

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas  
Benjamin H. Culbertson, Circuit Court Judge

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Appellate Case No. 2016-000058  
Opinion No. 5342 (S.C. Ct. App. refiled December 16, 2015)

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John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce C. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway,. . . . . Plaintiffs,

Of whom John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens are Respondents,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC a/k/a Source One Signature Communities, . . . . . Defendants,

Of whom Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton, and Bayside Property, Inc. are Petitioners.

---

APPENDIX VOLUME 1

---

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(843) 545-6578  
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Bonnie N. Charlton, James R. Charlton, and  
Bayside Property, Inc.

Other Counsel of Record:

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and  
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Attorneys for Hartford Casualty Insurance Company  
and Hartford Fire Insurance Company

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STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

APPELLATE CASE NO. 2013-001644

John Steven Goodwin, Louise C. Goodwin, Thomas L. Puckett  
and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama,  
Thomas Holland and Sharon Louise Holland, Joyce K. Sobel,  
Robert W. Waruszeński, Richard N. Taylor, Robert K. Spillers  
(a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah  
Spillers, Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E.  
Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults,  
and Dennis Ridgeway and Teresa Lynn Ridgeway, ....Appellants

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay  
Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L.  
Charlton, Bonnie N. Charlton, James R. Charlton and Bayside  
Property, Inc., the City of Georgetown, Hartford Casualty  
Insurance Company, Hartford Fire Insurance Company, and  
National Land Sales, Inc., f/k/a Source One Communities, LLC,  
a/k/a Source One Signature Communities.....Respondents

---

APPELLANTS' RECORD ON APPEAL

---

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John M. Leiter, Esquire  
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(843) 449-1451  
Attorneys for Appellants

**RECEIVED**

AUG 21 2014

**SC Court of Appeals**



Charles T. Smith, Esquire  
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Bonnie N. Charlton, James R. Charlton and  
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Attorneys for Respondent City of Georgetown

James Lynn Werner, Esquire  
Lawrence M. Hershon, Esquire  
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Columbia, South Carolina 29202  
Attorneys for Respondents Hartford Casualty  
Insurance Company and Hartford Fire  
Insurance Company

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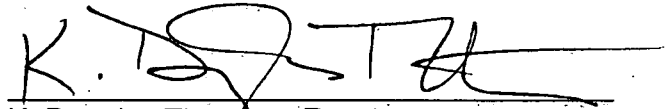
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I certify that this Record on Appeal contains no matter which is irrelevant to this appeal.

Respectfully submitted:

THORNTON LAW FIRM, LLC

A handwritten signature in black ink, appearing to read 'K. Douglas Thornton', written over a horizontal line.

K. Douglas Thornton, Esquire  
1025 Third Avenue  
Conway, South Carolina 29526  
(843) 488-5858

John M. Leiter, Esquire  
1203 48<sup>th</sup> Avenue, North, Suite 109  
Myrtle Beach, South Carolina 29577  
(843) 449-1451

ATTORNEYS FOR APPELLANTS

August 5, 2014

Conway, SC

STATE OF SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE

COUNTY OF GEORGETOWN

CASE NO: 2009CP2201045

IN THE COURT OF COMMON PLEAS

John Steven Goodwin vs. Landquest Development Llc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;  
(Formal order to follow)

X Statement of Judgment by the Court:

Case Stricken Due To Bankruptcy

Dated at Georgetown, South Carolina, this 22nd day of July, 2011.

Court Reporter:

S/ Larry B. Hyman, Jr.  
PRESIDING JUDGE - Larry B Hyman, Jr

This judgment was entered on the 22nd day of July, 2011, and a copy mailed first class this 22nd day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

K. Douglas Thornton Thornton Law Firm 1025  
Third Ave Conway, SC 29526  
John M. Leiter Law Offices Of John M. Leiter PA  
1203 48Th Avenue N Suite 109 Myrtle Beach, SC  
29577

Elise Freeman Crosby Crosby & Crosby Law Firm  
405 Dozier Street Georgetown, SC 29440  
Joseph Kevin Qualey Qualey & Beck 23 Broad St.  
Charleston, SC 29401  
James Lynn Werner Parker Poe Adams &

CPFORM4M  
SCCA SCRPC Form 4 Revised 06/2008

SCANNED

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

) IN THE COURT OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO. 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin,  
Thomas I. Puckett and Brenda C. Puckett,  
Robert Nahama and Jeanne E. Nahama,  
Thomas Holland and Sharon Louise Holland,  
Joyce K. Sobel, Robert W. Waruszewski,  
Richard N. Taylor, Robert K. Spillers  
(a/k/a Robert Spillers) and Deborah T. Spillers  
(a/k/a Deborah Spillers), Patrick A. DiAngelo  
and Deborah A. DiAngelo, Gary E. Owens and  
Joyce M. Owens, Fount L. Shults and  
Lynda M. Shults, Dennis Ridgeway and  
Teresa Lynn Ridgeway,

Plaintiffs,

v.

Landquest Development, LLC,  
Kyle V. Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC,  
Ronald L. Charlton, Bonnie N. Charlton,  
James R. Charlton and Bayside Property, Inc.,  
The City of Georgetown, Hartford Casualty  
Insurance Company, Hartford Fire Insurance  
Company, and National Land Sales, Inc.,  
f/k/a Source One Communities, LLC, a/k/a  
Source One Signature Communities,

Defendants.

ORDER

FILED  
GEORGETOWN COUNTY  
2011 JUL 22 PM 2:48  
ALMA V. WHITE  
CLERK OF COURT

Before the Court is the Defendant South Bay Properties, LLC's Notice of Motion  
and Motion for Continuance seeking to continue the jury roster presently scheduled to take place  
during the week of July 25, 2011, due to the bankruptcy filing of Defendant South Bay  
Properties, LLC.

IT IS HEREBY ORDERED that the Motion for a Continuance is GRANTED.

(SIGNATURE PAGE TO FOLLOW)

Larry B. Hyman, Jr.

The Honorable Larry B. Hyman, Jr.  
Chief Administrative Judge

Conway, South Carolina

7:20, 2011



STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN )

CASE NO.: 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin, )  
Thomas I. Puckett and Brenda C. Puckett, )  
Robert Nahama and Jeanne E. Nahama, )  
Thomas Holland and Sharon Louise )  
Holland, Joyce C. Sobel, Robert W. )  
Waruszewski, Richard N. Taylor, Robert )  
K. Spillers (a/k/a Robert Spillers), and )  
Deborah T. Spillers (a/k/a Deborah )  
Spillers), Patrick A. DiAngelo and )  
Deborah A. DiAngelo, Gary E. Owens and )  
Joyce M. Owens, Fount L. Shults and )  
Lynda M. Shults, and Dennis Ridgeway )  
and Teresa Lynn Ridgeway, )

Plaintiffs, )

vs )

**ORDER DENYING MOTIONS TO  
RESTORE AND TO CONSOLIDATE**

Landquest Development, LLC, Kyle C. )  
Corkum, South Bay Properties, LLC, C. )  
R. Thompspon and Sons, LLC, Ronald L. )  
Charlton, Bonnie N. Charlton, James R. )  
Charlton and Bayside Property, Inc., The )  
City of Georgetown, Hartford Casualty )  
Insurance Company, Hartford Fire )  
Insurance Company, and National Land )  
Sales, Inc., f/k/a Source One Communities, )  
LLC, a/k/a Source One Signature )  
Communities, )

Defendants. )

FILED  
GEORGETOWN COUNTY, S.C.  
2013 MAR 27 AM 10:30  
ALMA Y. WHITE  
CLERK OF COURT

This action came before the Court on March 7, 2013 for consideration of motions by John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens to restore this action to the docket and to consolidate this action with the action entitled *Bonnie N. Charlton et al. v. South*

Page 1 of 4 / *mtc*

*Bay Properties, LLC, et al.* (case number 2012-CP-22-00934). Arguments in support of the motions were presented by John M. Leiter and K. Douglas Thornton, attorneys for the Plaintiffs. Arguments in opposition to the motions were presented by Lawrence M. Hershon, attorney for Hartford Casualty Insurance Company and Hartford Fire Insurance Company, Elise F. Crosby, attorney for The City of Georgetown, and Charles T. Smith, attorney for Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.

#### FACTS

This action concerns a real estate development in the City of Georgetown known as Harbor Club on Winyah Bay. The Goodwins purchased Lot 160 on September 17, 2007 and the Owens purchased Lot 94 on December 21, 2007. The other Plaintiffs purchased lots in Harbor Club on Winyah Bay between September 17, 2007 and December 21, 2007.

The Complaint, filed July 9, 2009, alleges twelve causes of action and names twelve defendants. The causes of action include claims for breach of contract, violation of the South Carolina Unfair Trade Practices Act, negligent misrepresentation, fraud, violation of the Interstate Land Sales Full Disclosure Act, violation of the South Carolina Uniform Land Sales Full Disclosure Act, equitable lien and civil conspiracy pertaining to the real estate development. The Complaint also alleges there was an amalgamation of corporate interests, entities and activity so as to establish a joint venture partnership between various Defendants.

This action was struck from the docket on July 22, 2011 due to the bankruptcy of South Bay Properties, LLC. The bankruptcy was dismissed twenty days later on August 12, 2011.

The motion to restore this action to the docket was not filed until January 22, 2013, eighteen months after the action was stricken.

#### ANALYSIS

*Graham v. Dorchester County School District*, 339 S.C. 121, 528 S.E.2d 80 (Ct. App. 2000) addressed a similar factual situation. There the trial court dismissed the case with prejudice because Graham's motion to restore, made after the time allowed by Rule 40(j), SCRCP, was not timely. The Court of Appeals stated: "Rule 40(j) required motions to restore be made within one year of the case being stricken to take advantage of the tolling of the statute of limitations." 528 S.E.2d at 82. The statute of limitations had expired on Graham's cause of action by the time the motion to restore was filed so the decision of the trial court was affirmed.

*Maxwell v. Genes*, 356 S.C. 617, 591 S.E.2d 26 (2003) arose from an automobile accident. The action was stricken from the docket on April 13, 1999. On May 1, 2000, one year and eighteen days after the case was stricken, Maxwell moved to restore the case. The circuit court denied Maxwell's motion to restore. The Court of Appeals found there was good cause to enlarge the time for filing the motion to restore and reversed the circuit court. The Supreme Court stated:

"Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period. . . . A party can move to restore a case to the docket more than one year after the claim was stricken without running afoul of . . .

Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule." 591 S.E.2d at 28.

The Supreme Court concluded that the Court of Appeals erred in holding that the one year deadline established by Rule 40(j) may be extended for good cause and reversed the Court of Appeals' decision allowing restoration of the case.

In the present action the statute of limitations on the Plaintiffs' claims was not tolled by Rule 40(j) because the motion to restore the action to the docket was filed more than one year after the action was stricken. 11 U.S.C.A. §108(c) provided the Plaintiffs an extension of time because of South Bay Property, LLC's bankruptcy. But, the extension of time expired thirty days after notice of the termination or expiration of the bankruptcy stay. The bankruptcy was dismissed on August 12, 2011, seventeen months before the motion to restore was filed. Therefore, I find and conclude that the Plaintiffs' claims are barred by the statute of limitations and restoration of this case should be denied. Since restoration of this case is denied, consolidation of this case with *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) is moot.

#### CONCLUSION

The motions to restore this action to the docket and to consolidate this action with *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) are denied. AND IT IS SO ORDERED.

  
Benjamin H. Culbertson  
Resident Circuit Court Judge

March 26, 2013

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-22-934

Bonnie N. Charlton, et al.  
PLAINTIFF(S)

South Bay Properties, LLC, et al.  
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

*Motion for Reconsideration by defendants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens dated 3/7/2013 and filed 3/7/2013 is DENIED.*  
(This motion was decided without oral arguments.)

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

*Benjamin H. Culbertson*  
Benjamin H. Culbertson, Circuit Court Judge

2148  
Judge Code

March 26, 2013  
Date

**For Clerk of Court Office Use Only**

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

Charles T. Smith

K. Douglas Thornton

John M. Leiter

John W. Davidson

Byron L. Saintsbury

Wesley P. Bryant

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Shirley A. Smith, Deputy*  
CLERK OF COURT

Court Reporter: None

FORM 4

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

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2009CP2201045

|                     |                       |                           |                          |
|---------------------|-----------------------|---------------------------|--------------------------|
| John Steven Goodwin | Louise C Goodwin      | Landquest Development Llc | Kyle V Corkum            |
| Thomas I Puckett    | Brenda C Puckett      | South Bay Properties LLC  | CR Thompson and Sons LLC |
| Robert Nahama       | Jeanne E Nahama       | Ronald L Charlton         | Bonnie N Charlton        |
| Thomas Holland      | Sharon Louise Holland | James R Charlton          | Bayside Property Inc     |
| Joyce K Sobel       |                       | Georgetown City of        |                          |
| PLAINTIFF(S)        |                       | DEFENDANT(S)              |                          |

|                                     |                                                                                                                                           |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Submitted by: <u>Clerk of Court</u> | Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant<br><input type="checkbox"/> Self-Represented Litigant |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:  
Motion to Alter or Amend Judgment by Attorney Thornton; denied. Attorney Smith to prepare a Formal Order.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

| INFORMATION FOR THE JUDGMENT INDEX                                                                                                                                                                           |                                          |                                                          |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|----------------------------------------------------------|
| Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below. |                                          |                                                          |
| Judgment in Favor of<br>(List name(s) below)                                                                                                                                                                 | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
| N/A                                                                                                                                                                                                          | N/A                                      | N/A                                                      |
|                                                                                                                                                                                                              |                                          |                                                          |
|                                                                                                                                                                                                              |                                          |                                                          |
|                                                                                                                                                                                                              |                                          |                                                          |

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

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

*Margaret Culbertson*  
Circuit Court Judge

2148  
Judge Code

6/6/2013  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on June 7th 2013, and a copy mailed first class or placed in the appropriate attorney's box on June 10th 2013, to attorneys of record or to parties (when appearing pro se) as follows:

K. Douglas Thornton 1025 Third Ave. Conway, SC 29526  
John M. Leiter 1203 48Th Ave. North, Ste. 109 Myrtle Beach, SC 29577

Elise Freeman Crosby 405 Dozier St. Georgetown, SC 29440  
Joseph Kevin Qualey 23 Broad Street Charleston, SC 29401  
James Lynn Werner PO Box 1509 Columbia, SC 29202  
Charles T. Smith 608 Cypress Street Georgetown, SC 29440  
Ronald L. Richter Jr. 18 Broad St., Ste. Mezz Charleston, SC 294013010  
Eric Steven Bland PO Box 72 Columbia, SC 29202  
Andrew F. Lindemann PO Box 8568 Columbia, SC 292028568  
Lawrence Michael Hershon PO Box 1509 Columbia, SC 292021509

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Alma Y. White*, Deputy for  
Alma Y. White - Clerk of Court

Court Reporter - Grace L. Hurley



STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN )

CASE NO.: 2009-CP-22-1045



John Steven Goodwin, Louise C. Goodwin, )  
Thomas I. Puckett and Brenda C. Puckett, )  
Robert Nahama and Jeanne E. Nahama, )  
Thomas Holland and Sharon Louise )  
Holland, Joyce C. Sobel, Robert W. )  
Waruszewski, Richard N. Taylor, Robert )  
K. Spillers (a/k/a Robert Spillers), and )  
Deborah T. Spillers (a/k/a Deborah )  
Spillers), Patrick A. DiAngelo and )  
Deborah A. DiAngelo, Gary E. Owens and )  
Joyce M. Owens, Fount L. Shults and )  
Lynda M. Shults, and Dennis Ridgeway )  
and Teresa Lynn Ridgeway, )

Plaintiffs,

vs

Landquest Development, LLC, Kyle V. )  
Corkum, South Bay Properties, LLC, C. )  
R. Thompspon and Sons, LLC, Ronald L. )  
Charlton, Bonnie N. Charlton, James R. )  
Charlton and Bayside Property, Inc., The )  
City of Georgetown, Hartford Casualty )  
Insurance Company, Hartford Fire )  
Insurance Company, and National Land )  
Sales, Inc., f/k/a Source One Communities, )  
LLC, a/k/a Source One Signature )  
Communities, )

Defendants.

**ORDER DENYING MOTION TO  
ALTER OR AMEND JUDGMENT**

FILED  
GEORGETOWN COUNTY, S.C.  
2013 JUN 21 PM 1:46  
ALMA Y. WHITE  
CLERK OF COURT

This action came before the Court on June 6, 2013 for consideration of a motion by the Plaintiffs to alter or amend the Order Denying Motions to Restore and to Consolidate dated March 26, 2013. Present in support of the motion were John M. Leiter and K. Douglas Thornton, attorneys for the Plaintiffs. Present in opposition to the motion were Lawrence M. Hershon,

1 / MKC

attorney for Hartford Casualty Insurance Company and Hartford Fire Insurance Company, Elise F. Crosby, attorney for The City of Georgetown, Donald G. Hunt, Jr., attorney for Landquest Development, LLC, Kyle V. Corkum, and South Bay Properties, LLC, and Charles T. Smith, attorney for Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.

The Plaintiffs' motions to restore this action to the docket and to consolidate this action with the action entitled *Bonnie N. Charlton et al. v. South Bay Properties, LLC, et al.* (case number 2012-CP-22-00934) were originally heard on March 7, 2013. At that time the Plaintiffs' arguments were thoroughly and effectively presented by Plaintiffs' counsel and were carefully considered by this Court. After taking the motions under advisement for further consideration, I found and concluded that the Plaintiffs' claims are barred by the statute of limitations and restoration of this case should be denied.

The arguments presented in support of the Plaintiffs' Motion to Alter or Amend Judgment failed to disclose any facts or analysis in the Order Denying Motions to Restore and to Consolidate that required alteration or amendment. However, a more complete discussion of the impact of South Bay Properties, LLC's bankruptcy on the statute of limitations is appropriate.

South Bay Properties, LLC filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code on June 18, 2010. South Bay Properties, LLC's attorneys promptly informed the parties to this action and the Georgetown County Clerk of Court of the bankruptcy filing and that the filing acted as an automatic stay of any actions against South Bay Properties, LLC. The bankruptcy was ultimately dismissed on August 12, 2011. The Plaintiffs contend that South Bay Properties, LLC's bankruptcy tolled the statute of limitations on the Plaintiffs' claims in this action.

2/mk

11 U.S.C. §108(c) provides that if nonbankruptcy law or rules fix a period for commencing or continuing a civil action against the debtor and such period did not expire before the start of the bankruptcy, then such period does not expire until the later of (i) the end of such period or (ii) 30 days after notice of the termination of the bankruptcy stay. Thus, South Bay Properties, LLC's bankruptcy did not toll of the statute of limitations but merely insured the Plaintiffs had at least 30 days after notice of the termination of the bankruptcy to commence or continue any claims against South Bay Properties, LLC that had not expired before the start of the bankruptcy.

#### CONCLUSION

The Plaintiffs' Motion to Alter or Amend Judgment dated April 10, 2013 is denied.

AND IT IS SO ORDERED.



Benjamin H. Culbertson  
Resident Circuit Court Judge

June 19, 2013

3/

# The South Carolina Court of Appeals

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce C. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, Appellants,

v.

Landquest Development, LLC, Kyle C. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities, Respondents.

Appellate Case No. 2013-001644

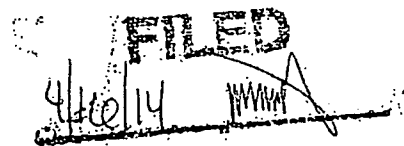
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## ORDER

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Respondents City of Georgetown, Hartford Casualty Insurance Company, and Hartford Fire Insurance Company filed motions to dismiss. After careful consideration, the motions are denied. Within thirty days, Respondents shall file and serve their initial briefs and designation of matter.

  
FOR THE COURT



Columbia, South Carolina

cc:

John M. Leiter, Esquire  
K. Douglas Thornton, Esquire  
Charles T. Smith, Esquire  
Joseph Kevin Qualey, Esquire  
Ronald L. Richter, Jr., Esquire  
Elise Freeman Crosby, Esquire  
Lawrence Michael Hershon, Esquire  
Andrew F. Lindemann, Esquire  
Donald G. Hunt, Jr., Esquire  
Kristin Atkins, Esquire  
James Lynn Werner, Esquire  
National Land Sales, Inc.

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CIVIL ACTION NO. 2009-CP-22-\_\_\_\_\_

20090722 1045

John Steven Goodwin, Louise C.  
Goodwin, Thomas I. Puckett and  
Brenda C. Puckett, Robert Nahama  
and Jeanne E. Nahama,  
Thomas Holland and Sharon  
Louise Holland, Joyce K. Sobel,  
Robert W. Waruszewski,  
Richard N. Taylor, Robert K. Spillers  
(a/k/a Robert Spillers), and Deborah T.  
Spillers (a/k/a Deborah Spillers),  
Patrick A. DiAngelo and Deborah A.  
DiAngelo, Gary E. Owens and  
Joyce M. Owens, Fount L. Shults and  
Lynda M. Shults, and Dennis Ridgeway  
and Teresa Lynn Ridgeway,

Plaintiffs,

v.

Landquest Development, LLC,  
Kyle V. Corkum, South Bay Properties,  
LLC, C. R. Thompson and Sons, LLC,  
Ronald L. Charlton, Bonnie N. Charlton  
James R. Charlton and Bayside Property  
Inc., The City of Georgetown, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, and  
National Land Sales, Inc., f/k/a Source  
One Communities, LLC, a/k/a Source  
One Signature Communities

Defendants.

COMPLAINT

Jury Trial Demanded

FILED  
GEORGETOWN COUNTY, S.C.  
2009 JUL -9 PM 3:37  
ALMA Y. WHITE  
CLERK OF COURT

Plaintiffs, complaining of the Defendants, would respectfully show unto this  
Honorable Court and allege as follows:

### JURISDICTION AND VENUE

1. As described more fully herein below, Plaintiffs are owners of various lots located in a subdivision situate in Georgetown County, South Carolina, known and designated as "Harbor Club on Winyah Bay" ("the Subdivision"). The Subdivision is situate upon approximately 79.866 acres contiguous with and bounded along portions of its Eastern boundary by Winyah Bay, and is more fully described as follows:

ALL those certain pieces, parcels, or lots of land, situate, lying, and being in the City of Georgetown, Georgetown County, South Carolina, containing a "Total Area = 79.866 Acres," which is comprised of "HOA/Wetlands Area = 33.120 Acres," "Lot Area = 34.870 Acres," and "R/W Area = 11.876 Acres," said property being further shown and delineated on a plat entitled "FINAL BONDED SUBDIVISION PLAT SHOWING THE PLANTATION @ WINYAH BAY, 79.866 ACRES PREPARED FOR LANDQUEST", prepared by Trico Engineering Consultants, Inc. dated June 27, 2007 and recorded on July 18, 2007 in Plat Slide 647 at Page 1 – 10 in the Office of the Register of Deeds for Georgetown County, South Carolina, said property having such metes, bounds, courses and distances as will more fully appear by reference to the aforesaid map, which map is incorporated herein by reference.

2. In accordance with Rule 20, SCRPC, all Plaintiffs herein are asserting discrete rights and claims, jointly and severally, arising from a series of similar and/or related transactions and occurrences, and affected or controlled by common questions of fact and/or law.

3. Plaintiffs are informed and believe that they are entitled to join their similar and related rights and claims within this action for purposes of determining the joint and/or several liability of the Defendants with respect to same, in the form of appropriate declaratory relief, and to thereafter conduct hearings as this Court may deem necessary and appropriate, upon breach of contract and related issues, for the purpose of

determining the actual, compensatory, consequential, special and/or punitive damages to be awarded to each Plaintiff, or group of Plaintiffs, as separate purchasers and lot owners within the Subdivision.

4. Plaintiffs John Steven Goodwin and Louise C. Goodwin are residents of the Horry County, South Carolina. Said Plaintiffs are owners as joint tenants with right of survivorship of Lot 160 in the Subdivision, by virtue of a General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and filed in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 688, at Page 45. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

5. Plaintiffs Thomas I. Puckett and Brenda C. Puckett are residents of Bristol, Virginia. Said Plaintiffs are owners in fee simple, as joint tenants with right of survivorship, of Lot 93 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 318. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges



as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

6. Plaintiffs Robert Nahama and Jeanne E. Nahama are residents of the Horry County, South Carolina. Plaintiffs Thomas Holland and Sharon Louise Holland are residents of Bergen County, New Jersey. Plaintiff Joyce K. Sobel is a resident of Cobb County, Georgia. Said Plaintiffs, jointly, are the owners in fee simple of undivided interests totaling 100% ownership interest, of Lot 44 in the Subdivision, as more fully described and defined in that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 687, at Page 19. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

7. Plaintiff Robert W. Waruszewski is a resident of the State of Tennessee, and is the fee simple owner of Lots 65, 151 and 157 in the Subdivision, by virtue of General Warranty Deeds executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County on September 19, 2007, in Deed Book 692, at Page 51 (Lot 65); on September 17, 2007, in Deed Book 687, at Page 244 (Lot 151); and, on September 21, 2007, in Deed Book 696, at Page 48 (Lot 157). Said Plaintiff's fee simple ownership interests in said lots includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

8. Plaintiff Richard N. Taylor is a resident of Cumming, Georgia. Plaintiffs Robert K. Spillers and Deborah T. Spillers are residents of Greenville, South Carolina. Said Plaintiffs, jointly, are the owners in fee simple of undivided interests totaling 100% ownership interest of Lot 154 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 688, at Page 201. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing

Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

9. Plaintiffs Robert K. Spillers and Deborah T. Spillers are residents of Greenville, South Carolina, and are the fee simple owners, as joint tenants with right of survivorship, of Lot 98 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 687, at Page 308. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

10. Plaintiffs Patrick A. DiAngelo and Deborah A. DiAngelo are residents of Horry County, South Carolina, and are fee simple owners as joint tenants with right of survivorship, of Lot 91 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the

Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 688, at Page 108. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

11. Plaintiffs Gary E. Owens and Joyce M. Owens are residents of Horry County, South Carolina, and are the joint owners in fee simple of Lot 94 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on December 21, 2007, in Deed Book 798, at Page 263. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99; reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

12. Plaintiffs Fount L. Shults and Lynda M. Shults are residents of Georgetown County, South Carolina, and are the fee simple owners, as joint tenants with right of survivorship, of Lot 89 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 688, at Page 1. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

13. Plaintiffs Dennis Ridgeway and Teresa Lynn Ridgeway are residents of Horry County, South Carolina, and are the fee simple owners, as joint tenants with right of survivorship, of Lot 92 in the Subdivision, by virtue of that General Warranty Deed executed and delivered by Defendant South Bay Properties, LLC, and recorded in the Office of the Register of Deeds for Georgetown County, South Carolina, on September 17, 2007, in Deed Book 686, at Page 258. Said Plaintiffs' fee simple ownership interest in said lot includes all rights, rights of way, easements, common areas, restrictions and privileges as more fully set forth and described in the foregoing Deed, including all attachments and exhibits thereto, as well as the "Declaration of Covenants, Conditions

and Restrictions for Harbor Club on Winyah Bay" recorded in the Office of the Register of Deeds for Georgetown County on September 17, 2007, in Deed Book 686, at Page 99, reference to all such public records being craved for a more complete description thereof, all of which are incorporated herein in their entirety by reference.

14. Upon information and belief, the Defendant Landquest Development, LLC, ("Landquest") is a limited liability company established pursuant to the laws of another state, but at all times relevant hereto was authorized to do business in the State of South Carolina, and is or was doing business in Georgetown County, South Carolina.

15. Defendant Kyle V. Corkum ("Corkum"), upon information and belief, is a resident of the State of North Carolina.

16. The Defendant South Bay Properties, LLC ("South Bay"), upon information and belief, is a limited liability company formed and existing pursuant to the laws of North Carolina, but at all times relevant hereto was and is authorized to do business in this state, and is doing business in Georgetown County, South Carolina.

17. Upon information and belief, Defendant C.R. Thompson and Sons, LLC ("CRT") is a limited liability company formed and existing pursuant to the laws of the State of South Carolina, and doing business in Georgetown County, South Carolina.

18. The Defendants Ronald L. Charlton and Bonnie N. Charlton ("the Charltons") are citizens and residents of South Carolina.

19. The Defendant Bayside Property, Inc. is a corporation formed and existent pursuant to the laws of the State of South Carolina and at all times relevant hereto was and is doing business in Georgetown County, South Carolina. Together with the

Charltons, these Defendants are collectively hereinafter referred to as the "Charlton Defendants").

20. The Defendant City of Georgetown ("City") is a municipality and governmental entity organized and existing pursuant to the laws of the State of South Carolina, and exists within Georgetown County, South Carolina.

21. The Defendant Hartford Casualty Insurance Company ("Hartford Casualty") is a corporation organized and existing under the laws of the State of Indiana. At all times relevant herein, Defendant Hartford Casualty was authorized to do and was doing business in Georgetown County, South Carolina.

22. Upon information and belief, the Defendant Hartford Fire Insurance Company ("Hartford Fire") is a corporation organized and existing under the laws of the State of Connecticut. At all times relevant herein, the Defendant Hartford Fire was authorized to do and was doing business in Georgetown County, South Carolina.

23. The Defendant National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities ("Source One"), upon information and belief, is a limited liability company organized and existing pursuant to the laws of the State of South Carolina, with its principal office in Georgetown County, South Carolina.

24. As described more fully hereinabove, the Subdivision which forms the subject matter of this action, is situate and located within the Georgetown County, South Carolina.

25. All transactions, occurrences, acts and omissions alleged and complained of herein, transpired and occurred within Georgetown County, South Carolina, and/or

were directly related to the Subdivision located within Georgetown County, South Carolina.

26. The parties and the subject matter of this action are within the jurisdiction of this Court.

27. Venue is proper in Georgetown County, South Carolina.

### **FACTUAL ALLEGATIONS**

28. Plaintiffs affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

29. Upon information and belief, at all times relevant hereto, the Defendant Corkum is and has been the Manager-Member of both Defendants Landquest and South Bay.

30. Plaintiffs are informed and believe that, at all times relevant hereto, Defendants Landquest and South Bay have been managed and controlled by Defendant Corkum.

31. Upon information and belief, at the direction and control of Defendant Corkum, Defendant Landquest entered into a Joint Venture Agreement with Defendant CRT, dated July 3, 2006, for the purpose of evaluating, conducting due diligence, conducting financial analysis and feasibility studies, and thereafter financing, acquiring, developing, designing, permitting, constructing, marketing and selling four (4) specific real estate developments, including the Subdivision identified herein.

32. Upon information and belief, Defendants Corkum and CRT utilized Defendant Landquest for the purpose of conducting initial evaluations, financial analysis



and feasibility studies, and to negotiate the acquisition and financing for the acquisition of the property. On information and belief, Defendant CRT and/or Defendant Corkum thereafter personally, or through Defendant Landquest, conducted all due diligence investigations, and arranged for necessary surveys, final planning, permitting, construction, marketing, and sale of the Subdivision.

33. Upon information and belief, Defendants Corkum, Landquest and CRT formed, or caused to be formed, in accordance with the Landquest-CRT Joint Venture Agreement, the Defendant South Bay, on or about June 29, 2006, for the purpose of owning, holding, and conveying lots in the Subdivision to ultimate purchasers, including but not limited to the Plaintiffs herein.

34. At all times relevant hereto, Defendant South Bay was and is the designated owner and "developer" of the Subdivision.

35. Plaintiffs are informed and believe that, at all times relevant hereto, Defendant South Bay has possessed inadequate capital and financial resources to perform its obligations as represented and undertaken, and its contractual obligations and duties to Plaintiffs, as described more fully herein below.

36. Plaintiffs are informed and believe that Defendant Corkum has utilized the assets and resources of Defendant Landquest, in addition to the pledge of his personal assets and resources, in conjunction with the assets and resources of Defendant CRT as joint venturer, and other third parties, to create the perception that South Bay had the necessary capital and financial ability to perform and complete its obligations for the acquisition of the Subdivision, and its obligations to the Plaintiffs herein and other lot purchasers, as described more fully herein below.

37. On or about August 14, 2006, upon information and belief, Defendant South Bay, by and through its manager Defendant Corkum, utilizing the assets and resources of Defendants Corkum, Landquest and CRT, and other third parties, as alleged hereinabove, entered into a contract with the Charlton Defendants for the purchase of the Subdivision for the sum of Twenty Million and 00/100 Dollars (\$20,000,000.00). This Purchase Contract was subsequently amended on January 23, 2007, and again on May 9, 2007 (collectively referred to as the "Purchase Contract").

38. South Bay eventually closed the Purchase Contract with the Charlton Defendants as sellers on or about September 17, 2007, the date of filing of a General Warranty Deed conveying the property to Defendant South Bay for the sum of Twenty Million Eight Hundred and Fifty Thousand and 00/100 Dollars (\$20,850,000.00), in Deed Book 686, at Page 90 ("South Bay's Deed"). The unpaid balance of the purchase price was secured by a Mortgage from Defendant South Bay to the Charlton Defendants, recorded on the same date, in the sum of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars (\$14,580,662.92), in Mortgage Book 686, at Page 135 ("South Bay Mortgage").

39. Also on September 17, 2007, following the recording of South Bay's Deed and Mortgage as recited hereinabove, Defendant South Bay conveyed twenty-nine (29) lots to various purchasers by General Warranty Deeds recorded on this date, generating total gross lot sale proceeds of Seven Million Nine Hundred Twenty-six Thousand Five Hundred and Fifty and 00/100 Dollars (\$7,926,550.00).

40. The Purchase Contract provided, among other things, that (i) the Charlton Defendants would have unlimited ingress and egress over the Subdivision for the

Charlton Defendants' own purposes, and that (ii) the Charlton Defendants had the right to use the Subdivision, infrastructure and amenities at no cost to the Charlton Defendants. This right included use of all amenities, including the clubhouse, and to receive a portion of the boat slips upon completion of the build-out of the marina.

41. Between September 29, 2007 and January 4, 2008, Defendant South Bay conveyed twenty-five (25) more lots in the Subdivision to ultimate purchasers, generating additional gross lot sale proceeds of Six Million Eight Hundred Eleven Thousand-Fifty and 00/100 Dollars (\$6,811,050.00), resulting in total gross lot sale proceeds of Fourteen Million Seven Hundred Thirty-seven Thousand Six Hundred and 00/100 Dollars (\$14,737,600.00).

42. Thirty-one (31) lots in the Subdivision were excepted from the lien of Defendant South Bay's Mortgage, representing gross lot sale proceeds of Seven Million Seven Hundred Forty-five Thousand Eight Hundred and 00/100 Dollars (\$7,745,800.00).

43. Plaintiffs are informed and believe that Defendant South Bay has invested no capital, funds or other expenditures in or for the Subdivision, with the exception of lot release fees paid to its Sellers.

44. Plaintiffs are further informed and believe that the Defendant South Bay's only assets are the remaining 107 unsold, unimproved lots in the Subdivision, all of which are subject to the lien of South Bay's Mortgage in the original principal amount of Fourteen Million Five Hundred Eighty Thousand Six Hundred Sixty-two and 92/100 Dollars (\$14,580,662.92).

45. Plaintiffs are therefore informed and believe that the Defendant South Bay has, at no time since its purchase of the Subdivision, owned or possessed any equity in the property, or possessed other adequate capital or resources to perform its obligations to Plaintiffs or other lot purchasers in the Subdivision, as described more fully herein below.

46. On or about July 17, 2007, in order to obtain final Plat approval for the Subdivision, thereby enabling Defendant South Bay and/or its principals to lawfully sell lots in the Subdivision, Defendant South Bay procured the issuance of a "Subdivision Performance Bond" ("Performance Bond"), issued by Hartford Casualty Insurance Company. Defendant South Bay is the principal; Hartford Casualty Insurance Company is the surety; and the City of Georgetown is the obligee upon the Subdivision Performance Bond, in the principal penal sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars (\$7,882,359.00).

47. Upon information and belief, Hartford Casualty Insurance Company's rights and liabilities under the Performance Bond were subsequently assigned by rider to Hartford Fire Insurance.

48. The purpose of the Performance Bond, in addition to facilitating the Final Subdivision Plat approval, was to assure construction of the infrastructure (roads and utilities) in the Subdivision.

49. Plaintiffs are informed and believe the Defendant South Bay was incapable of obtaining and procuring the issuance of the Performance Bond, and that the Performance Bond was issued by Hartford Casualty and subsequently by Hartford Fire, in reliance upon a General Indemnity Agreement, executed and delivered by the

Defendants Corkum, South Bay, and six (6) other third parties, on or about July 13, 2007.

50. The Defendant Corkum and/or Landquest conducted all due diligence, required and permitted under the Contract for the purchase of the Subdivision for themselves, CRT and the Charlton Defendants.

51. At some date subsequent to August 14, 2006, Defendants Landquest, Corkum, CRT, South Bay and the Charlton Defendants, or some combination thereof, selected Defendant Source One as the sales and marketing agent for the Subdivision, and commenced marketing lots in the Subdivision to prospective purchasers, including but not limited to Plaintiffs.

52. Upon information and belief, Defendant Source One solicited and procured potential and actual purchasers of lots in the Subdivision by providing photographs, artist renderings and allegedly factual information about the ultimate appearance, infrastructure, facilities, amenities and common areas to be constructed, provided and established in the Subdivision, and regarding the ultimate value thereof, based on information and material provided by Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants, or some combination thereof, or otherwise approved and ratified by said Defendants.

53. Plaintiffs further relied upon Defendant City's approval of the Final Subdivision Plat, and the Performance Bond upon which Defendant City approved same, as assurance and warranty that the Subdivision's infrastructure, in the very least, would be constructed in accordance with representations and covenants made by

Defendants Corkum, Landquest, CRT, South Bay and the Charlton Defendants, or some combination of one or more of said Defendants.

54. Despite such representations and covenants, none of the promised infrastructure, amenities or other such facilities have been commenced or completed in the Subdivision.

55. At all times referenced in this Complaint, the Charlton Defendants were joint venture partners with Corkum, Landquest, CRT and South Bay, for the purpose of developing the Subdivision.

56. There has been such an amalgamation of corporate interests, entities and activity so as to blur the legal distinction between Corkum, South Bay, Landquest, CRT, and the Charlton Defendants, and their activities.

**FOR A FIRST CAUSE OF ACTION**

**(Breach of Contract/Rescission v. Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One)**

57. Plaintiffs affirm and reallege each and every allegation set forth hereinabove as fully as if repeated herein verbatim, and further allege:

58. All matters alleged herein specifically and exclusively refer to and assert a cause of action for relief from Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants (hereinafter referred to as the "Developer Defendants") and Source One, jointly and/or severally.

59. In response to, and in reliance upon, the marketing efforts, representations, covenants and contractual undertakings of the Developer Defendants and their agents, Plaintiffs and other third parties executed Reservation Agreements

and "Agreement(s) to Buy and Sell Real Estate" ("Purchase Agreements") for various lots in the Subdivision, for various prices, on various dates.

60. The Plaintiffs were induced to execute and enter into the Reservation Agreements and Purchase Agreements based upon the following representations and contractual terms made and entered into by the Developer Defendants and/or their agents, to wit:

- a. At no cost to Purchasers/Plaintiffs, the Developer Defendants were going to build a turning lane from South Island Road into the Subdivision, as well as roads, water, sewer, electrical service and telephone service to all lots throughout the Subdivision, in accordance with the Final Subdivision Plat;
- b. The Developer Defendants, at no cost to Purchasers/Plaintiffs, were going to build and provide a Clubhouse, Swimming Pool, a Boathouse and Fishing Pier, as a portion of the common areas and amenities of the Subdivision;
- c. At no cost to Purchasers/Plaintiffs the Developer Defendants were going to provide various improvements to the 1.95± acre island, and its connecting pedestrian bridge, which form a portion of the common areas and amenities of the Subdivision;
- d. At no cost to Purchasers/Plaintiffs, the Developer Defendants were going to provide landscaping throughout the Subdivision, to enhance and preserve its aesthetic appearance, as a portion of the common areas and amenities;
- e. The infrastructure and amenity construction would be commenced in September, 2007, and was expected to be complete in approximately August, 2008;
- f. The value and marketability of Plaintiffs' lots would increase substantially once the infrastructure and amenities were completed; and,
- g. Defendant Source One would set aside, or escrow, approximately \$3,700.00 to \$4,000.00 per lot closed, with such funds to be used for the purpose of conducting at least two major re-marketing events, coinciding with completion of the above-referenced infrastructure and amenities, the purpose and result of which would

be to assist Plaintiffs in re-selling their lots at a substantial profit, if they so desired.

61. The Developer Defendants, or a combination of one or more of said Defendants, separately or through their authorized agents, represented, covenanted and bound themselves to provide the foregoing infrastructure and amenities to Plaintiffs and other purchasers in the Subdivision.

62. The Purchase Agreements were supported by good and valuable consideration, and were mutually binding and enforceable upon all parties thereto.

63. The representations, covenants, and obligations made and entered into by the Developer Defendants and their agents were express and implied executory terms of the Purchase Agreements, and were specifically intended to and did survive the execution of the Purchase Agreements, and the subsequent execution, delivery and filing of the General Warranty Deeds to various lots which vested title to such lots in Plaintiffs.

64. The Plaintiffs have fully performed all obligations and conditions precedent required of them to render the terms of the parties' Purchase Agreements, and other representations and inducements preceding same, fully enforceable as against one or more of these Defendants.

65. Despite Plaintiffs' full performance of all obligations required of them under the Purchase Agreements, including without limitation payment of the full purchase price demanded by one or more of the Developer Defendants, together with closing costs and other substantial expenses incurred by each of the Plaintiffs, and other lot purchasers, said Defendants have failed and refused to perform any of the obligations,



representations, warranties or undertakings made, set forth, and entered into by them. More particularly, the Developer Defendants and Source One have failed to commence, and therefore have not completed, the construction of paved roads providing access to Plaintiff's lots; water or sewer service lines, or other necessary and appropriate utilities and services to the boundary lines of said lots; or the clubhouse, pool, boathouse, fishing pier, landscaping, or improvements to and around the 1.945± acre island as specifically represented, covenanted and warranted or set up an escrow account for remarketing efforts.

66. As a direct, proximate and foreseeable result of the Defendants' material, substantial and unexcused breach of the parties' Purchase Agreements as set forth herein, Plaintiffs have sustained foreseeable actual and special damages and loss, including, but not limited to the following:

- a. In that Plaintiffs have paid and delivered a full and excessive purchase price to said Defendants for their respective lots, and have each undertaken debt and liability for this purpose, far in excess of the actual fair market value of the lots without such infrastructure and amenities;
- b. In that Plaintiffs have incurred interest, property taxes, closing costs, and other consequential and/or special damages as a result of their closing upon the purchase of their respective lots, and undertaking the debt and liabilities resulting directly therefrom;
- c. In that Plaintiffs have incurred substantial attorneys' fees and costs herein, in pursuit of recovery of their rights, interests and damages under their Purchase Agreements;
- d. In that the Plaintiffs have been denied reasonable access to, or any beneficial use of, their individual lots;
- e. In that more than one Plaintiff has been unable or unwilling to comply with the terms of their purchase money financing, and to pay the monthly costs of such financing, as well as excessive property taxes assessed upon their unimproved and inaccessible

lots, resulting in substantial damage to Plaintiffs' credit, and multiple threats of mortgage and property tax foreclosures, together with assessments of penalties and interest on past due financing and property tax payments;

- f. In that, upon information and belief, no funds were or have been "set aside" or escrowed by Defendant Source One, for the purpose of conducting the two significant re-marketing events as promised and represented, and no such events have been planned or conducted;
- g. In that Plaintiffs' investment is jeopardized by virtue of the Charlton Defendants' apparent right to foreclose on all the property that would constitute the common elements to be located within the Property, which would include the roads, easements for utilities, amenities, the marina and the island; and
- h. In such other and further particulars as may be established hereafter.

67. Plaintiffs are informed and believe that Defendants' breach of their covenants and Purchase Agreements have been so fundamental and substantial that Plaintiffs are entitled to judgment against the Defendants, jointly and/or severally, awarding Plaintiffs complete Rescission of their Purchase Agreements, and restoring them to the *status quo ante*, immediately prior to the execution of their Reservation Agreements and Purchase Agreements, by Declaratory Judgment and related relief as follows:

- a. Requiring one or more of the Defendants named herein to refund all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Plaintiffs, to Plaintiffs;
- b. Directing and requiring that one or more of the Defendants fully pay and satisfy all purchase money debt incurred by Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose;
- c. Awarding Plaintiff's judgment against the Defendants in a sum equal to the monetary value of all damage to Plaintiffs' credit which

has or may have occurred as of the date of judgment; upon completion of which, at Defendants' expense, Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to such Defendant/Defendants as this Court shall direct;

- d. Awarding Plaintiffs Judgment for all attorneys' fees and costs incurred by them herein; and,
- e. Awarding Plaintiffs such other and further relief as may be necessary and appropriate to make Plaintiffs whole, and to restore them to the *status quo ante* prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

**FOR A SECOND CAUSE OF ACTION**

**(Breach of Contract – Declaratory Relief, Specific Performance and Damages v. Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One)**

68. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated verbatim, and further allege in the alternative:

69. Without just cause or excuse, the Defendants Landquest, Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One (hereinafter referred to as "the Developer Defendants"), or one or more of them, materially and substantially breached the Purchase Agreements, as alleged more fully hereinabove, all to Plaintiffs' great damage and loss.

70. Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants, jointly and/or severally, as follows:

- a. Declaring the Developer Defendants to be in material and substantial breach of their obligations under the parties' Purchase Agreements, and other representations, covenants and obligations made and entered into by them;
- b. Requiring the Developer Defendants to specifically perform their covenants and obligations to Plaintiffs, by immediately commencing and timely completing the construction of all infrastructure and amenities, in accordance with existing plans; and consistent with

the planned exclusive subdivision portrayed by the Developer Defendants and their agents where plans do not exist; the Final Subdivision Plat; and applicable building codes and standards; as alleged more fully hereinabove;

- c. Awarding Plaintiffs judgment against the Developer Defendants, and Source One jointly and/or severally, in a sum equal to all actual, special and consequential damages incurred by them, together with pre-judgment interest on such sums;
- d. Awarding Plaintiffs all costs and fees incurred herein, including without limitation a reasonable attorneys' fee; and,
- e. Awarding Plaintiffs such other and further relief as this Court may deem just and proper.

**FOR A THIRD CAUSE OF ACTION**

**(Breach of Contract Accompanied by Fraudulent Acts v. Defendants Corkum, Landquest, CRT, South Bay and the Charlton Defendants)**

71. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

72. The Developer Defendants have materially, substantially and fundamentally breached their Purchase Agreements with Plaintiffs, and have defaulted upon the representations, inducements, covenants and warranties given, as alleged more fully hereinabove.

73. The Developer Defendants breach of contracts were accompanied by fraudulent acts, in the following particulars:

- a. the Developer Defendants and Source One made such representations, inducements, covenants and warranties regarding their construction and/or delivery of the infrastructure, amenities and other facilities in the Subdivision, for the purpose and with the intent of inducing Plaintiffs' reliance thereon, without securing or depositing into a *bona fide* escrow account, or otherwise securing and undertaking appropriate and sufficient financial arrangements, to assure completion of same;

- b. the Developer Defendants and Source One specifically intended for Plaintiffs to rely upon such representations, covenants, warranties and contractual obligations, and Plaintiffs did justifiably rely thereon in electing to proceed with execution and performance of their Purchase Agreements for their respective lots, at grossly inflated and excessive values without such infrastructure, amenities and other facilities in place;
- c. the Developer Defendants and Source One, or one or more of them, provided the further assurance of compliance with said representations, covenants, warranties and contractual obligations, by procuring the issuance of a Performance Bond, allegedly assuring the completion of at least the infrastructure in the Subdivision, and pursuant to which the Developer Defendants were enabled and allowed by Defendant City to proceed with the sale and closings upon lots within the Subdivision;
- d. upon information and belief, the Developer Defendants and Source One attempted to avoid and disclaim their duties, responsibilities, obligations and representations, by language contained in their HUD Property Report. However, the Developer Defendants, or one or more of them, instructed, requested or otherwise approved and ratified subsequent representations and "explanations" by Defendant Source One of the HUD Property Report, which negated, glossed over, and otherwise reassured Plaintiffs of the Defendants' financial ability to perform their representations; covenants, warranties and contractual obligations, and of the Developer Defendants intention and ability to do so, as allegedly evidenced by the Hartford Performance Bond;
- e. the Plaintiffs justifiably relied upon the Developer Defendants assurances and reassurances, as alleged herein, were entitled to do so, and had no reasonable means of otherwise discovering the Developer Defendants fraudulent intent, and acted to their detriment in reliance upon such representations and assurances, by electing and deciding to execute and enter into the Purchase Agreements for their lots, to expend sums required for the performance of such Purchase Agreements, and to undertake substantial purchase money debt in order to perform such Purchase Agreements, all to Plaintiff's great damage and loss;
- f. the Developer Defendants, despite such representations, assurances and reassurances, and despite the fact that one or more of the Developer Defendants, jointly and/or severally, are financially capable of fully performing their obligations to Plaintiffs, constructed the transaction with the Charlton Defendants and

secured the issuance of the Hartford Performance Bond, without having any financial obligation or funds committed to construction of the infrastructure, amenities and facilities of the Subdivision;

- g. upon information and belief, the Developer Defendants, or one or more of them, intentionally refrained from undertaking any financial obligation or commitment for the construction of infrastructure, amenities and other such facilities, because of their perception of a pending real estate, and real estate financial market crisis, and Defendants objectively intended, at the time of closing upon the sale of lots to Plaintiffs, to repudiate, deny and avoid any obligation for the construction and provision of such infrastructure, amenities and related facilities;
- h. the Developer Defendants, or one or more of them, were therefore aware at the time of such closings, that Plaintiffs lots were grossly over-valued, and that the Developer Defendants had received far in excess of the actual fair market value of such lots, in the absence of said infrastructure, amenities and related facilities, which the Developer Defendants had then decided not to construct and/or provide;
- i. the Developer Defendants have not commenced or completed construction of any infrastructure, amenities or related facilities in the subdivision, despite their representations, warranties and assurances that such construction would commence in or about September, 2007, and thereafter representing that such construction would commence in or about January, 2008, and in both instances such construction would be complete in or about August, 2008;
- j. the Developer Defendants representations, inducements, covenants and warranties were material and fundamental, and were false and deceptive as recited herein; such material and false representations were made by the Developer Defendants for the purpose of invoking and inducing Plaintiffs' reliance thereon; that Plaintiffs justifiably relied thereon, and had no reason to disbelieve or reasonable ability to discover the falsity of such representations; that Plaintiffs did in fact rely upon such representations to their detriment; and, as a direct and proximate result of such materially false and deceptive misrepresentations and the Developer Defendants breach of their resulting duties, obligations and covenants, Plaintiffs have been severely and egregiously damaged, as recited more fully hereinabove.

74. Plaintiffs are informed and believe that they are entitled to judgment against the Defendants, jointly and/or severally, for all actual and punitive damages sustained herein.

**FOR A FOURTH CAUSE OF ACTION**

**(Violation of South Carolina Unfair Trade Practices Act v. Defendants Corkum, Landquest, CRT, South Bay, the Charlton Defendants and Source One)**

75. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

76. The Defendants Corkum, Landquest, CRT and South Bay, at all times relevant hereto, have held themselves out as experts, and have engaged in business with Plaintiffs and the public at large in the field of real estate development, marketing and sales. The Charlton Defendants, by virtue of their joint venture status as a Developer Defendant, are vicariously liable for the acts and omissions of the other Developer Defendants.

77. At all times relevant hereto, the Defendant Source One has held itself out as an expert, and has engaged in business with Plaintiffs and with the public at large in the field of real estate marketing and sales.

78. The Developer Defendants and Source One named herein have solicited and procured Plaintiffs' reliance upon their expertise, integrity and abilities, as alleged more fully hereinabove, and have thereby procured Plaintiffs' Purchase Agreements and performance of same for the purchase of various lots in the Subdivision, as alleged more fully hereinabove.

79. That the Developer Defendants' and Source One's acts and omissions, in breach and violation of their representations to and agreements with Plaintiffs, as alleged more fully hereinabove, constitute unfair or deceptive acts in the conduct of

trade or commerce, as provided in the South Carolina Unfair Trade Practices Act [S.C. Code Ann. §§ 39-5-10, *et seq.* (1976 as amended).] ("the Act").

80. The Defendants' acts and omissions, as alleged more fully hereinabove, are capable of, and have the potential to be repeated, to the damage of the general public and contrary to the public interest and principles of good faith and fair dealing in the conduct of trade and commerce.

81. Plaintiffs are therefore informed and believe that the Defendants, or one or more of them, have negligently, willfully and recklessly violated the terms and provisions of the Act.

82. That as a direct and proximate result of the Defendants' negligent, willful, and reckless violation of the Act, Plaintiffs have sustained financial damage and property loss, as alleged more fully hereinabove.

83. Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants and Source One, jointly and/or severally, for all actual damages, treble damages, and attorneys' fees, in accordance with the Act.

**FOR A FIFTH CAUSE OF ACTION**  
**(Negligent Misrepresentation v. Defendants Corkum, Landquest, CRT, the**  
**Charlton Defendants, South Bay and Source One)**

84. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

85. The Developer Defendants and Source One, jointly and/or severally, made false representations to Plaintiffs, as alleged more fully hereinabove. Such false representations included:



- a. Defendant South Bay would construct and provide, at no cost to Plaintiffs, the infrastructure, amenities and other related facilities described hereinabove;
- b. the Hartford Performance Bond provided assurance that at least the infrastructure would be constructed and provided;
- c. construction of the infrastructure, amenities and related facilities would be complete in or around August, 2008;
- d. Plaintiffs' lots would be worth substantially more than their purchase price, upon completion of the infrastructure, amenities and related facilities;
- e. Defendant Source One would "set aside", or escrow, \$3,700.00 to \$4,000.00 per lot closing, for the purpose of funding two significant re-marketing events, the first of which would be scheduled to occur in August or September, 2008, for the purpose of assisting those Plaintiffs and other lot purchasers who so desired in re-selling their lots at a substantial profit.

86. The Developer Defendants and Source One, jointly and/or severally, had a pecuniary interest in making these false representations to Plaintiffs, thereby inducing Plaintiffs to enter into and perform their Purchase Agreements for their various lots.

87. The Developer Defendants and Source One, jointly and/or severally, owed Plaintiffs a duty of care to assure that truthful information was conveyed to Plaintiffs regarding their ability to perform as represented, covenanted and undertaken by them in their various contracts with Plaintiffs.

88. The Developer Defendants and Source One, jointly and/or severally, negligently, carelessly, recklessly and willfully breached their duties to Plaintiffs, and failed either consciously or negligently, to ensure that truthful and accurate information was conveyed to Plaintiffs regarding these material issues of fact.

89. The Plaintiffs justifiably relied on the Developer Defendants' and Source One's representations, having no reason to doubt or suspect that the Developer

Defendants and Source One were Incapable of performing, or lacked the integrity and financial commitment or obligation to compel them to perform as represented, covenanted and undertaken.

90. As a direct and proximate result of Plaintiffs' reliance upon such false and material misrepresentations, and said Defendants' failure to perform such obligations, covenants and representations, Plaintiffs have been severely and egregiously damaged as alleged more fully hereinabove.

91. Plaintiffs are informed and believe that they are entitled to judgment against the Developer Defendants and Source One, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

**FOR A SIXTH CAUSE OF ACTION**  
**(Actual Fraud/Constructive Fraud v. Defendants Corkum, Landquest,  
CRT, South Bay and Source One)**

92. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

93. The Developer Defendants and Source One, or one or more of them, by and through their principals and agents, made the representations set forth more fully hereinabove, all of which were material and were false.

94. The Developer Defendants and Source One knew or should have known of the falsity of said representations at the time they were made, or made such representations in reckless disregard of their falsity.

95. The Developer Defendants and Source One made such representations with the intent and purpose that they be acted upon by Plaintiffs as true.

96. Plaintiffs were ignorant of the falsity of the Developer Defendants' and Source One's representations, had no reason to doubt the veracity of such representations, and had no means of reasonably discovering their falsity. Plaintiffs were therefore entitled to rely upon the truth of such representations, and did in fact rely upon the truth of such representations in executing and performing their respective Purchase Agreements for lots in the Subdivision.

97. That, as a direct and proximate result of the Developer Defendants' and Source One's actual or constructive fraud in making such false representations, and Plaintiffs' material change of position in reliance thereon, Plaintiffs have sustained damages and loss, as set forth more fully hereinabove.

98. Plaintiffs are informed and believe that they are entitled to judgment against the Defendants, jointly and/or severally, for all actual, compensatory and punitive damages sustained herein.

**FOR A SEVENTH CAUSE OF ACTION**  
**(Third Party Beneficiaries/Declaratory Judgment v. City of Georgetown, Hartford Casualty, Hartford Fire, South Bay Properties, LLC, the Charlton Defendants and Landquest/CRT)**

99. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

100. Upon information and belief, Plaintiffs were intended beneficiaries of the Subdivision Performance Bond issued by Hartford Casualty and subsequently undertaken by Hartford Fire, as follows:

- a. The Hartford Performance Bond was issued for the purpose of obtaining the Defendant City's approval of the Final Bonded Subdivision Plat;

- b. The Defendant City's approval of the Final Bonded Subdivision Plat was a condition precedent to the Developer Defendants, being authorized to convey title to lots within the Subdivision to ultimate purchasers of said lots, including Plaintiffs;
- c. The Charlton Defendants had to join in and consent to the Final Bonded Plat before it was approved by the Defendant City and/or Georgetown County before it was recorded;
- d. The Defendant City accepted the Hartford Performance Bond and, in reliance thereon, approved the Final Bonded Subdivision Plat for the Subdivision; and,
- e. The preceding facts were conveyed to Plaintiffs by the Developer Defendants and Source One, whereafter and in reliance whereof, Plaintiffs proceeded to closing on their respective lots, and discharged their duties and obligations fully under their Contracts to purchase said lots.

101. That Defendants City and Hartford knew or should have known that Plaintiffs would rely upon the Defendant City's acceptance of the Hartford Performance Bond, and its consequent approval of the Final Bonded Subdivision Plat for the Subdivision, and that Plaintiffs were entitled to rely thereon in accordance with relevant statutory and municipal code provisions as alleged more fully herein below.

102. Pursuant to Code 1964, §17-16(2), Code of Ordinances, City of Georgetown, the City's planning commission is required to "undertake plans and programs designed to promote public health, safety, morals, convenience, prosperity, or the general welfare . . . ." In discharging its responsibilities, the planning commission has the power and duty to recommend for adoption regulations for the development of land pursuant to S.C. Code of Laws, as amended, §§6-29-1110 through 6-29-1200.

103. S.C. Code §6-29-1120 states that:

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land

within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties or consolidated political subdivisions is authorized for the following purposes, among others:

(1) to encourage the development of economically sound and stable municipalities and counties;

(2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; ... and

(5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

104. S.C.Code §6-29-1180 provides that in:

circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

105. S.C. Code §6-29-1120 further states that the:

Owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records....

106. Upon information and belief, in April, 1999, pursuant to the statutory authority granted by S.C. Code §§ 6-29-110-1200, the City enacted Land Development Regulations. The purpose of these Regulations, among other things, was to "assure the timely provision of required street utilities and other facilities and services to new land development." Sec. 102, Land Development Regulations of the City of Georgetown.

107. The Land Development Regulations of the City of Georgetown, in pertinent part, require the following:

- a. Sec. 107: Planning Commission approval and recording of a plat of a subdivision prior to any transfer, sale, agreement to sell, negotiating for sale or advertising for sale of any "land by reference to or exhibition of or by other use of a plat of subdivision of such land."
- b. Sec. 203.1: Approval of the Final Plat requires certification from the City that "... improvements have been installed to the City's satisfaction or that an acceptable technique in lieu of completion of all improvements has been proposed for the subdivision."
- c. Sec. 302.8: "Financial guarantees as required in Section 502 shall be submitted ... along with the Final Plat. Approval shall not be granted in the absence of such guarantee."
- d. Sec. 500.1: Approval of the Final Plat for recording shall not be given unless "the subdivider has installed ...improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502."
- e. Sec. 501: Improvements required to be made by every subdivision developer include grading and improving streets and alleys, installing curbs, monuments, sewers, storm water inlets, and water mains.
- f. Sec. 502.1: "Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees...in accordance with the requirements of this section."

- g. Sec. 502.3: "Prior to completion of any or all required improvements by the subdivider, the subdivider may post a performance bond...guaranteeing the completion of said improvements in compliance with the requirements herein..."
- h. Sec. 502.321: The performance bond shall "[r]un to the governing authority or, if applicable, any other governmental unit having legal responsibility for the construction and completion of said improvements."
- i. Sec. 502.324: The performance bond shall specify "that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however, that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or part of such improvements for such period of time as it deems is in the public interest."

108. Upon information and belief, prior to the closing of the individual lots to Plaintiffs, the Developer Defendants applied to Defendant City for approval and/or pre-approval of the Subdivision Plat, and for subsequent closing of sales of lots in the Subdivision to third parties, including Plaintiffs. At the time that Defendant South Bay applied to the Defendant City, it did not own the Property, but rather the Charlton Defendants did. As a result, the Charlton Defendants were either expressly or impliedly co-applicants with Defendant South Bay. As required by the Land Development Regulations of the City of Georgetown, on or about July 17, 2007, Defendants South Bay and Hartford Casualty executed the Subdivision Performance Bond for the benefit of the Defendant City, with Plaintiffs and other third party lot purchasers and property owners as intended beneficiaries thereof, in the sum of Seven Million Eight Hundred Eighty-two Thousand Three Hundred Fifty-nine and 00/100 Dollars (\$7,882,359.00) to guarantee the completion of required improvements and site infrastructure, specifically roads and utilities, for the Subdivision within one year.

109. The Performance Bond, which was executed by a Power of Attorney, may or may not have been assigned by rider, also executed by a separate Power of Attorney, to Defendant Hartford Fire.

110. Upon the submission of the Bond, the Final Plat was approved by the City and recorded.

111. Plaintiffs are informed and believe that the amount of the Bond was necessarily determined by Defendant City in reliance upon specific, and adequately complete, plans and specifications for the required infrastructure and site improvements, and/or by specific bids and/or contracts for such work by third party contractors, as submitted to Defendant City by the Developer Defendants.

112. Thereafter, upon information and belief, the Developer Defendants sold fifty-four (54) lots in the Subdivision to various third parties, including Plaintiffs.

113. As part and parcel of their fee simple ownership interest in their respective lots, Plaintiffs should have granted easements for access and egress to and from their lots, and throughout the Subdivision, over and along the roadways depicted and described on the Final Subdivision Plat, as well as the use of all amenities and common areas of the Subdivision which were to be constructed by the Developer Defendants, and the right to assign and convey such easements, rights and interest to subsequent purchasers, and their heirs and assigns. Plaintiffs should have also been granted the right and beneficial use of all utilities, which were to be constructed and provided by the Developer Defendants to and serving all lots in the Subdivision, including without limitation Plaintiffs' lots.



114. Plaintiffs' respective decisions to enter into, execute and perform their obligations under their Purchase Agreements for their respective lots, were made in reliance upon the Developer Defendants' promises and assurances that the Subdivision Infrastructure would be completed, as guaranteed by issuance of the Subdivision Performance Bond and the City's acceptance thereof and its subsequent approval of the Final Subdivision Plat.

115. Such decisions and performance by Plaintiffs were further made and delivered in reliance upon the Developer Defendants' promises, assurances, representations and contractual covenants to provide all amenities and related facilities as described more fully hereinabove.

116. Plaintiffs allegedly received permanent easements appurtenant, in perpetuity, for the use of all roads and utilities in the Subdivision, and membership in the Property Owners Association which provided them perpetual and assignable rights to use all amenities and common areas in the Subdivision subject only to payment of appropriate regime fees.

117. Plaintiffs specifically relied on Defendant City's approval of the Final Plat and its recording with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements.

118. The prices, terms and conditions of lot sales in the Subdivision, including those lots purchased and closed by Plaintiffs, were premised on, and conducted in reliance upon, the full development of the Subdivision, and the Developer Defendants' promises, covenants, and assurances that the Subdivision improvements would be completed in a timely fashion.

119. Plaintiffs' lots purchases and closings were premised upon, and made in reliance of, Defendant City's approval of the Final Plat and its recording with the County of Georgetown, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements within one year.

120. As of June 8, 2009, no site infrastructure or required improvements as stipulated by Section 501 of the Land Development Regulations of the City of Georgetown had been commenced in the Subdivision.

121. Further, as of June 8, 2009, no amenities or related facilities, as represented, covenanted, and undertaken by the Developer Defendants, had been commenced in the Subdivision.

122. Upon information and belief, Defendant City has received demands and inquires from interested parties with standing, requesting that the City enforce the Performance Bond and/or take action to require or cause the Developer Defendants to perform the required improvements and install the site infrastructure, but Defendant City has taken no action thereon, or has otherwise refused to take timely action to enforce the Performance Bond and the Developer Defendants obligations to perform in a timely fashion, or at all.

123. Upon information and belief, pursuant to the referenced statutes, ordinances and regulations, and the terms and conditions of the Performance Bond, the required improvements and site infrastructure in the Subdivision must be commenced and completed in a timely manner.

124. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal duties and obligations to Plaintiffs specifically, and to the public generally, and

whether and to what extent under the facts, law and circumstances described above, Defendant City is bound to notify Defendant Hartford of Defendant Developers' failure to perform, and/or demand that Defendant Hartford pay to Defendant City the bonded sum for Defendant Developers' failure to start and complete the required improvements and site infrastructure.

125. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above. Defendant City is now required itself to timely undertake and complete the required improvements and site infrastructure at the Subdivision in light of Defendant Developers' failure to start or complete the work.

126. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, Defendant City is permitted to extend, and for how long, the time of completion for the benefit of Defendant Developers and/or Defendant Hartford of all or part of such required improvements and site infrastructure.

127. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant City's legal obligations and duties to Plaintiffs specifically, and to the public generally, and whether and to what extent under the facts, law and circumstances described above, Defendant City has abused, or failed to properly exercise its discretion by failing to take appropriate and timely action to compel completion of the required infrastructure and

site improvements by the Developer Defendants, or to enforce the Performance Bond and complete such infrastructure and site improvements itself.

128. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant Hartford's legal duties and obligations to Defendant City and Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances, Defendant Hartford's Rider and the attendant Power of Attorney purportedly assigning the Bond from Hartford Casualty Insurance Company to Hartford Fire Insurance Company are valid and enforceable, and as such, which Defendant Hartford is the applicable entity holding and responsible for the Bond.

129. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of Defendant Hartford's legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the circumstances described above, Plaintiffs are entitled to enforce the Bond and demand Defendant Hartford pay to Defendant City the bonded sum for Defendant Developers' failure to start or complete the required improvements and site infrastructure.

130. S.C. Code §15-53-30 entitles Plaintiffs to a declaration of the Developer Defendants' legal duties and obligations to Plaintiffs specifically and the public generally, and whether and to what extent under the facts, law and circumstances described above, the Developer Defendants have violated their obligations regarding the required improvements, site infrastructure, amenities and related facilities.

131. Plaintiffs are informed and believe that the declaratory relief sought by them herein will terminate the controversies among the parties to this action with respect to the required infrastructure and site improvements in the Subdivision, and will

remove the uncertainties with respect to these issues. Further, the declaratory relief sought by Plaintiffs herein will partially mitigate Plaintiffs' damages to which Plaintiffs otherwise claim entitlement.

132. Plaintiffs are informed and believe that there is no adequate remedy at law with respect to these issues, except by way of the relief provided by the declaratory judgment statutes aforesaid, with respect to the Defendants' obligations, and Plaintiffs' rights and interest therein, to build and provide the requisite infrastructure and utility services and related improvements in the Subdivision.

133. Further, Plaintiffs are entitled to recovery of their costs and attorneys fees in the present declaratory judgment action.

#### **FOR AN EIGHTH CAUSE OF ACTION**

**(Violation of Interstate Land Sales Full Disclosure Act – Damages v.  
Defendants Corkum, Landquest, CRT, South Bay,  
the Charlton Defendants, and Source One)**

134. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

135. The Developer Defendants are "developers" of the Subdivision as defined by the Interstate Land Sales Full Disclosure Act ("ILSFDA") 15 USCA § 1701 *et seq.*

136. The Defendant Signature Properties is an "agent" of the Project as defined by the ILSFDA. This Defendant represented and acted for the Developer Defendants in both marketing and selling of lots and has engaged in such behavior before, during and after the sale of the lots.

137. The Plaintiffs constitute "purchasers" as defined by the ILSFDA.

138. The Subdivision is a "subdivision" as defined by the ILSFDA, as it contains more than one hundred (100) lots.

139. The lots within the Subdivision were offered and marketed under a common promotional plan as defined by the ILSFDA.

140. The Subdivision is subject to the ILSFDA, including, without limitation, the marketing and sale of lots therein.

141. As described above, each of the Plaintiffs entered into Purchase Agreements to purchase lots within the Subdivision. At the time of sale, each such lot was titled in the name of South Bay.

142. As required by the ILSFDA, a Property Report was presented to the Plaintiffs at the time each Purchase Agreement was signed and the sale was made with such report being a part of the transaction. Each of the Plaintiffs has closed on the purchase of his, her or their respective lot.

143. The Defendant Signature One acted as either developer or agent in consummating the sale of the lots.

144. The lots were marketed and sold by the Defendants for the purpose of building residential dwellings on the lots.

145. The Developer Defendants and Signature One knew, or should have known, at the time of the sale and the presentation of the Property Report, that the lots were not useable for the purpose for which they were sold and that certificates of occupancy could not have been obtained for a dwelling constructed on such lots and still cannot be obtained for such purpose.

146. The Property Report presented by the Defendants to Plaintiffs, and required by the United States Department of Housing and Urban Development ("HUD"), contains misrepresentations of fact and omitted material facts, all contrary to the provisions of the ILSFDA. Specifically, the Property Report misrepresented or omitted the following:

- a. The name of the Subdivision; to-wit: Plantation at Winyah Bay.
- b. At the time the Plaintiffs closed on their respective lot purchases, the Property Report misrepresented the escrow agent holding escrow funds;
- c. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that an occupancy permit to occupy a house could not be issued until the Subdivision was completed and accepted by the City of Georgetown.
- d. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Charlton Defendants held and hold a reversionary interest in a 1.945 acre tract, being a portion of the Subdivision, now known as Harbor Club on Winyah Bay.
- e. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Charlton Defendants held and hold a mortgage on the Subdivision less and excepting lots 21, 44, 45, 46, 57, 58, 85, 89, 90, 91, 92, 93, 95, 98, 104, 105, 110, 112, 113, 117, 118, 140, 149, 151, 153, 154, 155, 157, 158, 159, and 160; said mortgage encumbering all land considered common areas, as well as all land being designated for streets and rights of way, and land required for utility easements, and land to be held in the name of Harbor Club on Winyah Bay Homeowners Association.
- f. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Harbor Club on Winyah Bay required authorization from the U.S. Army Corps of Engineers and through the U.S. Army Corps of Engineers, approvals from South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resources Management ("OCRM") for permits issued by the U.S. Army Corps of Engineers under Section 10 and Section 404.

- g. At the time Plaintiffs closed on their respective lot purchases, the Property Report omitted the fact that the Defendants had or needed to request (and later requested), a permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) Section 401 of the Clean Water Act (33 U.S.C. 1344), and the South Carolina Coastal Zone Management Act (S.C. Code Ann. § 48-39-10 *et seq.*) to enlarge an existing docking facility into a community marina containing fifty-six (56) slips in Winyah Bay, at Plantation at Winyah Bay a/k/a Harbor Club at Winyah Bay, Georgetown, Georgetown County, South Carolina.

147. The Defendants failed to file amendments to the Property Report, as required by law, when material changes occurred.

148. The Defendants failed to keep Plaintiffs advised concerning additional liens and encumbrances being placed on the Subdivision.

149. The Purchase Agreements executed by the Plaintiffs did not contain the language required by ILSFDA found in 15 U.S.C.A. §1703.

150. The acts and omissions of the Defendants constitute devices, schemes or artifices to defraud, all of which are prohibited by ILSFDA.

151. On information and belief, the lots purchased by the Plaintiffs are, at present, of little or no value.

152. Plaintiffs are informed and believe that Defendants' violation of ILSFDA entitle the Plaintiffs to:

- a. judgment against the Defendants, jointly and severally, for actual, compensatory, consequential, and punitive damages to be determined by a jury;
- b. pre-judgment and post-judgment interest on the damages awarded according to law;
- c. attorneys fees and the costs and expenses of litigation; and
- d. such further and other relief as may be deemed necessary and appropriate to make the Plaintiffs whole and that this Court deems



just and proper.

**FOR AN NINTH CAUSE OF ACTION**

**(Violation of Interstate Land Sales Full Disclosure Act – Rescission v. Defendants  
Corkum, Landquest, CRT, South Bay, and the Charlton Defendants)**

153. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

154. In response to, and in reliance upon, representations, covenants and contractual undertakings of said Defendants and their agents, each of the Plaintiffs executed Purchase Agreements for the lots upon which they ultimately closed.

155. Pursuant to the ILSFDA, the Plaintiffs are entitled to rescission of their purchases and a refund of the purchase price and all incidental and consequential costs related to their purchase of lots including, without limitation, reimbursement for property taxes, attorney's fees and related costs and expenses.

156. The Plaintiffs are informed and believe that the Defendants' violations of ILSFDA entitle the Plaintiffs to judgment against the Defendants awarding Plaintiffs' complete rescission of their Purchase Agreements and restoring them to the *status quo ante* immediately prior to the execution of their Purchase Agreements and related relief as follows:

- a. Requiring one or more of the Defendants named herein to refund to the Plaintiffs all earnest monies, closing costs, interest, property taxes, and other such actual and consequential damages and expenses incurred by Plaintiffs;
- b. Directing and requiring that one or more of the Defendants fully pay and satisfy all purchase money debt incurred by Plaintiffs for the purchase of their respective lots, together with all interest, attorneys' fees and costs incurred for such purpose; awarding Plaintiff's judgment against the Defendants in a sum equal to the

monetary value of all damage to Plaintiffs' credit which has or may have occurred as of the date of judgment; upon completion of which, at Defendants' expense, Plaintiffs shall execute and deliver Quitclaim Deeds conveying their respective lots to the Defendant/Defendants as this Court shall direct;

- c. Directing and requiring that the lenders satisfy, release or cancel all debt obligations incurred by the Plaintiffs.
- d. Awarding Plaintiffs judgment for all attorneys' fees and costs incurred by them herein; and,
- e. Awarding Plaintiffs such other and further relief as may be necessary and appropriate to make Plaintiffs whole, and to restore them to the *status quo ante* prior to the execution and performance of their respective Reservation Agreements and Purchase Agreements for lots in the Subdivision.

#### **FOR A TENTH CAUSE OF ACTION**

**(Violation of South Carolina Uniform Land Sales Full Disclosure Act v.  
Defendants Corkum, Landquest, CRT, South Bay,  
the Charlton Defendants, and SourceOne)**

157. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

158. The Developer Defendants and Source One failed to make application and register the Subdivision with the South Carolina Real Estate Commission or its duly authorized assistant or deputy appointed by the Director of the South Carolina Department of Labor.

159. The Plaintiffs are informed and believe that they are entitled to:

- a. judgment against the Defendants, jointly and severally, for actual, compensatory, consequential, and punitive damages to be determined by a jury;
- b. recover the consideration paid for each lot, together with interest at the rate of six percent per year from the date of payment; property taxes paid, costs and reasonable attorneys fees; and

- c. such further and other relief as that this Court deems just and proper.

**FOR AN ELEVENTH CAUSE OF ACTION**

**(Equitable Lien v. the Charlton Defendants and South Bay)**

160. Plaintiffs affirm and reallege each and every allegation set forth hereinabove, as fully as if repeated herein verbatim, and further allege:

161. As alleged above, the Charlton Defendants are joint venture partners in the development and sale of lots within the Subdivision.

162. The amalgamation of identities, interests and activities by the Charlton Defendants and South Bay has blurred their separate identities rendering them both the developer of the subdivision.

163. The Charlton Defendants intended to develop their property contiguous to the Subdivision using, without cost to the Charlton Defendants, the infrastructure and amenities, to be constructed by South Bay.

164. The Charlton Defendants also knew that South Bay intended to sell lots to purchasers who were promised the installation of infrastructure and amenities, which infrastructure and amenities were going to be used by the Charlton Defendants.

165. The South Bay Deed and the South Bay mortgage should be subject to and inferior to the rights, claims and liens of the Plaintiffs including, without limitation, their claims for damages and the cost, if necessary, of completing the Subdivision.

166. The Plaintiffs are informed and believe they are entitled to a declaration from this honorable Court that their rights, claims and liens are superior to those of South Bay and the Charlton Defendants.

**FOR A TWELFTH CAUSE OF ACTION**

**(Civil Conspiracy v. Defendants Corkum, Landquest, CRT, South Bay, the  
Charlton Defendants, and Source One)**

167. Plaintiffs affirm and reallege each and every allegation set forth above, as fully as if repeated herein verbatim, and further allege:

168. The Developer Defendants and Source One conspired together to have the Plaintiffs close on their respective lots by utilization of the acts and omissions on the part of each Defendant described hereinabove.

169. As a result of these Defendants' consummation of the conspiracy by inducing the Plaintiffs to purchase their respective lots, the Plaintiffs have been specially damaged including, but not limited to the following:

- a. Credit damage - from closing and undertaking excessive debt for the acquisition of their lots;
- b. Legal fees and costs to rescind, or attain specific performance;
- c. Legal fees and costs to defend property tax assessments and collection at inflated value; and
- d. Lost opportunity to resell, build or otherwise derive benefit from their lots.

170. The Plaintiffs are informed and believe that they are entitled to actual, compensatory, consequential, special and punitive damages against these Defendants.

WHEREFORE, the Plaintiffs pray as follows:

- a. As to the First Cause of Action, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One

Communities, LLC, a/k/a Source One Signature Communities, jointly and severally for an Order declaring that these defendants have breached the Purchase Agreements with the Plaintiffs and that the Plaintiffs are entitled to rescission and a refund of all earnest monies, closing costs, interest, property taxes, and such actual and consequential damages and expenses incurred by the Plaintiffs;

b. As to the Second Cause of Action, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for an Order that these Defendants specifically perform under the Purchase Agreements with the Plaintiffs, or in the alternative, judgment against these Defendants, jointly and/or severally, in a sum equal to all actual, special and consequential damages, expenses incurred by the Plaintiffs, together with pre-judgment interest;

c. As to the Third Cause of Action, for judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., jointly and/or severally, for actual, consequential, special and punitive damages;

d. As to the Fourth Cause of Action, judgment for Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a

Source One Signature Communities jointly and/or severally, for actual damages, together with treble damages, as allowed by the South Carolina Unfair Trade Practices Act;

e. As to the Fifth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally, for actual, consequential, special and punitive damages;

f. As to the Sixth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally, for actual, consequential, special and punitive damages;

g. As to the Seventh Cause of Action, for an Order declaring and requiring that the City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc. an Order utilizing the bond to start or complete the required improvements and site infrastructure or, in the alternative, for an Order declaring and requiring that the City of Georgetown and the other

Defendants build and provide the requisite infrastructure and utility services and related improvements to the subdivision;

h. As to the Eighth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for actual, consequential, special and punitive damages.

i. As to the Ninth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., jointly and/or severally for an Order declaring that these Defendants have breached the Purchase Agreements with the Plaintiffs and that the Plaintiffs are entitled to rescission and a refund of all earnest monies, closing costs, interest, property taxes, and such actual and consequential damages and expenses incurred by the Plaintiffs;

j. As to the Tenth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for actual, consequential, special and punitive damages.

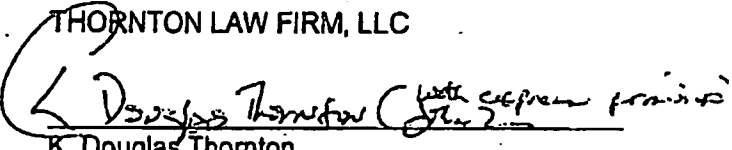
k. As to the Eleventh Cause of Action, for an Order imposing an equitable lien on the Subdivision in favor of Plaintiffs, securing the relief prayed for herein, and declaring the lien to be superior to that of Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc.

l. As to the Twelfth Cause of Action, judgment against Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., and National Land Sales, Inc., formerly known as Source One Communities, LLC, a/k/a Source One Signature Communities, jointly and/or severally for actual, consequential, and punitive damages;

m. For attorney's fees and the costs and expenses of litigation; and

n. For such other and further relief as this Court may deem just and proper.

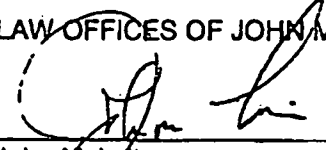
THORNTON LAW FIRM, LLC

  
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Conway, South Carolina

Dated: July 7, 2009

LAW OFFICES OF JOHN M. LEITER, PA

  
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Myrtle Beach, SC

Dated: July 1, 2009



STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF GEORGETOWN ) CASE NO.: 09-CP-22-1045

John Steven Goodwin, Louise C. Goodwin, )  
Thomas I. Puckett and Brenda C. Puckett, )  
Robert Nahama and Jeanne E. Nahama, )  
Thomas Holland and Sharon Louise Holland, )  
Joyce K. Sobel, Robert W. Waruszewski, )  
Richard N. Taylor, Robert K. Spillers )  
(a/k/a Robert Spillers), and Deborah T. )  
Spillers (a/k/a Deborah Spillers), Patrick A. )  
DiAngelo and Deborah A. DiAngelo, )  
Gary E. Owens and Joyce M. Owens, )  
Fount L. Shults and Lynda M. Shults, and )  
Ridgeway and Teresa Lynn Ridgeway, )

Plaintiffs, )

v. )

Landquest Development, LLC, Kyle V. )  
Corkum, South Bay Properties, LLC, )  
C. R. Thompson and Sons, LLC, )  
Ronald L. Charlton, Bonnie N. Charlton, )  
James R. Charlton and Bayside Property )  
Inc., The City of Georgetown, Hartford )  
Casualty Insurance Company, Hartford )  
Fire Insurance Company, and National )  
Land Sales, Inc., f/k/a Source One )  
Communities, LLC, a/k/a Source One )  
Signature Communities, )

Defendants. )

**AMENDED ANSWER,**  
**COUNTERCLAIM AND**  
**CROSS-CLAIM OF DEFENDANTS**  
**RONALD L. CHARLTON,**  
**BONNIE N. CHARLTON,**  
**JAMES R. CHARLTON AND**  
**BAYSIDE PROPERTIES, INC.**

Defendants Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Properties, Inc. (collectively hereinafter "Charltons") and Defendant Bayside Property Inc. ("Bayside") (Charltons and Bayside Property Inc. collectively hereinafter "Defendants") answering the Plaintiffs' Complaint state as follows:

**FOR A FIRST DEFENSE**

1. Defendants deny each and every allegation of Plaintiffs' Complaint not hereinafter

specifically admitted.

2. Upon information and belief, Defendants admit Paragraph 1, but crave reference to those documents that establish Plaintiffs' ownership and define that subdivision known as "Harbor Club on Winyah Bay" ("Subdivision"), which speak for themselves, and any variation from such documents is denied.

3. Paragraphs 2 and 3 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent any response is required, Defendants deny the same.

4. Defendants lack knowledge and information sufficient to form a belief as to Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13, and therefore deny the same. Further, Defendants state that the best evidence of the terms of the deeds and documents referenced is the actual deeds and documents which speak for themselves, and any variation from such deeds and documents is denied.

5. Upon information and belief, Defendants admit Paragraphs 14, 15, 16 and 17.

6. Defendants admit Paragraph 18 and 19.

7. Upon information and belief, Defendants admit Paragraphs 20, 21 and 22.

8. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 23, and therefore deny the same.

9. Upon information and belief, Defendants admit Paragraph 24.

10. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 25, and therefore deny the same.

11. Paragraphs 26 and 27 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent any response is required, Defendants deny the same.

12. In answering Paragraph 28, Defendants repeat their responses above.

13. Defendants lack knowledge and information sufficient to form a belief as to Paragraphs 29, 30, 31, 32 and 33, and therefore deny the same.

14. Defendants admit only so much of Paragraph 34 as alleges that as of September 17, 2007, South Bay became the legal owner of the property at issue and that South Bay currently holds legal title to said property. Upon information and belief, Defendants admit so much of Paragraph 34 as alleges that South Bay was and is the developer of the Subdivision. Defendants deny any remaining allegations.

15. Defendants lack knowledge and information sufficient to form a belief as to Paragraphs 35 and 36, and therefore deny the same.

16. Defendants admit so much of Paragraph 37 as alleges that South Bay Properties, LLC, entered into a purchase agreement for real property with Defendants on August 14, 2006, which was signed by Kyle Corkum, and that such agreement was amended on January 23, 2007 and May 9, 2007. Defendants state that the best evidence of the terms of the agreement and amendments are the documents which speak for themselves, and any variation from such documents is denied. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore deny the same.

17. Defendants admit so much of Paragraph 38 as alleges that the General Warranty Deed for the real property sold by Defendants to South Bay was filed on September 17, 2007, that the unpaid balance was secured by a mortgage from Defendants to South Bay, and that such mortgage was recorded on that same date. Defendants state the best evidence of the deed and mortgage are the documents which speak for themselves, and any variation from such documents is denied. Defendants deny the remaining allegations, if any.

18. Upon information and belief, Defendants admit so much of Paragraph 39 as alleges that at some time following their closing with South Bay, South Bay then conveyed certain Subdivision lots to certain purchasers. Defendants state the best evidence of the dates, number and amounts of these lot sales is the deeds and other related documents which speak for themselves, and any variation from such deeds is denied. Defendants deny the remaining allegations, if any.

19. Defendants admit so much of Paragraph 40 as alleges that the purchase agreement between Defendants and South Bay granted the Charltons certain rights to use the Subdivision, its infrastructure and its amenities. Defendants state the best evidence of the terms and conditions of the purchase agreement and amendments is the documents which speak for themselves, and any variation from such documents is denied. Defendants deny that the Charltons right to use the Subdivision, its infrastructure and its amenities was obtained at no cost, and deny any remaining allegations.

20. Upon information and belief, Defendants admit so much of Paragraph 41 as alleges that South Bay conveyed additional Subdivision lots to certain purchasers. Defendants state the best evidence of the dates, number and amounts of these lot sales is the deeds and related

documents which speak for themselves, and any variation from such deeds is denied. Defendants deny the remaining allegations, if any.

21. In answering Paragraph 42, upon information and belief, Defendants admit that 31 lots were excepted from South Bay's mortgage with Defendant. Defendants state the best evidence of which lots and their values is the mortgage, deed and related documents which speak for themselves, and any variation from such documents is denied. Defendants deny the remaining allegations, if any.

22. Upon information and belief, Defendants admit so much of Paragraph 43 as alleges that South Bay has made some partial payments to Bonnie Charlton, Ronald Charlton and Bayside. Defendants lack knowledge and information sufficient to form a belief as to any remaining allegations, and therefore deny the same.

23. Defendants admit so much of Paragraph 44 as alleges that a portion of the real property of the Subdivision is subject to a lien under South Bay's mortgage. Defendants state the best evidence is the mortgage, which speaks for itself, and any variation from such document is denied. Defendants lack knowledge and information sufficient to form a belief as to any remaining allegations, and therefore, deny the same.

24. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 45, and therefore deny the same.

25. Upon information and belief, Defendants admit Paragraph 46. Further, Defendants state the best evidence of the Subdivision Performance Bond ("Bond") terms and conditions and the subdivision development requirements is the bond, the code, regulations and ordinances which speak for themselves, and any variation from such documents is denied.

26. Upon information and belief, Defendants admit Paragraphs 47 and 48. Further, Defendants state the best evidence of the Bond and subdivision development requirements is the bond, the code, regulations and ordinances which speak for themselves, and any variation from such documents is denied.

27. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 49, and therefore deny the same.

28. In answering Paragraph 50, Defendants deny that Corkum and/or Landquest performed any due diligence for them. Further, Defendants lack knowledge and information

sufficient to form a belief as to the remaining allegations, and therefore deny the same.

29. Defendants deny Paragraphs 51 and 52 as it applies or pertains to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

30. In answering Paragraph 53, Defendants deny they made any representations or covenants, and lack sufficient to form a belief as to the remaining allegations, and therefore deny the same.

31. Defendants admit so much of Paragraph 54 as alleges that no infrastructure has been commenced or completed for the Subdivision, and deny any remaining allegations as to them.

32. Defendants deny Paragraphs 55 and 56.

#### **FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION**

33. In answering Paragraph 57, Defendants repeat their responses above.

34. The allegations of Paragraph 58 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent any response is required. Defendants specifically deny they are or were a developer of the Subdivision.

35. Defendants deny Paragraphs 59 and 60 as pertains to them. Further, Defendants state the best evidence is the "Reservation Agreement(s)" and "Agreement(s) to Buy and Sell Real Estate" for the lots which speak for themselves, and any variation from such documents is denied. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

36. Defendants deny Paragraph 61 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

37. Paragraphs 62, 63 and 64 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent any response is required, Defendants deny the same as to them. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore, deny the same.

38. Defendants admit so much of Paragraph 65 as alleges the Subdivision's infrastructure and amenities have not been commenced or complete, but deny any allegations as to them. Defendants lack knowledge and information sufficient to form a belief as to the remaining

allegations and therefore deny the same.

39. Paragraphs 66 and 67 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same.

**FOR A FIRST DEFENSE TO THE SECOND CAUSE OF ACTION**

40. In answering Paragraph 68, Defendants repeat their responses above.

41. Paragraphs 69 and 70 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same as to them. Defendants specifically deny they are or were a developer of the Subdivision. Further, Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore, deny the same.

**FOR A FIRST DEFENSE TO THE THIRD CAUSE OF ACTION**

42. In answering Paragraph 71, Defendants repeat their responses above.

43. Paragraphs 72 and 73 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same as to them. Defendants specifically deny they are or were a developer of the Subdivision. Further, Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore, deny the same.

44. Defendants deny Paragraph 74.

**FOR A FIRST DEFENSE TO THE FOURTH CAUSE OF ACTION**

45. In answering Paragraph 75, Defendants repeat their responses above.

46. In answering the allegations of Paragraph 76 regarding Corkum, Landquest, CRT and South Bay, Defendants lack knowledge and information sufficient to form a belief and therefore deny the same. The remaining allegations constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same. Further, Defendants deny the allegations as pertains to them.

47. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 77, and therefore deny the same.

48. Defendants deny Paragraph 78 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same. Defendants specifically deny they are or were a developer of the Subdivision.

49. Defendants deny the allegations of Paragraphs 79, 80, 81 and 82 as pertains to them. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations of Paragraphs 79, 80, 81 and 82, and therefore deny the same.

50. Defendants deny Paragraph 83 as to them. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore deny the same.

**FOR A FIRST DEFENSE TO THE FIFTH CAUSE OF ACTION**

51. In answering Paragraph 84, Defendants repeat their responses above.

52. Defendants deny Paragraph 85 and 86 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same. Defendants specifically deny they are or were a developer of the Subdivision.

53. Paragraphs 87 and 88 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same as to them.

54. Defendants deny the allegations of Paragraphs 89 and 90 as pertains to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

55. Defendants deny Paragraph 91 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

**FOR A FIRST DEFENSE TO THE SIXTH CAUSE OF ACTION**

56. In answering Paragraph 92, Defendants repeat their responses above.

57. Defendants deny Paragraphs 93, 94 and 95 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same. Defendants specifically deny they are or were a developer of the Subdivision.

58. In answering Paragraph 96, Defendants lack knowledge and information sufficient to form a belief as what Plaintiffs knew, could have known or should know, and therefore deny the same. The remaining allegations constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same as to them.

59. Defendants deny the allegations of Paragraph 97 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the

same.

60. Defendants deny Paragraph 98 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

**FOR A FIRST DEFENSE TO THE SEVENTH CAUSE OF ACTION**

61. In answering Paragraph 99, Defendants repeat their responses above.

62. Upon information and belief, Defendants admit Paragraph 100 and its subparts a and d. Further, upon information and belief, Defendants admit so much of Paragraph 100(b) as alleges that the Final Bonded Subdivision Plat had to be approved before South Bay could convey title to any lots, and lack knowledge and information sufficient to form a belief as to the remaining allegations of 100(b) and therefore deny the same. Defendants admit so much of Paragraph 100(c) as alleges that Defendants, as the sellers of that real property that was used for the Subdivision, complied and consented to the extent required under the law and pursuant to the applicable agreements between Defendants and South Bay. Defendants state the best evidence is the Subdivision documents, law and the agreements which speak for themselves, and any variation from such documents is denied. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 100(e) and therefore deny the same. Defendants specifically deny they are or were a developer of the Subdivision.

63. Upon information and belief, Defendants admit Paragraph 101.

64. Paragraphs 102, 103, 104, 105, 106 and 107 constitute conclusions and restatements of law which Defendants are neither required to admit or deny. To the extent a response is required, Defendants deny the same as to them. Defendants crave reference to such statutes, regulations, ordinances or other law, which speak for themselves, and any variation from such documents is denied.

65. The first sentence of Paragraph 108 is unclear and vague, and Defendants lack knowledge and information sufficient to form a belief as to it, and therefore deny the same. Defendants deny so much of Paragraph 108 as alleges that Defendants were co-applicants for the Subdivision, and specifically deny that Defendants are or were developers. Defendants crave reference to the Bond and regulations which speak for themselves and any variation from such documents is denied. Defendants deny the remaining allegations, if any.

66. Upon information and belief, Defendants admit Paragraphs 109 and 110. Further,



Defendants crave reference to such the Bond and Final Plat which speak for themselves and any variation from such documents is denied.

67. Defendants deny so much of Paragraph 111 as alleges they are or were developers, or that they submitted any such information to the City of Georgetown. Upon information and belief, Defendants admit the remaining allegations.

68. Defendants deny so much of Paragraph 112 as alleges they are or were developers or sold any Subdivision lots. Upon information and belief, Defendants admit that South Bay sold lots but state the best evidence of the dates and numbers of such lot sales are the sales and closing documents which speak for themselves, and any variation from such documents is denied.

69. Answering Paragraph 113, Defendants state the best evidence of Plaintiffs' rights, benefits, title and interests in the lots or Subdivision are the Subdivision documents, the lot sales purchase and closing documents, and other related documents which speak for themselves, and any variation from such documents is denied. Defendants deny any remaining allegations as to them.

70. Defendants deny so much of Paragraphs 114 and 115 as alleges they are or were developers, and/or made any such promises, assurances, representations or covenants. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

71. In answering Paragraph 116, Defendants state the best evidence of Plaintiffs' rights, benefits, title and interests are the Subdivision, sales and closing, and other related documents which speak for themselves, and any variation from such documents is denied.

72. Defendants lack knowledge and information sufficient to form a belief as to the allegations of Paragraph 117, and therefore deny the same.

73. The allegations of Paragraph 118 are vague and unclear. To the extent Defendants understand them, Defendants deny so much of Paragraph 118 as alleges they are or were developers, and/or made any such promises, assurances or covenants regarding the Subdivision. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same. Further, Defendants state that the best evidence of the prices, terms and conditions of the lot is the purchase and closing, and related documents which speak for themselves, and any variation from such documents is denied.

74. Defendants lack knowledge and information sufficient to form a belief as to the allegations of Paragraph 119, and therefore deny the same.

75. Upon information and belief, Defendants admit so much of Paragraph 120 as alleges that no site infrastructure or improvements have been commenced. In answering the remaining allegations, Defendants state that the best evidence is the regulation which speaks for itself, and any variation from such document is denied.

76. Defendants deny so much of Paragraph 121 as alleges they are or were developers, and/or made any such representations, covenants or undertakings. Upon information and belief, Defendants admit that no amenities or related facilities have been commenced.

77. Upon information and belief, Defendants admit so much of Paragraph 122 as alleges that persons or entities have contacted the City requesting that the City assist in moving the development of the Subdivision forward, and that the City has taken limited steps in response. Defendants deny so much of Paragraph 122 as alleges they are or were developers, or are or were required to do any such things for the Subdivision. Defendants lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same.

78. Defendants admit, upon information and belief, Paragraph 123. Further, Defendants state that the best evidence is such statutes, ordinances, regulations and Bond which speak for themselves, and any variation from such documents is denied.

79. Paragraphs 124, 125, 126, 127, 128, 129, 130, 131 and 132 constitute conclusions of law which Defendants are neither required to admit or deny. To the extent a response is required; Defendants deny the same as to them. Further, to the extent these Paragraphs allege that Defendants are or were developers, and/or have any related duties or obligations, Defendants deny them.

80. Defendants deny Paragraph 133.

#### **FOR A FIRST DEFENSE TO THE EIGHTH CAUSE OF ACTION**

81. In answering Paragraph 134, Defendants repeat their responses above.

82. Defendants deny the allegations of Paragraphs 135, 136, 137, 138, 139 and 140 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations in these Paragraphs, and therefore deny the same. Defendants specifically deny they are or were a developer, under any definition, of the Subdivision.

83. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 141, 142 and 143, and therefore deny the same.

84. Defendants deny Paragraphs 144, 145, 146, 147 and 148 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations in these Paragraphs, and therefore deny the same. Defendants specifically deny they are or were a developer of the Subdivision.

85. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 149, and therefore deny the same.

86. Defendants deny the allegations of Paragraph 150 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore deny the same.

87. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 151, and therefore deny the same.

88. Defendants deny the allegations of Paragraph 152 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore deny the same.

#### **FOR A FIRST DEFENSE TO THE NINTH CAUSE OF ACTION**

89. In answering Paragraph 153, Defendants repeat their responses above.

90. Defendants lack knowledge and information sufficient to form a belief as to Paragraph 154, and therefore deny the same. Defendants further specifically deny they are or were a developer of the Subdivision, or made any such representations, covenants or undertakings.

91. Defendants deny the allegations of Paragraphs 155 and 156 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations, and therefore deny the same.

#### **FOR A FIRST DEFENSE TO THE TENTH CAUSE OF ACTION**

92. In answering Paragraph 157, Defendants repeat their responses above.

93. Defendants deny Paragraph 158 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same. Further, Defendants specifically deny they are or were a developer of the Subdivision.

94. Defendants deny Paragraph 159.

**FOR A FIRST DEFENSE TO THE ELEVENTH CAUSE OF ACTION**

95. In answering Paragraph 160, Defendants repeat their responses above.

96. Defendants deny Paragraphs 161 and 162.

97. Defendants deny the allegations of Paragraph 163 as written. Further, Defendants state that the best evidence of the rights and responsibilities of Defendants and South Bay is the purchase and closing, and related documents which speak for themselves, and any variation from such documents is denied

98. Defendants admit so much of Paragraph 164 as alleges that they knew, upon information and belief, that South Bay purchased the subject property to build a residential development. Further, Defendants state that the best evidence of the rights and responsibilities of South Bay is the purchase and closing, and related documents which speak for themselves, and any variation from such documents is denied. Defendants deny any remaining allegations.

99. Defendants deny Paragraph 165 and 166.

**FOR A FIRST DEFENSE TO THE TWELFTH CAUSE OF ACTION**

100. In answering Paragraph 167, Defendants repeat their responses above.

101. Defendants deny Paragraphs 168, 169 and 170 as to them, and lack knowledge and information sufficient to form a belief as to the remaining allegations and therefore deny the same. Further, Defendants specifically deny they are or were a developer of the Subdivision.

102. Defendants deny each and every allegation of the WHEREFORE paragraph and its subparts a-n.

**FOR A SECOND DEFENSE**

103. Plaintiffs have failed to state a claim against Defendants upon which relief can be granted and therefore the Complaint must be dismissed pursuant to South Carolina Rule of Procedure 12(b)(6).

**FOR A THIRD DEFENSE**

104. Plaintiffs' claims against Defendants are barred by the contractual doctrine of lack of privity.

**FOR A FOURTH DEFENSE**

105. Plaintiffs' claims against Defendants are barred by the statute of frauds.

**FOR A FIFTH DEFENSE**

106. Plaintiffs have failed to plead with particularity the circumstances constituting the alleged fraud by Defendants.

**FOR A SIXTH DEFENSE**

107. Plaintiffs' claims for violation of the South Carolina Unfair Trade Practices Act must be dismissed because they do not meet the requirements of the Act as to Defendants.

**FOR A SEVENTH DEFENSE**

108. Plaintiffs' claims for violation of the Interstate Land Sales Full Disclosure Act must be dismissed because they do not meet the requirements of the Act as to Defendants.

**FOR AN EIGHTH DEFENSE**

109. Plaintiffs' claims for violation of the South Carolina Uniform Land Sales Full Disclosure Act must be dismissed because they do not meet the requirements of the Act as to Defendants.

**FOR A NINTH DEFENSE**

110. Another action is pending between the parties for the same claim, and therefore Plaintiffs' Complaint must be dismissed pursuant to South Carolina Rule of Procedure 12(b)(8).

**FOR A TENTH DEFENSE**

111. Plaintiffs lack standing to assert some or all of their claims, and therefore they must be dismissed.

**FOR AN ELEVENTH DEFENSE**

112. Plaintiffs' Complaint should be dismissed because all persons who have or may claim an interest which could be affected by this action, and/or who are indispensable to this action have not all been made a party hereto.

**FOR A TWELFTH DEFENSE**

113. Plaintiffs' recovery may be barred or limited due to their failure to mitigate their damages.

**FOR A THIRTEENTH DEFENSE**

114. Plaintiffs' recovery may be barred or limited by the doctrines of comparative negligence and/or assumption of the risk.

**FOR A FOURTEENTH DEFENSE**

115. Plaintiffs' claims were caused by the acts or omissions of third parties over whom Defendants had no control.

**FOR A FIFTEENTH DEFENSE**

116. Plaintiffs may be barred from recovery by the doctrine of unclean hands.

**FOR A SIXTEENTH DEFENSE**

117. Plaintiffs' claims may be barred or limited by the doctrines of laches, estoppel, or waiver.

**FOR A SEVENTEENTH DEFENSE**

118. Plaintiffs, to the extent that they seek punitive or exemplary damages, if any, are in violation of the right of Defendant to procedural due process under the 14th Amendment of the United States Constitution and the Constitution of the State of South Carolina and, therefore, fail to state a cause of action upon which either punitive or exemplary damages may be awarded.

**FOR AN EIGHTEENTH DEFENSE**

119. Plaintiffs, to the extent that they seek punitive or exemplary damages, if any, are in violation of the right of Defendant to protection from excessive fines, as provided in the 8th Amendment of the United States Constitution and the Constitution of the State of South Carolina and, furthermore, are in violation of the right of Defendant to substantive due process as provided in the 5th and 14th Amendments of the United States Constitution and the Constitution of the State of South Carolina and, therefore, fail to state a cause of action upon which either punitive or exemplary damages may be awarded.

**FOR A NINETEENTH DEFENSE**

120. Defendant expressly reserves and does not waive any other or further defenses as may be revealed by additional information that may be acquired in discovery or otherwise.

**FOR A COUNTERCLAIM AGAINST PLAINTIFFS**

121. Defendants repeat their responses above.

122. Plaintiffs make numerous allegations in their Complaint collectively against all the defendants named in the action, including Defendants.

123. These allegations include that Defendants: entered into contracts or agreements

with Plaintiffs, and breached such contracts or agreements; were developers of the Subdivision and lots; made representations, promises, assurances, covenants, warranties and inducements to Plaintiffs; undertook obligations regarding the Subdivision and lots; developed, designed, marketed and sold the Subdivision and the lots; committed acts and omissions regarding the development of the Subdivision, including, but not limited to, failing to build the infrastructure and amenities for the Subdivision; and were joint venturers with co-Defendants Kyle Corkum ("Corkum"), Landquest Development, LLC ("Landquest"), C.R. Thompson and Sons, LLC ("CRT") and South Bay, and that there was an amalgamation of the corporater interests of Defendants and such co-Defendants so as to blur the legal distinction between them.

124. Defendants deny all the allegations made by Plaintiffs as to them. Defendants sold the real property to South Bay that South Bay developed into the Subdivision. Defendants were not and are not parties to any contract or agreement with Plaintiffs regarding the Subdivision or any lots. Defendants were not and are not the developers of the Subdivision or its lots, and did not make representations, promises, assurances, covenants, warranties and inducements to Plaintiffs. Defendants did not undertake obligations, and did not participate in any aspect of the development, design, marketing or sale of the Subdivision or its lots. Defendants did not commit acts or omissions regarding the development of the Subdivision or the lots. Further, Defendants were not joint venturers with co-Defendants Corkum, Landquest, CRT and/or South Bay, and that there was and is no amalgamation of the corporate or individual interests of Defendants and such co-Defendants so as to blur the legal distinction between them.

125. Plaintiffs have no reasonable belief that the facts as alleged in their Complaint, and upon which their claims against Defendants are based, apply to or are accurate as to Defendants.

126. Plaintiffs filed the Complaint in this matter in bad faith and in an attempt to harass or injure Defendants.

127. No factual basis exists to support the claims made by Plaintiffs against Defendants in the Complaint.

128. Therefore, pursuant to S.C. Code § 15-36-10, et seq Defendants are entitled to a dismissal of Plaintiffs' claims, and a judgment in their favor in an amount to be determined by the trier of fact.

**FOR A CROSS-CLAIM  
Equitable Indemnity  
(Against to Landquest, Corkum, South Bay, City of Georgetown,  
Hartford Casualty Insurance Company and Hartford Fire Insurance Company**

129. Defendants repeat their responses above.

130. Defendants are parties to this action due to the individual or joint acts and omissions of co-Defendants Landquest, Corkum, South Bay, City of Georgetown ("Georgetown"), Hartford Casualty Insurance Company and/or Hartford Fire Insurance Company (both Hartford's collectively "Hartford").

131. Defendants do not have any fault or responsibility for the claims and damages alleged by Plaintiffs.

132. As a result of the acts and omissions by co-Defendants Landquest, Corkum, South Bay, Georgetown and Hartford, Defendants are forced to expend substantial sums for attorneys fees and costs to defend themselves in the within action, and may be forced to pay additional sums to satisfy a judgment that may be obtained herein by Plaintiffs.

133. A special relationship exists between Defendants and the co-Defendants Landquest, Corkum, South Bay, Georgetown and Hartford such that as a matter of equity, said co-Defendants should be required to indemnify Defendants for the amounts paid by them in their defense of this action.

134. Further, to the extent that Defendants are required to pay any amount to satisfy a verdict or to settle the claims alleged in this action, as a matter of equity such co-Defendants should be required to indemnify Defendants for the amounts paid.

135. Any such amount due to Defendants is a liquidated sum, and therefore Defendants are entitled to recover pre-judgment interest on the amount due at the rate provided by law.

136. Therefore, Defendants are entitled to equitable indemnification from co-Defendants Landquest, Corkum, South Bay, Georgetown and Hartford for any damages they sustain in this matter in an amount to be determined by the trier of fact.

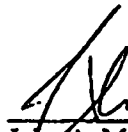
WHEREFORE, having fully answered Plaintiffs' Complaint, Defendants Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Properties, Inc. pray that the same



be dismissed with costs of this action.

WHEREFORE, by way of its Counterclaim, Defendants respectfully request this Honorable Court, pursuant to S.C. Code § 15-36-10, et seq., to award Defendants actual damages, consequential damages, costs and attorneys' fees, prejudgment and post-judgment interest, and for such other relief as this Court may deem appropriate.

WHEREFORE, by way of its Cross-claim, Defendants pray that they be granted actual and consequential damages, costs and attorneys' fees, prejudgment and post-judgment interest, and for such other relief as this Court may deem appropriate.



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ATTORNEYS FOR DEFENDANTS  
RONALD L. CHARLTON, BONNIE N.  
CHARLTON, JAMES R. CHARLTON AND  
BAYSIDE PROPERTY, INC.

CHARLESTON, SC  
October 28, 2009

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

John Steven Goodwin, Louise C.  
Goodwin, Thomas I Puckett and  
Brenda C. Puckett, Robert Nahama  
and Jeanne E. Nahama, Thomas  
Holland and Sharon Louise Holland,  
Joyce K. Sobel, Robert W. Waruszewski,  
Richard N. Taylor, Robert K. Spillers  
(a/k/a Robert Spillers), and Deborah T.  
Spillers (a/k/a Deborah Spillers),  
Patrick A. DiAngelo and Deborah A.  
DiAngelo, Gary E. Owens and  
Joyce M. Owens, Fount L. Shults and  
Lynda M. Shults, Dennis Ridgeway  
and Teresa Lynn Ridgeway,

Plaintiffs,

vs.

Landquest Development, LLC,  
Kyle V. Corkum, South Bay Properties,  
LLC, C. R. Thompson and Sons, LLC,  
Ronald L. Charlton, Bonnie N. Charlton,  
James R. Charlton and Bayside Property  
Inc., The City of Georgetown, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, and National  
Land Sales, Inc. f/k/a Source One  
Communities, LLC, a/k/a Source One  
Signature Communities,

Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT

Civil Action No. 2009-CP-22-1045

**ANSWER TO COMPLAINT  
BY DEFENDANTS  
HARTFORD CASUALTY INSURANCE  
COMPANY  
AND  
HARTFORD FIRE INSURANCE  
COMPANY**

Defendants Hartford Casualty Insurance Company and Hartford Fire Insurance Company

("Hartford Defendants") hereby answer the Complaint herein as follows:

**FOR A FIRST DEFENSE**

1. Each and every allegation of the Complaint not hereinafter specifically admitted  
is denied.

2. Hartford Defendants admit the allegations contained in Paragraph 1 of the Complaint upon information and belief.

3. Answering Paragraphs 2 and 3 of the Complaint, the allegations set forth therein state nothing more than legal conclusions to which no answer is required. To the extent any answer to said allegations is required, Hartford Defendants deny same and demand strict proof thereof.

4. Answering Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 of the Complaint, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

5. Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged in Paragraph 14 of the Complaint and, therefore, deny same and demand strict proof thereof.

6. Hartford Defendants admit the allegations set forth in Paragraph 15 of the Complaint upon information and belief.

7. Hartford Defendants admit the allegations set forth in Paragraph 16 of the Complaint upon information and belief.

8. Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged in Paragraph 17 of the Complaint and, therefore, deny same and demand strict proof thereof.

9. Hartford Defendants admit the allegations set forth in Paragraph 18 of the Complaint.

10. Hartford Defendants admit the allegations set forth in Paragraph 19 of the Complaint upon information and belief.

11. Hartford Defendants admit the allegations set forth in Paragraph 20 of the Complaint.

12. Hartford Defendants admit the allegations set forth in Paragraph 21 of the Complaint.

13. Hartford Defendants admit the allegations set forth in Paragraph 22 of the Complaint.

14. Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged in Paragraph 23 of the Complaint and, therefore, deny same and demand strict proof thereof.

15. Hartford Defendants admit the allegations set forth in Paragraph 24 of the Complaint.

16. Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged in Paragraph 25 of the Complaint and, therefore, deny same and demand strict proof thereof.

17. Answering Paragraph 26 of the Complaint, the allegations set forth therein state nothing more than legal conclusions to which no answer is required. To the extent any answer to said allegations is required, Hartford Defendants deny same and demand strict proof thereof.

18. Answering Paragraph 27 of the Complaint, the allegations set forth therein state nothing more than legal conclusions to which no answer is required. To the extent any answer to said allegations is required, Hartford Defendants deny same and demand strict proof thereof.

19. Answering Paragraph 28 of the Complaint, Hartford Defendants repeat and reallege their responses to the Paragraphs of the Complaint realleged therein as fully as if said responses were set forth here verbatim.

20. Answering Paragraphs 29 through 45 of the Complaint, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

21. Answering Paragraph 46 of the Complaint, Hartford Defendants admit that on or about July 17, 2007, Hartford Casualty Insurance Company, as Surety, issued that certain Subdivision Performance Bond for South Bay, as Principal, and the City of Georgetown, as Obligee, with a penal sum limitation of \$7,882,359. Any allegations or inferences set forth in Paragraph 46 of the Complaint inconsistent with the foregoing limited admission are denied.

22. Hartford Defendants admit the allegations set forth in Paragraph 47 of the Complaint.

23. Answering Paragraph 48 of the Complaint, Hartford Defendants crave reference to the Subdivision Performance Bond in question, and the underlying statutes and ordinances related thereto, for the terms, conditions and limitations of said Bond. Any allegations or inferences set forth in Paragraph 48 of the Complaint inconsistent with the foregoing limited admission are denied.

24. Answering Paragraph 49 of the Complaint, Hartford Defendants admit that the issuance of the Subdivision Performance Bond in question was induced by execution of the General Indemnity Agreement, executed and delivered by South Bay, Kyle Corkum, and others on or about July 13, 2007. Hartford Defendants further answer that the issuance of such General Indemnity Agreement is a pre-condition to issuance of essentially any and every Performance Bond by Hartford Defendants and other Sureties. Any remaining allegations or inferences set forth in Paragraph 49 of the Complaint inconsistent with the foregoing limited admissions are denied.

25. Answering Paragraphs 50, 51, 52, 53, 54, 55, and 56 of the Complaint, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

26. Answering Paragraph 57 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

27. Answering Paragraphs 58, 59, 60, 61, 62, 63, 64, 65, 66, and 67 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

28. Answering Paragraph 68 of the Complaint, Hartford Defendants repeat and reallege their responses to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

29. Answering Paragraphs 69 and 70 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

30. Answering Paragraph 71 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

31. Answering Paragraphs 72, 73, and 74 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the

Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

32. Answering Paragraph 75 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

33. Answering Paragraphs 76, 77, 78, 79, 80, 81, 82, and 83 of the Complaint, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

34. Answering Paragraph 84 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

35. Answering Paragraphs 85, 86, 87, 88, 89, 90, and 91 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

36. Answering Paragraph 92 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

37. Answering Paragraphs 93, 94, 95, 96, 97, and 98 of the Complaint, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

38. Answering Paragraph 99 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

39. Hartford Defendants deny the allegations set forth in Paragraph 100 of the Complaint, including all subparts.

40. Hartford Defendants deny the allegations set forth in Paragraph 101 of the Complaint.

41. Answering Paragraphs 102, 103, 104, and 105 of the Complaint, Hartford Defendants crave reference to the statutes referred to therein for the express terms and provisions thereof and deny any allegations set forth in the Complaint inconsistent therewith.

42. Answering Paragraph 106 of the Complaint, Hartford Defendants crave reference to the controlling, or relevant, statutes, ordinances and regulations for the terms and conditions thereof and deny any allegations in the Complaint inconsistent therewith.

43. Answering Paragraph 107 of the Complaint, Hartford Defendants crave reference to the regulations referred to therein for the express terms and provisions thereof and deny any allegations set forth in the Complaint inconsistent therewith.

44. Answering Paragraph 108 of the Complaint, Hartford Defendants admit only that Hartford Casualty Insurance Company, as Surety, issued that certain Subdivision Performance Bond to the City of Georgetown, as Obligee, in the penal sum of \$7,882,359.00 in connection with approvals by the Obligee for site infrastructure (roads and utilities) described on plans and specifications prepared by Trico Engineering Consultants, Inc., dated July 17, 2007. Hartford Defendants crave reference to said Bond for the terms and conditions thereof and deny any allegations set forth in the Complaint inconsistent therewith. Hartford Defendants specifically deny that Plaintiffs were intended beneficiaries of the Bond. Hartford Defendants lack sufficient



information to form a belief as to the truth of any other allegations contained in Paragraph 108 of the Complaint and, therefore, deny same and demand strict proof thereof.

45. Answering Paragraph 109 of the Complaint, Hartford Defendants admit that by Rider to the Subdivision Performance Bond, Bond No. 22BCSBA8552, the Surety Company name was changed from Hartford Casualty Insurance Company to Hartford Fire Insurance Company, effective July 19, 2007. Hartford Defendants crave reference to said Rider for the terms and conditions thereof and deny any allegations set forth in the Complaint inconsistent therewith.

46. Answering Paragraph 110 of the Complaint, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

47. Answering Paragraph 111 of the Complaint, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof. However, Hartford Defendants are informed and believe that the estimates of costs associated with the establishment of the Penal Sum of the Bond improperly include various items and costs not associated with the construction of the required roads and utilities.

48. Answering Paragraphs 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, and 122 of the Complaint, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

49. Answering Paragraph 123 of the Complaint, Hartford Defendants crave reference to any applicable or controlling statutes, ordinances and regulations and to the Bond for the terms and conditions thereof and deny any allegations in the Complaint inconsistent therewith.

50. Answering Paragraphs 124, 125, 126, 127, 128, 129, and 130 of the Complaint, Hartford Defendants are informed and believe that the allegations set forth therein are nothing more than conclusory statements of law to which no response is required. To the extent any response is required, Hartford Defendants deny same, and specifically deny that Plaintiffs are entitled to any declarations as asserted therein.

51. Hartford Defendants deny the allegations contained in Paragraphs 131, 132, and 133 of the Complaint.

52. Answering Paragraph 134 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

53. Answering Paragraphs 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, and 152 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

54. Answering Paragraph 153 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

55. Answering Paragraphs 154, 155, and 156 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

56. Answering Paragraph 157 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

57. Answering Paragraphs 158 and 159 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

58. Answering Paragraph 160 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

59. Answering Paragraphs 161, 162, 163, 164, 165, 166, and 167 of the Complaint, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

60. Answering Paragraph 167 of the Complaint, Hartford Defendants repeat and reallege their answers to the Paragraphs of the Complaint realleged therein as fully as if said answers were set forth here verbatim.

61. Answering Paragraphs 168, 169, and 170 of the Complaint, including all subparts, all of which purport to allege matters related to and involving other Defendants, and not the Hartford Defendants, Hartford Defendants lack sufficient information to form a belief as to the truth of the matters alleged therein and, therefore, deny same and demand strict proof thereof.

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

62. The Complaint fails to state facts sufficient to constitute a cause of action against the Hartford Defendants and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

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

63. Plaintiffs lack standing to assert any claim under, or pursuant to, the Bond issued by the Hartford Defendants.

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

64. Issuance of the declaratory judgment would not terminate or resolve the uncertainty or controversy allegedly giving rise to the claim and, therefore, the Court should, in its discretion, refuse to render or enter the declaratory judgment or decree.

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

65. The Complaint should be dismissed because all persons who have or may claim an interest which could be affected by the declaration have not been made parties to the action.

#### **FOR A SIXTH DEFENSE**

66. Plaintiffs' claim for relief should be denied because there has been undue delay in connection with the effort to enforce the obligations relative to the construction of the site infrastructure and improvements in question and the defense of Laches applies as a bar to the relief requested.

#### **FOR A SEVENTH DEFENSE**

67. Plaintiffs' claim for relief should be denied because the delay by the City in notifying the Hartford Defendants about the purported failures of South Bay with respect to construction of the site infrastructure and improvements in question, and the delay in attempting to enforce the purported obligations in connection therewith, has, upon information and belief,

impaired the Hartford Defendants' rights and unjustly and unnecessarily increased the risk of loss for Hartford Defendants.

**FOR AN EIGHTH DEFENSE**

68. The delays and other action and inaction by the City and Plaintiffs described herein give rise to grounds for estoppel which is a bar to the relief sought from Hartford Defendants.

**FOR A NINTH DEFENSE**

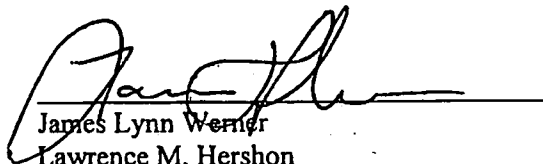
69. Plaintiffs' claims, and any right to relief against Hartford Defendants is barred to the extent such relief would involve or cause economic waste.

**FOR A TENTH DEFENSE**

70. Plaintiffs' claims, and any right to relief against Hartford Defendants is barred because, upon information and belief, a condition precedent to recovery under the Bond was that the site infrastructure and improvements be started and the Complaint expressly alleges that such work was never even commenced.

WHEREFORE, having fully answered Plaintiffs' Complaint herein, Hartford Defendants pray that the Court issue its Order as follows:

1. Denying Plaintiffs' the relief which they seek;
2. Awarding Hartford Defendants their costs in the defense of this action; and
3. Awarding Hartford Defendants such other and further relief as may be just and proper.

  
James Lynn Werner  
Lawrence M. Hershon  
PARKER POE ADAMS & BERNSTEIN LLP  
Post Office Box 1509 (29202)  
Columbia, South Carolina 29201

Tel: (803) 255-8000  
Fax: (803) 255-8017  
Attorneys for Defendants Hartford Casualty  
Insurance Company and Hartford Fire  
Insurance Company

November 5, 2009  
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

) IN THE COUR OF COMMON PLEAS  
) FIFTEENTH JUDICIAL CIRCUIT  
) CIVIL ACTION NO. 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin,  
Thomas I. Puckett and Brenda C. Puckett,  
Robert Nahama and Jeannne E. Nahama,  
Thomas Holland and Sharon Louise Holland,  
Joyce K. Sobel, Robert W. Waruszewski,  
Richard N. Taylor, Robert K. Spillers  
(a/k/a Robert Spillers) and Deborah T. Spillers  
(a/k/a Deborah Spillers), Patrick A. DiAngelo  
and Deborah A. DiAngelo, Gary E. Owens and  
Joyce M. Owens, Fount L. Shults and  
Lynda M. Shults, Dennis Ridgeway and  
Teresa Lynn Ridgeway,

Plaintiffs,

v.

Landquest Development, LLC,  
Kyle V. Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC,  
Ronald L. Charlton, Bonnie N. Charlton,  
James R. Charlton and Bayside Property, Inc.,  
The City of Georgetown, Hartford Casualty  
Insurance Company, Hartford Fire Insurance  
Company, and National Land Sales, Inc.,  
f/k/a Source One Communities, LLC, a/k/a  
Source One Signature Communities,

Defendants.

**NOTICE OF MOTION AND  
MOTION FOR CONTINUANCE**

FILED  
SUSAN T. HARRIS, S.C.  
2011 JUL 14 P 12:54:52  
ALMA F. MOORE  
CLERK OF COURT

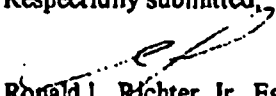
YOU WILL PLEASE TAKE NOTICE that the Defendant South Bay Properties, LLC, by and through their undersigned attorneys, and with consent of all parties, hereby move before the Presiding Judge for the Fifteenth Judicial Circuit, for an Order granting the Defendant South Bay Properties, LLC a continuance in the jury roster presently scheduled to take place during the week of July 25, 2011.

This motion is based upon the grounds that the above captioned matter is not prepared to proceed to trial at this time, most notably due to the bankruptcy filing of Defendant South Bay Properties, LLC, in the United States Bankruptcy Court for the Eastern District of North Carolina, said bankruptcy filing being referred to be action number 10-04922-8-SWH. As a result of the bankruptcy of South Bay Properties, LLC, it is subject to the protection of the automatic stay provisions of the United States Bankruptcy Code.

For this and other good reasons, Defendant South Bay Properties, LLC respectfully requests that this matter be continued and protected against any future calls for trial during the pendency of the South Bay bankruptcy.

Charleston, South Carolina  
July 12, 2011

Respectfully submitted,

  
Ronald L. Richter, Jr., Esquire  
Bland Richter, LLP  
*Attorneys for Defendant (co-counsel)*  
*South Bay Properties, LLC*  
Peoples Building  
18 Broad Street, Mezzanine  
Charleston, South Carolina 29401

Eric S. Bland, Esquire  
Bland Richter, LLP  
*Attorneys for Defendant (co-counsel)*  
*South Bay Properties, LLC*  
1500 Calhoun Street  
Post Office Box 72  
Columbia, South Carolina 29202

Donald G. Hunt, Jr., Esquire  
Akins Hunt, P.C.  
*Attorneys for Defendant (co-counsel)*  
*South Bay Properties, LLC*  
134 N. Main Street, Suite 204  
P.O. Box 266  
Fuquay-Varina, NC 27526



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS  
15th JUDICIAL CIRCUIT

CASE NO.: 2009-CP-22-1045

John Steven Goodwin, et al.

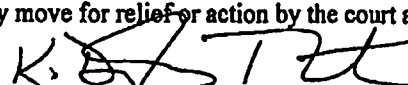
Plaintiff,

vs.

Landquest Development, LLC, et al.

Defendant.

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |                                                                                                                                   |  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|-----------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>K. Douglas Thornton, Bar No. 5565<br>Address:<br>1025 Third Ave., Conway, SC 29526<br>Phone: 843-488-5858 Fax 843-488-5859<br>E-mail: kdouglasthornton@gmail.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |  | <b>Defendant's Attorney:</b><br>_____, Bar No. _____<br>Address:<br>_____<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____ |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III)<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                   |  |
| <b>SECTION I: Hearing Information</b><br>Nature of Motion: Motion to Reinstate/Restore Complaint, etc.<br>Estimated Time Needed: 30 Min. Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                   |  |
| <b>SECTION II: Motion/Order Type</b><br><input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><div style="text-align: center;"><br/>Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant</div> <div style="text-align: right;">Date submitted: 1-22-13</div>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                   |  |
| <b>SECTION III: Motion Fee</b><br><input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$</b> _____<br><input type="checkbox"/> <b>EXEMPT:</b> (check reason)<br><div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br/><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br/><input type="checkbox"/> Indigent Status<br/><input type="checkbox"/> Sexually Violent Predator Act<br/><input type="checkbox"/> Motion for Stay in Bankruptcy<br/><input type="checkbox"/> Motion for Publication<br/><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions<br/>Name of Court Reporter: _____<br/><input type="checkbox"/> Other: _____</div><div><input type="checkbox"/> State Agency v. Indigent Party<br/><input type="checkbox"/> Post-Conviction Relief<br/><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</div></div> |  |                                                                                                                                   |  |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | <b>JUDGE CODE</b> _____<br>Date: _____                                                                                            |  |
| <b>CLERK'S VERIFICATION</b><br>Collected by:  Date Filed: 1/22/13<br><input type="checkbox"/> <b>MOTION FEE COLLECTED: \$</b> 50<br><input type="checkbox"/> <b>CONTESTED - AMOUNT DUE: \$</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |  |                                                                                                                                   |  |

FILED  
GEORGETOWN COUNTY, S.C.  
2013 JAN 22 AM 10:23  
ALMA Y. WHITE  
CLERK OF COURT

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2009-CP-22-1045

John Steven Goodwin, Louise )  
C. Goodwin, Gary E. Owens, )  
and Joyce M. Owens, )

Plaintiffs, )

Landquest Development, LLC, )  
Kyle V. Corkum, South Bay )  
Properties, LLC, C.R. Thompson )  
and Sons, LLC, Ronald L. )  
Charlton, Bonnie N. Charlton, )  
James R. Charlton, Bayside )  
Property, Inc., The City of )  
Georgetown, Hartford Casualty )  
Insurance Company, Hartford )  
Fire Insurance Company, and )  
National Land Sales, Inc., f/k/a )  
Source One Communities, LLC, )  
a/k/a Source One Signature )  
Communities, )

Defendants. )

NOTICE OF MOTION AND MOTION  
TO REINSTATE/RESTORE COMPLAINT  
AND LIS PENDENS AND  
TO CONSOLIDATE  
SEPARATE TRIALS

FILED  
GEORGETOWN COUNTY, S.C.  
2013 JAN 22 AM 10:23  
ALMA Y. WHITE  
CLERK OF COURT

TO: THE ABOVE NAMED DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

YOU WILL PLEASE TAKE NOTICE THAT Plaintiffs John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens, will move before this Honorable Court on the tenth (10<sup>th</sup>) day following service hereof, or as soon hereafter as counsel may be heard, for an Order of this Court reinstating the within action to the active trial docket for Georgetown County, subject to a proposed Scheduling Order to enable all parties to engage in and complete discovery before the case is called to trial.

Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 1

and to consolidate this case with Charlton, et al. v. South Bay Properties, LLC, et al., being Civil Action Number 12-CP-22-934 pending in this court.

In support of this Motion, Plaintiffs would respectfully show the Court as follows:

1. Plaintiffs' Summons and Complaint was filed on July 9, 2009, premised upon various acts and occurrences surrounding the marketing, sale, and failed development of Lots in a subdivision known and designated as "Harbor Club on Winyah Bay." Plaintiffs Goodwins' Lot 160 was closed on about September 17, 2007; Plaintiffs Owens' Lot 94 was closed on or about December 21, 2007.

2. Defendant South Bay Properties, LLC was and is the designated owner and "developer" of the subdivision. As more fully alleged in Plaintiffs' Complaint, the allegations of which are affirmed and reiterated, as fully as if repeated herein verbatim, all infrastructure and amenity construction was to have been completed in or about August, 2008. Defendants Landquest Development, LLC, Kyle V. Corkum, and South Bay Properties, LLC, procured a "Subdivision Performance Bond" issued by Hartford Casualty Insurance Company, in the principal penal sum of \$7,882,359.00. This Bond enabled the Defendants Landquest, Corkum, South Bay, C. R. Thompson & Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., to lawfully sell and convey lots in the subdivision, and was designed to assure construction, at a minimum, of the infrastructure required for the subdivision.

3. As of the date of the filing of Plaintiffs' Complaint, July 9, 2009, no construction of infrastructure or amenities had commenced in the subdivision.

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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 2

4. Plaintiffs' discovery efforts were delayed by Motions to Dismiss filed by Defendants Corkum and Hartford Casualty Insurance Company/Hartford Fire Insurance Company. The Hartford's Motion was heard and denied by this Court on October 19, 2009. Defendant Corkum's Motion was heard and denied by this Court on November 30, 2009. Thereafter, while Motions to Compel Discovery were pending before the Court, Defendant South Bay Properties, LLC filed a Petition for relief under Chapter 11 of the Bankruptcy Code on June 18, 2010.

5. This Court conducted one or more status conferences with counsel for all parties in the present action, as well as in similar actions affecting other subdivisions in Georgetown County. Due to the complexities of the case, and the pending Bankruptcy of Defendant South Bay, the Court concluded that all further proceedings in this action, including discovery, would be stayed, pending the outcome of South Bay's Bankruptcy Petition.

6. Thereafter, by form Order dated July 22, 2011, this Court struck the within action, noting "*Case Stricken Due to Bankruptcy.*" A copy of this Order is attached hereto and incorporated herein by reference as Exhibit "A".

7. By Order executed on August 12, 2011, the Honorable Stephanie W. Humrickhouse, United States Bankruptcy Judge, issued an Order dismissing the Bankruptcy Petition of South Bay Properties, LLC. A copy of this Order is attached hereto and incorporated herein by reference as Exhibit "B".

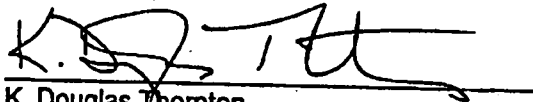
8. Plaintiffs are informed and believe that they are entitled to an Order of this Court restoring and reinstating the within action to the active jury trial docket for the

Court of Common Pleas for Georgetown County. Plaintiffs are further informed and believe that it will be necessary and appropriate for the Court to enter a Scheduling Order, to enable the parties to engage in and complete discovery prior to the case being called for trial.

9. Plaintiffs also move for consolidation of this case with *Charlton, et al. vs. South Bay Properties, et al.* (2012-CP-22-934) pending in this Court, pursuant to Rule 42, SCRCP, because the two actions involve common questions of law and fact.

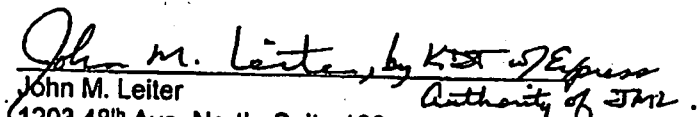
This Motion will be supported by such other and further facts and law as may appear necessary and appropriate at the hearing hereof.

THORNTON LAW FIRM, LLC



K. Douglas Thornton  
1025 Third Avenue  
Conway, South Carolina 29526  
Telephone: (843) 488-5858  
Facsimile: (843) 488-5859  
[kdouglasthornton@gmail.com](mailto:kdouglasthornton@gmail.com)

LAW OFFICES OF JOHN M. LEITER, PA



John M. Leiter  
1203 48<sup>th</sup> Ave. North, Suite 109  
Myrtle Beach, South Carolina 29577  
Telephone: (843) 449-1451  
Facsimile: (843) 449-4884  
[jleiter@48th.com](mailto:jleiter@48th.com)

ATTORNEYS FOR PLAINTIFFS

Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 4

Conway, South Carolina  
Dated: 1/21/13

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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Notice of Motion and Motion to Reinstate/Restore Action to Active Trial Docket

Page 5

# EXHIBIT

## A

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

JUDGMENT IN A CIVIL CASE  
CASE NO: 2009CP2201045

John Steven Goodwin vs. Landquest Development Llc

CHECK ONE:

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

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

IT IS ORDERED AND ADJUDGED:

☐ See attached order;  
(Formal order to follow)

X Statement of Judgment by the Court.

Case Stricken Due To Bankruptcy

Dated at Georgetown, South Carolina, this 22nd day of July, 2011.

Court Reporter:

S/ Larry B. Hyman, Jr.  
PRESIDING JUDGE - Larry B Hyman, Jr

This judgment was entered on the 22nd day of July, 2011, and a copy mailed first class this 22nd day of July, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

K. Douglas Thornton Thornton Law Firm 1025  
Third Ave Conway, SC 29526  
John M. Leiter Law Offices Of John M. Leiter, PA  
1203 48Th Avenue N Suite 109 Myrtle Beach, SC  
29577

Elise Freeman Crosby Crosby & Crosby Law Firm  
405 Dozier Street Georgetown, SC 29440.  
Joseph Kevin Qualley Qualley & Beck 23 Broad St.  
Charleston, SC 29401  
James Lynn Werner Parker Poe Adams &

CPFORM4M  
SCCA SCRPC Form 4 Revised 06/2008

SCANNED



# EXHIBIT

## B

SO ORDERED.

SIGNED this 12 day of August, 2011.



*Stephani W. Humrickhouse*  
Stephani W. Humrickhouse  
United States Bankruptcy Judge

UNITED STATES-BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

IN RE:

SOUTH BAY PROPERTIES, LLC

DEBTOR

CASE NO.

10-04922-8-SWH

ORDER ALLOWING MOTIONS TO DISMISS

The matters before the court are the motions of Ronald L. Charlton, Bonnie N. Charlton, and Bayside Property, Inc. (collectively, "Bayside"), as well as the bankruptcy administrator, to dismiss the debtor's case. Hearings took place in Raleigh, North Carolina on April 6, 2011, and August 1, 2011. For the reasons that follow, the case will be dismissed.

Background

In 2006, South Bay entered into a contract with Bayside for the purchase of approximately 80 acres of real property on Winyah Bay in Georgetown, South Carolina, which South Bay intended to develop as a residential subdivision. In 2007, after a bank loan fell through, Bayside financed the transaction in exchange for a promissory note and mortgage for over \$14 million, which was to be later replaced by permanent commercial financing.

South Bay filed a petition for relief under chapter 11 of the Bankruptcy Code on June 18, 2010, at which time the balance owed to Bayside on the note was approximately \$15,282,370.04. Shortly thereafter, another creditor, Milone & MacBroom, Inc. ("M&M"), filed a motion to dismiss

the case. Alleging bad faith, among other things, M&M contended that the debtor had nearly ceased property development and filed the petition in order to delay ongoing litigation and protect the guarantors of a construction bond. On November 10, 2010, this court denied the motion, finding that the debtor had potential avenues to pursue toward confirmation, and that the petition did not appear to have been filed in bad faith.

In the meantime, on August 27, 2010, Bayside filed a motion for relief from the automatic stay, seeking to foreclose on the subject property. On September 16, 2010, during the pendency of the stay motion, the debtor initiated an adversary proceeding against Bayside to avoid Bayside's lien on the property. The debtor alleged that because the mortgage deed refers to a note of even date, and the note is dated one day later than the mortgage, the mortgage is invalid and the debt to Bayside is unsecured. Because the result of the stay motion necessarily depended on the result of the adversary proceeding, on December 14, 2010, the parties requested and received a continuance of the stay motion until a determination could be made in the adversary proceeding as to the validity of Bayside's lien. The next day, on December 15, 2010, Bayside filed its motion to dismiss the debtor's case.

On June 15, 2011, upon Bayside's motion, the court dismissed the adversary proceeding, finding Bayside's mortgage lien valid and enforceable. Shortly thereafter, the debtor withdrew its response to Bayside's motion for relief from stay, and the stay lifted as to Bayside on July 12, 2011. The bankruptcy administrator filed her motion to dismiss on July 6, 2011, and M&M filed a response in support of the motions to dismiss on July 18, 2011. If and when Bayside forecloses on the property, the only remaining assets in the debtor's estate will be permits to develop boat slips near the property.

In support of their motions to dismiss, both Bayside and the bankruptcy administrator contend that the debtor essentially has nothing left to reorganize, in light of the debtor's inability to avoid Bayside's lien and Bayside's anticipated foreclosure on the property. The debtor, on the other hand, believes that the appointment of a trustee is warranted, in order to determine whether reorganization is possible and potentially negotiate a compromise. The debtor represents that it has two potential assets for a trustee to work with: (1) boat slip permits and (2) a promised \$150,000 cash infusion from one of the debtor's principals.

#### Discussion

Under § 1112(b) of the Bankruptcy Code, "the court shall convert a case under [chapter 11] to a case under chapter 7 or dismiss a case under [chapter 11], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). The primary 'cause' asserted by Bayside and the bankruptcy administrator for dismissal pursuant to the statute is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

Based on this standard, the court finds more than ample cause to dismiss the debtor's case. Although the debtor initially had 80 acres of property to develop, foreclosure recently became final on 79 lots on account of unpaid property tax obligations. Loss of the remaining lots appears imminent and inevitable, given that the debtor's challenge to Bayside's lien was unsuccessful, and Bayside has been granted relief from the automatic stay for the purpose of foreclosure. The debtor's only remaining assets are permits to build boat slips, which may be of extremely limited value to

the debtor once the debtor loses access to the adjoining property. This leaves the debtor with virtually no assets to reorganize or liquidate, and the court with little choice but to dismiss the case.

Incidentally, the debtor foreshadowed this result in its response to Bayside's motion to dismiss, describing the avoidance of liens on its real property as a "seminal issue" to plan feasibility. Debtor's Response at 3. Later, at a hearing on the motion to dismiss, the debtor indicated that if Bayside's lien was upheld, dismissal or conversion would likely follow. Although the debtor seeks the appointment of a trustee, it is questionable what value a trustee could provide under these particular circumstances. In general, a debtor is in the best position to formulate a strategy for its own reorganization. In light of the present circumstances, and the amount of time which the debtor has had to devise a feasible plan of reorganization, a trustee is not likely to be able to accomplish what this debtor could not. Even though a principal of the debtor has pledged \$150,000 as a show of goodwill, this amount is almost negligible in comparison to the multi-million dollar debt, and has no practical purpose (for example, it cannot be used toward development of infrastructure if the property is no longer the debtor's to develop). Nor does the court find any practical value in the permits to build boat slips, in light of the differences between the debtor and Bayside (the inevitable new owner of the property adjacent to the slip area), as well as the fact that permits certainly have less value than actual boat slips.

Based on the foregoing, it is apparent that the debtor has no *reasonable* likelihood of rehabilitation. Allowing the debtor to continue in chapter 11 would amount to offering the debtor a last gasp effort at rehabilitation, but with no source of air. Accordingly, the case is **DISMISSED**.

**SO ORDERED.**

**END OF DOCUMENT**

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

John Steven Goodwin, et al.

vs.

Landquest Development, LLC, et al.

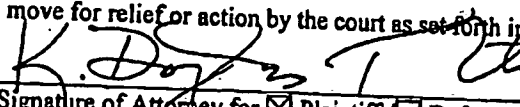
Plaintiff,

Defendant.

IN THE COURT OF COMMON PLEAS  
15th JUDICIAL CIRCUIT

CASE NO.: 2009-CP-22-1045

**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |  |                                                                                                                                |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>K. Douglas Thornton, Bar No. 5565<br>Address:<br>1025 Third Ave., Conway, SC 29526<br>Phone: 843-488-5858 Fax 843-488-5859<br>E-mail: kdouglasthornton@gmail.com Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  | <b>Defendant's Attorney:</b><br>_____, Bar No. _____<br>Address: _____<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____ |  |
| <input checked="" type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III)<br><input type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III)<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |  |                                                                                                                                |  |
| <b>SECTION I: Hearing Information</b><br>Nature of Motion: Motion to Alter or Amend Judgment<br>Estimated Time Needed: 30 min. Court Reporter Needed: <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |  |                                                                                                                                |  |
| <b>SECTION II: Motion/Order Type</b><br><input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.<br><br>Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant Date submitted: April 11, 2013                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                |  |
| <b>SECTION III: Motion Fee</b><br><input checked="" type="checkbox"/> <b>PAID - AMOUNT: \$</b> _____<br><input type="checkbox"/> <b>EXEMPT:</b> (check reason)<br><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support<br><input type="checkbox"/> Domestic Abuse or Abuse and Neglect<br><input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party<br><input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief<br><input type="checkbox"/> Motion for Stay in Bankruptcy<br><input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)<br><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions<br>Name of Court Reporter: _____<br><input type="checkbox"/> Other: _____ |  |                                                                                                                                |  |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |  | <b>JUDGE CODE</b> _____<br>Date: _____                                                                                         |  |
| <b>CLERK'S VERIFICATION</b><br>Collected by:  Date Filed: 4/15/13<br><input type="checkbox"/> <b>MOTION FEE COLLECTED: \$</b> 25<br><input type="checkbox"/> <b>CONTESTED - AMOUNT DUE: \$</b> _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |  |                                                                                                                                |  |

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FILED  
GEORGETOWN COUNTY, S.C.  
2013 APR 15 PM 4:02  
ALMA Y. WHITE  
CLERK OF COURT

SCCA 233 (11/2003)

COPY

STATE OF SOUTH CAROLINA )  
COUNTY OF GEORGETOWN )

COURT OF COMMON PLEAS  
FIFTEENTH JUDICIAL CIRCUIT  
CASE NO.: 2009-CP-22-1045

John Steven Goodwin, Louise )  
C. Goodwin, Gary E. Owens, )  
and Joyce M. Owens, )

Plaintiffs, )

Landquest Development, LLC, )  
Kyle V. Corkum, South Bay )  
Properties, LLC, C.R. Thompson )  
and Sons, LLC, Ronald L. )  
Charlton, Bonnie N. Charlton, )  
James R. Charlton, Bayside )  
Property, Inc., The City of )  
Georgetown, Hartford Casualty )  
Insurance Company, Hartford )  
Fire Insurance Company, and )  
National Land Sales, Inc., f/k/a )  
Source One Communities, LLC, )  
a/k/a Source One Signature )  
Communities, )

Defendants. )

MOTION TO ALTER OR AMEND  
JUDGMENT  
[Rule 59(e), SCRCP]

ALMA Y. WHITE  
CLERK OF COURT

2013 APR 15 PM 4:02

FILED  
GEORGETOWN COUNTY, S.C.

TO: Landquest Development, LLC, Kyle V. Corkum and South Bay Properties, and their attorneys Kristin Atkins, Esquire and Ronald L. Richter, Esquire; C. R. Thompson and Sons, LLC and its attorney Kevin Qualey, Esquire; Ronald L. Charlton, Bonnie N. Charlton, James L. Charlton and Bayside Property, Inc., and their attorney Charles T. Smith, Esquire; The City of Georgetown and its attorneys Elise F. Crosby, Esquire and Andrew Lindemann, Esquire; Hartford Casualty Insurance Company and Hartford Fire Insurance Company, and its attorney Lawrence M. Hershon, Esquire; and National Land Sales, Inc., d/k/a Source One Communities, LLC, a/k/a Source One Signature Communities.

YOU WILL PLEASE TAKE NOTICE THAT Plaintiffs, by and through their undersigned counsel, will move before this Honorable Court on the tenth (10<sup>th</sup>) day

Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Motion to Alter or Amend Judgment

Page 1

following service hereof, or as soon hereafter as counsel may be heard, for an Order of this Court, pursuant to Rule 59(e), SCRCF, altering or amending its Order filed herein on March 27, 2013, and received by Plaintiffs' counsel on or about April 1, 2013. Plaintiffs request an Order vacating the Court's Order denying Motions to Restore and Consolidate, and granting Plaintiffs' Motion to Restore and Consolidate, on the following grounds:

1. Plaintiffs were purchasers of lots in a failed real estate subdivision in the City of Georgetown, known as "Harbor Club on Winyah Bay" ("the property".) Defendants Charlton conveyed the subdivision tract to the putative developer, South Bay Properties, LLC ("South Bay"), for the sum of \$20,850,000.00, on September 17, 2007. On that same date, South Bay conveyed 29 lots to various purchasers, resulting in total gross lot sale proceeds of \$7,926,550.00. Between September 29, 2007 and January 4, 2008, South Bay conveyed 25 more lots in the subdivision to ultimate purchasers, generating additional gross lot sale proceeds of \$6,811,050.00.

2. After the payment of real estate commissions, marketing fees, partial judgment/lien satisfactions for the benefit of the developers, the Defendants Charltons received approximately 70% of the net closing proceeds. With these proceeds, the Defendants Charltons satisfied approximately \$7,000,000.00 of personal debt, which was theretofore secured by the subdivision tract.

3. All infrastructure and amenities were supposed to have been completed in or about August, 2008. The lot sales described hereinabove, were allowed to proceed prior to construction of the infrastructure, in reliance upon the procurement and filing of a "Subdivision Performance Bond", obtained by developers Landquest Development,

Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Motion to Alter or Amend Judgment

Page 2



LLC, Kyle V. Corkum, and South Bay Properties, LLC, in the principal penal sum of \$7,882,359.00.

4. Plaintiffs contend that the three (3) year statute of limitations applicable to their action against the Defendants, did not begin to run prior to August, 2008, when the infrastructure and amenities were supposed to have been completed, at the earliest. Plaintiffs filed their Complaint on July 9, 2009, thereby tolling the statute of limitations. As of this date, therefore, eleven (11) months had elapsed of the 36 months statute of limitations.

5. On July 22, 2011, this Court struck this action, noting "*Case Stricken Due to Bankruptcy*." The effect of this Order was not to dismiss this action, but to strike the action from the Court's active trial roster. The filing of this Order tolled the applicable statute of limitations, until South Bay's bankruptcy was dismissed by the Bankruptcy Court on August 12, 2011. Seventeen (17) months lapsed between the date South Bay's bankruptcy action was dismissed, and the date Plaintiffs filed their Motion to Restore/Reinstate their Complaint and Lis Pendens on January 22, 2013. Under the preceding facts, with the tolling of the applicable statute of limitations upon the filing of Plaintiffs' Complaint, and the subsequent tolling upon the filing of this Court's Order striking the case from the active docket:

(A) Rule 40(j). SCRPC is not relevant or applicable to this case:

1. Rule 40(j), which requires that an action be reinstated within one (1) year from the date it is dismissed under this Rule is neither relevant nor dispositive of the issues. This case was not stricken under Rule 40(j), thus Plaintiff had no notice of any requirement to reinstate the action under Rule 40(j). To hold otherwise constitutes a violation of Plaintiffs' entitlement to procedural due process.

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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045  
Motion to Alter or Amend Judgment

Page 3

2. As with 40(j) this Court's Order striking this case from its active docket due to South Bay's Bankruptcy, tolled the applicable statute of limitations. Even if the year for reinstatement under Rule 40(j) had expired, Plaintiffs were not barred from restoring or reinstating the action as long as the applicable statute of limitations itself had not expired. *Maxwell v. Genez*, 356 SC 617, 591 SE2d 26 (2003). (Cited by Court in its Order, at Page 3.)

(B) Applicable statute of limitations had not expired:

1. Only twenty-eight (28) of the thirty-six (36) month statute of limitations had elapsed when Plaintiffs filed their Motion to Reinstate/Restore.

2. The filing of the Complaint in July, 2009, tolled the applicable statute of limitations.

But for this course striking the case due to South Bay's Bankruptcy, Plaintiffs' action would have been litigated to conclusion, unaffected by the statute of limitations.

3. This Court erred in not making any findings of fact as to the date the statute of limitations began to run and on what date the statute of limitations ended.

(C) 11 U.S.C.A. §108(c):

1. Similar to the above argument regarding Rule 40(j), this Court's Order striking Plaintiffs' case from the active docket due to South Bay's Bankruptcy, did not refer to, nor was it based on, 11 U.S.C.A., §108(c). Invoking this Bankruptcy code section as a bar to Plaintiff's Motion to Restore/Reinstate, without prior notice, violates Plaintiffs Due Process rights.

2. This Court Order striking Plaintiff's action from the active roster did not "[fix] a period for commencing or continuing..." this civil action, and therefore left the period for moving to restore this action completely open.

3. If §108(c) were applicable, which Plaintiffs contend it is not, its provisions would not shorten this open period for restoring/reinstating this action because it specifically

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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Motion to Alter or Amend Judgment

Page 4

provides that the period for restoring/refiling the stayed action does not expire until the later of: (1) the end of the period fixed by the order suspending such action under this section; or (2) thirty (30) days after notice of the termination or expiration of the stay..."

(D) Other related actions restore:

1. In support of their position that neither Rule 40(j), 11 U.S.C.A. §108(c), or any other rule or law operates to bar Plaintiffs' right to restore their case to the active trial roster, Plaintiff would refer the Court to its own Orders restoring thirteen (13) other related cases, all which were stricken from the Court's active roster due to South Bay's Bankruptcy. These Orders to restore were executed and filed by the Court between the dates of April 27, 2012 and November 2, 2012, as follows:

- (a) 2008-CP-22-1461, restored 5-2-12;
- (b) 2009-CP-22-1463, restored 4-30-12;
- (c) 2009-CP-22-1464, restored 4-30-12;
- (d) 2009-CP-22-1465, restored 5-3-12;
- (e) 2009-CP-22-1466, restored 5-18-12;
- (f) 2009-CP-22-1467, restored 5-3-12;
- (g) 2009-CP-22-1468, restored 4-30-12;
- (h) 2009-CP-22-1469, restored 4-27-12;
- (i) 2009-CP-22-1470, restored 4-30-12;
- (j) 2009-CP-22-1665, restored 5-3-12;
- (k) 2009-CP-22-1678, restored 4-30-12;
- (l) 2009-CP-22-1467, restored 5-3-12;
- (m) 2009-CP-22-1814, restored 5-2-12; and
- (n) 2009-CP-22-1490, restored 11-2-12.

With the exception of the Order restoring case number 2008-CP-22-1490, copies of the foregoing Orders are attached hereto in the order recited, collectively, as Exhibit "A". Case number 2008-CP-22-1490, restored by this Court to the active roster on November 2, 2012, is the action filed by Defendants Charlton against the City of Georgetown, and others. Plaintiffs have not attached a copy of this Order, but request that the Court take judicial notice of its file, incorporating such Order as evidence in support of Plaintiff's Motion.

2. The earliest any of these thirteen (13) related cases was restored by the Court was April 27, 2012, eight (8) months

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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Motion to Alter or Amend Judgment

Page 5

after South Bay's bankruptcy was dismissed. The last of the thirteen (13) related cases restored, was that of the Defendants Charlton themselves, which was restored fifteen (15) months after South Bay's bankruptcy was dismissed. Plaintiffs moved to restore their action just two (2) months later (January, 2013).

3. It was inequitable, fundamentally unfair, and unsupported by any relevant law, therefore, to bar Plaintiffs' Motion to Restore/Reinstate, on the basis of a Rule or statute which was not referenced by the Court in striking this action, and of which Plaintiffs had no prior notice. It is similarly inequitable, fundamentally unfair and without legal support, to treat Plaintiffs' Motion to Restore/Reinstate differently than that of the thirteen (13) other moving parties referred to hereinabove.

(E) Other sustaining grounds:

1. This Court's Order denying Plaintiffs' Motions to Restore and Consolidate finds that Plaintiffs' Motions were opposed by the attorneys for Hartford Casualty Insurance Company and Hartford Fire Insurance Company, the attorneys for the City of Georgetown, and the attorney for Defendants Charlton. Only Defendants Charltons' attorney opposed Plaintiffs' Motion and Plaintiffs contend that the attorney did so in recognition of the fact that there is no reasonable basis for denying Plaintiffs' Motions.

2. The case was struck either at the request of South Bay Properties, LLC or on the Court's own initiative. The clerk of court should have restored the case once the clerk's office had notice the case was no longer in bankruptcy.

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For the foregoing reasons, and such other and further fact and law as may appear necessary and appropriate at the hearing hereof, Plaintiffs respectfully submit that the Court erred in denying their Motions to Restore/Reinstate and Consolidate this action, and that such Oder should be vacated and reversed.

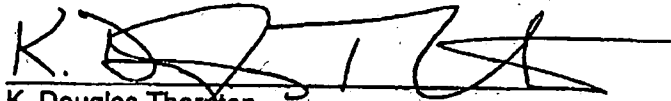
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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045

Motion to Alter or Amend Judgment

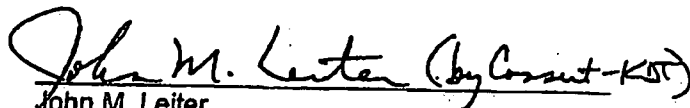
Page 6

THORNTON LAW FIRM, LLC



K. Douglas Thornton  
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Telephone: (843) 488-5858  
Facsimile: (843) 488-5859  
[kdouglasthornton@gmail.com](mailto:kdouglasthornton@gmail.com)

LAW OFFICES OF JOHN M. LEITER, PA



John M. Leiter  
1203 48<sup>th</sup> Ave. North, Suite 109  
Myrtle Beach, South Carolina 29577  
Telephone: (843) 449-1451  
Facsimile: (843) 449-4884  
[jleiter@48th.com](mailto:jleiter@48th.com)

ATTORNEYS FOR PLAINTIFFS

Conway, South Carolina

Dated: April 10, 2013

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Goodwin, et al. vs. Landquest Development, LLC  
2009-CP-22-1045  
Motion to Alter or Amend Judgment

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## **EXHIBIT "A"**

STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Richard W. Seibold and Sandra J. Rubin,

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-22-01463

**ORDER TO RESTORE CASE TO ACTIVE  
STATUS**

FILED  
2012 APR 30 PM 12:04  
ALMA Y. WHITE  
CLERK OF COURT

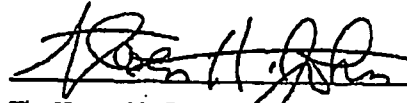
Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

1. On or about June 22, 2010, the Court received a Notice of Bankruptcy related to the Defendant South Bay Properties, LLC's filing of a bankruptcy proceeding under Chapter 11 in the United States Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division.
2. As a result of that notice, the case was moved to an inactive status pending the outcome of the filing of the Chapter 11 bankruptcy.
3. On August 12, 2011, the Bankruptcy Court issued its Order Allowing Motions to Dismiss the bankruptcy action, thereby dismissing the bankruptcy proceeding related to Defendant South Bay Properties, LLC.
4. Since the bankruptcy proceeding has now ended, Defendant Wells Fargo moves this Court to reinstate this lawsuit to an active status.

For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

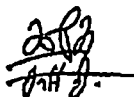
IT IS SO ORDERED.

10/13  
A.H.J.



The Honorable Steven H. John  
Chief Administrative Judge

Dated: 4/20/12  
Georgetown, D.C.





STATE OF SOUTH CAROLINA )

COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS

Glennon M. Willis and Hans M. Senn, )

Civil Action No. 2009-CP-22-01461

Plaintiffs, )

v. )

Landquest Development, LLC, Kyle V. )  
Corkum, South Bay Properties, LLC, )  
C.R. Thompson and Sons, LLC, Hartford )  
Casualty Insurance Company, Hartford )  
Fire Insurance Company, National Land )  
Sales, Inc., formerly known as Source )  
One Communities, LLC, and Wachovia )  
Bank, N.A., )

Defendants. )

**ORDER TO RESTORE CASE TO ACTIVE  
STATUS**

FILED  
GEORGETOWN COURT  
2012 MAY -2 AM 11:34  
ALMA Y. WHITE  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

1. On or about June 22, 2010, the Court received a Notice of Bankruptcy related to the Defendant South Bay Properties, LLC's filing of a bankruptcy proceeding under Chapter 11 in the United States Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division.

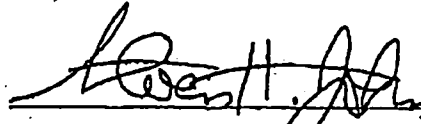
2. As a result of that notice, the case was moved to an inactive status pending the outcome of the filing of the Chapter 11 bankruptcy.

3. On August 12, 2011, the Bankruptcy Court issued its Order Allowing Motions to Dismiss the bankruptcy action, thereby dismissing the bankruptcy proceeding related to Defendant South Bay Properties, LLC.

4. Since the bankruptcy proceeding has now ended, Defendant Wells Fargo moves this Court to reinstate this lawsuit to an active status.

For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated: 4/26/12  
George A. P.



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

William J. Russell and Nancy B. Russell,  
Plaintiffs,

Civil Action No. 2009-CP-22-01467

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

FILED  
GEORGETOWN COUNTY, S.C.  
MAY -3 AM 10:58  
ALMA Y. WHITE  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

1. On or about June 22, 2010, the Court received a Notice of Bankruptcy related to the Defendant South Bay Properties, LLC's filing of a bankruptcy proceeding under Chapter 11 in the United States Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division.

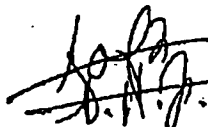
2. As a result of that notice, the case was moved to an inactive status pending the outcome of the filing of the Chapter 11 bankruptcy.

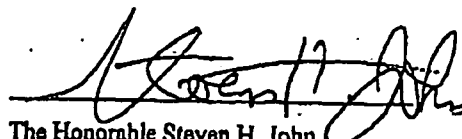
3. On August 12, 2011, the Bankruptcy Court issued its Order Allowing Motions to Dismiss the bankruptcy action, thereby dismissing the bankruptcy proceeding related to Defendant South Bay Properties, LLC.

4. Since the bankruptcy proceeding has now ended, Defendant Wells Fargo moves this Court to reinstate this lawsuit to an active status.

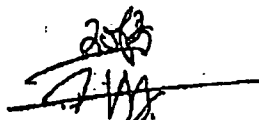
For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

IT IS SO ORDERED.



  
The Honorable Steven H. John  
Chief Administrative Judge

Dated: 4/26/12  
Georgetown, D.C.



STATE OF SOUTH CAROLINA )

COUNTY OF GEORGETOWN )

IN THE COURT OF COMMON PLEAS

Jeffrey K. Hodge, Sherry D. Hodge and  
Hans M. Senn,

Civil Action No. 2009-CP-22-01468

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

**ORDER TO RESTORE CASE TO ACTIVE  
STATUS**

FILED  
2012 APR 30 PM 4:21  
ALMA Y. WHITE  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

1. On or about June 22, 2010, the Court received a Notice of Bankruptcy related to the Defendant South Bay Properties, LLC's filing of a bankruptcy proceeding under Chapter 11 in the United States Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division.

2. As a result of that notice, the case was moved to an inactive status pending the outcome of the filing of the Chapter 11 bankruptcy.

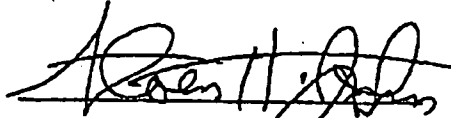
3. On August 12, 2011, the Bankruptcy Court issued its Order Allowing Motions to Dismiss the bankruptcy action, thereby dismissing the bankruptcy proceeding related to Defendant South Bay Properties, LLC.

4. Since the bankruptcy proceeding has now ended, Defendant Wells Fargo moves this Court to reinstate this lawsuit to an active status.

For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

*[Handwritten signature]*

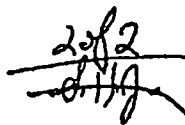
IT IS SO ORDERED.



The Honorable Steven H. Lehn  
Chief Administrative Judge

Dated: 4/26/12

Georgetown, D.C.



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Richard W. Seibold,

Civil Action No. 2009-CP-22-01469

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

FILED  
GEORGETOWN COUNTY, S.C.  
2012 APR 27 PM 2:18  
ALMA Y. WHIT  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

1. On or about June 22, 2010, the Court received a Notice of Bankruptcy related to the Defendant South Bay Properties, LLC's filing of a bankruptcy proceeding under Chapter 11 in the United States Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division.

2. As a result of that notice, the case was moved to an inactive status pending the outcome of the filing of the Chapter 11 bankruptcy.

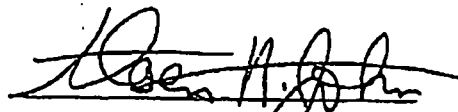
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4. Since the bankruptcy proceeding has now ended, Defendant Wells Fargo moves this Court to reinstate this lawsuit to an active status.

For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

IT IS SO ORDERED.

*[Handwritten signature]*



The Honorable Steven H. Linn  
Chief Administrative Judge

Dated: 4/20/12  
Seigler, D.R.

2013  
4/11/12



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

David A. Dangerfield and Leigh F. Dangerfield,

Civil Action No. 2009-CP-22-01470

Plaintiffs,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C.R. Thompson and Sons, LLC, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, National Land Sales, Inc., formerly known as Source One Communities, LLC, and Wachovia Bank, N.A.,

Defendants.

**ORDER TO RESTORE CASE TO ACTIVE STATUS**

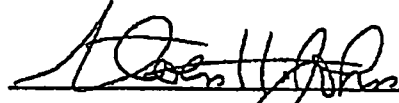
FILED  
TOWN COUNCIL  
2012 APR 30 PM 2:03  
ALMA Y. WHITE  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

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For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated: \_\_\_\_\_

4/20/12

Georgetown, S.C.



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Michael W. Brown, Benton T. Brown,  
James K. Bernhard, and Scott A. Miller,

Civil Action No. 2009-CP-22-01665

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

FILED  
GEORGETOWN COUNTY S.C.  
2012 MAY -3 PM 2:33  
ALMA Y. WHITE  
CLERK OF COURT

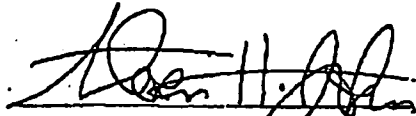
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*10/23*  
*A.H.B.*

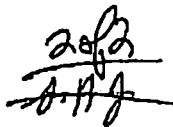
IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated:

4/26/12  
Georgetown, S.C.



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Edgar R. Moody,

Civil Action No. 2009-CP-22-01678

Plaintiff,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

ALMA Y. WHITE  
CLERK OF COURT

FILED  
2012 APR 30 PM 2:44  
S.C.

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

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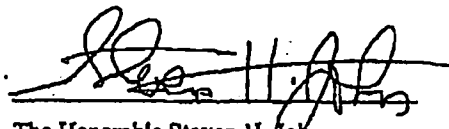
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For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.

IT IS SO ORDERED.

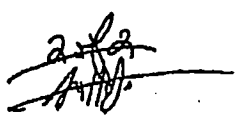
*[Signature]*



The Honorable Steven H. John  
Chief Administrative Judge

Dated: 4/20/12

Georgetown, D.C.



STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Donald I. Lemmon; Linda A. Lemmon;  
Phillip T. Harris; Cynthia M. Harris;  
Kenneth L. Mashburn, Brenda D.  
Mashburn,

Civil Action No. 2009-CP-22-01814

Plaintiffs,

v.

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

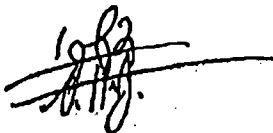
Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

FILED  
GEORGETOWN COUNTY S.C.  
2012 MAY -2 AM 10:43  
ALMA Y. WHITE  
CLERK OF COURT

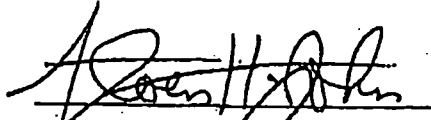
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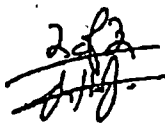
IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated: 4/26/12

Georgetown, I.C.





STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Donald I. Lemmon; Linda A. Lemmon;  
and Christine F. Litz,

Civil Action No. 2009-CP-22-01465

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

**ORDER TO RESTORE CASE TO ACTIVE  
STATUS**

FILED  
GEORGETOWN COUNTY, S.C.  
2012 MAY -3 PM 2:01  
ALMA Y. WHITE  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

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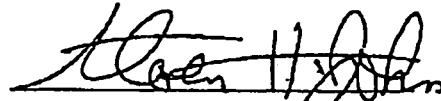
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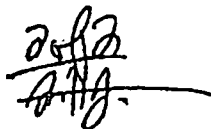
*[Handwritten signature]*  
2011.8.

IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated: 4/26/12  
Georgetown, J.C.



STATE OF SOUTH CAROLINA

COUNTY OF GEORGETOWN

Arnold Ray Hayes, Hans M. Senn and  
Lillie Ann Senn,

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

IN THE COURT OF COMMON PLEAS

2009 01466  
Civil Action No. 2010-CP-22-01268

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

ALMA T. COOPER  
CLERK OF COURT

2012 MAY 18 AM 11:25

FILED  
CLERK OF COURT, S.C.

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

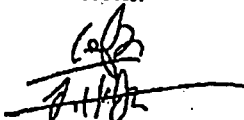
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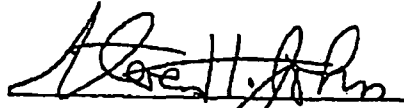
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For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.



IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated:

4/20/12  
Georgette J. L.



# **EXHIBIT A**

SO ORDERED.

SIGNED this 12 day of August, 2011.



*Stephani W. Mumrickhouse*  
Stephani W. Mumrickhouse  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

IN RE:

SOUTH BAY PROPERTIES, LLC

DEBTOR

CASE NO.

10-04922-8-SWH

ORDER ALLOWING MOTIONS TO DISMISS

The matters before the court are the motions of Ronald L. Charlton, Bonnie N. Charlton, and Bayside Property, Inc. (collectively, "Bayside"), as well as the bankruptcy administrator, to dismiss the debtor's case. Hearings took place in Raleigh, North Carolina on April 6, 2011, and August 1, 2011. For the reasons that follow, the case will be dismissed.

Background

In 2006, South Bay entered into a contract with Bayside for the purchase of approximately 80 acres of real property on Winyah Bay in Georgetown, South Carolina, which South Bay intended to develop as a residential subdivision. In 2007, after a bank loan fell through, Bayside financed the transaction in exchange for a promissory note and mortgage for over \$14 million, which was to be later replaced by permanent commercial financing.

South Bay filed a petition for relief under chapter 11 of the Bankruptcy Code on June 18, 2010, at which time the balance owed to Bayside on the note was approximately \$15,282,370.04. Shortly thereafter, another creditor, Milone & MacBroom, Inc. ("M&M"), filed a motion to dismiss

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the case. Alleging bad faith, among other things, M&M contended that the debtor had nearly ceased property development and filed the petition in order to delay ongoing litigation and protect the guarantors of a construction bond. On November 10, 2010, this court denied the motion, finding that the debtor had potential avenues to pursue toward confirmation, and that the petition did not appear to have been filed in bad faith.

In the meantime, on August 27, 2010, Bayside filed a motion for relief from the automatic stay, seeking to foreclose on the subject property. On September 16, 2010, during the pendency of the stay motion, the debtor initiated an adversary proceeding against Bayside to avoid Bayside's lien on the property. The debtor alleged that because the mortgage deed refers to a note of even date, and the note is dated one day later than the mortgage, the mortgage is invalid and the debt to Bayside is unsecured. Because the result of the stay motion necessarily depended on the result of the adversary proceeding, on December 14, 2010, the parties requested and received a continuance of the stay motion until a determination could be made in the adversary proceeding as to the validity of Bayside's lien. The next day, on December 15, 2010, Bayside filed its motion to dismiss the debtor's case.

On June 15, 2011, upon Bayside's motion, the court dismissed the adversary proceeding, finding Bayside's mortgage lien valid and enforceable. Shortly thereafter, the debtor withdrew its response to Bayside's motion for relief from stay, and the stay lifted as to Bayside on July 12, 2011. The bankruptcy administrator filed her motion to dismiss on July 6, 2011, and M&M filed a response in support of the motions to dismiss on July 18, 2011. If and when Bayside forecloses on the property, the only remaining assets in the debtor's estate will be permits to develop boat slips near the property.

In support of their motions to dismiss, both Bayside and the bankruptcy administrator contend that the debtor essentially has nothing left to reorganize, in light of the debtor's inability to avoid Bayside's lien and Bayside's anticipated foreclosure on the property. The debtor, on the other hand, believes that the appointment of a trustee is warranted, in order to determine whether reorganization is possible and potentially negotiate a compromise. The debtor represents that it has two potential assets for a trustee to work with: (1) boat slip permits and (2) a promised \$150,000 cash infusion from one of the debtor's principals.

#### Discussion

Under § 1112(b) of the Bankruptcy Code, "the court shall convert a case under [chapter 11] to a case under chapter 7 or dismiss a case under [chapter 11], whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b)(1). The primary 'cause' asserted by Bayside and the bankruptcy administrator for dismissal pursuant to the statute is a "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

Based on this standard, the court finds more than ample cause to dismiss the debtor's case. Although the debtor initially had 80 acres of property to develop, foreclosure recently became final on 79 lots on account of unpaid property tax obligations. Loss of the remaining lots appears imminent and inevitable, given that the debtor's challenge to Bayside's lien was unsuccessful, and Bayside has been granted relief from the automatic stay for the purpose of foreclosure. The debtor's only remaining assets are permits to build boat slips, which may be of extremely limited value to



the debtor once the debtor loses access to the adjoining property. This leaves the debtor with virtually no assets to reorganize or liquidate, and the court with little choice but to dismiss the case.

Incidentally, the debtor foreshadowed this result in its response to Bayside's motion to dismiss, describing the avoidance of liens on its real property as a "central issue" to plan feasibility. Debtor's Response at 3. Later, at a hearing on the motion to dismiss, the debtor indicated that if Bayside's lien was upheld, dismissal or conversion would likely follow. Although the debtor seeks the appointment of a trustee, it is questionable what value a trustee could provide under these particular circumstances. In general, a debtor is in the best position to formulate a strategy for its own reorganization. In light of the present circumstances, and the amount of time which the debtor has had to devise a feasible plan of reorganization, a trustee is not likely to be able to accomplish what this debtor could not. Even though a principal of the debtor has pledged \$150,000 as a show of goodwill, this amount is almost negligible in comparison to the multi-million dollar debt, and has no practical purpose (for example, it cannot be used toward development of infrastructure if the property is no longer the debtor's to develop). Nor does the court find any practical value in the permits to build boat slips, in light of the differences between the debtor and Bayside (the inevitable new owner of the property adjacent to the slip area), as well as the fact that permits certainly have less value than actual boat slips.

Based on the foregoing, it is apparent that the debtor has no *reasonable likelihood* of rehabilitation. Allowing the debtor to continue in chapter 11 would amount to offering the debtor a last gasp effort at rehabilitation, but with no source of air. Accordingly, the case is **DISMISSED**.

**SO ORDERED.**

**END OF DOCUMENT**

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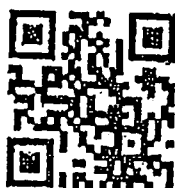
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32507033181034

SUN-32507 0417-8 pd001 10-04922  
Trawick R Stubbs, Jr.  
P. O. Drawer 1654  
New Bern, NC 28563

033148 33148 1 MD 0387 29601 \$ 1 6819-1-33367  
Wechovia Bank NA  
c/o Sterling Lanesy, Atty  
550 South Main St Ste 400  
Greenville, SC 29601-2541



## FREE ELECTRONIC BANKRUPTCY NOTICING

Snap this QR code with your smartphone for more information.  
Or you can visit our website at [ahp.uscourts.gov/feater](http://ahp.uscourts.gov/feater).

033148

32507033181034

STATE OF SOUTH CAROLINA  
COUNTY OF GEORGETOWN

IN THE COURT OF COMMON PLEAS

Timothy D. Holdren, Ginger L.  
Holdren, and Brenda G. Holdren,

Civil Action No. 2009-CP-22-01464

Plaintiffs,

v.

Landquest Development, LLC, Kyle V.  
Corkum, South Bay Properties, LLC,  
C.R. Thompson and Sons, LLC, Hartford  
Casualty Insurance Company, Hartford  
Fire Insurance Company, National Land  
Sales, Inc., formerly known as Source  
One Communities, LLC, and Wachovia  
Bank, N.A.,

Defendants.

ORDER TO RESTORE CASE TO ACTIVE  
STATUS

FILED  
COUNTY OF GEORGETOWN, S.C.  
2012 APR 30 PM 1:43  
ALMA Y. WHITE  
CLERK OF COURT

Upon motion of the Wells Fargo Bank, N.A as successor in interest to Wachovia Bank, N.A., by way of merger ("Wells Fargo"), and for the reasons stated below, the foregoing case is restored to the active roster.

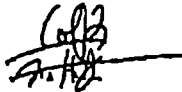
1. On or about June 22, 2010, the Court received a Notice of Bankruptcy related to the Defendant South Bay Properties, LLC's filing of a bankruptcy proceeding under Chapter 11 in the United States Bankruptcy Court for the Eastern District of North Carolina, Raleigh Division.

2. As a result of that notice, the case was moved to an inactive status pending the outcome of the filing of the Chapter 11 bankruptcy.

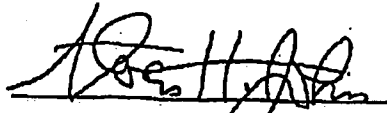
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4. Since the bankruptcy proceeding has now ended, Defendant Wells Fargo moves this Court to reinstate this lawsuit to an active status.

For the reasons stated above, it is hereby ordered that the foregoing matter be moved to an active status and placed back on the trial roster.



IT IS SO ORDERED.



The Honorable Steven H. John  
Chief Administrative Judge

Dated:

4/20/12  
Sanger, S.C.



STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2009-CP-22-1045

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John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway,

..... Appellants

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a Source One Signature Communities

..... Respondents

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**NOTICE OF APPEAL**

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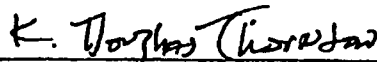
Appellants appeal the Order of the Honorable Benjamin H. Culbertson, dated June 19, 2013 (and filed June 21, 2013) denying Appellants' Motion to Alter or Amend Judgment entered in the case on April 10, 2013 ruling on their Motion to Restore and to Consolidate

argued on March 7, 2013 and the resulting Order Denying Motions to Restore and to Consolidate dated March 26, 2013 (and filed with the Clerk of Court on March 27, 2013).

Counsel for Appellants received written notice of the entry of the denial of the Motion to Alter or Amend on June 24, 2013. Copies of the two orders are attached to this Notice as Exhibits A and B, respectively.



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*Attorneys for Appellants John Steven Goodwin, Louise C. Goodwin, Gary E. Owens and Joyce M. Owens*

July 22, 2013

**Other Counsel of Record:**

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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2009-CP-22-1045

John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and  
Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas  
Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W.  
Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert  
Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A.  
DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M.  
Owens, Fount L. Shults and Lynda M. Shults, Dennis Ridgeway and  
Teresa Lynn Ridgeway, ..... Appellants,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay  
Properties, LLC, C.R. Thompson and Sons, LLC, Ronald L. Charlton,  
Bonnie N. Charlton, James R. Charlton and Bayside Property Inc.,  
The City of Georgetown, Hartford Casualty Insurance Company,  
Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a  
Source One Communities, LLC, a/k/a Source One Signature  
Communities, ..... Respondents.

MOTION TO DISMISS APPEAL



The Respondent City of Georgetown moves this Court to dismiss the Appellants' appeal on the basis that all claims by the Appellant against the Respondent City are moot, and as a result, this Court lacks jurisdiction.

The grounds for this motion are set forth in more detail in the supporting memorandum filed herewith.

In accordance with Rule 224(b), SCACR, the Respondent City of Georgetown respectfully requests that all time limits be held in abeyance while this motion remains pending.

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*Counsel for Respondent  
City of Georgetown*

Columbia, South Carolina

February 5, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2009-CP-22-1045

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John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and  
Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas  
Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W.  
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Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A.  
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Landquest Development, LLC, Kyle V. Corkum, South Bay  
Properties, LLC, C.R. Thompson and Sons, LLC, Ronald L. Charlton,  
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The City of Georgetown, Hartford Casualty Insurance Company,  
Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a  
Source One Communities, LLC, a/k/a Source One Signature  
Communities, ..... Respondents.

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MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL

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The Respondent City of Georgetown ("City") has moved to dismiss the

Appellants' appeal on the basis that all claims alleged by the Appellants against the Respondent City are moot, and as a result, this Court lacks jurisdiction.<sup>1</sup>

The Appellants' only cause of action against the City of Georgetown is the seventh cause of action as alleged in the Complaint. The Appellants seek only prospective relief against the City. Specifically, the Appellants pray for an order directing the City to call the Subdivision Performance Bond issued by the Respondent Hartford Fire Insurance Company as the surety. The Appellants also seek declaratory relief to the same effect. The record demonstrates the City has already taken such action. Thus, the Appellants' sole claim for prospective relief against the City is moot or otherwise not justiciable.

The South Carolina Supreme Court has explained that the Declaratory Judgments Act "has its limits." *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 593 S.E.2d 462, 466 (2004). "An adjudication that would not settle the legal rights of the parties would only be advisory in nature and, therefore, would be beyond the intended purpose and scope of the Uniform Declaratory Judgments Act." *Id.* "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Id.* "A justiciable controversy is a real and substantial controversy which is ripe and appropriate for judicial

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<sup>1</sup> In accordance with Rule 208(b)(6), SCACR, the Respondent City of Georgetown adopts and incorporates herein, to the extent not inconsistent herewith, the arguments made by the Hartford Respondents in support of their Motion to Dismiss Appeal. The Respondent City further relies on the record presented to the Court by the Hartford Respondents, including copies of the pertinent documents attached to the Affidavit of Lawrence Hershon.

determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character." *Rainey v. Haley*, 404 S.C. 320, 745 S.E.2d 81, 87 (2013). Most importantly, "[a] declaratory judgment should not address moot or abstract matters." *Sunset Cay*, 593 S.E.2d at 466.

It is well settled that an appellate court lacks subject matter jurisdiction when there is no justiciable controversy between the parties. *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996). When events occurring after the filing of an appeal render the appeal moot as to one or more parties, the appellate court lacks subject matter jurisdiction over that aspect of the appeal. *Id.*

In the case at bar, there is no longer any justiciable controversy between the Appellants and the Respondent City of Georgetown. The record reflects that the City took the action requested by the Appellants in their seventh cause of action: the City called the Subdivision Performance Bond with the surety, Hartford Fire Insurance Company. In addition, the City brought suit against Hartford and resolved that action by entering into an Agreement dated August 20, 2013.<sup>2</sup> That Agreement, a copy of which is an exhibit to the Hershon Affidavit, provides for Hartford, as the surety under the bond, to install and pay for the site infrastructure improvements covered by the bond. In accordance with that Agreement, Hartford has engaged a contractor and issued a Notice to Proceed under the Construction Contract. Work is presently ongoing.

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<sup>2</sup> The Appellants' Notice of Appeal was served July 23, 2013.

The record thus reflects that the Appellants have received the very prospective relief that was sought in their only cause of action alleged against the City. The City called the bond, and as the obligee under the bond, the City entered into an agreement with the surety to install and pay for the site infrastructure covered by the bond. It is well settled that a party's receipt of the requested relief moots a claim. *See, Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680, 684, n.2 (Ct. App. 2008); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Appellants' claims have thus been rendered moot. There is no longer any case or controversy between the City and the Appellants, and for that reason, this Court lacks subject matter jurisdiction over this appeal as it applies to the City.

Based on the foregoing, the Respondent City of Georgetown requests that this Court dismiss the Appellants' appeal against the City.

Respectfully submitted,

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Columbia, South Carolina

February 5, 2014

THE STATE OF SOUTH CAROLINA  
in The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

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Trial Court Case No. 2009-CP-22-1045

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APPELLATE CASE NO. 2013-001644

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John Steven Goodwin, Louise C. Goodwin, Thomas L. Puckett and Branda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W. Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A. DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M. Owens, Fount L. Shults and Lynda M. Shults, and Dennis Ridgeway and Teresa Lynn Ridgeway, ..... Appellants

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay Properties, LLC, C. R. Thompson and Sons, LLC, Ronald L. Charlton, Bonnie N. Charlton, James R. Charlton and Bayside Property, Inc., the City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a Source One Communities, LLC, a/k/a South One Signature Communities ..... Respondents

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**RESPONDENTS HARTFORD CASUALTY INSURANCE COMPANY'S AND  
HARTFORD FIRE INSURANCE COMPANY'S MEMORANDUM OF LAW IN  
SUPPORT OF THEIR MOTION TO DISMISS APPEAL**

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Respondents Hartford Casualty Insurance Company and Hartford Fire Insurance Company (collectively, "Hartford Respondents") by and through their undersigned counsel, hereby submit this Memorandum of Law in Support of their Motion to Dismiss,

pursuant to Rule 240 of the South Carolina Appellate Court Rules. In support of their Motion, Hartford Respondents show unto this Court the following:

1. Appellants filed their Complaint on July 9, 2009.

2. The Complaint alleges:

(a) That the Appellants "are owners of various lots located in the subdivision situate in Georgetown County, South Carolina, known and designated as 'Harbor Club on Winyah Bay' . . . ." [Complaint ¶1]

(b) Hartford Casualty Insurance Company issued a Subdivision Performance Bond, dated July 17, 2007, in the penal sum of \$7,882,359.00, on behalf of South Bay Properties, LLC, as Principal, in favor of the City of Georgetown, South Carolina, as Obligee, relating to certain improvements and site infrastructure in the subdivision. By Rider to the Bond, the Surety Company name was changed from Hartford Casualty Insurance Company to Hartford Fire Insurance Company. [Complaint ¶ 46] A copy of the Bond, which was incorporated by reference in the Complaint, is attached hereto as Exhibit A. [Affidavit of Lawrence M. Hershon, ¶ 5, February 5, 2014, attached hereto as Exhibit B]

(c) The developer, South Bay Properties, LLC, failed, neglected, and refused to complete the construction of the Project. [Complaint ¶ 54]

3. In their Complaint, Appellants allege a single cause of action against Hartford Respondents. Namely, Appellants seek a declaratory judgment as to Hartford



Respondents' legal duties and obligations to Appellants under the Bond. Appellants allege that they are suing Hartford Respondents under the Subdivision Performance Bond, on the contention that "Plaintiffs were intended beneficiaries of the Subdivision Performance Bond. . . ." [Complaint ¶ 100]

4. Hartford Respondents dispute the contentions of Appellants as to their assertions of the rights they claim under the Bond. However, regardless of the lack of legal authority for their claim, due to events that have transpired since the dismissal of the underlying lawsuit the claim against Hartford Respondents is now moot.
5. On August 20, 2013, the City of Georgetown, as Obligee on the Bond, entered into an Agreement with Hartford Fire Insurance Company ("Hartford") whereby those parties to the Bond have agreed to have the improvements covered by the Bond constructed and installed. The Agreement is attached hereto as Exhibit C. [Aff. L. Hershon, ¶ 6]
6. On December 11, 2013, following completion of a bidding and contractor selection process, Hartford Fire Insurance Company entered into a Construction Contract with R.H. Moore Company, Inc. ("R.H. Moore"), pursuant to the aforementioned Agreement between Hartford and the City, to install the site infrastructure and utilities pursuant to plans and specifications approved by the City of Georgetown. The Construction Contract (without exhibits) is attached hereto as Exhibit D. [Aff. L. Hershon, ¶ 7-8]
7. Hartford issued a Notice to Proceed under the Construction Contract with R.H. Moore, effective January 13, 2014, and R.H. Moore commenced work on the

Project on or about that date. The Notice to Proceed is attached hereto as Exhibit E. [Aff. L. Hershon, ¶ 9]

8. "To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a justiciable controversy." *Graham v. State Farm Mut. Auto. Ins. Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 845 (1995) (citing *Brown v. Wingard*, 285 S.C. 478, 330 S.E.2d 301 (1985)). "A justiciable controversy exists when a concrete issue is present, there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." *Graham*, at 71, 459 S.E.2d at 845 (citing *Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970)). This requirement is satisfied by "[a]ny person interested under a deed ... written contract or other writings constituting a contract or whose rights, status or other legal relations are affected by a ... contract or franchise [and such person] may have determined any question of construction or validity arising under the instrument, ... contract or franchise and obtain a declaration of rights, status or other legal relations thereunder." S.C. CODE ANN. § 15-53-30.
9. South Carolina appellate courts may only consider cases presenting a justiciable controversy. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Id.* at 26, 630 S.E.2d at 477 citing *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973).

10. Mootness has been described as "the doctrine of standing set in a time frame."

*Jackson v. State*, 331 S.C. 486, 489 S.E. 2d 915 (1997). An appellate court will not pass judgment on moot and academic questions or make an adjudication where there remains no actual controversy. *Id.* Moot appeals result when intervening events render a case non-judicial. Mootness exists "when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Matthis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E. 2d 713, 715 (1973).

11. In their Complaint, Appellants seek a declaration that the City take appropriate action as to the Bond and require that the Hartford Respondents complete the site infrastructure for the Subdivision.

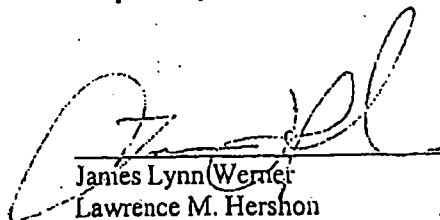
12. Because the City, as Obligee under the Bond, and Hartford Fire Insurance Company, as Surety under the Bond, have executed an agreement for construction of the improvements covered by Hartford's Subdivision Performance Bond, a justiciable controversy no longer exists. Any adjudication by this Court on the issues raised on appeal will not settle the rights (if any) between Hartford and the Appellants, because the parties to the Bond have resolved any dispute related to the Bond and have agreed to complete the work covered under the Bond. As a result of the Agreement between the City and Hartford, there is no remaining issue with respect to the legal duties and obligations under the Bond and no remaining claim in the case requiring interpretation by the Court as to the Bond. By their Agreement, the City and Hartford have undertaken to provide and

perform the work at issue in the claim for declaratory relief. The claim is now moot.

13. The Appellants' claim has become moot. Therefore, the appeal as to Hartford Respondents should be dismissed. Accordingly, Hartford Respondents respectfully request that this Court issue an Order dismissing the Hartford Respondents from the above-referenced appeal.

WHEREFORE, the Hartford Respondents respectfully request that the appeal be dismissed as to each of the Hartford parties, and per Rule 240(b), SCACR, that all deadlines relating to the appeal be stayed pending a decision on the Motion to Dismiss.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS  
HARTFORD CASUALTY INSURANCE  
COMPANY AND HARTFORD FIRE  
INSURANCE COMPANY

February 5, 2014  
Columbia, South Carolina

## AGREEMENT

This Agreement is made this 20<sup>th</sup> day of August, 2013, by and between the City of Georgetown, South Carolina ("Obligee") and Hartford Fire Insurance Company ("Surety") upon the following terms and conditions.

## RECITALS

WHEREAS, Obligee is the governing authority with respect to a Subdivision within the City of Georgetown, South Carolina – known as the Harbor Club at Winyah Bay (the "Development") – which was approved, and for which a Final Plat was recorded in accordance with the Land Development Regulations for the City of Georgetown, South Carolina; and

WHEREAS, the Subdivider for the Development was South Bay Properties, LLC; and

WHEREAS, in accordance with the Land Development Regulations, the Subdivider submitted plans and specifications to Obligee for all required improvements under the Land Development Regulations, along with a Final Plat for the Subdivision; and

WHEREAS, Obligee approved the plans and specifications, and the Final Plat, for the Subdivision and required the Subdivider to provide the financial guarantee, in the form of a surety bond, in accordance with the Land Development Regulations to ensure that funds would be available to complete the "required improvements" as described in Section 501 of the Land Development Regulations; and

WHEREAS, following approval of the plans and specifications and submission of the financial guarantee by the Subdivider, Obligee allowed the Final Plat to be recorded; and

WHEREAS, in accordance with the Land Development Regulations, the Subdivider, as Principal, and Surety executed that certain Subdivision Performance Bond, dated July 17, 2007, attached hereto as **Exhibit 1**, and

WHEREAS, an estimate of costs was developed by the Subdivider and used to calculate the penal sum limit contained in the Subdivision Performance Bond; (Exhibit 2) and

WHEREAS, the Obligee accepted said Subdivision Performance Bond and approved and recorded the Final Plat for the Harbor Club at Winyah Bay, attached hereto as Exhibit 3; and

WHEREAS, the Plans and Specifications previously submitted in connection with the development of the Harbor Club on Winyah Bay are attached hereto as Exhibit 4; and

WHEREAS, the Subdivider, following approval and recording of the Final Plat, proceeded to sell various lots within the Subdivision but did not install the infrastructure; and

WHEREAS, after the expiration of the one year period for the completion of the specified improvements, various third parties claiming an interest in the Subdivision commenced civil actions seeking declaratory judgments as to the obligations of the Obligee and Surety with respect to the Subdivision Performance Bond (list of civil actions attached as Exhibit 5); and

WHEREAS, during the pendency of such civil actions and discussions between the Obligee and Surety relative to the obligations under the Subdivision Performance Bond and the Obligee's demand to Surety thereunder, the Subdivider commenced bankruptcy proceedings which affected the Subdivision; and

WHEREAS, Obligee filed a cross-claim against Surety in the civil action *Bonnie N. Charlton and Ronald L. Charlton v. The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and South Bay Properties, LLC*, Civil Action No. 2008-CP-22-1490, pending in the Circuit Court for Georgetown County (the Lawsuit), related to the Subdivision Performance Bond; and

WHEREAS, during the interim period, various lots within the subdivision have been foreclosed on account of delinquent tax obligations and a number of said lots are now believed to be under the control of the Georgetown County Forfeited Land Commission; and

WHEREAS, the Subdivider applied for and obtained permits believed to be necessary for the improvements for the Development and, during the interim period, Surety has undertaken to confirm that the permits previously obtained in connection with the subdivision have been, or will be, extended; and

WHEREAS, during the interim period, the engineering firm that performed water, sewer and landscape architectural design services for the subdivision has given notice to the Obligee and Surety that its design and engineering documents for the Subdivision are copyright protected and their use has not been authorized (there has been no such assertion or notice by the engineering firm with respect to the survey and roadway design or design documents and it is assumed for purposes of this Agreement that the survey and roadway design documents submitted to and approved by Obligee in connection with the Subdivision approval are available for use); and

WHEREAS, as an accommodation to facilitate the continuing potential for having the site infrastructure installed in accordance with the previously submitted plans and specifications, Surety has made an agreement with the engineering firm that performed the water, sewer and landscape design to allow the authorized use of said design and engineering documents for use in installation of said "site infrastructure" and for the engineering firm to provide other services which may be, or become, necessary for the work to proceed; and

WHEREAS, Surety has contacted and solicited proposals from qualified contractors to provide prices and proposals for performing the work to install "site infrastructure" in accordance with the previously submitted plans and specifications for the Development approved by the permitting authorities, and previously obtained responsive proposals; and

WHEREAS, the scope of work, including expected quantities required for the installation of the "site infrastructure" pursuant to the plans and specifications, and upon which the qualified contractors' proposals have been based, is as set forth in Exhibit 6, attached hereto; and

WHEREAS, following execution of this Agreement Surety will solicit and obtain best and final proposals from the qualified contractors to install the scope of work described in Exhibit 6 attached hereto; and

WHEREAS, Oblige and Surety desire to avoid further delay, dispute and unnecessary expense and to make agreement with each other to resolve any issues between them arising out of, or in connection with the Subdivision Performance Bond and the installation of the "site infrastructure" for the Subdivision covered thereby.

NOW, THEREFORE, in mutual consideration of the covenants, terms and promises contained herein, Oblige and Surety agree:

1. Surety will pay \$49,500.00 to Milone & MacBroom (M&M) and make such agreement as is necessary to engage and pay said firm to update and seal its design for the Development, authorize use of its design and design documents, and provide such additional engineering services as may be necessary for the work to install the "site infrastructure" pursuant to the plans and specifications for such work. For purposes of this Agreement, it is understood that the survey and roadway design documentation originally prepared by another engineering firm and previously submitted in connection with the Subdivision approval will be used without further cost or restriction.
2. M&M has proposed that updated and final plans and specifications for the development can be signed and sealed and delivered to Oblige by approximately August 16, 2013, assuming no unforeseen delays. Upon receipt of the final plans and specifications, Surety will promptly solicit and obtain final proposals from qualified contractors to install the



"site infrastructure" pursuant to the plans and specifications for such work, which scope of work and estimated quantities are reflected in Exhibit 6 attached hereto.

3. Surety will select the contractor and proposal for the work which it deems acceptable and advantageous and, assuming receipt of one or more proposals deemed acceptable to Surety, will execute a unit price Contract with said contractor to perform the work reflected in Exhibit 6.
4. Surety is informed and believes that Subdivider had previously obtained the necessary permits. Surety shall provide Obligees with written proof that such permits are still active. If there are any required permits that are revoked for reasons beyond the reasonable control of the Surety or the Contractor, thereby rendering the Surety's obligations under the Subdivision Performance Bond impossible to perform, the Surety shall be relieved of its obligations under this Agreement. The Surety is required to keep the Obligees fully advised of all matters regarding permits and shall timely provide the Obligees with copies of all records related to the application for and revocation of any required permits. In addition, the Obligees retain the right to contest any claim by the Surety that the required permits cannot be obtained. The Obligees further retain the right to contest any revocation of the required permits by any governmental authority. The Surety shall cooperate with the Obligees in contesting any revocation of the required permits by any governmental authority.
5. In addition to the signed and sealed documents as referenced herein, Surety shall provide Obligees, through the Engineer, with as-built drawings, and certification by the Engineer of Record for DPFC that the improvements have been constructed in accordance with the plans and specifications.
6. Surety will pay the contractor for such work pursuant to said Contract.

7. Obligee agrees that all payments by Surety to the contractor and to M&M or other engineer(s) as described herein constitute payments to be applied against the Penal Sum limit of the Subdivision Performance Bond.
8. Obligee agrees that in making and performing this Agreement, Surety is acting solely in its role and capacity as surety under the Subdivision Performance Bond in response to Obligee's demand thereunder. Neither Surety nor Obligee assumes or accepts any other liability or responsibility for the Development or the future operation or maintenance of the installed infrastructure.
9. Obligee ratifies and affirms the penal sum limitation of liability set forth in the Subdivision Performance Bond, which penal sum limit is expressly reserved and is not waived by Surety.
10. Obligee agrees that upon completion by the contractor of the installation of the scope of work reflected in Exhibit 6 (pursuant to the Contract between Surety and Contractor), Surety's Subdivision Performance Bond shall be discharged and released and Surety's liability thereon shall be extinguished subject to the reservation set forth in the following Paragraph.
11. Recognizing that the estimate of costs used to develop the Penal Sum limitation for the Subdivision Performance Bond includes estimates of costs for some items (Exhibit 2) which Surety alleges are not required by the Land Development Regulations and which are not included in the Plans and Specifications for the Subdivision which were incorporated by reference into the Subdivision Performance Bond – and which, therefore, are not included in the Scope of Work attached as Exhibit 6 – Obligee and Surety agree that the Obligee reserves, and does not waive or release, its right to assert that such item(s) are covered by the Subdivision Performance Bond if a third-party, with a valid

interest in the Subdivision, pursues litigation against Obligee on the basis that such item(s) were within the covered scope of the Subdivision Performance Bond and the Obligee was obligated to have such work performed through said Bond. In event of such litigation by such third-party, the Obligee shall give notice of the commencement of such litigation to Surety and allow Surety the opportunity to participate in the defense of such litigation; however, if the litigation is successful against the Obligee and the third-party obtains a judicial determination on the basis that said item(s) were within the existing scope of said Bond, the Obligee shall have the right to pursue a claim against Surety that such item(s) shall be installed. This right to pursue a claim against Surety is not only limited to a right to pursue a claim after judicial determination, but includes Obligee's right to join Surety by way of third-party complaint or other procedure in the litigation commenced by the third-party. This exception from the foregoing discharge and release provisions of this Agreement, and reservation of claim by the Obligee shall only apply to the extent it is judicially determined that such item(s) were within the existing scope of the Bond. Furthermore, Surety expressly agrees any applicable statute of limitations period is tolled by this Agreement and expressly waives any defense as to statute of limitations. The provisions of this Paragraph apply only to the items appearing in Exhibit 2, and it is agreed that the Surety shall not be required to indemnify the Obligee with respect to any third-party claims that may allege the Obligee's failure to install or its failure to have the Surety install any items not included in Exhibit 2.

12. In further consideration of this Agreement, Surety agrees, upon execution of this Agreement, to pay consideration in the amounts of Thirty Thousand and no/100 Dollars (\$30,000.00) and Fifty Thousand and no/100 Dollars (\$50,000.00) to Obligee in accordance with the terms and purposes stated hereinbelow.

A. The consideration payment in the amount of Thirty Thousand and no/100 Dollars (\$30,000.00) shall be paid to Obligee for Obligee's exclusive control and use subject to the terms and conditions set forth in this subparagraph. The parties agree that the payment of this amount by Surety, together with its other obligations as set forth in this subparagraph, shall fully settle and resolve any dispute related to the item identified as "Refit Existing Lift Station" on Exhibit 2. At the time of this Agreement, a final determination by the engineers who will be tasked with completing the design and specifications of the sanitary sewer and stormwater systems has not been made, and as a result, no final determination has been made as to the improvements, if any, that may be required to be made to the existing lift station. If the final plans and specifications require improvements to the existing lift station, as determined by the engineer of record in consultation with the City Engineer, the parties agree that the consideration payment in the amount of Thirty Thousand and no/100 Dollars (\$30,000.00) shall be expended to pay for those improvements as follows: If the required improvements cost Thirty Thousand and no/100 Dollars (\$30,000.00) or in excess of that amount, the Obligee shall use the entire consideration payment to contribute to the costs of those improvements and Surety shall be financially responsible only for the costs of those improvements in excess of that amount. If the required improvements cost less than Thirty Thousand and no/100 Dollars (\$30,000.00), Obligee shall contribute the required amount from the consideration payment for said improvements and shall be entitled to retain the difference between the cost and the amount of the consideration payment and apply those remaining sums to any future maintenance costs, repair costs, or improvements to the sanitary sewer and

stormwater systems. However, if the final plans and specifications do not require immediate improvements to the existing lift station, as determined by the engineer of record in consultation with the City Engineer, the parties agree that the consideration payment in the amount of Thirty Thousand and no/100 Dollars (\$30,000.00) may be retained in full by Obligee and may be used for any future maintenance costs, repair costs, or improvements to the sanitary sewer and stormwater systems.

- B. The consideration payment in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) shall be paid to Obligee to be held in trust or escrow for later payment to a Homeowners Association after such an entity is legally formed and established. This consideration payment is paid by Surety subject to the terms and conditions set forth in this subparagraph which Homeowners Association and its members shall be required to agree to as a condition for receiving this consideration payment. The parties agree that the payment of this consideration by Surety does not alter the terms or conditions of Paragraph 11 of this Agreement. The parties further agree that the payment of this consideration by Surety shall not fully settle and resolve any dispute related to any of the items appearing in Exhibit 2 that Surety does not install or have installed as part of the Scope of Work attached as Exhibit 6 (except for the "Refit Existing Lift Station" item addressed in subparagraph A above); however, in the event that there is a judicial determination made as described in Paragraph 11, finding that one or more items from Exhibit 2 were within the covered scope of the Subdivision Performance Bond and Obligee was obligated to have such work performed through said Bond, then in that event only, the parties, including Homeowners

Association and its members as a condition for receiving this allowance, agree Surety shall be entitled to a set-off or credit for the costs of those item(s) not to exceed the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) and that Obligee cannot be liable to Homeowners Association or its members for the amount of that set-off or credit. Subject to the agreement of Homeowners Association and its members to these terms as a condition for receiving the consideration payment, the parties further agree that, once the consideration payment is transferred to Homeowners Association, the monies may be used by Homeowners Association for any common purpose for the subdivision as it sees fit in accordance with any by-laws adopted to govern Homeowners Association. In the event that Homeowners Association is not formed or Homeowners Association and its members do not agree to the terms of subparagraph B within two years of the execution of this Agreement, the Fifty Thousand and no/100 Dollars (\$50,000.00) held in trust or escrow shall be returned by Obligee to Surety.

13. In further consideration of this Agreement, the Obligee agrees, upon execution of this Agreement, to file a stipulation of dismissal without prejudice of its cross-claim against Hartford Casualty Insurance Company and Hartford Fire Insurance Company in Case No. 2008-CP-22-1490.
14. This Agreement shall not be construed to waive, limit, alter, or amend any of the Surety's obligations, rights, defenses, or liabilities under the Bond, except Surety expressly waives the affirmative defense that an action is time-barred by the statute of limitations in a situation as contemplated by paragraph 11.

15. Obligee and Surety do not intend to create any rights for the third-parties under, or by virtue of the terms of this Agreement. No rights shall accrue hereunder to or for the use of any other person, firm, corporation, or governmental entity other than the parties hereto and their respective successors and assigns. There are no intended third-party beneficiaries of this Agreement.
16. This Agreement may be executed in two or more counterparts, each of which shall be deemed as an original but all of which shall constitute one and the same Agreement.
17. This Agreement shall bind the parties hereto and their successors and assigns and shall not be modified or amended except by a written document duly executed by the parties hereto, or their successors.
18. This Agreement and its exhibits 1-6 constitute the whole of the understanding, discussions, and agreements between Obligee and Surety, including required or prospective documents to be provided as referenced herein. The terms and provisions of this Agreement are contractual and not mere recitals.
19. It is understood and agreed by the Obligee and Surety that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
20. All notices and communications required by or pertaining to this Agreement shall be sent to the Parties at the respective following addresses:

**To Surety:**

Gary Judd  
Hartford Bond Claims  
Hartford Plaza, Tower 4  
Hartford, CT 06115

with a copy to:

James Lynn Werner, Esquire  
Parker Poe Adams & Bernstein LLP  
PO Box 1509  
Columbia, SC 29202-1509

To Obligee:

Jack M. Scoville, Jr., Mayor, City of Georgetown  
P.O. Box 939  
Georgetown, SC 29442

With a copy to:

Elise F. Crosby, Esq.  
Crosby Law Firm, LLC  
405 Dozier St.  
Georgetown, SC 29440

THE CITY OF GEORGETOWN

By: J. M. Scoville, Jr.

Its: Mayor

08/20/13

HARTFORD FIRE INSURANCE COMPANY

By: [Signature]

Its: Director

Aug. 12, 2013



SUBDIVISION PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that  
we South Bay Properties, LLC

as Principal, and Hartford Casualty Insurance Company  
authorize to do business in the state of South Carolina, and having an office at  
690 Asylum Avenue, Hartford, CT 06115

as surety, are held and firmly bound unto The City of Georgetown

as obligee, in the penal sum of Seven Million Eight Hundred Eighty-two Thousand  
Three Hundred Fifty-nine & no/100 (\$7,882,359.00) for the  
payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors,  
successors and assigns, jointly and severally, firmly by these presents;

WHEREAS, the above bounden principal has been granted approval by the above named obligee  
for site infrastructure (roads and utilities)

NOW, THEREFORE, the condition of the above obligation is such, that if the said Principal shall  
complete the above improvements in accordance with the plans and specifications prepared by Trico Engineering Consultants, Inc.

within the 1 year period from the date hereof; and shall indemnify and save harmless the town from all  
costs and damages which it may suffer by reason of failure to do so, and fully reimburse and repay the  
obligee any outlay and expense which it may incur in making good any such default, then this obligation  
shall be null and void, otherwise to remain in full force and effect.

THE FOREGOING OBLIGATION, however, is limited by the following express conditions, the  
performance of which shall be a condition precedent to any rights of claims or recovery hereunder:

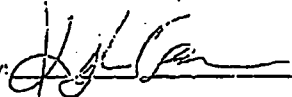
1. Upon the discovery by the obligee, or by the obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the obligee shall endeavor to give written notice thereof with the fullest information obtainable at the time to the surety at its office.
2. Legal Proceedings for recovery hereunder may not be brought unless begun within twelve (12) months from the date of the discovery of the act or omission of the principal on account of which claim is made.
3. The principal shall be made a party of any suit or action for recovery hereunder, and no judgment shall be rendered against the surety in excess of the penalty of this instrument.
4. No right of action shall accrue hereunder to or for the use or benefit of anyone other than the obligee, and the obligee's right hereunder, may not be assigned without the written consent of the surety.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representative of the principal and the surety.

SIGNED, SEALED AND DATED: July 17, 2007

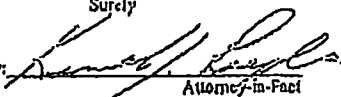
SOUTH BAY PROPERTIES, LLC

Principal

By: 

HARTFORD CASUALTY INSURANCE COMPANY

Surety

By: 

Attorney-in-Fact

Kenneth J. Peoples,

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD  
3010, 101  
P.O. BOX 2103, 690 ASYLUM AVENUE  
HARTFORD, CONNECTICUT 06115  
call: 860-266-3468 or fax: 836-757-5855  
Agency Code: 22 270197

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of UNLIMITED:

LAURA KROSKY, SANDRA B. BYRUM, SANDRA V. PIERIE, SOUTHGATE JONES III, DRUID M. CLODFELTER, ANGELA B. BRITT, JAMES P. CARTER, II, CINDY GREEN, PHOEBE HONEYCUTT, KENNETH J. PEEPLES, KITARA A. SMITH OF DURHAM, NORTH CAROLINA

their true and lawful Attorney(s)-In-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒ and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003, the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Paul A. Bergenholz*  
Paul A. Bergenholz, Assistant Secretary

*David T. Akers*  
David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } ss. Hartford

On this 4th day of August, 2004, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Scott E. Pasela*  
Scott E. Pasela  
Notary Public  
My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of July 17, 2007  
Signed and sealed at the City of Hartford.



*Gary W. Slumper*  
Gary W. Slumper, Assistant Vice President

FOA2005

RIDER

To be attached to and form a part of:

Bond No. 22BCSDA8552.

Type of Bond: Subdivision Bond.

Executed by South Bay Properties, LLC, as Principal, and by Hartford Casualty Insurance Company, as Surety, in favor of City of Georgetown and dated July 17, 2007

In Consideration of the premium charged for the attached bond, It is hereby agreed to change:

The Surety Company Name.

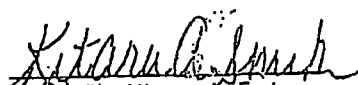
From: Hartford Casualty Insurance Company

To: Hartford Fire Insurance Company

This rider is effective 7/19/2007.

This rider is executed upon the express condition that the surety's liability under said bond shall not be cumulative and shall in no event exceed the amount specifically set forth in said bond or any existing certificate changing the amount of said bond. The referenced bond shall be subject to all its agreements, limitations and conditions except as herein expressly modified.

SIGNED, SEALED AND DATED this 19 day of July, 2007.

By:   
Kitara A. Smith, Attorney in Fact

# POWER OF ATTORNEY

Direct inquiries/Claims to:

THE HARTFORD

6010, 100  
P.O. BOX 2103, 680 ASYLUM AVENUE  
HARTFORD, CONNECTICUT 06115

Call: 980-263-3408 or fax: 330-737-5835

Agency Code: 22 270197

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
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- ☐ Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
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- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of UNLIMITED

LAURA KROSKY, SANDRA B. BYRUM, SANDRA V. PIERIE, SOUTHGATE JONES III, DRUID M. CLODFELTER, ANGELA B. BRITT, JAMES P. CARTER, II, CINDY GREEN, PHOEBE HONEYCUTT, KENNETH J. PEEPLES, KITARA A. SMITH OF DURHAM, NORTH CAROLINA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒, and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003, the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Paul A. Bergenholz*  
Paul A. Bergenholz, Assistant Secretary

*David T. Akers*  
David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }  
COUNTY OF HARTFORD } ss. Hartford

On this 4th day of August, 2004, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Scott E. Pascho*  
Scott E. Pascho  
Notary Public  
My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of  
Signed and sealed at the City of Hartford.

*July 19, 2007*



*Gary W. Stump*  
Gary W. Stump, Assistant Vice President

COUNTY OF RICHLAND )  
 ) AFFIDAVIT OF LAWRENCE M. HERSHON  
STATE OF SOUTH CAROLINA )

PERSONALLY APPEARS, before me, Lawrence M. Hershon, who, being duly sworn,  
deposes and says that:

1. He is over the age of 18 years, suffers from no known disability, and is competent to testify to the facts set forth herein.

2. He makes this Affidavit upon personal knowledge and with access to the pertinent documents.

3. He has been a member in good standing of the South Carolina Bar since 2008.

4. He has the responsibility, along with James Lynn Werner, for representing Respondents Hartford Casualty Insurance Company and Hartford Fire Insurance Company ("Hartford Respondents") in Trial Court Case No. 2009-CP-22-1045, Appellate Case No. 2013-001644 (the "Appeal"), the negotiation of the Agreement referenced below between Hartford Fire Insurance Company ("Hartford") and the City of Georgetown, and negotiation of the Construction Contract referenced below between Hartford and R.H. Moore Company, Inc.

5. On or about July 17, 2007, Hartford Casualty Insurance Company, as Surety, issued a certain Subdivision Performance Bond for South Bay Properties, LLC, as Principal, and the City of Georgetown, as Obligee relating to certain improvements and site infrastructure in the subdivision at issue in the Complaint. A true and accurate copy of the Bond and Rider to the Bond is attached to the Hartford Respondents' Memorandum of Law in the Appeal as Exhibit A.

6. On August 20, 2013, the City of Georgetown, as Obligee on the Bond, entered into an Agreement with Hartford whereby those parties to the Bond have agreed to have the improvements covered by the Bond constructed and installed. A true and accurate copy of the Agreement is attached to the Hartford Respondents' Memorandum of Law in the Appeal as

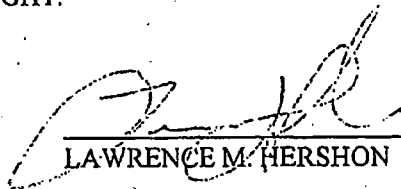
Exhibit C.

7. Following entry into the August 20, 2013 Agreement with the City of Georgetown, Hartford obtained bids for construction of the improvements covered by the Bond.

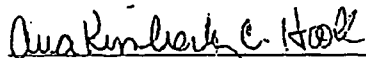
8. On December 11, 2013, Hartford entered into a Construction Contract with R.H. Moore Company, Inc., pursuant to the aforementioned Agreement between Hartford and the City, to install the site infrastructure and utilities pursuant to plans and specifications approved by the City of Georgetown. An accurate copy of the Construction Contract, without exhibits, is attached to the Hartford Respondents' Memorandum of Law in the Appeal as Exhibit D.

9. Hartford issued a Notice to Proceed, under the Construction Contract with R.H. Moore Company, Inc., effective January 13, 2014, and R.H. Moore Company, Inc. commenced work on the Project on or about that date. An accurate copy of the Notice to Proceed is attached to the Hartford Respondents' Memorandum of Law in the Appeal as Exhibit E.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
LAWRENCE M. HERSHON

SWORN and subscribed to before  
me this 5<sup>th</sup> day of February, 2014

 (L.S.)  
Notary Public for South Carolina  
My commission expires: 09-25-2016

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GEORGETOWN COUNTY  
Benjamin H. Culbertson, Circuit Court Judge

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Case No. 2009-CP-22-1045

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John Steven Goodwin, Louise C. Goodwin, Thomas I. Puckett and  
Brenda C. Puckett, Robert Nahama and Jeanne E. Nahama, Thomas  
Holland and Sharon Louise Holland, Joyce K. Sobel, Robert W.  
Waruszewski, Richard N. Taylor, Robert K. Spillers (a/k/a Robert  
Spillers), and Deborah T. Spillers (a/k/a Deborah Spillers), Patrick A.  
DiAngelo and Deborah A. DiAngelo, Gary E. Owens and Joyce M.  
Owens, Fount L. Shults and Lynda M. Shults, Dennis Ridgeway and  
Teresa Lynn Ridgeway, ..... Appellants,

v.

Landquest Development, LLC, Kyle V. Corkum, South Bay  
Properties, LLC, C.R. Thompson and Sons, LLC, Ronald L. Charlton,  
Bonnie N. Charlton, James R. Charlton and Bayside Property Inc.,  
The City of Georgetown, Hartford Casualty Insurance Company,  
Hartford Fire Insurance Company, and National Land Sales, Inc., f/k/a  
Source One Communities, LLC, a/k/a Source One Signature  
Communities, ..... Respondents.

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REPLY MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL

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The Respondent City of Georgetown ("City") has moved to dismiss the Appellants' appeal on the basis that all claims alleged by the Appellants against the City are moot, and as a result, this Court lacks jurisdiction.

In their return to the motion, the Appellants agree with the City's recitation of the relief sought by the Appellants in their Complaint. The Appellants have only sought prospective relief against the City. Through their claim for declaratory relief, the Appellants sought an order directing the City to call the Subdivision Performance Bond issued by the Respondent Hartford Fire Insurance Company as the surety so that the required site improvements may be installed. The evidence is undisputed that the City has done just that. The City commenced litigation against Hartford and resolved that action by entering into an Agreement dated August 20, 2013. That Agreement provides for the installation of and payment for the site improvements as required by the City of Georgetown Land Development Regulations and S.C. Code Ann. § 6-29-1180. As a result, the Appellants have received the relief sought, and their claim against the City is rendered moot.

In challenging the City's assertion that their claim is now moot, the Appellants make two arguments. First, they claim that the City's agreement with Hartford does not cover all improvements. Second, they argue that they may amend on remand – if successful on the merits of their appeal – to pursue a money damages claim against the City. Neither argument has merit.

As to the first argument, the Agreement between the City and Hartford does

address all site improvements as *required* by the Land Development Regulations and S.C. Code Ann. § 6-29-1180.<sup>1</sup> Section 500.1 of the Land Development Regulations provides that "[t]he Planning Commission shall not give approval of the Final Plat for recording unless the subdivider has installed *the following improvements as herein specified and required*, or has provided a financial guarantee therefore as specified in Section 502." (Emphasis added). Section 502 states that a developer must provide "Financial Guarantees covering *all improvements required by this Ordinance*" – i.e., the "required improvements." (Emphasis added). The financial guarantees may take the form of a subdivision performance bond. Section 502.3 provides that "[p]rior to completion of any or all *required improvements* by the subdivider, the subdivider may post a performance bond with the governing authority guaranteeing the completion of *said improvements*." (Emphasis added). Clearly, the financial guarantees in the form of a performance bond may cover only "required improvements." In fact, the funds from the bond may only be used to guarantee and pay for "required improvements." See, Section 502.5, City of Georgetown Land Development Regulations ("Any funds received from the financial guarantees required by this Ordinance shall be used only for the purpose of making the improvements for which said guarantees were provided"). Those "required improvements" are set

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<sup>1</sup> A copy of Article V of the City of Georgetown Land Development Regulations is attached hereto as an exhibit.

forth in Section 501, which is entitled "Required Improvements," and those required improvements are provided for in the Agreement with Hartford. Hartford, as the surety, has agreed to install and pay for the site infrastructure improvements required under Section 501.

In their second argument, the Appellants claim that they are intended beneficiaries under the Subdivision Performance Bond issued by Hartford. That is not the case. The Subdivision Performance Bond itself clearly and unambiguously provides that "[n]o right of action shall accrue hereunder to or for the use or benefit of anyone other than the obligee."

Nonetheless, the Appellants have not included a money damages claim in their only cause of action against the City. The Appellants now seek to misconstrue their own Complaint to suggest otherwise. Paragraph 131 provides that "the declaratory relief sought by Plaintiffs herein will partially mitigate Plaintiffs' damages to which Plaintiffs otherwise claim entitlement." *See*, Complaint, para. 131. But that language refers to the damages claimed from the other Defendants, most notably the developer. The Appellants have not sought damages against the City as is evident from the assertion that "there is no adequate remedy at law with respect to these issues, except by way of the relief provided by the declaratory judgment statutes aforesaid." *See*, Complaint, para. 132.

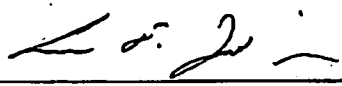
Further, the Court is strongly urged to review the prayer at the end of the Complaint. In the prayer as to the Seventh Cause of Action, which is the only

count against the City, the Appellants sought "an Order declaring and requiring that the City of Georgetown ... utilizing [sic] the bond to start or complete the required improvements and site infrastructure." *See*, Complaint, p. 49.

The Appellants have received *that very relief*. As the City argued in its opening memorandum, it is well settled that a party's receipt of the requested relief moots a claim. *See*, *Southeastern Housing Foundation v. Smith*, 380 S.C. 621, 670 S.E.2d 680, 684, n.2 (Ct. App. 2008); *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006). The Appellants' claims have thus been rendered moot. There is no longer any case or controversy between the City and the Appellants, and for that reason, this Court lacks subject matter jurisdiction over this appeal as it applies to the City. The Appellants' appeal against the City therefore should be dismissed.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

Elise F. Crosby  
CROSBY LAW FIRM, LLC  
405 Dozier Street  
Georgetown, South Carolina 29440  
(843) 546-3103

*Counsel for Respondent  
City of Georgetown*

Columbia, South Carolina

February 25, 2014

ARTICLE V  
IMPROVEMENTS

**SECTION 500: GENERAL**

**500.1        Approval of Final Plat**

The Planning Commission shall not give approval of the Final Plat for recording unless the subdivider has installed the following improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502.

**500.2        Right of Free Access and Inspection**

Any authorized agent of the Planning Commission or the governing authority shall be granted the right of free access to the subdivision at all times for the purpose of inspecting the construction and installation of improvements. Inspection, or lack of inspection, by the governing authority shall not diminish the obligation of the subdivider to install required improvements in accordance with approved plans and specification and the requirements of this Ordinance.

**500.3        Changes in the Approved Plans and Specifications**

If exigencies of construction necessitate changes in the approved plans and specifications, the subdivider shall request approval of such changes by the Planning Commission, who may delegate the responsibility for reviewing and approving said changes to a qualified agent of the governing authority. The subdivider shall not proceed with construction involving any changes prior to obtaining written approval from such qualified agent.

**500.4        Filing of Plans**

One set of "as built" plans and specifications shall be filed with the Planning Commission.

**500.5        Maintenance of Improvements**

Completion of construction of any improvement shall not obligate the governing authority of any public agency to maintain said improvement.

**SECTION 501: REQUIRED IMPROVEMENTS**

Every subdivision developer shall be required to grade and improve streets and alleys, and to install curbs, monuments, sewers, storm water inlets, and water mains, in accordance with specifications established by the City of Georgetown Planning and Zoning Commission. Where specifications adopted by local authorities conflict with standards as set forth in these subdivision regulations, the higher set of standards as determined by the Planning Commission, shall govern.

#### 501.1 Monuments

Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, shall be set at all street corners, at all points where the street lines intersect the exterior boundaries of the subdivision, and at angle points and points of curve in each street. The top of the monument shall have an indented cross to identify properly the location and shall be set flush with the finished grade. All other corners and points shall be marked with iron pipe or solid steel rod not less than one-half inch in diameter and twenty-four inches long and driven so as to be flush with the finished grade.

#### 501.2 Grading

All streets, roads and alleys shall be graded or filled horizontally to the full width of their rights-of-way by the subdivider or developer. Due to special topographical conditions, deviation from the above will be allowed only with special approval of the Planning Commission.

- (a) Preparation- Before grading is started; the entire right-of-way area shall be cleared of all trees, stumps, roots, brush, and other objectionable materials.
- (b) Cuts- All tree stumps, boulders and other obstructions shall be removed to the depth of two feet below the sub grade. Rock, when encountered, shall be scarified to the depth of twelve inches below sub grade.
- (c) Fill- All suitable material from roadway cuts may be used in the construction of fills, approaches, or at other places as needed. Excess materials including organic materials, soft clays, etc., shall be removed from the development site. The fill shall be spread in layers not to exceed six inches loose and compacted by sheep's foot roller, unless another method of preparation of the sub grade is approved by the Planning Commission or District Highway Engineer.

#### 501.3 Storm Drainage

An adequate drainage system, including storm sewers, necessary open ditches, pipes, culverts, intersectional drains, drop inlets, bridges, etc., shall be provided for the proposed drainage of all surface water. Cross drains shall be provided to accommodate all natural water flow, and shall be sufficient length to permit a full width roadway and the required slopes. The size openings to be provided shall be determined by Talbot's formula, but in no case shall the pipe be less than fifteen inches. Cross drains shall be built on straight line and grade, and shall be laid on a firm base but not on rock. Pipes shall be laid with spigot end pointing in the direction of the flow and with the ends fitted and matched to provide tight joints and a smooth uniform invert.

501.4      Roadway Improvement

All streets designated and shown on the Final Plat shall be graded, constructed and surfaces in accordance with the current requirements of the South Carolina Department of Highways and Public Transportation for paved streets. \* The Planning Commission may require higher standards than those required by the Standard Specifications or governing authority to provide adequately for unusual soil conditions, extraordinary traffic volume or other abnormal conditions.

501.5      Shoulders, Side Slopes and Ditches

All shoulders, side slopes and ditches shall be prepared in compliance with the Standard Specifications. All shoulder, side slopes and ditches shall be protected from erosion by either sodding or seeding as set forth in the Standard Specifications for erosion control and shall be a part of the required improvement plans to be submitted by the subdivide with the Preliminary Plat.

501.6      Curbs

The subdivide shall install curbs of no lower classification than machine formed concrete extruded curb, nine inches wide at her base and seven and one-half inches high. The curb shall be installed after the prime coat is applied to the base. Back fill shall be towards the curb to insure drainage of surface water into the drainage system. In lieu of curbs as the drainage system on cul-de-sacs and loop streets, the Planning Commission may accept one of two alternatives:

501.61      Swales must be used on streets where the finished grade does not exceed two percent; and,



501.62 Streets with an inverted crown may be used provided that the drainage area of the streets does not exceed five acre, One-half inch to three-fourths inch expansion and contraction joints for the curbs shall be placed at intervals not exceeding four feet.

**501.7 Minimum Pavement Widths**

Minimum pavement widths for surface treatment of streets shall be as follows:

- (a) Arterial Streets (not paved by the subdivider), 12 feet per lane.
- (b) Collector Streets (usually not paved by the subdivider) 36 feet.
- (c) Minor Residential Streets and Marginal Access Streets, 28 feet.
- (d) Cul-de-sacs, Dead-end Streets and Alleys, 20 feet.

**501.8 Installation of Utilities**

After grading is completed and approved and before any base is applied, all of the underground work, water mains, gas mains, etc., and all service connections shall be installed and approved throughout the length of the road and across the flat section. All driveways for houses to be built by the subdivider shall be cut and drained.

**501.9 Water Supply System**

Water mains properly connected with the City water supply system or with an alternative supply approved by the appropriate health officer shall be constructed in such a manner as to adequately serve all lots shown on the subdivision plat for both domestic use and fire protection. The size of water mains, the location and type of valves and hydrants, the amount of soil cover and the pipes and other features of the installation shall be approved by the Planning Commission upon the recommendation of the applicable inspection agencies, and shall conform with accepted standards of good practice for public water systems.

**501.10 Sanitary Sewers**

Sewer lines properly connected with the City sewerage system shall be constructed in such a manner as to serve all lots shown on the Final Plat. Such lines shall be constructed according to the

requirements established by the City of Georgetown and South Carolina Department of Health and Environmental Control. The size of the sewer lines, the amount of soil cover and pipes and other features of the installation shall be approved by the Planning Commission upon the recommendation of the applicable inspection agencies and shall conform with accepted standards of good practice for public sewer systems. Where lots cannot be economically connected to the City sewerage system, they shall contain adequate are for the installation of approved septic tank and disposal fields and shall be approved in writing by the appropriate health officer.

**501.11 Street Name Signs**

The City of Georgetown Street Department will be responsible for erecting and maintaining standard street name signs for an approved subdivision. The developers will incur the cost of the materials (posts, signs, and letters).

**501.12 Off-Site Extensions**

When streets or utilities are not available at the boundary of a proposed subdivision, the Planning Commission may require, as precedence to approval of a Preliminary Plat or Final Plat, assurances that such improvement extensions shall be provided onto the property involved and shall be adequate to serve the total development requirements of the service or drainage area. Facilities leaving the property shall be constructed in such a manner as to make their extension practical for servicing the adjacent areas of the service or drainage areas.

**501.13 Underground Utilities**

The subdivider shall have the option of requesting the placement of electrical lines underground as opposed to above ground. If underground utilities are requested, the subdivider shall indicate the proposed location of all writing on the plat, together with any design, drainage and specifications as may be required by the manager of the Electric and Water Department for his approval. Final construction plans shall show underground utilities as constructed, with permanent reference points shown, as a condition of acceptance by the City of Georgetown of said subdivision. The design and construction of the underground system shall meet all requirements contained in Division 2 (City Service Installation), Section C of the City of Georgetown Terms and Conditions of Utility Services and Charges.

**501.14 Sidewalks**

The Planning Commission may require sidewalks where pedestrian traffic necessitates, when required, they shall be constructed in accordance with the SCDHPT Standard Specifications and located in a manner so as not to interfere with the maintenance of utility systems.

**501.15 Fire Hydrants**

The subdivider shall install fire hydrants connected to adequately sized lines in locations required by the Planning Commission upon the recommendations of the manager of the Electric and Water Department.

**SECTION 502: FINANCIAL GUARANTEES**

**502.1 General**

Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees to the Commission and the appropriate governing authority in accordance with the requirements of this section.

**502.2 Certification of Construction**

In subdivisions where the subdivider has completed the construction and installation of all required improvements, the subdivider shall file with the Planning Commission written certification by their governing authority and all applicable governmental units that said improvements have been completed according to the requirements of the Ordinance, and that said improvements have been accepted by the governing authority or the appropriate governmental unit for maintenance.

**502.3 Performance Bond**

Prior to completion of any or all required improvements by the subdivider, the subdivider may post a performance bond with the governing authority guaranteeing the completion of said improvements in compliance with the requirements herein below:

**502.31** The governing authority shall have the right to refuse a performance bond of any and/or all

required improvements and require construction and installation thereof by the subdivider.

502.32

Where accepted by the governing authority, the performance bond shall:

502.321 Run to the governing authority or, if applicable, any other governmental unit having a legal responsibility for the construction and completion of said improvements;

502.322 Be in an amount equal to 125% of the cost as estimated by the governing authority of any improvements which have not been constructed, installed and completed in compliance with the requirements of this Ordinance prior to the posting of said bond and for which sufficient certification has been furnished in compliance with Section 502.2;

502.323 Be with surety as approves by the governing authority;

502.324 Specify that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however; that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or a part of such improvements for such period of time as it deems is in the public interest; and,

502.325 Run until and terminate ninety days after filing certification of completion and acceptance as required in Section 502.2, unless the Planning Commission or governing authority determines that the requirements, standards and specification of this Ordinance applicable to the construction, installation and completion of said improvements have not been met and

notified the applicant of such determination by certified mail, in which event said bond shall continue to run until the filing of acceptance proof that said standards, requirements and specification have been met.

- 502.33 In the event that any or all of the required improvements are not completed within the time specified in said bond, the governing authority may let or re-let the contract and the subdivider and performance bond shall be severally and jointly liable for the costs thereof to the amount specified for such improvements(s) in said bond.

#### 502.4 Prepayment

In lieu of construction by the subdivider of any or all required improvements, the subdivider may make payment to the governing authority of the full amount of said improvements in compliance with the requirements herein below:

- 502.41 The governing authority shall have the right to refuse prepayment for any and/or all required improvements and require construction and installation thereof by the subdivider.
- 502.42 Where accepted by the governing authority, prepayment shall be in an amount equal to 125% of the cost as established by the governing authority for the required improvements which have not been either completed and certified and accepted as provided in Section 502.2 or covered by a performance bond as provided in Section 502.3
- 502.43 Where the governing authority accepts prepayment. After completion of said improvements, any unexpected amounts shall be refunded to the subdivider by the governing authority.

#### 502.5 Bond Funds

Any funds received from the financial guarantees required by this Ordinance shall be used only for the purpose of making the improvements for which said guarantees were provided.

SUBDIVISION PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that  
we South Bay Properties, LLC  
as Principal, and Hartford Casualty Insurance Company  
authorized to do business in the state of South Carolina, and having an office at  
680 Asylum Avenue, Hartford, CT 06115  
as surety, are held and firmly bound unto The City of Georgetown  
as obligee, in the penal sum of Seven Million Eight Hundred Eighty-two Thousand  
Three Hundred Fifty-nine & no/100 (\$7,882,359.00) for the  
payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors,  
successors and assigns, jointly and severally, firmly by these presents;

WHEREAS, the above bounden principal has been granted approval by the above named obligee  
for site infrastructure (roads and utilities)

NOW, THEREFORE, the condition of the above obligation is such, that if the said Principal shall  
complete the above improvements in accordance with the plans and specifications prepared by  
Trico Engineering Consultants, Inc.

within the 1 year period from the date hereof, and shall indemnify and save harmless the town from all  
costs and damages which it may suffer by reason of failure to do so, and fully reimburse and repay the  
obligee any outlay and expense which it may incur in making good any such default, then this obligation  
shall be null and void, otherwise to remain in full force and effect.

THE FOREGOING OBLIGATION, however, is limited by the following express conditions, the  
performance of which shall be a condition precedent to any rights of claims or recovery hereunder:

1. Upon the discovery by the obligee, or by the obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the obligee shall endeavor to give written notice thereof with the fullest information obtainable at the time to the surety at its office.
2. Legal Proceedings for recovery hereunder may not be brought unless begun within twelve (12) months from the date of the discovery of the act or omission of the principal on account of which claim is made.
3. The principal shall be made a party of any suit or action for recovery hereunder, and no judgement shall be rendered against the surety in excess of the penalty of this instrument.
4. No right of action shall accrue hereunder to or for the use or benefit of anyone other than the obligee, and the obligee's right hereunder, may not be assigned without the written consent of the surety.

IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representative of the principal and the surety.

SIGNED, SEALED AND DATED: July 17, 2007

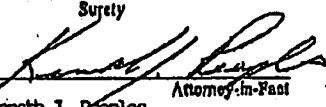
SOUTH BAY PROPERTIES, LLC

Principal

By: 

HARTFORD CASUALTY INSURANCE COMPANY

Surety

By: 

Kenneth J. Peoples, Attorney-in-Fact

Exhibit 1, Page 2 of 3

# POWER OF ATTORNEY

Direct Inquiries/Claims to:

THE HARTFORD

BOND, T-4

P.O. BOX 2103, 600 ASYLUM AVENUE  
HARTFORD, CONNECTICUT 06116

call: 888-266-3468 or fax: 860-767-9836

Agency Code: 22 270197

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- |                                            |                                                                                                                  |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------|
| <input checked="checked" type="checkbox"/> | Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut         |
| <input type="checkbox"/>                   | Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana         |
| <input type="checkbox"/>                   | Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut |
| <input type="checkbox"/>                   | Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut |
| <input type="checkbox"/>                   | Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana            |
| <input type="checkbox"/>                   | Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois     |
| <input type="checkbox"/>                   | Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana   |
| <input type="checkbox"/>                   | Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida |

having their home offices in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of UNLIMITED:

LAURA KROSKY, SANDRA B. BYRUM, SANDRA V. PIERIE, SOUTHGATE JONES III, DRUID M. CLODFELTER, ANGELA B. BRITT, JAMES P. CARTER, II, CINDY GREEN, PHOEBE HONEYCUTT, KENNETH J. PEEPLES, KITARA A. SMITH OF DURHAM, NORTH CAROLINA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by ☒ and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003, the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Paul A. Bergerholz*  
Paul A. Bergerholz, Assistant Secretary

*David T. Akers*  
David T. Akers, Assistant Vice President

STATE OF CONNECTICUT } ss. Hartford  
COUNTY OF HARTFORD }

On this 4th day of August, 2004, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



*Scott E. Pasche*  
Scott E. Pasche  
Notary Public  
My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of July 17, 2007.  
Signed and sealed at the City of Hartford.



*Gary W. Stumper*  
Gary W. Stumper, Assistant Vice President

POA 2003

Exhibit 1, Page 3 of 3



LAND DEVELOPMENT REGULATIONS  
CITY OF GEORGETOWN, SOUTH CAROLINA

AN ORDINANCE GOVERNING THE SUBDIVISION OF LAND WITHIN  
THE CITY LIMITS OF GEORGETOWN, SOUTH CAROLINA, AND PROVIDING  
FOR DESIGN STANDARDS, REQUIRED IMPROVEMENTS AND THE  
ADMINISTRATION, ENFORCEMENT AND AMENDMENT THEREOF.  
BE IT ORDAINED AND ENACTED BY THE CITY COUNCIL OF THE CITY  
OF GEORGETOWN, SOUTH CAROLINA, IN COUNCIL ASSEMBLED.

ARTICLE I  
GENERAL PROVISIONS

SECTION 100: TITLE

This ordinance shall be known as the "Land Development Regulations of the City of Georgetown, South Carolina".

SECTION 101: AUTHORITY

This Ordinance is adopted pursuant to the authority granted under the General Statutes of South Carolina, Code of Laws, Title 6, Chapter 29, Article 7, Sections 6-29-110 through 6-29-1200.

SECTION 102: PURPOSE

The purpose of this Ordinance is to provide for the orderly development of the City of Georgetown through the control and regulation of the subdivision of land. The standards contained herein are intended to encourage the development of an economically sound and stable urban area; to assure the timely provision of required streets utilities and other facilities and services to new land developments; to assure the adequate provision of safe and convenient traffic access and circulation (both vehicular and pedestrian) in and through new land developments; to assure the provision of needed public open space and building sites in new land developments through the dedication of reservation of land for recreational, educational and other public purposes; and assure, in general, the wise and timely development of new areas, in harmony with the city of Georgetown Land Use Plan and Major Thoroughfare Plan.

EXHIBIT 1

### SECTION 103: APPLICATION OF ORDINANCE

No plat of the subdivision of any land within the territorial jurisdiction of the City of Georgetown shall be filed with the or recorded by the Georgetown County Clerk of Court until such plat shall have been submitted to and approved by the Planning Commission according to the procedures set forth in this Ordinance. Plats of land subdivisions, which are recorded prior to the effective date of this Ordinance and were prepared for the sole purpose of transferring the lot to another person, do not require the approval of the Planning Commission.

No street, public way or public land shall be accepted or maintained, nor shall any water lines, sewer lines, street lighting or similar improvements be extended or connected, nor shall any permit be issued by any department of the City for the construction of any building or other improvement in any subdivision established hereafter which has not been approved by the Planning Commission.

### SECTION 104: JURISDICTION

The standards contained herein shall hereafter govern all land subdivision within the City Limits of the City of Georgetown, South Carolina. All land hereafter annexed by the City of Georgetown shall conform to the regulations contained herein.

### SECTION 105: VARIANCES

Whenever, in the opinion of the Georgetown Board of Zoning Appeals, the strict application of the requirements contained in this Ordinance would result in extreme practical difficulties or undue misuse of property, the Board of Zoning Appeals may modify such requirements as deemed necessary so that the subdivider is allowed to develop the property in a reasonable manner, providing that the public interest of the City and its citizens are protected and general intent and spirit of these regulations are preserved. The Board shall grant such a variance or modification only upon determination that:

- 105.1 The variance will not be detrimental to the public health, safety, and general welfare of the community;
- 105.2 The variance will not adversely affect the reasonable development of adjacent property;
- 105.3 The variance is justified because of topographic or other special conditions unique to the property involved in contra-distinction to mere inconvenience or financial disadvantages;
- 105.4 The variance is consistent with the objectives of this Ordinance and will not have the effect or nullifying the intent or purpose of this Ordinance or the comprehensive plan; and,
- 105.5 Such variances will not conflict with the requirements of the Zoning Ordinance of the City of Georgetown.

Procedures for requesting a variance from the Board of Zoning Appeals shall be the same as those contained in Section 1203 of the Georgetown Zoning Ordinance in addition to those procedures adopted by the Board of Zoning Appeals.

### SECTION 106: AMENDMENTS

This Ordinance may be amended from time to time provided that the Planning Commission shall review and prepare a recommendation on the proposed amendment before the City Council takes any action on the request. The Planning Commission shall have sixty days within to submit its recommendation on the proposed amendment before the City Council takes any action on the request. The Planning Commission shall have sixty days within to submit its recommendation of the proposed amendment before the City Council takes any action on the

proposed amendment. If the Planning Commission fails to submit a report within the specified time, it shall be deemed to have approved the proposed amendment. Prior to action by City Council, a public hearing on the proposed amendment shall be held. The time, place, and date and purpose of the hearing shall be duly advertised in a newspaper of general circulation in the City at least fifteen days prior to the hearing.

#### SECTION 107: VIOLATIONS AND PENALTIES

Unless otherwise provided, any person, firm or corporation who violates the provisions of this Ordinance, or the owner or agent or the owner of any land to be subdivided within the City of Georgetown who transfers or sells or agrees to sell or negotiates or advertises to sell such land by reference to or exhibition of or by other use of a plat of subdivision of such land before such plat has been approved by the Planning Commission and recorded in the Office of the Clerk of Court in and for the County of Georgetown, shall be guilty of a misdemeanor. The violation(s) shall be tried in Recorder's Court as deemed necessary by Mayor and City Council, and upon conviction, shall be fined as determined by the Recorder's Court. Each lot or parcel involved constitutes a separate violation and each day such violation(s) occurs shall constitute a separate offense. The description of metes and bounds in the instrument of transfer of other documents used in the process of selling or transfer shall not exempt the transaction from these penalties. Nothing herein shall prevent the City from taking such other lawful action as is necessary to prevent or remedy any violations.

#### SECTION 108: INTERPRETATION AND CONFLICT

The standards and provisions of this Ordinance shall be interpreted as being the minimum requirements necessary to uphold the purpose of this Ordinance and for the protection of the health, safety, economy, good order, appearance, convenience and welfare of the general public. Whenever this Ordinance imposes a higher standard than required by other resolutions, ordinances, rules or regulations, or by easements, covenants, or agreements, the provisions of this Ordinance shall govern. When the provisions of such statute shall govern.

#### SECTION 109: SEPARABILITY AND VALIDITY

Should any section, paragraph, clause, phrase, or provision of this Ordinance be adjudged invalid or held unconstitutional by a court of competent jurisdiction, such declaration shall not affect the validity of this Ordinance as a whole or any part or provision thereof, other than the part so decided to be invalid or unconstitutional.

#### SECTION 110: REPEAL OF CONFLICTING ORDINANCES

All Ordinances or parts of ordinances in conflict therewith are repealed to the extent necessary to give the Ordinance full force and effect.

#### SECTION 111: EFFECTIVE DATE

This Ordinance shall take effect and be in force from and after the date of its adoption by the City Council of Georgetown, South Carolina.

## ARTICLE II

### PLAT SUBMISSION AND REVIEW PROCEDURES

#### SECTION 200: GENERAL

The following sections are an outline of the procedure for obtaining approval of a subdivision of land within the territorial jurisdiction of the City of Georgetown Planning and Zoning Commission. The Procedure for review and approval of a subdivision plat consists of three separate steps. The initial step is the early informal consultation and sketch plan review by the Planning Commission's technical staff. The second step is the preparation and submission to the planning Commission of a preliminary plat of the proposed subdivision. The third step is the preparation and submission to be recorded in the office of the Clerk of Court when duly signed by the Chairman of the Planning Commission.

Any owners of land situated within the City Limits of Georgetown, who intends to divide such land into two or more lots for the purpose of either immediate or future sale or building development, or intends to resubdivision for this purpose, shall submit a plan of such proposed subdivision to the Georgetown Planning and Zoning Commission for approval and shall obtain such approval prior to the filing of his subdivision of land with the Georgetown County Clerk of Court. The information shall be presented in a manner specified in the following sections of Article II. No plat of the subdivision of land within the City of Georgetown shall be filed or recorded by the Clerk of Court of the County of Georgetown without the approval of the Planning Commission as specified herein.

In order to secure review and approval for a proposed subdivision by the Planning Commission, the subdivider shall submit a preliminary plat as outlined in Section 301, prior to the making of any street improvements or installation of utilities. On the approval of the preliminary plat by the Planning Commission, the subdivider may proceed with the preparation of the final plat and other required documents as specified in Section 302 or the improvements set forth in Article V.

#### SECTION 201: PRESUBMISSION CONSULTATION AND SKETCH PLAN REVIEW

Prior to the preparation of the plans and plats required herein, the subdivider is encouraged to consult with the Planning Commission staff regarding the requirements of this Ordinance, provisions of the comprehensive plan and general land subdivision practices. The subdivider shall submit a sketch plan to the staff of the Planning Commission, in accordance with the requirements contained in Section 300. The staff shall approve or disapprove the sketch plan within five working days and notify the subdivider in writing of such approval or disapproval. If the staff disapproves the sketch plan, or the staff requires changes with which the developer does not concur, the subdivider may present the sketch plan to the Planning Commission at its next regular meeting. Notice of the time and place of such meeting shall be sent by registered or certified mail to the address specified on the plat not less than five days before the meeting. The Planning Commission shall review and approve, disapprove, or approve with modifications the sketch plan at the meeting at which it is presented. Pertinent comments and recommendations shall be noted in the minutes of the meeting. Failure of the Planning Commission to act on the sketch plan at the meeting shall be deemed to constitute sketch plan approval, and a letter to that effect shall be issued by the Planning Commission upon demand; provided, however, that the subdivider may waive this request and consent in writing to the extension of such period.

## SECTION 202: PRELIMINARY PLAT

### 201.1 Submission

The subdivider shall prepare a Preliminary Plat and submit such plat to the Planning Commission to be used for the purpose of determining the adherence of the proposed subdivision to design standards and improvements proposals. An application requesting approval of the Preliminary Plat, together with seven copies of the Plat and any required supplemental material, shall be submitted to the staff of the Planning Commission not less than ten working days prior to the meeting at which it is to be considered.

### 202.2 Reserved 202.3 Planning Commission Procedure

The Planning Commission shall review and act upon the Preliminary Plat within sixty days of the date of its submission by the applicant. If no action is taken by the Commission within the same time, the Preliminary plat shall be deemed to have been approved; however, provided, however, that the subdivider may waive the requirement and consent to an extension of said time period. Action taken by the Commission shall be at a scheduled public meeting and notice of the time and place of said meeting be sent by registered or certified mail to the name and address specified on or accompanying the Preliminary Plat. Such notice shall be sent not less than five days before the date fixed for the meeting. At the meeting, the Planning Commission shall approve, approve with modification or disapprove the preliminary plat. Notice of any action taken by the Commission shall be in writing, signed by the Chairman, and forwarded to the subdivider. In case of disapproval, the reasons for disapproval shall after specifically to those parts of the Comprehensive Plan, or Ordinance, or regulation with which the plat does not conform. One copy of the reasons shall be retained in the records of the Commission and one copy forwarded to the subdivider. On approval with modifications, the Commission may require the subdivider to resubmit the Preliminary Plat with all recommended modifications to the Commission before approval is given to the Preliminary plat.

Before taking action on the Preliminary Plat, the Commission shall refer copies of the Plat and any attachments to those public officials and agencies which are concerned with new development, including but not limited to the S.C. Department of Health and Environmental Control, Georgetown Electric and Water Department, District Engineer of the S.C. Department of Transportation, telephone company, S.C. Electric & Gas Company, and the cable television company.

If the Preliminary Plat is found to conform to all of the requirements pertaining to the particular subdivision, the Commission

shall approve the Preliminary Plat and the Chairman on two copies of the Plat shall note such approval in writing. One copy shall be given to the subdivider and the Planning Commission shall retain one copy.

202.4           Effect of the Preliminary Plat Approval

Approval of the Preliminary Plat is conditional approval and does not constitute approval of the Final Plat. Preliminary Plat approval shall be authorization for the subdivider to proceed with the preparation of the Final Plat and design the installation of site improvements, but shall not authorize the sale or transfer of lots. Approval of the Preliminary Plat shall become void unless installation of improvements are submitted for approval with one year of the date of said approval; provided, however, that the Planning Commission may waive this requirement and consent to an extension of said time period for one additional year.

SECTION 203: FINAL PLAT

203.1           Submission

The subdivider shall prepare and submit a Final Plat to the Planning Commission accompanied by an application requesting approval of the Plat. Seven copies of the Plat shall be submitted to the Commission's staff not less than ten working days prior to the meeting at which it is to be considered. One copy shall be on cloth, Mylar, film, or linen. The remaining copies shall be dark line prints. Final Plats shall include certification from a City-designated representative(s) that all required site improvements have been installed to the City's satisfaction or that an acceptable technique in lieu of completion of all improvements has been proposed for the subdivision. The Planning Commission may permit submission of the Final Plat in sections covering a reasonable portion of the entire proposed subdivision as shown on the approved Preliminary Plat.

203.2           Reserved

203.3           Planning Commission Procedure

The Planning Commission shall review and act upon the Final Plat within sixty days of the date of its submission by the applicant. If the Commission within this time takes no action, the Final Plat shall be deemed to have been approved; provided, however, that the applicant may waive the requirements and consent to an extension of said time period. Action taken by the Commission shall be at a scheduled public meeting and notice of the time and place of the meeting shall be sent by certified or registered mail to the name and address specified on the Plat. Such notice shall be mailed not less than five days before the date of the meeting.

The Final Plat shall conform in all respects to the Preliminary Plat as previously approved by the Commission, but shall incorporate all modifications required by the Planning Commission in its review of the Preliminary Plat. The Commission may, however, accept a Final Plat so modified as to reflect any substantial changes, which have occurred on the site of the proposed subdivision or in its surroundings, since the time of the Preliminary Plat approval. If the Final Plat and all supplementary data submitted comply with all the requirements pertaining to the particular subdivision being considered, the Planning Commission shall approve said Plat and approval shall be noted in writing by the Chairman on each copy of the Final Plat. The Mylar and one copy shall be retained by the Planning Commission, one copy to the Georgetown County Tax Assessor and two copies to the subdivider for recording purposes. If the Final Plat is disapproved, the reasons for such action shall be stated in writing, signed by the Chairman and forwarded to the subdivider. If deemed necessary, any modifications required by the Planning Commission as prerequisites to approval of the Final Plat shall be noted on three copies of the Plat. The Planning Commission shall retain one copy and two copies shall be returned to the subdivider for recording purpose.

#### 203.4 Recording the Final Plat

No subdivision plat shall be recorded unless it bears the endorsement of the Planning Commission. After the Commission has approved the Final Plat, two signed copies of the plat shall be returned to the subdivider for filing in the Office of the Clerk of Court of Georgetown County. The subdivider shall record the two-signed copies in this office within fifteen days of the date of final approval. Failure to meet the fifteen day deadline shall cause the approval by the Planning Commission be null and void, unless an extension of time is granted in writing by the Commission upon written request by the subdivider.

Recording the Final Plat shall constitute an irrevocable offer to dedicate all streets and other public ways shown on the plat and to dedicate or reserve, as specified by the Commission, all park reservations and other such areas to the public use. Recording of the Plat, however, shall not impose any duty the City concerning acceptance of such dedicated streets or dedicated or reserved areas, until the Georgetown City Council has made the proper acceptance.

#### SECTION 204: SUBDIVISIONS EXEMPTED FROM STANDARD PROCEDURES

- 204.1 In the case of any proposed subdivision which does not involve the provision of new streets for access (i.e., one in which all proposed lots will have frontage on an existing public street or road) the following

procedures may, at the subdivider's discretion, be followed to obtain review and approval of the Plat by the Planning Commission:

- 204.11 The subdivider shall prepare a Sketch Plan of the proposed subdivision in accordance with the requirements of this Ordinance;
- 204.12 The subdivider shall obtain the approval of the Georgetown Department of Streets and Utilities for water and sewer connections;
- 204.13 The subdivider shall submit three copies of the Sketch Plan to the staff of the Planning Commission, who, within ten working days thereafter, shall notify the subdivider of any additions or modifications to the plan, which may be necessary to comply with the standards of this Ordinance. Such review by the staff shall constitute an official review by the Planning Commission; and,
- 204.14 Following the receipt of such notification from the staff of the Planning Commission, the subdivider shall then prepare a Final Plat in full accordance with Section 302 of this Ordinance, and such Final Plat shall be submitted in accordance with Section 203 or this Ordinance.

204.2 The following exception is exempted from the standard plat submission and review procedure:

The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of this Ordinance and other regulations of the governing authority, provided that in making such changes:

- 204.21 No lot or tract of land shall be created or sold that is smaller than the minimum dimensions required by these or other City Regulations;
- 204.22 Easements or rights-of-ways reserved for drainage shall not be changed;
- 204.23 Street locations and block sizes shall not be changed; and,
- 204.24 No lot shall be created which does not abut a street.

204.3 Such lot arrangements as are permitted in the Georgetown Zoning Ordinance, which, by their nature, cannot meet all the requirements included herein. Examples of such lot arrangements are: nonresidential lots within the Core Commercial District, townhouse residences on individual lots, and marsh areas subdivided for purpose of transfer. It is the intent of this section to exempt these types of subdivisions from those specified regulations, which would restrict that particular use of land, while the spirit of this Ordinance.



204.4

In case of the above exceptions, the subdivider shall submit to the staff of the Planning Commission six copies. One tracing on cloth, Mylar, film or lines and five dark line prints of the plat drawn to the requirements of this Ordinance for a Final Plat, or in the case of a plat previously submitted, he shall submit five dark line prints on the revised Plat, whereupon the staff shall, in writing, advise the subdivider if the proposed subdivision or resubdivision complies with the requirements listed above. When the plat does comply, the Planning Commission shall receive the Final Plat as a matter of information and shall indicate such fact upon each copy of the plat. Distribution of the copies shall be as required in Section 203.3 of this Ordinance.

ARTICLE III  
PLAT REQUIREMENTS

SECTION 300: SKETCH PLAN

The Sketch Plan of a proposed subdivision shall be drawn at a scale not smaller than one hundred (100) feet to one (1) inch and shall be drawn on material not larger than eighteen (18) inches by twenty-four (24) inches. On large subdivisions, matched sheets shall be used. Sketch Plans shall include the following data:

- 300.1 North arrow, written and graphic scales, and a location map showing the relationship between the proposed subdivision and the surrounding area;
- 300.2 Tract boundaries and total acreage;
- 300.3 Significant topographical and physical features, including the location of any water courses within the tract;
- 300.4 Location, names, and right-of-way widths of existing streets in the vicinity of the tract;
- 300.5 Tentative street and lot arrangement showing average lot size and the number of lots;
- 300.6 Existing and proposed land use and/or structure locations throughout the subdivision;
- 300.7 Zoning classifications; and,
- 300.8 Time schedule, if only part of the subdivision is to be developed at one time (the subdivider may, and is encouraged to, submit a Sketch Plan of his entire tract even though his present plans call for the development of only a part of the property).

SECTION 301: PRELIMINARY PLAT

The Preliminary Plat of a proposed subdivision shall be clearly and legibly drawn at a scale not smaller than one hundred (100) feet to one (1) inch and shall be drawn of material not larger than eighteen (18) by twenty-four (24) inches, of an approved size to correspond to plat book dimensions used in the Georgetown County Courthouse. If the Preliminary Plat requires more than one sheet, a key diagram showing the relative location of the various sections shall be drawn on each sheet. The Preliminary Plat shall include or be accompanied by the following data:

- 301.11 Proposed name of subdivision (the name shall not duplicate, phonetically or otherwise, the name of any subdivision within the City of Georgetown or its environs);

- 301.12 North arrow, graphic scale, written scale, date that the original drawing was completed and dates of any revisions to the original drawing;
- 301.4 Supplementary Data
  - 301.41 Draft of any restriction, including protective covenants proposed to be included in the owner's declaration of plat;
- 301.5 If any portion of the proposed subdivision is located within the "A14 flood zone" according to the Flood Insurance Rate Map for City of Georgetown, South Carolina, the Preliminary Plat shall show all proposed dredging, filling or other alterations to the flood-prone areas and shall be accompanied by a report prepared by a registered engineer containing, as a minimum, the following information:
  - 301.51 Source and characteristics of all fill material;
  - 301.52 Proposed deposition of all spoil material;
  - 301.53 Engineering evaluation of proposed filling or dredging operations with specific reference to anticipated engineering problems such as drainage, siltation, slope erosion, fill settlement, etc.;
  - 301.54 Evaluation of the impact of the subdivision on the ecology of the area and the overall environment of the community; and,
  - 301.55 Conformance of the requirements contained in the Georgetown Flood Damage Prevention Ordinance.
  - 301.56 Conformance to the requirements contained in the Georgetown Flood Damage Prevention Ordinance.
- 301.6 Any other information considered by either the subdivider or the Planning Commission to be pertinent to the review of the Preliminary Plat.

#### **SECTION 302: FINAL PLAT**

The Final Plat of a proposed subdivision shall be clearly and legibly drawn to a scale not smaller than one inch equal to one hundred (100) feet and shall be eighteen (18) inches by twenty-four (24) inches, or of an approved size to correspond to local plat book dimensions. If the Final Plat requires more than one sheet, a key diagram showing relative location of the several sections shall be drawn on each other. The Final Plat shall contain or be accompanied by the following information:

- 302.1 General Information
  - 302.11 Name of subdivision

- 302.12 Name of record owner, subdivider and surveyor or engineer;
- 302.13 North point, graphic and written scales, date (including the month, day and year that the original drawing was completed, the month, day and year for each revision of the original drawing);
- 302.14 Name and locations of all abutting subdivision, if any, and location and ownership of adjoining unsubsidized, drawn at a scale of one inch equals one thousand feet and showing the relations of the property, differentiated by tone or pattern, to adjoining property and to all streets, roads, municipal boundaries and recorded subdivision plats existing within four hundred (400) feet of any part of the property.
- 302.15 Existing zoning classification; and,
- 302.16 A location map showing the relationship between the proposed subdivision and the surrounding area.
- 302.2 Existing Data
- 302.21 The distance and bearing of one of the corners of the boundary of the subdivision to the nearest intersection of existing streets or roads;
- 302.22 Total tract boundaries of the property being subdivided, showing bearings and distances, and a statement of the total acreage of the property;
- 302.23 Contour lines at vertical intervals of two feet or less. The location and elevation of the bench mark to which the elevations refer should be noted;
- 302.24 All existing city limit lines, property lines, right-of-ways, easements, railroads, sewer lines, fire hydrant, utility transmission lines, culverts, bridges, ditches, water courses, buildings, floodplains (based on one hundred year storms), wooded areas and all other significant man-made or natural features within the property boundaries of the subdivision; and,
- 302.25 All existing streets (including streets that are recorded, but not constructed) on or abutting the tract, including the names, right-of-way, widths, pavement widths and approximate grades.
- 302.3 Proposed Site Data

- 302.31 Street right-of-ways, pavement widths, grades and street names. Street profiles and cross sections shall be provided when required by the planning Commission;
- 302.32 Lot lines, lot dimensions, lot and block numbers, and minimum setback lines for buildings along streets as well as along rear and side property lines;
- 302.33 Preliminary plans prepared by a registered engineer for sanitary sewers, storm sewers, water, electric, and gas line. Storm and sanitary sewer profiles, cross-sections and sizes shall be provided when required by the planning Commission;
- 302.34 Plans for the protection of on-site soils from wash and erosion during the construction period;
- 302.35 Other easements and right-of-ways, including location, dimension and functions;
- 302.36 Contour changes to be made by grading;
- 302.37 Areas, other than streets and easements, designated for public use with any conditions governing their use; and,
- 302.38 Areas to be used for purposes other than residential or public, with the purpose, location, and dimensions located.

#### 302.4 Platting Information

- 302.41 The total tract boundary lines of the area being subdivided shall be in accordance with the "Minimum Standards Manual for the Practice of Land Surveying in South Carolina" Code of Regulations, Chapter 49, Article 3;
- 302.42 Correct courses and distances to the nearest established street lines of official monument which accurately describe the location of the plat and are accurately tied to the primary control points of the subdivision;
- 302.43 Street designations according to the provisions of the Comprehensive Plan and this Ordinance;
- 302.44 Names, widths and lines of all streets within or on the perimeter of the subdivision, with accurate dimensions in feet and hundredths and showing angles to streets, alleys and lot lines to the nearest thirty seconds;
- 302.45 Radii, central angles, tangents, lengths of arcs and curvatures of all street lines;
- 302.46 Lengths and widths of all easements provided for or owned by public services and utilities, with accurate dimensions in feet and hundredths, including notation of any limitations on such easements;
- 302.47 All water courses, streams lake shores, wetlands, and flood plains (based on 100 year flood) meander lines with

- distances and hearings, including the fluctuation distance indicating ordinary high and low marks;
- 302.48 Lot numbers and a statement of the total number of lots. Lot lines shall be defined by distances in hundredths of a foot and in degrees to the nearest one-half of a minute, either by magnetic bearings or by angles of deflection from other lot and street lines; and,
- 302.49 The location (and elevation, if established) of all existing and proposed street monuments as required in Section 501.1

302.5 Additional Information

- 302.51 On a separate sheet the correct street names and property numbers for all lots and parcels in accordance with the requirements of the Georgetown Street Department and the Postmaster for the City of Georgetown;
- 302.52 Building setback lines accurately shown with dimensions;
- 302.53 A statement of the intended use of all nonresidential lots, with reference to existing or proposed restrictions as will exist as covenants in the deed; and,
- 302.54 Accurate boundaries of any area to be dedicated or reserved for public use or acquisition designated as blocks "A", "B", "C", etc. With the purpose indicated thereon and in the dedication. Any area to be reserved by deed covenants or restriction for the common use by owners of land contained within the subdivision shall be indicated.

302.6 Certification

The following certificates shall be lettered or printed on the face of the Final Plat in substantially the same form as provided in the Appendix:

- 302.61 Surveyor of Engineer. The signature, seal and certification of a registered professional land surveyor or engineer to the effect that the Final Plat accurately reflects a survey made by him, that any changes for the description appearing in the last record transfer of land contained in the Final Plat are so designated, that all monuments shown thereof actually exist or will be installed and their positions are accurately shown, and that all dimensional and geodetic details are correct (See Appendix A). Only the Engineer or Land Surveyor's signature is required on the reproducible copy. Both seal and signature are required on the paper copies.

- 302.62 Owners Certification. A notarized certification of title showing the applicants are the owners and statements by such owners acknowledging offers of dedication of land for public use and restricting land by protective covenants. This certification shall also indicate that the title thereof is free and unencumbered (See Appendix A).
- 302.63 Certification by City-Designated Engineer or Representative. The signature and approval of the City designated engineer or representative shall be construed as acceptance by the City of the applicant's offer of dedication of land for public use, unless otherwise noted on the plat. Such approval shall indicate that required improvements have been satisfactorily installed or that adequate financial guarantees have been provided in accordance with Section 502. (See Appendix A).
- 302.64 Recording Notations. Appropriate notations for transfer and recording by the County Clerk of Court, indicating date and time of recording, the plat book location thereof, and instrument number.
- 302.65 Certification by Planning Commission. The signature of the Chairman of the Georgetown Planning and Zoning Commission together with the endorsement stamp thereof. (See Appendix A).
- 302.7 Improvement Plans and Data
- 302.71 The subdivider shall submit construction plans and specifications for all improvements and installations required by Article V of this Ordinance. The construction plans and specifications shall consist of all cross-sections, profiles and other engineering data deemed necessary by the City designated engineer for the proper design and construction of all required improvements and installations.
- 302.72 No installation work or construction, other than rough grading shall be done on any said improvements and installations until a construction agreement or financial guarantee is posted in accordance, and until such plans and specifications have been submitted to the Planning Commission. The subdivider shall notify the City-Designated Engineer of his intention to begin such work at least twenty-four hours in advance, in order that inspection may be made as the work progresses.
- 302.8 Financial Guarantees

Financial guarantees as required in Section 502 shall be submitted to the Planning Commission along with the Final Plat. Approval shall not be granted in the absence of such guarantee.



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ARTICLE IV  
DESIGN STANDARDS

**SECTION 400: GENERAL PROVISIONS**

The design standards contained herein shall be considered minimum standards. Higher standards are to be encouraged in subdivision design. The following standards shall be applied toward that end.

**SECTION 401: STREETS**

**401.1      Conformity to Major Thoroughfare Plan**

The location and width of all streets and roads shall conform to the Official Major Thoroughfare Plan of the City of Georgetown of current adoption.

**401.2      Relation to Adjoining Street System**

The proposed street system shall extend existing streets when possible. These streets shall be extended at a width no less than the required minimum width as referred to in this Article or the width of the existing street whichever is greater.

**401.3      Access Streets to Subdivision Boundaries**

Sufficient access streets to adjoining properties shall be provided in subdivision to permit harmonious development of the area.

**401.4      Street Widths**

The minimum width of right-of-way, measured from lot line to lot line, shall be in conformance with the Major Thoroughfare Plan and shall not be less than as follows:

- a)      Arterial Streets and Highways, 80-150 feet
- b)      Collector Streets, 60 feet
- c)      Minor Residential Streets and Marginal Access Streets, 50 feet
- d)      Dead-End Streets and/or cul-de-sacs, 40 feet
- e)      Alleys, 20 feet

**401.5      Additional Width on Existing Streets**

Subdivisions on existing streets shall dedicate additional right-of-way to meet the minimum widths listed above.

**401.6      Restriction of Access**

Where a subdivision abuts or contains an existing or proposed arterial or collector street, the Planning Commission may require marginal access streets separated from the major street by a screen planting contained in a non-access reservation or such other treatment as may be required for adequate protection of residential and commercial properties and to afford separation of through and local traffic.

**401.7      Intersections**

Street intersections shall be as nearly at right angles as is possible and not intersection shall be at an angle of less than sixty degrees. To permit the construction of a curb having a desirable radius, property line radii at all street intersections shall not be less than twenty (20) feet. Where the angle of the street intersection is less than ninety degrees, the Planning Commission may require a greater radius.

**401.8      Tangents**

A tangent of at least one hundred (100) feet long shall be introduced between reverse curves on arterial and collector streets.

**401.9      Street Jogs**

Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall not be allowed.

**401.10     Dead-End Streets**

Minor terminal streets or courts designed to have one end permanently closed shall be no more than four hundred (400) feet in length, unless necessitated by topography. The termination point of these streets shall be provided with a turnaround having an outside paved diameter at least eighty (80) feet and a street right-of-way diameter of at least one hundred (100) feet. The Planning Commission may allow an alternate design such as the "T" or "Y" background shown on Illustration 4.

Where, in the opinion of the Planning Commission, it is desirable to provide for street access to adjoining property, proposed streets shall be extended to the boundary of such property. Such dead-end streets shall be provided with a temporary turnaround having a roadway diameter of at least eighty (80) feet.

401.11 Private Streets

Private streets shall only be allowed if constructed to SCDOT construction standards and as part of a Planned Development District. Every subdivided property shall be served from a publicly dedicated and accepted street. There shall be no reserve strips controlling access to streets.

401.12 Drainage

All streets shall be designed to provide for the discharge of surface water for the right-of-way by grading or other means as approved by the Planning Commission. Where it is the opinion of the Planning Commission that surface water cannot be adequately or safely discharged by surface drainage, the Planning Commission may require the installation of a storm sewer system.

401.13 Street Names

Proposed streets, which obviously in alignment with others already exist and named, shall bear the name of the existing street. IN no case shall the name for proposed streets duplicate existing street names, irrespective of the use of the suffixes; street, avenue, boulevard, drive, place, or court. Through its index of existing street names, the Planning Commission can assist the subdivider in avoiding duplication of street names.

401.14 Alleys

Alleys shall be provided to the rear of all lots used for business purposes, and shall or be provided in residential areas unless the subdivider produces satisfactory evidence to the Planning Commission of the need, or lack of need for alleys.

SECTION 402: BLOCKS

402.1 Length

Blocks shall not be less than three hundred (300) feet nor more than one thousand (1,000) feet in length, except as the Planning Commission considers necessary to secure efficient use of land or desired features of street patterns. In blocks over eight hundred (800) feet in length, the Planning Commission may require one or more public crosswalks (not elevated) of not less than ten (10) feet in width to extend entirely across the blocks and at locations deemed necessary.

402.2 Width

Blocks shall be wide enough to allow for two rows of lots of minimum depth, except where fronting on a major street or the size of the property makes this requirement impractical. In this case, the Planning Commission may approve a single tier of lots of minimum depth.

#### SECTION 403: LOTS

##### 403.1 Arrangement

Insofar as practical, side lot lines shall be at right angles to straight street lines or radial to curved street line. Each lot must front for the minimum with established in the Zoning Ordinance, except on culled-sacs or loop streets where a minimum of thirty feet of frontage may be allowed.

##### 403.2 Minimum Size

The size, shape, and orientation of lots shall be such, as the Planning Commission deems appropriate for the type of development and use contemplated. The size and width of lots shall in no case be less than the minimum requirements of the Georgetown Zoning ordinance. Where access to public water and/or sewer is not reasonably accessible, lots shall meet the minimum requirements of all public health regulations. Residential lots served by public water sewer shall not be less than sixty (60) feet wide and shall not be less than six thousand (6,000) square feet in area.

##### 403.3 Corner Lots

Corner lots shall be sufficiently wider and larger to permit the additional side yard requirements contained in Section 502 of the Georgetown Zoning Ordinance.

#### SECTION 404: PUBLIC USE AND SERVICE AREAS

In large subdivision, due consideration shall be given to the allocation of areas suitably located and of adequate size of playgrounds and parks for local or neighborhood use as well as public service areas. The Planning Commission may require the applicant to dedicate or reserve up to five percent (5%) of the gross area of the subdivision for open space or recreation purposes.

##### 404.1 Easements of Utilities

Drainage and utility easements shall be provided on each side and rear lot line where deemed necessary by the Planning Commission. The easements shall be designed to adequately provide utilities and drainage

for all lots in the proposed subdivision. Drainage shall not be designed to cross any lot except at her side or corner of sub lot. Cul-de-sacs shall have provisions for a fifteen (15) feet wide utility easement extending from the terminating point of the cul-de-sacs in order to prevent dead-end water mains. Easements of the same or greater width maybe required along the lines of lots within the subdivision when necessary for the extension of existing or planned utilities.

Where in the opinion of the Planning Commission, the flow of water cannot be accommodated with surface drainage storm sewers may be required. The Planning Commission shall determine, on the basis of the watershed and the probable runoff, the size of storm sewers. In ascertaining the size of the storm sewers, the Planning Commission may call upon its technical staff or any public or private agency to assist them in their determinations.

#### 404.2 Water Supply and Sewerage Connections

Where City water and sewer services are reasonably accessible, the subdivider shall indicate a connection with such water or sewer service for each lot with such material and to such size and length as shall be approved by the Planning Commission. Where access to water and/or sewer services is not reasonably accessible, or not planned for in the future, an alternate method of water supply or sewerage disposal may be indicated and shall be approved in writing by the appropriate health officer.

#### 404.3 Community Assets

In all subdivisions due regard shall be shown for all natural features such as large trees, water courses, historical sites, and similar community assets which, if preserved, will add attractiveness and value to the property.

### SECTION 405: SUTIABILITY OF THE LAND

The Planning Commission shall not approve the subdivision of land if, from adequate investigations conducted by all public agencies concerned, it has been determined that in the best interest of the public site is not suitable for platting and development purposes of the kind proposed. Land subject to frequent floods and land deemed to be topographically unsuitable should not be platted for residential occupancy, nor for such other uses as might increase danger to health, life or property or aggravate erosion or flood hazard. Such land within the subdivision shall set aside for such uses as shall not be endangered by frequent inundation or shall not produce unsatisfactory living conditions. Fill may not be used to raise land areas subject of flood unless the fill proposed does not restrict the flow of water and unduly increase flood heights.

ARTICLE V  
IMPROVEMENTS

**SECTION 500: GENERAL**

**500.1      Approval of Final Plat**

The Planning Commission shall not give approval of the Final Plat for recording unless the subdivider has installed the following improvements as herein specified and required, or has provided a financial guarantee therefore as specified in Section 502.

**500.2      Right of Free Access and Inspection**

Any authorized agent of the Planning Commission or the governing authority shall be granted the right of free access to the subdivision at all times for the purpose of inspecting the construction and installation of improvements. Inspection, or lack of inspection, by the governing authority shall not diminish the obligation of the subdivider to install required improvements in accordance with approved plans and specification and the requirements of this Ordinance.

**500.3      Changes in the Approved Plans and Specifications**

If exigencies of construction necessitate changes in the approved plans and specifications, the subdivider shall request approval of such changes by the Planning Commission, who may delegate the responsibility for reviewing and approving said changes to a qualified agent of the governing authority. The subdivider shall not proceed with construction involving any changes prior to obtaining written approval from such qualified agent.

**500.4      Filing of Plans**

One set of "as built" plans and specifications shall be filed with the Planning Commission.

**500.5      Maintenance of Improvements**

Completion of construction of any improvement shall not obligate the governing authority of any public agency to maintain said improvement.

**SECTION 501: REQUIRED IMPROVEMENTS**

Every subdivision developer shall be required to grade and improve streets and alleys, and to install curbs, monuments, sewers, storm water inlets, and water mains, in accordance with specifications established by the City of Georgetown Planning and Zoning Commission. Where specifications adopted by local authorities conflict with standards as set forth in these subdivision regulations, the higher set of standards as determined by the Planning Commission, shall govern.

#### 501.1 Monuments

Concrete monuments four (4) inches in diameter or square, three (3) feet long, with a flat top, shall be set at all street corners, at all points where the street lines intersect the exterior boundaries of the subdivision, and at angle points and points of curve in each street. The top of the monument shall have an indented cross to identify properly the location and shall be set flush with the finished grade. All other corners and points shall be marked with iron pipe or solid steel rod not less than one-half inch in diameter and twenty-four inches long and driven so as to be flush with the finished grade.

#### 501.2 Grading

All streets, roads and alleys shall be graded or filled horizontally to the full width of their rights-of-way by the subdivider or developer. Due to special topographical conditions, deviation from the above will be allowed only with special approval of the Planning Commission.

- (a) Preparation- Before grading is started; the entire right-of-way area shall be cleared of all trees, stumps, roots, brush, and other objectionable materials.
- (b) Cuts- All tree stumps, boulders and other obstructions shall be removed to the depth of two feet below the sub grade. Rock, when encountered, shall be scarified to the depth of twelve inches below sub grade.
- (c) Fill- All suitable material from roadway cuts may be used in the construction of fills, approaches, or at other places as needed. Excess materials including organic materials, soft clays, etc., shall be removed from the development site. The fill shall be spread in layers not to exceed six inches loose and compacted by sheep's foot roller, unless another method of preparation of the sub grade is approved by the Planning Commission or District Highway Engineer.

#### 501.3 Storm Drainage



An adequate drainage system, including storm sewers, necessary open ditches, pipes, culverts, intersectional drains, drop inlets, bridges, etc., shall be provided for the proposed drainage of all surface water. Cross drains shall be provided to accommodate all natural water flow, and shall be sufficient length to permit a full width roadway and the required slopes. The size openings to be provided shall be determined by Talbot's formula, but in no case shall the pipe be less than fifteen inches. Cross drains shall be built on straight line and grade, and shall be laid on a firm base but not on rock. Pipes shall be laid with spigot end pointing in the direction of the flow and with the ends fitted and matched to provide tight joints and a smooth uniform invert.

#### 501.4 Roadway Improvement

All streets designated and shown on the Final Plat shall be graded, constructed and surfaces in accordance with the current requirements of the South Carolina Department of Highways and Public Transportation for paved streets. \* The Planning Commission may require higher standards than those required by the Standard Specifications or governing authority to provide adequately for unusual soil conditions, extraordinary traffic volume or other abnormal conditions.

#### 501.5 Shoulders, Side Slopes and Ditches

All shoulders, side slopes and ditches shall be prepared in compliance with the Standard Specifications. All shoulder, side slopes and ditches shall be protected from erosion by either sodding or seeding as set forth in the Standard Specifications for erosion control and shall be a part of the required improvement plans to be submitted by the subdivide with the Preliminary Plat.

#### 501.6 Curbs

The subdivide shall install curbs of no lower classification than machine formed concrete extruded curb, nine inches wide at her base and seven and one-half inches high. The curb shall be installed after the prime coat is applied to the base. Back fill shall be towards the curb to insure drainage of surface water into the drainage system. In lieu of curbs as the drainage system on cul-de-sacs and loop streets, the Planning Commission may accept one of two alternatives:

- 501.61 Swales must be used on streets where the finished grade does not exceed two percent; and,

501.62 Streets with an inverted crown may be used provided that the drainage area of the streets does not exceed five acre, One-half inch to three-fourths inch expansion and contraction joints for the curbs shall be placed at intervals not exceeding four feet.

#### 501.7 Minimum Pavement Widths

Minimum pavement widths for surface treatment of streets shall be as follows:

- (a) Arterial Streets (not paved by the subdivider), 12 feet per lane.
- (b) Collector Streets (usually not paved by the subdivider) 36 feet.
- (c) Minor Residential Streets and Marginal Access Streets, 28 feet.
- (d) Cul-de-sacs, Dead-end Streets and Alleys, 20 feet.

#### 501.8 Installation of Utilities

After grading is completed and approved and before any base is applied, all of the underground work, water mains, gas mains, etc., and all service connections shall be installed and approved throughout the length of the road and across the flat section. All driveways for houses to be built by the subdivider shall be cut and drained.

#### 501.9 Water Supply System

Water mains properly connected with the City water supply system or with an alternative supply approved by the appropriate health officer shall be constructed in such a manner as to adequately serve all lots shown on the subdivision plat for both domestic use and fire protection. The size of water mains, the location and type of valves and hydrants, the amount of soil cover and the pipes and other features of the installation shall be approved by the Planning Commission upon the recommendation of the applicable inspection agencies, and shall conform with accepted standards of good practice for public water systems.

#### 501.10 Sanitary Sewers

Sewer lines properly connected with the City sewerage system shall be constructed in such a manner as to serve all lots shown on the Final Plat. Such lines shall be constructed according to the

requirements established by the City of Georgetown and South Carolina Department of Health and Environmental Control. The size of the sewer lines, the amount of soil cover and pipes and other features of the installation shall be approved by the Planning Commission upon the recommendation of the applicable inspection agencies and shall conform with accepted standards of good practice for public sewer systems. Where lots cannot be economically connected to the City sewerage system, they shall contain adequate area for the installation of approved septic tank and disposal fields and shall be approved in writing by the appropriate health officer.

**501.11 Street Name Signs**

The City of Georgetown Street Department will be responsible for erecting and maintaining standard street name signs for an approved subdivision. The developers will incur the cost of the materials (posts, signs, and letters).

**501.12 Off-Site Extensions**

When streets or utilities are not available at the boundary of a proposed subdivision, the Planning Commission may require, as precedence to approval of a Preliminary Plat or Final Plat, assurances that such improvement extensions shall be provided onto the property involved and shall be adequate to serve the total development requirements of the service or drainage area. Facilities leaving the property shall be constructed in such a manner as to make their extension practical for servicing the adjacent areas of the service or drainage areas.

**501.13 Underground Utilities**

The subdivider shall have the option of requesting the placement of electrical lines underground as opposed to above ground. If underground utilities are requested, the subdivider shall indicate the proposed location of all utilities on the plat, together with any design, drainage and specifications as may be required by the manager of the Electric and Water Department for his approval. Final construction plans shall show underground utilities as constructed, with permanent reference points shown, as a condition of acceptance by the City of Georgetown of said subdivision. The design and construction of the underground system shall meet all requirements contained in Division 2 (City Service Installation), Section C of the City of Georgetown Terms and Conditions of Utility Services and Charges.

501.14 Sidewalks

The Planning Commission may require sidewalks where pedestrian traffic necessitates, when required, they shall be constructed in accordance with the SCDHPT Standard Specifications and located in a manner so as not to interfere with the maintenance of utility systems.

501.15 Fire Hydrants

The subdivider shall install fire hydrants connected to adequately sized lines in locations required by the Planning Commission upon the recommendations of the manager of the Electric and Water Department.

SECTION 502: FINANCIAL GUARANTEES

502.1 General

Financial Guarantees covering all improvements required by this Ordinance shall be prerequisite to Planning Commission action on the application for Final Plat approval. The subdivider shall submit such guarantees to the Commission and the appropriate governing authority in accordance with the requirements of this section.

502.2 Certification of Construction

In subdivisions where the subdivider has completed the construction and installation of all required improvements, the subdivider shall file with the Planning Commission written certification by their governing authority and all applicable governmental units that said improvements have been completed according to the requirements of the Ordinance, and that said improvements have been accepted by the governing authority or the appropriate governmental unit for maintenance.

502.3 Performance Bond

Prior to completion of any or all required improvements by the subdivider, the subdivider may post a performance bond with the governing authority guaranteeing the completion of said improvements in compliance with the requirements herein below:

- 502.31 The governing authority shall have the right to refuse a performance bond of any and/or all

required improvements and require construction and installation thereof by the subdivider.

502.32

Where accepted by the governing authority, the performance bond shall:

- 502.321 Run to the governing authority or, if applicable, any other governmental unit having a legal responsibility for the construction and completion of said improvements;
- 502.322 Be in an amount equal to 125% of the cost as estimated by the governing authority of any improvements which have not been constructed, installed and completed in compliance with the requirements of this Ordinance prior to the posting of said bond and for which sufficient certification has been furnished in compliance with Section 502.2;
- 502.323 Be with surety as approves by the governing authority;
- 502.324 Specify that all said required improvements shall be completed in accordance with the requirements of this Ordinance within a period not to exceed one year from the date of posting said bond; provided, however, that the governing authority may, by proper application, for good cause shown, extend the time of completion of all or a part of such improvements for such period of time as it deems is in the public interest; and,
- 502.325 Run until and terminate ninety days after filing certification of completion and acceptance as required in Section 502.2, unless the Planning Commission or governing authority determines that the requirements, standards and specification of this Ordinance applicable to the construction, installation and completion of said improvements have not been met and

notified the applicant of such determination by certified mail, in which event said bond shall continue to run until the filing of acceptance proof that said standards, requirements and specification have been met.

- 502.33 In the event that any or all of the required improvements are not completed within the time specified in said bond, the governing authority may let or re-let the contract and the subdivider and performance bond shall be severally and jointly liable for the costs thereof to the amount specified for such improvements(s) in said bond.

#### 502.4 Prepayment

In lieu of construction by the subdivider of any or all required improvements, the subdivider may make payment to the governing authority of the full amount of said improvements in compliance with the requirements herein below:

- 502.41 The governing authority shall have the right to refuse prepayment for any and/or all required improvements and require construction and installation thereof by the subdivider.
- 502.42 Where accepted by the governing authority, prepayment shall be in an amount equal to 125% of the cost as established by the governing authority for the required improvements which have not been either completed and certified and accepted as provided in Section 502.2 or covered by a performance bond as provided in Section 502.3
- 502.43 Where the governing authority accepts prepayment. After completion of said improvements, any unexpected amounts shall be refunded to the subdivider by the governing authority.

#### 502.5 Bond Funds

Any funds received from the financial guarantees required by this Ordinance shall be used only for the purpose of making the improvements for which said guarantees were provided.

## ARTICLE VI

### DEFINITIONS

600 Except as specifically defined herein, all words used in this Ordinance have their customary dictionary definitions. For the purposes of this Ordinance, certain words or terms used herein are defined as follows:

- 600.1 Word used in the present tense includes the future tense. Words used in the singular include the plural, and words used in the plural including the singular;
- 600.2 The word "shall" is always mandatory;
- 600.3 The word "may" is permissive;
- 600.4 The word "lot" includes the word "plot" or "parcel";
- 600.5 The word "structure" includes the word "plot" or "parcel";
- 600.6 The word "person" includes a firm, association, organization, partnership, trust company, or corporation as well as an individual;
- 600.7 The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended", "arranged", or "designed" to be used or occupied; and,
- 600.8 Term "Planning Commission" refers to the City of Georgetown Planning and Zoning Commission.

- 601. BLOCK: A parcel of land entirely surrounded by highways, parks, railroads, right-of-ways, waterways, or by a combination thereof.
- 602. EASEMENT: A grant by a property owner to any person, firm, association or the general public, of a strip or parcel of land for a specified purpose.
- 603. ENGINEER: A registered engineer in good standing with the South Carolina Board of Engineering Examiners.
- 604. GOVERNING AUTHORITY: The City Council of Georgetown, South Carolina.
- 605. LOT: A piece of parcel, tract or plot of land intended as a unit for transfer of ownership of for development or both.
- 606. PLAT: A map or drawing upon which the subdivider's plan of the subdivision is presented for approval.
- 607. STAFF PLANNING COMMISSION: Any person, firm, or agency utilized by the Planning Commission in the review and approval procedure for subdivision.
- 608. STREET: A dedicated public way for vehicular traffic, whether designated as an avenue, boulevard, thoroughfare, road, highway, expressway, lane, drive, alley, or any other public way. For the purposes of this Ordinance, "streets" are divided into the following categories:
  - 608.1 Alley – A vehicular way used primarily for providing secondary access along the rear or side of properties which are also served by one of the other types of streets defined herein;



**State of South Carolina**  
**The Circuit Court of the Fifteenth Judicial Circuit**

**Benjamin H. Culbertson**  
Resident Circuit Judge

P. O. Box 479 (zip code 29442)  
401 Cleland St. (zip code 29440)  
Georgetown, South Carolina  
Telephone: (843) 545-3030  
Facsimile: (843) 545-3282  
Email: bculbertson@sccourts.org

March 8, 2013

RECEIVED MAR 13 2013

John M. Leiter, Esquire  
John M. Leiter, P.A.  
1203 48<sup>th</sup> Avenue North, Suite 109  
Myrtle Beach, SC 29577

Elise F. Crosby, Esquire  
Crosby & Crosby  
405 Dozier St.  
Georgetown, SC 29440

K. Douglas Thornton, Esquire  
Thornton Law Firm, LLC  
1025 Third Avenue  
Conway, SC 29526

Charles T. Smith, Esquire  
Grimes & Smith  
1112 Highmarket St.  
Georgetown, SC 29440

Lawrence M. Hershon, Esquire  
Parker, Poe, Adams & Bernstein, LLP  
P.O. Box 1509  
Columbia, SC 29202

RE: *Goodwin, et al. v. Landquest Development, LLC, et al.*  
Case Number: 2009-CP-22-1045

Dear Ms. Crosby and Gentlemen:

I ask that Mr. Charles T. Smith prepare an order denying the plaintiffs' Motion to Reinstate/Restore Complaint and Lis Pendens and to Consolidate Separate Trials in the above referenced case.

Pursuant to 11 U.S.C.A. §108(c), the plaintiffs had 30 days after notice of the termination or expiration of the bankruptcy stay to seek restoration of this case. Since the plaintiffs' motion to restore was not filed for over 17 months after dismissal of the bankruptcy case, this action is now barred by the statute of limitations.

Since restoration of the case is denied, consolidation of this case with the foreclosure action is moot.



John M. Leiter, Esquire  
K. Douglas Thornton, Esquire  
Lawrence M. Hershon, Esquire  
Elise F. Crosby, Esquire  
Charles T. Smith, Esquire

---

March 8, 2013  
Page Two

Please provide the proposed order to all counsel of record for review prior to submitting it to me for signature.

With kindest regards, I remain

Very truly yours,

  
Benjamin H. Culbertson

BHC/bhc

LAW OFFICES OF  
**JOHN M. LEITER, PA**  
ATTORNEYS AND COUNSELORS AT LAW

1203 48TH AVE. N. SUITE 109  
MYRTLE BEACH, SC 29577

TELEPHONE (843) 449-1451  
FACSIMILE (843) 449-4884  
E-MAIL jleiter@48th.com

June 18, 2013

The Honorable Benjamin H. Culbertson  
Georgetown County Court House  
Post Office Box 479  
Georgetown, SC 29442

Via Email Only to:  
Bculbertsonj@sccourts.org  
Bculbertsonlc@sccourts.org

Re: John Steven Goodwin, et al. v. Landquest Development, LLC, et al.  
Civil Action No.: 2009-CP-22-1045

Dear Judge Culbertson:

I have received a copy of the proposed Order Charles Smith has forwarded to you. Mr. Smith and I had an email exchange which I am enclosing for your review. We would ask that the Order include enough facts to determine when the statute of limitations began and when it ended.

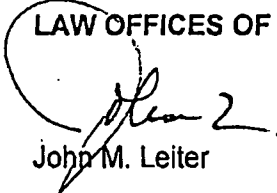
You also announced from the bench that your Order was not going to rely on 40(j), SCRPC and the proposed Order does not reflect your ruling from the bench.

If you have any questions or comments, please do not hesitate to contact us.

With best regards,

Sincerely yours,

LAW OFFICES OF JOHN M. LEITER, PA

  
John M. Leiter

JML/smp  
Attachment

cc: K. Douglas Thornton, Esq. (w/ encl., via email only)  
Charles T. Smith, Esq. (w/ encl., via email only)  
Kristin Atkins, Esq. (w/ encl., via email only)  
Donald Hunt, Esq. (w/ encl., via email only)  
Ronald Richter, Esq. (w/ encl., via email only)  
Elise F. Crosby, Esq. (w/ encl., via email only)  
Lawrence M. Hershon, Esq. (w/ encl., via email only)

## AGREEMENT

This Agreement is made this 20<sup>th</sup> day of August, 2013, by and between the City of Georgetown, South Carolina ("Obligee") and Hartford Fire Insurance Company ("Surety") upon the following terms and conditions.

## RECITALS

WHEREAS, Obligee is the governing authority with respect to a Subdivision within the City of Georgetown, South Carolina – known as the Harbor Club at Winyah Bay (the "Development") – which was approved, and for which a Final Plat was recorded in accordance with the Land Development Regulations for the City of Georgetown, South Carolina; and

WHEREAS, the Subdivider for the Development was South Bay Properties, LLC; and

WHEREAS, in accordance with the Land Development Regulations, the Subdivider submitted plans and specifications to Obligee for all required improvements under the Land Development Regulations, along with a Final Plat for the Subdivision; and

WHEREAS, Obligee approved the plans and specifications, and the Final Plat, for the Subdivision and required the Subdivider to provide the financial guarantee, in the form of a surety bond, in accordance with the Land Development Regulations to ensure that funds would be available to complete the "required improvements" as described in Section 501 of the Land Development Regulations; and

WHEREAS, following approval of the plans and specifications and submission of the financial guarantee by the Subdivider, Obligee allowed the Final Plat to be recorded; and

WHEREAS, in accordance with the Land Development Regulations, the Subdivider, as Principal, and Surety executed that certain Subdivision Performance Bond, dated July 17, 2007, attached hereto as **Exhibit 1**, and

WHEREAS, an estimate of costs was developed by the Subdivider and used to calculate the penal sum limit contained in the Subdivision Performance Bond; (**Exhibit 2**) and

WHEREAS, the Oblige accepted said Subdivision Performance Bond and approved and recorded the Final Plat for the Harbor Club at Winyah Bay, attached hereto as **Exhibit 3**; and

WHEREAS, the Plans and Specifications previously submitted in connection with the development of the Harbor Club on Winyah Bay are attached hereto as **Exhibit 4**; and

WHEREAS, the Subdivider, following approval and recording of the Final Plat, proceeded to sell various lots within the Subdivision but did not install the infrastructure; and

WHEREAS, after the expiration of the one year period for the completion of the specified improvements, various third parties claiming an interest in the Subdivision commenced civil actions seeking declaratory judgments as to the obligations of the Oblige and Surety with respect to the Subdivision Performance Bond (list of civil actions attached as **Exhibit 5**); and

WHEREAS, during the pendency of such civil actions and discussions between the Oblige and Surety relative to the obligations under the Subdivision Performance Bond and the Oblige's demand to Surety thereunder, the Subdivider commenced bankruptcy proceedings which affected the Subdivision; and

WHEREAS, Oblige filed a cross-claim against Surety in the civil action *Bonnie N. Charlton and Ronald L. Charlton v. The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company, and South Bay Properties, LLC*, Civil Action No. 2008-CP-22-1490, pending in the Circuit Court for Georgetown County (the Lawsuit), related to the Subdivision Performance Bond; and

WHEREAS, during the interim period, various lots within the subdivision have been foreclosed on account of delinquent tax obligations and a number of said lots are now believed to be under the control of the Georgetown County Forfeited Land Commission; and

WHEREAS, the Subdivider applied for and obtained permits believed to be necessary for the improvements for the Development and, during the interim period, Surety has undertaken to confirm that the permits previously obtained in connection with the subdivision have been, or will be, extended; and

WHEREAS, during the interim period, the engineering firm that performed water, sewer and landscape architectural design services for the subdivision has given notice to the Obligee and Surety that its design and engineering documents for the Subdivision are copyright protected and their use has not been authorized (there has been no such assertion or notice by the engineering firm with respect to the survey and roadway design or design documents and it is assumed for purposes of this Agreement that the survey and roadway design documents submitted to and approved by Obligee in connection with the Subdivision approval are available for use); and

WHEREAS, as an accommodation to facilitate the continuing potential for having the site infrastructure installed in accordance with the previously submitted plans and specifications, Surety has made an agreement with the engineering firm that performed the water, sewer and landscape design to allow the authorized use of said design and engineering documents for use in installation of said "site infrastructure" and for the engineering firm to provide other services which may be, or become, necessary for the work to proceed; and

WHEREAS, Surety has contacted and solicited proposals from qualified contractors to provide prices and proposals for performing the work to install "site infrastructure" in accordance with the previously submitted plans and specifications for the Development approved by the permitting authorities, and previously obtained responsive proposals; and

WHEREAS, the scope of work, including expected quantities required for the installation of the "site infrastructure" pursuant to the plans and specifications, and upon which the qualified contractors' proposals have been based, is as set forth in **Exhibit 6**, attached hereto; and

WHEREAS, following execution of this Agreement Surety will solicit and obtain best and final proposals from the qualified contractors to install the scope of work described in **Exhibit 6** attached hereto; and

WHEREAS, Oblige and Surety desire to avoid further delay, dispute and unnecessary expense and to make agreement with each other to resolve any issues between them arising out of, or in connection with the Subdivision Performance Bond and the installation of the "site infrastructure" for the Subdivision covered thereby.

NOW, THEREFORE, in mutual consideration of the covenants, terms and promises contained herein, Oblige and Surety agree:

1. Surety will pay \$49,500.00 to Milone & MacBroom (M&M) and make such agreement as is necessary to engage and pay said firm to update and seal its design for the Development, authorize use of its design and design documents, and provide such additional engineering services as may be necessary for the work to install the "site infrastructure" pursuant to the plans and specifications for such work. For purposes of this Agreement, it is understood that the survey and roadway design documentation originally prepared by another engineering firm and previously submitted in connection with the Subdivision approval will be used without further cost or restriction.
2. M&M has proposed that updated and final plans and specifications for the development can be signed and sealed and delivered to Oblige by approximately August 16, 2013, assuming no unforeseen delays. Upon receipt of the final plans and specifications, Surety will promptly solicit and obtain final proposals from qualified contractors to install the

"site infrastructure" pursuant to the plans and specifications for such work, which scope of work and estimated quantities are reflected in **Exhibit 6** attached hereto.

3. Surety will select the contractor and proposal for the work which it deems acceptable and advantageous and, assuming receipt of one or more proposals deemed acceptable to Surety, will execute a unit price Contract with said contractor to perform the work reflected in **Exhibit 6**.
4. Surety is informed and believes that Subdivider had previously obtained the necessary permits. Surety shall provide Obligees with written proof that such permits are still active. If there are any required permits that are revoked for reasons beyond the reasonable control of the Surety or the Contractor, thereby rendering the Surety's obligations under the Subdivision Performance Bond impossible to perform, the Surety shall be relieved of its obligations under this Agreement. The Surety is required to keep the Obligees fully advised of all matters regarding permits and shall timely provide the Obligees with copies of all records related to the application for and revocation of any required permits. In addition, the Obligees retain the right to contest any claim by the Surety that the required permits cannot be obtained. The Obligees further retain the right to contest any revocation of the required permits by any governmental authority. The Surety shall cooperate with the Obligees in contesting any revocation of the required permits by any governmental authority.
5. In addition to the signed and sealed documents as referenced herein, Surety shall provide Obligees, through the Engineer, with as-built drawings, and certification by the Engineer of Record for DHEC that the improvements have been constructed in accordance with the plans and specifications.
6. Surety will pay the contractor for such work pursuant to said Contract.

7. Obligee agrees that all payments by Surety to the contractor and to M&M or other engineer(s) as described herein constitute payments to be applied against the Penal Sum limit of the Subdivision Performance Bond.
8. Obligee agrees that in making and performing this Agreement, Surety is acting solely in its role and capacity as surety under the Subdivision Performance Bond in response to Obligee's demand thereunder. Neither Surety nor Obligee assumes or accepts any other liability or responsibility for the Development or the future operation or maintenance of the installed infrastructure.
9. Obligee ratifies and affirms the penal sum limitation of liability set forth in the Subdivision Performance Bond, which penal sum limit is expressly reserved and is not waived by Surety.
10. Obligee agrees that upon completion by the contractor of the installation of the scope of work reflected in Exhibit 6 (pursuant to the Contract between Surety and Contractor), Surety's Subdivision Performance Bond shall be discharged and released and Surety's liability thereon shall be extinguished subject to the reservation set forth in the following Paragraph.
11. Recognizing that the estimate of costs used to develop the Penal Sum limitation for the Subdivision Performance Bond includes estimates of costs for some items (Exhibit 2) which Surety alleges are not required by the Land Development Regulations and which are not included in the Plans and Specifications for the Subdivision which were incorporated by reference into the Subdivision Performance Bond – and which, therefore, are not included in the Scope of Work attached as Exhibit 6 – Obligee and Surety agree that the Obligee reserves, and does not waive or release, its right to assert that such item(s) are covered by the Subdivision Performance Bond if a third-party, with a valid



interest in the Subdivision, pursues litigation against Obligee on the basis that such item(s) were within the covered scope of the Subdivision Performance Bond and the Obligee was obligated to have such work performed through said Bond. In event of such litigation by such third-party, the Obligee shall give notice of the commencement of such litigation to Surety and allow Surety the opportunity to participate in the defense of such litigation; however, if the litigation is successful against the Obligee and the third-party obtains a judicial determination on the basis that said item(s) were within the existing scope of said Bond, the Obligee shall have the right to pursue a claim against Surety that such item(s) shall be installed. This right to pursue a claim against Surety is not only limited to a right to pursue a claim after judicial determination, but includes Obligee's right to join Surety by way of third-party complaint or other procedure in the litigation commenced by the third-party. This exception from the foregoing discharge and release provisions of this Agreement, and reservation of claim by the Obligee shall only apply to the extent it is judicially determined that such item(s) were within the existing scope of the Bond. Furthermore, Surety expressly agrees any applicable statute of limitations period is tolled by this Agreement and expressly waives any defense as to statute of limitations. The provisions of this Paragraph apply only to the items appearing in Exhibit 2, and it is agreed that the Surety shall not be required to indemnify the Obligee with respect to any third-party claims that may allege the Obligee's failure to install or its failure to have the Surety install any items not included in Exhibit 2.

12. In further consideration of this Agreement, Surety agrees, upon execution of this Agreement, to pay consideration in the amounts of Thirty Thousand and no/100 Dollars (\$30,000.00) and Fifty Thousand and no/100 Dollars (\$50,000.00) to Obligee in accordance with the terms and purposes stated hereinbelow.

A. The consideration payment in the amount of Thirty Thousand and no/100 Dollars (\$30,000.00) shall be paid to Obligee for Obligee's exclusive control and use subject to the terms and conditions set forth in this subparagraph. The parties agree that the payment of this amount by Surety, together with its other obligations as set forth in this subparagraph, shall fully settle and resolve any dispute related to the item identified as "Refit Existing Lift Station" on Exhibit 2. At the time of this Agreement, a final determination by the engineers who will be tasked with completing the design and specifications of the sanitary sewer and stormwater systems has not been made, and as a result, no final determination has been made as to the improvements, if any, that may be required to be made to the existing lift station. If the final plans and specifications require improvements to the existing lift station, as determined by the engineer of record in consultation with the City Engineer, the parties agree that the consideration payment in the amount of Thirty Thousand and no/100 Dollars (\$30,000.00) shall be expended to pay for those improvements as follows: If the required improvements cost Thirty Thousand and no/100 Dollars (\$30,000.00) or in excess of that amount, the Obligee shall use the entire consideration payment to contribute to the costs of those improvements and Surety shall be financially responsible only for the costs of those improvements in excess of that amount. If the required improvements cost less than Thirty Thousand and no/100 Dollars (\$30,000.00), Obligee shall contribute the required amount from the consideration payment for said improvements and shall be entitled to retain the difference between the cost and the amount of the consideration payment and apply those remaining sums to any future maintenance costs, repair costs, or improvements to the sanitary sewer and

stormwater systems. However, if the final plans and specifications do not require immediate improvements to the existing lift station, as determined by the engineer of record in consultation with the City Engineer, the parties agree that the consideration payment in the amount of Thirty Thousand and no/100 Dollars (\$30,000.00) may be retained in full by Obligee and may be used for any future maintenance costs, repair costs, or improvements to the sanitary sewer and stormwater systems.

- B. The consideration payment in the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) shall be paid to Obligee to be held in trust or escrow for later payment to a Homeowners Association after such an entity is legally formed and established. This consideration payment is paid by Surety subject to the terms and conditions set forth in this subparagraph which Homeowners Association and its members shall be required to agree to as a condition for receiving this consideration payment. The parties agree that the payment of this consideration by Surety does not alter the terms or conditions of Paragraph 11 of this Agreement. The parties further agree that the payment of this consideration by Surety shall not fully settle and resolve any dispute related to any of the items appearing in Exhibit 2 that Surety does not install or have installed as part of the Scope of Work attached as Exhibit 6 (except for the "Refit Existing Lift Station" item addressed in subparagraph A above); however, in the event that there is a judicial determination made as described in Paragraph 11, finding that one or more items from Exhibit 2 were within the covered scope of the Subdivision Performance Bond and Obligee was obligated to have such work performed through said Bond, then in that event only, the parties, including Homeowners

Association and its members as a condition for receiving this allowance, agree Surety shall be entitled to a set-off or credit for the costs of those item(s) not to exceed the amount of Fifty Thousand and no/100 Dollars (\$50,000.00) and that Obligee cannot be liable to Homeowners Association or its members for the amount of that set-off or credit. Subject to the agreement of Homeowners Association and its members to these terms as a condition for receiving the consideration payment, the parties further agree that, once the consideration payment is transferred to Homeowners Association, the monies may be used by Homeowners Association for any common purpose for the subdivision as it sees fit in accordance with any by-laws adopted to govern Homeowners Association. In the event that Homeowners Association is not formed or Homeowners Association and its members do not agree to the terms of subparagraph B within two years of the execution of this Agreement, the Fifty Thousand and no/100 Dollars (\$50,000.00) held in trust or escrow shall be returned by Obligee to Surety.

13. In further consideration of this Agreement, the Obligee agrees, upon execution of this Agreement, to file a stipulation of dismissal without prejudice of its cross-claim against Hartford Casualty Insurance Company and Hartford Fire Insurance Company in Case No. 2008-CP-22-1490.
14. This Agreement shall not be construed to waive, limit, alter, or amend any of the Surety's obligations, rights, defenses, or liabilities under the Bond, except Surety expressly waives the affirmative defense that an action is time-barred by the statute of limitations in a situation as contemplated by paragraph 11.

15. Obligee and Surety do not intend to create any rights for the third-parties under, or by virtue of the terms of this Agreement. No rights shall accrue hereunder to or for the use of any other person, firm, corporation, or governmental entity other than the parties hereto and their respective successors and assigns. There are no intended third-party beneficiaries of this Agreement.
16. This Agreement may be executed in two or more counterparts, each of which shall be deemed as an original but all of which shall constitute one and the same Agreement.
17. This Agreement shall bind the parties hereto and their successors and assigns and shall not be modified or amended except by a written document duly executed by the parties hereto, or their successors.
18. This Agreement and its exhibits 1-6 constitute the whole of the understanding, discussions, and agreements between Obligee and Surety, including required or prospective documents to be provided as referenced herein. The terms and provisions of this Agreement are contractual and not mere recitals.
19. It is understood and agreed by the Obligee and Surety that this Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.
20. All notices and communications required by or pertaining to this Agreement shall be sent to the Parties at the respective following addresses:

**To Surety:**

Gary Judd  
Hartford Bond Claims  
Hartford Plaza, Tower 4  
Hartford, CT 06115

with a copy to:

James Lynn Werner, Esquire  
Parker Poe Adams & Bernstein LLP  
PO Box 1509  
Columbia, SC 29202-1509

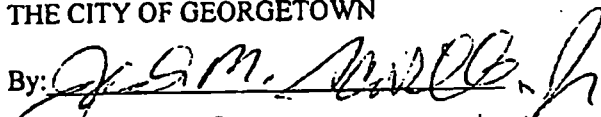
To Obligee:

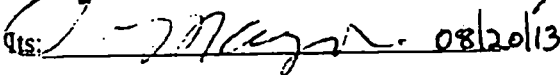
Jack M. Scoville, Jr., Mayor, City of Georgetown  
P.O. Box 939  
Georgetown, SC 29442

With a copy to:

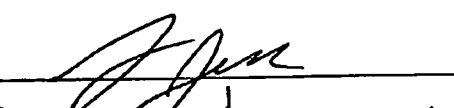
Elise F. Crosby, Esq.  
Crosby Law Firm, LLC  
405 Dozier St.  
Georgetown, SC 29440

THE CITY OF GEORGETOWN

By: 

Dts:  08/20/13

HARTFORD FIRE INSURANCE COMPANY

By: 

Its: Director Aug. 12, 2013

---

# EXHIBIT 1

SOLIDIFICATION PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that  
we, South Bay Properties, LLC  
as Principal, and Hartford Casualty Insurance Company  
authorized to do business in the state of South Carolina, and having its office at  
690 Asylum Avenue, Hartford, CT 06115  
as surety, are held and firmly bound unto the City of Georgetown

as obligee, in the penal sum of Seven Million Eight Hundred Eighty-two Thousand  
Three Hundred Fifty-nine & no/100 (\$7,882,359.00) for the  
payment of which sum well and truly to be made, we bind ourselves, our heirs, administrators, executors,  
successors and assigns, jointly and severally, firmly by these presents;

WHEREAS, the above bounden principal has been granted approval by the above named obligee  
for site infrastructure (roads and utilities)

NOW, THEREFORE, the condition of the above obligation is such, that if the said Principal shall  
complete the above improvements in accordance with the plans and specifications prepared by

Trico Engineering Consultants, Inc.

within the 1 year period from the date hereof; and shall indemnify and save harmless the town from all  
costs and damages which it may suffer by reason of failure to do so, and fully reimburse and repay the  
obligee any outlay and expense which it may incur in making good any such default, then this obligation  
shall be null and void, otherwise to remain in full force and effect.

THIS FORGOING OBLIGATION, however, is limited by the following express conditions, the  
performance of which shall be a condition precedent to any rights of claims or recovery hereunder:

1. Upon the discovery by the obligee, or by the obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the obligee shall endeavor to give written notice thereof with the fullest information obtainable at the time to the surety at its office.
2. Legal Proceedings for recovery hereunder may not be brought unless begun within twelve (12) months from the date of the discovery of the act or omission of the principal on account of which claims is made.
3. The principal shall be made a party of any suit or action for recovery hereunder, and no judgment shall be rendered against the surety in excess of the penalty of this instrument.
4. No right of action shall accrue hereunder to or for the use or benefit of anyone other than the obligee, and the obligee's right hereunder, may not be assigned without the written consent of the surety.

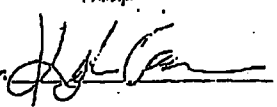


IN WITNESS WHEREOF, this instrument has been executed by the duly authorized representative of the principal and the surety.

SIGNED, SEALED AND DATED: July 17, 2007

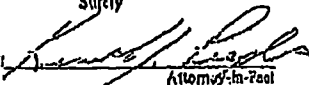
SCUDY BAY PROPERTIES, LLC

Principal

By: 

HARTFORD CASUALTY INSURANCE COMPANY

Surety

By: 

Kenneth J. Peoples,

Attorney-in-Fact

Exhibit 1, Page 2 of 3

# POWER OF ATTORNEY

Direct Inquiry's Attention to:

THE HARTFORD

201 C. B.

P.O. BOX 2103, 600 ASYLUM AVENUE  
HARTFORD, CONNECTICUT 06115

cell: 800-268-1400 or fax: 860-767-3825

Agency Code 22 270297

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- ☒ Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- ☐ New City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- ☐ Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- ☐ Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home offices in Hartford, Connecticut (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of UNLIMITED:

LAURA KROSKY, SANDRA B. BYRUM, SANDRA V. PIERIE, SOUTHGATE JONES III, DAVID H. CLODFELTER, ANGELA B. BRITT, JAMES P. CARTER, II, CINDY GREEN, PHOEBE HONEYCUTT, KENNETH J. PEEPLES, KITARA A. SMITH OF DURHAM, NORTH CAROLINA

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as supra(s) only as delineated above by ☒ and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003, the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*Paul A. Bergenholzer*  
Paul A. Bergenholzer, Assistant Secretary

*David T. Akers*  
David T. Akers, Assistant Vice President

STATE OF CONNECTICUT )  
COUNTY OF HARTFORD ) ss. Hartford

On this 4th day of August, 2004, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say; that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*David T. Akers*

Seal B. Paul  
Henry P. H.

My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of July 17, 2007  
Signed and sealed at the City of Hartford.



*Gary W. Shumper*  
Gary W. Shumper, Assistant Vice President

POA 2003

Exhibit 1, Page 3 of 3

# EXHIBIT 2

Pg. 254

§ 7, 600, 268.71 14-6755

Pg. 256

| The Pl. Section 1 (Sanitary) (U.S. & C.O.) |     |      |           |           |          |             |     |      |       |
|--------------------------------------------|-----|------|-----------|-----------|----------|-------------|-----|------|-------|
|                                            |     |      |           |           |          |             |     |      |       |
| Number of Lbs.                             |     |      |           |           |          |             |     |      |       |
| 60                                         |     |      |           |           |          |             |     |      |       |
| Construction Yrs. (Months)                 |     |      |           |           |          |             |     |      |       |
| 12                                         |     |      |           |           |          |             |     |      |       |
| ITEM                                       | QTY | UNIT | PRICE     | AMOUNT    | DIVISION | AMOUNT      | QTY | UNIT | PRICE |
| 1.000                                      | TON |      | \$ 80.00  | \$ 80.00  |          |             |     |      |       |
| 1.001                                      | LB  |      | \$ 101.77 | \$ 101.77 |          |             |     |      |       |
|                                            |     |      |           |           |          | \$ 1,027.53 |     |      |       |
| S/STATION SEWER                            |     |      |           |           |          |             |     |      |       |
| 1.002                                      | LB  |      | \$ 260.00 | \$ 260.00 |          |             |     |      |       |
| 1.003                                      | LB  |      | \$ 30.00  | \$ 30.00  |          |             |     |      |       |
| 1.004                                      | LB  |      | \$ 35.00  | \$ 35.00  |          |             |     |      |       |
| 1.005                                      | LB  |      | \$ 11.00  | \$ 11.00  |          |             |     |      |       |
| 1.006                                      | LB  |      | \$ 82.17  | \$ 82.17  |          |             |     |      |       |
| 1.007                                      | EA  |      | \$ 150.00 | \$ 150.00 |          |             |     |      |       |
| 1.008                                      | EA  |      | \$ 3.00   | \$ 3.00   |          |             |     |      |       |
| 1.009                                      | EA  |      | \$ 7.00   | \$ 7.00   |          |             |     |      |       |
| 1.010                                      | EA  |      | \$ 5.00   | \$ 5.00   |          |             |     |      |       |
| 1.011                                      | EA  |      | \$ 17.00  | \$ 17.00  |          |             |     |      |       |
|                                            |     |      |           |           |          | \$ 1,192.10 |     |      |       |
| SPECIAL CONSTRUCTION SITE                  |     |      |           |           |          |             |     |      |       |
| 1.012                                      | EA  |      | \$ 40.00  | \$ 40.00  |          |             |     |      |       |
| 1.013                                      | EA  |      | \$ 10.00  | \$ 10.00  |          |             |     |      |       |
| 1.014                                      | EA  |      | \$ 10.00  | \$ 10.00  |          |             |     |      |       |
| 1.015                                      | EA  |      | \$ 7.00   | \$ 7.00   |          |             |     |      |       |
| 1.016                                      | EA  |      | \$ 20.00  | \$ 20.00  |          |             |     |      |       |
| 1.017                                      | EA  |      | \$ 25.00  | \$ 25.00  |          |             |     |      |       |
| 1.018                                      | EA  |      | \$ 35.00  | \$ 35.00  |          |             |     |      |       |
| 1.019                                      | EA  |      | \$ 6.00   | \$ 6.00   |          |             |     |      |       |
| 1.020                                      | EA  |      | \$ 307.76 | \$ 307.76 |          |             |     |      |       |
|                                            |     |      |           |           |          | \$ 565.76   |     |      |       |
| CONTINGENCIES                              |     |      |           |           |          |             |     |      |       |
| 1.021                                      | EA  |      | \$ 100.00 | \$ 100.00 |          |             |     |      |       |
|                                            |     |      |           |           |          | \$ 100.00   |     |      |       |
| SITE TOTAL                                 |     |      |           |           |          |             |     |      |       |
|                                            |     |      |           |           |          | \$ 6,303.07 |     |      |       |

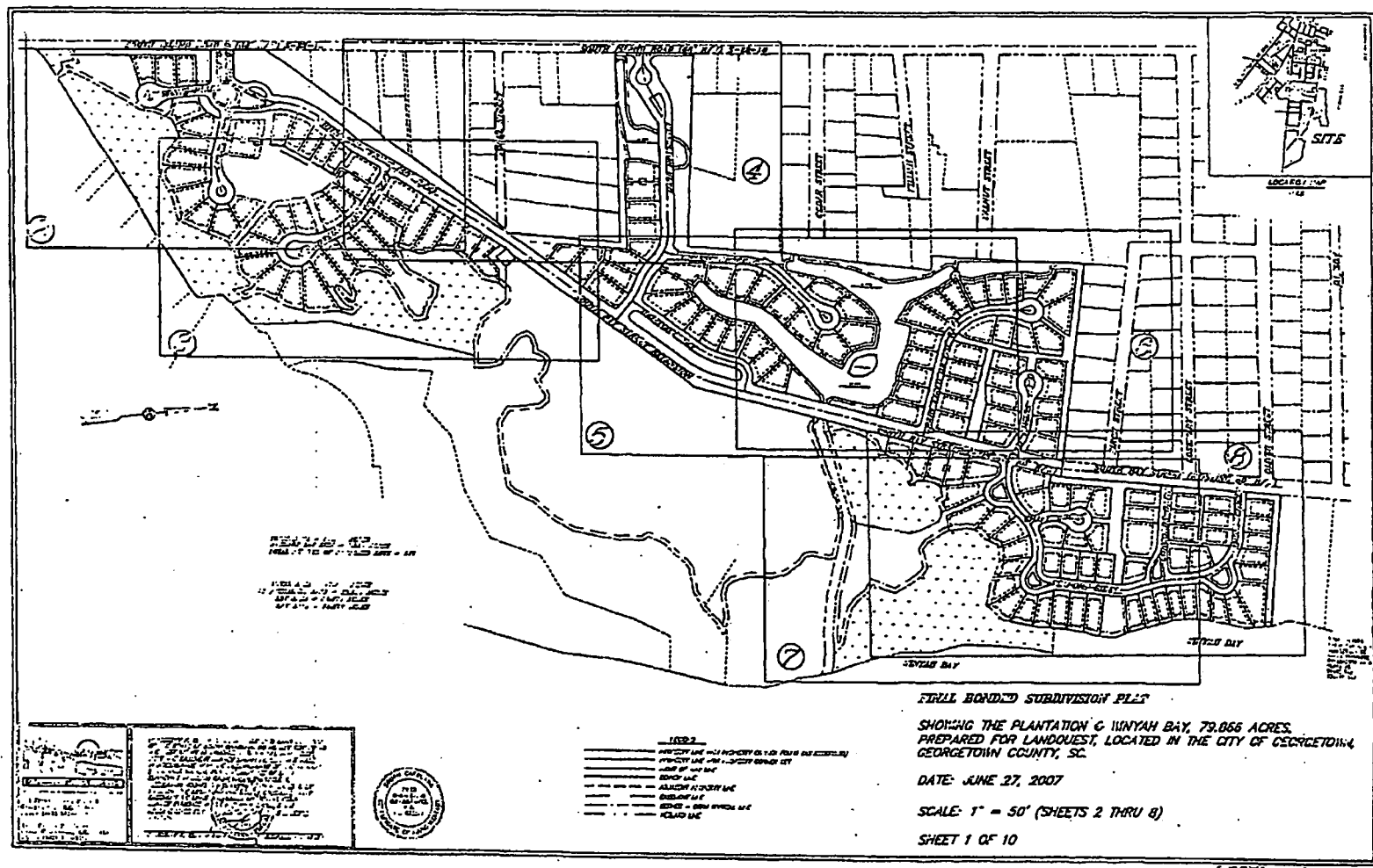
City Board Resolution

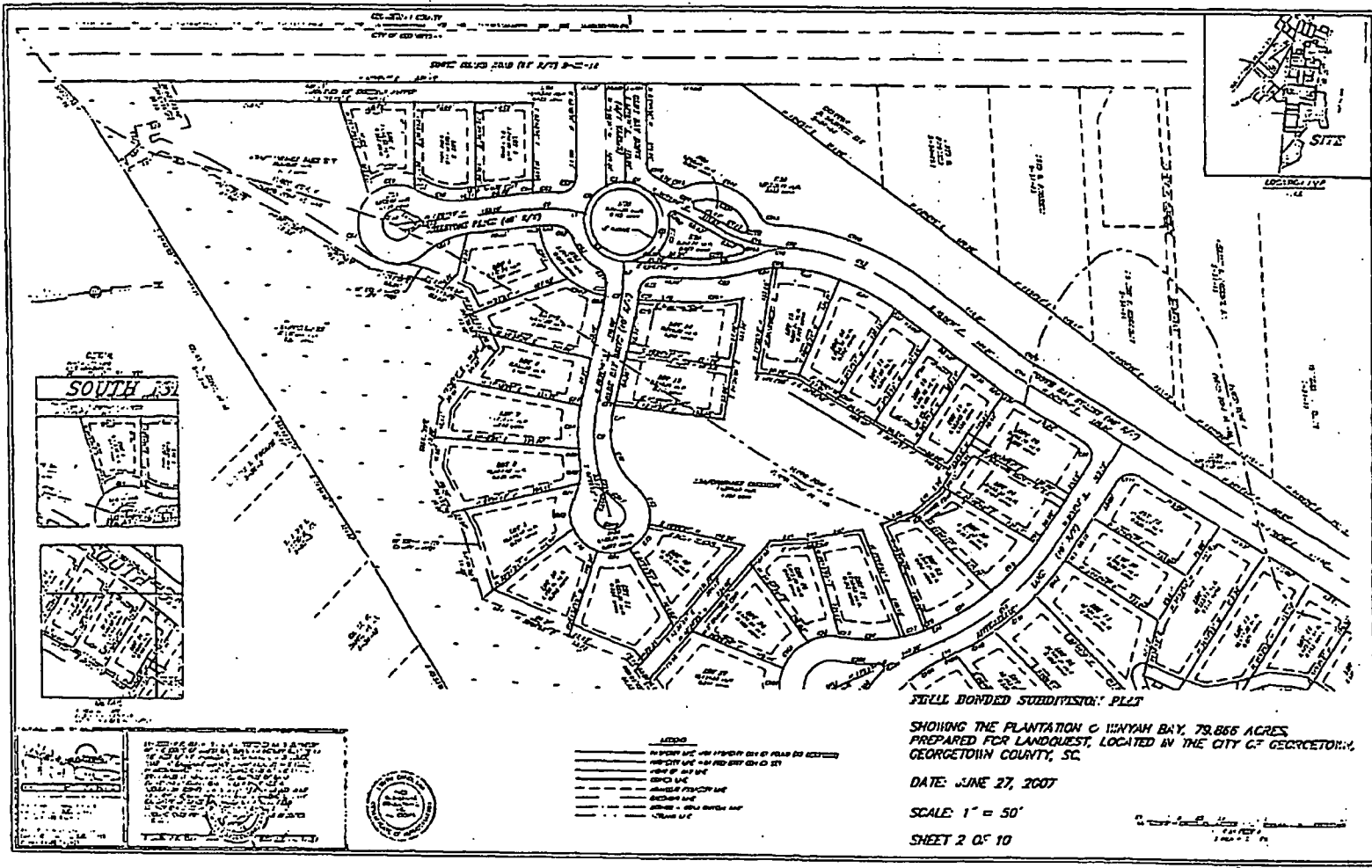
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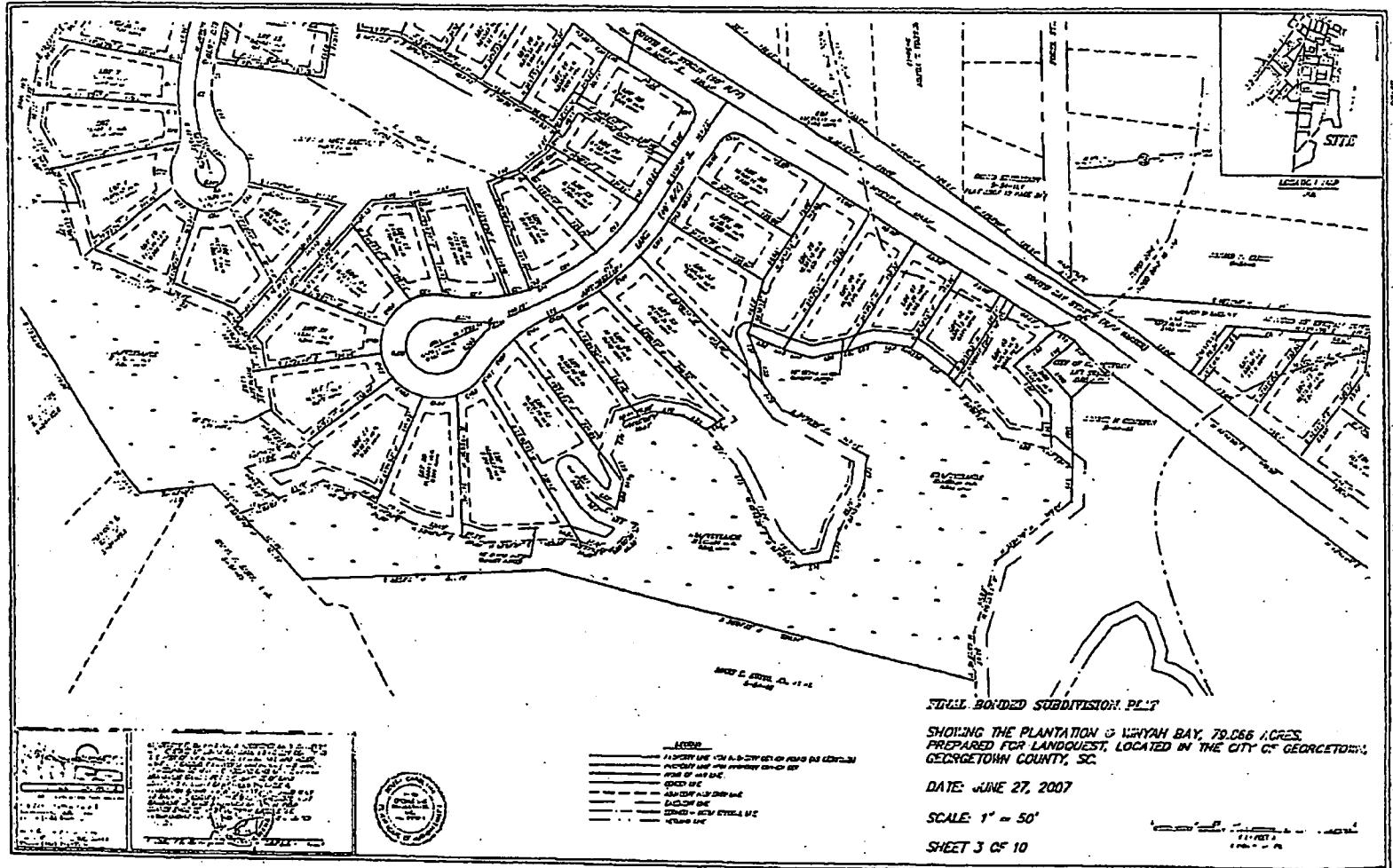
\$ 7,520,277.11 + 44,875.11

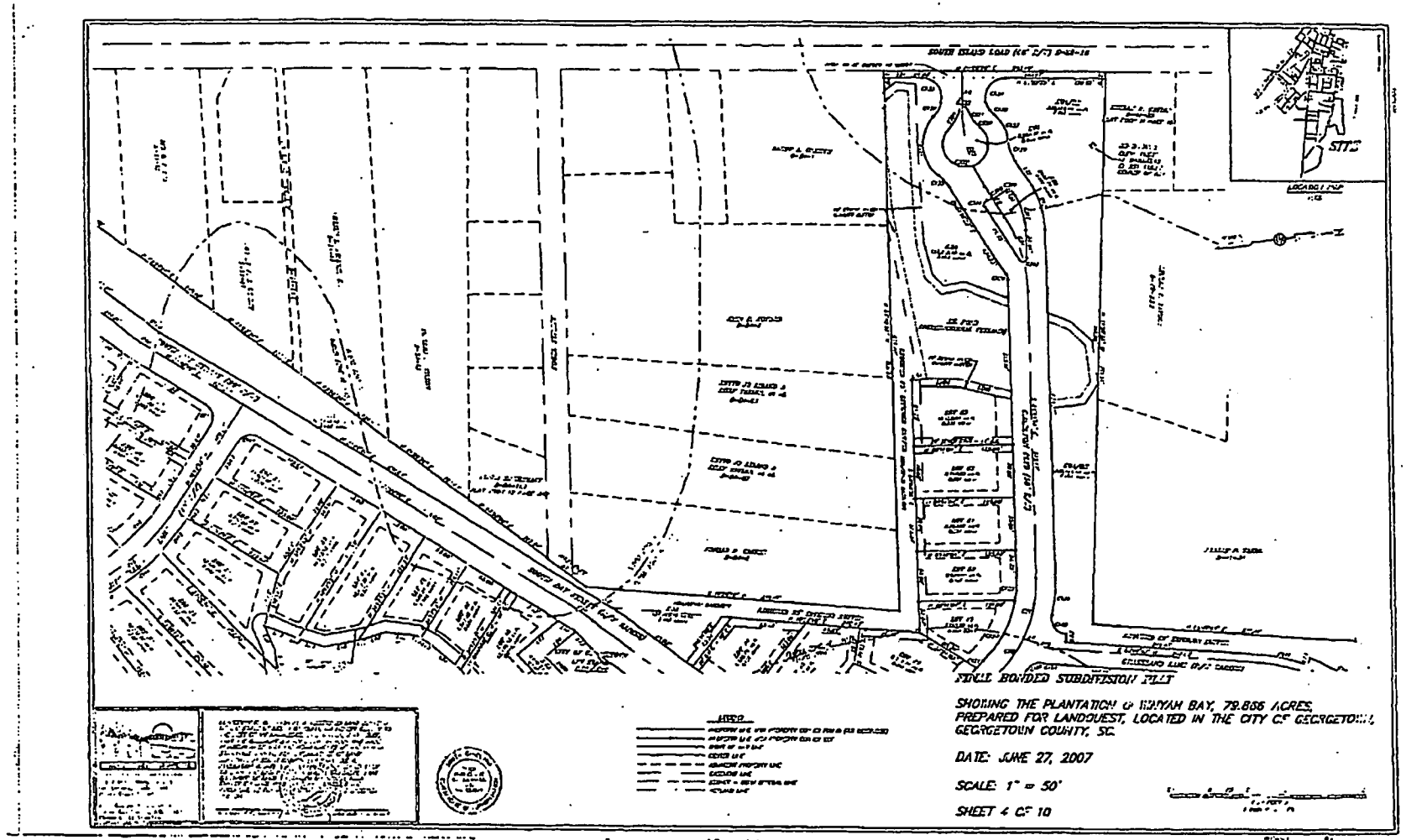
# EXHIBIT 3

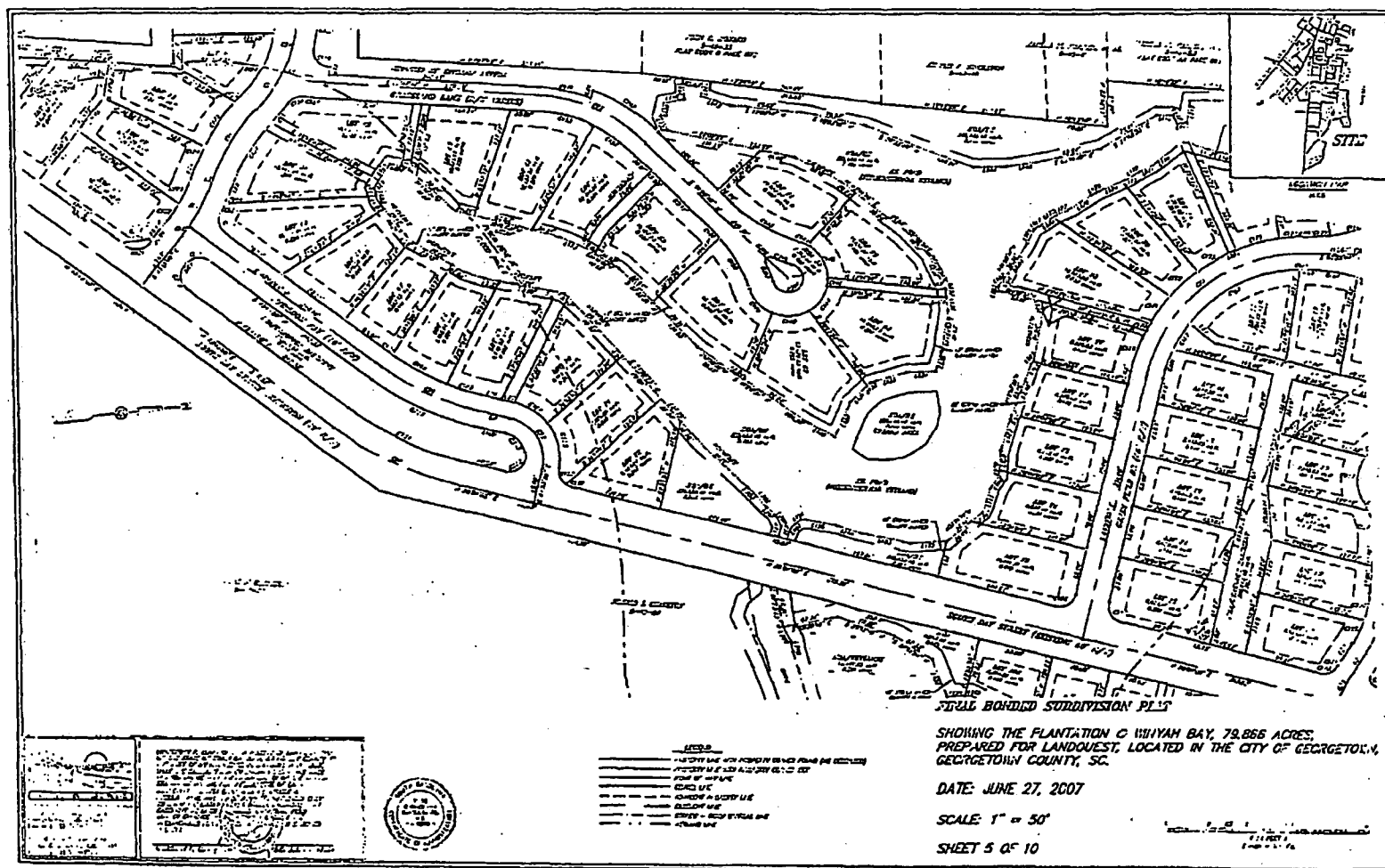


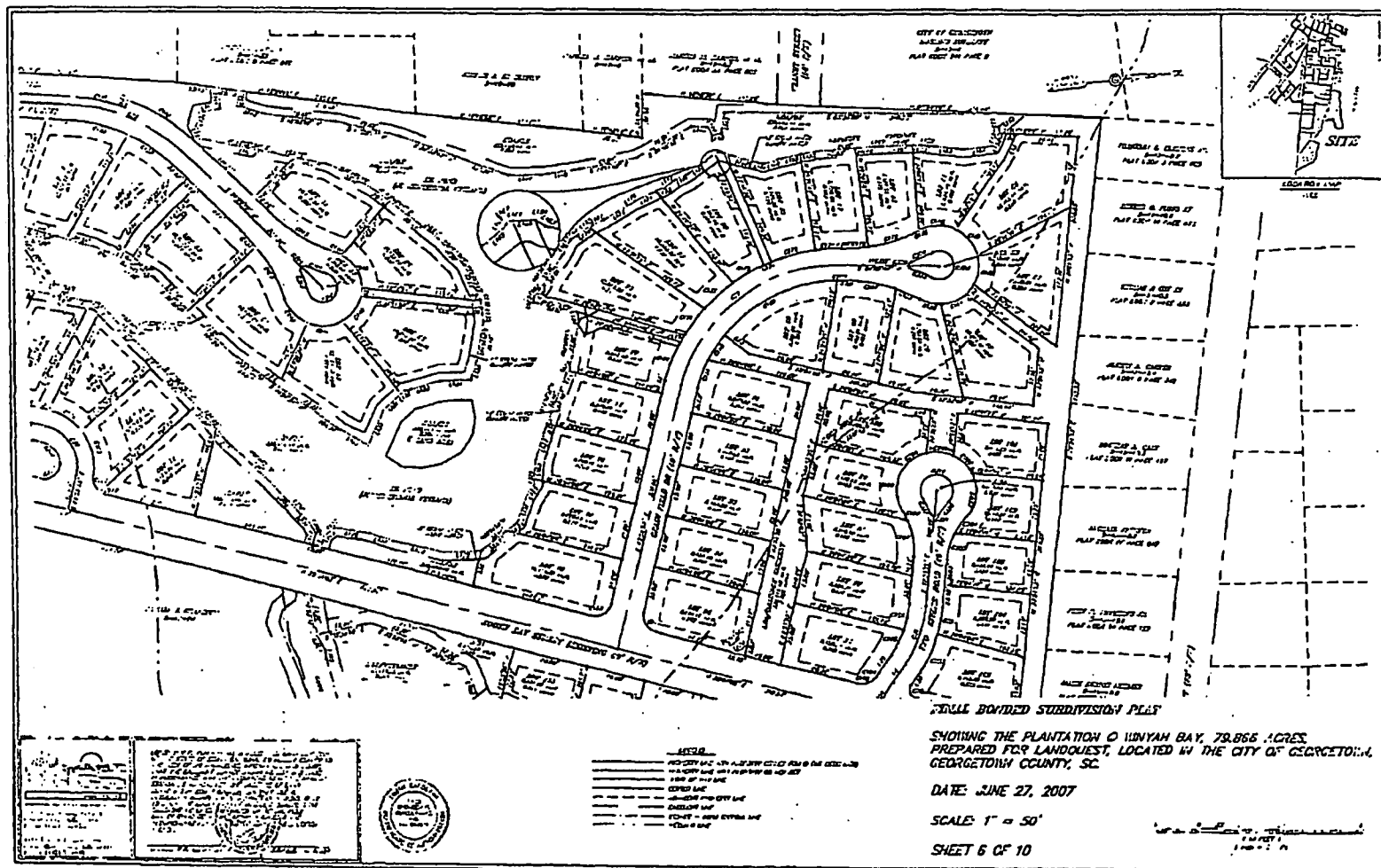


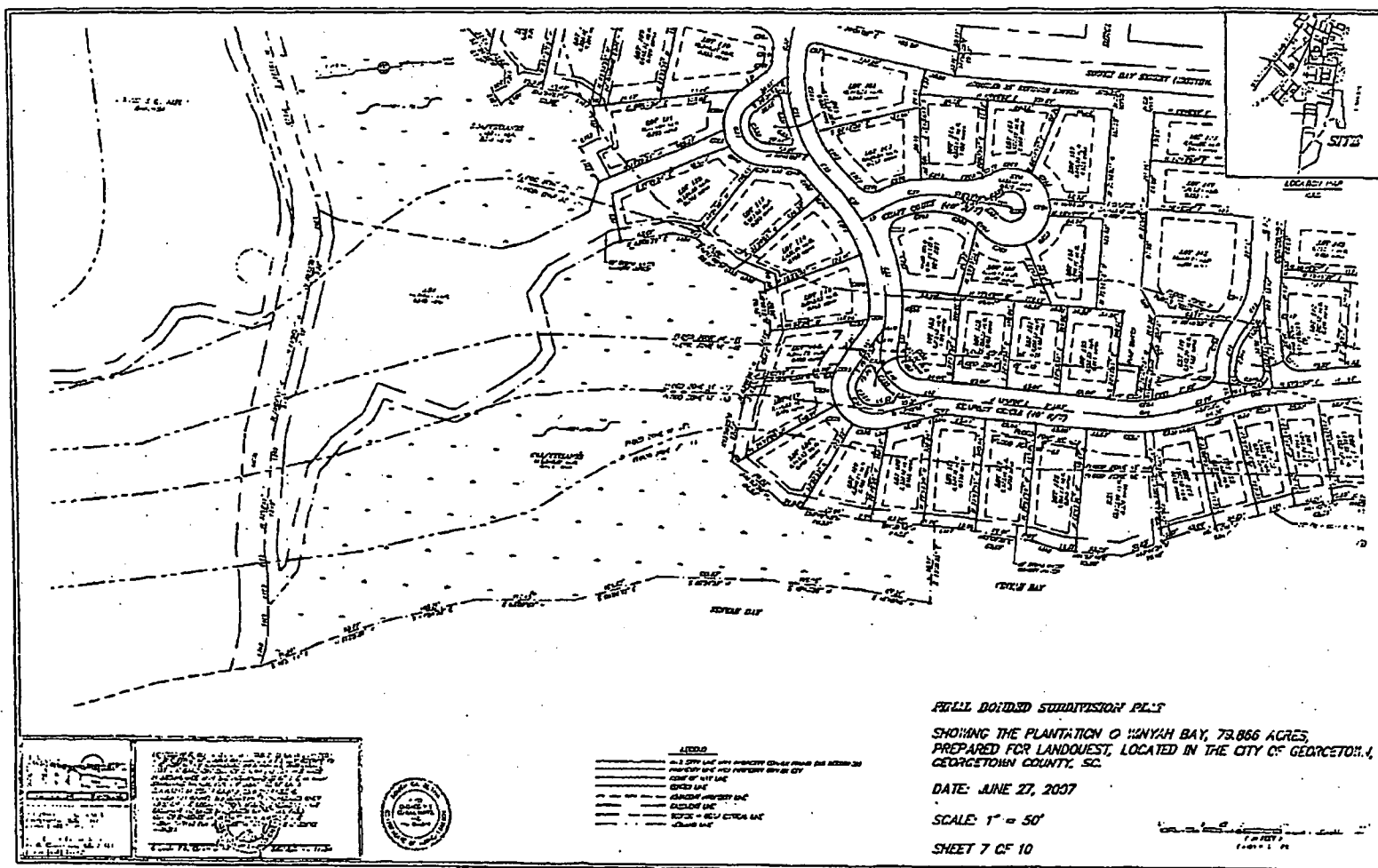


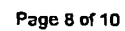




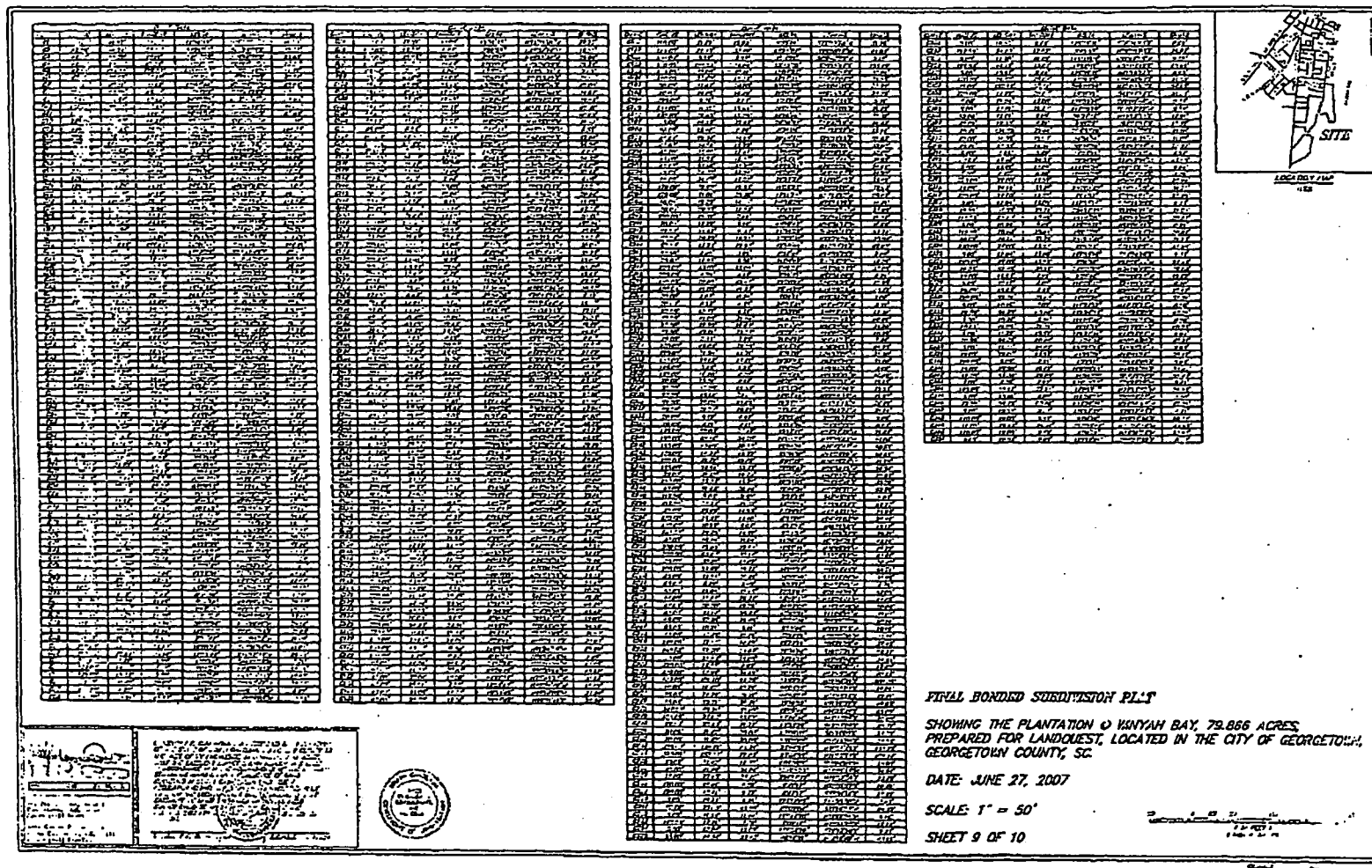


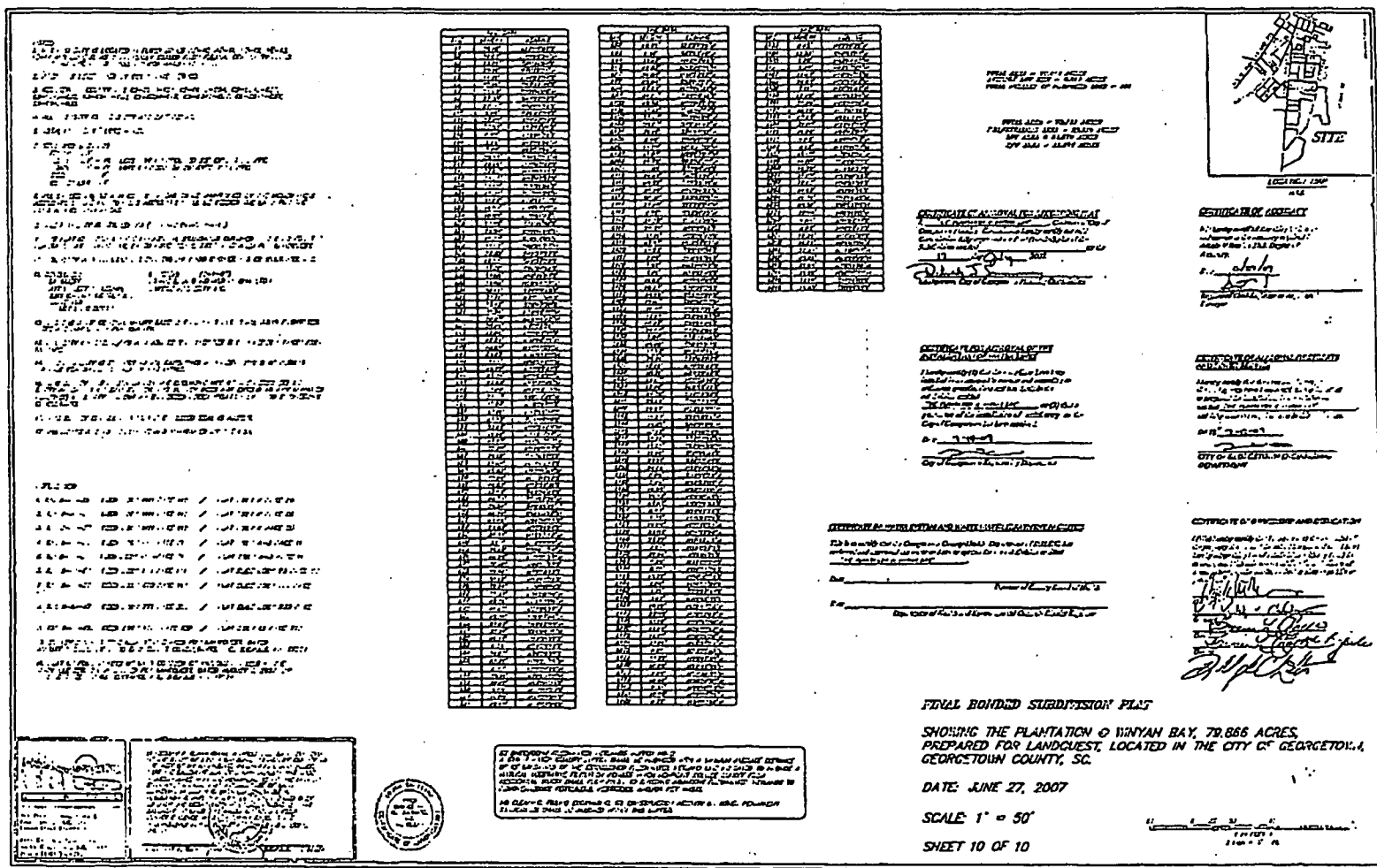












# EXHIBIT 4

APRIL 2, 2007

1. The first step in the process of the investigation is to identify the problem or issue that needs to be addressed. This involves gathering information about the situation and determining the scope of the investigation.

2. Once the problem is identified, the next step is to develop a plan of action. This plan should outline the objectives of the investigation, the methods to be used, and the timeline for completion.

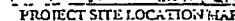
3. The third step is to collect data. This involves gathering information from various sources, including interviews, observations, and documents. The data should be organized and analyzed to identify patterns and trends.

4. The fourth step is to interpret the data. This involves drawing conclusions from the data and identifying the causes of the problem. It is important to consider the limitations of the data and the potential for bias.

5. The final step is to report the findings. This involves writing a report that summarizes the results of the investigation and provides recommendations for action. The report should be clear, concise, and easy to understand.



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SOUTH BAY PROPERTIES LLC  
5511 CAPITAL CENTER DRIVE - SUITE 105  
RALEIGH, NORTH CAROLINA 27603  
T: (919) 256-1901  
F: (919) 256-1902

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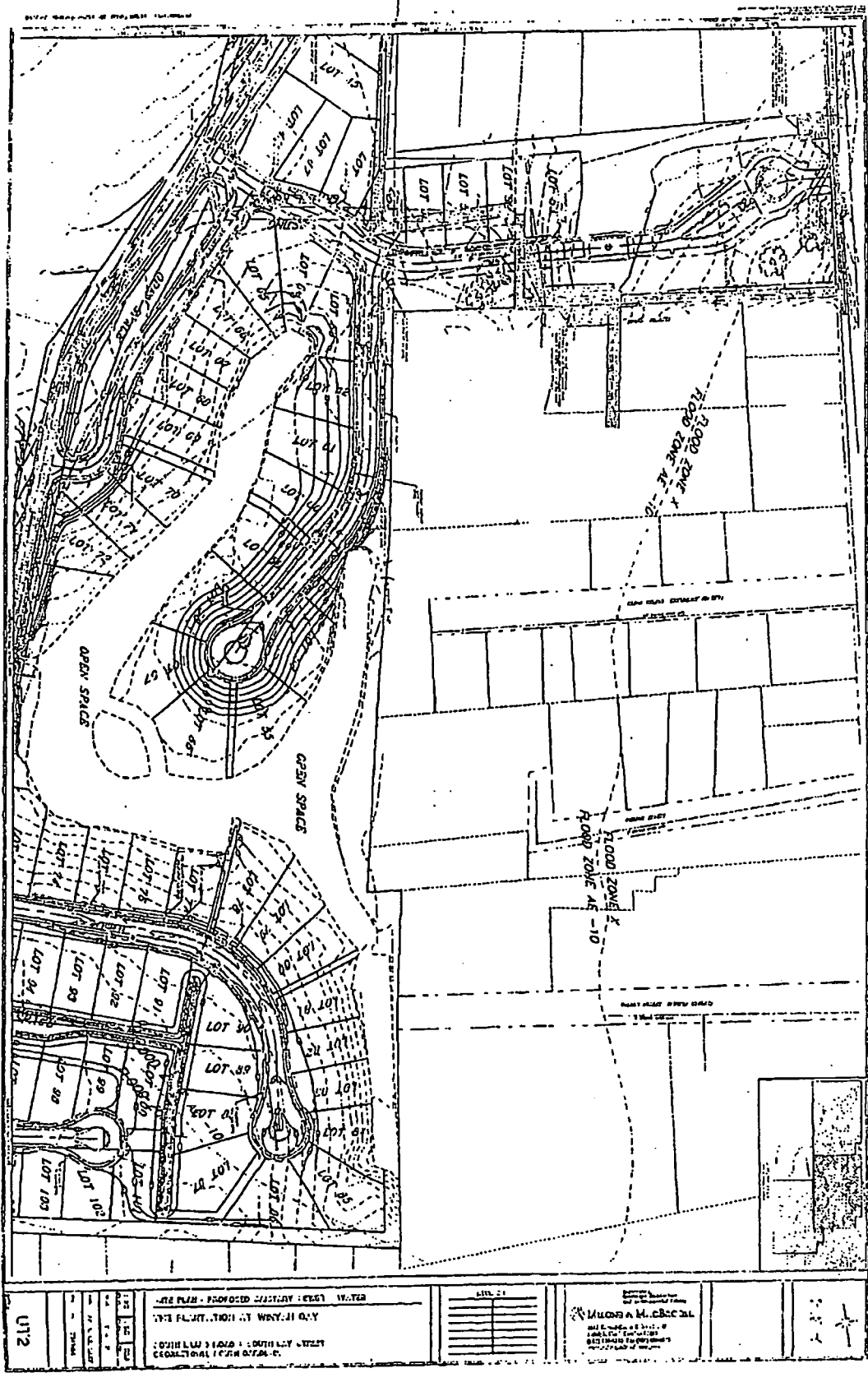
SANITARY SEWER PACKAGE  
LIST OF PLANS, FRONT DRAWINGS

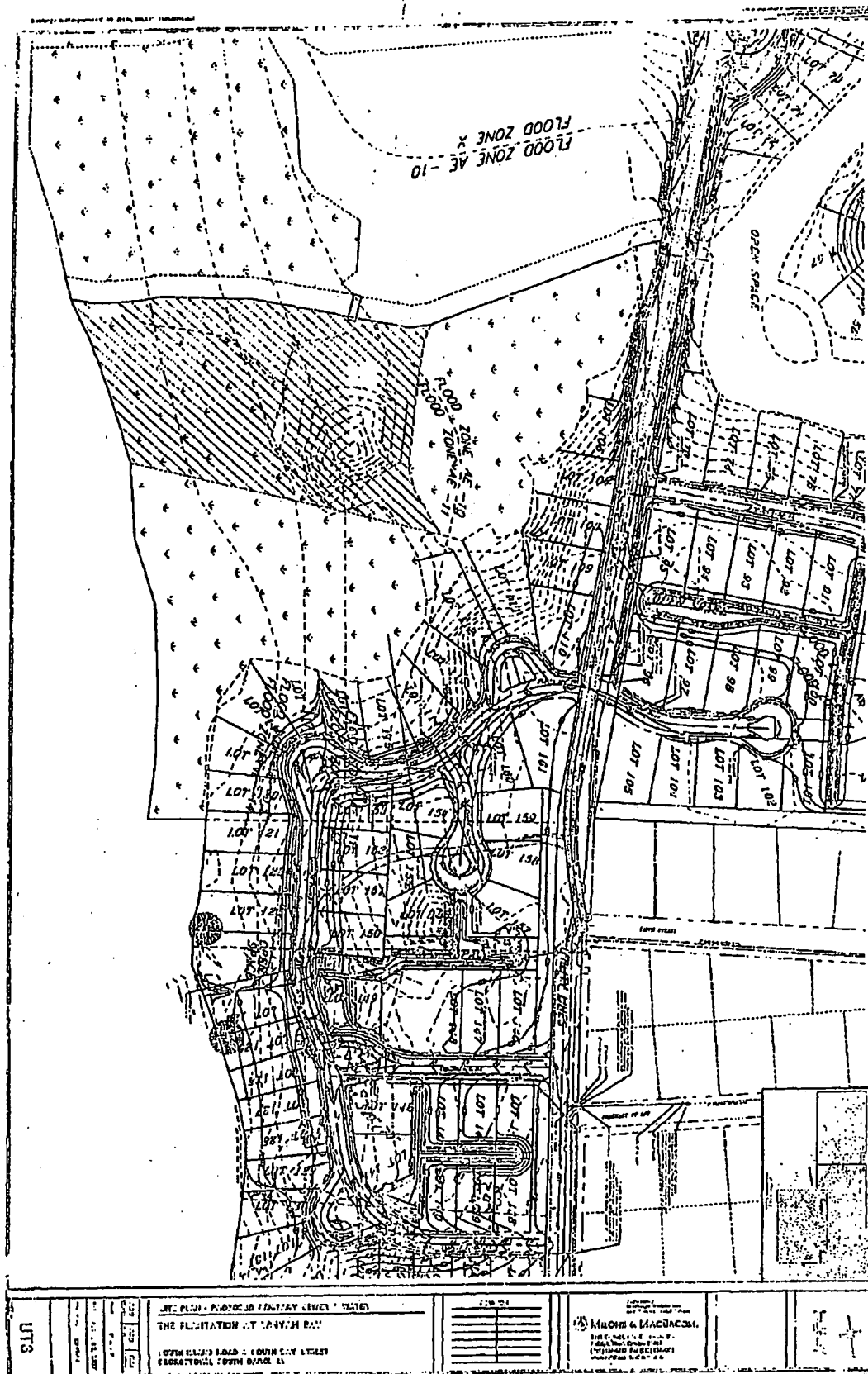
|   |                                      |
|---|--------------------------------------|
| 1 | THE                                  |
| 2 | THE PLAN - NO MORE CRAFTS TO BE MADE |
| 3 | IN THE POWER PLANT                   |
| 4 | SANITARY POWER PLANT                 |
| 5 | IN THE POWER PLANT                   |
| 6 | SANITARY POWER PLANT                 |
| 7 | WATER PLANT                          |

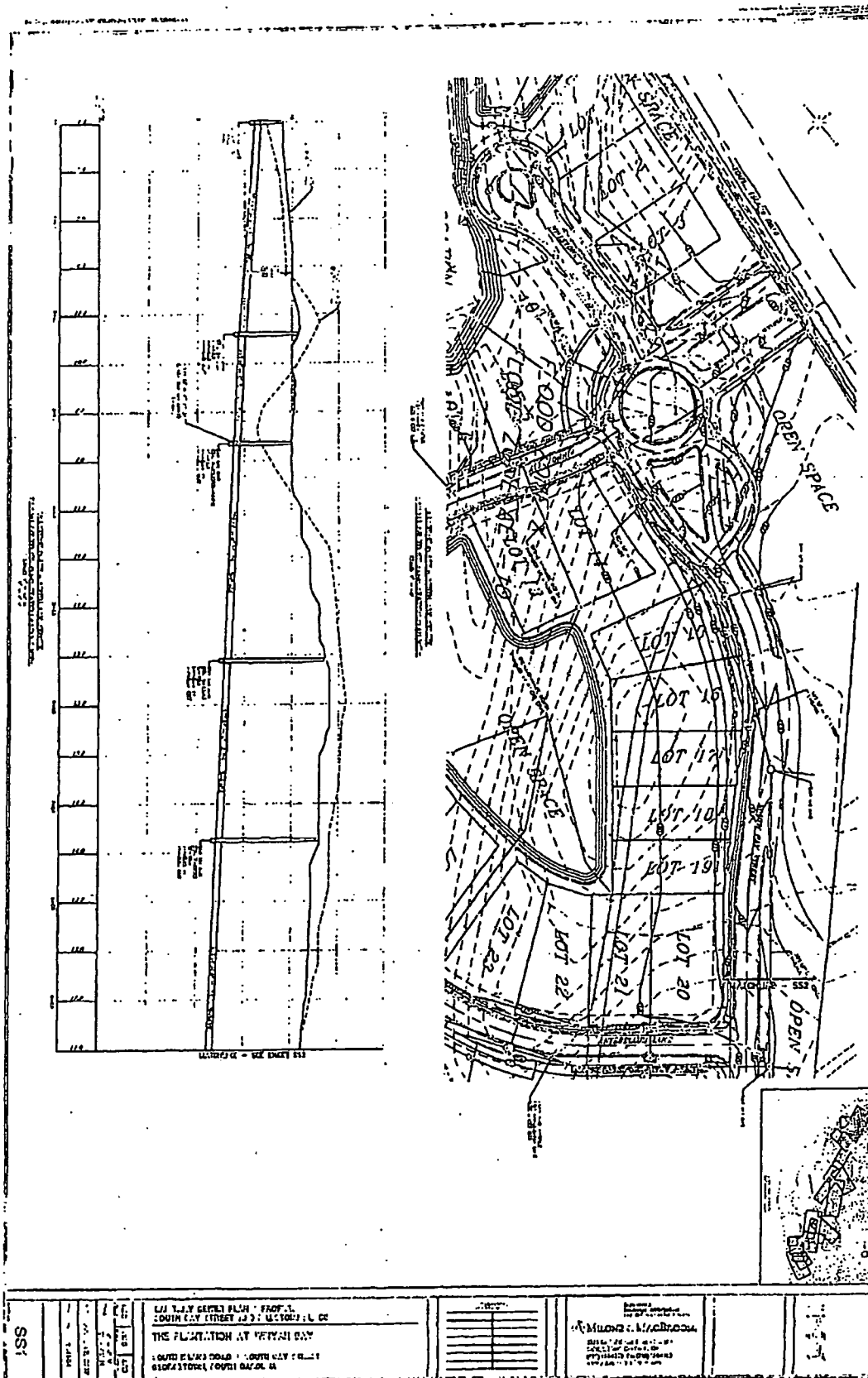
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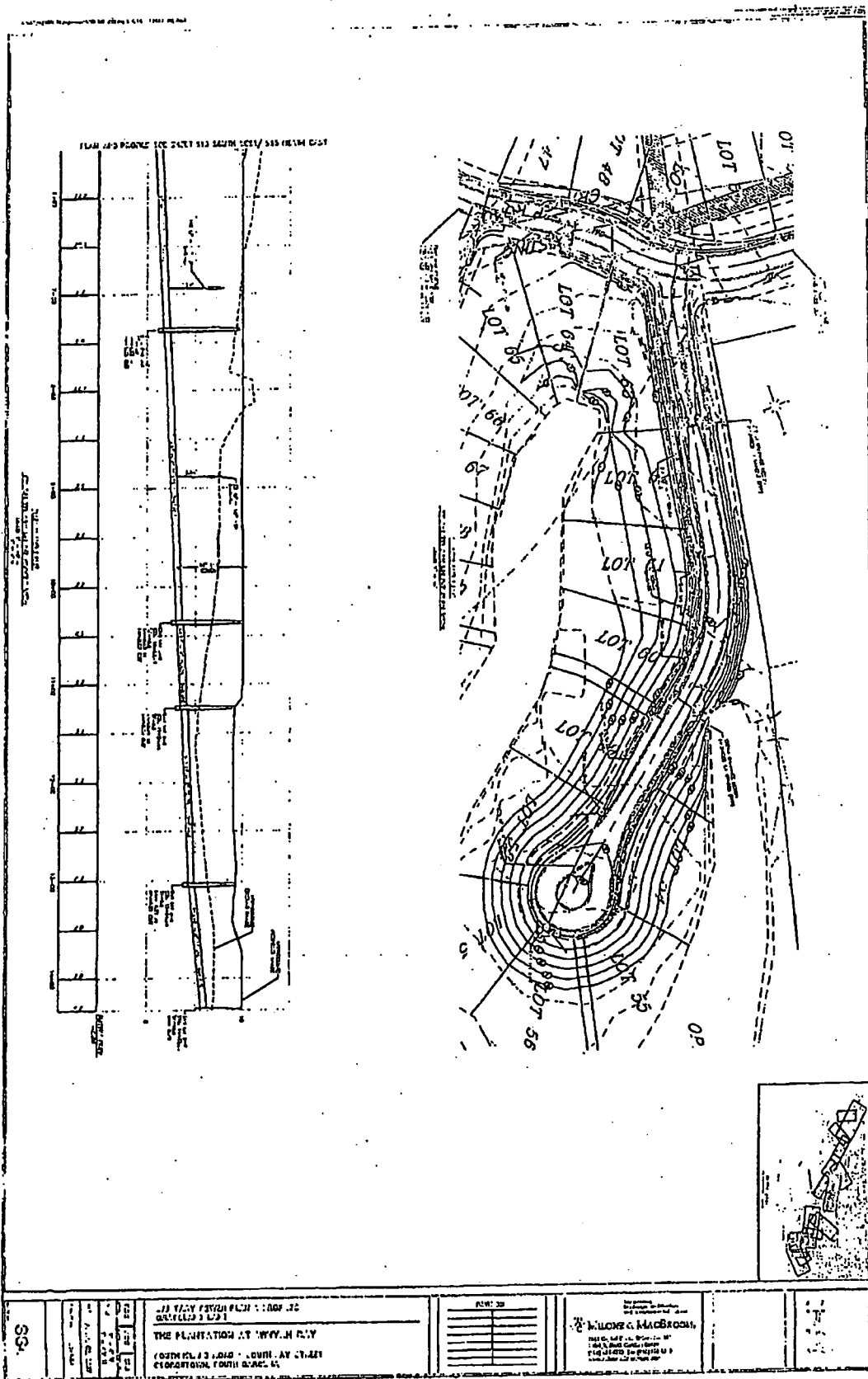


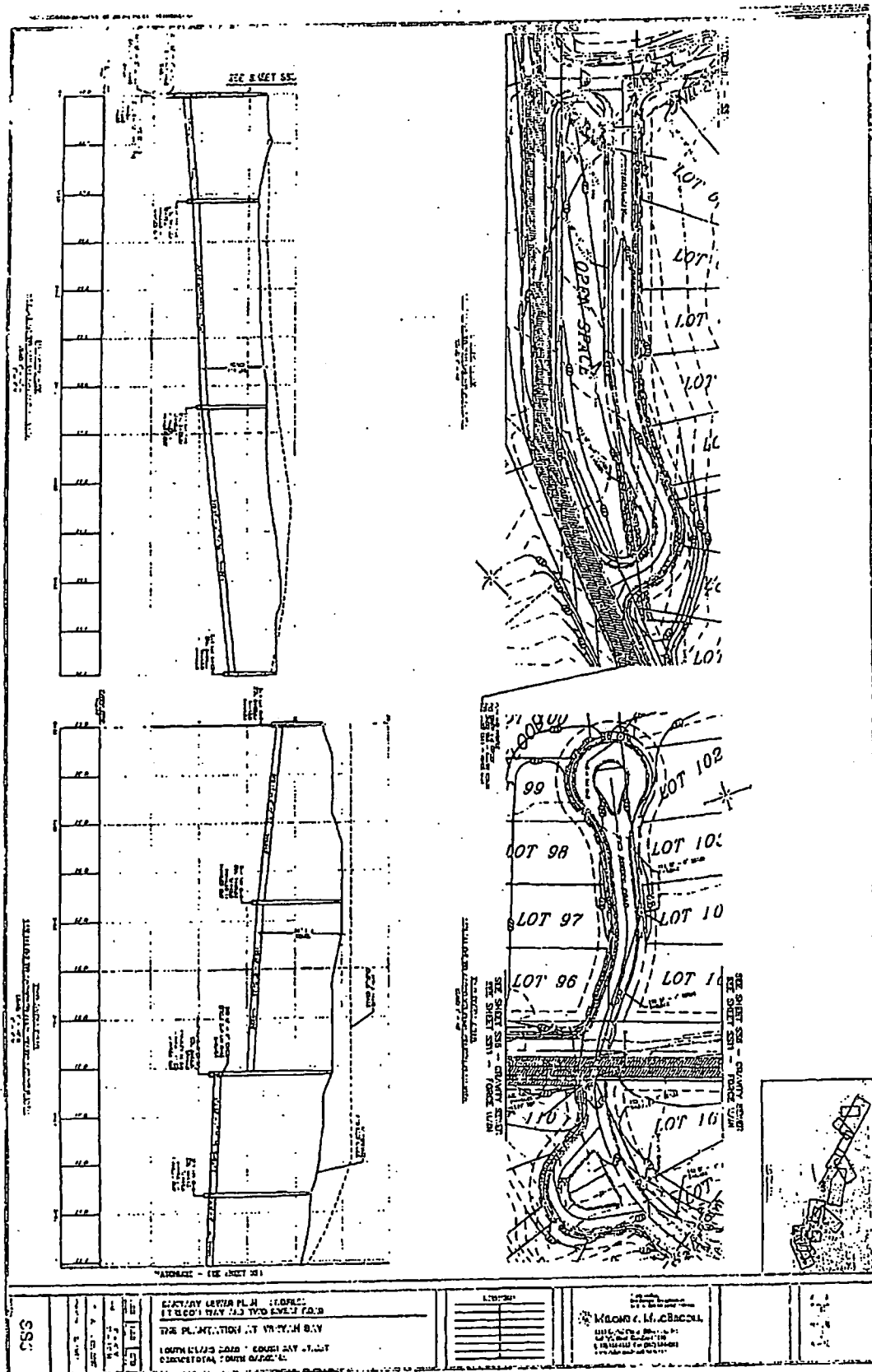




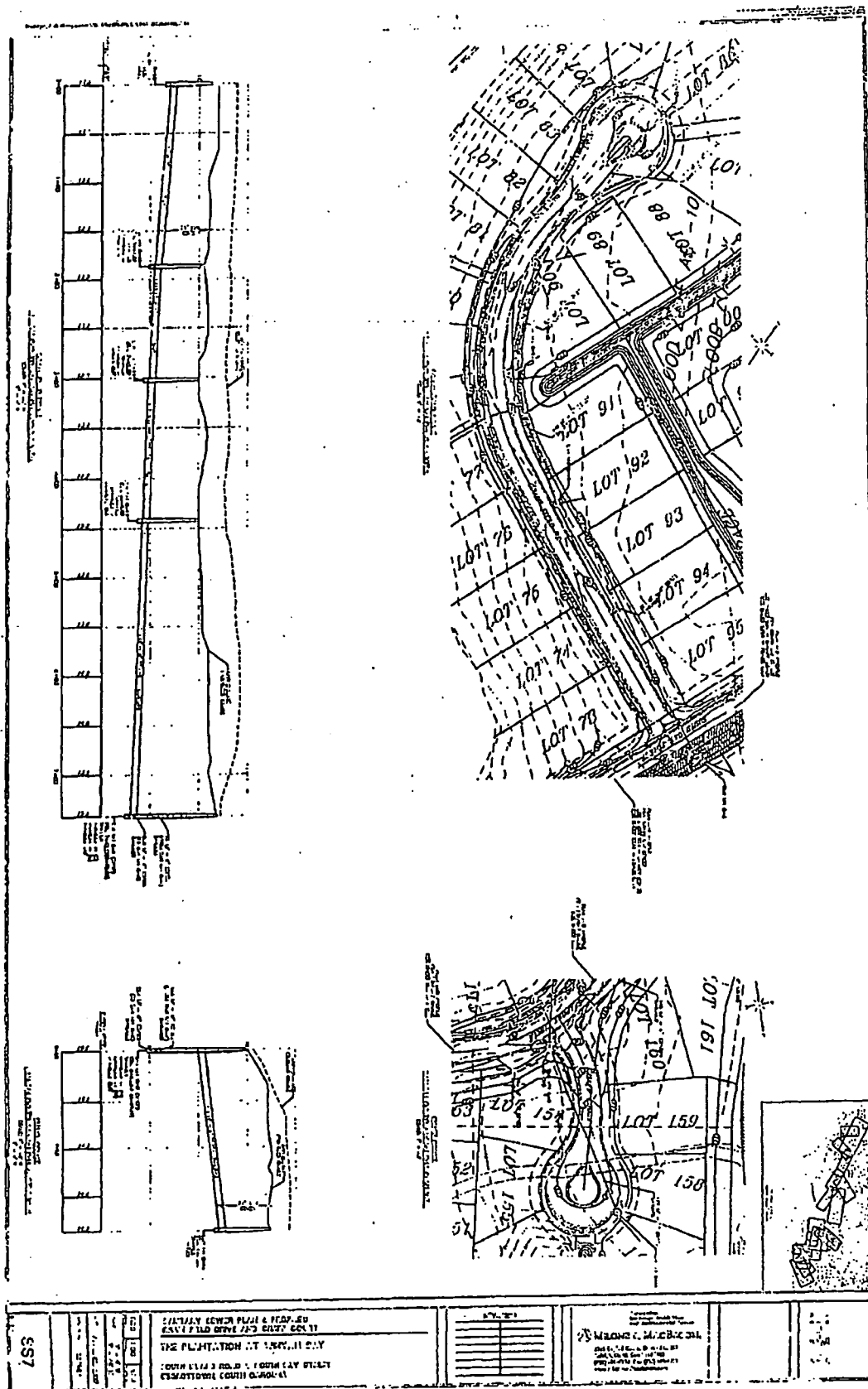


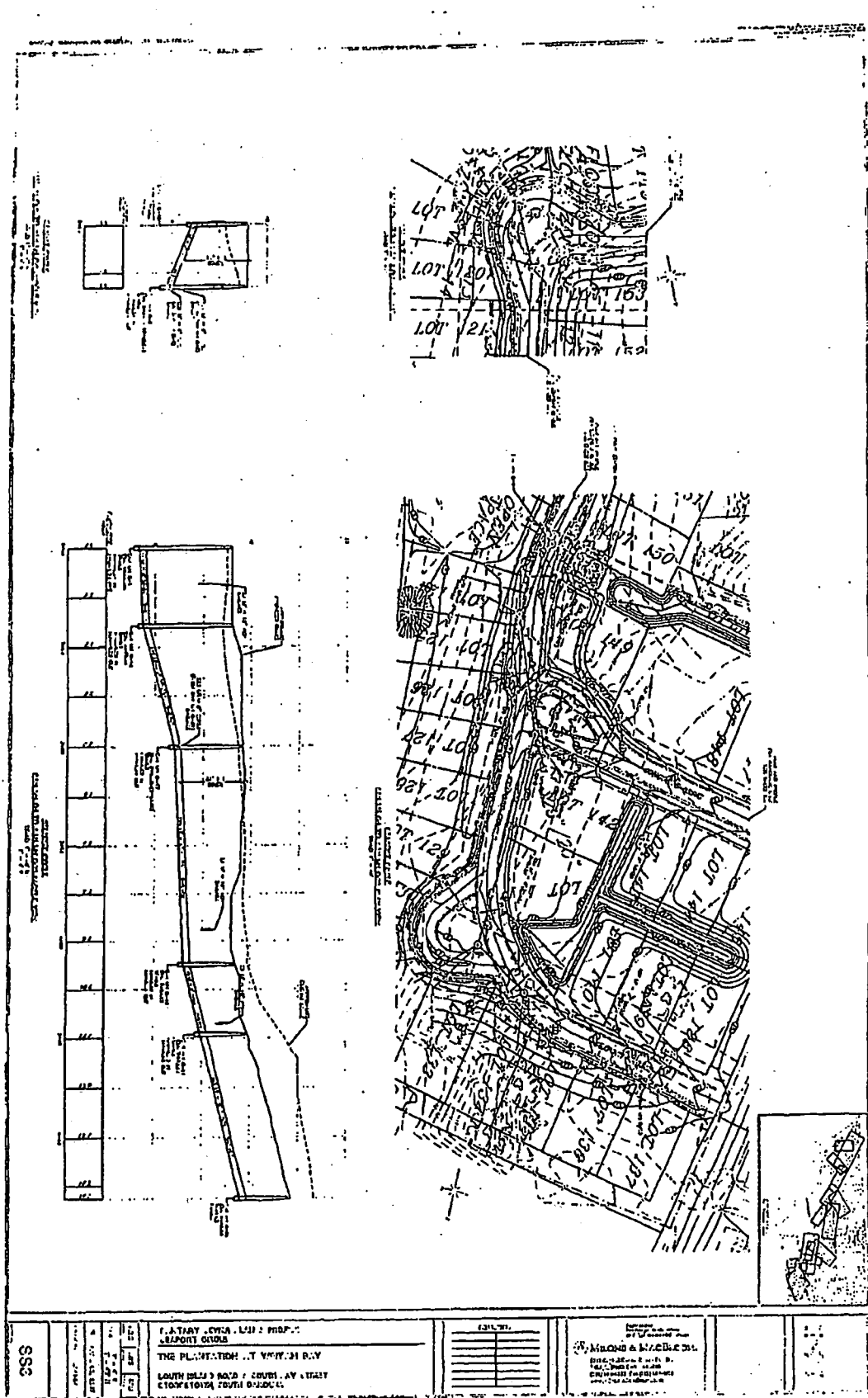


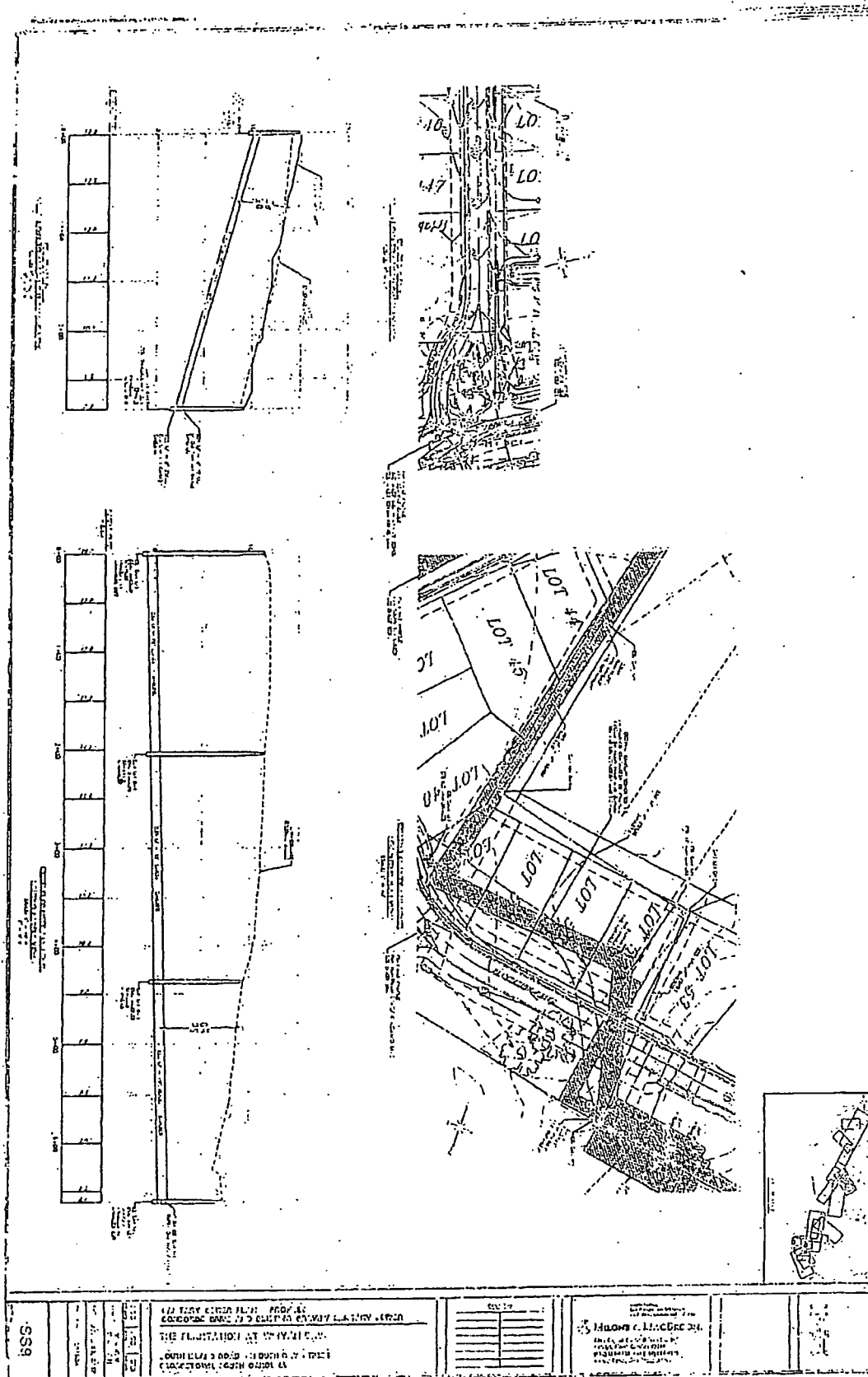










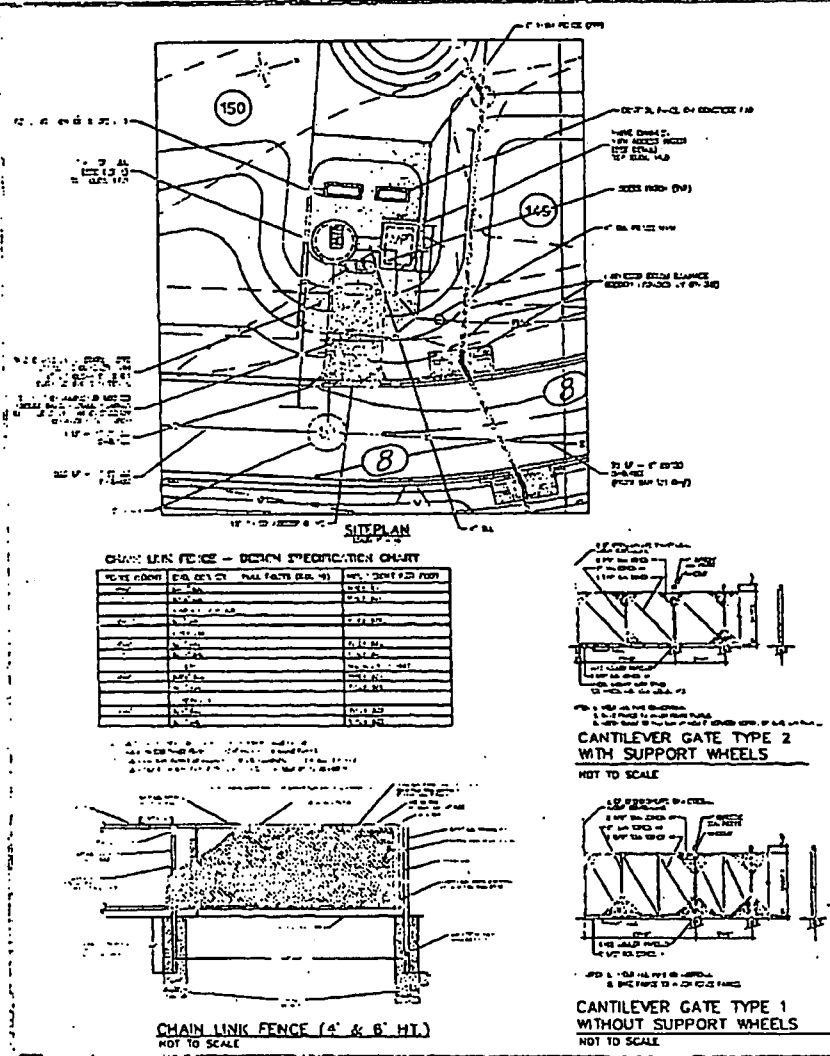












1. The purpose of this document is to provide a detailed description of the design and construction of the chain link fence and gate system. The system is designed to provide a secure and durable barrier for the perimeter of the facility.

2. The chain link fence is constructed from galvanized steel wire, with a minimum height of 4 feet and a maximum height of 20 feet. The fence is supported by wooden posts, which are spaced at intervals of 10 feet. The posts are driven into the ground to a depth of 3 feet.

3. The gate system consists of two types of cantilever gates. Type 1 is a standard cantilever gate without support wheels, while Type 2 is a cantilever gate with support wheels. Both gates are constructed from galvanized steel and are designed to provide easy access to the facility.

4. The gate system is supported by a concrete foundation, which is designed to withstand the weight of the gate and the force of the wind. The foundation is constructed from concrete and is 12 inches thick.

5. The gate system is operated by a manual lever, which is located on the outside of the gate. The lever is designed to be easy to use and is made of galvanized steel.

6. The gate system is designed to be resistant to corrosion and is painted with a protective coating. The coating is designed to last for a minimum of 10 years.

7. The gate system is designed to be easy to maintain and is made of materials that are readily available.

8. The gate system is designed to be a cost-effective solution for the perimeter security of the facility.

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2. PROJECT NUMBER: **11000000000000000000**

3. PROJECT LOCATION: **CHINA M. CROCODILE**

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6. PROJECT DESCRIPTION: **11000000000000000000**

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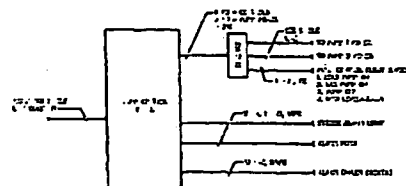
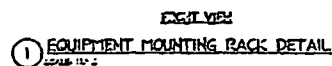
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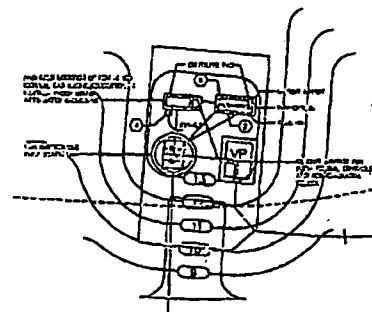
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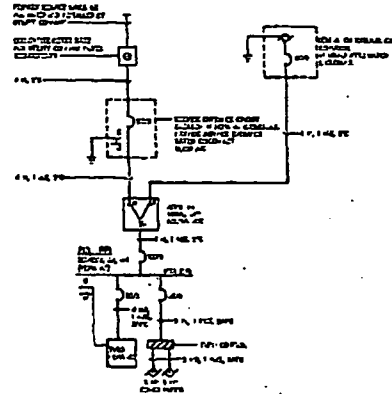


② PUMP CONTROL WIRING DIAGRAM  
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| Workers Compensation Benefits |  |            |  | Date |  | Page |  |
| Social Security Benefits      |  |            |  | Date |  | Page |  |
| Medicare Benefits             |  |            |  | Date |  | Page |  |
| Medicaid Benefits             |  |            |  | Date |  | Page |  |
| Veterans Benefits             |  |            |  | Date |  | Page |  |
|                               |  |            |  |      |  |      |  |



⊕ SITE PLAN - ELECTRICAL  
SCALE: 1" = 10'-0"



### ③ ELECTRICAL SINGLE LINE DIAGRAM

### KEYED NOTES

- ① TONY KID.
- ② DISTRICT ATTORNEY SHALL PROVIDE COPY OF COMPLAINT AGAINST KID TO THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED.
- ③ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ④ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ⑤ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ⑥ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ⑦ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ⑧ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ⑨ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.
- ⑩ DISTRICT ATTORNEY SHALL ADVISE THE DISTRICT ATTORNEY OF THE DISTRICT WHERE KID WAS ARRESTED OF THE ARREST AND THE FACTS OF THE CASE.

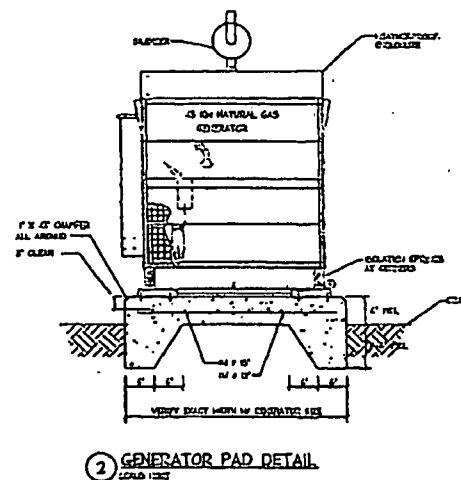
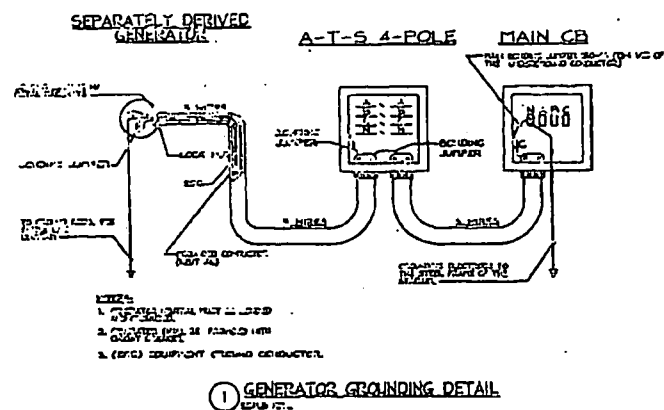
### POWER SYMBOL SCHEDULE

| SYMBOLS | DESCRIPTION    |
|---------|----------------|
| 0       | SECTION END    |
| ①       | CONNECTION     |
| ②       | ELECTRIC POWER |
| ③       | CONTINUED      |
|         | NOTES          |
|         | REVISIONS      |

## ELECTRICAL ABBREVIATIONS

|   |     |           |
|---|-----|-----------|
| A | Ans | Answer    |
| B | Aut | Automatic |
| C | Bus | Company   |
| D | Cl  | Company   |
| E | Cl  | Company   |
| F | Cl  | Company   |
| G | Cl  | Company   |
| H | Cl  | Company   |
| I | Cl  | Company   |
| J | Cl  | Company   |
| K | Cl  | Company   |
| L | Cl  | Company   |
| M | Cl  | Company   |
| N | Cl  | Company   |
| O | Cl  | Company   |
| P | Cl  | Company   |
| Q | Cl  | Company   |
| R | Cl  | Company   |
| S | Cl  | Company   |
| T | Cl  | Company   |
| U | Cl  | Company   |
| V | Cl  | Company   |
| W | Cl  | Company   |
| X | Cl  | Company   |
| Y | Cl  | Company   |
| Z | Cl  | Company   |

[illegible]









# EXHIBIT 5

# HARTFORD COUNTY CASES

| <u>No.</u> | <u>Description</u>                                                                                                                                                        | <u>Case Number</u> |
|------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| 1.         | <i>Bonnie N. Charlton and Ronald L. Charlton v. The City of Georgetown, Hartford Casualty Insurance Company, Hartford Fire Insurance Company and South Bay Properties</i> | 2008-CP-22-01490   |
| 2.         | <i>John Steven Goodwin, et al. v. Landquest, et al.</i>                                                                                                                   | 2009-CP-22-1045    |
| 3.         | <i>Glannon M. Willis v. Landquest</i>                                                                                                                                     | 2009-CP-22-1431    |
| 4.         | <i>McDuffie F. Renfro, Marianna Renfro v. Landquest</i>                                                                                                                   | 2009-CP-22-1462    |
| 5.         | <i>Richard W. Seibold v. Landquest</i>                                                                                                                                    | 2009-CP-22-1463    |
| 6.         | <i>Timothy D. Holdren, et al. v. Landquest</i>                                                                                                                            | 2009-CP-22-1464    |
| 7.         | <i>Donald L. Lemmon, et al. v. Landquest</i>                                                                                                                              | 2009-CP-22-1465    |
| 8.         | <i>Arnold Hayes v. Landquest</i>                                                                                                                                          | 2009-CP-22-1466    |
| 9.         | <i>William J. Russell v. Landquest</i>                                                                                                                                    | 2009-CP-22-1467    |
| 10.        | <i>Jeffrey K. Hodge v. Landquest</i>                                                                                                                                      | 2009-CP-22-1468    |
| 11.        | <i>Richard W. Seibold v. Landquest</i>                                                                                                                                    | 2009-CP-22-1469    |
| 12.        | <i>David Dangerfield v. Landquest</i>                                                                                                                                     | 2009-CP-22-1470    |
| 13.        | <i>Michael Brown v. Landquest</i>                                                                                                                                         | 2009-CP-22-1558    |
| 14.        | <i>McDuffie Renfro v. Landquest</i>                                                                                                                                       | 2009-CP-22-1584    |
| 15.        | <i>Bret Lyon v. Landquest</i>                                                                                                                                             | 2009-CP-22-1615    |
| 16.        | <i>Jonathan M. Pierce v. Landquest</i>                                                                                                                                    | 2009-CP-22-1629    |
| 17.        | <i>Michael W. Brown v. Landquest</i>                                                                                                                                      | 2009-CP-22-1685    |
| 18.        | <i>Edgar R. Moody v. Landquest</i>                                                                                                                                        | 2009-CP-22-1678    |
| 19.        | <i>Donald Lemmon, et al. v. Landquest</i>                                                                                                                                 | 2009-CP-22-1814    |
| 20.        | <i>Tod A. Herbers v. Landquest</i>                                                                                                                                        | 2010-CP-22-1268    |
| 21.        | <i>Franklin v. Landquest</i>                                                                                                                                              | 2010-CP-22-1377    |
| 22.        | <i>Green v. Landquest</i>                                                                                                                                                 | 2010-CP-22-1386    |
| 23.        | <i>Buss v. Landquest</i>                                                                                                                                                  | 2010-CP-22-1446    |

# EXHIBIT 6

Project: The Plantation at Winyah Bay  
Georgetown, SC  
BID FORM

| Item No.          | Description                                                                                                                                  | Quantity | Unit | Unit Price | Amount |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------|----------|------|------------|--------|
| <b>General</b>    |                                                                                                                                              |          |      |            |        |
| 100               | Mobilization & Bonding                                                                                                                       | 1        | LS   |            |        |
| 110               | Permits                                                                                                                                      | 1        | LS   |            |        |
| 120               | Clearing & Grubbing                                                                                                                          | 1        | LS   |            |        |
| 130               | Surveys and Layout                                                                                                                           | 1        | LS   |            |        |
| 140               | Construction entrance & exit                                                                                                                 | 1        | LS   |            |        |
| 150               | Tree Save Fencing                                                                                                                            | 1        | LS   |            |        |
| 160               | Seeding                                                                                                                                      | 1        | LS   |            |        |
| 170               | Wetlands Buffer                                                                                                                              | 1        | LS   |            |        |
| 180               | Erosion Control per BMP                                                                                                                      | 1        | LS   |            |        |
| <b>Demolition</b> |                                                                                                                                              |          |      |            |        |
| 210               | Remove existing structures                                                                                                                   | 1        | LS   |            |        |
| 220               | Remove existing sewer and manholes                                                                                                           | 1        | LS   |            |        |
| 230               | Remove existing drainage pipe and structures                                                                                                 | 1        | LS   |            |        |
| <b>Sanitary</b>   |                                                                                                                                              |          |      |            |        |
| 305               | Install 12" SDR 35 Sanitary Sewer                                                                                                            | 683      | LF   |            |        |
| 310               | Install 8" SDR 35 Sanitary Sewer                                                                                                             | 8,024    | LF   |            |        |
| 320               | Install 4' diameter manholes                                                                                                                 | 47       | EA   |            |        |
| 330               | Install 8" DIP Sanitary Sewer - Force Main                                                                                                   | 799      | LF   |            |        |
| 335               | Install 8" DIP Sanitary Sewer - Gravity                                                                                                      | 220      | LF   |            |        |
| 340               | Install 4" DIP forcemain                                                                                                                     | 622      | LF   |            |        |
| 400               | Single Sewer Service                                                                                                                         | 65       | EA   |            |        |
| 410               | Double Sewer Service                                                                                                                         | 63       | EA   |            |        |
| 450               | Test Sewer                                                                                                                                   | 1        | LS   |            |        |
| 600               | Pump Station Complete to include all work required to 6' outside required fence plus connections to existing and testing for complete system | 1        | LS   |            |        |
| <b>Earthwork</b>  |                                                                                                                                              |          |      |            |        |
| 610               | Strip topsoil & Stockpile                                                                                                                    | 1        | LS   |            |        |
| 620               | Roadway Cut & Fill                                                                                                                           | 1        | LS   |            |        |
| 630               | Haul excess material off-site                                                                                                                | 1        | LS   |            |        |
| 640               | Subgrade prep. (18")                                                                                                                         | 1        | LS   |            |        |
| 650               | Fine Grade Roads                                                                                                                             | 1        | LS   |            |        |
| 660               | Fine Grade Shoulders and Slopes                                                                                                              | 1        | LS   |            |        |

Bid Form 1 of 3 - Addendum No. 3

Bid Form 4/27/10

Project: The Plantation at Winyah Bay  
Georgetown, SC  
3-D FORM

|      |                                                                                                    |       |           |              |              |
|------|----------------------------------------------------------------------------------------------------|-------|-----------|--------------|--------------|
| 670  | Laboratory Testing (Concrete, Earthwork, Roadways and Utility Backfill) (See Specs & Instructions) | 1     | Allowance | \$ 50,000.00 | \$ 50,000.00 |
| 680  | Unsuitable Soil Removal & Replacement                                                              | 1     | Allowance | \$ 20,000.00 | \$ 20,000.00 |
|      |                                                                                                    |       |           |              |              |
|      | Stormwater                                                                                         |       |           |              |              |
| 710  | Type 18 Structure                                                                                  | 33    | EA        |              |              |
| 720  | Type 17 Structure                                                                                  | 11    | EA        |              |              |
| 730  | Type 9 Structure                                                                                   | 1     | EA        |              |              |
| 740  | Junction Boxes                                                                                     | 8     | EA        |              |              |
| 760  | 18" RCP                                                                                            | 2,184 | LF        |              |              |
| 760  | 24" RCP                                                                                            | 838   | LF        |              |              |
| 770  | 30" RCP                                                                                            | 213   | LF        |              |              |
| 780  | 48" RCP                                                                                            | 31    | LF        |              |              |
| 790  | 36" X 60" RCPA                                                                                     | 113   | LF        |              |              |
| 800  | 14" X 23" RCPA                                                                                     | 76    | LF        |              |              |
| 810  | Outlet Structure                                                                                   | 4     | EA        |              |              |
| 820  | Headwall                                                                                           | 1     | EA        |              |              |
| 830  | 18" Flared end section                                                                             | 10    | EA        |              |              |
| 840  | 24" Flared end section                                                                             | 6     | EA        |              |              |
| 850  | 30" Flared end section                                                                             | 1     | EA        |              |              |
| 860  | 48" Flared end section                                                                             | 2     | EA        |              |              |
| 870  | 14"x23" Flared end section                                                                         | 1     | EA        |              |              |
| 880  | 36" X 60" Flared end section                                                                       | 4     | EA        |              |              |
| 890  | Rip-Rap                                                                                            | 600   | Ton       |              |              |
| 900  | 6" Underdrain                                                                                      | 6,600 | LF        |              |              |
|      |                                                                                                    |       |           |              |              |
|      | Water                                                                                              |       |           |              |              |
| 1010 | 8" PVC Water line incl fittings                                                                    | 9,375 | LF        |              |              |
| 1020 | 6" PVC water line incl fittings                                                                    | 384   | LF        |              |              |
| 1030 | 4" PVC Water line                                                                                  | 83    | LF        |              |              |
| 1040 | 3" PVC Water line                                                                                  | 988   | LF        |              |              |
| 1050 | 2" PVC Water line                                                                                  | 2,178 | LF        |              |              |
| 1060 | 1 1/2" PVC Water line                                                                              | 16    | LF        |              |              |
| 1070 | Fire Hydrants incl valve, lead and tee                                                             | 18    | EA        |              |              |
| 1080 | 8" Gate Valve                                                                                      | 24    | EA        |              |              |
| 1090 | 6" Gate Valves                                                                                     | 4     | EA        |              |              |
| 1100 | 4" Gate Valve                                                                                      | 1     | EA        |              |              |
| 1110 | 2" Gate Valve                                                                                      | 3     | EA        |              |              |
| 1120 | 1 1/2" Gate Valve                                                                                  | 1     | EA        |              |              |

Bld Form 2 of 3 - Addendum No. 3

Bld Form 4/27/10

Project: The Plantation at Winyah Bay  
Georgetown, SC  
BID FORM

|      |                                                                        |        |           |                  |               |
|------|------------------------------------------------------------------------|--------|-----------|------------------|---------------|
| 1130 | 8" x 6" Reducer                                                        | 3      | EA        |                  |               |
| 1140 | 6" x 3" Reducer                                                        | 1      | EA        |                  |               |
| 1150 | 8" x 2" Reducer                                                        | 5      | EA        |                  |               |
| 1160 | 8" x 3" Reducer                                                        | 1      | EA        |                  |               |
| 1170 | 6" x 2" Reducer                                                        | 1      | EA        |                  |               |
| 1180 | 4" x 1.5" Reducer                                                      | 1      | EA        |                  |               |
| 1190 | 2" blowoff assembly to grade complete                                  | 4      | EA        |                  |               |
| 1200 | 3" blowoff assembly to grade complete                                  | 3      | EA        |                  |               |
| 1210 | 6" Bend                                                                | 6      | EA        |                  |               |
| 1220 | 6" Tapping Sleeve & Valve                                              | 5      | EA        |                  |               |
| 1230 | 2" Tapping Sleeve & Valve                                              | 6      | EA        |                  |               |
| 1240 | 8" x 8" x 8" Tee                                                       | 5      | EA        |                  |               |
| 1250 | 8" x 6" x 8" Tee                                                       | 2      | EA        |                  |               |
| 1260 | 8" x 8" x 6" Tee                                                       | 1      | EA        |                  |               |
| 1270 | 8" x 4" x 8" Tee                                                       | 1      | EA        |                  |               |
| 1280 | Single Water Service                                                   | 39     | EA        |                  |               |
| 1290 | Double Water Service                                                   | 61     | EA        |                  |               |
| 1300 | Test Water Lines and Chlorination                                      | 1      | LS        |                  |               |
|      |                                                                        |        |           |                  |               |
|      | <b>Pavement</b>                                                        |        |           |                  |               |
| 2010 | Curb 18"                                                               | 19,426 | LF        |                  |               |
| 2020 | Curb 24"                                                               | 3,974  | LF        |                  |               |
| 2030 | Sidewalk (including ramps)                                             | 55,875 | SF        |                  |               |
| 2040 | 6" SABC incl fine grade                                                | 29,302 | SY        |                  |               |
| 2050 | Pave 2 1/2" Surface - Type 1                                           | 29,302 | SY        |                  |               |
| 3000 | Offsite SCDOT ROW Work Complete                                        | 1      | LS        |                  |               |
|      |                                                                        |        |           |                  |               |
|      | <b>Traffic</b>                                                         |        |           |                  |               |
| 4000 | Street Signs                                                           | 1      | Allowance | \$ 10,000.00     | \$ 10,000.00  |
| 4010 | Pavement Markings                                                      | 1      | Allowance | \$ 10,000.00     | \$ 10,000.00  |
|      |                                                                        |        |           |                  |               |
|      | <b>Electrical</b>                                                      |        |           |                  |               |
| 5000 | Electrical U/G conduit and sleeves                                     | 1      | Allowance | \$ 300,000.00    | \$ 300,000.00 |
|      |                                                                        |        |           |                  |               |
|      | <b>Bridge</b>                                                          |        |           |                  |               |
| 6000 | Bridge (complete including abutments, foundation, approach slabs, etc) | 1      | LS        |                  |               |
|      |                                                                        |        |           |                  |               |
|      |                                                                        |        |           | <b>TOTAL BID</b> |               |

Bid Form 3 of 3 - Addendum No. 3

Bid Form 4/27/10

THIS CONTRACT IS SUBJECT TO THE ARBITRATION PROVISIONS  
IN SECTION 13-46-41 OF THE SOUTH CAROLINA CODE

CONSTRUCTION CONTRACT

THIS Construction Contract (the "Agreement") is entered into by and between Hartford Fire Insurance Company (the "Company") and R. H. Moore Company, Inc. (the "Contractor"). The effective date of this Contract shall be December 11, 2013, and the Work shall begin upon issuance of a Notice to Proceed by Company.

In consideration of the premises set forth above, the parties hereto agree as follows:

1. *Recitals and Status of Parties:*

1.1 The Project is for the installation of certain site infrastructure and utilities in communities with a platted and approved Subdivision in the City of Georgetown, South Carolina known as The Plantation at Winyah Bay.

1.2 The Company is Surety for the original Developer of the Subdivision and issued its Subdivision Performance Bond in favor of the City of Georgetown relative to the installation of the site infrastructure and utilities pursuant to plans and specifications therefor approved by the City. The Company is not the Owner or Developer of the property or Subdivision in issue and does not otherwise have any obligations or interests therein.

1.3 The Company, as Surety, is entering the Construction Contract pursuant to, and in discharge of its obligations under its Subdivision Performance Bond and that certain Agreement, dated August 20, 2013, between it and the City.

1.4 The Company desires to avail itself of the services of the Contractor in connection with the construction of certain infrastructure work at The Plantation at Winyah Bay, Georgetown, South Carolina (the "Project"), as covered by its Subdivision Performance Bond and the above-referenced Agreement between the Company and the City, and the Contractor desires to provide such services.

1.5 The Company makes no other warranties or representations regarding the Subdivision, the subject property or the Plans and Specifications approved by the City for the Work.

A. SCOPE OF WORK; PAYMENTS TO OTHERS

2. *Scope of Work:*

2.1 "Work" includes all labor, materials, equipment and costs required or reasonably inferable from the scope of work established by the Contract Documents and as set forth in Section 25 (the "Scope of Work").

2.2 "Engineer" is Milone & MacBroom.

2.3 Contractor has made his own independent investigation and evaluation regarding the Project and the Work and is entering into this Contract on the basis of such investigation,

PPAB 2208254v4

independent of any information or estimates provided by the Company. Contractor has provided written notice to Company and Engineer of any conditions, errors, or inconsistencies in the documents setting forth the Scope of Work. Contractor has satisfied itself, by its own investigation and research, regarding all the conditions affecting the Work and materials to be furnished including all requirements, regulations, statutes and ordinances of all governmental entities and agrees to do the Work in compliance with all such requirements, regulations, statutes and ordinances.

2.4 The Contractor agrees to furnish all labor, materials, equipment, skill, and instrumentalities used in, or in connection with, the full performance of all Work required under the terms of this Contract and agrees to complete the Work no later than one hundred eighty (180) calendar days from the date Company issues written Notice to Proceed to Contractor ("Contract Time"). TIME IS OF THE ESSENCE WITH RESPECT TO CONTRACTOR'S PERFORMANCE CONCERNING EACH AND EVERY TIME LIMIT ESTABLISHED BY THIS CONTRACT.

2.5 Within ten (10) days of the issuance of the Notice to Proceed, Contractor shall prepare a critical path schedule establishing the most efficient and effective path for sequencing the Work. This schedule shall provide for coordination of all trades for each and every portion of the Work. Contractor shall update the status of the Work according to the schedule on a monthly basis, showing the amount of Work constructed and comparing the Work in place to the progress required on the original critical path schedule. Contractor shall inform Company in writing if, at any time, the progress of the Work is such that the Contractor will not be able to complete the Work within the Contract Time. In such case, Contractor shall also present a recovery schedule and plan for such overtime work or other measures that may be required to recover the schedule and complete the Work within the Contract Time.

2.6 The time of the completion of the Work is critical to the Company. In the event that Contractor does not achieve Substantial Completion of the Work within the Contract Time, Contractor shall pay Company liquidated damages in the amount of Five Hundred Dollars (\$500.00) per day for each day after the date for Substantial Completion that Contractor fails to properly complete the Work. Contractor acknowledges that these liquidated damages are fair and equitable and reflect the fact that it would be difficult or impossible to accurately assess the full scope of actual damages to Company if Contractor is late in completing the Work.

2.7 Contractor shall take sole and exclusive responsibility for initiating, maintaining and supervising all necessary safety precautions and programs in connection with all of the Work under this Contract. The Contractor shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of all public authorities, related to the Work and/or the safety of persons or properties connected with the Project (collectively, "Laws").



3. **Payment & Retention:**

3.1 **Contractor agrees to:**

3.1.1 Pay for all expenses, including, but not limited to, materials, skills, labor, equipment and instrumentality's used in, or in connection with, the performance of this Contract and any other claims arising out of Contractor's Work, when and as bills or claims therefore become due or are made. Nothing herein shall limit Contractor's ability to withhold payment from subcontractors for improper work or in the event of other reasonable dispute over payment due to subcontractors. However, in all cases, Contractor shall save and protect the property and the Company from all manner of claims, including without limitation, mechanics' liens on account thereof, and to furnish satisfactory evidence to the Company, when and if required, that it has complied with the above requirements;

3.1.2 Satisfy and discharge any claims, or transfer to bond with good and sufficient surety acceptable to Company any liens, filed by its subcontractors, suppliers, sub-subcontractors, or their materialmen within ten (10) days of such claim having been made or lien filed or recorded. If within such ten (10) day period, Contractor shall not have removed, satisfied, or discharged any lien claim, or with respect to any other claim, have satisfied the same or have given the Company such further assurances as the Company may request, then the Company may, at its option, pay such claims or remove such lien at the Contractor's expense and may set off and deduct from any payments due or to become due to Contractor all costs and expenses of removing or satisfying such liens or other claims; and

3.1.3 Indemnify, defend, and hold harmless the Company and any related entities from any costs, including reasonable attorneys' fees, incurred as a result of liens or claims filed by subcontractors, suppliers, sub-subcontractors, or materialmen.

**E. PAYMENTS**

4. **Partial Payments - Final Payment - Release:**

4.1 The price to be paid to Contractor by the Company for timely, proper performance of the Work accepted by the Company under this Contract is ~~XXXXXX~~ (the "Contract Price"). The Contract Price is based in part on unit prices, allowances and quantities provided in the Contract Documents and includes (i) all materials, equipment, labor, delivery, installation, overhead, and profit, and (ii) any other costs or expenses in connection with, or incidental to, the performance of the Work. Contractor understands and agrees that Contractor shall not be entitled to a Change Order, additional time or additional compensation unless the Scope of Work is increased through a modification of the plans and specifications for the Project.

If there is an increase in the Scope of Work through a modification of the plans or specifications then Contractor shall be paid for Work based on the amount agreed to in writing in advance by Contractor and Company. Measurement and payment for such additional Work shall be made at the unit prices set forth in the Contractor's Bid Proposal but only for units actually installed/performed by Contractor and certified by the Engineer. If at any time measurements, tests, or other inquiries by the Engineer or Company reveal a prior overpayment to Contractor for any item of additional Work, Company shall be entitled to deduct the amount of such overpayment from any subsequent progress payment or from the final payment due Contractor; if there are no funds or an insufficient amount of funds due to Contractor at the time such overpayment is discovered, then Contractor shall pay to Company the amount of such

overpayment within ten (10) days of demand therefor by Company. Neither Company's nor Engineer's approval of any application for payment shall be considered a waiver of Company's right to later deduct from amounts due to Contractor or demand payment from Contractor for prior overpayments made to Contractor.

4.2 Payment shall be made to the Contractor based upon applications for payment for Work properly performed. Such applications for payment shall be submitted to the Engineer and the Company on a monthly basis in the form requested by the Company and the Engineer. Subject to retainage in the amount of ten percent (10%), Contractor shall be paid based upon the Engineer's approval of the Work performed and the amounts due pursuant to such applications for payment. Payment for approved Work will be made no later than 30 days after the date of invoices.

Final payment, including the release of retainage, if any, shall not be made to Contractor until all of the following have occurred: (1) all Work is properly completed; (2) the Engineer has certified all of the Work as being properly completed; and (3) certification by the Engineer of Record for DHEC that the improvements have been constructed in accordance with the plans and specifications.

4.3 As further conditions precedent to Contractor's right to receive any payment:

4.3.1 Contractor shall submit to the Engineer and the Company an application for payment on the form required by the Engineer, and the Engineer shall approve or reject all or part of such pay application as appropriate.

4.3.2 Together with the application for payment, Contractor shall deliver to the Company fully executed lien releases or certifications that all wages, materials, and any and all other indirect costs have been paid, corresponding with the Work for which payment is sought and in the amount of the payment sought.

4.3.3 All necessary approvals of the Work for which payment is sought shall have been received from the Engineer and any governmental authority whose approval is required under applicable Laws.

4.3.4 The truthful and complete preparation of interim lien waivers from Contractor and its subcontractors in a form acceptable to the Company in its sole discretion, shall be an express condition precedent to the Company's duty to make any payments to Contractor under this Contract. Contractor agrees that the Company has the right to disclosure of the information requested in the lien waiver and that the Company has the right to withhold any and all payments due under this Contract if Contractor fails to submit the lien waiver or if any information contained in any lien waiver or certification is determined to be false. The submission of any information in the lien waiver that is in any way false or misleading shall constitute a material breach under this Contract and entitle Company to withhold payments due under this Contract. Contractor further agrees to payments being made under this Contract by way of check being made jointly payable to Contractor and any person or entity who is owed funds by Contractor in connection with the Work. However, payment by joint check shall be at the sole discretion of the Company, and Company shall have no duty to issue joint check.

4.3.5 Once Contractor has completed all Work, Contractor shall certify completion of the Work to the Company and shall submit a Final Pay Application to the Company including all amounts that Contractor contends is owed under the Contract, including, but not limited to, any and all outstanding claims or Change Orders between

the parties. Along with the Final Application for Payment, Contractor shall furnish to the Company a complete, final and unconditional release of all liens and claims from Contractor as well as all other persons, firms and corporations who have performed more than \$10,000 of work or supplied more than \$10,000 of materials or equipment in connection with this Contract. Contractor shall also submit an affidavit to the Company stating that all of the Work requiring inspection by governmental authorities has been appropriately and fully approved and accepted by such governmental authorities. Such approval and acceptance of the Work by all the applicable governmental authorities as being complete and ready for dedication and acceptance as a public roadway is a condition precedent to Final Payment. Thereafter, upon Contractor's meeting all of the requirements in this Contract concerning submission of its Final Application for Payment and approval by the Company and/or the Company's Engineer of Contractor's Final Application for Payment, the Company will remit payment to Contractor within thirty (30) days of that time.

#### 5. Change Orders:

5.1 Contractor shall not make any change in the Work or deviate from the plans and specifications set forth in the Scope of Work unless Contractor receives a written Change Order signed by the Company prior to making such a change. Every Change Order initiated by Contractor shall be preceded by a written Change Order proposal from the Contractor which shall describe the physical nature of the proposed change and the proposed amount of the adjustment, if any, in the Contract Price and/or Contract Time. If the Company requests a proposal for a Change Order, the Contractor shall submit a proposal within ten (10) days. The Company will then, within ten (10) days of receiving the Change Order proposal, either approve, deny or approve with conditions the Change Order proposal submitted by the Contractor. If Contractor performs any change in the Work without following the requirements of this paragraph, then Contractor waives the right to seek or receive any additional compensation or time related to such Work.

5.2 In the event that the Company issues a Change Order to Contractor, Contractor shall perform such additional Work. If the Change Order is issued or to be issued on a basis other than an agreed upon lump sum or unit price for the Work to be performed, Contractor shall only be entitled to receive payment for the actual Cost incurred for such changed Work plus ten percent (10%) for overhead and profit. Extended general conditions, if any, for Change Orders extending the Contract Time will be based on a negotiated agreement between Company and Contractor at the time of such Change Order. Contractor shall provide the Company with any information reasonably requested by the Company to substantiate the Cost of such changed Work. Contractor shall not be entitled to request or receive any payment for overhead and profit for such changed Work except as specifically set forth above.

#### 6. Deductions in General:

In addition to the rights enumerated elsewhere herein, the Company may withhold from any amounts due or to become due to Contractor sums equal to indebtedness owed by Contractor to the Company or others for labor or material or equipment, or any other obligations of Contractor on this Project or regarding matters for which the Company has received notice and for which the Company is or may possibly become liable or on account of which Company has incurred any indebtedness, as determined and certified by the Engineer. In the event of any breach by Contractor of any provision or obligation of this Contract, Company shall have the right to retain out of and deduct from any payments due or to become due to Contractor an amount sufficient to completely protect the Company from any and all loss, damage, or expenses therefrom until the breach, cause, or claim which prompted the withholding has been

satisfactorily remedied or adjusted by Contractor. The rights of the Company under this Section shall not be exclusive of any other rights of the Company herein or provided by Laws.

## 6. PERFORMANCE

### 7. Prosecution of Work:

7.1 Contractor shall comply with reasonable instructions given by the Company, including any to suspend, delay or accelerate the Work. In the event, that Contractor believes that Company's instructions entitle Contractor to a Change Order or to a claim for additional compensation or time, Contractor shall seek such a Change Order or assert such a Claim as otherwise provided in the Contract.

7.2 The Contractor shall cooperate with the Company and other contractors whose work may interfere with the Work and shall participate in the preparation of coordinated drawings and work schedules as required by the Company in areas of congestion, specifically noting and advising the Company of any interference by others.

7.3 Contractor shall keep the construction area reasonably clear of debris resulting from the performance of the Work and shall remove from the construction area and lawfully dispose of all debris generated by the execution of the Work. If the Contractor fails to comply with this paragraph within forty-eight (48) hours after receipt of notice of noncompliance from the Company, Company may perform such necessary clean up and deduct the reasonable cost from any amounts due to the Contractor.

7.4 Contractor shall give adequate notices pertaining to the Work to the applicable governmental authorities, and shall secure and pay for all necessary licenses and permits to carry on its Work, a copy to be provided to the Company by Contractor prior to the start of the Work under this Contract.

7.5 Contractor is obligated to inform the Company of any material or design it may view as unsuitable for its intended purpose.

7.6 The Contractor shall review for compliance with the Scope of Work, approve and submit to the Company and Engineer for review and approval, shop drawings, product data, samples and other submittals in reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Company or of separate contractors. By submitting shop drawings, product data, samples or similar submittals, the Contractor represents to the Company and Engineer that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work.

7.7 Contractor represents and warrants to the Company that Contractor has complied with all terms of this Contract in connection with any Work that may have been performed prior to the date of this Contract.

7.8 Should the Contractor fall behind in its progress of the Work (taking into account extensions of the Contract Time approved in accordance with the Contract), or otherwise fail to timely progress the Work to meet the Company's reasonable expectations, Contractor shall, without being entitled to any additional compensation or extension of the Contract Time, work overtime, increase its forces, or take other such action as may be necessary or appropriate to complete the Work within the Contract Time.

7.9 Before acceptance of the whole or any part of the Work, such Work shall be subjected to observation and tests to determine that it is in accordance with the Contract Documents. The Contractor will be required to maintain all Work for a 30-day operating period after the same has been completed as a whole and the Engineer has notified the Contractor in writing that the Work has been finished to its satisfaction. The Contractor shall pay for all reasonable testing, and shall engage, if reasonably necessary, the laboratory, Company or qualified individual identified by the Engineer and the Company to conduct the tests in accordance with the Contract Documents. The Contractor shall give the Engineer a minimum of forty-eight (48) hours notice for all required observations or tests. All re-testing shall be conducted at Contractor's sole expense.

7.10 It is agreed that the Contractor occupies and shall occupy the status of an "independent contractor," and that Contractor's employees are not employees of the Company.

7.11 Contractor shall provide temporary sanitary facilities for the use of its employees, subcontractors, sub-subcontractors, and other workmen (including the Engineer) during the progress of the Work. The sanitary facilities shall conform to the requirements of the Horry County health engineer and applicable Laws. All facilities shall be removed at the completion of the Work.

7.12 Contractor shall be responsible for restoring any property corners or monuments disturbed during construction, which shall be restored by a professional surveyor registered in the State of South Carolina.

7.13 Contractor shall keep accurate, legible records of the locations, types, and sizes of sanitary sewage lines, service laterals, manholes, cleanouts, water lines, fittings, valves, hydrants, drainage pipes, drainage structures and other related work performed under this Contract. On a set of Project construction prints, the Contractor shall prepare a set of "record" drawings from the data stated above. The horizontal locations of all portions of items installed on the Project shall be accurately tied down to features that are physical and visible, such as property corner markers and/or permanent type structures. Invert and frame elevations of all manholes, storm sewers and structures, potable water services, sanitary sewers, sanitary laterals and lift stations shall be clearly indicated. These "record" drawings shall be kept clean and dry and maintained in a current state with the progress of the Work. If at any time a copy of this set of "record" drawings (or any portion thereof) is requested by the Company, such copy shall be made available within twenty-four (24) hours after the request is made.

Before final acceptance of the completed Work and before final payment by the Company is due, the Contractor shall deliver to the Engineer a completed set of "record" drawings accurately depicting the data described above. The horizontal and vertical locations as shown on the "record" drawings for the items installed on the Project shall be certified by a licensed engineer or surveyor, other than Engineer, registered in the State of South Carolina. "Record" drawings shall be submitted either on a marked-up set of Project construction prints or electronically in a CADD file. Engineer shall prepare original "record" drawings from the Contractor's submitted data. When completed, Engineer shall stamp and sign the original "record" drawings before making copies available to the Company or to appropriate governmental agencies.

#### 8. Coordination with Others:

The Contractor agrees to perform and coordinate its Work with that of the Company and other contractors to the best interests of the Project as a whole.

2. Protection of Work

9.1 Contractor agrees to adequately and properly protect the Work (including all staking and surveying work with regard to the Project) and the safety of the public, including by erecting and maintaining suitable and sufficient lights, barricades, barriers, supports, signs, guards, and any other necessary devices or means, so as to avoid injury or damage to persons or property. Traffic lanes closed to traffic shall be protected by effective barricades which shall be lighted during hours of darkness, and suitable warning signs shall be provided to control and direct traffic and to warn pedestrians. Upon completion of the Work (or, if applicable, portion of the Work), all barricades, signs, and the like shall be removed by Contractor. Contractor agrees to be directly responsible for damages to persons and property occasioned by its failure to comply with the requirements of this Section 9.1 and for any negligence in the performance of the Work, that it shall be responsible for the repair costs of others' work which Contractor damages or fails to protect, and that it shall indemnify and hold harmless the Indemnified Parties from all losses, costs, and expenses as set forth more fully in Section 14.2 arising from or relating to Contractor's failure to comply with this Section 9.1.

9.2 Contractor acknowledges that any utility interferences shown in the Contract Documents may not be complete, and the existence and location of underground utilities will be investigated and verified in the field by the Contractor before starting the Work. Contractor is responsible for coordinating with the utility companies any relocation, adjustment, or replacement of utility facilities. Excavation in the vicinity of existing structures and utilities shall be carefully done by hand. Contractor shall take all necessary precautions to protect in place all overhead, underground and surface improvements, including but not necessarily limited to pole lines, pipe lines, conduits, cabling, subsurface facilities, sewer lines, water lines, service and meters, valves, hydrants, irrigation facilities and any other improvements located within or adjacent to the Project. Contractor shall be responsible for any damage to and for maintenance and protection of existing utilities and structures.

9.3 The Contractor shall provide, at the Project site, such equipment and medical facilities as are necessary to supply first-aid service to anyone who may be injured in connection with the Work. The Contractor must report in writing to the Engineer and the Company within forty-eight (48) hours thereof all accidents or occurrences whatsoever arising out of, or in connection with, the performance of the Work, whether on or adjacent to the Project site, which cause death, personal injury, or property damage, giving a full statement of details (including an identification of witnesses) known to Contractor. Contractor shall also furnish Company with a copy of all reports made by Contractor to Contractor's insurer or others regarding such accidents or occurrences.

10. Claims:

10.1 The Contractor agrees to give immediate written notice of any claims for which the Company is or may be liable so the Company may timely address such claims. Provided that the preceding sentence does not require earlier action within the earlier of five (5) days after the event for which a claim is to be made or the date Contractor becomes aware or reasonably should have become aware of the event. In the case of a personal injury or a potential workmen's compensation claim, Contractor must provide Company and Engineer written notice within 24 hours of the event. Failure to strictly comply with the notice requirements set forth herein shall constitute a waiver by Contractor of any such claims, including claims for additional time or compensation related to such notice requirements.

10.2 As a precondition to Contractor making a claim for an extension of the Contract Time arising out of abnormal weather conditions ("Weather Delay Claim"), Contractor shall

submit data from the National Oceanic Atmospheric Administration (NOAA) showing the number of days where precipitation or other inclement weather occurred during the period for which the claim is made along with daily weather logs which must be kept at the job site and which must indicate that adverse weather or site conditions precluded Work. Contractor agrees that a comparison of (1) the number of days of precipitation for the month or months in question during the Project (the "On-Site Precipitation Days"), and (2) the average number of days where precipitation for the month or months in question during the previous five years exceeded .5 inches (the "Five Year Average"), is a proper comparison by which to determine Contractor's potential entitlement for extension of time for Weather Delay Claims, and that no Weather Delay Claim shall be made unless - and then, only to the extent that - the On-Site Precipitation Days exceed the Five Year Average ("Abnormal Weather Days"). Contractor acknowledges that it has taken weather conditions into account in agreeing to meet the Contract Time under this Contract and that Contractor shall only be allowed an extension of time based upon the comparison set forth in this Section. If Contractor experiences a rain event on site in excess of one inch in a 24 hour period, Contractor may also claim additional days of precipitation for the month as outlined above if Contractor establishes that site conditions remained too wet to allow work to proceed the following day(s). Notwithstanding anything else to the contrary, Contractor shall not be entitled to an extension of the Contract Time for abnormal weather unless it can show that the abnormal weather specifically affected the critical path for the Work in such a manner as to cause the Work to extend beyond the Contract Time.

**10.3 No Damages for Delay.** *In no event shall Contractor be entitled to recover costs, overhead or any other damages for delays regardless of the cause or basis for such delay, and Contractor specifically waives its right to seek or recover any such delay damages. Contractor's sole and exclusive remedy for a delay claim shall be an extension of the Contract Time.*

**10.4** In the event that Contractor or the Work is damaged by a third party other than Company, Contractor waives any and all claims against Company arising out of or related to such damage. Contractor further agrees that its sole and exclusive remedy in such case shall be to pursue claims against the third party responsible for the damages incurred by Contractor or caused to the Work.

#### **11. Testing:**

Reasonable costs for all testing and re-testing required for Contractor's Work shall be conducted by the laboratory, Company or qualified individual approved by the Engineer and the Company and shall be paid for by the Contractor. However, the Company may choose to have additional testing conducted at the Company's expense.

#### **12. Warranty:**

**12.1** Neither the final payment nor any provision or modification of this Contract nor any review or approval of Work by the Company or its consultants shall relieve Contractor of responsibility for faulty materials or workmanship. Contractor is solely responsible for the accuracy, completeness and sufficiency of all Work. In addition to the specific guarantees required by the Scope of Work and any plans and specifications, Contractor warrants that materials and equipment furnished under this Agreement will be of good quality and new, unless otherwise required or permitted in writing by the Company; that the Work of this Contract will be free from defects; and that the Work will conform with the requirements of this Contract, as well as all applicable laws, codes, standards and regulations. In addition, Contractor further warrants that it will repair or replace any Work performed or materials furnished under this Contract against defects in material or workmanship, at its own expense and without cost to the

Company, for a period beginning at Substantial Completion of the Project, and continuing until one (1) year after Substantial Completion of the Work. Such one (1) year repair warranty shall not reduce the duration of any other warranties herein or any applicable common law, state or federal statutory warranties or statutes of limitation. Accordingly, Contractor shall, if possible, complete all correction items within five (5) working days from receipt of the original notice. In the event of an emergency, Contractor agrees to respond and repair or replace any defective Work or materials within twenty-four (24) hours from receipt of such notice, if possible.

12.2 In the event Contractor fails to repair or replace any Work or materials after receiving reasonable notice of the Company's request to repair or replace the same, the Company may, at its sole option and discretion, elect to repair or replace such Work or materials and hold Contractor liable for such repair or replacement (including any administrative costs incurred by the Company), and may backcharge or withhold the cost of such repair or replacement from any account then payable by Contractor. Nothing in the foregoing provision shall, in any manner, diminish or defeat any legal right Company may have to proceed against Contractor, including, but not limited to the right to recover for latent effects.

#### D. INSURANCE, BONDS AND INDEMNITY

##### 13. Insurance and Bonds:

13.1 Neither Contractor nor any of its Contractor Representatives (as defined in Section 14 below) shall commence any Work until such time as the Company has received, reviewed, and approved evidence satisfactory to the Company that all bonds and insurance as required in Exhibit A to this Contract have been obtained by such parties and that such bonds and insurance are in form and substance satisfactory to the Company. Without in any way limiting Contractor's obligations under Section 14 below, Contractor shall, during the term of this Contract, maintain the policies of insurance required and all insurance certificates and endorsements must be in compliance prior to payment of invoices. However, the Company's failure to receive, review or approve evidence of insurance prior to the commencement of Work shall not be deemed a waiver by the Company of the insurance requirements of the Contract.

##### 14. Hold Harmless - Indemnity:

14.1 The parties understand and agree that \$1,000.00 of the price to be paid to Contractor is specific consideration from the Company to the Contractor for Contractor's indemnification of the Company from liability for damage to persons or property arising from Contractor's act, omission or default in connection with this Contract or the Work.

14.2 To the fullest extent permitted by law, Contractor for its own acts or failure to act, and for those of its agents, employees, suppliers, subconsultants, subcontractors and sub-subcontractors (including those employed directly or indirectly by such agents, employees, suppliers, subconsultants, subcontractors and sub-subcontractors) (collectively, the "Contractor Representatives"), shall indemnify, defend, protect and hold harmless the Company, all subsidiary or affiliated companies of the Company, and all of such parties' representatives, partners, stockholders, designees, officers, directors, agents, and employees and their respective heirs, executors, administrators, successors, and assigns, and the Company's lender(s) (collectively the "Indemnified Parties"), from any and all losses, costs, expenses, reasonable attorneys' fees and other costs of defense incurred in defending against any claim(s) or in enforcing this indemnity and defense obligation, liabilities, claims, court costs, demands, debts, causes of action, fines, judgments and penalties (collectively, "Liability") which may arise from or relate to: (a) death or injury to people or damage or injury to property in connection with the performance of the Work; (b) the negligent acts, errors or omissions of



Contractor or any Contractor Representative in connection with the performance of the Work; (c) any and all liens, stop notices and charges of any type, nature, kind or description which may at any time be filed or claimed against the site of the Project or community or any portion thereof, or the Company or the Company's lender (except when such liens or stop notices are caused by the Company's default in its obligation to pay Contractor pursuant to the provisions of this Contract) in connection with performance of the Work; (d) any claim(s) under workers' compensation acts, disability benefits acts, and other employees benefit acts, (provided, however, the indemnity and defense obligation hereunder shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable under such acts); (e) Contractor's failure to fulfill its obligations under this Contract in accordance with its terms, including Contractor's breach of any representations or covenants given in this Contract or elsewhere by Contractor; (f) violation of any local, state or federal law, regulation or code; or (g) infringement of any patent, trademark or copyright, or violation of trade secret or other proprietary right, in connection with performance of the Work. Notwithstanding the foregoing, Contractor shall not be obligated to indemnify the Indemnified Parties to the extent such Liability is determined by a court of competent jurisdiction to have been caused by the negligence or willful misconduct of one or more Indemnified Parties. In the event an Indemnified Party incurs Liability by reason of strict liability, or a similar legal theory, Contractor shall, nonetheless, indemnify, protect and hold each Indemnified Party harmless from such portion of such Liability that, directly or indirectly, relates to Contractor or one or more Contractor Representatives or others for whose negligent acts they may be liable or any or all of them. Payment to Contractor by any Indemnified Party shall not be a condition precedent to enforcing such party's rights to indemnification. The obligations under this Section 14 shall survive expiration or termination of this Contract. Nothing in this Section 14 shall be construed to negate, abridge or otherwise reduce any other right or obligation of indemnity (including, without limitation, equitable indemnity) which would otherwise exist as to the Indemnified Parties.

## E. DISPUTES

### 15. Disputes Clause:

15.1 Mandatory Mediation. Any claim arising out of or related to the Contract shall be subject to mediation as a condition precedent to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their claims by mediation within ninety (90) days of receipt by a party of a Notice of Mandatory Mediation setting forth the general basis for the mediation received from the other party, which shall be conducted in accordance with the construction industry mediation rules of the American Arbitration Association in effect on the effective date of this Contract. The request for mediation shall be filed in writing with the other party and with the American Arbitration Association. The parties shall share the mediator's fee and any filing fees equally, and the mediation shall be held in Charleston, South Carolina.

### 15.2 Arbitration.

15.2.1 Every claim between the parties arising out of or related to the Contract that is not resolved by mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the effective date of the Contract. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party or which a arbitration is permitted to be demanded.

15.2.2 A demand for arbitration shall not be allowed if it is made after the date when the institution of legal or equitable proceedings based on the claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim.

15.2.3 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

15.2.4 This agreement to arbitrate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

15.2.5 Either party, at its sole discretion, may consolidate an arbitration conducted under this Contract with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

15.2.6 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

15.2.7 The Company and Contractor grant to any person or entity made a party to an arbitration conducted under this Section 15.2, whether by joinder or consolidation, the same rights of joinder and consolidation as the Company and Contractor under this Contract.

#### F. MISCELLANEOUS

#### 16. Compliance With Laws:

16.1 The Contractor is in compliance and shall comply with all Laws effective where the Work is to be performed under this Contract, and to pay all fees, permits, taxes (including sales and use taxes), and expenses connected with such compliance, and also to pay all taxes imposed by any Laws for any employment insurance, pensions, old age retirement funds, or any similar purpose.

16.2 If any of the provisions under this Contract are in conflict with any Laws, then such Laws shall control over this Contract. In such case, the Contractor is obligated to inform the Company in writing of such non-compliance with such Law(s) within three (3) days of the discovery of such non-compliance.

16.3 To the extent that any term or provision of this Contract may be deemed void or not in compliance with any applicable Laws, that term or provision will be void, and where possible, void language shall be modified to the minimum extent necessary to conform to such Law(s) with all other terms and provisions of this Contract remaining in full force and effect.

17. Safety:

As to safety on the Project, Contractor:

17.1 Shall familiarize itself and comply with all prevailing safety Laws; and

17.2 Agrees that it is responsible for compliance with all applicable Laws applying to safety, including the Occupational Safety & Health Act (OSHA). Without limiting the foregoing, Contractor shall perform the Work using only those employees and/or subcontractors, if any, who are fully trained and certified pursuant to 29 C.F.R. § 1910.120. It shall further assure itself that any tools, equipment, scaffolding, or other items which may be loaned or rented to it by the Company or others, are in good order and in compliance with OSHA standards and any other Laws designed to protect the safety of persons at the job site. Contractor agrees to indemnify and hold the Company harmless with respect to any penalties or fines for violations of applicable safety Laws or for injuries or death resulting from non-compliance.

18. Termination of Contract:

18.1 The Company may immediately terminate this Contract or portion thereof:

18.1.1 If Contractor at any time shall breach this Contract, fail, refuse or neglect to supply sufficient, properly skilled workmen or materials or equipment of the proper quality or quantity, or fail in any respect to prosecute the Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the Work of the Company or others, or fail in the performance of any of the covenants or conditions herein contained, or be unable to meet its debts as they mature, the Company shall deliver written notice to Contractor setting forth the basis for the breach and allowing Contractor fourteen (14) days to cure the breach or, if the cure reasonably would take longer than fourteen (14) days, reasonable time for Contractor to cure the breach. If the breach is not cured within such time, as determined by the Engineer, Contractor may, at its option, terminate this Contract by delivering written notice of termination to Contractor. Thereafter, the Company may take possession of the Work, and through itself or others provide labor, equipment, and materials to prosecute Contractor's Work on such terms and conditions as shall be deemed necessary, and shall deduct the reasonable costs thereof, including all charges, expenses, losses, costs, damages, and attorney's fees, incurred as a result of Contractor's failure to perform or other breach, from any money then due or thereafter to become due to Contractor.

18.1.2 If the Company terminates this Contract for cause, Contractor shall not be entitled to any further payments under this Contract until the Work has been completed as verified by the Engineer. In the event that the unpaid balance due to Contractor exceeds the Company's cost of completion, the difference shall be paid to Contractor; but if the Company's cost of completion exceeds the balance due to Contractor, Contractor agrees to pay the difference to the Company within ten (10) calendar-days of written certification from the Engineer that the additional costs were reasonable and necessary for the completion of the Work. Termination of this Contract, or portion thereof, shall not relieve the Contractor of its responsibilities for the Work it performed prior to completion, nor shall it relieve its surety and indemnity obligation for and concerning any claim arising out of the Work performed by the Contractor. To the extent that any termination for cause by the Company is found to be without adequate cause, such termination shall be treated in all respects as a termination for convenience as set forth below in Article 18.1.3.

19.1.6 By written notice, without Contractor being at fault and for the Company's convenience, the Company may require Contractor to immediately stop work and/or terminate this Contract. In such event, the Company shall pay Contractor for that portion of the Work actually performed in compliance with this Contract in an amount proportionate to the fixed price set forth in or calculated pursuant to Section 4.1. Under no circumstances shall the Company be liable to Contractor for any other costs, expenses or damages, including any lost or prospective profits.

19. Entire Agreement:

It is agreed that the terms and conditions of this Contract are fully covered as part of this document, and that any verbal statements made by either party, or agents claiming to represent either party, are to be considered of no effect whatsoever. The failure of the Company to enforce at any time, or for any period of time, any one or more of the provisions of this Contract shall not be construed to be and shall not be a waiver of such provision or provisions or of its right thereafter to enforce each and every such provision.

20. Assignment:

Contractor understands, agrees and consents to the Company's assignment of this Contract to a third party upon completion of the Work and payment to Contractor. Contractor understands that the Work is only a portion of a larger project being undertaken by the Company and, as such, the Company may hire a third party general contractor to complete the larger project at which time this Contract would be assigned by Company to the third party general contractor.

21. Severability:

If any provisions contained in this Contract are held illegal, invalid or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The Court shall instead reform or replace any void or unenforceable provision with a valid and enforceable provision that gives meaning to the intention of the provision or shall strike the provision from the Contract.

22. Applicable Law:

This Contract shall be construed and enforced in accordance with the Laws of the State of South Carolina, excluding only its conflict of laws principles.

23. Construction of this Contract:

It is agreed that the terms and conditions of the Contract shall not be construed in favor of or against either party and that both parties have legal counsel available to review this Contract in connection with this arms-length transaction.

24. Notices:

24.1 Except as otherwise provide in this Contract, all communications required or permitted hereunder must be in writing (including email) and will be effective only when actually received by the parties. All notices shall be sent to the following individuals as set forth below:

Company:

Name: Gary Judd  
Address: Hartford Bond Claims  
Hartford Plaza, Tower 4  
Hartford, CT 06115  
e-mail: Gary.Judd@ihhartford.com

With a copy to:

Name: James L. Werner  
Address: Parker Poe Adams & Bernstein LLP  
PO Box 1509  
Columbia SC 29202-1509

Contractor:

Name: Kevin Moore  
Address: R. H. Moore Company, Inc.  
Post Office Box 830  
Murrels Inlet, SC 29576  
e-mail: kevinmoore@rhmoorecompany.com

**25. Contract Documents:**

The Contract Documents which comprise the entire agreement between Company and Contractor concerning the Work are set forth below. In the event of any conflict between any Contract Document other than a Change Order executed in accordance with this Agreement, and this Agreement, the terms of this Agreement shall govern:

- 25.1 This Contract;
- 25.2 Exhibits to this Contract;
- 25.3 Performance Bond;
- 25.4 Labor and Materials (or "Payment") Bond;
- 25.5 Notice to Proceed;
- 25.6 Specifications prepared by the Engineer dated April 2, 2007 and revised August 9, 2013, and attached hereto as Exhibit B;
- 25.7 Drawings and plans listed in Exhibit C;
- 25.8 Permit information attached hereto in Exhibit D;
- 25.9 Scope of Work listed in the Request for Proposal, dated August 29, 2013, attached hereto as Exhibit E.
- 25.10 Addendum Number 1 (dated September 13, 2013) to the Request for Proposal, dated August 29, 2013;
- 25.11 Addendum Number 2 (dated September 22, 2013) to the Request for Proposal, dated August 29, 2013;

- 25.12 Addendum Number 3 (dated October 1, 2013) to the Request for Proposal, dated August 29, 2013;
- 25.13 Contractor's Bid Proposal and Bid Form, as amended and corrected, attached hereto as Exhibit F.
- 25.14 Special Instructions from the Request for Proposal, dated August 29, 2013, attached hereto as Exhibit G.
- 25.15 Quote for conduit installation, attached hereto as Exhibit H.
- 25.16 Change Orders and any other written modification agreed to by the parties.

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IN WITNESS WHEREOF, the Company and Contractor have hereunto set their hands  
and seals in duplicate the day and year written below.

HARTFORD FIRE INSURANCE COMPANY

Date: December 11, 2013

By: [Signature]

Printed Name: Gary Todd

Title: Director

R. H. MOORE COMPANY, INC.

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, the Company and Contractor have hereunto set their hands and seals in duplicate the day and year written below.

HARTFORD FIRE INSURANCE COMPANY

Date: \_\_\_\_\_ By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

R. H. MOORE COMPANY, INC.

Date: 12-10-2013 By: [Signature]  
Printed Name: R. HENRY MOORE  
Title: PRESIDENT



Bond Dept.  
One Hartford Plaza 7-A  
Hartford, CT 06155  
Phone (888) 547 5000

December 23, 2013

VIA EMAIL kevinmoore@rhmoorescompany.com and Original by First Class Mail

Mr. Kevin Moore, Vice President  
R.H. Moore Company, Inc.  
Post Office Box 830  
Murrells Inlet, SC 29576

Re: Surety: Hartford Fire Insurance Company  
Principal: South Bay Properties, LLC  
Obligee: The City of Georgetown, SC  
Claim No.: 564 S 37297  
Bond No.: 22 BCS DA3552  
Project: The Plantation at Winyah Bay

Dear Mr. Moore:

This will acknowledge Hartford Fire Insurance Company receipt of the executed Construction Contract, Performance and Payment Bonds, and Insurance Certificate for completion of the above captioned project. This letter shall serve as your Notice to Proceed (NTP) effective January 13, 2014. The Contract time is 180 calendar days and the work shall commence on or before January 13, 2014 with a Contract Completion Date of July 12, 2014.

You are the person designated within the Contract to receive Contract Notices. It is our understanding you have designated Eric Buckner with your Company as the Project Manager.

Please sign and return a copy of this Notice to Proceed as acknowledgement of this NTP directly to Hartford Fire Insurance Company to my attention.

Sincerely,  
Hartford Fire Insurance Company

Gary Judd  
Bond Claims Department  
Phone: (888) 266-3488  
(860) 547-8239  
Fax: (860) 221-3825  
Email: Gary.Judd@rthartford.com

Acknowledged: [Signature] Date: 12-23-13

R.H. Moore Company, Inc.



EXHIBIT

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN ) 2009-CP-22-1045

John Steven Goodwin, et al., )

Plaintiffs, )

Transcript of Record

vs. )

March 7, 2013

Landquest Development LLC, )  
et al., )

Defendants. )

B E F O R E :

Honorable Benjamin H. Culbertson  
Georgetown County Courthouse  
Georgetown, South Carolina

A P P E A R A N C E S:

John M. Leiter, Esquire  
K. Douglas Thornton, Esquire  
Attorneys for Plaintiffs

Elise F. Crosby, Esquire  
Attorney for City of Georgetown

Lawrence M. Hershon, Esquire  
Attorney for the Hartford Defendants

Charles T. Smith, Esquire  
Attorney for the Charltons and  
Bayside Property, Inc.

Grace L. Hurley, CVR-CM-M  
Circuit Court Reporter

1 (There were no exhibits marked during the hearing.)  
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1 (On the record, March 7, 2013.)

2 THE COURT: All right, the next one is 2009-CP-22-  
3 1045. This is the case of John Steven Goodwin and others  
4 versus Landquest Development, LLC, and others. According to  
5 my roster the matter is before the Court, let me see, on a  
6 motion to reinstate or restore the complaint and lis pendens  
7 and to consolidate separate trials.

8 Please give the court reporter your name and who you  
9 represent.

10 MR. LEITER: Your Honor, my name is John Leiter and I'm  
11 here with K. Douglas Thornton and we represent the Plaintiffs.

12 THE COURT: All right.

13 MR. HERSHON: Lawrence Hershon, Your Honor, from Parker,  
14 Poe, representing the Hartford Defendants.

15 MS. CROSBY: Elise Crosby for the City of Georgetown  
16 and I'm also here on behalf of Andrew Lindemann who represents  
17 City of Georgetown as well.

18 THE COURT: All right.

19 MR. SMITH: Charles Smith on behalf of Ronald L.  
20 Charlton, Bonnie N. Charlton, James R. Charlton and Bayside  
21 Property, Inc.

22 THE COURT: All right, and I apologize, sir, your name  
23 again?

24 MR. HERSHON: Lawrence Hershon.

25 THE COURT: Could you spell your last name, please?

1 MR. HERSHON: Yes, Your Honor, H-E-R-S-H-O-N.

2 THE COURT: And you represent - you're from what firm?

3 MR. HERSHON: From Parker, Poe.

4 THE COURT: Oh, okay.

5 All right, Mr. Leiter, Mr. Thornton, this is your motion?

6 MR. LEITER: It is, Your Honor.

7 THE COURT: All right.

8 MR. LEITER: And as you indicated in the beginning this  
9 is a motion to restore and reinstate the civil action which  
10 was stricken because of the bankruptcy of South Bay back in  
11 2010 or 2011 and the bankruptcy ended, I believe, that we've  
12 stated it in our motion it ended sometime in 2011. I believe  
13 the Court is familiar generally with these types of cases. We  
14 had a status conference before Your Honor some - shortly after  
15 the bankruptcy proceeding was filed where we discussed what  
16 would happen but it was understood that the matters would be  
17 stricken until the bankruptcy was resolved and then they would  
18 be ---

19 THE COURT: All right, well, what happened in  
20 bankruptcy?

21 MR. LEITER: It was dismissed, Your Honor.

22 THE COURT: The bankruptcy court dismissed ---

23 MR. LEITER: The filing, the petition filed by South  
24 Bay.

25 THE COURT: Okay, all right, go ahead.

1       MR. LEITER:     So that happened sometime in 2011; and so,  
2 the Court, I don't know if His Honor has actually restored any  
3 of these cases but there are several of these cases that have  
4 been restored including what I would call a very close  
5 companion case and that was an action brought by the Charltons  
6 and Bayside against the City of Georgetown, the Hartford and  
7 South Bay and that order was entered in by Judge Hyman in  
8 November of 2012. So the parties have been - the various  
9 parties have been restoring these cases; and so, we are just  
10 now in that line of parties coming before the Court asking  
11 that our case be restored. We have an additional part. We're  
12 asking that this case be consolidated with a fairly recently  
13 filed foreclosure action brought by the Charltons and Bayside  
14 because in our lawsuit we had sued the Charltons and Bayside  
15 alleging various causes of action against them including the  
16 fact that they may be joint ventures with the other  
17 Defendants. There are questions relating to the equitable  
18 subordination of their mortgage and they all arise out of the  
19 same core facts. I believe His Honor is familiar with us  
20 before in that matter.

21       THE COURT:     All right, well, what kind of case is  
22 this?

23       MR. LEITER:     Well, it arises out of a failed  
24 development, this one.

25       THE COURT:     But I mean what are your allegations? What

1 are you suing the Defendants for?

2 MR. LEITER: Okay, well, going down the list we have  
3 several groups of Defendants, but the developer sales group  
4 made - obviously it's a breach of contract. They promised  
5 certain amenities and infrastructure to be built in this  
6 subdivision that were never - it was never - they were never  
7 put in. We've alleged against them as well breach of the  
8 Unfair Trade Practices Act, fraud and those related kinds of  
9 actions because South Bay and Landquest or at least starting  
10 with South Bay we believe knew that they did not have the  
11 financial wherewithal to actually complete the project even as  
12 they were selling the project to our clients. The Charltons  
13 and Bayside were the owners of the land and through their  
14 efforts, together with South Bay, they really entered into a  
15 joint venture arrangement with South Bay that we believe  
16 exposes them to liability out of the failed development. Then  
17 there is the Hartford and the City of Georgetown relating to a  
18 bond that was put in place regarding the funding of the  
19 infrastructure in the event that the developer failed to do  
20 it. That has never been put in and so they also are parties.  
21 So in a broad way those are our claims within the developer  
22 class of - causes of action. We have violations of the  
23 Federal Interstate Land Sales Act, for instance, as well as  
24 the other causes of action I mentioned to you.

25 THE COURT: Okay, and the property - so your - the

1 Plaintiffs are purchasers of lots in this failed development?

2 MR. LEITER: Correct, Your Honor.

3 THE COURT: All right, there's another action that is  
4 foreclosing on the remaining properties?

5 MR. LEITER: Correct, Your Honor.

6 THE COURT: But it doesn't affect your clients'  
7 individual lots?

8 MR. LEITER: Not the individual lots but ---

9 THE COURT: Okay.

10 MR. LEITER: --- the infrastructure, what would be part  
11 of the infrastructure, yes, Your Honor.

12 THE COURT: Okay, common areas and all of that?

13 MR. LEITER: Common areas, yes.

14 THE COURT: Okay, all right, I got you.

15 All right, who wants to go first?

16 MR. HERSHON: Your Honor, Lawrence Hershon on behalf of  
17 the Hartford Defendants, and if - may it please the Court,  
18 I've got a brief memo I'd like to supply for the response to  
19 the motion.

20 THE COURT: All right.

21 MR. HERSHON: And Your Honor, submitting that simply is  
22 a summary for the Court of the positions of Hartford. First  
23 on the issue of the motion to restore here, I think generally  
24 speaking, and you know, as, as Plaintiffs' counsel mentioned  
25 there is, there is another matter that has been restored.



1 However, there's some significant differences here with this  
2 case. If you'll notice in the motion that was filed by the  
3 Plaintiffs there are four Plaintiffs that are listed. If  
4 you'll notice on this response memo and the initial complaint  
5 have 21 Plaintiffs, and so something that I'm still not fully  
6 aware of is where those other 17 Plaintiffs are.

7 THE COURT: Well, let's find out. Are you - is - are  
8 you just restoring this - there were originally 17 Plaintiffs?

9 MR. LEITER: Something like that, Your Honor.

10 THE COURT: All right, and so, are all 17 - are we  
11 restoring that case in its entirety or how ---

12 MR. LEITER: Yes, Your Honor.

13 THE COURT: Okay, all right, go ahead.

14 MR. HERSHON: Okay, so, and - so, okay, if it is  
15 something that's restoring as to all 21 Plaintiffs then that,  
16 that's not an issue and if they are and that they all - and  
17 they all have knowledge of the hearing and know that their -  
18 that this case was being restored?

19 MR. LEITER: Your Honor, I've never been asked that  
20 question before. We're here on their behalf.

21 MR. HERSHON: Okay, all right, I, I'd heard ---

22 THE COURT: Okay, so, they're - you all represent all  
23 of the Plaintiffs.

24 MR. LEITER: Yes, at this point.

25 THE COURT: Okay.

1 MR. LEITER: What Mr. Hershon is getting to is that  
2 some of these Plaintiffs have - you know, their - the interest  
3 in pursuing this has waned for some.

4 THE COURT: Yeah.

5 MR. LEITER: And so, after the case is restored we'll  
6 have to bring that up by way of motion to be relieved as to  
7 those clients, but as we stand here today we represent all the  
8 Plaintiffs.

9 THE COURT: All right.

10 MR. HERSHON: Okay, all right, thank you for clarifying  
11 that.

12 MR. LEITER: Sure.

13 MR. HERSHON: I just didn't - I had, had heard different  
14 stories and I didn't know if you represented everyone.

15 MR. LEITER: Sure.

16 MR. HERSHON: So appreciate that.

17 As to the, the motion for - so I think the issue here  
18 then because we certainly don't - I don't - Hartford does not  
19 have an issue with restoration if all Plaintiffs are involved.  
20 The significant issue though is with the motion to  
21 consolidate. As, as the, as the Court mentioned in its  
22 questions we're dealing with two very different suits here.  
23 I'll refer to the lawsuit by the Charltons basically as the  
24 foreclosure lawsuit. That's dealing with the foreclosure -  
25 this development was all done by an entity, South Bay, and the

1 Charlton lawsuit is regarding a foreclosure of that South Bay  
2 property, the property that's owned by South Bay. The lots  
3 that are owned by these Plaintiffs here are completely  
4 different lots. We have different parties in these two  
5 lawsuits. Hartford is not a party to the, to the foreclosure  
6 lawsuit. Hartford is not involved in any way in the  
7 foreclosure lawsuit and the only reason Hartford, the reason  
8 Hartford is involved in this lawsuit is it provided a  
9 subdivision performance bond for the roads and utilities in  
10 this neighborhood. That has nothing to do with this, the  
11 foreclosure lawsuit that they're attempting.

12 THE COURT: Well, I mean, does the foreclosure include  
13 the roads and the common areas and where all of these  
14 infrastructures were supposed to go? Does it include that  
15 realty?

16 MR. HERSHON: My understanding is that there would be,  
17 yes, that the common areas that are owned by South Bay would  
18 be - are a part of that. Mr. - the attorney for the - for Mr.  
19 Charlton could comment further if I've stated anything  
20 incorrect there. However, the only reason that the - that  
21 these Plaintiffs are even in that - my understanding the only  
22 reason the Plaintiffs are in that - the Charlton foreclosure  
23 lawsuit is because the Plaintiffs here filed a very broad lis  
24 pendens; and so that is the reason that they are named as  
25 Defendants in the Charlton foreclosure suit is just as a - is

1 because of that, of that broad lis pendens. So there's not -  
2 that is, that is a very different set of claims, Your Honor,  
3 and again as Hartford is not a party to that lawsuit it's not  
4 really doing anything in terms of common law fact, if it's,  
5 it's not saving any kind of judicial economy in that nature  
6 when you're bringing together two very - even though it's  
7 about the same neighborhood, the same overall development  
8 talking about, just very different interests in those two  
9 lawsuits.

10 THE COURT: Okay, all right. Ms. Crosby, any  
11 argument?

12 MS. CROSBY: Very briefly, Your Honor, with regard to  
13 the motion to restore, it's not to steal his thunder but I  
14 believe that the - Mr. Smith might have an argument regarding  
15 the timeliness of the motion. That would be dispositive. If  
16 it is it is, if it's not the City has no real opposition to  
17 restoring it, and in fact, that is the only way the City could  
18 reach its claim for fees in the case is if the case is  
19 actually restored. The City, again, is really only - we're a  
20 party, we're a named Defendant in the Charlton lawsuit, not  
21 the foreclosure lawsuit, but a separate lawsuit by a different  
22 set of landowners and we're a named Defendant in this one as  
23 well, and we actually, the City moved to restore the Charlton  
24 lawsuit in order to perfect our cross-claim against the  
25 Hartford on the bond. So that - we're only related on the

1 bond, Your Honor.

2 THE COURT: Okay, all right, Mr. ---

3 MS. CROSBY: And with regard to the motion to  
4 consolidate, the judicial economy, the City would prefer  
5 obviously not to have that - this bond issue consolidated with  
6 a much broader foreclosure lawsuit. Thank you.

7 THE COURT: All right, Mr. Smith.

8 MR. SMITH: Thank you, Your Honor, on behalf of my  
9 clients I do oppose the motion to restore. The reason for my  
10 opposition is because the Goodwins and the Owens who filed  
11 this motion failed to move to restore the case within the one  
12 year permitted by 40(J). Since they did not file it timely  
13 within that one year the statute of limitations continued to  
14 run and the case is now barred by the statute of limitations.

15 THE COURT: Was it struck pursuant to 40(J) or it was  
16 struck because of bankruptcy?

17 MR. SMITH: It said bankruptcy, it did not say  
18 specifically ---

19 MR. LEITER: Yeah, it was not struck.

20 THE COURT: Okay.

21 MR. SMITH: --- pursuant to 40(J), but that does not  
22 seem to be required. There are two cases, Your Honor,  
23 addressing this matter if I may provide copies.

24 THE COURT: Well, I mean, when a party files  
25 bankruptcy that automatically pursuant to bankruptcy law stays

1 ---

2 MR. SMITH: Yes, Your Honor.

3 THE COURT: --- the civil action.

4 MR. SMITH: Exactly.

5 THE COURT: Okay, so I'm having a hard time following  
6 your argument how 40(J) comes into play in this.

7 MR. SMITH: Well, and if I may these two cases may be  
8 of help.

9 THE COURT: Okay.

10 MR. SMITH: Let me go ahead and hand those out first.

11 THE COURT: All right, hold for a second, let me read  
12 these.

13 All right, in both of these cases though the case was  
14 stricken pursuant to Rule 40(J) or the predecessor to Rule  
15 40(J).

16 MR. SMITH: Well, yes, sir, and of course the  
17 predecessor to Rule 40(J) was very different. It had nothing  
18 about the one-year staying of the statute of limitations, and  
19 that of course is the Court of Appeals decision, but they  
20 applied Rule 40(J) even though Rule 40(J) wasn't adopted until  
21 after that had been stayed.

22 THE COURT: Yeah, but Rule 40(J), my understanding  
23 basically replaced the old Rule 40(C)(3).

24 MR. SMITH: It did replace that but the provision  
25 about staying the statute of limitations if it's restored in

1 one year was new.

2 THE COURT: But I mean some of these bankruptcies last  
3 three and four and five years. So you're saying that if a  
4 case is stayed for bankruptcy then the statute of limitations  
5 can still expire?

6 MR. SMITH: Well, Your Honor, of course that's not the  
7 situation we have here.

8 THE COURT: Okay.

9 MR. SMITH: In the present case less than a month  
10 after this case was stayed the bankruptcy was dismissed. This  
11 case was stayed or stricken on July the 22<sup>nd</sup> of 2011. The  
12 bankruptcy was dismissed August the 12<sup>th</sup> of 2011, you know,  
13 basically 20 days later. So the bankruptcy did not preclude  
14 anything, but nevertheless over a year and six months passed  
15 between the time this action was stayed and when the motion  
16 was filed to restore.

17 THE COURT: Okay, I see what you're saying. The bank  
18 - it was - it was discharged from bankruptcy when?

19 MR. SMITH: Actually the Plaintiffs have attached a  
20 copy of the discharge to their motion but ---

21 THE COURT: Okay.

22 MR. SMITH: --- the discharge is August the 12<sup>th</sup>, 2011.

23 THE COURT: Okay, all right, go ahead, and when does  
24 the statute ---

25 MR. SMITH: Well, since we've touched upon the case

1 law let me just go back to the chronology here.

2 THE COURT: Okay.

3 MR. SMITH: The Goodwins, according to complaint,  
4 purchased their lot in September of 2007. The Owens purchased  
5 their lot in December of 2007. So the statute of limitations  
6 would start to run back in 2007. This action was filed in  
7 July of 2009, which certainly was within that period, within,  
8 less than, less than three years. The case was then stricken  
9 in July of 2011. Now at that point we're more than three  
10 years down the road. So we get to the situation that's really  
11 highlighted in the footnote two to the Supreme Court's opinion  
12 where more than three years had passed at the time it was  
13 stricken, but had they restored this case within the one year  
14 provided by 40(J) no problem. They would have been  
15 protected, but once they pass that one year there is no  
16 staying of the statute of limitations. In this case the  
17 motion to restore was not filed until January the 22<sup>nd</sup> of 2013.  
18 That's a year and six months after the case had been stayed  
19 and that's over five years after the cause of action arose.  
20 So under those two cases I think the Court is required to  
21 dismiss this case with prejudice per the statute of  
22 limitations.

23 THE COURT: All right, anything in reply?

24 MR. LEITER: Yes, Your Honor, several things. First of  
25 all when the statute begins is subject to the discovery rule.



1 It's not just one set date, but more importantly the  
2 Charltons' own action was restored November the 2<sup>nd</sup>, 2012,  
3 outside of the one year that he's talking about. Most  
4 importantly he's converting this into a 40(J).

5 THE COURT: Well, no, I understand his argument now  
6 and it's not really 40(J). What he's saying is you had a case  
7 stayed by bankruptcy and basically you've waited a year and a  
8 half after the discharge from bankruptcy to restore it. How  
9 long do you have after a case is discharged from bankruptcy to  
10 move to restore it? Is it, I mean?

11 MR. LEITER: Well, I'm not sure that there is one set  
12 answer to that. It's certainly not the 40(J) answer because  
13 we're just simply not under 40(J) but what I would request the  
14 Court to consider would be all the cases that have been  
15 restored that fall within the scope of this underlying action.  
16 I mean, we don't represent all the Plaintiffs that have sued  
17 South Bay and Landquest and I believe we might be the only  
18 ones that have sued the Charltons, but nonetheless, it's all  
19 the same underlying set or core of facts and ---

20 THE COURT: Well, that might be the case but that's  
21 the first time I've heard this argument and then so - as far  
22 as anything that might have been in front of me this is the  
23 first time this argument has been posed and that's why I'm  
24 asking because I don't know the answer to be honest with  
25 you.

1       MR. LEITER:     It's the first time we've heard this  
2 argument as well, Your Honor, but the only thing I'm, I'm  
3 requesting in my argument back or in my reply is that you look  
4 at the, you know, there's no set rule obviously that says it  
5 has to be one year, year and a half, two years. It just  
6 doesn't exist. So if the Court is considering it it has to be  
7 in my opinion an equitable review of the totality of the facts  
8 that exist. If we were standing by ourselves and no one else  
9 had restored the case it might be a different argument but  
10 we're within, you know, since November when the Charltons  
11 restored their case and the end of December when they filed  
12 their - of 2012 when they filed their foreclosure that we're  
13 asking to be consolidated with this action. We're still all  
14 in the same neighborhood. I mean, if you, if you try to  
15 dissect it like Mr. Smith would ask you to do it does seem  
16 like these dates that are extended but if you look at the  
17 totality in the other cases, including the Charltons' own case  
18 in restoring the case we're all within the same time period,  
19 whether it's six months, eight months, I mean, that's what  
20 we're talking about. There is no bright-line that I can bring  
21 to the Court to say, "Well, everyone else met the bright-line  
22 but we're over it." I mean if there is it's a new bright-line  
23 for me, but I would like to hand up the various orders that we  
24 have gotten from the courthouse files and ask the Court to  
25 take judicial notice of those.

1 THE COURT: Well, I can take judicial notice but my  
2 question is has this argument been raised in any of these  
3 motions to restore?

4 MR. LEITER: That, that I don't know, Your Honor.  
5 Well, obviously not in the Charlton matter because had they  
6 raised it you would be hearing about it now, but this is a  
7 consent order where they've - yeah, this is a consent order in  
8 the matter that was restored in November of 2012, and so we  
9 filed our motion to restore January of 2013. I really don't  
10 see a monumental time difference in those two dates.

11 THE COURT: So what was restored in November of 2012?

12 MR. LEITER: This was when the Charltons, Bonnie  
13 Charlton and Ronald Charlton, brought the action against the  
14 City of Georgetown.

15 THE COURT: They filed the action.

16 MR. LEITER: They filed the action, correct.

17 THE COURT: Yeah, we're talking about a case that has  
18 been struck from the roster because a named Defendant was in  
19 bankruptcy and now they're trying to restore that case because  
20 the bankruptcy is discharged from the debtor.

21 MR. LEITER: And that's all we're doing. I mean they  
22 sued South Bay as well.

23 THE COURT: I understand that, but I don't think you  
24 understand my question.

25 MR. LEITER: Okay.

1 THE COURT: Is there a case out there against these  
2 Defendants that was stricken from the active roster because I  
3 think it was South Bay filed bankruptcy?

4 MR. SMITH: Yes, Your Honor.

5 THE COURT: Okay, because South Bay filed bankruptcy  
6 that has since been restored following South Bay's discharge  
7 from bankruptcy?

8 MR. LEITER: Yes, Your Honor.

9 THE COURT: Okay.

10 MR. LEITER: And that's the Charlton action. Let me  
11 hand up the ---

12 THE COURT: Where the Charltons - okay, so, their case  
13 was pending and it was stricken from the roster because South  
14 Bay filed bankruptcy?

15 MR. LEITER: Yes, Your Honor.

16 THE COURT: All right, and so now this one has been  
17 restored ---

18 MR. HERSHON: And Your Honor, not to ---

19 THE COURT: --- by a consent order but this issue was  
20 not raised in this?

21 MR. LEITER: I assume not. I can't answer that.

22 MR. SMITH: I mean, you recall that I was not involved  
23 in the other case.

24 MR. HERSHON: Well, now, and actually I want to clarify  
25 to the Court, I mean, there are two different Charlton actions

1 that were - that are being discussed now, too. There's the  
2 case to consolidate, that they're seeking to consolidate with  
3 is the Charlton foreclosure case. The order that you have in  
4 front of you is a case that is somewhat similar to the  
5 Plaintiffs' case brought by the Charltons about - against  
6 parties like South Bay, the City of Georgetown and Hartford.  
7 That, that case was restored by consent, consent agreement by  
8 all the, by all the Defendants. It, I mean, so up to that  
9 part it's the same. I think then there's some, you know, the

10 ---

11 THE COURT: Then I guess the difference is is that the  
12 Charltons were Plaintiffs in that case and the Charltons are  
13 Defendants in this case, and so the Charltons don't consent to  
14 the restoration of this one?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: Okay, all right, anything further?

17 MR. LEITER: Your Honor, as you're considering it I  
18 think you stated it perfectly the case that they're the  
19 Plaintiffs in they don't mind the case being restored. The  
20 case that they're not the Plaintiff in they object to it being  
21 restored, but the truth of the matter is is that we're all in  
22 the same litigation. They were also outside of the one-year  
23 period when this case was restored.

24 THE COURT: But nobody raised the statute of  
25 limitations. That's a ---

1       MR. LEITER:   Well, from an equitable point of view I  
2 understand what you're saying. Number one, I don't think the  
3 statute of limitations is the issue here. It's - we are - the  
4 case was stricken, not dismissed, just stricken because of  
5 bankruptcy. We are back in court now. The bankruptcy is  
6 over as any party would be.

7       THE COURT:    But the bankruptcy ended in 2011.

8       MR. LEITER:   And Your Honor, and I do understand that  
9 and that's a fact.

10      THE COURT:    Right.

11      MR. LEITER:   So I'm not trying to argue around that  
12 fact except the Charlton case was restored in 2012. We filed  
13 our motion to restore about a month or a month and a half  
14 after that. Whether they consented to it or not I don't think  
15 is the issue when the case is stricken. I mean, they, they  
16 took advantage of the fact that if the statute had run they  
17 weren't bringing it to the Court's attention. If it had run  
18 they waived it now for the purposes of this.

19      THE COURT:    Well, now, they haven't - so you're saying  
20 because they were Plaintiffs in that case they're waiving the  
21 statute of limitations as a defense in this case?

22      MR. LEITER:   As this Court - well, I'm - let me get to  
23 the statute in a minute ---

24      THE COURT:    All right.

25      MR. LEITER:   --- because I think that's an important

1 issue here because as the Court was inquiring - well, let me  
2 just finish this point. I think the Court has to look at the  
3 totality of the circumstances in making this decision, but  
4 going now to the issue of the statute of limitations when a  
5 case is stricken when did the statute run? I mean, what I'm,  
6 what I'm hearing the Court may be questioning or gravitating  
7 to is that there was a one-year rule based on 40(J) which  
8 clearly isn't applicable.

9 THE COURT: Well, and I don't know that that's the  
10 answer.

11 MR. LEITER: I understand.

12 THE COURT: You know, and I - that's my question. I  
13 think everybody agrees that had you filed this motion the day  
14 after bankruptcy was discharged you'd be okay. I think  
15 everybody equally agrees that if you hadn't filed this motion  
16 yet and you don't file it for another 15 or 20 years that  
17 you're certainly outside the timeframe. What I'm trying to  
18 figure out is what is that timeline between the day after  
19 bankruptcy and 15 years down the road ---

20 MR. LEITER: Understood.

21 THE COURT: --- where it becomes too late to move to  
22 restore it.

23 MR. LEITER: And so that was the only point I was -  
24 that I'm attempting to make. There were some restorations in  
25 April, some in May, one in November, now our request in

1 January. All that was in 2012 except for our motion to  
2 reinstate.

3 THE COURT: Let me ask you this, were there any cases  
4 in which the Charltons were named Defendants that were stayed  
5 pursuant to bankruptcy and that were restored more than a year  
6 after the discharge from bankruptcy?

7 MR. LEITER: Other than the Charlton action that  
8 they've brought which they're the Plaintiff in none that I'm  
9 aware of, Your Honor.

10 THE COURT: Okay, are you aware of any, Mr. Smith?

11 MR. SMITH: No, Your Honor.

12 THE COURT: Okay, so all that were restored naming the  
13 - where the Charltons were Defendants were restored within a  
14 year of the discharge from bankruptcy?

15 MR. SMITH: The only one that I'm aware of that the  
16 Charltons were involved in that was restored is the one that  
17 the Charltons brought against the City and the bonding  
18 company.

19 THE COURT: So there's no other case where they're a  
20 named Defendant?

21 MR. SMITH: Not that I'm aware of, Your Honor.

22 THE COURT: Okay, all right, so this is the only case  
23 out there? Okay, I got you. All right, anything else?

24 MR. LEITER: Just in closing, Your Honor, if you look  
25 at the actual order striking the case it's stricken due to



1 bankruptcy and there's no, no guidance, no saying when a  
2 motion has to be filed to reinstate, no rule has been cited in  
3 the order saying when it has to be reinstated. Based on the  
4 facts that you have in front of you, including the Charltons'  
5 own reinstatement, we are not outside of any reasonable  
6 timeline.

7 THE COURT: Okay, all right, I think I've got a - I've  
8 got a hold of the facts. I'm going to take it under  
9 advisement because quite frankly I don't know what the answer  
10 is. I've got to go do some research.

11 MR. SMITH: If I may touch upon one other thing, Your  
12 Honor, I didn't get a chance to speak to the joinder or the  
13 consolidation of the two cases, just wanted to make clear we  
14 also would oppose that consolidation.

15 THE COURT: And I understand your ---

16 MR. SMITH: The foreclosure is a classic foreclosure  
17 purely in rem.

18 THE COURT: Yeah, and I understand that but I think  
19 since it does involve common elements and since there is  
20 potentially down the road another person that owns those  
21 common areas and as I understand this lawsuit is for their -  
22 the Plaintiffs' failure to put in roads, infrastructures and  
23 stuff like that.

24 MR. SMITH: If I may, Your Honor, I certainly don't  
25 want to belabor the point, there are common elements involved

1 in the foreclosure but there is no question those common  
2 elements are subject to the master deed. So their use and  
3 purpose continues other than a change in title so that there  
4 is really nothing of benefit that the Charltons would get  
5 through that foreclosure other than clearing the title of  
6 South Bay Properties which has basically ceased to exist ---

7 THE COURT: Well, let me ask ---

8 MR. SMITH: --- where in this action what the  
9 Plaintiffs are seeking are monetary damages.

10 THE COURT: Well, and that's my question, is in the  
11 foreclosure action is the ultimate purchaser of that going to  
12 be subject to the damages that they, the Plaintiffs may obtain  
13 in this case? I mean, what I'm saying is is if the subsequent  
14 purchaser is stepping into the shoes of the prior developer  
15 who failed to put in this infrastructure and as I understand  
16 basically this lawsuit is against those developer or  
17 developers or whoever is claimed to be in that joint venture  
18 of development. I mean, when you say - I understand that  
19 they're subject to the, the restrictive covenants and they're  
20 stepping into those shoes but they're certainly not consenting  
21 to step into the - as Defendants in this lawsuit?

22 MR. SMITH: No, Your Honor, the foreclosure action is  
23 the foreclosure of a purchase money mortgage. The property was  
24 subject to a master deed. So obviously whoever acquires the  
25 property at the foreclosure sale will be taking it subject to

1 the master deed. Part of the property are lots that would be  
2 suitable for development. Part of the property are the common  
3 elements which logically would be conveyed over to the  
4 homeowners association.

5 THE COURT: Yeah, but without anybody - who's going to  
6 be putting in the infrastructures that were promised by the  
7 developer that's being foreclosed on?

8 MR. SMITH: The bonding company.

9 THE COURT: Okay, all right, so, in other words in  
10 this action if the Plaintiffs prevail in this action then they  
11 would recover from the bonding company. Is that ---

12 MR. SMITH: Well, this action they have alleged what  
13 about 13 causes of action, about 13 different Defendants.  
14 They'll be happy to take money from whoever will pay them.

15 THE COURT: Well, and that's what, and that's what I'm  
16 trying to figure out ---

17 MR. LEITER: He speaks well.

18 THE COURT: --- is you're saying it's a simple  
19 foreclosure action, but if, in fact, down the road looking at  
20 the facts that are most favorable to the Plaintiffs in this  
21 case I don't want their feet cut off from under them if  
22 they're entitled to recovery and you say, "Well, it was sold  
23 at foreclosure. So the new purchaser's not liable for it."  
24 You've got a former developer who no longer owns the property  
25 so they've been discharged, you've got a bonding company that

1 is not responsible for it. So who steps in?

2 MR. SMITH: Well, one of the 13 claims that they have  
3 made in this action is that the Plaintiffs have a constructive  
4 trust over the property owned by the developer, South Bay  
5 Properties, that because of all these bad things all these  
6 people did that are attributable to every, each other that  
7 they have a constructive trust that comes ahead of that  
8 purchase money mortgage. Now that's obviously not something  
9 for a jury to determine. That is purely - if there is any  
10 validity of the claim that is an equitable claim.

11 THE COURT: And shouldn't that be included and  
12 determined before they sell it at foreclosure?

13 MR. SMITH: Well, that is part of the foreclosure  
14 action. That is why these Plaintiffs were named in that  
15 foreclosure action so that their equitable claim against that  
16 real estate, both as to its validity, its priority could be  
17 determined.

18 THE COURT: Okay, so, these Plaintiffs are named in  
19 that foreclosure action?

20 MR. SMITH: For precisely the purpose of determining  
21 that equitable claim they claim to have against the property.

22 THE COURT: I got you. Okay, all right, well, I'm  
23 going to take it under advisement. Anything else in response  
24 to Mr. Smith's argument?

25 MR. THORNTON: Briefly as I can be, Your Honor, on the

1 consolidation, these issues are present both in this case and  
2 the foreclosure action but we had filed a motion to amend our  
3 answer on behalf of two Defendants in that foreclosure action  
4 and I believe that motion has been referred to the master-in-  
5 equity, has not been heard because Mr. Crosby had a conflict.  
6 So it hasn't been asserted yet in that action and in this  
7 action the real reason that we want to consolidate the cases  
8 and I believe they're directly related and should be  
9 consolidated is that the Charltons as joint venturers we  
10 contend issues made the decision to proceed with these  
11 closings knowing there was no loan in place to build the  
12 infrastructure, relying on this bond that was purchased by  
13 Kyle Corkum and Landquest and an indemnification agreement  
14 that was signed by 15 parties, including those two at no cost  
15 to the Charltons, we're in the position we're in, 21  
16 Plaintiffs and there are numerous other Plaintiffs, lot  
17 purchasers out there, we're in this position because the lots  
18 that were valued based on appraisals with the infrastructure  
19 and the amenities going in are worth about 10 or 15 percent.  
20 They were vastly overvalued without the infrastructure. So if  
21 we are entitled to judgments against the Charltons as joint  
22 venturers it would be inappropriate and inequitable for them  
23 to be allowed to foreclose their mortgage and then dispose of  
24 the property before we can have our issues heard and obtain a  
25 judgment and assert our lien priority of our judgment over

1 their mortgage. Thank you.

2 THE COURT: All right, I'll take it under advisement  
3 and let you all know.

4 MR. LEITER: Thank you, Your Honor.

5 MS. CROSBY: Thank you, Your Honor.

6 THE COURT: Thank you.

7 (Adjourned.)

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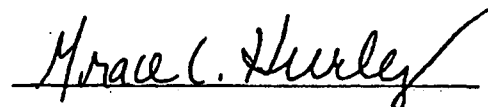
Goodwin, et al. v. Landquest, et al.

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C E R T I F I C A T E

I, the undersigned, Grace L. Hurley, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of John Steven Goodwin, et al. versus Landquest Development, LLC, et al., held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on March 7, 2013.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.



Grace L. Hurley, CVR-CM-M

Official Reporter

September 3, 2013.