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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable J. Ernest Kinard, Jr., Circuit Court Judge
Case No. 2013-CP-07-02255

SC Court of Appeals

Appellate Case No. 2014-001587

Mamdouh Sabry Abdelrahman,

Appellant,

vs.

Daufuskie Island Utility Company, Inc.,

Respondent,

RECORD ON APPEAL

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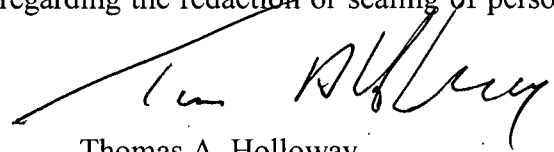
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The undersigned certifies that this document is in compliance with the South Carolina Supreme Court's Order, of August 13, 2007, regarding the redaction or sealing of personal data identifiers and other sensitive information.

A handwritten signature in black ink, appearing to read "Tom Holloway", written over a horizontal line.

Thomas A. Holloway
Attorney for the Appellant

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the **8th day of April, 2013**, and a copy mailed first class or placed in the appropriate attorney's box on the **25th day of April, 2013**, to attorneys of record or to parties (when appearing pro se) as follows:

George Trenholm Walker PO Drawer 22247 Charleston, SC
294132247

Mamdouh Sabry Abdelrahman 8300 Hinton Mill Road
Ostrander, OH 43061

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Lynn Geren - Staff

Jerri Ann Roseneau - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Plaintiff,

vs.

DOUGLAS HENDERSON, IN HIS
OFFICIAL CAPACITY AS TREASURER
OF BEAUFORT COUNTY; BEAUFORT
COUNTY; AND MAMDOUH SABRY
ABDELRAHMAN,

Defendants

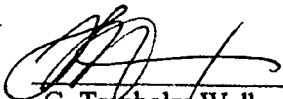
COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-07-02715

**STIPULATION
OF DISMISSAL**

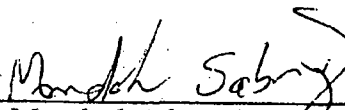
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JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THE PARTIES, through their undersigned counsel, hereby file this Stipulation of Dismissal pursuant to Rule 41(a). The parties hereby stipulate and agree that this action should be dismissed, and that each side shall bear its own costs and legal fees.

PRATT-THOMAS WALKER, P.A.



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 3-26-2013
Mamdouh Sabry Abdelrahman
Defendant, pro se

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
CASE NO.: 2013-CP-07-02255

MAMDOUH SABRY ABDELRAHMAN,

Plaintiff,

vs.

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Defendant.

**ORDER GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT
AS TO ALL CAUSES OF ACTION**

This matter is before the Court on a Motion for Summary Judgment filed by the Defendant, Daufuskie Island Utility Company, Inc. ("DIUC"). The Court has carefully reviewed the memoranda, exhibits, affidavits, and excerpts of testimony submitted by the parties. The Court also conducted a hearing on June 3, 2014, and heard oral argument from the parties. For the reasons stated herein, the Court grants the Defendant's Motion for Summary Judgment as to all causes of action.

PROCEDURAL HISTORY AND BRIEF SUMMARY OF FACTS

DIUC is a "public utility" under the terms of S.C. Code Ann. §58-5-10(4), and is subject to the regulatory jurisdiction of the Public Service Commission of South Carolina. DIUC is authorized by the Public Service Commission to be the exclusive provider of water services to a service area that encompasses Daufuskie Island, South Carolina.

In October of 2010, Beaufort County sold a .337 acre tract in Haig Point, Daufuskie Island, South Carolina upon which DIUC operates a 125,000 gallon storage tank and related

water system facilities ("the Property") at public auction to Mamdouh Sabry Abdelrahman ("Sabry") for the sum of \$526.70. On December 1, 2011, Beaufort County issued a tax deed conveying the Property to Sabry. DIUC did not learn of the auction and of the conveyance to Sabry until early 2012. After learning of the sale and tax deed, DIUC filed a declaratory judgment action against Beaufort County, the Beaufort County Treasurer, and Sabry (*DIUC v. Douglas Henderson, et al.*, Civil Action No. 2012-CP-07-02715) seeking adjudication that the tax sale and tax deed are invalid, void, and unenforceable (hereafter "the Tax Sale Action"). The complaint in the Tax Sale Action alleged the requirements of Title 12, Chapter 51, of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011, tax deed conveying the Property to Sabry. As such, the purpose of the case was to set aside the tax sale. Via Stipulation of Dismissal filed April 8, 2013, the Tax Sale Action was dismissed pursuant to Rule 41(a) of the South Carolina Rules of Civil Procedure.

On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment thereby initiating Civil Action 2013-CP-07-2338, which seeks to condemn the Property (hereafter "the Condemnation Action"). The Condemnation Notice names Sabry as the Landowner-Condemnee and states the Condemnation Action is brought by DIUC pursuant to The South Carolina Eminent Domain Procedure Act and under the authority of S.C. Code §58-7-20 and S.C. Code §58-7-30.

In September of 2012, Mr. Sabry filed this action alleging DIUC does not have authority to condemn the Property. By virtue of The Eminent Domain Procedure Act, the Condemnation Action was automatically stayed pending resolution of this case. DIUC timely answered Sabry's Complaint which alleges seven causes of action. Then, on November 25, 2013, DIUC filed the

instant Motion for Summary Judgment with the Affidavit of John F. Guastella, the manager of DIUC, asserting that there is no triable issue as to any material fact, and that the Defendant DIUC is entitled to a judgment as a matter of law on all causes of action. DIUC also contends this action challenging DIUC's condemnation authority was not raised and litigated in good faith, as that term is used in The Eminent Domain Procedure Act.

On June 3, 2014, the Court held a hearing on DIUC's Motion for Summary Judgment. At the outset of the hearing, the Plaintiff conceded DIUC's Motion for Summary Judgment as to Counts 2 through 7 of the Complaint. The Court then heard oral argument as to the only remaining count, Count 1 of the Complaint, which alleges the Condemnation Action is a second action "for recovery of real property" and is therefore barred by S.C. Code §15-67-20.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Etheridge v. Richland Sch. Dist. I, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998). According to South Carolina case law, "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

DISCUSSION

Plaintiff's First Cause of Action alleges that DIUC's condemnation of the Property is barred by S.C. Code §15-67-20, which states "The plaintiff in actions for recovery of real

property or the recovery of the possession of real property is limited to one action for recovery.” Sabry asserts the voluntarily dismissed Tax Sale Action seeking to overturn the tax sale of the Property based on Beaufort County’s failure to comply with mandated procedures bars the Condemnation Action, which seeks to exercise the power of eminent domain afforded to DIUC by The Eminent Domain Procedure Act and S.C. Code of Laws §58-7-20 and §58-7-30.

The Court finds that neither of the two actions filed by DIUC is an action “for the recovery of real property,” as that term is used in §15-67-20; therefore, S.C. Code §15-67-20 does not apply to bar the Condemnation Action.

The Tax Sale Action previously filed by DIUC was an action to overturn a tax sale and it alleged Beaufort County failed to comply with the requirements of Title 12, Chapter 51, of the South Carolina Code. Quite simply, it was not an action “for the recovery of real property,” as that term is used in §15-67-20. The Condemnation Action was filed pursuant to DIUC’s eminent domain authority and pursuant to The South Carolina Eminent Domain Procedure Act. A condemnation action, by clear legislative intent, is not an action “for the recovery of real property,” as that term is used in §15-67-20, for the following reasons.

First, The Eminent Domain Procedure Act, codified at Title 28, Chapter 2, of the South Carolina Code, states that the Act is intended to create uniform procedures “for acquisition of property and ... the exercise of the power of eminent domain.” S.C. Code §28-2-20. Therefore, a condemnation action brought pursuant to the Act is an exercise of the power to condemn and acquire property; such cases are not a debate over title to property or an action to recover property, as that term is used in S.C. Code §15-67-20. Accordingly, the Notice of Condemnation does not dispute title to the Property, it specifically alleges that Mr. Sabry is the owner of the Property by virtue of the tax deed dated December 1, 2011.

Second, by its own mandate The Eminent Domain Procedure Act distinguishes actions to condemn property from all other causes of action affecting real property. See S.C. Code §28-2-60 (“The provisions of this chapter shall constitute *the exclusive procedure whereby condemnation may be undertaken* in this State.”) (Emphasis added.) Clearly the Legislature intended condemnation actions to be distinguished from all other actions, including actions “for the recovery of real property,” as that term is used in §15-67-20. Furthermore, The Eminent Domain Procedure Act states, “A condemnor may commence an action under this chapter for the acquisition of an interest in *any real property* necessary for any public purpose.” S.C. Code §26-2-60. (Emphasis added.) The Act does not limit the type of property that can be condemned and as South Carolina’s exclusive condemnation procedure, the Act does not permit any other statute to limit condemnation procedure or condemnable property.

It is clear to the Court that The Eminent Domain Procedure Act excludes condemnation cases from restriction by any other statute, including S.C. Code §15-67-20. It is also clear to the Court that S.C. Code §15-67-20 is not applicable to and does not operate as a bar to condemnation actions because condemnation actions are, by their nature, not “for the recovery of real property or the recovery of the possession of real property,” as those term are used in §15-67-20. Additionally, if the Court were to apply S.C. Code §15-67-20 to this action as Plaintiff suggests, the statute would be in conflict with The Eminent Domain Procedure Act.

Whenever there is a conflict between a statute and The Eminent Domain Procedure Act, The Eminent Domain Procedure Act controls because S.C. Code §28-2-20 unequivocally states, “In the event of conflict between this Act and *any other law* with respect to *any subject* governed by this Act, this Act shall prevail.” (Emphasis added.) Plaintiff herein suggests the Court apply S.C. Code §15-67-20 to effectively alter DIUC’s authority to condemn and the

procedure for condemnation established by The Eminent Domain Procedure Act. To so apply Section 15-67-20 places the Section in conflict with The Eminent Domain Procedure Act, the plain terms of which require the Act's provisions to prevail.

The Court also finds that DIUC's Motion for Summary Judgment should be granted because the Tax Sale Action and the Condemnation Action are too dissimilar to both constitute actions for the recovery of real property under SC Code §15-67-20. The South Carolina Supreme Court has made it clear that the actions for recovery of real property covered by S.C. Code §15-67-20 (and its predecessor statute prior to amendment) must be for the *same* cause of action. See Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201 (1912). That is not the case here; as the Condemnation Action and Tax Sale Action raise totally unique claims through different procedures. When two separate actions merely bring title to property into issue, as is the case here, the actions are not actions "for the recovery of real property," as that term is used in §15-67-20. Specifically, the Supreme Court held:

To be sure, there are other forms of action by which the title to real property may be brought in issue and determined, as for instance, an action for damages or trespass in the nature of common law action of trespass quare clausum fregit, an action for rents and profits, and actions for foreclosure of mortgage or partition in which a defendant sets up an independent legal title in himself, but none of these are actions "for recovery of real property" and therefore they do not fall within the provisions of [the statute].

Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201, 203 (1912); see also Tompkins v. Augusta & K.R. Co., 30 S.C. 479, 9 S.E. 521 (1889) (holding under previous version of statute that actions seeking different relief are not repeated actions "for the recovery of real property") and Frederick v. Chapman, 144 S.C. 137, 142 S.E. 247 (1928) (citing Tompkins v. Augusta & K.R. Co., 30 S.C. 479, 9 S.E. 521 (1889); Elmore v. Davis, 49 S. C. 1, 26 S. E. 898 (1897); Foster v. Foster, 81 S. C. 311, 62 S. E. 320 (1908). Therefore, even though the Tax Sale Action and the

Condemnation Action both bring title of the Property into issue, the cases are so dissimilar that they are not both actions "for recovery of real property." As such, S.C. Code §15-67-20 does not bar the Condemnation Action.

CONCLUSION

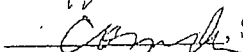
Because the Plaintiff has conceded DIUC's Motion for Summary Judgment as to Counts 2 through 7 of the Complaint and because the aforementioned grounds support granting DIUC's Motion for Summary Judgment as to Count 1 of the Complaint, DIUC's Motion for Summary Judgment is granted as to all causes of action and this action shall be accordingly concluded.

IT IS SO ORDERED.



The Honorable J. Ernest Kinard, Jr.
Circuit Court Judge

June 17, 2014

 South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Plaintiff,

vs.

DOUGLAS HENDERSON, IN HIS
OFFICIAL CAPACITY AS TREASURER
OF BEAUFORT COUNTY; BEAUFORT
COUNTY; AND MAMDOUH SABRY
ABDELRAHMAN,

Defendants

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-07- 2715

COMPLAINT

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The Plaintiff above named, complaining of the Defendants herein, alleges and states as follows:

1. The Plaintiff, Daufuskie Island Utility Company, Inc. is a corporation formed under the laws of the State of South Carolina.
2. The Plaintiff, Daufuskie Island Utility Company, Inc., brings this action requesting this Court declare the invalidity of the December 1, 2011 Tax Deed (hereinafter "December 1, 2011 Tax Deed") recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 03102, Pages 0169-0170, File Number 2011061014, on December 1, 2011 referencing certain property (hereinafter "the Property") and more fully described therein as:

All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat

entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

3. The Plaintiff, Daufuskie Island Utility Company, Inc., owns and operates a water and wastewater utility system on Daufuskie Island, subject to the regulation of the South Carolina Public Service Commission, that includes an elevated 125,000 gallon above-ground storage tank located on the Property.
4. The Defendant Douglas Henderson is the Treasurer of Beaufort County.
5. The Defendant Beaufort County is a public body corporate and politic existing under the laws of the State of South Carolina.
6. Upon information and belief, the Defendant Mamdouh Sabry Abdelrahman is a citizen of the State of Ohio, residing at 8300 Hilton Mill Road, Ostrander, Ohio 43061.

FOR A FIRST CAUSE OF ACTION
(ALL DEFENDANTS)

7. The Plaintiff realleges its previous allegations as if fully set forth herein.
8. Haig Point Utility Company, Inc. became the lawful and sole owner of the Property via Special Warranty Deed and Bill of Sale Title recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 01402, Pages 2190-2192, File Number 2001018868, on April 5, 2001.
9. By Order of the Public Service Commission of South Carolina dated March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc.
10. The Plaintiff, Daufuskie Island Utility Company, Inc., is the sole, rightful, and legal owner of the Property.
11. Defendants Beaufort County and Beaufort County Treasurer Henderson purported to sell the Property at a tax sale for unpaid ad valorem property taxes and later purported to convey the Property to the Defendant Mamdouh Sabry Abdelrahman via the Tax Deed recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 03102, Pages 0169-0170, File Number 2011061014, on December 1, 2011.
12. The December 1, 2011 Tax Deed contains certain representations regarding events related to the attempted conveyance of the Property to Defendant Abdelrahman, including the following:

- a. Herschel J. Evans, Jr. (authorized officer) did on May 1, 2010, mail a notice of tax delinquency under cover of certified mail, restricted, return receipt to said delinquent taxpayer and this notice was not received;
 - b. The authorized officer directed to collect delinquent taxes, penalties and costs, did, on September 23, 2010 take exclusive possession of the property against which such taxes were assessed by posting a notice at one or more conspicuous places on the property hereinafter described, reading "seized by The Beaufort County Treasurer to be sold for delinquent taxes" and
 - c. The Beaufort County Treasurer did thereafter properly advertise for sale once a week for three successive weeks for sale in September 2010; and
 - d. Upon the failure of the delinquent taxpayer, or anyone acting in his behalf, to pay the taxes, penalties and costs, the property described hereinafter was duly sold at public auction on the sales day of the month of October in the year 2010 during the usual hours of sale to Mamdouh Sabry Abdelrahman, the purchaser and the highest bidder at such sale for the sum of \$526.70; and
 - e. Under cover of certified mail restricted delivery, return receipt, Troy Hodges, Deputy Treasurer did, on August 31, 2011, mail a notice addressed Haig Point Utility Company, Inc. that the property described on the notice had been sold for taxes and advising said owner if not redeemed by paying taxes, penalties and costs in the amount of \$789.90, on or before October 5, 2011, a tax title would be issued to the successful purchaser at the tax sale; and was not redeemed; and
 - f. Twelve months have elapsed since the date of the sale for delinquent taxes, and the said Haig Point Utility Company, Inc. or other parties interested after due notice have failed to redeem said property so sold.
 - g. Douglas Henderson, Treasurer of the County of Beaufort, in consideration of the premises and the sum of \$526.70, paid by the said Mamdouh Sabry Abdelrahman granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Mamdouh Sabry Abdelrahman.
13. In order to convey a valid title under Title 12, Chapter 51 of the South Carolina Code, there must be strict compliance with each and every provision of the Chapter.

14. The requirements of Title 12, Chapter 51 of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011 Tax Deed.
15. The Defendants Beaufort County and Beaufort County Treasurer failed to strictly adhere to the requirements of the Title 12, Chapter 51 of the South Carolina Code in that they:
 - a. Failed to properly deliver a notice of tax delinquency under cover of certified mail, restricted, return receipt to Plaintiff as required by law;
 - b. Failed to take exclusive possession of the property by properly posting a proper notice of tax delinquency and sale of the Property in one or more conspicuous places on the Property herein described as required by law;
 - c. Failed to properly advertise the Property for sale a week for three successive weeks of sale as required by law;
 - d. Failed to properly conduct a public auction of the Property as required by law,
 - e. Failed to properly, under cover of certified mail restricted delivery, return receipt, mail a notice to Plaintiff informing Plaintiff the Property had been sold for taxes and advising Plaintiff that title to the Property would be issued to purchaser at tax sale if taxes were not paid within 12 months as required by law; and
 - f. Failed to send notices and correspondence to Plaintiff at Plaintiff's proper address despite being notified by Plaintiff of this correct address.

16. For the reasons alleged herein, the attempted tax sale and transfer of the Property to Defendant Mamdouh Sabry Abdelrahman via the December 1, 2011 Tax Deed were defective, irregular, and invalid.
17. As a result of these defects and irregularities, the December 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahman is invalid and unenforceable.
18. The tax sale and December 1, 2011 Tax Deed to Defendant Mamdouh Sabry Abdelrahman must be set aside.
19. The Plaintiff has no adequate remedy at law.
20. The Plaintiff is entitled to a declaratory adjudication voiding the tax sale and December 1, 2011 Tax Deed to Defendant Mamdouh Sabry Abdelrahman and enjoining Defendant Mamdouh Sabry Abdelrahman from the further steps to interfere with the possession of the Property by Plaintiff.

FOR A SECOND CAUSE OF ACTION
(DEFENDANT MAMDOUH SABRY ABDELRAHMAN)

24. The Plaintiff realleges its previous allegations as if fully set forth herein.
25. In addition to the Property at issue in the First Cause of Action, the Defendant Mamdouh Sabry Abdelrahman is the record owner of four other parcels of land located on Daufuskie Island (hereafter "Abdelrahman Parcels"):
 - a. R800 022 00B 0099 0000, formerly owned by HPL of Bluffton LLC
 - b. R800 022 00B 0123 0000, formerly owned by Mark Alexander
 - c. R800 022 00E 0066 0000, formerly owned by Craig Hedgecock
 - d. R800 022 00H 0007 0000, formerly owned by Kelly Palmer
26. The Plaintiff has provided and continues to make available water and wastewater services to each of the Abdelrahman Parcels. In accordance with fees and charges

approved by the Public Service Commission of South Carolina, Plaintiff has assessed availability fees against the Abdelrahman Parcels and notified Defendant Mamdouh Sabry Abdelrahman of the amounts due.

27. The Defendant Mamdouh Sabry Abdelrahman has failed to pay the Plaintiff availability fees for the Abdelrahman Parcels as follows:

a. R800 022 00B 0099 0000	Amount Due: \$208.56
b. R800 022 00B 0123 0000	Amount Due: \$208.56
c. R800 022 00E 0066 0000	Amount Due: \$208.56
d. R800 022 00H 0007 0000	Amount Due: <u>\$208.56</u>
	Total Due: \$834.24

28. The Plaintiff has properly notified the Defendant of the amounts due for each parcel by mailing bills to the Defendant.
29. The Plaintiff is entitled to and will apply penalties, late fees, and other charges to the Total Due to the extent allowed by the South Carolina Public Service Commission.
30. The Defendant Mamdouh Sabry Abdelrahman has breached his statutory obligation to pay the amounts due Plaintiff for services made available to him.
31. The Plaintiff has suffered and continues to suffer damages caused by such breach in an amount greater than \$834.24, and is entitled to prejudgment interest on all amounts due.

WHEREFORE, the Plaintiff, relying on the allegations set forth herein, prays that this

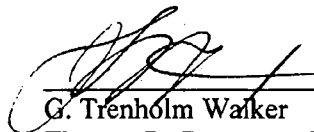
Court:

1. Enter a declaratory adjudication that the tax sale and December 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahman are invalid, void, and

unenforceable and enter an injunction enjoining Defendant Mamdouh Sabry Abdelrahman from interfering in any manner with Plaintiff's title to and possession of the Property.

2. Enter a declaratory adjudication that Plaintiff is the true legal as well as beneficial owner of the Property with the right to exclusive possession of the Property;
3. Enter judgment in an appropriate amount of actual damages against Defendant Mamdouh Sabry Abdelrahman for all amounts owed Plaintiff for unpaid availability fees for water and wastewater services to the Abdelrahman Parcels;
5. Award Plaintiff its attorneys' fees and costs under S.C. Code §§15-77-300, et seq. (Supp).
6. For such further and other relief from all Defendants as the Court deems just and proper, including an award to the Plaintiff of all attorneys' fees and costs associated with the prosecution of this case.

PRATT-THOMAS WALKER, P.A.



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Attorneys for the Plaintiff

Charleston, South Carolina
July 25, 2012

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-07- 2715

) CASE NO.: 2012-CP-07- 2715

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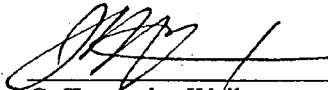
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sale of October 4, 2010 for delinquent 2009 taxes in
the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

PRATT-THOMAS WALKER, P.A.



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Charleston, SC 29413-2247
Tel: 843-727-2249
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E-mail: gtw@p-tw.com and tpg@p-tw.com
Attorneys for the Plaintiff

Charleston, South Carolina
July 25, 2012

STATE OF SOUTH CAROLINA

COUNTY OF Beaufort

Mamdouh Sabry Abdelrahman

Plaintiff(s)

vs.

Daufuskie Island Utility Company, Inc.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 07- 0225

SEP-4 PM 3:28

Submitted By: Thomas A. Holloway
Address: P.O. Box 1107, Beaufort, SC 29901-1107

SC Bar #: 14196
Telephone #: 843.524.3109
Fax #: 843.524.6973
Other:
E-mail: tholloway@harveyandbattey.com

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

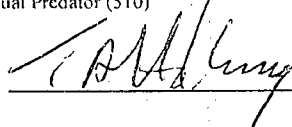
DOCKETING INFORMATION (Check all that apply)

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

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
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☐ Sexual Predator (510) | | |

Submitting Party Signature: 

Date: September 4, 2013

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

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CA NO: 2013-CP-07-

Mamdouh Sabry Abdelrahman
Plaintiff,

vs.

Daufuskie Island Utility Company, Inc.,
Defendants,

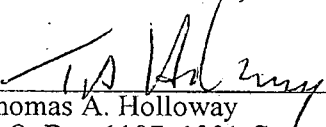
SUMMONS
(Jury Trial Demanded)

2013 SEP -4 PM 3:28

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the Plaintiff or his undersigned attorney at 1001 Craven Street, Beaufort, South Carolina, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in this Complaint.

HARVEY & BATTEY, P. A.

By: 
Thomas A. Holloway
P. O. Box 1107, 1001 Craven St.
Beaufort, South Carolina 29901
(Tel)843.524.3109 (Fax)843.524.6973
ATTORNEYS FOR THE PLAINTIFF

Beaufort, South Carolina
September 4, 2013

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CA NO. 2013-CP-07

Mamdouh Sabry Abdelrahman,)

Plaintiff,)

vs.)

COMPLAINT
(Jury Trial Demanded)

Daufuskie Island Utility Company, Inc.,)

Defendant,)

Pursuant to the South Carolina Eminent Domain Procedure Act, §28-2-10, et seq Code of Laws of South Carolina, (1976) as amended, the Plaintiff alleges as follows:

1. The Daufuskie Island Utility Company, Inc., is a private utility located on Daufuskie Island, South Carolina, with the purpose to provide water and sewer service to private gated community of Haig Point. Daufuskie Island Utility Company, Inc., did sent to the Plaintiff an unfiled "Condemnation Notice and Tender of Payment" (copy attached hereto and made part hereof as Exhibit 1).

2. Mamdouh Sabry Abdelrahman is lawful the record title holder and owner of the real property that is the subject of this action located On Daufuskie Island, Beaufort County, South Carolina;

3. That Condemnation Notice states in pertinent part, " Daufuskie Island Utility Company, Inc. (DIUC) is the condemnor herein and seeks to acquire real property described herein for public purposes. Mamdouh Sabry Abdelrahman is named as landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina (the property), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File No.

2011061014, in the Office of the Registrar of Deeds for Beaufort County, State of South Carolina.

The property as described is the property subject to this action and the property to be condemned.”

FOR A FIRST CAUSE OF ACTION

4. The Plaintiff by authority of §28-2-470, Code of Laws of South Carolina (1976), As Amended challenges Defendant’s right to condemn the property aforementioned for the following reasons: Section 15-67-20, Code of Laws of South Carolina (1976) as Amended provides, “[T]he Plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to *one* action for recovery.” The Daufuskie Island Utility Company, Inc., previously litigated the case captioned, Daufuskie Island Utility Company, Inc., vs. Douglas Henderson, In His Official Capacity As Treasurer of Beaufort County; Beaufort County and Mamdouh Sabry Abdelrahman under Case Number 2012-CP-07-2715, with that case ended by Stipulation of Dismissal filed in the Court of Common Pleas on April 8, 2013. The previous action was for the purpose of the recovery of the real property subject of the Condemnation Notice, and therefore, Daufuskie Island Utility Company, Inc. is forever barred from maintaining another action for the recovery or possession of the subject property.

FOR A SECOND CAUSE OF ACTION

5. The Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 4 as if recited herein.

6. The Daufuskie Island Utility Company, Inc., alleged within its unfilled “Condemnation Notice” authority to condemn the lands of Mamdouh Sabry Abdelrahman by virtue of Section 58-7-30, Code of Laws of South Carolina (1976), as Amended.

7. The Daufuskie Island Utility Company, Inc., alleges they are seeking to condemn the subject property in order to operate a water and wastewater/sewer utility system on the private Haig

Point Plantation located on Daufuskie Island, South Carolina.

8. The Daufuskie Island Utility Company, Inc., is not authorized to under the provisions of Section 58-7-30, Code of Laws, to exercise the right of condemnation as the law requires the governing body of the county in which the condemnation will occur to adopt an ordinance granting the corporation the authority to condemn property necessary to provide wastewater sewer services. Upon information and belief no such ordinance has been adopted by Beaufort County Council.

FOR A THIRD CAUSE OF ACTION

9. The Plaintiff repeats and reiterates the allegations contained in paragraph 1 though 8 as if fully recited herein.

10. The purpose for which Mamdouh Sabry Abdelrahman's property is sought to be taken by Eminent Domain, pursuant to the Eminent Domain Procedure Act, is not primarily a public one, but on the contrary, is a private purpose to cause ownership of the land to be taken from one private owner and turned over to another private owner for the benefit of a group of persons that live in a private gated community and any public benefit believed to accrue from the alleged purpose is merely incidental thereto. For this reason, the Statute relied upon, Section 58-7-20 and Section 58-7-30, insofar as it authorizes the seizure of land by Eminent Domain, violates the Fourteenth Amendment to the Constitution of the United States and also the Article 1 Section 13 of the Constitution of the State of South Carolina.

FOR A FOURTH CAUSE OF ACTION

11. The Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 10 as if recited herein.

12. There is no public interest or necessity requiring the taking of Plaintiff's property

for the purposes set forth in the Condemnation Notice, as the property is sought to be used by private individuals for private individuals on private gated communities.

FOR A FIFTH CAUSE OF ACTION

13. The Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 12 as if recited herein.

14. The Daufuskie Island Utility Company, Inc., lacks standing and is not vested with the right of condemnation under the Eminent Domain Procedure Act or under Section 58-7-20 and 58-7-30 Code of Laws of South Carolina (1976) As Amended.

FOR A SIXTH CAUSE OF ACTION

15. The Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 14 as if recited herein.

16. Mamdouh Sabry Abdelrahman claims damages of loss of rental income resulting from the unlawful occupation of Plaintiff's property and claims damages of loss of rental income and loss of use and enjoyment of property during the time of Daufuskie Island Utility Company's unlawful use and occupancy of the subject property.

FOR A SEVENTH CAUSE OF ACTION

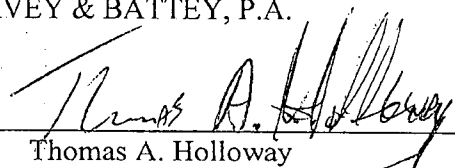
17. The Plaintiff repeats and reiterates the allegations contained in paragraphs 1 through 16 as if recited herein.

18. The Plaintiff is entitled to injunctive relief for an Order requiring the Daufuskie Island Utility Company, Inc., to relocate its facilities from Plaintiff's land and vacate the property immediately.

WHEREFORE, the Plaintiff prays for this Court to determine that the condemnor has no right to maintain a Condemnation Action or to take all or part of the landowner's property, and to

award the landowner reasonable costs and litigation expenses incurred herein. The Plaintiff further requests the Court to award financial damages for the "Utilities" unlawful occupancy of the land, for back reasonable rent and any damages resulting therefrom and Injunctive Relief requiring the Defendant to immediately vacate the property without further delay, together with any other and further relief the Court may deem just and proper.

HARVEY & BATTEY, P.A.

By: 

Thomas A. Holloway
P.O.Box 1107, 1001 Craven St.
Beaufort, SC 29901-1107
(Tel) 843.524.3109 (Fax) 843.524.6973
Attorneys for the Plaintiff

Beaufort, South Carolina

September 4, 2013

EXHIBIT 1

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Condemnor,

vs.

MAMDOUH SABRY ABDELRAHMAN,

Landowner.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-07-_____

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)**

TO: THE LANDOWNER, ABOVE NAMED, MAMDOUH SABRY ABDELRAHMAN,
8300 HINTON MILL ROAD, OSTRANDER, OH 43061:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.
2. Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File Number 2011061014, in the Office of the Register of Deeds for Beaufort County, State of South Carolina.
3. The property identified in the Tax Deed recorded on December 11, 2011, at the Office of the Register of Deeds for Beaufort County, State of South Carolina, in Book 03102, Pages 0169-0170, File Number 2011061014 (hereinafter "the Property") is more fully described therein as:

All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.
Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

4. The Property, as described in the preceding paragraph, is the property subject to this action and the property to be condemned.
5. DIUC is engaged in the business of supplying water services on Daufuskie Island in Beaufort County.
6. The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.
7. DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

9. DIUC has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and by making the appraisal available to the Landowner.

10. DIUC has complied with the requirements set forth in Section 28-2-70(B) by making reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid.

11. Plans of the waterworks plant and water supply system may be inspected at 803 Haig Point Road, Daufuskie Island, SC 29915. The Landowner should contact counsel for Condemnor to make an appointment for inspection.

12. Attached hereto is a survey including a vicinity map showing the property to be taken.

13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

14. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Thomas P. Gressette, Jr., Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403. If no Agreement and

Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected. A copy of the Agreement and Request for Payment is attached hereto.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

19. If the Landowner accepts the amount tendered in this Notice, the attached Agreement and Request for Payment should be signed and returned as explained herein.

PRAATT-THOMAS WALKER, P.A.



Thomas P. Gressette, Jr.

P.O. Drawer 22247

Charleston, SC 29413-2247

Tel: 843-727-2249

Fax: 843-727-2239

E-mail: tpg@p-tw.com

G. Trenholm Walker

P.O. Drawer 22247

Charleston, SC 29413-2247

Tel: 843-727-2208

Fax: 843-727-2239

E-mail: gtw@p-tw.com

Attorneys for the Plaintiff-Condernnor

Charleston, South Carolina
August 1, 2013

R200 025 000 0344 0300
HAWK POINT COMMUNITY ASSOC INC
10 HAWK POINT CR
HILTON HEAD ISLAND SC 29928

R200 024 990 0301 0300
DAUFUSKE LAND INVESTMENTS LLC
111 CHEROKEE ST STE 200
FORT WIL SC 29713

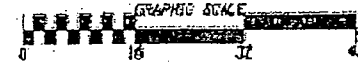
VICINITY MAP
N.E.S.

R200 025 000 0314 0300
HAWK POINT COMMUNITY ASSOC INC
10 HAWK POINT CR
HILTON HEAD ISLAND SC 29928

ASBUILT SURVEY OF:
PARCEL 3, TOWER SITE,
EQUESTRIAN CENTER, HAWK POINT,
DAUFUSKE ISLAND,
BEAUFORT COUNTY, SOUTH CAROLINA

PREPARED FOR:
DAUFUSKE ISLAND UTILITY COMPANY

DATE: 4/24/12 SCALE: 1" = 40'



SIL Sea Island Land Survey, LLC
A Member Firm THE BLACK HILLS GROUP

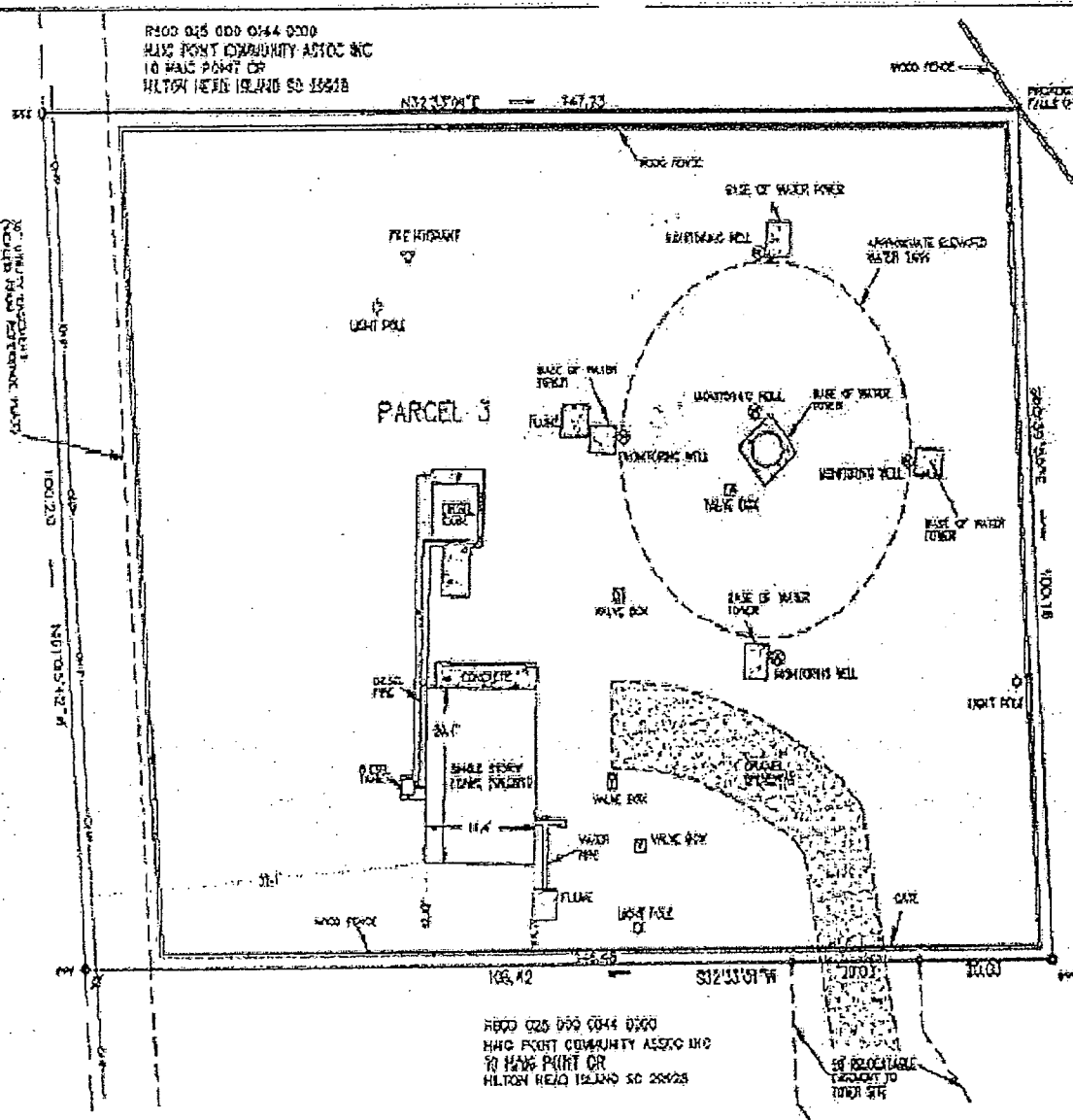
THIS REPORT IS THE PROPERTY OF THE SURVEYOR AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE SURVEYOR. ANY REPRODUCTION OR TRANSMISSION OF THIS REPORT WITHOUT THE WRITTEN PERMISSION OF THE SURVEYOR IS PROHIBITED. THE SURVEYOR ASSUMES NO LIABILITY FOR DAMAGES OR LOSSES OF ANY KIND, INCLUDING CONSEQUENTIAL DAMAGES, ARISING FROM THE USE OF THIS REPORT.



- NOTES:
- 1) THIS REPORT WAS PREPARED FOR THE PURPOSE OF A COMPLETE TITLE EXAMINER BY SEA ISLAND LAND SURVEY, LLC.
 - 2) THIS PROPERTY MAY BE SUBJECT TO EASEMENTS OF RECORD AND CURRENT EASEMENTS AS SHOWN ON THE OFFICE OF THE HILTON HEAD COUNTY RECORDS.
 - 3) SUBJECT PROPERTY DOES NOT APPEAR TO BE AFFECTED BY THE EASEMENT SETBACK.

- SYMBOLS
- PT 0 - 3/4" IRON PIPE NAIL
 - △ - TREE REMOVAL
 - ☆ - UTILITY POLE
 - - VALVE BOX
 - - MONITORING WELL
 - - LIGHT POLE
 - CH- - CHIMNEY

ALTERNATE PLAT
IF A PLAT OF 2.00 AC. TRACT EQUESTRIAN CENTER, HAWK POINT, DAUFUSKE ISLAND, BEAUFORT COUNTY, SOUTH CAROLINA, BEING 2.00 AC. RECORDED IN HILTON HEAD, PAGE 28, DATED 5/14/93, OLD HILTON HEAD, SC, BY JOHN L. YOUNG, SURVEYOR, 11/11/93.
PROPERTY AREA = 0.41 AC. 14,668 S.F.
ADDRESS: OFF OF HAWK POINT ROAD
DISTRICT: 400, MAP: 25, PARCEL: 45



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Condemnor,

vs.

MAMDOUH SABRY ABDELRAHMAN,

Landowner.

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-07-_____

) **AGREEMENT**
) **AND**
) **REQUEST FOR PAYMENT**

I, Mamdouh Sabry Abdelrahman, have reviewed the Condemnation Notice and Tender of Payment regarding the property identified with TMS #800-025-000-00045-0000 and more fully described in the Condemnation Notice and Tender of Payment.

I hereby accept the amount tendered of Three Thousand Seven Hundred and no/100 (\$3,700.00) and request payment of the same. I further agree to promptly execute all paperwork necessary to effectuate transfer of the property to the Condemnor.

Date

Mamdouh Sabry Abdelrahman

Sworn to and subscribed before me
this ____ day of _____ 2013.

(SEAL)
Notary Public for _____
Commission Expires: _____

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY COMPANY,
INC.

Plaintiff(s)

vs.

MAMDOUH SABRY ABDELRAHMAN

Defendant(s)

Submitted By: THOMAS P. GRESSETTE, JR.

Address: 16 CHARLOTTE STREET
CHARLESTON, SC 29403

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2013-CP - 07-

SC Bar #: 14065

Telephone #: 843.727.2200

Fax #: 843.727.2239

Other:

E-mail: TPG@P-TW.COM

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DOCKETING INFORMATION (Check all that apply)

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

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
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☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (619) | | |

Submitting Party Signature: _____

Date: September 11, 2013

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

F MANDATED ADR COUNTIES OF Y

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

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

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

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

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

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Condemnor,

vs.

MAMDOUH SABRY ABDELRAHMAN,

Landowner.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-07-2338

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)**

FILED
CLERK OF COURT
BEAUFORT COUNTY, S.C.
SEP 12 PM 4:25

TO: THE LANDOWNER, ABOVE NAMED, MAMDOUH SABRY ABDELRAHMAN,
8300 HINTON MILL ROAD, OSTRANDER, OH 43061:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to
acquire the real property described herein for public purposes.

2. Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his
ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"),
as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort,
dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File
Number 2011061014, in the Office of the Register of Deeds for Beaufort County, State of South
Carolina.

3. The property identified in the Tax Deed recorded on December 11, 2011, at the Office of
the Register of Deeds for Beaufort County, State of South Carolina, in Book 03102, Pages 0169-
0170, File Number 2011061014 (hereinafter "the Property") is more fully described therein as:

All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

4. The Property, as described in the preceding paragraph, is the property subject to this action and the property to be condemned.
5. DIUC is engaged in the business of supplying water services on Daufuskie Island in Beaufort County.
6. The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.
7. DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.
9. DIUC has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and by making the appraisal available to the Landowner.
10. DIUC has complied with the requirements set forth in Section 28-2-70(B) by making reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid.
11. Plans of the waterworks plant and water supply system may be inspected at 803 Haig Point Road, Daufuskie Island, SC 29915. The Landowner should contact counsel for Condemnor to make an appointment for inspection.
12. Attached hereto is a survey including a vicinity map showing the property to be taken.
13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.
14. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Thomas P. Gressette, Jr., Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403. If no Agreement and

Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected. A copy of the Agreement and Request for Payment is attached hereto.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

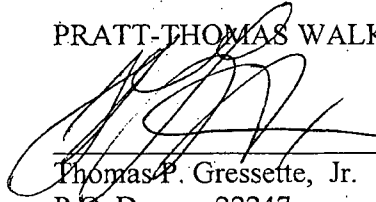
16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

19. If the Landowner accepts the amount tendered in this Notice, the attached Agreement and Request for Payment should be signed and returned as explained herein.

PRATT-THOMAS WALKER, P.A.



Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com

G. Trenholm Walker
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2208
Fax: 843-727-2239
E-mail: gtw@p-tw.com

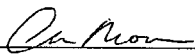
Attorneys for the Plaintiff-Condennor

Charleston, South Carolina
September 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Condemnation Notice and Tender of Payment by mailing a copy, United States First Class, to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 20th day of September, 2013:

Thomas Holloway, Esq.
Harvey & Battey
1001 Craven Street
Beaufort, SC 29902


Chris Morrow
Paralegal to Thomas P. Gressette, Jr.

as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File No. 2011061014, in the Office of the Registrar of Deeds for Beaufort County, State of South Carolina, which is the property subject to condemnation in Civil Action No. 2013-CP-07-2338. The remaining allegations of the Paragraph are denied as stated.

4. That the Defendant, answering Paragraph 3 of the Complaint, admits only that Paragraph 1 of the Condemnation Notice and Tender of Payment in Civil Action No. 2013-CP-07-2338 states "Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to acquire real property described herein for public purposes" and that Paragraph 2 of the Condemnation Notice states "Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File No. 2011061014, in the Office of the Registrar of Deeds for Beaufort County, State of South Carolina" and that Paragraph 4 of the Condemnation Notice states "The Property [the .337 acre tract] is the property subject to this action and the property to be condemned." The remaining allegations of the Paragraph are denied as stated.
5. That the Defendant denies the allegations contained in Paragraphs 4 and 5 of the Complaint as stated.
6. That the Defendant denies the allegations of Paragraph 6 of the Complaint as stated. For clarification purposes, the Defendant states that DIUC alleged in Paragraph 8 of

Condemnation Notice and Tender of Payment in Civil Action No. 2013-CP-07-2338 that “DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.”

7. That the Defendant denies the allegations of Paragraph 7 as stated. For clarification purposes, the Defendant states that DIUC alleged in Paragraph 7 of Condemnation Notice and Tender of Payment in Civil Action No. 2013-CP-07-2338 that “The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.”
8. That the Defendant denies the allegations of Paragraph 8 as stated.
9. That the Defendant denies the allegations of Paragraph 9 as stated.
10. That the Defendant denies the allegations of Paragraph 10 as stated.
11. That the Defendant denies the allegations of Paragraph 11 as stated.
12. That the Defendant denies the allegations of Paragraph 12 as stated.
13. That the Defendant denies the allegations of Paragraph 13 as stated.
14. That the Defendant denies the allegations of Paragraph 14 as stated.
15. That the Defendant denies the allegations of Paragraph 15 as stated.
16. That the Defendant denies the allegations of Paragraph 16 as stated.
17. That the Defendant denies the allegations of Paragraph 17 as stated.
18. That the Defendant denies the allegations of Paragraph 18 as stated.

19. That the Defendant, responding to the Plaintiff's Prayer for Relief, states that DIUC is not required to admit or deny the contents of this Paragraph. To the extent that any statement included therein may be deemed to require a response, the Defendant denies that the Plaintiff is entitled to any relief.

FOR A FURTHER DEFENSE AS TO ALL CAUSES OF ACTION
(Failure to State a Cause of Action)

20. Each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

21. DIUC would show that the allegations of the Complaint fail to state facts sufficient to constitute a cause of action and/or causes of action against DIUC, and therefore should be dismissed.

FOR A FURTHER DEFENSE AS TO ALL CAUSES OF ACTION
(Reservation of the Right to Amend Answer and Non-Waiver)

22. Each and every allegation set forth in the proceeding paragraphs hereof is hereby realleged and reiterated as fully as if set forth herein.

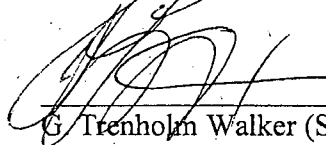
23. DIUC reserves the right to amend its Answer and its affirmative defenses after investigation, discovery, and further information is disclosed, including any and all defenses supported by the evidence proffered at trial of this matter, and DIUC is not waiving any defenses that may arise during investigation, discovery, and trial of this litigation.

WHEREFORE, having fully answered the Complaint herein, DIUC prays

- a. That the claims against DIUC be dismissed with prejudice;
- b. That all costs of DIUC, including reasonable attorneys' fees, be taxed to the Plaintiff;

- c. For a trial by jury on all triable issues; and
- d. For other such relief as the Court may deem just and proper.

PRATT-THOMAS WALKER, P.A.



G. Trenholm Walker (SC Bar #5777)

Email: gtw@p-tw.com

Direct: 843-727-2208

Thomas P. Gressette, Jr. (SC Bar #14065)

Email: tpg@p-tw.com

Direct: 843-727-2249

Pratt-Thomas Walker, PA

PO Drawer 22247

Charleston, SC 29413-2247

843-727-2200 Phone

843-727-2239 Facsimile

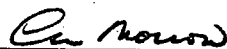
Charleston, South Carolina

October 3, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Answer by mailing a copy via Federal Express to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 3rd day of October, 2013.

Thomas A. Holloway, Esq.
1001 Craven Street
Beaufort, SC 29901-1107



Chris Morrow
Paralegal to Thomas P. Gressette, Jr.

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

MAMDOUH SABRY ABDELRAHMAN,)

Plaintiff,)

vs.)

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-07-02255

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Thomas A. Holloway, Bar No. _____

Address:

1001 Craven Street, Beaufort SC 29902

Phone: 843-524-3109 Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Thomas P. Gressette, Bar No. 14065

Address:

PO Drawer 22247, Charleston, SC 29413-2247

Phone: 843-727-2249 Fax 843-727-2239

E-mail: tpg@p-tw.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☐ Plaintiff / ☐ Defendant _____ Date submitted _____

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

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

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED: \$ _____**

☐ **CONTESTED - AMOUNT DUE: \$ _____**

20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended, and no additional authorization is required for the exercise of the power as asserted in Civil Action No. 2013-CP-07-2338.

3. Contrary to the allegations of Counts Three, Four, and Five of the Complaint, DIUC seeks to acquire real property described in Civil Action No. 2013-CP-07-2338 for public use, public benefit, and public purposes. Additionally, DIUC may exercise the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.
4. Contrary to the allegations of Count Six of the Complaint, DIUC is not liable to Plaintiff for any damages including, but not limited to, loss of rental income or use and enjoyment of the property.
5. Contrary to the allegations of Count Seven of the Complaint, the Plaintiff is not entitled to any equitable or injunctive relief against DIUC.

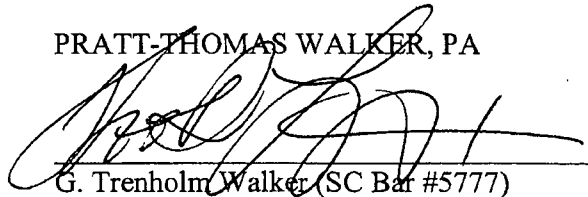
This Motion will be based on the pleadings in this matter, applicable case law and statutory law, affidavits filed herewith and in the future, legal memoranda that may be filed prior to any hearing, and oral argument or testimony to be presented to the Court at any hearing on this Motion. In support of its Motion, DIUC files herewith the Affidavit of John F. Guastella dated November 20, 2013.

WHEREFORE The Defendant requests that the Court grant its Motion for Summary Judgment and award costs and attorneys' fees to the Defendant.

Please be present to defend this Motion if so minded.

Respectfully submitted,

PRATT-THOMAS WALKER, PA

A handwritten signature in black ink, appearing to read 'G. Trenholm Walker', is written over a horizontal line.

G. Trenholm Walker (SC Bar #5777)

Email: gtw@p-tw.com

Direct: 843-727-2208

Thomas P. Gressette, Jr. (SC Bar #14065)

Email: tpg@p-tw.com

Direct: 843-727-2249

Pratt-Thomas Walker, PA

PO Drawer 22247

Charleston, SC 29413-2247

843-727-2200 Phone

843-727-2239 Facsimile

November 22, 2013.
Charleston, South Carolina.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Defendant's Notice of Motion and Motion for Summary Judgment by mailing a copy United States Mail First Class to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 22nd day of November, 2013.

Thomas A. Holloway, Esq.
1001 Craven Street
Beaufort, SC 29901-1107



Chris Morrow
Paralegal to Thomas P. Gressette, Jr.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2013-CP-07-02255
	)	
MAMDOUH SABRY ABDELRAHMAN,	)	
	)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM
	)	OF LAW IN SUPPORT OF
vs.	)	MOTION FOR
	)	SUMMARY JUDGMENT
DAUFUSKIE ISLAND UTILITY	)	
COMPANY, INC.,	)	
	)	
Defendant.	)	

COMES NOW the Defendant, Daufuskie Island Utility Company, Inc. ("DIUC"), by and through its undersigned attorneys, to respectfully submit this Memorandum of Law in Support of Defendant's Motion for Summary Judgment. Simultaneously filed herewith and specifically incorporated herein is a Statement of Undisputed Facts that includes citations to evidence and exhibits for the Court's convenience.

Based on the uncontroverted facts, the claims set forth in the Plaintiff's Complaint have no merit, there is no triable issue as to any material fact, and the Defendant DIUC is entitled to a judgment as a matter of law. Because no further discovery is necessary for the trier of fact to decide this Motion, it is ripe for the Court's consideration. Therefore, DIUC respectfully requests this Court grant DIUC's Motion for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to all of Plaintiff's alleged causes of action.

BRIEF SUMMARY OF PROCEDURAL HISTORY

DIUC is a "public utility" under the terms of S.C. Code Ann. §58-5-10(4), and is subject to the regulatory jurisdiction of the Public Service Commission of South Carolina. See Affidavit of John F. Guastella at Paragraph 8.¹ DIUC is authorized by the Public Service Commission to be the exclusive provider of water services to a service area that encompasses Daufuskie Island, South Carolina. See Affidavit of John F. Guastella at Paragraph 9.

On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment thereby initiating Civil Action 2013-CP-07-2338. See Affidavit of John F. Guastella at Paragraph 27 and Exhibit 5 thereto (Condemnation Notice filed September 12, 2012). The property to be condemned is a .337 acre tract in Haig Point, Daufuskie Island, South Carolina upon which DIUC operates a 125,000 gallon storage tank and related water system facilities ("the Property"). See Affidavit of John F. Guastella at Paragraph 12. The Condemnation Notice names Mamdouh Sabry Abdelrahman ("Sabry") as the Landowner-Condemnee. The Condemnation Notice was filed pursuant to The South Carolina Eminent Domain Procedures Act and asserts, among other authority, two statutes as authority for condemnation -- the first is S.C. Code §58-7-20 and the second is S.C. Code §58-7-30.

In September of 2012, Mr. Sabry filed this action alleging DIUC does not have authority to condemn the Property. As such, the condemnation action, Civil Action 2013-CP-07-0338, was automatically stayed pending resolution of this case. DIUC timely answered Sabry's Complaint. Then, on November 25, 2013, DIUC filed the instant Motion for Summary Judgment with the Affidavit of John F. Guastella, the manager of DIUC, asserting there is no triable issue as to any material fact, and the Defendant DIUC is entitled to a judgment as a matter

¹ A copy of the Affidavit of John F. Guastella is attached to the simultaneously filed Statement of Undisputed Facts as Exhibit 1 thereto. Deposition transcript excerpts and other documents not incorporated as exhibits to the Affidavit are attached hereto beginning with Exhibit 1.

of law. DIUC also contends this action challenging DIUC's condemnation authority was not raised in good faith as that term is defined under The South Carolina Eminent Domain Procedure Act. See S.C. Code §28-2-510(A). Therefore, DIUC seeks repayment of its costs and all litigation expenses incurred herein.

STANDARD OF REVIEW FOR SUMMARY JUDGMENT

Rule 56(c) of the South Carolina Rules of Civil Procedure provides that a party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Etheridge v. Richland Sch. Dist. I, 330 S.C. 447, 499 S.E.2d 238 (Ct. App. 1998). According to South Carolina case law, "[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001).

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct.App. 2004). However, the moving party's initial responsibility may be discharged by showing that "there is an absence of evidence to support the nonmoving party's case." Baughman v. Am. Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986)). Specifically, "[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Gauld v. O'Shaughnessy Realty Co., 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008), cert. denied (Oct. 21, 2009), reh'g denied (Jan. 27, 2009).

DISCUSSION AND POINTS OF LAW

1. **Count One: South Carolina Code §15-67-20 does not bar the condemnation action brought by DIUC in *DIUC v. Sabry*, Civil Action No. 2013-CP-07-2338.**

Plaintiff's First Cause of Action alleges that DIUC's condemnation of the Property is barred by S.C. Code §15-67-20, which states "The Plaintiff in actions for recovery of real property or the recovery of possession of real property is limited to one action for recovery." See Complaint at Paragraph 4. As set forth in the Statement of Undisputed Facts, after Beaufort County improperly deeded the Property to the Plaintiff via tax deed dated December 1, 2011, DIUC filed a Declaratory Judgment action (hereafter "Tax Sale Action") against Beaufort County, the Beaufort County Treasurer, and also the Plaintiff herein seeking adjudication that the tax sale and the tax deed are invalid, void, and unenforceable. See Affidavit of John F. Guastella at Paragraph 21 and Exhibit 3 thereto (Complaint filed July 26, 2012). The Complaint in *DIUC v. Douglas Henderson, et al.*, 2012-CP-07-02715, alleged that the requirements of Title 12, Chapter 51, of the S.C. Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the tax deed; as such, the purpose of the case was to set aside the tax sale because of the County's failure to meet its statutory notice and procedural obligations.

- a) **Neither filing at issue is an action "for the recovery of real property" as that is used in S.C. Code §15-67-20.**

Neither of the two actions filed by DIUC is an action "for the recovery of real property," as that term is used in §15-67-20, therefore §15-67-20 does not apply. The Tax Sale Action filed by DIUC was an action dealing with the failure of Beaufort County to properly notice and conduct a tax sale. See Affidavit of John F. Guastella at Paragraph 21 and Exhibit 3 thereto (*DIUC v. Douglas Henderson, et al.*, Complaint filed July 26, 2012). More specifically, DIUC's

case against Beaufort County dealt with Beaufort County's failure to comply with the requirements of Title 12, Chapter 51, of the South Carolina Code regarding. See Id. and S.C. Code §12-51-40 (entitled "Default on Payment of Taxes; Levy of Execution by Distress and Sale; Notice of Delinquent Taxes; Seizure of Property; Advertisement of Sale"). Quite simply, it was not an action "for the recovery of real property," as that term is used in §15-67-20.

Even if the Court were to assume the Tax Sale Action was an action covered by S.C. Code §15-67-20, the condemnation action brought by DIUC in Civil Action Number 2013-CP-07-0338 was filed pursuant to DIUC's eminent domain authority and pursuant to The South Carolina Eminent Domain Procedure Act. See Affidavit of John F. Guastella at Paragraph 21 and Exhibit 5 thereto (Notice of Condemnation and Tender of Payment). For the following reasons, the condemnation action, by clear legislative intent, is not an action "for the recovery of real property," as that term is used in §15-67-20. As such, the current case should be dismissed as a matter of law.

First, the plain language of The Eminent Domain Procedure Act, codified at Title 28, Chapter 2, of the South Carolina Code states that the Act is intended to create uniform procedures "for acquisition of property and ... the exercise of the power of eminent domain." S.C. Code §28-2-20. Therefore, condemnation action brought pursuant to the Act is an exercise of the State's power to condemn and acquire property; such cases are not a debate over title to property or an action to recover property, as those terms are used in S.C. Code §15-67-20.

Second, The Eminent Domain Procedures Act, by its own mandate, distinguishes actions to condemn property from all other causes of action affecting real property. See S.C. Code §28-2-60 ("The provisions of this chapter shall constitute *the exclusive procedure whereby condemnation may be undertaken* in this State.") (Emphasis added.) Clearly the Legislature

intended condemnation actions to be distinguished from all other actions, including actions “for the recovery of real property,” as that term is used in §15-67-20.

Third, even if the Court were to find that there is some conflict between the Eminent Domain Procedure Act and S.C. Code §15-67-20, the procedure and power set forth in The Eminent Domain Procedure Act controls because S.C. Code §28-2-20 unequivocally states, “In the event of conflict between this Act and *any other law* with respect to *any subject* governed by this Act, this Act shall prevail.” (Emphasis added.)

Finally, the South Carolina Supreme Court has made it clear that the actions for recovery of real property covered by S.C. Code §15-67-20 (and its predecessor statute prior to amendment) must be for the *same* cause of action. See Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201 (1912). When two separate actions merely bring title to property into issue, as is the case here, the actions are not actions “for the recovery of real property,” as that term is used in §15-67-20. Specifically, the Supreme Court held:

To be sure, there are other forms of action by which the title to real property may be brought in issue and determined, as for instance, an action for damages or trespass in the nature of common law action of trespass quare clausum fregit, an action for rents and profits, and actions for foreclosure of mortgage or partition in which a defendant sets up an independent legal title in himself, but none of these are actions “for recovery of real property” and therefore they do not fall within the provisions of [the statute]. See

Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201, 203 (1912); see also Tompkins v. Augusta & K.R. Co., 30 S.C. 479, 9 S.E. 521 (1889) (holding under previous version of statute that actions seeking different relief are not repeated actions “for the recovery of real property”) and Frederick v. Chapman, 144 S.C. 137, 142 S.E. 247 (1928) (citing Tompkins v. Augusta & K.R. Co., 30 S.C. 479, 9 S.E. 521 (1889); Elmore v. Davis, 49 S. C. 1, 26 S. E. 898 (1897); Foster v. Foster, 81 S. C. 311, 62 S. E. 320 (1908).

The condemnation action currently pending does not challenge Sabry's title to the Property. In fact, it states that he is named in the action by virtue of his status as Landowner of the Property. See Exhibit 5 to Affidavit of John F. Guastella (Condemnation Notice filed September 12, 2012) at Paragraph 2. As such, the claim in this case is distinguishable from the previous action against the County regarding tax sale procedures; the causes of action are not the same, as required by §15-67-20. Also, the condemnation case is not an action to recover property, as that term is used in §15-67-20. In a condemnation action, the condemning authority admits that it has no title to the subject property. See Affidavit of John F. Guastella at Paragraph 21 and Exhibit 5 thereto (Condemnation Notice filed September 12, 2012). The condemning authority provides notice that it intends to condemn the property and to provide the landowner with just compensation, all of which is established by the exclusive procedure set forth in The Eminent Domain Procedures Act. See S.C. Code §28-2-1, et seq. Condemnation actions are, by their own terms, not actions "for the recovery of real property" as that term is used in §15-67-20.

For the foregoing reasons, S.C. Code §15-67-20 does not bar the condemnation action filed by DIUC. Therefore, the Defendant's Motion for Summary Judgment as to the First Cause of Action should be granted.

2. Count Two: DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and S.C. Code of Laws §58-7-30 and §58-7-20.

a) S.C. Code §58-7-30 authorizes DIUC, without limitation, to condemn the Property.

Count 2 of the Plaintiff's Complaint alleges that DIUC is not authorized to exercise the right of condemnation under S.C. Code §58-7-30 because that Section "requires the governing body of the county in which the condemnation will occur to adopt an ordinance granting the corporation the authority to condemn property necessary to provide wastewater services." See

Complaint at Paragraph 8. The Condemnation Notice in this case explicitly relies upon two statutes as authority for condemnation -- the first is S.C. Code §58-7-30 and the second is S.C. Code §58-7-20.

Section 58-7-30 is entitled "Water Companies May Condemn Land for Waterworks" and states:

(A) Any corporation engaged in the business of supplying water or sewerage service in this State or which may intend in the business of supplying water or sewerage service has the same rights and powers of condemnation as are conferred upon municipal corporations pursuant to the provision of §5-31-420, §5-31-430, and §5-31-440.

(B) Before a corporation engaged in supplying *sewer services* as authorized under the provision of this section exercises the right of condemnation, the governing body of the county in which the condemnation will occur must adopt an ordinance granting the corporation the authority *to condemn property necessary to provide sewer services*.

(Emphasis added). As indicated by the plain language of the statute, only condemnation of "property necessary to provide *sewer services*" requires an authorizing ordinance. Id. There is no such requirement in the statute related to condemnation for supplying *water services*. As explained below, the record clearly and without dispute establishes the condemnation of the Property is for the supply of *water services*.

Since 1986, DIUC and its predecessors in interest have provided water services to Daufuskie Island through a water supply system using the 125,000 gallon tank and related facilities located on the Property. See Affidavit of John F. Guastella at Paragraph 24. DIUC's water supply services are authorized by and regulated by the Public Service Commission of South Carolina. See S.C. Public Service Commission Order Approving Establishment of Service Area, May 24, 1988 (Exhibit 1 hereto), and Affidavit of John F. Guastella at Paragraph 25. The

property to be condemned is related *solely to the water system* and is *not part of the sewer system*; further, the land condemned is in no way "necessary to provide sewer services," as that phrase is used in S.C. Code §58-7-30(B), the statute that requires an ordinance for certain sewer service condemnations. During his deposition, John Guastella, DIUC's manager, testified as follows regarding the condemnation's purpose to the water system only:

- Q. Are the waste water and -- is the water and waste water system tied together in any way?
A. No.
Q. Do they operate independent of each other?
A. Yes.
Q. There's no water required in treating waste water?
A. Well, there's a water line at the waste water treatment plants for washing off different pieces of equipment, but it's not part of the collection in waste water treatment system. You don't interconnect waste water mains with water mains. That's what you're asking me?
Q. No. I'm asking you if the water is used -- clean water is used in the process of waste water treatment --
A. No.
Q. -- collection or distribution, any of it.
A. No.
[...]
Q. Are both the water and waste water system under the same permit?
A. No, they're separate permits for the water [and] waste water system.

Deposition of John F. Guastella, pages 38-40 (Exhibit 2 hereto).

Again, the land condemned is in no way "necessary to provide sewer services," as that phrase is used in S.C. Code §58-7-30(B)'s ordinance requirement. Therefore, under the terms of the statute, no ordinance is required for condemnation of the Property as it relates *only* to the separately permitted and operated water supply system.

It is the Defendant's understanding that Plaintiff intends to persuade this Court to rule that DIUC's *water system* is really a *sewer system* and therefore a county ordinance is required for condemnation of the Property. It seems that Plaintiff will assert as follows: the water tank on the Property is part of the water system which supplies potable water to homeowners;

homeowners receive potable water from the water system; homeowners convert potable water into wastewater by placing it into the sewer system (ie, sink drains and flushing toilets); and therefore the water tank on the Property is really part of the waste water system, so DIUC needs Beaufort County's permission to condemn the Property. Such a position is not supported by any fact in the record, it defies engineering and functional realities, and it is totally contrary to the law of South Carolina.

Because *water service systems and sewerage systems are always distinct systems*, the two types of systems are distinguished throughout the South Carolina Code and the applicable South Carolina Regulations. By way of example, DIUC highlights the following undisputed facts and statutory excerpts:

- DIUC must maintain separate performance bonds for the water utility and the sewer utility. See S.C. Code § 58-5-720 (filing of bond of certificates). See Exhibit 3 hereto (DIUC Performance Bond (Water System) and DIUC Performance Bond (Sewer System)).
- The water system and utility system are valued separately for purposes of calculating the rate base. See Exhibit 4 hereto (Daufuskie Island Utility Company, Inc. Valuation and Appraisal, 2012 at Table 3-4).
- The water system and utility system are valued separately for purposes of calculating present value. See Exhibit 4 hereto (Daufuskie Island Utility Company, Inc. Valuation and Appraisal, 2012 at Table 41A and Table 41B).
- Throughout the various statutes related to condemnation by water or sewer service providers, the distinction between water and sewerage systems is repeatedly delineated.
 - S.C. Code §5-31-410 (condemning land for the “purpose of procuring a supply of water or establishing a sewer system or other public works);
 - S.C. Code §5-31-420 (condemnation of land “for enlarging, extending, or establishing a sewerage system or a water system”);
 - S.C. Code §5-31-440 (entitled “Condemnation of Land for Waterworks and to Protect Watersheds” includes only reference to water systems);

- S.C. Code §58-7-20 (same powers of telephone and telegraph companies, including the power to condemn, are granted to companies “engaging in supplying of water or sewerage services”);
- S.C. Code §58-7-30 (any corporation engaged in the business of “supplying water or sewerage services in this state” may exercise the power of condemnation); and
- S.C. Code §58-5-710 (S.C. Public Service Commission clearly distinguishes between the operation of “a water or sewer utility system.”)

There is a real, obvious, and practical distinction between *water* services and *sewer* services. The Court, then, must be mindful of that distinction between water and sewer systems when considering condemnation powers that may be different between the two types of systems.

Because the issue at hand is interpretation of a condemnation power exercised by The Eminent Domain Procedure Act, the Supreme Court’s rulings on the Act also require this Court reject Plaintiff’s strained assertion that DIUC’s water system is somehow a sewer system. The South Carolina Supreme Court has stated “a statute providing the method of procedure for exercising the power of eminent domain should be so construed as to give effect to the intention of the Legislature. It should receive a reasonable and sensible construction” See University of South Carolina v. Mehlman, 245 S.C. 180, 188, 139 S.E. 2d 771, 775 (1964). Any attempt by Plaintiff to contort the definition of a water service into a sewer system in order to assert that the Property is part of a sewer system is not a reasonable or a sensible construction of The Eminent Domain Procedures Act and it would not effectuate the Legislature’s intent. As such, it must be rejected by this Court.

There can be no question that the South Carolina Code, the South Carolina Public Service Commission, and DIUC itself, all distinguish between the definition of and operation of a water supply system versus a sewerage system. Because the Property only relates to the supply of water service, S.C. Code §58-7-30 authorizes the instant condemnation and no additional action,

particularly no additional county ordinance, is required. Therefore, the Defendant is entitled to summary judgment as to Count 2 of the Complaint.

b) S.C. Code §58-7-20 also authorizes DIUC, without limitation, to condemn the Property.

South Carolina Code Section §58-7-20 is entitled "Rights, Powers and Privileges of Telegraph and Telephone Companies Conferred on Water Companies" and states:

Subject to the same duties and liabilities, all the rights, powers, and privileges conferred upon telegraph and telephone companies under Chapter 2 of Title 28, including the power to condemn property, are granted to companies engaged in supplying water or sewerage services incorporated under the laws of this State or to companies incorporated under the laws of any other state upon complying with the laws of this State regulating foreign corporations and by becoming a domestic corporation.

Therefore, §58-7-20 vests DIUC the right to condemn land, including the Property, as further outlined in the Code sections related to telephone and telegraph condemnations (S.C. Code §58-9-2020 and §58-9-2030).

Under both S.C. Code §58-9-2020 and §58-9-2030, there are no ordinance requirements and there are no additional permission or action required for condemnation of property. As a water company possessing the same condemnation power of telegraph companies under §58-7-20, DIUC "may construct, maintain and operate its line . . . on, over and under the lands of any person in this State . . . provided . . . that just compensation is first paid such landowners." See S.C. Code §58-9-2020. Again, *the right to condemn is not conditional*; no county approval is necessary to exercise the condemnation authority. See *Id.* Additionally, under Section 58-9-2030, if DIUC seeks to condemn applicable property, it has been authorized -- without any condition of county or other approval-- to "secure the right and privilege by condemnation actions against the condemnees." S.C. Code §58-9-2030.

Therefore, whether the Court finds DIUC is authorized to condemn the Property pursuant to S.C. Code §58-7-30(A) or pursuant to S.C. Code §58-7-20 with §58-9-2020 and §58-9-2030, the Defendant's Motion for Summary Judgment should be granted as to Count Two of the Complaint.

3. Counts Three, Four, and Five: As a "public utility" under South Carolina law, DIUC's action to condemn the Property is for public use, public benefit, and public purposes.

Causes of Action 3, 4, and 5 in the Plaintiff's Complaint collectively allege that DIUC is not authorized to condemn the Property because the land will be "taken from one private owner and turned over to another private owner for the benefit of a group of persons that live in a private gated community" and therefore that S.C. Code §58-7-20 and §58-7-30 do not authorize the condemnation. See Complaint at Paragraph 10.

Under S.C. Code §58-5-10(4), DIUC is a "public utility" in that it is a "corporation ... furnishing or supplying ... water ... to the public ... for compensation." See also Affidavit of John F. Guastella at Paragraph 8. As a public utility, DIUC is subject to the regulatory jurisdiction of the Public Service Commission of South Carolina. Id. DIUC is further authorized by the Public Service Commission of South Carolina to be the exclusive provider of water and wastewater services to a service area that encompasses Daufuskie Island, South Carolina. See Id. at Paragraph 9.

S.C. Code §58-5-10(5) defines the term "public or any portion thereof" to mean

"the public generally, or any limited portion of the public, including a person, private corporation, municipality, or any political subdivision of the State for which the service is performed or to which the commodity is delivered and...for which compensation is required, such corporation or person is hereby declared to be a public utility"

S.C. Code §58-5-10(5). Therefore, DIUC's service to Daufuskie Island customers who use the water system and the storage tank on the Property is, by statutory definition, service to the "public."

The South Carolina Department of Health and Environmental Control ("DHEC") also endorses DIUC's position. Douglas J. Kinard, PE, Director of Drinking Water Protection Division for DHEC's Bureau of Water, agrees that DIUC serves the public and asserts that "it is in the public interest for [DIUC] to own or remain in control of all of its facilities so that they are able to remain in compliance with the [Safe Drinking Water Act] and the [State Primary Drinking Water Regulations]." See Exhibit 6 to Affidavit of John F. Guastella (Letter from Kinard to Guastella dated October 3, 2013).

Clearly, according to South Carolina statutory definitions and DHEC, DIUC is a public utility that serves the public. See S.C. Code §58-5-10(4) and §58-5-10(5). As such, the Plaintiff's Third, Fourth, and Fifth causes of action are without merit, and summary judgment for the Defendant as to these causes of action is appropriate.

4. Count Six: DIUC is not liable to Plaintiff for any damages including, but not limited to, loss of rental income or use and enjoyment of the property.

Count Six of the Plaintiff's Complaint alleges that the Plaintiff is entitled to "loss of rental income resulting from the unlawful occupation of Plaintiff's Property" by DIUC. See Complaint at Paragraph 16. First, there is no contract or rental agreement between the Plaintiff and DIUC, as testified to by Mr. Guastella.

Q. Okay. And have you been paying rent on the facility?

A. No.

Q. Why not?

A. It's not necessary to pay rent. We don't have any lease. There's no -- there's no agreement for any rent to pay for those facilities. And we have been using those facilities, the utilities' facilities, and we have an easement for the facilities.

Deposition of John F. Guastella at Page 46-47 (Exhibit 5 hereto.)

The "easement for the facilities" referred to by Mr. Guastella in his deposition is the Assignment of Rights filed at Beaufort County Register of Deeds, Book 2298, Page 2080 (Exhibit 6 hereto.) The Assignment of Rights incorporates The Haig Point General Covenants, Article 3, §18 of which states:

Certain Easements The company reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over, and under the ground of the Property to erect, maintain, and use...drainage ways, sewers, wells, pumping stations, tanks, water mains, and other suitable equipment for the conveyance and use of...sewer, water, drainage or other public conveniences or utilities on...the property as may be reasonably required ...

See Exhibit 6 hereto (which includes a copy of Haig Point General Covenants).

Pursuant to the Assignment of Rights, Haig Point, Inc. assigned to Haig Point Utility Company, Inc. its rights pursuant to the covenants previously quoted. Pursuant to Order of the Public Service Commission dated March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc. (DIUC), the Defendant herein. See Affidavit of John F. Guastella at Paragraph 14 and Exhibit 2 thereto (Public Service Commission of South Carolina Order Approving Request of Name Change). As the rightful owner of the easements identified in Section 18 of the Haig Point General Covenants, DIUC's facilities are lawfully located on the Property, and no rent is required. As such, the Defendants are entitled to summary judgment as to the Sixth Cause of Action.

5. Count Seven: The Plaintiff is not entitled to any equitable or injunctive relief against DIUC.

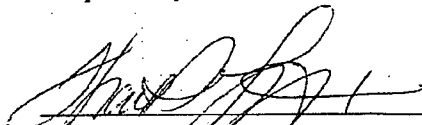
Count Seven of the Complaint requests that this Court issue Order requiring DIUC to relocate its facilities from Plaintiff's land and vacate the Property immediately. See Complaint

at Paragraph 18. Because this cause of action explicitly admits that the facilities located on the Property belong to DIUC and because DIUC has the right to maintain facilities on the Property pursuant to the aforementioned easement and the General Covenants, as discussed above, the Plaintiff cannot maintain a claim --legal, equitable, or otherwise-- for the relief sought by this cause of action. As such, Defendant's Motion for Summary Judgment as to the Seventh Cause of Action should be granted.

CONCLUSION

"[T]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). For the aforementioned reasons, there is no genuine issue of material fact regarding Plaintiffs' claims and DIUC respectfully requests that this Court grant summary judgment as to all causes of action against it thereby expediting disposition of this case to its proper conclusion.

Respectfully submitted,



Thomas P. Gressette, Jr. (S.C. Bar #14065)

G. Trenholm Walker (S.C. Bar #5777)

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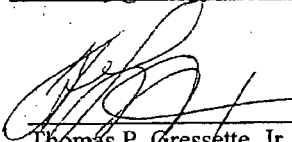
Attorneys for Defendant, Daufuskie Island
Utility Company, Inc.

Charleston, South Carolina
May 22, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Defendant's Memorandum in Support of Motion for Summary Judgment and Defendant's Statement of Undisputed Facts by electronic mail to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 22nd day of May, 2014:

Thomas A. Holloway, Esq.
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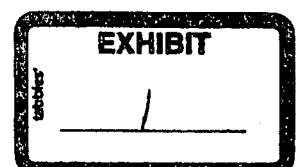
7-5/88

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 87-333-W/S - ORDER NO. 88-522
MAY 24, 1988

IN RE: Application of Haig Point Utility Company, Inc. for approval to operate a water and sewer system and for approval of a schedule of rates and charges for customers in the Haig Point Plantation Area, Daufuskie Island, Beaufort County, South Carolina.) ORDER APPROVING ESTABLISHMENT OF SERVICE AREA AND RATES AND CHARGES

By Application filed February 5, 1988, Haig Point Utility Company, Inc. (the Applicant) seeks approval to provide water and sewer service in the Haig Point Plantation area, Daufuskie Island, Beaufort County, South Carolina, and for approval of a schedule of rates and charges for water and sewerage service provided to its customers in this area. The Application was filed pursuant to S. C. Code Ann. Section 58-5-240 (1976), as amended, and R.103-821 of the Commission's Rules of Practice and Procedure.

After notice duly provided, a public hearing was held pursuant to S. C. Code Ann. Section 58-3-95 (Cum. Supp. 1987) in the Offices of the Commission on May 12, 1988 at 10:30 a.m., the Honorable Henry G. Yonce, presiding. The hearing panel consisted of Commissioners Butler and Frazier. Appearances were entered by M. Jeffrey Vinzani, Esquire, on behalf of the Applicant and Marsha A. Ward, Assistant General Counsel, on behalf of the



Commission Staff. No one appeared in opposition to the Application.

The Applicant presented the testimony of Danny E. Stanley, Professional Engineer and Vice President of Thomas and Hutton Engineering Company; John J. Hutton, Project Representative and Business Services Coordinator of Thomas and Hutton Engineering Company; and Benny K. Jones, Vice President of Construction of International Paper Realty Corporation, President of the Haig Point Utility Company and President of Haig Point/Melrose Wastewater Treatment Company, to present testimony concerning the proposed operations of the utility and explain the proposed schedule of rates and charges. The Application and attached exhibits were moved into evidence as Hearing Exhibit No. 1. The testimony established under Paragraph A, "Tapping Fees", of Section III, "Special Conditions", that if tap fees have not been paid and water and sewer charges commenced within five (5) years of the purchase date, the customer will be charged the base rate for water and sewer services, in addition to the authorized tap fee. The Commission also notes that the testimony relating to Paragraph C, "System Development Charges", of the same Section III, established that system development charges apply only to a developer outside of the Company's approved service area requesting service to be connected to the Haig Point system.

The testimony given by witness Jones explained how the Applicant will operate its water and wastewater services. Haig

Point Utility Company, Inc. was incorporated on August 28, 1986, for the purpose of providing sewer collection and water distribution services to property owners on Haig Point Plantation, Daufuskie Island, South Carolina. International Paper Realty Corporation of South Carolina entered into an agreement whereby the Melrose Group and International Paper Realty Corporation of South Carolina formed Haig Point/Melrose Wastewater Treatment Company, Inc. for the purposes of providing the development, construction and operation of a six hundred and forty thousand (640,000) gallon per day wastewater treatment facility on Daufuskie Island. Under this agreement, Haig Point Utility Company holds a sixty (60%) percent ownership and the Melrose Utility Company holds a forty (40%) percent ownership interest.

The Commission is of the opinion, and so finds, that based on the record of this proceeding, that the rates and charges requested by the Applicant, and as shown in Appendix A of this Order, are fair and reasonable and should be granted. Further, the Commission is of the opinion and so finds that the Applicant is fit, willing and able to provide the proposed water and sewerage service in the requested service area, and approves same.

IT IS THEREFORE ORDERED:

1. That Haig Point Utility Company, Inc. be, and hereby is, granted a Certificate of Public Convenience and Necessity to

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operate as a water and sewerage utility in the Haig Point Plantation Area, Daufuskie Island, Beaufort County, South Carolina.

2. That the schedule of rates and charges for Haig Point Utility Company, Inc., as set forth in Appendix A attached hereto be, and hereby is approved and may be charged for service rendered on or after the date of this Order.

3. That Haig Point Utility Company, Inc. shall maintain its books and records for its water and sewer operations in accordance with the NARUC System of Accounts for Class B Water and Sewer Utilities.

4. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


ACTING Executive Director

(SEAL)

HAIG POINT UTILITY COMPANY, INC.

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APPENDIX A

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I. RESIDENTIAL RATES

A. WATER:

- | | | | |
|----|---------------------------------------|----|--------|
| 1. | Tapping Fee & 3/4" Meter Box | \$ | 500.00 |
| 2. | Base Monthly Charge 0-7, 500 gal. use | \$ | 15.00 |
| 3. | Each 1,000 gal. over 7,500 gal./month | \$ | 1.20 |

B. SEWER:

- | | | | |
|----|---------------------------------------|----|--------|
| 1. | Tapping Fee & Lateral Stub | \$ | 500.00 |
| 2. | Base Monthly Charge | \$ | 15.00 |
| 3. | Each 1,000 gal. over 7,500 gal./month | \$ | .96 |

C. IRRIGATION:

- | | | | |
|----|--------------------------------|----|--------|
| 1. | Tapping Fee & 3/4" Meter Box | \$ | 500.00 |
| 2. | Each 1,000 gal. used per month | \$ | 1.20 |

II. COMMERCIAL RATES

A. WATER:

- | | | | |
|----|--------------------------------------|----|----------|
| 1. | Tapping Fee per Hotel or Inn Room | \$ | 250.00 |
| 2. | Tapping Fee up to 1-1/2" Water Meter | \$ | 500.00 |
| 3. | Tapping Fee for 2" or 3" Water | \$ | 1,500.00 |
| 4. | Tapping Fee for 6" Meter | \$ | 3,500.00 |

(Larger Meter on a case by case basis)

- | | | | |
|----|------------------------------------|----|-------|
| 5. | Base Monthly Charge, 0-7, 500 gal. | \$ | 21.00 |
| 6. | Each 1,000 gal. over 7,500 gal. | \$ | 1.20 |

B. SEWER

- | | | | |
|----|---------------------------------------|----|--------|
| 1. | Tapping Fee per Inn Room | \$ | 250.00 |
| 2. | Tapping Fee, 4"-8" 0 Sewer Pipe | \$ | 500.00 |
| 3. | Base Monthly Charge, 0-7,500 gal. use | \$ | 21.00 |
| 4. | Each 1,000 gal. over 7,500 gal./month | \$ | .96 |

C. IRRIGATION:

- | | | |
|----|--------------------------------|-----------|
| 1. | Tapping Fee & 3/4 Meter Box | \$ 500.00 |
| 2. | Each 1,000 gal. used per month | \$ 1.20 |

III.

SPECIAL CONDITIONS

- A. TAPPING FEES: Capacity in the water and sewer systems has been reserved for purchasers of lots and/or building sites in Haig Point. Tapping Fees must have been paid and water and sewer charges commenced within five years from purchase date.
- B. BACKFLOW PREVENTION: All irrigation systems and pipes running from potable water lines must have approved backflow prevention devices installed.
- C. SYSTEM DEVELOPMENT CHARGES: Should new customers or their agent(s) petition to connect to the systems where there are no existing lines, pumps, hydrants, etc.; and should such petitions be approved, the following requirements shall apply:
1. New customers or their agent(s) shall be responsible for the cost of installation of the new water and sewer systems, including points of connection with existing systems and effluent return systems. The Installation shall be according to the requirements and satisfaction to the utility company, and costs shall include observation, testing, and certification services provided by utility company.

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APPENDIX A

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2. New customers or their agent(s) who install their systems must pay an amount equal to their share of the net investment in the existing plant and system facilities. This payment, on a cost per gallon of design flow, will be made according to the System Buy-in Pricing Basis (AWWA Manual 26, First Edition), based on the following formula.

System				
a. Original Cost	-	Accumulated Depreciation	=	Net Cost
b. Net Cost	-	Outstanding Debt	=	Total Equity*

Total Equity Investment
System Water or Sewer

c. Flow (Total design gallons per day) = \$/gallons

*For these calculations, the utility company's annual report to the PSC for the preceding year shall be used. Extra strength wastewaters will be charged accordingly.

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

MAMDOUH SABRY ABDELRAHMAN,

Plaintiff,

vs.

CASE NO. 2013-CP-07-02255

DAUFUSKIE ISLAND UTILITY COMPANY, INC.,

Defendant.

DEPOSITION OF: JOHN FRANCIS GUASTELLA

DATE: February 28, 2014

TIME: 10:42 AM

LOCATION: Pratt-Thomas Walker, PA

16 Charlotte Street

Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIA D. DEMPSEY, Registered
Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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RECORD ON APPEAL - 80

EXHIBIT

2

18 Q. Are the wastewater and -- is the water
19 and wastewater system tied together in any way?

20 A. No.

21 Q. Do they operate independent of each
22 other?

23 A. Yes.

24 Q. There's no water required in treating
25 wastewater?

1 A. Well, there's a water line at the
2 wastewater treatment plants for washing off
3 different pieces of equipment, but it's not part of
4 the collection in the wastewater treatment system.

5 You don't interconnect wastewater mains
6 with water mains; that's what you're asking me?

7 Q. No. I'm asking you if the water is
8 used -- clean water is used in the process of
9 wastewater treatment --

10 A. No.

11 Q. -- collection or distribution, any of
12 it?

13 A. No.

14 Q. Would there be any wastewater treatment
15 without the water system?

16 A. Well, the customers who have homes use
17 water, and that water is used to flush toilets. I
18 don't consider that part of the water and wastewater
19 system. I mean, that's when we deliver water --

20 Q. Without water, you don't have
21 wastewater?

22 A. That's right.

23 Q. Are both the water and wastewater system
24 under the same permit?

25 A. No. They're separate permits for the

1 water/wastewater system.

PERFORMANCE BOND
FINANCIAL STATEMENT
(WATER UTILITIES)

Bond No:

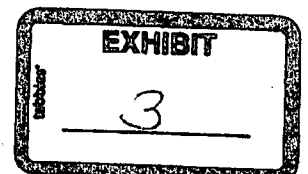
KNOW ALL MEN BY THESE PRESENTS, that Daufuskie Island Utility Company, Inc.

being duly qualified to do business in the State of South Carolina, designated as "principal", and that The Hanover Insurance Company, designated as "surety"/"sureties" in/are held and firmly bound unto the Public Service Commission of South Carolina, designated as "obligee", in the penal sum of \$, for the payment of which well and truly to be made, the principal binds itself, its successors and assigns, and the surety/sureties bind themselves, their personal representatives, and their assigns, jointly and severally, firmly by these presents.

WHEREAS, in accordance with the provisions of S. C. Code Ann., §58-5-720 (1976, as amended), which requires the principal to furnish a bond with sufficient surety, to the satisfaction of the obligee, conditioned as provided in said §58-5-720, and

WHEREAS, the obligee has granted the principal a Certificate of Public Convenience and Necessity and approved a schedule of rates for water service in areas shown on operating maps filed with the obligee, and

WHEREAS, this bond, when approved by the obligee, conditioned as in said §58-5-720, is to cover any and all liability which may arise as a result of the principal failing to provide adequate and sufficient service within its service area as prescribed in §58-5-720, and



WHEREAS, the obligee, upon notice and hearing, shall have the right to declare all or any part of the bond forfeited upon a determination by the obligee that the principal shall have willfully failed to provide such service as prescribed above, without just cause or excuse, and that such failure has continued for an unreasonable length of time, and

WHEREAS, the liability under the terms of this bond is hereby extended so as to include any fines or penalties imposed or assessed by the obligee against the principal under the provisions of S.C. Code Ann. §58-5-710 (1976 as amended), and

WHEREAS, in the event that any judicial action or proceedings are initiated with respect to this bond, the parties hereby agree that the venue thereof shall be Richland County, State of South Carolina, and

WHEREAS, the surety/sureties, as stockholders of the principal, undertake this obligation for and in consideration of the principal being able to continue to operate a water utility providing service to the public for compensation under the jurisdiction of the obligee, and

WHEREAS, the surety/sureties, as shall file with this bond a Financial Statement showing personal assets, liabilities, and net worth; and shall file annually with the obligee a revised Financial Statement as long as the bond continues in effect, and

WHEREAS, this bond shall become effective on the date executed by the principal and surety/sureties, and shall continue from year to year unless the obligations of the principal and surety/sureties under this bond are expressly released by the obligee in writing, and

WHEREAS, the obligee upon notice and opportunity to the principal and surety/sureties to be heard, may order that the face amount of this bond to be changed within the limits set forth in S. C. Code Ann., §58-5-720 (1976 as amended).

NOW THEREFORE, in testimony whereof, said principal has hereunto subscribed its name and said principal has caused this instrument to be signed by its duly authorized officers, and its corporate seal to hereunto affixed this 14th day of February, 2011; and that said surety/sureties have caused this instrument to be signed this 14th day of February, 2011.

SURETY/SURETIES:

The Hanover Insurance Company

Joyce M Connor
Signature Joyce M Connor, Attorney-in-Fact

Danforth Island Utility Company, Inc.
Company

IN THE PRESENCE OF:

Raimona Neal
Witness # 1 Raimona Neal

Jimmy Forrester
Witness # 2 Jimmy Forrester

Terry A Lee
By

Manager/member
Title

IN THE PRESENCE OF

[Signature]
Signature
[Signature]
Witness # 1

[Signature]
Witness # 2

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint
S Danny Sellers, Joyce M Connor, and/or Richmond Lanier Mitchell

of Duluth, GA and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:
Any such obligations in the United States, not to exceed Ten Million and No/100 (\$10,000,000.00) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents
These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this 14th day of June, 2010.



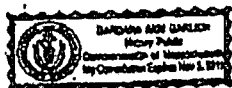
THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Mary Joanne Anderson
Mary Joanne Anderson, Vice President

Robert K. Greiman
Robert K. Greiman, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 13th day of June, 2010, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Hardick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this

day of

20

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Groul
Stephen L. Groul, Assistant Vice President

PERFORMANCE BOND
FINANCIAL STATEMENT
(SEWER UTILITIES)

Bond No:

KNOW ALL MEN BY THESE PRESENTS, that Daufuskie Island Utility Company, Inc.

being duly qualified to do business in the State of South Carolina, designated as "principal", and that
The Hanover Insurance Company, **designated as "surety"/"sureties" is/are held and firmly**
bound unto the Public Service Commission of South Carolina, designated as "obligee", in the penal
sum of , **for the payment of which well and truly to be made, the principal binds itself,**
its successors and assigns, and the surety/sureties bind themselves, their personal representatives, and
their assigns, jointly and severally, firmly by these presents.

WHEREAS, in accordance with the provisions of S. C. Code Ann., §58-5-720 (1976, as
amended), which requires the principal to furnish a bond with sufficient surety, to the satisfaction of
the obligee, conditioned as provided in said §58-5-720, and

WHEREAS, the obligee has granted the principal a Certificate of Public Convenience and
Necessity and approved a schedule of rates for sewer service in areas shown on operating maps filed
with the obligee, and

WHEREAS, this bond, when approved by the obligee, conditioned as in said §58-5-720, is to
cover any and all liability which may arise as a result of the principal failing to provide adequate and
sufficient service within its service area as prescribed in §58-5-720, and

WHEREAS, the obligee, upon notice and hearing, shall have the right to declare all or any part of the bond forfeited upon a determination by the obligee that the principal shall have willfully failed to provide such service as prescribed above, without just cause or excuse, and that such failure has continued for an unreasonable length of time, and

WHEREAS, the liability under the terms of this bond is hereby extended so as to include any fines or penalties imposed or assessed by the obligee against the principal under the provisions of S.C. Code Ann. §58-5-710 (1976 as amended), and

WHEREAS, in the event that any judicial action or proceedings are initiated with respect to this bond, the parties hereby agree that the venue thereof shall be Richland County, State of South Carolina, and

WHEREAS, the surety/sureties, as stockholders of the principal, undertake this obligation for and in consideration of the principal being able to continue to operate a sewer utility providing service to the public for compensation under the jurisdiction of the obligee, and

WHEREAS, the surety/sureties, as shall file with this bond a Financial Statement showing personal assets, liabilities, and net worth; and shall file annually with the obligee a revised Financial Statement as long as the bond continues in effect, and

WHEREAS, this bond shall become effective on the date executed by the principal and surety/sureties, and shall continue from year to year unless the obligations of the principal and surety/sureties under this bond are expressly released by the obligee in writing, and

FINANCIAL STATEMENT
Sewer Utilities
Page 3

WHEREAS, the obligee upon notice and opportunity to the principal and surety/sureties to be heard, may order that the face amount of this bond to be changed within the limits set forth in S. C. Code Ann., §58-5-720 (1976 as amended).

NOW THEREFORE, in testimony whereof, said principal has hereto subscribed its name and said principal has caused this instrument to be signed by its duly authorized officers, and its corporate seal to hereto affixed this 14th day of February, 2011; and that said surety/sureties have caused this instrument to be signed this 14th day of February, 2011.

SURETY/SURETIES:

The Hanover Insurance Company

Joyce M Connor
Signature Joyce M Connor, Attorney-in-Fact

Daufuskie Island Utility Company, Inc.

Company

IN THE PRESENCE OF:

Raimona Neal
Witness # 1 Raimona Neal

Tammy Forrester
Witness # 2 Tammy Forrester

Terry A Lee
By

Manager / member
Title

IN THE PRESENCE OF

Dwight D. Cole
Signature
Witness # 1

Rita Hubbard
Witness # 2

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint
S Danny Sellers, Joyce M Connor, and/or Richmond Lanier Mitchell

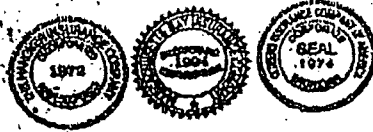
of Duluth, GA and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:
Any such obligations in the United States, not to exceed Ten Million and No/100 (\$10,000,000.00) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of claim and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this 14th day of June, 2010.



THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

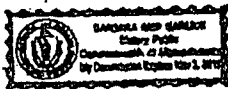
Mary Jeanne Anderson
Mary Jeanne Anderson, Vice President

Robert K. Gorman
Robert K. Gorman, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS
COUNTY OF WORCESTER

} ss

On this 13th day of June, 2010, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Starlick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this

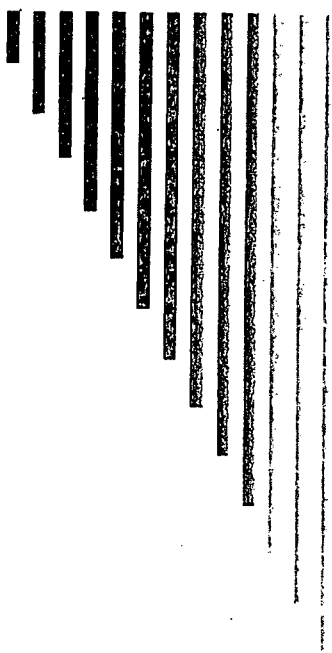
day of

, 20

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Brault
Stephen L. Brault, Assistant Vice President

Guastella Associates, LLC

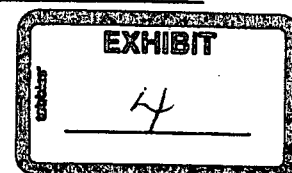


Daufuskie Island Utility Company, Inc.

Valuation and Appraisal

2012

6 Beacon Street, Suite 200 Boston, MA 02108
617.423.3030



RECORD ON APPEAL - 92

TABLE 3-3

Summary of Ratios of Sale Price to Rate Base

Type of Acquisition	Low Ratio	Average	High Ratio
Sale to Investor-Owned Entities	0.12	2.63	31.62
Municipal Condemnations	0.69	4.40	14.30
Municipal Purchases	0.35	4.82	38.87

TABLE 3-4

Values as Multiples of Rate Base

	DIUC - Water System		
	Low	With \$3,228,300 Average	Rate Base High
Sale to Investor-Owned Entities	\$372,000	\$8,482,000	\$102,086,000
Municipal Condemnations	\$2,230,000	\$14,191,000	\$46,169,000
Municipal Purchases	\$1,120,000	\$15,563,000	\$125,490,000

	DIUC - Wastewater System		
	Low	With \$3,461,100 Average	Rate Base High
Sale to Investor-Owned Entities	\$399,000	\$9,094,000	\$109,448,000
Municipal Condemnations	\$2,391,000	\$15,215,000	\$49,498,000
Municipal Purchases	\$1,201,000	\$16,686,000	\$134,539,000

TABLE 4-1A

Daufuskie Island Utility Company, Inc. Water and Wastewater Divisions
Water System Feasibility Analysis
 Projected Investor-Owned Operations
 Present Value Cash Flow at Projected Rates
 7.69% Annual Income Capitalization

	2012	2013	2014	2015	2016
REVENUES					
Operating Revenues	\$479,013	\$537,365	\$542,792	\$754,411	\$761,559
Connection Fees					
Total Revenues	<u>\$479,013</u>	<u>\$537,365</u>	<u>\$542,792</u>	<u>\$754,411</u>	<u>\$761,559</u>
OPERATING EXPENSES					
O & M Expenses	\$285,477	\$312,351	\$319,598	\$329,114	\$336,645
Depreciation	24,901	25,377	26,091	26,467	27,312
Amortizations	4,688	9,375	9,375	21,875	17,188
Payroll Tax	4,679	5,009	5,364	5,746	6,157
Property Tax	48	49	50	50	51
Other Taxes	4,556	5,110	5,162	7,175	7,243
Income Taxes	49,678	35,702	35,565	106,264	108,441
Total Operating Deductions	<u>\$374,026</u>	<u>\$392,973</u>	<u>\$401,205</u>	<u>\$496,691</u>	<u>\$503,036</u>
Net Operating Income	<u>\$104,987</u>	<u>\$144,391</u>	<u>\$141,587</u>	<u>\$257,720</u>	<u>\$258,523</u>
Capital Expenditures	0	0	0	0	0
Contributed Property	0	0	0	0	0
Depreciation (add)	24,901	25,377	26,091	26,467	27,312
CASH FLOW	<u>\$129,888</u>	<u>\$169,768</u>	<u>\$167,678</u>	<u>\$284,187</u>	<u>\$285,835</u>
PRESENT VALUE CASH FLOW	<u>\$809,859</u>				
PRESENT VALUE REVERSION	<u>1,353,354</u>				
TOTAL PRESENT VALUE	<u>\$2,163,213</u>				
				CASH FLOW-5 YR AVG	\$207,471
				CAPITALIZATION RATE	7.69%
				SALE PRICE	2,697,151
				COST	2.00%
					53,943
				NET PRICE	<u>\$2,643,208</u>
				FAIR VALUE 5TH YEAR	3,220,798
				CAPITAL GAIN	-577,590
				TAXES	34.00%
					-196,381
				NET PROCEEDS	<u>\$2,839,589</u>

TABLE 4-1B

Daufuskie Island Utility Company, Inc. Water and Wastewater Divisions
Sewer System Feasibility Analysis
Projected Investor-Owned Operations
Present Value Cash Flow at Projected Rates
7.69% Annual Income Capitalization

	2012	2013	2014	2015	2016
REVENUES					
Operating Revenues	\$441,445	\$528,359	\$530,907	\$752,552	\$755,994
Connection Fees	0	0	0	0	0
Total Revenues	<u>\$441,445</u>	<u>\$528,359</u>	<u>\$530,907</u>	<u>\$752,552</u>	<u>\$755,994</u>
OPERATING EXPENSES					
O & M Expenses	\$209,408	\$239,846	\$245,991	\$255,006	\$261,465
Depreciation	30,870	30,777	33,517	34,673	35,900
Amortization	4,688	9,375	9,375	21,875	17,188
Payroll Tax	4,936	5,623	5,780	5,943	6,110
Property Tax	142	153	159	160	161
Other Taxes	4,198	5,025	5,049	7,157	7,190
Income Taxes	61,814	57,137	55,663	130,045	131,200
Total Operating Deductions	<u>\$316,056</u>	<u>\$347,935</u>	<u>\$355,534</u>	<u>\$454,858</u>	<u>\$459,213</u>
Net Operating Income	\$125,389	\$180,424	\$175,373	\$297,694	\$296,781
Capital Expenditures	0	0	0	0	0
Contributed Property	0	0	0	0	0
Depreciation (add)	<u>30,870</u>	<u>30,777</u>	<u>33,517</u>	<u>34,673</u>	<u>35,900</u>
CASH FLOW	<u>\$156,259</u>	<u>\$211,201</u>	<u>\$208,890</u>	<u>\$332,367</u>	<u>\$332,681</u>
PRESENT VALUE CASH FLOW	\$971,229				\$248,279
PRESENT VALUE REVERSION	<u>1,604,226</u>				<u>7.69%</u>
TOTAL PRESENT VALUE	<u>\$2,575,454</u>				<u>3,227,660</u>
					<u>64,553</u>
					<u>\$3,163,107</u>
					<u>3,759,748</u>
					<u>-596,641</u>
					<u>-202,858</u>
					<u>\$3,365,965</u>

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

MAMDOUH SABRY ABDELRAHMAN,

Plaintiff,

vs.

CASE NO. 2013-CP-07-02255

DAUFUSKIE ISLAND UTILITY COMPANY, INC.,

Defendant.

DEPOSITION OF: JOHN FRANCIS GUASTELLA

DATE: February 28, 2014

TIME: 10:42 AM

LOCATION: Pratt-Thomas Walker, PA

16 Charlotte Street

Charleston, SC

TAKEN BY: Counsel for the Plaintiff

REPORTED BY: MARIA D. DEMPSEY, Registered
Professional Reporter

A. WILLIAM ROBERTS, JR., & ASSOCIATES

Fast, Accurate & Friendly

Charleston, SC	Hilton Head, SC	Myrtle Beach, SC
(843) 722-8414	(843) 785-3263	(843) 839-3376

Columbia, SC	Greenville, SC	Charlotte, NC
(803) 731-5224	(864) 234-7030	(704) 573-3919

A. WILLIAM ROBERTS, JR. & ASSOCIATES 800-743-DE
SCHEDULEDEPO.COM

RECORD ON APPEAL - 96

EXHIBIT

5

1 Those particular facilities, we have an
2 easement for those facilities. So our response is
3 going to be with respect to rate setting
4 prospectively, that the adjustment is not necessary
5 because we do have a control on use of those assets
6 through an easement.

7 Q. What easement are you referring to?

8 A. It's part of the documents that we
9 provided, I believe.

10 Q. Tell me what your understanding of them
11 are.

12 A. That the utility has a perpetual
13 easement to use those facilities, and that goes with
14 the land.

15 Q. And when did you discover that?

16 A. Just recently, in preparing for this
17 deposition, as a matter of fact.

18 Q. Okay. And have you been paying rent on
19 the facility?

20 A. No.

21 Q. Why not?

22 A. It's not necessary to pay rent. We
23 don't have any lease. There's no -- there's no
24 agreement for any rent to pay for those facilities.
25 And we have been using those facilities, the

1 utilities' facilities, and we have an easement for
2 the facilities.

3 Q. You don't believe that you owe rent on
4 the land that you don't own?

5 A. No.

6 MR. GRESSETTE: Objection.

7 BY MR. HOLLOWAY:

8 Q. And that's been your position since the
9 time that Mr. Sabry acquired the land?

10 A. Well, it's been my position since the
11 time Mr. Sabry first sent us bills requesting
12 payments.

13 Q. Have you ever replied to his bills
14 requesting payments?

15 A. No.

16 Q. Why not?

17 A. I don't have a basis for -- I don't see
18 any basis for the bill in the first place. We have
19 the right to use those facilities. We've been using
20 those facilities without paying any rent.

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BEAUFORT COUNTY SC - ROD
BK 02298 PGS 2080-2084
FILE NUM 2006001317
01/06/2008 02:28:40 PM
REC'D BY M DOE RCPT# 587719
RECORDING FEES 10.00

Prepared by and when recorded return to:

MCNAIR LAW FIRM, P.A./VJN
Shelter Cove Executive Park, Suite 400
23-B Shelter Cove Lane
Post Office Drawer 3
Hilton Head Island, SC 29928
(843) 785-2171

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ASSIGNMENT OF RIGHTS

December, 2005, by HAIG POINT, INC., a Delaware corporation having an address c/o International Paper Company, 3 Paragon Drive, Montvale, NJ 07645 (hereinafter the "Assignor") to HAIG POINT UTILITY COMPANY, INC., a South Carolina corporation having an address c/o International Paper Company, 3 Paragon Drive, Montvale, NJ 07645 (hereinafter the "Assignee").

WHEREAS, Assignor, formerly known as International Paper Realty Corporation of South Carolina, is the developer of that certain planned community known as Haig Point on Daufuskie Island, South Carolina (hereinafter "Haig Point"); and

WHEREAS, Assignor is also the Declarant under certain documents entitled "Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to all Property at Haig Point, Daufuskie Island, South Carolina" recorded in the Beaufort County Register of Deeds in Book 431 at Page 325 (the "Haig Point Covenants");

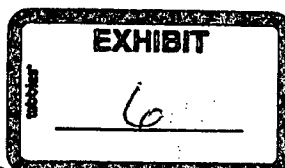
WHEREAS, the Haig Point Community Association, Inc., a South Carolina not for profit corporation was organized for the purposes set forth in the Declaration of Covenants and Restrictions of Haig Point Community Association, Inc. dated August 31, 1985 and recorded October 1, 1985 in the Office of the Beaufort County Register of Deeds in Book 431 at Page 355, as amended by that certain First Amendment thereto dated October 4, 1987 and recorded October 8, 1987 in Book 487 at Page 731, that certain Second Amendment thereto dated April 26, 1995 and recorded April 28, 1995 in Book 774 at Page 1217, and that certain Third Amendment thereto dated November 17, 2000, and recorded December 20, 2000, in Deed Book 1365 at Page 1366, as further amended from time to time (collectively the "HPCCA Covenants"); and

WHEREAS, Assignor desires to convey to Assignee certain rights reserved in the Haig Point Covenants and the HPCAA Covenants, more particularly described below.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that Assignor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and no other valuable consideration to it paid by the Assignee, the receipt and legal sufficiency of which are hereby acknowledged, assigns the following rights and Assignee accepts said rights set forth as follows:

-1 of 4-

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RECORD ON APPEAL - 55

1. Assignment. Assignor hereby assigns, transfers, sets over and by these presents has assigned, transferred and set over, unto Assignee, and Assignee agrees to accept such assignment as set forth in Exhibit "A" attached hereto and made part hereof.
2. Recording. This Assignment of Rights shall be recorded in the Register of Deeds in Beaufort County, South Carolina.
3. Acceptance. By execution of this Assignment, Assignee acknowledges said Assignment and agrees to accept all of the obligations of Assignor set forth in Exhibit "A". By acceptance of this Assignment, Assignee agrees to release Assignor from any further obligations under Haig Point Covenants and the HPCAA Covenants and to hold Assignee harmless and indemnify Assignee for any claims relating to obligations under Haig Point Covenants and the HPCAA Covenants.

[Execution and acknowledgment on following page.]

IN WITNESS WHEREOF, Haig Point, Inc., a Delaware corporation, has caused these presents to be executed by its duly authorized officer this 30th day of December, 2005.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Ronnie M. Ronnie
Chairman

ASSIGNOR:
HAIG POINT, INC.,
A Delaware corporation

By: [Signature]
Its: Chairman of the Board and President

STATE OF NEW JERSEY

COUNTY OF BERGEN

)
)
)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that L. H. Ronnie, Jr., as Chairman of the Board and President of Haig Point, Inc., appeared before me this day and acknowledged the due execution of the foregoing instrument, by and on behalf of the Assignor.

Witness my hand and official seal this 30th day of December, 2005.

[Signature] (SEAL)
Notary Public for New Jersey
My Commission Expires:

[Execution and Acknowledgment of Assignee on Following Page.] COLETTE J BORELL
Notary Public, State of New Jersey
My Commission Expires November 14, 2008

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

James M. Williams
Chris L. Farrell

ASSIGNEE:
HAIG POINT UTILITY COMPANY, INC.,
A South Carolina Corporation

By: Thomas F. Connor
Its: Vice President

STATE OF NEW JERSEY
COUNTY OF BERGEN

} ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Thomas Connor, as Vice President of Haig Point Utility Company, Inc., appeared before me this day and acknowledged the due execution of the foregoing instrument, by and on behalf of the Assignee.

Witness my hand and official seal this 30th day of December, 2005.

Colette J. Borell (SEAL)
Notary Public for New Jersey
My Commission Expires:

COLETTE J. BORELL
Notary Public, State of New Jersey
My Commission Expires November 14, 2008

EXHIBIT "A"

1. An absolute assignment of Assignor's perpetual, alienable and releasable easement right as set forth in Article III, Section 18 of the Haig Point General Covenants recorded in Deed Book 431 at Page 325 in the Office of the Register of Deeds for Beaufort County, South Carolina, on October 1, 1985, relating specifically to water and sewer utility service; and

2. An absolute assignment of the Assignor's perpetual, alienable, and releasable easement right as set forth in Article IV, Section 8 of the Haig Point General Covenants recorded in Deed Book 431 at Page 325 in the Office of the Register of Deeds for Beaufort County, South Carolina, relating specifically to water and sewer utility service; and

3. An assignment of the Company's right of ingress, egress and access via roadways and waterways as set forth in Article III, Section 24, of the Haig Point General Covenants recorded in Deed Book 431 at Page 325 in the Office of the Register of Deeds for Beaufort County, South Carolina.

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HAIG POINT GENERAL COVENANTS

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FILED AT 165000 ON 10/01/65

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STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DECLARATION OF RIGHTS,
RESTRICTIONS, AFFIRMATIVE
OBLIGATIONS AND CONDITIONS
APPLICABLE TO ALL PROPERTY
AT HAIG POINT, DAUFUSKIE
ISLAND, SOUTH CAROLINA

THIS DECLARATION, made this 31st day of August, 1985,
by INTERNATIONAL PAPER REALTY CORPORATION OF SOUTH CAROLINA,
a South Carolina Corporation, hereinafter referred to as the
"Company",

W I T N E S S E T H:

WHEREAS, the Company holds title in fee simple to the
certain lands (hereinafter referred to as the "Property")
described in Article II, Section 1 of this Declaration and
intends to plan and develop a community comprised of the
Property and known as "Haig Point" with certain facilities
and services for the use and benefit of all property owners
within such community; and

WHEREAS, the Company holds options for the purchase of
certain additional lands located on Daufuskie Island as
described in Article II, Section 2 of this Declaration; and

WHEREAS, the Company desires to provide for the
preservation of the values and for the maintenance of common
facilities, services and properties; and, to this end, the
Company has consented to subject the Property together with
such additions as may hereafter be made, as provided in
Article II, to the covenants, restrictions, easements,
affirmative obligations, charges and liens, hereinafter set
forth (hereinafter referred to as the "General Covenants" or
"these Covenants"), each and all of which is and hereby
declared to be for the benefit of the Property and every
owner of any and all parts thereof.

NOW, THEREFORE, the Company hereby declares that the
Property and such additions thereto as may hereafter be made
pursuant to Article II hereof are and shall be held,
transferred, sold, conveyed, given, purchased, leased,
occupied, and used subject to the General Covenants. These
General Covenants, the benefits of these General Covenants,
and the affirmative and negative burden of these General
Covenants shall touch and concern and run with the land
herein referred to as the Property.

ARTICLE I

DEFINITIONS
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All defined terms set forth in this Declaration or any
Supplemental Declaration, unless otherwise defined herein,
will have the meaning ascribed to them in the Declaration of
Covenants and Restrictions of Haig Point Community

Association, Inc. (the "Association Covenants") executed by International Paper Realty Corporation of South Carolina and the Haig Point Community Association, Inc. on the 31st day of August, 1985 and recorded simultaneously herewith.

1. "Association" shall mean and refer to the Haig Point Community Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

2. "Company" shall mean and refer to International Paper Realty Corporation of South Carolina, a Delaware corporation authorized to do business in the State of South Carolina, its successors and assigns.

3. "Haig Point" shall mean and refer to the property described in Exhibit A attached hereto and by reference incorporated herein and any additional real property made subject to these General Covenants by the filing of a Supplementary Declaration by the Company in the future, including the property described in Exhibit B attached hereto and incorporated by reference herein.

4. "General Covenants" or "these Covenants" shall mean and refer to the covenants set forth in this Declaration, as amended from time to time.

5. "Property" or "Properties" shall mean and refer to the real property now owned by the Company on Daufuskie Island, Beaufort County, South Carolina, as described in Exhibit A attached hereto and incorporated by reference herein, and to all additional real property made subject to these General Covenants by the filing of a Supplementary Declaration by the Company in the future.

6. "Master Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Haig Point. Since the concept of the future development of Haig Point is subject to continuing revision and change by the Company, present and future references to the "Master Plan" shall be references to the latest revision thereof.

ARTICLE XI PROPERTY DESCRIPTION

Section 1. Existing Property. The real property which is, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these General Covenants is located on Daufuskie Island, Beaufort County, South Carolina and is more particularly described in Exhibit "A" attached hereto and by reference incorporated herein.

The Company intends to develop the Property in accordance with the Master Plan, as subsequently modified

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from time to time, as a residential community featuring recreation facilities and various amenities and all other activities permitted by law which the Company deems appropriate as uses for the Property. The Company reserves the right to review and modify the Master Plan at its sole option, from time to time, based upon its continuing research and design program or economic conditions. The Master Plan or any future Master Plan, shall not bind the Company, its successors and assigns, to adhere to the Master Plan in the development of the land shown thereon; however, the Company covenants, on behalf of itself, its successors and assigns, that the Master Plan will at no time be modified or amended to provide for a gross density greater than 1.24 units per acre based upon the acreage set forth in the property description attached hereto as Exhibit A. Real property conveyed by the Company shall be classified and restricted in accordance with their designation in the deed of conveyance from the Company. The Company shall not be required to follow any predetermined sequence or order of improvements and development; and it may bring within the plan of these General Covenants additional lands, and develop the same before completing the development of the Property. The Company shall have full power to add to, subtract from, or make changes in the Master Plan, including the addition of other nearby lands owned by the Company or acquired in the future by the Company.

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration. The Company, its successors and assigns, shall have the right, without consent of any person, including the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of development. The additions authorized under this and the succeeding subsections shall be made by either deeding such additional property subject to this Declaration by specific reference in individual deeds or by filing a Supplementary Declaration of Covenants and Restrictions (hereinafter referred to as "The Supplementary Declaration") with respect to the additional property which shall extend the operation and effect of these General Covenants to such additional property. The Supplementary Declaration may contain such complementary additions and/or modifications of these General Covenants as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties. The Company holds an option for the purchase of the property described in Exhibit "B" attached hereto and incorporated by reference herein, and the Company may elect to subject this additional property to these General Covenants.

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ARTICLE III

GENERAL COVENANTS

Section 1. Purpose. The primary purpose of these covenants and restrictions and the foremost consideration in the origin of same has been the creation of a community which is aesthetically pleasing and functionally convenient. The establishment of objective standards relating to design, size and locations of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of property and of technological advances and environmental values. For this reason such standards are not established by these covenants. In order to implement the purposes of these covenants, the Company shall establish and amend from time to time objective standards and guidelines which shall be in addition to these covenants.

Section 2. Residential Lots. All Residential Lots in Haig Point shall be used for residential purposes exclusively. The use of a portion of a dwelling on a Residential Lot as an office by the owner or tenant thereof shall be considered a residential use if such use does not create, in the sole discretion of the Company, customer or client traffic to and from the lot. No structure, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Residential Lot other than one (1) single family dwelling, one (1) small accessory building which may include a detached private garage, provided the use of such accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. A guest suite or like facility may be included as part of the main dwelling or accessory building, but such suite may not be rented or leased except as part of the entire premises including the main dwelling, and provided, however, that such suite would not result in over-crowding the site. The provisions of this Section shall not prohibit the Company, its successors or assigns, from using a house or other family dwelling units as models for a sales program. Use as a model shall be limited to display purposes except as hereinafter provided.

Section 3. Architectural and Design Review.

- (a) Purpose. In order to preserve the natural beauty of Haig Point and its setting, to maintain Haig Point as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of property, no building, fence, swimming pool, tennis court, garage, paving materials of any kind, or any other structure or improvement of any nature or addition shall be erected, placed or altered until the proposed plans,

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FILED AT 155222 ON 12-21-75

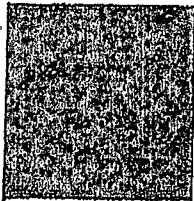
specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking areas), building height, landscape plan, and construction schedule shall have been approved in writing by the Company.

(b) Objectives. Architectural and design review shall be directed toward attaining the following objectives for Haig Point:

- (1) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural landforms.
- (2) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the Residential Lot and with surrounding Residential Lots and structures and do not unnecessarily block scenic views from existing structures or tend to dominate any general development or natural landscape.
- (3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with Haig Point's overall appearance, history and cultural heritage, with surrounding development, with natural landforms and native vegetation, and with development plans, officially approved by the Company, or any governmental or public authority, if any, for the areas in which the structures are proposed to be located.
- (4) Ensuring the plans for landscaping provide visually pleasing settings for structures on the same lot and on adjoining or nearby lots, and blend harmoniously with the natural landscape.
- (5) Ensuring that any development, structure, building or landscaping complies with the provisions of these Covenants.
- (6) Promoting building design and construction techniques that respond to energy consumption and environmental quality consideration such as heat loss, air emissions, and run-off water quality.

(c) Submission, Approval and Refusal of Architecture, Siting, Landscaping and Other Building Plans. Two copies of all plans and related data shall be submitted to the Company. The Company shall establish a fee sufficient to cover the expense of reviewing plans and

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related data at the time they are submitted for review and to compensate any consulting architects, landscape architects, urban designers or attorney's retainer. The fee initially established by these General Covenants shall be \$150 for each submission. The Company shall have the right to increase this amount not more than once in any subsequent twelve (12) month period. Approvals shall be dated and shall not be effective for construction commenced more than six months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the Company of the written request for approval, the provisions of this Section shall be thereby waived. Refusal or approval of plans, site location, building height, or specifications may be based by the Company upon any ground which is consistent with the objectives of these covenants, including purely aesthetic considerations, so long as such ground is not arbitrary or capricious.

- (d) Architectural and Design Review Guidelines. The Company will publish Architectural and Design Review Guidelines from time to time which will set forth minimum criteria and controls for construction of improvements on the Property. In order to further carry out the objectives set forth in this Section, the Architectural and Design Review Guidelines will provide for lot line setbacks, lot coverage and clearing limitations, and specify types of materials approved for incorporation in the exterior construction of structures. All plans submitted to the Company must incorporate the provisions of these Guidelines prior to the Company becoming obligated to review the plans, and the failure by the Company to review non-conforming plans shall not be deemed a waiver of the provisions of this Section.
- (e) Approval Not a Guarantee or Representation of Proper Design or Good Workmanship. No approval of plans, location or specifications, and no publication or Architectural and Design Review Guidelines shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good workmanlike manner. The Company shall not be responsible or liable for any defects in any plans or specifications submitted, revised or approved under these covenants nor for any defects in construction pursuant to such plans and specifications. The Property Owner shall have sole responsibility for compliance with approved plans

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and does hereby hold the Company harmless for any failure thereof caused by the Property Owner's architect or builder. The Company reserves the right to prohibit the Property Owner's builder and/or general contractor from the site in the event it is determined that failure to comply with approved plans is determined to be intentional or due to gross negligence.

Section 4. Siting. To assure that buildings and other structures will be located so that the maximum view, privacy and breeze will be available to each building or structure, and that structures will be located with regard to the topography of each property taking into consideration the location of large trees and other aesthetic and environmental considerations, the Company reserves unto itself, its successors and assigns, the right to control and to decide solely (so long as (a) its decisions are not arbitrary or capricious and (b) subject to the provisions of the pertinent land use regulations of public authorities having jurisdiction) the precise site and location of any building or structures on any property in Haig Point. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. Provided, however, that in the event an agreed location is stipulated in writing in the contract of purchase from the Company, and such location complies with the local county subdivision regulations, the Company shall approve automatically such location for a residence or group of residential units.

Section 5. Building Height. No single Family Dwelling Unit structure shall be constructed on a Residential lot which has a height exceeding three (3) and one-half (1 1/2) stories above the natural existing grade of said Residential lot. For purposes of this Section, one-half (1/2) story is defined as habitable space within the roof structure of the Dwelling Unit. A raised level below the first habitable floor of a Dwelling Unit to comply with the minimum height established by applicable flood zone regulations of the United States shall be considered a story for purposes of this Section. No other attached or detached residences shall be constructed on the existing property described on Exhibit A which has a height exceeding three (3) stories, provided that the first parking level or deck underneath such buildings shall not be considered a story. No attached or detached Dwelling Unit structure shall be constructed on any additions to the existing property which has a height exceeding five (5) stories above the minimum height established by applicable flood zone regulations of the United States. The height of any structure, including Single Family Residential or attached or detached Dwelling Units within the Property shall be subject to the prior review and approval in writing by the Company.

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FILED AT LOS ANGELES ON 10/21/85

Section 6. Parking. Each Property Owner subject to these Covenants shall provide sufficient space for the parking of approved vehicles for his and his family's use and the use of their guests off community roads prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Company. Enclosed parking shall be provided for all vehicles used by occupants of each residence.

Section 7. Completion of Construction. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to strikes, fires, national emergency or natural calamities. Houses and other dwelling structures may not be temporarily or permanently occupied until the exterior thereof have been completed. During the continuance of construction the Property Owner shall require the contractor to maintain the Residential Lot in a reasonably clean and uncluttered condition. Upon completion of construction the Property Owner shall cause the contractor to immediately remove all equipment, tools and construction material from the Lot. Any damage to roads, paths, Common Properties or any other property owned by any person or entity caused by the Property Owners' contractor or other parties providing labor or services to the Property Owner shall be repaired by the Property Owner or by the Company at Property Owner's expense. The landscaping plan for all Family Dwelling Units and other structures must be completed within ninety (90) days of occupancy or substantial completion, whichever date shall first occur.

Section 8. Service Yards. Each Property Owner shall provide a visually screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or similar storage receptacles, electric gas meters, air conditioning equipment, clothes lines, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties. No window air conditioning units may be installed or used on any Residential Lot.

Section 9. Signs and Mailboxes. No signs or ornaments shall be erected or maintained on the Property by anyone including, but not limited to, the Property Owner, a realtor, a contractor or subcontractor, or except with the written permission of the Company or except as may be required by legal proceedings. If such permission is granted the Company reserves the right to restrict size, color and content of such signs. No mailboxes may be erected or maintained on the Property except mailboxes approved and provided by the Company to a Property Owner. The actual cost of providing, erecting and maintaining a mailbox, including

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Company approved numbering or lettering, shall be paid by the Property Owner.

Section 10. Other Buildings, Vehicles and Boats. No mobile home, recreational vehicle, trailer, tent, or other similar vehicle or out-building or structure shall be placed on any Residential Lot, Development Unit Parcel, Multiple Family Tract or any other Portion of the Property at any time, either temporarily or permanently without prior approval from the Company. No boat may be stored, temporarily or permanently, on any Residential Lot unless concealed from view in a garage approved by the Company.

Section 11. Unsightly Conditions. It shall be the responsibility of each Property Owner and tenant thereof to prevent the accumulation of litter, trash, packing crates or rubbish or the development of any unclean, unsightly or unkempt condition of buildings or grounds on his property either before, during or after construction, nor to permit accumulations which shall tend to substantially decrease the beauty of the community as a whole or the specific area.

Section 12. Lights. The design and location of all exterior lighting fixtures shall be subject to the approval of the Company. Neither these nor any other illumination devices, including but not limited to Christmas ornaments, located anywhere on the structures or grounds of any Residential Lot or Family Dwelling Unit shall be located, directed, or of such intensity to affect adversely the night-time environment of any adjacent property.

Section 13. Animals. No animals, livestock, or poultry of any kind shall be raised, bred, kept or pastured on the Property, except that: (i) a reasonable number of common household pets such as dogs and cats may be kept in any one Family Dwelling Unit; provided said pets must be secured by a leash or lead, or under the control of a responsible person and obedient to that person's command at any time they are permitted outside a house or other dwelling or other enclosed area approved by the Company for the maintenance and confinement of pets; and (ii) horses may be allowed in such areas and for such purposes as may be designated by the Company from time to time in the Company's sole discretion. No horses may be kept on any Residential Lot without the express written permission of the Company, and in the event such permission is granted the Property Owner will be subject to such rules and regulations regarding horses as may be published from time to time by the Company.

Section 14. Sewage. Prior to the occupancy of a Dwelling Unit, proper and suitable provisions shall be made for the disposal of sewage by connection with the sewer mains of the Company, its licensee, successor or assigns. No sewage or other waste material shall be emptied or

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discharged in to the ocean, any creek, marsh, river, sound, waterway or beach or shorelines thereof.

Section 15. Water. No private water wells may be drilled or maintained on any Residential Lot or any other portion of the Property so long as the Company or a public service district or other governmental unit, its successors and assigns has installed a water distribution line within 100 feet of such property with average daily water pressure in such line adequate for the normal household use in dwellings served by such distribution line.

Section 16. Repairs and Hazards. Any building or other improvement on the Property that is destroyed partially or totally by fire, storm or any other means shall be repaired or demolished within a reasonable period of time, and the land restored to an orderly and attractive condition.

Section 17. Offensive Activity. No noxious or offensive activity shall be carried on upon any Residential Lot, Family Dwelling Unit, Development Unit Parcel, Common Properties, Open Space Area, or any portion of the Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the community. The Company shall have the express right, in its sole discretion, to publish rules from time to time to prohibit, regulate or otherwise deal with activities which violate this Paragraph. No fireworks of any type may be discharged within the property without express advance written permission of the Company.

Section 18. Certain Easements. The Company reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement and right on, over and under the ground of the Property to erect, maintain, and use electric, cable television, and telephone poles, wires, cables, conduits, drainage ways, sewers, wells, pumping stations, tanks, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of the Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these General Covenants by the Company, or (b) such portion of the Property as may be designated as the site for a building on a plot plan or for erection of a building which has been filed with the Company and which has been approved in writing by the Company. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide

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economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Any material disturbance to the grounds of any Property Owner caused by such utility installation shall be repaired and said grounds returned to their prior condition by the Company or prompt and reasonable remuneration for such repair shall be made to such Property Owner by the Company.

Section 19. Antennas. Except with the written permission of the Company, no television antenna, receiving "dish", radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of property within Haig Point. Nor shall radio, television signals, nor any other form of electromagnetic radiation be permitted to originate from any Family Dwelling Unit, Residential Lot, Multiple Family Tract, Public or Commercial Unit, Development Unit Parcel, or any other portion of the Property which may unreasonably interfere with the reception of television or radio signals upon any other of such properties. However, the provisions of this section shall not prohibit the Company from installing equipment necessary for a master antenna system, security system, cable television and mobile radio systems or other similar systems within Haig Point.

Section 20. Trespass. Whenever the Company is permitted by these Covenants to correct, repair, clean, preserve, clear out or do any action on any property or on the easement areas adjacent thereto, entering such property and taking such action shall not be deemed a trespass.

Section 21. Parcels. No Residential Lot shall be subdivided, or its boundary lines changed, except with the written consent of the Company. However, the Company hereby expressly reserves to itself, its successors or assigns, the right by to replat any lot and to take such other steps as are reasonably necessary to make such replatted lot suitable and fit as a building site including, but not limited to, the relocation of the lot or easements, walkways, rights-of-way, private roads, bridges, parks and recreational facilities. The provision of this Section shall not prohibit the combining of two (2) or more contiguous lots into one (1) larger lot. Following the combining of two (2) or more lots into one (1) larger lot, only the exterior boundary lines of the resulting larger lot shall be considered in the interpretation of these General Covenants. Consolidation of lots, as described above, must be approved by the Company, said approval to be granted in the Company's sole discretion upon such terms and conditions as may be established by the Company from time to time, including specific provisions for the payment of assessments.

Section 22. Bridges. The Company expressly reserves to itself, its successors and assigns, any other provisions in

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this Declaration notwithstanding, the right to build bridges, walkways, or fixed spans across any or all natural or man-made canals, creeks, paths, or lagoons in Haly Point. Nothing in this Section shall be construed as placing an affirmative obligation on the Company to provide or construct any such improvement.

Section 23. Repurchase. When any Residential Lot, Family Dwelling Unit, or Development Unit Parcel or any other portion of the Property is offered for sale by a Property Owner or successors in title to the Property Owner, the Company shall have the option to purchase such property at the price and on the terms of any duly executed bona fide contract for such property duly submitted to the Company for verification. The Company shall have thirty (30) days after presentation of such contract to exercise this purchase option. If the Company declines to exercise this option, it shall execute a Waiver of Repurchase Option, said Waiver to be an instrument prepared by the Company, its successors or assigns, which shall also be executed by the Property Owner and prospective purchaser and be in recordable form. Should, however, such sale to a third party not be consummated within six (6) months of the date of the contract transmitted to the Company, the terms and limitations of this Section shall again be imposed upon any sale by the Property Owner. If the Company shall elect to purchase such property, the transaction shall be consummated within sixty (60) days following delivery of notice by the Company to the Property Owner of its decision to purchase. The provisions of this paragraph shall not apply to sales under powers contained in Mortgages and similar security instruments.

Section 24. Ingress and Egress, Roadways and Waterways. The Property Owner, in accepting title to property conveyed subject to the covenants and restrictions of this Declaration, waives all rights of uncontrolled and unlimited egress and ingress to such property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Property Owner and successors in title) and agrees that such ingress and egress to its property may be limited to docks and roads built by the Company. The Company reserves the right for itself, its successors and assigns, but not the obligation, to (a) maintain guarded gates controlling access to such roads; (b) require payment of toll charges for use of such roads by members of the general public including business invitees, except that (1) no such toll shall be applicable to any Property Owners, lessees, or tenants of Property Owners, nor shall the toll be applicable to any person who gives reasonable evidence satisfactory to entry guards that their entry into the premises of the Property Owner is with the specific permission of the Property Owner, or his duly authorized agent; provided, however, that this exception

shall not apply to commercial or construction vehicles of any kind; (2) no such toll charge shall be applicable to guests of the Company; (c) determine in its sole discretion the types of vehicles that will be permitted access to the Property and use of such roads; (d) provided, however, that the Company reserves the right to limit access to the Property to the Company, Property Owners, lessees or tenants, and their guests and invitees; and (e) further provided, that transportation fees may be charged for ferry boat and water taxi services and for jitney and transportation services within the Property. If and when the roadways and streets are conveyed to the Association the aforesaid rights may be assigned to the Association by the Company.

Section 25. Firearms. Without the written permission of the Company, no hunting by any means or discharge of firearms of any type shall be allowed on the Property; provided, however, the Company may develop or permit the development of skeet, trap and shooting ranges.

Section 26. Timesharing. No Dwelling Unit or other portion of the Property within Haig Point shall be used for or subject to any type of vacation Time Sharing Plan, as defined by Section 27-32-10, et. seq. of the 1976 Code of Laws of South Carolina, as amended.

ARTICLE III

ADDITIONAL RESTRICTIONS TO IMPLEMENT EFFECTIVE ENVIRONMENTAL CONTROLS

In order to protect the natural beauty of the vegetation, topography, and other natural features of all properties within Haig Point and in furtherance of the safety and esthetic enjoyment of Haig Point, the following environmental controls and restrictions are hereby established.

Section 1. Topography and Vegetation. In order to protect the natural beauty of the vegetation and topography of the shoreline, woodlands, marsh, lake and lagoon edges located throughout Haig Point, written approval of the Company is hereby required for the removal, reduction, cutting down, excavation or alteration of topographic and vegetation characteristics. Written approval will be granted for the minimum amount of earth movement required in plans and specifications approved pursuant to the provisions of Section 3 of Article II.

Section 2. Tree Removal. Prior to approval of a Property Owner's landscaping plan by the Company, no trees

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or underbrush may be removed without the written consent of the Company. Upon completion of a residence pursuant to approved plans, no trees measuring three (3) inches or more in diameter at a point four (4) feet above ground level measured outside bark to outside bark, may be removed without the written approval of the Company.

Section 3. Certain Controls. In order to implement effective insect, reptile and woods fire control, the Company and its agents have the right to enter upon any property on which a building or structure had not been constructed and upon which no landscaping plan had been implemented, for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth which in the opinion of the Company detracts from the overall beauty, setting and safety for Haig Point. The cost of this vegetation control shall be kept as low as reasonably possible and shall be paid by the owner of the property. The Company and its agents may likewise enter upon such property to remove any trash which has collected. The provisions in this paragraph shall not be construed as an obligation on the part of the Company to mow, clear, cut or prune any property, to provide garbage or trash removal services, or to provide water pollution control on any privately owned property. Entrance upon property pursuant to the provisions of this paragraph shall not be deemed a trespass.

Section 4. Pesticides; Fire Control. In addition, the Company reserves unto itself, its successors and assigns a perpetual, alienable and releasable easement and right on, over and under any portion of the Property to dispense pesticides and take other action which in the opinion of the Company is necessary or desirable to control insects, vermin, reptiles or any other animal not permitted by Article II, Section 12 of these Covenants, to cut fire breaks and other activities which in the opinion of the Company are necessary or desirable to control fires on any property, or any improvements thereon. No burning of underbrush, trees, trash, leaves, debris or setting of fires for any purpose other than normal outdoor cooking shall be allowed without the written permission of the Company. Entrance upon property pursuant to the provisions of this paragraph shall not be deemed a trespass.

Section 5. Vehicle Control. In the interest of the health, safety and aesthetic enjoyment of the Owners and visitors within Haig Point, the Company reserves unto itself, its successors and assigns, the exclusive and absolute right to prescribe or otherwise limit the type, size, axle length, tires, weight and engine or motor characteristics of all vehicles, boats, jitneys, carriages or other mode of transportation to be used within Haig Point, and further, to establish and enforce speed limits

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and other traffic and vehicle rules and regulations within Haig Point as the Company in its sole discretion deems appropriate.

Section 6. Parking. Parking on the traveled portion of any roadway within Haig Point shall be prohibited at all times. Parking areas will be established by the Company or the Association at various places for access to selected common areas and commercial areas. Any vehicle violating this restriction may be removed by the Company or its designated agent and towing charges assessed with the impounding of the vehicle.

Section 7. Beaches. In order that Property Owners, their guests and the guests of the Company may enjoy free and uninterrupted usage of the beaches of Haig Point, the use of any vehicle or mode of transportation of any nature, including bicycles, on the beaches of Haig Point shall be restricted and governed by such rules and regulations as may be adopted from time to time by the Company in its sole discretion.

ARTICLE IV

ADDITIONAL RESTRICTIONS AFFECTING OPEN SPACE AREAS

Section 1. Intention of Company. It is the intent of the Company to maintain and enhance (or to convey subject to open space restrictions to the Association) certain areas which the Company designates as "Open Space Areas" or "Private Open Space Areas" on plats subsequently filed for record in the office of the Register of Deeds of Beaufort County, South Carolina, by the Company and accompanied by a written instrument setting forth such restrictions. It is the further intent and purpose of these restrictions and covenants to protect, to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, wet lands, wildlife, game and migratory birds, enhance the value of abutting and neighboring properties adjacent to such forests, wildlife preserves, natural reservations or sanctuaries or other open areas and open spaces, and to afford and enhance recreation opportunities, preserve historical sites and implement generally the Haig Point Master Plan for development.

Section 2. Easement to Property Owners in Open Space Areas. An easement in Open Space Areas is hereby granted to the Owners of property in Haig Point, their tenants and to the guests of the Company and Property Owners which easement shall entitle such owners, tenants, and their guests to enjoy the Open Space Areas subject to the rules and regulations of the Company.

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Section 3. Open Space Uses. Land designated as "Open Space Areas" may be employed in the construction, maintenance, and enjoyment of the following types of facilities:

- (a) Social, recreational and community buildings.
- (b) Public and private profit making clubs, golf courses, equestrian centers and other recreational facilities.
- (c) Daycare centers, nursery schools and kindergartens.
- (d) Art schools and/or art galleries and/or museums.
- (e) Emergency squad(s) and fire stations.
- (f) Such other facilities and uses determined by the Company to be in the best interest of the community, including but not limited to, drainage, fire breaks, sewage effluent spray areas and soil borrow pits.

Section 4. Easement to Property Owners in Private Open Space Areas. Land designated as "Private Open Space Areas" shall be subject to the easement granted in Section 2 of this Article IV in every respect except that the enjoyment thereof shall be and is hereby limited to guests of the Company and owners of the property, their tenants and guests immediately contiguous and adjacent to such land and owners of non-contiguous property designated on plats of property in Kalg Point as being entitled to the enjoyment thereof. The easement in Private Open Space Areas hereby granted shall not extend to any area not clearly designated as "Private Open Space Areas". All expenses incurred in the protection, maintenance and enhancement of "Private Open Space Areas" shall be paid equally by the owners who are entitled to an easement of enjoyment over such areas.

5. Private Open Space Improvements. Upon receipt of the written request of seventy-five percent (75%) of Property Owners having an easement of enjoyment over a Private Open Space Area, the Company at its sole discretion may permit the construction, maintenance, and operation of indoor and/or outdoor recreation facilities upon such Private Open Space Area. The cost of such construction, maintenance and operation shall be at the sole cost of the owners entitled to such easement of enjoyment.

Section 6. Wildlife Study. Pursuant to its overall program of wildlife conservation and nature study, the right is expressly reserved to the Company to erect wildlife feed stations, to plant small patches of cover and food crops for wildlife, to make access trails or paths or boardwalks through said Open Space Areas and Private Open Space Areas for the purpose of permitting observation and study of

wildlife, hiking, and riding, to erect small signs throughout the Open Space Areas and Private Open Space Areas designating points of particular interest and attraction, and to take such other steps as are reasonable, necessary and proper to further the aims and purposes of the open space and community use and enjoyment thereof.

Section 7. Erosion Control. The Company shall have the right to protect from erosion all Property at Haig Point including Open Space Area or Private Open Space Area by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as construction and maintenance of siltation basins, or other means deemed expedient or necessary by the Company. The right is likewise reserved to the Company to take steps necessary to provide and ensure adequate drainage ways in open spaces, to cut fire breaks, remove diseased, dead or dangerous trees and carry out other similar activities.

8. Reservation of Easements. The Company reserves unto itself, its successors and assigns, a perpetual, alienable and releasable easement of right to go on, over and under the ground to erect, maintain and use electric, community antenna television, telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone and television equipment, gas, sewer, water drainage or other public conveniences or utilities in said Open Space Areas and Private Open Space Areas. These reservations and rights expressly include the right to cut any trees, bushes or shrubbery, reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Company further reserves the right to locate wells, pumping stations and tanks, or other utility facilities within such Open Space Areas and Private Open Space Areas. Such rights may be exercised by any licensee or assignee of the Company, but this reservation shall not be considered an obligation of the Company to provide or maintain any such utility or service.

Section 9. Public Rights Limited. The granting of the easement in Open Space Areas and Private Open Space Areas in this part in no way grants to the public or to the owners of any land outside Haig Point the right to enter such open space without the express permission of the Company.

Section 10. Reservations. The Company expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of said open space, in a manner not inconsistent with the provisions of this Declaration.

Section 11. Conveyance of Open Space Areas. The Company further reserves the right to convey Open Space

Areas" to the Association or any non-profit organization. Such conveyances shall be made subject to the provisions of this Article IV, and shall contain such additional restrictions and reservations as set forth in the deed of conveyance. As an appurtenance to such conveyances, the Association shall have all of the powers, immunities and privileges reserved unto the Company in this part as well as all of the Company's obligations with respect thereto, including the obligation to maintain and enhance set out in Section 1 of this Article. Property conveyed to the Association pursuant to the authority of this Section 11 shall become "Common Properties", "Restricted Common Properties", or "Purchased Common Properties" as prescribed by the "Declaration of Covenants and Restrictions of the Haig Point Community Association, Inc.", which are to be recorded in the Office of the Clerk of Court of Beaufort County, South Carolina, contemporaneously herewith.

Section 12. Company Actions. Where the Company is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on any restricted property, entering the property and taking such action shall not be deemed a trespass or breach of these Covenants.

Section 13. No Obligation on Company. It is expressly understood and agreed that the granting of the easements set out in this Article IV in no way places a burden of affirmative action on the Company, that the Company is not bound to dedicate any area as Open Spaces or to make any of the improvements noted herein, or extend to any Property Owner any service of any kind, except as such may be undertaken at the expense of the Association.

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FILED AT 165000 ON 10/01/83

SPECIAL RESTRICTIONS AFFECTING
GOLF FAIRWAY RESIDENTIAL AREAS

Section 1. Definitions. "Golf Fairway Residential Areas" are hereby defined as all those Residential Lots or blocks of land intended for subdivision located adjacent to any golf course located in the Property.

Section 2. Landscaping. That portion of any Golf Fairway Residential Lot within thirty (30) feet of the lot line bordering the golf course shall be in general conformity with the overall landscaping pattern for the golf course fairway area established by the golf course architect. All individual lot landscaping plans must be approved by the Company before their implementation.

Section 3. Maintenance Easement. There is reserved to the Company a "Golf Course Maintenance Easement Area" on

each Property adjacent to any golf course located in the Property. This reserved easement shall permit the Company to go onto any Golf Course Maintenance Easement Area. Such maintenance and landscaping may include regular removal of underbrush, trees less than three (3) inches in diameter, stumps, trash or debris, planting of grass, watering, application of fertilizer, and mowing the Easement Area. This Golf Course Maintenance Area shall be limited to the portion of such lots within thirty (30) feet of the lot line(s) bordering the golf course, provided, however, that the above described maintenance and landscaping rights shall apply to the entire lot until there has been filed with the Company a landscaping plan for such lot by the Owner thereof, or alternatively, a residence is constructed on the lot. Notwithstanding the provisions herein of this Article V the Company hereby reserves the right to allow an owner to construct a dwelling over a portion of the "Golf Course Maintenance Easement Area" in those cases where it, in its uncontrolled discretion, determines that such construction will not materially lessen the beauty or playing qualities of the adjacent golf course, or unreasonably interfere with the views of adjoining Property Owners.

Section 4. Golf Easement. Until such time as a residence is constructed on a lot, the Company reserves an easement to permit and authorize registered golf course players and their caddies to enter upon a lot to recover a ball or play a ball, subject to the official rules of the course, without such entering and playing being deemed a trespass. After a residence is constructed, such easement shall be limited to that portion of the lot included in the Golf Course Maintenance Easement Area, and recovery of balls only, not play, shall be permitted in such Easement Area. Golfers or their caddies shall not be entitled to enter on any such lot with a golf cart or other vehicle, shall not spend unreasonable time on such lot, or in any way commit a nuisance while on such lot. After construction of a residence on a Golf Fairway Residential Lot, "Out of Bounds" markers may be placed on said lot at the expense of the Company.

Section 5. Restrictions. Owners of Golf Fairway property shall be obligated to refrain from any actions which would detract from the playing qualities of the golf course or the development of an attractive overall landscaping plan for the entire golf course area. Such prohibited actions shall include, but are not limited to, such activities as the maintenance of unfenced dogs or other pets on the lot under conditions interfering with play due to their loud barking, running on the fairways, picking up balls or other like interference with play.

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ARTICLE VI

SPECIAL RESTRICTIONS AFFECTING ALL WATERFRONT AND WOODLAND AREAS

Section 1. Habitat Preservation. In order to preserve the natural appearance and scenic beauty of the property and to provide a "cover" for animals which habitually move along the woodland or marshland, Company designated wildlife areas and the area located within thirty (30) feet of the South Carolina Coastal Council Critical Line and with fifteen (15) feet of the top of the bank of any lake, lagoon or waterway shall be preserved substantially in its present natural state except for Company approved clearing for view and breeze. Notwithstanding the foregoing, the Company hereby reserves the right to exempt lots or portions of lots from said construction and clearing restrictions in those cases where it, in its uncontrolled discretion, determines that such exemption will not materially lessen the wildlife habitat, natural appearance and scenic beauty of the property.

Section 2. Watercraft Restrictions. In order to protect the natural beauty and water quality of the natural ponds, man-made lakes and lagoons, water craft will be allowed to operate only on the inland ponds, man-made lakes and lagoons as designated by the Company where the operation will not affect golf and other outdoor recreational facilities or residential facilities or residential units. Permission to operate water craft on the designated waterways shall be at the discretion of the Company which will establish operating rules for each designated waterway. To this end, water craft propelled by an internal combustion engine shall not be allowed except to perform maintenance or other community related functions with prior Company approval.

ARTICLE VII

FILED IN DEED - C BOOK 431 PAGE 348
ADDITIONS, LIMITATIONS, MODIFICATIONS
AND VIOLATION OF COVENANTS
FILED AT 4:50 PM ON 10/01/85

Section 1. Duration. All covenants, restrictions, and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them specifically including, but not limited to, the successors and assigns, if any, of the Company for a period of twenty-five (25) years from the execution date of the Declaration after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by an instrument signed by the then Owners of two thirds (2/3) of Residential lots and Family Dwelling Units in the Property.

Section 2. Enforcement. In the event of a violation or breach of any of the restrictions contained herein by any Owner of property within the Property or by any agent of such Owner, any other Owner of property shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent a violation or a breach. In addition to the foregoing, the Company and/or Association shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent a violation or a breach. In addition to the foregoing the Company and/or Association shall have the right, whenever there shall have been built on any lot any structure which is in violation of these restrictions, to enter upon such property where such violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days' written notice of such violation it shall not have been corrected by the Owner. Any such entry and abatement or removal shall not be deemed a trespass. Any person entitled to file a legal action for the violation of these covenants shall be entitled to recover reasonable attorney's fees as a part of such action. The failure to enforce any rights, reservations, restrictions, or condition contained in the Declaration, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 3. Amendment by Company. The Company reserves the right at its sole discretion to amend, modify, add to, subtract from, cancel or in any way change these General Covenants or to limit the property subject to these General Covenants for a period of six (6) years from the date hereof. Thereafter, these General Covenants may be amended by the Company with the written approval of Property Owners owning at least sixty-six and two-thirds percent (66-2/3%) of all Family Dwelling Units and Residential Lots in the Property.

Section 4. Additional Restrictions. The Company hereby reserves the right to add additional restrictive covenants in the future which may apply to any portion of the Property or to any addition to the Property which has not been conveyed by the Company to any grantees.

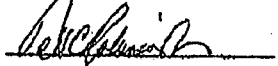
Section 5. Successors to Company. The Company reserves the right to assign to the Association or to any other entity any of its rights or functions reserved in these covenants including, but not limited to, its rights to approve (or disapprove) plans and specifications of proposed improvements.

Section 6. Severability. Should any covenant or restriction herein contained, or any article, section,

subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

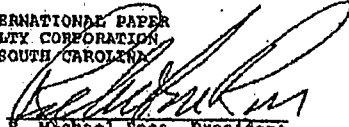
IN WITNESS WHEREOF, International Paper Realty Corporation of South Carolina has caused these presents to be executed by its duly authorized officers this 31 day of August, 1985.

SIGNED, SEALED AND
DELIVERED IN THE
PRESENCE OF:

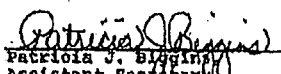

R. Kyle Jarvey

INTERNATIONAL PAPER
REALTY CORPORATION
OF SOUTH CAROLINA

By:


R. Michael Ross, President

By:


Patricia J. Higgins,
Assistant Secretary

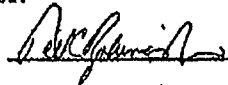
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FILED AT 165800 ON 10/01/85

STATE OF SOUTH CAROLINA }

PROBATE

COUNTY OF DEAFORT }

PERSONALLY appeared before me Neil C. Robinson, Jr., who, being duly sworn, deposes and says that (s)he saw International Paper Realty Corporation of South Carolina, by R. Michael Rose, its President, and Patricia J. Higgins, its Assistant Secretary, sign the within Declaration, and the said Corporation by said officers seal said Declaration, and as the act and deed of said Corporation, deliver the same, and that (s)he with A. Neale Jervoy witnessed the execution thereof.



SWORN to before me this

31 day of August, 1985.

A. Neale Jervoy (Seal)
Notary Public for South Carolina

My Commission Expires: July 1, 1992

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FILED AT 165000 ON 10/01/85

EXHIBIT A

ALL THAT certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, State of South Carolina, known as Haig Point Plantation, consisting of one thousand and forty (1,040) acres of said Haig Point Plantation located on Daufuskie Island. Being more particularly bounded and described as follows: on the North by Cooper River, on the East by Calibogue Sound, on the South by Melrose Plantation and the Webb Tract and on the West by what is known as the Cooper River Settlement Subdivision. The lines between the Melrose lands and the Webb Tract and the Cooper River Settlement Subdivision are marked by the original ditches. Said property being more accurately described on that certain plat by Gifford, Nielson & Williams titled "Plat of A 1040.238 Acre Tract Known As Haig Point Plantation" dated July 12, 1984 and finally revised October 17, 1984 and recorded in Plat Book 32, Page 151.

ALSO

ALL THOSE two certain lots, tracts or parcels of land, situate, lying and being on a part of the plantation known as Haig Point Plantation on Daufuskie Island, South Carolina, the first northerly piece is bounded on a line commencing at a monument of stone standing at the high mark of the Cooper River and running south seven (7) degrees and thirty (30) minutes east five hundred and eighty-five (585) feet to a monument of stone, thence north eighty-two (82) degrees and thirty (30) minutes east four hundred and twenty-four (424) feet to a mark; thence northerly along the high water mark to the place of beginning, containing three (3) acres, more or less. The second and southerly piece or parcel of land lies to the south of the first piece of land above described, not adjoining it, and is bounded by a line commencing at a monument of stone, standing at high water mark at the edge of the marsh lying on Calibogue Sound, thence running south eighty-two (82) degrees and thirty (30) minutes west to a monument of stone three hundred (300) feet, thence south seven (7) degrees and thirty (30) minutes east five hundred and seventy-five (575) feet to the high water mark at the edge of the marsh, thence along the high water mark inland of the marsh to the place of beginning, containing two (2) acres of land, more or less, said southerly parcel being more fully shown and described on the amended plat of July 12, 1984 by Gifford, Nielson & Williams as "Front Range Lighthouse Tract" to which reference is craved. Said plat is recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 32, Page 151.

FILED IN DEED - C BOOK 431 PAGE 332
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EXHIBIT B

ALL that certain poles, parcel or tract of land, situate, lying and being on Dauphin Island, Beaufort County, South Carolina, sometimes referred to as the Webb Tract, containing seven hundred and thirty-three (733) acres, according to the survey and plat of Marshall R. Johnson, Surveyor, dated July 9, 1900, recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 12, Page 59, and having the following metes and bounds, to wit: commencing at a concrete marker at the high water mark of the Cooper River on the property line between the Webb Tract and the property of the heirs of Robert Jenkins and running South 60 degrees 45 minutes West, 59.71 chains along a stream to an iron pipe on the West side of a road thence South 60 degrees, North minutes East, 0.71 chains to an iron pipe on the opposite side of the road thence continuing South 60 degrees, Forty-five minutes East, 25.14 chains to a marker thence South sixty-one degrees forty-five minutes East 10.54 chains to an iron pipe which is the Northeast corner of the tract of land and the boundary line between the Webb Tract and the lands of Ramsey thence South 55 degrees, Forty-five minutes West 8.25 chains to an iron nail thence South 55 degrees, Sixteen minutes West 50.51 chains to a three inch iron pipe thence South 55 degrees, Fifteen minutes West 12.54 chains to a six inch iron pipe, which is the Southeast corner of the Webb Tract thence North 74 degrees, 00 minutes West, 74 chains to an iron pipe 2 feet in diameter thence North 60 degrees, 30 minutes West, 4.18 chains to an iron nail at the high water mark of the mouth of the Cooper River which is the Southwest corner of the Webb Tract thence along the high water mark of the Cooper River in a generally northern direction to the point of beginning and bounded on the North now or formerly by lands of the heirs of Robert Jenkins, William Ramsey and others; on the East by Ramsey Plantation, now or formerly of Stoddard, on the South by lands now or formerly of R. White, East White Jenkins and William Johnson and on the West by the waters and marshes of the Cooper River, said property being more accurately described as the Webb Tract on that certain plat of Coastal Surveying Co., Inc. dated May 2, 1900 and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 28, Page 170.

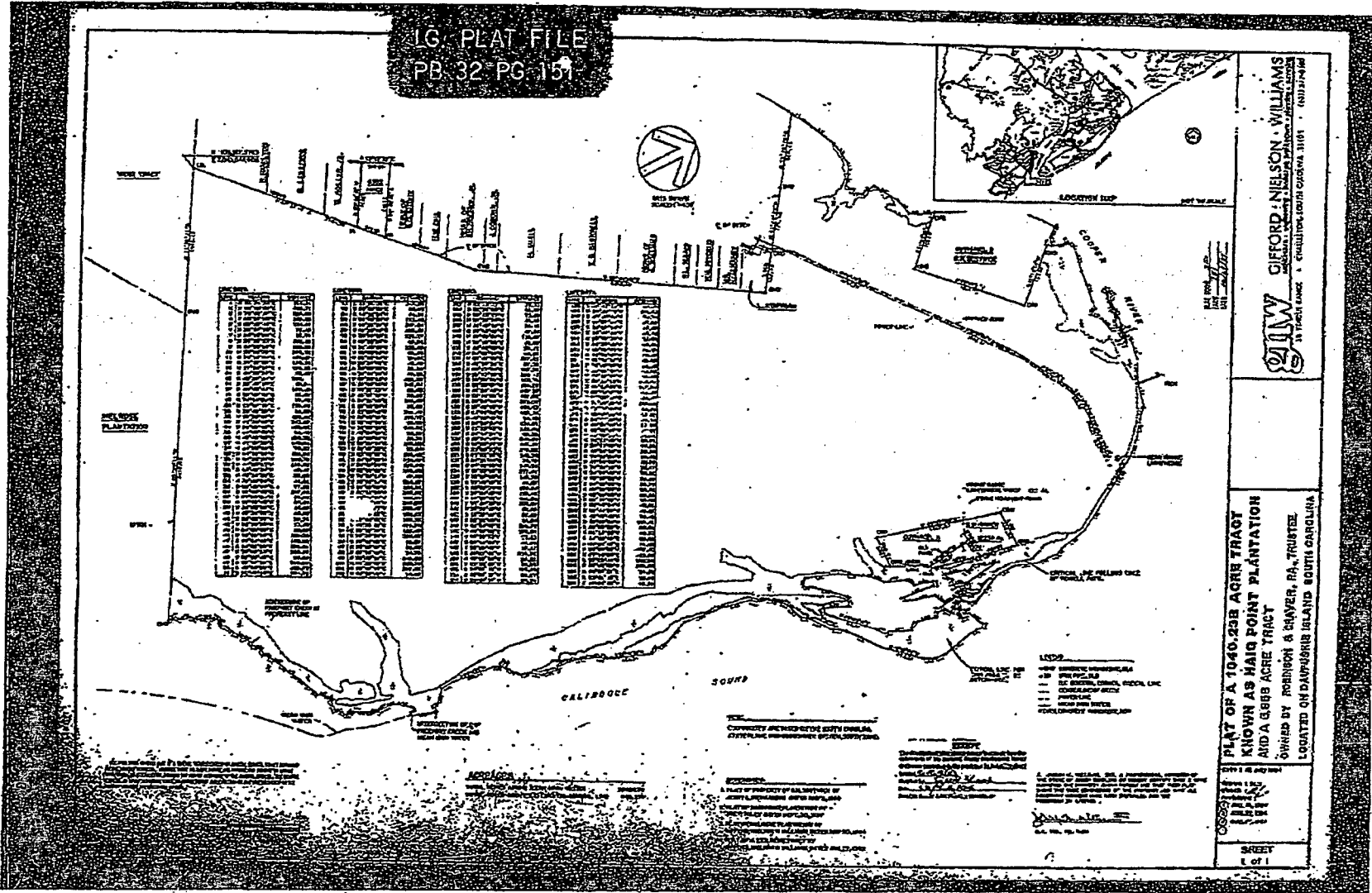
ALL that certain poles, parcel or tract of land, situate, lying and being on Dauphin Island, Hilton Head Township, Beaufort County, South Carolina, designated as Oak Ridge Plantation and sometimes known as Willow Road Plantation, containing seven hundred thirty-eight and nine tenths (738.9) acres, according to plat of said tract of land prepared August, 1901, by Palmer & Malone, Inc., Civil Engineers, said tract of land is bounded on the Northeast by Ramsey Plantation, now or formerly belonging to Robert H. Stoddard, on the Southeast and South by the high water mark of the

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Atlantic Ocean, on the Southwest and West by Bloody Point Plantation, now or formerly owned by Morton Deutsch, a small tract owned by Mr. Burn; Lot No. One of Benjas Point tract, owner unknown; and by another piece of land owned by Morton Deutsch, on the Southwest and Northwest by what was formerly known as Maryfield Plantation and bounded by portion thereof owned by various parties, namely Robinson, Frances Jones, John Mitchell, Malcolm Johnson, et al. Said parcel being more accurately described as Oak Ridge Plantation on that certain plat of Coastal Surveying Co., Inc. dated May 2, 1980 and recorded in the Office of the Clerk of Court for Beaufort County in Plat Book 26, Page 171.

Robinson, Frances Jones + Malcom
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FILED AT 165000 ON 10/01/83 84817
BOOK NUMBER 431 PAGES 325- 354
FILING FEE \$1.00
STATE STAMPS .00
COUNTY STAMPS .00
TOTAL FEES \$1.00
HENRY JACKSON
CLERK OF COURT BFT CITY, SC

DIUC_JFG_000164



STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CA NO. 2013-CP-07-02255

Mamdouh Sabry Abdelrahman,
Plaintiff,

Daufuskie Island Utility Company, Inc.,
Defendant,

Brief in Opposition
to Defendant's Motion for Summary
Judgment

The Plaintiff asks that Summary Judgment be denied in this matter. Plaintiff challenges Defendant's right to condemn the property which is the subject matter of this litigation. Section 15-67-20, Code of Laws of South Carolina (1976) as amended provides "[T]he Plaintiff in actions for recovery of real property or the recovery of the possession of real property is limited to **one** action for recovery." The Daufuskie Island Utility Company, Inc., previously litigated the case captioned, Daufuskie Island Utility Company, Inc., vs. Douglas Henderson, In His Official Capacity As Treasurer of Beaufort County; Beaufort County and Mamdouh Sabry Abdelrahman under Case Number 2012-CP-07-2715 (Exhibit 1), with that case being ended by Stipulation of Dismissal filed in the Court of Common Pleas on April 8, 2013. The previous action was for the purpose of the recovery of the real property subject of the Condemnation Notice (Exhibit 2) and therefore, Daufuskie Island Utility Company, Inc., is forever barred from maintaining another action for the recovery or possession of the property which is the subject matter of this litigation.

The Legislature intended to protect persons from burdensome litigation about real property as a result of the great inconvenience and injustice which resulted to a party in possession of real property repeated and continued attacks on his title and possession by the same person. It is a statute of repose, and should be so construed. Logan v. Jones, 155 SC 258, 152 SE 518 (1930), Ladd v. DuPree, 247 SC 328, 147SE2d 253 (1966).

At common law there was no limit to the number of actions of ejectment which a plaintiff

might bring for the recovery of the same real property, and, as each was based upon the fiction of a different lease, entry, and ouster, they were not within the principles of res judicata, because the parties were not the same, and the cause of action was different. While the difference in the parties was only nominal and in the cause of action only technical, the courts nevertheless refused to apply the general principles of res judicata to such actions supposedly because, by the common law of England, the title and right to the possession of real property was regarded with special favor, and it was thought that such important rights should not be finally determined by one action. No doubt, also, the fact that the plaintiff in such actions labored under so many disadvantages, as compared to the defendant in possession, and there were so many obstacles to be overcome in the prosecution of his action, fortified the idea that his claim should not be concluded by a single action.

As a result of the great inconvenience and injustice which resulted to a party in possession of real property from such unlimited right of action on the part of claimants and as changes were made in legal procedure, the reasons for the adoption of the foregoing common law rule largely disappeared and caused the enactment of the present statute limiting the number of such actions on the part of the plaintiff to two. As stated in Logan v. Jones, 155 S.C. 258, 152 S.E. 518, 520, '[T]he statute was enacted, not only to limit the right of a person to two actions for the recovery of real estate, but it was intended also to protect a person in possession of, and claiming title to, real estate. Such person has a right some time to be relieved of continued attacks on his title by the same person, or those claiming under him. It is a statute of repose, and should be so construed.' Also see Carr v. Mouzon, 93 S.C. 161, 76 S.E. 201, 202 (1914).

ACTION TO RECOVER REAL ESTATE

Under S.C. Code §15-67-20 both actions must be to "recover" the land in question in order to bar the second action. Foster v. Foster, 81 S.C. 307 (1908). Walsh v. Evans, 112 S.C. 131 (1919). When both actions primary purpose is to recover possession of the same premises, the statute bars the subsequent action. Southern Cotton Oil Co. v. Shelton, 220 F. 247 (1914).

The character of an action is not to be determined by the terminology which the pleaders may chance to give to it. On the contrary, the character of an action is fixed by the events which the

pleaders have recited, the one to enforce a right and the other to resist such an enforcement, or to set up another right. Walsh v. Evans, 112 S.C. 131 (1919).

In this case, clearly both actions are for the recovery and possession of the same land by the same Plaintiff against the same defendant. The first action under Docket No. 2012-CP-07-2715 states:

WHEREFORE, the Plaintiff, relying on the allegations set forth herein, prays that this Court:

1. Enter a declaratory adjudication that the tax sale and Decemeber 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahmann are invalid, void, and unenforceable and enter an injunction enjoining Defendant from interfering in any manor with Plaintiff's title to and possession of the property.

2. Enter a declaratory adjudication that Plaintiff is the true legal as well as beneficial owner of the property with the right to exclusive possession of thee property.

That first action was dismissed by the court and the subsequent action was under a Cause of Action for Condemnation and stated:

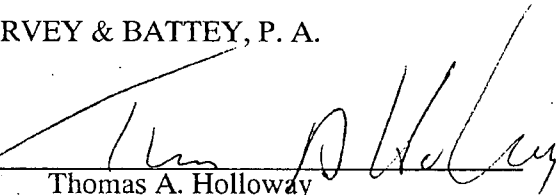
1. Daufuskie Island Utility Company, Inc., (DIUC) is the Condemnor herein and seeks to acquire the real property described herein for public purposes (being the same property as sought in the previous action).

While the causes of actions between the same parties are described by different terms, the allegations, the character and the relief sought are the same, the recovery and possession of the property subject of both actions. There is no difference between the cause of action in the two suits. The gist of both complaints is the same. The recovery and possession of real property the plaintiff lost by failure to pay taxes and failure to redeem within the following year yet deems necessary to operate a utility, is the gist of both actions. Having, then, the same parties, identity of premises, and identity of relief sought, there is no doubt the statute bars the subsequent action. There is no doubt that the chief and primary purpose of both complaints was to recover possession of the premises.

See Southern Cotton Oil. Co. v. Shelton, 220 F. 247, 261- 262 (1914).

For the forgoing reasons, Plaintiff respectfully requests the Court to deny the Motion for Summary Judgment.

HARVEY & BATTEY, P. A.

By: 

Thomas A. Holloway
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Attorneys for the Plaintiff

Beaufort, SC

June 2, 2014

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT) CASE NO.: 2013-CP-07-02255

MAMDOUH SABRY ABDELRAHMAN,)
)
 APPELLANT,)
)
VS.)
)
DAUFUSKIE ISLAND UTILITY COMPANY, INC.,)
)
 RESPONDENT.)

MOTIONS HEARING

held before the Honorable J. Ernest Kinard, Jr.
Mia Perron, Circuit Court Reporter, 9th Judicial Circuit
in the Beaufort County Courthouse
Beaufort, South Carolina
on June 3, 2014, Commencing at 1:01 p.m.

SUSAN "MIA" PERRON, CVR-CM-M
Circuit Court Reporter - 9th Judicial Circuit
Post Office Box 31865
Charleston, South Carolina 29417-1865
1-706-231-6028

APPEARANCES OF COUNSEL

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Harvey & Battey
P.O. Drawer 1107
Beaufort, South Carolina 29901-1107

FOR THE RESPONDENT: Thomas P. Gressette, Jr., Esquire
Pratt-Thomas Walker
Post Office Box 22247
Charleston, South Carolina 29413-2247

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EXHIBITS

[None]

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PROCEEDINGS

THE COURT: Okay.

MR. GRESSETTE: Good morning, Your Honor. Or
afternoon. I'm Tom Gressette, here on behalf of
Daufuskie Island Utility Company.

If I understand from my conversation with
Mr. Holloway just before the hearing, we are left only
with the first issue as to summary judgment.

MR. HOLLOWAY: Yes. I have pled several
affirmative defenses. I'm going to concede all but
the actions barred by the statute 15-67-20.

MR. GRESSETTE: So that leaves us with count
one, Your Honor, and count one of this complaint is an
allegation in response to a condemnation action filed
by Daufuskie Island Utility Company.

In late 2011, Daufuskie Island Utility Company
updated -- had updated its address with the county
treasurer. That information didn't transfer properly
and tax bills didn't go to Boston like they were
supposed to. Taxes didn't get paid. The property was
sold for \$386 -- or a tax debt of \$386, a total of
\$526, to a gentleman named Mr. Sabry, or also
Mr. Sabry Abdelrahman, from Ohio.

Subsequent to learning that the tax sale had
occurred, our client contacted us on their behalf. We

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Abdelrahman v. Daufuskie
Motions Hearing
June 3, 2014

1 filed an action challenging the tax sale. We began to
2 negotiate with Mr. Sabry, were not successful in
3 consummating a settlement, so pursuant to Rule 41 we
4 dismissed that action and filed a condemnation action,
5 in the process of preparing for the condemnation
6 action, as is required, and provided notice to
7 Mr. Sabry. So a few days before the actual
8 condemnation action was filed, this case was filed,
9 which has been challenged to the authority of
10 Daufuskie Island Utility to engage in an eminent
11 domain taking.

12 As Your Honor is aware, there were several
13 causes of action pled. We are left with the first
14 cause of action, pursuant to Mr. Holloway's
15 representation, which is that South Carolina Code
16 Section 15-67-20 bars the action because it is a
17 second action for the recovery of real property.
18 South Carolina Code Section 15-67-20 is a statute that
19 is the result of some interesting history regarding
20 title actions. By common law, there was no bar to
21 repeated actions against the same parties for title to
22 property. That was changed, a statute was passed, and
23 the limitation was two actions, bring an action. As
24 long as you paid the cost and fees, you could bring
25 another one. And in the late '80s, 15-67-20 was

MIA PERRON, CVR-CM-M

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1 passed, which states the plaintiff in actions for
2 recovery of real property or the recovery of the
3 possession of real property is limited to one action
4 for recovery.

5 The Utility's position is that although there
6 was previous litigation, admittedly -- we've just
7 discussed it -- inherent in eminent domain case is the
8 allegation, as is in our condemnation pleading, that
9 the landowner owns the property and that by virtue of
10 power vested in the Utility by statute, it intends to
11 take the property and offer just compensation. So our
12 position, basically, that that is not an action for
13 the recovery of property, despite the fact that the
14 Utility may have had some ownership interest
15 previously.

16 To break that down, I would argue that the
17 action against the treasurer, that also named
18 Mr. Sabry, was not an action to recover property, it
19 was an action to void the tax sale. Secondly, even if
20 that action is found by the Court to be an action for
21 the recovery of property, this second action is not a
22 recovery claim.

23 Supporting the conclusion that this is not a
24 recovery action is the Eminent Domain Procedure Act
25 itself, which states that it is the exclusive

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June 3, 2014

1 procedure whereby any condemnation action may be
2 undertaken. Therefore, if there is any conflict or
3 confusion about whether an eminent domain case is, in
4 fact, a recovery action under this statute at issue
5 today, the Eminent Domain Act would control as the
6 exclusive procedure.

7 The Eminent Domain Act further states that if
8 there are any conflicts between the Act and any other
9 law with respect to any subject governed by the Act,
10 the Act, the Eminent Domain Act, shall prevail. And
11 that is South Carolina Code Section 28-2-20.

12 Your Honor, at its basic, a condemnation action
13 is an action to exercise the governmental power that
14 is subject to the constraints of constitutional
15 requirements of just compensation. It is the
16 Utility's position that such is not, by definition, a
17 recovery action and therefore shouldn't be subject to
18 the bar applied by 15-67-20.

19 THE COURT: All right.

20 MR. HOLLOWAY: Thank you, Your Honor. Tom
21 Holloway, on behalf of the plaintiffs.

22 If it walks like a duck and it quacks like a
23 duck, it's a duck. The name of the cause of action
24 under the statute in the case law is not controlling.
25 The controlling fact is what were the facts in the

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1. issues in the case.

2. In this case Daufuskie Island Utility Company
3. owned a parcel of land on Daufuskie Island where they
4. had a water-treatment plant or a well and then an
5. elevated tank facility. They didn't pay their taxes.
6. It went into a tax sale. My client purchased the tax
7. debt. After one year and one day, the Utility again
8. failed to redeem their property. My client sent them
9. a notice and a bill for rent, at which point they
10. filed an action to overturn the tax sale. In that
11. notice to overturn the tax sale, they were asking for
12. a declaratory adjudication that the tax sale and
13. December 1st, 2011 tax deed issued to Mr. Sabry are
14. invalid, void and unenforceable, and entered an
15. injunction enjoining the defendant from interfering in
16. any manner with the plaintiff's title and possession
17. to the property. It also asked that the Court declare
18. an adjudication that the plaintiff was the true legal,
19. as well as beneficial, owner of the property with the
20. right to exclusive possession of the property. In
21. essence, they were asking to recover that property.

22. Well, that action was unsuccessful and
23. dismissed. Subsequently, they filed -- or sent a
24. notice of condemnation within the time prescribed. On
25. behalf of my client, I filed an action to challenge

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1 that. The action for condemnation is very clear. And
2 it asks to acquire the real property described for
3 public purposes. It's the same property that was
4 described and lost in the tax sale in the first
5 action. It was the same parties. It was the same
6 every element in the action. So they tried to recover
7 it through the first action, they were unsuccessful,
8 and now they're trying to recover it from the second
9 action.

10 The case law that's described in my brief says
11 it doesn't have to be the same cause of action, it
12 just has to be the requesting or seeking of the
13 recovery of the same piece of property. And that's
14 because the legislature intended that people should be
15 secure in their property, they should not have
16 repeated tax from the same person, as we're entitled
17 to the property.

18 And there is no conflict between the Eminent
19 Domain Procedure Act and 15-67-20. There is none,
20 because the Eminent Domain Procedure Act does not give
21 repeated rights, or any additional rights, that
22 anybody else has. It just gives them a right to
23 acquire through eminent domain.

24 For those reasons, I think they're barred from
25 any subsequent action.

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1 THE COURT: All right. Of course, you know I'm
2 a speed reader. I just read your first two or three
3 pages of your brief. I haven't read it all.

4 It sounds to me that they can do it, but I'm not
5 ruling that way. So Mr. Gressette, prepare an order,
6 send an order saying no, and I'll read everything. He
7 sent a long brief, which I just glanced at on the way
8 in here. Didn't study that, either. But most of the
9 stuff in there is irrelevant, once you withdrew your
10 thing, which is why I try not to read things before I
11 come in, other than just to know what the issues are.

12 MR. HOLLOWAY: Let me also be clear for the
13 record that I withdrew those at this time based on the
14 depositions and discovery that's occurred since the
15 time of the filing of the complaint.

16 MR. GRESSETTE: So, Your Honor, are we -- the
17 proposed order would be granting the motion to
18 dismiss?

19 THE COURT: Yes.

20 MR. GRESSETTE: Just wanted to be sure. Thank
21 you, sir.

22 THE COURT: Now, I mean, years ago I represented
23 utilities and condemned power lines all the way across
24 Kershaw County. Of course, I represented landowners,
25 too, and made more money doing that. But hit every

Abdelrahman v. Daufuskie
Motions Hearing
June 3, 2014

1 type of thing about move the line, and don't go over
2 my fish pond, and had to take it to the Supreme Court
3 because -- a couple of times because they're going
4 this way and they didn't do proper notice, whatever,
5 whatever, whatever. So I might have a little bias for
6 utilities, but I think I can overcome that and
7 objectively look at it.

8 But I think they can condemn, you know. I think
9 that's separate. But I haven't ruled that way.
10 That's just what I think.

11 MR. HOLLOWAY: I will seek to change your mind
12 in my proposed order.

13 THE COURT: Good luck. I'll look at it.

14 MR. HOLLOWAY: Thank you, Your Honor.

15 MR. GRESSETTE: Thank you, Judge.

16 THE COURT: Let me ask a question, though. Do
17 you need further discovery or will the ruling be the
18 law of the case?

19 MR. HOLLOWAY: Not on this issue.

20 MR. GRESSETTE: Your Honor, it's the defendant's
21 position is this case, it's been pending since
22 September. We've received one set of interrogatories
23 and one deposition has been taken. There was
24 discussion about an inspection of the property. We've
25 allowed access and none has been had. It's our

MIA PERRON, CVR-CM-M.

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1 position that we're ready to try the case if this
2 issue has to be tried.

3 MR. HOLLOWAY: This case isn't a year old yet.
4 I'm not ready to waive discovery. But I think this is
5 a legal issue as to whether --

6 THE COURT: It looks like to be, legally -- I
7 haven't read the file so I can't really rule.

8 MR. GRESSETTE: Thank you, Judge.

9 THE COURT: You need to send it to Camden with a
10 self-addressed stamped envelope. Both sides.

11 MR. GRESSETTE: Yes, sir.

12 [HEARING CONCLUDES AT 1:11 P.M.]
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Abdelrahman v. Daufuskie
Motions Hearing
June 3, 2014

C E R T I F I C A T E

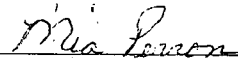
STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

I, the undersigned Mia Perron, Circuit Court Reporter for the 9th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the hearing held before the Honorable J. Ernest Kinard, Jr., on June 3, 2014.

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

Dated this 25th day of October, 2014.



Mia Perron, CVR-CM-M
Circuit Court Reporter
9th Judicial Circuit

MIA PERRON, CVR-CM-M

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2013-CP-07-02255
	)	
MAMDOUH SABRY ABDELRAHMAN,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF
	)	JOHN F. GUASTELLA
vs.	)	
	)	
DAUFUSKIE ISLAND UTILITY	)	
COMPANY, INC.,	)	
	)	
Defendant.	)	
	)	

Personally appeared before me John F. Guastella, who being duly sworn, testifies as follows:

1. My name is John F. Guastella.
2. I offer this Affidavit as testimony, under oath and under penalty of perjury, stating and affirming that I have personal knowledge of the facts set forth herein, that I am competent to testify to the matters set forth herein, and that all statements included herein are truthful and accurate.
3. I am President of Guastella Associates, LLC ("Guastella").
4. Guastella is the manager of Daufuskie Island Utility Company, Inc. ("DIUC").
5. Guastella has been the manager of DIUC since July 9, 2008. I have served as the President of Guastella throughout this period and I have been personally involved the day-to-day operations as well as the management activities and decisions of DIUC.
6. In addition to my work with DIUC, I provide consulting service to utilities around the country with respect to rate setting, valuation and appraisals, and utility management. In my career I have worked with utilities in some 30 states and have been qualified to testify as an expert in 23 states.

7. As President of Guastella, the manager of DIUC, I am the custodian of the records of DIUC. The documents attached to this Affidavit are business records kept in the course of DIUC's regularly conducted business activity, and each is maintained in the regular practice of the business of DIUC. Each document attached hereto is the original or an exact duplicate of the original.
8. DIUC is a "public utility" under the terms of S.C. Code Ann. §58-5-10(4), and is subject to the regulatory jurisdiction of the Public Service Commission of South Carolina ("PSC").
9. DIUC is authorized by the Public Service Commission of South Carolina to be the exclusive provider of water and wastewater services to a service area that encompasses Daufuskie Island, South Carolina.
10. The rates and amounts DIUC charges its customers are regulated by and subject to the approval of the Public Service Commission of South Carolina.
11. The current rates and charges for DIUC's water and wastewater service were approved by the Public Service Commission by Order Number 2012-515, dated July 10, 2012, and filed in Docket Number 2011-229-WS. See Exhibit 1.
12. The DIUC water supply system includes a 125,000 gallon storage tank and related facilities located on a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property").
13. Haig Point Utility Company, Inc. previously owned the Property, as set forth in the Special Warranty Deed and Bill of Sale Title recorded on April 5, 2001, at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 01402, Pages 2190-2192, File Number 2001018868.
14. By Order of the Public Service Commission of South Carolina dated March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc. (referred to herein as "DIUC"). See Exhibit 2.
15. After its name change, DIUC properly updated its mailing address via the online system established by Beaufort County for such activities.
16. Despite providing Beaufort County with its proper address, DIUC did not receive tax bills for the Property and the taxes were not paid.
17. In October of 2010, Beaufort County sold the Property at public auction to Mamdouh Sabry Abdelrahman ("Sabry") for the sum of \$526.70.

18. On December 1, 2011, Beaufort County issued a tax deed conveying the Property to Sabry.
19. Beaufort County did not properly place the required notice of the pending tax sale on the Property, so DIUC was not aware of the tax sale until after it occurred.
20. DIUC learned of the auction and of the conveyance to Sabry in early 2012.
21. After learning of the sale and tax deed, DIUC filed a declaratory judgment action against Beaufort County, the Beaufort County Treasurer, and Sabry seeking adjudication that the tax sale and tax deed are invalid, void, and unenforceable. See Exhibit 3.
22. The complaint in the declaratory judgment action alleged the requirements of Title 12, Chapter 51, of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011, tax deed conveying the Property to Sabry. As such, the purpose of the case was to set aside the tax sale. See Exhibit 3, particularly ¶¶ 14 – 16.
23. Via Stipulation of Dismissal filed April 8, 2013, the declaratory judgment action seeking to set aside the tax sale was dismissed pursuant South Carolina Rule of Civil Procedure 41(a). See Exhibit 4.
24. Since 1986, DIUC and its predecessors in interest have provided water services to Daufuskie Island through a water supply system that uses the 125,000 gallon tank and related facilities located on the Property.
25. As previously stated herein, DIUC's water supply services are authorized and regulated by the Public Service Commission of South Carolina.
26. As authorized and regulated by the Public Service Commission of South Carolina, DIUC supplies water services on Daufuskie Island for public purposes and for the public interest.
27. On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment seeking to condemn the Property thereby initiating Civil Action 2013-CP-07-0338. See Exhibit 5.
28. DIUC seeks to condemn the Property for public use, public benefit, and public purposes including, but not limited to, supplying water to the citizens of Daufuskie Island.
29. Once condemned, the Property will become part of the system that supplies water to the residents of, visitors to, and businesses located on Daufuskie Island, South Carolina.

30. It is in the public interest for DIUC to own and control the Property.
31. Douglas J. Kinard, P.E., Director of Drinking Water Protection Division for DHEC's Bureau of Water, also agrees that "It is in the public interest for [DIUC] to own or remain in control of all of its facilities so that they are able to remain in compliance with the [Safe Drinking Water Act] and the [State Primary Drinking Water Regulations]." See Exhibit 6.
32. DIUC's previous action against Sabry sought an order declaring Beaufort County and the Beaufort County Treasurer failed to comply with statutory requirements governing notice and tax sale proceedings.
33. The currently pending action to condemn the Property, Civil Action 2013-CP-07-0338, is DIUC's only action to condemn the Property.
34. DIUC has not previously filed any other action to condemn the Property.
35. Because the Property cannot be used for residential or other real estate development even if the storage tank and other facilities are removed, an appraisal performed on behalf of DIUC in conjunction with the condemnation estimates the market value of the Property to be \$3,700.
36. DIUC therefore provided notice to Sabry of the appraisal and offered to pay Sabry \$3,700 as just compensation for the Property. See Exhibit 7.
37. Sabry did not accept the offer of just compensation.
38. On September 4, 2013, Sabry filed this action, Civil Action 2013-CP-07-0225, challenging DIUC's right to condemn the Property.
39. In conjunction with filing its Notice of Condemnation and Tender of Payment thereby initiating Civil Action 2013-CP-07-0338, DIUC deposited \$3,700 with Beaufort County Clerk of Court as tendered just compensation for the Property. See Exhibit 8.
40. DIUC now seeks a grant of summary judgment as to all counts of the complaint in this action, Civil Action 2013-CP-07-0225, whereby Sabry challenges DIUC's condemnation authority.
41. I am providing this Affidavit in support of DIUC's Motion for Summary Judgment in this action.
42. In addition to the Property subject to condemnation in Civil Action 2013-CP-07-0338, Sabry is the record owner of four additional parcels of land located on Daufuskie Island ("the Sabry Parcels").

43. The Sabry Parcels are all within in the DIUC service area, as established by the Public Service Commission of South Carolina.
44. DIUC has provided and continues to make available water and wastewater services to all four of the Sabry Parcels.
45. In accordance with fees and charges approved by the Public Service Commission of South Carolina, DIUC has assessed availability fees against the Sabry Parcels and has repeatedly notified Sabry of the amounts due.
46. Sabry has never paid DIUC for the properly charged availability fees for the Sabry Parcels.
47. The amounts owed by Sabry to DIUC for unpaid availability fees are as follows:
- | | |
|---------------------------|------------------------------|
| a. R800 022 00B 0099 0000 | Amount Due: \$ 681.48 |
| b. R800 022 00B 0123 0000 | Amount Due: \$ 681.48 |
| c. R800 022 00E 0066 0000 | Amount Due: \$ 681.48 |
| d. R800 022 00H 0007 0000 | Amount Due: <u>\$ 681.48</u> |
| | Total Due: \$2,725.92 |
48. DIUC continues to apply penalties, late fees, and other charges to the Total Due to the extent allowed by the Public Service Commission of South Carolina.
49. By failing to pay DIUC these amounts due, Sabry has breached and continues to breach his statutory obligation to pay the amounts due DIUC for services made available to him.
50. I would further note that on August 30, 2013, DIUC applied to the Public Service Commission, Docket No. 2013-329-WS, for approval of a stock transfer that was necessary to close on a loan with SunTrust Bank.
51. The Public Service Commission had previously approved the loan with SunTrust, which was necessary to make capital improvements in order to provide safe and adequate service to our customers.
52. On October 14, 2013, Sabry filed a petition with the Public Service Commission to intervene in that proceeding.
53. On October 23, 2013, the Public Service Commission denied Sabry's petition for intervention and in the same order approved the transfer of stock ownership. See Exhibit 9.

54. Further Affiant sayeth not.

John F. Guastella
John F. Guastella

11/20/13
Date

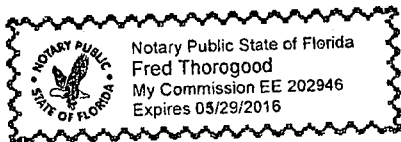
Palm Beach, Florida
County and State

John F. Guastella did personally appear before me, was duly sworn under oath and under penalty of perjury, and did execute this Affidavit in my presence.

SWORN before me this 20 day of November, 2013

Fred Thorogood
Notary Public for the State of Florida

My Commission Expires: 05/29/2016



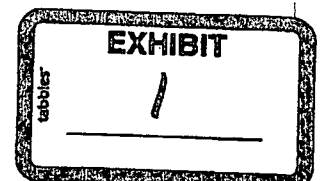
BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-229-WS - ORDER NO. 2012-515

JULY 10, 2012

IN	Application of Daufuskie Island Utility	)	ORDER APPROVING
RE:	Company, Inc. for Approval of Water and	)	AND ADOPTING
	Sewer Rates, Terms and Conditions	)	SETTLEMENT
		)	AGREEMENT

The above-captioned matter is before the Public Service Commission of South Carolina ("Commission") on the proposed Settlement Agreement ("the Settlement Agreement") filed on June 25, 2012, by Haig Point Club and Community Association, Inc. ("HPCCA"), Bloody Point Property Owners Association, Inc. ("BPPOA"), Melrose Property Owners Association, Inc. ("MPOA"), and Daufuskie Island Utility Company, Inc. ("DIUC") (hereinafter collectively referred to as the "signatory agreeing Parties" or sometimes individually as a "Party"). As explained more fully below, the South Carolina Office of Regulatory Staff ("ORS") does not object to the Settlement Agreement and was identified as one of the signing "Parties to this Settlement Agreement." Intervenor Patrick M. Connolly, Esquire, did not submit prefiled testimony or appear at the hearing on May 30, 2012. The proposed settlement was stated into the record at the hearing on May 30, 2012, after partial introduction of the evidence.¹

¹ After the hearing on May 30, 2012, the parties agreed to change the additional annual revenue permitted by their settlement from \$291,448 to \$291,485.



This matter was initiated on June 6, 2011, when DIUC filed a letter of intent with the Commission and on January 10, 2012, DIUC filed an Application for approval of an adjustment in its rates and charges for water and sewer services with the Commission pursuant to S.C. Code Ann. § 58-5-240 and 26 S.C. Code Ann. Regs. 103-712.4.A and 103.512.4.A.

By letter dated January 24, 2012, the Commission's Clerk's Office instructed DIUC to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by DIUC's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. The Commission also instructed DIUC to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Notice of Filing. On February 20, 2012, DIUC filed Affidavits of Publication demonstrating that the Notice of Filing had been duly published and provided a letter certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all customers.

In response to a request for a local hearing, by Order No. 2012-196 (March 7, 2012), the Commission ordered a public night hearing.²

On March 13, 2012, DIUC revised its application. By letter dated March 20, 2012, the Commission's Clerk's Office instructed DIUC to publish a prepared

² The purpose of the night hearing was to provide a forum, at a convenient time and location, for customers of DIUC to present their comments regarding the service and rates of DIUC.

Public Notice of Night Hearing and Revised Notice of Filing, one time, in newspapers of general circulation in the area affected by DIUC's Revised Application. The Public Notice of Night Hearing and Revised Notice of Filing described the night hearing to be conducted on April 30, 2012, and the nature of the Revised Application and advised all interested persons desiring to participate in the amended schedule of the proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. The Commission also instructed DIUC to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Public Notice of Night Hearing and Revised Notice of Filing. On April 5, 2012, DIUC filed Affidavits of Publication demonstrating that the Public Notice of Night Hearing and Revised Notice of Filing had been duly published and provided a letter certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all customers.

On April 30, 2012, the Commission held a night hearing at Haig Point Club and Community Association, 10 Haig Point Circle, Daufuskie Island, South Carolina to hear comments from members of the public.

The Commission, with Chairman Howard presiding, heard the expert witnesses testify on DIUC's Application beginning at 10:30 am on May 30, 2012, at the Commission Hearing Room located at 101 Executive Center Drive in Columbia, South Carolina. DIUC was represented by G. Trenholm Walker, Esquire. ORS was represented by Nanette S. Edwards, Esquire, and Courtney D. Edwards,

Esquire. Intervenors HPCCA, BPPOA, and MPOA were collectively represented by John F. Beach, Esquire. Intervenor Patrick M. Connolly, Esquire, did not appear at the merits hearing.

Negotiations between the signatory agreeing Parties in this proceeding, with ORS participating, resulted in a proposed settlement during the course of the merits hearing on May 30, 2012, and ultimately in the Settlement Agreement signed by the Parties on June 25, 2012. In the Settlement Agreement, the Applicant, the three property owner's groups and the Office of Regulatory Staff are collectively defined as the "Parties." The Settlement Agreement also identifies these same entities as "Parties to this Settlement Agreement." However, the first paragraph explains that the Settlement Agreement is "made . . . without objection from the South Carolina Office of Regulatory Staff ("ORS")." Further, the Settlement Agreement signature page "representing and binding" the ORS, states: "We do not object to and acknowledge the effect of this settlement."

The signatory agreeing Parties have all determined that their interests, as well as the public interest, are best served by settling the dispute in this matter under the terms and conditions in the Settlement Agreement and set forth below.

By signing the Settlement Agreement, the signatory agreeing Parties' counsel acknowledged their respective clients' consent to its terms. The Settlement Agreement provides that the signatory agreeing Parties all viewed the terms of the agreement to be fair and reasonable.

The Commission considered and evaluated the Settlement Agreement at its meeting on June 27, 2012. The Commission is fully familiar with this matter based on the evidence and arguments that were presented at the merits hearing on May 30, 2012, and determined that no additional testimony or other proof is necessary.

All signatory agreeing Parties have agreed in the Settlement Agreement that a resolution of this matter on the terms therein allows DIUC to continue to provide water and wastewater services to its customers, and would provide a fair and reasonable operating margin and return on equity to DIUC.

The rates for residential and commercial water, sewer, and irrigation, as well as the charges for availability fees, are specified in Settlement Agreement Exhibit 1, which is attached to and incorporated as a part of this Order as Order Attachment No. 1.

We find that the rates and charges agreed to by the signatory agreeing Parties and not objected to by ORS are fair and reasonable and will allow DIUC to continue to provide its customers with adequate water and wastewater service. We specify an allowable operating margin of 16.64% and find that a rate of return on equity of 8.81% is fair and reasonable under the circumstances based on the proof admitted into evidence at the hearing.

The signatory agreeing Parties all agreed, and this Commission finds, that an increase in rates and charges (including availability fees) for water and sewer rates, fees, and charges is necessary. DIUC (through its predecessors) has not obtained an increase in its rates and charges since 2005. Since that time, DIUC's costs of

providing service have increased so that it can no longer earn a fair return on its investment. Significant facilities operated by DIUC are in need of maintenance and repair.

The signatory agreeing Parties therefore agreed and stipulated to certain rates and charges, which we hereby approve, that are specified in Settlement Agreement Exhibit 1 and included in Order Attachment No. 1. We agree with the signatory agreeing Parties that the rates and charges contained in the Settlement Agreement are fair and reasonable, and will allow DIUC to continue to provide its customers with adequate water and wastewater services.

The Commission further finds that the additional conditions imposed under the Settlement Agreement with respect to annual reporting to the Commission and ORS on the intended loan are also fair, reasonable, and necessary.

The Commission finds the terms and conditions set forth in the Settlement Agreement and Exhibits thereto are fair and reasonable to the Parties and ORS as well as to the DIUC customers affected by the rates and fees approved by this Order.

After careful review and consideration of the Settlement Agreement, the evidence in the record in this proceeding, and the representations of counsel, the Commission concludes as a matter of law that (i) approval of the Settlement Agreement is in the public interest; (ii) the residential and commercial rates, fees, and charges (including availability fees) for both water and sewer agreed to by the signatory agreeing Parties and not objected to by ORS, and as set forth in Order

Attachment No. 1 attached hereto are reasonable and fair and should be put into effect after the notice required herein.

An examination of Settlement Agreement Exhibit 2, attached hereto as part of Order Attachment No. 1, reveals that, based on the operating revenues, income, and expenses agreed upon by the parties, the additional revenues produced by the new rates and charges will result in an operating margin for DIUC of 16.64% and return on equity of 8.81%. We find that the new rates and charges provide DIUC with the opportunity to earn a return on equity of 8.81% for this Company.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, including its attached Exhibits, is attached hereto as Order Attachment No. 1, is accepted into the record without objection, and is incorporated into and made part of this Order by reference. Further, we find the Settlement Agreement is in the public interest and constitutes a reasonable resolution of this proceeding, and we therefore approve the settlement in its entirety.

2. The statement of proposed rates, fees, and charges attached to the Settlement Agreement (Order Attachment No. 1) is entered into the record of this case without objection. We find that the proposed rates, fees, and charges are both fair and reasonable and will allow DIUC to continue to provide its customers with adequate water and wastewater services. We further find that the additional terms and conditions set forth in the Settlement Agreement, including its reporting requirements if DIUC should obtain a bank loan, are reasonable and fair.

3. The Company is to provide thirty (30) days' advance notice of the increase to customers of its water and wastewater services prior to the rates and schedules being put into effect for service rendered. The schedules shall be deemed to be filed with the Commission pursuant to S.C. Code Ann. § 58-5-240.

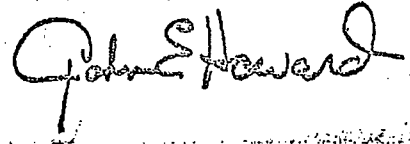
4. A return on equity of 8.81% based on the new rates, fees, and charges is approved for DIUC, as well as an operating margin of 16.64%

5. The Company shall continue to maintain current performance bonds in the amounts of \$350,000 for water operations and \$350,000 for wastewater operations pursuant to S.C. Code Ann. § 58-5-720.

6. The Company's books and records shall be maintained according to the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts. The Company is directed to make any necessary adjustments to its accounting system to conform to the NARUC Uniform System of Accounts.

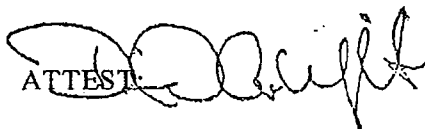
7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST:



David A. Wright, Vice Chairman

(SEAL)

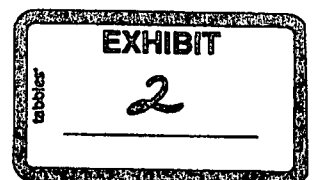
BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2007-414-WS - ORDER NO. 2009-154

MARCH 6, 2009

IN RE: Joint Application of Haig Point, Inc. and CK Material, LLC for Approval of the Sale and Transfer of Stock, Assets, and Operating Authority of Haig Point Utility Company, Inc.	) ORDER APPROVING) REQUEST FOR NAME) CHANGE AND TO) MAINTAIN BOOKS AND) RECORDS OUT OF) STATE
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This matter comes before the Public Service Commission of South Carolina ("Commission") on a request by the Haig Point Utility Company, Inc. ("Haig Point" or the "Company") to change its name to Daufuskie Island Utility Company, Inc. and to maintain its books and records at an out-of-state location. The request for a name change results from provisions in a settlement agreement with Haig Point Club and Community Association, Inc. that was reached when ownership was transferred from Haig Point Utility Company, Inc. to CK Materials, LLC ("CK Materials") by Commission Order No. 2008-448 (June 24, 2008). According to the settlement agreement, CK Materials stipulated that it would remove any reference to the name "Haig Point" in the title of the Company following the acquisition. The Company states that the name change will have no impact on the operations of the utility.

Concerning the location where the Company's records are maintained, 26 S.C. Code Ann. Regs. 103-510 and 103-710 (Supp. 2008) require that these records be maintained within an office located in South Carolina, unless a different location is



specifically authorized by the Commission. It appears that the records of Haig Point have been historically maintained at the former owner's offices in Memphis, Tennessee, and the Company requests that these records now be maintained at the offices of G2 Utility Management, LLC ("G2"), a newly formed company by the new owners specifically for this purpose. G2 is located at 6 Beacon Street, Suite 410, Boston, Massachusetts.

The Company maintains that the utility's financial records will be prepared electronically, with hard copies printed on a periodic basis, as necessary. If requested, copies of the books will be provided to the Office of Regulatory Staff ("ORS") either the same day or the next business day of its request. Moreover, the Company provides that such source documents as invoices, contracts, correspondence, etc., which would not routinely be scanned into the Company's computer files, will also be made available as soon as possible upon request.

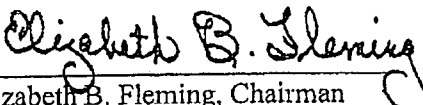
The Company also provides that operating records, which are now compiled and prepared at the utility's local office on Daufuskie Island, will continue to be maintained and kept at that location. Additionally, it is anticipated that copies of those records will also be kept at G2's Boston office. In the event of any investigation by the Commission or the ORS with respect to rate cases or any other matter for which ORS requests access to the books and records, the Company states it will make a full set of the requested records available at a location in South Carolina that is acceptable to ORS.

We find the request for a name change and request to keep the Company's records at G2's Boston Office acceptable.

IT IS THEREFORE ORDERED:

1. The request to change the name of Haig Point Utility Company, Inc. to Daufuskie Island Utility Company, Inc. is approved.
2. The request to keep and maintain the books and records of the utility at the offices of G2 in Boston, Massachusetts is approved, provided that these books and records are made available to ORS at ORS's request and at a time and place of ORS's choosing.
3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Plaintiff,

vs.

DOUGLAS HENDERSON, IN HIS
OFFICIAL CAPACITY AS TREASURER
OF BEAUFORT COUNTY; BEAUFORT
COUNTY; AND MAMDOUH SABRY
ABDELRAHMAN,

Defendants

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2012-CP-07-_____

COMPLAINT

2012 JUL 26 PM 1:34

The Plaintiff above named, complaining of the Defendants herein, alleges and states as follows:

1. The Plaintiff, Daufuskie Island Utility Company, Inc. is a corporation formed under the laws of the State of South Carolina.
2. The Plaintiff, Daufuskie Island Utility Company, Inc., brings this action requesting this Court declare the invalidity of the December 1, 2011 Tax Deed (hereinafter "December 1, 2011 Tax Deed") recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 03102, Pages 0169-0170, File Number 2011061014, on December 1, 2011 referencing certain property (hereinafter "the Property") and more fully described therein as:

All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat

entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

3. The Plaintiff, Daufuskie Island Utility Company, Inc., owns and operates a water and wastewater utility system on Daufuskie Island, subject to the regulation of the South Carolina Public Service Commission, that includes an elevated 125,000 gallon above-ground storage tank located on the Property.
4. The Defendant Douglas Henderson is the Treasurer of Beaufort County.
5. The Defendant Beaufort County is a public body corporate and politic existing under the laws of the State of South Carolina.
6. Upon information and belief, the Defendant Mamdouh Sabry Abdelrahman is a citizen of the State of Ohio, residing at 8300 Hilton Mill Road, Ostrander, Ohio 43061.

FOR A FIRST CAUSE OF ACTION
(ALL DEFENDANTS)

7. The Plaintiff realleges its previous allegations as if fully set forth herein.
8. Haig Point Utility Company, Inc. became the lawful and sole owner of the Property via Special Warranty Deed and Bill of Sale Title recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 01402, Pages 2190-2192, File Number 2001018868, on April 5, 2001.
9. By Order of the Public Service Commission of South Carolina dated March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc.
10. The Plaintiff, Daufuskie Island Utility Company, Inc., is the sole, rightful, and legal owner of the Property.
11. Defendants Beaufort County and Beaufort County Treasurer Henderson purported to sell the Property at a tax sale for unpaid ad valorem property taxes and later purported to convey the Property to the Defendant Mamdouh Sabry Abdelrahman via the Tax Deed recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 03102, Pages 0169-0170, File Number 2011061014, on December 1, 2011.
12. The December 1, 2011 Tax Deed contains certain representations regarding events related to the attempted conveyance of the Property to Defendant Abdelrahman, including the following:

- a. Herschel J. Evans, Jr. (authorized officer) did on May 1, 2010, mail a notice of tax delinquency under cover of certified mail, restricted, return receipt to said delinquent taxpayer and this notice was not received;
- b. The authorized officer directed to collect delinquent taxes, penalties and costs, did, on September 23, 2010 take exclusive possession of the property against which such taxes were assessed by posting a notice at one or more conspicuous places on the property hereinafter described, reading "seized by The Beaufort County Treasurer to be sold for delinquent taxes" and
- c. The Beaufort County Treasurer did thereafter properly advertise for sale once a week for three successive weeks for sale in September 2010; and
- d. Upon the failure of the delinquent taxpayer, or anyone acting in his behalf, to pay the taxes, penalties and costs, the property described hereinafter was duly sold at public auction on the sales day of the month of October in the year 2010 during the usual hours of sale to Mamdouh Sabry Abdelrahman, the purchaser and the highest bidder at such sale for the sum of \$526.70; and
- e. Under cover of certified mail restricted delivery, return receipt, Troy Hodges, Deputy Treasurer did, on August 31, 2011, mail a notice addressed Haig Point Utility Company, Inc. that the property described on the notice had been sold for taxes and advising said owner if not redeemed by paying taxes, penalties and costs in the amount of \$789.90, on or before October 5, 2011, a tax title would be issued to the successful purchaser at the tax sale; and was not redeemed; and
- f. Twelve months have elapsed since the date of the sale for delinquent taxes, and the said Haig Point Utility Company, Inc. or other parties interested after due notice have failed to redeem said property so sold.
- g. Douglas Henderson, Treasurer of the County of Beaufort, in consideration of the premises and the sum of \$526.70, paid by the said Mamdouh Sabry Abdelrahman granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Mamdouh Sabry Abdelrahman.

13. In order to convey a valid title under Title 12, Chapter 51 of the South Carolina Code, there must be strict compliance with each and every provision of the Chapter.

14. The requirements of Title 12, Chapter 51 of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011 Tax Deed.
15. The Defendants Beaufort County and Beaufort County Treasurer failed to strictly adhere to the requirements of the Title 12, Chapter 51 of the South Carolina Code in that they:
 - a. Failed to properly deliver a notice of tax delinquency under cover of certified mail, restricted, return receipt to Plaintiff as required by law;
 - b. Failed to take exclusive possession of the property by properly posting a proper notice of tax delinquency and sale of the Property in one or more conspicuous places on the Property herein described as required by law;
 - c. Failed to properly advertise the Property for sale a week for three successive weeks of sale as required by law;
 - d. Failed to properly conduct a public auction of the Property as required by law,
 - e. Failed to properly, under cover of certified mail restricted delivery, return receipt, mail a notice to Plaintiff informing Plaintiff the Property had been sold for taxes and advising Plaintiff that title to the Property would be issued to purchaser at tax sale if taxes were not paid within 12 months as required by law; and
 - f. Failed to send notices and correspondence to Plaintiff at Plaintiff's proper address despite being notified by Plaintiff of this correct address.

16. For the reasons alleged herein, the attempted tax sale and transfer of the Property to Defendant Mamdouh Sabry Abdelrahman via the December 1, 2011 Tax Deed were defective, irregular, and invalid.
17. As a result of these defects and irregularities, the December 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahman is invalid and unenforceable.
18. The tax sale and December 1, 2011 Tax Deed to Defendant Mamdouh Sabry Abdelrahman must be set aside.
19. The Plaintiff has no adequate remedy at law.
20. The Plaintiff is entitled to a declaratory adjudication voiding the tax sale and December 1, 2011 Tax Deed to Defendant Mamdouh Sabry Abdelrahman and enjoining Defendant Mamdouh Sabry Abdelrahman from the further steps to interfere with the possession of the Property by Plaintiff.

FOR A SECOND CAUSE OF ACTION
(DEFENDANT MAMDOUH SABRY ABDELRAHMAN)

24. The Plaintiff realleges its previous allegations as if fully set forth herein.
25. In addition to the Property at issue in the First Cause of Action, the Defendant Mamdouh Sabry Abdelrahman is the record owner of four other parcels of land located on Daufuskie Island (hereafter "Abdelrahman Parcels"):
 - a. R800 022 00B 0099 0000, formerly owned by HPL of Bluffton LLC
 - b. R800 022 00B 0123 0000, formerly owned by Mark Alexander
 - c. R800 022 00E 0066 0000, formerly owned by Craig Hedgecock
 - d. R800 022 00H 0007 0000, formerly owned by Kelly Palmer
26. The Plaintiff has provided and continues to make available water and wastewater services to each of the Abdelrahman Parcels. In accordance with fees and charges

approved by the Public Service Commission of South Carolina, Plaintiff has assessed availability fees against the Abdelrahman Parcels and notified Defendant Mamdouh Sabry Abdelrahman of the amounts due.

27. The Defendant Mamdouh Sabry Abdelrahman has failed to pay the Plaintiff availability fees for the Abdelrahman Parcels as follows:

a. R800 022 00B 0099 0000	Amount Due: \$208.56
b. R800 022 00B 0123 0000	Amount Due: \$208.56
c. R800 022 00E 0066 0000	Amount Due: \$208.56
d. R800 022 00H 0007 0000	Amount Due: <u>\$208.56</u>
	Total Due: \$834.24

28. The Plaintiff has properly notified the Defendant of the amounts due for each parcel by mailing bills to the Defendant.
29. The Plaintiff is entitled to and will apply penalties, late fees, and other charges to the Total Due to the extent allowed by the South Carolina Public Service Commission.
30. The Defendant Mamdouh Sabry Abdelrahman has breached his statutory obligation to pay the amounts due Plaintiff for services made available to him.
31. The Plaintiff has suffered and continues to suffer damages caused by such breach in an amount greater than \$834.24, and is entitled to prejudgment interest on all amounts due.

WHEREFORE, the Plaintiff, relying on the allegations set forth herein, prays that this

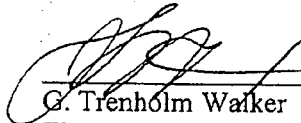
Court:

1. Enter a declaratory adjudication that the tax sale and December 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahman are invalid, void, and

unenforceable and enter an injunction enjoining Defendant Mamdouh Sabry Abdelrahman from interfering in any manner with Plaintiff's title to and possession of the Property.

2. Enter a declaratory adjudication that Plaintiff is the true legal as well as beneficial owner of the Property with the right to exclusive possession of the Property;
3. Enter judgment in an appropriate amount of actual damages against Defendant Mamdouh Sabry Abdelrahman for all amounts owed Plaintiff for unpaid availability fees for water and wastewater services to the Abdelrahman Parcels;
5. Award Plaintiff its attorneys' fees and costs under S.C. Code §§15-77-300, et seq. (Supp).
6. For such further and other relief from all Defendants as the Court deems just and proper, including an award to the Plaintiff of all attorneys' fees and costs associated with the prosecution of this case.

PRATT-THOMAS WALKER, P.A.


G. Trenholm Walker
Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com and gtw@p-tw.com
Attorneys for the Plaintiff

Charleston, South Carolina
July 25, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Plaintiff,

vs.

DOUGLAS HENDERSON, IN HIS
OFFICIAL CAPACITY AS TREASURER
OF BEAUFORT COUNTY; BEAUFORT
COUNTY; AND MAMDOUH SABRY
ABDELRAHMAN,

Defendants

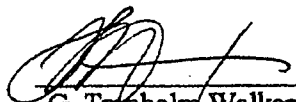
COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-07-02715

STIPULATION
OF DISMISSAL

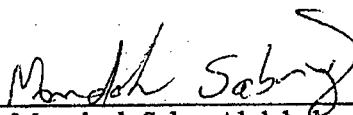
13 APR -8 PM 3:10
JENNIFER E. JOSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

THE PARTIES, through their undersigned counsel, hereby file this Stipulation of Dismissal pursuant to Rule 41(a). The parties hereby stipulate and agree that this action should be dismissed, and that each side shall bear its own costs and legal fees.

PRATT-THOMAS WALKER, P.A.



G. Trenholm Walker
Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com and gtw@p-tw.com
Attorneys for the Plaintiff

 3-26-2013
Mamdouh Sabry Abdelrahman
Defendant, pro se



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Condemnor,

vs.

MAMDOUH SABRY ABDELRAHMAN,

Landowner.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-07-2338

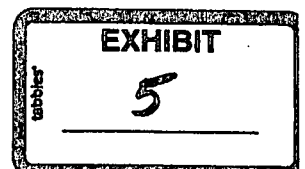
**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)**

SEP 12 PM 4:25
CLERK OF COURT
JULIA S. HARRIS
JULIA S. HARRIS
JULIA S. HARRIS

TO: THE LANDOWNER, ABOVE NAMED, MAMDOUH SABRY ABDELRAHMAN,
8300 HINTON MILL ROAD, OSTRANDER, OH 43061:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.
2. Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File Number 2011061014, in the Office of the Register of Deeds for Beaufort County, State of South Carolina.
3. The property identified in the Tax Deed recorded on December 11, 2011, at the Office of the Register of Deeds for Beaufort County, State of South Carolina, in Book 03102, Pages 0169-0170, File Number 2011061014 (hereinafter "the Property") is more fully described therein as:



All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

4. The Property, as described in the preceding paragraph, is the property subject to this action and the property to be condemned.
5. DIUC is engaged in the business of supplying water services on Daufuskie Island in Beaufort County.
6. The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.
7. DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.

9. DIUC has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and by making the appraisal available to the Landowner.

10. DIUC has complied with the requirements set forth in Section 28-2-70(B) by making reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid.

11. Plans of the waterworks plant and water supply system may be inspected at 803 Haig Point Road, Daufuskie Island, SC 29915. The Landowner should contact counsel for Condemnor to make an appointment for inspection.

12. Attached hereto is a survey including a vicinity map showing the property to be taken.

13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.

14. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Thomas P. Gressette, Jr., Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403. If no Agreement and

Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected. A copy of the Agreement and Request for Payment is attached hereto.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

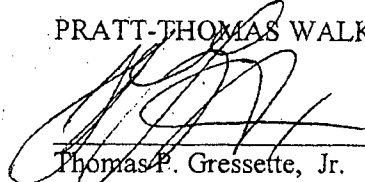
16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

19. If the Landowner accepts the amount tendered in this Notice, the attached Agreement and Request for Payment should be signed and returned as explained herein.

PRATT-THOMAS WALKER, P.A.



Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com

G. Trenholm Walker
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2208
Fax: 843-727-2239
E-mail: gtw@p-tw.com

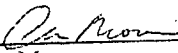
Attorneys for the Plaintiff-Condennor

Charleston, South Carolina
September 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Condemnation Notice and Tender of Payment by mailing a copy, United States First Class, to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 20th day of September, 2013:

Thomas Holloway, Esq.
Harvey & Battey
1001 Craven Street
Beaufort, SC 29902


Chris Morrow
Paralegal to Thomas P. Gressette, Jr.



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BUREAU OF WATER

October 3, 2013

Mr. John Guastella
Daufuskie Island Utility Company, Inc.
c/o Guastella Associates, LLL
133 Mystic Lane
Juniper, Florida 33458

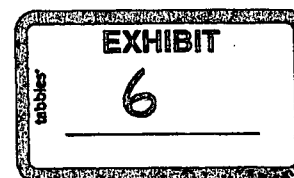
Re: Haig Point Utility Company (PWS #0750036)

Dear Mr. Guastella,

In response to your request, I am writing to confirm that Daufuskie Island Utility Company is an approved public water system as defined in the Safe Drinking Water Act (SDWA) and the State Primary Drinking Water Regulations (SPDWR). As such, Daufuskie Island Utility Company is subject to the jurisdiction of the South Carolina Department of Health and Environmental Control. It is in the public interest for Haig Point Utility Company to own or remain in control of all of its facilities so that they are able to remain in compliance with the SDWA and the SPDWR.

Sincerely,

Douglas B. Kinard, P.E.
Director
Drinking Water Protection Division



PRATT-THOMAS | WALKER

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

(843) 727-2249 (direct dial)
(843) 727-2239 (fax)
tpg@p-tw.com (e-mail)

ATTORNEYS AT LAW

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW COWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YARCEY (SC, NC)

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MOROC

JOHN P. LINTON, JR.

OF COUNSEL

THOMAS P. GRESSETTE, JR. (SC, USVI)

August 1, 2013

Via Certified Mail/Return Receipt Requested

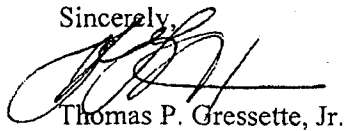
Mamdouh Sabry Abdelraham
8300 Hinton Mill Road
Ostrander, OH 43061

Re: Condemnation Notice and Tender of Payment

Dear Mr. Sabry:

The enclosed Condemnation Notice and Tender of Payment is hereby served upon you. As explained in the Notice, you may accept the amount tendered by executing and returning the Agreement and Request for Payment attached to the Notice.

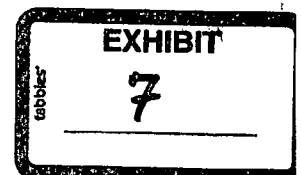
Sincerely,



Thomas P. Gressette, Jr.

TPG:cam

Enclosure (as stated above)



STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT	)	CASE NO.: 2013-CP-07-_____
	)	
DAUFUSKIE ISLAND UTILITY	)	
COMPANY, INC.,	)	
	)	
Condemnor,	)	CONDEMNATION NOTICE
	)	AND
vs.	)	TENDER OF PAYMENT
	)	(JURY TRIAL DEMANDED)
	)	
MAMDOUH SABRY ABDELRAHMAN,	)	
	)	
Landowner.	)	

TO: THE LANDOWNER, ABOVE NAMED, MAMDOUH SABRY ABDELRAHMAN,
8300 HINTON MILL ROAD, OSTRANDER, OH 43061:

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.
2. Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File Number 2011061014, in the Office of the Register of Deeds for Beaufort County, State of South Carolina.
3. The property identified in the Tax Deed recorded on December 11, 2011, at the Office of the Register of Deeds for Beaufort County, State of South Carolina, in Book 03102, Pages 0169-0170, File Number 2011061014 (hereinafter "the Property") is more fully described therein as:

All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

4. The Property, as described in the preceding paragraph, is the property subject to this action and the property to be condemned.
5. DIUC is engaged in the business of supplying water services on Daufuskie Island in Beaufort County.
6. The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.
7. DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.
9. DIUC has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and by making the appraisal available to the Landowner.
10. DIUC has complied with the requirements set forth in Section 28-2-70(B) by making reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid.
11. Plans of the waterworks plant and water supply system may be inspected at 803 Haig Point Road, Daufuskie Island, SC 29915. The Landowner should contact counsel for Condemnor to make an appointment for inspection.
12. Attached hereto is a survey including a vicinity map showing the property to be taken.
13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.
14. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Thomas P. Gressette, Jr., Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403. If no Agreement and

Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected. A copy of the Agreement and Request for Payment is attached hereto.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

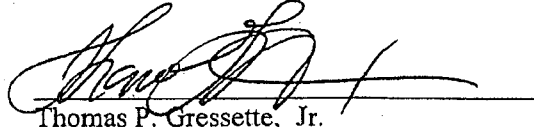
16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

19. If the Landowner accepts the amount tendered in this Notice, the attached Agreement and Request for Payment should be signed and returned as explained herein.

PRATT-THOMAS WALKER, P.A.



Thomas P. Gressette, Jr.

P.O. Drawer 22247

Charleston, SC 29413-2247

Tel: 843-727-2249

Fax: 843-727-2239

E-mail: tpg@p-tw.com

G. Trenholm Walker

P.O. Drawer 22247

Charleston, SC 29413-2247

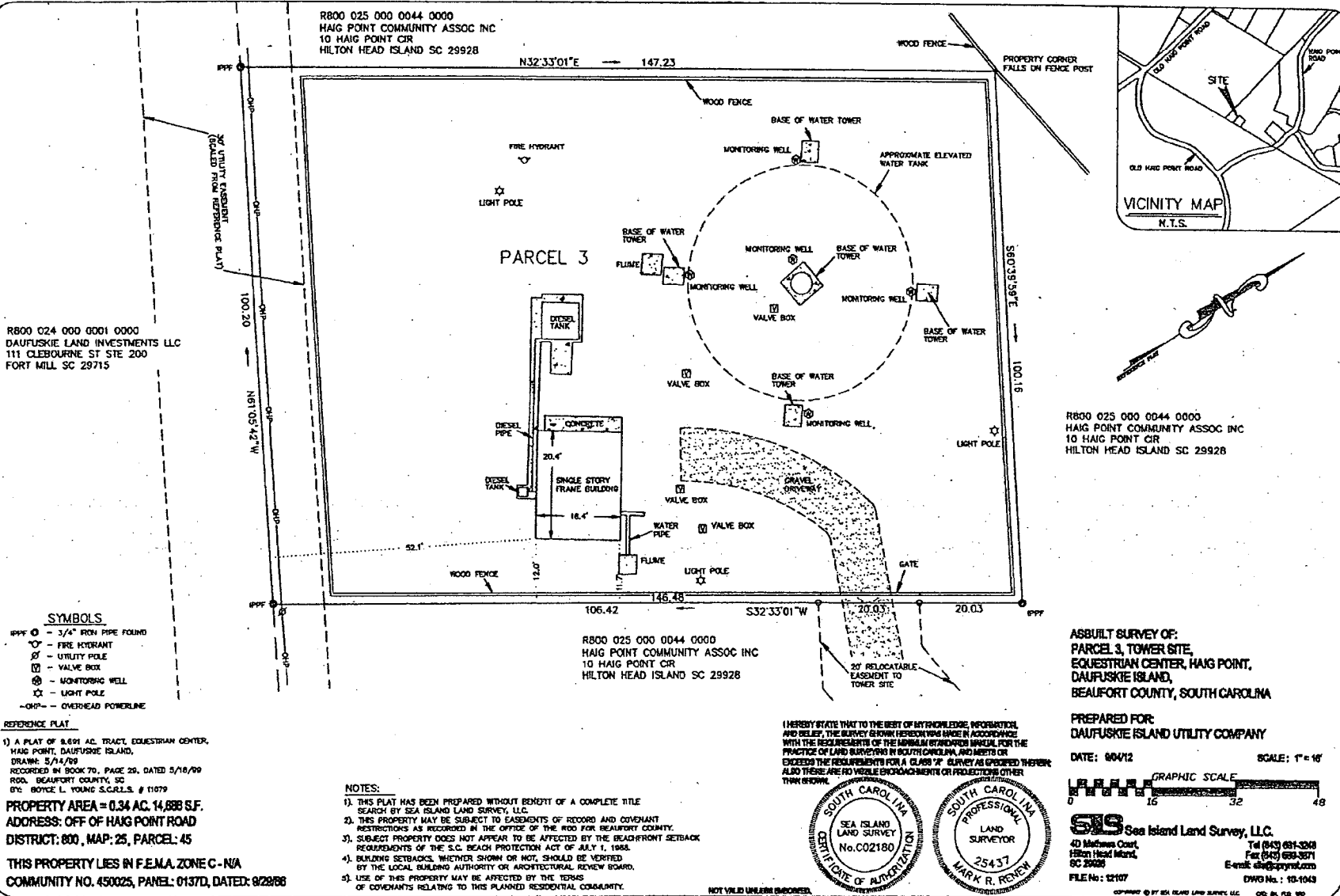
Tel: 843-727-2208

Fax: 843-727-2239

E-mail: gtw@p-tw.com

Attorneys for the Plaintiff-Condernnor

Charleston, South Carolina
August 1, 2013



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Condemnor,

vs.

MAMDOUH SABRY ABDELRAHMAN,

Landowner.

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-07-_____

**AGREEMENT
AND
REQUEST FOR PAYMENT**

I, Mamdouh Sabry Abdelrahman, have reviewed the Condemnation Notice and Tender of Payment regarding the property identified with TMS #800-025-000-00045-0000 and more fully described in the Condemnation Notice and Tender of Payment.

I hereby accept the amount tendered of Three Thousand Seven Hundred and no/100 (\$3,700.00) and request payment of the same. I further agree to promptly execute all paperwork necessary to effectuate transfer of the property to the Condemnor.

Date

Mamdouh Sabry Abdelrahman

Sworn to and subscribed before me
this ____ day of _____ 2013.

(SEAL)

Notary Public for _____
Commission Expires: _____

SENDER: COMPLETE THIS SECTION

- ☒ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mamdouh Sabry Abdelraham
8300 Hinton Mill Road
Ostrander, OH 43061

COMPLETE THIS SECTION ON DELIVERY

A. Signature <i>x Mamdouh Sabry</i>		☐ Agent ☐ Addressee
B. Received by (Printed Name) <i>Mamdouh Sabry Abdelraham</i>		C. Date of Delivery <i>2-05-2013</i>
D. Is delivery address different from item 1? If YES, enter delivery address below:		☐ Yes ☐ No
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		
4. Restricted Delivery? (Extra Fee)		☐ Yes

2. Article Number
(Transfer from service label)

7001 2510 0008 7190 6719

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22247
CHARLESTON, SC 29413-2247

PHONE: 843.727.2200
FAX: 843.727.2238

WWW.P-TW.COM

(843) 727-2249 (direct dial)
(843) 727-2239 (fax)
tpg@p-tw.com (e-mail)

E. DOUGLAS PRATT-THOMAS

G. TRENHOLM WALKER

W. ANDREW GOWDER, JR.

JON L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

THOMAS H. HESSE (SC, GA)

JAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONOC

JOHN P. LINTON, JR.

OF COUNSEL

THOMAS P. GRESSETTE, JR. (SC, USVI)

September 11, 2013

The Honorable Jerri Ann Roseneau
Beaufort County Clerk of Court
102 Ribaut Road, Room 208
Beaufort, SC 29901

Re: Daufuskie Island Utility Company, Inc. v. Mamdouh Sabry Abdelrahman

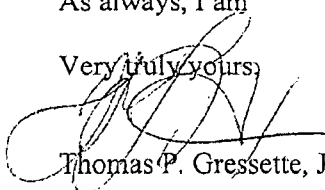
Dear Ms. Roseneau:

Enclosed please find the original and three copies of the Condemnation Notice and Tender of Payment and Lis Pendens. We have also enclosed a check in the amount of Three Thousand Seven Hundred and no/100 for the tender of payment, Civil Action Cover Sheets, and our firm check for the filing fee. Please file the originals and return stamped copies to me in the enclosed envelope.

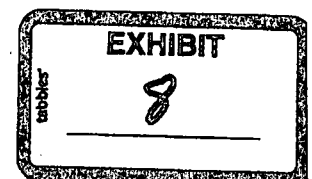
Please contact me if you have any questions. Thank you for your assistance.

As always, I am

Very truly yours,


Thomas P. Gressette, Jr.

Enclosures



Beaufort County Common Pleas

Jerri Ann Roseneau

PO Box 1128

Beaufort, SC 299011128

Date: 9/12/2013

Transaction Number: 1

Clerk: Jerri Ann Roseneau

Received By: c07boshie1

Received From: Daufuskie Island Utility Company Inc

Paying For: Daufuskie Island Utility Company Inc

Payment Type: CK

Payment Amount: \$ 3,700.00

Reference Number: 2060

Case #

2013CP0702338

Caption

Daufuskie Island Utility Company Inc VS
Mamdouh Sabry Abdelrahman

Amount Paid

\$ 3,700.00

**PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE**

ADMINISTRATIVE MATTER	☐	DATE	<u>October 23, 2013</u>
MOTOR CARRIER MATTER	☐	DOCKET NO.	<u>2013-329-WS</u>
UTILITIES MATTER	☒	ORDER NO.	<u>2013-768</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2013-329-WS - Application of Daufuskie Island Utility Company, Incorporated for Approval to Transfer Stock to Remove Daufuskie Island Utility Company, Incorporated from Its Current Status as a Subsidiary of CK Materials, LLC - Discuss with the Commission the Objections to the Petition to Intervene of Mamdouh Sabry Abdelrahman, along with a Request for Expedited Review of Pending Application without Hearing Filed on Behalf of Daufuskie Island Utility Company, Incorporated.

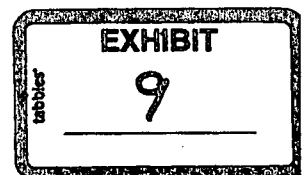
COMMISSION ACTION:

Deny the Petition for Intervention by Mamdouh Sabry Abdelrahman as the petitioner has no nexus to the matter of the stock transfer; grant the request of Daufuskie Island Utility Company, Inc. (DIUC) for Expedited Review; and approve the transfer of the stock in DIUC from CK Materials, LLC to JJK Utilities Holdings, LLC.

PRESIDING: HamiltonSESSION: RegularTIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
FLEMING	☐	☒	☐	
HALL	☒	☒	☐	
HAMILTON	☐	☒	☐	
HOWARD	☐	☒	☐	
RANDALL	☐	☒	☐	
WHITFIELD	☐	☒	☐	
VACANT	☐	☐	☐	

(SEAL)

RECORDED BY: J. Schmieding

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Affidavit of John F. Guastella by mailing a copy United States Mail First Class to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 22nd day of November, 2013.

Thomas A. Holloway, Esq.
1001 Craven Street
Beaufort, SC 29901-1107



Chris Morrow
Paralegal to Thomas P. Gressette, Jr.

Haig Point Utility Company, Inc. previously owned the Property. See Exhibit 2 attached hereto (Special Warranty Deed and Bill of Sale Title, Book 01402, Pages 2190-2192, File No. 2001018868, Office of Register of Deeds for Beaufort County).

On March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc. See Exhibit 2 to Affidavit of John F. Guastella (Public Service Commission of South Carolina Order Approving Request of Name Change).

Following the name change, DIUC provided its updated mailing address to Beaufort County. See Affidavit of John F. Guastella at Paragraph 15.

However, DIUC did not receive tax bills for the Property, and the taxes were not paid. See Affidavit of John F. Guastella at Paragraph 16.

In October of 2010, Beaufort County sold the Property at public auction to Mamdouh Sabry Abdelrahman ("Sabry") for the sum of \$526.70. See Affidavit of John F. Guastella at Paragraph 17 and Exhibit 3 attached hereto (Book No. 03102, Pages 0169 – 0170, File No. 2011061014, Office of the Register of Deeds for Beaufort County, State of South Carolina).

On December 1, 2011, Beaufort County issued a tax deed conveying the Property to Sabry. See Affidavit of John F. Guastella at Paragraph 18 and Exhibit 3 attached hereto (Book No. 03102, Pages 0169 – 0170, File No. 2011061014, Office of the Register of Deeds for Beaufort County, State of South Carolina).

Beaufort County did not properly place the required notices of the tax sale on the property, so DIUC did not learn about the auction until early 2012 after the conveyance to Sabry. See Affidavit of John F. Guastella at Paragraphs 19-20.

After learning of the tax sale and deed to Sabry, DIUC filed a declaratory judgment action against Beaufort County, the Beaufort County Treasurer, and Sabry seeking adjudication that the tax sale and tax deed are invalid, void, and unenforceable. See Affidavit of John F. Guastella at Paragraph 21 and Exhibit 3 (Complaint filed July 26, 2012).

The Complaint alleged that the requirements of Title 12, Chapter 51, of the S.C. Code were not satisfied by the Defendants, Beaufort County and Beaufort County Treasurer prior to issuance of the December 1, 2011 tax deed conveying the Property to Sabry; as such, the purpose of the case was to set aside the tax sale. See Affidavit of John F. Guastella at Paragraph 23 and Exhibit 3 (Complaint filed July 26, 2012, at Paragraphs 14, 15, and 16).

DIUC was unable to efficiently resolve the challenge to the tax sale, so by Stipulation of Dismissal filed April 8, 2013, the Declaratory Judgment action seeking to set aside the tax sale was dismissed pursuant to South Carolina Rules of Civil Procedure 41(a). See Affidavit of John F. Guastella at Paragraph 23 and Exhibit 4 (Stipulation of Dismissal dated April 8, 2013).

On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment seeking to condemn the Property, thereby initiating Civil Action No. 2013-CP-07-2338. See Affidavit of John F. Guastella at Paragraph 27 and Exhibit 5 (Notice of Condemnation and Tender of Payment dated September 12, 2013).

The Condemnation Notice states that DIUC seeks to condemn the Property for public use, public benefit, and public purposes including, but not limited to, supplying water to the citizens of Daufuskie Island. See Affidavit of John F. Guastella at Paragraph 28 and Exhibit 3 (Complaint filed July 26, 2012).

Douglas J. Kinard, PE, Director of Drinking Water Protection Division for DHEC's Bureau of Water, agrees that "it is in the public interest for [DIUC] to own or remain in control of all of its facilities so that they are able to remain in compliance with the [Safe Drinking Water Act] and the [State Primary Drinking Water Regulations]." See Exhibit 6 to Affidavit of John F. Guastella (Letter from Kinard to Guastella dated October 3, 2013).

In conjunction with the Notice of Condemnation and Tender of Payment, DIUC provided Sabry with a copy of its appraisal indicating the fair market value of the Property to the Condemnee is \$3,700.00. See Exhibit 4 attached hereto (Letter from Gressette to Sabry dated July 24, 2013 (DIUC-000069)).

Sabry did not accept the Offer of Just Compensation. See Affidavit of John F. Guastella at Paragraph 37.

On September 12, 2013, DIUC filed its Condemnation of Notice and Tender of Payment thereby initiating thereby initiating Civil Action No. 2013-CP-07-2338 and deposited the Just Compensation Amount from its appraisal of \$3,700.00 with the Beaufort County Clerk of Court. See Affidavit of John F. Guastella at Paragraph 39 and Exhibit 5 (Notice of Condemnation and Tender of Payment dated September 12, 2013) and Exhibit 8 (Beaufort County Trust Account Receipt dated September 12, 2013).

On September 4, 2013, Sabry filed the instant action, Civil Action 2013-CP-07-2255, challenging the authority of DIUC to condemn the Property.

On October 4, 2013, DIUC filed its Answer.

On November 25, 2013, DIUC filed the instant Motion for Summary Judgment with the Affidavit of John F. Guastella, the manager of DIUC, asserting there is no triable issue as to any material fact, and the Defendant DIUC is entitled to a judgment as a matter of law.

On February 28, 2014, the Plaintiff deposed John F. Guastella, the manager of DIUC.

A hearing on DIUC's Motion for Summary Judgment was set for Monday, March 10, 2104, before The Honorable Donald B. Hocker.

On Friday, March 7, 2014, counsel for the Plaintiff informed the Court via email that he intended to request a continuance of the Summary Judgment Hearing so the Plaintiff would have "the opportunity for a site inspection with an expert together with other related items." See Exhibit 5 attached hereto (Email from Holloway to Judge Hocker's Law Clerk (Alfred L. Bixler) and Gressette dated March 7, 2014).

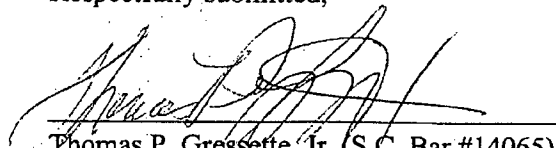
After a brief telephone conference with counsel for the parties on Monday, March 10, 2014, Judge Hocker granted Plaintiff's request for a 30-day continuance of the hearing.

Via Consent Order entered April 14, 2014, Defendant's Motion for Summary Judgment was rescheduled for hearing before The Honorable Carmen T. Mullen on May 27, 2014. See Exhibit 6 attached hereto (Consent Order for Continuance of Motion Hearing dated April 14, 2014).

Since the March 7, 2014, request by Plaintiff's counsel for additional time to conduct discovery, no discovery has been served upon DIUC and no site inspection of the Property has been scheduled with Counsel for DIUC.

DIUC asserts there has been ample time for discovery, that no further discovery is required for the trier of fact to decide DIUC's Motion for Summary Judgment, and that the Motion should be granted as a matter law for the reasons set forth in DIUC's Motion and Memorandum of Law in Support of DIUC's Motion for Summary Judgment.

Respectfully submitted,


Thomas P. Gressette, Jr. (S.C. Bar #14065)
G. Trenholm Walker (S.C. Bar #5777)
PRATT-THOMAS WALKER, P.A.
P.O. Drawer 22247
Charleston, SC 29413-2247
Telephone: 843-727-2249
E-mail: tpg@p-tw.com

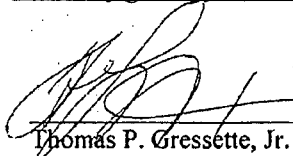
Attorneys for Defendant,
Daufuskie Island Utility Company, Inc.

Charleston, South Carolina
May 22, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Defendant's Memorandum in Support of Motion for Summary Judgment and Defendant's Statement of Undisputed Facts by electronic mail to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 22nd day of May, 2014:

Thomas A. Holloway, Esq.
1001 Craven Street
Beaufort, SC 29901-1107
tholloway@harveyandbattey.com



Thomas P. Gressette, Jr.

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-07-02255

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7. As President of Guastella, the manager of DIUC, I am the custodian of the records of DIUC. The documents attached to this Affidavit are business records kept in the course of DIUC's regularly conducted business activity, and each is maintained in the regular practice of the business of DIUC. Each document attached hereto is the original or an exact duplicate of the original.
8. DIUC is a "public utility" under the terms of S.C. Code Ann. §58-5-10(4), and is subject to the regulatory jurisdiction of the Public Service Commission of South Carolina ("PSC").
9. DIUC is authorized by the Public Service Commission of South Carolina to be the exclusive provider of water and wastewater services to a service area that encompasses Daufuskie Island, South Carolina.
10. The rates and amounts DIUC charges its customers are regulated by and subject to the approval of the Public Service Commission of South Carolina.
11. The current rates and charges for DIUC's water and wastewater service were approved by the Public Service Commission by Order Number 2012-515, dated July 10, 2012, and filed in Docket Number 2011-229-WS. See Exhibit 1.
12. The DIUC water supply system includes a 125,000 gallon storage tank and related facilities located on a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property").
13. Haig Point Utility Company, Inc. previously owned the Property, as set forth in the Special Warranty Deed and Bill of Sale Title recorded on April 5, 2001, at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 01402, Pages 2190-2192, File Number 2001018868.
14. By Order of the Public Service Commission of South Carolina dated March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc. (referred to herein as "DIUC"). See Exhibit 2.
15. After its name change, DIUC properly updated its mailing address via the online system established by Beaufort County for such activities.
16. Despite providing Beaufort County with its proper address, DIUC did not receive tax bills for the Property and the taxes were not paid.
17. In October of 2010, Beaufort County sold the Property at public auction to Mamdouh Sabry Abdelrahman ("Sabry") for the sum of \$526.70.

18. On December 1, 2011, Beaufort County issued a tax deed conveying the Property to Sabry.
19. Beaufort County did not properly place the required notice of the pending tax sale on the Property, so DIUC was not aware of the tax sale until after it occurred.
20. DIUC learned of the auction and of the conveyance to Sabry in early 2012.
21. After learning of the sale and tax deed, DIUC filed a declaratory judgment action against Beaufort County, the Beaufort County Treasurer, and Sabry seeking adjudication that the tax sale and tax deed are invalid, void, and unenforceable. See Exhibit 3.
22. The complaint in the declaratory judgment action alleged the requirements of Title 12, Chapter 51, of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011, tax deed conveying the Property to Sabry. As such, the purpose of the case was to set aside the tax sale. See Exhibit 3, particularly ¶¶ 14 – 16.
23. Via Stipulation of Dismissal filed April 8, 2013, the declaratory judgment action seeking to set aside the tax sale was dismissed pursuant South Carolina Rule of Civil Procedure 41(a). See Exhibit 4.
24. Since 1986, DIUC and its predecessors in interest have provided water services to Daufuskie Island through a water supply system that uses the 125,000 gallon tank and related facilities located on the Property.
25. As previously stated herein, DIUC's water supply services are authorized and regulated by the Public Service Commission of South Carolina.
26. As authorized and regulated by the Public Service Commission of South Carolina, DIUC supplies water services on Daufuskie Island for public purposes and for the public interest.
27. On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment seeking to condemn the Property thereby initiating Civil Action 2013-CP-07-0338. See Exhibit 5.
28. DIUC seeks to condemn the Property for public use, public benefit, and public purposes including, but not limited to, supplying water to the citizens of Daufuskie Island.
29. Once condemned, the Property will become part of the system that supplies water to the residents of, visitors to, and businesses located on Daufuskie Island, South Carolina.

30. It is in the public interest for DIUC to own and control the Property.
31. Douglas J. Kinard, P.E., Director of Drinking Water Protection Division for DHEC's Bureau of Water, also agrees that "It is in the public interest for [DIUC] to own or remain in control of all of its facilities so that they are able to remain in compliance with the [Safe Drinking Water Act] and the [State Primary Drinking Water Regulations]." See Exhibit 6.
32. DIUC's previous action against Sabry sought an order declaring Beaufort County and the Beaufort County Treasurer failed to comply with statutory requirements governing notice and tax sale proceedings.
33. The currently pending action to condemn the Property, Civil Action 2013-CP-07-0338, is DIUC's only action to condemn the Property.
34. DIUC has not previously filed any other action to condemn the Property.
35. Because the Property cannot be used for residential or other real estate development even if the storage tank and other facilities are removed, an appraisal performed on behalf of DIUC in conjunction with the condemnation estimates the market value of the Property to be \$3,700.
36. DIUC therefore provided notice to Sabry of the appraisal and offered to pay Sabry \$3,700 as just compensation for the Property. See Exhibit 7.
37. Sabry did not accept the offer of just compensation.
38. On September 4, 2013, Sabry filed this action, Civil Action 2013-CP-07-0225, challenging DIUC's right to condemn the Property.
39. In conjunction with filing its Notice of Condemnation and Tender of Payment thereby initiating Civil Action 2013-CP-07-0338, DIUC deposited \$3,700 with Beaufort County Clerk of Court as tendered just compensation for the Property. See Exhibit 8.
40. DIUC now seeks a grant of summary judgment as to all counts of the complaint in this action, Civil Action 2013-CP-07-0225, whereby Sabry challenges DIUC's condemnation authority.
41. I am providing this Affidavit in support of DIUC's Motion for Summary Judgment in this action.
42. In addition to the Property subject to condemnation in Civil Action 2013-CP-07-0338, Sabry is the record owner of four additional parcels of land located on Daufuskie Island ("the Sabry Parcels").

43. The Sabry Parcels are all within in the DIUC service area, as established by the Public Service Commission of South Carolina.
44. DIUC has provided and continues to make available water and wastewater services to all four of the Sabry Parcels.
45. In accordance with fees and charges approved by the Public Service Commission of South Carolina, DIUC has assessed availability fees against the Sabry Parcels and has repeatedly notified Sabry of the amounts due.
46. Sabry has never paid DIUC for the properly charged availability fees for the Sabry Parcels.
47. The amounts owed by Sabry to DIUC for unpaid availability fees are as follows:
- | | |
|---------------------------|------------------------------|
| a. R800 022 00B 0099 0000 | Amount Due: \$ 681.48 |
| b. R800 022 00B 0123 0000 | Amount Due: \$ 681.48 |
| c. R800 022 00E 0066 0000 | Amount Due: \$ 681.48 |
| d. R800 022 00H 0007 0000 | Amount Due: <u>\$ 681.48</u> |
| | Total Due: \$2,725.92 |
48. DIUC continues to apply penalties, late fees, and other charges to the Total Due to the extent allowed by the Public Service Commission of South Carolina.
49. By failing to pay DIUC these amounts due, Sabry has breached and continues to breach his statutory obligation to pay the amounts due DIUC for services made available to him.
50. I would further note that on August 30, 2013, DIUC applied to the Public Service Commission, Docket No. 2013-329-WS, for approval of a stock transfer that was necessary to close on a loan with SunTrust Bank.
51. The Public Service Commission had previously approved the loan with SunTrust, which was necessary to make capital improvements in order to provide safe and adequate service to our customers.
52. On October 14, 2013, Sabry filed a petition with the Public Service Commission to intervene in that proceeding.
53. On October 23, 2013, the Public Service Commission denied Sabry's petition for intervention and in the same order approved the transfer of stock ownership. See Exhibit 9.

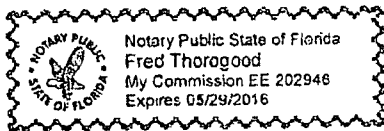
54. Further Affiant sayeth not.

John F. Guastella
John F. Guastella

11/20/13
Date

Palm Beach, Florida
County and State

John F. Guastella did personally appear before me, was duly sworn under oath and under penalty of perjury, and did execute this Affidavit in my presence.



SWORN before me this 20 day of November, 2013

[Signature]
Notary Public for the State of Florida

My Commission Expires: 05/29/2016

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2011-229-WS - ORDER NO. 2012-515

JULY 10, 2012

IN	Application of Daufuskie Island Utility	)	ORDER APPROVING
RE:	Company, Inc. for Approval of Water and	)	AND ADOPTING
	Sewer Rates, Terms and Conditions	)	SETTLEMENT
		)	AGREEMENT

The above-captioned matter is before the Public Service Commission of South Carolina ("Commission") on the proposed Settlement Agreement ("the Settlement Agreement") filed on June 25, 2012, by Haig Point Club and Community Association, Inc. ("HPCCA"), Bloody Point Property Owners Association, Inc. ("BPPOA"), Melrose Property Owners Association, Inc. ("MPOA"), and Daufuskie Island Utility Company, Inc. ("DIUC") (hereinafter collectively referred to as the "signatory agreeing Parties" or sometimes individually as a "Party"). As explained more fully below, the South Carolina Office of Regulatory Staff ("ORS") does not object to the Settlement Agreement and was identified as one of the signing "Parties to this Settlement Agreement." Intervenor Patrick M. Connolly, Esquire, did not submit prefiled testimony or appear at the hearing on May 30, 2012. The proposed settlement was stated into the record at the hearing on May 30, 2012, after partial introduction of the evidence.¹

¹ After the hearing on May 30, 2012, the parties agreed to change the additional annual revenue permitted by their settlement from \$291,448 to \$291,485.



This matter was initiated on June 6, 2011, when DIUC filed a letter of intent with the Commission and on January 10, 2012, DIUC filed an Application for approval of an adjustment in its rates and charges for water and sewer services with the Commission pursuant to S.C. Code Ann. § 58-5-240 and 26 S.C. Code Ann. Regs. 103-712.4.A and 103.512.4.A.

By letter dated January 24, 2012, the Commission's Clerk's Office instructed DIUC to publish a prepared Notice of Filing, one time, in newspapers of general circulation in the area affected by DIUC's Application. The Notice of Filing described the nature of the Application and advised all interested persons desiring to participate in the scheduled proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. The Commission also instructed DIUC to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Notice of Filing. On February 20, 2012, DIUC filed Affidavits of Publication demonstrating that the Notice of Filing had been duly published and provided a letter certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all customers.

In response to a request for a local hearing, by Order No. 2012-196 (March 7, 2012), the Commission ordered a public night hearing.²

On March 13, 2012, DIUC revised its application. By letter dated March 20, 2012, the Commission's Clerk's Office instructed DIUC to publish a prepared

² The purpose of the night hearing was to provide a forum, at a convenient time and location, for customers of DIUC to present their comments regarding the service and rates of DIUC.

Public Notice of Night Hearing and Revised Notice of Filing, one time, in newspapers of general circulation in the area affected by DIUC's Revised Application. The Public Notice of Night Hearing and Revised Notice of Filing described the night hearing to be conducted on April 30, 2012, and the nature of the Revised Application and advised all interested persons desiring to participate in the amended schedule of the proceedings of the manner and time in which to file appropriate pleadings for inclusion in the proceedings as a party of record. The Commission also instructed DIUC to notify directly, by U.S. Mail, each customer affected by the Application by mailing each customer a copy of the Public Notice of Night Hearing and Revised Notice of Filing. On April 5, 2012, DIUC filed Affidavits of Publication demonstrating that the Public Notice of Night Hearing and Revised Notice of Filing had been duly published and provided a letter certifying that it had complied with the instructions of the Commission's Clerk's Office and mailed a copy of the Notice of Filing to all customers.

On April 30, 2012, the Commission held a night hearing at Haig Point Club and Community Association, 10 Haig Point Circle, Daufuskie Island, South Carolina to hear comments from members of the public.

The Commission, with Chairman Howard presiding, heard the expert witnesses testify on DIUC's Application beginning at 10:30 am on May 30, 2012, at the Commission Hearing Room located at 101 Executive Center Drive in Columbia, South Carolina. DIUC was represented by G. Trenholm Walker, Esquire. ORS was represented by Nanette S. Edwards, Esquire, and Courtney D. Edwards,

Esquire. Intervenor HPCCA, BPPOA, and MPOA were collectively represented by John F. Beach, Esquire. Intervenor Patrick M. Connolly, Esquire, did not appear at the merits hearing.

Negotiations between the signatory agreeing Parties in this proceeding, with ORS participating, resulted in a proposed settlement during the course of the merits hearing on May 30, 2012, and ultimately in the Settlement Agreement signed by the Parties on June 25, 2012. In the Settlement Agreement, the Applicant, the three property owner's groups and the Office of Regulatory Staff are collectively defined as the "Parties." The Settlement Agreement also identifies these same entities as "Parties to this Settlement Agreement." However, the first paragraph explains that the Settlement Agreement is "made . . . without objection from the South Carolina Office of Regulatory Staff ("ORS")." Further, the Settlement Agreement signature page "representing and binding" the ORS, states: "We do not object to and acknowledge the effect of this settlement."

The signatory agreeing Parties have all determined that their interests, as well as the public interest, are best served by settling the dispute in this matter under the terms and conditions in the Settlement Agreement and set forth below.

By signing the Settlement Agreement, the signatory agreeing Parties' counsel acknowledged their respective clients' consent to its terms. The Settlement Agreement provides that the signatory agreeing Parties all viewed the terms of the agreement to be fair and reasonable.

The Commission considered and evaluated the Settlement Agreement at its meeting on June 27, 2012. The Commission is fully familiar with this matter based on the evidence and arguments that were presented at the merits hearing on May 30, 2012, and determined that no additional testimony or other proof is necessary.

All signatory agreeing Parties have agreed in the Settlement Agreement that a resolution of this matter on the terms therein allows DIUC to continue to provide water and wastewater services to its customers, and would provide a fair and reasonable operating margin and return on equity to DIUC.

The rates for residential and commercial water, sewer, and irrigation, as well as the charges for availability fees, are specified in Settlement Agreement Exhibit 1, which is attached to and incorporated as a part of this Order as Order Attachment No. 1.

We find that the rates and charges agreed to by the signatory agreeing Parties and not objected to by ORS are fair and reasonable and will allow DIUC to continue to provide its customers with adequate water and wastewater service. We specify an allowable operating margin of 16.64% and find that a rate of return on equity of 8.81% is fair and reasonable under the circumstances based on the proof admitted into evidence at the hearing.

The signatory agreeing Parties all agreed, and this Commission finds, that an increase in rates and charges (including availability fees) for water and sewer rates, fees, and charges is necessary. DIUC (through its predecessors) has not obtained an increase in its rates and charges since 2005. Since that time, DIUC's costs of

providing service have increased so that it can no longer earn a fair return on its investment. Significant facilities operated by DIUC are in need of maintenance and repair.

The signatory agreeing Parties therefore agreed and stipulated to certain rates and charges, which we hereby approve, that are specified in Settlement Agreement Exhibit 1 and included in Order Attachment No. 1. We agree with the signatory agreeing Parties that the rates and charges contained in the Settlement Agreement are fair and reasonable, and will allow DIUC to continue to provide its customers with adequate water and wastewater services.

The Commission further finds that the additional conditions imposed under the Settlement Agreement with respect to annual reporting to the Commission and ORS on the intended loan are also fair, reasonable, and necessary.

The Commission finds the terms and conditions set forth in the Settlement Agreement and Exhibits thereto are fair and reasonable to the Parties and ORS as well as to the DIUC customers affected by the rates and fees approved by this Order.

After careful review and consideration of the Settlement Agreement, the evidence in the record in this proceeding, and the representations of counsel, the Commission concludes as a matter of law that (i) approval of the Settlement Agreement is in the public interest; (ii) the residential and commercial rates, fees, and charges (including availability fees) for both water and sewer agreed to by the signatory agreeing Parties and not objected to by ORS, and as set forth in Order

Attachment No. 1 attached hereto are reasonable and fair and should be put into effect after the notice required herein.

An examination of Settlement Agreement Exhibit 2, attached hereto as part of Order Attachment No. 1, reveals that, based on the operating revenues, income, and expenses agreed upon by the parties, the additional revenues produced by the new rates and charges will result in an operating margin for DIUC of 16.64% and return on equity of 8.81%. We find that the new rates and charges provide DIUC with the opportunity to earn a return on equity of 8.81% for this Company.

IT IS THEREFORE ORDERED THAT:

1. The Settlement Agreement, including its attached Exhibits, is attached hereto as Order Attachment No. 1, is accepted into the record without objection, and is incorporated into and made part of this Order by reference. Further, we find the Settlement Agreement is in the public interest and constitutes a reasonable resolution of this proceeding, and we therefore approve the settlement in its entirety.

2. The statement of proposed rates, fees, and charges attached to the Settlement Agreement (Order Attachment No. 1) is entered into the record of this case without objection. We find that the proposed rates, fees, and charges are both fair and reasonable and will allow DIUC to continue to provide its customers with adequate water and wastewater services. We further find that the additional terms and conditions set forth in the Settlement Agreement, including its reporting requirements if DIUC should obtain a bank loan, are reasonable and fair.

3. The Company is to provide thirty (30) days' advance notice of the increase to customers of its water and wastewater services prior to the rates and schedules being put into effect for service rendered. The schedules shall be deemed to be filed with the Commission pursuant to S.C. Code Ann. § 58-5-240.

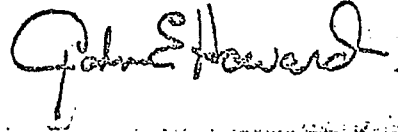
4. A return on equity of 8.81% based on the new rates, fees, and charges is approved for DIUC, as well as an operating margin of 16.64%

5. The Company shall continue to maintain current performance bonds in the amounts of \$350,000 for water operations and \$350,000 for wastewater operations pursuant to S.C. Code Ann. § 58-5-720.

6. The Company's books and records shall be maintained according to the National Association of Regulatory Utility Commissioners ("NARUC") Uniform System of Accounts. The Company is directed to make any necessary adjustments to its accounting system to conform to the NARUC Uniform System of Accounts.

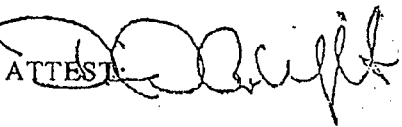
7. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



John E. Howard, Chairman

ATTEST



David A. Wright, Vice Chairman

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

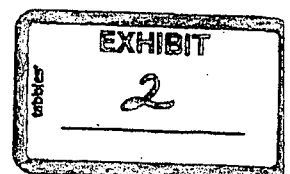
DOCKET NO. 2007-414-WS - ORDER NO. 2009-154

MARCH 6, 2009

IN RE: Joint Application of Haig Point, Inc. and CK	)	ORDER APPROVING
Material, LLC for Approval of the Sale and	)	REQUEST FOR NAME
Transfer of Stock, Assets, and Operating	)	CHANGE AND TO
Authority of Haig Point Utility Company,	)	MAINTAIN BOOKS AND
Inc.	)	RECORDS OUT OF
	)	STATE

This matter comes before the Public Service Commission of South Carolina ("Commission") on a request by the Haig Point Utility Company, Inc. ("Haig Point" or the "Company") to change its name to Daufuskie Island Utility Company, Inc. and to maintain its books and records at an out-of-state location. The request for a name change results from provisions in a settlement agreement with Haig Point Club and Community Association, Inc. that was reached when ownership was transferred from Haig Point Utility Company, Inc. to CK Materials, LLC ("CK Materials") by Commission Order No. 2008-448 (June 24, 2008). According to the settlement agreement, CK Materials stipulated that it would remove any reference to the name "Haig Point" in the title of the Company following the acquisition. The Company states that the name change will have no impact on the operations of the utility.

Concerning the location where the Company's records are maintained, 26 S.C. Code Ann. Regs. 103-510 and 103-710 (Supp. 2008) require that these records be maintained within an office located in South Carolina, unless a different location is



specifically authorized by the Commission. It appears that the records of Haig Point have been historically maintained at the former owner's offices in Memphis, Tennessee, and the Company requests that these records now be maintained at the offices of G2 Utility Management, LLC ("G2"), a newly formed company by the new owners specifically for this purpose. G2 is located at 6 Beacon Street, Suite 410, Boston, Massachusetts.

The Company maintains that the utility's financial records will be prepared electronically, with hard copies printed on a periodic basis, as necessary. If requested, copies of the books will be provided to the Office of Regulatory Staff ("ORS") either the same day or the next business day of its request. Moreover, the Company provides that such source documents as invoices, contracts, correspondence, etc., which would not routinely be scanned into the Company's computer files, will also be made available as soon as possible upon request.

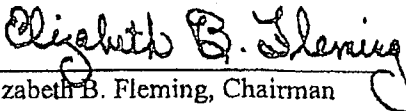
The Company also provides that operating records, which are now compiled and prepared at the utility's local office on Dauskuskie Island, will continue to be maintained and kept at that location. Additionally, it is anticipated that copies of those records will also be kept at G2's Boston office. In the event of any investigation by the Commission or the ORS with respect to rate cases or any other matter for which ORS requests access to the books and records, the Company states it will make a full set of the requested records available at a location in South Carolina that is acceptable to ORS.

We find the request for a name change and request to keep the Company's records at G2's Boston Office acceptable.

IT IS THEREFORE ORDERED:

1. The request to change the name of Haig Point Utility Company, Inc. to Daufuskie Island Utility Company, Inc. is approved.
2. The request to keep and maintain the books and records of the utility at the offices of G2 in Boston, Massachusetts is approved, provided that these books and records are made available to ORS at ORS's request and at a time and place of ORS's choosing.
3. This Order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:


Elizabeth B. Fleming, Chairman

ATTEST:


John E. Howard, Vice Chairman
(SEAL)

entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

3. The Plaintiff, Daufuskie Island Utility Company, Inc., owns and operates a water and wastewater utility system on Daufuskie Island, subject to the regulation of the South Carolina Public Service Commission, that includes an elevated 125,000 gallon above-ground storage tank located on the Property.
4. The Defendant Douglas Henderson is the Treasurer of Beaufort County.
5. The Defendant Beaufort County is a public body corporate and politic existing under the laws of the State of South Carolina.
6. Upon information and belief, the Defendant Mamdouh Sabry Abdelrahman is a citizen of the State of Ohio, residing at 8300 Hilton Mill Road, Ostrander, Ohio 43061.

FOR A FIRST CAUSE OF ACTION
(ALL DEFENDANTS)

7. The Plaintiff realleges its previous allegations as if fully set forth herein.
8. Haig Point Utility Company, Inc. became the lawful and sole owner of the Property via Special Warranty Deed and Bill of Sale Title recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 01402, Pages 2190-2192, File Number 2001018868, on April 5, 2001.
9. By Order of the Public Service Commission of South Carolina dated March 6, 2009, Haig Point Utility Company, Inc. was approved to and did change its name to Daufuskie Island Utility Company, Inc.
10. The Plaintiff, Daufuskie Island Utility Company, Inc., is the sole, rightful, and legal owner of the Property.
11. Defendants Beaufort County and Beaufort County Treasurer Henderson purported to sell the Property at a tax sale for unpaid ad valorem property taxes and later purported to convey the Property to the Defendant Mamdouh Sabry Abdelrahman via the Tax Deed recorded at the Office of the Register of Deeds for Beaufort County, State of South Carolina, Book Number 03102, Pages 0169-0170, File Number 2011061014, on December 1, 2011.
12. The December 1, 2011 Tax Deed contains certain representations regarding events related to the attempted conveyance of the Property to Defendant Abdelrahman, including the following:

- a. Herschel J. Evans, Jr. (authorized officer) did on May 1, 2010, mail a notice of tax delinquency under cover of certified mail, restricted, return receipt to said delinquent taxpayer and this notice was not received;
 - b. The authorized officer directed to collect delinquent taxes, penalties and costs, did, on September 23, 2010 take exclusive possession of the property against which such taxes were assessed by posting a notice at one or more conspicuous places on the property hereinafter described, reading "seized by The Beaufort County Treasurer to be sold for delinquent taxes" and
 - c. The Beaufort County Treasurer did thereafter properly advertise for sale once a week for three successive weeks for sale in September 2010; and
 - d. Upon the failure of the delinquent taxpayer, or anyone acting in his behalf, to pay the taxes, penalties and costs, the property described hereinafter was duly sold at public auction on the sales day of the month of October in the year 2010 during the usual hours of sale to Mamdouh Sabry Abdelrahman, the purchaser and the highest bidder at such sale for the sum of \$526.70; and
 - e. Under cover of certified mail restricted delivery, return receipt, Troy Hodges, Deputy Treasurer did, on August 31, 2011, mail a notice addressed Haig Point Utility Company, Inc. that the property described on the notice had been sold for taxes and advising said owner if not redeemed by paying taxes, penalties and costs in the amount of \$789.90, on or before October 5, 2011, a tax title would be issued to the successful purchaser at the tax sale; and was not redeemed; and
 - f. Twelve months have elapsed since the date of the sale for delinquent taxes, and the said Haig Point Utility Company, Inc. or other parties interested after due notice have failed to redeem said property so sold.
 - g. Douglas Henderson, Treasurer of the County of Beaufort, in consideration of the premises and the sum of \$526.70, paid by the said Mamdouh Sabry Abdelrahman granted, bargained, sold and released and by these presents do grant, bargain, sell and release unto the said Mamdouh Sabry Abdelrahman.
13. In order to convey a valid title under Title 12, Chapter 51 of the South Carolina Code, there must be strict compliance with each and every provision of the Chapter.

14. The requirements of Title 12, Chapter 51 of the South Carolina Code were not satisfied by the Defendants Beaufort County and Beaufort County Treasurer prior to the issuance of the December 1, 2011 Tax Deed.
15. The Defendants Beaufort County and Beaufort County Treasurer failed to strictly adhere to the requirements of the Title 12, Chapter 51 of the South Carolina Code in that they:
 - a. Failed to properly deliver a notice of tax delinquency under cover of certified mail, restricted, return receipt to Plaintiff as required by law;
 - b. Failed to take exclusive possession of the property by properly posting a proper notice of tax delinquency and sale of the Property in one or more conspicuous places on the Property herein described as required by law;
 - c. Failed to properly advertise the Property for sale a week for three successive weeks of sale as required by law;
 - d. Failed to properly conduct a public auction of the Property as required by law,
 - e. Failed to properly, under cover of certified mail restricted delivery, return receipt, mail a notice to Plaintiff informing Plaintiff the Property had been sold for taxes and advising Plaintiff that title to the Property would be issued to purchaser at tax sale if taxes were not paid within 12 months as required by law; and
 - f. Failed to send notices and correspondence to Plaintiff at Plaintiff's proper address despite being notified by Plaintiff of this correct address.

16. For the reasons alleged herein, the attempted tax sale and transfer of the Property to Defendant Mamdouh Sabry Abdelrahman via the December 1, 2011 Tax Deed were defective, irregular, and invalid.
17. As a result of these defects and irregularities, the December 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahman is invalid and unenforceable.
18. The tax sale and December 1, 2011 Tax Deed to Defendant Mamdouh Sabry Abdelrahman must be set aside.
19. The Plaintiff has no adequate remedy at law.
20. The Plaintiff is entitled to a declaratory adjudication voiding the tax sale and December 1, 2011 Tax Deed to Defendant Mamdouh Sabry Abdelrahman and enjoining Defendant Mamdouh Sabry Abdelrahman from the further steps to interfere with the possession of the Property by Plaintiff.

FOR A SECOND CAUSE OF ACTION
(DEFENDANT MAMDOUH SABRY ABDELRAHMAN)

24. The Plaintiff realleges its previous allegations as if fully set forth herein.
25. In addition to the Property at issue in the First Cause of Action, the Defendant Mamdouh Sabry Abdelrahman is the record owner of four other parcels of land located on Daufuskie Island (hereafter "Abdelrahman Parcels"):
 - a. R800 022 00B 0099 0000, formerly owned by HPL of Bluffton LLC
 - b. R800 022 00B 0123 0000, formerly owned by Mark Alexander
 - c. R800 022 00E 0066 0000, formerly owned by Craig Hedgecock
 - d. R800 022 00H 0007 0000, formerly owned by Kelly Palmer
26. The Plaintiff has provided and continues to make available water and wastewater services to each of the Abdelrahman Parcels. In accordance with fees and charges

approved by the Public Service Commission of South Carolina, Plaintiff has assessed availability fees against the Abdelrahman Parcels and notified Defendant Mamdouh Sabry Abdelrahman of the amounts due.

27. The Defendant Mamdouh Sabry Abdelrahman has failed to pay the Plaintiff availability fees for the Abdelrahman Parcels as follows:

a. R800 022 00B 0099 0000	Amount Due: \$208.56
b. R800 022 00B 0123 0000	Amount Due: \$208.56
c. R800 022 00E 0066 0000	Amount Due: \$208.56
d. R800 022 00H 0007 0000	Amount Due: <u>\$208.56</u>
	Total Due: \$834.24

28. The Plaintiff has properly notified the Defendant of the amounts due for each parcel by mailing bills to the Defendant.
29. The Plaintiff is entitled to and will apply penalties, late fees, and other charges to the Total Due to the extent allowed by the South Carolina Public Service Commission.
30. The Defendant Mamdouh Sabry Abdelrahman has breached his statutory obligation to pay the amounts due Plaintiff for services made available to him.
31. The Plaintiff has suffered and continues to suffer damages caused by such breach in an amount greater than \$834.24, and is entitled to prejudgment interest on all amounts due.

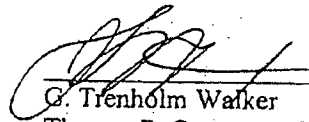
WHEREFORE, the Plaintiff, relying on the allegations set forth herein, prays that this Court:

1. Enter a declaratory adjudication that the tax sale and December 1, 2011 Tax Deed issued to Defendant Mamdouh Sabry Abdelrahman are invalid, void, and

unenforceable and enter an injunction enjoining Defendant Mamdouh Sabry Abdelrahman from interfering in any manner with Plaintiff's title to and possession of the Property.

2. Enter a declaratory adjudication that Plaintiff is the true legal as well as beneficial owner of the Property with the right to exclusive possession of the Property;
3. Enter judgment in an appropriate amount of actual damages against Defendant Mamdouh Sabry Abdelrahman for all amounts owed Plaintiff for unpaid availability fees for water and wastewater services to the Abdelrahman Parcels;
5. Award Plaintiff its attorneys' fees and costs under S.C. Code §§15-77-300, et seq. (Supp).
6. For such further and other relief from all Defendants as the Court deems just and proper, including an award to the Plaintiff of all attorneys' fees and costs associated with the prosecution of this case.

PRATT-THOMAS WALKER, P.A.


G. Trenholm Walker
Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com and gtw@p-tw.com
Attorneys for the Plaintiff

Charleston, South Carolina
July 25, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Plaintiff,

vs.

DOUGLAS HENDERSON, IN HIS
OFFICIAL CAPACITY AS TREASURER
OF BEAUFORT COUNTY; BEAUFORT
COUNTY; AND MAMDOUNH SABRY
ABDELRAHMAN,

Defendants

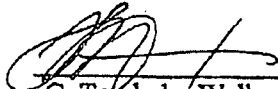
COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-07-02715

STIPULATION
OF DISMISSAL

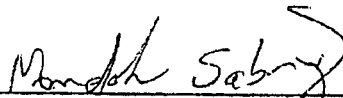
13 APR -8 PM 3:12
BEAUFORT COUNTY S.C.
CLERK OF COURT

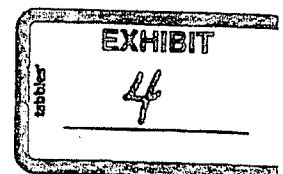
THE PARTIES, through their undersigned counsel, hereby file this Stipulation of Dismissal pursuant to Rule 41(a). The parties hereby stipulate and agree that this action should be dismissed, and that each side shall bear its own costs and legal fees.

PRATT-THOMAS WALKER, P.A.



G. Trenholm Walker
Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com and gtw@p-tw.com
Attorneys for the Plaintiff

 3-26-2013
Mamdouh Sabry Abdelrahman
Defendant, pro se



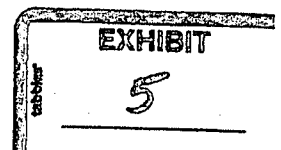
COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-07- 2338

**CONDEMNATION NOTICE
AND
TENDER OF PAYMENT
(JURY TRIAL DEMANDED)**

MAMDOUH SABRY ABDELRAHMAN,
Landowner.

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq., Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.
2. Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File Number 2011061014, in the Office of the Register of Deeds for Beaufort County, State of South Carolina.
3. The property identified in the Tax Deed recorded on December 11, 2011, at the Office of the Register of Deeds for Beaufort County, State of South Carolina, in Book 03102, Pages 0169-0170, File Number 2011061014 (hereinafter "the Property") is more fully described therein as:



All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

This the same lot of land sold at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes in the name of Haig Point Utility Company, Inc.

District: 800 Map: 025 Sub-map: 000
Parcel: 00045 Block: 0000

4. The Property, as described in the preceding paragraph, is the property subject to this action and the property to be condemned.
5. DIUC is engaged in the business of supplying water services on Daufuskie Island in Beaufort County.
6. The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.
7. DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.
9. DIUC has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and by making the appraisal available to the Landowner.
10. DIUC has complied with the requirements set forth in Section 28-2-70(B) by making reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid.
11. Plans of the waterworks plant and water supply system may be inspected at 803 Haig Point Road, Daufuskie Island, SC 29915. The Landowner should contact counsel for Condemnor to make an appointment for inspection.
12. Attached hereto is a survey including a vicinity map showing the property to be taken.
13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.
14. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Thomas P. Gressette, Jr., Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403. If no Agreement and

Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected. A copy of the Agreement and Request for Payment is attached hereto.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

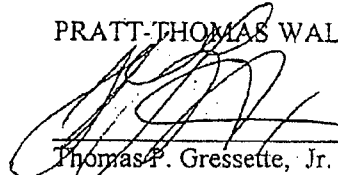
16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

19. If the Landowner accepts the amount tendered in this Notice, the attached Agreement and Request for Payment should be signed and returned as explained herein.

PRATT-THOMAS WALKER, P.A.



Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com

G. Trenholm Walker
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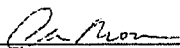
Attorneys for the Plaintiff-Condemnor

Charleston, South Carolina
September 11, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Condemnation Notice and Tender of Payment by mailing a copy, United States First Class, to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 20th day of September, 2013:

Thomas Holloway, Esq.
Harvey & Battey
1001 Craven Street
Beaufort, SC 29902


Chris Morrow
Paralegal to Thomas P. Gressette, Jr.



Catherine B. Templeton, Director

Promoting and protecting the health of the public and the environment

BUREAU OF WATER

October 3, 2013

Mr. John Guastella
Daufuskie Island Utility Company, Inc.
c/o Guastella Associates, LLL
133 Mystic Lane
Juniper, Florida 33458

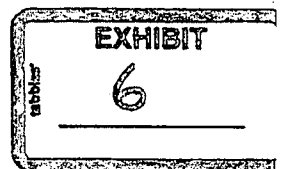
Re: Haig Point Utility Company (PWS #0750036)

Dear Mr. Guastella,

In response to your request, I am writing to confirm that Daufuskie Island Utility Company is an approved public water system as defined in the Safe Drinking Water Act (SDWA) and the State Primary Drinking Water Regulations (SPDWR). As such, Daufuskie Island Utility Company is subject to the jurisdiction of the South Carolina Department of Health and Environmental Control. It is in the public interest for Haig Point Utility Company to own or remain in control of all of its facilities so that they are able to remain in compliance with the SDWA and the SPDWR.

Sincerely,

Douglas B. Kinard, P.E.
Director
Drinking Water Protection Division



PRATT-THOMAS | WALKER

PROFESSIONAL ASSOCIATION

14 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22747
CHARLESTON, SC 29413-2247

PHONE 843 727 2200
FAX 843 727 2238

WWW.P-TW.COM

(843) 727-2200 (Office)
(843) 727-2238 (Fax)
p-tw.com (Website)

ATTORNEYS AT LAW

F. DOUGLAS PRATT-THOMAS
D. TRENIOLM WALKER
W. ANDREW COWDER, JR.
JOHN I. EUSTEN
LINDSAY K. SMITH-YANCEY (SC, NC)
THOMAS H. HESSE (SC, GA)
JAN W. FREEMAN (SC, GA)
DANIEL S. McQUEENEY, JR.
KATHLEEN FOWLER MONROE
JOHN P. LINTON, JR.

OF COUNSEL
THOMAS P. GRESSETTE, JR. (SC, USVI)

August 1, 2013

Via Certified Mail/Return Receipt Requested

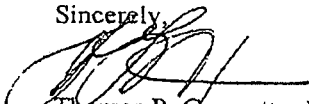
Mamdouh Sabry Abdelraham
8300 Hinton Mill Road
Ostrander, OH 43061

Re: Condemnation Notice and Tender of Payment

Dear Mr. Sabry:

The enclosed Condemnation Notice and Tender of Payment is hereby served upon you. As explained in the Notice, you may accept the amount tendered by executing and returning the Agreement and Request for Payment attached to the Notice.

Sincerely,


Thomas P. Gressette, Jr.

TPG:cam

Enclosure (as stated above)



STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,

Condemnor,

vs.

MAMDOUH SABRY ABDELRAHMAN,

Landowner.

) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-07-_____

)
) **CONDEMNATION NOTICE**
) **AND**
) **TENDER OF PAYMENT**
) **(JURY TRIAL DEMANDED)**

TO: THE LANDOWNER, ABOVE NAMED, MAMDOUH SABRY ABDELRAHMAN,
8300 HINTON MILL ROAD, OSTRANDER, OH 43061;

Pursuant to the South Carolina Eminent Domain Procedure Act, Section 28-2-10, et seq.,
Code of Laws of South Carolina, 1976, as amended, you are hereby notified as follows:

1. Daufuskie Island Utility Company, Inc. (DIUC) is the Condemnor herein and seeks to acquire the real property described herein for public purposes.
2. Mamdouh Sabry Abdelrahman is named as Landowner in this action by virtue of his ownership of a .337 acre tract in Haig Point, Daufuskie Island, South Carolina ("the Property"), as shown by that certain tax deed from Douglas Henderson, Treasurer of the County of Beaufort, dated December 1, 2011, and recorded on the same date in Book 03102 at Pages 0169-0170, File Number 2011061014, in the Office of the Register of Deeds for Beaufort County, State of South Carolina.
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All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled 9.691 acre tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.

Derivation: Book 1402 Page 2190.

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6. The Property sought herein to be acquired is necessary for establishing, maintaining, extending and/or operating a waterworks plant and system for supplying water service on Daufuskie Island.
7. DIUC is vested with the power of eminent domain pursuant to the operation of applicable laws including, but not limited to, the South Carolina Eminent Domain Procedure Act and Sections 58-7-20 and 58-7-30, Code of Laws of South Carolina, 1976 as amended.

8. This action is brought pursuant to Section 28-2-240, Code of Laws of South Carolina, 1976, as amended.
9. DIUC has complied with the requirements set forth in Section 28-2-70(A), Code of Laws of South Carolina, 1976, as amended, by having the subject property appraised and by making the appraisal available to the Landowner.
10. DIUC has complied with the requirements set forth in Section 28-2-70(B) by making reasonable and diligent efforts to negotiate an agreement upon the amount of compensation to be paid.
11. Plans of the waterworks plant and water supply system may be inspected at 803 Haig Point Road, Daufuskie Island, SC 29915. The Landowner should contact counsel for Condemnor to make an appointment for inspection.
12. Attached hereto is a survey including a vicinity map showing the property to be taken.
13. THE CONDEMNOR HAS DETERMINED JUST COMPENSATION FOR THE PROPERTY AND RIGHTS TO BE ACQUIRED HEREUNDER TO BE THE SUM OF THREE THOUSAND SEVEN HUNDRED AND NO/100 DOLLARS (\$3,700.00) AND HEREBY TENDERS PAYMENT THEREOF TO THE LANDOWNER.
14. Payment of this amount will be made to the Landowner if within thirty (30) days of service of this Condemnation Notice, the Landowner in writing requests payment, and agrees to execute any instruments necessary to convey to the Condemnor the property interests and rights described hereinabove. The Agreement and Request for Payment must be sent by first class certified mail with return receipt requested or delivered in person to Thomas P. Gressette, Jr., Pratt-Thomas Walker, P.A., 16 Charlotte Street, Charleston, SC 29403. If no Agreement and

Request for Payment is received by the Condemnor within the thirty (30) day period, the tender is considered rejected. A copy of the Agreement and Request for Payment is attached hereto.

15. If the tender is rejected, the Condemnor has the right to file this Condemnation Notice with the Clerk of Court of the County where the property is situated and deposit the tender amount with the Clerk. The Condemnor shall give the Landowner notice that it has done so and may then proceed to take possession of the property interests and exercise the rights described in this Condemnation Notice.

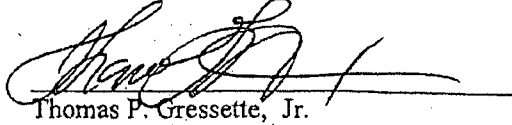
16. AN ACTION CHALLENGING THE CONDEMNOR'S RIGHT TO ACQUIRE THE PROPERTY AND RIGHTS DESCRIBED HEREIN MUST BE COMMENCED IN A SEPARATE PROCEEDING IN THE COURT OF COMMON PLEAS WITHIN THIRTY (30) DAYS OF THIS CONDEMNATION NOTICE, OR THE LANDOWNER WILL BE CONSIDERED TO HAVE WAIVED THE CHALLENGE.

17. THE CONDEMNOR HAS ELECTED NOT TO UTILIZE THE APPRAISAL PANEL PROCEDURE. Therefore, if the tender herein is rejected, the Condemnor shall notify the Clerk of Court and shall demand a trial to determine the amount of just compensation to be paid. A copy of that notice must be served on the Landowner. That notice shall state whether the Condemnor demands a trial by jury or by the Court without a jury. The Landowner has the right to demand a trial by jury. The case may not be called for trial before sixty (60) days after the service of that notice, but it may thereafter be given priority for trial over other civil cases. The Clerk of Court shall give the Landowner written notice by mail of the call of the case for trial.

18. THEREFORE, IF THE TENDER HEREIN IS REJECTED, THE LANDOWNER IS ADVISED TO OBTAIN LEGAL COUNSEL AT ONCE, IF NOT ALREADY OBTAINED.

19. If the Landowner accepts the amount tendered in this Notice, the attached Agreement and Request for Payment should be signed and returned as explained herein.

PRATT-THOMAS WALKER, P.A.

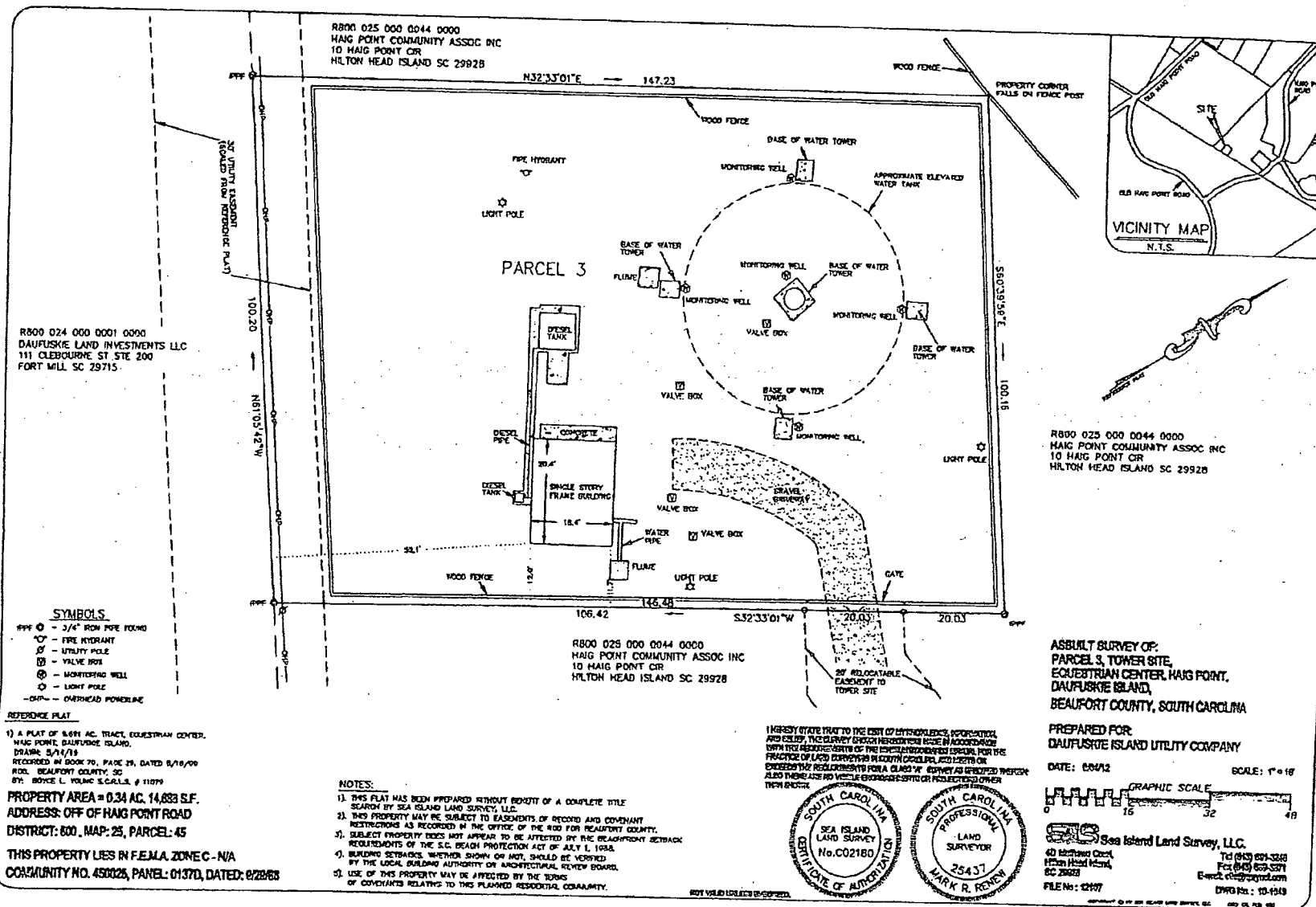


Thomas P. Gressette, Jr.
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2249
Fax: 843-727-2239
E-mail: tpg@p-tw.com

G. Trenholm Walker
P.O. Drawer 22247
Charleston, SC 29413-2247
Tel: 843-727-2208
Fax: 843-727-2239
E-mail: gtw@p-tw.com

Attorneys for the Plaintiff-Condennor

Charleston, South Carolina
August 7, 2013



) COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2013-CP-07-

)
)
)

AGREEMENT
AND
REQUEST FOR PAYMENT

viewed the Condemnation Notice and Tende

TMS #800-025-000-00045-0000 and more fu

of Three Thousand Seven Hundred and no/

further agree to promptly execute all papers

the Condemnor.

Mamdoun Sabry Abdelrahman

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☐ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X. Mamdouh Sabry ☐ Agent ☐ Addressee	
1. Article Addressed to: Mamdouh Sabry Abdelraham 8300 Hinton Mill Road Ostrander, OH 43061		B. Received by (Printed Name) C. Date of Delivery Mamdouh Sabry Abdelraham 2-05-2012	
		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number (Transfer from service label)		7001 2510 0008 7190 6719	
PS Form 3811, February 2004		Domestic Return Receipt	
		102585-02-M-1540	

PRATT-THOMAS | WALKER

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 22267
CHARLESTON, SC 29412-2247

PHONE: 843.727.2200
FAX: 843.727.2236

WWW.P-TW.COM

(843) 727-2200 (toll free)
(843) 727-2236 (fax)
E-mail: info@p-tw.com

ATTORNEYS AT LAW

E DOUGLAS PRATT-THOMAS

G TRENNDIA WALKER

W. ANDREW COWDER, JR.

JOHN L. AUSTEN

LINDSAY K. SMITH-YANCEY (SC, NC)

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, GA)

DANIEL S. MCCURKEY, JR.

KATHLEEN FOWLER MORRIS

JOHN P. LINTON, JR.

OF COUNSEL

THOMAS P. GRESSETTE, JR. (SC, USVI)

September 11, 2013

The Honorable Jerri Ann Rosencau
Beaufort County Clerk of Court
102 Ribaut Road, Room 208
Beaufort, SC 29901

Re: Daufuskie Island Utility Company, Inc. v. Mamdouh Sabry Abdelrahman

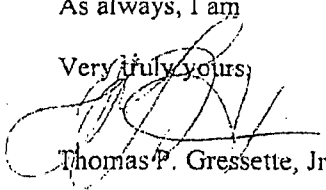
Dear Ms. Rosencau:

Enclosed please find the original and three copies of the Condemnation Notice and Tender of Payment and Lis Pendens. We have also enclosed a check in the amount of Three Thousand Seven Hundred and no/100 for the tender of payment, Civil Action Cover Sheets, and our firm check for the filing fee. Please file the originals and return stamped copies to me in the enclosed envelope.

Please contact me if you have any questions. Thank you for your assistance.

As always, I am

Very truly yours,


Thomas P. Gressette, Jr.

Enclosures



Beaufort County Common Pleas

Jerri Ann Roseneau

PO Box 1128

Beaufort, SC 299011128

Date: 9/12/2013

Transaction Number: 1

Clerk: Jerri Ann Roseneau

Received By: c07boshie1

Received From: Daufuskie Island Utility Company Inc

Paying For: Daufuskie Island Utility Company Inc

Payment Type: CK

Payment Amount: \$ 3,700.00

Reference Number: 2060

<u>Case #</u>	<u>Caption</u>	<u>Amount Paid</u>
2013CP0702338	Daufuskie Island Utility Company Inc VS Mamdouh Sabry Abdelrahman	\$ 3,700.00

PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA
COMMISSION DIRECTIVE

ADMINISTRATIVE MATTER	☐	DATE	<u>October 23, 2013</u>
MOTOR CARRIER MATTER	☐	DOCKET NO.	<u>2013-329-WS</u>
UTILITIES MATTER	☒	ORDER NO.	<u>2013-768</u>

THIS DIRECTIVE SHALL SERVE AS THE COMMISSION'S ORDER ON THIS ISSUE.

SUBJECT:

DOCKET NO. 2013-329-WS - Application of Daufuskie Island Utility Company, Incorporated for Approval to Transfer Stock to Remove Daufuskie Island Utility Company, Incorporated from Its Current Status as a Subsidiary of CK Materials, LLC - Discuss with the Commission the Objections to the Petition to Intervene of Mamdouh Sabry Abdelrahman, along with a Request for Expedited Review of Pending Application without Hearing Filed on Behalf of Daufuskie Island Utility Company, Incorporated.

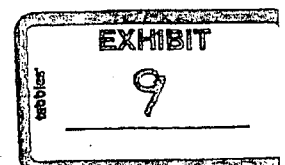
COMMISSION ACTION:

Deny the Petition for Intervention by Mamdouh Sabry Abdelrahman as the petitioner has no nexus to the matter of the stock transfer; grant the request of Daufuskie Island Utility Company, Inc. (DIUC) for Expedited Review; and approve the transfer of the stock in DIUC from CK Materials, LLC to JJK Utilities Holdings, LLC.

PRESIDING: HamiltonSESSION: RegularTIME: 2:00 p.m.

	MOTION	YES	NO	OTHER
FLEMING	☐	☒	☐	
HALL	☒	☒	☐	
HAMILTON	☐	☒	☐	
HOWARD	☐	☒	☐	
RANDALL	☐	☒	☐	
WHITFIELD	☐	☒	☐	
VACANT	☐	☐	☐	

(SEAL)

RECORDED BY: J. Schmieding

CERTIFICATE OF SERVICE

I hereby certify that I have served a true copy of the Affidavit of John F. Guastella by mailing a copy United States Mail First Class to the following counsel/parties, in accord with applicable Rules of Civil Procedure on this 22nd day of November, 2013.

Thomas A. Holloway, Esq.
1001 Craven Street
Beaufort, SC 29901-1107



Chris Morrow
Paralegal to Thomas P. Gressette, Jr.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

3
100MB
BJH
4950
7757
6450

RECORDED
2001 Jun -04 03:24 PM
Sharon D. Bunn
BEAUFORT COUNTY AUDITOR

COUNTY Beaufort County
BX 01402 PG 2190
FILE NO 2001018868
RECORDING FEES 10.00
RECORDED BY Q WILSON
RECORDED 04/05/2001 10:37:40 AM

Prepared by:
BETHEA, JORDAN & GRIFFIN, P.A.
Shelter Cove Executive Park, Suite 400
23-B Shelter Cove Lane
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171

STATE OF SOUTH CAROLINA) SPECIAL WARRANTY DEED
COUNTY OF BEAUFORT) AND
BILL OF SALE

THIS SPECIAL WARRANTY DEED is made effective this 1st day of April, 2001, by and between HAIG POINT, INC., a Delaware corporation with an address of Post Office Box 7319, Hilton Head Island, South Carolina 29938 ("Grantor") and HAIG POINT UTILITY COMPANY, INC., a South Carolina corporation with an address of P.O. Box 7319, Hilton Head Island, South Carolina 29938 ("Grantee").

WHEREAS, Haig Point, Inc., is the owner and developer of the community known as Haig Point on Daufuskie Island, South Carolina; and

WHEREAS, the Grantee is a corporation organized and existing under the laws of the State of South Carolina as a utility company, for the purpose of constructing and maintaining water and sewer facilities for persons and businesses in Haig Point on Daufuskie Island, South Carolina; and

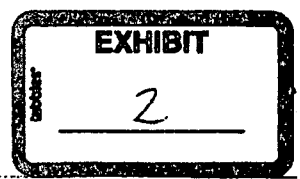
WHEREAS, Grantor desires to convey to Grantee certain real property which is more particularly described below.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS, that Grantor, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and no other valuable consideration to it paid by the Grantee, the receipt and legal sufficiency of which is hereby acknowledged, has granted, bargained, sold and released and by these presents does grant, bargain, sell and release unto the Grantee, its successors and assigns forever, the following real and personal property, subject to, however, the conditions, limitations, and reservations of easements and rights set forth herein:

REAL PROPERTY

ALL those certain pieces, parcels or tracts of land situated, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain Plat entitled "9.691 Acre Tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina,"

(246122.2) 13732-00101



which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in Plat Book 70 at Page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the Property, reference to said plats of record is hereby made.

SUBJECT TO, however, the following conditions, limitations, and reservations of easements and rights:

1. Grantor expressly reserves a non-exclusive access, ingress and egress easement to, over, and through the Property along with the right to utilize and grant to others entry to, over, and through the Property for vehicular and pedestrian access to and from any and all of the remainder of Haig Point so long as Grantor, or its successors or assigns, continues to own any real property within the boundaries of the Haig Point planned unit development as defined in the master plan on record with the Beaufort County Zoning and Planning Department.
2. Grantee is restricted from passing any rule or regulation which would diminish the easement rights reserved herein unto Grantor or any previous easement rights vested with Grantor.
3. Grantor makes no warranties to title to that portion of the Property which is deemed marshland or wetlands, as defined by Federal or State law, or which lies below the mean high water mark of Calibogue Sound.
4. Grantor makes no warranties to interests created by or limitations on the Property use imposed by the Federal Coastal Zone Management Act or other Federal law or regulation, or by South Carolina Code Sections 48-39-10 et. seq., as amended, or any regulations promulgated pursuant to said State or Federal laws.
5. Grantor makes no warranties to zoning laws and regulations of Beaufort County, South Carolina and/or any regulatory agency of the State of South Carolina affecting the Property.

Beaufort County Tax Map Reference: 800-~~35~~ -45

The Property conveyed herein is a portion of the property conveyed to Grantor herein by deed dated October 23, 1984 and recorded October 24, 1984 in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 406 at Page 64.

BILL OF SALE FOR PERSONAL PROPERTY AND FIXTURES

This conveyance shall constitute a bill of sale and conveys title to all personal property and improvements located on the Property conveyed herein to the Grantee, including, but not limited to all pipes, valves, fittings and appurtenances to the water supply system and utility infrastructure and other improvements and systems located on the real property conveyed herein (collectively the "Improvements"), if any. The Improvements are conveyed to the Grantee "WHERE IS, AS IS" and without recourse. The Grantor disclaims and makes no representations or warranties, express or implied, in fact or law, with respect to the Improvements including, without limitation, representations or warranties of merchantability, or fitness

for ordinary or any particular purpose.

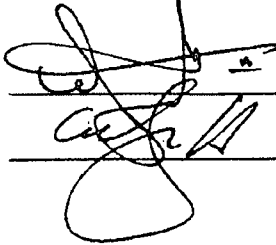
TOGETHER WITH all and singular the rights, members hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, its successors and assigns, forever, subject to, however, the conditions, limitations, and reservations of easement and rights set forth above.

AND the Grantor does hereby bind itself and its successors to warrant and forever defend all and singular the said premises unto Grantee, its successors and assigns, against itself and its successors and any person lawfully claiming or to claim the same or any part thereof, by, through or under it, but against none other.

IN WITNESS WHEREOF, Haig Point, Inc., a Delaware corporation, has caused these presents to be executed by their duly authorized officers this 1st day of April, 2001.

**SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:**



GRANTOR:
HAIG POINT, INC., a Delaware corporation

By: 
Its: Pres. Lt

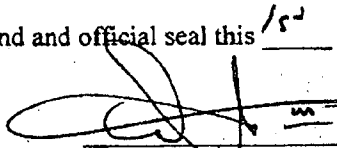
STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Haig Point, Inc., by Donald H. Renne, its Pres. Lt, appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 1st day of April, 2001.

 (SEAL)
Notary Public for: 
My Commission Expires: 4-25-10

RECORDED
2011 Dec -09 10:00 AM

Sham Q. Bani
BEAUFORT COUNTY AUDITOR
THE STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

TAX TITLE

BEAUFORT COUNTY SC - ROD
BK 03102 PGS 0169-0170
FILE NUM 2011061014
12/01/2011 04:28:00 PM
REC'D BY S SMITH RCPT# 662513
RECORDING FEES 10.00
County Tax 1.10
State Tax 2.60

NOT WARRANTY TITLE

TO ALL WHOM THESE PRESENTS MAY CONCERN:

WHEREAS, the provisions of Title 12, Chapter 51, Section 10 through 170 of the South Carolina Code, 1976, as amended, entitled "Alternate procedure for Collection of Property Taxes" duly enacted by the General Assembly of the State of South Carolina, provide an additional method and procedure for the collection of delinquent property taxes, penalties and costs due to counties and other political subdivisions of the State; and

WHEREAS, the provisions of the aforesaid Title 12, Chapter 51, Sections 10 through 170, authorize the levy by distress and sale of so much of the defaulting taxpayer's estate, real, or personal, or both, as may be sufficient to satisfy the taxes, penalties and costs of sale of property following proper advertisement of the property for sale; and

WHEREAS, I, DOUGLAS HENDERSON, TREASURER OF BEAUFORT COUNTY, pursuant to the authority of the aforesaid provisions and amendments thereto, issued a warrant or execution in duplicate against Haig Point Utility Company Inc., a defaulting taxpayer of said Beaufort County, to levy by distress and sale of so much of the defaulting taxpayer's estate, real or personal, or both as may be sufficient to satisfy the 2009 taxes and costs in the amount of \$338.96; and

WHEREAS, by virtue of said warrant or execution, Herschel J. Evans Jr. (authorized officer) did on May 1, 2010, mail a notice of tax delinquency under cover of certified mail, restricted delivery, return receipt to said delinquent taxpayer and this notice was not received; and

WHEREAS, (in the event the certified mail notice was undelivered) the authorized officer directed to collect delinquent taxes, penalties and costs did, on Sept. 23, 2010 take exclusive possession of the property against which such taxes were assessed by posting a notice at one or more conspicuous places on the property hereinafter described, reading "seized by The Beaufort County Treasurer to be sold for delinquent taxes"; and

WHEREAS, The Beaufort County Treasurer did thereafter properly advertise for sale once a week for three successive weeks for sale in September 2010; and

WHEREAS, upon the failure of the delinquent taxpayer, or anyone acting in his behalf, to pay the taxes, penalties and costs, the property described hereinafter was duly sold at public auction on the sales day of the month of October in the year 2010 during the usual hours of sale, to Mamdouh Sabry Abdelrahman, the purchaser and the highest bidder at such sale for the sum of \$526.70 and furnished the purchaser a receipt for such purchase money and annexed such receipt to the duplicate warrant for the endorsement thereon of his actions there under; and

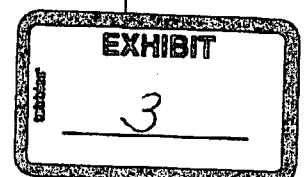
WHEREAS, under cover of certified mail, restricted delivery, return receipt, Troy Hodges, Deputy Treasurer did, on August 31, 2011, mail a notice addressed Haig Point Utility Company Inc. that the property described on the notice had been sold for taxes and advising said owner if not redeemed by paying taxes, penalties and costs in the amount of \$789.90, on or before October 5, 2011, a tax title would be issued to the successful purchaser at the tax sale; and was not redeemed; and

WHEREAS, twelve months have elapsed since the date of the sale for delinquent taxes, and the said Haig Point Utility Company Inc. or other parties interested after due notice have failed to redeem said property so sold.

NOW THEREFOR, I, DOUGLAS HENDERSON, TREASURER OF THE COUNTY OF BEAUFORT, in consideration of the premises, and the sum of \$526.70 to me by the said Mamdouh Sabry Abdelrahman have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the said Mamdouh Sabry Abdelrahman.

ADD DMP Record 12/6/2011 09:22:18 AM
BEAUFORT COUNTY TAX MAP REFERENCE

Dist	Map	SMap	Parcel	Block	Week
R800	025	000	0045	0000	00



All those certain pieces, parcels or lots of land situate, lying and being in Haig Point, Daufuskie Island, Beaufort County, South Carolina, shown as "Elevated Tank Site" having and containing 0.337 acres, more or less, as depicted on that certain plat entitled "9.691 Acre Tract known as Equestrian Center, being a portion of Haig Point, Daufuskie Island, South Carolina," which plat was prepared by Thomas & Hutton Engineering Co., Boyce L. Young, S.C.P.L.S. #11079, dated May 14, 1999 and recorded in plat book 70 at page 29 in the Office of the Register of Deeds for Beaufort County, South Carolina. For a more accurate description of the distances, courses, metes and bounds of the property, reference to said plats of record is hereby made.
Derivation: Book 1402 Page 2190

This is the same lot of land sold at the delinquent tax sale of October 4, 2010, for delinquent 2009 taxes in the name of Haig Point Utility Company Inc..

District: 800 Map: 025 Sub-map: 000 Parcel: 00045 Block: 0000

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in any wise incident or appertaining.
TO HAVE AND TO HOLD, all and singular, the said Premises hereby granted, and with the appurtenances, unto the said Mamdoub Sabry Abdelrahman, his Heirs and Assigns forever, according to the form, force and effect of the laws and usages of the State of South Carolina, in such cases made provided.

Witness my Hand and Seal this 1st day of December in the year of our Lord Two Thousand eleven

Signed, Sealed and Delivered in the presence of:

[Signature]
Johnna L. Neil

[Signature]
Douglas Henderson
Treasurer of Beaufort County

State of South Carolina

County of Beaufort

Probate

Personally appeared before me [Signature] who being duly sworn, deposed and said that (s)he saw the within named Douglas Henderson as Treasurer of Beaufort County sign, seal and deliver the within deed, and that (s)he, together with Johnna L. Neil Witness the execution thereof.

Sworn to subscribed before me

This 1st day of December, 2011
Johnna L. Neil (Seal)
Notary Public of South Carolina

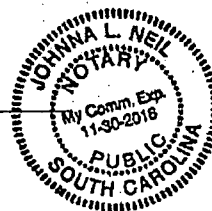
My commission expires: _____

The State of South Carolina Deed

Treasurer of Beaufort County

TO

Mamdouh Sabry Abdelrahman
8300 Hinton Mill Rd
Ostrander, OH 43061



PRATT-THOMAS | WALKER

PROFESSIONAL ASSOCIATION

16 CHARLOTTE STREET
CHARLESTON, SC 29403

PO DRAWER 27247
CHARLESTON, SC 29413-2247

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(843) 727-2200 (Charleston)
(843) 727-2238 (Fax)
TOLL FREE: 1-800-441-1111

ATTORNEYS AT LAW

E. DOUGLAS PRATT-THOMAS

G. TRICHOLM WALKER

W. ANDREW COWDER, JR.

JOHN L. AUSTEN

LINDSAY K. SMITH-YANCY (SC, NC)

THOMAS H. HESSE (SC, GA)

IAN W. FREEMAN (SC, CA)

DANIEL S. McQUEENEY, JR.

KATHLEEN FOWLER MONROE

JOHN P. LINTON, JR.

OF COUNSEL

THOMAS P. GRESSETTE, JR. (SC, USVI)

July 24, 2013

Via Email to adam2_m@yahoo.com

And Via Certified Mail/Return Receipt Requested

Mamdouh Sabry Abdelraham
8300 Hinton Mill Road
Ostrander, OH 43061

Re: Attempt to Negotiate a Compensation Agreement Prior to Condemnation

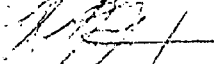
Dear Mr. Sabry:

Thank you for your letter dated July 13, 2013, which you sent to us via email and United States Mail.

As I indicated in my July 3, 2013, letter, DIUC is willing to pay you the sum of Three Thousand Seven Hundred and no/100 Dollars (\$3,700.00) for the property. That is the appraised value set forth in the June 17, 2013 Appraisal Report. A copy of that appraisal is hereby made available to you.

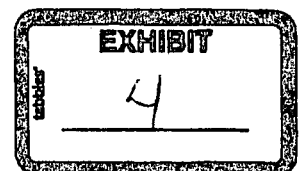
If you do not accept this offer of compensation prior to August 1, 2013, we will institute the condemnation action.

Sincerely,



Thomas P. Gressette, Jr.

TPG:cam
Enclosure



DIUC-000069

Tom Gressette

From: Tom Holloway <tholloway@harveyandbattey.com>
Sent: Friday, March 07, 2014 9:34 AM
To: Tom Gressette; Hocker, Donald B. Law Clerk (Alfred L. Bixler)
Cc: Trenholm Walker
Subject: RE: Request for Conference, Civil Action 2013-CP-07-2255

JournalPM: J

Dear Mr. Bixler:

I will be requesting a continuance as the case really started witness discovery and I have requested the opportunity for a site inspection with an expert together with other related items. Consistent with the caselaw, I think the opportunity to obtain that information is necessary before the matter is ripe for a summary judgment proceed. When I met with Counsel last week I thought it was agreed upon that the requested inspection and related discovery would proceed before a motion hearing and carrying this hearing would not be an issue. It appears that counsel have now changed their position.

I will be glad to meet in the morning as previously suggested on my request or I can do so during the hearing as scheduled for 2 p.m., Monday.

Thank you for the consideration,

Tom

From: Tom Gressette [mailto:tpg@p-tw.com]
Sent: Thursday, March 6, 2014 5:00 PM
To: Hocker, Donald B. Law Clerk (Alfred L. Bixler)
Cc: Tom Holloway; Trenholm Walker
Subject: RE: Request for Conference, Civil Action 2013-CP-07-2255

Thank you for the quick reply. We will be ready to proceed with the hearing as scheduled at 2pm on Monday in Beaufort.

Would you like the parties to email you a courtesy copy of any briefs to be filed?

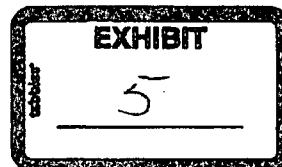
Tom

From: Hocker, Donald B. Law Clerk (Alfred L. Bixler) [mailto:dhockerlc@sccourts.org]
Sent: Thursday, March 06, 2014 3:15 PM
To: Tom Gressette
Cc: tholloway@harveyandbattey.com
Subject: RE: Request for Conference, Civil Action 2013-CP-07-2255

Mr. Gressette,

Unfortunately, Judge Hocker had to leave out early today and will not be back tomorrow. However, he will be arriving in Beaufort at 11:00 a.m. on Monday, we could probably set up a quick conference in chambers if that would be helpful.

If you have any questions please let me know.



Lyon Bixler

From: Tom Gressette [<mailto:tpg@p-tw.com>]
Sent: Thursday, March 06, 2014 3:00 PM
To: Hocker, Donald B. Law Clerk (Alfred L. Bixler)
Cc: tholloway@harveyandbattey.com
Subject: Request for Conference, Civil Action 2013-CP-07-2255

Abdelrahman v. Daufuskie Island Utility, Civil Action 2013-CP-07-2255

Mr. Bixler,

Judge Hocker is scheduled to hear my client's Motion for Summary Judgment in the above-referenced matter on Monday in Beaufort. The subject action is a challenge to the Utility's authority to condemn the property under the Eminent Domain Act. (Complaint and Motion for Summary Judgment with Affidavit are attached.)

Opposing counsel has asked me to agree to a continuance of the hearing, but my client would prefer to proceed on Monday as scheduled. In order to avoid counsel and His Honor preparing for the hearing only to have a request for continuance made on Monday, I thought we might schedule a quick telephone conference with Judge Hocker to resolve the question of scheduling.

I can be available at any time this afternoon or tomorrow and will be glad to circulate a call-in number, if that would be helpful to the Court.

Tom

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This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender immediately.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
MAMDOUH SABRY ABDELRAHMAN,
Plaintiff,
vs.
DAUFUSKIE ISLAND UTILITY
COMPANY, INC.,
Defendant.

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-07-02255

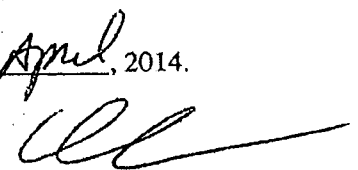
CONSENT ORDER
FOR CONTINUANCE
OF MOTION HEARING

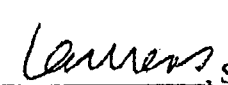
2014 APR 14 PM 4:18
BEAUFORT COUNTY, S.C.
CLERK OF COURT

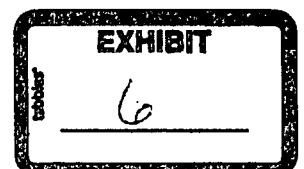
Defendant's Motion for Summary Judgment was scheduled for hearing before this Court on March 10, 2014. After a brief telephone conference with counsel for the parties, the Court granted Plaintiff's request for a 30-day continuance of the hearing.

THEREFORE, the hearing scheduled on March 10, 2014, is hereby continued. The Office of the Clerk of Court for Beaufort County has informed the parties that Defendant's Motion for Summary Judgment may now be rescheduled for hearing before The Honorable Carmen T. Mullen on May 27, 2014. The parties have indicated availability on that date and the Clerk is hereby directed to set the hearing accordingly.

AND IT IS SO ORDERED this the 11 day of April, 2014.


The Honorable Donald B. Hocker
Circuit Court Judge


Carmen T. Mullen, South Carolina



IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable J. Ernest Kinard, Jr., Circuit Court Judge
Case No. 2013-CP-07-02255

Appellate Case No. 2014-001587

Mamdouh Sabry Abdelrahman,

Appellant,

vs.

Daufuskie Island Utility Company, Inc.,

Respondent,

INITIAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

Did the Circuit Court err in holding that the limitations imposed in S.C. Code Ann. §15-67-20, is not a bar to Respondent's subsequent Condemnation action?

STATEMENT OF THE CASE

In October of 2010, Beaufort County sold a .337 acre tract in Haig Point, Daufuskie Island, South Carolina upon which the Daufuskie Island Utility Company, Inc. (DIUC), a privately owned water and sewer utility, operates a 125,000 gallon storage tank and related water and sewer system facilities ("the property") at a tax sale public auction to the Plaintiff Mamdough Sabry Abdelrahman (Sabry) for the sum of \$526.70. DIUC failed to redeem the property within the statutory redemption period of one year and on December 1, 2011, and Beaufort County issued a tax deed conveying the property to Sabry. Thereafter, DIUC filed a Declaratory Judgment action against Beaufort County, the Beaufort County Treasurer, and Sabry (DIUC v. Douglas Henderson, et al., Civil Action Number 2012-CP-07-02715) seeking to recover possession of the property and an order that the tax deed issued to Sabry is invalid, void and unenforceable and to enter into an injunction enjoining the Defendant "Sabry" from interfering in any manner with Plaintiff's title to and possession of the property. (R. ____). DIUC also sought for the Court "enter a Declaratory Adjudication that the Plaintiff is the true legal as well as beneficial owner of the property with the right to exclusive possession of the property." That action was voluntarily dismissed by Stipulation of Dismissal filed on April 8, 2013. (R. ____)

On September 12, 2013, DIUC filed a Notice of Condemnation and Tender of Payment thereby instituting Civil Action Number 2013-CP-07-2338, which sought to condemn the property that was subject of DIUC's first action captioned DIUC v. Douglas Henderson, et al., Civil Action

Number 2012-CP-07-02715. (R. ____) The Condemnation Notice named Sabry as the Landowner, Condemnee and was brought under the provisions of the Eminent Domain Procedure Act. Thereafter in September, 2013, the Appellant filed the action challenging DIUC's right to condemn alleging among other grounds, that, "Section 15-67-20, Code of Laws of South Carolina (1976) as amended, provides "the Plaintiff's action for the recovery of real property or the recovery of possession of real is limited to one action for recovery, that Daufuskie Island Utility Company, Inc., previously litigated an action for the recovery of real property captioned under Daufuskie Island Utility Company, Inc. v. Douglas Henderson and Mamdough Sabry Abdelrahman ,under Civil Action Number 2012-CP-07-02715, with that case ended by Stipulation of Dismissal filed in the Court of Common Pleas on April 8, 2013 and; that the previous action was for the recovery of real property that is subject to the condemnation notice, and therefore, DIUC was forever barred from maintaining another action for the possession or recovery of the subject property." (R. ____)

On November 25, 2013, DIUC filed a Motion for Summary Judgment asserting that the Defendant DIUC was entitled to judgment as a matter of law. On June 13, 2014, the Circuit Court held a hearing on DIUC's Motion for Summary Judgment. At the outset of the hearing, Plaintiff conceded argument on Counts 2 through 7 of the Complaint. The Court then heard oral argument only as to the remaining Count 1 of the Complaint, which alleges that the Condemnation is a second action "for the recovery of real property" and is therefore barred by the limitations imposed by S.C. Code § 15-67-20. On June 12, 2014, the Circuit Court granted DIUC's Motion for Summary Judgment and Appellant timely served the Notice of Appeal on July 21, 2014.

ARGUMENT

S.C. Code §15-67-20 is a complete bar to the Respondent's Condemnation action. S.C.

Code §15-67-20 of the Code of Laws of South Carolina (1976) as amended, provides, “[T]he Plaintiff in actions for the recovery of real property or the recovery of the possession of real property is limited to one action for recovery.” It is uncontroverted that DIUC previously litigated a case captioned Daufuskie Island Utility Company, Inc. v. Douglas Henderson in his official capacity as Treasurer of Beaufort County, Beaufort County and Mamdough Sabry Abdelrahman, Civil Action Number 2012-CP-07-02715 (R. ____) with that case being ended by Stipulation of Dismissal filed in the Court of Common Pleas on April 8, 2013. That action was for the purpose of the recovery of real property, the same real property that is subject of the Condemnation Notice filed by DIUC on September 12, 2013. (R. ____).

S.C. Code §15-67-20, is intended to protect persons from burdensome litigation about real property as a result of the great inconvenience and injustice which resulted to a party in possession of real property from repeated and continued attacks on his title and possession by the same person. The statute is a statute of repose and should be considered so. Logan v. Jones, 155 S.C. 258, 158 S.E. 518 (1930), also see Ladd v. Dupree, 247 S.C. 328, 147 S.E.2nd 253 (1966). Under S.C. Code §15-67-20 both actions at issue must be to “recover” the land in question in order to bar the second action. Foster v. Foster, 81 S.C. 307 (1908), Walsh v. Evans, 112 S.C. 131 (1919). When both actions primary purpose is to recover possession of the same premises, the statute bars the subsequent action. Southern Cotton Oil Co. v. Shelton, 220 F. 247 (1914).

The character of an action is not to be determined by terminology which the pleaders may chance give to it. On the contrary, the character of an action is fixed by the events which the pleaders have recited, the one to enforce a right and the other to resist such an enforcement, or to set up another right. Walsh v. Evans, 112 S.C. 131 (1919).

In this case, clearly both the action to recover the real property lost in a tax sale and the action to re-take the property by condemnation seeks the recovery and possession of the same land by the same Plaintiff against the same Defendant. In the first action seeking to recover the property by voiding a tax sale under Civil Action Number 2012-CP-07-02715 the allegations state: "Wherefore the Plaintiff relying on the allegations set forth herein, prays that this Court: 1) enter a Declaratory Adjudication that the tax sale in December 1, 2011 tax deed issued to the Defendant Mamdough Sabry Abdelrahman are invalid, void and unenforceable and enter an injunction injoining Defendant from interfering in any manner with Plaintiff's title and possession of property. 2) enter a Declaratory Adjudication that the Plaintiff is the true legal as well as beneficial owner of the property with the right to the exclusive possession of the property." (R.____)

After that first action was dismissed by the Court on Stipulation of the parties, DIUC filed a second action that stated: "1. Daufuskie Island Utility Company, Inc. is the Condemnor herein and seeks to acquire the real property described herein for public purposes" (that being the same property as sought in the previous action under Civil Action Number 2012-CP-07-02715). (R.____)

While the causes of action between the same parties are described by terms, the allegations, the character and the relief sought are the same, they seek the recovery and possession of the same real property in both actions. Having then, the same parties, the identity of premises, and the identity of relief sought, there is little doubt that the statute bars the subsequent action under S.C. Code §15-67-20.

The Circuit Court also erred when the Court held, "[T]he Court finds that neither the two actions filed by DIUC is an action for the recovery of real property as that term is used in §15-67-20 therefore, S.C. §15-67-20 does not apply to bar the condemnation." (R.____)

First, The Court held that the tax sale action previously filed by DIUC was an action to overturn a tax sale and held that it was “not an action for the recovery of real property” as the terms is used in §15-67-20. (R.____) On its plain and ordinary meaning, Plaintiff’s action for the recovery of real property lost at a tax sale for failure to pay the required taxes and the failure to redeem within the statutory redemption period is nothing less than an action for the redemption of real property previously owned. The provisions of §15-67-20 of the Code, provide that a Plaintiff in actions for the recovery of real property or the recover of possession of real property is limited to one action for recovery. Simply stated, that action for the recovery of the real property lost for the failure to pay the required ad valorem taxes was DIUC’s first action to recover the property according to §15-67-20, no further actions are allowed.

The next question that is required to be answered, Is the subsequent condemnation action by DIUC a “second action to recover real property” and therefore barred by the limitations of §15-67-20 or exemption from the limitations of §15-67-20? A review of the Condemnation Notice and Tender of Payment filed by DIUC, the Condemnor clearly seeks to acquire real property owned by Appellant that being the same property formerly owned by DUIC and acquired by Appellant “at the delinquent tax sale of October 4, 2010 for delinquent 2009 taxes.” (R.____)

While the causes of action between the same parties are described by different terms, the allegations, character and the relief sought are the same. In both actions DIUC sought the recovery and possession of .337 acres used for a water facility on Daufuskie Island. There is no difference between the relief sought in both the two suits. The recovery and the possession of real property DIUC lost by the failure to pay the taxes and the failure to redeem within the following year is the request of both actions. Having then, the same parties, the identity of premises and the identity of

relief sought, there is no doubt that the statute bars the subsequent action for condemnation. There is no doubt the chief and primary purpose of both complaints was the recovery of the possession of the premises known as .337 acres on Daufuskie Island. In addition, the Court erred in determining the "condemnation action was filed pursuant to DUIC's Eminent Domain Authority and pursuant to the South Carolina Eminent Domain Procedure Act, a condemnation action, by clear legislative intent, is not an action "for the recovery of real property," as that term is used in §15-67-20. (R. ____)

The Eminent Domain Procedure Act provides a uniform method by which a condemning authority may acquire real property (S.C. Code §28-2-210 and S.C. Code §28-2-260) Nowhere in the Act does the Legislature grant a condemning authority unlimited power to acquire or re-acquire real property. In fact, the purpose of the Act is to create an orderly procedure by which a condemning authority may acquire real property. S.C. Code §28-2-20. Nowhere in the Eminent Domain Procedure Act is the condemnor granted the unlimited or repeated right to attempt to acquire or litigate the acquisition of real property. The Eminent Domain Procedure Act does not excuse the statute of limitations, statute of repose or any other law that is not in conflict with the Act. To allege such a claim would be to hold that the condemning authorities had unlimited rights to unlimited actions against a landowner until the condemning authority ultimately acquired the property sought.

In the case at bar, the provisions of §15-67-20 and the Eminent Domain Procedure Act are not in conflict. The Eminent Domain Procedure Act provides a procedure to acquire property but not unlimited, repeated or successive actions. The Eminent Domain Procedure Act does not excuse a condemning authority's violation of the statute of repose or statute of limitations or any other laws that are not in conflict. S.C. Code §15-67-20 merely provides a limitation of one action for the recovery of the same real property between the same parties. The purpose of the Statute is to relieve

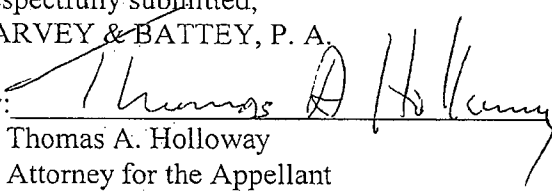
landowners from the burdens of successive attacks upon their title or possession of real property. There is no conflict between the limitations imposed by §15-67-20 and any provision of the Eminent Domain Procedure Act. Accordingly, it was an error by the trial judge to rule so.

CONCLUSION

Considering the pleadings as a whole, there can be no doubt that both prior actions were to recover possession of the same land Respondent formerly owned. The right to two actions is prohibited by §15-67-20 and not excused by the Eminent Domain Procedure Act.

For the foregoing reasons, Appellant respectfully submits that the Court should reverse the judgment of Circuit Court and remand the case back to the trial court for trial.

Respectfully submitted,
HARVEY & BATTEY, P. A.

By: 
Thomas A. Holloway
Attorney for the Appellant

Beaufort, South Carolina
January 12, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Honorable J. Ernest Kinard, Jr., Circuit Court Judge
Case No. 2013-CP-07-02255

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MAY 22 2015

SC Court of Appeals

Appellate Case No. 2014-001587

Mamdouh Sabry Abdelrahman,

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vs.

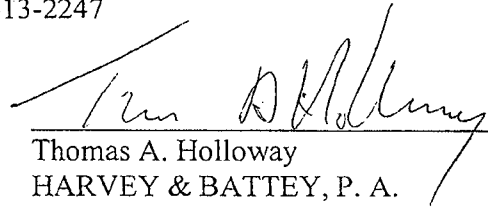
Daufuskie Island Utility Company, Inc.,

Respondent,

PROOF OF SERVICE

I certify that I have served the Appellant's Initial Brief and Designation of Matter in the above matter upon the following attorney:

Thomas P. Gressette, Jr.
Pratt-Thomas/Walker
P. O. Drawer 22247
Charleston, SC 29413-2247

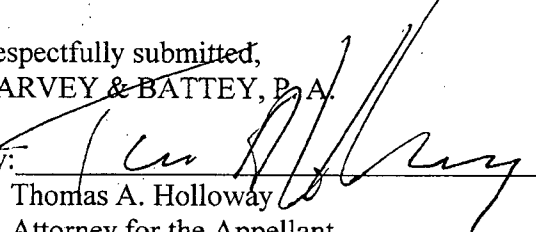

Thomas A. Holloway
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Attorney for the Appellant

Beaufort, South Carolina
January 12, 2015

CERTIFICATE OF COUNSEL

Appellant, by and through its undersigned attorney, certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,
HARVEY & BATTEY, P.A.

By: 

Thomas A. Holloway
Attorney for the Appellant

Beaufort, South Carolina
May 11, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
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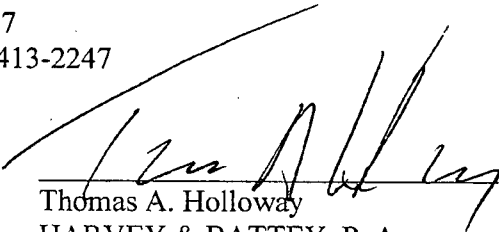
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May 11, 2015

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas
Honorable J. Ernest Kinard, Jr., Circuit Court Judge
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Mamdouh Sabry Abdelrahman,

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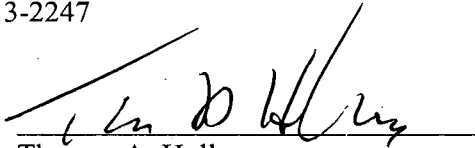
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