and knowing  
8 that issues can arise down the road.

9 That's the duty of the closing  
10 attorney. Otherwise, you wouldn't have all these  
11 rules about closing attorneys and attorneys being  
12 necessary to closings. That's why they're there.

13 Q What rule and regulation can you cite  
14 me to that states that a closing attorney in South  
15 Carolina has a duty to advise a buyer with regard  
16 to the flood elevation of a particular home?

17 A I can't give you the specific duty  
18 relating specifically to flood. But all defects  
19 are issues with reference to the property that  
20 come across the attorney's desk and the attorney  
21 knows about and should reasonably know about,  
22 whether it be a matter of public record, whether  
23 it be a matter of showing on the plat, whether it  
24 be a matter that is in some extraneous paper and  
25 jumps out at the lawyer, you know.

1           Q     Have you closed transactions where the  
2     buyer, your client, chose affirmatively not to be  
3     at the closing?

4           A     Not that I recall.

5           Q     Tell me about your residential real  
6     estate closing activities over the last five  
7     years. How many residential real estate closings  
8     on behalf of the buyer have you personally closed?

9           A     Probably no more than five. We  
10    essentially gave up residential closings in 1995.  
11    I may close some for my sons or for friends, some  
12    people in the office we've closed.

13                But we do not really have the  
14    resources to close regularly, residential  
15    closings. We continue to close commercial  
16    transactions, and we consciously maybe abandoned  
17    that kind of practice after decades of struggling  
18    to make it profitable.

19           Q     So you abandoned it because you  
20    concluded it was not profitable?

21           A     Absolutely, yes.

22           Q     Now when you say you may have closed  
23    for sons or friends, that's you personally or  
24    someone in your office?

25           A     No, me personally. And there's no one

1 else in our firm at the moment who does real  
2 estate.

3 Q So your residential real estate  
4 closings over -- well, since 1995 -- that's, you  
5 know, almost 15 years -- have been limited to your  
6 sons and friends?

7 A A handful of friends.

8 Q A handful of friends?

9 A I think my preacher. You can tell all  
10 these were freebies.

11 Q And were any of those residential  
12 closings on property along South Carolina's coast  
13 line?

14 A No.

15 Q Did any of those residential real  
16 estate closings involve property in flood zones?

17 A Perhaps properties that had portions  
18 of the property in flood zones, but none that  
19 affected the structures. The structures were on  
20 the ...

21 Q Tell us about your practice over the  
22 last 15 years, since 1995.

23 A Yeah. My practice is primarily  
24 transactional. We represent First Citizens Bank.  
25 I do all of the bank acquisitions, sites and some

1 banks themselves. I have, for 45 years almost,  
2 done V.A conservatorships state-wide, and I  
3 continue to do those. Those are situations where  
4 a veteran is receiving disability benefits and the  
5 V.A. has determined that veteran is not managing  
6 those and a bank is appointed to do so. I do --

7 Q Is that done through First Citizens?

8 A Right now it is. There's been several  
9 different banks, but First Citizens is the bank  
10 right now that the V.A. most frequently names.  
11 Most banks won't accept them. They have very  
12 severe fee restrictions and -- not lawyer fees,  
13 but fees to the bank.

14 And I continue to do a lot of work  
15 with the Trust department for First Citizens, and  
16 that usually involves issues of interpretation of  
17 trust documents. And I -- I qualified as a  
18 mediator but have yet to mediate, and then I do  
19 these expert witness cases. I try to limit my  
20 expert witness cases to about 20 percent of my  
21 practice in terms of time.

22 Q And you -- we'll look at your list in  
23 a moment. Your practice as an expert witness, is  
24 this an expert witness in attorney malpractice  
25 cases?

1 at issues relating to the proper names,  
2 identification of the property. You have to be  
3 sure that this is the property you're dealing  
4 with. You can sometimes get the wrong plat  
5 delivered to your office.

6 Q And that would affect title, correct?

7 A Well, that necessarily wouldn't affect  
8 title if there's a right map somewhere out there.  
9 But it affects the transaction you're trying to  
10 close.

11 Q Why else look at the survey?

12 A The survey would indicate on it the --  
13 well, it might indicate, and should indicate, the  
14 flood plain itself, if the flood plain encroaches  
15 upon the property and the lot. It would indicate  
16 that. It indicates what the boundaries are. All  
17 these things may affect title. But they are not  
18 necessarily defects of title. They are proper  
19 identification of the property and that kind of  
20 thing.

21 Q And the elevation issue is separate  
22 from all of that, correct?

23 A The elevation issue is not always  
24 reflected on the plats and surveys.

25 Q Can you name me a single treatise,

1 written case, CLE handout material, that states  
2 that a closing attorney in a real estate --  
3 closing attorney in a residential real estate  
4 purchase must review the survey for elevation  
5 issues?

6 A Not specifically.

7 Q Now you've also highlighted collect a  
8 termite letter, HVAC, vent or other letters  
9 required by the sales contract and/or lender's  
10 instructions. How is that related, if at all, to  
11 your opinion in this case?

12 A It's not. This is my general copy.

13 Q Now you go on -- just to finish up  
14 with this -- we were looking at Exhibit No. 17,  
15 your handwritten notes. You go on at the bottom  
16 of your third page to state, and I quote, Wells  
17 Fargo - knew - through its closing agent/  
18 attorneys/defendants that Plaintiffs could only  
19 get minimum flood insurance and had duty to  
20 disclose. Is it your opinion that Wells Fargo had  
21 a duty to disclose to the buyers that the buyers  
22 could only get minimum flood insurance?

23 A I don't know. I'm not sure I know  
24 what these notes are here about, except things  
25 that I wanted to look at more closely. It was



1 he should have done --

2 A Well, he --

3 Q On December the 2nd, 4th, or 8th

4 A I think he needed to have a greater  
5 sense of urgency about the statute of limitations.  
6 It's not enough to say generally these statutes  
7 exist or later say these are remedies; you can get  
8 your litigation attorney. Once the statute's  
9 passed, they're gone.

10 Q So what greater urgency could he --  
11 what could he have done?

12 A Well, I think being the closing  
13 attorney, having and should recognize some  
14 responsibility, he could have put them in touch  
15 with one of these lawyers or somebody who does  
16 litigation, or emphasized to them in a much  
17 stronger way that this is an issue, this is an  
18 issue you're facing. I don't know whether it  
19 worked out to be a material issue or not.

20 Q In fact it didn't -- it wasn't a  
21 material issue, was it, Mr. Roof, because they  
22 went and got counsel who has now sued the seller?

23 MR. HUDSON: Object to the form.

24 BY MS. WALL:

25 Q Right?

1           Q       In order to ask a question about the  
2       heighth of house, you have to know that there's an  
3       issue before you ask the question, correct?

4                   MR. HUDSON: Objection.

5           A       There would have to be an issue in  
6       your mind about it, yes.

7 BY MS. WALL:

8           Q       Correct.

9           A       Yes, in some fashion.

10          Q       All right. You're not aware, are you,  
11       of any prohibition by the lender involved in this  
12       2003 closing concerning the closing attorney  
13       holding a power of attorney?

14          A       Where? What about it?

15          Q       That there was any prohibition by this  
16       lender --

17          A       Any prohibition?

18          Q       Prohibition by this lender in 2003,  
19       with regard to this closing attorney or his office  
20       holding a power of attorney?

21          A       I know of no prohibition.

22          Q       Now these issues that you've given  
23       opinions on here today, this is not a disciplinary  
24       matter, is it, that you're giving opinions in?

25          A       I don't know that any kind of

EXH. 21

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1  
2 IN THE COURT OF COMMON PLEAS  
3 STATE OF SOUTH CAROLINA  
4 COUNTY OF BEAUFORT

5  
6 GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,  
7 Plaintiffs,

8  
9  
10 vs. CIVIL ACTION NUMBER  
2008-CP-07-00517

11 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE,  
12 JERRY L. RICHARDSON; COASTAL SURVEYING CO.,  
13 INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER;  
14 THE BYRNE CORPORATION d/b/a DUNES MARKETING  
GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB,  
JR.; and CHARLES H. WISEMAN,

15 Defendants.

16 -----/ **COPY**

17 The deposition of CHARLES H. WISEMAN, a  
18 witness in the above-entitled cause, taken  
19 pursuant to Notice and agreement, before Ceil  
20 Weser, Certified Court Reporter and Notary  
21 Public, at the Offices of Coastal Court  
22 Reporting & Video, Inc., 1 Corpus Christie, 107  
23 Executive Center, Hilton Head, South Carolina,  
24 on the 1st day of December, 2009, commencing at  
25 or about the hour of 2:42 p.m.

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1 HUDSON - WISEMAN (DIRECT EXAMINATION)

2 Q So do you think it is likely that the  
3 Sea Island survey that was prepared in March of  
4 2001 was the first survey you had ever seen  
5 containing that type of information?

6 MS. WALL: Object to the form.

7 THE WITNESS: I can't attest to  
8 that. I don't know and I can honestly  
9 tell you I honestly don't concern  
10 myself when I look at surveys of  
11 anything that has to do with elevation.

12 If I had seen surveys with it on  
13 it before, I obviously didn't deem it  
14 material at all.

15 BY MR. HUDSON:

16 Q Have you ever asked anyone in the past  
17 why a survey might contain elevation  
18 information?

19 A No, I have not.

20 Q When you have had occasion to look at  
21 surveys in the past, what type of information  
22 are you looking for on the document?

23 A I look for matters of title. Matters  
24 that would be affecting title, which is the  
25 boundaries of the property, easements,

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1 HUDSON - WISEMAN (DIRECT EXAMINATION)

2 encroachments, setback lines, things of that  
3 nature.

4 Q Why is that the only type of  
5 information you would look for?

6 A Because that is where my expertise  
7 lies. That is what I am engaged to perform for  
8 my client.

9 Q Have you ever had occasion to look at  
10 elevation certificates for clients in the past?

11 A If you are asking me to -- repeat that  
12 question for me again.

13 Q Have you ever had occasion to look at  
14 elevation certificates for clients in the past?

15 A No client has asked me to review an  
16 elevation certificate, if that is what you are  
17 asking.

18 Q That is not what I am asking.

19 I am asking you if you have ever had  
20 occasion for whatever reason, whether asked by a  
21 client or determined to be necessary by you,  
22 have you ever looked at an elevation certificate  
23 for a client in the past?

24 A I have seen one, but like I don't  
25 review it, no.

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1 HUDSON - WISEMAN (DIRECT EXAMINATION)

2 A Would you repeat that question for me  
3 again?

4 Q When you were acting as attorney in  
5 fact for my clients on December 2, 2003, were  
6 you aware that the applicable base flood  
7 elevation for Palmetto Dunes was 14 feet?

8 MS. WALL: Object to the form.

9 THE WITNESS: I probably wasn't  
10 aware of that.

11 BY MR. HUDSON:

12 Q Sitting here today do you have an  
13 understanding of what the base flood elevation  
14 level is?

15 A Presently, given the circumstances I  
16 do. I am aware.

17 Q Did you not have an understanding of  
18 what the base flood elevation level was prior to  
19 becoming involved in this litigation?

20 A Yes, because I deem that not to be a  
21 part of the services that I provide as a  
22 residential closing attorney.

23 Q You have practiced law on Hilton Head  
24 for how long did you say? Since '99?

25 A Since 2000, yes.

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EXH. 22

...



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

GREGORY M. GOTTSCHLICH and DONALD L. MCNEIL,  
Plaintiffs,

vs. CIVIL ACTION NUMBER  
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE,  
JERRY L. RICHARDSON; COASTAL SURVEYING CO.,  
INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER;  
THE BYRNE CORPORATION d/b/a DUNES MARKETING  
GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB,  
JR.; and CHARLES H. WISEMAN,

Defendants.

**COPY**

-----/

The deposition of HERBERT L. NOVIT, a  
witness in the above-entitled cause, taken  
pursuant to Notice and agreement, before Ceil  
Weser, Certified Court Reporter and Notary  
Public, at the Offices of Coastal Court  
Reporting & Video, Inc., 1 Corpus Christie, 107  
Executive Center, Hilton Head, South Carolina,  
on the 1st day of December, 2009, commencing at  
or about the hour of 10:30 a.m.

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...

1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 foreclosures and workouts.

3 We have two lawyers that do probate,  
4 estate planning, and some tax work.

5 Dan does a little bit of litigation.  
6 He used to be a litigator with the Moss firm  
7 over in Beaufort.

8 Q That is Jim Moss's firm?

9 A Yes.

10 Q You currently focus your practice on  
11 residential real estate?

12 A Residential real estate exclusively.  
13 Except I did do one divorce about five or six  
14 years ago, believe it or not. That is the only  
15 thing I have done outside of that that I can  
16 recall.

17 Q What in particular does your  
18 residential real estate practice consist of now  
19 or at least predominantly? Are you closing  
20 loans, refinances, loan workouts?

21 A Primarily I represent buyers and  
22 sellers, and I handle of course loans,  
23 refinances, purchase money mortgage loans,  
24 things of that type.

25 Q You know Robert Deeb, Jr., correct?

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 A I thinks so, yes. Yes, she did.

3 Q So you had met Mrs. Wall prior to her  
4 retaining you in this particular case, is that  
5 correct?

6 A Yes.

7 Q You had just never been retained by  
8 Mrs. Wall or her firm as an expert witness?

9 A That is correct.

10 Q Had you ever been hired by Mrs. Wall to  
11 consult with her or her firm informally on any  
12 type of legal matter?

13 A No.

14 Q Have you had any discussions with  
15 Ms. Wall in this particular case about the role  
16 of the insurance agent in this transaction?

17 A No.

18 Q Have you formed any opinions about the  
19 role of the insurance agent in this particular  
20 transaction?

21 A I have.

22 Q And what are those specific opinions?

23 A The opinion I formed is that the  
24 insurance agent should be the defendant in this  
25 matter and not the lawyers.

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 Q And why is that your opinion?

3 A Because the problem was caused by the  
4 insurance agent ignoring apparently what was in  
5 the elevation certificate. The insurance agent  
6 handles the flood insurance. That is the person  
7 or the entity that should have discovered the  
8 problem, and how they could write flood  
9 insurance ignoring that is beyond me.

10 Q Did you do anything to flesh that out  
11 to try to understand why the transaction might  
12 have occurred as it did?

13 A No, other than what is in the pleadings  
14 and the depositions.

15 Q As I understand the essence of your  
16 opinion it is simply that the insurance agent  
17 and not the lawyers should be named as  
18 defendants in this lawsuit, is that correct?

19 A That is the way I feel, yes.

20 Q Tell me what background if any you have  
21 with flood insurance in particular?

22 A I have very little background with  
23 flood insurance other than general knowledge,  
24 and of course flood insurance is required in  
25 every insured closing. So we have to make sure

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 BY MR. HUDSON:

3 Q Do you have an understanding of what  
4 Miss Farrell's professional reputation is?

5 A I don't have much, no. I don't know,  
6 no. I don't know that her reputation with me is  
7 pretty good. I don't know what her professional  
8 reputation is with anybody else.

9 Q Do you have an understanding of what  
10 Seacoast Insurance's professional reputation is?

11 A No.

12 Q Do you have a personal opinion as to  
13 what their professional reputation is?

14 A Yes, I think Seacoast is one of the  
15 better ones. There are not many bad ones that  
16 are left. And if you last a while around here  
17 you are probably pretty good.

18 Q Upon what do you base your opinion that  
19 the insurance agent as opposed to the lawyers  
20 should have been named as a defendant in this  
21 lawsuit?

22 A Because we don't do insurance. I don't  
23 know many of us, including myself, who have  
24 enough knowledge of insurance. We don't examine  
25 the policies, we don't examine the amounts. We

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 only comply with what the lender requires, and  
3 what our clients who deal directly with the  
4 insurance agent decides to obtain.

5 I would not presume to direct a client  
6 about the details of a flood insurance policy.

7 Q Is it your understanding that the  
8 closing at issue in this case took place on  
9 December 2, 2003?

10 A Yes.

11 Q Can we agree that when I say the  
12 closing, I am referring to that particular  
13 closing unless I specify otherwise?

14 A Sure.

15 Q Okay, good.

16 Do you have an understanding as to  
17 whether or not the insurance agent at the time  
18 of closing failed to provide my clients with the  
19 insurance that they requested for their purchase  
20 of 48 Sea Lane?

21 A I have nothing to indicate otherwise.

22 Q Meaning that Seacoast did or did not  
23 fail to provide them with the requested  
24 insurance?

25 A No, they couldn't have closed the loan

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 may have asked me in person. And I suggest to  
3 them that they do get a survey and the elevation  
4 certificate because it is cheaper. They are  
5 paying less for the survey when you get an  
6 elevation certificate.

7 But again, this only happens rarely  
8 because we don't usually get involved even in  
9 ordering those.

10 Q Those being the --

11 A The elevation certificates.

12 Q But it does happen at least on  
13 occasion, correct?

14 A Yes. On occasion we are asked to do  
15 it.

16 But we don't review the elevation  
17 certificates once we receive it. We only obtain  
18 it and forward it to the -- definitely to the  
19 insurance agent, and usually a copy to the  
20 person who ordered it, even though he has  
21 probably got one from the surveyor.

22 Q And why is that the case? Why do you  
23 not review an elevation certificate?

24 A Because it is strictly something for  
25 flood insurance purposes that we are not

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 involved in. It is for underwriting flood  
3 insurance, and it is for complying with the  
4 Federal FEMA regulations; and that is something  
5 the insurance agents handle and we don't.

6 I don't consider myself competent to  
7 review an elevation certificate.

8 Q Is it your testimony that you have  
9 never in the past reviewed an elevation  
10 certificate that has been prepared by a surveyor  
11 for a client of yours?

12 A I may have been asked a question on it,  
13 but I don't sit down when I get an elevation  
14 certificate from the surveyor and take a look at  
15 them to make sure every blank has been filled in  
16 or that everything is correct, because I have no  
17 interest in that. I am not employed to do that.  
18 I am not competent to do that.

19 Q Have you in the past ever received an  
20 elevation certificate prepared for a client and  
21 looked at it at least in a cursory fashion to  
22 make sure that it was prepared for the correct  
23 client or on the correct property?

24 A Not really, no. I forward them to the  
25 insurance agent and to the client.

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 Q Have there been occasions in the past  
3 when in addition to receiving an elevation  
4 certificate for a client you have also at the  
5 same time received a survey that was prepared in  
6 conjunction with that elevation certificate?

7 A Yes..

8 Q In those situations have you reviewed  
9 to any extent the survey that was delivered to  
10 you with the elevation certificate?

11 A Yes.

12 Q For what reason?

13 A For title purposes, to make sure that  
14 there are no encroachments.

15 I look to make sure that the surveyor  
16 surveyed the correct property, and that is about  
17 it. Because the only thing the survey means to  
18 me is that I will have to certify and obtain for  
19 my client good title, and the survey would show  
20 any encroachments and that is the main problem  
21 we have around here are encroachments. That is  
22 primarily what I look at them for.

23 Q So you look at the survey in situations  
24 where it is submitted to you along with an  
25 elevation certificate primarily for

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 base your opinion that my clients should not  
3 have counted on its closing attorney to pick up  
4 on and disclose to them this negative elevation  
5 information on the survey?

6 A A number of reasons. First of all, if  
7 there was a requirement that we determine  
8 whether or not the elevation for this particular  
9 house is correct, conforming, or incorrect and  
10 nonconforming, then we would be required to get  
11 surveys and elevation certificates in every  
12 closing and review them and give them an opinion  
13 on it.

14 If further, if it was required that  
15 elevation certificates be placed on a plat, and  
16 every seller's attorney send us an old plat,  
17 which they never do or they rarely do, then I  
18 guess it would become more material.

19 However, in this particular instance  
20 the only thing that I am concerned about in the  
21 elevation is that that is something that the  
22 insurance agent has to handle, and I don't  
23 handle it. I don't give an opinion as to 13.3  
24 feet being accurate or a required elevation.  
25 Again, this home may be grandfathered. It may

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1 HUDSON - NOVIT (DIRECT EXAMINATION)

2 be like my condo, for example, on a slab.

3 So it is something that if I happen to  
4 see it, yes, I probably let them know about it.  
5 But I probably wouldn't see it. I don't look at  
6 those certificates. I don't look at the fact  
7 that this is a two-story stucco frame residence,  
8 which is as prominent as the elevation. I don't  
9 look at that. That is not what I am interested  
10 in this plat for.

11 Q But how is my client supposed to  
12 understand or appreciate the fact that that is  
13 not why you are interested in the plat as their  
14 closing attorney?

15 A Because he has employed me to close a  
16 real estate transaction, his purchase, and his  
17 loan, and not to give an opinion as to about  
18 elevation.

19 And how does he know? I mean the man  
20 is not an idiot I assume. He has hired me to do  
21 this, and I can't tell you everything that he  
22 thinks I am doing if he doesn't ask questions.  
23 I give him the opportunity to ask questions. If  
24 he wants to know what I am doing, ask me. When  
25 he gets my engagement letter, if it doesn't make

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EXH. 23

 COPY

Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

3  
4 GREGORY M. GOTTSCHLICH and DONALD  
5 L. McNEIL,

6 Plaintiffs,

7 vs.

8 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH  
9 A. REEVE; JERRY L. RICHARDSON; COASTAL  
10 SURVEYING CO., INC.; THOMAS N. DYE;  
11 JAN H. DYE; KEN OLIVER; THE BYRNE  
CORPORATION d/b/a DUNES MARKETING GROUP;  
LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.;  
and CHARLES H. WISEMAN,

12 Defendants.

13 30(b)(6) DEPOSITION OF  
14 SEACOAST INSURANCE, INC.

15 (Tommy Faye Lyons, Corporate Designee)

16  
17 DATE: SEPTEMBER 21, 2009  
18 TIME: 10:22 a.m. - 1:15 p.m.m  
19 LOCATION: Tupper, Grimsley & Dean, P.A.  
20 611 Bay Street  
Beaufort, South Carolina  
21 REPORTED BY: Beth Walters Kornuta

22 \*\*\*\*\*

23 PALMETTO STATE COURT REPORTERS

P. O. Box 50488

Summerville, SC 29485

24 843.670.1637 Fax: 843.486.0064

Palmettostatecr@yahoo.com



25

 COPY

1 program during that year?

2 A Yes, as far as I know.

3 Q All right. And that year was 2003,  
4 correct?

5 A Correct.

6 Q And on this Flood Insurance  
7 Application it references the Plaintiffs' names  
8 with the property address 48 Sea Lane, Hilton  
9 Head. Do you see that?

10 A I do.

11 Q On the second page it indicates, under  
12 Elevation Information, on the right side, "Source  
13 of Certificate: Elevation Certificate." Do you  
14 see that?

15 A I do.

16 Q Does that indicate or tell you that  
17 the standard practice at your company would be  
18 before placing that notation, Elevation  
19 Certificate, that your company received a copy  
20 from the customer of the elevation certificate?

21 A Correct.

22 Q Under Certificate Date it states  
23 "03/28/2001." Do you see that?

24 A Yes, I do.

25 Q Does your company's file include a

1 to Exhibit No. 3, which are the documents that you  
2 brought with you here today. The first page of  
3 Exhibit No. 3, this indicates insurance from 2007  
4 to 2008; is that correct?

5 A That's correct.

6 Q And it indicates a flood premium  
7 greater than that which was quoted, or provided,  
8 from December 2003 to December 2004, correct?

9 A Correct.

10 Q From 2003 to 2004, it was \$2,620.  
11 This indicates a flood premium for 2007 to 2008 of  
12 \$3,223. Correct?

13 A Correct.

14 Q Does that raise any red flags for you,  
15 or does that appear to be the steady increase that  
16 NFIP flood insurance has undergone over the years?

17 A It would not raise flags because NFIP  
18 regulations, they go up each year.

19 Q So -- and again these premiums, as  
20 they go up each year, are set by NFIP, not by  
21 Travelers, correct?

22 A That's correct.

23 Q Also looking again at this first page,  
24 which is 2007 to 2008, is this a document that the  
25 insured, the Plaintiffs in this case, would

1 receive?

2 A That's correct.

3 Q And on this document that the  
4 Plaintiffs would have, does it indicate an  
5 elevation difference from that which is the code  
6 elevation and that which actually exists on this  
7 property?

8 A Yes, it does.

9 Q And show us where that is.

10 A That's in the center of the page where  
11 it says Regular, or SRC Class 6, A zone 7, and a  
12 difference of a negative one.

13 Q And to your knowledge, did the  
14 insureds -- Plaintiffs, in this case -- receive a  
15 copy such a document each year, that the flood  
16 insurance was renewed through Travelers/NFIP from  
17 2003 to the present?

18 A Yes.

19 Q And on each one of those documents,  
20 would it indicate elevation difference minus one?

21 MR. HUDSON: Object to the form.

22 A Yes.

23 BY MS. WALL:

24 Q And in fact we have one for each year  
25 in the files, correct?



1 A Yes.

2 Q Does Seacoast Insurance also obtain a  
3 copy?

4 A Yes.

5 Q Or are provided a copy?

6 A Yes.

7 Q The mortgage company also received a  
8 copy?

9 A That is correct.

10 Q And that's indicated on this Exhibit  
11 No. 3, first page, under -- at the bottom of the  
12 page, First Mortgagee: Wells Fargo Bank, N.A.,  
13 correct?

14 A Correct.

15 Q And on this case, there's also a  
16 second mortgagee, correct?

17 A Correct.

18 Q Which is the same bank?

19 A Uh-huh.

20 Q The second page to Exhibit No. 3 is  
21 the same flood dwelling policy declaration renewal  
22 document as that which we just saw on the first  
23 page, except this one is for 2008 to 2009,  
24 correct?

25 A Correct.

1 Q And does this show the elevation  
2 difference minus one?

3 A It does.

4 Q And would a copy of this go to the  
5 insureds/Plaintiffs in this case?

6 A Yes.

7 Q Do you have any knowledge of the  
8 excess flood insurance issue involving these  
9 Plaintiffs and this property at 48 Sea Lane?

10 A Not aware of the details, but I have  
11 reviewed it and I know why it was declined.

12 Q All right. So we are now going to  
13 look at the fourth page of Exhibit No. 3, which is  
14 entitled Excess Flood Insurance Application. It  
15 indicates on the top, and I quote, "Declined due  
16 to negative elevation," with a 5/9/2006 date.  
17 Tell me what you understand to be the reason.

18 A The reason is because it's a negative  
19 elevation. Our markets we have available will not  
20 write anything that is a negative elevation.

21 Q There are markets, however, that will  
22 write negative elevations, correct?

23 A None that I'm aware of that we have  
24 available.

25 Q All right. Now when you say "we have

1 Q Who explained that to them?

2 A From the notes I saw in the file, it  
3 was Teena Farrell.

4 Q What explanation with regard to  
5 negative elevation was given to the Plaintiffs  
6 prior to that time, if you know?

7 A I do not know.

8 Q Who is Sand Wright?

9 A I don't know her.

10 Q Moving on to the next page of Exhibit  
11 No. 3, this is again a flood dwelling policy  
12 declaration renewal, this time for the years  
13 December 2005 to December 2006. Do you see that?

14 A I do.

15 Q And does that also indicate an  
16 elevation difference of minus one?

17 A It does.

18 Q And was a copy of this sent to the  
19 insureds?

20 A Yes, it was.

21 Q In reviewing the file in this case,  
22 did you find an indication of the Dyes making a  
23 claim under any policy written through Seacoast  
24 Insurance Agency with regard to this lawsuit?

25 A Not that I'm aware of.

1 procedures in discussing flood elevation -- excuse  
2 me -- flood certificates indicating a negative  
3 elevation, with insureds?

4 A Repeat that for me?

5 Q What is the policy and procedure of  
6 Seacoast in discussing negative elevation  
7 certificates with its customers?

8 A Normally we'll explain to the insured  
9 that homes located in a negative flood area, first  
10 of all. And the rates will be higher versus being  
11 someone who's not in a negative area.

12 Q Now is an A area a negative area?

13 A No. It can be the same or it can be a  
14 positive or it can be a negative, depending on the  
15 area.

16 Q All right. How does Seacoast  
17 determine a negative area?

18 A We don't determine a negative. NFIP  
19 sets the area. When the surveyor goes out and he  
20 makes that survey, he's the one who's going to  
21 tell us whether it's a negative or it's a  
22 positive.

23 Q Was there a discussion with the  
24 Plaintiffs in this case with regard to this  
25 property at 48 Sea Lane being in a negative area?

1       they had a negative one elevation, or  
2       approximately a negative one?

3             A       There's no indication of what time.

4             Q       Okay. And we've got here the earliest  
5       dec page is for, what, 2005 to 2006, correct?

6             A       Correct.

7             Q       And according to Exhibit 2, they had  
8       also had flood starting in December 2003, correct?

9             A       I'm assuming. I could not find those  
10       records.

11            Q       Okay. Well, do you know how somebody  
12       in Ohio then was able to find those records?

13            A       They could pull the policy number off  
14       of our system. But I was not able to find a dec  
15       for that year.

16            Q       Oh, okay. And is it fair to say that,  
17       for example, if I'm just a lay person, I don't  
18       work for Seacoast, if I went to Travelers and  
19       tried to pull something off of their flood  
20       insurance like this Travelersflood.com, it  
21       wouldn't allow me access?

22            A       Not to the dec page, no.

23            Q       And any time an application is put in,  
24       it requires an elevation certification as well as  
25       photographs, at least currently?

1           A       Depending on what zone you're located  
2       in, whether -- is what elevation certificate is  
3       required.

4           Q       And 48 Sea Lane, even way back when,  
5       was in an A zone?

6           A       That is correct.

7           Q       Okay. And so when the Plaintiffs in  
8       this case, in December of 2003 or perhaps before  
9       that, were applying for flood insurance, they  
10      would have had to get an elevation certificate?

11          A       Correct.

12          Q       And of course you discussed that with  
13      Ms. Wall, that the floor elevation shown as 13.3,  
14      when 14.0 is the --

15          A       The basic.

16          Q       Standard? The base. Okay. And do  
17      the records show that they were -- that this was  
18      kind of, say, brought home to them? You know,  
19      kind of hitting in them in the fact with it and  
20      saying we just want y'all to know that you're in a  
21      negative elevation?

22                   MR. HUDSON: Object to the form.

23          A       It does when you give the rate,  
24      because the elevation certificate makes the rate  
25      higher.

1 BY MR. MAHAFFEE:

2 Q Okay. So in 2003, they would have  
3 known of that negative elevation?

4 MR. HUDSON: Object to the form.

5 A They should have known.

6 BY MR. MAHAFFEE:

7 Q Okay. And can you tell from looking  
8 at the records, as the Records Custodian for  
9 Seacoast, that that information was provided to  
10 the Plaintiffs, to one or more Plaintiffs in this  
11 case?

12 A I'm not -- I did not see any  
13 documentation in the file where it was actually  
14 indicated to them.

15 Q But the standard pattern of practice  
16 would be to do so?

17 MR. HUDSON: Object to the form.

18 A To let them know, yes.

19 MR. HUDSON: Object to the form.

20 MR. MAHAFFEE: What's your objection,  
21 counsel?

22 MR. HUDSON: Foundation.

23 MR. MAHAFFEE: That's why I was  
24 asking --

25 MR. HUDSON: You build the question up

EXH. 24



## FLOOD INSURANCE APPLICATION

**Travelers**

Travelers Flood Insurance Program

## GENERAL INFORMATION

Quote ID: 206187893

Application Status: SUBMITTED  
Policy Type: Standard  
Effective Date: 12/03/2003  
Waiting Period: Loan Activity  
Payer: First Mortgage - WELLS FARGO MORTGAGE #708  
Agency Name: SEACOAST INSURANCE INC  
Agency ID: 571112265

## POLICY HOLDER INFORMATION

Insured Name: Donald McNeil  
Additional Name: Gregory M Gottschlich  
Mailing Address:  
2341 LANE RD  
COLUMBUS, OH 43220  
Home Phone:  
Social Security Number:

Property Address:  
48 SEA LN  
HILTON HEAD, SC 29928  
Work Phone:

## MORTGAGEE INFORMATION

|                            |                               |                                 |
|----------------------------|-------------------------------|---------------------------------|
| Mortgage Type:             | First Mortgage                | Second Mortgage                 |
| Mortgage Name:             | WELLS FARGO MORTGAGE #708     | WELLS FARGO BANK NA             |
| Clause:                    | ITS SUCCESSORS AND OR ASSIGNS | ITS SUCCESSORS AND OR ASSIGNS   |
| Loan Number:               | 0133761288                    | 6540954551                      |
| Lender 1 Address:          |                               | Lender 2 Address:               |
| PO BOX 5708                |                               | PO BOX 49069                    |
| SPRINGFIELD, OH 45501-5708 |                               | COLORADO SPRINGS, CO 80949-9069 |



Insured Name: Donald McNeil  
 Additional Name: Gregory M  
 Gottschlich  
 Quote ID: 206187893  
 Travelers Agency ID: 571112265

## RATING INFORMATION

|                         |               |                      |             |
|-------------------------|---------------|----------------------|-------------|
| Community-Panel Number: | 450250 0014 D | State Govt. Owned:   | No          |
| Program Type:           | Regular       | Builder's Risk:      | No          |
| FIRM Zone:              | A07           | Principle Residence: | No          |
| Hazard Area:            | Yes           | Elevated Building:   | Yes         |
| Building Occupancy:     | Single Family | Post FIRM:           | Yes         |
| Basement:               | None          | Date Built:          | 01/01/1989  |
| Building Type:          | Two Floors    | Condo Type:          | Not a condo |
| Obstruction:            |               |                      |             |

## ELEVATION INFORMATION

|                        |      |                        |                       |
|------------------------|------|------------------------|-----------------------|
| Lowest Floor:          | 13.3 | Source of Certificate: | Elevation Certificate |
| Base Flood:            | 14.0 | Prior Policy Number:   | 6004611874            |
| Lowest Adjacent Grade: | 9.2  | Certificate Date:      | 03/28/2001            |
| Diagram Number:        | 8    | Certificate Type:      | Elevation/Survey      |

## CONTENTS INFORMATION

Contents Location: Lowest Floor Above Ground Level and Higher  
 Contents Household: Yes  
 Contents Description:

## RCBAP INFORMATION

Total Number of Units:

## COVERAGE AND RATING DETAIL

|                      | Basic Limits        |      | Additional Limits   |      | Deductible                 | Basic and Additional Insurance | Total Premium |
|----------------------|---------------------|------|---------------------|------|----------------------------|--------------------------------|---------------|
|                      | Amount of Insurance | Rate | Amount of Insurance | Rate | Premium Reduction/Increase |                                |               |
| Building             | \$50,000.00         | 1.97 | \$200,000.00        | 0.86 | \$0.00                     | \$250,000.00                   | \$2,705.00    |
| Contents             | \$20,000.00         | 1.77 | \$30,000.00         | 0.58 | \$0.00                     | \$50,000.00                    | \$528.00      |
| Building Deductible: | \$500.00            |      |                     |      |                            | Annual Subtotal:               | \$3,233.00    |
| Contents Deductible: | \$500.00            |      |                     |      |                            | ICC Premium:                   | \$4.00        |
|                      |                     |      |                     |      |                            | CRS Discount:                  | \$647.00      |
|                      |                     |      |                     |      |                            | Subtotal:                      | \$2,590.00    |
| Deductible Credit:   | 1.0                 |      |                     |      |                            | Prohibition Surcharge:         | \$0.00        |
|                      |                     |      |                     |      |                            | Expense Constant:              | \$0.00        |
| Policy Term:         | One Year            |      |                     |      |                            | Federal Policy Fee:            | \$30.00       |
| Replacement Cost:    | 800000.00           |      |                     |      |                            | Total Premium Due:             | \$2,620.00    |

## PART 2 Section 1

Insured Name: Donald McNeil  
Additional Name: Gregory M  
Gottschlich  
Quote ID: 206187893  
Travelers Agency ID: 571112265

## BASEMENT INFORMATION

Units:Feet Above Floor:

Furnace:  
Heat Pump:  
Elevator Equipment:  
Oil Tank:  
Hot Water Heater:  
Air Conditioner:  
Washer:  
Dryer:  
Food Freezer:  
Other:  
Other Description:

## GARAGE INFORMATION

Attached Garage: Yes  
Openings to Code: Yes  
Used for Parking/Storage/Access: Yes  
Garage Use Description:  
Garage Floor below floor of building: 6.0  
Garage Floor Elevation: 7.0

Units:Feet Above Floor:

Furnace:  
Heat Pump:  
Elevator Equipment:  
Oil Tank:  
Hot Water Heater:  
Air Conditioner:  
Washer:  
Dryer:  
Food Freezer:  
Other:  
Other Description:

## PART 2 Section 2

Insured Name: Donald McNeil  
Additional Name: Gregory M  
Gottschlich  
Quote ID: 206187893  
Travelers Agency ID: 571112265

## ELEVATED BUILDING

|                                  |                        |                                   |      |
|----------------------------------|------------------------|-----------------------------------|------|
| Building Constructed On:         | Piles, Posts, or Piers | Elevated Floor Feet above Ground: | 7.0  |
| Is there Enclosure:              | true                   | Enclosure Type:                   |      |
| Enclosure Square Feet:           | 2500                   | Enclosure Floor Elevation:        | 13.3 |
| Enclosure Wall/Type:             | Masonry Walls          | Openings to Code:                 | true |
| Used for Parking/Storage/Access: | true                   | Enclosure Use Description:        |      |

Units:Feet Above Floor:

Furnace:  
Heat Pump:  
Elevator Equipment:  
Oil Tank:  
Hot Water Heater:  
Air Conditioner:  
Washer:  
Dryer:  
Food Freezer:  
Other:  
Other Description:

## PART 2 Section 3

## MOBILE HOME INFORMATION

|                                |                                    |
|--------------------------------|------------------------------------|
| Make:                          | Model Number:                      |
| Serial Number:                 | Manufacture Date:                  |
| Dimensions (Length X Width):   | Permanent Additions or Extensions: |
| Properly Anchored:             | Type of Anchor:                    |
| Located in a Park/Subdivision: | Date Placed on Foundation:         |

## AGENCY INFORMATION

Insured Name: Donald McNeil  
Additional Name: Gregory M  
Gottschlich  
Quote ID: 206187893  
Travelers Agency ID: 571112265

Agency: SEACOAST INSURANCE INC  
Address: PO BOX 7048  
HILTON HEAD ISL, SC 29938

Phone: 843-681-4340

The above statements are correct to the best of my knowledge. The property owner and I understand that any false statements may be punishable by fine or imprisonment under applicable federal law.

Agent Signature \_\_\_\_\_ Date \_\_\_\_\_

## PAYMENT / SUBMISSION INFORMATION

TOTAL PREMIUM: 2620.00

If paying by check, please make  
check payable to: Travelers

Mail checks or supporting  
documentation, if any, to: Travelers Flood Insurance Program  
PO Box 34272  
Bethesda, MD 20827

12/02/2003 12:29:22 PM

EXH. 25

---

# LAURICH, DEEB & WISEMAN, P.A.

ATTORNEYS AND COUNSELORS AT LAW

1040 WILLIAM HILTON PARKWAY  
CIRCLE BUILDING, SUITE 200  
POST OFFICE DRAWER 6868  
HILTON HEAD ISLAND, SC 29938-6868  
PHONE: (843) 785-6868  
FAX: (843) 842-2552  
www.laurichdeeb.com  
EMAIL: bobd@laurichdeeb.com

## ATTORNEYS

EUGENE J. LAURICH  
ROBERT M. DEEB, JR.  
CHARLES H. WISEMAN  
PAULA M. KILGORE

## BLUFFTON OFFICE:

104 BUCKWALTER PARKWAY  
SUITE 1 F  
BLUFFTON, SC 29910  
PHONE: (843) 815-5522  
FAX: (843) 815-2568

December 8, 2006

## Via Mail

Dr. Donald L. McNeil  
2341 Lane Road  
Columbia, OH 43220

## Via Fax 513-769-2769 and Mail

Dr. Gregory M. Gottschlich  
3619 Vineyard Ridge  
Cincinnati, OH 45241

PLAINTIFF'S  
EXHIBIT

24 ck

Re: 48 Sea Lane, Hilton Head Island, SC

Dear Dr. McNeil and Dr. Gottschlich:

It was a pleasure speaking with both of you over the telephone recently. As I discussed in depth with Greg, I will speak with Strimpfel Builders and the Town of Hilton Head Island to determine what can be done with regard to the elevation of your Palmetto Dunes property. From the Town's perspective, we want to ensure that the Town will not obligate you to take any corrective action to raise the residence's minimum elevation. From Strimpfel Builder's perspective, we would like to determine what, if anything, Strimpfel Builders will do to rectify the improper elevation.

Also as I discussed with Greg, Closing on your purchase occurred on December 2, 2003. Accordingly, the statute of limitations for any claims you may have had against your Seller expired on December 2, 2006. I spoke with both of you on Friday, December 1, 2006. However, it was late in the day before I was able to pull the three year old file from our storage. I did not have an opportunity to review the file thoroughly until Monday, December 4, 2006.

I do not practice litigation and never have. I answer many phone calls from clients every day regarding real property issues that are not related to litigation. I did not anticipate the December 1 telephone call would require the need to file an immediate lawsuit to avoid a statute of limitation expiration.

L&D-00005  
ELS #79-58113

**LAURICH, DEEB & WISEMAN, P.A.**

Page 2

I have given Greg the names and telephone numbers of three litigation attorneys you may wish to consult regarding any possible claims you may have against the Seller, our firm, your insurance company, Strimpel Builders, or other parties which may have a role in this situation. Those attorneys are:

Stephen Carter, Esq., McNair Law Firm, Phone 843-785-2171

Richard Wieters, Esq., Wieters Law Firm, Phone 843-341-7000

Rick Haight, Esq., Minor, Haight and Arundell Law Firm, Phone 843-785-8040

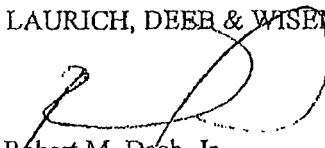
I will gladly assist with the Town and Strimpel Builders. If you do not wish me to proceed with this assistance, please let me know. Please note that our closing responsibilities include abstracting and reviewing title to the property to ensure that purchasers attain clear title to the property. We also receive all closing funds and disburse those funds to agents, lenders, South Carolina, Beaufort County and other parties at closing. Afterwards, we record all documents in the Beaufort County Register of Deeds Office, and subsequently forward the original, recorded documents back to the appropriate parties.

A review of the legal documentation does not customarily include elevation certificates. Insurance policies are usually obtained by purchasers directly from insurance agents and it appears that our paralegal Leslee Thomas obtained an elevation certificate from the Seller's attorney and forwarded the same on to Dr. McNeil prior to Closing to prepay insurance premiums. I will keep you updated as to my progress with this unique issue. Of course, call me at any time should you have any questions regarding the residence's elevation or any of the issues raised in this correspondence.

With best regards, I am

Very truly yours,

LAURICH, DEEB & WISEMAN, P.A.



Robert M. Deeb, Jr.

RMD:dc

M:\RMD\Correspondence 2006\McNeil-Gottschlich 03-2025.wpd

L&D-00006  
ELS #79-58113



EXH. 26

Agency Name: SEACOAST INSURANCE INC.

Date: 12/09/2009 Page 7 of 30

Activity List  
1/1/1999 to 12/15/2010

| Action                                                 | Date/Time | By    | Policy     | Claim/Loss Date | Co                      | Policy Term           | Exec  | Tran | Effective  | System Date          |
|--------------------------------------------------------|-----------|-------|------------|-----------------|-------------------------|-----------------------|-------|------|------------|----------------------|
| Description: [Category]=Memos<br>[Title]=Check Request |           |       |            |                 |                         |                       |       |      |            |                      |
| g Form Letter                                          | 12/7/2004 | FRIDA | 6004878572 |                 | Travelers Flood Insuran | 12/3/2003 - 12/3/2004 | TEENA | PCH  | 12/03/2004 | 12/7/2004 12:11:37PM |
| Type of Bus: Personal Lines                            |           |       |            |                 |                         |                       |       |      |            |                      |
| Description: [Category]=Memos<br>[Title]=Check Request |           |       |            |                 |                         |                       |       |      |            |                      |

12/14/2004

Center: Customer Name: McNeil Gregory M Gottschlich and Dr Don

|       |            |      |            |                         |                       |       |     |            |                       |
|-------|------------|------|------------|-------------------------|-----------------------|-------|-----|------------|-----------------------|
| Notes | 12/14/2004 | COOK | 6004878572 | Travelers Flood Insuran | 12/3/2003 - 12/3/2004 | TEENA | PCH | 12/03/2004 | 12/14/2004 10:53:41AM |
|-------|------------|------|------------|-------------------------|-----------------------|-------|-----|------------|-----------------------|

Type of Bus: Personal Lines

Description: Called surveyor today regarding the fact that the home was built below the base flood elevation. At the time the home was built (1988) the bfe was 14ft. There is nothing that we can do to re-underwrite the policy and improve the premium amount for the insured. The base flood elevation changed from 12ft to 14ft in 1986. KJ 12/14/2004

|             |            |       |           |                       |                         |       |     |            |                      |
|-------------|------------|-------|-----------|-----------------------|-------------------------|-------|-----|------------|----------------------|
| Policy Memo | 12/14/2004 | HOVER | 005667400 | South Carolina Wind & | 12/26/2003 - 12/26/2004 | TEENA | PCH | 12/03/2004 | 12/14/2004 5:28:27PM |
|-------------|------------|-------|-----------|-----------------------|-------------------------|-------|-----|------------|----------------------|

Type of Bus: Personal Lines

Description: Policy Change Request, First Request, Correct Name &amp; 1st Mortgagee

|             |            |       |           |                       |                         |       |     |            |                      |
|-------------|------------|-------|-----------|-----------------------|-------------------------|-------|-----|------------|----------------------|
| Policy Memo | 12/14/2004 | HOVER | 005667400 | South Carolina Wind & | 12/26/2003 - 12/26/2004 | TEENA | PCH | 12/03/2004 | 12/14/2004 5:28:53PM |
|-------------|------------|-------|-----------|-----------------------|-------------------------|-------|-----|------------|----------------------|

Type of Bus: Personal Lines

Description: Policy Change Request, First Request, Change Mailing Address

|               |            |       |            |                         |                       |       |     |            |                      |
|---------------|------------|-------|------------|-------------------------|-----------------------|-------|-----|------------|----------------------|
| Policy Change | 12/14/2004 | HOVER | 6004878572 | Travelers Flood Insuran | 12/3/2003 - 12/3/2004 | TEENA | PCH | 12/03/2004 | 12/14/2004 5:30:01PM |
|---------------|------------|-------|------------|-------------------------|-----------------------|-------|-----|------------|----------------------|

Type of Bus: Personal Lines

Description: Change 1st &amp; 2nd Mortgagee

|             |            |       |            |                         |                       |       |     |            |                      |
|-------------|------------|-------|------------|-------------------------|-----------------------|-------|-----|------------|----------------------|
| Policy Memo | 12/14/2004 | HOVER | 6004878572 | Travelers Flood Insuran | 12/3/2003 - 12/3/2004 | TEENA | PCH | 12/03/2004 | 12/14/2004 5:30:28PM |
|-------------|------------|-------|------------|-------------------------|-----------------------|-------|-----|------------|----------------------|

Type of Bus: Personal Lines

Description: Policy Change Request, First Request, Change Mailing Address

|               |            |       |            |                         |                       |       |     |            |                      |
|---------------|------------|-------|------------|-------------------------|-----------------------|-------|-----|------------|----------------------|
| Policy Change | 12/14/2004 | HOVER | 6004878572 | Travelers Flood Insuran | 12/3/2003 - 12/3/2004 | TEENA | PCH | 12/03/2004 | 12/14/2004 5:37:54PM |
|---------------|------------|-------|------------|-------------------------|-----------------------|-------|-----|------------|----------------------|

Type of Bus: Personal Lines

Description: Correct Name &amp; 1st Mortgagee

12/20/2004

EXH. 27

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 COPY

Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

3

4 GREGORY M. GOTTSCHLICH and DONALD  
5 L. McNEIL,

6

7 Plaintiff,

8 vs.

9 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH  
10 A. REEVE; JERRY L. RICHARDSON; COASTAL  
11 SURVEYING CO., INC.; THOMAS N. DYE;  
12 JAN H. DYE; KEN OLIVER; THE BYRNE  
13 CORPORATION d/b/a DUNES MARKETING GROUP;  
14 LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.;  
15 and CHARLES H. WISEMAN,

16 Defendants.

17

18 DEPOSITION OF  
19 PATRICIA R. FARRELL

20

21 DATE: SEPTEMBER 21, 2009

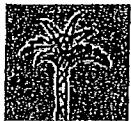
22 TIME: 1:34 p.m. - 4:53 p.m.

23 LOCATION: Tupper, Grimsley & Dean, P.A.  
24 611 Bay Street  
25 Beaufort, South Carolina

REPORTED BY: Beth Walters Kornuta

21

22 \*\*\*\*\*

23  PALMETTO STATE COURT REPORTERS  
24 P. O. Box 50488  
25 Summerville, SC 29485  
843.670.1637 Fax: 843.486.0064  
Palmettostatecr@yahoo.com

1 notes, in the paper file.

2 Q In 2003, in the paper file, were files  
3 opened in last 2003 eventually scanned and put on  
4 the computer system?

5 A Eventually, yes, ma'am.

6 Q So the notes that you would have taken  
7 with your first contact with either Dr. McNeil or  
8 Gottschlich, those notes should have been scanned  
9 and should be a part of the file, correct?

10 A The scanning system was taking the  
11 important documents and scanned in. Whether notes  
12 were kept -- the history that I saw in our system  
13 now was strictly copies of the actual policies and  
14 application. I did not see anything that were  
15 notes.

16 Q Do you have any independent  
17 recollection of your conversation with Dr. McNeil  
18 or Dr. Gottschlich when they called to -- one or  
19 more of them called to ask you about insurance?

20 A No, ma'am.

21 Q In order to prepare a flood insurance  
22 application, what information did you have to  
23 receive from the insureds?

24 A An elevation certificate.

25 Q Anything else, in 2003?

1 R-E-E-X-A-M-I-N-A-T-I-O-N

2 BY MS. WALL:

3 Q I'm going to hand you what we'll mark  
4 as Exhibit No. 9, for purposes of completeness.

5 (Various Documents, Defendants Laurich &  
6 Deeb, P.A.'s, Robert M. Deeb, Jr.'s, and Charles  
7 H. Wiseman's Exhibit No. 9 is marked for  
8 identification.)

9 BY MS. WALL:

10 Q Some of those documents are already a  
11 part of Exhibit No. 3, but I hope now that these  
12 are in time order. And do you recognize these as  
13 being flood dwelling policy declaration, both  
14 renewal notices and endorsement notices for the  
15 property at issue, to McNeil and Gottschlich?

16 A Yes, ma'am.

17 Q And these would be sent directly from  
18 the Travelers to the insured, McNeil and  
19 Gottschlich, correct?

20 A Yes, ma'am.

21 Q And on each one of these it indicates,  
22 in the middle of every document, whether it's a  
23 renewal or an endorsement, that the elevation  
24 difference is minus one, correct?

25 A That's correct.

EXH. 28

 COPY

Page 1

1 STATE OF SOUTH CAROLINA ) COURT OF COMMON PLEAS  
2 COUNTY OF BEAUFORT ) Case No. 08-CP-07-0517

3  
4 GREGORY M. GOTTSCHLICH and DONALD  
5 L. McNEIL,

6 Plaintiff,

7 vs.

8 STRIMPFEL CUSTOM HOMES, INC.; JOSEPH  
9 A. REEVE; JERRY L. RICHARDSON; COASTAL  
10 SURVEYING CO., INC.; THOMAS N. DYE;  
11 JAN H. DYE; KEN OLIVER; THE BYRNE  
CORPORATION d/b/a DUNES MARKETING GROUP;  
LAURICH & DEEB, P.A.; ROBERT M. DEEB, JR.;  
and CHARLES H. WISEMAN,

12 Defendants.

13  
14 DEPOSITION OF  
15 THOMAS E. HARTNETT, GAA, CRB

16 DATE: OCTOBER 22, 2009

17 TIME: 10:10 a.m. - 12:47 p.m.

18 LOCATION: Parker Poe Adams & Bernstein, LLP  
19 200 Meeting Street, Suite 301  
Charleston, South Carolina

20 REPORTED BY: Beth Walters Kornuta

21

22 \*\*\*\*\*

23 PALMETTO STATE COURT REPORTERS  
P. O. Box 50488  
Summerville, SC 29485  
24 843.670.1637 Fax: 843.486.0064  
Palmettostatecr@yahoo.com

25



1       also assuming I was going to keep -- you were  
2       going to keep on going through it?

3                   MS. WALL: I am.

4                   MR. HUDSON: So can I take it all?

5                   MS. WALL: Sure. Here's your 4M.

6           A       Yes, ma'am, I do recognize this as the  
7       e-mail which he sent to me the two estimates to  
8       elevate the property.

9   BY MS. WALL:

10           Q       Did you, in looking at Exhibit 4M, did  
11       these materials form the basis of any of your  
12       opinions?

13           A       Absolutely.

14           Q       Were you aware that there were  
15       estimates before you received these in this  
16       e-mail? Had they been discussed with you?

17           A       If I remember correctly, yes, ma'am.  
18       I had asked about had there been any estimates to  
19       elevate the property.

20           Q       And why were you concerned with  
21       elevation of the property as a factor in your  
22       opinion?

23           A       Because in my opinion, that's the only  
24       cost to cure the problem that exists, and  
25       that's -- that's the way to cure it and that's the

1 cost to cure it. So that's the basis of my  
2 opinion as to ...

3 Q Is there any other way, in your  
4 opinion, to cure the elevation issue?

5 A Ms. Wall, if it's a code violation,  
6 and I understand it is at the Town of Hilton Head  
7 Island, I don't know of any other way to do it  
8 other than to elevate the property, to build up  
9 the first floor elevation.

10 Q What about building up the floor  
11 itself?

12 A Well, you still haven't solved that  
13 problem. I don't think -- you make it where, you  
14 know, your furniture and all will be a little bit  
15 higher, but I just don't think that solves the  
16 problem.

17 Q Why not?

18 A I just answered that. I just don't  
19 think it solves the problem. It's just -- you're  
20 going to have extra subflooring underneath it of  
21 eight inches. And to start with -- I just don't  
22 think it solves the problem.

23 Q All right. Elevation, is it measured  
24 to the height of the lowest finished floor?

25 MR. HUDSON: Objection.

1       supposed to be.

2           Q       All right. So it's your testimony  
3       that in order to meet the Town of Hilton Head  
4       code, it needs to be 14 feet one inch?

5           A       That's what I'm saying. The minimum  
6       elevation has to be 14 feet, so you want to be  
7       just a little bit above that. You're at 14 feet.  
8       But we argued about an inch, because I understood  
9       it to be in this document, it's 14 feet one inch.

10                 That's the primary element of damage,  
11       as far as I'm concerned. If that solves the  
12       problem, if that takes care of the problem and the  
13       cost of flood insurance is not excessive, if it  
14       meets the requirements of the Town of Hilton Head  
15       Island, then in my opinion the majority of the  
16       problem would go away.

17           Q       Let me back up and go through this  
18       with you. Is it your understanding that the code  
19       requirement in this flood zone in which this  
20       particular property in this lawsuit is located, is  
21       14 feet one inch?

22                 MR. HUDSON: Objection.

23           A       Well, the plat that I examined that  
24       was furnished to me said the minimum floor  
25       elevation of the first floor is 14 feet. That's

EXH. 29

Filters Used:  
1 Tagged Record

## Email Report

Form Format

Date Printed: 10/16/2009  
Time Printed: 9:58AM  
Printed By: TM

Date 10/15/2009 Time 4:36PM 4:36PM Duration 0.00 (hours) Code Email  
Subject RE: Gottschlich, et. al. v. Strimpfel Custom Homes, Inc., et. al. Staff John D Hudson  
Client Allergy & Asthma Affiliates MatterRef Gottschlich, Greg & Don McNeil MatterNo 000079-58113  
From tfhartnett@hotmail.com  
To John Hudson  
CC To  
BCC To  
Reminders (days before) Follow N Done N Notify Y Hide N Trigger N Private N Status  
User1 User3  
User2 User4

John:

Enjoyed being with you earlier this week. Hope your ride back to Columbia was safe and uneventful.

John I have thought over what you have asked me to do. I have also spoken with several of my colleagues in my industry. I am convinced that my job is simple. My opinion is that someone should have caught the fact that the property was below the minimum elevation and informed the purchaser.

Secondly, the measure of damage is somewhere between the two estimates you have forwarded to me for raising the house. This will be especially accurate if the Town of HHI insists that the code violation be corrected and fines the owner. If it is not, I don't need to be a rocket scientist and I don't have to go into a great deal of research. The damage to your client is the "COST TO CURE" and that is whatever it costs to correct the problem. There could be other relatively small losses like loss of use, moving expense, etc.

Stay in touch and keep me in the loop. Would like to get a copy of the deposition of the HHI official when it is completed.

Tommy Hartnett

Subject: Gottschlich, et. al. v. Strimpfel Custom Homes, Inc., et. al.  
Date: Wed, 14 Oct 2009 18:22:52 -0400  
From: jhudson@ellislawhorne.com  
To: tfhartnett@hotmail.com

Mr. Hartnett:

Attached please find a copy of the two repair estimates prepared by Lynas Construction, Inc. and Anchor Construction of Beaufort, Inc. respectively in the above matter.

HRC 1181  
ELS 78-58113



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

GREGORY M. GOTTSCHLICH &  
DONALD L. MCNEIL,

Plaintiffs,

v.

STRIMPFEL CUSTOM HOMES, INC;  
JOSEPH A. REEVE; JERRY L.  
RICHARDSON; COASTAL SURVEYING,  
CO. INC.; THOMAS N. DYE; JANET  
H. DYE; KEN OLIVER; THE BYRNE  
CORPORATION D/B/A DUNES  
MARKETING GROUP; LAURICH &  
DEEB, P.A.; ROBERT M. DEEB, JR;  
AND CHARLES H. WISEMAN,

Defendants.

IN THE COURT OF COMMON PLEAS  
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2008-CP-07-00517

MEMORANDUM IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT  
OF DEFENDANTS THE BYRNE  
CORPORATION AND OLIVER

09 DEC 17 PM 4:16  
JERAL AND ROSENEAU  
BEAUFORT COUNTY, S.C.  
CLERK OF COURT

The Defendants Ken Oliver and The Byrne Corporation d/b/a Dunes Marketing Group ("these Defendants"), by and through their undersigned attorney, submits this memorandum of law, and adopts by reference, to the extent that it assists these Defendants, the previously filed Motions for Summary Judgment (and the documents filed) by Defendants Strimpfel; Reeve; Laurich & Deeb, P.A.; Deeb; and Wiseman.

Attached to this Memorandum is a portion of the Deposition of the Plaintiff Donald L. McNeil, M.D. centering in upon Exhibit 2 to his deposition, and thus is equal to Plaintiff's Exhibit 25 (also attached). Essentially, Dr. McNeil states that he may or may not



have received the fax with the attached survey/elevation certificate and is unable to state one way or the other. Depo of Donald McNeil, p. 49, line 15- p. 51, line 4. In other words, he can not refute the fact that delivery of such occurred on or about November 26, 2003, which is 20 days after the recognition of the two Plaintiffs that they were dealing with these Defendants in a dual agency situation, which greatly limits the duties of these Defendants. Depo. Of William Baldwin, p. 151, lines 3-20. Closing on the house at 48 Sea Lane occurred in early December 2003. Depo of Donald McNeil, p. 69, lines 4-6. Thus, the receipt by one of the Plaintiffs of the survey/elevation certificate occurred prior to the Plaintiffs closing on their vacation house. Thus, like in Dorman v. Campbell, 331 S.C. 179, 500 S.E.2d 786 (1998), it puts them on notice and, as a result, blocks their recovery against these Defendants.

#### STATUTE OF LIMITATIONS

In addition to the above, the factual setting and the documents submitted by Defendants Laurich & Deeb, P.A.; Deeb; and Wiseman ("Defendant attorneys") clearly show that the Plaintiffs knew, had constructive knowledge of, or at the very least should have known that the elevation on the house at 48 Sea Lane on Hilton Head was a negative elevation much before the filing of the original Complaint in this case. The Plaintiffs' filing of the first Complaint, as can be seen from the court's file, occurred on

February 18, 2008. The Defendant attorneys, on November 26, 2003 faxed a "copy of Elevation Cert which your Ins. Co will need to give you a quote on the Flood Ins. [sic]." This fax (attached, showing as Plaintiff's Exhibit 25), is addressed to Plaintiff Dr. McNeil, but also shows the fax number of the other Plaintiff, Dr. Gottschlich. Thus, the Plaintiffs knew of the negative elevation more than four (4) years prior to the filing of their Complaint.

The Plaintiffs' actions or inactions here are subject to the three (3) year statute of limitations pursuant to S.C.Code Ann. § 15-3-530(5) (Supp.1997). Further, they are subject to the discovery rule provision of S.C.Code Ann. § 15-3-535 (Supp.1997) (providing actions initiated under S. C. Code Ann. § 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action). It is clear that from the Plaintiffs' depositions and from the Plaintiffs' actions and inactions that these Defendants should be granted summary judgment in this case, particularly based upon the statute of limitations.

The exercise of reasonable diligence means that an injured party must act promptly where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point, and not when advice of counsel is sought or a full-blown theory of recovery developed. Snell v. Columbia Gun Exchange, Inc., 276 S.C. 301, 278 S.E.2d 333 (1981); Brown v. Pearson, 326



S.C. 409, 483 S.E.2d 477 (Ct.App.1997). The date on which discovery should have been made is an objective rather than subjective question. Kreutner v. David, 320 S.C. 283, 465 S.E.2d 88 (1995). Therefore, the statutory period of limitations begins to run when a person could or should have known, through the exercise of reasonable diligence, that a cause of action might exist in his or her favor, rather than when a person obtains actual knowledge of either the potential claim or of the facts giving rise thereto. Burgess v. American Cancer Society, 300 S.C. 182, 386 S.E.2d 798 (Ct. App.1989). Moreover, the fact that the injured party may not comprehend the full extent of the damage is immaterial. Dean v. Ruscon Corporation, 321 S.C. 360, 468 S.E.2d 645 (1996).

Dorman v. Campbell, 331 S.C. 179, 184-185, 500 S.E.2d 786, 789 (1998). The Plaintiffs purchased basic flood insurance, but in this case allege that, after the closing, were unable to purchase excess flood insurance some two (2) years later. Thus, the Dorman case, which also deals with flood elevations, real estate agents and the statute of limitations is particularly relevant in this case.

#### CAUSES OF ACTION ALLEGED AGAINST THESE DEFENDANTS

[ONE] NEGLIGENT MISREPRESENTATION: Regarding this cause of action, in Ralph King Anderson, Jr. South Carolina Requests to Charge-Civil<sup>1</sup> section 30-1 it states that in South Carolina "[r]ecovery in negligent misrepresentation cases is based upon negligent conduct and predicated upon a negligently made false

---

<sup>1</sup> Unless otherwise stated, this book is used throughout.

statement where a party suffers either injury or loss as a consequence of relying upon the misrepresentation" and sets forth the following as elements:

To recover in a negligent misrepresentation action, the Plaintiff must prove:

(1) the Defendant made a false representation to the Plaintiff (There must be a false representation of material fact. The representation must relate to a present or pre-existing fact and be false when made);

(2) the Defendant had a pecuniary interest in making the statement ("Pecuniary interest" is defined as a "direct interest related to money in an action or case.");

(3) the Defendant owed a duty of care to see that he communicated truthful information to the Plaintiff (A duty of care is that standard of conduct the law requires of an actor in order to protect others against the risk of harm from his actions. In South Carolina, "it is elementary that a [real estate] broker . . . is bound to disclose all material facts and to exercise reasonable skill and diligence in the transaction of business entrusted to him; and that he will be responsible for any loss resulting from his failure to do so.");

(4) the Defendant breached that duty by failing to exercise due care;

(5) the Plaintiff justifiably relied on the representation (The

Plaintiff must establish his reliance on the misrepresentation was reasonable. There can be no reasonable reliance on a misstatement if the Plaintiff knows the truth of the matter. A determination of justifiable reliance involves the evaluation of the totality of the circumstances, including the positions and relations of the parties. There can be no reasonable reliance on a misstatement if the Plaintiff knows the truth of the matter. There is no liability for negligent misrepresentation which involves casual statements, representations as to matters of law, or matters which the Plaintiff could ascertain on his own in the exercise of due diligence.); and

(6) the Plaintiff suffered a pecuniary loss as a direct and proximate result of his reliance on the defendant's representation.

Here, these Defendants did not make a representation (the Contract of Sale specifically disclaims any representation by these Defendants as the involved real estate agents) and thus Negligent Misrepresentation is not viable, nor is number [TWO] belo

[TWO] VIOLATION OF THE RESIDENTIAL PROPERTY CONDITION DISCLOSURE ACT: These Defendants were not a signatory to the Disclosure and thus only the Dye Defendants, as the sellers, would be liable for this cause of action, which sounds in Negligent Misrepresentation.

[THREE] NEGLIGENCE: Here the Plaintiffs claim that five Defendants were negligent in providing (not making) "untruthful,

inaccurate material information or failed to provide truthful, accurate information" and thus this cause of action is similar in tone and in allegations to number [ONE] above, which sounds in Negligent Misrepresentation.

[FOUR] BREACH OF CONTRACT AND [FIVE] BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT: As these Defendants were not signatories of the Contract of Sale, the Plaintiffs allege they "facilitated the formation of a binding real estate contract," which is not a cause of action for Breach of Contract, nor of Breach of Contract Accompanied by a Fraudulent Act, as those causes of action would require these Defendants to be a party to the contract. Here, the parties to the contract were only the Plaintiffs and the Dye Defendants, and clearly not these Defendants.

[FIVE] VIOLATION OF THE UNFAIR TRADE PRACTICES ACT ("UTPA"): Section 39-5-140(a) of the South Carolina Code authorizes recovery only when the Plaintiff has suffered "any ascertainable loss of money or property . . . as a result of the use or employment by another person of an unfair or deceptive method, act or practice." To recover pursuant to the Unfair Trade Practices Act, the Plaintiff must prove...: (1) a violation of the Unfair Trade Practices Act; (2) proximate cause; and (3) damages. The act or practice complained of must be unfair or deceptive. Whether an act or practice is unfair or deceptive within the meaning of the Act

depends upon the surrounding facts and the impact of the transaction on the marketplace. It need not be based on a binding contract. Where a contract exists, a mere breach of the contract is not conduct which violates the Act. Proof of common law fraud is not required to establish a violation. However, to be actionable under the Act, the unfair or deceptive act or practice complained of must have an impact on the public interest. Unfair or deceptive acts or practices in the conduct of trade or commerce have an impact upon the public interest if the acts or practices have the potential for repetition. The potential for repetition may be shown in two ways: (1) by showing the same kind of actions occurred in the past, thus making it likely they will continue to occur absent deterrence; or (2) by showing the company's procedures create a potential for repetition of the unfair and deceptive acts. These are not the only means for showing potential repetition. See Clarkson v. Orkin Exterminating Co., 761 F.2d 189 (4th Cir. 1985); Crary v. Diebelli, 329 S.C. 385, 496 S.E.2d 21 (1998); York v. Conway Ford, Inc., 325 S.C. 170, 480 S.E.2d 726 (1997) (alleged acts or practices have the potential for repetition where Defendant remains in the same business and faced with opportunities to repeat the conduct); Taylor v. Medenica, 324 S.C. 200, 479 S.E.2d 35 (1996); Daisy Outdoor Advertising Co. v. Abbott, 322 S.C. 489, 473 S.E.2d 47 (1996) (evidence of a potential for repetition, generally speaking, establishes the required public

impact); Foggie v. CSX Transp., Inc., 313 S.C. 98, 431 S.E.2d 587 (1993); ...Jefferies v. Phillips, 316 S.C. 523, 451 S.E.2d 21 (Ct. App. 1994) (to be actionable under UTPA, unfair or deceptive practice or act must adversely affect public interest; conduct which only affects parties to transaction provides no basis for UTPA claim); ...Noack Enters., Inc. v. Country Corner Interiors, 290 S.C. 475, 351 S.E.2d 347 (Ct. App. 1986); S.C. Code Ann. § 39-5-10(b) (1985); S.C. Code Ann. § 39-5-20(a) (1985); S.C. Code Ann. § 39-5-140 (1985); Michael G. Sullivan, *Elements of Civil Causes of Action* 249-255 (2000).

This UTPA cause of action is the rare cause of action in that it must be reviewed by a judge before it is submitted to a jury, as it must meet the heavier standards of proof and, if allowed, carries the possibility of treble damages and attorneys fees. As noted above, "conduct which only affects parties to the transaction provides no basis for UTPA claim." Jefferies. Thus, this cause of action is not met here based upon the allegations of the Plaintiffs and the lack of proof brought forward at any point thus far.

[SIX] CIVIL CONSPIRACY: A civil conspiracy consists of three elements: (1) a combination of two or more persons; (2) joining for the purpose of injuring the Plaintiff; and (3) which causes special damage to the Plaintiff. Conspiracy may be inferred from the nature of the acts, the relationship of the parties, the interests of the alleged conspirators, and other circumstances. Civil conspiracy is

an act which is by its very nature covert and clandestine and usually not susceptible of proof by direct evidence. Concert of action, amounting to a conspiracy, may be shown by circumstantial as well as direct evidence. In order to establish a civil conspiracy, direct or circumstantial evidence must be produced from which one may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise. A conspiracy is actionable only if overt acts pursuant to the common design proximately cause damage to the party bringing the action. See Lawson v. South Carolina Dep't of Corrections, 340 S.C. 346, 532 S.E.2d 259 (2000); Future Group, II v. Nationsbank, 324 S.C. 89, 478 S.E.2d 45 (1996); LaMotte v. Punch Line of Columbia, Inc., 296 S.C. 66, 370 S.E.2d 711 (1988); Todd v. South Carolina Farm Bureau Mut. Ins. Co., 276 S.C. 284, 278 S.E.2d 607 (1981); Charles v. Texas Co. (Charles II), 199 S.C. 156, 18 S.E.2d 719 (1942); Charles v. Texas Co. (Charles I), 192 S.C. 82, 5 S.E.2d 464 (1939); Robertson v. First Union Nat'l Bank, Op. No. 3491 (S.C. Ct. App. filed May 13, 2002) (Shearouse Adv. Sh. No. 15 at 60); First Union Nat'l Bank v. Soden, 333 S.C. 554, 511 S.E.2d 372 (Ct. App. 1998); Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987); Lee v. Chesterfield Gen. Hosp., Inc., 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986); 15A C.J.S. Conspiracy §§ 1-6 (1967); Michael G. Sullivan, Elements of Civil Causes of Action 41-45 (2000).

Frankly, the proof of a conspiracy on the facts presented here would have to go back almost 20 years, based upon the three (3) Defendants Strimpfel Custom Homes; Coastal Surveying, Inc.; and Joseph A. Reeve who were involved in the original construction of this home.

[SEVEN] BREACH OF FIDUCIARY DUTY: "A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A confidential or fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. To constitute a fiduciary relationship, the relationship must be more than a casual one. As a general rule, a fiduciary relationship cannot be established by the unilateral action of one party. The other party must have actually accepted or induced the confidence placed in him." See SSI Medical Servs., Inc. v. Cox, 301 S.C. 493, 392 S.E.2d 789 (1990); In re Estate of Cumbee, 333 S.C. 664, 511 S.E.2d 390 (Ct. App. 1999); Brown v. Pearson, 326 S.C. 409, 483 S.E.2d 477 (Ct. App. 1997); Chapman v. Citizens and Southern Nat'l Bank, 302 S.C. 469, 395 S.E.2d 446 (Ct. App. 1990); Steele v. Victory Sav. Bank, 295 S.C. 290, 368 S.E.2d 91 (Ct. App. 1988); Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987). "Parties in a fiduciary relationship must fully disclose to each other all



known information that is significant and material." See Anthony v. Padmar, Inc., 320 S.C. 436, 465 S.E.2d 745 (Ct. App. 1995).

With these Defendant not having any knowledge of the elevation and not having received a copy of the survey (which survey shows in the middle of the outline of the house an indication that the house is at 13.3 feet), there is no breach of the fiduciary duty, even if a fiduciary duty existed here between the Plaintiffs and these Defendants Dunes Marketing and Oliver, when a dual agency existed between them, which goes against the finding of a fiduciary duty.

[EIGHT] FRAUD: Fraud occurs where one person or party intentionally deceives another by word or conduct for the purpose of inducing that other party to part with some property or surrender some legal right and the party thereby accomplishes his purpose. It involves the elements of dishonesty and deceit. Fraud involves deceitful practices in depriving or endeavoring to deprive another of his known rights by means of some artful device or plan contrary to the plain rules of common honesty. Fraud, in its general sense, comprises anything calculated to deceive, including all acts, omissions and concealments involving a breach of legal or equitable duty, trust, or confidence justly reposed and resulting in damage to another. In South Carolina, all nine elements of fraud must be proved by clear and convincing evidence (a higher burden of proof), which does not appear here, as fraud requires a representation that must have been reasonably relied upon. Here,

as previously pointed out, these Defendant made no representation as to the flood elevation of the house and these Defendants also had no notice or knowledge of it being below the required 14 feet.

[NINE] CONSTRUCTIVE FRAUD is a breach of a legal or equitable duty which, irrespective of the moral guilt of the person committing fraud, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. To establish constructive fraud, all elements of actual fraud, except the element of intent, must be established. The Plaintiffs must prove every element of their case, again, by clear, cogent and convincing evidence. Constructive fraud is distinguished from fraud by the absence of the element of intent to deceive. Unlike actual fraud, neither actual dishonesty of purpose nor intent to deceive is an element of constructive fraud. Instead, it is sufficient that it be alleged the Defendant ought to have known the falsity of the misrepresentation. In a constructive fraud case involving an arm's length transaction between mature, educated individuals, there is no right to rely absent a confidential or fiduciary relationship. This is especially true in circumstances where one should have utilized precaution and protection to safeguard his interests. To establish constructive fraud, all elements of actual fraud, except the element of intent, must be established. See O'Quinn v. Beach Assocs., 272 S.C. 95, 249 S.E.2d

734 (1978); Singleton v. Mullins Lumber Co., 234 S.C. 330, 108 S.E.2d 414 (1959); Greene v. Brown, 199 S.C. 218, 19 S.E.2d 114 (1942); Ardis v. Cox, 314 S.C. 512, 431 S.E.2d 267 (Ct. App. 1993); Woods v. State, 314 S.C. 501, 431 S.E.2d 260 (Ct. App. 1993); Designer Showrooms, Inc. v. Kelley, 304 S.C. 478, 405 S.E.2d 417 (Ct. App. 1991); Giles v. Lanford & Gibson, Inc., 285 S.C. 285, 328 S.E.2d 916 (Ct. App. 1985); Michael G. Sullivan, Elements of Civil Causes of Action 47-57 (2000).

APPLICABLE REAL ESTATE LAW

In S. C. Code Ann. § 40-57-137(F), it states the following:

(F) A licensee who represents a seller shall treat all prospective buyers honestly and may not knowingly give them false or misleading information about the condition of the property which is known to the licensee or, when acting in a reasonable manner, should have been known to the licensee. Notwithstanding another provision of law, no cause of action may be brought against a seller's agent that has truthfully disclosed to a buyer any known material defect including, but not limited to, moisture or mold problems and conditions. No cause of action may be brought against a real estate licensee by a seller for information contained in reports or opinions prepared by an engineer, land surveyor, geologist, wood destroying inspection control expert, termite inspector, mortgage broker, home inspector or other home inspection expert, or other similar reports. A seller's agent is not obligated to discover latent

defects in property or to advise the agent's clients on matters outside the scope of the agent's real estate expertise. A seller's agent, the company, and the broker-in-charge are not liable to a buyer for providing the buyer with false or misleading information if that information was provided to the licensee by his client and the licensee did not know or have reasonable cause to suspect the information was false or incomplete..

Id.

In the deposition of the Rule 30(b)(6) of The Byrne Corporation d/b/a Dunes Marketing Group, William Baldwin was presented for deposition. Depo of Baldwin, p. 7, line 15. He noted that it is the requirement of the Town of Hilton Head to ensure the first floor is above the required elevation before the Town issues a Certificate of Occupancy. Id., p. 81, lines 12-20; p. 82, lines 4-9. He notes that attorney Cary Griffin provided a survey to the Plaintiffs' closing attorneys (the Defendant attorneys here) on or about November 16, 2003. Id., pp. 173-75. None of the involved real estate agents with Dunes Marketing Group received a copy of the survey which apparently was only sent to the Defendant attorneys by attorney Cary Griffin. Id., p. 177, lines 2-19. Certainly without having this knowledge, there was no information that these Defendants had, which they could indeed tell or impart to the Plaintiffs. "My testimony is that we did not receive it." Id., p. 181, line 11. It is

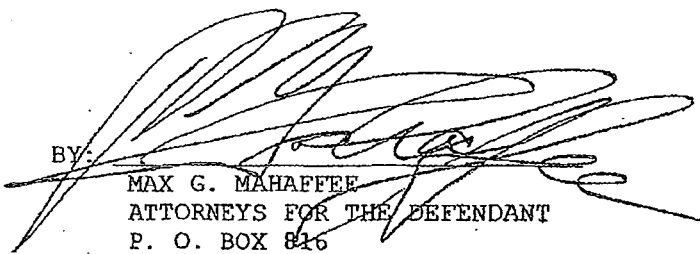
uncontested that Defendant Dunes Marketing did not ever receive a copy of the Sea Island Land Survey dated March 28, 2001 until after this lawsuit was begun. Id., p. 181, lines 14-19.

SUMMARY JUDGMENT

Summary judgment is appropriate where it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Hamiter v. Retirement Division of the South Carolina Budget and Control Board, 326 S.C. 93, 484 S.E.2d 586 (1997).

Earlier on in this Memorandum the relevant portions of South Carolina law was set forth regarding the statute of limitations and its parameters. Based upon that law and the other law applicable to this case, these Defendants should be granted summary judgment.

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Charleston, South Carolina

December 15, 2009

Certified Copy

State of South Carolina  
County of Beaufort  
IN THE COURT OF COMMON PLEAS  
FOR THE FOURTEENTH JUDICIAL CIRCUIT

GREGORY M. GOTTSCHLICH and  
DONALD L. McNEIL,

Plaintiffs,

Civil Action No.:  
2008-CP-07-00517

vs.

STRIMPFEL CUSTOM HOMES,  
INC., et al.,

Defendants.

DEPOSITION OF  
DONALD L. McNEIL, M.D.

July 31, 2009  
8:35 a.m.

Midwest Asthma & Allergy Associates  
8080 Ravines Edge Court  
2nd Floor  
Columbus, Ohio

Elaine S. Newlin,  
Registered Professional Reporter and Notary Public



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1 page that's entitled Occupancy?

2 A I believe I read it, yes.

3 Q And did you have the understanding after  
4 reading that that the borrower, of course you  
5 were one of the borrowers, was not to enter  
6 into an agreement to rent the property?

7 MS. WALL: Object to the  
8 form.

9 A I can't say that I recall at the time looking  
10 at that and realizing that it meant anything --  
11 anything at the time. It was not an item that  
12 came to mind then, so if you're asking me did I  
13 notice it and did I pay attention to it at the  
14 time, my answer is no.

15 Q If you would look at Exhibit 2, please, sir.

16 A Okay.

17  
18 (Defendants' Deposition Exhibit No. 2 was  
19 previously marked.)

20  
21 Q And that's a three-page document; am I correct?

22 A Yes.

23 Q And you see that on the fax sheet it says "To:  
24 Dr. McNeil. Dated: 11-26-03"?

25 A Yes.



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1 Q And it talks about a copy of Elevation  
2 Certificate which your insurance company will  
3 need to give you a quote on the flood  
4 insurance. Do you see that?

5 A I do.

6 Q Did you receive this document or this fax,  
7 excuse me, on or about November 26th, 2003?

8 A I don't recall receiving this, Mr. Mahaffee. I  
9 may have received it or I may not. I just do  
10 not recall.

11 Q And do you see, is there an Elevation  
12 Certificate which is attached to that?

13 A I believe this is a survey, not an Elevation  
14 Certificate.

15 Q And did you prior to closing receive an  
16 Elevation Certificate that showed 13.3 feet?

17 A I don't recall ever receiving one. I may have,  
18 but I may not have. I just do not recall.

19 Q Do you recall in your conversations with  
20 Dr. Gottschlich if he had received an Elevation  
21 Certificate prior to closing?

22 A I don't recall ever having a conversation with  
23 Dr. Gottschlich in those terms.

24 Q Did you have a conversation with anybody else  
25 other than your attorney regarding the



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1 possibility of you and/or Dr. Gottschlich  
2 having received a 13.3 foot Elevation  
3 Certificate prior to closing?

4 A No, I do not recall having a conversation with  
5 anyone about that.

6 Q All right. And if you would, take a look at I  
7 believe this is Exhibit 9, Dr. McNeil. It's a  
8 multipage document.

9 A I have it.

10

11 (Defendants' Deposition Exhibit No. 9 was  
12 previously marked.)

13

14 Q All right, sir. And it looks like on the last  
15 page of that there's a block there for  
16 Purchaser's Acknowledgment. If you could find  
17 that and let me know.

18 A I have it.

19 Q Whose signature is that?

20 A That's the signature of my wife, Trudy McNeil.

21 Q And was she authorized to sign that on your  
22 behalf and on behalf of Dr. Gottschlich?

23 A Yes.

24 Q Did you at any time understand as is set forth  
25 in here that the representations were being



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1 A Yes.

2 MR. HUDSON: Object to the  
3 form.

4 Q When was closing on this house?

5 A I believe it was December 3rd or December 4th,  
6 2003.

7 Q And the letter from Cary Griffin was going to  
8 your attorney, your closing attorney?

9 A Yes.

10 Q And what knowledge or notice was being given  
11 from Cary Griffin to your attorneys or closing  
12 attorneys at that point?

13 MS. WALL: Object to the  
14 form. Also, if this is an exhibit, will you  
15 reference the exhibit number?

16 MR. MAHAFFEE: It's part of  
17 Number 2.

18 MS. WALL: Thank you.

19 A That information is the land survey on the  
20 property at 48 Sea Lane which was prepared for  
21 the Dyes and dated March 28th, 2001 which  
22 specified that the finished floor elevation was  
23 13.3 inches -- 13.3 feet. Excuse me.

24 Q Yes. Well, first off, do you have Exhibit 2 in  
25 front of you, Dr. McNeil, that we talked about



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1 earlier?

2 A Yes, I do.

3 Q And that letter that you referenced of November  
4 16th, 2003 from Attorney Cary Griffin to Robert  
5 Deeb dated December 16, 2003, is that the one  
6 you were referencing earlier?

7 A No. I'm referring to the letter November 16th,  
8 2003.

9 Q Okay. Yes, that's the same one. In other  
10 words, that's part of Exhibit 2?

11 A Yes. You said December.

12 Q Oh, I'm sorry. I'm sorry.

13 Which states, quote, "I am enclosing a  
14 copy of the recent survey that was completed,"  
15 end quote.

16 Wasn't that to put the purchasers as well  
17 as your attorneys on notice of that survey?

18 MR. HUDSON: Object to the  
19 form.

20 MS. WALL: Object to the  
21 form.

22 Q You could answer.

23 A Where does it say I'm enclosing the survey? I  
24 don't see that. Oh, I'm sorry. "I'm enclosing  
25 a copy of the recent survey." Excuse me. I



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1 see that now.

2 Q Yes. I just did not read all of it.

3 A And what was your question?

4 Q The survey that was involved showed the 13.3  
5 feet; in other words, the survey that was sent  
6 by Mr. Griffin to Mr. Deeb?

7 A Yes.

8 Q And was that to put everyone, specifically your  
9 closing attorney, on notice of the contents of  
10 that survey which was being sent with the --

11 MS. WALL: Object to  
12 the form.

13 A I'm not sure what you are saying when you ask  
14 put them on notice. My interpretation is that  
15 he was sharing information on the elevation  
16 survey, and if that's what you mean by putting  
17 them on notice, then the answer is yes.

18 Q And so you had said earlier that the documents  
19 or information that you had that showed that  
20 Dunes Marketing was aware of the 13.3  
21 elevation, you referenced this letter --

22 A Yes.

23 Q -- in my earlier questioning, correct?

24 A Yes.

25 Q Okay. And any other information or documents



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1 other than this letter of November 16, 2003 to  
2 indicate or to prove that Ken Oliver and/or  
3 Dunes Marketing Group had notice of the 13.3  
4 elevation or the lower than proper elevation of  
5 the house?

6 A I'd have to think about that. It's possible  
7 that there were other documents, especially  
8 Elevation Certificates rather than just an  
9 elevation survey or property survey. I'm not  
10 sure that I can answer yea or nay to that  
11 question. There's a possibility there were  
12 other documents, yes.

13 Q Did you and/or Dr. Gottschlich ever discuss  
14 this letter of November 16, 2003 with Mr. Deeb,  
15 your closing attorney?

16 A No, I don't recall that that discussion ever  
17 occurred.

18 Q When was it that you received a copy of this  
19 November 16, 2003 letter from either Mr. Deeb  
20 or from any other source?

21 A It must have been soon after the dates on the  
22 letter. I would think sometime in December  
23 2006.

24 Q You said December 2006?

25 A Oh, I'm sorry. I'm looking at the wrong



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1 exhibit.

2 Q We're on Exhibit 2.

3 A Yes. You know, I think I saw this sometime  
4 during the preparation for this suit.

5 Q And did you in preparation for this lawsuit or  
6 for any other reason discuss this with Mr. Deeb  
7 and say, "You know, it had the survey that  
8 showed 13.3 feet. Why didn't you tell us?", or  
9 anything regarding that?

10 MS. WALL: Object to the  
11 form.

12 A No, I never had a conversation with Mr. Deeb  
13 about that.

14 Q Do you know if Dr. Gottschlich did?

15 A No, I don't believe he did either, but I can't  
16 say that for certain.

17 MR. MAHAFFEE: All right,  
18 sir. I think that's all the questions that I  
19 have of you, at least at this point,  
20 Dr. McNeil. I may have some later.

21 Rather than sitting here and flipping  
22 through papers or scratching my head, I'm going  
23 to pass you on to another attorney so that we  
24 can make the best use of our time. Thank you  
25 very much, sir.



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1 MS. WALL: Shall I go  
2 forward as I did with the other witness as  
3 examiner number 2?

4 MS. GRAHAM: That's fine  
5 with me, Susan.

6 MR. HAIGHT: Sure.

7 MS. WALL: All right.  
8 Thank you.

9 - - - - -

10 EXAMINATION OF DONALD L. McNEIL, M.D.

11 BY MS. WALL:

12 Q Doctor, my name is Susan Wall and I represent  
13 Laurich & Deeb, Mr. Deeb, Mr. Wiseman that  
14 you've named in this lawsuit and I will have  
15 some questions for you.

16 If at any time you don't understand what  
17 I'm saying, please let me know that, because  
18 under the Rules of Court, when you answer a  
19 question, we are entitled to understand that  
20 you in turn understood fully the question asked  
21 of you and fully and truthfully answered that  
22 question to the best of your ability. Do you  
23 understand that?

24 A Yes.

25 Q In looking back at Exhibit 2 which you were



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1 just asked about, Exhibit 21 and Exhibit 20, if  
2 you'll pull all three of those, please.

3 -----  
4 (Defendants' Deposition Exhibits Nos. 2,  
5 20 and 21 were previously marked.)  
6 -----

7 A I have Exhibit 2, Number 20 and Number 21.

8 Q Thank you.

9 From these documents, do we understand  
10 that as of November the 26th, 2003, you had  
11 received a copy of a survey, an Elevation  
12 Certificate and an appraisal on the house at  
13 issue? Correct?

14 MR. HUDSON: Object to the  
15 form.

16 Q You could answer it.

17 A No, I can't answer that yes or no. All I can  
18 say is that I may or may not have received it  
19 and I just do not recollect having received  
20 them.

21 Q All right. Let's look at the transmittal to  
22 you from Laurich & Deeb, Exhibit Number 20..  
23 That has in fact your name with a fax number  
24 614-846-6504. Is that one of your fax  
25 numbers --



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1 A That is the fax number of my --

2 Q -- in November 2003?

3 A That is the fax number of my business, yes.

4 Q Do you have any reason to believe that you did  
5 not receive this fax with the attachments?

6 A Again, I'm going to say that I may or may not  
7 have received it. This is a fax to my  
8 business. It's a busy fax machine with eight  
9 partners and it's quite possible that I didn't  
10 receive it.

11 Q Looking at Exhibit Number 2 with your name and  
12 fax number 614-846-6504, do you have any reason  
13 to believe that you did not receive a copy of  
14 that fax cover sheet with the appropriate  
15 attachments?

16 A Ms. Wall, my answer is the same. It is  
17 possible that I received it. I may have  
18 received it or I may not have received it. I  
19 do not recall. Now, do I have a reason to  
20 believe I may not? Yes.

21 Q Turning your attention to Exhibit Number 22.

22 A Okay.

23 Q You were the person who had the contact with  
24 Seacoast Insurance, Inc., an insurance agency  
25 in Hilton Head, in order to obtain flood



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1 insurance which was a requirement of your  
2 lender before closing, correct?

3 MR. HUDSON: Object to the  
4 form.

5 A I believe I was --

6 Q Is that correct?

7 A I believe I was one of two people that were  
8 required to be in contact with the insurance  
9 company. That's what I believe to be the  
10 truth, yes.

11 Q All right. Let me make sure my question is  
12 clear to you.

13 The insurance agency known as Seacoast  
14 was the group, the agency that was assisting  
15 you in obtaining flood insurance on this home  
16 before closing in 2003, correct?

17 A And I am going to say that they were the  
18 company in charge of assisting Greg and I in  
19 obtaining the flood insurance, yes, that is  
20 correct.

21 Q All right. And do we understand that you in  
22 fact were the point person with Seacoast  
23 Insurance, Inc., which is an insurance agency  
24 in Hilton Head, as opposed to Dr. Gottschlich?

25 MR. HUDSON: Object to the



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1 form.

2 A No, I don't believe that your statement is  
3 correct. It was Greg or it was me and I don't  
4 recall.

5 Q In looking at Exhibit Number 22, it indicates  
6 that the insured name is Donald McNeil with an  
7 additional name of Gregory Gottschlich. Do you  
8 see that?

9 A Just a moment. I have to get 22.

10 Yes, that is correct.

11 Q And do you recall having any contact with  
12 anyone at Seacoast Insurance Inc., the  
13 insurance agency, to obtain flood insurance?

14 A No, I do not recall having any conversation  
15 with Seacoast.

16 Q Do you recall providing to Seacoast a copy of  
17 the Elevation Certificate which they needed in  
18 order to obtain flood insurance for you and  
19 Dr. Gottschlich before the closing on that  
20 purchase?

21 A I do not recall. I may have done that or I may  
22 not have. I just do not recall.

23 Q Do you understand from Exhibit 22, page 2, that  
24 the source of the information that was placed  
25 on that document by Seacoast Insurance, Inc. in



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1 order to obtain Travelers flood insurance for  
2 this home was based upon an Elevation  
3 Certificate as it states on page 2? Do you  
4 understand that?

5 A Yes.

6 Q And does that help refresh your recollection  
7 that you or Dr. Gottschlich provided to  
8 Seacoast Insurance, Inc. a copy of the  
9 Elevation Certificate from which the  
10 information was filled out on this document?

11 MR. HUDSON: Object to the  
12 form.

13 A No, that doesn't refresh my memory at all. It  
14 is entirely possible that this information was  
15 conveyed to me and that I transferred it on  
16 according to whatever instructions that we see  
17 in these exhibits. I just do not recall.

18 Q Right. Did you receive a copy of Exhibit 22  
19 before closing so that you would know what  
20 premium was going to be charged to you and  
21 Dr. Gottschlich for flood insurance on this  
22 property?

23 A I do not recall seeing this document at the  
24 time of the closing.

25 Q How did you know how much you were going to pay



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PLAINTIFF'S  
EXHIBIT

25 CC

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PLEASE DELIVER THE FOLLOWING IMMEDIATELY:

TO: Dr. McNeil

DATE: 11/26/03

FAX NUMBER: (614) 846-6504

FROM: Erin For Leslie

RE: See attached

**FAXED**

3 pages

Copy of Elevation Cert which  
you Ins. Co will need to.  
give you a quote on the  
Flood Ins.

Mr. Gattaleia  
(Fax 513-733-8677)

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L&D-00079  
ELS #79-58118

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9 OAK FOREST ROAD, SUITE 200

BLUFFTON, SC 29910

PHONE: (843) 815-5522

FAX: (843) 815-2568

DEPOSITION  
EXHIBIT

*Gottschick 2*  
*alt*

PLEASE DELIVER THE FOLLOWING IMMEDIATELY:

TO:

*Dr. McNeil*

DATE:

*11/26/03*

FAX NUMBER:

*(614) 846-6504*

**FAXED**

FROM:

*Evin for Leslie*

*3 pages*

RE:

See attached

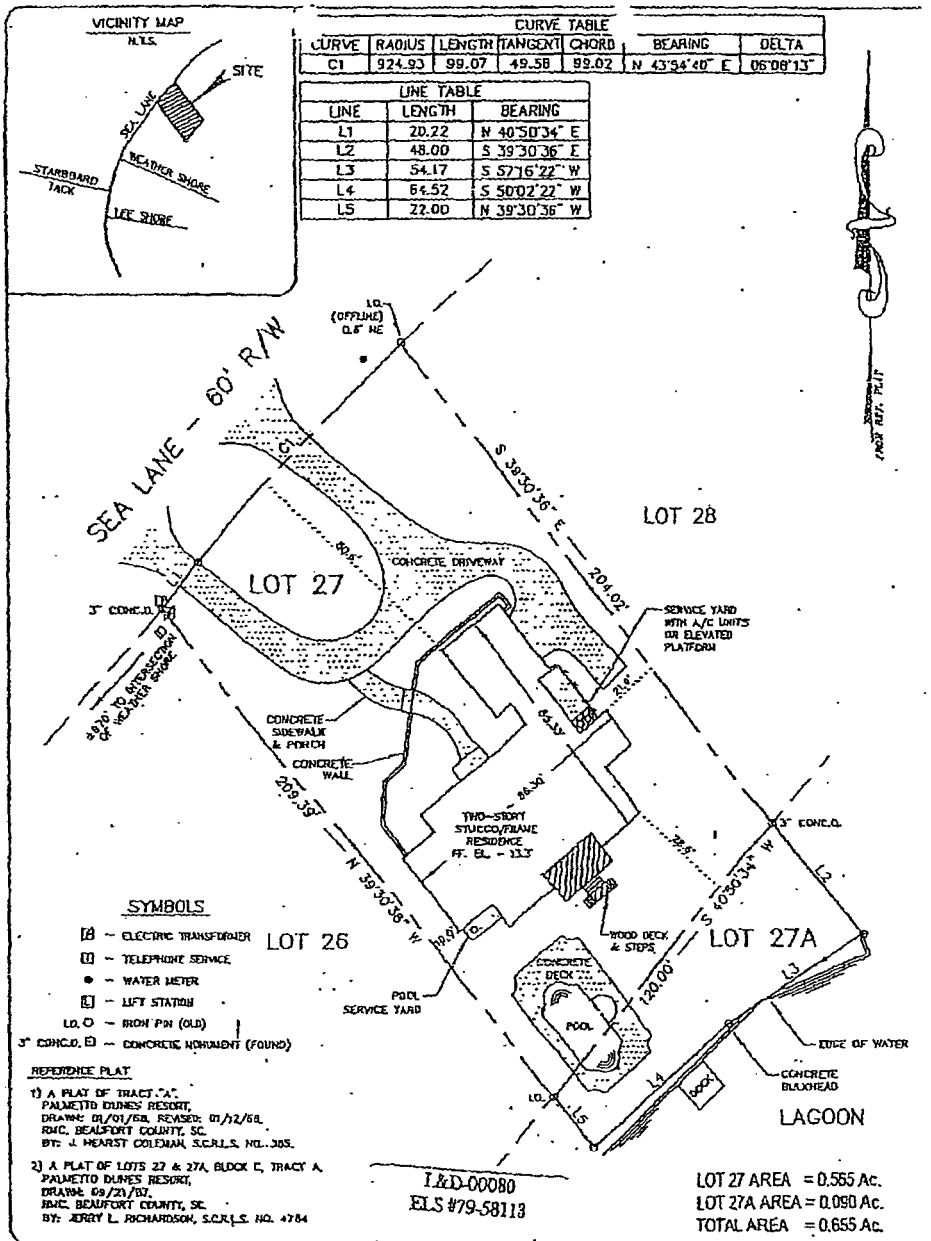
*Copy of Elevation Cert which  
your Ins. Co will need to  
give you a quote on the  
Flood Ins.*

*Mr. Gottschick*

*(Fax 513-733-8677)*

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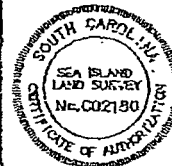
L&D-00079  
ELS #79-58113



SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988.

ADDRESS: 848 SEA LANE  
DIST.: 520, MAP: 12A, PARCEL: 168  
THIS PROPERTY LIES IN FEMA ZONE AT  
BASE ELEVATION = 14.0'

I HEREBY STATE THAT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, THE SURVEY SHOWN HEREON WAS MADE IN ACCORDANCE WITH THE REQUIREMENTS OF THE UNIFORM STANDARDS MANUAL FOR THE PRACTICE OF LAND SURVEYING IN SOUTH CAROLINA, AND MEETS OR EXCEEDS THE REQUIREMENTS FOR A CLASS A SURVEY AS SPECIFIED THEREIN.



NOT VALID UNLESS RECORDED

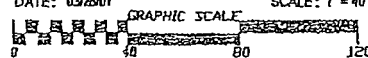
ASBUILT SURVEY OF:

LOT 27 & LOT 27A, TRACT A, PARCEL 3, BLOCK C,  
PALMETTO DUNES RESORT, HILTON HEAD ISLAND,  
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:  
THOMAS N. & JAN H. DYE

DATE: 03/28/01

SCALE: 1" = 40'



**SIS** Sea Island Land Survey

P.O. Box 21568, Hilton Head Island, SC 29925  
4-D Mathews Court, Hilton Head Island, SC 29926

Tel (843) 681-3248  
Fax (843) 684-3871

JOB No: 01096

FILE: 3-744



BETHEA, JORDAN & GRIFFIN, P.A.  
ATTORNEYS AND COUNSELORS AT LAW

SHELTER COVE EXECUTIVE PARK  
23-B SHELTER COVE LANE, SUITE 400  
HILTON HEAD ISLAND, SC 29928-3588

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P.O. DRAWER 3  
HILTON HEAD ISLAND, SC 29928-0003  
843.785.2171  
FAX: 843.686.5991

MAINLAND OFFICE:  
5 BELFAIR VILLAGE DRIVE  
BLUFFTON, SC 29910-2605  
843.815.2171  
FAX: 843.815.5991

JOSEPH R. BARKER  
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R. NICHOLAS FELIX  
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SARAH F. ROBERTSON  
TONYA L. SAYERS  
DAVID J. TIGGES

OF COUNSEL  
JOHN C. WEST

cgriffin@bjglaw.com

November 16, 2003

Robert M. Deeb, Jr., Esq.  
Laurich and Deeb, P.A.  
P.O. Box 6868  
Hilton Head Island, SC 29938

Re: Gottschlich and McNeil Acquisition 48 Sea Lane

Dear Bob:

I understand you represent the purchasers in the above captioned transaction. I represent the sellers. To assist you in your title examination, please note that the deed was recorded in Deed Book 1404 at Page 792. I show a mortgage in favor of Lighthouse at Book 1404, Page 795. I also pulled our file and I am enclosing a copy of the recent survey that was completed. Hopefully, this will be of some help to your client.

René Serrato will be working with me here at the office.

With best wishes, I am

Very truly yours,

BETHEA, JORDAN & GRIFFIN, P.A.

Cary S. Griffin

CSG:YI  
Enclosure

c: Mr. and Mrs. Thomas N. Dye  
Mr. Ken Oliver  
Mr. Greg Merrill

(318290.1)

L&D-00081  
ELS #79-58113



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

GREGORY M. GOTTSCHLICH and DONALD L. McNEIL,  
Plaintiffs,

vs. CIVIL ACTION NUMBER  
2008-CP-07-00517

STRIMPFEL CUSTOM HOMES, INC.; JOSEPH A. REEVE,  
JERRY L. RICHARDSON; COASTAL SURVEYING CO.,  
INC.; THOMAS N. DYE; JAN H. DYE; KEN OLIVER;  
THE BYRNE CORPORATION d/b/a DUNES MARKETING  
GROUP; LAURICH & DEEB, P.A.; ROBERT M. DEEB,  
JR.; and CHARLES H. WISEMAN,

Defendants.

COPY

The deposition of WILLIAM BALDWIN, a  
witness in the above-entitled cause, taken  
pursuant to Notice and agreement, before Ceil  
Weser, Certified Court Reporter and Notary  
Public, at the Offices of Coastal Court  
Reporting & Video, Inc., 1 Corpus Christie  
Place, 107 Executive Center, Hilton Head, South  
Carolina, on the 19th day of October, 2009,  
commencing at or about the hour of 10:12 a.m.

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 WILLIAM BALDWIN,

3 having been produced and first duly sworn as a  
4 witness, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. HUDSON:

7 Q Mr. Baldwin, we have met, but let me  
8 get your full name for the record, please, sir.

9 A William Warren Baldwin.

10 Q Mr. Baldwin, my name is John Hudson. I  
11 am a lawyer from Columbia, and I represent Greg  
12 Gottschlich and Don McNeil in this lawsuit that  
13 has been brought against Dunes Marketing Group,  
14 which I believe is legally identified as The  
15 Byrne Corporation; as well as Mr. Ken Oliver and  
16 a variety of defendants that arises out of a  
17 purchase of a piece of property in Palmetto  
18 Dunes in December of 2003.

19 I have noticed what is called a  
20 30(b)(6) deposition today of The Byrne  
21 Corporation; and it is my understanding that you  
22 have been identified as the lone designee to  
23 testify on behalf of The Byrne Corporation.

24 Is that your understanding of why you  
25 are here?

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 A That is correct.

3 Q A 30(b)(6) deposition is merely a  
4 procedural device that the South Carolina Rules  
5 of Civil Procedure provide for that allow  
6 lawyers to take the testimony of a partnership,  
7 a limited liability company or a corporation,  
8 because those legal entities cannot speak on  
9 behalf of themselves other than through their  
10 agents.

11 You have been identified as the  
12 representative to give testimony on behalf of  
13 The Byrne Corporation today, do you understand  
14 that?

15 A That is correct.

16 Q Let me show you please, sir, what I  
17 have previously served upon your lawyer.

18 I would ask you to take a look at that  
19 and let me know if you recognize that.

20 A I have already received a copy of this  
21 from our attorney. Because of its voluminous  
22 nature I can't tell whether or not everything is  
23 in here that I received, but I can assume that  
24 it is.

25 MR. HUDSON: Let me get that

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- 1 HUDSON - BALDWIN (DIRECT EXAMINATION)  
2 services to Benchmark Atlantic?  
3 A About a year.  
4 Q And you first started with The Byrne  
5 Corporation in 1983, is that correct?  
6 A Right.  
7 Q In what capacity?  
8 A As a sales agent.  
9 Q Then you worked as a sales agent for  
10 The Byrne Corporation until when?  
11 A 1985.  
12 Q In 1985 you became the director of  
13 sales and marketing for The Byrne Corporation,  
14 is that correct?  
15 A That is correct.  
16 Q And you served in that capacity  
17 continuously ever since?  
18 A Yes.  
19 Q Do you still currently hold your real  
20 estate license?  
21 A Oh, yes.  
22 Q And have you held that license  
23 continuously since you earned it in -- was it  
24 '80?  
25 A Yes, I have; although in 1984 or '85 it

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 was upgraded to a broker's license.

3 (Whereupon, a short break was  
4 taken.)

5 BY MR. HUDSON:

6 Q Mr. Baldwin, getting back to that line  
7 of questioning, I believe you stated you  
8 upgraded your real estate license to a broker's  
9 license in 1984, '85, is that correct?

10 A That is correct.

11 Q And you have maintained your broker's  
12 license continuously ever since then?

13 A Yes.

14 Q Have you ever had any disciplinary  
15 action taken against your real estate license?

16 A No.

17 Q Have you ever had any disciplinary  
18 action taken against your broker's license?

19 A No.

20 Q Never had your real estate license  
21 suspended for any period of time?

22 A No.

23 Q Never had your broker's license  
24 suspended for any period of time?

25 A No.

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 on it and pay it off in full, I would not have  
3 to have flood insurance?

4 A Yeah, sure.

5 Q Then could I then build that house to  
6 any height I so chose?

7 MR. MAHAFFEE: Objection.

8 THE WITNESS: I suppose you could  
9 if you don't want insurance, but I  
10 don't -- let me think about that a  
11 second, all right?

12 The town requires in order for you  
13 to get a Certificate of Occupancy that  
14 you must be at the first floor  
15 elevation that is required by federal  
16 law; so whether you pay cash or not is  
17 irrelevant. But you don't have to buy  
18 insurance, that is what I was saying.  
19 If you don't want to insure yourself  
20 you don't have to.

21 BY MR. HUDSON:

22 Q I will take this step one step further.  
23 That is why I asked you about the required  
24 height.

25 A You would still have to comply to the

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 required height in order to get a Certificate of  
3 Occupancy.

4 Q So if I failed to meet the required  
5 height at least from a first floor elevation  
6 standpoint, would it be your testimony that a  
7 Certificate of Occupancy should not be issued by  
8 the town on that house?

9 A That is correct.

10 Q How have you developed that  
11 understanding?

12 A Well, for one thing I built houses  
13 myself, and I know how the process works. Also,  
14 I am familiar with information that the town  
15 produces that we have had for sales meetings. I  
16 just don't have copies of it anymore, that  
17 stipulate what the steps are in order to  
18 complete a home; what the requirements are along  
19 the way, one of which is getting the elevation  
20 certificate.

21 Q Has the Town of Hilton Head Island ever  
22 sent representatives over to give a talk at any  
23 of these mandatory meetings that Dunes Marketing  
24 Group holds?

25 A No, but they have provided information

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 information to be provided to my clients and for  
3 them to execute it twice or could the agency --

4 A Maybe he gave them everything on 10/25  
5 and they didn't sign it and return it for  
6 whatever reason. I can't tell. But it appears  
7 as though on 11/6 he made sure he got all the  
8 documentation back from them.

9 Q Should Mr. Merrill have had any  
10 discussions with my clients about the  
11 ramifications of dual agency?

12 A He would have explained what it says in  
13 the pamphlet. And to be quite honest with you,  
14 if you read it the pamphlet is really  
15 self-explanatory.

16 Q How do you know he would have explained  
17 what is contained in the pamphlet?

18 A I don't.

19 Q He should have, though, correct?

20 MR. MAHAFFEE: Objection.

21 THE WITNESS: Yes, he should have.

22 BY MR. HUDSON:

23 Q Is it Dunes Marketing's custom or  
24 policy that agents explain anything above and  
25 beyond what is contained in the pamphlet?

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 A No.

3 Q For instance, should they explain how  
4 Dunes Marketing's duties will likely be limited  
5 by the dual agency?

6 A It says that in here.

7 Q Where?

8 A Well, what it says is that -- working  
9 with a dual agent is not the same as having your  
10 own exclusive agent.

11 For instance, when representing both a  
12 buyer and seller the dual agent must not  
13 disclose to one party confidential information  
14 obtained from the other party. Also a dual  
15 agent may not be the advocate for either party  
16 and cannot negotiate or advise either as to  
17 price or terms.

18 Q Is that the complete scope of the  
19 limitations?

20 A Yes.

21 Q So even in the context of the consent  
22 to dual agency, the duties of Dunes Marketing  
23 Group set forth in provision 6 C could and would  
24 still apply at least in part as shown on the  
25 exclusive buyer agency agreement, is that

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 correct?

3 A I think that is correct.

4 No, you wouldn't negotiate.

5 Other than that it is correct.

6 Q But you still could provide  
7 information?

8 A Yes.

9 Q Depending on the type?

10 A Yes.

11 Q Facts?

12 A Yes.

13 Q Advantages and disadvantages about a  
14 property, correct?

15 A That is correct.

16 Q And still could assist attorneys?

17 A Yes.

18 Q Lenders, et cetera in the closing of  
19 the property, correct?

20 A That is correct.

21 (Whereupon, Plaintiff's Exhibit

22 Number 9 was marked for

23 identification.)

24 BY MR. HUDSON:

25 Q I am showing you Exhibit 9.

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 I don't know if you recognize that?

3 A Yes, this is a typewritten contract  
4 between Gottschlich, McNeil and Dye for 48 Sea  
5 Lane.

6 Q Does this appear to be a copy of the  
7 contract that was ultimately entered into  
8 between my clients and the seller in this case?

9 A Yes.

10 Q Do you know who typed in the initial  
11 information contained in the first couple of  
12 paragraphs of this contract?

13 A No.

14 Q It appears that my client signed this  
15 contract on November 6 of 2003, correct?

16 A That is correct.

17 Q Toward the top portion of this contract  
18 it says Dunes Marketing Group, do you see that?

19 A Yes.

20 Q Did Dunes Marketing Group prepare this  
21 contract?

22 A I don't know.

23 Q Can we assume that?

24 A If you want to assume.

25 Q If I am wrong, tell me. If I should

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)  
2 for identification.)

3 BY MR. HUDSON:

4 Q I am showing you what we have marked as  
5 Exhibit 15.

6 Have you looked at it?

7 A Yes.

8 Q Have you seen this document before  
9 today?

10 A Yes. In fact we provided this letter.

11 Q You say "we", you mean Dunes Marketing  
12 Group?

13 A Yes.

14 Q Provided the letter to?

15 A We provided a copy of this letter, so  
16 did probably other people too because it went to  
17 different people.

18 Q And you would have provided this letter  
19 from the company's master file, is that correct?

20 A Yes.

21 My file and Ken's file.

22 Q Describe this document for me, please.

23 What is it?

24 A It is a letter from Cary Griffin to Bob  
25 Deeb regarding the transaction at 48 Sea Lane,

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 and he is offering to provide some assistance;

3 and he has pulled a file, an old file I guess

4 for Mr. Dye, and he had a copy of a survey in it

5 which he sent to Mr. Deeb.

6 Q Do you have an understanding of why

7 Mr. Griffin would have been sending a survey to

8 Mr. Deeb on or about November 16, 2003?

9 MS. WALL: Object.

10 THE WITNESS: It sounds like he is

11 a nice guy; just trying to help out.

12 BY MR. HUDSON:

13 Q And you know that to be the case or

14 that is just what you can glean from reading

15 this?

16 A It is what I can glean from reading

17 this.

18 Q Was there any reason material to the

19 closing that Mr. Griffin might have been

20 providing this document to Mr. Deeb?

21 MS. WALL: Objection.

22 MR. MAHAFFEE: Objection.

23 THE WITNESS: None that I know of.

24 BY MR. HUDSON:

25 Q When he says: Hopefully this will be

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 of some help to your client.

3 Any idea what he might be referring to?

4 MS. WALL: Object.

5 MR. MAHAFFEE: Objection.

6 THE WITNESS: Well, attached to  
7 this is an as-built survey and this is  
8 something that the Dye's paid for that.  
9 If he was giving this to them then  
10 perhaps Gottschlich and McNeil would  
11 not have to pay for it, and they would  
12 save themselves some money.

13 BY MR. HUDSON:

14 Where is the date on this thing?

15 Q The bottom right corner.

16 A 3/28/01, yes. This would have been  
17 acceptable for a lender. He could have saved  
18 the cost of the survey.

19 Q How do you know it would have been  
20 acceptable for a lender?

21 A Well, I think they have to be within 12  
22 months, a survey of the property. That is  
23 speculation on my part, but I have had  
24 them accepted surveys that were prepared by  
25 somebody else within a reasonable time frame.

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- 1 HUDSON - BALDWIN (DIRECT EXAMINATION)
- 2 Q Well, this is not within 12 months mis
- 3 it?
- 4 A Oh, I guess it is not. Well, you know,
- 5 it is a fairly current one anyway, let us put it
- 6 that way.
- 7 Q Now, this letter is copied to Mr. and
- 8 Mrs. Thomas N. Dye, correct?
- 9 A Correct.
- 10 Q Who were the sellers in this case,
- 11 correct?
- 12 A Correct.
- 13 Q Who were clients of Dunes Marketing
- 14 Group?
- 15 A That is correct.
- 16 Q It is also copied to Mr. Ken Oliver,
- 17 correct?
- 18 A Yes.
- 19 Q Who is the listing agent, correct?
- 20 A Yes.
- 21 Q And it is also copied to Mr. Greg
- 22 Merrill, correct?
- 23 A Yes.
- 24 Q Who is the buyer's agent, correct?
- 25 A Right.

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 Q Do you know if Mr. Oliver in fact  
3 received a copy of this November 16 letter with  
4 the attached survey?

5 A We don't believe we got this. It is  
6 not in my file or in Ken's file, and I really  
7 thought about this. What it says is is  
8 enclosure, and I believe they sent a copy of  
9 this to Bob Deeb; and they just simply sent Dye,  
10 Oliver in the mail a copy of the letter.

11 Normally if they were sending one to  
12 Dye, Oliver, and Merrill it would say enclosure  
13 next to their names; but we don't have this in  
14 our files. I have seen this because I got it  
15 from you.

16 Q So it would be your testimony that you  
17 merely have a copy of the November 16, 2003  
18 cover letter in your file, is that correct?

19 A That is correct.

20 Q Had you assumed for the sake of  
21 argument that a copy of the survey was enclosed  
22 with this cover letter to Mr. Oliver, what if  
23 anything should he have done upon receipt of  
24 this information?

25 MR. MAHAFFEE: Objection.

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 THE WITNESS: Well, if he got it

3 Mr. Dye would have got it, so he

4 wouldn't have had to do anything with

5 it. Put it in the file.

6 BY MR. HUDSON:

7 Q That was not my question.

8 Unless you meant he didn't have to do

9 anything with it?

10 MR. MAHAFFEE: Objection.

11 THE WITNESS: He didn't have to do

12 anything with it.

13 BY MR. HUDSON:

14 Q Just stick it in the file?

15 A Yes.

16 Q He didn't have an obligation to review  
17 it?

18 A Well, it is an as-built survey and  
19 Mr. Dye paid for it originally. Mr. Dye is his  
20 client, so Mr. Dye should certainly have a copy  
21 of it. I don't think he had an obligation to do  
22 anything with it.

23 Q What about Greg Merrill, what  
24 obligation did he have assuming he got this  
25 survey?

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 MR. MAHAFFEE: Objection.

3 THE WITNESS: Well it was already  
4 given to his client through Bob Deeb.  
5 Cary Griffin sent it to Bob Deeb who  
6 represented Gottschlich and McNeil; I  
7 mean both the buyer and the seller have  
8 this document.

9 BY MR. HUDSON:

10 Q So is it your testimony that Greg  
11 Merrill had no obligation to review the survey  
12 assuming he received it?

13 MR. MAHAFFEE: Objection.

14 THE WITNESS: That is right.

15 BY MR. HUDSON:

16 Q Now, you testified earlier that you  
17 know how to read surveys, correct?

18 A Yes.

19 Q If you look on the survey there is  
20 information contained within the footprint of  
21 the house that says two story stucco/frame  
22 residence. FF EL equals 13.3 feet.

23 Do you see that?

24 A Yes.

25 Q What do you make of that information,

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 if anything?

3 A First floor elevation is 13.3.

4 Q Is that information material to this  
5 transaction?

6 MS. WALL: Object to the form.

7 THE WITNESS: The base elevation  
8 is 14 feet.

9 BY MR. HUDSON:

10 Q How do you know that?

11 A Well, I know it because I just know it;  
12 but it is also stated on the bottom: This  
13 property lies in FEMA A7, base elevation 14  
14 feet.

15 Q So would you deem the reference to the  
16 finish floor elevation being 13.3 feet material  
17 on this survey?

18 MS. WALL: Object to the form.

19 MR. MAHAFFEE: Objection.

20 THE WITNESS: Well, in this  
21 particular case it is; but this is an  
22 as-built survey and flood for elevation  
23 is in the same size print as the  
24 concrete wall and sidewalk and pool and  
25 wood steps and a deck and so on and so

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 forth. It is not an elevation survey.

3 There is a notation on there about what

4 the first floor elevation is. I don't

5 know that anybody would pick this thing

6 up without really studying it.

7 BY MR. HUDSON:

8 Q Would you?

9 A Had I seen it, yes.

10 MR. MAHAFFEE: Objection.

11 THE WITNESS: My testimony is we

12 did not receive it.

13 BY MR. HUDSON:

14 Q Did Dunes Marketing ever receive a copy

15 of the elevation certificate that was prepared

16 by Sea Island Land Survey on March 28, 2001?

17 A We received it from you.

18 Q Only after this lawsuit was filed?

19 A That is correct.

20 Q Prior to seeing this particular survey

21 have you ever seen finish floor elevation

22 information contained on a survey?

23 A You know, I probably have. Usually

24 they don't include first floor elevation on an

25 as-built survey.

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 Keeping in mind that, you know, they  
3 should have never gotten a CO for this house  
4 because it was at 13.3; so you could assume that  
5 it is at 14 feet.

6 Maybe Mr. Dye suspected that it was not  
7 correct for some reason and so he asked them to  
8 shoot the first floor elevation, but normally  
9 this would not be included on an as-built  
10 survey. An as-built survey is required by the  
11 lender. It is required by an insurance company,  
12 but generally you get an elevation certificate  
13 when you want to find out what the first floor  
14 elevation is.

15 Q It is somewhat unusual for the  
16 elevation information to be included on the  
17 survey, is that what you are saying?

18 A That is correct.

19 Q Is there any reason for Mr. Griffin to  
20 provide this information, and when I say  
21 information I am referring to both the cover  
22 letter and the survey to Mr. Oliver or  
23 Mr. Merrill?

24 MS. WALL: Objection.

25 THE WITNESS: Not that I am aware

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1 HUDSON - BALDWIN (DIRECT EXAMINATION)

2 of. That is probably why he didn't. I

3 mean we didn't need this.

4 BY MR. HUDSON:

5 Q Did he need to provide it to the Dye's?

6 MS. WALL: Object.

7 THE WITNESS: Mr. Dye already had

8 it. He is the one ordering the survey.

9 BY MR. HUDSON:

10 Q Do you know that he ever received a  
11 copy of it?

12 A Well, I can assume he did because his  
13 name -- he paid for it. Thomas M. and Jan H.  
14 Dye. Somebody had to pay for it.

15 Q But as I understand your testimony you  
16 are assuming Mr. Dye paid for it, is that  
17 correct?

18 A True.

19 Q You don't know that?

20 MR. MAHAFFEE: Objection.

21 THE WITNESS: I don't know if he  
22 paid for it or not. They might have  
23 done it for free.

24 BY MR. HUDSON:

25 Q Is Dunes Marketing required to keep a

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18-D-00127

44-38861-1A41E  
Page 10 of 10

10

**15th Fed. Conv. October, November**

### Discussion - Problems

Department of Health and Human Services

the original *Antipater* of Sidon, the author of the *De vita beata*, is said to have been a pupil of the Stoic philosopher, and to have been a contemporary of the Emperor Nero. The *De vita beata* is a treatise on the art of living, and is one of the most important works of the Stoic philosophy. It is a dialogue between Antipater and his friend, and is written in a simple and elegant style. The work is divided into two parts, the first of which is a general introduction to the Stoic philosophy, and the second of which is a detailed account of the life of a Stoic. The work is a valuable source of information on the Stoic philosophy, and is one of the most important works of the ancient world.

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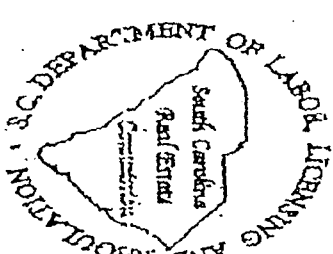
For the District Court of the United States  
at New York, New York

Columbia, South Carolina, July 10, 1967

THE UNIVERSITY OF CHICAGO

10

Agency Relationship  
in Real Estate



**When Buying or  
Selling Real Estate,  
Are You a  
Customer or Client?**

11/06/2003 14:20 FAX 813 848 0820  
KIDNEY ALTHIST CLINIC

પા/ત્રૅઁ  
ત્રૅઁ

DEPOSITION  
EXHIBIT

PLAINTIFF'S EXHIBIT 8 10-19-09

Jul. 18. 2007 3:51PM

No. 2679 P. 17

11/06/2003 14:18 FAX 814 848 8504

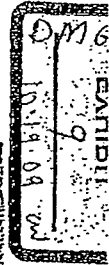
MIDWEST ALLERGY CLINIC

0002

Post Office Box 21325  
Hilton Head Island  
South Carolina 29925

DUNKES MARKETING GROUP

(843) 842-1111  
(800) 258-5202  
Fax Number (843) 842-4741



CONTRACT OF SALE - OFFER AND ACCEPTANCE

DEPOSITION  
EXHIBIT

Dr. Gregory M. Gottschlich and Dr. Don H. Dye

whose address is: 3619 Vineyard Ridge, Cincinnati, OH 45241  
2341 Kane Road, Columbus, OH 43220

Each party agrees to purchase from:

Thomas M. and Jan M. Dye

whose address is: 210 Riverbush Place, Duluth, GA 30097

1. PROPERTY DESCRIPTION. Seller hereby agrees to sell all the lot or parcel of land, with all improvements thereon, and any interest appurtenant thereto, situated in South Carolina and being described as follows:

Legal: 27 TA/E1/BC

Measuring: 48 Sea Lane (the "Property")

2. PURCHASE PRICE. The total Purchase Price for the Property is \$ 1,395,000.00 to be paid by Purchaser as follows:

|    |                                                                                  |                 |
|----|----------------------------------------------------------------------------------|-----------------|
| a. | Amount Money deposited herewith ("Deposit")                                      | \$ 10,000.00    |
| b. | Additional Deposit to be paid by                                                 | \$              |
| c. | A First Mortgage for at least _____ years at prevailing interest rates and terms | \$ 1,115,000.00 |
| d. | Balance in cash at Closing                                                       | \$ 269,000.00   |

3. FINANCING CONTINGENCY. If referred to in Section 2-C above, this Contract is subject to the Purchaser obtaining a commitment for the financing indicated above from a lender currently making such loans in South Carolina and the surrounding area. Purchaser shall use best efforts to obtain such a loan and shall supply the prospective lender(s) with all requisite information. The timing of this financing contingency is as follows:

- Purchaser's loan application must be submitted within 4 days.
- Purchaser shall obtain a commitment letter from the lender within 6 days.
- Purchaser shall obtain a loan commitment within 10 days.

All time periods run from the date of this Contract. The "commitment letter" is to be in a form currently used by lenders in Beaufort County.

If Purchaser's loan application does not result in a commitment within the above time frame, Purchaser shall have the affirmative obligation of notifying Seller or Seller's Agent in writing that the financing contingency has not been satisfied and that the Purchaser has elected to terminate this Contract for failure to obtain financing. Such notice must be received by Seller or Seller's agent not later than five (5) days after the financing contingency expires date. Upon receipt of notice and execution of any required release, future, the Listing Agency (or other Broker/Agent holding the funds) shall return to the Purchaser any sums heretofore paid as earnest money, and upon such payment this Contract shall have no force and effect and neither party hereto shall have any rights against the other hereunder. Notwithstanding the right to cure time period contained in Section 3, the parties acknowledge and agree that time is of the essence with respect to all time periods contained within this Section 3. No right to cure shall apply to the periods contained in this Section 3. If any requisite action called for by this Section is not taken within the time periods contained in this Section, the financing contingency shall be deemed waived.

WITNESSES

Initials: Purchaser: Da Date: 11/6/03 Seller: Da Date: 11/6/03

(Page 1)

PLF-0052  
ELS #79-58113

27A/2005B



No. 2679 P. 18

MIDWEST ALLERGY CLINIC

51002

☒ Refrigerator ☒ Freezer ☒ Washer ☒ Dryer ☒ Stove/Oven ☒ Microwave ☒ Cook Top  
☒ Dishwasher ☒ Ceiling Fans ☒ Irrigation System ☒ Pool Equipment ☐ Septic System ☐ Paved  
☐ Other \_\_\_\_\_

5. **WOOD INFESTATION REPORT.** Seller agrees to provide at its expense to Clothing in "Official Sewing Machine Wood Infestation Report" (CL-100") in which no infestation or damage is reported or if there is damage observed, but it is insufficient to necessitate repairs. Such report must be dated within 45 days of the Clothing and shall be provided to Purchaser's closing attorney not less than seven (7) days prior to closing. If infestation or significant damage is observed, Seller shall cause same to be repaired prior to closing or permit Purchaser's closing attorney to escrow funds from the sales proceeds in Clothing in an amount equal to the costs of such repair.

# INSECTICIDES & ADDENDUM

2. **CONDITION OF PROPERTY.** Purchaser has viewed the premises and, subject to the terms and conditions in Section 4, Sections 1 of Schedule 10, is purchasing the Property in its present condition "as is," except for:

9. **DEPOSIT/DRAWNOUT.** All money deposited by Purchaser hereunder shall be applied toward the Purchase Price at Closing. Upon the failure of either party to comply with the term herein within the stipulated time, and after receipt of notice of said default with a ten (10) day right to cure, its bank account and agreed by and between the parties hereto that either party may proceed with all rights and remedies of law in equity against the defaulting party. In the case of a Purchaser default, the Seller may elect, in lieu of all other remedies, the forfeiture of the Deposit as liquidated and agreed upon damages. The parties agree that the Broker/Agent shall not disburse the Deposit until Seller and Purchaser have executed a release from authorizing the disbursement or until a court of competent jurisdiction has directed a disbursement. In the event of a forfeiture of the Deposit, it shall be divided equally between Seller and the Listing Agency; provided, however, that the amount to be received by the Listing Agency shall not exceed the amount of the commission it would have earned had this sale been completed. In the event of any Refundant commenced because of a default hereunder, the prevailing party in such litigation shall be entitled to recover attorney fees and court costs from the nonprevailing party.

Date: 11/6/03      Page: 2

PLF-0053  
ELS #79-58113

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The Escrow Agent shall not be required to institute or maintain any litigation unless indemnified to its satisfaction for its attorney fees, not disbursements, and all other expenses and liabilities to which it may, in its judgment, be subjected in connection with this action. The Seller and Purchaser shall at all times indemnify the Escrow Agent against all actions, proceedings, claims and demands arising out of this transaction relating to the holding of the Deposit. In the event of a dispute between the Seller and Purchaser which cannot be resolved, the Escrow Agent shall have the option of depositing the Deposit into the Clerk of Court's Office, pending the order of the deposition of said funds, and Escrow Agent shall have no further responsibility for said Deposit. The Purchaser hereby acknowledges that the Deposit shall be held in escrow by the Escrow Agent, Dumas Marketing Group.

10. **RISK OF LOSS AND DAMAGE.** In case the Property is wholly or partially damaged by fire, storm or other casualty, Purchaser may elect for ten (10) days after receiving written notice thereof, to proceed hereunder with a mutually agreed adjustment in the Purchase Price, or rescind this Contract and receive back all money deposited hereunder. In the event the Property is damaged by the Purchaser, or by any person upon the Property at the Purchaser's behalf (i.e., inspector), such damage shall be repaired by Purchaser.

11. **PRORATIONS; CLOSING COSTS; ASSESSMENTS.** All expenses of ownership (and rent, if any) shall be prorated to the date of Closing. Purchaser is responsible for any applicable real estate transfer taxes. Seller shall be responsible for the South Carolina deed recording fee required by SC Code §12-24-10. Purchaser shall be responsible for County recording fees for the deed and any mortgage. Purchaser shall pay the cost of obtaining a title examination, title insurance, and a survey (except a Beach Protection Act survey, which is the responsibility of Seller); each party shall pay its own attorney fees. Unless otherwise agreed to in this Contract, Seller shall be obligated to pay any region or property owner association special assessment approved by its Board of Directors or similar body prior to closing; provided, however, a special assessment to cover depreciable premiums, whenever assessed prior to closing, shall be prorated based on ownership over the period covered by the premium.

12. **BROKER DISCLOSURE.** Seller and Purchaser agree that the Selling Agency & Listing Agency are acting only as real estate agents in this transaction and as such have no responsibility for and make no oral or written representations concerning the condition of the premises, terms of the sale or title to the Property, nor are they responsible or accountable for payment of the Purchase Price or for any other funds, exceptive Deposit. Neither Agency guarantees payment of any check received as deposit money hereunder. Seller and Purchaser acknowledge that the Agencies: (1) give no warranty or warranty of any kind, express or implied, as to the physical condition of the Property; (2) give no warranty, express or implied, as to the marketability or fitness for a particular purpose regarding the Property; (3) give no warranty or warranty concerning any inspection or report concerning the Property or the accuracy of any published square footage of the Property; (4) give no warranties or warranties regarding any rental income or other economic benefits of the Property to Purchaser; (5) give no warranties or warranties regarding any region or property owner association special assessments which may apply to the Property; and (6) are not responsible for the accuracy of any information contained in the Seller's Property Condition Disclosure Statement.

13. **TITLE.** Seller shall convey marketable title to the Property to Purchaser in the sample by proper deed in recordable form with covenants of general warranty, subject to normal utility easements, applicable restrictions, covenants, governmental regulations and assessments. If an owner's title binder can be issued by an ALTA title insurance company at standard rates with standard exceptions for the Beaufort County area, title shall be deemed to be marketable. Purchaser acknowledges that Selling Agency has recommended that an attorney examine the title to the Property on Purchaser's behalf. If the Property is a condominium or subject to covenants or restrictions, Purchaser shall have the obligation to verify all region and property owner regular or special assessments.

14. **NON-RESIDENT TAX WITHHOLDING.** Seller shall comply with the provisions of South Carolina Code §12-9-310 and U.S. Internal Revenue Code §1445 (as amended) regarding withholding requirements for sellers who are not South Carolina or U.S. residents.

000001

Signed: Purchaser [Signature] Date 11/6/03 Seller [Signature] Date 11/6/03

(Page 3)

PLF-0054  
ELS #79-58113

XTD/PASB

DATA W/STATION 0000 RPD RSE I TEN 07:01 DEL 0002/00/01  
NADA 00000000 RPD 750 PEO T TLE 27:01 DEL 0002/00/01

No. 2679 P. 20

4005

1. The South Carolina Real Estate Agency Disclosure form is attached hereto and incorporated herein.  
 2. The Beach Management Act is ☐ is not ☒ applicable to this Contract. If applicable, attached hereto and incorporated herein is the regular Beach Management Act Disclosure Addendum.  
 3. The Purchaser has ☒ has not ☐ completed a South Carolina Property Condition Disclosure Statement.  
 4. The South Carolina Vacation Rental Act does ☐ does not ☒ apply to this transaction.  
 5. This Contract applies ☐ does not apply ☒ to a residence built prior to 1978. If such residence was built prior to 1978, this Contract is subject to the Lead Based Paint Congregancy Addendum and the Lead Based Paint Disclosure, both of which are attached hereto and incorporated herein.  
 6. Flood Insurance is required ☒ is not required ☐ for any federally insured mortgage on the Property.  
 7. An Inspection Report Addendum is ☒ is not ☐ attached to this Contract and incorporated herein by reference.  
 8. Also attached hereto and incorporated herein are the following Addendum:

16. **MISCELLANEOUS.** The invalidity or unenforceability of any provision of this Contract shall not void the other provisions hereof and this Contract shall be construed in all respects as if such invalid and unenforceable provision were omitted. This Contract may be entered into counterparts, each of which shall be deemed to be an original. The parties agree that any offer, counteroffer, and/or acceptance may be communicated by the use of facsimile (FAX) and that the signature, 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 originals were present as the documents in the handwriting of each party. This Contract shall be governed and construed in accordance with the laws of the State of South Carolina. No failure of a party to exercise any power or right granted hereunder or to insist upon strict compliance with any obligation specified herein, and no practice at variance with the terms hereof, shall constitute a waiver of said power or right unless expressly authorized in writing by the affected party. If either party is a corporation, limited liability company, trust, or partnership, it shall provide evidence that (i) the person executing this Contract is authorized to act on behalf of the entity, and (ii) that the entity is validly and legally existing and in good standing and the undersigned individuals agree that the principals of the purchasing entity will personally endorse any financing described above if required by the lender. This Contract shall be binding upon and future to the benefit of the parties hereto and their respective heirs, devisees, personal representatives, successors and assigns. This Contract may not be assigned by Purchaser without Seller's written consent. This Contract constitutes the entire agreement between the parties hereto and may be modified only in writing.

(Page 4)

PLF-0055  
ELS #79-58113

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Jul 18, 2007 3:51PM

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11/06/2003 14:18 FAX 614 846 6504

MIDWEST ALLERGY CLINIC

0000

THIS IS A LEGALLY BINDING CONTRACT WHEN SIGNED. PURCHASER AND SELLER SHOULD SEEK LEGAL ASSISTANCE IF THE CONTENTS OF THIS CONTRACT ARE NOT UNDERSTOOD. PURCHASER AND SELLER ACKNOWLEDGE RECEIPT OF A COPY OF THIS CONTRACT.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract on the date set forth beneath their respective signatures. The later date shall be the date of the Contract for purposes of all time periods set forth herein.

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

WITNESSES:

\_\_\_\_\_

\_\_\_\_\_

Listing Agent: Len Oliver

Selling Agent: Greg Morrill

Gregory E. Gottschlich  
Purchaser Dr. Gregory E. Gottschlich

Date

Don Howell  
Purchaser Dr. Don Howell

Date

Seller Thomas H. Dye

Date

Seller Jan H. Dye

Date

Company: Dunes Marketing Group

Company: DUNES MARKETING GROUP, a  
Division of The Byrne Corporation

(The foregoing form may be used only by members in good standing of the Illinois Head Area Association of REALTORS®.)

Revised 1/22/03

\_\_\_\_\_ This is the unmodified Illinois Head Area Association of REALTORS® recommended contract form.

\_\_\_\_\_ This form has been modified from that recommended by the Illinois Head Area Association of REALTORS®.

(Print)

Greg Morrill Purchaser Don Howell Date 11/6/07

Seller

Date

(Page 2)

PLF-0056  
ELS #79-58113

PLF-0056

THIS CONTRACT BOOK THE CLOSING DATE AND THE DATE OF THE FIRST PAYMENT SHALL BE THE DATE OF THE FIRST PAYMENT.



BETHEA, JORDAN & GRIFFIN, P.A.  
ATTORNEYS AND COUNSELORS AT LAW

23-B SHELTER COVE LANE, SUITE 4  
HILTON HEAD ISLAND, SC 29928-35

www.bjglaw.com

P.O. DRAWER  
HILTON HEAD ISLAND, SC 29928-001

843.785.217

FAX: 843.686.595

MAINLAND OFFICE  
5 BELFAIR VILLAGE DRIV  
BLUFFTON, SC 29910-260

843.815.217

FAX: 843.815.599

JOSEPH R. BARKE  
WILLIAM L. BETHEA, JR.  
STEPHEN E. CARTE  
HUTSON S. DAVIS, II  
R. NICHOLAS FELI  
CARY S. GRIFFIN  
MICHAEL L. M. JORDAN, CF  
WALTER J. NESTER, I  
KEITH M. PARRELL  
SARAH F. ROBERTSON  
TONYA L. SAYER  
DAVID J. TIGGE

OF COUNSEL  
JOHN C. WES

cgriffin@bjglaw.com

November 16, 2003

Robert M. Deeb, Jr., Esq.  
Laurich and Deeb, P.A.  
P.O. Box 6868  
Hilton Head Island, SC 29938

Re: Gottschlich and McNeil Acquisition 48 Sea Lane

Dear Bob:

I understand you represent the purchasers in the above captioned transaction. I represent the sellers. To assist you in your title examination, please note that the deed was recorded in Deed Book 1404 at Page 792. I show a mortgage in favor of Lighthouse at Book 1404, Page 795. I also pulled our file and I am enclosing a copy of the recent survey that was completed. Hopefully, this will be of some help to your client.

René Serrato will be working with me here at the office.

With best wishes, I am

Very truly yours,

BETHEA, JORDAN & GRIFFIN, P.A.

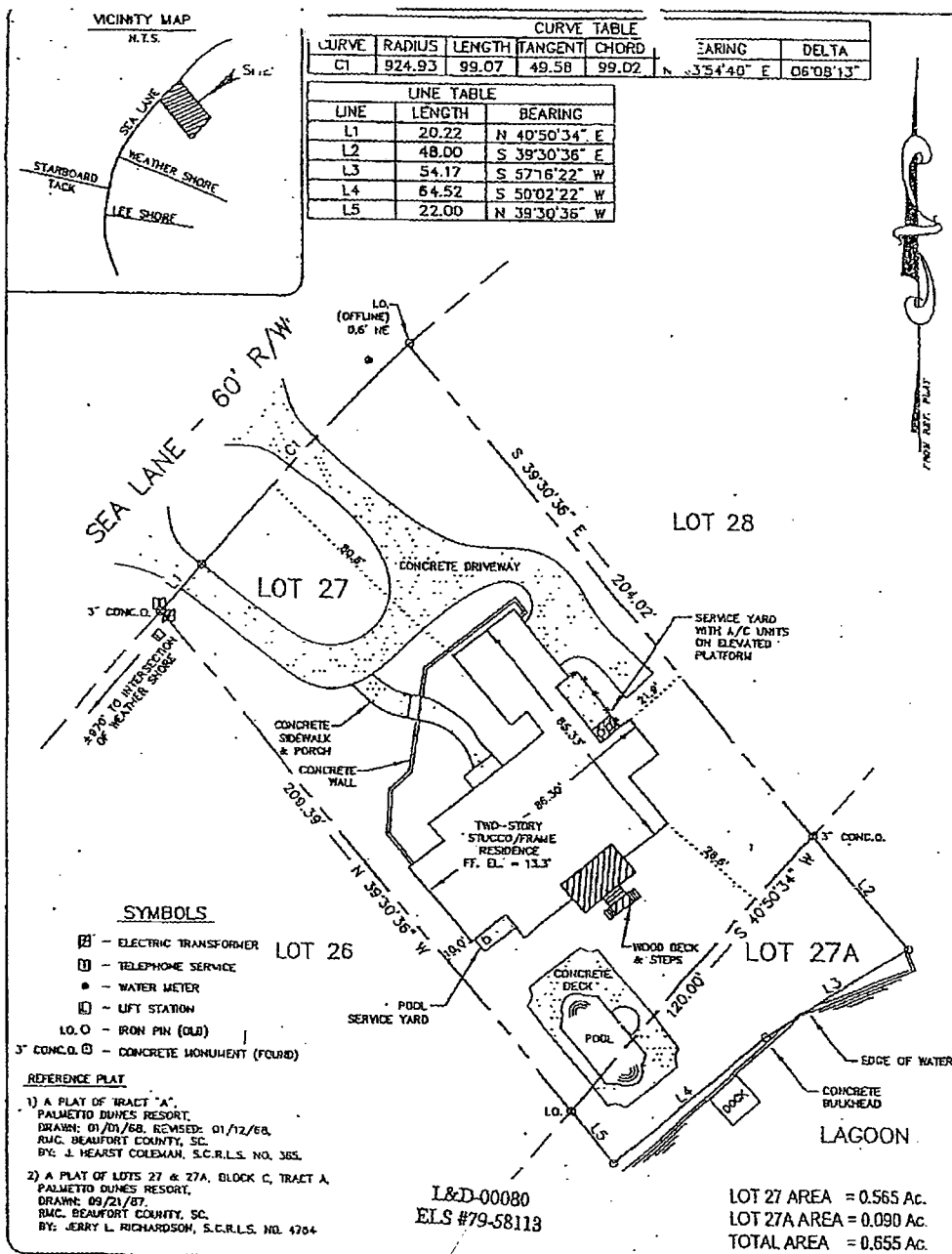
Cary S. Griffin

CSG:YI  
Enclosure

c: Mr. and Mrs. Thomas N. Dye  
Mr. Ken Oliver  
Mr. Greg Merrill

(318290.1)

I&D-00081  
ELS #79-58113



SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE BEACHFRONT SETBACK REQUIREMENTS OF THE S.C. BEACH PROTECTION ACT OF JULY 1, 1988

ADDRESS: #48 SEA LANE  
DIST.: 520 , MAP: 12A , PARCEL: 168  
THIS PROPERTY LIES IN F.E.M.A. ZONE A7  
BASE ELEVATION = 14.0'

ASBUILT SURVEY OF:  
LOT 27 & LOT 27A, TRACT A, PARCEL 3, BLOCK C,  
PALMETTO DUNES RESORT, HILTON HEAD ISLAND,  
BEAUFORT COUNTY, SOUTH CAROLINA  
PREPARED FOR:  
THOMAS N. & JAN H. DYE  
DATE: 03/28/01  
SCALE: 1" = 40'

GRAPHIC SCALE

0 40 80 120

SIS Sea Island Land Survey  
P.O. Box 21568, Hilton Head Island, SC 29925  
4-D Mathews Court, Hilton Head Island, SC 29926  
Tel (843) 681-3248  
Fax (843) 689-3871  
JOB No.: 01096  
FILE: 3-744

NOT VALID UNLESS ELABORATED

488