The State of South Carolina
In the Supreme Court

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222
Appellate Case No. 2013-002137

Opinion No. 5365 (S.C. Ct. App. Dec. 2, 2015)

THOMAS P. and DESIREE J. LYONS,

Respondents,

v.

FIDELITY NATIONAL TITLE INSURANCE COMPANY, as Successor by Merger to Lawyers Title Insurance Corporation, BOBBY GENE MARTIN, and THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE,

Defendants,

Of Whom The Security Title Guarantee Corporation of Baltimore is the Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA COUNTY OF HORRY Thomas P. and Desiree J. Lyons, Plaintiffs, v. Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore, Defendants.	IN THE COURT OF COMMON PLEAS OF THE FIFTEENTH JUDICIAL CIRCUIT Case No. 2012-CP-26-05222 **ORDER GRANTING PARTIAL SUMMARY JUDGMENT**

FILED
HORRY COUNTY
2013 JUL 12 AM 9:58
ELAINE HUGGINS-BOARD
CLERK OF COURT

This matter is before the Court on Plaintiffs' Motion for Partial Summary Judgment. The parties presented oral arguments on May 15, 2013, at the Horry County Courthouse. After hearing the arguments of counsel, reviewing the memoranda and other documents submitted to the Court, and the applicable authority, the Court hereby grants Plaintiffs' Motion for Partial Summary Judgment as set forth below.

FACTUAL BACKGROUND

The property subject to this dispute (Subject Property) is located in Horry County, South Carolina, and fronts on the Intracoastal Waterway. The Subject Property consists of a residential lot approximately three tenths of an acre in area upon which was formerly located a residence made up of a mobile home onto which a number of extensions and additions had been added over the years.

Plaintiffs purchased the property in two separate transactions. On May 5, 2005, for the stated consideration of $240,000, Plaintiffs purchased what had been described as lot 1 on a plat of lots 1, 2, and 3 dated August 24, 1970, recorded in the public land records for Horry County. The second transaction closed on October 28, 2005, at which

time and for the stated consideration of $100,000, plaintiffs purchased an approximate 30 foot by 120 foot strip of property which formerly had been a portion of adjacent lot 2 as shown on the August 24, 1970 plat. The entirety of the Subject Property, i.e., lot 1 acquired in May 2005 and the portion of lot 2 acquired in October 2005, is shown as lot 1 on a plat dated August 24, 2005, and recorded in the public land records for Horry County.

In conjunction with the first transaction, Fidelity National Title Insurance Company (Fidelity) issued the Lyons an owners' title insurance policy in the amount of the purchase price. In conjunction with the second transaction, Security Title Guaranty Company of Baltimore (STGC) issued the Lyons an owners' title insurance policy in the amount of the second transaction purchase price. These policies are substantively identical.

In 1931, a predecessor-in-interest of plaintiffs conveyed to the State of South Carolina what is generally described as a spoils easement over the Subject Property and adjacent property. This easement is recorded in the land records of Horry County and was available for title examination before the issuance of the policy. The spoils easement was given so as to provide for the construction and maintenance of what became the Intracoastal Waterway.

On or about November 4, 2003, the Horry County Council adopted Resolution R-143-03, (no-build resolution) which provided as follows:

> Horry County Council resolves to authorize the issuance of building permits to repair, remodel or replace existing structures within the spoil easements along the Intracoastal Waterway, but to otherwise continue the policy of denying building permits in this area. Mobile homes within the spoil area may only be replaced with mobile homes.

Plaintiffs assert Horry County refused to issue a building permit to build a residence on the subject property due to the no-build resolution.

This suit[1] followed in which Plaintiffs assert a contract action against Fidelity and STGC under their title policy and for bad faith in failing to pay the claim. Plaintiffs' motion for partial summary judgment is directed to their contract actions only and not their bad faith claims.

STANDARD OF REVIEW

In considering summary judgment, the Court must view the facts in the light most favorable to the non-moving party. *Koester c. Carolina Rental Ct., Inc.*, 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). Summary judgment is appropriate only if "there is no genuine issue as to any material fact and... the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP. When there is conflicting evidence on some material issue, the court may not grant summary judgment. *See Shirley's Iron Works. Inc. v. City of Union*, 387 S.C. 389, 397, 693 S.E.2d 1, 4 (Ct. App. 2010).

ANALYSIS

Liability

Plaintiffs assert that Defendants are liable in contract for damages due to the existence of the spoilage easement and no-build resolution. Defendants argue by way of

[1] It is worth noting that Plaintiffs' neighbors recently litigated this same issue involving the same spoils easement, no-build resolution, and title insurance policy language before United States District Judge Bryan Harwell who granted partial summary judgment in favor of the insureds. *Whitlock v. Stewart Title Guaranty Co.*, 2011 WL 4549367 (D.S.C. 2011).

affirmative defense that Exclusion 1 in the policy excludes coverage in this case. That exclusion provides:[2]

> In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:
>
> 1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
>
> - land use
> - improvements on the land
> - land division
> - environmental protection
>
> **This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.**
>
> **This exclusion does not limit the zoning coverage described in Items 12 and 13 of the covered title risks.**

(emphasis added).

The "Covered Title Risks" of the policy state that the policy covers "the following title risks, if they affect your title on the Policy Date": "10. Someone else has an easement on your land ... 13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law. 14. Other defects, liens or encumbrances."

The policy defines "easement" as "the right of someone else to use your land for a special purpose." It defines "public records" as title records that give constructive notice of matters affecting your title-according to the state statutes where your land is located." The policy does not define "single-family residence."

[2] In the interest of saving the Court from reinventing the wheel, today's Order restates much of Judge Harwell's summary of the policy's terms.

The Court holds as a matter of law that Exclusion 1 does not exclude coverage in the instant case. The spoilage easement and the no-build resolution appeared in the public record at the policy date. Defendants argue that the no-build resolution was not in the "public record" as defined in the policy. Plaintiffs argue that the Horry County Council resolution is indeed a public record. The Court holds that the term may be fairly and reasonably understood either way; thereby, the Court construes the term against the drafter and interprets the policy in favor of providing coverage. *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975); *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435, 174 S.E. 402 (1934); *General Acc. Ins. Co. v. Safeco Ins. Companies*, 314 S.C. 63, 433 S.E.2d 813 (Ct. App. 1994).

The same analysis is true for the term "single-family residence," which, unlike public record, is not defined in the policy at all. The parties dispute whether a mobile home is a single-family residence as the term is used in the policy. This Court holds that single-family residence is also an ambiguous term and construes Covered Title Risk 13 to provide coverage because Plaintiffs cannot use the land as a single-family residence due to the existing zoning law preventing them from building a site-built home on the property.

Defendants have also asserted two additional affirmative defenses, namely, the expiration of the three year statute of limitations for contract actions found in S.C. Code Section 15-3-530(1) and Plaintiffs' failure of their duty to mitigate damages. Defendants assert that Plaintiffs first became aware of the spoilage easement after receiving a letter dated October 20, 2006, from the Army Corps of Engineers informing them of a disposal easement held by the United States on or adjacent to the area Plaintiffs planned to

construct a dock, followed by another letter dated March 19, 2007, stating the same. South Carolina Code Section 15-3-530(1) provides a three-year limitations period for contract actions, which begins to accrue when "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575-576, 593 S.E.2d 624, 627 (Ct. App. 2004) (citations omitted). Here, there is some evidence Plaintiffs knew or should have known, either directly or by imputation of knowledge from their dock-constructing agent, *see Crystal Ice Co. of Cola., Inc. v. The First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979), of the spoils easement as early as October 2006, more than three years before this action was filed.

Plaintiffs in response argue that Defendants' policies are "sealed" instruments and, therefore, subject to a twenty year limitations period pursuant to S.C. Code Section 15-3-520(b), rather than the three-year limitations period of Section 15-3-530(1). Both policies have an imprint of the respective corporation's seal and Fidelity's seal even includes the word "SEAL." Defendants argue that these seals in themselves do not amount to making the documents sealed instruments. The Court holds the policies are indeed sealed instruments and that the twenty-year statute of limitations applies.

Defendants also argue that Plaintiffs failed to mitigate their damages due to the fact that Plaintiffs refused to accept a $475,000 offer for the property made when the Plaintiffs listed the property for sale between September 12, 2006, and September 12, 2007. It is settled law that "a party injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances, but the law does not require him to exert himself unreasonably or incur substantial expense to avoid

damages." *Baril v. Aiken Regional Medical Centers*, 352 S.C. 271, 285, 573 S.E.2d 830, 838 (Ct. App. 2002) (citing *McClary v. Massey Ferguson, Inc.*, 291 S.C. 506, 354 S.E.2d 405 (Ct. App. 1987). However, it cannot be said that after the discovery of an easement held by the United States that prevents construction of a dock, the law requires one to sell the entire property or be thwarted from bringing suit against his title insurance company at a later date; such a requirement would call for a party to exert himself unreasonably.

Damages

Plaintiffs argue they are entitled to a judgment against the defendants for the full amount of the policies, to wit, $340,000. They argue, given their inability to use the property for a single-family residence, that the policies insure this loss to the full value of the policies. This Court disagrees. The spoilage easement and no-build resolution have not rendered the property useless or completely unmarketable. *See Stanley v. Atlantic Title Ins. Co.*, 377 S.C. 405, 411-412, 661 S.E.2d 62, 65-66 (2008) (citing *McMaster v. Strickland*, 305 S.C. 527, 409 S.E.2d 440 (Ct. App. 1991)).

Rather, this Court holds that damages are to be calculated based on the diminution in value caused by the title defects, measured from the date the property was purchased. *Whitlark v. Stewart Title Guaranty Co.*, 399 S.C. 610, 732 S.E.2d 626 (2012). Because the amount of the diminution in value is a genuine issue of material fact, summary judgment is not appropriate as to damages. *See Stanley*. Further hearing will be necessary to establish the amount of damages.

CONCLUSION

THEREFORE, Plaintiffs' Motion for Partial Summary Judgment is hereby GRANTED as to Defendants' liability, but DENIED as to the amount of damages.

IT IS SO ORDERED.

July 8, 13
Pageland, South Carolina

The Honorable Paul M. Burch
Presiding Judge

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	OF THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	
Thomas P. and Desiree J. Lyons,	Case Number: 2012-CP-26-5222
Plaintiffs,	
v.	**ORDER DENYING MOTION TO RECONSIDER AND ALTER**
Fidelity National Title Insurance Co., Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,	
Defendants.	

This matter is before the Court on Defendant's Motion to Reconsider the Order of the Court of July 8, 2013 granting Plaintiff's Motion for Partial Summary Judgment. In accordance with Rule 59(f), SCRCP, the Court holds that it is not necessary to hear oral arguments on this matter. After reviewing the Court's file and Plaintiff's Motion, and upon careful reconsideration, the Court hereby finds that Plaintiff's Motion should be denied.

THEREFORE, Plaintiff's Motion to Reconsider and Alter is hereby DENIED.

AND IT IS SO ORDERED.

The Honorable Paul M. Burch
Presiding Judge

Pageland, South Carolina
August 9, 2013

HORRY COUNTY
13 AUG 12 PM 4:49
MELANIE HOGGINS-WARD
CLERK OF COURT

MAILED
8-28-13 to all
parties not in
default. BW

IN THE COURT OF COMMON PLEAS

THIS IS TO CERTIFY THAT I, MELANIE HUGGINS-WARD, THE CLERK OF COURT OF HORRY COUNTY, OR MY DESIGNEE DID MAIL COPIES OF ORDERS/JUDGMENTS FILED ON JULY 12TH, 2013 TO ALL PLAINTIFFS / ATTORNEYS AND DEFENDANTS / ATTORNEYS THAT ANSWERS WERE IN CASE FILES ON CASES LISTED BELOW:

2011-CP-26-09255
2012-CP-26-03978
2013-CP-26-00316
2008-CP-26-00625
2012-CP-26-05222

2013 AUG 26 PM 1:18

MELANIE [illegible]
CLERK [illegible]

26*

Joyce Todd
JOYCE TODD

HORRY COUNTY
CONWAY, SOUTH CAROLINA

(5)

Pd
Jud
#

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Lyons, Thomas P and Desiree J.)
Plaintiff(s))
vs.)
Lawyers Title Insurance, Co., etal)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012 -CP- ___ - 5222

(Please Print)
Submitted By: David K. Haller
Address: 115 River Landing Dr, Ste. 102
Charleston, SC 29492

SC Bar #: 13411
Telephone #: 843-849-1884
Fax #: 843-853-9377
Other:
E-mail: dhaller@hallerlawfirm.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.

HORRY COUNTY
2012 JUL -5 PM 3:04
ELAINE HUCKABY-WARDY
CLERK OF COURT

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)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☑ Other (199) Bad Faith

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20___-CP-___-___

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

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- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

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- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

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- ☐ Habeas Corpus (530)
- ☐ Other (599)

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- ☐ SCDOT (950)
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- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Sexual Predator (510)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions
- ☐ Motion to Quash Subpoena in Out-of-County Action (660)

Submitting Party Signature: D. K. Haller **Date:** July 2, 2012

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

SCCA / 234 (04/2012)

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, 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	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
Plaintiff,	)	
versus	)	**SUMMONS**
Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Guarantee of Baltimore,	)	
Defendants.	)	

HORRY COUNTY
12 JUL -5 PM 3:04
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to the said complaint upon the subscriber, David K. Haller, Esquire, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the said complaint, judgment by default will be rendered against you for the relief demanded in the said complaint.

HALLER LAW FIRM. P.C.

David K. Haller, Esquire
115 River Landing Drive, Suite 102
Charleston, SC 29492
Telephone: (843) 849-1384
Fax: (843) 853-9377
Attorney for the Plaintiff

Charleston, South Carolina

July 2, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
	)	
Plaintiff,	)	
	)	
versus	)	**COMPLAINT**
	)	
Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Guarantee of Baltimore,	)	JURY TRIAL DEMANDED
	)	
Defendants.	)	

HORRY COUNTY
12 JUL -5 PM 3:04
MELANIE HUGGINS-HARD
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED

Plaintiffs allege and complain of the defendants as follows:

1. Plaintiffs Thomas P. Lyons and Desiree J. Lyons are residents and citizens of Horry County, South Carolina.
2. Defendant Lawyers Title Insurance Corporation (hereinafter "Lawyers Title") is a foreign corporation, not licensed to do business in South Carolina, which owns property and does business in South Carolina.
3. Defendant Bobby Gene Martin is a resident and citizens of Horry County, South Carolina.
4. Defendant The Security Title Guarantee of Baltimore (hereinafter "Security Title") is a foreign corporation, not licensed to do business in South Carolina, which owns property and does business in South Carolina.
5. This is an action to require payment of proceeds under two title insurance policies described herein and to enforce warranties under a general warranty deed. This court has

jurisdiction over the subject matter of this action and the parties named herein. Venue is proper in Horry County.

6. On or about May 5, 2005, Mr. and Mrs. Lyons purchased from Bobby Gene Martin the parcel of land generally described as:

> All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S.D. Cox, dated October 12, 1956, and designated thereon as Lot No. 1.
>
> Bounded and described as follows: Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company Land; thence with said line 4 6 deg. 10 min E 109.5' to St. N at Northern margin of International Waterway; thence with lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet St. N at Southern edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 in. E 56 feet to beginning corner.
>
> Bound on the North by a 20 foot Road, abutting other lands of the herein grantor, R.C. Bellamy, East by International Paper Company; South by International Waterway and West by Lot No. 2, now owner by Mr. Martin.
>
> This being the identical property as conveyed to the grantor by that specific deed of R.C. Bellamy and John L. Bellamy, recorded September 24, 1958 in Deed Book 212 at Page 167, Horry County Records; that specific deed of R.C. Bellamy, recorded February 27, 1973 in Deed Book 486 at Page 371, Horry County Records; and Corrective Deed recorded April 5, 1979 in Deed Book 638 at Page 834, Horry County Records.
>
> TMS # 179-20-01-001 (hereinafter the "Martin tract").

7. The Lyons paid $240,000.00 in cash for this land. The purpose of the property purchase was to build the Lyons' dream retirement home. A true and correct copy of the deed from Martin to the Lyons is attached hereto as Exhibit A.

8. Defendant Martin gave the plaintiffs a General Warranty Deed in exchange for the purchase.

9. On or about October 28, 2005, the Lyons purchased from McQuiddy & Johnston, LLC, the parcel of land generally described as the following:

All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005, and records 11-3-2005, in the Office of the ROD for Horry County in Plat Book 208, at Page 205. Said plat is incorporated by reference herein.

This being the same property acquired by the Grantors by deed of William D. Parker and Geraldine Parker dated September 9, 2005, and recorded September 9, 2005, in Deed Book 2974, at Page 1347, Horry County records.

TMS # 179-20-01-001 (hereinafter the "McQuiddy tract").

10. The Lyons paid $100,000.00 in cash for the McQuiddy tract. A true and correct copy of the deed from Martin to the Lyons is attached hereto as Exhibit B. A subsequent corrective deed was filed on or about January 26, 2006 without notice to the Lyons to correct an alleged scrivener's error. A true and correct copy of the Corrective Deed is attached hereto as Exhibit C.

11. The McQuiddy tract is adjacent to the Martin tract. The Martin and McQuiddy tracts were combined into one parcel.

12. The Lyons purchased from Lawyers Title Insurance Corporation an insurance policy protecting the quality of the title to the Martin tract. A true and correct copy of said policy is attached hereto as Exhibit D.

13. In exchange for the Lyons' payment of a premium, which Lawyers Title has received and used, Lawyers Title promised, among other things, to "pay up to your actual loss or the Policy Amount in force when the claim is made" if "someone else has an easement on your land" or because, "you cannot use your land because use as a single-family residence violates a restriction shown on Schedule B or an existing zoning law."

14. The Lyons purchased from Security Title Guarantee Corporation of Baltimore an insurance policy protecting the quality of the title to the McQuiddy tract. A true and correct copy of said policy is attached hereto as Exhibit E.

15. In exchange for the Lyons' payment of a premium, which Security Title has received and used, it promised, among other things, to "pay up to your actual loss or the Policy Amount in force when the claim is made" if "someone else has an easement on your land" or because, "you cannot use your land because use as a single-family residence violates a restriction shown on Schedule B or an existing zoning law."

16. On or about July 3, 1930, the Congress of the United States enacted the River and Harbor Act, which, among other things, created the Intracoastal Waterway. Each state, including South Carolina was required to obtain a right-of-way over such property through which the Waterway would flow and over which spoil incident to the creation and maintenance of the Waterway could be dumped.

17. On August 17, 1932, Ibra C. Blackwood, as Governor of South Carolina, executed a Deed to Rights of Way over several tracts through which the Waterway would flow and over which spoil incident to the creation and maintenance of the Waterway could be dumped.

18. The Deed to Rights of Way was filed in the ROD for Horry County on September 17, 1932, and has remained of record since that time. A true and correct copy of said Deed to Right of Way is attached hereto as Exhibit F (hereinafter "Deed").

19. The Martin tract abuts the Intracoastal Waterway is part of the "Canal Prism" described in the Deed.

20. The McQuiddy tract abuts the Intracoastal Waterway is part of the "Canal Prism" described in the Deed.

21. The Martin tract is part of the "Spoil Disposal Area" described in the Deed.

22. The McQuiddy tract is part of the "Spoil Disposal Area" described in the Deed.

23. In or about 1983, Horry County took management with the Army Corps of Engineers of the "Spoil Disposal Area." Horry County's obligations were established in a "Tri-Party Agreement" dated December 8, 1982. A true and correct copy of the Tri-Party Agreement is attached hereto as Exhibit G.

24. Horry County Council enacted a zoning ordinance in order to carry out its obligations under the Tri-Party Agreement. Among other things, Horry County prohibited the issuance of building permits to build single-family residences.

25. Although the Deed was in the public record and provides constructive notice of the Spoil Drainage Area, the Lyons were unaware of the Spoil Drainage Area at the time of closing on the Martin and McQuiddy tracts.

26. In or about May of 2011, the Lyons attempted to obtain a permit to build their dream retirement home. The building permit request was rejected because of Horry County's policy as it related to properties in the Spoil Drainage Area. Hence, the Lyons cannot build the single-family residence intended when they bought the property.

27. The Deed is not excluded from the coverage afforded by the Lawyers Title policy on the Martin tract and the Deed is a "Covered Title Risk."

28. Although demand has been made by the Lyons for coverage under the policy and the Lyons have complied with all obligations required by the policy, Lawyers Title has failed and refused to comply with the terms and conditions of the same. Lawyers Title has

unreasonably refused to respond to communications or pay benefits due without any cause or justification.

29. The Deed is not excluded from the coverage afford by the Security Title policy on the McQuiddy tract and is a "Covered Title Risk."

30. Although demand has been made by the Lyons for coverage under the policy and the Lyons have complied with all obligations under the same as required by the policy, Security Title has failed and refused to comply with the terms and conditions of the same. In fact, Security Title denied coverage by letter dated October 11, 2011, by misstating the facts and twisting the language of the policy. See Exhibit H.

31. Defendant Bobby Martin warranted the title to the Lyons. The claims stated in the Deed violate the warranty and Martin is in breach of the same.

FOR A FIRST CAUSE OF ACTION

BREACH OF CONTRACT AS TO DEFENDANT LAWYERS TITLE

32. Plaintiffs incorporate by reference paragraphs one through 31 hereinafter to the extent the same are not inconsistent with the state cause of action.

33. A contract exists between Lawyers Title and the plaintiffs by which the plaintiffs paid a premium for a contract of insurance protecting the title to their policy. As alleged herein, benefits under the policy are due and owing to the Lyons by Lawyers Title. Lawyers Title has failed and refused to pay the benefits to the Lyons. Lawyers Title is in breach of the contract.

34. As a direct and proximate result of Lawyers Titles breach of contract, the Lyons have been injured and suffered damages. The Lyons are entitled to a judgment against

Lawyers Title for the full amount the consequential damages suffered by them as a result of Lawyers Title's breach.

FOR A SECOND CAUSE OF ACTION

BREACH OF CONTRACT AGAINST SECURITY TITLE

35. Plaintiffs incorporate by reference paragraphs one through 31 hereinafter to the extent the same are not inconsistent with the state cause of action.

36. A contract exists between Security Title and the plaintiffs by which the plaintiffs paid a premium for a contract of insurance protecting the title to their policy. As alleged herein, benefits under the policy are due and owing to the Lyons by Security Title. Security Title has failed and refused to pay the benefits to the Lyons. Security Title is in breach of the contract.

37. As a direct and proximate result of Security Titles breach of contract, the Lyons have been injured and suffered damages. The Lyons are entitled to a judgment against Security Title for the full amount the consequential damages suffered by them as a result of Security Title's breach.

FOR A THIRD CAUSE OF ACTION

BAD FAITH FAILURE TO PAY AS TO LAWYERS TITLE

38. Plaintiffs incorporate by reference paragraphs one through 31 hereinafter to the extent the same are not inconsistent with the state cause of action.

39. As alleged herein, Lawyers Title has acted in bad faith or in an unreasonable manner in the processing of the claim made by the plaintiffs under the mutually binding insurance contract between the plaintiffs and Lawyers Title and Lawyers Title has failed to pay benefits required of it in bad faith.

40. Lawyers Title has engaged in the conduct alleged herein willfully and wantonly.

41. As a direct and proximate result of the defendant bad faith failure to pay claims, the plaintiffs have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendant for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such similar conduct in the future.

FOR A FOURTH CAUSE OF ACTION

BAD FAITH FAILURE TO PAY AS TO SECURITY TITLE

42. Plaintiffs incorporate by reference paragraphs one through 29 hereinafter to the extent the same are not inconsistent with the state cause of action.

43. As alleged herein, Security Title has acted in bad faith or in an unreasonable manner in the processing of the claim made by the plaintiffs under the mutually binding insurance contract between the plaintiffs and Security Title and Security Title has failed to pay benefits required of it in bad faith.

44. Security Title has engaged in the conduct alleged herein willfully and wantonly.

45. As a direct and proximate result of the defendant bad faith failure to pay claims, the plaintiffs have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendant for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such similar conduct in the future.

FOR A FIFTH CAUSE OF ACTION

BREACH OF WARRANTY OF TITLE AGAINST DEFENDANT MARTIN

46. Plaintiffs incorporate by reference paragraphs one through 29 hereinafter to the extent the same are not inconsistent with the state cause of action.

47. Defendant Martin warranted the title he conveyed to the plaintiffs against all others.

48. Martin's warranty includes the claims stated in the Deed.

49. As a result of the claim in the Deed, Martin is in breach of the warranties of title and the plaintiffs have been damaged. Plaintiffs are entitled to a judgment against Martin for all loss suffered by them as a result of the breach of warranty, including a return of the consideration paid for the title he conveyed.

WHEREFORE the plaintiffs pray for judgment against the defendants, for actual damages in the full amount of their damages, punitive damages against defendants Lawyers Title ad Security Title for their bad faith failure to pay under the title insurance policies, attorneys fees under the title policies, pre-judgment interest, and such other relief as the court deem just, prudent, and proper.

HALLER LAW FIRM. P.C.

David K. Haller, Esquire
115 River Landing Drive, Suite 102
Charleston, SC 29492
Telephone: (843) 849-1384
Fax: (843) 853-9377
Attorney for the Plaintiffs

Charleston, South Carolina

July 2, 2012

EXHIBIT A

POSGN
05-1353PS

FILED
HORRY COUNTY, S.C.
2005 MAY -6 PM 2:20
BALLERY V. SKIPPER
REGISTRAR OF DEEDS

PREPARED BY:
DOVE LAW FIRM, P.A.
P.O. BOX 625
MURRELLS INLET, SC 29576

STATE OF SOUTH CAROLINA

DEED TO REAL ESTATE

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS that I, **Bobby Gene Martin**, hereinafter called Grantor in consideration of **Two Hundred Forty Thousand and00/100 ($240,000.00) Dollars** to the Grantor in hand paid at and before the sealing of these presents by the Grantee(s) hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **Thomas P. Lyons and Desiree J. Lyons**, as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever, in fee simple, the following described property, to-wit:

All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S. D. Cox, dated, October 12, 1956, and designated thereon as lot No. 1.

Bounded and described as follows: Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company land; thence with said line S 6 deg. 10 min. E 109.5' to St. N at Northern margin of Intracoastal Waterway; thence with Northern margin of said Waterway N 72 deg. 15 min. W 100 feet to St. N. corner of lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet to St. N at Southern edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 min. E 56 feet to beginning corner.

HORRY COUNTY ASSESSOR
TM#: 179-20-01-001
Map Blk Parcel 5-9-05 JC

GRANTEES ADDRESS: 1 Brook Road
New City, NY 10956

STATE 624.00 COUNTY 264.00

EXEMPT YES T (NO)

ASSESSOR _____

DEED
2906 0080

2901

Bound on the North by a 20 foot Road, abutting other lands of herein grantor, R. C. Bellamy, East by International Paper Company; South by Intracoastal Waterway and West by Lot No. 2, now owned by Mr. Martin.

This being the identical property as conveyed to the grantor by that specific deed of R.C. Bellamy and John L. Bellamy, recorded September 24, 1958 in Deed Book 212 at Page 167, Horry County Records; that specific deed of R.C. Bellamy, recorded February 27, 1973 in Deed Book 486 at Page 371, Horry County Records; and Corrective Deed recorded April 5, 1979 in Deed Book 638 at Page 834, Horry County Records.

Together with all and singular the rights, hereditaments and appurtenances to said premises belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto said grantee(s) as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever.

And, I, grantor, do hereby bind myself and my heirs, successors and assigns to warrant and forever defend all and singular said premises unto the said grantee(s), their heirs, successors and assigns, against all persons or entities whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness the execution hereof by Grantor this 5th day of May, 2005.

Signed, Sealed and Delivered
in the Presence of:

Witness

Witness/Notary

SELLER(S):

Bobby Gene Martin

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF HORRY

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within named Bobby Gene Martin, sign, seal, and as his Act and Deed deliver the within written Deed; and that (s)he with the other witness subscribed above witnessed the execution thereof.

Witness

SWORN TO before me this
5th day of May, 2005.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 2-12-14

State of South Carolina

County of Horry

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at 2380 John Henry Lane, Myrtle Beach, South Carolina, bearing Horry County TM#: 197-20-01-001 was transferred by **Bobby Gene Martin** to **Thomas P. Lyons and Desiree J. Lyons** on May 5, 2005.

2. The transaction was (Check one):

__XX__ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $ 240,000.00 .

____ **not** an arm's length real property transaction and the fair market value of the property is $__ _____*.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in South Carolina Ann. Section 12-24-10 et. seq. because the deed is (See back of Affidavit): _____

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: _____Seller_____.

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Bobby Gene Martin

Bobby Gene Martin

SWORN to before me this 5th day of March, 2005.

_____

Notary Public for South Carolina

My Commission Expires: 2/12/09

*** The fee is based** on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

8

EXHIBIT B

Lawyers Title

Issued with Simultaneous Policy No.: N/A
Prior Policy No.: N/A
Prior Policy Amount: N/A

SCHEDULE A **ALTA OWNER'S RESIDENTIAL TITLE POLICY**

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	PREMIUM	POLICY NUMBER
05-1353TDG	May 6, 2005 at 2:20 pm	$240,000.00	520.00	A87-0044979

1. Name of Insured:

   Thomas P. Lyons and Desiree J. Lyons

2. Your interest in the land covered by this policy is:

   FEE SIMPLE

3. The land referred to in this policy is situated in the City of Myrtle Beach, County of Horry, State of South Carolina, and is identified as follows:

   ALL AND SINGULAR, **all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S.D. Cox, dated October 12, 1956, and designated thereon as Lot No. 1.**

   Bounded and described as follows" Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company land; hence with line S 6 deg. 10 min. E 109.5' to St. N at Northern margin of Intracoastal Waterway; thence with Northern margin of said Waterway N 72 deg. 15 min. W 100 feet to St. N. corner of lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet to St. N at Southern Edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 min. E 56 feet to beginning corner.

   Bound on the North by a 20 foot Road, abutting other lands of herein grantor, R.C. Bellamy, East by international Paper company; South by Intracoastal Waterway and West by Lot No. 2, now owned by Mr. Martin.

SURFSIDE TITLE, INC.

Countersignature Authorized Officer or Agent

11883 Plaza Drive
Post Office Box 2850
Murrells Inlet, SC 29576
Issued at (Location)

Lawyers Title

RESIDENTIAL OWNER'S TITLE POLICY

CASE NUMBER
05-1353TDG

SCHEDULE B

POLICY NUMBER
A87-0044979

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, you are not insured against loss, costs, attorney's fees, and expenses resulting from:

1. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
2. Taxes for the year **2005** and subsequent years, a lien not yet due and payable.
3. Quit Claim Right of Way and Easement to Grand Strand Water and Sewer Authority recorded August 11, 2000 in Deed Book 2289 at page 520.
4. Sewer Pump Tank Perpetual Easement and Right of Way to Grand Strand Water and Sewer Authority recorded January 5, 2001 in Deed Book 2332 at page 291.
5. Possible outstanding life estate of John Bellamy.
6. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.
7. Title to that portion of the property which is or may be filled-in land, or which is or has been under water, or which lies below the mean high water mark of Intracoastal Waterway.
8. Title to that portion of the property lying below the mean high water mark of Intracoastal Waterway .

RESIDENTIAL TITLE INSURANCE POLICY ONE-TO-FOUR FAMILY RESIDENCE

Issued by **Lawyers Title Insurance Corporation**

POLICY NUMBER

A87-0044979

LandAmerica Lawyers Title

Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and LAWYERS TITLE INSURANCE CORPORATION.
It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page two of the Policy.
The Policy is limited by:

- Exclusions on page 2
- Exceptions on Schedule B
- Conditions on page 3

You should keep the Policy even if you transfer the title to your land.
If you want to make a claim, see Item 3 under Conditions on page 3. You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy – and not this sheet – is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact the office that issued this policy or:

Consumer Affairs Dept.
Lawyers Title Insurance Corporation
P.O. Box 27567
Richmond, Virginia 23261-7567

LAWYERS TITLE INSURANCE CORPORATION

Attest: Secretary

LAWYERS TITLE INSURANCE CORPORATION SEAL 1925 RICHMOND, VA

By: President

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

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3. Description of the Land	
SCHEDULE B – EXCEPTIONS	Insert
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OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A - if that land is a one-to-four family residential lot or condominium unit. Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A. Your insurance is limited by the following:

- Exclusions on page 2
- Exceptions in Schedule B
- Conditions on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy - up to the Policy Amount
  and
- any costs, attorneys' fees and expenses we have to pay under this Policy

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date – unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure - other than a boundary wall or fence - because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense. We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A
     or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

RESIDENTIAL TITLE INSURANCE POLICY CONDITIONS

1. **DEFINITIONS.**
   a. Easement - the right of someone else to use your land for a special purpose.
   b. Land - the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
   d. Public Records - title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located.
   e. Title - the ownership of your interest in the land, as shown in Schedule A.

2. **CONTINUATION OF COVERAGE.**
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. **HOW TO MAKE A CLAIM.**
   a. You Must Give The Company Notice Of Your Claim
      If anyone claims a right against your insured title, you must notify us promptly in writing.
      Send the notice to Lawyers Title Insurance Corporation, P.O. Box 27567, Richmond, Virginia 23261-7567. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
      Our obligation to you could be reduced if:
      - you fail to give prompt notice
        and
      - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
      You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
      The statement must have the following facts:
      - the Covered Title Risks which resulted in your loss
      - the dollar amount of your loss
      - the method you used to compute the amount of your loss

      You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
      We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.
      We may require you to answer questions under oath.
      Our obligation to you could be reduced if you fail or refuse to:
      - provide a statement of loss
        or
      - answer our questions under oath
        or
      - show us the papers we request,
        and
      - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. **OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM.**
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:
   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this policy paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

5. **HANDLING A CLAIM OR COURT CASE.**
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. **LIMITATION OF THE COMPANY'S LIABILITY.**
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made - whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed
        or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. **TRANSFER OF YOUR RIGHTS.**
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. **ARBITRATION.**
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company.
   The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court. The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. **OUR LIABILITY IS LIMITED TO THIS POLICY.**
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

Form B 1086-119

RESIDENTIAL TITLE INSURANCE POLICY

American Land Title Association (6/1/87)

Issued by

Lawyers Title Insurance Corporation

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, Virginia 23235-5153
www.landam.com

THANK YOU.

Title insurance provides for the protection of your real estate investment. We suggest you keep this policy in a safe place where it can be readily available for future reference.

If you have questions about title insurance or the coverage provided by this policy, contact the office that issued this policy, or you may call or write:

Lawyers Title Insurance Corporation
Consumer Affairs
P.O. Box 27567
Richmond, Virginia 23261-7567
telephone, toll free: 800 446-7086
web: www.landam.com

We thank you for choosing to do business with Lawyers Title Insurance Corporation, and look forward to meeting your future title insurance needs.

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

EXHIBIT C

FILED
HORRY COUNTY, S.C.
2005 NOV -3 PM 2:29
BALLERY W. GRAHAM
REGISTRAR OF DEEDS

BRYAN & HAAR
P O Box 14860
Surfside Beach, SC 29587
File # 15948\MCQUIDDY & JOHNSTON, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that MCQUIDDY & JOHNSTON, LLC, THOMAS P. LYONS AND DESIREE J. LYONS in the State aforesaid, for and in consideration of the sum of ONE HUNDRED THOUSAND AND 00/100's DOLLARS ($100,000.00), paid unto MCQUIDDY & JOHNSTON, LLC, by THOMAS P. LYONS AND DESIREE J. LYONS, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell, and release unto the said THOMAS P. LYONS AND DESIREE J. LYONS, as joint tenants with right of survivorship and not as tenants in common, the following described property, to wit:

All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005, and recorded 11 - 3 -, 2005, in the Office of the ROD for Horry County in Plat Book 208, at Page 235. Said plat is incorporated by reference herein.

This being the same property acquired by the Grantors by deed of William D. Parker and Geraldine Parker dated September 8, 2005, and recorded September 9, 2005, in Deed Book 2974, at Page 1347, Horry County records.

HORRY COUNTY ASSESSOR
~~TMS# 179-20-01-001~~ 11-8-05 pa
Map Blk Parcel

Grantee's address: 206 VAN HOUTEN FIELDS
W. NYACK NY 10994

TOGETHER WITH all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

STATE 260.00 COUNTY 110.00

NO

DEED

3004-457

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said THOMAS P. LYONS AND DESIREE J. LYONS, as joint tenants with right of survivorship and not as tenants in common.

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said THOMAS P. LYONS AND DESIREE J. LYONS, their heirs and assigns forever, against itself and its successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS its Hands and Seals this 28th day of October, 2005.

Signed, Sealed And Delivered
In The Presence Of:

1st Witness

2nd Witness

1st Witness

2nd Witness

McQuiddy & Johnston, LLC

By: _____
Managing Member

By: _____
Thomas P. Lyons

By: _____
Desiree J. Lyons

458

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGEMENT
COUNTY OF HORRY)

I, H. Jay Haar, being a notary public for the State of South Carolina, do hereby certify that R. Kirkland McQuiddy, Managing Member of McQuiddy & Johnston, LLC, personally appeared before me this 28th day of October, 2005, and acknowledged the execution of the foregoing instrument.

_____(L.S.)
Notary Public for the State of SOUTH CAROLINA

My commission expires: April 1, 2014

STATE OF _____)
) ACKNOWLEDGEMENT
COUNTY OF _____)

I, _____, being a notary public for the State of _____, do hereby certify that Thomas P. Lyons and Desiree J. Lyons personally appeared before me this 28th day of October, 2005, and acknowledged the execution of the foregoing instrument.

_____(L.S.)
Notary Public

My commission expires: _____

455

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. The property being transferred is located at John Henry Lane bearing Horry County Tax Map Number 179-20-01-001, was transferred by McQuiddy & Johnston, LLC, Thomas P. Lyons and Desiree J. Lyons to Thomas P. Lyons and Desiree J. Lyons on October 28, 2005.

2. ✓ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $100,000.00.

   NOT an arm's length real property transaction and the fair market value of the property is $.

3. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.*, because the Deed is (see back of Affidavit):

4. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

5. I further understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and no/100 Dollars ($1,000.00) or imprisoned not more than one year, or both.

McQuiddy & Johnston, LLC

By: _____
Managing Member

SWORN to before me this 28th day of October, 2005.

_____
(Notary Public)

My commission expires: _____

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or place on the realty as a realty of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

460

EXHIBIT D

COPY

2006 JAN 23 PM 3:13

REGISTRAR OF DEEDS

Prepared By: N. David DuRant
1801 Glenns Bay Road
Post Office Box 14722
Surfside Beach, SC 29587

State of South Carolina)
)
County of Horry)

CORRECTIVE DEED

WHEREAS, a deed was recorded in Deed Book 3004, at Page 457 and:

WHEREAS, the deed is a scriveners error:

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that MCQUIDDY & JOHNSTON, LLC for the consideration of Five ($5.00) Dollars, all right, title and interest to THOMAS P. LYONS AND DESIREE J. LYONS in the following real property situated in the County of Horry, State of South Carolina:

All and Singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005, and recorded 11-3-05 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

This being the same property acquired by the Grantors by Deed of William D. Parker and Geraldine Parker dated September 8, 2005 and recorded September 9, 2005, in Deed Book 2974, at Page 1347, Horry County Records.

Tax Map # 179-20-01-001

Grantee's Address: 206 Vanhouten Fields
W. Nyack NJ 10994

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the premises unto the Grantees, their heirs and assigns,

3039-1104

against itself and their heirs and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

ANY REFERENCE in this instrument to the singular shall include the plural and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantees.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal 23rd day of January 2006.

Signed, Sealed and Delivered

in Presence of:

MCQUIDDY & JOHNSTON, LLC

1st Witness

BY Bryan Smith Agent {SEAL}

Managing Member

2nd Witness

State of South Carolina)

County of Horry)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s) he saw the within-named Grantor sign, seal, and deliver the within Deed; and that (s) he, with the other subscribing witness whose signature appears above, witnessed the execution thereof.

Witness (*Not Notary*)

SWORN to before me this 23rd day of **January, 2006**

Notary Public for South Carolina

My Commission Expires 8-19-2015

File # 05-14450

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. The property being transferred is located at **30 feet, Myrtle Beach, SC 29579**, bearing **Horry County** Tax Map Number **179-20-01-002**, was transferred by **McQuiddy & Johnston, LLC** to **Thomas Lyons and Desiree Lyons** on **January 23rd, 2006**.

2. an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $100,000.00*.

   x **NOT** an arm's length real property transaction and the fair market value of the property is $100,000.00.

3. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.*, because the Deed is (see back of Affidavit): CORRECTIVE DEED FOR SCRIVENERS ERROR.

4. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: McQuiddy & Johnston, LLC

5. I further understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and no/100 Dollars ($1,000.00) or imprisoned not more than one year, or both.

SWORN to before me this 23rd day of JANUARY, 2006.

(Notary Public)
My commission expires 9-14-11

Responsible Person Connected with Transaction

N. David DuRant
Print or Type Name Here

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or place on the realty as a realty of the transaction). However, a deduction is allow4ed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

EXHIBIT E

POLICY NO: P

RESIDENTIAL
TITLE INSURANCE POLICY
One-To-Four Family Residences
ISSUED BY
THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE
BALTIMORE, MARYLAND

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A-if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in the Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount; and
- any costs, attorneys' fees and expenses we have to pay under this Policy

This Policy is not complete without Schedules A and B.

ISSUED BY:

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

By Theodore C Rogers
President

ATTEST:

By Marlene B. McGraw
Secretary

Authorized Signatory

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RESIDENTIAL TITLE INSURANCE POLICY

One-To-Four Family Residence

ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S INFORMATION SHEET

Your title Insurance Policy is a legal contract between you and The Security Title Guarantee Corporation of Baltimore. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page 2 of the Policy. The Policy is limited by:

- EXCLUSIONS on page 2
- EXCEPTIONS on Schedule B
- CONDITIONS on page 3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 3.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet-- is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact: THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE.

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COMPANY'S DUTY TO DEFEND AGAINST COURT CASES	2
SCHEDULE A	Insert
Policy Date, Amount and Number	
1. Name of Insured	
2. Interest in Land Covered	
3. Description of the Land	
SCHEDULE B -- EXCEPTIONS	Insert
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COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity, or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure-other than a boundary wall or fence-because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.

We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental policy power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the Land
   - land division
   - environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land.

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS

a. Easement--the right of someone else to use your land for a special purpose.
b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE

This Policy protects you as long as you:
- own your title
  or
- own a mortgage from anyone who buys your land
  or
- are liable for any title warranties you make

This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM

a. You Must Give The Company Notice Of Your Claim

If anyone claims a right against your insured title, you must notify us promptly in writing.
Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
Our obligation to you could be reduced if:
- you fail to give prompt notice
  and
- your failure affects our ability to dispose of or to defend you against the claim

b. Proof Of Your Loss Must Be Given To The Company

You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
This statement must have the following facts:
- the Covered Title Risks which resulted in your loss
- the dollar amount of your loss
- the method you used to compute the amount of your loss.

You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss.
We may make copies of these papers.
We may require you to answer questions under oath.
Our obligation to you could be reduced if you fail or refuse to:
- provide a statement of loss
  or
- answer our questions under oath
  or
- show us the papers we request,
  and
- your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM

After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

a. Pay the claim against your title.
b. Negotiate a settlement.
c. Prosecute or defend a court case related to the claim.
d. Pay you the amount required by this Policy.
e. Take other action which will protect you.
f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE

You must cooperate with us in handling any claim or court case and give us all relevant information.
We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
When we defend your title, we have a right to choose the attorney.
We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF COMPANY'S LIABILITY

a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
   If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
   - the cause of the claim is removed; or
   - we settle your claim
c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS

When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION

If it is permitted in your state, you or the Company may demand arbitration.
The arbitration shall be binding on both you and the Company.
The arbitration shall decide any matter in dispute between you and the Company.
The arbitration award may:
- include attorneys' fees if allowed by state law
- be entered as a judgment in the proper court.

The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
The law used in the arbitration is the law of the place where the property is located.
You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY

This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy Number	Amount of Insurance	Date of Policy	Commitment No.	Agent File No.	Premium
P 019073	*$100,000.00*	*01/23/06*		*05-14450NDD*	$275.00

Simultaneous Policy Data

Policy Number	Amount of Insurance	Date of Policy
	$.00	

1. Name of Insured:
   Thomas P. Lyons and Desiree J. Lyons

2. The estate or interest in the land which is encumbered by the Insured mortgage/deed of trust is: ***Fee Simple***

3. Title to the estate or interest in the land is vested in:

   Thomas P. Lyons and Desiree J. Lyons

4. The land referred to in this policy is located in the ***City of Myrtle Beach, County of Horry***, State of ***South Carolina***, and described as follows:

   All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005 and recorded November 3, 2005 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy No. *P 019073*

EXCEPTIONS FROM COVERAGE

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

1. Those taxes and special assessments which become due and payable subsequent to Date of Policy.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. All matters and facts, including, but not limited to, discrepancies, encroachments, overlaps, boundary line disputes, shortage in area, which would be disclosed by a correct survey or inspection of the premises, and where a survey is made, the surveyor is the agent and employee of the Insured and Insured must look to surveyor for protection in respect to these matters..
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Rights, if any, of the public to sue as a public beach or recreations area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used are form the upper land private areas.
8. Subject to perpetual Right-of-Way and Easement granted by William D. Parker and Geraldine M. Parker to Grand Strand Water and Sewer Authority dated June 24, 2000, and recorded August 12, 2000, in Deed Book 2289 at Page 524, Horry County Records.
9. Taxes for the year 2006 and all subsequent years not yet due and payable.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

N. DAVID DURANT

By _____
Authorized Officer or Agent

EXHIBIT F

THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

DEED TO RIGHTS OF WAY

WHEREAS, in the River and Harbor Act of Congress, approved July 3, 1930, provision was made for the construction of that section between Cape Fear River and Winyah Bay of the intracoastal waterway from Cape Fear River, North Carolina to St. Johns River, Florida, in accordance with a project set forth in House Document No. 41, seventy-first Congress, first session, subject to the condition, among others, that local interests shall furnish, free of cost to the United States, rights of way of sufficient width for the canal prism and the disposal of spoil therefrom; and

WHEREAS, at the session of the General Assembly of the State of South Carolina for the year 1931, an Act was passed "to Provide a Right-of-way for the United States Government for the Inland Waterway from the North Carolina-South Carolina State line at Little River to Winyah Bay, by Donation, Purchase or Condemnation; Including the Creation of the South Carolina Inland Waterway Commission, and Defining its Powers and Duties", said Act being Act #163 of Acts and Joint Resolutions of the General Assembly of the State of South Carolina passed at the regular session of 1931, and

WHEREAS, under and by virtue of said Act the South Carolina Inland Waterway Commission was created and has secured by donation, purchase or condemnation rights of way over and across the tracts of land hereinafter described for purposes of construction of a canal to be and form a part of the Intracoastal waterway and/or for the disposal of spoil incident to the construction of said

Waterway, Little River, South Carolina to Winyah Bay, South Carolina, Horry County", dated May 20, 1931, and revised September 8, 1931 on file in the office of the United States Engineer, Charleston, S. C., and

WHEREAS, under and by virtue of the terms of the aforesaid Act the Governor and the Secretary of State of the State of South Carolina are authorized and directed to execute a deed for such rights and easements to the United States,

N O W, THEREFORE, KNOW ALL MEN BY THESE PRESENTS That the undersigned Ibra C. Blackwood as Governor of the State of South Carolina, and W. P. Blackwell as Secretary of State of the State of South Carolina, acting for and in behalf of said State, and under and by virtue of authority conferred by the aforesaid act and all other laws of force applicable to this conveyance, for and in consideration of the foregoing premises and the further sum of One Dollar paid to the State of South Carolina by the United States, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the United States, its successors and assigns, the perpetual right and easement to enter upon, excavate, cut away and remove any and all of the tracts hereinafter described as composing a part of the canal prism, as may be required at any time for construction and maintenance of the said Inland Waterway, or any enlargement thereof, and to maintain the portion so excavated and the channel thereby created as a part of the navigable waters of the United States; and the further perpetual right and easement to enter upon, occupy and use any portion of the tracts hereinafter described as comprising a part of the spoil disposal area, not so cut away and

said Inland Waterway; reserving, however, to the grantor, its successors and assigns, and to those from whom the grantor has acquired title, his, her, its or their heirs, successors and assigns, all such rights and privileges in said tracts of land as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed.

And the grantor hereby gives and grants to the grantee, its successors and assigns, the perpetual right and privilege to deposit on the tracts hereinafter described as spoil disposal area, or any portion thereof, any and all spoil or other material excavated in construction and maintenance of the aforesaid waterway and its appurtenances.

The grantor does hereby waive and release the grantee, its successors and assigns and its or their officers, agents, servants, and contractors from any and all claims for damages which may result from the construction and maintenance of the waterway and the deposit of spoil or other matter as hereinbefore stated; this waiver and release of damages being intended as a continuing covenant which shall run with the land and be binding upon the grantor and on its successors and assigns.

The following tracts are shown and designated as "Canal Prism" on the map above referred to:

2A, 3A, 7A, 8A, 9A, 10A, 10B, 10C, 11A, 11B, 12A, 12B, 12C, 12D, 12-1A, 13A, 14A, 15A, 16A, 17A, 18A, 21A, 22A, 23A, 24A, 30A, 32A, 32B, 33A, 34A, 35A, 36A, 37A, 38A, 42A, 43A, 44A, 45A, 47A, 48A, 50A, 51A, 52A, 53A, 54A, 56A, 58A, 59A, 63A, 64A, 65A, 66A, 67A, 68A, 69A, 71A, 72A, 73A, 74A, 75A, 77A, 79A, 80A, 81A, 82A, 88A, 90-1A, 90-1B, 90A, 90B, 90C, 90D, 90E, 91A, 91B, 92A, 93A, 94A, 96A, 97A, 97B, 98A, 99A, 100A, 103A, 103B, 104A, 105A, 106A, 108A, 108B, 111A, 112A, 113A, 114A, 115A, 116A, 117A, 118A, 119A, 121A, 122A, 125A, 127A, 127B, 127C, 128A, 129A, 129B, 130A, 131A, 131-1A, 132A, 132B, 133A, 133B, 133C

The following tracts are represented as "Spoil Disposal Area" on the map above referred to:

2, 3, 4, 5, 6, 7, 8, 9, 9-1, 10, 10-1, 12, 12-1, 13, 14, 15, 16, 17, 18, 20, 21, 21-1, 22, 23, 23-1, 24, 25, 27, 29, 30, 32, 35, 37, 38, 39, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60, 63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 77, 79, 80, 81, 82, 86, 88, 89, 90, 90-1, 90-2, 90-3, 91, 92, 92-1, 95, 96, 97, 97-1, 97-2, 99, 99-1, 100, 101, 103, 104, 104-1, 106, 108, 111, 112, 113, 114, 117, 118, 119, 121, 122, 125, 126, 127, 128, 129, 130, 131, 131-1, 132, 133, 133-1

TO HAVE AND TO HOLD the said rights and easements unto the United States, its successors and assigns, for the purposes aforesaid forever. And the said grantor does hereby bind itself and its successors to warrant and forever defend, all and singular, the said premises unto the said grantee, its successors and assigns against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hand and seal of Ibra C. Blackwood as Governor and W. P. Blackwell as Secretary of State of the State of South Carolina and the seal of said State, this 17th day of August in the year of our Lord One Thousand Nine Hundred and thirty-two, and in the One Hundred and fifty-seventh year of the Sovereignty and Independence of the United States of America.

I. C. Blackwood

As Governor of State of South Carolina

STATE OF SOUTH CAROLINA)
:
COUNTY OF RICHLAND)

PERSONALLY appeared before me Jannie Garrison who, being duly sworn, says that she saw the within named Ibra C. Blackwood as Governor and W. P. Blackwell as Secretary of State of the State of South Carolina, sign, affix the seal of said State and as the Act and Deed of said State deliver the within written grant of way for the uses and purposes therein mentioned, and that she with Louise B. Bryson witnessed the execution thereof.

Jannie Garrison.

Sworn to before me this
17th day of August, 1932.

Louise B. Bryson (LS)
Notary Public for S. C.

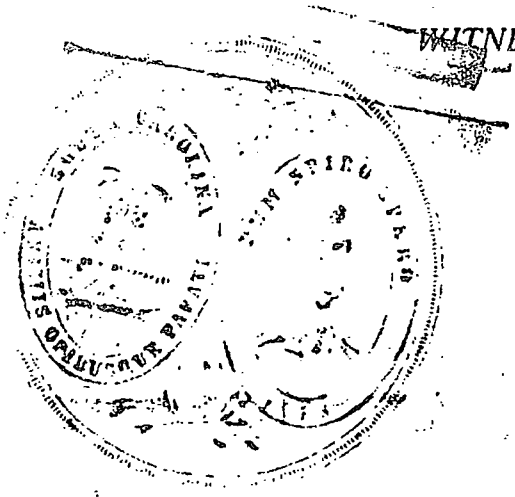
State of South Carolina

Office of Secretary of State

To Whom These Presents Come, Greeting:

KNOW YE, THAT LOUISE B. BRYSON,

whose official signature appears to the Instrument of writing hereto annexed, was, at the time of affixing the same thereto, duly appointed by the Governor, sworn and commissioned a Notary Public in and for the State of South Carolina, as appears from the records of this Department; that his attestation is in due form and that full faith and credit are due to his official acts.



WITNESS MY HAND and the Seal of the State, at Columbia, this 17th. *day of* August *in the year of our Lord one thousand nine hundred* thirty two *and in the one hundred and* fifty seventh *year of Independence of the United States of America.*

Secretary of State.

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State of South Carolina,

COUNTY OF HORRY

THE STATE OF SOUTH CAROLINA

to

THE UNITED STATES OF AMERICA

DEED TO RIGHTS-OF-WAY

Filed at 9 a.m. Sept. 17, 1932
recorded in Book 5, p. 492

MARION A. WRIGHT
ATTORNEY AT LAW
Spivey Building
Conway, : : S. C.

FILED

A.M. SEP 17 1932 P.M.

EXHIBIT G

"Tri-Party" Agreement

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
THE STATE OF SOUTH CAROLINA
AND HORRY COUNTY, SOUTH CAROLINA
FOR LOCAL COOPERATION
FOR
THE ATLANTIC INTRACOASTAL WATERWAY
(HORRY COUNTY SEGMENT)

THIS AGREEMENT entered into this 8th day of December, 1983 by and between the UNITED STATES OF AMERICA (hereinafter sometimes referred to as the "Government"), represented by the Contracting Officer executing this Agreement, the STATE OF SOUTH CAROLINA acting by and through THE SOUTH CAROLINA COASTAL COUNCIL (hereinafter sometimes referred to as the "Coastal Council"), and HORRY COUNTY, SOUTH CAROLINA (hereinafter sometimes referred to as the "County").

W I T N E S S E T H T H A T:

WHEREAS, construction of the Atlantic Intracoastal Waterway, Little River to Winyah Bay (hereinafter sometimes referred to as the "Project") was authorized by the River and Harbor Act approved July 3, 1930 in accordance with House Document No. 41, 71st Congress, 1st Session; and,

WHEREAS, the above cited Act of Congress required the local sponsor to furnish without cost to the Government certain rights-of-way and easements for the construction of the Project; and,

WHEREAS, the State of South Carolina acting by and through the South Carolina Inland Waterway Commission assumed the obligation to the Government to provide the rights-of-way and easements required for the construction of the Project and further assumed the obligation to provide additional rights-of-way and easements if and when needed for the operation and maintenance of the Project; and

WHEREAS, the State of South Carolina, as local sponsor for the Project, acquired the rights-of-way and easements for the construction of the Project and conveyed these rights-of-way and easements to the Government; and,

WHEREAS, the State of South Carolina has conferred upon the South Carolina Coastal Council the responsibilities and obligations previously assumed by the South Carolina Inland Waterway Commission; and,

WHEREAS, Horry County in coordination with the Coastal Council has commenced negotiations with the Government for the reduction in size and possible change in locaton of the dredged material disposal easements situated within Horry County; and,

WHEREAS, the Government has preliminarily determined that a portion of its dredged material disposal easements are excess to Project needs and is willing to relinquish its interest in these easements provided that the County and Coastal Council agree to certain conditions hereinafter set forth; and,

WHEREAS, the County desires to assume the below mentioned responsibilities and obligations for that portion of the Project situated within Horry County and hereby represents that it has the authority and capability to furnish the Designated non-Federal cooperation required for the Project and to perform and abide by the terms and conditions hereinafter provided; and,

WHEREAS, the Coastal Council hereby represents and reaffirms that it has the authority and capability to furnish the non-Federal cooperation required for the Project and to assume the performance of the terms and conditions herein after provided in the event the County fails or neglects to meet its obligations under this Agreement.

NOW THEREFORE, in consideration of the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed as follows:

1. The County agrees to fulfill the requirements of non-Federal cooperation as enumerated in paragraphs a through f below for that portion of the Project situated in Horry County, South Carolina, to wit:

a. The County shall furnish without cost to the Government the dredged material disposal easements in the amount and location as provided for in Exhibit "A", attached hereto and by this reference made a part hereof. The acquisition and conveyance of said easements to the Government shall be accomplished in accordance with Exhibit "B", attached hereto and by this reference made a part hereof.

b. In the event the Government determines that dredged material has been placed on an easement site to such an extent that it becomes necessary to remove the dredged material from the easement site in order for the site to continue to be used, the County will remove said dredged material and other debris from the disposal site within 8 months of notification by the Government.

c. The County shall provide the Government and its contractors with access roads to all easement sites. The access roads shall be suitable for the County to utilize to empty the disposal areas, and shall be available for Government use at the time the disposal sites are conveyed to the Government. The County shall preserve all easement sites, including dikes and appurtenant structures, and rights-of-way in a condition so as to allow for the optimum use by the Government. The County shall protect all easement sites, including dikes and appurtenant structures and rights-of-way from damage, destruction, or encroachment by the County or third parties. The County shall promptly restore such sites to the condition aforesaid if they are determined to be unfit for use by the Government, provided, however, with the exception of

rights-of-way, the County shall not be responsible for damage or destruction to such sites caused by the Government or its contractors, or acts of God. The County shall not commit or permit any act which may interfere with the performance of any work by the Government or its contractors in connection with the use or maintenance of the easement sites.

d. In the event the Government requires additional dredged material disposal easements, the County will provide such additional disposal easements including rights-of-way to said easements, to the Government, and be responsible for all costs associated therewith.

e. The County covenants and agrees that in the event it does not possess the financial resources to meet its obligations assumed in this contract, then it will immediately take the necessary action to issue and sell general obligation bonds pledging the full faith and credit of the County, and said general obligation bonds will be in an amount sufficient to meet the obligations of the County herein.

f. The County shall hold harmless and indemnify the Government for any and all damages sustained by the Government which arise out of the negligence of the County or the County's failure to comply with the terms and conditions of this contract relative to the maintenance and use by the Government of the dredged material disposal easement sites, including dikes and appurtenant structures, or the easements for ingress and egress to said dredged material disposal easement sites.

2. a. The Coastal Council will assume and perform the obligations and responsibilities herein assumed by the County without cost to the Government in the event the County shall fail, neglect, or otherwise not perform any of the obligations and responsibilities herein set forth. In such event, the Coastal Council and the Government will cooperate in the prosecution of any judicial proceedings required to enforce this Agreement and the County shall reimburse the Coastal Council and/or the Government for all costs incurred by

reason of such default. The Government shall have the option, upon refusal of the County and/or Coastal Council, to perform the obligations in paragraph 1 above and collect from the County and/or Coastal Council the costs incurred thereby.

b. Nothing contained herein is to be construed as relieving the Coastal Council from its legal responsibilities as local sponsor for the Atlantic Intracoastal Waterway in South Carolina in its currently authorized configuration, including that portion being and situate in Horry County, South Carolina, and specifically the responsibility to provide future additional lands and easements, including dredged material disposal easements, for the operation and maintenance of the Project, and to bear all costs associated therewith.

c. The Coastal Council does hereby waive and release the Government, its successors and assigns and its or their officers, agents, servants and contractors from any and all claims for damages which may result from the operation and maintenance of the Project and the deposit of dredged material or other matter.

3. The Government shall relinquish to the County those dredged material disposal easements situated within Horry County which are determined excess to Project requirements in accordance with the terms and conditions specified in Exhibit "B". All determinations of excess are subject to the approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

4. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement and neither party is to be considered the officer, agent, or employee of the other.

5. All notices to be given pursuant to this Agreement shall be addressed, if to the County, to Horry County Administrator, P.O. Box 1236,

Conway, South Carolina 29526; if to the Coastal Council, to Executive Director, South Carolina Coastal Council, Sumerall Center, 19 Hagood Avenue, Suite 802, Charleston, South Carolina 29403; or if to the Government, to District Engineer U.S. Army Corps of Engineers, Charleston, District, P.O. Box 919, Charleston, South Carolina 29402, or may from time to time be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper addressed as aforesaid and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Government.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
F. L. SMITH, JR.
LTC, Corps of Engineers
District Engineer
Contracting Officer
Date: 6 December 1983

STATE OF SOUTH CAROLINA COASTAL COUNCIL

_____
SENATOR JAMES WADDELL, CHAIRMAN
Date: 8 December 1983

HORRY COUNTY, SOUTH CAROLINA COUNTY COUNCIL

_____
LAURIE MCLEOD, CHAIRMAN
(as authorized by the attached Council resolution)
Date: 8 December 1983

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STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)

RESOLUTION BY

HORRY COUNTY COUNCIL, SOUTH CAROLINA

BE IT HEREBY RESOLVED, that the HORRY COUNTY COUNCIL, does hereby ratify the action taken by its Chairman, LAURIE McLEOD, in executing, on behalf of Horry County, South Carolina, that certain agreement dated December 8, 1983, between the United States of America, the State of South Carolina, and Horry County, for local cooperation at the Atlantic Intracoastal Waterway (Horry County Segment).

ADOPTED AND APPROVED, on this the 10th day of January 1984.

HORRY COUNTY COUNCIL

LAURIE McLEOD, Chairman

W. G. HUCKS, JR., Vice Chairman

BRICE BLANTON, Council Member

PAUL PRINCE, Council Member

LEROY WEATHERS, Council Member

GARY STEELE, Council Member

ALTON DUNCAN, Council Member

PAUL CREEL, Council Member

JAMES FRAZIER, Council Member

ULYSSES DEWITT, Council Member

DEWEY STRICKLEY, Council Member

ROBERT EDGE, JR., Council Member

ATTEST:

GLADYS ALLEN
Clerk, County Council

(SEAL)

CERTIFICATE OF AUTHORITY

I, T. Travis Medlock, do hereby certify that I am the Attorney General of the State of South Carolina, that the South Carolina Coastal Council is a legally constituted public body with full authority and legal capability to perform the terms of the agreement between the United States of America and the South Carolina Coastal Council in connection with the Horry County Land Exchange, and to pay damages, if necessary, in the event of the failure to perform in accordance with Section 221 of Public Law 91-611 and that the person(s) who have executed the contract on behalf of the South Carolina Coastal Council have acted within their statutory authority.

In Witness Whereof, I have made and executed this Certificate this 2nd day of December, 1983.

(Name and Title)

CERTIFICATE OF AUTHORITY

I, John P. Heary, do hereby certify that I am the County Attorney of Horry County Council, South Carolina, that Horry County Council is a legally constituted public body with full authority and legal capability to perform the terms of the agreement between the United States of America and Horry County in connection with the Horry County Land Exchange, and to pay damages, if necessary, in the event of the failure to perform in accordance with Section 221 of Public Law 91-611 and that the person(s) who have executed the contract on behalf of the Horry County Council have acted within their statutory authority.

In Witness Whereof, I have made and executed this Certificate this ____ day of December 8, 1983.

John P. Heary
(Name and Title)

EXHIBIT A

DISPOSAL AREA REQUIREMENTS

The attached table lists the disposal area requirements based on future requirements with periodic emptying as required for Corps' use. The total area required is comprised of three elements defined as follows: Containment Area Acreage is that area required to contain the dredged material; Dike Area is that area occupied by the dike structure itself; and Setback Area is that area required to offset the dike from the property line, or the edge of the waterway, or as required for construction of drainage ditches. The containment area acreage is a fixed quantity; however, the dike area and setback area as listed in the table will vary depending on the physical characteristics of the sites proposed. The area requirements listed in the table are based on areas which are square.

Two disposal areas will be required for each reach. The average elevation shall be no higher than 12 feet (mean low water) above the elevation of the Atlantic Intracoastal Waterway, or they shall be reduced to that elevation prior to acceptance by the Government. They shall be so spaced that the maximum pumping distance is 5,000 feet.

The dikes shall be 10 feet high with a top width of 6 feet, and side slope of 3:1 outside and 2:1 inside. The setbacks are based on 75 feet on the water way side, 15 feet on one side and 30 feet on the back and remaining side for drainage.

EXHIBIT A

DISPOSAL AREA REQUIREMENTS

REACH NUMBER	INCLUSIVE STATIONS	CONTAINMENT AREA (acres)	DIKE AREA (acres)	SETBACK AREA (acres)	TOTAL AREA REQUIRED (acres)
1	55+00	16.51	4.65	3.41	24.57
1	To 100+00	16.51	4.65	3.41	24.57
					49.14
2	100+00	8.27	3.37	2.56	14.20
2	To 200+00	8.27	3.37	2.56	14.20
					28.40
3	200+00	12.40	4.07	3.02	19.49
3	To 300+00	12.40	4.07	3.02	19.49
					38.98
4	300+00	6.44	3.01	2.32	11.77
4	To 400+00	6.44	3.01	2.32	11.77
					23.54
5	400+00	5.3	2.76	2.15	10.21
5	To 500+00	5.3	2.76	2.15	10.21
					20.42
6	500+00	9.82	3.65	2.75	16.22
6	To 600+00	9.82	3.65	2.75	16.22
					32.44
7	600+00	7.72	3.27	2.49	13.48
7	To 700+00	7.72	3.27	2.49	13.48
					26.96
8	700+00	12.64	4.10	3.05	19.79
8	To 800+00	12.64	4.10	3.05	19.79
					39.58
9	800+00	9.05	1.34	2.43	12.82
9	To 900+00	9.05	1.34	2.43	12.82
					25.64
10	900+00	10.31	3.73	2.80	16.84
10	To 1000+00	10.31	3.73	2.80	16.84
					33.68
11	1000+00	13.97	4.30	3.18	21.45
11	To 1100+00	13.97	4.30	3.18	21.45
					42.90
12	1100+00	18.06	4.85	3.55	26.46
12	To 1200+00	18.06	4.85	3.55	26.46
					52.92
13	1200+00	11.87	3.99	2.97	18.83
13	To 1300+00	11.87	3.99	2.97	18.83
					37.66
14	1300+00	10.31	3.73	2.80	16.84
14	To 1400+00	10.31	3.73	2.80	16.84
					33.68
15	1400+00	8.27	3.37	2.56	14.20
15	To 1500+00	8.27	3.37	2.56	14.20
					28.40

REACH NUMBER	INCLUSIVE STATIONS	CONTAINMENT AREA (acres)	DIKE AREA (acres)	SETBACK AREA (acres)	TOTAL AREA REQUIRED (acres)
16	1500+00	4.60	2.08	1.97	8.65
16	To 1600+00	4.60	2.08	1.97	8.65
					17.30
17	1600+00	4.60	2.08	1.97	8.65
17	To 1700+00	4.60	2.08	1.97	8.65
					17.30
18	1700+00	4.60	2.08	1.97	8.65
18	To 1800+00	4.60	2.08	1.97	8.65
					17.30
19	1800+00	4.60	2.08	1.97	8.65
19	To 1900+00	4.60	2.08	1.97	8.65
					17.30
20	1900+00	4.60	2.08	1.97	8.65
20	To 2000+00	4.60	2.08	1.97	8.65
					17.30
		367.88	129.18	103.78	600.84

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EXHIBIT B
U.S. ARMY CORPS OF ENGINEERS
REQUIREMENTS FOR THE
TRANSFER OF DREDGED MATERIAL DISPOSAL EASEMENTS
HORRY COUNTY, SOUTH CAROLINA
ATLANTIC INTRACOASTAL WATERWAY

I. Introduction:

The following plan has been developed for the United States to relinquish its existing disposal easements within Horry County in return for much more restrictive easements over smaller areas. All transfers of property interests will be through Horry County. Horry County will acquire fee simple interest and hold the fee simple absolute interest in the new areas and subsequently will convey the necessary easement interest in these areas to the United States.

II. Basic Requirements:

The basic real estate regulation requirements for the transfer of the disposal easement areas are as follows:

a. A declaration of excess from the Charleston District Engineer

b. Map, legal description, and title insurance policy for the easement areas to be conveyed to the United States

c. Map and legal description of the easement areas to be relinquished

d. Real Estate map depicting the acquisition and disposal parcels

e. Copy of proposed acquisition document

f. Written concurrence from the South Carolina Coastal Council

In order that the United States may be reasonably assured that its release of existing easements will not result in holding easements on substitute lands which are unsuitable in terms of environmental impacts and legal restraints, Horry County will provide the Corps with the following documents:

1. Written opinions from the South Carolina State Historical Preservation Officer and the National Park Service that the areas proposed by Horry County do not contain any significant historical or archeological resources that would prevent or restrict their use as a disposal area. Archeological surveys by the County may be required prior to obtaining these opinions.

2. Letters from the South Carolina Wildlife and Marine Resources Department and the U.S. Fish and Wildlife Service stating that the area does not contain any endangered species, critical habitat, or other fish and wildlife resources that would prohibit or restrict its use as a disposal area. Mitigation or special preparation of a site to avoid wildlife impacts will be accomplished by the County.

3. Letters from the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control stating that the proposed area is suitable for dredged material disposal and that its use would not cause any foreseeable water quality problems.

4. Letter from the South Carolina Coastal Council stating that the use of the proposed areas would be consistent with the Coastal Zone Management Program.

The above letters would provide reasonable assurance that the lands proposed by Horry County for use by the Corps could actually be used in compliance with existing laws and regulations. In the event that one or more of the proposed areas cannot be used due to new laws, regulations, or

listings, Horry County, will be responsible for the acquisition of new areas of comparable size and location to replace the areas lost.

The transfer of the easement areas will proceed as follows: Each 10,000-foot reach along the waterway will be treated as a unit. Horry County will be responsible for contacting and coordinating with the individual landowners within each 10,000-foot reach. In conjunction with the individual owners, the county will select tentative disposal areas in accord with the environmental guidelines set forth above. The Charleston District Engineer will review the preliminary selections for conformance to the engineering criteria and for general acceptability from an environmental standpoint. The County will then obtain the various environmental approvals indicated above.

Once the proposed disposal areas for a particular reach have been tentatively approved by the Charleston District Engineer and once Horry County has furnished the required maps, legal descriptions, and title insurance policies to the Savannah District Real Estate Office, the Corps will then initiate action to have the specific disposal approved by the Secretary of the Army and the appropriate disposal instruments executed. When these actions have been completed, Horry County will be notified and requested to execute the instruments which will convey the new dredged material disposal easement sites to the United States. Upon delivery of these instruments to the Savannah District Real Estate Office, the Corps will furnish Horry County the disposal instruments. All instruments will then be recorded by Horry County. It will be the responsibility of Horry County to furnish the Savannah District Real Estate Office the recordation data (deed book and page number) for all instruments.

III. Specific Real Estate Requirements for Horry County:

Horry County will have the primary responsibility for providing the Corps with acceptable maps and legal descriptions for the easement areas to be disposed of and the new easement areas to be conveyed to the United States. It will also be the responsibility of Horry County to provide the Corps with acceptable title insurance policies for the new easement areas to be conveyed to the United States.

a. In order for the United States to be adequately protected with respect to its real estate interests, it is necessary that title insurance policies be procured. Title insurance policies will only be required for the new disposal easement tracts within each 10,000-foot reach. These policies must be obtained from title insurance companies which have been approved by the United States Department of Justice. The title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. In this instance, the value of the property interest will be determined by the Corps of Engineers. If the value of the new disposal easement tract is determined to be more than $50,000, the liability of the title company may be limited to 50 percent of the first $50,000 and 25 percent of that portion of the value in excess of that amount. A separate title insurance policy will be required for each new disposal easement tract. The estimate of the value of each new disposal easement tract will be made once the Charleston District Engineer has approved all the tracts within that 10,000-foot reach. Once these values have been determined by the Corps, the required amount of each title insurance policy will be furnished to Horry County. The Savannah District Real Estate office must be furnished with acceptable title insurance policies for the new disposal easement tracts within a particular 10,000-foot reach on or before the date that the Corps notifies Horry County that the appropriate disposal instrument has been executed and is ready for delivery.

The conveyance of the new disposal easement tracts by Horry County to the United States will be by warranty deed. The conveyance of the existing disposal easement interests by the United States to Horry County will be by a quitclaim deed. There will be an administrative fee in the amount of $250 for

the disposal of the existing disposal easement interests in each 10,000-foot reach.

b. The second major item of responsibility for Horry County is the furnishing of maps and legal descriptions for the existing disposal easements and for the new disposal easement tracts within each 10,000-foot reach.

The Government has two types of property interests in and along the waterway. The first is what is known as the canal prism which primarily include the waterway channel. The second type of property interest is the dredged material disposal easement. This transfer program will generally involve the disposal easement areas (5,754 acres in Horry County).

In the acquisition and disposal of property interests of the United States, it is imperative that the legal descriptions and maps required in such transactions be as accurate as possible. A high degree of accuracy is essential in order for the conveyance of a property interest to be in conformity with applicable state law, to preclude encroachments, to properly manage Federally owned property, and, in this instance, to prevent the unintentional disposal of any of the United States' property interests within the canal prism. Consequently, the boundary lines for a portion of the existing disposal easements and the new disposal easements must be surveyed by an on-ground field survey. The survey of both areas must be performed by a land surveyor who is properly qualified and registered under the laws of the State of South Carolina (South Carolina Code Section 40-21-10, et. seq.). Based upon the data obtained from the field surveys, maps and legal descriptions of all the existing disposal easement areas and the new disposal easement areas within each 10,000-foot reach should be prepared and submitted to the Savannah District Real Estate Office for approval.

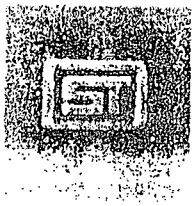
The survey of the boundary lines of the existing disposal easements and the new disposal easement tracts should not be initiated until the Charleston District Engineer has approved the location of the new disposal easement tracts for that 10,000-foot reach. When the new sites have been approved, the Savannah District Real Estate Office will advise Horry County with respect to which portion of the existing disposal easement boundary lines, if any, have to be surveyed. This determination will be based upon the location of the new disposal easement tracts in relation to the existing boundary lines. The boundary lines of the canal prism have already been surveyed and monumented by the Corps. Consequently, the extent of the survey required for the existing disposal easement boundary lines cannot be determined until the new sites have been approved. It should be emphasized that all the new disposal easement tracts will have to be surveyed and monumented.

Once the Savannah District Real Estate Office has advised Horry County as to which areas have to be surveyed, Horry County should proceed with surveying the boundary lines in accord with the following requirements. All field surveys will have a closure of 1' - 5,000'. All surveys will be tied to the South Carolina Grid System. All corners will be marked with concrete monuments. Where possible, all lines will be marked and painted. More detailed surveying instructions will be furnished Horry County prior to initiation of work.

Once the boundary lines have been surveyed, maps and legal descriptions will be prepared from the survey data. The legal descriptions, tract maps, and segment maps should be prepared in a form similar to examples furnished by the Savannah District Real Estate Office. The maps and legal descriptions should then be submitted to the Savannah District Real Estate Office for approval.

The maps and descriptions have to be furnished to the Corps before any action can be initiated to relinquish the United States disposal easement interest within a particular 10,000-foot reach.

EXHIBIT H



THE
SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

October 11, 2011

SENT VIA EMAIL TO: dhaller@hallerlawfirm.com

David K. Haller
Haller Law Firm, P.C.
115 River Landing Drive, Suite 102
Charleston, SC 29492

RE:

Property:	Lot 1 on Plat Dated 8/24/05 by Culler Land Surveying Co.
Owners:	Thomas P. Lyons and Desiree J. Lyons
Policy No.:	P019073
Policy Amount:	$100,000.00
Claim No.:	11-360

Dear Mr. Haller:

This letter is the response of The Security Title Guarantee Corporation of Baltimore ("Security Title") to your claim letter concerning the above-referenced matter and your email dated October 10, 2011 in which you stated that Mr. and Mrs. Lyons would be willing to settle the claim you submitted on their behalf for the sum of $80,000.00.

First, let me recite the facts as I understand them. By deed dated May 5, 2005, Thomas and Desiree Lyons acquired Lot 1 as shown on a map dated October 12, 1956 by S. D. Cox. Then, by deed dated October 28, 2005, Thomas and Desiree Lyons acquired a thirty-foot strip of land from McQuiddy & Johnston, LLC that was added to Lot 1 pursuant to a Reconfiguration Plat dated August 24, 2005 by Culler Land Surveying Co., Inc. ("Culler"). Subsequently, Mr. and Mrs. Lyons applied to Horry County, South Carolina for a building permit to construct a new house on the reconfigured Lot 1. Horry County denied the building permit due to its policy of only issuing building permits for the "repair, remodeling or replacement" of structures lying along the Intracoastal Waterway pursuant to Horry County Council Resolution R-143-03. Consequently, you submitted a claim under Mr. and Mrs. Lyons' title insurance policy on their behalf. Based upon the information I have received to date, your claim is denied for the reasons set forth herein.

Initially, I have provided you with a copy of the policy jacket for Mr. and Mrs. Lyons' particular policy form (you had only provided me with copies of the schedules). Please review Paragraph 1 of the Exclusions which exclude from coverage, "Governmental police power, and the existence or violation of any law or governmental regulation. This includes building and zoning ordinances and also laws and regulations concerning: land use; improvements on the Land; land division; environmental protection." Quite simply, Horry County's land use resolution is excluded from coverage by this "governmental police power" exclusion. Although this exclusion does not limit Covered Risk 13 ("You cannot use the land because use a single-family residence violates a restriction shown in Schedule B or an existing zoning law"); that Covered Risk is not applicable to Mr. and Mrs. Lyons' situation. The aforementioned

Six South Calvert Street • Baltimore, Maryland 21202-1388 • 410-727-4456 • 800-669-6063
Fax: 410-727-3252
http://www.eSecurityTitle.com

Reconfiguration Plat prepared by Culler depicts a "1 Story Dwelling" on the property. Via email dated October 10, 2011, you indicated that the referenced dwelling is a mobile home and that mobile homes are permissible along the Intracoastal Waterway. Indeeed, Horry County Resolution R-143-03 states that Horry County has had a long established policy of allowing the placement of mobile homes on properties along the Intracoastal Waterway. In that the property can be used for a residence utilizing the existing mobile home, Covered Risk 13 is not applicable, and the governmental police power exclusion operates to exclude Mr. and Mrs. Lyons' claim from coverage.

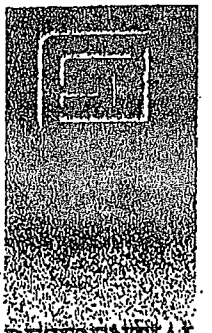
Additionally, please review Paragraph 2 of the Exceptions from Coverage on Schedule B which excepts from coverage, "Easements, or claims of easements, not shown by the public records." You provided me with a "Deed to Rights of Way" dated August 17, 1932 in which South Carolina purports to convey easements to the United States of America. This document, however, provides more questions than it does answers. Initially, the properties in this document are described pursuant to map dated May 20, 1931 which is "on file in the office of the United States Engineer, Charleston, South Carolina." As you have not provided me with a copy of that map, it is unclear as to whether Mr. and Mrs. Lyons' property is depicted on that map. One also wonders whether that legal description is sufficient to create an easement under South Carolina law. More importantly, however, is the fact that none of the documents that you have provided to me indicate when and how South Carolina acquired the easements that it purports to convey in this document. In short, I have not seen any documents whereby South Carolina acquired an easement over Lot 1 (Mr. and Mrs. Lyons' property). Accordingly, the claim to a spoil easement is not shown by the public records, and is therefore excepted from coverage. As an aside, I note that the "Deed to Rights of Way" is outside Mr. and Mrs. Lyons' chain of title, and does not impart notice on anyone searching their title.

For the reasons set forth above, your settlement offer of $80,000.00 is rejected, and Mr. and Mrs. Lyons' claim is denied. By setting forth the above grounds for denial of liability, Security Title is not waiving, but is expressly reserving, all applicable defenses to this title insurance claim. If you feel that I have misunderstood the facts of your claim, if there are additional facts that you feel should be considered, or if additional allegations are made that may bring this matter within coverage of the Policy, please contact me immediately. Security Title reserves the right to supplement this letter should additional facts be discovered and/or provided.

Sincerely,

Patrick S. Daly

Patrick S. Daly
Underwriting & Claims Counsel



POLICY NO: P

RESIDENTIAL TITLE INSURANCE POLICY

One-To-Four Family Residences

ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A-if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in the Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount; and
- any costs, attorneys' fees and expenses we have to pay under this Policy

This Policy is not complete without Schedules A and B.

ISSUED BY:

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

By _____ President

ATTEST:

By _____ Secretary

_____ Authorized Signatory

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RESIDENTIAL TITLE INSURANCE POLICY

One-To-Four Family Residence

ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S INFORMATION SHEET

Your title Insurance Policy is a legal contract between you and The Security Title Guarantee Corporation of Baltimore. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page 2 of the Policy. The Policy is limited by:

- EXCLUSIONS on page 2
- EXCEPTIONS on Schedule B
- CONDITIONS on page 3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 3.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet-- is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact: THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE.

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COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity, or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure-other than a boundary wall or fence-because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.
We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental policy power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - land division
   - improvements on the Land
   - environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land.

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS
   a. Easement--the right of someone else to use your land for a special purpose.
   b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
   d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM
   a. You Must Give The Company Notice Of Your Claim
   If anyone claims a right against your insured title, you must notify us promptly in writing.
   Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
   Our obligation to you could be reduced if:
   - you fail to give prompt notice
     and
   - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
   This statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss.

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss.
   We may make copies of these papers.
   We may require you to answer questions under oath.
   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
     or
   - answer our questions under oath
     or
   - show us the papers we request,
     and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney. We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF COMPANY'S LIABILITY
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed; or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court.

   The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy Number	Amount of Insurance	Date of Policy	Commitment No.	Agent File No.	Premium
P 019073	*$100,000.00*	*01/23/06*		*05-14450NDD*	$275.00

Simultaneous Policy Data

Policy Number	Amount of Insurance	Date of Policy
	$.00	

1. Name of Insured:
   Thomas P. Lyons and Desiree J. Lyons

2. The estate or interest in the land which is encumbered by the Insured mortgage/deed of trust is: ***Fee Simple***

3. Title to the estate or interest in the land is vested in:

   Thomas P. Lyons and Desiree J. Lyons

4. The land referred to in this policy is located in the ***City of Myrtle Beach, County of Horry***, State of ***South Carolina***, and described as follows:

   All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005 and recorded November 3, 2005 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy No. *P 019073*

EXCEPTIONS FROM COVERAGE

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

1. Those taxes and special assessments which become due and payable subsequent to Date of Policy.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. All matters and facts, including, but not limited to, discrepancies, encroachments, overlaps, boundary line disputes, shortage in area, which would be disclosed by a correct survey or inspection of the premises, and where a survey is made, the surveyor is the agent and employee of the Insured and Insured must look to surveyor for protection in respect to these matters..
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Rights, if any, of the public to sue as a public beach or recreations area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used are form the upper land private areas.
8. Subject to perpetual Right-of-Way and Easement granted by William D. Parker and Geraldine M. Parker to Grand Strand Water and Sewer Authority dated June 24, 2000, and recorded August 12, 2000, in Deed Book 2289 at Page 524, Horry County Records.
9. Taxes for the year 2006 and all subsequent years not yet due and payable.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

N. DAVID DURANT

By _____
Authorized Officer or Agent

EXHIBIT B

STEWART TITLE

GUARANTY COMPANY

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A–if that land is a one-to-four family residential lot or condominium unit. Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on pages 2 and 5.

We insure you against actual loss resulting from:

- any title risks covered by this Policy–up to the policy Amount and
- any costs, attorneys' fees and expenses we have to pay under this Policy.

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association.
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date--unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure--other than a boundary wall or fence--because:
    - it extends on to adjoining land or on to an easement.
    - it violates a restriction shown in Schedule B.
    - it violates an existing zoning law.
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.

We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

This policy is not complete without Schedules A and B.

Signed under seal for the Company, but this Policy is to be valid only when it bears an authorized countersignature.

STEWART TITLE
GUARANTY COMPANY

Chairman of the Board

Countersigned:

Authorized Countersignature

BRYAN & HAAR, ATTORNEYS
Company 508 Highway 17 South, Ste B
Surfside Beach, SC 29575
City, State 843-238-3461

STEWART TITLE GUARANTY COMPANY
INCORPORATED
1908
TEXAS

President

Page 1 of Policy Serial No. 0-9917 518827

101 (Rev. 6-1-87)

and zoning ordinances and also laws and regulations concerning:

- land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date--unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date--this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A
     or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS
   a. Easement - the right of someone else to use your land for a special purpose.
   b. Land - the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
   d. Public Records - title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title - the ownership of your interest in the land, as shown in Schedule A.
2. CONTINUATION OF COVERAGE

   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.
3. HOW TO MAKE A CLAIM

   a. You Must Give The Company Notice Of Your Claim

   If anyone claims a right against your insured title, you must notify us promptly in writing.

   Send the notice to Stewart Title Guaranty Company, P.O. Box 2029, Houston, Texas 77252. Please include the Policy number shown in Schedule A, and the county and state where the land is located.

   Our obligation to you could be reduced if:
   - you fail to give prompt notice
     and
   - your failure affects our ability to dispose of or to defend you against the claim.

   b. Proof Of Your Loss Must Be Given To The Company

   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.

   The statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.

   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.

   We may require you to answer questions under oath.

   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
     or
   - answer our questions under oath
     or
   - show us the papers we request,
     and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

(continued and concluded on last page of this policy)

File No. 16796\WHITLOCK

OWNER'S POLICY SCHEDULE A

Policy No.	O-9917-518827	
Policy Amount:	$410,000.00	Premium: $818.00
Date of Policy:	November 1, 2006 at 3:29 pm	

1. Name of Insured:

   Joetta P. Whitlock, Trustee of the Joetta P. Whitlock Trust, UTD 2-20-2001

2. Your Interest in the land covered by this Policy is:

   FEE SIMPLE

3. The land referred to in this policy is described as follows:

   ALL AND SINGULAR, that certain piece, parcel or lot of land, together with improvements thereon, situate, lying and being on the Northeast side of the Intracoastal Waterway, Socastee Township, Horry County, South Carolina, and being shown and designated as Lots 5 and 5A of R.C. Bellamy Subdivision on a map prepared for Lewis W. Collins by S. D. Cox Surveyors, Inc., dated August 29, 1968, and recorded in Deed Book 403 at page 230, Horry County records.

   Address of Property (For Identification Purposes Only):

   Street: 2330 John Henry Lane
   City: Myrtle Beach
   State: South Carolina
   Unit/Lot: 5& 5A Subdivision/Condo/Section: R C Bellamy

This policy valid only if Schedule B is attached

STEWART TITLE
GUARANTY COMPANY

OWNER'S POLICY SCHEDULE B

In addition to the Exclusions, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Taxes for the year 2007, and subsequent years, a lien, but not yet due and payable, plus any special assessments.
2. Increase or decrease in area due to rise and fall of tidewaters of the Intracoastal Waterway.
3. Rights of State of South Carolina as to accretions occurring after July 1, 1977, as provided in Title 48, Chapter 39, (Coastal Tidelands and Wetlands Act) of the South Carolina Code of Laws, 1976, as amended.
4. The rights of control lying in the South Carolina Coastal Council as provided in Title 48, Chapter 39, (Coastal Tidelands, and Wetlands Act), of the South Carolina Code of Laws, 1976, amended.
5. Interests created by, or limitations on use imposed by the Federal Coastal Zone Management Act or other Federal law or South Carolina Code of Laws, 1976, as amended, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to State or Federal laws.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Title to that portion of the property lying below the high mean water mark of the Intracoastal Waterway.
8. Rights, if any, of the public to use as a public beach or recreation area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used area from the upper land private areas.
9. Perpetual Right-of-Way and Easement granted by Frank Wesley Collins and Cheryl Ann Collins to Grand Strand Water and Sewer Authority dated June 31, 2000, and recorded February 14, 2001, in Deed Book 2341 at page 1231, Horry County records.
10. Conditions shown on that certain Map of Lots 5 and 5A of R.C. Bellamy Subdivision prepared for Lewis W. Collins by S. D. Cox Surveyors, Inc., dated August 29, 1968, and recorded in Deed Book 403 at page 230, Horry County records.
11. Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey and inspection of the premises.

STEWART TITLE
GUARANTY COMPANY

After we receive your claim notice or in any other way learn of a matter ... of the following:

a. Pay the claim against your title.
b. Negotiate a settlement.
c. Prosecute or defend a court case related to the claim.
d. Pay you the amount required by this Policy.
e. Take other action which will protect you.
f. Cancel this Policy by paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE

You must cooperate with us in handling any claim or court case and give us all relevant information.

We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.

- to settle disputes
  or
- to cover expenses and attorneys' fees.

When we defend your title, we have a right to choose the attorney. We can appeal any decision to the highest court.

We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF THE COMPANY'S LIABILITY

a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.

   If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:

   - the cause of the claim is removed
     or
   - we settle your claim.

c. The Policy Amount will be reduced by all payments made under this Policy--except for costs, attorneys' fees and expenses.
d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS

When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.

We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.

With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION

If it is permitted in your state, you or the Company may demand arbitration.

The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.

The arbitration award may:

- include attorneys' fees if allowed by state law
- be entered as a judgment in the proper court.

The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

The law used in the arbitration is the law of the place where the property is located.

You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY

This Policy, plus any endorsements, is the entire contract between you and the Company. Any title claim you make against us must be made under this Policy and is subject to its terms.

Valid Only If Schedules A and B are Attached.

STEWART TITLE
GUARANTY COMPANY

STEWART TITLE
GUARANTY COMPANY

RESIDENTIAL TITLE INSURANCE POLICY – ONE-TO-FOUR FAMILY RESIDENCES

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and Stewart Title Guaranty Company.

It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page one of the Policy. The Policy is limited by:

- Exclusions on page 2
- Exceptions in Schedule B
- Conditions on pages 2 and 5

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 2.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy–and not this sheet–is the legal document:

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact:

STEWART TITLE
GUARANTY COMPANY

P. O. Box 2029
Houston, Texas 77252

STEWART TITLE
GUARANTY COMPANY

P. O. Box 2029
Houston, Texas 77252

A NAME
RECOGNIZED NATIONALLY
AS BEING
SYNONYMOUS WITH

QUALITY

ESTABLISHED 1893

INCORPORATED 1908

Sanctity of Contract

POLICY
OF
TITLE
INSURANCE

STEWART TITLE
GUARANTY COMPANY

RESIDENTIAL TITLE INSURANCE POLICY

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7-9-12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
Plaintiff,	)	
versus	)	**AMENDED SUMMONS**
Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee of Baltimore,	)	
Defendants.	)	

FILED
HORRY COUNTY
2012 JUL 19 PM 1:48
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to the said complaint upon the subscriber, David K. Haller, Esquire, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the said complaint, judgment by default will be rendered against you for the relief demanded in the said complaint.

HALLER LAW FIRM. P.C.

David K. Haller, Esquire
115 River Landing Drive, Suite 102
Charleston, SC 29492
Telephone: (843) 849-1384
Fax: (843) 853-9377
Attorney for the Plaintiff

Charleston, South Carolina

July 18, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
Plaintiff,	)	
versus	)	**FIRST AMENDED COMPLAINT**
Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,	)	
Defendants.	)	

FILED
HORRY COUNTY
2012 JUL 19 PM 1:48
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED

Plaintiffs allege and complain of the defendants as follows:

1. Plaintiffs Thomas P. Lyons and Desiree J. Lyons are residents and citizens of Horry County, South Carolina.
2. Defendant Lawyers Title Insurance Corporation is a foreign corporation, not licensed to do business in South Carolina, which owns property and does business in South Carolina.
3. Defendant Bobby Gene Martin is a resident and citizens of Horry County, South Carolina.
4. Defendant The Security Title Guarantee Corporation of Baltimore is a foreign corporation, not licensed to do business in South Carolina, which owns property and does business in South Carolina.
5. This is an action to requirement payment of proceeds under two title insurance policies described herein and to enforce warranties under a general warranty deed. This court has jurisdiction over the subject matter of this action and the parties named herein. Venue is proper in Horry County.

jurisdiction over the subject matter of this action and the parties named herein. Venue is proper in Horry County.

6. On or about May 5, 2005, Mr. and Mrs. Lyons purchased from Bobby Gene Martin the parcel of land generally described as:

> All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S.D. Cox, dated October 12, 1956, and designated thereon as Lot No. 1.
>
> Bounded and described as follows: Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company Land; thence with said line 4 6 deg. 10 min E 109.5' to St. N at Northern margin of International Waterway; thence with lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet St. N at Southern edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 in. E 56 feet to beginning corner.
>
> Bound on the North by a 20 foot Road, abutting other lands of the herein grantor, R.C. Bellamy, East by International Paper Company; South by International Waterway and West by Lot No. 2, now owner by Mr. Martin.
>
> This being the identical property as conveyed to the grantor by that specific deed of R.C. Bellamy and John L. Bellamy, recorded September 24, 1958 in Deed Book 212 at Page 167, Horry County Records; that specific deed of R.C. Bellamy, recorded February 27, 1973 in Deed Book 486 at Page 371, Horry County Records; and Corrective Deed recorded April 5, 1979 in Deed Book 638 at Page 834, Horry County Records.
>
> TMS # 179-20-01-001 (hereinafter the "Martin tract").

7. The Lyons paid $240,000.00 in cash for this land. The purpose of the property purchase was to build the Lyons' dream retirement home. A true and correct copy of the deed from Martin to the Lyons is attached hereto as Exhibit A.

8. Defendant Martin gave the plaintiffs a General Warranty Deed in exchange for the purchase.

9. On or about October 28, 2005, the Lyons purchased from McQuiddy & Johnston, LLC, the parcel of land generally described as the following:

All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005, and records 11-3-2005, in the Office of the ROD for Horry County in Plat Book 208, at Page 205. Said plat is incorporated by reference herein.

This being the same property acquired by the Grantors by deed of William D. Parker and Geraldine Parker dated September 9, 2005, and recorded September 9, 2005, in Deed Book 2974, at Page 1347, Horry County records.

TMS # 179-20-01-001 (hereinafter the "McQuiddy tract").

10. The Lyons paid $100,000.00 in cash for the McQuiddy tract. A true and correct copy of the deed from Martin to the Lyons is attached hereto as Exhibit B. A subsequent corrective deed was filed on or about January 26, 2006 without notice to the Lyons to correct an alleged scrivener's error. A true and correct copy of the Corrective Deed is attached hereto as Exhibit C.

11. The McQuiddy tract is adjacent to the Martin tract. The Martin and McQuiddy tracts were combined into one parcel.

12. The Lyons purchased from Lawyers Title Insurance Corporation an insurance policy protecting the quality of the title to the Martin tract. A true and correct copy of said policy is attached hereto as Exhibit D.

13. In exchange for the Lyons' payment of a premium, which Lawyers Title has received and used, Lawyers Title promised, among other things, to "pay up to your actual loss or the Policy Amount in force when the claim is made" if "someone else has an easement on your land" or because, "you cannot use your land because use as a single-family residence violates a restriction shown on Schedule B or an existing zoning law."

14. The Lyons purchased from Security Title Guarantee Corporation of Baltimore an insurance policy protecting the quality of the title to the McQuiddy tract. A true and correct copy of said policy is attached hereto as Exhibit E.

15. In exchange for the Lyons' payment of a premium, which Security Title has received and used, it promised, among other things, to "pay up to your actual loss or the Policy Amount in force when the claim is made" if "someone else has an easement on your land" or because, "you cannot use your land because use as a single-family residence violates a restriction shown on Schedule B or an existing zoning law."

16. On or about July 3, 1930, the Congress of the United States enacted the River and Harbor Act, which, among other things, created the Intracoastal Waterway. Each state, including South Carolina was required to obtain a right-of-way over such property through which the Waterway would flow and over which spoil incident to the creation and maintenance of the Waterway could be dumped.

17. On August 17, 1932, Ibra C. Blackwood, as Governor of South Carolina, executed a Deed to Rights of Way over several tracts through which the Waterway would flow and over which spoil incident to the creation and maintenance of the Waterway could be dumped.

18. The Deed to Rights of Way was filed in the ROD for Horry County on September 17, 1932, and has remained of record since that time. A true and correct copy of said Deed to Right of Way is attached hereto as Exhibit F (hereinafter "Deed").

19. The Martin tract abuts the Intracoastal Waterway is part of the "Canal Prism" described in the Deed.

20. The McQuiddy tract abuts the Intracoastal Waterway is part of the "Canal Prism" described in the Deed.

21. The Martin tract is part of the "Spoil Disposal Area" described in the Deed.

22. The McQuiddy tract is part of the "Spoil Disposal Area" described in the Deed.

23. In or about 1983, Horry County took management with the Army Corps of Engineers of the "Spoil Disposal Area." Horry County's obligations were established in a "Tri-Party Agreement" dated December 8, 1982. A true and correct copy of the Tri-Party Agreement is attached hereto as Exhibit G.

24. Horry County Council enacted a zoning ordinance in order to carry out its obligations under the Tri-Party Agreement. Among other things, Horry County prohibited the issuance of building permits to build single-family residences.

25. Although the Deed was in the public record and provides constructive notice of the Spoil Drainage Area, the Lyons were unaware of the Spoil Drainage Area at the time of closing on the Martin and McQuiddy tracts.

26. In or about May of 2011, the Lyons attempted to obtain a permit to build their dream retirement home. The building permit request was rejected because of Horry County's policy as it related to properties in the Spoil Drainage Area. Hence, the Lyons cannot build the single-family residence intended when they bought the property.

27. The Deed is not excluded from the coverage afforded by the Lawyers Title policy on the Martin tract and the Deed is a "Covered Title Risk."

28. Although demand has been made by the Lyons for coverage under the policy and the Lyons have complied with all obligations required by the policy, Lawyers Title has failed and refused to comply with the terms and conditions of the same. Lawyers Title has

unreasonably refused to respond to communications or pay benefits due without any cause or justification.

29. The Deed is not excluded from the coverage afford by the Security Title policy on the McQuiddy tract and is a "Covered Title Risk."

30. Although demand has been made by the Lyons for coverage under the policy and the Lyons have complied with all obligations under the same as required by the policy, Security Title has failed and refused to comply with the terms and conditions of the same. In fact, Security Title denied coverage by letter dated October 11, 2011, by misstating the facts and twisting the language of the policy. See Exhibit H.

31. Defendant Bobby Martin warranted the title to the Lyons. The claims stated in the Deed violate the warranty and Martin is in breach of the same.

FOR A FIRST CAUSE OF ACTION

BREACH OF CONTRACT AS TO DEFENDANT LAWYERS TITLE

32. Plaintiffs incorporate by reference paragraphs one through 31 hereinafter to the extent the same are not inconsistent with the state cause of action.

33. A contract exists between Lawyers Title and the plaintiffs by which the plaintiffs paid a premium for a contract of insurance protecting the title to their policy. As alleged herein, benefits under the policy are due and owing to the Lyons by Lawyers Title. Lawyers Title has failed and refused to pay the benefits to the Lyons. Lawyers Title is in breach of the contract.

34. As a direct and proximate result of Lawyers Titles breach of contract, the Lyons have been injured and suffered damages. The Lyons are entitled to a judgment against

Lawyers Title for the full amount the consequential damages suffered by them as a result of Lawyers Title's breach.

FOR A SECOND CAUSE OF ACTION

BREACH OF CONTRACT AGAINST SECURITY TITLE

35. Plaintiffs incorporate by reference paragraphs one through 31 hereinafter to the extent the same are not inconsistent with the state cause of action.

36. A contract exists between Security Title and the plaintiffs by which the plaintiffs paid a premium for a contract of insurance protecting the title to their policy. As alleged herein, benefits under the policy are due and owing to the Lyons by Security Title. Security Title has failed and refused to pay the benefits to the Lyons. Security Title is in breach of the contract.

37. As a direct and proximate result of Security Titles breach of contract, the Lyons have been injured and suffered damages. The Lyons are entitled to a judgment against Security Title for the full amount the consequential damages suffered by them as a result of Security Title's breach.

FOR A THIRD CAUSE OF ACTION

BAD FAITH FAILURE TO PAY AS TO LAWYERS TITLE

38. Plaintiffs incorporate by reference paragraphs one through 31 hereinafter to the extent the same are not inconsistent with the state cause of action.

39. As alleged herein, Lawyers Title has acted in bad faith or in an unreasonable manner in the processing of the claim made by the plaintiffs under the mutually binding insurance contract between the plaintiffs and Lawyers Title and Lawyers Title has failed to pay benefits required of it in bad faith.

40. Lawyers Title has engaged in the conduct alleged herein willfully and wantonly.

41. As a direct and proximate result of the defendant bad faith failure to pay claims, the plaintiffs have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendant for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such similar conduct in the future.

FOR A FOURTH CAUSE OF ACTION

BAD FAITH FAILURE TO PAY AS TO SECURITY TITLE

42. Plaintiffs incorporate by reference paragraphs one through 29 hereinafter to the extent the same are not inconsistent with the state cause of action.

43. As alleged herein, Security Title has acted in bad faith or in an unreasonable manner in the processing of the claim made by the plaintiffs under the mutually binding insurance contract between the plaintiffs and Security Title and Security Title has failed to pay benefits required of it in bad faith.

44. Security Title has engaged in the conduct alleged herein willfully and wantonly.

45. As a direct and proximate result of the defendant bad faith failure to pay claims, the plaintiffs have been injured and suffered damages. Plaintiffs are entitled to a judgment against the defendant for both actual damages, in an amount to be determined by the trier of fact, and punitive damages, in an amount sufficient to deter such similar conduct in the future.

FOR A FIFTH CAUSE OF ACTION

BREACH OF WARRANTY OF TITLE AGAINST DEFENDANT MARTIN

46. Plaintiffs incorporate by reference paragraphs one through 29 hereinafter to the extent the same are not inconsistent with the state cause of action.

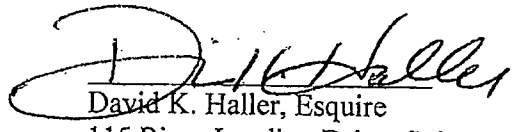
47. Defendant Martin warranted the title he conveyed to the plaintiffs against all others.

48. Martin's warranty includes the claims stated in the Deed.

49. As a result of the claim in the Deed, Martin is in breach of the warranties of title and the plaintiffs have been damaged. Plaintiffs are entitled to a judgment against Martin for all loss suffered by them as a result of the breach of warranty, including a return of the consideration paid for the title he conveyed.

WHEREFORE the plaintiffs pray for judgment against the defendants, for actual damages in the full amount of their damages, punitive damages against defendants Lawyers Title ad Security Title for their bad faith failure to pay under the title insurance policies, attorneys fees under the title policies, pre-judgment interest, and such other relief as the court deem just, prudent, and proper.

HALLER LAW FIRM. P.C.



David K. Haller, Esquire
115 River Landing Drive, Suite 102
Charleston, SC 29492
Telephone: (843) 849-1384
Fax: (843) 853-9377
Attorney for the Plaintiffs

Charleston, South Carolina

July 2 2012

EXHIBIT A

POSGN
05-13535

FILED
HORRY COUNTY, S.C.
2005 MAY -6 PM 2:20
BALLERY V. SKIPPER
REGISTRAR OF DEEDS

PREPARED BY:
DOVE LAW FIRM, P.A.
P.O. BOX 625
MURRELLS INLET, SC 29576

STATE OF SOUTH CAROLINA

DEED TO REAL ESTATE

COUNTY OF HORRY

KNOW ALL MEN BY THESE PRESENTS that I, **Bobby Gene Martin**, hereinafter called Grantor in consideration of **Two Hundred Forty Thousand and00/100 ($240,000.00) Dollars** to the Grantor in hand paid at and before the sealing of these presents by the Grantee(s) hereinafter named, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto **Thomas P. Lyons and Desiree J. Lyons**, as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever, in fee simple, the following described property, to-wit:

All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S. D. Cox, dated, October 12, 1956, and designated thereon as lot No. 1.

Bounded and described as follows: Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company land; thence with said line S 6 deg. 10 min. E 109.5' to St. N at Northern margin of Intracoastal Waterway; thence with Northern margin of said Waterway N 72 deg. 15 min. W 100 feet to St. N. corner of lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet to St. N at Southern edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 min. E 56 feet to beginning corner.

HORRY COUNTY ASSESSOR
TM#: 179-20-01-001
Map Blk Parcel 5-9-05 JK

STATE 624.00 COUNTY 264.00

EXEMPT YES T (NO)

ASSESSOR _____

GRANTEES ADDRESS: 1 Brook Road
New City, NY 10956

DEED
2906 0080

2901

Bound on the North by a 20 foot Road, abutting other lands of herein grantor, R. C. Bellamy, East by International Paper Company; South by Intracoastal Waterway and West by Lot No. 2, now owned by Mr. Martin.

This being the identical property as conveyed to the grantor by that specific deed of R.C. Bellamy and John L. Bellamy, recorded September 24, 1958 in Deed Book 212 at Page 167, Horry County Records; that specific deed of R.C. Bellamy, recorded February 27, 1973 in Deed Book 486 at Page 371, Horry County Records; and Corrective Deed recorded April 5, 1979 in Deed Book 638 at Page 834, Horry County Records.

Together with all and singular the rights, hereditaments and appurtenances to said premises belonging, or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto said grantee(s) as joint tenants with the right of survivorship and not as tenants in common, their heirs and assigns forever.

And, I, grantor, do hereby bind myself and my heirs, successors and assigns to warrant and forever defend all and singular said premises unto the said grantee(s), their heirs, successors and assigns, against all persons or entities whomsoever lawfully claiming, or to claim the same or any part thereof.

Witness the execution hereof by Grantor this 5th day of May, 2005.

Signed, Sealed and Delivered
in the Presence of:

Witness

Witness/Notary

SELLER(S):

Bobby Gene Martin

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF HORRY

PERSONALLY appeared before me, the undersigned witness and made oath that (s)he saw the within named Bobby Gene Martin, sign, seal, and as his Act and Deed deliver the within written Deed; and that (s)he with the other witness subscribed above witnessed the execution thereof.

Witness

SWORN TO before me this
5th day of May, 2005.

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 1-1-2014

State of South Carolina

AFFIDAVIT

County of Horry

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. Property located at 2380 John Henry Lane, Myrtle Beach, South Carolina, bearing Horry County TM#: 197-20-01-001 was transferred by **Bobby Gene Martin** to **Thomas P. Lyons and Desiree J. Lyons** on May 5, 2005.

2. The transaction was (Check one):

__XX__ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $ 240,000.00 .

_____ **not** an arm's length real property transaction and the fair market value of the property is $__ _____*.

The above transaction is exempt, or partially exempt, from the recording fee as set forth in South Carolina Ann. Section 12-24-10 et. seq. because the deed is (See back of Affidavit): _____

As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Seller .

I further understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

X Bobby Gene Martin
Bobby Gene Martin

SWORN to before me this 5th day of March, 2005.

_____
Notary Public for South Carolina
My Commission Expires: 7/12/14

* **The fee is based** on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or placed on the realty as a result of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

8

EXHIBIT B

Lawyers Title

Issued with Simultaneous Policy No.: N/A
Prior Policy No.: N/A
Prior Policy Amount: N/A

SCHEDULE A

ALTA OWNER'S RESIDENTIAL TITLE POLICY

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	PREMIUM	POLICY NUMBER
05-1353TDG	May 6, 2005 at 2:20 pm	$240,000.00	520.00	A87-0044979

1. Name of Insured:

   Thomas P. Lyons and Desiree J. Lyons

2. Your interest in the land covered by this policy is:

   FEE SIMPLE

3. The land referred to in this policy is situated in the City of Myrtle Beach, County of Horry, State of South Carolina, and is identified as follows:

   ALL AND SINGULAR, **all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S.D. Cox, dated October 12, 1956, and designated thereon as Lot No. 1.**

   Bounded and described as follows" Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company land; hence with line S 6 deg. 10 min. E 109.5' to St. N at Northern margin of Intracoastal Waterway; thence with Northern margin of said Waterway N 72 deg. 15 min. W 100 feet to St. N. corner of lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet to St. N at Southern Edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 min. E 56 feet to beginning corner.

   Bound on the North by a 20 foot Road, abutting other lands of herein grantor, R.C. Bellamy, East by international Paper company; South by Intracoastal Waterway and West by Lot No. 2, now owned by Mr. Martin.

SURFSIDE TITLE, INC.

Countersignature Authorized Officer or Agent

11883 Plaza Drive
Post Office Box 2850
Murrells Inlet, SC 29576
Issued at (Location)

Lawyers Title

RESIDENTIAL OWNER'S TITLE POLICY

CASE NUMBER
05-1353TDG

SCHEDULE B

POLICY NUMBER
A87-0044979

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, you are not insured against loss, costs, attorney's fees, and expenses resulting from:

1. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
2. Taxes for the year **2005** and subsequent years, a lien not yet due and payable.
3. Quit Claim Right of Way and Easement to Grand Strand Water and Sewer Authority recorded August 11, 2000 in Deed Book 2289 at page 520.
4. Sewer Pump Tank Perpetual Easement and Right of Way to Grand Strand Water and Sewer Authority recorded January 5, 2001 in Deed Book 2332 at page 291.
5. Possible outstanding life estate of John Bellamy.
6. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.
7. Title to that portion of the property which is or may be filled-in land, or which is or has been under water, or which lies below the mean high water mark of Intracoastal Waterway.
8. Title to that portion of the property lying below the mean high water mark of Intracoastal Waterway

RESIDENTIAL TITLE INSURANCE POLICY ONE-TO-FOUR FAMILY RESIDENCE

Issued by **Lawyers Title Insurance Corporation**

POLICY NUMBER

A87-0044979

LandAmerica Lawyers Title

Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and LAWYERS TITLE INSURANCE CORPORATION.
It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page two of the Policy.
The Policy is limited by:

- Exclusions on page 2
- Exceptions on Schedule B
- Conditions on page 3

You should keep the Policy even if you transfer the title to your land.
If you want to make a claim, see Item 3 under Conditions on page 3. You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy – and not this sheet – is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact the office that issued this policy or:

Consumer Affairs Dept.
Lawyers Title Insurance Corporation
P.O. Box 27567
Richmond, Virginia 23261-7567

LAWYERS TITLE INSURANCE CORPORATION

Attest: Secretary

LAWYERS TITLE INSURANCE CORPORATION SEAL 1925 RICHMOND, VA

By: President

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

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COVERED TITLE RISKS	2
COMPANY'S DUTY TO DEFEND AGAINST COURT CASES	2
SCHEDULE A	Insert
Policy Number, Date and Amount	
1. Name of Insured	
2. Interest in Land Covered	
3. Description of the Land	
SCHEDULE B – EXCEPTIONS	Insert
EXCLUSIONS	2
CONDITIONS	3
1. Definitions	3
2. Continuation of Coverage	3
3. How to Make a Claim	3
4. Our Choices When You Notify Us of a Claim	3
5. Handling a Claim or Court Case	3
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OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A - if that land is a one-to-four family residential lot or condominium unit. Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A. Your insurance is limited by the following:

- Exclusions on page 2
- Exceptions in Schedule B
- Conditions on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy - up to the Policy Amount and
- any costs, attorneys' fees and expenses we have to pay under this Policy

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date – unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure - other than a boundary wall or fence - because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense. We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

RESIDENTIAL TITLE INSURANCE POLICY CONDITIONS

1. DEFINITIONS.
   a. Easement - the right of someone else to use your land for a special purpose.
   b. Land - the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
   d. Public Records - title records that give constructive notice of matters affecting your title – according to the state statutes where your land is located.
   e. Title - the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE.
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM.
   a. You Must Give The Company Notice Of Your Claim
      If anyone claims a right against your insured title, you must notify us promptly in writing.
      Send the notice to Lawyers Title Insurance Corporation, P.O. Box 27567, Richmond, Virginia 23261-7567. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
      Our obligation to you could be reduced if:
      - you fail to give prompt notice
        and
      - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
      You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
      The statement must have the following facts:
      - the Covered Title Risks which resulted in your loss
      - the dollar amount of your loss
      - the method you used to compute the amount of your loss

      You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
      We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.
      We may require you to answer questions under oath.
      Our obligation to you could be reduced if you fail or refuse to:
      - provide a statement of loss
        or
      - answer our questions under oath
        or
      - show us the papers we request,
        and
      - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM.
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:
   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this policy paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE.
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF THE COMPANY'S LIABILITY.
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made - whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed
        or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS.
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION.
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company.
   The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court. The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY.
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

Form B 1086-119

RESIDENTIAL TITLE INSURANCE POLICY

American Land Title Association (6/1/87)

Issued by

Lawyers Title Insurance Corporation

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, Virginia 23235-5153
www.landam.com

THANK YOU.

Title insurance provides for the protection of your real estate investment. We suggest you keep this policy in a safe place where it can be readily available for future reference.

If you have questions about title insurance or the coverage provided by this policy, contact the office that issued this policy, or you may call or write:

Lawyers Title Insurance Corporation
Consumer Affairs
P.O. Box 27567
Richmond, Virginia 23261-7567
telephone, toll free: 800 446-7086
web: www.landam.com

We thank you for choosing to do business with Lawyers Title Insurance Corporation, and look forward to meeting your future title insurance needs.

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

EXHIBIT C

FILED
HORRY COUNTY, S.C.
2005 NOV -3 PM 2:29
BALLERY V. SINGLETARY
REGISTRAR OF DEEDS

BRYAN & HAAR
P O Box 14860
Surfside Beach, SC 29587
File # 15948\MCQUIDDY & JOHNSTON, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS, that MCQUIDDY & JOHNSTON, LLC, THOMAS P. LYONS AND DESIREE J. LYONS in the State aforesaid, for and in consideration of the sum of ONE HUNDRED THOUSAND AND 00/100's DOLLARS ($100,000.00), paid unto MCQUIDDY & JOHNSTON, LLC, by THOMAS P. LYONS AND DESIREE J. LYONS, in the State aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released and by these presents do grant, bargain, sell, and release unto the said THOMAS P. LYONS AND DESIREE J. LYONS, as joint tenants with right of survivorship and not as tenants in common, the following described property, to wit:

All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005, and recorded 11 - 3 -, 2005, in the Office of the ROD for Horry County in Plat Book 208, at Page 235. Said plat is incorporated by reference herein.

This being the same property acquired by the Grantors by deed of William D. Parker and Geraldine Parker dated September 8, 2005, and recorded September 9, 2005, in Deed Book 2974, at Page 1347, Horry County records.

HORRY COUNTY ASSESSOR

~~TMS# 179-20-01-001~~ 11-8-05 pa
Map Blk Parcel

Grantee's address: 206 VAN HOUTEN FIELDS
W. NYACK NY 10994

TOGETHER WITH all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

STATE 260.00 COUNTY 110.00

EXEMPT YES NO

REASON _____

3004-457

DEED

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said THOMAS P. LYONS AND DESIREE J. LYONS, as joint tenants with right of survivorship and not as tenants in common.

AND Grantor does hereby bind itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said THOMAS P. LYONS AND DESIREE J. LYONS, their heirs and assigns forever, against itself and its successors and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS its Hands and Seals this 28th day of October, 2005.

Signed, Sealed And Delivered
In The Presence Of:

1st Witness

2nd Witness

1st Witness

2nd Witness

McQuiddy & Johnston, LLC

By: _____
Managing Member

By: _____
Thomas P. Lyons

By: _____
Desiree J. Lyons

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STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF HORRY)

I, H. Jay Haar, being a notary public for the State of South Carolina, do hereby certify that R. Kirkland McQuiddy, Managing Member of McQuiddy & Johnston, LLC, personally appeared before me this 28th day of October, 2005, and acknowledged the execution of the foregoing instrument.

_____(L.S.)
Notary Public for the State of SOUTH CAROLINA

My commission expires: April 1, 2014

STATE OF _____)
) **ACKNOWLEDGEMENT**
COUNTY OF _____)

I, _____, being a notary public for the State of _____, do hereby certify that Thomas P. Lyons and Desiree J. Lyons personally appeared before me this 28th day of October, 2005, and acknowledged the execution of the foregoing instrument.

_____(L.S.)
Notary Public

My commission expires: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. The property being transferred is located at John Henry Lane bearing Horry County Tax Map Number 179-20-01-001, was transferred by McQuiddy & Johnston, LLC, Thomas P. Lyons and Desiree J. Lyons to Thomas P. Lyons and Desiree J. Lyons on October 28, 2005.

2. ✓ an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $100,000.00.

   NOT an arm's length real property transaction and the fair market value of the property is $.

3. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.*, because the Deed is (see back of Affidavit):

4. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor

5. I further understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and no/100 Dollars ($1,000.00) or imprisoned not more than one year, or both.

McQuiddy & Johnston, LLC

By: _____
Managing Member

SWORN to before me this 28th day of October, 2005.

_____
(Notary Public)

My commission expires: _____

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or place on the realty as a realty of the transaction). However, a deduction is allowed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

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EXHIBIT D

FILED COPY
HORRY COUNTY S.C.
2006 JAN 23 PM 3:13
REGISTRAR OF DEEDS

Prepared By: N. David DuRant
1801 Glenns Bay Road
Post Office Box 14722
Surfside Beach, SC 29587

State of South Carolina)
)
County of Horry)

CORRECTIVE DEED

WHEREAS, a deed was recorded in Deed Book 3004, at Page 457 and:

WHEREAS, the deed is a scriveners error:

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that MCQUIDDY & JOHNSTON, LLC for the consideration of Five ($5.00) Dollars, all right, title and interest to THOMAS P. LYONS AND DESIREE J. LYONS in the following real property situated in the County of Horry, State of South Carolina:

All and Singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005, and recorded 11-3-05 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

This being the same property acquired by the Grantors by Deed of William D. Parker and Geraldine Parker dated September 8, 2005 and recorded September 9, 2005, in Deed Book 2974, at Page 1347, Horry County Records.

Tax Map # 179-20-01-001

Grantee's Address: 206 Vanhouten Fields
W. Nyack NJ 10994

THIS CONVEYANCE IS MADE SUBJECT TO easements and restrictions of record and otherwise affecting the property.

TOGETHER with all and singular, the Rights, Members, Hereditaments and Appurtenances to the Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the premises before mentioned unto the Grantees, their heirs and assigns forever.

AND THE GRANTOR does hereby bind itself and its successors and assigns, to warrant and forever defend all and singular the premises unto the Grantees, their heirs and assigns,

3039-164

against itself and their heirs and assigns and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

ANY REFERENCE in this instrument to the singular shall include the plural and vice versa. Any reference to one gender shall include the others, including the neuter. Such words of inheritance shall be applicable as are required by the gender of the Grantees.

IN WITNESS WHEREOF, the Grantor has hereunto set its hand and seal 23RD day of January 2006.

Signed, Sealed and Delivered
in Presence of:

MCQUIDDY & JOHNSTON, LLC

1st Witness

BY Brayton Lentz, Agent {SEAL}
Managing Member

2nd Witness

State of South Carolina)

County of Horry)

PROBATE

PERSONALLY appeared before me the undersigned witness, who, being duly sworn, says that (s) he saw the within-named Grantor sign, seal, and deliver the within Deed; and that (s) he, with the other subscribing witness whose signature appears above, witnessed the execution thereof.

Witness (*Not Notary*)

SWORN to before me this 23rd day of **January, 2006**

Notary Public for South Carolina

My Commission Expires 8-19-2015

File # 05-14450

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. The property being transferred is located at **30 feet, Myrtle Beach, SC 29579**, bearing **Horry County** Tax Map Number **179-20-01-002**, was transferred by **McQuiddy & Johnston, LLC** to **Thomas Lyons and Desiree Lyons** on **January 23rd, 2006.**

2. an arm's length real property transaction and the sales price paid or to be paid in money or money's worth was $100,000.00*.

   x **NOT** an arm's length real property transaction and the fair market value of the property is $100,000.00.

3. The above transaction is exempt, or partially exempt, from the recording fee as set forth in S.C. Code Ann. Section 12-24-10, *et seq.*, because the Deed is (see back of Affidavit): CORRECTIVE DEED FOR SCRIVENERS ERROR.

4. As required by Code § 12-24-70, I state that I am a responsible person who was connected with the transaction as: McQuiddy & Johnston, LLC

5. I further understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than One Thousand and no/100 Dollars ($1,000.00) or imprisoned not more than one year, or both.

SWORN to before me this 23rd day of JANUARY, 2006.

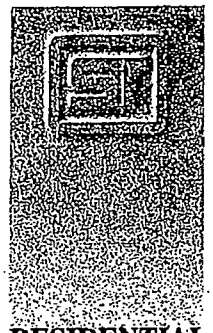
(Notary Public)
My commission expires 9-14-11

Responsible Person Connected with Transaction

N. David DuRant
Print or Type Name Here

* The fee is based on the real property's value. Value means the realty's fair market value. In arm's length real property transactions, this value is the sales price to be paid in money or money's worth (e.g. stocks, personal property, other realty, forgiveness of debt, mortgages assumed or place on the realty as a realty of the transaction). However, a deduction is allow4ed from this value for the amount of any lien or encumbrance existing on land, tenement, or realty before the transfer and remaining on it after the transfer.

EXHIBIT E



POLICY NO: P

RESIDENTIAL
TITLE INSURANCE POLICY
One-To-Four Family Residences
ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A-if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in the Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount; and
- any costs, attorneys' fees and expenses we have to pay under this Policy

This Policy is not complete without Schedules A and B.

ISSUED BY:



THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

By Theodore C Rogers
President

ATTEST:

By Marlene B. McGraw
Secretary

Authorized Signatory

AMERICAN LAND TITLE ASSOCIATION

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RESIDENTIAL TITLE INSURANCE POLICY

One-To-Four Family Residence

ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S INFORMATION SHEET

Your title Insurance Policy is a legal contract between you and The Security Title Guarantee Corporation of Baltimore. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page 2 of the Policy. The Policy is limited by:

- EXCLUSIONS on page 2
- EXCEPTIONS on Schedule B
- CONDITIONS on page 3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 3.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet-- is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact: THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE.

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COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity, or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure-other than a boundary wall or fence-because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.
We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental policy power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - land division
   - improvements on the Land
   - environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land.

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. **DEFINITIONS**
   a. Easement--the right of someone else to use your land for a special purpose.
   b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
   d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. **CONTINUATION OF COVERAGE**
   This Policy protects you as long as you:
   - own your title
   or
   - own a mortgage from anyone who buys your land
   or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. **HOW TO MAKE A CLAIM**
   a. You Must Give The Company Notice Of Your Claim
   If anyone claims a right against your insured title, you must notify us promptly in writing.
   Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
   Our obligation to you could be reduced if:
   - you fail to give prompt notice
   and
   - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
   This statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss.

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss.
   We may make copies of these papers.
   We may require you to answer questions under oath.
   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
   or
   - answer our questions under oath
   or
   - show us the papers we request,
   and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. **OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM**
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. **HANDLING A CLAIM OR COURT CASE**
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. **LIMITATION OF COMPANY'S LIABILITY**
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
   If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
   - the cause of the claim is removed; or
   - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. **TRANSFER OF YOUR RIGHTS**
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. **ARBITRATION**
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court.

   The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. **OUR LIABILITY IS LIMITED TO THIS POLICY**
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy Number	Amount of Insurance	Date of Policy	Commitment No.	Agent File No.	Premium
P 019073	*$100,000.00*	*01/23/06*		*05-14450NDD*	$275.00

Simultaneous Policy Data

Policy Number	Amount of Insurance	Date of Policy
	$.00	

1. Name of Insured:
   Thomas P. Lyons and Desiree J. Lyons

2. The estate or interest in the land which is encumbered by the insured mortgage/deed of trust is: ***Fee Simple***

3. Title to the estate or interest in the land is vested in:

   Thomas P. Lyons and Desiree J. Lyons

4. The land referred to in this policy is located in the ***City of Myrtle Beach, County of Horry***, State of ***South Carolina***, and described as follows:

   All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005 and recorded November 3, 2005 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy No. *P 019073*

EXCEPTIONS FROM COVERAGE

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

1. Those taxes and special assessments which become due and payable subsequent to Date of Policy.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. All matters and facts, including, but not limited to, discrepancies, encroachments, overlaps, boundary line disputes, shortage in area, which would be disclosed by a correct survey or inspection of the premises, and where a survey is made, the surveyor is the agent and employee of the Insured and Insured must look to surveyor for protection in respect to these matters..
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Rights, if any, of the public to sue as a public beach or recreations area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used are form the upper land private areas.
8. Subject to perpetual Right-of-Way and Easement granted by William D. Parker and Geraldine M. Parker to Grand Strand Water and Sewer Authority dated June 24, 2000, and recorded August 12, 2000, in Deed Book 2289 at Page 524, Horry County Records.
9. Taxes for the year 2006 and all subsequent years not yet due and payable.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

N. DAVID DURANT

By _____
Authorized Officer or Agent

INCLUDED IN AND FORMING PART OF THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE OWNER'S POLICY NO. P 019073

EXHIBIT F

3 - 7245 (Cape Fear R. - Winyah Bay W.W.) 42/4

AUG 2 R 1932

:42

THE STATE OF SOUTH CAROLINA)
: DEED TO RIGHTS OF WAY
COUNTY OF HORRY)

WHEREAS, in the River and Harbor Act of Congress, approved July 3, 1930, provision was made for the construction of that section between Cape Fear River and Winyah Bay of the intracoastal waterway from Cape Fear River, North Carolina to St. Johns River, Florida, in accordance with a project set forth in House Document No. 41, seventy-first Congress, first session, subject to the condition, among others, that local interests shall furnish, free of cost to the United States, rights of way of sufficient width for the canal prism and the disposal of spoil therefrom; and

WHEREAS, at the session of the General Assembly of the State of South Carolina for the year 1931, an Act was passed "to Provide a Right-of-way for the United States Government for the Inland Waterway from the North Carolina-South Carolina State line at Little River to Winyah Bay, by Donation, Purchase or Condemnation; Including the Creation of the South Carolina Inland Waterway Commission, and Defining its Powers and Duties", said Act being Act #163 of Acts and Joint Resolutions of the General Assembly of the State of South Carolina passed at the regular session of 1931, and

WHEREAS, under and by virtue of said Act the South Carolina Inland Waterway Commission was created and has secured by donation, purchase or condemnation rights of way over and across the tracts of land hereinafter described for purposes of construction of a canal to be and form a part of the Intracoastal waterway and/or for the disposal of spoil incident to the construction of said

Waterway, Little River, South Carolina to Winyah Bay, South Carolina, Horry County", dated May 20, 1931, and revised September 8, 1931 on file in the office of the United States Engineer, Charleston, S. C., and

WHEREAS, under and by virtue of the terms of the aforesaid Act the Governor and the Secretary of State of the State of South Carolina are authorized and directed to execute a deed for such rights and easements to the United States,

N O W, THEREFORE, KNOW ALL MEN BY THESE PRESENTS That the undersigned Ibra C. Blackwood as Governor of the State of South Carolina, and W. P. Blackwell as Secretary of State of the State of South Carolina, acting for and in behalf of said State, and under and by virtue of authority conferred by the aforesaid act and all other laws of force applicable to this conveyance, for and in consideration of the foregoing premises and the further sum of One Dollar paid to the State of South Carolina by the United States, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto the United States, its successors and assigns, the perpetual right and easement to enter upon, excavate, cut away and remove any and all of the tracts hereinafter described as composing a part of the canal prism, as may be required at any time for construction and maintenance of the said Inland Waterway, or any enlargement thereof, and to maintain the portion so excavated and the channel thereby created as a part of the navigable waters of the United States; and the further perpetual right and easement to enter upon, occupy and use any portion of the tracts hereinafter described as composing a part of the spoil disposal area, not so cut away and

said Inland Waterway; reserving, however, to the grantor, its successors and assigns, and to those from whom the grantor has acquired title, his, her, its or their heirs, successors and assigns, all such rights and privileges in said tracts of land as may be used and enjoyed without interfering with or abridging the rights and easements hereby conveyed.

And the grantor hereby gives and grants to the grantee, its successors and assigns, the perpetual right and privilege to deposit on the tracts hereinafter described as spoil disposal area, or any portion thereof, any and all spoil or other material excavated in construction and maintenance of the aforesaid waterway and its appurtenances.

The grantor does hereby waive and release the grantee, its successors and assigns and its or their officers, agents, servants, and contractors from any and all claims for damages which may result from the construction and maintenance of the waterway and the deposit of spoil or other matter as hereinbefore stated; this waiver and release of damages being intended as a continuing covenant which shall run with the land and be binding upon the grantor and on its successors and assigns.

The following tracts are shown and designated as "Canal Prism" on the map above referred to:

2A, 3A, 7A, 8A, 9A, 10A, 10B, 10C, 11A, 11B, 12A, 12B, 12C, 12D, 12-1A, 13A, 14A, 15A, 16A, 17A, 18A, 21A, 22A, 23A, 24A, 30A, 32A, 32B, 33A, 34A, 35A, 36A, 37A, 38A, 42A, 43A, 44A, 45A, 47A, 48A, 50A, 51A, 52A, 53A, 54A, 56A, 58A, 59A, 63A, 64A, 65A, 66A, 67A, 68A, 69A, 71A, 72A, 73A, 74A, 75A, 77A, 79A, 80A, 81A, 82A, 88A, 90-1A, 90-1B, 90A, 90B, 90C, 90D, 90E, 91A, 91B, 92A, 93A, 94A, 96A, 97A, 97B, 98A, 99A, 100A, 103A, 103B, 104A, 105A, 106A, 108A, 108B, 111A, 112A, 113A, 114A, 115A, 116A, 117A, 118A, 119A, 121A, 122A, 125A, 127A, 127B, 127C, 128A, 129A, 129B, 130A, 131A, 131-1A, 132A, 132B, 133A, 133B, 133C

The following tracts are represented as "Spoil Disposal Area" on the map above referred to:

2, 3, 4, 5, 6, 7, 8, 9, 9-1, 10, 10-1, 12, 12-1, 13, 14,
15, 16, 17, 18, 20, 21, 21-1, 22, 23, 23-1, 24, 25,
27, 29, 30, 32, 35, 37, 38, 39, 40, 41, 42, 43, 45,
46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 58, 59, 60,
63, 64, 65, 66, 67, 68, 69, 70, 72, 73, 74, 75, 77, 79,
80, 81, 82, 86, 88, 89, 90, 90-1, 90-2, 90-3, 91, 92, 92-1,
95, 96, 97, 97-1, 97-2, 99, 99-1, 100, 101, 103, 104, 104-1,
106, 108, 111, 112, 113, 114, 117, 118, 119, 121, 122, 125,
126, 127, 128, 129, 130, 131, 131-1, 132, 133, 133-1

TO HAVE AND TO HOLD the said rights and easements unto the United States, its successors and assigns, for the purposes aforesaid forever. And the said grantor does hereby bind itself and its successors to warrant and forever defend, all and singular, the said premises unto the said grantee, its successors and assigns against itself and its successors and against every person whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hand and seal of Ibra C. Blackwood as Governor and W. P. Blackwell as Secretary of State of the State of South Carolina and the seal of said State, this 17th day of August in the year of our Lord One Thousand Nine Hundred and thirty-two, and in the One Hundred and fifty-seventh year of the Sovereignty and Independence of the United States of America.

I. C. Blackwood
As Governor of State of South Carolina

Signed, Sealed and Delivered

STATE OF SOUTH CAROLINA)
:
COUNTY OF RICHLAND)

PERSONALLY appeared before me Jannie Garrison who, being duly sworn, says that she saw the within named Ibra C. Blackwood as Governor and W. P. Blackwell as Secretary of State of the State of South Carolina, sign, affix the seal of said State and as the Act and Deed of said State deliver the within written grant of way for the uses and purposes therein mentioned, and that she with Louise B. Bryson witnessed the execution thereof.

Jannie Garrison.

Sworn to before me this
17th day of August, 1932.

Louise B. Bryson (LS)
Notary Public for S. C.

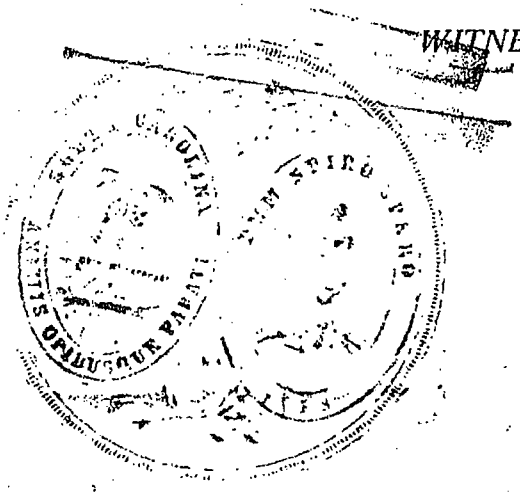
State of South Carolina

Office of Secretary of State

To Whom These Presents Come, Greeting:

KNOW YE, THAT LOUISE B. BRYSON,

whose official signature appears to the Instrument of writing hereto annexed, was, at the time of affixing the same thereto, duly appointed by the Governor, sworn and commissioned a Notary Public in and for the State of South Carolina, as appears from the records of this Department; that his attestation is in due form and that full faith and credit are due to his official acts.



WITNESS MY HAND and the Seal of the State, at Columbia, this 17th *day of* August *in the year of our Lord one thousand nine hundred* thirty two *and in the one hundred and* fifty seventh *year of Independence of the United States of America.*

Secretary of State.

BOOK 1785 PAGE 080-B

FILED

SEP 17 1932

State of South Carolina,
COUNTY OF HORRY

THE STATE OF SOUTH CAROLINA

to

THE UNITED STATES OF AMERICA

DEED TO RIGHTS-OF-WAY

Filed at 9 a.m. Sept. 17, 1932
recorded in Book H-S, p. 492

MARION A. WRIGHT
ATTORNEY AT LAW
Spivey Building
Conway, : : S. C.

EXHIBIT G

"Tri-Party" Agreement

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
THE STATE OF SOUTH CAROLINA
AND HORRY COUNTY, SOUTH CAROLINA
FOR LOCAL COOPERATION
FOR
THE ATLANTIC INTRACOASTAL WATERWAY
(HORRY COUNTY SEGMENT)

THIS AGREEMENT entered into this 8th day of December, 1983 by and between the UNITED STATES OF AMERICA (hereinafter sometimes referred to as the "Government"), represented by the Contracting Officer executing this Agreement, the STATE OF SOUTH CAROLINA acting by and through THE SOUTH CAROLINA COASTAL COUNCIL (hereinafter sometimes referred to as the "Coastal Council"), and HORRY COUNTY, SOUTH CAROLINA (hereinafter sometimes referred to as the "County").

W I T N E S S E T H T H A T:

WHEREAS, construction of the Atlantic Intracoastal Waterway, Little River to Winyah Bay (hereinafter sometimes referred to as the "Project") was authorized by the River and Harbor Act approved July 3, 1930 in accordance with House Document No. 41, 71st Congress, 1st Session; and,

WHEREAS, the above cited Act of Congress required the local sponsor to furnish without cost to the Government certain rights-of-way and easements for the construction of the Project; and,

WHEREAS, the State of South Carolina acting by and through the South Carolina Inland Waterway Commission assumed the obligation to the Government to provide the rights-of-way and easements required for the construction of the Project and further assumed the obligation to provide additional rights-of-way and easements if and when needed for the operation and maintenance of the Project; and

WHEREAS, the State of South Carolina, as local sponsor for the Project, acquired the rights-of-way and easements for the construction of the Project and conveyed these rights-of-way and easements to the Government; and,

WHEREAS, the State of South Carolina has conferred upon the South Carolina Coastal Council the responsibilities and obligations previously assumed by the South Carolina Inland Waterway Commission; and,

WHEREAS, Horry County in coordination with the Coastal Council has commenced negotiations with the Government for the reduction in size and possible change in locaton of the dredged material disposal easements situated within Horry County; and,

WHEREAS, the Government has preliminarily determined that a portion of its dredged material disposal easements are excess to Project needs and is willing to relinquish its interest in these easements provided that the County and Coastal Council agree to certain conditions hereinafter set forth; and,

WHEREAS, the County desires to assume the below mentioned responsibilities and obligations for that portion of the Project situated within Horry County and hereby represents that it has the authority and capability to furnish the designated non-Federal cooperation required for the Project and to perform and abide by the terms and conditions hereinafter provided; and,

WHEREAS, the Coastal Council hereby represents and reaffirms that it has the authority and capability to furnish the non-Federal cooperation required for the Project and to assume the performance of the terms and conditions herein after provided in the event the County fails or neglects to meet its obligations under this Agreement.

NOW THEREFORE, in consideration of the faithful performance of each party of the mutual covenants and agreements hereinafter set forth, it is mutually agreed as follows:

1. The County agrees to fulfill the requirements of non-Federal cooperation as enumerated in paragraphs a through f below for that portion of the Project situated in Horry County, South Carolina, to wit:

a. The County shall furnish without cost to the Government the dredged material disposal easements in the amount and location as provided for in Exhibit "A", attached hereto and by this reference made a part hereof. The acquisition and conveyance of said easements to the Government shall be accomplished in accordance with Exhibit "B", attached hereto and by this reference made a part hereof.

b. In the event the Government determines that dredged material has been placed on an easement site to such an extent that it becomes necessary to remove the dredged material from the easement site in order for the site to continue to be used, the County will remove said dredged material and other debris from the disposal site within 8 months of notification by the Government.

c. The County shall provide the Government and its contractors with access roads to all easement sites. The access roads shall be suitable for the County to utilize to empty the disposal areas, and shall be available for Government use at the time the disposal sites are conveyed to the Government. The County shall preserve all easement sites, including dikes and appurtenant structures, and rights-of-way in a condition so as to allow for the optimum use by the Government. The County shall protect all easement sites, including dikes and appurtenant structures and rights-of-way from damage, destruction, or encroachment by the County or third parties. The County shall promptly restore such sites to the condition aforesaid if they are determined to be unfit for use by the Government, provided, however, with the exception of

rights-of-way, the County shall not be responsible for damage or destruction to such sites caused by the Government or its contractors, or acts of God. The County shall not commit or permit any act which may interfere with the performance of any work by the Government or its contractors in connection with the use or maintenance of the easement sites.

d. In the event the Government requires additional dredged material disposal easements, the County will provide such additional disposal easements including rights-of-way to said easements, to the Government, and be responsible for all costs associated therewith.

e. The County covenants and agrees that in the event it does not possess the financial resources to meet its obligations assumed in this contract, then it will immediately take the necessary action to issue and sell general obligation bonds pledging the full faith and credit of the County, and said general obligation bonds will be in an amount sufficient to meet the obligations of the County herein.

f. The County shall hold harmless and indemnify the Government for any and all damages sustained by the Government which arise out of the negligence of the County or the County's failure to comply with the terms and conditions of this contract relative to the maintenance and use by the Government of the dredged material disposal easement sites, including dikes and appurtenant structures, or the easements for ingress and egress to said dredged material disposal easement sites.

2. a. The Coastal Council will assume and perform the obligations and responsibilities herein assumed by the County without cost to the Government in the event the County shall fail, neglect, or otherwise not perform any of the obligations and responsibilities herein set forth. In such event, the Coastal Council and the Government will cooperate in the prosecution of any judicial proceedings required to enforce this Agreement and the County shall reimburse the Coastal Council and/or the Government for all costs incurred by

reason of such default. The Government shall have the option, upon refusal of the County and/or Coastal Council, to perform the obligations in paragraph 1 above and collect from the County and/or Coastal Council the costs incurred thereby.

b. Nothing contained herein is to be construed as relieving the Coastal Council from its legal responsibilities as local sponsor for the Atlantic Intracoastal Waterway in South Carolina in its currently authorized configuration, including that portion being and situate in Horry County, South Carolina, and specifically the responsibility to provide future additional lands and easements, including dredged material disposal easements, for the operation and maintenance of the Project, and to bear all costs associated therewith.

c. The Coastal Council does hereby waive and release the Government, its successors and assigns and its or their officers, agents, servants and contractors from any and all claims for damages which may result from the operation and maintenance of the Project and the deposit of dredged material or other matter.

3. The Government shall relinquish to the County those dredged material disposal easements situated within Horry County which are determined excess to Project requirements in accordance with the terms and conditions specified in Exhibit "B". All determinations of excess are subject to the approval of the Secretary of the Army or his duly authorized representative and shall not be binding until so approved.

4. The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement and neither party is to be considered the officer, agent, or employee of the other.

5. All notices to be given pursuant to this Agreement shall be addressed, if to the County, to Horry County Administrator, P.O. Box 1236,

Conway, South Carolina 29526; if to the Coastal Council, to Executive Director, South Carolina Coastal Council, Summerall Center, 19 Hagood Avenue, Suite 802, Charleston, South Carolina 29403; or if to the Government, to District Engineer U.S. Army Corps of Engineers, Charleston, District, P.O. Box 919, Charleston, South Carolina 29402, or may from time to time be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper addressed as aforesaid and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Government.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

By _____
F. L. SMITH, JR.
LTC, Corps of Engineers
District Engineer
Contracting Officer
Date: 6 December 1983

STATE OF SOUTH CAROLINA COASTAL COUNCIL

_____
SENATOR JAMES WADDELL, CHAIRMAN
Date: 8 December 1983

HORRY COUNTY, SOUTH CAROLINA COUNTY COUNCIL

_____
LAURIE MCLEOD, CHAIRMAN
(as authorized by the attached Council resolution)
Date: 8 December 1983

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

RESOLUTION BY

HORRY COUNTY COUNCIL, SOUTH CAROLINA

BE IT HEREBY RESOLVED, that the HORRY COUNTY COUNCIL, does hereby ratify the action taken by its Chairman, LAURIE McLEOD, in executing, on behalf of Horry County, South Carolina, that certain agreement dated December 8, 1983, between the United States of America, the State of South Carolina, and Horry County, for local cooperation at the Atlantic Intracoastal Waterway (Horry County Segment).

ADOPTED AND APPROVED, on this the 10th day of January 1984.

HORRY COUNTY COUNCIL

LAURIE McLEOD, Chairman

W. G. HUCKS, JR., Vice Chairman

BRICE BLANTON, Council Member

PAUL PRINCE, Council Member

LEROY WEATHERS, Council Member

GARY STEELE, Council Member

ALTON DUNCAN, Council Member

PAUL CREEL, Council Member

JAMES FRAZIER, Council Member

ULYSSES DEWITT, Council Member

DEWEY KINSEY, Council Member

ROBERT EDGE, JR., Council Member

ATTEST:

GLADYS ALLEN
Clerk, County Council

(SEAL)

CERTIFICATE OF AUTHORITY

I, T. Travis Medlock, do hereby certify that I am the Attorney General of the State of South Carolina, that the South Carolina Coastal Council is a legally constituted public body with full authority and legal capability to perform the terms of the agreement between the United States of America and the South Carolina Coastal Council in connection with the Horry County Land Exchange, and to pay damages, if necessary, in the event of the failure to perform in accordance with Section 221 of Public Law 91-611 and that the person(s) who have executed the contract on behalf of the South Carolina Coastal Council have acted within their statutory authority.

In Witness Whereof, I have made and executed this Certificate this 2nd day of December, 1983.

(Name and Title)

CERTIFICATE OF AUTHORITY

I, John P. Henry, do hereby certify that I am the County Attorney of Horry County Council, South Carolina, that Horry County Council is a legally constituted public body with full authority and legal capability to perform the terms of the agreement between the United States of America and Horry County in connection with the Horry County Land Exchange, and to pay damages, if necessary, in the event of the failure to perform in accordance with Section 221 of Public Law 91-611 and that the person(s) who have executed the contract on behalf of the Horry County Council have acted within their statutory authority.

In Witness Whereof, I have made and executed this Certificate this _____ day of December 8, 1983.

John P. Henry
(Name and Title)

EXHIBIT A

DISPOSAL AREA REQUIREMENTS

The attached table lists the disposal area requirements based on future requirements with periodic emptying as required for Corps' use. The total area required is comprised of three elements defined as follows: Containment Area Acreage is that area required to contain the dredged material; Dike Area is that area occupied by the dike structure itself; and Setback Area is that area required to offset the dike from the property line, or the edge of the waterway, or as required for construction of drainage ditches. The containment area acreage is a fixed quantity; however, the dike area and setback area as listed in the table will vary depending on the physical characteristics of the sites proposed. The area requirements listed in the table are based on areas which are square.

Two disposal areas will be required for each reach. The average elevation shall be no higher than 12 feet (mean low water) above the elevation of the Atlantic Intracoastal Waterway, or they shall be reduced to that elevation prior to acceptance by the Government. They shall be so spaced that the maximum pumping distance is 5,000 feet.

The dikes shall be 10 feet high with a top width of 6 feet, and side slope of 3:1 outside and 2:1 inside. The setbacks are based on 75 feet on the water way side, 15 feet on one side and 30 feet on the back and remaining side for drainage.

EXHIBIT A

DISPOSAL AREA REQUIREMENTS

REACH NUMBER	INCLUSIVE STATIONS	CONTAINMENT AREA (acres)	DIKE AREA (acres)	SETBACK AREA (acres)	TOTAL AREA REQUIRED (acres)
1	55+00	16.51	4.65	3.41	24.57
1	To 100+00	16.51	4.65	3.41	24.57
					49.14
2	100+00	8.27	3.37	2.56	14.20
2	To 200+00	8.27	3.37	2.56	14.20
					28.40
3	200+00	12.40	4.07	3.02	19.49
3	To 300+00	12.40	4.07	3.02	19.49
					38.98
4	300+00	6.44	3.01	2.32	11.77
4	To 400+00	6.44	3.01	2.32	11.77
					23.54
5	400+00	5.3	2.76	2.15	10.21
5	To 500+00	5.3	2.76	2.15	10.21
					20.42
6	500+00	9.82	3.65	2.75	16.22
6	To 600+00	9.82	3.65	2.75	16.22
					32.44
7	600+00	7.72	3.27	2.49	13.48
7	To 700+00	7.72	3.27	2.49	13.48
					26.96
8	700+00	12.64	4.10	3.05	19.79
8	To 800+00	12.64	4.10	3.05	19.79
					39.58
9	800+00	9.05	1.34	2.43	12.82
9	To 900+00	9.05	1.34	2.43	12.82
					25.64
10	900+00	10.31	3.73	2.80	16.84
10	To 1000+00	10.31	3.73	2.80	16.84
					33.68
11	1000+00	13.97	4.30	3.18	21.45
11	To 1100+00	13.97	4.30	3.18	21.45
					42.90
12	1100+00	18.06	4.85	3.55	26.46
12	To 1200+00	18.06	4.85	3.55	26.46
					52.92
13	1200+00	11.87	3.99	2.97	18.83
13	To 1300+00	11.87	3.99	2.97	18.83
					37.66
14	1300+00	10.31	3.73	2.80	16.84
14	To 1400+00	10.31	3.73	2.80	16.84
					33.68
15	1400+00	8.27	3.37	2.56	14.20
15	To 1500+00	8.27	3.37	2.56	14.20
					28.40

REACH NUMBER	INCLUSIVE STATIONS	CONTAINMENT AREA (acres)	DIKE AREA (acres)	SETBACK AREA (acres)	TOTAL AREA REQUIRED (acres)
16	1500+00	4.60	2.08	1.97	8.65
16	To 1600+00	4.60	2.08	1.97	8.65
					17.30
17	1600+00	4.60	2.08	1.97	8.65
17	To 1700+00	4.60	2.08	1.97	8.65
					17.30
18	1700+00	4.60	2.08	1.97	8.65
18	To 1800+00	4.60	2.08	1.97	8.65
					17.30
19	1800+00	4.60	2.08	1.97	8.65
19	To 1900+00	4.60	2.08	1.97	8.65
					17.30
20	1900+00	4.60	2.08	1.97	8.65
20	To 2000+00	4.60	2.08	1.97	8.65
					17.30
		367.88	129.18	103.78	600.84

EXHIBIT B
U.S. ARMY CORPS OF ENGINEERS
REQUIREMENTS FOR THE
TRANSFER OF DREDGED MATERIAL DISPOSAL EASEMENTS
HORRY COUNTY, SOUTH CAROLINA
ATLANTIC INTRACOASTAL WATERWAY

I. Introduction:

The following plan has been developed for the United States to relinquish its existing disposal easements within Horry County in return for much more restrictive easements over smaller areas. All transfers of property interests will be through Horry County. Horry County will acquire fee simple interest and hold the fee simple absolute interest in the new areas and subsequently will convey the necessary easement interest in these areas to the United States.

II. Basic Requirements:

The basic real estate regulation requirements for the transfer of the disposal easement areas are as follows:

a. A declaration of excess from the Charleston District Engineer

b. Map, legal description, and title insurance policy for the easement areas to be conveyed to the United States

c. Map and legal description of the easement areas to be relinquished

d. Real Estate map depicting the acquisition and disposal parcels

e. Copy of proposed acquisition document

f. Written concurrence from the South Carolina Coastal Council

In order that the United States may be reasonably assured that its release of existing easements will not result in holding easements on substitute lands which are unsuitable in terms of environmental impacts and legal restraints, Horry County will provide the Corps with the following documents:

1. Written opinions from the South Carolina State Historical Preservation Officer and the National Park Service that the areas proposed by Horry County do not contain any significant historical or archeological resources that would prevent or restrict their use as a disposal area. Archeological surveys by the County may be required prior to obtaining these opinions.

2. Letters from the South Carolina Wildlife and Marine Resources Department and the U.S. Fish and Wildlife Service stating that the area does not contain any endangered species, critical habitat, or other fish and wildlife resources that would prohibit or restrict its use as a disposal area. Mitigation or special preparation of a site to avoid wildlife impacts will be accomplished by the County.

3. Letters from the Environmental Protection Agency and the South Carolina Department of Health and Environmental Control stating that the proposed area is suitable for dredged material disposal and that its use would not cause any foreseeable water quality problems.

4. Letter from the South Carolina Coastal Council stating that the use of the proposed areas would be consistent with the Coastal Zone Management Program.

The above letters would provide reasonable assurance that the lands proposed by Horry County for use by the Corps could actually be used in compliance with existing laws and regulations. In the event that one or more of the proposed areas cannot be used due to new laws, regulations, or

listings, Horry County, will be responsible for the acquisition of new areas of comparable size and location to replace the areas lost.

The transfer of the easement areas will proceed as follows: Each 10,000-foot reach along the waterway will be treated as a unit. Horry County will be responsible for contacting and coordinating with the individual landowners within each 10,000-foot reach. In conjunction with the individual owners, the county will select tentative disposal areas in accord with the environmental guidelines set forth above. The Charleston District Engineer will review the preliminary selections for conformance to the engineering criteria and for general acceptability from an environmental standpoint. The County will then obtain the various environmental approvals indicated above.

Once the proposed disposal areas for a particular reach have been tentatively approved by the Charleston District Engineer and once Horry County has furnished the required maps, legal descriptions, and title insurance policies to the Savannah District Real Estate Office, the Corps will then initiate action to have the specific disposal approved by the Secretary of the Army and the appropriate disposal instruments executed. When these actions have been completed, Horry County will be notified and requested to execute the instruments which will convey the new dredged material disposal easement sites to the United States. Upon delivery of these instruments to the Savannah District Real Estate Office, the Corps will furnish Horry County the disposal instruments. All instruments will then be recorded by Horry County. It will be the responsibility of Horry County to furnish the Savannah District Real Estate Office the recordation data (deed book and page number) for all instruments.

III. Specific Real Estate Requirements for Horry County:

Horry County will have the primary responsibility for providing the Corps with acceptable maps and legal descriptions for the easement areas to be disposed of and the new easement areas to be conveyed to the United States. It will also be the responsibility of Horry County to provide the Corps with acceptable title insurance policies for the new easement areas to be conveyed to the United States.

a. In order for the United States to be adequately protected with respect to its real estate interests, it is necessary that title insurance policies be procured. Title insurance policies will only be required for the new disposal easement tracts within each 10,000-foot reach. These policies must be obtained from title insurance companies which have been approved by the United States Department of Justice. The title insurance policies shall not limit the liability of the title company to a sum less than 50 percent of the reasonable value of the property. In this instance, the value of the property interest will be determined by the Corps of Engineers. If the value of the new disposal easement tract is determined to be more than $50,000, the liability of the title company may be limited to 50 percent of the first $50,000 and 25 percent of that portion of the value in excess of that amount. A separate title insurance policy will be required for each new disposal easement tract. The estimate of the value of each new disposal easement tract will be made once the Charleston District Engineer has approved all the tracts within that 10,000-foot reach. Once these values have been determined by the Corps, the required amount of each title insurance policy will be furnished to Horry County. The Savannah District Real Estate office must be furnished with acceptable title insurance policies for the new disposal easement tracts within a particular 10,000-foot reach on or before the date that the Corps notifies Horry County that the appropriate disposal instrument has been executed and is ready for delivery.

The conveyance of the new disposal easement tracts by Horry County to the United States will be by warranty deed. The conveyance of the existing disposal easement interests by the United States to Horry County will be by a quitclaim deed. There will be an administrative fee in the amount of $250 for

the disposal of the existing disposal easement interests in each 10,000-foot reach.

b. The second major item of responsibility for Horry County is the furnishing of maps and legal descriptions for the existing disposal easements and for the new disposal easement tracts within each 10,000-foot reach.

The Government has two types of property interests in and along the waterway. The first is what is known as the canal prism which primarily include the waterway channel. The second type of property interest is the dredged material disposal easement. This transfer program will generally involve the disposal easement areas (5,754 acres in Horry County).

In the acquisition and disposal of property interests of the United States, it is imperative that the legal descriptions and maps required in such transactions be as accurate as possible. A high degree of accuracy is essential in order for the conveyance of a property interest to be in conformity with applicable state law, to preclude encroachments, to properly manage Federally owned property, and, in this instance, to prevent the unintentional disposal of any of the United States' property interests within the canal prism. Consequently, the boundary lines for a portion of the existing disposal easements and the new disposal easements must be surveyed by an on-ground field survey. The survey of both areas must be performed by a land surveyor who is properly qualified and registered under the laws of the State of South Carolina (South Carolina Code Section 40-21-10, et. seq.). Based upon the data obtained from the field surveys, maps and legal descriptions of all the existing disposal easement areas and the new disposal easement areas within each 10,000-foot reach should be prepared and submitted to the Savannah District Real Estate Office for approval.

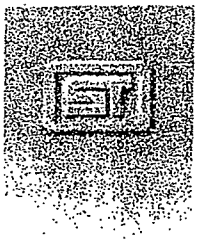
The survey of the boundary lines of the existing disposal easements and the new disposal easement tracts should not be initiated until the Charleston District Engineer has approved the location of the new disposal easement tracts for that 10,000-foot reach. When the new sites have been approved, the Savannah District Real Estate Office will advise Horry County with respect to which portion of the existing disposal easement boundary lines, if any, have to be surveyed. This determination will be based upon the location of the new disposal easement tracts in relation to the existing boundary lines. The boundary lines of the canal prism have already been surveyed and monumented by the Corps. Consequently, the extent of the survey required for the existing disposal easement boundary lines cannot be determined until the new sites have been approved. It should be emphasized that all the new disposal easement tracts will have to be surveyed and monumented.

Once the Savannah District Real Estate Office has advised Horry County as to which areas have to be surveyed, Horry County should proceed with surveying the boundary lines in accord with the following requirements. All field surveys will have a closure of 1' - 5,000'. All surveys will be tied to the South Carolina Grid System. All corners will be marked with concrete monuments. Where possible, all lines will be marked and painted. More detailed surveying instructions will be furnished Horry County prior to initiation of work.

Once the boundary lines have been surveyed, maps and legal descriptions will be prepared from the survey data. The legal descriptions, tract maps, and segment maps should be prepared in a form similar to examples furnished by the Savannah District Real Estate Office. The maps and legal descriptions should then be submitted to the Savannah District Real Estate Office for approval.

The maps and descriptions have to be furnished to the Corps before any action can be initiated to relinquish the United States disposal easement interest within a particular 10,000-foot reach.

EXHIBIT H



THE
SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

October 11, 2011

SENT VIA EMAIL TO: dhaller@hallerlawfirm.com

David K. Haller
Haller Law Firm, P.C.
115 River Landing Drive, Suite 102
Charleston, SC 29492

RE:

Property:	Lot 1 on Plat Dated 8/24/05 by Culler Land Surveying Co.
Owners:	Thomas P. Lyons and Desiree J. Lyons
Policy No.:	P019073
Policy Amount:	$100,000.00
Claim No.:	11-360

Dear Mr. Haller:

This letter is the response of The Security Title Guarantee Corporation of Baltimore ("Security Title") to your claim letter concerning the above-referenced matter and your email dated October 10, 2011 in which you stated that Mr. and Mrs. Lyons would be willing to settle the claim you submitted on their behalf for the sum of $80,000.00.

First, let me recite the facts as I understand them. By deed dated May 5, 2005, Thomas and Desiree Lyons acquired Lot 1 as shown on a map dated October 12, 1956 by S. D. Cox. Then, by deed dated October 28, 2005, Thomas and Desiree Lyons acquired a thirty-foot strip of land from McQuiddy & Johnston, LLC that was added to Lot 1 pursuant to a Reconfiguration Plat dated August 24, 2005 by Culler Land Surveying Co., Inc. ("Culler"). Subsequently, Mr. and Mrs. Lyons applied to Horry County, South Carolina for a building permit to construct a new house on the reconfigured Lot 1. Horry County denied the building permit due to its policy of only issuing building permits for the "repair, remodeling or replacement" of structures lying along the Intracoastal Waterway pursuant to Horry County Council Resolution R-143-03. Consequently, you submitted a claim under Mr. and Mrs. Lyons' title insurance policy on their behalf. Based upon the information I have received to date, your claim is denied for the reasons set forth herein.

Initially, I have provided you with a copy of the policy jacket for Mr. and Mrs. Lyons' particular policy form (you had only provided me with copies of the schedules). Please review Paragraph 1 of the Exclusions which exclude from coverage, "Governmental police power, and the existence or violation of any law or governmental regulation. This includes building and zoning ordinances and also laws and regulations concerning: land use; improvements on the Land; land division; environmental protection." Quite simply, Horry County's land use resolution is excluded from coverage by this "governmental police power" exclusion. Although this exclusion does not limit Covered Risk 13 ("You cannot use the land because use a single-family residence violates a restriction shown in Schedule B or an existing zoning law"); that Covered Risk is not applicable to Mr. and Mrs. Lyons' situation. The aforementioned

Six South Calvert Street • Baltimore, Maryland 21202-1388 • 410-727-4456 • 800-669-6063
Fax: 410-727-3252
http://www.eSecurityTitle.com

Reconfiguration Plat prepared by Culler depicts a "1 Story Dwelling" on the property. Via email dated October 10, 2011, you indicated that the referenced dwelling is a mobile home and that mobile homes are permissible along the Intracoastal Waterway. Indeeed, Horry County Resolution R-143-03 states that Horry County has had a long established policy of allowing the placement of mobile homes on properties along the Intracoastal Waterway. In that the property can be used for a residence utilizing the existing mobile home, Covered Risk 13 is not applicable, and the governmental police power exclusion operates to exclude Mr. and Mrs. Lyons' claim from coverage.

Additionally, please review Paragraph 2 of the Exceptions from Coverage on Schedule B which excepts from coverage, "Easements, or claims of easements, not shown by the public records." You provided me with a "Deed to Rights of Way" dated August 17, 1932 in which South Carolina purports to convey easements to the United States of America. This document, however, provides more questions than it does answers. Initially, the properties in this document are described pursuant to map dated May 20, 1931 which is "on file in the office of the United States Engineer, Charleston, South Carolina." As you have not provided me with a copy of that map, it is unclear as to whether Mr. and Mrs. Lyons' property is depicted on that map. One also wonders whether that legal description is sufficient to create an easement under South Carolina law. More importantly, however, is the fact that none of the documents that you have provided to me indicate when and how South Carolina acquired the easements that it purports to convey in this document. In short, I have not seen any documents whereby South Carolina acquired an easement over Lot 1 (Mr. and Mrs. Lyons' property). Accordingly, the claim to a spoil easement is not shown by the public records, and is therefore excepted from coverage. As an aside, I note that the "Deed to Rights of Way" is outside Mr. and Mrs. Lyons' chain of title, and does not impart notice on anyone searching their title.

For the reasons set forth above, your settlement offer of $80,000.00 is rejected, and Mr. and Mrs. Lyons' claim is denied. By setting forth the above grounds for denial of liability, Security Title is not waiving, but is expressly reserving, all applicable defenses to this title insurance claim. If you feel that I have misunderstood the facts of your claim, if there are additional facts that you feel should be considered, or if additional allegations are made that may bring this matter within coverage of the Policy, please contact me immediately. Security Title reserves the right to supplement this letter should additional facts be discovered and/or provided.

Sincerely,

Patrick S. Daly

Patrick S. Daly
Underwriting & Claims Counsel

10-1-12

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,)	Case No. 2012-CP-26-5222
)	
Plaintiffs,)	
)	
v.)	**ANSWER OF SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE**
)	
Lawyers Title Insurance Corporation,)	
Bobby Gene Martin, and The)	
Security Title Guarantee)	
Corporation of Baltimore,)	
)	
Defendants.)	

HORRY COUNTY
12 OCT -1 PM 1:40
MELANIE HUGGINS-WARD
CLERK OF COURT

Security Title Guarantee Corporation of Baltimore (Security Title), answering the First Amended Complaint herein, would respectfully show:

FOR A FIRST DEFENSE

1. Each and every allegation of the First Amended Complaint not hereinafter specifically admitted is denied.

FOR A SECOND DEFENSE

2. Paragraph 1 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

3. Paragraph 2 is admitted to the extent it alleges that Lawyers Title Insurance Corporation is a foreign corporation, duly licensed to conduct business in the State of South Carolina by the South Carolina Department of Insurance. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

4. Paragraph3 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

5. Paragraph 4 is admitted to the extent it alleges that Security Title is a foreign corporation duly licensed to conduct business in the State of South Carolina by the South Carolina Department of Insurance. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

6. Paragraph 5 is admitted to the extent that it alleges this court has jurisdiction over the subject matter of this action and the parties named herein and venue is proper in Horry County. To the extent any allegation in this paragraph remains unanswered, or requires a response from Security Title, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

7. Paragraph 6 is admitted.

8. Paragraph 7 is admitted to the extent it alleges the deed to the property described in paragraph 6 of the First Amended Complaint recites the amount of consideration paid by the Plaintiffs, Thomas B. and Desiree J. Lyons (the "Lyons"), as being $240,000.00. The balance of the paragraph is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

9. Paragraph 8 is admitted.

10. Paragraph 9 is admitted to the extent it alleges the deed to the Lyons from McQuiddy & Johnston, LLC, described the property thereby conveyed in accordance with the language which is quoted in this paragraph. Further responding to this paragraph, Security Title would

assert the property conveyed by McQuiddy & Johnston, LLC, on or about October 28, 2005, consisted of a tract measuring approximately thirty (30') feet by one-hundred and twenty (120') feet, formerly a portion of Lot Number 2 as shown on that certain plat dated September 2, 2005, prepared for William D. Parker, Geraldine Parker and Betty Joe Robins, by Culler Land Surveying Co., the same thereafter being recorded in the Office of the ROD for Horry County at Plat Book T-522, at Page 006 / 007. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

11. Paragraph 10 is admitted to the extent it alleges it alleges the affidavit filed in conjunction with the conveyance referenced in paragraph 9 of the First Amended Complaint recited the sum of $100,000.00, as consideration for the purchase by the Lyons of the property described in paragraph 9 of the First Amended Complaint. Further responding to this paragraph, it is admitted to the extent it alleges a subsequent corrective deed was recorded on or about January 26, 2006, in the Office of the ROD for Horry County. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

12. Paragraph 11 is admitted.

13. Paragraph 12 is admitted to the extent it alleges the Lyons purchased a Lawyers Title Insurance Corporation owner's title insurance policy. To the extent that this paragraph seeks to quote, paraphrase or characterize the Lawyers Title Insurance Corporation owner's title insurance policy, Security Title would crave reference to the policy itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the

same is denied, as Security Title lacks sufficient information upon which to form an opinion as to its truth or falsity.

14. To the extent paragraph 13 seeks to quote, paraphrase or characterize the Lawyers Title Insurance Corporation owner's title insurance policy issued to the Lyons, Security Title would crave reference to the owner's title insurance policy itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

15. Paragraph 14 is admitted to the extent it alleges that the Lyons purchased an owner's title insurance policy from Security Title. To the extent this paragraph seeks to quote, paraphrase, or characterize the owner's title insurance policy purchased by the Lyons from Security Title, Security Title would crave reference to that policy itself for its specific terms of import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

16. Responding to paragraphs 15, 16 and 17, to the extent these paragraphs seek to quote, paraphrase or characterize the owner's title insurance policy the Lyons purchased from Security Title, an Act of the Congress of the United States, or a deed dated August 17, 1932, or any other written document, Security Title would crave reference to those written documents for their specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief to form an opinion as to its truth or falsity.

17. Paragraph 18 is admitted to the extent that it alleges the document referred to as a "Deed to Rights of Way," was recorded in the Office of the ROD for Horry County on or about September 17, 1932. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

18. Paragraphs 19 and 20 are denied as Security Title lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.

19. Paragraphs 21 and 22 are admitted to the extent they allege that the property described in the First Amended Complaint as the Martin Tract and the McQuiddy Tract are within a spoil easement area. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

20. To the extent paragraph 23 seeks to quote, paraphrase or characterize a certain document dated December 8, 1982, Security Title would crave reference to that document for its specific terms and import. To the extent that any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

21. Paragraph 24 is admitted to the extent it alleges the Horry County Council adopted a resolution in 2003, that resolution bearing Resolution Number R-143-02. To the extent this paragraph seeks to quote, paraphrase, or characterize the resolution, Security Title would crave reference to the resolution itself for its specific terms and import.

22. Paragraph 25 is denied to the extent it alleges what is referred to in the First Amended Complaint as the Deed provides constructive notice of the "spoil drainage area", in that the Deed is not within the Lyons' chain of title. The balance of the paragraph is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

23. Paragraph 26 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

24. To the extent paragraph 27 seeks to quote, paraphrase or characterize the owner's title insurance policy issued by Lawyers Title Insurance Corporation, Security Title would crave reference to that document for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

25. Paragraph 28 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

26. Paragraph 29 is denied.

27. Paragraph 30 is admitted to the extent it alleges Security Title denied coverage under its owner's title insurance policy. The balance of the paragraph is denied.

28. Paragraph 31 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

29. Paragraph 32 is denied unless hereinbefore or hereinafter specifically admitted.

30. Paragraph 33 is admitted to the extent it alleges Lawyers Title Insurance Corporation issued the Lyons an owner's title insurance policy. The balance of the paragraph is denied.

31. Paragraph 34 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

32. Paragraph 35 is denied unless hereinbefore or hereinafter specifically admitted.

33. Paragraph 36 is admitted to the extent it alleges that Security Title issued the Lyons an owner's title insurance policy. The balance of the paragraph is denied.

34. Paragraph 37 is denied.

35. Paragraph 38 is denied unless hereinbefore or hereinafter specifically admitted.

36. Paragraphs 39, 40 and 41 are denied.

37. Paragraph 42 is denied unless hereinbefore or hereinafter specifically admitted.

38. Paragraphs 43, 44 and 45 are denied.

39. Paragraph 46 is denied unless hereinbefore or hereinafter specifically admitted.

40. Paragraphs 47, 48 and 49 are denied.

FOR A THIRD DEFENSE

41. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.

42. Exclusion number one of the owner's title insurance policy issued the Lyons by Security Title excludes from coverage "loss, costs, attorneys' fees and expenses resulting from [g]overnmental police power, and the existence or violation of any law or government regulation." This exclusion goes on to say that it includes "building and zoning ordinances and also laws and regulations concerning land use [and] improvements on the land...." Security Title is informed and believes that the claims set forth in the First Amended Complaint are the result of the exercise by Horry County of its police power in regard to the

enforcement of a law, regulation and/or ordinance regarding building, zoning, land use or improvements on land and therefore those claims are excluded from coverage as set forth above.

FOR A FOURTH DEFENSE

43. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.

44. The Deed, as described in the First Amended Complaint, is specifically excluded from coverage by exclusion number 3 of the title insurance policy issued the Lyons by Security Title in that it is not within the Lyons' chain-of-title and therefore did not provide constructive notice of its contents.

FOR A FIFTH DEFENSE

45. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.

46. The Plaintiffs have failed to mitigate their damages.

FOR A SIXTH DEFENSE

47. Each and every allegation contained in this answer is incorporated herein as if set forth verbatim.

48. Security Title would show that an award of punitive damages in this case would violate the 5th, 6th, and 14th Amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution.

49. Security Title would further show that even if punitive damages are awarded, and Security Title specifically denies the Plaintiffs are entitled to any such award, the amount of punitive

damages cannot exceed the amount of any actual damages, the entitlement to which Security Title also specifically denies.

FOR A SEVENTH DEFENSE

50. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.

51. The Plaintiffs claims are barred by the doctrines of waiver and estoppel.

Wherefore, having fully set forth its Answer to the First Amended Complaint, Security Title would respectfully request the First Amended Complaint be dismissed, with costs, and that the Court grant Security Title such other and further relief as the Court may deem just and proper.

CALLISON TIGHE & ROBINSON, LLC

Louis H. Lang, Esq. (SC Bar#003127)
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902
E-mail: louislang@callisontighe.com

Attorneys for Defendant, Security Title Guarantee Corporation of Baltimore

Columbia, South Carolina
September 28, 2012
G:\3000\3185.010\Pleadings\Security Title Answer.wpd

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action, dated September 28, 2012, on opposing counsel by:

☐ delivering it to him/her personally; or,

✓ mailing it to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

HORRY COUNTY
12 OCT -1 PM 1:40
MELANIE HUGGINS-WARD
CLERK OF COURT

Crystal Smith

September 28, 2012
Columbia, SC
G:\3000\3185.010\Pleadings\Security Title Answer.wpd

RECEIVED

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO.: 2012 -CP-26-5222

Lyons,)
Plaintiff,)
vs.)
Lawyers Title Insurance Corp., et al,)
Defendant.)

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED
HORRY COUNTY
12 DEC 20 PM 1:51
MELANIE WILKINS-WARD
CLERK OF COURT

Plaintiff's Attorney:	Defendant's Attorney:
Louis H. Lang, , Bar No. _____	David K. Haller, Bar No. 13411
Address:	Address:
POB 1390, Columbia, SC 29202	115 River Landing Dr., Ste. 102
Phone: 803-404-6900Fax _____	Charleston, SC 29492
E-mail: louislang@callisontighe.coOther: _____	Phone: 843-849-1384 Fax843-853-9[illegible]
	E-mail: dhaller@hallerlawfirm.comOther: _____

☒ **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: For Summary Judgment
Estimated Time Needed: 20 min 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.

D. K. Haller December 18, 2012
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☐ PAID – AMOUNT: $ _____
☐ 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, SCRCP)
☐ 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 JAB Date Filed: 12/20/12
☐ MOTION FEE COLLECTED: $ 25.00
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
Plaintiff,	)	
versus	)	**PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AGAINST DEFENDANT THE SECURITY TITLE GUARANTEE OF BALTIMORE ON THEIR DECLARATORY JUDGMENT CLAIM**
Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee of Baltimore,	)	
Defendants.	)	

FILED
HORRY COUNTY
2012 SEP 20 PM 1:51
JEANE HUGGINS-WARD
CLERK OF COURT

TO: LOUIS LANG, ESQ., ATTORNEY FOR DEFENDANT LAWYERS TITLE INSURANCE CORPORATION

YOU WILL PLEASE TAKE NOTICE that plaintiffs Thomas P. and Desiree J. Lyons will move, in ten (10) days at the Horry County Courthouse, or at such other time and place as the court deems proper, for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, granting them judgment as a matter of law on their claim for declaratory relief against defendant The Security Title Guarantee of Baltimore. Specifically, plaintiffs are entitled to judgment in their favor that: 1) as a matter of law, the plaintiffs' claims are covered under the title policy at issue here, and 2) defendant is required to pay the entire amount of the policy to the plaintiffs, plus interest, immediately. See *Whitlock v. Stewart Title Guarantee Company*, Slip Op. No. 27169, Shearouse Adv. Sheets No. 32, September 12, 2012. Plaintiffs do not seek summary judgment on their bad faith failure to pay claims at this time.

Plaintiffs support this motion on the pleadings and exhibits on file, the discovery responses of the defendant attached hereto, and such other record as may be made before the hearing on this motion.

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM. P.C.



David K. Haller, Esquire
115 River Landing Drive, Suite 102
Charleston, SC 29492
Telephone: (843) 849-1384
Fax: (843) 853-9377
Attorney for the Plaintiffs

Charleston, South Carolina

December 18th, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,	)	Case No. 2012-CP-26-5222
Plaintiffs,	)	
vs.	)	THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE'S RESPONSES TO PLAINTIFFS' FIRST REQUESTS FOR ADMISSION
Lawyers Title Insurance Corporation; Bobby Gene Martin; and The Security Title Guarantee Corporation of Baltimore,	)	
Defendants.	)	

TO: DAVID K. HALLER, ESQ., COUNSEL FOR PLAINTIFFS AND PLAINTIFFS:

1. On May 5, 2005, plaintiffs purchased for cash a portion of a lot identified as TMS #179-20-02-002, located on John Henry Lane in Myrtle Beach, South Carolina (hereinafter "the lot").

RESPONSE: Admitted.

2. The lot borders the Intracoastal Waterway.

RESPONSE: Admitted.

3. Plaintiffs purchased an owner's title insurance policy from Security Title Guaranty Corporation of Baltimore (hereinafter "Security Title") at closing for the face amount of $100,000.00.

RESPONSE: Admitted.

4. The policy attached hereto as Exhibit A is a true and correct copy of the policy purchased by the plaintiffs from Security Title covering the lot.

RESPONSE: Admitted.

5. Security Title is the drafter of the policy attached hereto as Exhibit A.

RESPONSE: Denied.

6. In or about May of 2011, the plaintiffs went to the Horry County Building Department to begin the process of obtaining a building permit to construct a home on the property.

RESPONSE: Security Title can neither admit nor deny this Request for Admission at this time. It has not yet deposed the Plaintiffs..

7. In the process of trying to obtain a building permit to build a home on the property, plaintiffs learned that the United States Army Corps of Engineers had a spoilage easement on the property for dredging the Intracoastal Waterway.

RESPONSE: *See* Response to Request for Admission Number 6.

8. The United States Army Corp of Engineer's spoilage easement had been on the lot identified as TMS # 179-20-02-001 since the 1930s.

RESPONSE: Admitted.

9. In the process of trying to obtain a building permit to build a home on the property, plaintiffs learned that Horry County Resolution R-143-03 had been in existence since 2003.

RESPONSE: *See* Response to Request for Admission Number 6..

10. Horry County Resolution R-143-3 only allowed the issuance of building permits in the area for repair, remodeling, and replacement of existing structures, but continued the County's previous policy not to otherwise allow building permits.

RESPONSE: Admitted.

11. The United States Army Corp of Engineer's spoilage easement was on the lot at the time the policy was issued.

RESPONSE: Admitted.

12. Horry County Resolution R-143-3 was in effect at the time the title policy was issued.

RESPONSE: Admitted.

13. On October 10, 2011, Plaintiffs offered to accept from Security Title $80,000.00 to settle the claim plaintiff's made against the policy.

RESPONSE: Admitted.

14. The title policy attached hereto as Exhibit B is identical to the policy issued by you to the plaintiffs.

RESPONSE: Denied.

CALLISON TIGHE & ROBINSON, LLC

Louis H. Lang, Esq. (Fed ID#240)
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902
E-mail: louislang@callisontighe.com

ATTORNEYS FOR SECURITY TITLE
GUARANTEE CORP. OF BALTIMORE

Columbia, South Carolina
December 7, 2012

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action, dated December 7, 2012, on Plaintiffs by:

☐ delivering it to him/her personally; or,

☑ mailing it to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

Crystal Smith

December 7, 2012
Columbia, South Carolina
G:\3000\3185.010\Discovery\Responses to Plaintiff's RFA.001.wpd

EXHIBIT B

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,)	Case No. 2012-CP-26-5222
)	
Plaintiffs,)	
vs.)	THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE'S ANSWERS TO PLAINTIFFS' FIRST SET OF INTERROGATORIES
)	
Lawyers Title Insurance Corporation; Bobby Gene Martin; and The Security Title Guarantee Corporation of Baltimore,)	
)	
Defendants.)	
)	

TO: DAVID K. HALLER, ESQ., COUNSEL FOR PLAINTIFFS AND PLAINTIFFS:

1. Give the names and addresses of persons known to the party or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

A. **All witnesses identified by the Plaintiffs.**

B. **Patrick S. Daly, Esq., Underwriting and Claims Counsel, Security Title Guarantee Corporation of Baltimore (Security Title), Six South Calvert St., Baltimore, MD 21202-1388.**

C. **N. David Durant, Esq., 1801 Glensbay Rd., PO Box 14722, Surfside Beach, SC 29587.**

D. **H. J. Haar, Esq., 820 Surfside Dr., Surfside Beach, SC 29587.**

E. **Kirk McQuiddy, c/o H.J. Haar, Esq.**

F. **Bobby Jordan, Remax - By the Sea, 4905 - C Hwy. 17 ByPass, Murrells Inlet, SC 29576.**

G. **Representative of Coastal Paralegal Services, LLC, 204 Elm St., Ste. 100, Conway, SC 29526.**

H. **Bobby Gene Martin, Defendant, address unknown.**

No written or recorded statements have been taken from any of these witnesses.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or the defense in this case.

ANSWER: ***See* responses to Plaintiffs' First Request for Production of Documents and Things, which are served herewith.**

3. Set forth the names and addresses of all insurance companies that have liability insurance coverage relating to the claim and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

ANSWER: **Security Title: The owners title insurance policy issued by this Defendant is included in the documents which are produced pursuant to the Plaintiffs' First Request for Production of Documents and Things. In addition, a copy of that policy is attached to the Amended Complaint.**

4. Identify the name, address, and phone number of any expert witness whom the defendants propose to use as a witness at the trial of the case and for each expert state in detail:

a. the expert's qualifications to testify;

b. a description of the subject matter on which each such expert is expected to testify;

c. identification of the documents on which each such expert is expected to rely and testify;

d. a detailed summary of the opinions and conclusions of each such expert;

e. a summary of the grounds for each such opinion and conclusion;

f. list the caption, jurisdiction, year of filing and attorneys for plaintiff(s) and defendant(s) in any civil action in which the expert has given court or deposition testimony.

ANSWER: **Security Title has yet to identify an expert witness or witnesses whom it would propose to call as a witness at the trial of this cased. When and if such an identification is made, this response will be supplemented.**

5. For each person known to the party or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER:

A. **Patrick S. Daly, Esq., was the underwriting and claims counsel who responded to the claim of the Plaintiffs on behalf of Security Title. He will testify as to his evaluation of that claim, and his response.**

B. **N. David Durant, Esq., was the closing attorney who closed the transaction which resulted in the issuance of the Security Title title insurance policy. He will testify as to that closing.**

C. **H. J. Haar, Esq., was the attorney who represented the seller in regard to the transaction closed by M. David Durant, Esq., referred to above. He will testify regarding his knowledge of that transaction.**

D. **Kirk McQuiddy, is, on information and belief, a principal of McQuiddy & Associates, LLC, the Grantor in regard to the transaction referenced above.**

E. **Bobby Jordan is, on information and belief, the real estate agent who was involved in the transaction referenced above.**

F. **Coastal Paralegal Services, LLC, produced a title abstract in regard to the real estate transaction referenced above. On information and belief, a representative of Coastal Paralegal Services, LLC, will testify as to its title abstract.**

G. **Bobby Gene Martin, is a Defendant in the above-referenced matter, and was the Grantor in regard to the adjacent property, which closed in and around the time of the real estate transaction referenced above.**

6. If you claim any person or entity other than the defendant is liable for or obligated to the plaintiff for the claims in the plaintiffs' complaint, state the name, address and telephone number of the person or entity who you claim is so obligated and state the factual and legal basis for your claim.

ANSWER: **Security Title does not so claim at this time.**

7. If you have made a claim for the sums you demand in this action to any third party or have collected sums from any third party for the sums you demand in this action, state the name, address and telephone number of the contact, the type of claim made, and the amounts you have either demanded or received from the same.

ANSWER: **Not applicable.**

8. If you denied or qualified your answer to Request for Admission Number 1 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

9. If you denied or qualified your answer to Request for Admission Number 2 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

10. If you denied or qualified your answer to Request for Admission Number 3 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

11. If you denied or qualified your answer to Request for Admission Number 4 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

12. If you denied or qualified your answer to Request for Admission Number 5 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: **Security Title was not the drafter of the substantive provisions of the policy attached as Exhibit A to the Plaintiffs' Requests for Admission. The substantive provisions of that policy were drafted by the American Land Title Association**

(ALTA) and are commonly referred to as an ALTA Residential Title Insurance Policy (6-1-87) adopted by the ALTA. The ALTA Residential Title Insurance Policy (6-1-87), was reformated somewhat to conform with other title insurance policies issued by Security Title and in the form of the policy attached as Exhibit A to the Plaintiffs' Request for Admission was approved for issuance by or on behalf of Security Title in the State of South Carolina by the South Carolina Department of Insurance.

13. If you denied or qualified your answer to Request for Admission Number 6 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: **Security Title has not deposed either of the Plaintiffs, and, therefore, can neither admit nor deny this Request for Admission at present.**

14. If you denied or qualified your answer to Request for Admission Number 7 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: ***See* response to Request for Admission Number 13.**

15. If you denied or qualified your answer to Request for Admission Number 8 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

16. If you denied or qualified your answer to Request for Admission Number 9 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: ***See*** **response to Request for Admission Number 13.**

17. If you denied or qualified your answer to Request for Admission Number 10 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

18. If you denied or qualified your answer to Request for Admission Number 11 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

19. If you denied or qualified your answer to Request for Admission Number 12 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

20. If you denied or qualified your answer to Request for Admission Number 13 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: Not applicable.

21. If you denied or qualified your answer to Request for Admission Number 14 served on your contemporaneously herewith, state each and every fact in support of your denials or qualifications.

ANSWER: **The title insurance policy attached as Exhibit B to the Requests for Admission was issued on behalf of Stewart Title Guaranty Company and is not identical to the policy issued by Security Title to the Plaintiffs. Schedules A and B of Exhibit B are not identical as they provide different dates of policy, property descriptions, policy amounts, names of insureds, policy numbers, agent file numbers, premium amounts, exceptions and the like. Exhibit B is in a different format than the title insurance policy issued by Security Title in regard to the subject transaction.**

CALLISON TIGHE & ROBINSON, LLC

Louis H. Lang, Esq. (Fed ID#240)
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902
E-mail: louislang@callisontighe.com

ATTORNEYS FOR SECURITY TITLE
GUARANTEE CORP. OF BALTIMORE

Columbia, South Carolina
December 7, 2012

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action, dated December 7, 2012, on Plaintiffs by:

☐ delivering it to him/her personally; or,

☑ mailing it to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

Crystal Smith

December 7, 2012
Columbia, South Carolina
G:\3000\3185.010\Discovery\Answers to Plaintiffs' Ints.001.wpd

CERTIFICATE OF SERVICE

I certify that this day I served true and correct copies of the foregoing Plaintiffs' Motion for Partial Summary Judgment against The Security Title Guarantee of Baltimore on Their Declaratory Judgment Claim via U.S. Mail addressed to counsel of record as follows:

Louis H. Lang, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street
P.O. Box 1390
Columbia, SC 29201-1390

David K. Haller

December 18, 2012

HORRY COUNTY
12 DEC 20 PM 1:51
MELANIE HUGGINS-WARD
CLERK OF COURT

5-7-13

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,)	Case No. 2012-CP-26-5222
Plaintiffs,)	**RETURN OF THE DEFENDANTS, FIDELITY NATIONAL TITLE INS. CO. AS SUCCESSOR BY MERGER TO LAWYERS TITLE INS. CORP. AND THE SECURITY TITLE INS. CORP. OF BALTIMORE TO PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT**
v.)	
Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,)	
Defendants.)	

HORRY COUNTY
13 MAY -7 PM 1:39
MELANIE HIGGINS-WARD
CLERK OF COURT

Fidelity National Title Ins. Co. (Fidelity), as successor by merger to Lawyers Title Ins. Corporation and The Security Title Guarantee Corp. of Baltimore (Security Title), through its undersigned counsel, respectfully submits the following return to the plaintiffs' motion for partial summary judgment.

I. PARTIES AND PROPERTY

The plaintiffs are Thomas P. and Desiree J. Lyons (Lyons). The defendants are Fidelity and Security Title. Bobby Gene Martin (Martin) is also a defendant and cross-claim defendant. Mr. Martin was just served in March of 2013 with both the summons and complaint and the cross-claim, which was asserted against him by Fidelity.[1]

[1] The Lyons' assert a breach of Martin's deed warranties and Fidelity alleges a claim for equitable indemnification.

The property involved is described generally as lot 1 on a plat entitled Reconfiguration Plat of Lots 1, 2, 2A and 3 of the R.C. Bellamy Subdivision. The reconfiguration accomplished by this plat added an approximate 30 foot by 120 foot portion of the adjacent lot 2 to lot 1.

Plaintiffs' property was conveyed in two transactions occurring in May and October 2005. In May, for the stated consideration of $240,000.00, Martin conveyed what was formerly lot 1and in November a different grantor who is not a party and for the stated consideration of $100,000.00, conveyed the 30 by 120 foot portion of lot 2.

In conjunction with the first transaction Fidelity issued plaintiffs an owners title insurance policy in the fact amount of $240,000.00, and in the second transaction Security Title issued plaintiffs an owners title insurance policy in the amount of $100,000.00.

II. CAUSES OF ACTION

Plaintiffs assert in their first amended complaint their property is subject to a spoils easement in favor of the United States Corps of Engineers to which there was no exception in either title policy. Plaintiffs' assert in May 2011 they were denied a building permit because of an Horry County policy "related to properties in the" spoil easement area.

Plaintiffs assert the following causes of action against Fidelity and Security Title; (1) breach of contract; and (2) bad faith failure to a first party insurance claim.

Fidelity and Security Title have denied the general allegations contained in the complaint and have asserted the following affirmative defenses; (1) exclusion 1 of their respective title policies which exclude "loss, costs, attorneys' fees and expenses resulting from [g]overnmental police power, the existence or violation of any law or government regulations" which also excludes "building and zoning ordinances and also laws and regulations concerning land use [and] improvements on the

land...;" (2) Fidelity has asserted a statute of limitations defense and Security Title has moved to amend its answer to include this affirmative defense; (3) failure to mitigate; (4) a constitutional defense to punitive damages and (5) waiver and estoppel. In addition and as indicated above, Fidelity has asserted a claim sounding in equitable indemnification against Martin.

III. PENDING MOTIONS

Plaintiffs seek partial summary judgment against Fidelity and Security Title in the face amount of their respective title policies based on *Whitlock v. Stewart Title Guaranty Co.*, 399 S.C. 610, 732 S.E.2d 626, 627 (2012). In addition, Fidelity and Security Title have filed motions for summary judgment or, in the alternative, partial summary judgment, addressing principally their affirmative defenses. Fidelity and Security Title respectfully submit all summary judgment motions should be heard together and, therefore, submit the hearing on plaintiffs' motion should be continued to accomplish this.

IV. ARGUMENT

A. Rule 7(b).

SCRCP, Rule 7(b) requires motions to state "with particularity the grounds therefore...." Plaintiffs motion sets forth neither facts nor argument, it simply states the relief sought. Fidelity and Security Title respectfully submit plaintiffs' motion should be denied on this basis.

B. Rule 56.

Under South Carolina law, "[i]n order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence." *Turner v. Milliman*, 392 S.C. 116, 122, 708 S.E.2d 766, 769 (2011). The South Carolina Supreme Court has defines the word "scintilla" as a "gleam," a

"glimmer," a "spark," the "least particle," and the "smallest trace." *Beathea v. Floyd,* 177 S.C. 521, 181 S.E. 721, 724 (1935), (citation omitted).

Fidelity and Security Title submit there is more than a "mere scintilla" of evidence present sufficient to deny plaintiffs' motion.

C. *Disputed facts - Horry County Resolution not a covered matter.*

On or about November 4, 2003, the Horry County Council adopted Resolution R-143-03, (Resolution) which provided as follows:

> Horry County Council resolves to authorize the issuance of building permits to repair, remodel or replace existing structures within the spoil easements along the Intercostal Waterway, but to otherwise continue the policy of denying building permits in this area. Mobile homes within the spoil area may only be replaced with mobile homes.

Plaintiffs assert Horry County denied them a building permit to construct a residence on the property because of the Resolution.

Title insurance indemnifies against loss from defects, liens, or encumbrances affecting title. The asserted refusal of Horry County to issue plaintiff a building permit is not a matter affecting title. *Elysian Inv. Group, LLC v. Stewart Title Guar. Co.,* 105 Cal. App. 4th 315, 129 Cal. Rptr. 2d 372 (2002). In *Elysian,* recorded on the public land records was a notice from the Department of Building and Safety to the effect the premises located on the property was substandard and subject to forced removal. There was no exception in the title policy for this notice. The court nevertheless granted the title insurance company summary judgment holding the notice did not affect title to the property, only its use. *See also Haw River Land & Timber Co., Inc. v. Lawyers Title Ins. Corp.,* 152 F.3d 275, 278 (4th Cir. 1998)(applying North Carolina law, and cited with approval in *Shea Homes, LLC v. Old Republic Nat. Title Ins. Co.,* 2007 WL 3334210 (W.D. N.C. 2007) ("...[T]itle to

property does not characterize the property as valuable, merchantable or even usable...."); *McMaster v. Strickland,* 305 S.C. 527, 530, 409 S.E.2d 440, 442 (Ct. App. 1991) ("While the purchaser may not be able to use the property for the purpose for which he sought [because of a wetlands determination], such does not mean the sellers cannot deliver marketable title.").

The same analysis applies here - the asserted refusal of Horry County to issue plaintiffs a building permit does not affect their title to the property, only its use.

Plaintiffs' motion, therefore, should be denied.

D. Disputed facts - Exclusion 1 to the title policies.

Exclusion number 1 of the policy excludes from coverage "loss, costs, attorneys' fees, and expenses resulting from [g]overnmental police power, and the existence or violation of any law or government regulation." This exclusion goes on to say it excludes such matters as "building and zoning ordinances and also laws and regulations concerning land use [and] improvements on the land...."

Based on the interrogatory responses of plaintiffs (which are attached hereto and marked collectively as **Exhibit "A"**), a mobile home was on the property when it was purchased, but was later removed. The Resolution does not preclude mobile homes being on the property and allows replacement.

Submitted with this Return and marked as **Exhibit "B"** is the affidavit of Patrick S. Daly, Esq., underwriting and claims counsel for Security Title in which he says the Horry County

resolution quoted above is not a "public record" as that term is defined in the title policy[2] and a mobile home is a single family residence as that term is defined in the policy.

Fidelity and Security Title respectfully submit Exclusion 1 precludes coverage and plaintiffs' motion should be denied and entitle defendants to summary judgment on plaintiffs' claims.[3]

E. Disputed facts - statute of limitation.

Fidelity has asserted a limitations defense and Security Title has moved to amend its answer to assert this affirmative defense.

On March 15, 2013, Fidelity and Security Title served a subpoena by mail the United States Army Corps. of Engineers (COE) seeking documents related to the subject property. The COE responded by e-mail on April 9, 2013, producing a number of documents related to the subject property. Two of the documents produced indicate plaintiffs knew or should have known the property was the subject of a spoils easement in favor of the COE as early as October 20, 2006. In particular, document entitled "Joint Public Notice" which was issued in conjunction with plaintiffs' application to construct a dock on their property says ".... [i]t is understood that this work will be conducted on/or adjacent to an area subject to a prism and/or disposal easement held by the United States." Further, in a letter dated March 19, 2007, address to the Lyons, in the care of the company doing the dock design work, the COE said, "... [i]t is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United

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[2] The policies issued by Fidelity and Security Title are attached to the complaint and are substantively identical.

[3] As indicated above, Fidelity and Security Title have filed motions for summary judgment.

States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of the Atlantic Intracoastal Waterway..." Attached hereto and marked collectively as **Exhibit "C"** are copies of these documents.

S.C. Code Ann. § 15-3-530(1) provides a 3 year limitations period for contract actions. This limitations period begins to run when "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 575-576, 593 S.E.2d 624, 627 (Ct. App. 2004) (citations omitted). Here, plaintiffs knew or should have known of the spoils easement as early as October 2006, more than 3 years before this action was filed. Further, any knowledge plaintiffs' agent (the company plaintiffs' engaged for their dock design) had concerning the spoil easement, would be imputed to the plaintiffs. *Crystal Ice Co. of Cola., Inc. v. The First Colonial Corp.*, 273 S.C. 306, 257 S.E.2d 496 (1979).

The Honorable Carmen T. Mullen, Circuit Judge, came to a similar conclusion in regard to a statute of limitations defense in a case captioned *Segars v. Fidelity Nat. Title Ins. Co.*, Civil Action Number 2011-CP-07-0093.[4] A copy of Judge Mullen's order is attached hereto marked as **Exhibit "D".**

The statute of limitations defenses establish more than a scintilla of evidence and, therefore, plaintiffs' motion should be denied.

F. Disputed facts - Whitlock v. Stewart Title Guar. Co..

Citing *Whitlock*, plaintiffs assert they should be granted partial summary judgment in the face amount of their Fidelity and Security Title title policies.

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[4] Judge Mullen's ruling is presently on appeal with the South Carolina Court of Appeals.

The *Whitlock* decision was the South Carolina Supreme Court's answer to a certified question posed by the federal district court in *Whitlock v. Stewart Title,* Civil Action Number 4:10-CV-01992. The question certified was as follows:

> In the case of a *partial* failure of title which is covered by an owner's title insurance policy, where the title defect cannot be removed, should the actual loss suffered by the insured as a result of that partial failure of title be measured by the *diminution* in value of the insured property as a result of the title defect as of the *date* of the purchase of the insured property, or as of the *date* of the discovery of the title defect.

Whitlock, ___ S.C. ___, 732 S.E.2d 626, 627 (2012) (Emphasis added).

In *Stanley v. Atlantic Title Ins. Co.,* 377 S.E.2d 405, 411 - 412, 661 S.E.2d 62, 65 - 66 (2008), a case cited in *Whitlock's* majority and dissenting opinions, the court said:

> Depending on the circumstances, the loss of a title's value can be measured [under a title insurance policy] in a variety of ways. For instance, an owner's loss can be the fair market value of a portion of the property which has proven completely unmarketable; the cost of removing the defect from the property; or the difference in the values of the property with and without the defect. ...
>
> ...
>
> The fact that property may be useless or may be put to only limited use does not mean that the property is not marketable. This has been recognized in South Carolina jurisprudence, most recently by the court of appeals in the case of *McMaster v. Strickland,* 305 S.C. 527, 409 S.E.2d 440 (Ct. App. 1991). In that case ... [t]he court of appeals held that there was no evidence the title was unmarketable because 'there is no evidence that the sellers do not own the property. ... [f]urther, there is no evidence it is unlawful to sell the property[.] [T]herefore, it is legally, if not actually marketable.

Citations omitted, emphasis added.

Whitlock dealt with the *date of valuation. Stanley* dealt with the *method of valuation.*[5] The date of valuation and the method of valuation of a loss resulting from a partial failure of title are related, but distinct, questions.

In this case, the spoilage easement covers plaintiffs' property. However, it has not rendered the property useless. For example and as is pointed out above and supported by plaintiffs' responses to interrogatories, a mobile home was located on the property when purchased by plaintiffs and plaintiffs have received a limited amount of income from the property by renting it for storage purposes. Plaintiff retains ownership of the property and its sale would not be unlawful. *See McMaster.*

Accordingly, of the three valuation methods suggested by *Stanley*, the difference in the values of the property with and without the spoil easement is one appropriate measure of damages . The date of valuation, in accordance with *Whitlock,* is the date of purchase.

Plaintiffs suggest they are entitled to partial summary judgment in the amount of $240,000.00 and $100,000.00, because that was the purchase price of the property and the face amount of the title insurance policies. This argument disregards *Stanley's* method of valuation. It assumes the value of the property on the date of purchase was $240,000.00 and $100,000.00, assumes the spoilage easement results in a complete failure of title (which it is not) and ignores the other half of the *Stanley* valuation equation[6] - the value of the property with the encumbrance of the spoil easement.[7]

---

[5] "*Stanley* is concerned with methodology for measuring the damages caused by a title defect which affects only a portion of the property, not with the timing of that valuation." *Whitlock* at ___, 732 S.E.2d, 629. (Pleicones, J., dissenting).

[6] The South Carolina Supreme Court's answer to the certified question cited *Stanley* with approval, it did not overrule *Stanley* in any respect. The certified question concerned the timing of the valuation of an actual loss resulting from a partial failure of title. *Stanley* concerned the

Fidelity and Security Title respectfully submit there is nothing in the South Carolina Supreme Court's opinion answering the certified question, the certified question itself, the face amount of the policies, the purchase prices of the property or the policies themselves,[8] whether considered individually, together, or in any combination, which support plaintiffs' assertion they are entitled to partial summary judgment in the amounts of $240,000.00 and $100,000.00.

Further, Fidelity and Security Title have obtained a diminution in value appraisal of the property, a portion of which is attached hereto and marked as **Exhibit "E"**. While Fidelity and Security Title deny liability under the policies, this diminution in value appraisal establishes far more than a scintilla of evidence in regard to plaintiffs' motion for partial summary judgment and, therefore, the motion should be denied.

G. Disputed facts - Failure to mitigate damages.

Fidelity and Security Title have pleaded as an affirmative defense a failure to mitigate damages.

Following their purchase of the property, plaintiffs listed the property for sale. The listing agreement ran from September 12, 2006 to September 12, 2007. During this period, plaintiffs' received one offer in the amount of $475,000.00. Precisely when this offer was made during the

---

methodology of determining such a loss.

[7] *See McMaster* at 530, 409 S.E.2d, 442. *Cf. Scalise Dev. Inc. v. Tidelands Investment, LLC,* 392 S.C. 27, 36, 707 S.E.2d 440, 445 (2011) ("Here, unlike in *McMaster*, there was evidence the Appellants did not own the portions of the Property below the mean high water mark....").

[8] The policies provide Fidelity and Security Title will pay "up to your actual loss or the Policy Amount in force when the claim is made - whichever is less."

listing period plaintiffs' could not recall, but plaintiff's rejected offer. Attached hereto and marked collectively as **Exhibit "F"** are the deposition excerpt concerning this offer.

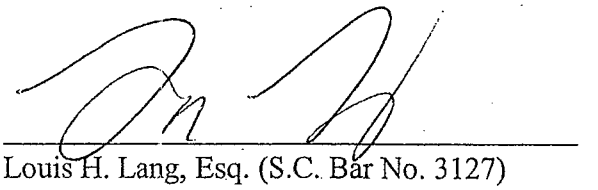
One who claims to be injured by another is required to do those things an ordinary prudent person would do under similar circumstances to avoid damages which are reasonable avoidable. *Tri-County Leasing Corp. v. Stevens, Stevens & Thomas, P.A.*, 287 S.C. 338, 338 S.E.2d 343 (Ct. App. 1985).

Here, plaintiffs had an opportunity to sell the property for $135,000.00 more than the total they paid. Rejecting the $475,000.00 offer establishes more than a scintilla of evidence in opposition to plaintiffs' motion and it, therefore, should be denied.

VI. CONCLUSION

Based on the foregoing, Fidelity and Security Title respectfully request plaintiffs motion be denied or in the alternative continued.

CALLISON TIGHE & ROBINSON, LLC



Louis H. Lang, Esq. (S.C. Bar No. 3127)
1812 Lincoln St., Ste. 200 (29201)
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902
E-mail: louislang@callisontighe.com

ATTORNEYS FOR FIDELITY NATIONAL TITLE INS. CO. AS SUCCESSOR BY MERGER TO LAWYERS TITLE INS. CORP. AND THE SECURITY TITLE GUARANTEE CORP. OF BALTIMORE.

Columbia, South Carolina
May 6, 2013
G:\5000\5320.062\Pleadings\Return to Motion for Partial Summary Judgment.wpd

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action, dated May 6, 2013, on Plaintiffs by:

☐ delivering it to him/her personally; or,

☑ mailing it to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Attorney for Plaintiffs:
David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

Attorney for Defendant, Bobby Gene Martin:
Mark A. Nappier, Esq.
Joye, Nappier & Risher, LLC
3575 Hwy. 17 Bus.
Murrells Inlet SC 29576

HORRY COUNTY
13 MAY -7 PM 1:39
MELANIE HUGGINS-WARD
CLERK OF COURT

Crystal Smith

May 6, 2013
Columbia, South Carolina

11212

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO. 2012-CP-26-5222
)	
Thomas P. and Desiree J. Lyons,)	
)	
Plaintiff,)	
)	PLAINTIFFS' RESPONSES TO
vs.)	FIRST SET OF INTERROGATORIES
)	OF THE DEFENDANT, LAWYERS
Lawyers Title Insurance Corporation;)	TITLE INSURANCE CORPORATION
Bobby Gene Martin; and The Security)	
Title Guarantee Corporation of Baltimore,)	
)	
Defendants.)	
)	

TO: LOUIS LANG, ESQ., ATTORNEY FOR THE DEFENDANTS

Plaintiffs Thomas P. and Desiree J. Lyons, reserving all rights, respond to Defendant The Security Title Guarantee Corporation of Baltimore's interrogatories as follows:

RESPONSES TO INTERROGATORIES

1. Give the names, addresses and telephone numbers of persons known to the parties or counsel to have knowledge concerning the facts of the case and indicate whether or not written or recorded statements have been taken from such persons and indicate who has possession of such statements.

ANSWER:

Cathy R. Saathoff
Fidelity National Title
6601 Frances Street
Omaha, NE 68106

Ms. Saathoff is claims counsel for Fidelity National Title and she will testify as to why Fidelity National has failed and refused to pay the Lyons' claim.

Patrick S. Daly
c/o Louis Lang, Esq.
1812 Lincoln Street
Columbia, SC 29202

EXHIBIT "A"

8. Have you ever occupied the property as your permanent residence? If so, please state, with particularity, for what period the property was so occupied as well as provide the dates the property was so occupied.

ANSWER: No.

9. At the time you purchased the subject property was there a mobile home or any other type of structure on the property? If so, please state, with particularity, what type of structure was on the property when it was purchased? If such structure is no longer on the property, please state, with particularity, when the structure was removed and why.

ANSWER: At the time of purchase, a 1969,12x60 trailer and shed were located on the property. The structures were removed because they were in disrepair and posed a nuisance.

10. Have you ever used the subject property as rental property? If so, please state, with particularity, for what period the property was so used and the rental amount charged.

ANSWER: Plaintiffs rented the property for storage of a boat and R.V. $225.00 per month for a brief time in the last year. The tenant has since vacated.

11. Please state, with particularity, when, as you allege in your complaint, you requested a building permit from Horry County in regard to the subject property.

ANSWER: On or about April 27, 2011.

12. Please state, with particularity, with whom within the Horry County government you spoke when you attempted to obtain a building permit to build a single-family residence.

ANSWER: Michael Odea.

13. At the time you attempted to obtain a building permit from Horry County, what were your plans in regard to the construction of a single family residence on the subject property?

ANSWER: Plaintiffs had designed with an architect a "stick-build" home they were ready to construct.

14. At the time you attempted to obtain a building permit Horry County, had you hired a residential homebuilder, other type of contractor, or anyone else concerning the design or construction of a house on the subject property? If so, please provide the name address and telephone number for the residential homebuilder, other type of contractor, etc.

ANSWER: The plaintiffs were interviewing contractors at the time they learned they could not obtain a building permit.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,	)	Case No. 2012-CP-26-5222
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	AFFIDAVIT OF PATRICK S. DALY, ESQ.
Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,	)	
	)	
Defendants.	)	

Patrick S. Daly, Esq., first being duly sworn, deposes and says:

1. I am an attorney, licensed to practice law in the State of Maryland. I am over the age of 18 and competent to provide the following affidavit on behalf of The Security Title Guarantee Corporation of Baltimore (Security Title). This affidavit is based on my first-hand knowledge of the events related.

2. I was admitted to practice in the State of Maryland in 1998. I have been employed by Security Title since August 23, 2010. I have been involved in handling title insurance claims since 2003. My present position at Security Title is Underwriting and Claims Counsel and I held that position during the time I was assigned to the plaintiffs' claim.

3. In evaluating plaintiffs' claim, I followed my usual procedure of reviewing the closing file, title work and the submissions of plaintiffs' lawyer. I also consulted with Security Title's South Carolina State Manager, who is a South Carolina attorney.

4. I authored the letter dated October 11, 2011, a copy of which is attached hereto, which denied plaintiffs' claim. The first basis for my denial was Exclusion 1 of the plaintiffs' title policy. Exclusion 1 excludes from coverage matters involving the exercise of governmental police power and the existence or violation of any law or governmental regulation. This exclusion includes building and zoning ordinances and laws and regulations concerning land use, improvements on land, land division and environmental protection.

5. In my opinion, Horry County Resolution R-143-03, and its affect on the subject property falls within Exclusion 1.

EXHIBIT "B"

6. Further, Covered Risk Number 13 of the title policy insures against plaintiffs' property not being able to be used as a single family residence because such use violates a restriction excepted to under the title policy or violates an existing zoning ordinance or law. The survey referenced in my October 11, 2011, letter shows a one story dwelling located on the property which counsel for the plaintiffs informed me was mobile home, a structure specifically permitted under Horry County Resolution R-143-03. I consider a mobile home to be a single family residence as that term is used in the title policy and, therefore, do not believe Covered Risk 13 as applicable to plaintiffs' claim.

7. Finally, in my opinion, Horry County Resolution R-143-03 is not a Public Record as that term is defined in the title policy.

Further the affiant sayeth not.

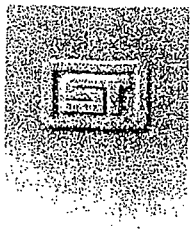
Patrick S. Daly, Esq.

Subscribed and sworn to before me
this 26th day of April, 2013.

Notary Public for the State of Maryland
My Commission Expires: May 13, 2016

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CYNTHIA HACKSHAW
Notary Public, State of Maryland
County of Baltimore
My Commission Expires May 13, 2016



THE
SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

October 11, 2011

SENT VIA EMAIL TO: dhaller@hallerlawfirm.com

David K. Haller
Haller Law Firm, P.C.
115 River Landing Drive, Suite 102
Charleston, SC 29492

RE:		
	Property:	Lot 1 on Plat Dated 8/24/05 by Culler Land Surveying Co.
	Owners:	Thomas P. Lyons and Desiree J. Lyons
	Policy No.:	P019073
	Policy Amount:	$100,000.00
	Claim No.:	11-360

Dear Mr. Haller:

This letter is the response of The Security Title Guarantee Corporation of Baltimore ("Security Title") to your claim letter concerning the above-referenced matter and your email dated October 10, 2011 in which you stated that Mr. and Mrs. Lyons would be willing to settle the claim you submitted on their behalf for the sum of $80,000.00.

First, let me recite the facts as I understand them. By deed dated May 5, 2005, Thomas and Desiree Lyons acquired Lot 1 as shown on a map dated October 12, 1956 by S. D. Cox. Then, by deed dated October 28, 2005, Thomas and Desiree Lyons acquired a thirty-foot strip of land from McQuiddy & Johnston, LLC that was added to Lot 1 pursuant to a Reconfiguration Plat dated August 24, 2005 by Culler Land Surveying Co., Inc. ("Culler"). Subsequently, Mr. and Mrs. Lyons applied to Horry County, South Carolina for a building permit to construct a new house on the reconfigured Lot 1. Horry County denied the building permit due to its policy of only issuing building permits for the "repair, remodeling or replacement" of structures lying along the Intracoastal Waterway pursuant to Horry County Council Resolution R-143-03. Consequently, you submitted a claim under Mr. and Mrs. Lyons' title insurance policy on their behalf. Based upon the information I have received to date, your claim is denied for the reasons set forth herein.

Initially, I have provided you with a copy of the policy jacket for Mr. and Mrs. Lyons' particular policy form (you had only provided me with copies of the schedules). Please review Paragraph 1 of the Exclusions which exclude from coverage, "Governmental police power, and the existence or violation of any law or governmental regulation. This includes building and zoning ordinances and also laws and regulations concerning: land use; improvements on the Land; land division; environmental protection." Quite simply, Horry County's land use resolution is excluded from coverage by this "governmental police power" exclusion. Although this exclusion does not limit Covered Risk 13 ("You cannot use the land because use a single-family residence violates a restriction shown in Schedule B or an existing zoning law"); that Covered Risk is not applicable to Mr. and Mrs. Lyons' situation. The aforementioned

Six South Calvert Street • Baltimore, Maryland 21202-1388 • 410-727-4456 • 800-669-6063
Fax: 410-727-3252
http://www.eSecurityTitle.com

STGC 0448

Reconfiguration Plat prepared by Culler depicts a "1 Story Dwelling" on the property. Via email dated October 10, 2011, you indicated that the referenced dwelling is a mobile home and that mobile homes are permissible along the Intracoastal Waterway. Indeeed, Horry County Resolution R-143-03 states that Horry County has had a long established policy of allowing the placement of mobile homes on properties along the Intracoastal Waterway. In that the property can be used for a residence utilizing the existing mobile home, Covered Risk 13 is not applicable, and the governmental police power exclusion operates to exclude Mr. and Mrs. Lyons' claim from coverage.

Additionally, please review Paragraph 2 of the Exceptions from Coverage on Schedule B which excepts from coverage, "Easements, or claims of easements, not shown by the public records." You provided me with a "Deed to Rights of Way" dated August 17, 1932 in which South Carolina purports to convey easements to the United States of America. This document, however, provides more questions than it does answers. Initially, the properties in this document are described pursuant to map dated May 20, 1931 which is "on file in the office of the United States Engineer, Charleston, South Carolina." As you have not provided me with a copy of that map, it is unclear as to whether Mr. and Mrs. Lyons' property is depicted on that map. One also wonders whether that legal description is sufficient to create an easement under South Carolina law. More importantly, however, is the fact that none of the documents that you have provided to me indicate when and how South Carolina acquired the easements that it purports to convey in this document. In short, I have not seen any documents whereby South Carolina acquired an easement over Lot 1 (Mr. and Mrs. Lyons' property). Accordingly, the claim to a spoil easement is not shown by the public records, and is therefore excepted from coverage. As an aside, I note that the "Deed to Rights of Way" is outside Mr. and Mrs. Lyons' chain of title, and does not impart notice on anyone searching their title.

For the reasons set forth above, your settlement offer of $80,000.00 is rejected, and Mr. and Mrs. Lyons' claim is denied. By setting forth the above grounds for denial of liability, Security Title is not waiving, but is expressly reserving, all applicable defenses to this title insurance claim. If you feel that I have misunderstood the facts of your claim, if there are additional facts that you feel should be considered, or if additional allegations are made that may bring this matter within coverage of the Policy, please contact me immediately. Security Title reserves the right to supplement this letter should additional facts be discovered and/or provided.

Sincerely,

Patrick S. Daly

Patrick S. Daly
Underwriting & Claims Counsel

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

March 19, 2007

Regulatory Division

Thomas and Desiree Lyons
c/o Reid Hilliard
11661 Highway 707
Murrells Inlet, South Carolina 29576

Dear Mr. and Ms. Lyons:

This letter is in response to a Pre-Construction Notification (PCN) dated September 25, 2006. By submittal of the PCN, you requested verification that the proposed project is authorized by Department of the Army General Permit # 2006-10-001.

The PCN contains the following identifying information for this project. The work affecting navigable waters of the United States is part of an overall project known as Lyons Dock as shown on drawing sheets 1-5 of 5 titled "Lyons Dock" and dated May 24, 2006. The work specifically consists of joining an existing 10' X 12' dock to the proposed 11' X 15' covered fixed pierhead by an irregularly shaped 56 square foot pierhead. The fixed pierhead will be partially covered by a 12' X 16' roof. A 10' X 12.5' boatlift will be constructed downstream of the pierhead. A 150' linear bulkhead will be constructed above mean high water (MHW). The project is located on Atlantic Intracoastal Waterway at lot adjacent to and east of 2340 John Henry Lane, Horry County, South Carolina.

Based on a review of the information provided, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, it appears that the activity meets the terms and conditions of Department of the Army General Permit #2006-10-001.

For this authorization to remain valid, the project must comply with the terms and conditions listed in the enclosed copy of the General Permit, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit).

2. That the structure(s) do not exceed the dimensions specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the permittee shall submit a signed letter to the Corps within 60 days following completion of the project stating that the authorized work was completed in accordance with this General Permit.

EXHIBIT "C"
208

4. That the permittee agrees to provide, as a part of the completion notification, as-built drawings which indicate all dimensions of the structure as well as the distance between the centerline of the federal channel, and the waterward edge of the authorized structure. These drawings must be prepared by a registered land surveyor and submitted within sixty (60) days of the completion of the structure. Failure to provide these drawings will result in non-compliance with the General Permit and further enforcement action will be taken.

5. It is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of the Atlantic Intracoastal Waterway. This authorization does not convey any property rights either in real estate or material or any exclusive use privileges; nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of the Atlantic Intracoastal Waterway pursuant to its easement rights.

6. It is understood and agreed that if the District Engineer determines this structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of the federal channel, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Engineer, and there shall be no entitlement to compensation from the United States for damage or injury.

7. Conveyance of this permit applies only to the structure authorized and does not authorize the construction of any permanent structure or any structure suitable for habitation or any utility leading either to permanent structures suitable for habitation or to permanent structures within the bounds of areas on which the Corps of Engineers enjoys easement rights.

8. That permittee agrees that no permanent structures, beyond those authorized by this document, will be placed on the prism easement or on any adjacent disposal easement without written approval of the District Engineer.

9. That the Secretary of the Army, representing the United States of America, hereby consents to the herein authorized facilities or structures to be located on or across easement lands vested in the United States of America for the construction and operation of the federal channel. The permittee shall not engage in any act which may interfere with or abridge the easement interests of the United States, except those specifically authorized herein.

10. That any Corps of Engineers Waterway Control Monument can not be disturbed without first notifying this office 30 days in advance. After coordination with this office, a decision will be made as to the proper steps to be taken with regard to removing and relocating the monuments(s).

In all future correspondence concerning this matter, please refer to our file number SAC 2006-2458-3GT. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Jay M. Thomas at 843-365-4239.

Respectfully,

Tina B. Hadden
Chief, Regulatory Division

Enclosures:
Permit Drawings
General Permit 2006-10-001
Customer Service Survey

Thomas/RD-NE 3/a/07
Fennel/ RD-NE 3/19/07
Hadden/RD 5/2/07

Copy Furnished:

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

JOINT
PUBLIC NOTICE

CHARLESTON DISTRICT, CORPS OF ENGINEERS
1949 Industrial Park Road, Room 110
Conway, South Carolina 29526
and
THE S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Office of Environmental Quality Control
Water Quality Certification and Wetlands Programs Section
2600 Bull Street
Columbia, South Carolina 29201

REGULATORY DIVISION
Refer to: P/N #2006-2458-3IT

20 October 2006

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the South Carolina Coastal Zone Management Act (48-39-10 et. seq.) and the S.C. Construction in Navigable Waters Permit Program (R. 19-450, et. seq., 1976 S.C. Code of Laws, as amended), an application has been submitted to the Department of the Army and the S.C. Department of Health and Environmental Control by

THOMAS and DESIREE LYONS
c/o REID HILLIARD
11661 HIGHWAY 707
MURRELLS INLET, SOUTH CAROLINA 29576

for a permit to construct a docking facility on the

ATLANTIC INTRACOASTAL WATERWAY

on the lot adjacent to and east of 2340 John Henry Lane, Horry County, South Carolina (Latitude 33.7006° N, Longitude 78.9738° W).

In order to give all interested parties an opportunity to express their views

NOTICE

is hereby given that written statements regarding the proposed work will be received by both of the above mentioned offices until

12 O'CLOCK NOON, MONDAY, NOVEMBER 20, 2006

from those interested in the activity and whose interests may be affected by the proposed work.

The proposed work consists of constructing a bulkhead, a partially covered fixed pierhead, and a boatlift. In detail, the work consists of joining an existing 10' X 12' dock to the proposed 11' X 15' covered fixed pierhead by an irregularly shaped 56 square foot pierhead. The fixed pierhead will be partially covered by a 12' X 16' roof. A 10' X 12.5' boatlift will be constructed downstream of the pierhead. A 150 linear foot bulkhead will be constructed above MHW. It is understood that this work will be conducted on/or adjacent to an area subject to a prism and/or disposal easement held by the United States. If a permit is issued, appropriate provisions will be included to ensure the interests of the Federal Government are understood. The purpose of the project is for the owner's private recreational use.

is defined in the Grant of Easement) for a dirt road. Mullis shall cause to be dismissed with prejudice the complaint filed in this matter and shall cause to be cancelled the lis pendens filed in conjunction with this matter. By her signature hereon, Mullis authorizes her attorney to execute such Stipulations of Dismissal, Consent Orders of Dismissal, Cancellations of Lis Pendens, or the like, in order to carry out this covenant.

3. **Covenants of Pulte:**

Pulte shall cause to be paid on its behalf to Mullis and Ross the Settlement Proceeds referenced above; shall execute, deliver and cause to be recorded the Grant of Easement referenced above in substantially the same form as Exhibit "A" attached hereto and shall clear and grade an approximately twelve (12) foot wide area within the Easement Area for the full length of the easement area for a road.

4. **Covenants of Ross:**

Upon receipt of the Settlement Proceeds paid by or on behalf of Pulte to Mullis and Ross; the execution, delivery and recordation in the public land records of Lancaster County the Grant of Easement in substantially the same form as is set forth in Exhibit "A" which is attached hereto and incorporated herein by reference; and the clearing and grading of an approximately twelve (12) foot wide area within the Easement Area, for the full length of the easement Ross shall cause to be dismissed the cross claim filed in this matter and shall cause to be cancelled the lis pendens filed in conjunction with this matter. By his signature hereon, Ross authorizes his

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THADDEUS F. SEGARS,

Plaintiff,

vs.

FIDELITY NATIONAL TITLE INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2011-CP-07-00938

2012 MAY 24 AM 10: 25
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER CAME ON FOR HEARING before the Honorable Carmen T. Mullen, Judge presiding over the April 25, 2012 Session of the Beaufort County Common Pleas Court upon the motion of Defendant Fidelity National Title Insurance Company to dismiss Plaintiff's Complaint pursuant to Rules 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6).

Attorney Michael Mogil entered an appearance on behalf of Plaintiff, and attorney Amy Hunt appeared on behalf of Defendant. The Court reviewed and considered the Complaint, Motions to Dismiss, authorities presented, and arguments of counsel; and the Court makes the following findings of fact and conclusions of law:

1. The title insurance policies at issue in this lawsuit were issued on June 23, 2004 (the Lot 2 Policy) and August 9, 2004 (the Lot 3 Policy).

2. The restrictions and plats of which Plaintiff complains were matters of public record prior to the issuance of the title insurance policies and are specifically referenced in the policies.

3. Plaintiff filed two prior actions against the same Defendant on July 16, 2008 (Beaufort County Case Number 2008-CP-07-2579) and August 4, 2008 (Beaufort County Case

EXHIBIT "D"

Number 2008-CP-07-2741). In these prior actions, the claims against Defendant were substantially the same as in the present action.

4. A Stipulation of Dismissal without prejudice was filed as to both of the prior actions on February 19, 2010.

5. The present action was filed on February 24, 2011.

6. The Court finds that Plaintiff discovered or should have discovered the facts underlying his Complaint at the time of the issuance of the title insurance policies, because the matters of which he now complains were matters of public record at that time. Plaintiff is not a bona fide purchaser because sufficient record notice was available as of the date of the issuance of the policies to charge him with a duty to inquire, which if pursued with due diligence, would have supplied him with knowledge of the restrictions and plats.

7. Accordingly, the Court finds that Defendant's Motion to Dismiss should be allowed, because Plaintiff's claims are all barred by the applicable statute of limitations under S.C. Code. Ann. § 15-3-530(1).

IT IS HEREBY ORDERED that the motion to dismiss is allowed as to all claims in the Complaint.

AND IT IS SO ORDERED.

The Honorable Carmen T. Mullen
Common Pleas Judge, Beaufort County

May 23, 2012
Beaufort, South Carolina

HTPL: 514126v4

[redacted]

AN APPRAISAL REPORT OF
LOT 1, JOHN HENRY LANE
INTRACOASTAL WATERWAY
MYRTLE BEACH, SC

FOR
MR. LOUIS H. LANG
CALLISON, TIGHE, AND ROBINSON, LLC
COLUMBIA, SC

AS OF
OCTOBER 28, 2005

BY
BECKHAM APPRAISAL SERVICE, LLC
MYRTLE BEACH, SC
MY FILE NO: 13-A-32

EXHIBIT "E"

BECKHAM APPRAISAL SERVICE, LLC
Real Estate Appraisers & Consultants
7700 N. Kings Hwy - Suite 101
Myrtle Beach, SC 29572

TELEPHONE (843) 449-7418
FAX (843) 449-1309

HENRY H. BECKHAM, GAA
STATE CERTIFIED
GEN. R.E. APPRAISER
S.C. LIC.#CG102

REAL ESTATE APPRAISAL SECTION
National Association of Realtors®

March 11, 2013

Mr. Louis H. Lang
Callison, Tighe, and Robinson, LLC
1812 Lincoln Street
Columbia, SC 29201

RE: My File No: 13-A-132, Lot 1, John Henry Lane, Myrtle Beach, SC, "Before and After Values", Spoil Easement Impact

At your request, I have inspected and appraised the above-referenced property and prepared the following Summary Appraisal Report. The subject property includes a .31-acre lot on the Intracoastal Waterway at 2380 John Henry Lane in the Forestbrook section of Myrtle Beach, SC. The subject property will be more particularly described within the body of this Summary Appraisal Report.

This Summary Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice For A Summary Appraisal Report. As such, it presents little discussion of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file and can be made available if needed.

The purpose of this appraisal is to make an estimate of the Market Value of the subject property described herein under two different assumptions. The first appraised value assumes that the subject property is a buildable lot and can be utilized for residential purposes, accommodating a freestanding, stick built, residential structure. The second appraisal scenario is based upon the assumption that the subject lot is located within a spoil easement, and that building regulations will not allow stick built homes, only mobile homes within such spoil areas. The effective date of the appraisal under either assumption is October 28, 2005.

GAA

As previously stated, the subject property has been valued under two different assumptions, "buildable and unbuildable". Based on the information contained in this report, it is my opinion that the difference in value for the subject property as a result of the spoilage easement can best be estimated in the amount of:

ONE HUNDRED AND EIGHTY-FIVE THOUSAND DOLLARS

($185,000)

Respectfully submitted,

BECKHAM APPRAISAL SERVICE, LLC

Henry H. Beckham, GAA
Real Estate Appraisal Section - National Association of Realtors
State Certified General Real Estate Appraiser, SC License #CG-102

QUALIFICATIONS OF HENRY H. BECKHAM

APPRAISAL CERTIFICATION AND DESIGNATION:

State Certified General Real Estate Appraiser, S. C. License #CG-102
S.C. Real Estate Broker - Lic. #6735
General Accredited Appraiser (GAA), Real Estate Appraisal Section, National Association of Realtors

EDUCATION:

B.A. Degree - Presbyterian College, Clinton, SC - 1973

APPRAISAL COURSES AND SEMINARS:

I-A Appraisal Principles	-	Appraisal Institute, 1977
I-B Basic Valuation Procedures	-	Appraisal Institute, 1977
VIII Residential Valuation	-	Appraisal Institute, 1979
C-1 Income Property App.	-	The Citadel, 1992
C-2 Advanced Inc. Prop. App.	-	The Citadel, 1992
C-3 Applied Inc. Prop. App.	-	Natl. Assoc. Realtors, 1992
Appraisal Standards & Ethics (USPAP)	-	Natl. Assoc. Realtors, 1993
320 General App. Applications	-	Appraisal Institute, 1994
Understanding Limited Appraisals (Departure Provisions)	-	Appraisal Institute, 1994
Litigation Skills	-	Appraisal Institute, 1998
Environmental Risk	-	Appraisal Institute, 1997
Standards of Professional Appraisal Practice & USPAP	-	SC R.E. App. Bd., 1999
R41-C Memorandum	-	Federal Home Loan Bank Board
Real Estate Securities and Syndication Practices	-	N. W. Center Professional Educators, Atlanta, GA

PROFESSIONAL EXPERIENCE:

S. C. Real Estate Broker since 1975
Real Estate Appraiser since 1978

1978 - 1985	-	Manager and Chief Appraiser, Myrtle Beach Office of Clyde Ratchford & Associates
1985 - 1989	-	President of Coastal Appraisal Consultants, full service appraisal firm, Myrtle Beach, SC
1989 - Present	-	Owner of Beckham Appraisal Service, LLC, Myrtle Beach, SC

Qualified as an expert witness in State and Federal Courts. Experience includes commercial, industrial, resort, and rural properties in SC, NC and GA. Commercial properties include motels, apartments, restaurants, subdivision, golf courses, and shopping centers.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO. 2012-CP-26-5222
Fidelity National Title)	DEPOSITION OF:
Ins. Co., Successor by)	Thomas P. Lyons
Merger to Lawyers Title)	
Ins. Corp. and the)	
Security Title Guarantee)	
Corporation of Baltimore.)	

Given before Elizabeth A. Beesley, Court Reporter and Notary Public, at the offices of BELLAMY RUTENBERG COPELAND & EPPS, 1000 29th Avenue North, Myrtle Beach, SC 29577, on Thursday, March 28, 2013, at 12:06 p.m.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA

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Spartanburg	Summerville	Sumter	West Columbia

A P P E A R A N C E S

ON BEHALF OF THE PLAINTIFF:
HALLER LAW FIRM, P.C.
David K. Haller, Esq.
115 River Landing Drive, Suite 102
Charleston, SC 29492
1-843-849-1384

ON BEHALF OF THE DEFENDANT:
CALLISON TIGHE
Louis H. Lang, Esq.
P.O. Box 1390
Columbia, SC 29202-1390
1-803-404-6900

Also Present: Desiree J. Lyons

A $539,000.00.

Q Right, it has the asking price. Do you know how that $539,000.00 was arrived at or do you recall?

A I guess just like fishing.

Q Let me invite your attention to the last page of Defendant's Exhibit No. 7, which does have a couple signatures on it. Well, actually three, but in particular the ones that appear above your typed name and your wife's typed name. Are those y'all's signatures?

A You mean the last page?

Q Yes, sir.

A Yes, sir.

Q Okay. I take it -- well, did you get any offers for the purchase of the property in September of '06?

A Yes. Yes, sir.

Q And what was that offer for?

A I think $475,000.00, I'm not 100% sure.

Q And how was that offer communicated to?

A The real estate called Desiree and talked to her.

Q Okay, that would be Mr. Jordan?

A Yes, sir.

Q And she told you?

A Yes, sir.

Q Did you ever talk to Mr. Jordan directly about the offer?

STATE OF SOUTH CAROLINA)
COUNTY OF GEORGETOWN)

I, Elizabeth A. Beesley, a Court Reporter and Notary Public of the State of South Carolina at Large, do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify to the truth, the whole truth and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and location therein stated; that the testimony of the witness and all objections made at the time of the examination were recorded via the voice writing method by me and were thereafter transcribed by computer-aided transcription; that the foregoing is a full, complete and true record of the testimony of the witness and of all objections made at the time of the examination; and that the witness was given an opportunity to read and correct said deposition and to subscribe the same.

Should the signature of the witness not be affixed to the deposition, the witness shall not have availed himself of the opportunity to sign or the signature has been waived.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal on April 3, 2013, at Georgetown County, South Carolina.

Elizabeth A. Beesley
Court Reporter

My commission expires: October 2, 2022

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,)	Case No. 2012-CP-26-5222
)	
Plaintiffs,)	
)	
v.)	
)	AMENDED ANSWER OF THE DEFENDANT,
Fidelity National Title Insurance)	THE SECURITY TITLE GUARANTEE CORP.
Company as successor by merger to)	OF BALTIMORE
Lawyers Title Insurance Corporation,)	
Bobby Gene Martin, and The)	
Security Title Guarantee)	
Corporation of Baltimore,)	
)	
Defendants.)	
)	

2012 MAY 14 PM 2:35
MELANIE HUGGINS-WARD
CLERK OF COURT
COUNTY

The Security Title Guarantee Corporation of Baltimore (Security Title), answering the First Amended Complaint herein, would respectfully show:

FOR A FIRST DEFENSE

1. Each and every allegation of the First Amended Complaint not hereinafter specifically admitted is denied.

FOR A SECOND DEFENSE

2. Paragraph 1 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

3. Paragraph 2 is admitted to the extent it alleges that Lawyers Title Insurance Corporation is a foreign corporation, duly licensed to conduct business in the State of South Carolina by the South Carolina Department of Insurance. To the extent any allegation in this paragraph

remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

4. Paragraph 3 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

5. Paragraph 4 is admitted to the extent it alleges that Security Title is a foreign corporation duly licensed to conduct business in the State of South Carolina by the South Carolina Department of Insurance. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

6. Paragraph 5 is admitted to the extent that it alleges this court has jurisdiction over the subject matter of this action and the parties named herein and venue is proper in Horry County. To the extent any allegation in this paragraph remains unanswered, or requires a response from Security Title, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

7. Paragraph 6 is admitted.

8. Paragraph 7 is admitted to the extent it alleges the deed to the property described in paragraph 6 of the First Amended Complaint recites the amount of consideration paid by the Plaintiffs, Thomas B. and Desiree J. Lyons (the "Lyons"), as being $240,000.00. The balance of the paragraph is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

9. Paragraph 8 is admitted.

10. Paragraph 9 is admitted to the extent it alleges the deed to the Lyons from McQuiddy & Johnston, LLC, described the property thereby conveyed in accordance with the language which is quoted in this paragraph. Further responding to this paragraph, Security Title would assert the property conveyed by McQuiddy & Johnston, LLC, on or about October 28, 2005, consisted of a tract measuring approximately thirty (30') feet by one-hundred and twenty (120') feet, formerly a portion of Lot Number 2 as shown on that certain plat dated September 2, 2005, prepared for William D. Parker, Geraldine Parker and Betty Joe Robins, by Culler Land Surveying Co., the same thereafter being recorded in the Office of the ROD for Horry County at Plat Book T-522, at Page 006 / 007. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

11. Paragraph 10 is admitted to the extent it alleges the affidavit filed in conjunction with the conveyance referenced in paragraph 9 of the First Amended Complaint recited the sum of $100,000.00, as consideration for the purchase by the Lyons of the property described in paragraph 9 of the First Amended Complaint. Further responding to this paragraph, it is admitted to the extent it alleges a subsequent corrective deed was recorded on or about January 26, 2006, in the Office of the ROD for Horry County. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

12. Paragraph 11 is admitted.

13. Paragraph 12 is admitted to the extent it alleges the Lyons purchased a Lawyers Title Insurance Corporation owner's title insurance policy. To the extent that this paragraph seeks

to quote, paraphrase or characterize the Lawyers Title Insurance Corporation owner's title insurance policy, Security Title would crave reference to the policy itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information upon which to form an opinion as to its truth or falsity.

14. To the extent paragraph 13 seeks to quote, paraphrase or characterize the Lawyers Title Insurance Corporation owner's title insurance policy issued to the Lyons, Security Title would crave reference to the owner's title insurance policy itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

15. Paragraph 14 is admitted to the extent it alleges that the Lyons purchased an owner's title insurance policy from Security Title. To the extent this paragraph seeks to quote, paraphrase, or characterize the owner's title insurance policy purchased by the Lyons from Security Title, Security Title would crave reference to that policy itself for its specific terms of import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

16. Responding to paragraphs 15, 16 and 17, to the extent these paragraphs seek to quote, paraphrase or characterize the owner's title insurance policy the Lyons purchased from Security Title, an Act of the Congress of the United States, or a deed dated August 17, 1932, or any other written document, Security Title would crave reference to those written

documents for their specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief to form an opinion as to its truth or falsity.

17. Paragraph 18 is admitted to the extent that it alleges the document referred to as a "Deed to Rights of Way," was recorded in the Office of the ROD for Horry County on or about September 17, 1932. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

18. Paragraphs 19 and 20 are denied as Security Title lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.

19. Paragraphs 21 and 22 are admitted to the extent they allege that the property described in the First Amended Complaint as the Martin Tract and the McQuiddy Tract are within a spoil easement area. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

20. To the extent paragraph 23 seeks to quote, paraphrase or characterize a certain document dated December 8, 1982, Security Title would crave reference to that document for its specific terms and import. To the extent that any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

21. Paragraph 24 is admitted to the extent it alleges the Horry County Council adopted a resolution in 2003, that resolution bearing Resolution Number R-143-02. To the extent this

paragraph seeks to quote, paraphrase, or characterize the resolution, Security Title would crave reference to the resolution itself for its specific terms and import.

22. Paragraph 25 is denied to the extent it alleges what is referred to in the First Amended Complaint as the Deed provides constructive notice of the "spoil drainage area", in that the Deed is not within the Lyons' chain of title. The balance of the paragraph is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

23. Paragraph 26 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

24. To the extent paragraph 27 seeks to quote, paraphrase or characterize the owner's title insurance policy issued by Lawyers Title Insurance Corporation, Security Title would crave reference to that document for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

25. Paragraph 28 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

26. Paragraph 29 is denied.

27. Paragraph 30 is admitted to the extent it alleges Security Title denied coverage under its owner's title insurance policy. The balance of the paragraph is denied.

28. Paragraph 31 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

29. Paragraph 32 is denied unless hereinbefore or hereinafter specifically admitted.

30. Paragraph 33 is admitted to the extent it alleges Lawyers Title Insurance Corporation issued the Lyons an owner's title insurance policy. The balance of the paragraph is denied.

31. Paragraph 34 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

32. Paragraph 35 is denied unless hereinbefore or hereinafter specifically admitted.

33. Paragraph 36 is admitted to the extent it alleges that Security Title issued the Lyons an owner's title insurance policy. The balance of the paragraph is denied.

34. Paragraph 37 is denied.

35. Paragraph 38 is denied unless hereinbefore or hereinafter specifically admitted.

36. Paragraphs 39, 40 and 41 are denied.

37. Paragraph 42 is denied unless hereinbefore or hereinafter specifically admitted.

38. Paragraphs 43, 44 and 45 are denied.

39. Paragraph 46 is denied unless hereinbefore or hereinafter specifically admitted.

40. Paragraphs 47, 48 and 49 are denied.

FOR A THIRD DEFENSE

41. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

42. Exclusion number one of the owner's title insurance policy issued to the Lyons by Security Title excludes from coverage "loss, costs, attorneys' fees and expenses resulting from [g]overnmental police power, and the existence or violation of any law or government regulation." This exclusion goes on to say that it includes "building and zoning ordinances and also laws and regulations concerning land use [and] improvements on the land...."

Security Title is informed and believes that the claims set forth in the First Amended Complaint are the result of the exercise by Horry County of its police power in regard to the enforcement of a law, regulation and/or ordinance regarding building, zoning, land use or improvements on land and therefore those claims are excluded from coverage as set forth above.

FOR A FOURTH DEFENSE

43. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

44. The Deed, as described in the First Amended Complaint, is specifically excluded from coverage by exclusion number 3 of the title insurance policy issued the Lyons by Security Title in that it is not within the Lyons' chain-of-title and therefore did not provide constructive notice of its contents.

FOR A FIFTH DEFENSE

45. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

46. The Plaintiffs have failed to mitigate their damages.

FOR A SIXTH DEFENSE

47. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

48. Security Title would show that an award of punitive damages in this case would violate the 5th, 6th, and 14th Amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution.

49. Security Title would further show that even if punitive damages are awarded, and Security Title specifically denies the Plaintiffs are entitled to any such award, the amount of punitive damages cannot exceed the amount of any actual damages, the entitlement to which Security Title also specifically denies.

FOR A SEVENTH DEFENSE

50. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

51. The Plaintiffs claims are barred by the doctrines of waiver and estoppel.

FOR AN EIGHTH DEFENSE

52. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

53. Plaintiffs' complaint is barred by the applicable statute of limitations.

Wherefore, having fully set forth its Answer to the First Amended Complaint, Security Title would respectfully request the First Amended Complaint be dismissed, with costs, and that the Court grant Security Title such other and further relief as the Court may deem just and proper.

CALLISON TIGHE & ROBINSON, LLC

Louis H. Lang, Esq. (SC Bar#003127)
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: (803) 404-6900
Facsimile: (803) 404-6902
E-mail: louislang@callisontighe.com

Attorneys for Defendant, Security Title Guarantee Corporation of Baltimore

Columbia, South Carolina
May 13, 2013
G:\3000\3185.010\Pleadings\Security Title Amended Answer.wpd

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action on opposing counsel by:

☐ delivering it to him/her personally; or,

✓ mailing it to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

Crystal Smith

May 13, 2013
Columbia, SC
G:\3000\3185.010\Pleadings\Security Title Amended Answer.wpd

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT Civil Action Number: 2012-CP-26-5222
THOMAS P. AND DESIREE J.) LYONS)) Plaintiff,)) vs.)) LAWYERS TITLE INSURANCE) CORPORATION, BOBBY GENE) MARTIN AND THE SECURITY) TITLE GUARANTEE) CORPORATION OF BALTIMORE)) Defendants.))	CERTIFICATE OF SERVICE BY MAIL

2013 MAY -7 PM 3:00
CLERK OF COURT

I, Mandie von Achen, employee of the law firm of Joye, Nappier & Risher, LLC, attorneys for the Defendant Bobby Gene Martin in the above-captioned action, certify that I have this 6th day of May, 2013, mailed a copy of the **Answer of Bobby Gene Martin to Amended Cross Claim of Defendant Fidelity National Title Insurance Company** to the Plaintiff and Co Defendant Lawyers Title Insurance Corporation, by and through their attorneys at their addresses of record, with sufficient postage attached thereto, as follows:

Louis H. Lang, Esq.
Callison Tighe
Post Office Box 1390
Columbia, South Carolina 29202

David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing D, Suite 102
Charleston, SC 29492

[SIGNATURE PAGE TO FOLLOW]

Mandie von Achen

SWORN to before me this
6th day of May, 2013

_____(L.S.)
Notary Public for South Carolina
My commission expires: 11/17/2021

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
	)	
Plaintiffs,	)	
	)	
versus	)	PLAINTIFF'S ADDITIONAL RECORD
	)	IN SUPPORT OF THEIR MOTION FOR
Fidelity National Title Ins. Co., et al.	)	SUMMARY JUDGMENT
	)	
Defendants.	)	
	)	

TO: LOUIS H. LANG, ESQ., ATTORNEY FOR THE DEFENDANTS

In support of their motions for summary judgment, the plaintiffs call the Court's attention to the Defendant's Motion for Summary Judgment and the "undisputed" facts stated therein.[1] Further, the plaintiffs ask the court to take judicial notice of the order of The Honorable R. Bryan Harwell in case number 4:10-cv-01992-RBH, *Whitlock v. Stewart Title Insurance Co.*, involving the identical facts and substantive policy as is at issue here, as shown by the Defendants' "undisputed" facts.[2] There is no genuine issue of material fact as to the plaintiffs' prayer for summary judgment.

As to the Defendants' argument relating to the statute of limitations, the contracts are instruments under seal and, hence, the statute of limitations is 20 years.[3] S.C. Code Ann. §15-3-520(b) ("Within twenty years: an action upon a sealed instrument...").

The property can only be legally used as a spoilage dump site. As a result, it is worthless and plaintiffs are entitled to a judgment against the defendants in the amount of $340,000.00, plus interest.[4]

---

[1] Pages 1-3 of the same, as served on the plaintiffs, are attached hereto as Exhibit A.
[2] Attached hereto as Exhibit B.
[3] Contracts attached hereto as Exhibits C and D.

Plaintiffs also call the Court's attention to the record on file submitted by the parties.

WHEREFORE plaintiffs pray for the relief requested herein and such other relief as the court deems just, prudent, and proper.

herein and such other relief the arbitrator finds just, prudent, and proper.

RESPECTFULLY SUBMITTED,

David K. Haller, Esquire
HALLER LAW FIRM, P.C.
115 River Landing Drive, Suite 102
Charleston, South Carolina 29492
COUNSEL FOR THE PLAINTIFFS

May 13, 2013

CERTIFICATE OF SERVICE

I certify that on 5-13-13 I caused to be (mailed) (delivered) (faxed) a true copy of the foregoing pleading(s) to each counsel of record.

Legal Assistant for (Plaintiff) (Defendant)

[4] Deposition testimony of Thomas P. Lyons, Pg. 54, ln. 6-7.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,	)	Case No. 2012-CP-26-5222
	)	
Plaintiffs,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS
	)	
Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,	)	
	)	
Defendants.	)	

TO: DAVID K. HALLER, ESQ., COUNSEL FOR THE PLAINTIFFS AND THE PLAINTIFFS:

YOU WILL PLEASE take notice that ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the defendants in the above matter, Fidelity National Title Ins. Co., as successor by merger to Lawyers Title Insurance Company (FNTIC) and The Security Title Guarantee Corporation of Baltimore (STGC) will move this Honorable Court pursuant to SCRCP, Rule 56, for an order dismissing this case with prejudice as there is no genuine issue of material fact and FNTIC and STGC are entitled to judgment as a matter of law.

FACTS

The undersigned is informed and believes that the following facts are undisputed:

The property subject to this dispute (Subject Property) is located in Horry County, South Carolina, and fronts on the Intra-Coastal Waterway. The Subject Property consists of a residential

EXHIBIT A

lot approximately three tenths of an acre in area upon which was formerly located a residence made up of a mobile home onto which a number of extensions and additions had been added over the years.

Plaintiffs purchased the property in two separate transactions. On May 5, 2005, for the stated consideration of $240,000.00, plaintiffs purchased what had been described as lot 1 on a plat of lots 1, 2 and 3 dated August 24, 1970, recorded in the public land records for Horry County. The second transaction closed on October 28, 2005 at which time and for the stated consideration of $100,000.00, plaintiffs purchased an approximate 30 by 120 foot strip of property which formerly had been a portion of adjacent lot 2 as shown on the August 24, 1970 plat. The entirety of the Subject Property, i.e., lot 1 acquired in May 2005 and the portion of lot 2 acquired in October 2005, is shown as lot 1 on a plat dated August 24, 2005 and recorded on the public land records for Horry County.

In conjunction with the first transaction, FNTIC issued the Lyons an owners title insurance policy in the amount of the purchase price and in conjunction with the second transaction, STGC issued the Lyons an owners title insurance policy in the amount of the second transaction purchase price. These policies are substantively identical.

In 1931, a predecessor-in-interest of plaintiffs conveyed to the State of South Carolina what is generally described as a spoils easement over the Subject Property and adjacent property. This easement is recorded in the land records of Horry County. The spoils easement was given so as to provide for the construction and maintenance of what became the Intra-Coastal Waterway.

On or about November 4, 2003, the Horry County Council adopted Resolution R-143-03, which provided as follows:

> Horry County Council resolves to authorize the issuance of building permits to repair, remodel or replace existing structures within the spoil easements along the Intercostal Waterway, but to otherwise continue the policy of denying building permits in this area. Mobile homes within the spoil area may only be replaced with mobile homes.

Attached hereto, marked as **Exhibit "A"** is a copy of this resolution.

Plaintiffs filed claims with FNTIC and STGC on May 19, 2011, and defendants acknowledged the claims by letter. FNTIC and STGC fully investigated the claims, reviewing the title examinations and closing files of the respective closing attorneys and considering the submissions of plaintiffs.

By letter dated September 12, 2011, while reserving its rights to further investigate the claim and to assert any exclusion or exception under its title policy, FNTIC informed counsel for plaintiffs the claim was "potentially" covered. However, prior to FNTIC taking final action on the claim, this action was filed. STGC, citing among other reasons exclusion 1 to its title policy, denied the claim by letter dated October 11, 2011.

Plaintiffs assert Horry County refused to issue them a building permit to build a residence on the subject property.

ARGUMENT

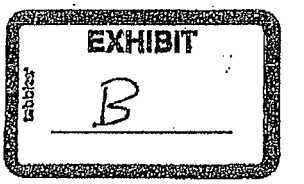
A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." SCRCP, Rule 56. In considering a summary judgment motion, the court must view the facts in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr., Inc.*, 313 S.C. 490,

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Joetta P. Whitlock, Trustee of the Joetta P. Whitlock Trust, Plaintiff, vs. Stewart Title Guaranty Company, Defendant.	Civil Action No.: 4:10-cv-01992-RBH **ORDER**

This is an action in which Plaintiff, Joetta P. Whitlock, Trustee of the Joetta P. Whitlock Trust, seeks damages against the defendant, Stewart Title Guaranty Company, for breach of contract based on an owner's title insurance policy issued by the defendant to the plaintiff. The case is before the Court on cross motions for summary judgment. A hearing was held on July 26, 2011, with appearances by Gene Connell, Jr., counsel for the plaintiff, and Louis Lang, counsel for the defendant.

The undisputed facts show that on October 30 2006 the plaintiff purchased for cash a lot located at 2330 John Henry Lane, Myrtle Beach, South Carolina for $410,000.00. The lot borders on the Intra-coastal Waterway. Plaintiff purchased an owner's title insurance policy from the defendant at closing for the face amount of $410,000, the amount of the purchase price. In January of 2010, the plaintiff went to the Horry County Building Department to begin the process of obtaining a building permit to construct a home on the property. Plaintiff learned that the United States Army Corps of Engineers had a spoilage easement on the property for dredging the Intracoastal Waterway and that the easement had been on the property since the 1930s. (*See* copy of easement at Docket Entry # 29-1). Plaintiff also learned about the existence of a county resolution (R-143-03, Docket Entry # 18-3) which had been in effect since 2003. The resolution allowed the issuance of building



permits in the area for repair, remodeling, and replacement of existing structures but continued the County's previous policy not to otherwise allow building permits. The resolution allowed mobile homes to be replaced only by mobile homes. (Docket Entry # 15-2). It is undisputed that the easement and resolution were in effect at the time the title policy was issued.

Plaintiff filed this action in state court on April 6, 2010. The defendant removed the case to this court on the basis of diversity of citizenship.

In its motion for summary judgment, Defendant Stewart Title Guaranty Company contends that the lawsuit should be dismissed because the plaintiff failed to give proper notice to the defendant of the claim[1]; that Exclusion 1 of the policy, which excludes losses from the exercise of governmental police power, bars the claim; and that the value of any loss should be measured as of the date of discovery of the title defect. Plaintiff has moved for summary judgment on liability only and contends the case presents jury issues regarding damages.

At the hearing, the Court requested additional briefing on the issue of damages. Therefore, this order pertains only to liability. An issue relating to damages will be certified to the South Carolina Supreme Court by separate order.

Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (2010). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record . . .; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce

[1] At the hearing on the cross motions for summary judgment, the defendant withdrew its motion on the basis of notice, so the Court will not discuss that ground in this order.

admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

When no genuine issue of any material fact exists, summary judgment is appropriate. *See Shealy v. Winston*, 929 F.2d 1009, 1011 (4th Cir. 1991). The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* However, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

"[O]nce the moving party has met [its] burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show that there is a genuine issue for trial." *Baber v. Hospital Corp. of Am.*, 977 F.2d 872, 874-75 (4th Cir. 1992). The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *See id.* Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits, depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. *Celotex Corp.*, 477 U.S. at 322.

ISSUE: **Does Policy Exclusion 1 exclude coverage?**

Defendant asserts that Exclusion 1 bars coverage in this case. That exclusion provides:

> In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:
> 1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
> •land use
> •improvements on the land
> •land division
> •environmental protection
> **This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.**
> **This exclusion does not limit the zoning coverage described in Items 12 and 13 of**

the covered title risks. (Emphasis added).

The "Covered Title Risks" of the policy state that the policy covers "the following title risks, if they affect your title on the Policy Date":

> "10. Someone else has an easement on your land. . . 13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law. 14. Other defects, liens or encumbrances."

The policy defines "easement" as "the right of someone else to use your land for a special purpose." It defines "public records" as title records that give constructive notice of matters affecting your title-according to the state statutes where your land is located." The policy does not define "single-family residence".

"As with contracts generally, the cardinal principle in construing insurance contracts is that the intention of the parties controls." *Poston v. National Fidelity Ins. Co.*, 303 S.C. 182, 185, 399 S.E.2d 770 (1990). Where the terms of a contract are clear and unambiguous and capable of only one reasonable interpretation, the court should construe the contract. *Hansen ex rel. Hansen v. United Services Automobile Ass'n*, 350 S.C. 62, 565 S.E.2d 114 (S.C.App. 2002). "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract. . . A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. . . Common sense and good faith are the leading touchstones of the inquiry." *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975). "Even if an ambiguity exists in a contract, extrinsic evidence may not be considered if the ambiguity is a patent ambiguity." *Beaufort County School Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 709 S.E.2d 85, 95 (Ct. App. 2011). "A patent ambiguity is one that arises upon the words of a will, deed, or contract. . . A latent ambiguity exists when there is no defect arising on the face of the instrument, but arising when attempting to apply the words of the instrument to the object or subject described . . .Interpretation of an

unambiguous policy, or a policy with a patent ambiguity is for the court." *Id.*

A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business. *Laser Supply and Services, Inc. v. Orchard Park Associates*, 676 S.E.2d 139 (S.C. App. 2009).

Insurance contracts are construed against the drafter, and in favor of coverage for the insured. *General Acc. Ins. Co. v. Safeco Ins. Companies*, 314 S.C. 63, 443 S.E. 2d 813 (Ct. App. 1994). Insurance policy exclusions are construed "most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 614 S.E.2d 611, 614 (2005). The rule that insurance contracts must be construed against the insurer applies to title insurance contracts. *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435, 174 S.E. 402 (1934). Title insurance "is designed to save (the insured) harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it." *Firstland Village Associates v. Lawyer's Title Insurance Co.*, 277 S.C.184, 284 S.E.2d 582 (1981).

Exclusion Number 1 does not apply, by its specific terms, to the situation in the case at bar. First, the exclusion provides that it does not apply to "violations or the enforcement of these matters which appear in the public records at Policy Date." It is uncontroverted that, as shown by the affidavits of the real estate attorney (Exhibit F to Docket Entry # 18) and title examiner (Exhibit E to Docket Entry # 18), the spoilage easement was of record and available for title examination in South Carolina before the issuance of this policy. *See* Docket Entry # 29-1, Deed from Julia R. Sessions to State of South Carolina, recorded November 9, 1931. Defendant argues that the Horry

County resolution, although in existence at the time of the closing, does not constitute a "public record" under state statute, citing S.C. Code Ann. § 30-7-10 (1976). Section 30-7-10 provides that all deeds, mortgages, liens, and "generally *all instruments in writing conveying an interest in real estate* required by law to be recorded in the office of the register of deeds . . .are valid so as to affect the rights of subsequent creditors . . . or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds. . . where the real property affected is situated." (Emphasis added). Plaintiff contends that a government regulation is inherently a public record and that, as a result, the policy provides coverage.

The court must construe the policy exclusion against the drafter and must also consider the purpose of the policy, read as a whole. The title policy provides broad coverage for title problems caused by zoning laws and for laws and regulations concerning land use and improvements on the land. Zoning designations are part of the "public records." *See Carolina Chloride, Inc. v. Richland County*, No. 27013, 2011 WL 3206901, at * 4 (S.C. July 25, 2011), rehearing granted, September 22, 2011 . Here, the insurance company was the drafter of the contract. It could have easily defined the term "public record" as not covering zoning laws. *See also, New England Federal Credit Union v. Stewart Title Guarantee Co.*, 171 Vt. 326, 765 A.2d 450, 456 (2000) ("Finally, we note that Stewart Title could have readily achieved the more narrow definition of public records that it seeks here simply by excluding from the definition certain locations where public records containing information about matters relating to land are maintained. . . Unlike the Stewart Title policy, however, the title insurer in [another case] added language explaining that, "without limitation, such records shall not be construed to include records in any of the offices of federal, state or local environmental protection, zoning, building, health or public safety authorities.") Therefore, the exclusion does not apply as a matter of law because the term "public record", although defined, is

patently ambiguous and should be construed as covering local zoning regulations.[2]

Additionally, Exclusion 1 states that it does not limit the zoning coverage described in Items 12 and 13 of the covered title risks. Item 13 of the covered title risks refers to zoning laws that prohibit use of the property as a single-family residence. Again, "single family residence" is not defined in the policy. Plaintiff argues that "single family residence" ordinarily means site-built homes, while Defendant argues that it also includes mobile homes. The undisputed facts are that Horry County will not allow the plaintiff to obtain a permit to build a site-built home on the property and that she has a mobile home on the property. The Court finds that the term "single-family residence" is patently ambiguous and must be construed against the drafter so as not to include a mobile home. Therefore, the plaintiff cannot use the land for a single-family residence because of the zoning law, and Exclusion 1 does not apply.

On the basis of the above, the Court finds that Exclusion Number 1 does not apply as a matter of law.

Conclusion

The Court has carefully examined the record in the case at bar and has determined that no genuine issue of material fact exists as to liability, and judgment as a matter of law for the plaintiff as to liability is appropriate. For the foregoing reasons, the undersigned grants the plaintiff's [25] Motion for Summary Judgment as to liability and denies the defendant's [15] Motion for Summary Judgment, as it pertains to liability. The Court reserves ruling on the defendant's [15] Motion for

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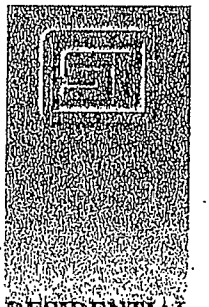
[2] Interestingly, the exceptions contained in Schedule B of the title policy exclude coverage for several matters that are not listed in the recording statute. The policy lists "2. increase or decrease in area due to rise and fall of tidewaters of the Intracoastal Waterway." It also lists rights of the State of South Carolina and the South Carolina Coastal Council as provided by statute or regulation. (Exception Numbers 3, 4, 5, and 6). It also refers to rights of the public to use the property as a public beach. (Exception 8).

Summary Judgment insofar as it relates to damages, as the Court is certifying a question to the South Carolina Supreme Court. The defendant's motion in limine (Docket Entry # 35) is taken under advisement.

AND IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Court Judge

October 3, 2011
Florence, South Carolina



POLICY NO: P

RESIDENTIAL
TITLE INSURANCE POLICY
One-To-Four Family Residences
ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A-if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in the Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount; and
- any costs, attorneys' fees and expenses we have to pay under this Policy

This Policy is not complete without Schedules A and B.

EXHIBIT
Exhibit C

ISSUED BY:

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

By _____ President

ATTEST:

By _____ Secretary

_____
Authorized Signatory

AMERICAN LAND TITLE ASSOCIATION

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RESIDENTIAL TITLE INSURANCE POLICY
One-To-Four Family Residence
ISSUED BY
THE SECURITY TITLE GUARANTEE
CORPORATION OF BALTIMORE
BALTIMORE, MARYLAND

OWNER'S INFORMATION SHEET

Your title Insurance Policy is a legal contract between you and The Security Title Guarantee Corporation of Baltimore. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page 2 of the Policy. The Policy is limited by:

- EXCLUSIONS on page 2
- EXCEPTIONS on Schedule B
- CONDITIONS on page 3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 3.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet-- is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact: THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE.

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COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity, or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure-other than a boundary wall or fence-because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.
We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental policy power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the Land
   - land division
   - environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land.

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS
   a. Easement--the right of someone else to use your land for a special purpose.
   b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
   d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE
   This Policy protects you as long as you:
   - own your title
   or
   - own a mortgage from anyone who buys your land
   or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM
   a. You Must Give The Company Notice Of Your Claim
   If anyone claims a right against your insured title, you must notify us promptly in writing.
   Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
   Our obligation to you could be reduced if:
   - you fail to give prompt notice
   and
   - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
   This statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss.

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.
   We may require you to answer questions under oath.
   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
   or
   - answer our questions under oath
   or
   - show us the papers we request,
   and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF COMPANY'S LIABILITY
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
   If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
   - the cause of the claim is removed; or
   - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court.

   The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy Number	Amount of Insurance	Date of Policy	Commitment No.	Agent File No.	Premium
P 019073	*$100,000.00*	*01/23/06*		*05-14450NDD*	$275.00

Simultaneous Policy Data

Policy Number	Amount of Insurance	Date of Policy
	$.00	

1. Name of Insured:
   Thomas P. Lyons and Desiree J. Lyons

2. The estate or interest in the land which is encumbered by the Insured mortgage/deed of trust is: ***Fee Simple***

3. Title to the estate or interest in the land is vested in:

   Thomas P. Lyons and Desiree J. Lyons

4. The land referred to in this policy is located in the ***City of Myrtle Beach, County of Horry***, State of ***South Carolina***, and described as follows:

   All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005 and recorded November 3, 2005 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy No. *P 019073*

EXCEPTIONS FROM COVERAGE

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

1. Those taxes and special assessments which become due and payable subsequent to Date of Policy.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. All matters and facts, including, but not limited to, discrepancies, encroachments, overlaps, boundary line disputes, shortage in area, which would be disclosed by a correct survey or inspection of the premises, and where a survey is made, the surveyor is the agent and employee of the Insured and Insured must look to surveyor for protection in respect to these matters..
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Rights, if any, of the public to sue as a public beach or recreations area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used are form the upper land private areas.
8. Subject to perpetual Right-of-Way and Easement granted by William D. Parker and Geraldine M. Parker to Grand Strand Water and Sewer Authority dated June 24, 2000, and recorded August 12, 2000, in Deed Book 2289 at Page 524, Horry County Records.
9. Taxes for the year 2006 and all subsequent years not yet due and payable.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

N. DAVID DURANT

By _____
Authorized Officer or Agent

RESIDENTIAL TITLE INSURANCE POLICY ONE-TO-FOUR FAMILY RESIDENCE

Issued by **Lawyers Title Insurance Corporation**

POLICY NUMBER

A87-0044979

LandAmerica Lawyers Title

Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and LAWYERS TITLE INSURANCE CORPORATION.
It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page two of the Policy.
The Policy is limited by:

- Exclusions on page 2
- Exceptions on Schedule B
- Conditions on page 3

You should keep the Policy even if you transfer the title to your land.
If you want to make a claim, see Item 3 under Conditions on page 3. You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy – and not this sheet – is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact the office that issued this policy or:

Consumer Affairs Dept.
Lawyers Title Insurance Corporation
P.O. Box 27567
Richmond, Virginia 23261-7567

LAWYERS TITLE INSURANCE CORPORATION

Attest: _____ Secretary

LAWYERS TITLE INSURANCE CORPORATION — SEAL — 1925 — RICHMOND, VA

By: _____ President

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

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EXHIBIT D

LandAmerica Lawyers Title

Issued with Simultaneous Policy No.: N/A
Prior Policy No.: N/A
Prior Policy Amount: N/A

SCHEDULE A **ALTA OWNER'S RESIDENTIAL TITLE POLICY**

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	PREMIUM	POLICY NUMBER
05-1353TDG	May 6, 2005 at 2:20 pm	$240,000.00	520.00	A87-0044979

1. Name of Insured:

   Thomas P. Lyons and Desiree J. Lyons

2. Your interest in the land covered by this policy is:

   FEE SIMPLE

3. The land referred to in this policy is situated in the City of Myrtle Beach, County of Horry, State of South Carolina, and is identified as follows:

   ALL AND SINGULAR, **all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S.D. Cox, dated October 12, 1956, and designated thereon as Lot No. 1.**

   Bounded and described as follows" Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company land; hence with line S 6 deg. 10 min. E 109.5' to St. N at Northern margin of Intracoastal Waterway; thence with Northern margin of said Waterway N 72 deg. 15 min. W 100 feet to St. N. corner of lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet to St. N at Southern Edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 min. E 56 feet to beginning corner.

   Bound on the North by a 20 foot Road, abutting other lands of herein grantor, R.C. Bellamy, East by International Paper company; South by Intracoastal Waterway and West by Lot No. 2, now owned by Mr. Martin.

SURFSIDE TITLE, INC.

Countersignature Authorized Officer or Agent

11883 Plaza Drive
Post Office Box 2850
Murrells Inlet, SC 29576
Issued at (Location)

ALTA Residential Title Insurance Policy 1987 - Schedule A

LandAmerica Lawyers Title

RESIDENTIAL OWNER'S TITLE POLICY

CASE NUMBER
05-1353TDG

SCHEDULE B

POLICY NUMBER
A87-0044979

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, you are not insured against loss, costs, attorney's fees, and expenses resulting from:

1. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
2. Taxes for the year **2005** and subsequent years, a lien not yet due and payable.
3. Quit Claim Right of Way and Easement to Grand Strand Water and Sewer Authority recorded August 11, 2000 in Deed Book 2289 at page 520.
4. Sewer Pump Tank Perpetual Easement and Right of Way to Grand Strand Water and Sewer Authority recorded January 5, 2001 in Deed Book 2332 at page 291.
5. Possible outstanding life estate of John Bellamy.
6. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.
7. Title to that portion of the property which is or may be filled-in land, or which is or has been under water, or which lies below the mean high water mark of Intracoastal Waterway.
8. Title to that portion of the property lying below the mean high water mark of Intracoastal Waterway

OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A - if that land is a one-to-four family residential lot or condominium unit. Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A. Your insurance is limited by the following:

- Exclusions on page 2
- Exceptions in Schedule B
- Conditions on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy - up to the Policy Amount and
- any costs, attorneys' fees and expenses we have to pay under this Policy

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date – unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure - other than a boundary wall or fence - because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense. We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

RESIDENTIAL TITLE INSURANCE POLICY CONDITIONS

1. DEFINITIONS.
   a. Easement - the right of someone else to use your land for a special purpose.
   b. Land - the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
   d. Public Records - title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located.
   e. Title - the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE.
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM.
   a. You Must Give The Company Notice Of Your Claim
      If anyone claims a right against your insured title, you must notify us promptly in writing.
      Send the notice to Lawyers Title Insurance Corporation, P.O. Box 27567, Richmond, Virginia 23261-7567. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
      Our obligation to you could be reduced if:
      - you fail to give prompt notice
        and
      - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
      You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss..
      The statement must have the following facts:
      - the Covered Title Risks which resulted in your loss
      - the dollar amount of your loss
      - the method you used to compute the amount of your loss

      You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
      We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.
      We may require you to answer questions under oath.
      Our obligation to you could be reduced if you fail or refuse to:
      - provide a statement of loss
        or
      - answer our questions under oath
        or
      - show us the papers we request,
        and
      - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM.
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:
   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this policy paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE.
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF THE COMPANY'S LIABILITY.
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made - whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed
        or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS.
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION.
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company.
   The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court. The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY.
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

Form B 1086-119

RESIDENTIAL TITLE INSURANCE POLICY

American Land Title Association (6/1/87)

Issued by

Lawyers Title Insurance Corporation

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, Virginia 23235-5153
www.landam.com

THANK YOU.

Title insurance provides for the protection of your real estate investment. We suggest you keep this policy in a safe place where it can be readily available for future reference.

If you have questions about title insurance or the coverage provided by this policy, contact the office that issued this policy, or you may call or write:

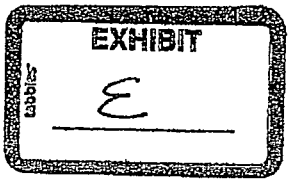
Lawyers Title Insurance Corporation
Consumer Affairs
P.O. Box 27567
Richmond, Virginia 23261-7567
telephone, toll free: 800 446-7086
web: www.landam.com

We thank you for choosing to do business with Lawyers Title Insurance Corporation, and look forward to meeting your future title insurance needs.

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO. 2012-CP-26-5222
Fidelity National Title)	DEPOSITION OF:
Ins. Co., Successor by)	Thomas P. Lyons
Merger to Lawyers Title)	
Ins. Corp. and the)	
Security Title Guarantee)	
Corporation of Baltimore.)	



Given before Elizabeth A. Beesley, Court Reporter and Notary Public, at the offices of BELLAMY RUTENBERG COPELAND & EPPS, 1000 29th Avenue North, Myrtle Beach, SC 29577, on Thursday, March 28, 2013, at 12:06 p.m.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA

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Spartanburg	Summerville	Sumter	West Columbia

Q Was that done after April of 2011, or before April of 2011?

A After.

Q Okay, and again, why was that?

A The property's useless.

Q Do you know how much the property is worth now?

A Nothing.

Q Okay. Well, have you --

A If you -- if you put anything on it, you've got to remove the thing. So tomorrow they could come and put sludge all over your property. It's going to cost you money to get rid of that sludge.

Q Do you know if the Corps of Engineers have ever done that?

A That's why I can't build on it.

Q Sure, I understand that.

A You know what I'm saying?

Q But do you know if the Corp. has ever done that?

A Personally, no.

Q Okay. Have you discussed with anyone what the property may be worth with the spoil easement on it?

A No.

Q Okay. Let me take a break and I think I'm about done, I appreciate it.

A Sure.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,)	Case No. 2012-CP-26-5222
)	
Plaintiffs,)	
)	
v.)	
)	AMENDED ANSWER OF THE DEFENDANT,
Fidelity National Title Insurance)	THE SECURITY TITLE GUARANTEE CORP.
Company as successor by merger to)	OF BALTIMORE
Lawyers Title Insurance Corporation,)	
Bobby Gene Martin, and The)	
Security Title Guarantee)	
Corporation of Baltimore,)	
)	
Defendants.)	
)	

HORRY COUNTY
13 JUN 25 PM 1:52
MELANIE HUGGINS-WARD
CLERK OF COURT

The Security Title Guarantee Corporation of Baltimore (Security Title), answering the First Amended Complaint herein, would respectfully show:

FOR A FIRST DEFENSE

1. Each and every allegation of the First Amended Complaint not hereinafter specifically admitted is denied.

FOR A SECOND DEFENSE

2. Paragraph 1 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

3. Paragraph 2 is admitted to the extent it alleges that Lawyers Title Insurance Corporation is a foreign corporation, duly licensed to conduct business in the State of South Carolina by the South Carolina Department of Insurance. To the extent any allegation in this paragraph

remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

4. Paragraph 3 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

5. Paragraph 4 is admitted to the extent it alleges that Security Title is a foreign corporation duly licensed to conduct business in the State of South Carolina by the South Carolina Department of Insurance. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

6. Paragraph 5 is admitted to the extent that it alleges this court has jurisdiction over the subject matter of this action and the parties named herein and venue is proper in Horry County. To the extent any allegation in this paragraph remains unanswered, or requires a response from Security Title, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

7. Paragraph 6 is admitted.

8. Paragraph 7 is admitted to the extent it alleges the deed to the property described in paragraph 6 of the First Amended Complaint recites the amount of consideration paid by the Plaintiffs, Thomas B. and Desiree J. Lyons (the "Lyons"), as being $240,000.00. The balance of the paragraph is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

9. Paragraph 8 is admitted.

10. Paragraph 9 is admitted to the extent it alleges the deed to the Lyons from McQuiddy & Johnston, LLC, described the property thereby conveyed in accordance with the language which is quoted in this paragraph. Further responding to this paragraph, Security Title would assert the property conveyed by McQuiddy & Johnston, LLC, on or about October 28, 2005, consisted of a tract measuring approximately thirty (30') feet by one-hundred and twenty (120') feet, formerly a portion of Lot Number 2 as shown on that certain plat dated September 2, 2005, prepared for William D. Parker, Geraldine Parker and Betty Joe Robins, by Culler Land Surveying Co., the same thereafter being recorded in the Office of the ROD for Horry County at Plat Book T-522, at Page 006 / 007. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

11. Paragraph 10 is admitted to the extent it alleges the affidavit filed in conjunction with the conveyance referenced in paragraph 9 of the First Amended Complaint recited the sum of $100,000.00, as consideration for the purchase by the Lyons of the property described in paragraph 9 of the First Amended Complaint. Further responding to this paragraph, it is admitted to the extent it alleges a subsequent corrective deed was recorded on or about January 26, 2006, in the Office of the ROD for Horry County. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

12. Paragraph 11 is admitted.

13. Paragraph 12 is admitted to the extent it alleges the Lyons purchased a Lawyers Title Insurance Corporation owner's title insurance policy. To the extent that this paragraph seeks

to quote, paraphrase or characterize the Lawyers Title Insurance Corporation owner's title insurance policy, Security Title would crave reference to the policy itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information upon which to form an opinion as to its truth or falsity.

14. To the extent paragraph 13 seeks to quote, paraphrase or characterize the Lawyers Title Insurance Corporation owner's title insurance policy issued to the Lyons, Security Title would crave reference to the owner's title insurance policy itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

15. Paragraph 14 is admitted to the extent it alleges that the Lyons purchased an owner's title insurance policy from Security Title. To the extent this paragraph seeks to quote, paraphrase, or characterize the owner's title insurance policy purchased by the Lyons from Security Title, Security Title would crave reference to that policy itself for its specific terms of import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

16. Responding to paragraphs 15, 16 and 17, to the extent these paragraphs seek to quote, paraphrase or characterize the owner's title insurance policy the Lyons purchased from Security Title, an Act of the Congress of the United States, or a deed dated August 17, 1932, or any other written document, Security Title would crave reference to those written

documents for their specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief to form an opinion as to its truth or falsity.

17. Paragraph 18 is admitted to the extent that it alleges the document referred to as a "Deed to Rights of Way," was recorded in the Office of the ROD for Horry County on or about September 17, 1932. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

18. Paragraphs 19 and 20 are denied as Security Title lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.

19. Paragraphs 21 and 22 are admitted to the extent they allege that the property described in the First Amended Complaint as the Martin Tract and the McQuiddy Tract are within a spoil easement area. To the extent any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

20. To the extent paragraph 23 seeks to quote, paraphrase or characterize a certain document dated December 8, 1982, Security Title would crave reference to that document for its specific terms and import. To the extent that any allegation in this paragraph remains unanswered, the same is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

21. Paragraph 24 is admitted to the extent it alleges the Horry County Council adopted a resolution in 2003, that resolution bearing Resolution Number R-143-02. To the extent this

paragraph seeks to quote, paraphrase, or characterize the resolution, Security Title would crave reference to the resolution itself for its specific terms and import.

22. Paragraph 25 is denied to the extent it alleges what is referred to in the First Amended Complaint as the Deed provides constructive notice of the "spoil drainage area", in that the Deed is not within the Lyons' chain of title. The balance of the paragraph is denied, as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

23. Paragraph 26 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

24. To the extent paragraph 27 seeks to quote, paraphrase or characterize the owner's title insurance policy issued by Lawyers Title Insurance Corporation, Security Title would crave reference to that document for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

25. Paragraph 28 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

26. Paragraph 29 is denied.

27. Paragraph 30 is admitted to the extent it alleges Security Title denied coverage under its owner's title insurance policy. The balance of the paragraph is denied.

28. Paragraph 31 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

29. Paragraph 32 is denied unless hereinbefore or hereinafter specifically admitted.

30. Paragraph 33 is admitted to the extent it alleges Lawyers Title Insurance Corporation issued the Lyons an owner's title insurance policy. The balance of the paragraph is denied.

31. Paragraph 34 is denied as Security Title lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

32. Paragraph 35 is denied unless hereinbefore or hereinafter specifically admitted.

33. Paragraph 36 is admitted to the extent it alleges that Security Title issued the Lyons an owner's title insurance policy. The balance of the paragraph is denied.

34. Paragraph 37 is denied.

35. Paragraph 38 is denied unless hereinbefore or hereinafter specifically admitted.

36. Paragraphs 39, 40 and 41 are denied.

37. Paragraph 42 is denied unless hereinbefore or hereinafter specifically admitted.

38. Paragraphs 43, 44 and 45 are denied.

39. Paragraph 46 is denied unless hereinbefore or hereinafter specifically admitted.

40. Paragraphs 47, 48 and 49 are denied.

FOR A THIRD DEFENSE

41. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

42. Exclusion number one of the owner's title insurance policy issued to the Lyons by Security Title excludes from coverage "loss, costs, attorneys' fees and expenses resulting from [g]overnmental police power, and the existence or violation of any law or government regulation." This exclusion goes on to say that it includes "building and zoning ordinances and also laws and regulations concerning land use [and] improvements on the land...."

Security Title is informed and believes that the claims set forth in the First Amended Complaint are the result of the exercise by Horry County of its police power in regard to the enforcement of a law, regulation and/or ordinance regarding building, zoning, land use or improvements on land and therefore those claims are excluded from coverage as set forth above.

FOR A FOURTH DEFENSE

43. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

44. The Deed, as described in the First Amended Complaint, is specifically excluded from coverage by exclusion number 3 of the title insurance policy issued the Lyons by Security Title in that it is not within the Lyons' chain-of-title and therefore did not provide constructive notice of its contents.

FOR A FIFTH DEFENSE

45. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

46. The Plaintiffs have failed to mitigate their damages.

FOR A SIXTH DEFENSE

47. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

48. Security Title would show that an award of punitive damages in this case would violate the 5th, 6th, and 14th Amendments to the United States Constitution and Article One, Section 3 of the South Carolina Constitution.

49. Security Title would further show that even if punitive damages are awarded, and Security Title specifically denies the Plaintiffs are entitled to any such award, the amount of punitive damages cannot exceed the amount of any actual damages, the entitlement to which Security Title also specifically denies.

FOR A SEVENTH DEFENSE

50. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

51. The Plaintiffs claims are barred by the doctrines of waiver and estoppel.

FOR AN EIGHTH DEFENSE

52. Each and every allegation contained in this Amended Answer is incorporated herein as if set forth verbatim.

53. Plaintiffs' complaint is barred by the applicable statute of limitations.

Wherefore, having fully set forth its Answer to the First Amended Complaint, Security Title would respectfully request the First Amended Complaint be dismissed, with costs, and that the Court grant Security Title such other and further relief as the Court may deem just and proper.

CALLISON TIGHE & ROBINSON, LLC

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Columbia SC 29202-1390
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E-mail: louislang@callisontighe.com

Attorneys for Defendant, Security Title Guarantee Corporation of Baltimore

Columbia, South Carolina
June 24, 2013
G:\3000\3185.010\Pleadings\Security Title Amended Answer.wpd

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action on opposing counsel by:

☐ delivering it to him/her personally; or,

✓ mailing it to him at his last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

Crystal Smith

MELANIE HUGGINS WARD
CLERK OF COURT
13 JUN 25 PM 1:52
HORRY COUNTY

June 24, 2013
Columbia, SC
G:\3000\3185.010\Pleadings\Security Title Amended Answer.wpd

5-15-13

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
Thomas P. and Desiree J. Lyons,)	Case No. 2012-CP-26-5222
)	
Plaintiffs,)	
)	
v.)	
)	Supplemental Submissions of the Defendants,
Fidelity National Title Insurance)	Fidelity National Title Ins. Co., as successor
Company as successor by merger to)	by merger to Lawyers Title Ins. Co. and
Lawyers Title Insurance Corporation,)	Security Title Guar. Corp. of Baltimore
Bobby Gene Martin, and The)	
Security Title Guarantee)	
Corporation of Baltimore,)	
)	
Defendants.)	
)	

The defendants above named respectfully submit the following additional documents in opposition to plaintiffs' motion for partial summary judgment:

1. Complete copy of diminution in value appraisal;
2. Copy of survey;
3. Copy of 2005 tax assessed value of subject property;
4. Picture of dwelling formerly located on subject property; and
5. Excerpts of deposition of Bobby Martin.

In addition, the above named defendants respectfully submit the following brief response to plaintiffs' assertion the title policies at issue are sealed instruments.

The title policy issued by Lawyers Title Ins. Corp. (exhibit B attached to the complaint) has a page on which appears a stamp bearing the word "Seal." However, immediately above this stamp is the following sentences, "[t]his sheet is ***not your insurance Policy.*** It is only a brief outline of

some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy - *and not this sheet* - is a legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY." (Emphasis added, with the exception of the capitalized portion of the quote, which appears as it does in the original). Nowhere in the actual policy does the word "seal" appear.

Nowhere in the title policy issued by Security Title Guarantee Corporation of Baltimore does the word "seal" appear. There is a corporate stamp on the first page of the policy, but that stamp does not contain the word "seal."

Plaintiffs apparently assert both title policies are "sealed" instruments and, therefore, a 20 year limitations period applies pursuant to S.C. Code Ann. 15-3-520(b), rather than the 3 year limitations period of section 15-3-530(1). In *Carolina Marine Handling, Inc. v. Lasch,* 262 S.C. 169, 175, 609 S.E.2d 348, 552 (Ct. App. 2005), the Court of Appeals said, "[w]e adhere to our general three-year statute of limitations for most contract action and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument." "The mere affixation of a corporate seal to a document does not automatically raise it to the status of an instrument under seal." 68 Am. Jur. 2d *Seals* § 6 (1993) (no longer in print). "The seal of a corporation is not, in itself, conclusive of an intent to make a specialty. It is equally appropriate as a means of evidencing the assent of a corporation to be bound by a simple contract as by a specialty." *Central Nat. Bank v. Charlotte, C & A. R. Co.,* 5 S.C. 156, 1874 WL 5344 (1874). In fact, in *Republic Contracting Corp. v. South Carolina Dep't of Highways & Pub. Trans.*, 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998), the court found the mere fact that an engineer's seal was attached to plans did not result in a sealed instrument. *Id*; *see also Aronow Roofing Company v.*

Gilbane Building Co., 902 F.2d 1127 (3rd Cir. 1990) ("The mere existence of the corporate seal and the use of the word 'seal' in a contract do not make the document a [sealed instrument]"); *Consolidated Rail Corp. v. Liberty Mut. Ins.*, 2002 WL 32080503 (Del. Super. 2002) (finding "the weight of the cases in this area favors the conclusion that the absence of even a symbolic seal precludes invoking the exception to [the general breach of contract limitations period], while the mere presence of a seal and a testimonium clause are not enough to create a sealed instrument. Except where mortgages are concerned, the simple use of formalities and boilerplate unaccompanied by substantive evidence of the parties' intent to seal it is not enough to turn an ordinary contract into a [sealed instrument].").

Our Court of Appeals in *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), stated that "[w]e adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument." *Id.* at 175, 609 S.E.2d at 552.

Neither of the two title policies at issue contain the word "seal." Accordingly, the 3 year limitations period applies.

CALLISON TIGHE & ROBINSON, LLC

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ATTORNEYS FOR FIDELITY NATIONAL TITLE INS. CO. AS SUCCESSOR BY MERGER TO LAWYERS TITLE INS. CORP. AND THE SECURITY TITLE GUARANTEE CORP. OF BALTIMORE.

Columbia, South Carolina
May 15, 2013
G:\3000\3185.010\Pleadings\Supplemental Submissions (proofread).wpd

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the foregoing document in this action, dated May 15, 2013, on opposing counsel by:

☐ delivering it to him/her personally; or,

☐ mailing it to them at their last known addresses, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Attorney for Plaintiffs:
David K. Haller, Esq.
Haller Law Firm, PC
115 River Landing Dr., Ste. #102
Charleston SC 29492

Attorney for Defendant, Bobby Gene Martin:
Mark A. Nappier, Esq.
Joye, Nappier & Risher, LLC
3575 Hwy. 17 Bus.
Murrells Inlet SC 29576

_____
Crystal Smith

May 15, 2013
Columbia, South Carolina

[redacted]

AN APPRAISAL REPORT OF
LOT 1, JOHN HENRY LANE
INTRACOASTAL WATERWAY
MYRTLE BEACH, SC

FOR
MR. LOUIS H. LANG
CALLISON, TIGHE, AND ROBINSON, LLC
COLUMBIA, SC

AS OF
OCTOBER 28, 2005

BY
BECKHAM APPRAISAL SERVICE, LLC
MYRTLE BEACH, SC
MY FILE NO. 13-A-32

Appraisal 001

BECKHAM APPRAISAL SERVICE, LLC
Real Estate Appraisers & Consultants
7700 N. Kings Hwy - Suite 101
Myrtle Beach, SC 29572

TELEPHONE (843) 449-7418
FAX (843) 449-1309

HENRY H. BECKHAM, GAA
STATE CERTIFIED
GEN. R.E. APPRAISER
S.C. LIC.#CG102

REALTOR® REAL ESTATE APPRAISAL SECTION
National Association of Realtors®

March 11, 2013

Mr. Louis H. Lang
Callison, Tighe, and Robinson, LLC
1812 Lincoln Street
Columbia, SC 29201

RE: My File No: 13-A-132, Lot 1, John Henry Lane, Myrtle Beach, SC
"Before and After Values", Spoil Easement Impact

At your request, I have inspected and appraised the above referenced property and prepared the following Summary Appraisal Report. The subject property includes a .31-acre lot on the Intracoastal Waterway at 2380 John Henry Lane in the Forestbrook section of Myrtle Beach, SC. The subject property will be more particularly described within the body of this Summary Appraisal Report.

This Summary Appraisal Report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice For A Summary Appraisal Report. As such, it presents little discussion of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's work file and can be made available if needed.

The purpose of this appraisal is to make an estimate of the Market Value of the subject property described herein under two different assumptions. The first appraised value assumes that the subject property is a buildable lot and can be utilized for residential purposes, accommodating a freestanding, stick built, residential structure. The second appraisal scenario is based upon the assumption that the subject lot is located within a spoil easement, and that building regulations will not allow stick built homes, only mobile homes within such spoil areas. The effective date of the appraisal under either assumption is October 28, 2005.

GAA

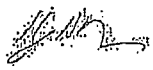
As previously stated, the subject property has been valued under two different assumptions, "buildable and unbuildable". Based on the information contained in this report, it is my opinion that the difference in value for the subject property as a result of the spoilage easement can best be estimated in the amount of:

ONE HUNDRED AND EIGHTY-FIVE THOUSAND DOLLARS

($185,000)

Respectfully submitted,

BECKHAM APPRAISAL SERVICE, LLC



Henry H. Beckham, GAA
Real Estate Appraisal Section - National Association of Realtors
State Certified General Real Estate Appraiser, SC License #CG-102

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CLIENT: Mr. Louis H. Lang
Callison, Tighe, and Robinson Law Firm
Columbia, SC

APPRAISER: Henry H. Beckham, GAA
Beckham Appraisal Service, LLC
Myrtle Beach, SC

IDENTIFICATION OF THE PROPERTY: The subject property is identified as Lot 1 on John Henry Lane in the Forestbrook section of Myrtle Beach, SC. The subject property has a street address of 2380 John Henry Lane and is located on the west bank of the Intracoastal Waterway. The subject is further identified on Horry County TMS #179-20-01-001 and on a plat contained herein as provided by the client.

The subject site includes a total of approximately .31 acres of land area and includes an irregularly shaped lot. Please note the attached exhibits including location map, tax map copy, plat copy, photographs, and others for a more exact identification of the subject property.

PURPOSE OF THE APPRAISAL: To estimate the Market Value of the fee simple interest in the subject property described, both under the assumption that the subject site is "buildable", or suitable for residential development, and that the property is "unbuildable", and only a mobile home would be permitted. Market Value is that as defined by the Office of the Comptroller of the Currency, under 12CFR, Part 34, Subpart C.

INTENDED USE OF THE REPORT: For the sole purpose of assisting the client in the valuation of the subject property for title insurance claim purposes.

PROPERTY RIGHTS APPRAISED: 100% Fee Simple Interest under the assumptions stated herein.

EFFECTIVE DATE OF VALUE: October 28, 2005

DATE OF REPORT: March 11, 2013

EXHIBITS: Please note the attached exhibits in the standard URAR Land Appraisal Report.

HISTORY OF THE SUBJECT PROPERTY: According to public records, the subject property is currently owned by Thomas and Desiree Lyons. The Lyons purchased approximately .29 acres of the site from Bobby Gene Martin in May of 2005 for $240,000 as shown in Horry County Deed Book 2906, Page 80. The Lyons acquired the remaining .02 acres of the subject from McQuiddy & Johnston, LLC on October 28, 2005 for $100,000 as shown in Horry County Deed Book 3004, Page 457. There have been no other sales or transfers of the subject property over the past 3 years.

SCOPE OF WORK: The scope of work is the volume of work that an appraiser performs to develop credible assignment results. USPAP defines "scope of work" as the type and extent of research and analyses in an assignment. The scope of work will include all necessary steps in order to produce a credible appraisal report. Based on the nature of the subject property as a vacant lot (under either appraisal scenario – buildable or unbuildable), the only applicable method of valuation is considered to be the Market Approach, or Direct Land Sales Comparison. The estimate of value for the subject site when considered "as unbuildable" is based upon market activity for similar, diminished properties which have limited use or appeal.

NEIGHBORHOOD DATA: The subject neighborhood is considered to include those properties along and just off of either side of Forestbrook Road between US Highway 501 and SC Highway 544 near Myrtle Beach, SC. The overall neighborhood is a popular suburban community and includes residential development, neighborhood commercial and service businesses, and area schools. Property uses along Forestbrook Road include single-family residences, convenience stores, professional offices, and neighborhood commercial and service business facilities. The Forestbrook area has seen a significant amount of residential development in recent years with several new residential subdivisions developed on interior properties as well as limited townhouse and commercial development. Most commercial development is concentrated at either end of Forestbrook Road near Highway 501 or Highway 544. However, there are scattered commercial facilities along Forestbrook Road, generally used for neighborhood commercial purposes. The public schools for the Forestbrook Road school district are also located off of Forestbrook Road, midway between Highway 501 and Highway 544.

The immediate subject neighborhood is considered to include those properties on John Henry Lane off of McCormick Road, just east of its intersection with Forestbrook Road. John Henry Lane is a paved, county-maintained road which services a small apartment complex and a series of stick-built and mobile homes along Socastee Creek and the Intracoastal Waterway. Water and sewer lines are in place along John Henry Lane and the subject property is located in an unincorporated area of Horry County, subject to Horry County zoning. In summary, the overall subject neighborhood is a popular suburb of Myrtle Beach and has experienced significant growth in recent years.

SITE DATA: The subject site includes a 31-acre lot with an irregular configuration. The subject property is located on John Henry Lane and the Intracoastal Waterway with 130' of frontage on the Intracoastal Waterway. Generally, the subject site is level and at road grade and has access to all public utilities. The portion fronting the waterway includes some wetlands and is located in a flood zone hazard area. The subject site is currently zoned MSF-6 as part of a medium density, residential district by Horry County. The MSF-6 zoning designation allows for 1 and 2-family residential development and mobile homes. According to FEMA Flood Map Panel No. 45051C0680H, dated August 23, 1999, the subject site does appear to be located in a flood zone hazard area. The subject site is typical of other lots along John Henry Lane fronting the Intracoastal Waterway. According to Jim Papadea, Horry County Real Property Administrator, the subject as well as the other lots along John Henry Lane fronting the ICW and Socastee Creek are all located in the spoilage easement area as determined by the U. S. Army Corps of Engineers.

HIGHEST AND BEST USE: There are four tests which are taken into consideration in developing an opinion of the Highest and Best Use of a particular property. These four tests include those uses which are physically possible, legally permissible, financially feasible, and maximally productive. Each of those uses is considered cumulatively in order to determine the Highest and Best Use of a particular property.

The subject site contains 31 acres of land area with approximately 130' of frontage along the Intracoastal Waterway and has access to all public utilities. The appraisal problem regarding the subject property involves a unique distinction, leading directly to a change in Highest and Best Use. Under the first scenario, I am assuming that the subject site can be improved with a stick built residence. Such a use is typical of other properties in the neighborhood which are also zoned MSF-6 for medium density residential purposes allowing single-family development, duplexes, and mobile homes with a minimum lot size of 6,000 square feet. The subject property is located in an established suburban area and the site is situated on the west bank of the Intracoastal Waterway with an excellent view amenity. The Highest and Best Use of the subject "if buildable" is considered to be for single-family residential development.

The second valuation scenario assumes that the subject site cannot be used for custom home, residential development purposes, and can only accommodate a mobile home. Under this assumption, the subject site and surrounding properties are located within a spoil easement held by the U. S. Army Corps of Engineers along the Intracoastal Waterway for dredge disposal purposes. Horry County Council will not issue building permits for new construction on properties located within the spoil easement and only allows mobile homes on such properties. Assuming that the spoil easement prohibits stick built, residential development, the number of buyers for the subject site is greatly diminished. While there would be a limited pool of buyers for a waterfront lot which could only be used for mobile home, there would be any number of investors who would be willing to purchase the subject property, have the spoil easement question resolved, and make a significant profit upon the resolution of the spoil problem. A nearby tract was purchased with that scenario in mind for

Highest and Best Use, Cont:

a large, upscale residential subdivision. During 2006, the speculation associated with the real estate market produced a large amount of risk taking, and the subject would be viewed as an opportunity for a profitable deal. Based upon the "unbuildable" assumption, the Highest and Best Use of the subject property is considered to be as an investment to be used as a mobile home on an interim basis, with the expectation of the spoilage easement removal, and a much greater future value. The property is obviously worthless because of the problems and discount which would be associated with the spoil easement.

VALUATION "AS IF BUILDABLE": When considered "as if buildable", the Highest and Best Use of the subject site is for stick-built residential development. I have reviewed lot sales of stick-built residential lots along the Intracoastal Waterway in 2005 and that valuation is included in the following standard URAR Land Appraisal form.

LAND APPRAISAL REPORT

File No. 13-A-32

Borrower | Census Tract 601 | Map Reference 179-20-01-001
Property Address Lot 1 John Henry Lane
City Myrtle Beach | County Horry | State SC | Zip Code 29579
Legal Description Lot 1 RC Bellamy Subdivision
Sale Price $ | Date of Sale | Loan Term | yrs. | Property Rights Appraised: ☒ Fee ☐ Leasehold ☐ De Minimis PUD
Actual Real Estate Taxes $ (yr) | Loan charges to be paid by seller $ | Other sales concessions
Lender/Client Louis H. Fong, Callison, Tighe, & Robinson, LLC | Address 1812 Lincoln Street, Columbia, SC 29201
Occupant | Appraiser Beckham Appraisal Service | Instructions to Appraiser Estimate value with and without spoil easement

						Good	Avg.	Fair	Poor
Location	☐ Urban	☒ Suburban	☐ Rural		Employment Stability	☐	☒	☐	☐
Built Up	☐ Over 75%	☒ 25% to 75%	☐ Under 25%		Convenience to Employment	☐	☒	☐	☐
Growth Rate ☐ Fully Dev.	☐ Rapid	☐ Steady	☒ Slow		Convenience to Shopping	☐	☒	☐	☐
Property Values	☐ Increasing	☒ Stable	☐ Declining		Convenience to Schools	☐	☒	☐	☐
Demand/Supply	☐ Shortage	☐ In Balance	☒ Oversupply		Adequacy of Public Transportation	☐	☒	☐	☐
Marketing Time	☐ Under 3 Mos.	☐ 4-6 Mos.	☒ Over 6 Mos.		Recreational Facilities	☐	☒	☐	☐
Present Land Use 80% 1 Family	% 2-4 Family	% Apts.	% Condo	% Commercial	Adequacy of Utilities	☐	☒	☐	☐
% Industrial 20% Vacant	%				Property Compatibility	☐	☒	☐	☐
Change in Present Land Use	☒ Not Likely	☐ Likely (*)	☐ Taking Place (*)		Protection from Detrimental Conditions	☐	☒	☐	☐
(*) From	To				Police and Fire Protection	☐	☒	☐	☐
Predominant Occupancy	☒ Owner	☐ Tenant	% Vacant		General Appearance of Properties	☐	☒	☐	☐
Single Family Price Range	$ 367,200 to $ 799,000		Predominant Value $ 400,000		Appeal to Market	☐	☒	☐	☐
Single Family Age	0 yrs. to 50 yrs.		Predominant Age 20 yrs.						

Comments including those factors, favorable or unfavorable affecting marketability (e.g. public parks, schools, view, noise): The subject is located in the Forestbrook area, west of Myrtle Beach. Suburban community of single family homes, mobile homes, and vacant land with limited homesites along ICW. Moderate priced housing area convenient to MB employment, schools, and retail.

Dimensions 130' X 208' X 50' X 29' X 36' X 115' = 13,401 Sq. Ft. or Acres ☐ Corner Lot
Zoning classification MSF6, mobile and single family homes | Present improvements ☒ do ☐ do not conform to zoning regulations
Highest and best use ☒ Present use ☐ Other (specify)

	Public	Other (describe)
Elec.	☒	
Gas	☐	
Water	☒	
San. Sewer	☒	
	☒	Underground Elec. & Tel.

OFF-SITE IMPROVEMENTS — Street Access: ☒ Public ☐ Private; Surface: Asphalt Paved; Maintenance: ☒ Public ☐ Private; ☐ Storm Sewer ☐ Curb/Gutter; ☐ Sidewalk ☒ Street Lights

Topo: Level; Road Grade: Slight slope to water; Site: .31 Acres, Typical for Neighborhood; Shape: Irregular, Typical; View: Waterway, Residential; Drainage: Adequate

Comments (favorable or unfavorable including any apparent adverse easements, encroachments, or other adverse conditions): Is the property located in a HUD Identified Special Flood Hazard Area? ☐ No ☒ Yes
The subject site is typical of other waterfront lots along the Intracoastal Waterway in the Socastee and Forestbrook area. This appraisal estimate is based upon the extraordinary assumption that the property is not subject to a spoilage easement.

The undersigned has recited three recent sales of properties most similar and proximate to subject and has considered these in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variation between the subject and comparable properties. If a significant item in the comparable property is superior to or more favorable than the subject property, a minus (-) adjustment is made thus reducing the indicated value of subject; if a significant item in the comparable is inferior to or less favorable than the subject property, a plus (+) adjustment is made thus increasing the indicated value of the subject.

ITEM	SUBJECT PROPERTY	COMPARABLE NO. 1		COMPARABLE NO. 2		COMPARABLE NO. 3	
Address	Lot 1 John Henry Lane, Myrtle Beach	Lot 2 River Road, Myrtle Beach		6079 Renata Lane, Myrtle Beach		Lot 8 Chapel Lane, Myrtle Beach	
Proximity to Subject		1.7 miles SW		3 miles SW		.93 miles SW	
Sales Price	$	$ 262,500		$ 288,900		$ 310,000	
Price	$	$		$		$	
Data Source		Public Records; MLS#130567		MLS#169812; Public Records		MLS#179106; Public Records	
Date of Sale and Time Adjustment	DESCRIPTION	DESCRIPTION	+(-) $ Adjust	DESCRIPTION	+(-) $ Adjust	DESCRIPTION	+(-) $ Adjust
	10/05	05/05	-13,125	07/05	+8,667	03/05	+21,700
Location	J.H. Lane	Similar		Inferior	+14,445	Similar	
Site/View	ICW/Residential	Similar		Inferior	+14,445	Similar	
Size	13,401 SF	21,322 SF		82,764 sf	-28,890	24,324 SF	-31,000
FEMA Flood Zone	Yes	Yes		Yes		Yes	
Sales or Financing Concessions							
Net Adj. (total)		☒ + ☐ - $ 13,125		☒ + ☐ - $ 6,667		☐ + ☒ - $ 9,300	
Indicated Value of Subject		$ 275,626		$ 295,567		$ 300,700	

Comments on Market Data: All of the comps have similar location and waterfront characteristic. Sales have been adjusted for improving market conditions and size. Subject and comps are all located in a flood zone hazard area.

Comments and Conditions of Appraisal: This appraisal estimate is based upon the extraordinary assumption that the subject property is NOT located in a spoil easement area.

Final Reconciliation: Equal consideration has been given to all comparable sales.

I ESTIMATE THE MARKET VALUE, AS DEFINED, OF SUBJECT PROPERTY AS OF October 28, 2005 to be $ 285,000.

Appraiser(s) | Review Appraiser (if applicable) ☒ Did ☐ Did Not Physically Inspect Property.

Location Map

Borrower/Client:	
Property Address:	Lot 1 John Henry Lane
City: S	Myrtle Beach County: Horry State: SC Zip Code: 29579
Lender:	Louis H. Lang, Callison, Tighe, & Robinson, LLC



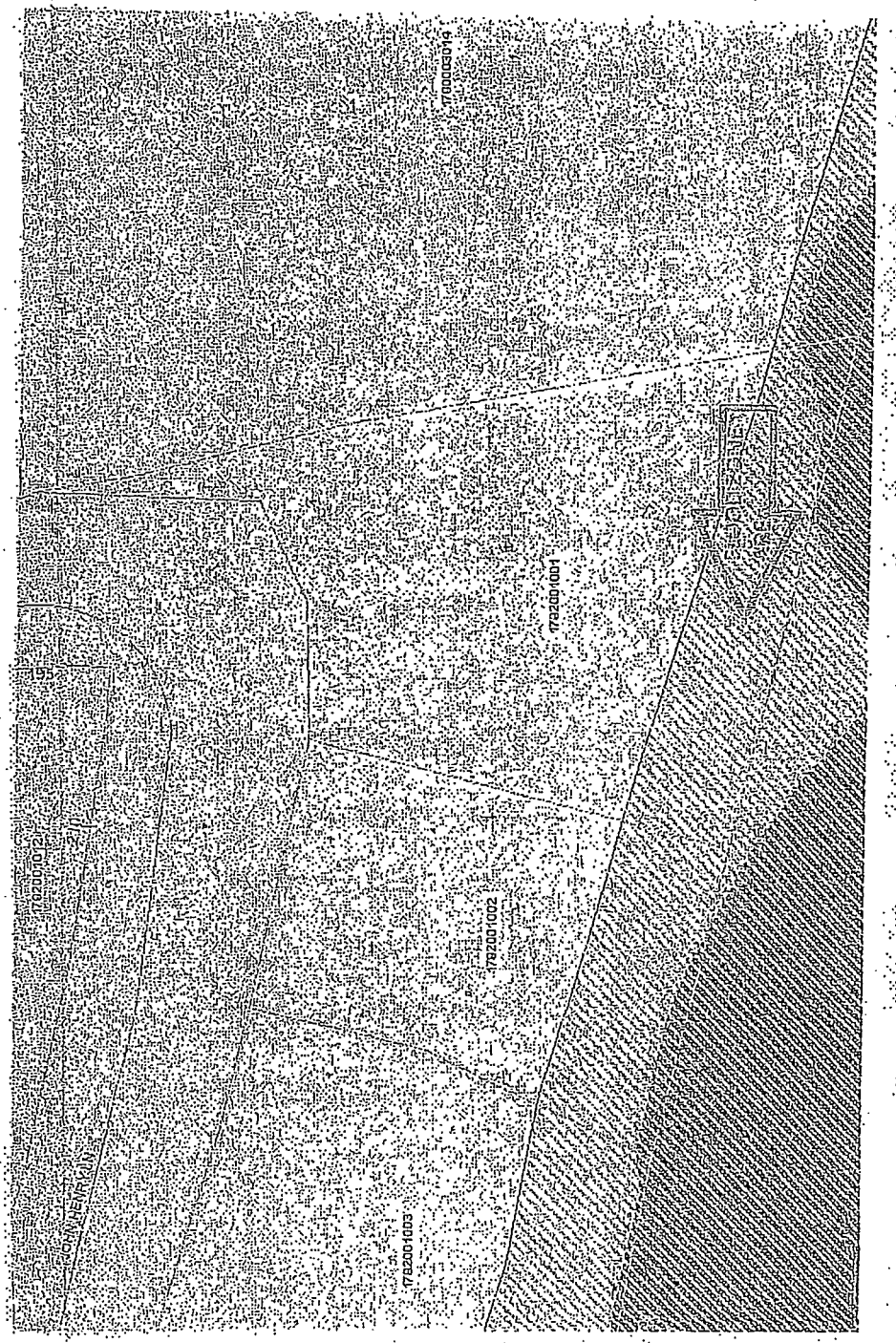
Location Map

Borrower/Client				
Property Address	Lot 1 John Henry Lane			
City	Myrtle Beach	County Horry	State SC	Zip Code 29579
Lender	Louis H. Lang, Gellison, Tighe, & Robinson, LLC			

JOHN HENRY LN
SC HIGHWAY 90
2000
2000
2000

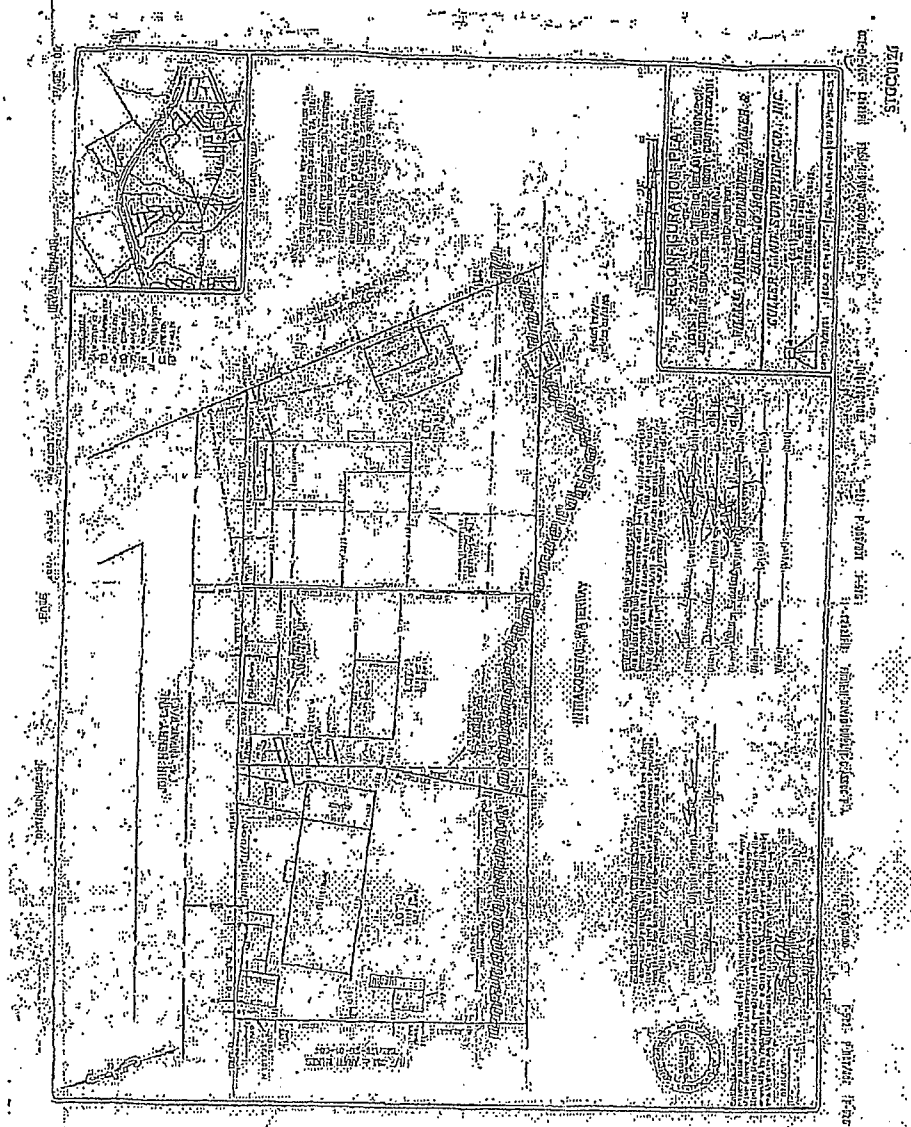
Flood Zone Map

Borrower/Client					
Property Address	Lot 1 John Henry Lane				
City	Myrtle Beach	County	Horry	State SC	Zip Code 29579
Lender	Louis H. Lang, Callison, Tighe, & Robinson, LLC				



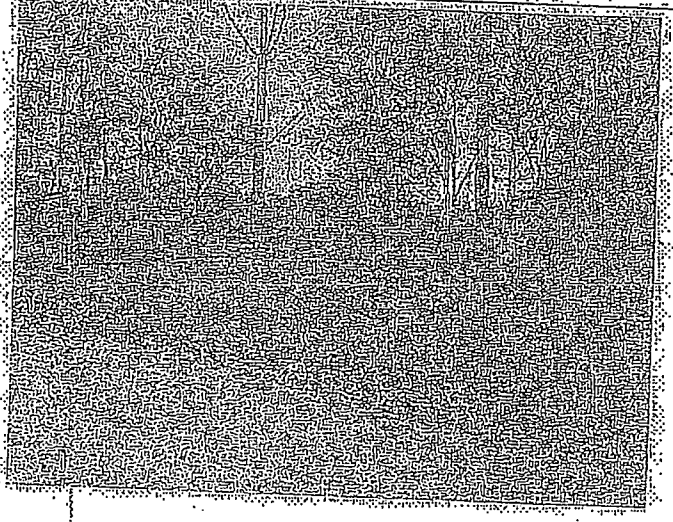
Plat Map

Borrower/Client:				
Property Address: Lot 1 John Henry Lane				
City: Myrtle Beach	County: Horry	State: SC	Zip Code: 29579	
Lender: Louis H. Land, Callison, Tighe, & Robinson, LLC				



Subject Photo Page

Borrower/Client	
Property Address	Lot 1 John Henry Lane
City	Myrtle Beach
County	Horry
State	SC
Zip Code	29579
Lender	Louis R. Lang, Callison, Tighe, & Robinson, LLC



Subject Front

Lot 1 John Henry Lane
Sales Price
G.L.A.
Tot. Rooms
Tot. Bedrms.
Tot. Baths
Location
View
Site
Quality
Age

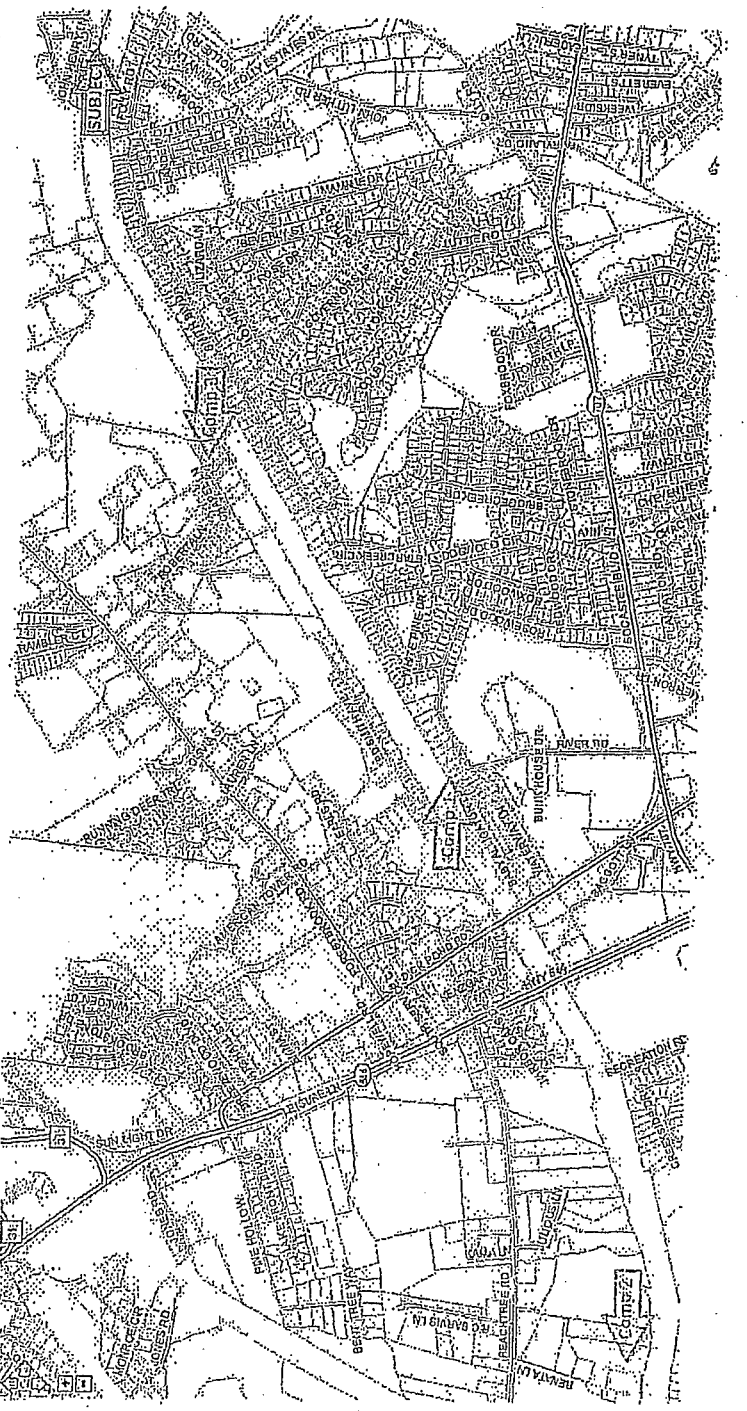
J.H. Lane/ Spoil
ICW/ Residential

Subject Rear

Subject Street

Comparable Sales Location Map

Borrower/Client					
Property Address	Lot 1 John Henry Lane				
City	Myrtle Beach	County	Horry	State	SC	Zip Code	29579
Lender	Louis H. Lane, Callison, Tighe, & Robinson, LLC				



DEFINITION OF MARKET VALUE: The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he considers his own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Adjustments to the comparables must be made for special or creative financing or sales concessions. Not adjustments are necessary for those costs which are normally paid by sellers as a result of tradition or law in a market area; these costs are readily identifiable since the seller pays these costs in virtually all sales transactions. Special or creative financing adjustments can be made to the comparable property by comparisons to financing terms offered by a third party institutional lender that is not already involved in the property or transaction. Any adjustment should not be calculated on a mechanical dollar for dollar cost of the financing or concession but the dollar amount of any adjustment should approximate the market's reaction to the financing or concessions based on the appraiser's judgement.

STATEMENT OF LIMITING CONDITIONS AND APPRAISER'S CERTIFICATION

CONTINGENT AND LIMITING CONDITIONS: The appraiser's certification that appears in the appraisal report is subject to the following conditions:

1. The appraiser will not be responsible for matters of a legal nature that affect either the property being appraised or the title to it. The appraiser assumes that the title is good and marketable and, therefore, will not render any opinions about the title. The property is appraised on the basis of it being under responsible ownership.

2. The appraiser has provided a sketch in the appraisal report to show approximate dimensions of the improvements and the sketch is included only to assist the reader of the report in visualizing the property and understanding the appraiser's determination of its size.

3. The appraiser has examined the available flood maps that are provided by the Federal Emergency Management Agency (or other data sources) and has noted in the appraisal report whether the subject site is located in an identified Special Flood Hazard Area. Because the appraiser is not a surveyor, he or she makes no guarantees, express or implied, regarding this determination.

4. The appraiser will not give testimony or appear in court because he or she made an appraisal of the property in question, unless specific arrangements to do so have been made beforehand.

5. The appraiser has estimated the value of the land in the cost approach at its highest and best use and the improvements at their contributory value. These separate valuations of the land and improvements must not be used in conjunction with any other appraisal and are invalid if they are so used.

6. The appraiser has noted in the appraisal report any adverse conditions (such as, needed repairs, deterioration, the presence of hazardous wastes, toxic substances, etc.) observed during the inspection of the subject property or that he or she became aware of during the normal research involved in performing the appraisal. Unless otherwise stated in the appraisal report, the appraiser has no knowledge of any hidden or unapparent conditions of the property or adverse environmental conditions (including the presence of hazardous wastes, toxic substances, etc.) that would make the property more or less valuable, and has assumed that there are no such conditions and makes no guarantees or warranties, express or implied, regarding the condition of the property. The appraiser will not be responsible for any such conditions that do exist or for any engineering or testing that might be required to discover whether such conditions exist. Because the appraiser is not an expert in the field of environmental hazards, the appraisal report must not be considered as an environmental assessment of the property.

7. The appraiser obtained the information, estimates, and opinions that were expressed in the appraisal report from sources that he or she considers to be reliable and believes them to be true and correct. The appraiser does not assume responsibility for the accuracy of such items that were furnished by other parties.

8. The appraiser will not disclose the contents of the appraisal report except as provided for in the Uniform Standards of Professional Appraisal Practice.

9. The appraiser has based his or her appraisal report and valuation conclusion for an appraisal that is subject to satisfactory completion, repairs, or alterations on the assumption that completion of the improvements will be performed in a workmanlike manner.

10. The appraiser must provide his or her prior written consent before the lender/client specified in the appraisal report can distribute the appraisal report (including conclusions about the property value, the appraiser's identity and professional designations, and references to any professional appraisal organizations or the firm with which the appraiser is associated) to anyone other than the borrower, the mortgagee or its successors and assigns, the mortgage insurer, consultants, professional appraisal organizations, any state or federally approved financial institution or any department, agency or instrumentality of the United States or any state or the District of Columbia; except that the lender/client may distribute the property description section of the report only to data collection or reporting service(s) without having to obtain the appraiser's prior written consent. The appraiser's written consent and approval must also be obtained before the appraisal can be conveyed by anyone to the public through advertising, public relations, news, sales, or other media.

APPRAISER'S CERTIFICATION: The Appraiser certifies and agrees that:

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to reduce the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than, the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.

2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have not knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.

3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the contingent and limiting conditions specified in this form.

4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the present owners or occupants of the properties in the vicinity of the subject property.

5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing this appraisal is contingent on the appraised value of the property.

6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimate, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.

7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of those Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.

8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent that I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.

9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will take no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees that, directly or indirectly, the appraiser who prepared the appraisal report have reviewed the appraiser's report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: Lot 1 John Henry Lane, Myrtle Beach, SC 29579

APPRAISER:	SUPERVISORY APPRAISER (only if required):
Signature:	Signature:
Name: Beckham Appraisal Service	Name:
Date Signed:	Date Signed:
State Certification #: CG-102	State Certification #:
or State License #:	or State License #:
State: SC	State:
Expiration Date of Certification or License: 06/30/2014	Expiration Date of Certification or License:

☒ Did. ☐ Did Not Inspect Property.

VALUATION "AS IF UNBUILDABLE" (MOBILE HOME ONLY): As described earlier, the second valuation scenario assumes the existence of the spoilage easement and the only allowable use of the subject site is as a mobile home pad. As such, when considered "as if unbuildable", the Highest and Best Use of the subject property is limited only to mobile home purposes. While I have been unable to find any sales of ICW lots used expressly for mobile home purposes, it is obvious that an unrestricted residential lot would have a much greater value than a lot limited to mobile home use only. The spoil easement limitation reduces the potential pool of buyers who would seek a premium waterfront lot. However, during the fast growing market in 2005, there were any number of investors who would purchase the subject property at a significant discount, and attempt to have the spoilage easement removed, and then resell the property at a much higher price. A local developer was attempting to remove the spoil easement on a 30 acre site which was scheduled to be developed with a community of million dollar homes, just south of the subject property, and local investors would have considered a discounted price in order to make a significant return on investment. Market expectations were significantly higher, and investors were willing to take a chance on any number of real estate opportunities.

While there have been no sales of waterfront lots for purely mobile home purposes, there are several indications of value which can be considered. A review of Multiple Listing Service records reveals that 37 lots dedicated to mobile home or manufactured home purposes were sold through the MLS system between January of 2005, and March of 2006. The three highest prices of finished lots used for mobile home purposes were located in the Bonaparte's Retreat area of Calabash, NC at $46,000, an interior lot in the Garden City section of Horry County at $57,500, and a wooded lot located west of 17 Bypass in Murrells Inlet at a price of $65,000. These premium lots contained no water frontage or view amenities. The average sales price for the premium lots were approximately $56,000 each.

Considering the average of the highest priced mobile home lots, and doubling that average price for the subject's waterfront location produces a value indication of the approximately $112,000, which has been rounded to $110,000. I have also considered sales of waterfront lots in non-premium locations along the Waccamaw River near Conway as well as the Black River in Georgetown. A series of waterfront lots along the Black River in Georgetown sold in October of 2006 at an average price of $140,000. These lots would require negative adjustments for continually rising market conditions, and would have been somewhat less valuable in October of 2005. Likewise, Lot No. 7 located on River Road in the Pitch Landing section south of Conway sold in May of '06 at a price of $140,000 also. This property would also require a negative adjustment for improving market conditions over the date of the appraisal for the subject property.

Valuation "As If Unbuildable" (Mobile Home Only), Cont.

While these properties were not limited to mobile home use exclusively, they are waterfront properties in non-premium or less desirable locations than the subject's Myrtle Beach, ICW location. There are numerous mobile homes located on lots surrounding the sales previously mentioned at Waccamaw Landing and the Black River. In many cases, non-premium, riverfront locations which were not subject to any building restriction limitations contain a mix of mobile homes and stick built houses. Recent trends appear to be for even those properties containing mobile homes to be converted to stick built housing; although there is still a significant demand for properties suitable for mobile home purposes.

As mentioned earlier, investment activity during 2005 was rampant. Land speculators would have gladly purchased the subject property at a significant discount, in order to remedy the spoilage easement and resell the property at a significant gain. Efforts were underway within the immediate neighborhood to release other properties from the spoilage easement, and real estate speculators would recognize the possible value potential of the subject site. After considering various indications of value for the subject property if subject to the spoilage easement, it is my opinion that when considered "as if unbuildable", the subject site has a Market Value in the amount of $110,000 as of October 28, 2005.

FINAL VALUE CONCLUSION: In the preceding sections of this report, I have valued the subject property under two different assumptions, "buildable and unbuildable". The "buildable" value estimates based upon actual lot sales of improved, waterfront lots which provide a value indication in the amount of $295,000. The "unbuildable" valuation is based upon the spoilage easement which limits the property for use as a mobile home pad. The "unbuildable" valuation analysis provides an indicated value in the amount of $110,000. Both value indications are as of the effective date of this report, October 28, 2005 and are subject to the appraisal Certification and Assumptions and Limiting Conditions as shown herein.

Based on the preceding information, it is my opinion that the difference in value for the subject property as a result of the spoilage easement can best be estimated in the amount of:

ONE HUNDRED AND EIGHTY-FIVE THOUSAND DOLLARS

($185,000)

Respectfully submitted,

BECKHAM APPRAISAL SERVICE, LLC

Henry H. Beckham, GAA
Real Estate Appraisal Section - National Association of Realtors
State Certified General Real Estate Appraiser, SC License #CG-102

CERTIFICATION

We do hereby certify that, to the best of our knowledge and belief:

The statements of fact contained in this report are true and correct.

The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and is our personal, impartial, and unbiased professional analyses, opinions and conclusions.

We have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved.

We have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment.

Our engagement in this assignment was not contingent upon developing or reporting predetermined results.

Our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.

Our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice*.

We have made a personal inspection of the property that is the subject of this report.

No one provided significant real property appraisal assistance to the persons signing this certification.

SIGNED:

Henry H. Beckham, GAA
SC License, CG-102, NC License #A5997

QUALIFICATIONS OF HENRY H. BECKHAM

APPRAISAL CERTIFICATION AND DESIGNATION:

State Certified General Real Estate Appraiser, S. C. License #CG-102
S.C. Real Estate Broker - Lic. #6735
General Accredited Appraiser (GAA), Real Estate Appraisal Section, National Association of Realtors

EDUCATION:

B.A. Degree - Presbyterian College, Clinton, SC - 1973

APPRAISAL COURSES AND SEMINARS:

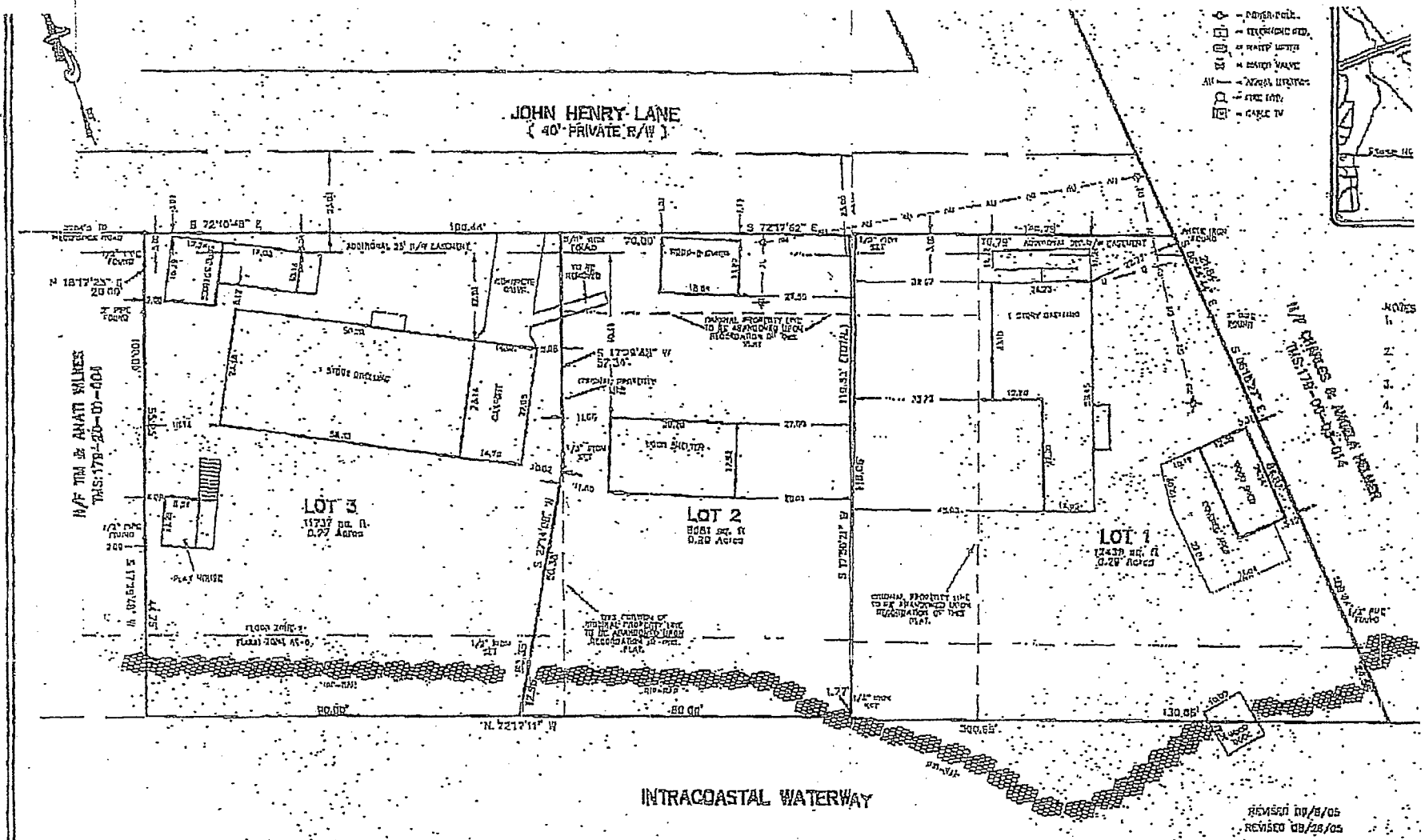
1-A Appraisal Principles	-	Appraisal Institute, 1977
1-B Basic Valuation Procedures	-	Appraisal Institute, 1977
VIII Residential Valuation	-	Appraisal Institute, 1979
C-1 Income Property App.	-	The Citadel, 1992
C-2 Advanced Inc. Prop. App.	-	The Citadel, 1992
C-3 Applied Inc. Prop. App.	-	Natl. Assoc. Realtors, 1992
Appraisal Standards & Ethics (USPAP)	-	Natl. Assoc. Realtors, 1993
320 General App. Applications	-	Appraisal Institute, 1994
Understanding Limited Appraisals (Departure Provisions)	-	Appraisal Institute, 1994
Litigation Skills	-	Appraisal Institute, 1998
Environmental Risk	-	Appraisal Institute, 1997
Standards of Professional Appraisal Practice & USPAP	-	SC R.E. App. Bd., 1999
R41-C Memorandum	-	Federal Home Loan Bank Board
Real Estate Securities and Syndication Practices	-	N. W. Center Professional Educators, Atlanta, GA

PROFESSIONAL EXPERIENCE:

S. C. Real Estate Broker since 1975
Real Estate Appraiser since 1978

1978 - 1985	-	Manager and Chief Appraiser, Myrtle Beach Office of Clyde Ratchford & Associates
1985 - 1989	-	President of Coastal Appraisal Consultants, full service appraisal firm, Myrtle Beach, SC
1989 - Present	-	Owner of Beckham Appraisal Service, LLC, Myrtle Beach, SC

Qualified as an expert witness in State and Federal Courts. Experience includes commercial, industrial, resort and rural properties in SC, NC and GA. Commercial properties include motels, apartments, restaurants, subdivision, golf courses, and shopping centers.



CERTIFICATE OF APPROVAL FOR RECORDING

I hereby certify that the (development plan/plat) shown here has been found to comply with the Horry County Land Development Regulations and that it has been approved for recording in the office of the Register of Deeds.

(DATE) 9/2/05 (Planning Signature)

(DATE) N/A (Engineering Signature) N/A

CERTIFICATE OF OWNERSHIP AND DEDICATION

The undersigned hereby acknowledge that I am (We are) the owner(s) of the property shown and described hereon and that I/We hereby adopt this (plan of development/plat) with my/our free consent and that I/we hereby dedicate all lines as specifically shown or indicated on said plat.

(Name) Thomas Lyons (Signed) (Date) 9/2/05

(Name) Deborah Lyons (Signed) (Date) 9/2/05

(Name) [illegible] (Signed) (Date) 9/6/05

(Name) (Signed) (Date)

(Name)

Certificate of Accuracy

I hereby state that to the best of my knowledge, information and belief, the survey shown hereon was made in accordance with the requirements of the "Minimum Standards Manual for the Practice of Land Surveying in South Carolina", and meets or exceeds the requirements for a Class (R,S,OR C) II survey as specified therein; also there are no visible encroachments or projections other than shown.

RECONF

LOTS 1, 2, 2A, & 3

LOCATED IN SOCASTEE

WILLIAM PARKE

BILL

CULLER LA

HORRY COUNTY, SOUTH CAROLINA
REAL ESTATE AND PERSONAL PROPERTY TAX RECEIPT

TAX YEAR	2005 272029
MBP/Account No.	179-20-01-001
Property Location:	R C BELLAMY SD LT 1-A & LT 1
Appraised Value (Taxable):	83,200

MARTIN BOBBY GENE
2337 JOHN HENRY LN
MYRTLE BEACH SC 29579-8201

POLITICAL SUBDIVISIONS	TAX LEVY	AMOUNT
CITY		
SCHOOL	129.7	431.64
COUNTY	46.3	154.09
SPECIAL DIST	22.7	75.55
LESS:		
COUNTY HOMESTEAD EXEMPTION		
CITY HOMESTEAD EXEMPTION		
STATE TAX RELIEF		-242.28
TOTAL TAX:		419.00
STORMWATER FEE		29.40
TOTAL DUE		448.40
(+3%) Jan.16 thru Feb.1 2006		460.97
(+7%) Feb. 2 thru Mar.16 2006		490.30
(+6%) After March 16 2006		511.25
PRIOR YEAR TAX ON THIS PROP		134.59

Itemization Of Your Tax Levy $ Distribution

	MILLS	CREDIT	TAX $'s
GEN. FUND DEBT	5.3		17.64
COUNTY GENERAL	36.7		122.14
HIGHER ED. DEBT	.7		2.33
HORRY GT TEC	1.9		6.32
SENIOR CITIZENS	.4		1.33
RECREATION	1.3		4.33
TOTAL COUNTY			154.09
SCHOOL OPER.	101.7	242.28	96.18
SCHOOL DEBT SEV	28.0		93.18
TOTAL SCHOOL		242.28	189.36
RURAL FIRE	16.3		54.25
WASTE MGT RECYC	5.4		21.30
TOTAL SPECIAL			75.55

ON MARCH 17th, ALL TAXES GO INTO EXECUTION WITH COLLECTION COSTS & PENALTIES ADDED

IMPORTANT NUMBERS

ASSESSOR - 1301 SECOND AVE.
CONWAY, S.C. 29526
TELEPHONE NUMBERS:
843-915-5040 843-205-5040
843-756-2121

COUNTY TREASURER - BOX 1237
CONWAY, S.C. 29528
TELEPHONE NUMBERS:
843-915-5470 843-756-2121

COUNTY AUDITOR - BOX 1205
CONWAY, S.C. 29528
TELEPHONE NUMBERS:
843-915-5050 843-756-2121

STORMWATER - BOX 1238
CONWAY, S.C. 29528
TELEPHONE NUMBER:
843-381-8000

Taxes due on the following property for tax year commencing December 31

NOTICE NUMBER	DATE OF NOTICE	MBP/ACCOUNT NUMBER	CITY OR	MORTG.	DIST.
2005 272029	12/20/2005	179-20-01-001			600

TOTAL ASSESSMENT	+	PENALTY FOR NO/LATE FILING	-	ASSESSMENT EXEMPT	-	HOMESTEAD EXEMPTION	=	TOTAL TAXABLE ASSESSMENT
3328								3328

PROPERTY CLASSIFICATION	NO. OF ACRES	NO. LOTS	APPRAISAL VALUE OF LAND	SPEC'L	APPRAISAL VALUE OF BLDGS	RATIO	TOTAL REAL OR PERSONAL
RESID.	.1		83200			4	3328

REAL ESTATE AND PERSONAL PROPERTY RECEIPT:

TAX	+	PENALTY	+	FEES	+	INTEREST	+	STORMWATER FEE	=	TOTAL PAID
419.00								29.40		448.40

DATE PAID
1/12/2006

PAID RECEIPT

WE APPRECIATE YOUR PAYMENT

GOD BLESS AMERICA

COPY COPY



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
	)	
Plaintiffs,	)	
	)	
versus	)	PLAINTIFFS' RESPONSE TO
	)	DEFENDANTS' MOTIONS FOR
Fidelity National Title Ins. Co., et al.	)	SUMMARY JUDGMENT
	)	
Defendants.	)	

Plaintiffs respond to the Defendants' motion for summary judgment as follows:

1. The Exclusion 1 argument.[1]

Defendants assert Exclusion 1, relating to "governmental police power," excludes the spoilage easement and no-build resolution from the policies. However, the defendants ignore the language they wrote into the policies: "This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date." Defendants have admitted that the spoilage easement and no-build resolution were in effect at the time the policy was issued. Hence, this argument has no merit at all. See Exhibits C and D, policies.

2. The "use is not insured" argument.

The policies promise to pay the 'actual loss' suffered as a result of a, "title risks, if they affect your title on the Policy Date [including]: 13. You cannot ***use*** the land because ***use*** as a single-family residence violates a restriction shown on Schedule B or an existing zoning law." Policies at 3. (Emphasis added.) While some policies may not insure use, this policy, by its own

[1] Plaintiffs' filed a motion for summary judgment against both defendants in December, which Judge Paul Burch heard and took under advisement in May. Arguments 1, 2, ad 3 are directly before Judge Burch on the plaintiff's request for summary judgment on their breach of contract claims.

terms, does. This argument can only be made by misrepresenting the actual language of the policy to the court and is frivolous.

3. The statute of limitations argument.

Both documents have on their face an imprint that is a corporate seal; in fact, the FNTIC policy says, "SEAL," in its seal. Under S.C. Code Ann. §19-1-160 (1976), the statute of limitations for a sealed instrument is twenty years. The defendants placed these seals on the policies when they drafted the policies. The defendants apparently would have the court turn a blind eye to their own black ink. At the very least, there is a genuine issue of material fact as to whether the imprint is intended as a seal. Because, the twenty-year statute of limitations applies, there are no grounds for summary judgment.

4. The "no bad faith" argument.

Reliance on Exclusion 1, the claimed 'reasonable basis for denial,' has already been rejected in an identical situation interpreting the identical policy. *Whitlock v. Stewart Title Guaranty Co.*, C/A No. 4:10-cv-01992-RBH (attached as Exhibit B), See also *Whitlock v. Stewart Title Guaranty Co,* 399 S.C. 610, 732 S.E.2d 626 (2012). *Whitlock*, a neighboring lot to the Lyons' property, involved the identical spoilage easement, the identical no-build resolution, the identical title insurance policy, and the identical legal arguments. All of the claims were decided in favor of the insured. Hence, defendants' assertion of a 'reasonable basis' fails because the legal argument upon which they rely has already been rejected in the exact same situation, rendering the basis for denial unreasonable. *Cock-n-Bull Steak House, Inc. v. Generali Insurance Co.*, 321 S.C. 1, 466 S.E.2d 727 (S.C. 1996)(upholding a directed verdict in favor of an insured where, "there clearly existed a mutually binding contract under which the insurer

refused to pay benefits.") The refusal to pay the claims when the legal issues have been answered, is the epitome of bad faith.

Further, both defendants had an opportunity to settle this claim within the policy limits well-prior to bringing suit. STGC refused. FNTIC didn't even respond. See Exhibit A.

WHEREFORE the plaintiffs pray the court deny the defendants motions, for sanctions for having brought a clearly frivolous motion, and for such other relief as the court deems just, prudent, and proper.

HALLER LAW FIRM, P.C.

David K. Haller
115 River Landing Drive, Suite 102
Charleston, SC 29492
(843) 849-1384
(843) 853-9377 FACSIMILE
dhaller@hallerlawfirm.com

25th day of June, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA PLEAS	)	IN THE COURT OF COMMON
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2012-CP-26-5222
Thomas P. and Desiree J. Lyons,	)	
	)	
Plaintiffs,	)	
	)	
versus	)	AFFIDAVIT OF DESIREE LYONS
	)	
Fidelity National Title Ins. Co., et al.	)	
	)	
Defendants.	)	
	)	

APPEARED BEFORE ME Desiree Lyons, who, being duly sworn, deposes and states as follows:

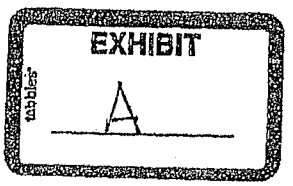
I am an adult and am competent to make the statements contained in this affidavit. The statements contained herein are of my own personal knowledge or belief.

In October of 2011, my husband and I decided to buy a home for our family since we could not build our dream retirement house on the property we bought on John Henry Lane in Myrtle Beach.

In an effort to avoid borrowing the money to buy the house, we directed our attorney to make settlement offers with the title insurance companies that insured the John Henry Lane property.

Attached hereto as Exhibits 1 and 2 are copies of the offers made by our attorney at our direction.

Lawyer's Title never responded to the offer made to it.

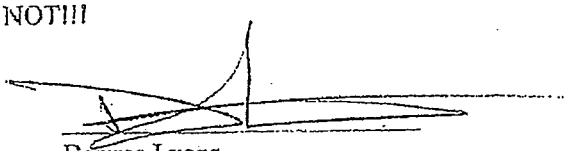


Security Title denied the claim in total.

Affidavit Continues Next Page

As a result of the carriers' refusals to settle the claims, my husband and I had to borrow the money to buy the house we live in and now pay interest.

FURTHER THE AFFIANT SAYETH NOT!!!



Desiree Lyons

Sworn to and Subscribed Before Me

This 20th day of June, 2013

Billie Jo Robbins

Notary Public for South Carolina

My Commission Expires: 10-26-2019

Subject: Thomas P and Desiree Lyons
Date: Monday, October 10, 2011 5:34 PM
From: David Haller <dhaller@hallerlawfirm.com>
To: Patrick Daly <PDaly@esecuritytitle.com>
Conversation: Thomas P and Desiree Lyons

Mr. Daly:

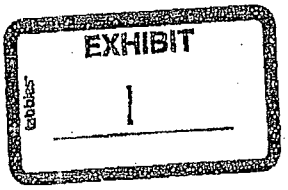
I am writing to propose an offer of settlement. My clients will accept $80,000.00 from the carrier in resolution of the claim, including a release and an assignment of any rights against third parties should the carrier require it. The settlement must be completed in full no later than October 28, 2011. If the offer is rejected or a settlement in full is not completed by October 28, all offers are fully null and void and my clients intend to seek full restitution.

I look forward to your prompt response,

David Haller

--
David K. Haller
Haller Law Firm, P.C.
115 River Landing Drive, Suite 102
Charleston, SC 29492
(843) 849-1384

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Subject: Thomas P. Lyons and Desiree J. Lyons, Claim No. 409209
Date: Monday, October 10, 2011 5:29 PM
From: David Haller <dhaller@hallerlawfirm.com>
To: "Saathoff, Cathy" <Cathy.Saathoff@fnf.com>
Conversation: Thomas P. Lyons and Desiree J. Lyons, Claim No. 409209

Ms. Saathoof:

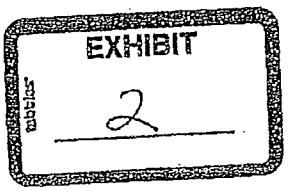
Thank you for your recent letter acknowledging the validity of my clients' claim. I am writing to propose an offer of settlement. My clients will accept $220,000.00 from the carrier in resolution of the claim, including a release and an assignment of any rights against third parties should the carrier require it. The settlement must be completed in full no later than October 28, 2011. If the offer is rejected or a settlement in full is not completed by October 28, all offers are fully null and void and my clients intend to seek full restitution.

I look forward to your prompt response,

David Haller

--
David K. Haller
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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Joetta P. Whitlock, Trustee of the Joetta P. Whitlock Trust, Plaintiff, vs. Stewart Title Guaranty Company, Defendant.	Civil Action No.: 4:10-cv-01992-RBH **ORDER**

This is an action in which Plaintiff, Joetta P. Whitlock, Trustee of the Joetta P. Whitlock Trust, seeks damages against the defendant, Stewart Title Guaranty Company, for breach of contract based on an owner's title insurance policy issued by the defendant to the plaintiff. The case is before the Court on cross motions for summary judgment. A hearing was held on July 26, 2011, with appearances by Gene Connell, Jr., counsel for the plaintiff, and Louis Lang, counsel for the defendant.

The undisputed facts show that on October 30 2006 the plaintiff purchased for cash a lot located at 2330 John Henry Lane, Myrtle Beach, South Carolina for $410,000.00. The lot borders on the Intra-coastal Waterway. Plaintiff purchased an owner's title insurance policy from the defendant at closing for the face amount of $410,000, the amount of the purchase price. In January of 2010, the plaintiff went to the Horry County Building Department to begin the process of obtaining a building permit to construct a home on the property. Plaintiff learned that the United States Army Corps of Engineers had a spoilage easement on the property for dredging the Intracoastal Waterway and that the easement had been on the property since the 1930s. (*See* copy of easement at Docket Entry # 29-1). Plaintiff also learned about the existence of a county resolution (R-143-03, Docket Entry # 18-3) which had been in effect since 2003. The resolution allowed the issuance of building

EXHIBIT
B

permits in the area for repair, remodeling, and replacement of existing structures but continued the County's previous policy not to otherwise allow building permits. The resolution allowed mobile homes to be replaced only by mobile homes. (Docket Entry # 15-2). It is undisputed that the easement and resolution were in effect at the time the title policy was issued.

Plaintiff filed this action in state court on April 6, 2010. The defendant removed the case to this court on the basis of diversity of citizenship.

In its motion for summary judgment, Defendant Stewart Title Guaranty Company contends that the lawsuit should be dismissed because the plaintiff failed to give proper notice to the defendant of the claim[1]; that Exclusion 1 of the policy, which excludes losses from the exercise of governmental police power, bars the claim; and that the value of any loss should be measured as of the date of discovery of the title defect. Plaintiff has moved for summary judgment on liability only and contends the case presents jury issues regarding damages.

At the hearing, the Court requested additional briefing on the issue of damages. Therefore, this order pertains only to liability. An issue relating to damages will be certified to the South Carolina Supreme Court by separate order.

Summary Judgment Standard

"The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) (2010). "A party asserting that a fact cannot be or is genuinely disputed must support the assertion by: (A) citing to particular parts of materials in the record . . .; or (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce

---

[1] At the hearing on the cross motions for summary judgment, the defendant withdrew its motion on the basis of notice, so the Court will not discuss that ground in this order.

admissible evidence to support the fact." Fed. R. Civ. P. 56(c)(1).

When no genuine issue of any material fact exists, summary judgment is appropriate. *See Shealy v. Winston*, 929 F.2d 1009, 1011 (4th Cir. 1991). The facts and inferences to be drawn from the evidence must be viewed in the light most favorable to the non-moving party. *Id.* However, "the mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no *genuine* issue of *material* fact." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

"[O]nce the moving party has met [its] burden, the nonmoving party must come forward with some evidence beyond the mere allegations contained in the pleadings to show that there is a genuine issue for trial." *Baber v. Hospital Corp. of Am.*, 977 F.2d 872, 874-75 (4th Cir. 1992). The nonmoving party may not rely on beliefs, conjecture, speculation, or conclusory allegations to defeat a motion for summary judgment. *See id.* Rather, the nonmoving party is required to submit evidence of specific facts by way of affidavits, depositions, interrogatories, or admissions to demonstrate the existence of a genuine and material factual issue for trial. *Celotex Corp.*, 477 U.S. at 322.

ISSUE: **Does Policy Exclusion 1 exclude coverage?**

Defendant asserts that Exclusion 1 bars coverage in this case. That exclusion provides:

> In addition to the exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees and expenses resulting from:
> 1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
> •land use
> •improvements on the land
> •land division
> •environmental protection
> **This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.**
> **This exclusion does not limit the zoning coverage described in Items 12 and 13 of**

the covered title risks. (Emphasis added).

The "Covered Title Risks" of the policy state that the policy covers "the following title risks, if they affect your title on the Policy Date":

> "10. Someone else has an easement on your land. . . 13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law. 14. Other defects, liens or encumbrances."

The policy defines "easement" as "the right of someone else to use your land for a special purpose." It defines "public records" as title records that give constructive notice of matters affecting your title-according to the state statutes where your land is located." The policy does not define "single-family residence".

"As with contracts generally, the cardinal principle in construing insurance contracts is that the intention of the parties controls." *Poston v. National Fidelity Ins. Co.*, 303 S.C. 182, 185, 399 S.E.2d 770 (1990). Where the terms of a contract are clear and unambiguous and capable of only one reasonable interpretation, the court should construe the contract. *Hansen ex rel. Hansen v. United Services Automobile Ass'n*, 350 S.C. 62, 565 S.E.2d 114 (S.C.App. 2002). "Whether a contract is ambiguous is to be determined from the entire contract and not from isolated portions of the contract. . . A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one. . . Common sense and good faith are the leading touchstones of the inquiry." *Farr v. Duke Power Co.*, 265 S.C. 356, 218 S.E.2d 431 (1975). "Even if an ambiguity exists in a contract, extrinsic evidence may not be considered if the ambiguity is a patent ambiguity." *Beaufort County School Dist. v. United Nat. Ins. Co.*, 392 S.C. 506, 709 S.E.2d 85, 95 (Ct. App. 2011). "A patent ambiguity is one that arises upon the words of a will, deed, or contract. . . A latent ambiguity exists when there is no defect arising on the face of the instrument, but arising when attempting to apply the words of the instrument to the object or subject described . . .Interpretation of an

unambiguous policy, or a policy with a patent ambiguity is for the court." *Id.*

A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement and (2) is cognizant of the customs, practices, usages, and terminology as generally understood in the particular trade or business. *Laser Supply and Services, Inc. v. Orchard Park Associates*, 676 S.E.2d 139 (S.C. App. 2009).

Insurance contracts are construed against the drafter, and in favor of coverage for the insured. *General Acc. Ins. Co. v. Safeco Ins. Companies*, 314 S.C. 63, 443 S.E. 2d 813 (Ct. App. 1994). Insurance policy exclusions are construed "most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 614 S.E.2d 611, 614 (2005). The rule that insurance contracts must be construed against the insurer applies to title insurance contracts. *First Carolinas Joint Stock Land Bank of Columbia v. New York Title*, 172 S.C. 435, 174 S.E. 402 (1934). Title insurance "is designed to save (the insured) harmless from any loss through defects, liens, or encumbrances that may affect or burden his title when he takes it." *Firstland Village Associates v. Lawyer's Title Insurance Co.*, 277 S.C.184, 284 S.E.2d 582 (1981).

Exclusion Number 1 does not apply, by its specific terms, to the situation in the case at bar. First, the exclusion provides that it does not apply to "violations or the enforcement of these matters which appear in the public records at Policy Date." It is uncontroverted that, as shown by the affidavits of the real estate attorney (Exhibit F to Docket Entry # 18) and title examiner (Exhibit E to Docket Entry # 18), the spoilage easement was of record and available for title examination in South Carolina before the issuance of this policy. *See* Docket Entry # 29-1, Deed from Julia R. Sessions to State of South Carolina, recorded November 9, 1931. Defendant argues that the Horry

County resolution, although in existence at the time of the closing, does not constitute a "public record" under state statute, citing S.C. Code Ann. § 30-7-10 (1976). Section 30-7-10 provides that all deeds, mortgages, liens, and "generally *all instruments in writing conveying an interest in real estate* required by law to be recorded in the office of the register of deeds . . .are valid so as to affect the rights of subsequent creditors . . . or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds. . . where the real property affected is situated." (Emphasis added). Plaintiff contends that a government regulation is inherently a public record and that, as a result, the policy provides coverage.

The court must construe the policy exclusion against the drafter and must also consider the purpose of the policy, read as a whole. The title policy provides broad coverage for title problems caused by zoning laws and for laws and regulations concerning land use and improvements on the land. Zoning designations are part of the "public records." *See Carolina Chloride, Inc. v. Richland County*, No. 27013, 2011 WL 3206901, at * 4 (S.C. July 25, 2011), rehearing granted, September 22, 2011 . Here, the insurance company was the drafter of the contract. It could have easily defined the term "public record" as not covering zoning laws. *See also, New England Federal Credit Union v. Stewart Title Guarantee Co.*, 171 Vt. 326, 765 A.2d 450, 456 (2000) ("Finally, we note that Stewart Title could have readily achieved the more narrow definition of public records that it seeks here simply by excluding from the definition certain locations where public records containing information about matters relating to land are maintained. . . Unlike the Stewart Title policy, however, the title insurer in [another case] added language explaining that, "without limitation, such records shall not be construed to include records in any of the offices of federal, state or local environmental protection, zoning, building, health or public safety authorities.") Therefore, the exclusion does not apply as a matter of law because the term "public record", although defined, is

patently ambiguous and should be construed as covering local zoning regulations.[2]

Additionally, Exclusion 1 states that it does not limit the zoning coverage described in Items 12 and 13 of the covered title risks. Item 13 of the covered title risks refers to zoning laws that prohibit use of the property as a single-family residence. Again, "single family residence" is not defined in the policy. Plaintiff argues that "single family residence" ordinarily means site-built homes, while Defendant argues that it also includes mobile homes. The undisputed facts are that Horry County will not allow the plaintiff to obtain a permit to build a site-built home on the property and that she has a mobile home on the property. The Court finds that the term "single-family residence" is patently ambiguous and must be construed against the drafter so as not to include a mobile home. Therefore, the plaintiff cannot use the land for a single-family residence because of the zoning law, and Exclusion 1 does not apply.

On the basis of the above, the Court finds that Exclusion Number 1 does not apply as a matter of law.

Conclusion

The Court has carefully examined the record in the case at bar and has determined that no genuine issue of material fact exists as to liability, and judgment as a matter of law for the plaintiff as to liability is appropriate. For the foregoing reasons, the undersigned grants the plaintiff's [25] Motion for Summary Judgment as to liability and denies the defendant's [15] Motion for Summary Judgment, as it pertains to liability. The Court reserves ruling on the defendant's [15] Motion for

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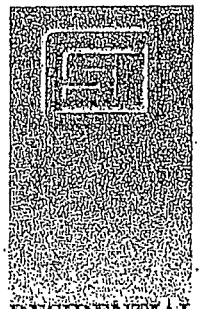
[2] Interestingly, the exceptions contained in Schedule B of the title policy exclude coverage for several matters that are not listed in the recording statute. The policy lists "2. increase or decrease in area due to rise and fall of tidewaters of the Intracoastal Waterway." It also lists rights of the State of South Carolina and the South Carolina Coastal Council as provided by statute or regulation. (Exception Numbers 3, 4, 5, and 6). It also refers to rights of the public to use the property as a public beach. (Exception 8).

Summary Judgment insofar as it relates to damages, as the Court is certifying a question to the South Carolina Supreme Court. The defendant's motion in limine (Docket Entry # 35) is taken under advisement.

AND IT IS SO ORDERED.

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Court Judge

October 3, 2011
Florence, South Carolina



POLICY NO: P

RESIDENTIAL
TITLE INSURANCE POLICY
One-To-Four Family Residences
ISSUED BY
THE SECURITY TITLE GUARANTEE
CORPORATION OF BALTIMORE
BALTIMORE, MARYLAND

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A-if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in the Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount; and
- any costs, attorneys' fees and expenses we have to pay under this Policy

This Policy is not complete without Schedules A and B.

EXHIBIT
SCHEDULE C

ISSUED BY:

THE SECURITY TITLE GUARANTEE
CORPORATION OF BALTIMORE

By Theodore C. Rogers
President

ATTEST:

By Marlene B. McShane
Secretary

Authorized Signatory

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RESIDENTIAL TITLE INSURANCE POLICY
One-To-Four Family Residence
ISSUED BY
THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE
BALTIMORE, MARYLAND

OWNER'S INFORMATION SHEET

Your title Insurance Policy is a legal contract between you and The Security Title Guarantee Corporation of Baltimore. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page 2 of the Policy. The Policy is limited by:

- EXCLUSIONS on page 2
- EXCEPTIONS on Schedule B
- CONDITIONS on page 3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 3.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet-- is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact: THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE.

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OWNER'S COVERAGE STATEMENT	1
COVERED TITLE RISKS	2
COMPANY'S DUTY TO DEFEND AGAINST COURT CASES	2
SCHEDULE A	Insert
Policy Date, Amount and Number	
1. Name of Insured	
2. Interest in Land Covered	
3. Description of the Land	
SCHEDULE B -- EXCEPTIONS	Insert
EXCLUSIONS	2
CONDITIONS	3
1. Definitions	3
2. Continuation of Coverage	3
3. How to Make a Claim	3
4. Our Choices When You Notify Us of a Claim	3
5. Handling a Claim or Court Case	3
6. Limitation of the Company's Liability	3
7. Transfer of Your Rights	3
8. Arbitration	3
9. Our Liability is Limited to This Policy	3

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity, or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure-other than a boundary wall or fence-because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.
We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental policy power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - land division
   - improvements on the Land
   - environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land.

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS
   a. Easement--the right of someone else to use your land for a special purpose.
   b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
   d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE
   This Policy protects you as long as you:
   - own your title
   or
   - own a mortgage from anyone who buys your land
   or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM
   a. You Must Give The Company Notice Of Your Claim
   If anyone claims a right against your insured title, you must notify us promptly in writing.
   Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
   Our obligation to you could be reduced if:
   - you fail to give prompt notice
   and
   - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
   This statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss.

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss.
   We may make copies of these papers.
   We may require you to answer questions under oath.
   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
   or
   - answer our questions under oath
   or
   - show us the papers we request,
   and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF COMPANY'S LIABILITY
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
   If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
   - the cause of the claim is removed; or
   - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court.

   The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

ALTA Owner's Policy **Schedule A**

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy Number	Amount of Insurance	Date of Policy	Commitment No.	Agent File No.	Premium
P 019073	*$100,000.00*	*01/23/06*		*05-14450NDD*	$275.00

Simultaneous Policy Data

Policy Number	Amount of Insurance	Date of Policy
	$.00	

1. Name of Insured:
   Thomas P. Lyons and Desiree J. Lyons

2. The estate or interest in the land which is encumbered by the insured mortgage/deed of trust is: *Fee Simple*

3. Title to the estate or interest in the land is vested in:

   Thomas P. Lyons and Desiree J. Lyons

4. The land referred to in this policy is located in the *City of Myrtle Beach, County of Horry*, State of *South Carolina*, and described as follows:

   All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005 and recorded November 3, 2005 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy No. P 019073

EXCEPTIONS FROM COVERAGE

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

1. Those taxes and special assessments which become due and payable subsequent to Date of Policy.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. All matters and facts, including, but not limited to, discrepancies, encroachments, overlaps, boundary line disputes, shortage in area, which would be disclosed by a correct survey or inspection of the premises, and where a survey is made, the surveyor is the agent and employee of the Insured and Insured must look to surveyor for protection in respect to these matters..
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Rights, if any, of the public to sue as a public beach or recreations area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used are form the upper land private areas.
8. Subject to perpetual Right-of-Way and Easement granted by William D. Parker and Geraldine M. Parker to Grand Strand Water and Sewer Authority dated June 24, 2000, and recorded August 12, 2000, in Deed Book 2289 at Page 524, Horry County Records.
9. Taxes for the year 2006 and all subsequent years not yet due and payable.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

N. DAVID DURANT

By _____
Authorized Officer or Agent

INCLUDED IN AND FORMING PART OF THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE OWNER'S POLICY NO. P 019073

RESIDENTIAL TITLE INSURANCE POLICY ONE-TO-FOUR FAMILY RESIDENCE

Issued by **Lawyers Title Insurance Corporation**

POLICY NUMBER

A87-0044979

LandAmerica Lawyers Title

Lawyers Title Insurance Corporation is a member of the LandAmerica family of title insurance underwriters.

OWNER'S INFORMATION SHEET

Your Title Insurance Policy is a legal contract between you and LAWYERS TITLE INSURANCE CORPORATION. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page two of the Policy. The Policy is limited by:

- Exclusions on page 2
- Exceptions on Schedule B
- Conditions on page 3

You should keep the Policy even if you transfer the title to your land.
If you want to make a claim, see Item 3 under Conditions on page 3. You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy – and not this sheet – is the legal document,

YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact the office that issued this policy or:

Consumer Affairs Dept.
Lawyers Title Insurance Corporation
P.O. Box 27567
Richmond, Virginia 23261-7567

LAWYERS TITLE INSURANCE CORPORATION

Attest: Secretary

LAWYERS TITLE INSURANCE CORPORATION SEAL 1925 RICHMOND, VA

By: President

NOTICE IS HEREBY GIVEN THAT THIS POLICY IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF CHAPTER 48 OF TITLE 15 (SEC. 15-48-10 ET SEQ.) OF THE SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED.

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EXHIBIT D

LandAmerica Lawyers Title

Issued with Simultaneous Policy No.: N/A
Prior Policy No.: N/A
Prior Policy Amount: N/A

SCHEDULE A

ALTA OWNER'S RESIDENTIAL TITLE POLICY

CASE NUMBER	DATE OF POLICY	AMOUNT OF INSURANCE	PREMIUM	POLICY NUMBER
05-1353TDG	May 6, 2005 at 2:20 pm	$240,000.00	520.00	A87-0044979

1. Name of Insured:

   Thomas P. Lyons and Desiree J. Lyons

2. Your interest in the land covered by this policy is:

   FEE SIMPLE

3. The land referred to in this policy is situated in the City of Myrtle Beach, County of Horry, State of South Carolina, and is identified as follows:

   ALL AND SINGULAR, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, County and State aforesaid as shown on map by S.D. Cox, dated October 12, 1956, and designated thereon as Lot No. 1.

   Bounded and described as follows" Beginning at St. N. at eastern edge of a 20 foot street in line of International Paper Company land; hence with line S 6 deg. 10 min. E 109.5' to St. N at Northern margin of Intracoastal Waterway; thence with Northern margin of said Waterway N 72 deg. 15 min. W 100 feet to St. N. corner of lot No. 2; thence with line of lot No. 2, N 17 deg. 45 min. E 100 feet to St. N at Southern Edge of a 20 foot street; thence with Southern edge of said Street S 72 deg. 15 min. E 56 feet to beginning corner.

   Bound on the North by a 20 foot Road, abutting other lands of herein grantor, R.C. Bellamy, East by International Paper company; South by Intracoastal Waterway and West by Lot No. 2, now owned by Mr. Martin.

SURFSIDE TITLE, INC.

Countersignature Authorized Officer or Agent

11883 Plaza Drive
Post Office Box 2850
Murrells Inlet, SC 29576

Issued at (Location)

LandAmerica Lawyers Title

RESIDENTIAL OWNER'S TITLE POLICY

CASE NUMBER
05-1353TDG

SCHEDULE B

POLICY NUMBER
A87-0044979

EXCEPTIONS FROM COVERAGE

In addition to the Exclusions, you are not insured against loss, costs, attorney's fees, and expenses resulting from:

1. The dower, curtesy, homestead, community property, or other statutory marital rights, if any, of the spouse of any individual insured.
2. Taxes for the year **2005** and subsequent years, a lien not yet due and payable.
3. Quit Claim Right of Way and Easement to Grand Strand Water and Sewer Authority recorded August 11, 2000 in Deed Book 2289 at page 520.
4. Sewer Pump Tank Perpetual Easement and Right of Way to Grand Strand Water and Sewer Authority recorded January 5, 2001 in Deed Book 2332 at page 291.
5. Possible outstanding life estate of John Bellamy.
6. Interests created by, or limitations on use imposed by, the Federal Coastal Zone Management Act or other federal law or by SC Code, Chapter 39, Title 48, as amended, or any regulations promulgated pursuant to said state or federal laws.
7. Title to that portion of the property which is or may be filled-in land, or which is or has been under water, or which lies below the mean high water mark of Intracoastal Waterway.
8. Title to that portion of the property lying below the mean high water mark of Intracoastal Waterway

OWNER'S COVERAGE STATEMENT

This policy insures your title to the land described in Schedule A - if that land is a one-to-four family residential lot or condominium unit. Your insurance, as described in this Coverage Statement, is effective on the Policy Date shown in Schedule A. Your insurance is limited by the following:

- Exclusions on page 2
- Exceptions in Schedule B
- Conditions on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy - up to the Policy Amount and
- any costs, attorneys' fees and expenses we have to pay under this Policy

COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date.

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date – unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure - other than a boundary wall or fence - because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense. We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the land
   - land division
   - environmental protection

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date. This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date - unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A or
   - in streets, alleys, or waterways that touch your land

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

RESIDENTIAL TITLE INSURANCE POLICY CONDITIONS

1. DEFINITIONS.
   a. Easement - the right of someone else to use your land for a special purpose.
   b. Land - the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage - a mortgage, deed of trust, trust deed or other security instrument.
   d. Public Records - title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located.
   e. Title - the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE.
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM.
   a. You Must Give The Company Notice Of Your Claim
      If anyone claims a right against your insured title, you must notify us promptly in writing. .
      Send the notice to Lawyers Title Insurance Corporation, P.O. Box 27567, Richmond, Virginia 23261-7567. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
      Our obligation to you could be reduced if:
      - you fail to give prompt notice
        and
      - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
      You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss..
      The statement must have the following facts:
      - the Covered Title Risks which resulted in your loss
      - the dollar amount of your loss
      - the method you used to compute the amount of your loss

      You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
      We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss. We may make copies of these papers.
      We may require you to answer questions under oath.
      Our obligation to you could be reduced if you fail or refuse to:
      - provide a statement of loss
        or
      - answer our questions under oath
        or
      - show us the papers we request,
        and
      - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM.
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:
   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this policy paying the Policy Amount, then in force, and only those costs, attorneys' fees and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE.
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF THE COMPANY'S LIABILITY.
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made - whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed
        or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS.
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION.
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company.
   The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court. The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.

   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY.
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

Form B 1086-119

RESIDENTIAL TITLE INSURANCE POLICY

American Land Title Association (6/1/87)

Issued by

Lawyers Title Insurance Corporation

Lawyers Title Insurance Corporation
is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

LandAmerica Financial Group, Inc.
101 Gateway Centre Parkway
Richmond, Virginia 23235-5153
www.landam.com

THANK YOU.

Title insurance provides for the protection of your real estate investment. We suggest you keep this policy in a safe place where it can be readily available for future reference.

If you have questions about title insurance or the coverage provided by this policy, contact the office that issued this policy, or you may call or write:

Lawyers Title Insurance Corporation
Consumer Affairs
P.O. Box 27567
Richmond, Virginia 23261-7567
telephone, toll free: 800 446-7086
web: www.landam.com

We thank you for choosing to do business with Lawyers Title Insurance Corporation, and look forward to meeting your future title insurance needs.

Lawyers Title Insurance Corporation
Is a member of the LandAmerica family of title insurance underwriters.

LandAmerica Lawyers Title

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY CA# 2012-CP-26-5222

Thomas P. and Desiree J. Lyons,

Plaintiff,

vs. **CERTIFICATE OF SERVICE**

Fidelity National Title Insurance Co., Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants.

HORRY COUNTY
13 JUL 26 PM 2:48
MELANIE HUGGINS-WARD
CLERK OF COURT

I, Shana M. Huth, certify that I am an employee of Ray Coit Yarborough, and that I mailed a copy of the **Motion to Reconsider** in the above entitled action to the Defendants' attorneys on July 25, 2013, by mailing a copy to him/her/them at the address/es listed below, in an envelope with proper postage attached thereto, and deposited in an official depository under the exclusive care and custody of the US Postal Service.

The Honorable Paul M. Burch
P. O. Box 276
Pageland, S. C. 29728-0276

Mr. David K. Haller
Attorney for Plaintiff
115 River Landing Drive, Suite 102
Charleston, SC 29492

Mr. Mark Andrew Nappier
Attorney for Bobby Gene Martin
3575 Hwy 17 Business
Murrells Inlet, SC 29576

Ms. Kristina A. Young
Attorney for Fidelity National Title Ins. Co.
200 Meeting St., Ste. 301
Charleston, SC 29401-3156

Shana M. Huth

This communication is an attempt to collect a debt, any information obtained will be used for that purpose.

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

IN THE COURT OF COMMON PLEAS
15th JUDICIAL CIRCUIT

CASE NO.: 2012 -CP- 26 -5222

Thomas P. and Desiree J. Lyons
Plaintiff,
vs.
Fidelity National Title Insurance Co., Bobby Gene Martin and The Security Title Guarantee Corporation of Baltimore.
Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney: David K. Haller	Defendant's Attorney: Ray Cothran Geddings, Jr.
_____, Bar No. _____	_____, Bar No. Attorney for The Security Title Guarantee Corp.
Address: 115 River Landing Drive, Suite 102 Charleston, SC 29492	Address: #5735 POB 4498, Florence, SC 29502
Phone: 843-410-9657	Phone: 0680 Fax 8436769045
E-mail: _____ Other: _____	E-mail: [illegible] Other: _____

FILED IN HORRY COUNTY
13 JUL 26 PM 2:58
MELANIE HUDGINS-WARD
CLERK OF COURT

☒ **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: 59(e)
Estimated Time Needed: 1 hour 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.

Ray Cothran Geddings. July 25, 2013
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, SCRCP)
- ☐ 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: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

CA # 2012-CP-26-5222

Thomas P. and Desiree J. Lyons,

Plaintiff,

vs.

Fidelity National Title Insurance Co., Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants.

MOTION TO RECONSIDER

HORRY COUNTY
13 JUL 26 PM 2:48
MELANIE HUGGINS-WARD
CLERK OF COURT

Pursuant to SCRCP 59(e), Defendant, The Security Title Guarantee Corporation of Baltimore (STGC), through its attorney, hereby moves the Court to Reconsider and to Alter its Judgment dated July 8, 2013 granting Plaintiffs' Motion for Partial Summary Judgment (Order). The attorney for STGC received a copy of the Order on July 16, 2013. The Court made certain factual findings that are disputed and granted partial summary judgment to Plaintiffs as a matter of law. As set forth below, STGC believes that the Circuit Court judge should reconsider its findings and rulings and amend its Order accordingly.

FACTUAL BACKGROUND

The real estate (Property) subject to this dispute fronts on the Intracoastal Waterway and is located in Horry County, South Carolina. The Property is a residential lot approximately three tenths of an acre in area upon which was

formerly located a residence made up of a mobile home onto which a number of extensions and additions had been added over the years. Plaintiffs purchased the property in two separate transactions. On May 5, 2005, for the stated consideration of $240,000, Plaintiffs purchased what was described as lot 1 on a plat of lots 1, 2, and 3 dated August 24, 1970, recorded in the public land records for Horry County. The second transaction closed on October 28, 2005, when plaintiffs, for the stated consideration of $100,000, purchased an approximate 30 foot by 120 foot strip of land which was a portion of adjacent lot 2 as shown on the August 24, 1970 plat. A plat of the entire Property, i.e: lot 1 acquired in May 2005 and the portion of lot 2 acquired in October 2005, is designated as lot 1 on a plat dated August 24, 2005, and recorded in the public land records for Horry County.

In conjunction with the first transaction, Fidelity National Title Insurance Company (Fidelity) issued the Lyons an owners' title insurance policy in the amount of the purchase price. In conjunction with the second transaction, Security Title Guaranty Company of Baltimore (STGC) issued the Lyons an owners' title insurance policy in the amount of the second transaction purchase price. These policies are substantively identical.

The court order states that "[I]n 1931, a predecessor-in-interest of plaintiffs conveyed to the State of South Carolina what is generally described as a spoils easement over the Property and adjacent property. The easement is recorded in the

land records of Horry County and was available for title examination before the policies were issued. The spoils easement was given for the construction and maintenance of what became the Intracoastal Waterway."

On or about November 4, 2003, the Horry County Council adopted Resolution R-143093, (no-build resolution) which provided:

"Horry County Council resolves to authorize the issuance of building permits to repair, remodel or replace existing structures within the spoil easements along the Intracoastal Waterway, but to otherwise continue the policy of denying building permits in this area. Mobile homes within the spoil area may only be replaced with mobile homes."

Plaintiffs assert Horry County refused to issue a building permit to build a residence on the subject property due to the no-build resolution.

After learning they could not build a house on their lot, Plaintiffs filed claims against Fidelity and STGC. STGC denied the claims and Fidelity never responded. This suit followed. Plaintiffs assert a contract action against Fidelity and STGC under their title policies and have another cause of action pending for bad faith in failing to pay the claims. Plaintiffs' moved for partial summary judgment against the insurance companies' solely on the contract actions.

MATTERS WHICH SECURITY REQUESTS RECONSIDERATION

I - The Court cited certain terms of the policies and held as a matter of law that Exclusion 1 does not exclude coverage in this case because the spoilage easement and the no-build resolution appeared in the public record at the policy date. STGC disputes both facts found by the court and will elaborate these disputes below. The parties dispute whether the no-build resolution was in the "public record" as defined in the policy. The court held that the term could fairly and reasonably be understood either way and construed the term against the drafter interpreting the policy in favor of providing coverage.

In its ruling, the court did not take an important part of the definition of "public records" in the policy; i.e. "title records that give constructive notice of matters affecting your title according to the state statutes where your land is located". This portion of the definition refers to the state statutes regarding the recorded land records. Because the Horry County Resolution is not recorded in the land records, it is not part of the public records as defined in the policy.

If the court's interpretation of "public record" includes county resolutions, a title examiner would be required to review the minutes of every meeting of every public body in addition to ordinances and found in the public indexes. STGC also respectfully submits that a Council resolution is not a public record because a resolution would not be found in an ordinance, assuming a title examiner or

closing attorney searched ordinances when abstracting title to real estate. Except in the case of nonconformities, the South Carolina Code of Laws requires that zoning regulation be established by ordinance. (See S.C. Code Ann.§ 6-29-710 et. seq. (Revised 2004)) In any event, the court is prohibited from rewriting the policy which it does by its failure to use the entire language in the policy defining "public record".

The court concluded that the easement was "available for title examination before the issuance of the policy". The court should take note that the Amended Complaint refers only to an easement executed in 1931 by the Governor of South Carolina to the federal government. There is no allegation or authority cited to indicate that the Governor's conveyance was from a "predecessor- in- interest" within the chain of title, or that a Governor's grant takes a super priority over the owner in a chain of title. Thus STGC believes that the Governor's conveyance was outside the chain of title, no title examiner should be expected to find it, and that its findings and factual conclusion is erroneous.

Notwithstanding its analysis, the court's fundamental error was in determining that the zoning coverage was invoked at all. The Lyons wanted to replace a mobile home with a site built home. Nothing prohibited the Lyons from using the property for a single family residence. They simply had to replace their admittedly existing mobile home with another mobile home, thus there was no

defect in their title, merely a restriction on the use of the property.

Title insurance indemnifies against loss from defects, liens, or encumbrances affecting title. The asserted refusal of Horry County to issue plaintiff a building permit is not a matter affecting title. *Elysian Inv. Group, LLC vs. Stewart Title Guar. Co.,* 105 Cal. App. 4th 315, 129 Cal. Rptr. 2d 372 (2002). In *Elysian,* recorded on the public land records was a notice from the Department of Building and safety to the affect the premises located on the property was substandard and subject to forced removal. There was no exception in the title policy for this notice. The court nevertheless granted the title insurance company summary judgment holding the notice did not affect title to the property, only its use. *See also Haw River Land & Timber Co., Inc. vs. Lawyers Title Ins. Corp.,* 152 F.3d 275, 278 (4th Cir. 1998)(applying North Carolina law, and cited with approval in *Shea Homes, LLC vs. Old Republic Nat. Title Ins. Co.,* 2007 WL 3334210 (W.D. N.C. 2007) ("...[T]itle to property does not characterize the property as valuable, merchantable or even usable...."); *McMaster vs. Strickland,* 305 S.C. 527, 530, 409 S.E.2d 440, 442 (Ct. App. 1991) ("While the purchaser may not be able to use the property for the purpose for which he sought [because of a wetlands determination], such does not mean the sellers cannot deliver marketable title."). The same analysis applies here-the asserted refusal of Horry County to issue plaintiffs a building permit does not affect their title to the property, only its use.

II- As stated in the Order (p. 4), the policy does not define "single-family residence". The parties dispute whether a mobile home, **a permitted use on this particular property**, is a "single-family residence" as the term is used in the policy. The Court found that Covered Title Risk 13 provides coverage because Plaintiffs cannot use the land as a single-family residence due to the existing zoning law preventing them from building a site-built home on the property. Security respectfully submits that the Court's interpretation is too restrictive.

United States Census records for 2011 indicate that 6.8 percent of all Americans live in mobile homes (Copy attached and incorporated herein by reference.) In 1992 the South Carolina Legislature established the South Carolina State Energy Office. One of its purposes was to "promote energy efficiency in manufactured housing". (See S.C. Code Ann. §48-52-420 (7) (Revised 1987)). The South Carolina Legislature adopted the Energy Efficient Manufactured Homes Program (S.C. Code Ann. § 48-52-870, et seq. (Revised 1987)) relying in part on recommendations submitted by The South Carolina Energy Office. The Energy Office recognized as far back as 2009 that approximately twenty percent of South Carolinians reside in mobile homes. (Energy Office Report attached and incorporated herein by reference.) United States Census records for 2008 indicate that 17.9 percent of total housing units in South Carolina are mobile homes. (Copy

of State Rankings for percentage of mobile homes of total housing units is attached and incorporated herein by reference). Thus, the Court's interpretation of the policy term "single family residence" rejecting STGC's argument that a mobile home is a single family residence fails to account for contradictory empirical data that mobile homes are currently being utilized as single-family residences for a significant number of South Carolinians. Most importantly, the court's interpretation of the policy opens Pandora's box for every title insurer in the state. Using the court's interpretation, "single family residence" excludes mobile homes. The mere method of construction should not determine whether a structure can be used as a single family residence.

Our legislature has recognized that mobile homes can be affixed to real estate, rendering the home a fixture, by simply removing the wheels, axles, and towing hitch and filing certain documents with the Clerk of Court. (S.C. Code Ann.§ 56-19-510 (A) (Revised 2008)). De-titled mobile homes can be re-titled, and under certain conditions must be re-titled if the home is sold. (See generally S.C. Code Ann.§ 56-19-500 et.seq. and S.C. Code Ann.§ 56-19-210) (Revised 2008)). In circumstances where mobile homes may not be replaced by site-built homes, one could claim proceeds from a title insurance policy by merely purporting to build a site-built home in a prohibited location forcing an insurer to pay a policy holder's fabricated damages simply because of the method of construction. Notably, a

mobile home was located on the property when the Plaintiffs purchased it, and Horry County would have approved a permit to replace the mobile home with another one pursuant to the no-build resolution. Nothing would prevent the Plaintiffs from using a mobile home as a single family residence and any such use does not affect title to the property. Therefore the method of construction should have no bearing on title to the property and the court's should reconsider its interpretation of the terms.

III – Mr. Lyons stated during his deposition that he determined his property to be useless after learning that he could not build a site built home on the property. The Plaintiffs also admitted his rejecting an offer to sell the property at a profit of $135,000.00. As this court noted in its Order, "[I]t is well settled law that "a party injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances, but the law does not require him to exert himself unreasonably or incur substantial expense to avoid damages." The court justified its denial of Defendants' defense by stating that "it cannot be said that after the discovery of an easement held by the United States that prevents construction of a dock, the law requires one to sell the entire property or be thwarted from bringing suit against his title insurance company at a later date; such a requirement would call for a party to exert himself unreasonably". STGC believes that accepting a $135,000.00 profit on the sale of property that the

Plaintiff deemed "useless" would not be an unreasonable exertion. Thus the court should reconsider this ruling.

IV- The Order does not address STGC's argument that the no build resolution does not affect title to the property. STGC believes that this defense is essential to the issue of coverage under the policy and should therefore be addressed by the Court. STGC submitted this fact to the court during the summary judgment hearing, and believes that the property has not been rendered useless by virtue of the no build resolution. Our Court of Appeals has stated that "While a purchaser may not be able to use the property for the purpose for which he sought [because of a wetlands determination], such does not mean the sellers cannot deliver marketable title". *McMaster v. Strickland*, 305 S.C. 527, 530, 409 W.E. 2d 440, 442 (Ct. App. 1991). Thus a ruling on this point is absolutely necessary in this case.

V - The order does not address STGC's argument that the matter is excluded from coverage as a matter created, suffered, assumed or agreed to by the insured claimant in that the insured demolished the existing home on the property. The home that was on the property was a mobile home to which numerous additions had been built-on over the years.

VI - The court did not address STGC's affirmative defense concerning the statute of limitations. The court did not fully address the issues surrounding

whether the mere affixation of a corporate seal made the document a document under seal. On March 15, 2013, Fidelity and Security Title served a subpoena by mail the United States Army Corps. of Engineers (COE) seeking documents related to the subject property. The COE responded by e-mail on April 9, 2013, producing a number of documents related to the subject property. Two of the documents produced indicate plaintiffs knew or should have known the property was the subject of a spoils easement in favor of the COE as early as October 20, 2006. In particular, document entitled "Joint Public Notice" which was issued in conjunction with plaintiffs' application to construct a dock on their property says " .... [i]t is understood that this work will be conducted on/or adjacent to an area subject to a prism and/or disposal easement held by the United States." Further, in a letter dated March 19, 2007, addressed to the Lyons, in the care of the company doing the dock design work, the COE said, " ... [i]t is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of the Atlantic Intracoastal Waterway . . .,"" (A copy of the COE documents are attached to Defendants' motion for Summary Judgment filed with the Horry County Clerk of Court on May 7, 2013)

S.C. Code Ann. § 15-3-530(1) provides a 3 year limitations period for contract actions. This limitations period begins to run when "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." *Martin* v. *Companion Healthcare Corp.*, 357 S.C. 570, 575-576, 593 S.E.2d 624, 627 (Ct. App. 2004) (citations omitted). Here, plaintiffs knew or should have known of the spoils easement as early as October 2006, more than 3 years before this action was filed. Further, any knowledge plaintiffs' agent (the company plaintiffs' engaged for their dock design) had concerning the spoil easement, would be imputed to the plaintiffs. *Crystal Ice Co. of Cola., Inc.* v. *The First Colonial Corp., 273* S.C. 306,257 S.E.2d 496 (1979).

The Honorable Carmen T. Mullen, Circuit Judge, concluded that the 3 year statute of limitations defense applied in a case captioned *Segars* v. *Fidelity Nat. Title Ins. Co.,* Civil Action Number 2011-CP-07-0093. (A copy of Judge Mullen's order is attached and it is noted that the ruling is on appeal with the South Carolina Court of Appeals.) The statute of limitations defenses establish more than a scintilla of evidence and, therefore, plaintiffs' motion should have been denied. If not, then the court should elaborate on its ruling.

Under section 15-3-530(1), "an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3- 520" must be

commenced within three years. S.C. Code Ann. § 15-3-530(1). Section 15-3-520(b) provides that, within twenty years, an action must be commenced "upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725." S.C. Code Ann. § 15-3-520(b).

The Policy being litigated in this case is a standard 1987 American Land Title Association ("ALTA") Owners Policy Form. (A complete copy of the Policy is attached hereto.) As is evident from the Policy, the Policy is only valid if the jacket and Schedule B are countersigned by an authorized officer or agent of STGC. Thus, the standard ALTA forms are generated, provided to agents of a title insurance company. and the agents of the title insurance company complete and sign the policy jacket and Schedule B thereby affording coverage. Here, the Policy appears to contain the seal of STGC beside what appears to be pre-printed signatures of the President and Secretary of STGC. Above the signature of these preprinted signatures, the Policy states it is "not complete without Schedules A and B". However, there is no seal on either Schedule as opposed to the pre-printed signatures of the President and Secretary of STGC. *Cf O'Cain* v. *O'Cain,* 32 S.C.L. 402, 1 Strob. 402, 1847 WL 2133 (1847) (holding where a note has been signed

and sealed by one person, and another signs his name under that of the first signer, but not opposite to his seal, making no seal of his own, and nothing being on the face of the paper sufficiently indicative of the intention to seal, and there being no evidence of an intent to seal, the seal of the second person cannot be inferred from his signature alone.) The purpose of the seal in this instance is to show that it is the act of the corporation. Am. Jur. *Corporations* § 255 (2009) ("The attachment of the corporate seal to an instrument signed by corporate officers generally shows prima facie that it is the act of the corporation."). Furthermore, the purpose of the seal on the Policy is to show that the company's agent is authorized to complete the policy Schedules to make the Policy valid. In essence, this language confers authority on STGC's agent to complete the blank form ALTA Policy by completing the Schedules. "The mere affixation of a corporate seal to a document does not automatically raise it to the status of an instrument under seal." *id.* "The seal of a corporation is not, in itself, conclusive of an intent to make a specialty. It is equally appropriate as a means of evidencing the assent of a corporation to be bound by a simple contract as by a specialty:' *Central Nat. Bank v. Charlotte,* C. *& A. R. Co.,* 5 S.C. 156,1874 WL 5344 (1874). In fact, in *Republic Contracting Corp.* v. *South Carolina Dep't of Highways & Pub. Trans.,* 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998), the Court found the mere fact that an engineer's seal was attached to plans did not result in a sealed instrument. *id; see also Aronow Roofing Company*

v. *Gilbane Building Co.*, 902 F.2d 1127 (3rd Cir.1990) ("The mere existence of the corporate seal and the use of the word 'seal' in a contract do not make the document a [sealed instrument]....) *Consolidated Rail Corp.* v. *Liberty Mut. Ins.*, 2002 WL 32080503 (Del. Super. 2002) (finding "the weight of the cases in this area favors the conclusion that the absence of even a symbolic seal precludes invoking the exception to [the general breach of contract limitations period], while the mere presence of a seal and a testimonium clause are not enough to create a sealed instrument. Except where mortgages are concerned, the simple use of formalities and boilerplate unaccompanied by substantive evidence of the parties' intent to seal it is not enough to turn an ordinary contract into a [sealed instrument]."). Our Court of Appeals in *Carolina Marine Handling, Inc.* v. *Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), stated that "[w]e adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument." *Id.* at 175, 609 S.E.2d at 552. There is no case in South Carolina finding that an insurance contract containing a seal is a sealed instrument for the purposes of section 15-3-520(b). If the 20-year time limitations period applicable to sealed instruments applies in this case, then the Lyons could have waited until the year 2026 to file this action on a policy issued in 2005 when the Lyons knew or had reason to know to file a claim in 2007. After all, "statutes of

limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates* v. *Bobb,* 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. *See Webb* v. *Greenwood County,* 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956); *City of Myrtle Beach* v. *Lewis-Davis,* 360 S.C. 225, 231, 599 S.E.2d 462, 464 (Ct. App. 2004). Significantly, "[s]tatutes of limitations provide potential defendants with certainty that after a set period of time, they will not be hailed [sic] into court to defend time-barred claims." *In re Elkay Indus., Inc., 167* 404, 408 (D.S.C. 1994), "Moreover, limitations periods discourage plaintiffs from sitting on their rights," *Id.* at 408 - 09. Statutes of limitations are, indeed, fundamental to our judicial system. *Carolina Marine Handling,* 363 S.C. at 176, 609 S.E.2d at 552. In that regard, the Court should reject plaintiffs' attempt to an ordinary breach of contract claim into a claim under a sealed instrument.

VII - The Order, citing *Whitlock v. Stewart Title Guaranty Co.*, 399 S.C. 610, 732 S.E.2d 626 (2012) states that the "damages are to be calculated based on the diminution in value caused by the title defects, measured from the date the property was purchased". STGC believes that the loss should be calculated based on the diminution in value measured from the date the property was purchased

until the date it received the claim since STGC limited its liability in Section 6 of the policy to that particular period of time. (Copy of Conditions of Policy attached and incorporated herein by reference.)

VIII - Finally, the Court granted summary judgment in the face of conflicting evidence on many material issues as stated above. In such an instance, the Court may not grant summary judgment. *See Shirley's Iron Work, Inc. vs. City of Union*, 387 S.C. 389, 397, 693 S.E. 2d 1, 4 (Ct. App. 2010)

Therefore, Security believes that the Court should reconsider its order granting partial summary judgment to the Plaintiffs because:

1- The spoilage easement and Horry County "no-build" resolution are not public records and would not be found by an examination of the public records as defined in the policy, and zoning issues are not a matter of title coverage;

2- The Court's policy interpretation of "single family dwelling is too restrictive and excludes a significant number of homes used as single-family dwellings in South Carolina simply because of their method of construction;

3- The plaintiffs failed to mitigate their damages;

4- The Order does not address STGC's argument that the no build resolution does not affect title to the property;

5- The Order does not address STGC's argument that the matter is excluded from coverage as a matter created, suffered, assumed or agreed to by the insured;

6- The Order does not adequately address STGC's affirmative defense concerning the statute of limitations;

7- The Order is unclear concerning the dates to be used to calculate plaintiffs' damages; and,

8- The circuit court judge granted summary judgment based on disputed material facts.

Respectfully submitted by the undersigned, attorney for Security Title Guarantee Corporation of Baltimore, this 25th day of July, 2013 at Florence, South Carolina.

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S2504 PHYSICAL HOUSING CHARACTERISTICS FOR OCCUPIED HOUSING UNITS
2011 American Community Survey 1-Year Estimates

BACK TO ADVANCED SEARCH

Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

Supporting documentation on code lists, subject definitions, data accuracy, and statistical testing can be found on the American Community Survey website in the Data and Documentation section.

Sample size and data quality measures (including coverage rates, allocation rates, and response rates) can be found on the American Community Survey website in the Methodology section.

Subject	United States					
	Occupied housing units		Owner-occupied housing units		Renter-occupied housing units	
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error
Occupied housing units	114,991,725	+/-179,541	74,264,435	+/-230,440	40,727,290	+/-100,848
UNITS IN STRUCTURE						
1, detached	63.0%	+/-0.1	82.2%	+/-0.1	27.9%	+/-0.1
1, attached	5.9%	+/-0.1	5.8%	+/-0.1	6.1%	+/-0.1
2 apartments	3.6%	+/-0.1	1.2%	+/-0.1	7.9%	+/-0.1
3 or 4 apartments	4.3%	+/-0.1	0.8%	+/-0.1	10.6%	+/-0.1
5 to 9 apartments	4.6%	+/-0.1	0.8%	+/-0.1	11.5%	+/-0.1
10 or more apartments	12.6%	+/-0.1	2.4%	+/-0.1	31.2%	+/-0.1
Mobile home or other type of housing	6.0%	+/-0.1	6.8%	+/-0.1	4.7%	+/-0.1
YEAR STRUCTURE BUILT						
2000 or later	15.6%	+/-0.1	16.7%	+/-0.1	13.7%	+/-0.1
1990 to 1999	14.0%	+/-0.1	15.2%	+/-0.1	11.8%	+/-0.1
1980 to 1989	13.7%	+/-0.1	13.5%	+/-0.1	14.1%	+/-0.1
1960 to 1979	27.0%	+/-0.1	25.8%	+/-0.1	29.2%	+/-0.1
1940 to 1959	16.6%	+/-0.1	16.8%	+/-0.1	16.0%	+/-0.1
1939 or earlier	13.1%	+/-0.1	11.9%	+/-0.1	15.2%	+/-0.1
ROOMS						
1 room	1.6%	+/-0.1	0.3%	+/-0.1	4.1%	+/-0.1
2 or 3 rooms	10.8%	+/-0.1	2.8%	+/-0.1	25.5%	+/-0.1
4 or 5 rooms	35.9%	+/-0.1	29.0%	+/-0.1	48.5%	+/-0.1
6 or 7 rooms	31.5%	+/-0.1	39.5%	+/-0.1	16.9%	+/-0.1
8 or more rooms	20.2%	+/-0.1	28.5%	+/-0.1	5.0%	+/-0.1
BEDROOMS						
No bedroom	1.8%	+/-0.1	0.3%	+/-0.1	4.6%	+/-0.1
1 bedroom	10.7%	+/-0.1	2.5%	+/-0.1	25.7%	+/-0.1
2 or 3 bedrooms	66.2%	+/-0.1	68.2%	+/-0.1	62.5%	+/-0.1
4 or more bedrooms	21.2%	+/-0.1	28.9%	+/-0.1	7.2%	+/-0.1
COMPLETE FACILITIES						
With complete plumbing facilities	99.4%	+/-0.1	99.6%	+/-0.1	99.1%	+/-0.1
With complete kitchen facilities	99.0%	+/-0.1	99.5%	+/-0.1	98.0%	+/-0.1
VEHICLES AVAILABLE						
No vehicle available	9.3%	+/-0.1	3.4%	+/-0.1	20.1%	+/-0.1
1 vehicle available	34.1%	+/-0.1	26.9%	+/-0.1	47.2%	+/-0.1
2 vehicles available	37.5%	+/-0.1	44.0%	+/-0.1	25.5%	+/-0.1
3 or more vehicles available	19.1%	+/-0.1	25.7%	+/-0.1	7.3%	+/-0.1
TELEPHONE SERVICE AVAILABLE						
With telephone service	97.4%	+/-0.1	98.4%	+/-0.1	95.4%	+/-0.1
HOUSE HEATING FUEL						
Utility gas	49.0%	+/-0.1	52.6%	+/-0.1	42.5%	+/-0.2
Bottled, tank, or LP gas	4.9%	+/-0.1	6.1%	+/-0.1	2.7%	+/-0.1
Electricity	36.3%	+/-0.1	30.4%	+/-0.1	47.1%	+/-0.2
Fuel oil, kerosene, etc.	6.2%	+/-0.1	6.9%	+/-0.1	4.8%	+/-0.1
Coal or coke	0.1%	+/-0.1	0.1%	+/-0.1	0.1%	+/-0.1
All other fuels	2.6%	+/-0.1	3.3%	+/-0.1	1.4%	+/-0.1
No fuel used	0.9%	+/-0.1	0.6%	+/-0.1	1.5%	+/-0.1
PERCENT IMPUTED						

Subject	United States					
	Occupied housing units		Owner-occupied housing units		Renter-occupied housing units	
	Estimate	Margin of Error	Estimate	Margin of Error	Estimate	Margin of Error
Units in structure	1.6%	(X)	(X)	(X)	(X)	(X)
Year structure built	19.2%	(X)	(X)	(X)	(X)	(X)
Rooms	6.0%	(X)	(X)	(X)	(X)	(X)
Bedrooms	5.0%	(X)	(X)	(X)	(X)	(X)
Plumbing facilities	2.5%	(X)	(X)	(X)	(X)	(X)
Kitchen facilities	3.3%	(X)	(X)	(X)	(X)	(X)
Vehicles available	1.2%	(X)	(X)	(X)	(X)	(X)
Telephone service available	1.0%	(X)	(X)	(X)	(X)	(X)
House heating fuel	3.2%	(X)	(X)	(X)	(X)	(X)

Source: U.S. Census Bureau, 2011 American Community Survey

Explanation of Symbols:
An '**' entry in the margin of error column indicates that either no sample observations or too few sample observations were available to compute a standard error and thus the margin of error. A statistical test is not appropriate.
An '-' entry in the estimate column indicates that either no sample observations or too few sample observations were available to compute an estimate, or a ratio of medians cannot be calculated because one or both of the median estimates falls in the lowest interval or upper interval of an open-ended distribution.
An '-' following a median estimate means the median falls in the lowest interval of an open-ended distribution.
An '+' following a median estimate means the median falls in the upper interval of an open-ended distribution.
An '***' entry in the margin of error column indicates that the median falls in the lowest interval or upper interval of an open-ended distribution. A statistical test is not appropriate.
An '*****' entry in the margin of error column indicates that the estimate is controlled. A statistical test for sampling variability is not appropriate.
An 'N' entry in the estimate and margin of error columns indicates that data for this geographic area cannot be displayed because the number of sample cases is too small.
An '(X)' means that the estimate is not applicable or not available.

Data are based on a sample and are subject to sampling variability. The degree of uncertainty for an estimate arising from sampling variability is represented through the use of a margin of error. The value shown here is the 90 percent margin of error. The margin of error can be interpreted roughly as providing a 90 percent probability that the interval defined by the estimate minus the margin of error and the estimate plus the margin of error (the lower and upper confidence bounds) contains the true value. In addition to sampling variability, the ACS estimates are subject to nonsampling error (for a discussion of nonsampling variability, see Accuracy of the Data). The effect of nonsampling error is not represented in these tables.

The percent imputed for units in structure, year structure built, rooms, bedrooms, plumbing facilities, and kitchen facilities is based on all housing units (both occupied and vacant housing units) instead of occupied housing units only.

The 2009, 2010, and 2011 plumbing data for Puerto Rico will not be shown. Research indicates that the questions on plumbing facilities that were introduced in 2008 in the stateside American Community Survey and the 2008 Puerto Rico Community Survey may not have been appropriate for Puerto Rico.

The imputation rates for some items - Units in Structure, Year Structure Built, Rooms, Bedrooms, Plumbing Facilities, and Kitchen Facilities - are calculated using the number of imputations in total housing units in the numerator but using total occupied housing units in the denominator. This results in artificially inflated imputation rates for all areas, but particularly in areas where there are unusually high percentages of vacant housing units.

While the 2011 American Community Survey (ACS) data generally reflect the December 2009 Office of Management and Budget (OMB) definitions of metropolitan and micropolitan statistical areas; in certain instances the names, codes, and boundaries of the principal cities shown in ACS tables may differ from the OMB definitions due to differences in the effective dates of the geographic entities.

Estimates of urban and rural population, housing units, and characteristics reflect boundaries of urban areas defined based on Census 2000 data. Boundaries for urban areas have not been updated since Census 2000. As a result, data for urban and rural areas from the ACS do not necessarily reflect the results of ongoing urbanization.

Source: U.S. Census Bureau | American FactFinder

ANNUAL REPORT ON THE

IMPLEMENTATION OF ENERGY EFFICIENT MANUFACTURED HOMES INCENTIVE PROGRAM

SECTION 48-52-870, CODE OF LAWS OF SOUTH CAROLINA

SC ENERGY OFFICE

SC BUDGET AND CONTROL BOARD

Prepared by the South Carolina Energy Office
Submitted to the South Carolina General Assembly
December 31, 2009

S.C. Energy Office ENERGY STAR Manufactured Housing Report
December 31, 2009

The South Carolina Energy Office submits this report in accordance with Section 48-52-870, Code of Laws of South Carolina.

South Carolina Energy Office

The 1992 South Carolina Energy Conservation and Efficiency Act established the South Carolina Energy Office (SCEO) within the SC Budget and Control Board in order to address energy issues in a consistent and professional manner. The SCEO carries out the state policy and program mandates of the Act and also administers the State Energy Program funded by the United States Department of Energy. Additionally, the office is responsible for substantial functions related to radioactive waste disposal mandated by legislation passed by the General Assembly in 2000. The mission of the South Carolina SCEO is to increase energy efficiency and diversity, enhance environmental quality and save energy dollars for South Carolina. As part of this mission, the SCEO administers the Energy Efficient Manufactured Homes Incentive Program.

Background

Twenty percent of South Carolinians live in manufactured housing, the highest percentage in the nation. Older manufactured homes, built before 1980, consume an average of 53 percent more energy per square foot compared to all other types of homes. Fifty-five percent of these households have incomes below 150 percent of the federal poverty level (Environmental and Energy Study Institute fact sheet, June 2009). These low to moderate income residents can not afford higher than average energy bills. Indeed, anecdotal evidence from utilities and other organizations suggest that some residents have lost their homes not because they cannot afford to pay the mortgage, but because they cannot afford to pay the utility bill. Therefore, any measures that reduce energy use, and thus energy bills, for residents of manufactured housing will contribute significantly to the overall economic well-being of the 20 percent of South Carolina residents who live in manufactured homes.

In 1992 legislation established South Carolina-specific criteria for energy efficient manufactured homes. Manufacturers constructing homes that meet the criteria order labels from the S.C. SCEO and affix them to the more energy efficient homes. Individuals who purchase these energy efficient homes pay no more than $300 in sales tax. When the program began in 1998, approximately 16 percent of all manufactured homes sold met the more stringent energy efficiency criteria. After 11 years of program implementation, between 70 percent and 80 percent of homes meet the South Carolina energy efficiency criteria (Manufactured Housing Institute of S.C., 2008.) We estimate that these energy efficiency standards have saved South Carolinians as much as $122,454,016 over the expected life of homes purchased, based on an estimated annual savings of $152 for a standard manufactured home and $252 in annual savings for a doublewide home. During this period more than 50,000 labels have been distributed to manufacturers, peaking in 2003 with 11,229 labels distributed and falling to a low of 2385 for 2008, the last full year for which statistics are available. We view the program

as a great success in that it spurred change during a period when little attention was paid to energy efficiency in manufactured housing.

New legislation enacted in 2008 was designed to create more significant incentives for ENERGY STAR labeled homes, which are even more energy efficient than the state-specific energy efficient criteria from 1992. These incentives include the elimination of all sales tax on ENERGY STAR manufactured homes and a $750 nonrefundable state income tax credit for eligible home buyers. These credits are offered in addition to, not in place of, the older energy efficiency sales tax incentive.

Current Program

Manufactured housing has been regulated by the U.S. Department of Housing and Urban Development (HUD) since 1976 under the Federal Manufactured Housing and Construction Standards (24 CFR 3280.) Recently, the U.S. Department of Energy and the U.S. Environmental Protection Agency created standards for ENERGY STAR manufactured homes, which are at least 15 percent more energy efficient than homes meeting the minimum energy code. In general, ENERGY STAR qualified homes include features and appliances that make them as much as 30 percent more efficient than most recently constructed manufactured or site-built homes. Factors contributing to increased efficiency include:

- Effective insulation in walls and floors
- High performance windows, including protective coatings and improved frame assemblies
- Tight construction and ducts so that cracks and holes are sealed to reduce drafts, dust and moisture problems
- High efficiency heating and cooling equipment
- ENERGY STAR qualified lighting and appliances

Section 48-52-870 creates the Energy Efficient Manufactured Homes Incentive Program. It was established by S. 1141 and introduced by Senators McConnell, Rankin, Martin, Leventis, Peeler, Alexander, Hayes, Setzler, Hutto and Ceips in 2008. The law was enacted to provide financial incentives for the purchase and installation of energy efficient manufactured homes in South Carolina in order to save money for low income residents and to reduce energy use across the state.

This program compliments federal incentives, which offer $1000 tax credits to manufacturers of ENERGY STAR rated homes, and incentives offered by one utility (Progress Energy) to retailers who sell ENERGY STAR homes. Progress Energy will pay manufactured home producers and retailers, or modular home builders, a $400 rebate for each new ENERGY STAR home equipped with a minimum of 14 SEER cooling equipment sold to customers of Progress Energy in North Carolina or South Carolina. Homes with 15 SEER cooling equipment are eligible for a $700 rebate. Both Progress Energy and Duke Energy offer ENERGY STAR homeowners a five percent bill discount.

Implementation

As required by law, the SCEO created retailer instructions (Appendix A) and an application form (Appendix B) for the new $750 tax credit. The SCEO worked with the S.C. Department of Revenue and the Manufactured Housing Institute of South Carolina to develop instructions for retailers and a form to certify the purchase which would be simple for home buyers to complete.

Retailers who sell an ENERGY STAR manufactured home are required to certify that they have installed the home in accordance with guidelines. That certification is returned to the home's manufacturer, who in turn files it with the national entity tracking ENERGY STAR home sales on behalf of the EPA and DOE. When a retailer sells an ENERGY STAR home, he/she supplies the buyer with a form to fill out and mail to the S.C. Energy Office.

The SCEO reviews the form, ensures that the home buyer has received his/her ENERGY STAR certification from the retailer, and signs and returns the approval form to the home buyer. The home buyer then attaches the certification to his/her tax form if filing a paper form, or retains it with other records if filing electronically.

Results

According to the Manufactured Housing Institute of South Carolina, an average of 140 homes per month were shipped from manufacturers to dealers in the state, meaning that approximately 700 have been shipped from the inception of the program July 1, 2009 to November 30, 2009, the last date for which data are available. According to the national database that manufacturers use to report ENERGY STAR homes produced and installed, 74 ENERGY STAR homes have been installed on-site in accordance with ENERGY STAR standards (hence certified) since July 1, 2009. Eight additional homes have been sold to SC homebuyers this year for which the site work hasn't been completed or the site completion paperwork hasn't been filed. In total, there are 82 homes that should be eligible for the tax credit. Energy efficient ENERGY STAR homes represent approximately 12% of the manufactured homes sold in South Carolina for the five months the program has been active, which represents a major success and significant savings for homeowners.

In addition to the ENERGY STAR homes that have been sold to date, national database records indicate that there are 113 ENERGY STAR homes placed in production since July 1, 2009 and sold to SC dealers, but for which no homeowner information has been provided. Many of these homes are recent sales and many are stock or display units. And half of these homes have been placed in production in just the past two months. Once installed on-site in accordance with ENERGY STAR requirements, these homes should also be eligible for the tax credit.

To date, only three households in South Carolina have submitted approval forms to the S.C. Energy Office. The first home buyer to receive approval was featured in an article in the SCEO newsletter (see Appendix B). While energy savings for this first year are

minimal, we expect more significant results in subsequent years and plan to use a format similar to the table below to report future results.

Location	Approximate square feet	Approved	Expected Annual Energy Savings (MMBTU)	Equivalent CO2 Reduction (lbs.)
Easley	2255	10/09/09	15.35	5,831
Sellers	2255	12/17/09	15.35	5,831
Summerton	1600	12/30/09	14.07	5,347
Total			44.77	17,009

Calculations are based on the most recent U. S. Energy Information Agency data (2005) for residential energy use based on square footage of homes. The SCEO made the very conservative assumption that the ENERGY STAR home would save only 15 percent of the energy used by the average home of approximately the same square footage.

It is our understanding that dealers expect home buyers to file their request for ENERGY STAR certification tax credit approval when they get ready to file their 2009 tax forms. We are working with the Manufactured Housing Institute of S.C. to be sure dealers explain to customers that waiting until the last minute could result in delays in filing for the tax credit

Appendix A:

Retailer Instructions

ENERGY STAR Incentives for Manufactured Homebuyers and Dealers

Customer's $750 Income Tax Credit

In order for your customers to claim the $750 non-refundable* tax credit on their state tax returns, the following items must be completed:

Step 1. Provide the customer with a copy of the ENERGY STAR Tax Credit Application Form (available on the web at either www.energy.sc.gov or www.mhisc.com).

Step 2. Verify that the ***Site Installation Checklist*** provided by the manufacturer and shipped with the home is completed and signed (the gray ENERGY STAR quality assurance label affixed inside the home should also be signed). Return a copy of the signed ***Site Installation Checklist*** to the manufacturer.

Step 3. Give the customer two copies of the bill of sale (clearly showing date of sale) and two copies of the signed ***Site Installation Checklist*** (must include customer's name and home address). The customer must forward one copy of each of these documents to the State Energy Office along with the ENERGY STAR Tax Credit Application Form. The address is on the application form.

Step 4. The State Energy Office will approve the request and return the form to the customer. The customer must retain the form along with other income tax records, and must include a copy with his/her income tax filing if filing a paper form.

*Non-refundable tax credits can not reduce the tax owed to less than zero.

Sales Tax Elimination

South Carolina law eliminates sales tax on homes meeting ENERGY STAR requirements. State law requires retailers to maintain records on each ENERGY STAR manufactured home sold. In lieu of a special form, the State Energy Office will require that retailers simply retain copies of the ***Site Installation Checklist***, which must include the customer's name and home address. By law, these records must be retained for three years and must be made available for inspection upon request of the Department of Consumer Affairs or the State Energy Office.

Retailer's Rebate

Retailers that sell Home Advantage ENERGY STAR homes that are connected to Progress Energy Carolina's service will receive a rebate for each home sold (check with the home manufacturer on the amount of the rebate). To receive the rebate, complete the rebate claim form available on the web at www.research-alliance.org and fax it, along with copies of the signed ***Site Installation Checklist*** and cooling equipment invoice, to the number shown on the form.

Appendix B:

Tax Credit Approval Form

Appendix

Energy Efficient (ENERGY STAR) Manufactured Home Credit Application Form

Please follow instructions carefully and submit to:

South Carolina Energy Office
Attn: Energy Star Manufactured Home Credit
1200 Senate St., Room 408 Wade Hampton Building
Columbia, S.C. 29201 803-737-8030

Applicant name:
(Note: Applicant name must match name on bill of sale)

Applicant Social Security Number* or Tax Identification Number (if not an individual):

Address of home for which $750 tax credit is sought:

Applicant mailing address, if different than above:
(Note: If neither fax nor email is included, your form will be returned via U.S. Mail)

Applicant email:
(Needed only if you prefer to receive your approved application via email)

Applicant fax:
(Needed only if you prefer to receive your approved application via fax)

Applicant phone:

Date of sale:
(Note: You must attach a copy of your bill of sale and ENERGY STAR Site Installation Checklist)

Description of home: ___Single ___Double ___Triple
Approximate square footage: _____

I certify the above information is correct, and that I am the owner of the ENERGY STAR home for which a bill of sale and Site Inspection Checklist is attached.

***Social Security Privacy Act :** It is mandatory that you provide your social security number on this tax form. 42 U.S.C 405(c)(2)(C)(i) permits a state to use an individual's social security number as means of identification in administration of any tax. SC Regulation 117-201 mandates that any person required to make a return to the SC Department of Revenue shall provide identifying numbers, as prescribed, for securing proper identification. Your social security number is used for identification purposes.

_____ _____
(Signature) (Please print name)

----------*SCEO Approval – Do not write below this line* ----------

_____ _____ _____
(Name) (Title) (Date)

Appendix C:

First ENERGY STAR Manufactured Home Buyer

(article)

Energy Connection, Winter, 2009

ENERGY STAR manufactured home makes debut in Upstate

The South Carolina Energy Office recently received its first request for approval of documentation for the state's new $750 income tax credit for an ENERGY STAR® manufactured home. Purchased at gallery of Homes of the Upstate, the home belongs to Phillip and Jessica Spradling of Easley.

An ENERGY STAR-qualified manufactured home is generally 30 percent more energy efficient in its heating, cooling, and water heating than a comparable standard code home. This increased level of energy efficiency can be met using standard technologies and manufacturing practices by successfully integrating three key home components:

- An energy-efficient building envelope (e.g., effective insulation, tight construction, and high-performance windows).
- Energy-efficient air distribution (e.g., airtight, well-insulated ducts).
- Energy-efficient equipment (e.g., space heating, space cooling, and hot water heating).

And unlike a site-built home, an ENERGY STAR manufactured home enjoys the benefits of factory-controlled conditions and third-party verification. The ENERGY STAR program is a joint effort between the U.S. Department of Energy and the Environmental Protection Agency.

Mr. Spradling said the economic benefits played a large role in why he and his wife chose to purchase an ENERGY STAR home.

"We've always been focused on conservation, on saving energy and money, especially in a recession," he said.

Mark Dillard, Director of the Manufactured Housing Institute of South Carolina agrees. "Homes remain in use longer than any other consumer product. It makes sense to focus energy efficiency incentives on housing because the payoff is year after year," Dillard said.

Utility companies state-wide are also encouraging this effort.

"Energy efficiency not only saves money for the homeowner, but saves money for the utility in the long run by delaying the need for new power supplies," Joel Ledbetter, General Manager of Easley Combined Utilities, said. "We think the tax credit is a great way to encourage people to invest in ENERGY STAR homes."

The tax incentives do not apply to modular homes. Manufactured homes are built to a national building code and modular homes are built to a state building code. The builder, developer or retailer selling the home can tell you whether the home you are interested in is a manufactured or modular home.

Appendix

State Rankings -- Statistical Abstract of the United States

MOBILE HOMES, PERCENT OF TOTAL HOUSING UNITS, 2008

[When states share the same rank, the next lower rank is omitted. Because of rounded data, states may have identical values shown, but different ranks. Cautionary note]

State	Percent	Rank
United States	6.6	(X)
Alabama	14.3	4
Alaska	4.6	34
Arizona	10.7	12
Arkansas	12.3	10
California	3.9	39
Colorado	4.6	33
Connecticut	0.8	49
Delaware	10.2	13
District of Columbia	0.0	(X)
Florida	9.8	16
Georgia	9.9	15
Hawaii	0.2	50
Idaho	9.3	17
Illinois	2.6	43
Indiana	5.5	31
Iowa	4.2	37
Kansas	5.2	32
Kentucky	12.6	9
Louisiana	13.4	8
Maine	9.1	18
Maryland	1.7	45
Massachusetts	0.9	48
Michigan	5.7	30
Minnesota	3.7	42
Mississippi	15.2	3
Missouri	6.7	26
Montana	11.8	11
Nebraska	3.8	41
Nevada	6.0	28
New Hampshire	6.0	27
New Jersey	1.0	47
New Mexico	16.4	2

State	Percent	Rank
New York	2.5	44
North Carolina	14.3	5
North Dakota	7.0	24
Ohio	3.9	38
Oklahoma	9.0	20
Oregon	8.6	21
Pennsylvania	4.3	36
Rhode Island	1.0	46
South Carolina	17.9	1
South Dakota	9.0	19
Tennessee	10.2	14
Texas	7.4	22
Utah	4.4	35
Vermont	6.9	25
Virginia	5.8	29
Washington	7.2	23
West Virginia	14.0	6
Wisconsin	3.8	40
Wyoming	14.0	7

Symbol
X Not applicable.
Z Less than 0.05 percent.

Source: U.S. Census Bureau,
2008 American Community Survey;
Table B25024. Units in Structure;
using American FactFinder;
http://factfinder.census.gov/
See Table 954, Statistical Abstract of the United States, 2010

For more information:
American Community Survey

Measuring America—People, Places, and Our Economy

ABOUT US
Are You in a Survey?
FAQs
Director's Corner
Regional Offices
History
Research
Scientific Integrity
Jobs @ Census
Diversity @ Census
Business Opportunities
Contact Us

FIND DATA
QuickFacts
American FactFinder
Easy Stats
Population Finder
2010 Census
Economic Census
Interactive Maps
Training & Workshops
Data Tools
Developers
Catalogs
Publications

BUSINESS & INDUSTRY
Help With Your Forms
Economic Indicators
Economic Census
E-Stats
Foreign Trade
Export Codes
NAICS
Governments
Local Employment Dynamics
Survey of Business Owners

PEOPLE & HOUSEHOLDS
2010 Census
2000 Census
American Community Survey
Income
Poverty
Population Estimates
Population Projections
Health Insurance
Housing
International
Genealogy

GEOGRAPHY
Maps and Data
TIGER
Gazetteer

SPECIAL TOPICS
Statistics in Schools
Tribal Resources (AIAN)
Emergency Preparedness
Statistical Abstract
Special Census Program
Fraudulent Activity & Scams
Recovery Act
USA.gov
BusinessUSA.gov

NEWSROOM
News Releases
Release Schedule
Fact for Features
Blogs
Multimedia

CONNECT WITH US
Email Updates
Facebook
Twitter
Flickr
YouTube

Accessibility Information Quality FOIA Data Protection & Privacy Policy U.S. Dept of Commerce

United States Census Bureau

DEPARTMENT OF THE ARMY
CHARLESTON DISTRICT, CORPS OF ENGINEERS
69-A Hagood Avenue
CHARLESTON, SOUTH CAROLINA 29403-5107

REPLY TO
ATTENTION OF

March 19, 2007

Regulatory Division

Thomas and Desiree Lyons
c/o Reid Hilliard
11661 Highway 707
Murrells Inlet, South Carolina 29576

Dear Mr. and Ms. Lyons:

This letter is in response to a Pre-Construction Notification (PCN) dated September 25, 2006. By submittal of the PCN, you requested verification that the proposed project is authorized by Department of the Army General Permit # 2006-10-001.

The PCN contains the following identifying information for this project. The work affecting navigable waters of the United States is part of an overall project known as Lyons Dock as shown on drawing sheets 1-5 of 5 titled "Lyons Dock" and dated May 24, 2006. The work specifically consists of joining an existing 10' X 12' dock to the proposed 11' X 15' covered fixed pierhead by an irregularly shaped 56 square foot pierhead. The fixed pierhead will be partially covered by a 12' X 16' roof. A 10' X 12.5' boatlift will be constructed downstream of the pierhead. A 150' linear bulkhead will be constructed above mean high water (MHW). The project is located on Atlantic Intracoastal Waterway at lot adjacent to and east of 2340 John Henry Lane, Horry County, South Carolina.

Based on a review of the information provided, it has been determined that the proposed activity will result in minimal individual and cumulative adverse environmental effects and is not contrary to the public interest. Furthermore, it appears that the activity meets the terms and conditions of Department of the Army General Permit #2006-10-001.

For this authorization to remain valid, the project must comply with the terms and conditions listed in the enclosed copy of the General Permit, and the following special conditions:

1. That prior to beginning the authorized work the permittee must obtain all appropriate state certifications and/or authorizations (i.e. 401 Water Quality Certification, Coastal Zone Management Consistency Determination, State Navigable Waters Permit).

2. That the structure(s) do not exceed the dimensions specified in the above mentioned PCN, including any supplemental information or revised permit drawings that were submitted to the Corps by the permittee;

3. That the permittee shall submit a signed letter to the Corps within 60 days following completion of the project stating that the authorized work was completed in accordance with this General Permit.

4. That the permittee agrees to provide, as a part of the completion notification, as-built drawings which indicate all dimensions of the structure as well as the distance between the centerline of the federal channel, and the waterward edge of the authorized structure. These drawings must be prepared by a registered land surveyor and submitted within sixty (60) days of the completion of the structure. Failure to provide these drawings will result in non-compliance with the General Permit and further enforcement action will be taken.

5. It is recognized that this structure is to be constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of the Atlantic Intracoastal Waterway. This authorization does not convey any property rights either in real estate or material or any exclusive use privileges; nor does it relinquish any right the United States has for the use of its easement or the maintenance and future widening or deepening of the Atlantic Intracoastal Waterway pursuant to its easement rights.

6. It is understood and agreed that if the District Engineer determines this structure shall in any way in the future conflict with the improvement, operation, maintenance and widening or deepening of the federal channel, the owners themselves, their heirs, successors and assigns will remove said structure within 45 days from the date that written notice is given by the District Engineer, and there shall be no entitlement to compensation from the United States for damage or injury.

7. Conveyance of this permit applies only to the structure authorized and does not authorize the construction of any permanent structure or any structure suitable for habitation or any utility leading either to permanent structures suitable for habitation or to permanent structures within the bounds of areas on which the Corps of Engineers enjoys easement rights.

8. That permittee agrees that no permanent structures, beyond those authorized by this document, will be placed on the prism easement or on any adjacent disposal easement without written approval of the District Engineer.

9. That the Secretary of the Army, representing the United States of America, hereby consents to the herein authorized facilities or structures to be located on or across easement lands vested in the United States of America for the construction and operation of the federal channel. The permittee shall not engage in any act which may interfere with or abridge the easement interests of the United States, except those specifically authorized herein.

10. That any Corps of Engineers Waterway Control Monument can not be disturbed without first notifying this office 30 days in advance. After coordination with this office, a decision will be made as to the proper steps to be taken with regard to removing and relocating the monuments(s).

In all future correspondence concerning this matter, please refer to our file number SAC 2006-2458-3GT. A copy of this letter is being forwarded to certain State and/or Federal agencies for their information. If you have any questions concerning this matter, please contact Jay M. Thomas at 843-365-4239.

Respectfully,

Tina B. Hadden
Chief, Regulatory Division

Enclosures:
Permit Drawings
General Permit 2006-10-001
Customer Service Survey

Thomas/RD-NE 31 Mar 07
Fennell/ RD-NE 2 Apr 07
Hadden/RD 5/2/07

Copy Furnished:

South Carolina Department of Health
and Environmental Control
Office of Ocean and Coastal
Resource Management
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29405

JOINT
PUBLIC NOTICE

CHARLESTON DISTRICT, CORPS OF ENGINEERS
1949 Industrial Park Road, Room 110
Conway, South Carolina 29526
and
THE S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
Office of Environmental Quality Control
Water Quality Certification and Wetlands Programs Section
2600 Bull Street
Columbia, South Carolina 29201

REGULATORY DIVISION — 20 October 2006
Refer to: P/N #2006-2458-3IT

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), the South Carolina Coastal Zone Management Act (48-39-10 et. seq.) and the S.C. Construction in Navigable Waters Permit Program (R. 19-450, et. seq., 1976 S.C. Code of Laws, as amended), an application has been submitted to the Department of the Army and the S.C. Department of Health and Environmental Control by

THOMAS and DESIREE LYONS
c/o REID HILLIARD
11661 HIGHWAY 707
MURRELLS INLET, SOUTH CAROLINA 29576

for a permit to construct a docking facility on the

ATLANTIC INTRACOASTAL WATERWAY

on the lot adjacent to and east of 2340 John Henry Lane, Horry County, South Carolina (Latitude 33.7006° N, Longitude 78.9738° W).

In order to give all interested parties an opportunity to express their views

NOTICE

is hereby given that written statements regarding the proposed work will be received by both of the above mentioned offices until

12 O'CLOCK NOON, MONDAY, NOVEMBER 20, 2006

from those interested in the activity and whose interests may be affected by the proposed work.

The proposed work consists of constructing a bulkhead, a partially covered fixed pierhead, and a boatlift. In detail, the work consists of joining an existing 10' X 12' dock to the proposed 11' X 15' covered fixed pierhead by an irregularly shaped 56 square foot pierhead. The fixed pierhead will be partially covered by a 12' X 16' roof. A 10' X 12.5' boatlift will be constructed downstream of the pierhead. A 150 linear foot bulkhead will be constructed above MHW. It is understood that this work will be conducted on/or adjacent to an area subject to a prism and/or disposal easement held by the United States. If a permit is issued, appropriate provisions will be included to ensure the interests of the Federal Government are understood. The purpose of the project is for the owner's private recreational use.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

THADDEUS F. SEGARS,

Plaintiff,

vs.

FIDELITY NATIONAL TITLE INSURANCE COMPANY,

Defendant.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
Civil Action No. 2011-CP-07-00932

2012 MAY 24 AM 10:25
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS MATTER CAME ON FOR HEARING before the Honorable Carmen T. Mullen, Judge presiding over the April 25, 2012 Session of the Beaufort County Common Pleas Court upon the motion of Defendant Fidelity National Title Insurance Company to dismiss Plaintiff's Complaint pursuant to Rules 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6).

Attorney Michael Mogil entered an appearance on behalf of Plaintiff, and attorney Amy Hunt appeared on behalf of Defendant. The Court reviewed and considered the Complaint, Motions to Dismiss, authorities presented, and arguments of counsel; and the Court makes the following findings of fact and conclusions of law:

1. The title insurance policies at issue in this lawsuit were issued on June 23, 2004 (the Lot 2 Policy) and August 9, 2004 (the Lot 3 Policy).

2. The restrictions and plats of which Plaintiff complains were matters of public record prior to the issuance of the title insurance policies and are specifically referenced in the policies.

3. Plaintiff filed two prior actions against the same Defendant on July 16, 2008 (Beaufort County Case Number 2008-CP-07-2579) and August 4, 2008 (Beaufort County Case

Number 2008-CP-07-2741). In these prior actions, the claims against Defendant were substantially the same as in the present action.

4. A Stipulation of Dismissal without prejudice was filed as to both of the prior actions on February 19, 2010.

5. The present action was filed on February 24, 2011.

6. The Court finds that Plaintiff discovered or should have discovered the facts underlying his Complaint at the time of the issuance of the title insurance policies, because the matters of which he now complains were matters of public record at that time. Plaintiff is not a bona fide purchaser because sufficient record notice was available as of the date of the issuance of the policies to charge him with a duty to inquire, which if pursued with due diligence, would have supplied him with knowledge of the restrictions and plats.

7. Accordingly, the Court finds that Defendant's Motion to Dismiss should be allowed, because Plaintiff's claims are all barred by the applicable statute of limitations under S.C. Code. Ann. § 15-3-530(1).

IT IS HEREBY ORDERED that the motion to dismiss is allowed as to all claims in the Complaint.

AND IT IS SO ORDERED.

The Honorable Carmen T. Mullen
Common Pleas Judge, Beaufort County

May 23, 2012
Beaufort, South Carolina

HTPL: 514126v4

POLICY NO: P

RESIDENTIAL TITLE INSURANCE POLICY

One-To-Four Family Residences

ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S COVERAGE STATEMENT

This Policy insures your title to the land described in Schedule A-if that land is a one-to-four family residential lot or condominium unit.

Your insurance, as described in the Coverage Statement, is effective on the Policy Date shown in Schedule A.

Your insurance is limited by the following:

- EXCLUSIONS on page 2
- EXCEPTIONS in Schedule B
- CONDITIONS on page 3

We insure you against actual loss resulting from:

- any title risks covered by this Policy-up to the Policy Amount; and
- any costs, attorneys' fees and expenses we have to pay under this Policy

This Policy is not complete without Schedules A and B.

ISSUED BY:

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

By Theodore C Rogers
President

ATTEST:

By Marlene B. McGraw
Secretary

Authorized Signatory

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RESIDENTIAL TITLE INSURANCE POLICY

One-To-Four Family Residence

ISSUED BY

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

BALTIMORE, MARYLAND

OWNER'S INFORMATION SHEET

Your title Insurance Policy is a legal contract between you and The Security Title Guarantee Corporation of Baltimore. It applies only to a one-to-four family residential lot or condominium unit. If your land is not either of these, contact us immediately.

The Policy insures you against certain risks to your land title. These risks are listed on page 2 of the Policy. The Policy is limited by:

- EXCLUSIONS on page 2
- EXCEPTIONS on Schedule B
- CONDITIONS on page 3

You should keep the Policy even if you transfer the title to your land.

If you want to make a claim, see Item 3 under Conditions on page 3.

You do not owe any more premiums for the Policy.

This sheet is not your insurance Policy. It is only a brief outline of some of the important Policy features. The Policy explains in detail your rights and obligations and our rights and obligations. Since the Policy--and not this sheet-- is the legal document, YOU SHOULD READ THE POLICY VERY CAREFULLY.

If you have any questions about your Policy, contact: THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE.

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COVERED TITLE RISKS

This Policy covers the following title risks, if they affect your title on the Policy Date:

1. Someone else owns an interest in your title.
2. A document is not properly signed, sealed, acknowledged, or delivered.
3. Forgery, fraud, duress, incompetency, incapacity, or impersonation.
4. Defective recording of any document.
5. You do not have any legal right of access to and from the land.
6. There are restrictive covenants limiting your use of the land.
7. There is a lien on your title because of:
   - a mortgage or deed of trust
   - a judgment, tax, or special assessment
   - a charge by a homeowner's or condominium association
8. There are liens on your title, arising now or later, for labor and material furnished before the Policy Date-unless you agreed to pay for the labor and material.
9. Others have rights arising out of leases, contracts, or options.
10. Someone else has an easement on your land.
11. Your title is unmarketable, which allows another person to refuse to perform a contract to purchase, to lease or to make a mortgage loan.
12. You are forced to remove your existing structure-other than a boundary wall or fence-because:
    - it extends on to adjoining land or on to any easement
    - it violates a restriction shown in Schedule B
    - it violates an existing zoning law
13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
14. Other defects, liens, or encumbrances.

COMPANY'S DUTY TO DEFEND AGAINST COURT CASES

We will defend your title in any court case as to that part of the case that is based on a Covered Title Risk insured against by this Policy. We will pay the costs, attorneys' fees, and expenses we incur in that defense.

We can end this duty to defend your title by exercising any of our options listed in Item 4 of the Conditions.

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental policy power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
   - land use
   - improvements on the Land
   - land division
   - environmental protection.

   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.
   This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.
2. The right to take the land by condemning it, unless:
   - a notice of exercising the right appears in the public records on the Policy Date
   - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
   - that are created, allowed, or agreed to by you
   - that are known to you, but not to us, on the Policy Date-unless they appeared in the public records
   - that result in no loss to you
   - that first affect your title after the Policy Date - this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
   - to any land outside the area specifically described and referred to in Item 3 of Schedule A

   or
   - in streets, alleys, or waterways that touch your land.

   This exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

CONDITIONS

1. DEFINITIONS
   a. Easement--the right of someone else to use your land for a special purpose.
   b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
   d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. CONTINUATION OF COVERAGE
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. HOW TO MAKE A CLAIM
   a. You Must Give The Company Notice Of Your Claim
   If anyone claims a right against your insured title, you must notify us promptly in writing.
   Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
   Our obligation to you could be reduced if:
   - you fail to give prompt notice
     and
   - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
   This statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss.

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss.
   We may make copies of these papers.
   We may require you to answer questions under oath.
   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
     or
   - answer our questions under oath
     or
   - show us the papers we request,
     and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:

   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. HANDLING A CLAIM OR COURT CASE
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. LIMITATION OF COMPANY'S LIABILITY
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed; or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. TRANSFER OF YOUR RIGHTS
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. ARBITRATION
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court.

   The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. OUR LIABILITY IS LIMITED TO THIS POLICY
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy Number	Amount of Insurance	Date of Policy	Commitment No.	Agent File No.	Premium
P 019073	*$100,000.00*	*01/23/06*		*05-14450NDD*	$275.00

Simultaneous Policy Data

Policy Number	Amount of Insurance	Date of Policy
	$.00	

1. Name of Insured:
   Thomas P. Lyons and Desiree J. Lyons

2. The estate or interest in the land which is encumbered by the insured mortgage/deed of trust is: ***Fee Simple***

3. Title to the estate or interest in the land is vested in:

   Thomas P. Lyons and Desiree J. Lyons

4. The land referred to in this policy is located in the ***City of Myrtle Beach, County of Horry,*** State of ***South Carolina,*** and described as follows:

   All and singular, all that certain piece, parcel or lot of land, situate, lying and being in Socastee Township, Horry County, South Carolina, known and designated as Lot 1, all as is more particularly shown and delineated on a plat by Culler Land Surveying Co., Inc. dated August 24, 2005 and recorded November 3, 2005 in the Office of the ROD for Horry County in Plat Book 208 at Page 235. Said plat is incorporated by reference herein.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

Policy No. *P 019073*

EXCEPTIONS FROM COVERAGE

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

1. Those taxes and special assessments which become due and payable subsequent to Date of Policy.
2. Rights or claims of parties in possession not shown by the public records.
3. Easements, or claims of easements, not shown by the public records.
4. All matters and facts, including, but not limited to, discrepancies, encroachments, overlaps, boundary line disputes, shortage in area, which would be disclosed by a correct survey or inspection of the premises, and where a survey is made, the surveyor is the agent and employee of the Insured and Insured must look to surveyor for protection in respect to these matters..
5. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
6. Subject to the permitting authority of the South Carolina Coastal Council, in "critical areas" as defined in Act #123 of the 1977 South Carolina General Assembly and rules and regulations promulgated pursuant to said Act.
7. Rights, if any, of the public to sue as a public beach or recreations area any part of any of the lands lying between the body of water abutting any of the subject property and the natural line of vegetation, bluff, extreme high water line or other apparent boundary lines separating the publicly used are form the upper land private areas.
8. Subject to perpetual Right-of-Way and Easement granted by William D. Parker and Geraldine M. Parker to Grand Strand Water and Sewer Authority dated June 24, 2000, and recorded August 12, 2000, in Deed Book 2289 at Page 524, Horry County Records.
9. Taxes for the year 2006 and all subsequent years not yet due and payable.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE

N. DAVID DURANT

By _____
Authorized Officer or Agent

CONDITIONS

1. **DEFINITIONS**
   a. Easement--the right of someone else to use your land for a special purpose.
   b. Land--the land or condominium unit described in Schedule A and any improvements on the land which are real property.
   c. Mortgage--a mortgage, deed of trust, trust deed, or other security instrument.
   d. Public Records--title records that give constructive notice of matters affecting your title--according to the state statutes where your land is located.
   e. Title--the ownership of your interest in the land, as shown in Schedule A.

2. **CONTINUATION OF COVERAGE**
   This Policy protects you as long as you:
   - own your title
     or
   - own a mortgage from anyone who buys your land
     or
   - are liable for any title warranties you make

   This Policy protects anyone who receives your title because of your death.

3. **HOW TO MAKE A CLAIM**
   a. You Must Give The Company Notice Of Your Claim
   If anyone claims a right against your insured title, you must notify us promptly in writing.
   Send the notice to The Security Title Guarantee Corporation of Baltimore, 6 S. Calvert Street, Baltimore, Md. 21202-1388. Please include the Policy number shown in Schedule A, and the county and state where the land is located.
   Our obligation to you could be reduced if:
   - you fail to give prompt notice
     and
   - your failure affects our ability to dispose of or to defend you against the claim

   b. Proof Of Your Loss Must Be Given To The Company
   You must give us a written statement to prove your claim of loss. This statement must be given to us not later than 90 days after you know the facts which will let you establish the amount of your loss.
   This statement must have the following facts:
   - the Covered Title Risks which resulted in your loss
   - the dollar amount of your loss
   - the method you used to compute the amount of your loss.

   You may want to provide us with an appraisal of your loss by a professional appraiser as a part of your statement of loss.
   We may require you to show us your records, checks, letters, contracts, and other papers which relate to your claim of loss.
   We may make copies of these papers.
   We may require you to answer questions under oath.
   Our obligation to you could be reduced if you fail or refuse to:
   - provide a statement of loss
     or
   - answer our questions under oath
     or
   - show us the papers we request,
     and
   - your failure or refusal affects our ability to dispose of or to defend you against the claim.

4. **OUR CHOICES WHEN YOU NOTIFY US OF A CLAIM**
   After we receive your claim notice or in any other way learn of a matter for which we are liable, we can do one or more of the following:
   a. Pay the claim against your title.
   b. Negotiate a settlement.
   c. Prosecute or defend a court case related to the claim.
   d. Pay you the amount required by this Policy.
   e. Take other action which will protect you.
   f. Cancel this Policy by paying the Policy Amount, then in force and only those costs, attorneys' fees, and expenses incurred up to that time which we are obligated to pay.

5. **HANDLING A CLAIM OR COURT CASE**
   You must cooperate with us in handling any claim or court case and give us all relevant information.
   We are required to repay you only for those settlement costs, attorneys' fees and expenses that we approve in advance.
   When we defend your title, we have a right to choose the attorney.
   We can appeal any decision to the highest court. We do not have to pay your claim until your case is finally decided.

6. **LIMITATION OF COMPANY'S LIABILITY**
   a. We will pay up to your actual loss or the Policy Amount in force when the claim is made--whichever is less.
   b. If we remove the claim against your title within a reasonable time after receiving notice of it, we will have no further liability for it.
      If you cannot use any of your land because of a claim against your title, and you rent reasonable substitute land or facilities, we will repay you for your actual rent until:
      - the cause of the claim is removed; or
      - we settle your claim

   c. The Policy Amount will be reduced by all payments made under this policy - except for costs, attorneys' fees and expenses.
   d. The Policy Amount will be reduced by any amount we pay to our insured holder of any mortgage shown in this Policy or a later mortgage given by you.
   e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

7. **TRANSFER OF YOUR RIGHTS**
   When we settle a claim, we have all the rights you had against any person or property related to the claim. You must transfer these rights to us when we ask, and you must not do anything to affect these rights. You must let us use your name in enforcing these rights.
   We will not be liable to you if we do not pursue these rights or if we do not recover any amount that might be recoverable.
   With the money we recover from enforcing these rights, we will pay whatever part of your loss we have not paid. We have a right to keep what is left.

8. **ARBITRATION**
   If it is permitted in your state, you or the Company may demand arbitration.
   The arbitration shall be binding on both you and the Company. The arbitration shall decide any matter in dispute between you and the Company.
   The arbitration award may:
   - include attorneys' fees if allowed by state law
   - be entered as a judgment in the proper court.

   The arbitration shall be under the Title Insurance Arbitration Rules of the American Arbitration Association. You may choose current Rules or Rules in existence on Policy Date.
   The law used in the arbitration is the law of the place where the property is located.
   You can get a copy of the Rules from the Company.

9. **OUR LIABILITY IS LIMITED TO THIS POLICY**
   This Policy, plus any endorsements, is the entire contract between you and the Company. Any claim you make against us must be made under this Policy and is subject to its terms.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222

HORRY COUNTY
13 OCT -1 AM 11:23
MELANIE HOGGINS-WARD
CLERK OF COURT

Thomas P. and Desiree J. Lyons,

Plaintiffs/Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants/Appellant.

NOTICE OF APPEAL

The Security Title Guarantee Corporation of Baltimore, appeals the order of the Honorable Paul M. Burch dated July 8, 2013 and his order denying Appellant's motion for reconsideration dated August 9, 2013. Appellant received written notice of entry of the order denying its motion to alter and for reconsideration on September 10, 2013.

September 30, 2013

s/ Ray Coit Yarborough, Jr.
Ray Coit Yarborough, Jr.
Post Office Box 4198
Florence, South Carolina 29502
(843) 676-0580
Attorney for Appellant

Other Counsel of Record:

David K. Haller
115 River Landing Drive, Suite 102
Charleston SC 29492
Attorney for Respondents, Thomas P. and Desiree J. Lyons
(843) 849-1384

Mark Andrew Nappier
Joye, Nappier & Risher, LLC
3575 Highway 17 Business
Murrells Inlet SC 29576
Attorney for Bobby Gene Martin
(843) 357-6454

Jenna Brooke Kiziah McGee
200 Meeting St., Ste. 301
Charleston SC 29401 - 3156
Attorney for Fidelity National Title Insurance Company
(843) 727-6302

Kristina A. Young
1201 Main Street, Suite 1450
Columbia SC 29201
Attorney for Fidelity National Title Insurance Company
(803) 253-6857

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222

HORRY COUNTY
13 OCT -1 AM 11:23
MELANIE HUGGINS-WARD
CLERK OF COURT

Thomas P. and Desiree J. Lyons,

Plaintiffs/Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants/Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following parties as follows:

1- Thomas P. Lyons and Desiree J. Lyons, the Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to their attorney of record, David K. Haller, 115 River Landing Drive, Suite 102, Charleston, South Carolina 29492;

2- Bobby Gene Martin by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to his attorney of record Mark Andrew Nappier, c/o Joye, Nappier & Risher, LLC, 3575 Highway 17 Business, Murrells Inlet, South Carolina 29576

3- Fidelity National Title Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to its attorneys of record Jenna Brooke Kiziah McGee, 200 Meeting St., Ste. 301, Charleston South Carolina 29401 - 3156 and Kristina A. Young, 1201 Main Street, Suite 1450, Columbia South Carolina 29201.

September 30, 2013

s/ Ray Coit Yarborough, Jr.
Ray Coit Yarborough, Jr.
Post Office Box 4198
Florence, South Carolina 29502
(843) 676-0580
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222

Thomas P. and Desiree J. Lyons,

Plaintiffs/Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants/Appellant.

NOTICE OF APPEAL

The Security Title Guarantee Corporation of Baltimore, appeals the order of the Honorable Paul M. Burch dated July 8, 2013 and his order denying Appellant's motion for reconsideration dated August 9, 2013. Appellant received written notice of entry of the order denying its motion to alter and for reconsideration on September 10, 2013.

September 30, 2013

s/ Ray Coit Yarborough, Jr.
Ray Coit Yarborough, Jr.
Post Office Box 4198
Florence, South Carolina 29502
(843) 676-0580
Attorney for Appellant

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OCT 01 2013
SC Court of Appeals

Other Counsel of Record:

David K. Haller
115 River Landing Drive, Suite 102
Charleston SC 29492
Attorney for Respondents, Thomas P. and Desiree J. Lyons
(843) 849-1384

Mark Andrew Nappier
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Attorney for Fidelity National Title Insurance Company
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222

Thomas P. and Desiree J. Lyons,

Plaintiffs/Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants/Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the following parties as follows:

1- Thomas P. Lyons and Desiree J. Lyons, the Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to their attorney of record, David K. Haller, 115 River Landing Drive, Suite 102, Charleston, South Carolina 29492;

2- Bobby Gene Martin by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to his attorney of record Mark Andrew Nappier, c/o Joye, Nappier & Risher, LLC, 3575 Highway 17 Business, Murrells Inlet, South Carolina 29576

RECEIVED
OCT 0 1 2013
SC Court of Appeals

3- Fidelity National Title Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on September 30, 2013, addressed to its attorneys of record Jenna Brooke Kiziah McGee, 200 Meeting St., Ste. 301, Charleston South Carolina 29401 - 3156 and Kristina A. Young, 1201 Main Street, Suite 1450, Columbia South Carolina 29201.

September 30, 2013

s/ Ray Coit Yarborough, Jr.
Ray Coit Yarborough, Jr.
Post Office Box 4198
Florence, South Carolina 29502
(843) 676-0580
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

FILED
HORRY COUNTY
2013 OCT 18 PM 2:54
MELANIE HUGGINS-WARD
CLERK OF COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Civil Action No. 2012-CP-26-05222
Appellate Case No. 2013-002137

Thomas P. and Desiree J. Lyons, Respondents,

v.

Fidelity National Title Insurance company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore, Defendants,

Of Whom The Security Title Guarantee Corporation of Baltimore is the Appellant

AMENDED NOTICE OF APPEAL

The Security Title Guarantee Corporation of Baltimore, through its undersigned attorney, Ray Coit Yarborough, Jr., appeals the order of the Honorable Paul M. Burch dated July 8, 2013 and his order denying Appellant's motion for reconsideration dated August 9, 2013. Appellant received written notice of entry of the order denying its motion to alter and for reconsideration on September 10, 2013.

October 16, 2013

S/ Ray Coit Yarborough

Ray Coit Yarborough, Jr.
Post Office Box 4198
Florence, South Carolina 29502
(843) 676-0580
SC Bar # 5725
Attorney for Appellant

Counsel of Record:

Mr. Ray Coit Yarborough, Jr.
Attorney for The Security Title Guarantee Corporation of Baltimore
POB 4198
Florence, SC 29502
(843) 676-0580

Mr. David K. Haller
Attorney for Thomas P. and Desiree J. Lyons
115 River Landing Drive, Suite 102
Charleston SC 29492
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Civil Action No. 2012-CP-26-05222
Appellate Case No. 2013-002137

Thomas P. and Desiree J. Lyons, Respondents,

v.

Fidelity National Title Insurance company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore, Defendants,

Of Whom The Security Title Guarantee Corporation of Baltimore is the Appellant

AMENDED NOTICE OF APPEAL

The Security Title Guarantee Corporation of Baltimore, through its undersigned attorney, Ray Coit Yarborough, Jr., appeals the order of the Honorable Paul M. Burch dated July 8, 2013 and his order denying Appellant's motion for reconsideration dated August 9, 2013. Appellant received written notice of entry of the order denying its motion to alter and for reconsideration on September 10, 2013.

October 16, 2013

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF HORRY	)	2012-CP-26-5222
Thomas & Desiree Lyons	)	
PLAINTIFFS	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Fidelity National Title	)	
Insurance Company	)	
DEFENDANTS'	)	

ORIGINAL

May 15, 2013
Horry, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, Judge.

A P P E A R A N C E S:

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HATTIE O. GORDON
Circuit Court Reporter
Transcibed by
Dinah M. Garvin
Official Court Reporter

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THE COURT: All right okay.

MR. HALLER: Good afternoon, Your Honor. May it please the Court. I am David Haller attorney for Thomas and Desiree Lyons, Mr. and Mrs. Lyons are in the back of the courtroom. Your Honor, this is an action on a title insurance policy. And my clients brought an action for breach -- actually two policies for breach of contract against Mr. Lang's clients, what is now Fidelity Title and another company called Security Title. The background story of this case is quite fascinating. Back in the 1930's when Congress authorized the creation of the International Coastal Waterway, it directed the states to go and acquire the property and to dig the waterway through. And in doing so when the State of South Carolina acquired the property and then deeded it back to the Department of the Army. And at the same time the Department of the Army retained on those lands, where it dug through the intercoastal waterway, a spoilage easement a dredge easement. So that when the Army -- so that when the intercoastal waterway was dredged over time, it would have a place to dump the property -- excuse me, dump the dredge.

And over the course of years the responsibility from management of that easement was turned over to Horry County. And in 2003 Horry County enacted a resolution

saying that any properties within the spoilage easement could not receive a building permit to build stick built homes. You could receive permits to improve on existing structures or if you had mobile homes on the property, you could receive a permit to replace an existing mobile home home.

In 2005 my clients bought an existing piece of property on the intercoastal waterway. A beautiful piece of property. And at the time there were two lots that were purchased. There was the initial lot, which is insured by Fidelity with a policy of $240,000. And then several months later they bought, what we in litigation call, the sliver, which is about 100 foot strip of land from a neighbor and those two parcels were combined. The sliver is insured by Security Title for $100,000. The easement was not found in the title search and it is not accepted in the title search. The resolution was not found in the title search and it was not accepted in the title search.

Fast forward to about six years when the Lyons prepare to build their dream home on this lot, having gone through the necessary of getting building plans and architectural certificates. They go into the Horry County building permits office with their building permit application and are told, you can't have a building

permit. And they learn for the first time that there is an easement on the property which essentially makes their property useless. Because any time the Army Corp of Engineers can come and put environmentally toxic sludge right on their land. We then make claims against the title insurance policies. One of them was flat denied and the other of them was tacitly admitted and then nothing was done with it. We made an offer to settle, the offer to settle was ignored. We then brought this action for breach of contract and also we brought a bad faith to pay claims.

Now what makes this case kind of even more interesting, in addition to the history behind it, is the fact that an additional -- another case almost identical to this case was litigated a year and a half ago in front of Judge Harwell in Federal District Court. In fact the land owner two lots over had the identical problem, tried to get a building permit, found out there was an easement from 1931, found out there was this resolution from 2003. And she then brought an action against Stuart Title interpreting essentially the identical policy that has been approved by the Department of Insurance and issued by Alta, the group that writes these policies for these insurance companies.

In that litigation the questions, the identical

questions, which are present here, were raised. Earlier this week I did email to your law clerk a copy of Judge Harwell's order. I don't know if you have had an opportunity to review it. In that case the carrier said an exception to the -- within the policy excluding covenants, and that exception is what has been referred to as the police powers exception. And -- but Mrs. Whitlock, the plaintiff, claimed that other policy provisions specifically policy provisions one, ten and thirteen, which says, that there is a covered risk if someone else owns an interest in your title, someone else has an easement in your land, and you cannot use the land because use as a single family residence violates restrictions shown in schedule B or an existing zoning line.

The exclusions that the defendants relied on is the police power exclusion actually specifically says this exclusion does not apply to the violations or the enforcement of these matters which appear in the public record as of policy date. And I would point out, Your Honor, there is is no dispute what so ever, the easement was in place, the easement covers my client's property, the resolution was in place, the resolutions were in the public record and that they are not excluded. Judge Harwell found on those facts that the policy was ambiguous as to whether or not a single family residence included a

mobile home. And having been not including a mobile home, and since it was ambiguous, the ambiguity was read in favor of insured and they were covered as is the law in South Carolina. And further found that the resolution was a public record, which being of public record was -- the term public record was also ambiguous and resolution in act of county counsel and something that could be found within the public confines, that too was something that was a covered issue. And he granted summary judgement under the same policy the almost identical substantive terms of the policies that are at issue here, with the identical set of facts that are at issue here.

Then the issue got certified, the question of damages and the date of evaluations got certified to the South Carolina Supreme Court. And the Supreme Court, using the same rules of contract interpretation and ambiguity, determined that for purposes of this case, the contracts was ambiguous as to what date was to be used for the evaluation, since the property could not be used as a single family residence, and that was the purpose for which Mrs. Whitlock owned her property and the purpose for which my client's brought their property. But since that was then ambiguous, the date of evaluation is the date of purchase.

In other words, for my clients set of facts that

means that the amount of money they are insured for on their title, $340,000 we contend is what they are due. And unlike some title insurance policies, this is a policy which actually ensures use. The policy specifically says a covered -- one of the covered title risks is you cannot use the land, because use as a single family residence violates the restrictions. And that is exactly what has happened here. That being the case, since that use is not permitted the entire policy amount, we believe, is what is due.

Your Honor, we moved for partial summary judgment today on number one, liability, and number two, liability under the contract, that is, that they have an obligation to pay the amount of policy. And, number two, as the payment -- an order requiring them to pay $340,000 as required by the policy. We are reserving our bad faith claims. Thank you, Your Honor.

THE COURT: Counsel.

MR. LANG: May it please The Court. Louis Lang for Fidelity National Title Insurance Company and Security Title Insurance Title Guarantee Company of Baltimore. Just as a house keeping matter, Your Honor, the caption in The Court file names lawyers Title Insurance Cooperation as the defendant and Lawyers Title has been merged into Fidelity. And Fidelity is the real party in interest.

And it is might fault, I had a consent order amending the caption sitting on my desk. I ask The Court to grant the motion to amend the caption to reflect the proper Defendant, that is Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation.

THE COURT: You join in their motion?

MR. HALLER: Yes, sir.

THE COURT: All right, motion granted.

MR. LANG: Thank you, Your Honor. Judge, I was the lawyer for the case that counsel refers to that had proceedings in both federal court and our State Supreme Court. So I guess there has never been a case that I tried or settled that I didn't think I could do better. So I guess I get a do over, essentially, on this case. I suggest to The Court the facts in this case are significantly different than the *Stewart Title* case. But I think I am compelled to discuss the *Stewart Title* case in terms of its posture both in Federal Court and State Court. I apologize, this will take me some time for me to do. So with that in mind let me first talk about damages.

Counsel, has indicated that based upon his reading of the *Stewart Title* case certified question in the Supreme Court that somehow because the federal district judge in Stewart title in federal court granted partial summary

judgement on liability and that he is now entitled to the policy limits. That is not either what Judge Harwell said in Federal Court or what the Supreme Court said in the certified question.

And in that regard, Your Honor, I would suggest a number of things. The case that the -- the issue that was certified by Judge Harwell was the date of evaluation. The dispute as to that date before Judge Harwell was when you had the partial failure of title. In other words, not a complete or total failure of title, but rather partial failure of title. When do you value that loss? Do you value it at the time of the purchase of the property or at the time you discover the defect. That's the issue that went up before the Supreme Court. And the Supreme Court said the value at the date of purchase, because there is nothing in the title policy that said you value at the date of the discovery. That is the question, and we would suggest to The Court, with regard to damages, there is clearly a genuine issue of material of fact, in this case, as to the damages, if there is liability, that might be owed under either of these two policies.

In that regard, Your Honor, if I could approach the bench. I have somewhat of an initial submission. Copy of which I've already provided to Mr. Haller. In that regard, Your Honor, a number of things. First off and --

first and for most is we have diminution in value of appraisal. Done by Henry Beckham in Horry County. What Mr. Beckham did was value the insured property without the spoilage easement. And he took that value and then valued the insured property value with the spoilage easement and subtracted it without value -- or subtracted with value and then without value and came to his diminution value conclusion. That diminution value conclusion was $185,000. Mr. Beckham, and a copy of his appraisal with -- a portion of which has been previously filed, and the complete appraisal is before the court in my initial submissions. Mr. Beckham said the value of the property at the time of the purchase, and he valued that date as October 2005, which is the date of the last purchase by the Lyons of the 3520 foot strip as $295,000 without the spoilage easement, with the spoilage easement $110,000, and that difference is 185,000.

Now that method of evaluation was adopted by the South Carolina Supreme Court in both certified question of *Whitlock vs Stewart Title* as well as the prior Supreme Court case of ***Stanley versus Atlantic Title Insurance Company*** where that evaluation method was one that the Supreme Court said was appropriate for a partial failure title.

So in this circumstance, Your Honor, I would suggest

there is clearly much more than a scintilla of evidence in regard to the damages issues. And of course The Court will recall what Judge Harwell did he granted summary judgement only on liability. He did not grant summary judgement on liability damages. Although he thought he could at one point in time after the certified question was answered, under the Federal Rule 56, a District Judge can actually, on his own motion, grant summary judgement as long as he gives the other side the opportunity to respond. Judge Harwell thought he could do that. He gave us time to respond. We sent in our diminution of value appraisals to Judge Harwell, and Judge Harwell decided was a genuine issue of material of fact, even under the federal standard. Which is quite different than the state standard.

So in that regard, Your Honor, I would suggest there is clearly genuine issue of material fact. In addition, Your Honor, I've submitted with my additional submittal the tax assessed value of the property as of 2005. It had a tax accessed value is $83,200. I've also and will invite The Court's attention and will submit an excerpt from the deposition of the prior owner Bobby Martin. And what Mr. Martin says is, of course, he lived on the property from 1972 to 2005, that is page 13 lines 9 through 14. And, of course, there is value to the

property, and it may not be able to be used as Lyons believe it should be used, and they wanted it to be used. But it is clearly something that can be used.

On the issue of liability, Judge, I would suggest to The Court again there are a number of matters I would like to address and I will be brief. The property is not useless. It has been used by Mr. Lyons as a residence for many years. The title insurance does not insure use generally. Now, in this circumstance, and I get to exclusion one in a moment. But, in this circumstance, it doesn't show the use as a single family residence, but no other use. We would suggest to The Court that at the time Mr. Martin sold the property it was being used as a single family residence. And I have cited a number of cases that support that Judge. And, in particular *Masters versus Strickland*, which is South Carolina Court of Appeals, not a title insurance case, but it does talk about a specific performance case in which the property, after the contract of purchase was signed, was determined to have been incumbent by wetlands. So the developer could not develop as he thought he could, he therefore did not close on the transaction, saying the seller could not deliver marketable title. The Supreme Court said the title was marketable, you just can't use it for what you want to use it for. I would suggest that is the circumstance here.

But, Your Honor, we suggested to The Court that there certainly is more than scintilla of evidence to indicate that exclusion number one, which, counsel for the plaintiff has quoted, excludes coverage in this circumstance. And that exclusion, Your Honor, excludes loss, cost, attorney fees, expenses resulting from government police powers and existence of violation of any law or government regulation.

The problem, in this circumstance, Your Honor, is not the spoilage easement. The deposition testimony of Bobby Martin on page 15 lines 16 through page 19 and lines 10. He talks about all the other houses and permanent buildings that surround his residence that were built prior to 2011. There is nothing in the spoilage easement, Your Honor, that precludes building on this property. The problem is this resolution. In that regard, Your Honor, we suggest that again there is more than scintilla of evidence as to the exclusion.

Now, Judge Harwell did find that the resolution was a matter of public record for purposes as that phrase is defined in the title policies. And he found, for some reason, that a public record would include county resolutions. Your Honor, with due respect to Judge Harwell, I just think he is wrong on that. There is no title examiner in which, I'm aware, in this state, that

goes and examines the county resolutions when they are examining titles. They go to the RDR office, they go to the Clerk of Court's office. They don't go to the County Clerk's Office or the county council or the municipality of which the property may be located to look at resolutions or ordinances and things of that nature. And I would suggest again Judge Harwell, again with all due respect was simply wrong in that regard.

I also invite The Court's attention to the affidavit, which is in the court record, from Pat Daily. And Mr. Daily is a Baltimore -- he is a Security Title Individual. He is the claims attorney who denied coverage under the $100,000 policy. He has been licensed in the State of Maryland since 1998 as a lawyer; he has been involved with title issues and title claims since 2003. His interpretation of the policy and his view of the policy is that the ordinance or resolution is not a matter of public record as that is defined in the policy. Of course the policy defined public record as those things that provide constructive notice in accordance with the statute of the state in which the property is located. We know constructive notice is, I think, *Spence versus Spence* and those are those things recorded at the courthouse either at RMD office or the clerk's office. So, again, I am suggesting to The Court that the resolution is not a

public record.

Secondly, Your Honor, I would suggest to The Court that the residence is a single family residence. And, again, I would invite The Court's attention to Mr. Daily's affidavit, in which he says a mobile home is a single family residence, in accordance, as that term is used in the title insurance policy.

Again, Your Honor, those things were not before Judge Harwell. So I would suggest that those things indicate that there is more than a scintilla of evidence to establish that there is genuine issue of material fact. In addition, Your Honor, I would invite The Court's attention to the survey, which I've attached my most recent submissions. It shows the property is, and it is very hard to read, but it identifies the structure on the property as a single story residence or single story, one story. In addition, Your Honor, I attached a picture of the property of the structure, which has been identified as accurately depicting the structure itself. It is on the last page of the submissions, Your Honor, and that does not look like a mobile home to me. It looks like a single family residence.

So again, Your Honor, I would suggest to The Court that there is more than a scintilla of evidence in regard to those issues and applicability of exclusion one to the

policy.

Finally Your Honor, we have raised a statute of limitations defense and we have developed evidence in the last several months that the Lyons applied for a dock permit to construct a dock. Of course they are on the intercoastal waterway. So they had to go to Corp of Engineers. That application was done in 2006. I've attached to my submissions, Your Honor, a letter from the Corp as well public notice. The letter from the Corp is dated, I think, in 2007. Public notice is dated 2006. And in both of those documents, Your Honor, there is -- it says and, I quote, it is understood that the structure, meaning the dock, is to be constructed on or adjacent to an area subject to the prior -- subject to a prism, rather, and or disposal easement covered by the United States perpituity. So we would suggest that there is more than scintilla of evidence as to the statute of limitations defense.

Judge, I know I have taken up a lot of your time and I appreciate The Court's patience in this regard. There are a number of things that I've submitted to Your Honor that are in The Court record. The last thing I will say I'm confident for counsel for plaintiff will assert these are sealed instruments and therefore the 3 year statute does apply rather than the 20 year statute. I've

addressed those in my most recent submissions, Your Honor. Thank you very much.

THE COURT: All right. Thank you.

MR. HALLER: Thank you, Your Honor, I will try to be brief. First of all, let's go back to the very beginning this is an issue of contract interpretation, which begins as we all learned first year of law school, reading the contract. So this Maryland lawyer's affidavit is fascinating. The fact of the matter is, it is interpreted in South Carolina about what the words are, by the standard rules of statutory interpretation, that rests with, Your Honor, and The Court, looking at the contract and determining if it ambiguous or unambiguous. If it's ambiguous, Your Honor, of course is obligated to enforce it against the defendant. If it's ambiguous -- if it is patently ambiguous, ambiguity that you need to look at and see, which is what Judge Harwell found. The rules are that contract of insurance are construed against the insurer and in favor of coverage. That is exactly what Judge Harwell did in Federal Court when applying South Carolina law. The purpose of this, unlike a lot of other set of title insurance policies, the purpose of this policy is to protect the property for residential use. It says so in the first lines of the policy. This is the Lawyers Title Policy, it applies only to one to 4 family

residential lots. If your land is not in any of these, contact us immediately. That is the only thing it shows. It is the use as a residential lot. It's more than -- so where as when they drafted the contract, they could have drafted it in here to exclude certain things or include certain things because they were exclusive drafter of the contract. My clients didn't have any right of negotiations as to the terms of this. They could have put -- if you can use it for any reason what so ever, we're not going to pay the claim. But, instead what they said is, we're protecting you from residential use and you can't -- and it specifically said, its coverage if you can't use it for single family use. And that is what they have contracted -- they took the blame. They enjoyed use of the money. They contracted with my folks to pay the benefit, and that is all we have asked for. So all this other stuff about a mobile home, you know, that is nice but the board of county says you can't do it.

Now, as to the the comment, the easement is not a problem here. Well may be that is right. Except the day that you built your home, and the next day the Army Corp of Engineer man knocks on the door and says, Oh by the way, we're coming here to dump something. You can't use the property at all because the sledge that is going to come out of there is going to be so toxic that now what

you own is a dump site. The entire property -- so the no build may be technically todays problem is that the no build resolution prohibits the plaintiffs from building. But, the fact of the matter is at any time at all, in perpetuity, the Army Corp of Engineers can dump sludge on that piece of property. That makes it unusable as a single family residence.

As to the argument that the resolution is not in the public records. Well, again, if Lawyers Title or Security Title wanted to put in there that if something a title abstracter, in the normal course of their business, had found, they could have written that in there. But, instead they gave a very broad view and definition of what a public record is. And the fact of the matter is, everyone is presumed to know the law and that -- and had they wanted to exclude that because the Lawyers Title and Security Title were presumed to know of the no build rule, if they wanted to exclude it, they could have put it into the exclusions. But they didn't do it that; there is coverage.

And last, Your Honor, I do want to speak as to the statute of limitations. These are the two originals contracts. And if Your Honor would like, I will hand them up to you. But, I think you can see seals, including on the Lawyers Title one, which actually used the word seal

on it. Now one of the arguments I saw that Mr. Lang made was that this document here, the first piece of paper on the Lawyers Title, is not part of the contract, it doesn't have any legal effect. Except right under the seal is the arbitration clause that is required by the state law, with the bold print and the underline to.

Of course there is a statute on how to determine whether an object or an instrument is a sealed object is 19-1-160. And it reads, when ever it shall appear from the attestation clause for from any other part of any instrument in writing, that it was the intention of party or parties thereto that such instrument should be a sealed instrument, that such instrument shall be construed to be and shall have the effect of a sealed instrument. Although no seal will actually be attached thereto. The case law is you don't even have to have the seal on it. If you put LS next to the signature line that is a legal seal. If you put the word seal. So we would -- again, interpreting the instrument, against the drafter, it has two seals on it, we believe the 20 year statute of limitations applies. So for those reasons, Your Honor, we ask for judgment in our favor.

MR. LANG: Just very briefly, Judge, I did want -- Counsel is correct in terms of the Lawyers Title Policy it says right on the first sheet. This sheet is not your

insurance policy. I don't see how it can be more clear that whatever this first document is, it is not part of the contract between the parties. It is not a seal instrument. The Security Title, what counsel refers to as a seal, doesn't use the word seal. It is just a stamp on the first page of the document. So we would suggest again, there is a gemination material fact as to whether or not these documents or these policies are sealed contracts, and whether the 20 year statute or 3 year statute applies. That is all and I appreciate your patience.

THE COURT: Thank y'all for your able argument. All right want to give us a little time to look at this I will invite proposed orders. Get them to me in 15 or 20 days. I would appreciate it..

MR. HALLER: Thank you, Your Honor.

MR. LANG: Thank you for The Court's time.

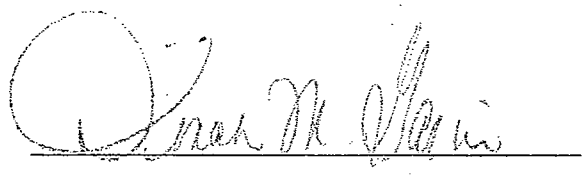
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C E R T I F I C A T E

I, the undersigned Hattie O. Gordon, Official Reporter for the Fifteenth Judicial Circuit of the State of South Carolina, transcribed by Dinah M. Garvin, Official Court Reporter, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal, in the Civil Court for Horry County, South Carolina on the 15th day of May, 2013.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 9, 2013



Court Reporter

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222
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Thomas P. and Desiree J. Lyons, Respondents

v.

Fidelity National Title Insurance company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore, Defendants,

Of Whom The Security Title Guarantee Corporation of Baltimore is the Appellant

---

CERTIFICATE OF SERVICE

I certify that I am an agent of Ray Coit Yarborough, Jr. and served the Initial Brief of Appellant and Designation of Matters to Include on Appeal to the attorneys for all parties of record in the above captioned action by depositing a copy of them in the United States Mail, postage prepaid, on March 31, 2014, addressed to them as noted below:

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THOMAS P. and DESIREE J. LYONS,

Respondents,

v.

THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE,

Appellant,

and

FIDELITY NATIONAL TITLE INSURANCE COMPANY, as Successor by Merger to Lawyers Title Insurance Corporation, BOBBY GENE MARTIN,

Defendant.

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STATEMENT OF ISSUES ON APPEAL

1. Did the trial judge err in finding that the Plaintiffs' claims against Security Title were not barred by the statute of limitations?

2. Did the trial judge err in holding as a matter of law that a county "no-build" resolution was in the public records as defined under the title insurance policy and available for title examination when the policy was issued?

3. Did the trial judge err in holding that a zoning resolution imposing a land use restriction was a defect in title triggering coverage under Security Title Company's title insurance policy and not excluded from coverage as a governmental policy power under Exclusions No. 1 of the title insurance policy?

4. Did the trial judge err in finding that the Plaintiffs did not mitigate their loss when they rejected an offer to purchase of the property that would have reaped the Plaintiffs a substantial profit?

5. Did the trial judge err in his determination when the date of loss was to be calculated?

STATEMENT OF THE CASE

This is an action for breach of contract and for bad faith failure to pay insurance claims commenced by Plaintiffs, Thomas P. Lyons and Desiree J. Lyons (Lyons), on July 5, 2012 by the filing a Summons and Complaint against Security Title Guarantee Corporation of Baltimore (Security) and Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation (Fidelity). Plaintiffs filed an Amended Summons and Complaint on July 19, 2012. Security and Fidelity filed Answers to the Amended Complaint on October 1, 2012. The Lyons filed a

motion for summary judgment solely on the issue of liability for breach of contract against Security and Fidelity on December 20, 2012, and filed an amended motion for partial summary judgment on January 10, 2013. Security and Fidelity filed responses to the Lyons' motion for summary judgment and filed cross-motions for summary judgment on May 7, 2013. A hearing on the plaintiffs' motion for partial summary judgment was conducted on May 15, 2013 before the Hon. Paul M Burch who issued an order dated July 8, 2013 granting partial summary judgment in favor of the Lyons. Security filed and served a motion to reconsider on July 26, 2013 pursuant to SCRCP 59(e). Judge Burch denied Security's motion to reconsider by order dated August 9, 2013. The order denying the motion to reconsider was filed in the office of the Clerk of Court for Horry County on August 12, 2013. Security timely filed and served its notice of appeal, and filed and served an amended notice of appeal on October 18, 2013.

FACTUAL BACKGROUND

The real estate (Property) subject to this dispute is located in Horry County, South Carolina and fronts on the Intracoastal Waterway. The Property is a residential lot approximately three tenths of an acre in area upon which was formerly located a residence made up of a mobile home onto which a number of extensions and additions had been added over the

years. Plaintiffs purchased the property in two separate transactions. On May 5, 2005, for the stated consideration of $240,000, Plaintiffs purchased what was described as lot 1 on a plat of lots 1, 2, and 3 dated August 24, 1970, recorded in the public land records for Horry County. The second transaction closed on October 28, 2005, when plaintiffs, for the stated consideration of $100,000, purchased an approximate 30 foot by 120 foot strip or sliver of land which was a portion of adjacent lot 2 as shown on the August 24, 1970 plat. A plat of the entire Property, i.e: lot 1 acquired in May 2005 and the portion of lot 2 acquired in October 2005, is designated as lot 1 on a plat dated August 24, 2005, and recorded in the public land records for Horry County.

In conjunction with the first transaction, Fidelity National Title Insurance Company (Fidelity) issued the Lyons an owners' title insurance policy in the amount of the purchase price. In conjunction with the second transaction, Security Title Guaranty Company of Baltimore (Security) issued the Lyons an owners' title insurance policy in the amount of the second transaction purchase price.

In 1931, a predecessor-in-interest of plaintiffs conveyed to the State of South Carolina what is generally described as a spoils easement over the Property and adjacent property. The easement is recorded in the land records

of Horry County and was available for title examination before the policies were issued. The spoils easement was given for the construction and maintenance of what became the Intracoastal Waterway.

On or about November 4, 2003, the Horry County Council adopted Resolution R-143093, (no-build resolution) which provided:

> "Horry County Council resolves to authorize the issuance of building permits to repair, remodel or replace existing structures within the spoil easements along the Intracoastal Waterway, but to otherwise continue the policy of denying building permits in this area. Mobile homes within the spoil area may only be replaced with mobile homes."

Plaintiffs wanted to construct a stick-built home on the Property, and assert Horry County refused to issue them a building permit to build a residence on the subject property due to the no-build resolution. Plaintiffs listed the property for sale, removed the existing structure from the property, but refused to accept an offer that would have generated them a profit from the sale of the Property

Plaintiffs filed claims against Fidelity and Security. Security Title denied the claims. Fidelity never responded. This suit followed.

STANDARD OF REVIEW

"In reviewing the grant of summary judgment, [an appellate court] applies the same standard that governs the trial court under Rule 56, SCRP: summary judgment is proper when there is no genuine issue as to any

material fact and the moving party is entitled to judgment as a matter of law." Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 619-620, 622 S.E.2d 733, 737 (Ct. App. 2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 269-270, 603 S.E.2d 629, 631 (Ct. App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 213, 609 S.E.2d 565, 267 (Ct. App. 2005). If triable issues are present, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 595, 608 S.E.2d 587, 592 (Ct. App. 2005).

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with 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. Rule 56(c), SCRCP; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 338, 611 S.E.2d 485, 487 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 324, 608 S.E.2d 155, 158 (Ct. App. 2005). On appeal from an order granting summary judgment, the

appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party. Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004); see also Schmidt v. Courtney, 357 S.C. 310, 316, 592 S.E.2d 326, 330 (Ct. App. 2003) (stating that all ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 320, 613 S.E.2d 533, 535 (2005); Montgomery v. CSX Transp., Inc., 362 S.C. 529, 541, 608 S.E.2d 440, 447 (Ct. App. 2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Baugus v. Wessinger, 303 S.C. 412, 415, 401 S.E.2d 169, 171 (1991); Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 5, 605 S.E.2d 744, 746 (Ct. App. 2004). When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). 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, 376, 597 S.E.2d 181, 183 (Ct. App.

2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 660, 582 S.E.2d 432, 438 (Ct. App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rife, 363 S.C. at 214, 609 S.E.2d at 568.

"The purpose of summary judgment is to expedite the disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (quoting George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)); Rumpf v. Massachusetts Mut. Life Ins. Co., 357 S.C. 386, 393, 593 S.E.2d 183, 186 (Ct. App. 2004). Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 644, 594 S.E.2d 455, 462 (2004); Hawkins v. City of Greenville, 358 S.C. 280, 289, 594 S.E.2d 557, 561-562 (Ct. App. 2004).

ARGUMENT

1. Did the trial judge err in finding that the Plaintiffs' claims against Security Title were not barred by the statute of limitations?

Security raised an affirmative defense that Plaintiffs' claims were barred by the statute of limitations. The circuit court did not address the defense, but held that that policy was a sealed document and therefore subject to the 20-year statute of limitation. Security argued that the mere affixation of a corporate seal did not make its policy a document under seal. The circuit court denied Security's 59(e) SCRCP motion to reconsider the issue. Security believes that the circuit court erred in finding that the Plaintiffs' claims were not barred by the statute of limitations.

Documents produced by the United States Army Corps. Of Engineers (COE), in response to a subpoena indicate plaintiffs knew or should have known the property was the subject of the spoils easement as early as October 20, 2006. Specifically, a document entitled "Joint Public Notice" which was issued in conjunction with plaintiffs' application to construct a dock on their property says " .... [i]t is understood that this work will be conducted on/or adjacent to an area subject to a prism and/or disposal easement held by the United States." Further, in a letter dated March 19, 2007, addressed to the Lyons, in the care of the company doing the dock design work, the COE said, " ... [i]t is recognized that this structure is to be

constructed on/or adjacent to an area subject to a prism and/or disposal easement held by the United States in perpetuity in conjunction with a Congressionally authorized project for the maintenance and improvement of the Atlantic Intracoastal Waterway . . ."

S.C. Code Ann. § 15-3-530(1) provides a 3-year limitations period for contract actions. This limitations period begins to run when "the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." Martin v. Companion Healthcare Corp., 357 S.C. 570, 575-576, 593 S.E.2d 624, 627 (Ct. App. 2004) (citations omitted). In any event, plaintiffs knew or should have known of the spoils easement as early as October 2006, more than 3 years before this action was filed, because any knowledge plaintiffs' agent (the company plaintiffs' engaged for their dock design) had concerning the spoil easement, would be imputed to them. Crystal Ice Co. of Cola., Inc. v. The First Colonial Corp., 273 S.C. 306, 257 S.E.2d 496 (1979).

Under section 15-3-530(1), "an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520" must be commenced within three years. S.C. Code Ann. § 15-3-530(1). Section 15-3-520(b) provides that, within twenty years, an action must be commenced "upon a sealed instrument, other than a sealed note and personal

bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725." S.C. Code Ann. § 15-3-520(b).

The Policy being litigated in this case is a standard 1987 American Land Title Association ("ALTA") Owners Policy Form. As is evident from the Policy, the Policy is only valid if the jacket and Schedule B are countersigned by an authorized officer or agent of Security. Thus, the standard ALTA forms are generated, provided to agents of a title insurance company, and the agents of the title insurance company complete and sign the policy jacket and Schedule B thereby affording coverage. Here, the Policy appears to contain the seal of Security beside what appears to be pre-printed signatures of the President and Secretary of Security. Above the signature of these preprinted signatures, the Policy states it is "not complete without Schedules A and B". However, there is no seal on either Schedule as opposed to the pre-printed signatures of the President and Secretary of Security. Cf. O'Cain v. O'Cain, 32 S.C.L. 402, 1 Strob. 402, 1847 WL 2133 (1847) (holding where a note has been signed and sealed by one person, and another signs his name under that of the first signer, but not opposite to his seal, making no seal of his own, and nothing being on the face of the paper

sufficiently indicative of the intention to seal, and there being no evidence of an intent to seal, the seal of the second person cannot be inferred from his signature alone.) The purpose of the seal in this instance is to show that it is the act of the corporation. Am. Jur. Corporations § 255 (2009) ("The attachment of the corporate seal to an instrument signed by corporate officers generally shows prima facie that it is the act of the corporation."). Furthermore, the purpose of the seal on the Policy is to show that the company's agent is authorized to complete the policy Schedules to make the Policy valid. In essence, this language confers authority on Security's agent to complete the blank form ALTA Policy by completing the Schedules. "The mere affixation of a corporate seal to a document does not automatically raise it to the status of an instrument under seal." Id. "The seal of a corporation is not, in itself, conclusive of an intent to make a specialty. It is equally appropriate as a means of evidencing the assent of a corporation to be bound by a simple contract as by a specialty." Central Nat. Bank v. Charlotte, C. & A. R. Co., 5 S.C. 156, 1874 WL 5344 (1874). In fact, in Republic Contracting Corp. v. South Carolina Dep't of Highways & Pub. Trans., 332 S.C. 197, 503 S.E.2d 761 (Ct. App. 1998), the Court found the mere fact that an engineer's seal was attached to plans did not result in a sealed instrument. id.; see also Aronow Roofing Company v. Gilbane

Building Co., 902 F.2d 1127 (3d Cir. 1990) ("The mere existence of the corporate seal and the use of the word 'seal' in a contract do not make the document a [sealed instrument]....) Consolidated Rail Corp. v. Liberty Mut. Ins., 2002 WL 32080503 (Del. Super. 2002) (finding "the weight of the cases in this area favors the conclusion that the absence of even a symbolic seal precludes invoking the exception to [the general breach of contract limitations period], while the mere presence of a seal and a testimonium clause are not enough to create a sealed instrument. Except where mortgages are concerned, the simple use of formalities and boilerplate unaccompanied by substantive evidence of the parties' intent to seal it is not enough to turn an ordinary contract into a [sealed instrument]."). Our Court of Appeals in Carolina Marine Handling, Inc. v. Lasch, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), stated that "[w]e adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument." Id. at 175, 609 S.E.2d at 552. There is no case in South Carolina finding that an insurance contract containing a seal is a sealed instrument for the purposes of section 15-3-520(b). The Maryland Supreme Court, however, has addressed this issue in the context of an insurance policy in GildenHorn v. Columbia Real Estate Title Insurance

Company, 271 Md. 387, 317 A.2d 836 (1974). In that particular case, although the court found the policy was a specialty, it did so because there was a recital showing an intention to have it serve the function of a general seal. The court specifically held that the mere presence of a corporate seal without reference to the seal in the instrument is not sufficient in and of itself to show that the instrument is a sealed instrument. Our policy contains no such reverence.

If the 20-year time limitations period applicable to sealed instruments applies in this case, then the Lyons could have waited until the year 2026 to file this action on a policy issued in 2005 when the Lyons knew or had reason to know to file a claim in as far back as the date they purchased the policy, depending on the court's interpretation of the date the Lyons knew they had a cause of action. After all, "statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." Moates v. Bobb, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation. See Webb v. Greenwood County, 229 S.C. 267, 276, 92 S.E.2d 688, 691 (1956); City of Myrtle Beach v. Lewis-Davis, 360 S.C. 225, 231,

599 S.E.2d 462, 464 (Ct. App. 2004). Significantly, "[s]tatutes of limitations provide potential defendants with certainty that after a set period of time, they will not be hailed [sic] into court to defend time-barred claims." In re Elkay Indus., Inc., 167 B.R. 404, 408 (D.S.C. 1994), "Moreover, limitations periods discourage plaintiffs from sitting on their rights," id. at 408-09. Statutes of limitations are, indeed, fundamental to our judicial system. Carolina Marine Handling, 363 S.C. at 176, 609 S.E.2d at 552. In that regard, the Court should have rejected plaintiffs' attempt to turn an ordinary breach of contract claim into a claim under a sealed instrument.

2. Did the trial judge err in holding as a matter of law that a county "no-build" resolution was in the public records as defined under the title insurance policy and available for title examination when the policy was issued?

Security initially denied coverage in part because of Exclusion 1 of its policy. Exclusion 1 in the policy provides in pertinent part: "[Y]ou are not insured against loss . . . resulting from: Governmental policy power, and the existence or violation of any law or government regulation. This includes building zoning ordinances and also laws and regulations concerning: land use, improvements on the Land . . . . This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date."The circuit court judge held as a matter of law that

Security's policy Exclusion 1 did not exclude coverage in this case because the no-build resolution appeared in the public record at the policy date.

Security disputes whether the no-build resolution was in the "public record" as defined in the policy. The court reasoned that the term "public record" could fairly and reasonably be understood to include a county resolution. Security believes that the court erred in its reasoning by failing to take the entire definition of "public records" in the policy into account. The policy defines public records as: "Public records- title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located."

Security believes that matters revealed by examination in the office of the Register of Conveyances, the Clerk of Court's office, the County Treasurer, Probate Court, and federal records depositories are the locations title records that give constructive notice of matters affecting title. As a practical matter, South Carolina real estate practitioners are taught to examine the records of these offices. See Claire T. Manning, Esquire, Handbook for South Carolina Dirt Lawyers 13-23 (2d ed. 2008). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting Sloan

Constr. Co. v. Cent. Nat'l Ins Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977). The Horry County resolution is not recorded in the recognized public records, therefore it is not part of the public records as defined in the policy. Title policy provisions are based upon the results of title examinations. If title examination included a review of county resolutions, a title examiner would be confronted with the impracticable (if not impossible) task of searching through the minutes of every meeting of every public body in the county with potential control over real estate. Such an examination could conceivably require a never-ending search in a plethora of records in a variety of locations, potentially including books and records located in state agencies as well as county and local offices. Security also submits that a council resolution is different from an ordinance, assuming a title examiner or closing attorney researched county ordinances when abstracting title to real estate. Except in the case of nonconformities, the South Carolina Code of Laws requires that zoning regulation be established by ordinance. (See S.C. Code Ann. §§ 6-29-710 et. seq. (Revised 2004)) Ordinances are statements of the law and usually codified. Resolutions are not. In any event, the court should not have rewritten the policy which it did by failing to use the entire language in the policy defining "public record". Finally, since zoning regulations are required to be

established by ordinance, the Lyons were already deemed to know the zoning regulations when they purchased the property. "Citizens are charged with knowledge of existing law." Labruce v. City of North Charleston, 234 S.E.2d 866, 268 S.C. 465 (S.C. 1977). It would simply be unconscionable to overwrite Security's exclusion to grant a benefit that the Lyons knew they were not entitled to have when they purchased the property.

3. Did the trial judge err in holding that a zoning resolution imposing a land use restriction was a defect in title triggering coverage under Security Title Company's title insurance policy and not excluded from coverage as a governmental policy power under Exclusions No. 1 of the title insurance policy?

Security concedes that its policy does not define "single-family residence". The parties dispute whether a mobile home, a permitted use on this particular property, is a "single-family residence" as the term is used in the policy or if the lack of a definition should trigger coverage because the Lyons cannot construct a site-built house on the property. The Circuit court ruled that Covered Title Risk 13 provides coverage because Plaintiffs cannot use the land as a single-family residence due to the existing zoning law preventing them from building a site-built home on the property. Security respectfully submits that the Court's interpretation is too broad since the Lyons could have replaced their existing mobile home with another. Security believes the court erred in determining that the zoning coverage was invoked

at all. The Lyons wanted to replace a mobile home with a site-built home. Nothing prohibited the Lyons from using the property for a single family residence.

Title insurance indemnifies against loss from defects, liens, or encumbrances affecting title. The asserted refusal of Horry County to issue plaintiff a building permit is not a matter affecting title. Elysian Inv. Group, LLC v. Stewart Title Guar. Co., 105 Cal. App. 4th 315, 129 Cal. Rptr. 2d 372 (2002). In Elysian, recorded on the public land records was a notice from the Department of Building and safety to the affect the premises located on the property was substandard and subject to forced removal. There was no exception in the title policy for this notice. The court nevertheless granted the title insurance company summary judgment holding the notice did not affect title to the property, only its use. See also Haw River Land & Timber Co., Inc. v. Lawyers Title Ins. Corp., 152 F.3d 275, 278 (4th Cir. 1998) (applying North Carolina law, and cited with approval in Shea Homes, LLC v. Old Republic Nat. Title Ins. Co., 2007 WL 3334210 (W.D. N.C. 2007) ("...[T]itle to property does not characterize the property as valuable, merchantable or even usable...."); McMaster v. Strickland, 305 S.C. 527, 530, 409 S.E.2d 440, 442 (Ct. App. 1991) ("While the purchaser may not be able to use the property for the purpose for which he sought

[because of a wetlands determination], such does not mean the sellers cannot deliver marketable title."). The same analysis applies here - the asserted refusal of Horry County to issue plaintiffs a building permit does not affect the Lyons' title to the property, only its use. The circuit court judge left this matter unaddressed and denied Security's 59(e) SCRCP motion to reconsider the issue. The Lyons merely had to replace their admittedly existing mobile home with another mobile home, thus there was no defect in their title, merely a restriction on the use of the property.

United States Census records for 2011 indicate that 6.8 percent of all Americans live in mobile homes. United States Census records for 2008 indicate that 17.9 percent of total housing units in South Carolina are mobile homes. Our own General Assembly implicitly recognizes that mobile homes are ordinarily used as single-family residences. See S.C. Code Ann. § 27-40-210 (Revised 2007). Empirical data proves that mobile homes are currently being utilized as single-family residences for a significant number of South Carolinians. Thus, the property can indeed be used for a residence. Most importantly, the court's interpretation of the policy opens Pandora's box for every title insurer in the state requiring specific provisions to exclude any type of structure one could imagine, yet ignoring a restriction on land use ordinances which do not affect title to the property. Therefore the method of

construction should have no bearing on title to the property and this court should rectify such an overbroad interpretation of the policy terms.

4. Did the trial judge err in finding that the Plaintiffs did not mitigate their loss when they rejected an offer to purchase of the property that would have reaped the Plaintiffs a substantial profit?

In its answer, Security raised a defense that the Lyons failed to mitigate their damages. Security's policy contains section 6(a) of the Conditions of the Policy which provides in pertinent part: "We will pay up to your actual loss . . . when the claim is made". Security's policy also contains section 6(e) of the Conditions of the Policy which limits the liability of the company by stating: "I f you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right". Security believes that the Plaintiffs' duty to mitigate damages arose both by operation of law and contractually. In this case, Security believes that Plaintiffs' actions invoke the doctrine of avoidable consequences, and they have thus failed to mitigate their damages. "The duty to mitigate losses applies to contracts." Cisson Const., Inc. v. Reynolds & Associates, Inc., 429 S.E.2d 847, 311 S.C. 499 (S.C. Ct. App. 1993) "The reasonableness of a party's actions to mitigate damages is a question of fact which cannot be decided as a matter of law

when there is conflicting evidence." McClary v. Massey Ferguson, Inc., 291 S.C. 506, 511, 354 S.E.2d 405, 408 (S.C. Ct. App. 1987).

The Lyons paid a total of $340,000 for the lots. Mr. Lyons gave deposition testimony that the property was "useless", but listed it for sale at $539,000 by "fishing" for a sales price, and was offered $475,000 for the property after listing it on the market. Had the Lyons accepted the offer, they would not only have recouped their initial investment but would have also reaped a profit from the sale. Security believes that the amount of damages, or lack thereof as a consequence of the Lyons' failure to mitigate, left the issue open for determination by a jury. "[T]he amount of damages is a question for the jury." Perry v. Green, 313 S.C. 250, 255, 437 S.E.2d 150, 153 (S.C. Ct. App. 1993) (citing Bonaparte v. Floyd, 291 S.C. 427, 438, 354 S.E.2d 40, 47 (S.C. Ct. App. 1987)); see also Charles v. Texas Co., 199 S.C. 156, 183, 18 S.E.2d 719, 725 (1942); Weeks v. Carolina Power and Light Co., 156 S.C. 158, 169, 153 S.E. 119, 123 (1930); Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 232, 317 S.E.2d 756 (Ct. App. 1984). While acknowledging the duty to mitigate, the trial court elaborated: "[I]t cannot be said that after the discovery of an easement held by the United States that prevents construction of a dock, the law requires one to sell the entire property or be thwarted from bringing suit against his title insurance

company at a later date; such a requirement would call for a party to exert himself unreasonably". The court did not analyze how the Lyons would have exerted themselves unreasonably by selling the property at a profit, especially in light of the fact that they wanted to build another house without having to borrow money, and actually removed the pre-existing structure from the property.

Finally, the circuit court did not address Security's argument that the matter of damages is excluded from coverage as a matter created, suffered, assumed or agreed to by the insured claimant in that the insured demolished the existing home on the property. Although the Lyons have made it clear that they would not want to use the property for a residence, by removing the home from the property, the no build resolution would now prohibit anyone else from replacing the mobile home that was already on the property as a result of the Plaintiffs' actions.

Security believes that there is a genuine issue of material fact as to whether the Lyons acted reasonably in failing to mitigate their damages by way of avoiding consequences and through their own acts in removing the pre-existing structure, and therefore the trial court erred in granting their motion for summary judgment.

5. Did the trial judge err in his determination when the date of loss was to be calculated?

The circuit court's order, citing Whitlock v. Stewart Title Guaranty Co., 399 S.C. 610, 732 S.E.2d 626 (2012) states that the "damages are to be calculated based on the diminution in value caused by the title defects, measured from the date the property was purchased". Security's policy states in paragraph 6(a) that the company "will pay up to your actual loss or the Policy Amount in force when the claim is made - whichever is less." Notably, the circuit court did not find that this provision of the policy was ambiguous or that there were conflicting terms in the policy concerning damages. See McGill v. Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009). The trial court merely found that damages were still to be determined and therefore not ripe for summary judgment. The court ordered "that damages are to be calculated based on the diminution in value caused by the title defects, measured from the date the property was purchased". It did not specify a date on which the calculation should be based, but Security believes that the court decided the issue by implication using the Whitlock standard of calculation. According to the terms of the policy, Security believes that the loss (diminution in value) should be calculated based on the value of the lot when Security received the Lyons claim. Even Whitlock recognized that when a title insurance policy '"unambiguously identifies a

date for measuring the diminution in value of the insured property . . . such date . . . . is controlling." Whitlock 399 S.C. 610, 613, 732 S.E.2d 626, 627. Security's interpretation is reasonable and the policy terms are unambiguous. "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (quoting Sloan Constr. Co. v. Cent. Nat'l Ins. Co. of Omaha, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977)). [399 S.C. 615] "Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." McGill, 381 S.C. at 185, 672 S.E.2d at 574. "It is a question of law for the court whether the language of a contract is ambiguous." McGill, 381 S.C. at 185, 672 S.E.2d at 574. "Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." Clegg, 377 S.C. at 655, 661 S.E.2d at 797 (quoting Diamond State Ins. Co. v. Homestead Indust., Inc., 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995)). In this case, the court did not determine that the policy language was ambiguous and thus was without authority to enforce the terms as stated in the order. Security therefore believes that the circuit court judge first erred by interpreting the policy at all, and that the calculation of loss, if any,

should be determined based on actual loss on the date when the claim was made by the insured as per the terms of the policy.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

Respectfully submitted,

January 14, 2014

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Thomas P. and Desiree J. Lyons, Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore, Defendants,

Of whom The Security Title Guarantee Corporation of Baltimore is the Appellant.

Appellate Case No. 2013-002137

Appeal From Horry County
Paul M. Burch, Circuit Court Judge

Opinion No. 5365
Heard November 3, 2014 – Filed December 2, 2015

AFFIRMED

Ray Coit Yarborough Jr., of Florence, for Appellant.

David K. Haller, of Haller Law Firm, of Charleston, for Respondents.

MCDONALD, J.: The Security Title Guarantee Corporation of Baltimore (Security Title) appeals the circuit court's grant of partial summary judgment in favor of Thomas P. Lyons and Desiree J. Lyons (collectively, the Lyons). Security Title argues the circuit court erred in (1) finding the Lyons' claims were not barred

by the statute of limitations; (2) holding a county "no-build" resolution appeared in the public record and was available for title examination when the policy was issued; (3) holding a zoning resolution imposing a land restriction was a defect in title triggering coverage under the policy; (4) finding the Lyons did not fail to mitigate their damages; and (5) determining the date of loss. We affirm.

FACTS/PROCEDURAL BACKGROUND

The real property (the Property) at issue is a residential lot located in Horry County, which previously held a mobile home with numerous extensions and additions. Unbeknownst to the Lyons at the time of their purchase, the Property had been encumbered since 1932 by a properly recorded easement allowing for the construction and maintenance of the Intracoastal Waterway. Moreover, the Property has been subject to a county "no-build" resolution since 2003.

The Lyons purchased the Property in two separate transactions. On May 5, 2005, they purchased a lot (Lot 1) for $240,000, along with a title insurance policy from Lawyers Title Insurance Corporation (Lawyers Title).[1] On October 28, 2005, the Lyons purchased a portion of a lot (Lot 2) adjacent to Lot 1 for $100,000. In conjunction with this transaction, they purchased a title insurance policy from Security Title.[2] Lots 1 and 2 were subsequently combined into the Property at issue, which is shown as "Lot 1" on a plat dated August 24, 2005, and recorded with the Horry County Register of Deeds.

On July 3, 1930, Congress enacted the River and Harbor Act, which provided for the construction of the Atlantic Intracoastal Waterway.[3] In 1931, our General Assembly passed an act to provide for rights-of-way for the construction project.[4] On August 17, 1932, the governor executed a deed to rights of way (Spoil Easement), which granted the federal government the following:

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[1] Fidelity National Title Insurance Company is the successor by merger to Lawyers Title. Fidelity is a defendant in the underlying action but is not a party to this appeal.

[2] The title insurance policies are substantially identical.

[3] *See* River and Harbor Act, ch. 847, § 2, 46 Stat. 945 (1930) (current version at 33 U.S.C. § 426 (2001)).

[4] *See* Act No. 163, 1931 S.C. Acts 225–26 (current version at S.C. Code Ann. § 3-5-20 (1986)).

> [T]he perpetual right and easement to enter upon, excavate, cut away and remove any and all of the tracts hereinafter described as composing a part of the canal prism,[5] as may be required at any time for construction and maintenance of the said Inland Waterway . . . and . . . to enter upon, occupy, and use any portion of . . . the spoil disposal area[6] . . . [and] to deposit on the . . . spoil disposal area, or any portion thereof, any and all spoil or other material excavated in construction and maintenance of the aforesaid waterway and its appurtenances.

The Spoil Easement was filed in the Horry County Register of Deeds on September 17, 1932.

In 1983, the Army Corps of Engineers began managing the Spoil Easement. Horry County's obligations were established in a tri-party agreement dated December 8, 1982. On or about November 4, 2003, the Horry County Council adopted Resolution R-143-03 (the no-build resolution), providing that,

> Horry County Council resolved to authorize the issuance of building permits to repair, remodel or replace existing structures within the spoil easements along the Intracoastal Waterway, but to otherwise continue the policy of denying building permits in this area. Mobile homes within the spoil area may only be replaced with mobile homes.

Horry County Res. 143-03. In May 2011, Horry County refused to issue the Lyons a building permit due to the no-build resolution. The Lyons assert that when their building permit was refused, "they learn[ed] for the first time that there is an easement on the property[,] which essentially makes their property useless." Thereafter, they removed the existing mobile home structure from the Property and listed the Property for sale for $539,000.

The Lyons subsequently submitted claims against Fidelity and Security Title under their title insurance policies. On October 11, 2011, Security Title denied the

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[5] The Property abuts the Intracoastal Waterway and is part of the canal prism.

[6] The Property is part of the spoil disposal area.

Lyons' claim and rejected their $80,000 demand. The Lyons filed an action for breach of contract and bad faith failure to pay insurance claims on July 5, 2012, followed by an amended summons and complaint on July 19, 2012. The Lyons subsequently moved for partial summary judgment on December 20, 2012.

At the May 15, 2013 summary judgment hearing, the Lyons brought to the circuit court's attention that United States District Court Judge R. Bryan Harwell had granted partial summary judgment for a neighboring insured on the liability question in a similar case. *See Whitlock v. Stewart Title Guar. Co.*, 2011 WL 4549367 (D.S.C. Oct. 3, 2011).[7] The circuit court granted the Lyons' motion for partial summary judgment by order filed July 12, 2013. Security Title moved to reconsider on July 26, 2013; the circuit court denied the motion to reconsider on August 9, 2013. This appeal followed.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court under Rule 56, SCRCP." *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 425, 746 S.E.2d 35, 37 (2013) (quoting *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (2010)). The circuit court may grant a motion for 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 a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party." *Wachovia Bank*, 404 S.C. at 425, 746 S.E.2d at 38 (quoting *Quail Hill*, 387 S.C. at 235, 692 S.E.2d at 505). "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." *Quail Hill*, 387 S.C. at 235, 692 S.E.2d at 505 (quoting *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000)).

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[7] The question of the applicable date for establishing the measure of damages was certified to the South Carolina Supreme Court, which concluded that when "faced with the task of construing an insurance policy, and in the presence of an ambiguity we are constrained to interpret it most favorably to the insured. In this case, the date the property was purchased is the proper valuation date." *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 616, 732 S.E.2d 626, 629 (2012).

LAW/ANALYSIS

I. Statute of Limitations

Security Title argues that the "mere affixation of a corporate seal" does not make the title policy a "sealed instrument;" thus, the three-year statute of limitations applies to bar the Lyons' claims. We disagree.

"Statutes of limitations embody important public policy considerations in that they stimulate activity, punish negligence, and promote repose by giving security and stability to human affairs." *Moates v. Bobb*, 322 S.C. 172, 176, 470 S.E.2d 402, 404 (Ct. App. 1996). "One purpose of a statute of limitations is 'to relieve the courts of the burden of trying stale claims when a plaintiff has slept on his rights.'" *Id.* (quoting *McKinney v. CSX Transp., Inc.*, 298 S.C. 47, 49–50, 378 S.E.2d 69, 70 (Ct. App. 1989)). "Another purpose of the statute of limitations is to protect potential defendants from protracted fear of litigation." *Id.* "The cornerstone policy consideration underlying statutes of limitations is the laudable goal of law to promote and achieve finality in litigation." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 175, 609 S.E.2d 548, 552 (Ct. App. 2005). "Statutes of limitations are, indeed, fundamental to our judicial system." *Id.*

South Carolina Code section 15-3-530(1) provides for a three-year statute of limitations for "an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520." S.C. Code Ann. § 15-5-530(1) (2005). Under the discovery rule, "the statute of limitations begins to run when a cause of action reasonably ought to have been discovered. The statute runs from the date the injured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from the wrongful conduct." *Dean v. Ruscon Corp.*, 321 S.C. 360, 363, 468 S.E.2d 645, 647 (1996). "The discovery rule applies to breach of contract actions." *Prince v. Liberty Life Ins. Co.*, 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010). "Pursuant to the discovery rule, a breach of contract action accrues not on the date of the breach, but rather on the date the aggrieved party either discovered the breach, or could or should have discovered the breach through the exercise of reasonable diligence." *Maher v. Tietex Corp.*, 331 S.C. 371, 377, 500 S.E.2d 204, 207 (Ct. App. 1998).

The Lyons asserted below that when their building permit was refused in May 2011, "they learn[ed] for the first time that there is an easement on the property[,] which essentially makes their property useless." However, the circuit court ruled there was evidence that the Lyons knew or should have known of the Spoil Easement as early as October 26, 2006, when they received a letter from the Army

Corps of Engineers informing them of a disposal easement held by the United States on or adjacent to the area where they planned to construct a dock. The Lyons had previously received a substantively identical letter dated March 19, 2006.

South Carolina Code section 15-3-520(b) provides for a twenty-year statute of limitations for "an action upon a sealed instrument, other than a sealed note and personal bond for the payment of money only whereon the period of limitation is the same as prescribed in Section 15-3-530." S.C. Code Ann. § 15-3-520(b) (2005). "We adhere to our general three-year statute of limitations for most contract actions and acknowledge the availability of the twenty-year limitations period where the contract clearly evidences an intent to create a sealed instrument." *Carolina Marine*, 363 S.C. at 175, 609 S.E.2d at 552. We acknowledge that South Carolina has not specifically considered whether an insurance policy containing a seal is a sealed instrument under section 15-3-520(b).

A sealed instrument is defined as "an instrument to which the bound party has affixed a personal seal, [usually] recognized as providing indisputable evidence of the validity of the underlying obligations." *Sealed Instrument*, BLACK'S LAW DICTIONARY (9th ed. 2010). A seal is defined as "an impression or sign that has legal consequences when applied to an instrument." *Id.*; *see also* 68 Am. Jur. 2d *Seals* § 6 (2014) ("Devices or impressions held to be seals include . . . a printed impression of a seal."). The prevailing view is that "the seal may consist of any substance affixed to the document or the use of an impression such as that customarily used by notaries and corporations, or the use of any other mark, work, symbol, scrawl, or sign intended to operate as a seal." 1 WILLISTON ON CONTRACTS § 2:4 (2007).

For purposes unrelated to the applicable statute of limitations, our supreme court addressed whether a particular deed was a sealed instrument in *Cook v. Cooper*, 59 S.C. 560, 38 S.E. 218 (1901). The deed at issue in *Cook* lacked a seal "upon its face." *Id.* at 562, 38 S.E. at 219. However, it presented the following features: (1) an attestation clause; (2) the word "seal" was adjacent to the grantor's signature; and (3) the deed concluded with "Signed, Sealed and Delivered in the [presence] of [names of witnesses]." *Id.* The *Cook* court, relying in part on the predecessor to section 19-1-160, found that the parties intended to create a sealed instrument. *Id.*

In *Stelts v. Martin*, 90 S.C. 14, 72 S.E. 550 (1911), the court addressed the statute of limitations applicable in a foreclosure action. In *Stelts*, the validity of a mortgage was at stake. Our supreme court explained the following:

> We are unable to agree with the Circuit Judge that a paper, in form a mortgage and *lacking a witness or a seal or other formal requisite of a legal mortgage*, but valid between the parties as an equitable mortgage, is barred by the statute of limitations six years after its maturity. The paper is . . . a sealed instrument importing an obligation to pay money and a lien as between the obligor and obligee upon the land to secure payment. This being so . . . the [action falls] under [the predecessor to code section 19-1-160,] providing a limitation of twenty years . . . .

Id. at 17, 72 S.E. 551–52 (emphasis added).

In *South Carolina Department of Social Services v. Winyah Nursing Homes, Inc.*, this court concluded that although the contract at issue did not include a seal, the language of the contract manifested the parties' intent to create a sealed instrument. 282 S.C. 556, 561, 320 S.E.2d 464, 467 (Ct. App. 1984). "The attestation clauses state that 'the parties hereto have set their hands and seals.' The notation 'L.S.' follows the signatures of the agents for both DSS and the Nursing Home." *Id.* "L.S. is an abbreviation for *locus sigilli*, which means 'the place of the seal; the place occupied by the seal of written instruments.' L.S. usually appears on documents in place of, and serves the same purpose as, a seal." *Carolina Marine*, 363 S.C. at 174, 609 S.E.2d at 551 (citing *Locus Sigilli*, BLACK'S LAW DICTIONARY (6th ed. 1990)).

Likewise, in *Treadaway v. Smith*, this court found the parties to a separation agreement (incorporated into a 1974 Haitian divorce) intended to create a sealed instrument. 325 S.C. 367, 378, 479 S.E.2d 849, 855 (Ct. App. 1996), *abrogated by Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005). The parties' agreement stated, "IN WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals in quadruplicate as of the day and year first above written" and "SIGNED SEALED AND DELIVERED IN THE PRESENCE OF [signatures of parties and witnesses]." *Id.* This court concluded that the plaintiff's action, which sought to enforce a provision of the agreement in which the defendant agreed to pay the children's college expenses, was governed by the twenty-year statute of limitations. *Id.*

However, in *Carolina Marine*, this court concluded that the sophisticated parties to a commercial lease agreement did not intend to create a sealed instrument. 363 S.C. at 174, 609 S.E.2d at 551. Thus, the lease at issue was not sealed, and the general three-year statute of limitations applied to the tenant's counterclaim for breach of contract against a subtenant. *Id.* Although the lease contained an attestation clause reading "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals," the lease did not contain an actual seal, the letters "L.S.," referring to the place where a seal would be affixed, or such a phrase as "signed, sealed, and delivered." *Id.* at 174–75, 609 S.E.2d at 551–52. This court cautioned, "Were we to construe this boilerplate attestation clause, *by itself*, as requiring a finding of intent to create a sealed instrument in an otherwise non-sealed instrument, we would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state." *Id.*

In the present case, we find Security Title's residential title insurance policy includes a seal "upon its face." The seal states "THE SECURITY TITLE GUARANTEE CORPORATION OF BALTIMORE, Incorporated 1952 Baltimore." In both *Cook* and *Stelts*, our supreme court implied that if the document at issue had a seal "upon its face," the court would not have needed to determine whether the parties intended to create a sealed instrument. Moreover, this court found the inclusion of "L.S." to be significant in *Winyah*.

Security Title argues that the purpose of the seal is "to show that it is the act of the corporation . . . [and] that the company's agent is authorized to complete the policy schedules to make the Policy valid." It asserts that the "mere affixation of a corporate seal" does not make the policy a "sealed instrument," citing *Central National Bank of Columbia v. Charlotte, Columbia & Augusta Railroad Co.*, 5 S.C. 156, 158 (1874) (explaining that the seal of corporation is not, in itself, conclusive of an intent to make a specialty as it is equally appropriate as means of evidencing the assent of a corporation to be bound by a simple contract as by a specialty), in support of its position.

In *Republic Contracting Corp. v. South Carolina Department of Highways & Public Transportation*, this court concluded that a statute requiring an engineer to place his professional engineer's seal and endorsement on bridge plans did not render the plans a "sealed instrument" triggering the application of the twenty-year statute of limitations. 332 S.C. 197, 205–06, 503 S.E.2d 761, 766 (Ct. App. 1998); *see* S.C. Code Ann. § 40-22-370(3), (4), and (6) (Supp. 1997) (requiring plans prepared by a registered engineer to include the engineer's seal and endorsement when filed with public authorities and when issued for use as job site record

documents). Moreover, nothing in the statute "lead[s] to the inference that a purpose of the mandate for affixing a seal and an endorsement is to extend the time in which an action can be brought concerning a document on which these items appear." *Republic Contracting*, 332 S.C. at 205–06, 503 S.E.2d at 766; *see also Landmark Eng'g, Inc. v. Cooper*, 476 S.E.2d 63, 64 (Ga. Ct. App. 1996) (explaining that a surveyor's seal ensures responsibility for his work but does not create a twenty-year statute of limitations prescribed for documents under seal).

The same cannot be said under the unique circumstances of this case. There is no statutory requirement that a title insurance company place its corporate seal and endorsement on a policy; this alone distinguishes the seal in this case from the engineer's seal in *Republic*. The court is bound by the rules of contract construction requiring that insurance policies be construed against the drafter and in favor of coverage. Therefore, we find the presence of the seal on the face of the policy, next to the president's signature, evidences an intent to create a sealed instrument.

Moreover, the purpose of residential title policies—the protection of homeowners from unknown title defects—lends additional support to this result. The Lyons purchased the Property with the intent to build their retirement home upon it. The standard terms for a residential note and mortgage are fifteen to thirty years. A twenty-year statute of limitations allows policyholders to carefully monitor situations as they unfold, ultimately preventing the bringing of unnecessary claims or litigation. Thus, we agree with the circuit court that "the policies are indeed sealed instruments and that the twenty-year statute of limitations applies."

II. Governmental Police Power Exclusion

Security Title further asserts the circuit court erred in granting the Lyons partial summary judgment because the title policy's "governmental police power" exclusion (Exclusion 1) excludes coverage as a matter of law. We disagree.

> Insurance policies are subject to the general rules of contract construction. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning.

> Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. It is a question of law for the court whether the language of a contract is ambiguous. Ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer.

Whitlock, 399 S.C. at 614–15, 732 S.E.2d at 628 (citations omitted).

Insurance policy exclusions are construed "most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005). This rule applies to title insurance contracts. *First Carolinas Joint Stock Land Bank of Columbia v. N.Y. Title*, 172 S.C. 435, 445, 174 S.E. 402, 406 (1934). "Generally, title insurance operates to protect a purchaser or mortgagee against defects in or encumbrances on title which are in existence at the time the insured takes title." *Firstland Vill. Assocs. v. Lawyer's Title Ins. Co.*, 277 S.C. 184, 186, 284 S.E.2d 582, 583 (1981).

In this case, Exclusion 1 states the following:

> In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:
>
> 1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
>
>   - land use
>   - improvements on the land
>   - land division
>   - environmental protection
>
>   This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

> This exclusion does not limit the zoning coverage described in Items 12 and 13 of the Covered Title Risks.

The "Covered Title Risks" section of the policy provides that the policy covers certain listed title risks if the listed risk affects title on the policy date. The Covered Title Risks include but are not limited to the following:

> 10. Someone else has an easement on your land.
>
> . . . .
>
> 13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.
>
> 14. Other defects, liens, or encumbrances.

Security Title contends the county's no-build resolution—prohibiting the issuance of building permits on property located in the Spoil Easement—was neither in the "public record" as defined by the policy nor available for title examination on the date the policy was issued. Thus, according to Security Title, coverage is excluded by the "governmental police power" provision of Exclusion 1. We disagree.

The title policy defines "public records" as "title records that give constructive notice of matters affecting your title—according to the state statutes where your land is located." As to such public records, section 30-7-10 provides, in pertinent part:

> [G]enerally all instruments in writing conveying an interest in real estate required by law to be recorded in the office of the register of deeds . . . are valid so as to affect the rights of subsequent creditors (whether lien creditors or simple contract creditors), or purchasers for valuable consideration without notice, only from the day and hour when they are recorded in the office of the register of deeds . . . of the county in which the real property affected is situated.

S.C. Code Ann. § 30-7-10 (1976); *see also Carolina Chloride, Inc. v. Richland Cty.*, 394 S.C. 154, 169, 714 S.E.2d 869, 876 (2011) (explaining that zoning designations are part of the public record).

It is the Lyons' position that a government regulation is inherently a public record and that, as a result, Exclusion 1 is inapplicable. After considering the purpose of the title policy, the circuit court construed the term "public record" against Security Title because the term "public record" may be fairly and reasonably understood in more than one way. *See Farr v. Duke Power Co.*, 265 S.C. 356, 362, 281 S.E.2d 431, 433 (1975) ("A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one.").

In reaching this conclusion, the circuit court referenced the South Carolina district court's opinion considering "the same spoils easement, no-build resolution, and title insurance policy language." *See Whitlock*, 2011 WL 4549367 at *2–4. We, like the circuit court, find the district court's reasoning logical and its conclusion persuasive. *See Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995) (stating that ambiguities are construed against the insurer); *Phillips v. Periodical Publishers' Serv. Bureau, Inc.*, 300 S.C. 444, 446, 388 S.E.2d 787, 789 (1989) (explaining that although a district court's decision is not binding, it is nevertheless persuasive authority).

The title policy provides broad coverage for title problems created by laws and regulations addressing land use and improvements on land. Because Security Title drafted the contract, it could easily have defined the term "public record" to exclude zoning laws and regulations or drafted other exclusionary language. Like the circuit court and district court, we find the term "public record" to be ambiguous as defined in the policy. Thus, we hold the circuit court properly granted partial summary judgment in favor of coverage because the Spoil Easement and no-build resolution were public records not located during the title search.

III. Zoning Regulation as Land Use Restriction Triggering Coverage

The parties dispute whether a mobile home, which would be permitted on the Property, is a "single-family residence" as the term is used in the policy, and whether the zoning regulation preventing construction of the site-built house the Lyons intended to construct on the Property triggers title coverage. It is undisputed that a mobile home with numerous extensions and additions was previously located on the Property. It is also undisputed that due to the no-build resolution, Horry County will not permit the Lyons to construct a "site-built" home.

Security Title concedes that its policy does not define "single-family residence" but argues that the "General Assembly implicitly recognizes that mobile homes are

ordinarily used as single-family residences." *See* S.C. Code Ann. § 27-40-210(14) (2007) (defining "single family residence" as "a structure maintained and used as a single dwelling unit"); S.C. Code Ann. § 27-40-210(3) (2007) (defining "dwelling unit" to include landlord-owned mobile homes). Here, Exclusion 1 "does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks." "Covered Title Risks" item 13 states that the policy provides coverage if "[one] cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law." The circuit court concluded that, like "public record," the term "single-family residence" is ambiguous. Therefore, the circuit court construed the term in favor of the Lyons and found that "Covered Title Risks" item 13 provided coverage because the Lyons "cannot use [the Property] as a single-family residence due to the existing zoning law preventing them from building a site-built home."

Our review of the record reveals that the term "single-family residence" is not defined by the policy. As this term's precise meaning is unclear, we find the circuit court properly construed the policy against the drafter so as not to include a mobile home. Thus, Exclusion 1 does not bar coverage because the Lyons cannot use the Property for a "single-family residence." *See Diamond*, 318 S.C. at 236, 456 S.E.2d at 915 (stating that ambiguities are construed against the insurer). Therefore, we hold the circuit court did not err in granting summary judgment as to this issue.

IV. Mitigation of Damages

Security Title argues the circuit court erred in determining that the Lyons did not fail to mitigate their damages.

"A party injured by the acts of another is required to do those things a person of ordinary prudence would do under the circumstances, but the law does not require him to exert himself unreasonably or incur substantial expense to avoid damages." *Baril v. Aiken Reg'l Med. Ctrs.*, 352 S.C. 271, 285, 573 S.E.2d 830, 838 (Ct. App. 2002); *see also Newman v. Brown*, 228 S.C. 472, 480, 90 S.E.2d 649, 653 (1955) ("It is the undoubted general rule that it is the duty of the owner of the property, which is injured by the negligence of another, to use reasonable means to minimize the damages."). "The duty to mitigate losses applies to contracts." *Cisson Constr., Inc. v. Reynolds & Assocs., Inc.*, 311 S.C. 499, 503, 429 S.E.2d 847, 849 (Ct. App. 1993). "Whether the party acted reasonably to mitigate damages is ordinarily a question for the jury." *Baril*, 352 S.C. at 285, 573 S.E.2d at 838.

A defendant who claims a plaintiff's damages could have been mitigated has the burden of proving that mitigation is possible and reasonable. *Moore v. Moore*, 360 S.C. 241, 262, 599 S.E.2d 467, 478 (Ct. App. 2004). "Moreover, the party who claims damages should have been minimized has the burden of proving they could reasonably have been avoided or reduced." *Id.* (quoting *Chastain v. Owens Carolina, Inc.*, 310 S.C. 417, 420, 426 S.E.2d 834, 835 (Ct. App. 1993)). The reasonableness of a party's actions to mitigate damages is a question of fact which cannot be decided as a matter of law when conflicting evidence is presented. *Chastain*, 310 S.C. at 420, 426 S.E.2d at 836; *Hinton v. Designer Ensembles, Inc.*, 335 S.C. 305, 320, 516 S.E.2d 665, 672 (Ct. App.1999), *overruled on other grounds by* 343 S.C. 236, 246, 540 S.E.2d 94, 99 (2000).

The "Limitation of Company's Liability" section of the policy provides in part:

> a. We will pay up to your actual loss or the Policy Amount in force when the claim is made -- whichever is less.
>
> . . . .
>
> e. If you do anything to affect any right of recovery you may have, we can subtract from our liability the amount by which you reduced the value of that right.

A. Offer to Purchase Subject Property

Security Title argues the Lyons failed to mitigate their damages when they rejected an offer to purchase the Property. We disagree.

In his deposition, Mr. Lyons testified that he "thinks" he was offered $475,000 for the Property in September 2006. Security Title contends that "[h]ad the Lyons accepted the offer, they would not only have recouped their initial investment but would have reaped a profit from the sale." Security Title further contends that the circuit court should have let a jury determine "the amount of damages, or lack thereof as a consequence of the Lyons' failure to mitigate." The circuit court acknowledged the duty to mitigate, but cogently explained:

> [I]t cannot be said that after the discovery of an easement held by the United States that prevents construction of a dock, the law requires one to sell the entire property or be

> thwarted from bringing suit against his title insurance company at a later date; such a requirement would call for a party to exert himself unreasonably.

We agree with the circuit court that the Lyons did not fail to mitigate their damages. *See Baril*, 352 S.C. at 285, 573 S.E.2d at 838 (explaining that the law does not require an injured party "to exert himself unreasonably or incur substantial expense to avoid damages"). Moreover, we find that Security Title's argument fails given that the Lyons could not have provided a potential purchaser with clean title to the Property because the Spoil Easement is properly recorded.

B. Demolition of Mobile Home

Security Title further contends that the Lyons failed to mitigate their losses when they demolished the mobile home previously located on the Property. We disagree.

Although Security Title raised this argument in its Rule 59(e) motion to reconsider, it did not raise this issue to the circuit court at the hearing on the Lyons' motion for summary judgment or by way of written opposition. Thus, this issue is not preserved for appellate review. *See Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004) (finding an issue not preserved because "a party may not raise an issue in a motion to reconsider, alter, or amend a judgment that could have been presented prior to the judgment").

V. Date of Loss

The circuit court determined that damages "are to be calculated based on the diminution in value caused by the title defects, measured from the date the property was purchased." Security Title contests this, arguing that any loss (diminution in value) should be calculated based on the value of the lot when Security Title received the Lyons' claim.

The circuit court further held, however, that summary judgment was not appropriate as to damages "[b]ecause the amount of diminution of value is a genuine issue of material fact . . . [and f]urther hearings will be necessary to establish the amount of damages." *See Stanley v. Atl. Title Ins. Co.*, 377 S.C. 405, 411–12, 661 S.E.2d 62, 65–66 (2008). Because the circuit court denied the Lyons'

motion for summary judgment as to damages,[8] we find this issue is not properly before this court. *See Ballenger v. Bowen*, 313 S.C. 476, 477, 443 S.E.2d 379, 380 (1994) (explaining that the denial of a motion for summary judgment is not immediately appealable because it does not finally determine anything about the merits or strike a defense); *Kinard v. Richardson*, 407 S.C. 247, 263–64, 754 S.E.2d 888, 897 (Ct. App. 2014) ("[T]he denial of a motion for summary judgment is not appealable, even after final judgment." (quoting *Olson v. Faculty House of Carolina, Inc.*, 354 S.C. 161, 168, 580 S.E.2d 440, 444 (2003))).[9]

CONCLUSION

For the foregoing reasons, we hold the circuit court properly found that (1) the Lyons' claims were not barred by the statute of limitation, (2) Exclusion 1 does not bar coverage, and (3) the Lyons did not fail to mitigate their damages. Accordingly, the decision of the circuit court granting partial summary judgment is

AFFIRMED.

WILLIAMS and GEATHERS, JJ., concur.

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[8] The circuit court also declined to accept the Lyons' argument that the title policies insure their loss to the full value of the policies, explaining that the "spoilage easement and no-build resolution have not rendered the property useless or completely unmarketable."

[9] In any event, as noted above, our supreme court's ruling on the certified question in *Whitlock* is likely determinative of this question. *See* 399 S.C. at 616, 732 S.E.2d at 629 (holding that, in the presence of the policy's ambiguity, it was constrained to interpret the provision "most favorably to the insured. In this case, the date the property was purchased is the proper valuation date.").

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222
Appellate Case No. 2013-002137

Thomas P. and Desiree J. Lyons,

Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants,

Of whom The Security Title Guarantee Corporation of Baltimore is the Appellant.

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, Appellant Security Title Guarantee Corporation of Baltimore petitions the Court for rehearing and reconsideration of Opinion No. 5365 filed December 2, 2015. This is an appeal from the trial court's grant of partial summary judgment in favor of the Respondents. Appellant specifically asks the Court to reconsider: (1) whether the court misapprehended the terms of the policy in holding that a county no-build resolution appeared in the "public record" and was available for title examination when the policy was issued; (2) misapprehended the terms of the policy by holding that a zoning resolution imposing

a land restriction was a defect in title triggering coverage under the policy; (3) misapprehended the law by speculating that the Lyons did not fail to mitigate their damages.

Pertinent Facts.

The real property (the Property) at issue is a residential lot located in Horry County, which previously held a mobile home with numerous extensions and additions. Op. at 1. The Property had been encumbered since 1932 by a properly recorded easement allowing for the construction and maintenance of the Intracoastal Waterway. R. at 54 – 60. The Lyons purchased the Property in two separate transactions. On May 5, 2005, they purchased a lot (Lot 1) for $240,000, along with a title insurance policy from Lawyers Title Insurance Corporation (Lawyers Title). R. at 24 – 27 and 29 – 34. On October 28, 2005, the Lyons purchased a portion of a lot (Lot 2) adjacent to Lot 1 for $100,000. R. at 36 – 39 and 41 – 44. In conjunction with this transaction, they purchased a title insurance policy from Security Title. R. at 46 – 52. Lots 1 and 2 were subsequently combined into the Property at issue, which is shown as "Lot 1" on a plat dated August 24, 2005, and recorded with the Horry County Register of Deeds. Br. of App. at 3. The closing attorney did not except to the easement in either title policy. R. at 29 – 34 and 46 – 52. On July 3, 1930, Congress enacted the River and Harbor Act, which provided for the construction of the Atlantic Intracoastal Waterway. Op. at Fnt 3. In 1931, our General Assembly passed an act to provide for rights-of-way for the construction project. Op. at Fnt. 4. On August 17, 1932, the governor executed a deed to the land that was to be the Intracoastal Waterway which included a spoils easement that encompassed the Property. R. at 54 – 60. The easement was filed in the Horry County Register of Deeds on September 17, 1932. R. at 60. Subsequently, in the early 1980s the Corps of Engineers transferred management of the spoils easement to Horry County which, in 2003, passed a "no-build" resolution. R. at 62 – 76 and 2. The resolution

authorized issuance of building permits to repair, remodel or replace existing structures within the easements, but denied permits for stick-built structures. R. at 2. Horry County allowed mobile homes to be replaced within the spoils area. Id. A mobile home with several additions was located on the property when the Lyons purchased the property. R. at 203. The Lyons applied for a building permit in 2011, but it was denied due to the "no-build" resolution. R. at 203. The Lyons then removed the existing mobile home from the Property and listed it for sale for $539,000.00. R. at 221. A potential purchaser offered the Lyons $475,000.00 for the property in September 2006, but the Lyons did not accept the offer. R. at 6. When the Lyons' claims under their title policies were denied, this suit followed. This appeal was filed after the trial court granted the Lyons' motion for partial summary judgment on the Lyons' action on the contract and the title company's motion to reconsider was denied. R. at 1 – 8 and 9.

Governmental Police Power Exclusion.

Security contends that the Court misapprehends Exclusion 1 of its policy, believes that the policy is not ambiguous and the policy terms exclude coverage. The Court found that the terms of the policy were ambiguous and that the exclusion did not apply. Op. at 7. As noted in the opinion, Exclusion 1 states, in pertinent part, that the policy excludes coverage for "Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:

- Land use
- improvements on the land
- land division
- environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of the Covered Title Risks." R. at 7.

The Court also noted certain covered risks assumed by the insurer. "The Covered Title Risks section of the policy provides that the policy covers certain listed title risks if the listed risk affects title on the policy date. The Covered Title Risks include but are not limited to the following:

10. Someone else has an easement on your land.

. . .

13. You cannot use the land because use as a single-family residence violates a restriction shown in Schedule B or an existing zoning law.

14. Other defects, liens, or encumbrances."

Id.

Security believes that the court misapprehends the term "public records" as the term is defined in the policy. The court noted that zoning designations are part of the public record citing Carolina Chloride, Inc. vs. Richland Cty., 394 S.C. 154, 169, 714 S.E.2d 869, 876 (2011). Op. at 8. While zoning records may be available to the public, the policy defines "public records" as "title records that give constructive notice of matters affecting your title - according to the state statutes where you land is located." R. at 49, Definitions. Zoning regulations affect use of the property, not title. Zoning regulations do not give notice of matters affecting title, ownership, or other matters encumbering real estate. One can own property and not be able to use it for a particular purpose. See McMaster v. Strickland, 305 S.C. 527, 530, 409 S.E.2 440, 442 (Ct. App.

1991). When taken in context, the policy unambiguously defines "public record". "A contract is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who (1) has examined the context of the entire integrated agreement and (2) is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business". Laser Supply and Services, Inc. v. Orchard Park Associates, 676 S.E. 2d 139, 144 (Ct. App. 2009) citing Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 592, 493 S.E.2d 875, 878 (Ct. App. 1997). There was no evidence that the resolution was on file in the public record affecting title to real estate as defined in the policy. Accordingly, the court misapprehended the terms of the policy by finding ambiguity by designating zoning regulations as a "public record" within the meaning of the policy.

Zoning Regulations as Land Use Restriction Triggering Coverage.

Security believes that this court misapprehended the terms of the policy when it found that zoning regulation, a land use restriction, triggered coverage under the policy. Op at 9. The court found that the since the term "single-family residence" was not defined by the policy, the Horry County "no-build" resolution in its zoning regulations prohibited the Lyons from constructing a stick built house on the property and thus triggered coverage under the policy. Op. at 9. The Lyons can use the property as a single-family residence if they would be willing to live in a mobile home. Since title insurance policies are written based on attorney's title opinions and the term "public records" includes zoning regulations, heretofore unknown, the opinion imposes new duties on real estate lawyers that have never before existed. The court's misapprehension of the terms of the policy, and consequential mistaken application, renders it virtually impossible for a real estate attorney to rely on long established title examination practices to write title insurance on real estate. The court by implication imposes a duty for the title examiner now to

certify zoning regulations, which in this particular case is particularly impractical and harsh since resolutions are not indexed. Further, public records are in a variety of state and county offices and can limit use of property. The Court also profoundly expands the extent of coverage of the title insurance policy because a title insurance policy insures title, not use. And since the court notes that the policy insures that one can use the property for a single-family residence, one should also note that many people use mobile homes for single-family residences, a permitted use on the Lyons' property. Finally, the Court's opinion alters the terms of the policy by interpreting it to insure a prohibited use because the term "single-family dwelling" is taken out of its proper context to mean any type of dwelling rather than designated uses permitted by the government.

Mitigation of Damages.

Even if coverage was triggered, and the terms of the policy are ambiguous, Security believes that the court misapprehended the law in finding that the Lyons did not mitigate their damages by refusing an offer to purchase the property because the Lyons would have earned a profit from a sale of the property. Citing the trial court's ruling, this court also found that, in effect, after learning of a defect in the title, the Lyons would exert themselves unreasonably by selling the property. Op. at 9 – 10. The court also opined that the properly recorded spoil easement prevented the Lyons from giving a buyer a clear title. Op. at 10. Security believes that both the trial court and this court erred in its rulings because the Lyons' duty had a duty to mitigate their damages under the terms of the policy, and both courts speculated in their factual findings that the buyer would not have taken the property subject to the easement. R. at 10. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is dispute as to the conclusion to be drawn from those facts." Quail Hill, LLC v. Cty. Of

Richland, 387 S.C. 223, 235, 692 S.E.2d 499, 505 (quoting Brockbank v. Best Capital Corp., 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000)). There is no dispute that the Lyons never allowed the potential purchaser to make his/their own decision to buy or not to buy the property. One can do no more than speculate whether the easement would have prevented the sale. Security believes that the Lyons' own decision to list the property for sale belies a conclusion that they would have exerted themselves unreasonably by selling the property at a profit. Thus, by failing to perform their contractual duty to mitigate their damages under the terms of the policy, as well as refusing the opportunity to reap a substantial profit after their own decision to list the property for sale, the Lyons' claim should be dismissed for their failure to mitigate their damages. Therefore, the trial judge should not have granted the motion for summary judgment in favor of the Lyons for their failure to mitigate their damages.

For the reasons stated above, Security Title Company requests this Court to grant this petition for rehearing.

Respectfully submitted,

Dated: December 16, 2015

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IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-26-05222
Appellate Case No. 2013-002137

Thomas P. and Desiree J. Lyons,

Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore, Defendants,

Defendants,

Of whom The Security Title Guarantee Corporation of Baltimore is the Appellant.

CERTIFICATE OF SERVICE

I certify that I am an agent of Ray Coit Yarborough, Jr. and served the Petition for Rehearing on Appeal to counsel of record for the Respondents in the above captioned action by depositing a copy in the United States Mail, postage prepaid, on December 16, 2015, addressed as noted below:

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Bianca Gianfrate

On Behalf of:
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Attorney for Appellant

PETITION FOR A WRIT OF CERTIORARIS TO THE COURT OF APPEALS

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM HORRY COUNTY
Paul M. Burch, Circuit Court Judge

Opinion No. 5365 (S.C. Ct. App. Dec. 2, 2015)

Thomas P. and Desiree J. Lyons,

Respondents,

v.

Fidelity National Title Insurance Company as successor by merger to Lawyers Title Insurance Corporation, Bobby Gene Martin, and The Security Title Guarantee Corporation of Baltimore,

Defendants,

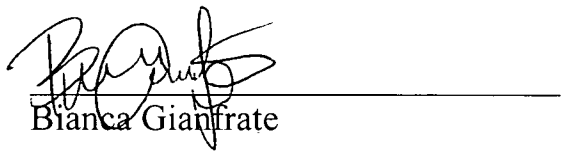
Of whom The Security Title Guarantee Corporation of Baltimore is the Petitioner.

CERTIFICATE OF SERVICE

I certify that I am an agent of Ray Coit Yarborough, Jr. and served the Appendix to Petition for Writ of Certiorari to counsel of record for the Respondents in the above

captioned action by depositing a copy in the United States Mail, postage prepaid, on February 19, 2016, addressed as noted below:

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