

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 10-CP-40-7330

H&H of Johnston, LLC, ... Appellant

v.

Old Republic National Title Insurance Company, and
Henry P. Bufkin d/b/a Bufkin Title, ... Respondents

RECORD ON APPEAL

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Amanda Coney Williams

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OCT 1 2012
SC Court of Appeals

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4007330

H&H Johnston, LLC

Old Republic Nat. Title Ins. Co., et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. No. Suit);
☐ 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:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Plaintiff's Rule 59 motion is respectfully denied

INFORMATION FOR THE PUBLIC INDEX

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

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

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

Circuit Court Judge MP Judge Code 2161 Date 02/27/2012

For Clerk of Court Office Use Only

This judgment was entered on the 9 day of Mar, 20 12 and a copy mailed first class or placed in the appropriate attorney's box on this 9 day of Mar, 20 12 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court Jeanette W McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

H & H OF JOHNSTON, LLC,

Plaintiff,

vs.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, AND HENRY P.
BUFKIN D/B/A BUFKIN TITLE,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-07330

ORDER

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 FEB - 8 PM 3:39

RICHLAND COUNTY
FILED

THIS MATTER CAME BEFORE THE COURT by way of Defendant Henry P. Bufkin d/b/a Bufkin Title's (hereinafter "Bufkin") Amended Motion for Summary Judgment. After due notice, a hearing was held on January 19, 2012 in Richland County, South Carolina. Present at the hearing were counsel for all parties: William E. Booth, III, Esq. for Plaintiff, Susan Taylor Wall, Esq. for Defendant Bufkin, and Louis Lang, Esq. for Defendant Old Republic National Title Insurance Company. The Court has carefully considered the motion, arguments of counsel, memoranda submitted in support of the parties' respective positions, and the law, and holds that for the reasons set forth below, as evidenced by the record, that summary judgment be GRANTED and the case be dismissed with prejudice as to Bufkin.

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002).

In this case, the Court, the Honorable James R. Barber, previously ruled that S.C. Code Ann §15-36-100 is applicable, that Plaintiff did not file an affidavit with the Complaint thereunder and insofar as the Complaint attempts to assert any claim against Bufkin in his

capacity as an attorney, the same is dismissed. (Order, March 10, 2011.) After discovery, including sworn testimony of Plaintiff through its representative Stanley Herlong, the evidence allows only one reasonable conclusion under the indisputable facts that the claims against Bufkin rest in his capacity as an attorney.

Among others, the following facts are uncontested: (1) Bufkin conducted a real estate closing concerning property purchased by Plaintiff on July 5, 2007; (2) Plaintiff retained Bufkin, a licensed South Carolina attorney, to close on the real estate transaction; and (3) at the closing, Plaintiff signed a financial disclosure and notice to borrower form requesting owner's title insurance, which form stated the title agent was an attorney and was signed by Bufkin as an attorney.

IN THIS ACTION, based upon the Complaint and admissions made by Plaintiff, Plaintiff is complaining about a title insurance policy issued by Bufkin as a part of the real estate closing. Plaintiff claims that certain exceptions to title affected Plaintiff's rights and the quality of title to the property at issue and that Bufkin failed to advise Plaintiff of the exceptions taken.

In South Carolina, the Supreme Court has ruled that matters related to a real estate closing, including opinions and certification as to the status of title to real estate, the preparation of documents affecting title to real property, as well as the conduct of the closing itself can only be performed by an attorney licensed to practice in South Carolina. *State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987). In *Matrix Financial Savings Corp. v. Frazier*, 394 S.C. 34, 714 S.E.2d 532 (2011), the Court again stated that only an attorney may perform the title search, prepare title and loan documents and preside over the closing.

Given the undisputed facts and the law in South Carolina, the claims against Bufkin are necessarily made in his capacity as the real estate closing attorney for the transaction at issue. As

such, Plaintiff was required to file an expert affidavit to accompany the Complaint, but failed to do so.

For the reasons set forth above, it is ORDERED, ADJUDGED AND DECREED that Defendant Bufkin's Amended Motion for Summary Judgment is GRANTED and the case against Bufkin is DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.



HONORABLE DEANDREA G. BENJAMIN

February 8, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
H&H of Johnson, LLC,	)	Case No. 2010-CP-40-07330
	)	
Plaintiff,	)	
	)	
v.	)	ORDER GRANTING DEFENDANT,
	)	OLD REPUBLIC NATIONAL TITLE INS. CO.
Old Republic National Title	)	SUMMARY JUDGMENT
Insurance Company, and Henry	)	
P. Bufkin d/b/a Bufkin Title,	)	
	)	
Defendants.	)	

2012 FEB - 8 PM 3:39
 FILED
 RICHLAND COUNTY
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

This matter came before me January 19, 2012 for a hearing on the motion for summary judgment of the Defendant, Old Republic National Title Ins. Co. (Old Republic). Present at the hearing was counsel for Old Republic, Louis H. Lang, Esq. Also present was Susan Taylor Wall, Esq., counsel for the Defendant, Henry P. Bufkin d/b/a Bufkin Title (Bufkin)¹, and William E. Booth, III, Esq., counsel for the Plaintiff.

After considering the arguments of counsel and the matters submitted in support of and in opposition to Old Republic's motion, I conclude for the following reasons that its motion for summary judgment should be GRANTED.

Summary judgment is appropriate when it is clear that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Estrada v. Lexington County Recreation Commission*, 332 S.C. 54, 504 S.E.2d 117 (S.C. 1998).

¹ Bufkin also filed a motion for summary judgment which was heard at the same time as Old Republic's motion. My ruling on that motion is encompassed in a separate order.

The Plaintiff's complaint alleges that Bufkin, who is an attorney as well as a licensed title insurance issuing agent for Old Republic, in conjunction with a real estate closing he was engaged by the Plaintiff to conduct, entered into an oral contract with the Plaintiff to issue, on behalf of Old Republic, an owner's title insurance policy which did not except from coverage two matters affecting title to the subject property - (1) an unrecorded contract (P&K Contract) which gave P&K Construction a right of first refusal to purchase certain lots located on the real property in question and (2) certain restrictive covenants which encumbered, in part, that property. The Plaintiff also asserts the inclusion in the title policy of the P&K Contract and restrictive covenants exceptions was a mutual mistake and the title policy should be reformed to delete these exceptions, that Old Republic should be estopped from asserting these exceptions as a basis for denial of the Plaintiff's title claims and Old Republic breached the "reformed" title policy because it has refused to pay the Plaintiff's claims based, in part, on these of exceptions.

In their argument for summary judgment, Old Republic asserts there is no evidence of an oral contract. I concur.

The authorities agree that before a contract of insurance, or to insure, is binding, all the essential elements and terms of the contract must be understood and mutually assented to. A mere expression of a desire by one intending to procure insurance, or a proposition made to an insurance agent to insure property, and an assent or acceptance by the agent to insure, without more, would not amount to a contract of insurance or an agreement to insure.

Fulmer v. London, Liverpool & Globe Fire Ins. Co., 172 S.C. 525, 174 S.E.466, 467 (1934), quoting *Commercial F. Ins. Co. v. Morris*, 105 Ala. 498, 18 So. 34 (1894), see also *Gaskins v. Firemen's Ins. Co. Of Newark, N.J.*, 206 S.C. 213, 33 S.E.2d 498 (1945).

There is no dispute that exceptions to a title insurance policy are material or essential terms of the policy. There is no dispute that at or before the closing in question, no request was

made by the Plaintiff or its members to Bufkin to issue a title insurance policy providing insurance against the possible effects of the P&K Contract or the restrictive covenants. Nor is there any evidence that at or before the closing Bufkin made any promise or representation to the Plaintiff or its members that he would provide such a title insurance policy.

Accordingly, the Plaintiff's claim of an oral contract must fail.

In order to be entitled to reformation, the Plaintiff must show the omission or insertion of some material element affecting the subject matter or the terms of the contract, inconsistent with a prior parol agreement in regard to that omission or insertion. *Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 259 S.E.2d 298, 300 (Ct. App. 1987). As pointed out above, there was no request, promise or representation to or by Bufkin to provide the Plaintiff a title insurance policy without the two subject exceptions. Accordingly, there is no mutual mistake to support reformation of the title policy in question and the Plaintiff's claim in this regard must also fail.²

Finally, the elements of promissory estoppel are lack of knowledge and of the means of knowledge of the truth as to the facts in question, some form of conduct or representation by the party against whom the estoppel is asserted, good faith reliance and detrimental change in position. *Fallaw v. Oswald*, 194 S.C. 387, 9 S.E.2d 793 (1940).

Given that there was no request, promise or representation that the P&K Contract or the restrictive covenants not be exceptions to the title policy, there is no "conduct or representation" to support an estoppel and the Plaintiff's estoppel claim must also fail.

Finally, for more than 100 years, the South Carolina Supreme Court has said providing advice regarding title to real property is the practice of law. *In Re Duncan*, 83 S.C. 186, 65 S.E.

² There being no basis to reform the policy, there is no basis to claim a breach of the policy.

210 (1909), *State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E. 2d 15 (1987), *Doe v. McMaster*, 255 S.C. 306, 585 S.E.2d 773 (2003), *Doe Law Firm v. Richardson*, 371 S.C. 14, 636 S.E.2d 866 (2006), *Matrix v. Frazer, et al.*, Op. No. 26859 (decided August 16, 2010), modified and reissued *Matrix Financial Services Corp. v. Frazer, et al.*, 394 S.C. 134, 714 S.E.2d 532 (2011) and *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010).

In *Linder v. Ins. Claims Consultants, Inc.*, 348 S.E.2d 477, 560 S.E.2d 612 (2002), the South Carolina Supreme Court considered what activities of an insurance adjuster could constitute the unauthorized practice of law. The Court held that “[adjusters] shall not [a]dvice clients of their rights, duties, or privileges under an insurance policy regarding matters requiring legal skill or knowledge, i.e., interpret the policy for clients,” as such activities constituted the unauthorized practice of law. *Id.* at 492; 560 S.E.2d, 621.

The Plaintiff has attempted to divorce Bufkin’s duties and responsibilities as the closing attorney of the subject real estate transaction from his status as a licensed Old Republic title insurance issuing agent suggesting that the issue of the two questioned title exceptions concerned only Bufkin’s actions as an Old Republic title insurance issuing agent. However, it is clear from the complaint and the parties’ submissions in support of and in opposition to summary judgment that the gravamen of the Plaintiff’s complaint is the advice or counsel Bufkin provided, or failed to provide, regarding the status and effect the P&K Contract and the restrictive covenants on the title to the subject property. To the extent there were any discussions between Bufkin and members of the Plaintiff, either before or during the closing concerning the P&K contract and/or

the restrictive covenants³, those discussions, given *Linder* and the *Buyers Service Co., Inc.*, line of cases, necessarily were between the Plaintiff and the lawyer Bufkin. Accordingly, the Plaintiff's attempt to style its case as being one against Bufkin in his capacity as a title insurance issuing agent rather than as a legal malpractice action, must fail.

For the reasons set forth above, it is

ORDERED, ADJUDGED AND DECREED that the motion for summary judgment of the Defendant, Old Republic National Title Ins. Co., be and hereby is GRANTED and the within action as against Old Republic National Title Ins. Co., be and hereby is DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.



DeAndrea G. Benjamin, Presiding
Circuit Court Judge

Columbia, S.C.
February 8, 2012

³ No evidence was submitted that either before or during the closing the Plaintiff's members discussed with Bufkin the possible effect of the restrictive covenants.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance Company, and Henry P. Bufkin d/b/a Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-32-2735

ORDER TRANSFERRING VENUE
TO RICHLAND COUNTY

DETH A. ARIGGS
CLERK OF COURT
LEXINGTON, SC

2010 NOV - 8 PM 2:32

FILED

THIS MATTER CAME BEFORE THE COURT by way of Defendant Henry P. Bufkin d/b/a Bufkin Title's ("Bufkin") Motion to Transfer Venue. After due notice, a hearing was held before this Court on October 14, 2010, and appearances were as follows: William E. Booth III, Esquire, of West Columbia for the Plaintiff H&H of Johnston, LLC ("H&H"), Louis H. Lang, Esquire, of Columbia for Defendant Old Republic National Title Insurance Company ("Old Republic"), and Amanda C. Williams, Esquire, of Charleston for Defendant Bufkin. Though a hearing was also scheduled on Bufkin's Motion to Dismiss, counsel for Bufkin requested that the Court first hear the Motion to Transfer Venue because if the Court ruled that venue was improper in Lexington County, the Court would not have jurisdiction to hear Bufkin's Motion to Dismiss. There was no objection by the other parties to this request.

On July 1, 2010, Plaintiff filed a Summons and Complaint in the Court of Common Pleas for Lexington County. The Complaint contains causes of action for breach of an oral contract, reformation of a title insurance policy based on mutual mistake, promissory estoppel, and breach of insurance contract.

RKM #1

Defendant Bufkin maintains that venue is improper in Lexington County and should be transferred to Newberry County pursuant to S.C. Code § 15-7-30(C). This statute provides that venue is proper as to a resident individual defendant where the defendant resides, or where the "most substantial part of the alleged act or omission giving rise to the cause of action occurred." Bufkin resides in Newberry County and also argues that the most substantial part of the alleged act or omission took place in Newberry County because the closing which forms the basis of Plaintiff's allegations in the Complaint took place at Bufkin's office in the Town of Prosperity in Newberry County. The Court did not consider Bufkin's argument under S.C. Code § 15-7-100.

H&H filed a Return to Bufkin's Motion, and it maintains that venue in Lexington County is proper because Old Republic maintains an office and an agent for the transaction of business in Lexington County. Whaley v. CSX Transportation, Inc., 362 S.C. 456, 609 S.E.2d 286 (2005). Counsel for H&H filed an affidavit showing an internet advertisement by a title insurance agent for Old Republic with a physical address of West Main Street in Lexington.

Defendant Old Republic maintains that the title insurance agent's office in Lexington County is not an office of Old Republic, and that venue would be proper where it has its principal office for transacting business. The parties then stipulated that Old Republic is a foreign corporation and maintains a principal place of business in Richland County with a street address on Middleburg Drive.

After consideration of the motions, applicable law, and the arguments presented by counsel, this Court finds and concludes that venue in Lexington County is not authorized by S.C. Code § 15-7-30. Pursuant to S.C. Code § 15-7-30(B), "[i]f there is

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more than one defendant, the action may be tried in any county where the action properly may be maintained against one of the defendants pursuant to this section." It appearing to the Court that Defendant Old Republic is a foreign corporation and maintains a principal place of business in Richland County, venue is proper in Richland County under S.C. Code § 15-7-30.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that venue for the captioned matter be, and hereby is transferred from the County of Lexington to the County of Richland, and that the Clerk of Court for the County of Lexington be, and she hereby is, ordered to forward the case file for the captioned county to the Clerk of Court for the County of Richland, and that the Clerk of Court for the County of Richland be, and she hereby is, ordered to add the captioned matter to the Common Pleas Jury Docket for the County of Richland.

IT IS SO ORDERED.

November 5, 2010
Lexington, South Carolina

R. Knox McMahon
R. Knox McMahon
Circuit Court Judge

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP3202735

H & H of Johnston LLC vs. Old Republic National Title Insurance comany

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: _____

IT IS ORDERED AND ADJUDGED:

☒ See attached order;

☐ Statement of Judgment by the Court:

PRESIDING JUDGE -

This judgment was entered on the 8th Day of November 2010, and a copy mailed first class this 10th Day of November 2010, to attorneys of record or to parties (when appearing pro se) as follows:

William E Booth III Booth Law Firm LLC
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Susan Taylor Wall Parker Poe Adams &
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Charleston, SC 29401-3156

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Beth A. Carrigg/wh

SCRPC APP-24/FORM 4

Beth A. Carrigg - Clerk of Court

COPY

FILED
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON 2010 JUL - 1 P CIVIL ACTION NO. 2010-CP-32-

H&H of Johnston, LLC,

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON SC
Plaintiff,

2010-CP32-2735
COMPLAINT

(Breach of Contract;
Reformation Of Contract)

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

(Jury Trial Demanded)

Defendants.

The Plaintiff above-named, complaining of the Defendants above-named, allege and request unto this Court as follows:

1. Plaintiff, H&H of Johnston, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina with its principal place of business located in Edgefield County, State of South Carolina.

2. Defendant, Old Republic National Title Insurance Company ("Company"), is a title insurance company licensed by the State of South Carolina to transact the business of title insurance within the state of South Carolina.

3. Defendant, Henry P. Bufkin, d/b/a Bufkin Title, is a citizen and resident of the County of Newberry, State of South Carolina, and at all times relevant hereto, a title insurance agent duly licensed to engage in the issuance of title insurance in connection with the purchase of real estate on behalf of buyers. Defendant Bufkin was also a licensed attorney for the practice of law and maintained an office in Newberry County.

4. This action involves a real estate transaction dealing with tracts of land within or near a residential community known as Stoney Pointe Subdivision ("Stoney

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Pointe") located near the Town of Chapin, in the County of Lexington, State of South Carolina.

5. This Court has jurisdiction over the parties and the subject matter of this action and the proper venue of this action is Lexington County under S.C. Code §15-7-10(1) (1976), as amended, and under S.C. Code §15-7-30 (1976), as amended.

FACTUAL BACKGROUND

6. Beginning in 1998, the acquisition of land for, and the development of builder ready lots within, the Stoney Pointe Subdivision were carried out by Five Star Development, LLC ("Five Star"). Defendant Bufkin was engaged at that time, and has continued since then, to provide legal services for such development, having considerable experience in doing real estate documentation and closings in Newberry and Lexington counties. During the development, Five Star recorded restrictions as to the lots in the various phases of Stoney Pointe. D.C. Herlong at various times provided funds and/or land to Five Star in connection with the development, but such funds and land were not provided by him as an investor.

7. On or about April 30, 2002, Five Star entered into a contract with P&K Construction for the purpose of taking down and purchasing up to forty-three (43) builder ready lots located along Palm Street in Stoney Pointe for the construction of residential homes by P&K Construction. The contract contained conditions for the taking down of lots as well as the price for the lots to be paid at the time of take down, but the contract stated that Five Star would not sell the lots to any other party as long as the conditions for the take down or purchase of lots were being met. On or about May 22, 2003, the contract was modified extending some of the time periods and added new

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conditions for the take down of lots. The contract provided for the right of cancellation if either party failed to perform including the requirement for P&K Construction to close lot purchases based on the take down schedule. Defendant Bufkin provided legal services to Five Star at that time including the drafting of, and the negotiation for, the agreements made with P&K Construction.

8. After the death of D.C. Herlong in 2005, the Personal Representative of his Estate, Thomas H. Herlong ("Herlong Personal Representative"), sought the services of Defendant Bufkin as an attorney and title agent for (a) the purpose of obtaining information about title and contracts for Stoney Pointe, and (b) the purpose of advising him on a proposal for a workout plan relating to debt owed to the Estate by Five Star. Defendant Bufkin was also engaged by Five Star for the same purpose, and he agreed to provide joint legal representation.

9. Based in part on the information and advice given by Defendant Bufkin at that time, the Herlong Personal Representative and Five Star entered into an "Investment Security Agreement" on or about July 18, 2006. The Herlong Personal Representative needed the information provided by Defendant Bufkin to determine and evaluate the options for the Estate to obtain payment of the debt owed by Five Star including the option to foreclose an existing mortgage. The existing mortgage had been executed and delivered on or about March 31, 2001.

10. As contemplated by the Investment Security Agreement, Defendant Bufkin prepared a real estate mortgage as additional collateral for debt owed to the Estate mortgaging certain real property owned by Five Star, but not subject to the existing mortgage now held by the Estate. This mortgage was executed and delivered on or

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7/1/10

about July 17, 2006, and is recorded in Record Book 11233 at page 308. The Investment Security Agreement also contemplated that Five Star would continue to sell builder ready lots and to further develop new phases for Stoney Pointe.

11. On or about June 15, 2007, as a result of pressure from other debt held by banks and slow sales activity, Five Star and the Herlong Personal Representative entered into a new agreement entitled "Agreement in Principal" contemplating the sale of property to the Estate, or a new entity to be created, for the purpose of satisfying debt owed to the Estate and for the Estate or the new entity to pay some of the bank debt secured by a mortgage on some of the property to be purchased. The property to be purchased consisted of: (a) twenty-six (26) builder ready lots as shown on the subdivision survey for Phase I and II of Stoney Pointe, and (b) a tract of undeveloped land consisting of approximately 11.94 acres.

12. At all times during the negotiation of and execution of the Agreement in Principal, the Herlong Personal Representative made all parties and Defendant Bufkin aware that the agreement would only be done if the Estate would be able to acquire the property with clear title and not be subject to any agreement with third parties for the purchase of the lots.

13. The Plaintiff was organized for the purpose of acquiring title to the unsold lots and the undeveloped tract of land for the purpose of holding title and finding suitable buyers for the property. Plaintiff never contemplated the development of the unsold lots but sought a buyer for the purchase of multiple lots at a single closing.

14. Defendant Bufkin was then engaged to perform legal services for the creation of the Plaintiff as a limited liability company with the two sons of the late D.C.

WB
7/1/10

Herlong as managers and with their mother as the sole member. These services were provided and a fee was charged for such services. Defendant Bufkin was aware that the business purpose of the Plaintiff was to offer all the property for sale at prices that would allow for quick sales so that funds could be transferred to the Estate from the sales and be used for the payment of expenses being incurred for the nursing care of Mrs. Herlong.

15. In connection with the contemplated real estate transaction, the Plaintiff contracted with Defendant Bufkin as a title agent for the Company to perform all acts necessary to protect the property interests of the Plaintiff in connection with the transaction. To perform such services, the terms of the oral contract would have included the following:

- a. To perform a title examination;
- b. To review his files and make any necessary inquiry to determine if the P&K Contract was still in effect;
- c. To issue a title insurance binder;
- d. To inform the Plaintiff of any title exceptions that would be included in the title insurance binder;
- e. To insure that the Plaintiff would be able to immediately sell the builder ready lots through a listing agreement to be entered into with Russell and Jeffcoat Realtors;
- f. To insure that the Plaintiff would not be required to pay any HOA assessments for the lots; and

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- g. To insure that the Plaintiff would be able to immediately sell the 11.44 acre tract of land without being subject to restrictions or assessments.

16. At the time of the engagement of Defendant Bufkin for obtaining title insurance, upon information and belief, he had an agency agreement with the Company that authorized him to issue Company's title insurance policies, as well as commitments for policies. Under the agreement, Company appointed Bufkin "to act for, and in the name of, [Company] in transacting [such] title insurance business".

17. Defendant Bufkin was also engaged by Five Star and the Plaintiff to provide the necessary legal services for the contemplated real estate transaction, and he agreed to provide such joint legal representation.

18. The closing was held at the offices of Defendant Bufkin on July 5, 2007, and the HUD-1 Settlement Statement prepared by Defendant Bufkin shows the following line items:

1102 – Abstract or Title Search to TB Abstracting - \$275.00

1104 – Title Insurance Binder to Bufkin Title - \$35.00

1106 - Title Insurance to Bufkin Title - \$1,492.50 (Owner's Coverage for \$845,000)

19. Defendant Bufkin in providing legal services for the real estate transaction prepared a general warranty deed for the conveyance of the real property to the Plaintiff, and the deed states in part that "[Five Star] binds [itself] unto [Plaintiff] and against every person whosoever lawfully claiming, or to claim the same or any part thereof." The general warranty deed did not reference any recorded restrictions or any

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recorded document authorizing HOA assessments, or take exception to any matters of title. The Plaintiff, therefore, had a right to expect clear title, and the Plaintiff was also unaware of any matters that would affect the marketability or the value of the property being purchased from Five Star.

20. Prior to the closing, Defendant Bufkin had also given legal advice to both Five Star and to the Plaintiff that P&K Construction had not complied with the take down schedule, and, therefore, its contract with Five Star had been cancelled.

21. At the closing, Defendant Bufkin as the agent for the Company failed to produce for inspection by the Plaintiff a title insurance binder and failed to explain to the Plaintiff what title exceptions would be included on the title insurance binder.

22. Because of the fact that Defendant Bufkin as the agent for the Company did not provide the title insurance binder or explain what title exceptions would be included on the binder, the Plaintiff did not expect any title exceptions on the binder relating to HOA assessments, the imposition of restrictions upon the 11.44 acres, or the P&K Construction contract.

23. Prior to the closing, Defendant Bufkin was made aware by the Plaintiff's managers that the property would be listed with Russell and Jeffcoat Realtors for immediate sale, and that there was a party ready to buy 26 builder ready lots.

24. After the closing, the Plaintiff entered into listing agreements with Russell and Jeffcoat Realtors for the sale of the property. After the closing, an offer to purchase was entered into with Empire Land Acquisitions & Development, LLC for the sale of 26 of the builder ready lots. After the closing, the Plaintiff also entered into a contract with Tentium Development, LLC for the purchase of the 11.44 acre tract of land.

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25. After the closing, the Plaintiff caused both the original mortgage and the additional collateral mortgage to be satisfied on record as well as the associated debt.

26. On or about August 3, 2007, the Plaintiff was notified that P&K Construction had an option to purchase the 26 builder ready lots included in the property purchased from Five Star.

27. On or about August 9, 2007, Plaintiff was notified in writing by attorney David W. Knight representing P&K Construction that a legal action would be filed unless the Plaintiff honored the contract entered into with P&K Construction.

28. On or about August 13, 2007, one of the managers of the Plaintiff visited the offices of Defendant Bufkin seeking the title insurance binder after being advised by another attorney to locate the binder. At that time, the binder was produced and given to the manager and the binder shows the following:

Exception No. 15: Private Road Maintenance Agreement as recorded on December 18, 2002 in Book 7759 at page 162.

Exception No. 19: Covenants, conditions and restrictions as recorded in said ROD/Clerk's office in deed book 4726 at page 206, 5889 at page 9, Book 5823 at page 127, Book 7759 at page 167, Book 7775 at page 249, Book 7919 at page 181, Book 7919 at page 184, Book 6317 at page 255, Book 6373 at page 104, Book 8693 at page 21, Deed Book 9164 at page 26, Deed Book 10544 at page 316.

Exception No. 26: Unrecorded contract dated April 30, 2002 between Five Star Development and P&K Construction for the sale of 43 lots, as modified.

29. On or about August 28, 2007, the Plaintiff through counsel filed a claim under the title insurance binder due to the claim of P&K Construction. The notification letter also included a statement that an offer of settlement of \$25,000 had been made and that the Plaintiff had an existing contract to sell the lots to another party.

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30. The Company then notified counsel for the Plaintiff that the claim would not be paid due to the fact that the title insurance binder contained an exception for the P&K Construction contract.

31. Prior to receiving the title insurance binder, the Plaintiff had already caused the Estate to satisfy the debt owed by Five Star and caused the Estate to satisfy on record the two real estate mortgages; all such actions being known by Defendant Bufkin.

32. The Plaintiff was then required to engage counsel to review the P&K Construction contract, and after negotiations, the Plaintiff paid P&K Construction the sum of \$25,000 to settle the lawsuit and to obtain a release of any property rights of P&K Construction relating to the lots purchased from Five Star. The Plaintiff was required to pay legal fees and costs for such legal representation.

33. On or about April 10, 2008, a legal action was commenced by the Stoney Pointe Homeowners Association, Inc. ("HOA") against the Plaintiff, filed in the Court of Common Pleas for Lexington County as Civil Action No. 2008-CP-32-01569. At or prior to the date of the filing of the legal action, the HOA filed a lis pendens against all the tracts of land purchased by the Plaintiff from Five Star. As a result, the pending sales contracts were cancelled.

34. The other defendants named in the lawsuit were: David Mikell, Five Star Development, LLC, John S. Herlong, Ralph J. McClendon, Ralph J. McClendon "dba" Five Star Development Group, LLC and/or Ralph J. McClendon "dba" Five Star Development Corporation, LLC and Richard B. Mikell. Defendant Bufkin undertook the

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representation of all Defendants other than the Plaintiff and John S. Herlong. John S. Herlong was dismissed from the legal action by court order.

35. The allegations of the lawsuit included causes of action seeking to void the transfer of title from Five Star to the Plaintiff for the tracts of land as a fraudulent conveyance, judgment for year's value of the property transferred, homeowners association assessments for road fund escrows, regular assessments, and to build a dock, and a declaration that recorded restrictions applied to the 11.44 acres purchased by the Plaintiff.

36. On or about December 19, 2007, Plaintiff was notified by the HOA that unpaid assessments were due.

37. The Plaintiff was required to engage legal counsel to defend its interests in the property purchased from Five Star on July 7, 2007, and has paid counsel for such services including the services provided for the preparation and review of the settlement documents. Defendant Bufkin as an agent for the Company was aware of the lawsuit and the need to employ separate counsel to represent the Plaintiff.

38. On or about December 12, 2008, a full and complete settlement with the HOA was reached as to all issues relating to the property owned by the Plaintiff. The Plaintiff was required to make a payment of \$16,500.00 to the HOA for unpaid assessments, and agreed to pay future HOA dues for the lots purchased from Five Star. The Plaintiff also agreed to impose restrictions on the 11.44 acre tract of land.

39. On or about January 6, 2009, Defendant Bufkin transmitted to the Plaintiff title insurance policy no. 0X250654 issued to H&H of Johnston, LLC which includes the same title exceptions contained in the title insurance commitment. The policy does not

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contain any references to the settlement documents or changes made to title by such documents.

FOR A FIRST CAUSE OF ACTION
(Breach of Oral Contracts with Agent)

40. Plaintiffs repeat and reallege each and every allegation contained in Paragraphs 1 through 38, as set forth fully herein.

41. The Company through its agent entered into an oral agreement to sell the Plaintiff a title policy that would not take exception to the contract with P&K Construction.

42. The Company through its agent breached the oral agreement to issue a title policy that would not take exception to the contract with P&K Construction.

43. The Company through its agent entered into an oral agreement to sell the Plaintiff a title policy that would not take exception to any restrictions upon the 11.44 acres.

44. The Company through its agent breached the oral agreement to issue a title policy that would not take exception to any restrictions upon the 11.44 acres.

45. The Company through its agent entered into an oral agreement to sell the Plaintiff a title policy that would not take exception to HOA assessments.

46. The Company through its agent breached the oral agreement to issue a title policy that would not take exception to HOA assessments.

47. As the result of the acts and omissions by Defendant Bufkin acting as agent for the Company, the Plaintiff suffered financial loss, including legal fees and costs relating to the defense of the HOA lawsuit, the settlement payment to P&K

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Construction, and the payment of HOA assessments for past due amounts and future amounts.

FOR A SECOND CAUSE OF ACTION
(Reformation of Policy due to Mutual Mistake)

48. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 38, as set forth fully herein.

49. The title insurance policy issued by the Company should be reformed and the title exceptions relating to the HOA assessments, restrictions upon the 11.44 acres, and the P&K Contract should be deleted.

50. Defendant Bufkin, acting as agent for the Company and in a dual representation of Five Star and the Plaintiff, knew what the parties intended as far as the title matters for the real estate transaction.

51. Consequently, a mutual mistake resulted when the title insurance policy was issued containing exceptions as to the HOA assessments, restrictions as to the 11.44 acres, and the P&K Construction Contract.

52. The title insurance policy issued by the Company should be reformed and the title exceptions relating to the HOA assessments, restrictions upon the 11.44 acres, and the P&K Contract should be deleted.

FOR A THIRD CAUSE OF ACTION
(Promissory Estoppel)

53. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 38, as set forth fully herein.

54. There was the presence of a promise by the Company through its agent and Defendant Bufkin that any title insurance issued through Defendant Bufkin would

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not take exception to the contract with P&K Construction, restrictions for the 11.44 acre tract, or HOA assessments.

55. The Plaintiff reasonably relied on the promise in completing the real estate transaction.

56. The reliance of the Plaintiff was expected and foreseeable by Defendant Bufkin, as agent for the Company.

57. The Plaintiff has suffered injury in reliance on the promise.

FOR A FOURTH CAUSE OF ACTION
(Breach of Insurance Contract)

58. The Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 38, as set forth fully herein.

59. The Plaintiff is an insured under the title insurance policy with the Company which became effective at the time the Plaintiff acquired its interest in the property from Five Star.

60. The Company's title insurance policy provided insurance to the Plaintiff that title to the property was vested to it in fee simple title and that there were no defects in title.

61. The Plaintiff successfully defended its title to the property in the lawsuit initiated by the HOA for the causes of action relating to seeking to void the deed due to the allegation of a fraudulent conveyance by Five Star, and to the moiety claim for payment of penalties.

62. The Plaintiff incurred expenses for legal fees and costs for such defense, and the Company is obligated to indemnify the Plaintiff for such expenses under the terms of its policy dealing with the curing of title.

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63. The Company has failed to reimburse the Plaintiff for the defense costs dealing with the HOA action as to defects in title despite demand for such payment, and, therefore, the Company has breached its insurance policy issued to the Plaintiff.

WHEREFORE, the Plaintiff prays that this Court inquire into the matters set forth herein and take the following action:

A. On the first cause of action:

1. For an award of actual damages against the Defendants in an amount to be determined; and
2. For such other and further relief as this court may deem just and proper.

B. On the second cause of action:

1. For a judgment that the Title Insurance Policy issued by the Company should be reformed to delete the title exceptions; and
2. For such other and further relief as this court may deem just and proper.

C. On the third cause of action:

1. For an award of actual damages against the Defendants in an amount to be determined; and
2. For such other and further relief as this court may deem just and proper.

D. On the fourth cause of action:

1. For an award of actual damages against the Old Republic National Title Insurance Company in an amount to be determined; and

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2. For such other and further relief as this court may deem just and proper.

BOOTH LAW FIRM, LLC



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West Columbia, South Carolina
July 1, 2010

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
H&H of Johnson, LLC,	)	Case No. 2010-CP-32-2735
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER OF THE DEFENDANT, OLD
	)	REPUBLIC NATIONAL TITLE INSURANCE
Old Republic National Title	)	COMPANY
Insurance Company, and Henry	)	
P. Bufkin d/b/a Bufkin Title,	)	
	)	
Defendants.	)	
	)	

The Defendant, Old Republic National Title Insurance Company (Old Republic), by and through its undersigned counsel, answering the Complaint herein, would respectfully show:

FOR A FIRST DEFENSE

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

FOR A SECOND DEFENSE

2. Paragraph 1 is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
3. Paragraphs 2 is admitted to the extent it alleges that Old Republic is authorized by the State of South Carolina to issue title insurance commitments and policies by and through its duly authorized title insurance issuing agents. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information and belief upon which to form an opinion as to its truth or falsity.

4. Paragraph 3 is admitted to the extent that it alleges that the Defendant, Henry P. Bufkin (Bufkin) at all times relevant hereto was a duly authorized title insurance issuing agent of Old Republic and that Bufkin was, at all times relevant hereto, an attorney licensed to practice and practicing law in the State of South, Count of Newberry. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information and belief upon which to form an opinion as to its truth or falsity.
5. Paragraph 4 is admitted.
6. Paragraph 5 is denied.
7. Paragraph 6 is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
8. To the extent paragraph 7 seeks to quote, paraphrase or characterize a written document or documents, Old Republic would crave reference to the document(s) itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
9. Paragraphs 8, 9, 10, 11, 12, 13 and 14 are denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
10. To the extent paragraph 15 alleges the Plaintiff contracted with an agent of Old Republic to perform legal services, to provide legal advice, or to act in any way as an attorney for or on behalf of the Plaintiff, the same is denied. The balance of the paragraph is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

11. To the extent paragraph 16 seeks to quote, paraphrase or characterize the written agency agreement by and between Old Republic and Bufkin, Old Republic would crave reference to the agency agreement itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
12. Paragraph 17 is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
13. To the extent paragraphs 18 and 19 seek to quote, paraphrase or characterize a certain written document or documents, Old Republic would crave reference to that written document(s) for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient knowledge or belief as to its truth or falsity.
14. Paragraphs 20 and 21 are denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
15. Paragraph 22 is denied.
16. Paragraphs 23, 24, 25, 26 and 27 are denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
17. To the extent paragraph 28 seeks to quote, paraphrase or characterize the subject title insurance commitment or binder, Old Republic would crave reference to the title insurance commitment for its specific terms and import. To the extent any allegation in this paragraph is unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.

18. Paragraph 29 is admitted to the extent that by letter dated August 28, 2007, received by Old Republic on August 29, 2007, the Plaintiff, through counsel, notified Old Republic generally of a claim regarding what the August 28, 2007, letter characterized as a contract affecting in some fashion the property described in the title insurance commitment. To the extent paragraph 29 seeks to quote, paraphrase or characterize the August 28, 2007, letter, Old Republic would crave reference to the letter itself for its specific terms and import. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
19. Paragraph 30 is denied. Further responding to this paragraph, Old Republic would show that it acknowledged receipt of the August 28, 2007, letter by e-mail to counsel for the Plaintiff on August 31, 2007, and in that e-mail, Old Republic requested certain additional information be provided in regard to the matters set out in the August 28, 2007, letter and pointed out that the contract allegedly affecting the property described in the title insurance commitment was listed in Schedule B of the commitment as an exception to coverage. Old Republic would further show that the Plaintiff, through counsel, acknowledged receipt of Old Republic's August 31, 2007, e-mail by a return e-mail of that same date, in which counsel for the Plaintiff generally requested some time to consider the matter of the exception to coverage. Old Republic would further show that by e-mail dated September 11, 2007, it renewed its request of counsel for additional information, this request going unanswered by the Plaintiff or its counsel.

20. Paragraphs 31 and 32 are denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
21. Responding to paragraphs 33, 34 and 35, Old Republic would admit that a certain action, bearing civil action number 2008-CP-32-1569 was filed in the Court of Common Pleas for Lexington County on or about April 10, 2008. To the extent these paragraphs seek to quote, paraphrase or characterize the pleadings in that action, Old Republic would crave reference to those pleadings for their specific terms and import. To the extent any allegation in these paragraphs remains unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
22. Paragraph 37 is denied as Old Republic lacks sufficient information or belief to form an opinion as to its truth or falsity. Further responding to this paragraph, any knowledge, notice or the like obtained by Bufkin of the lawsuit referred to in this paragraph was not obtained by Bufkin within the scope of any agency agreement he may have had with Old Republic.
23. Paragraphs 38 and 39 are denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
24. Paragraph 40 is denied unless hereinbefore expressly admitted.
25. Paragraphs 41, 42, 43, 44, 45, 46 and 47 are denied.
26. Paragraph 48 is denied unless hereinbefore expressly admitted.
27. Paragraph 49 is denied.
28. Paragraph 50 is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity. Further responding to this paragraph Old Republic would submit that in regard to the real estate transaction in question, Bufkin acted only as

the title insurance issuing agent for Old Republic and that any knowledge he may have acquired while acting in any other capacity can not be imputed to Old Republic.

29. Paragraphs 51 and 52 are denied.
30. Paragraph 53 is denied unless hereinbefore specifically admitted.
31. Paragraphs 54, 55, 56 and 57 are denied.
32. Paragraph 58 is denied unless hereinbefore specifically admitted.
33. Paragraph 59 is admitted to the extent that it alleges that the Plaintiff is a named insured in the title insurance policy bearing number OX 250654 (Title Policy) and the date of the Title Policy is July 6, 2007. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
34. To the extent paragraph 60 seeks to quote, paraphrase or characterize the title insurance policy in question, Old Republic would crave reference to the title insurance policy itself for its specific terms and import. Further answering this paragraph, the title insurance policy provides coverage in regard to certain clearly stated matters and includes certain exceptions and exclusions from coverage as well as certain conditions and stipulations regarding the coverage provided therein. To the extent any allegation in this paragraph remains unanswered, the same is denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to its truth or falsity.
35. Paragraphs 61 and 62 are denied as Old Republic lacks sufficient information or belief upon which to form an opinion as to their truth or falsity.
36. Paragraph 63 is denied.

FOR A THIRD DEFENSE

37. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.
38. The Complaint fails to state facts sufficient to constitute a cause or causes of action against Old Republic in that, to the extent the Complaint attempts to allege causes of action against Old Republic derived from the acts of Bufkin when he was acting in his capacity as an attorney, licensed to practice law in the State of South Carolina, such causes of action fail because Old Republic is not a natural person and it is not licensed nor can it be licensed to practice law in the State of South Carolina nor can it act as an attorney in any manner.

FOR A FOURTH DEFENSE

39. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.
40. Exclusion 3(a) of the Title Policy excludes from coverage defects, liens, encumbrances, adverse claims or other matter created, suffered, assumed or agreed to by the Plaintiff. This exclusion excludes from coverage under the Title Policy those matters of which the Plaintiff complains.

FOR A FIFTH DEFENSE

41. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.
42. To the extent the Complaint alleges Old Republic breached its duty to defend under the Title Policy based on an allegation that the conveyance of the subject property amounted to a fraudulent conveyance, exclusion 4(a) of the Title Policy excludes from coverage any claim

which arises out of the transaction vesting title in which there is an assertion that the conveyance amounted to a fraudulent conveyance or fraudulent transfer. Accordingly, as to that claim, Old Republic had neither a duty to defend nor a duty to indemnify the Plaintiff.

FOR A SIXTH DEFENSE

43. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.
44. Exception numbers 17 and 24, in Schedule "B" of the Policy except from coverage any loss or damage by reason of, respectively, covenants, conditions and restrictions as recorded in the Office of the ROD in deed book 4726 at page 206, deed book 5889 at page 9, deed book 4823 at page 127, deed book 7759 at page 167, deed book 7775 at page 249, deed book 7919 at page 181, deed book 7919 at page 184, deed book 6317 at page 255, deed book 6373 at page 104, deed book 8693 at page 21, deed book 9164 at page 26 and 105544 at page 316 and the unrecorded contract dated April 30, 2002 between Five Star Development and P & K Construction for the sale of 32 lots, as modified.
45. Accordingly, to the extent the Plaintiff's claims arise from the matters which are excepted from coverage as set forth in the preceding paragraph, Old Republic had no duty to defend or indemnify the Plaintiff.

FOR A SEVENTH DEFENSE

46. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.
47. Paragraph 9(c) of the Conditions and Stipulations section of the Policy provides that Old Republic shall not be liable for loss or damage to any insured for liability voluntarily

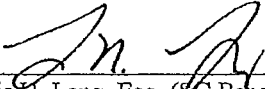
assumed by the insured in settling any claim or suit without the prior written consent of Old Republic.

48. Old Republic would show that the Plaintiff settled the claims of P & K Construction as well as the litigation involving the homeowners association without its prior written consent. Accordingly, Old Republic has no duty to indemnify the Plaintiff in regard to these two matters.

FOR AN EIGHTH DEFENSE

49. Each and every allegation contained in this Answer is incorporated herein as if set forth verbatim.
50. Paragraph 3 of the Conditions and Stipulations section of the Policy requires the insured claimant provide Old Republic with prompt notice of any litigation concerning which Old Republic might have a duty to defend under the terms and provisions of the Policy and if such prompt notice is not given and the failure to give prompt notice prejudices Old Republic, then coverage under the Policy is reduced or eliminated as to the extent of such prejudice. Old Republic would show that the Plaintiff failed to give it prompt notice of the litigation concerning the homeowner's association and that failure prejudiced Old Republic to the extent that it eliminated any duty on Old Republic's part to defend or indemnify the Plaintiff in regard to that litigation.

CALLISON TIGHE & ROBINSON LLC



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*Counsel for Defendant, Old Republic National Title
Insurance Company*

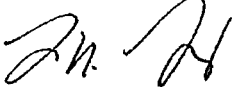
August 4, 2010
Columbia, South Carolina

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the above and foregoing to all counsel of record in said proceedings to his/her office address with sufficient postage attached.

William E. Booth, III, Esq.
Consolidated Business Park
3231 Sunset Blvd., Ste. A
W. Columbia SC 29169

Columbia, S.C. this 4th day of August, 2010.



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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
H & H OF JOHNSTON, LLC,	)	
	)	C/A No.: 2010-CP-40-07330
Plaintiff,	)	
	)	
vs.	)	ANSWER OF DEFENDANT
	)	HENRY P. BUFKIN D/B/A BUFKIN
OLD REPUBLIC NATIONAL TITLE	)	TITLE
INSURANCE COMPANY, AND HENRY P.	)	
BUFKIN D/B/A BUFKIN TITLE,	)	
	)	
Defendants.	)	

Defendant Henry P. Bufkin d/b/a Bufkin Title, ("Bufkin"), by and through its undersigned counsel, submits this Answer in response to the Complaint of Plaintiff and states as follows:

1. Bufkin denies each and every allegation of the Complaint not hereinafter specifically admitted.

AS TO PARTIES AND JURISDICTION

2. As to the allegations in Paragraph 1 of the Complaint, Bufkin admits only that H&H of Johnston, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina and denies the remaining allegations of said Paragraph.

3. Bufkin admits the allegations of Paragraph 2 of the Complaint.

4. As to the allegations in the first sentence of Paragraph 3 of the Complaint, Bufkin admits only that he is a citizen and resident of the County of Newberry, South Carolina, and is a title insurance agent for Old Republic National Title Insurance Company ("Old Republic") licensed to engage in the issuance of title insurance for Old Republic and denies all remaining

allegations of said sentence. Bufkin admits the allegations in the second sentence of Paragraph 3 of the Complaint.

5. As to the allegations of Paragraph 4 of the Complaint, Bufkin craves reference to the Complaint which speaks for itself and denies any allegations contained in Paragraph 4 of the Complaint not fully consistent therewith.

6. Bufkin denies the allegations of Paragraph 5 of the Complaint.

AS TO FACTUAL BACKGROUND

7. As to the allegations in the first sentence of Paragraph 6 of the Complaint, Bufkin admits upon information and belief only that at some point in time, Five Star began acquiring land for the development of builder ready lots within the Stoney Pointe Subdivision and denies all remaining allegations in said sentence. As to the allegations in the second sentence of Paragraph 6 of the Complaint, Bufkin admits only that he provided certain legal services to Five Star in conjunction with this development, has considerable experience in real estate documentation and closings in Newberry and Lexington counties, and denies all remaining allegations in said sentence. As to the allegations in the third sentence of Paragraph 6, Bufkin admits only that during the development, Five Star recorded restrictions on the lots in certain phases of Stoney Pointe and denies all remaining allegations in said sentence. As to the allegations in the fourth sentence of Paragraph 6, Bufkin admits upon information and belief only that D.C. Herlong at various times provided funds and/or land to Five Star in connection with the development and denies all remaining allegations in said sentence.

8. As to the allegations in the first and second sentences of Paragraph 7 of the Complaint, Bufkin craves reference to the referenced contract with P&K Construction, which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in the first and second sentences of Paragraph 7 of the Complaint not fully

consistent therewith. As to the allegations in the third and fourth sentences of Paragraph 7, Bufkin craves reference to the referenced modified contract, which speaks for itself and is the best evidence of the information contained therein, and denies all remaining allegations in said sentences not fully consistent therewith. Bufkin denies the allegations in the fifth sentence of Paragraph 7.

9. As to the allegations in the first sentence of Paragraph 8 of the Complaint, Bufkin admits only that he met with Thomas H. Herlong after the death of D.C. Herlong to discuss certain matters concerning Stoney Pointe and denies all remaining allegations in said sentence. As to the allegations in the second sentence of said Paragraph, Bufkin admits only that he provided certain legal representation to Five Star regarding Stoney Pointe, and denies all remaining allegations in the second sentence of said Paragraph.

10. As to the allegations in the first and second sentences of Paragraph 9 of the Complaint, Bufkin admits only that the Herlong Personal Representative and Five Star entered into an Investment Security Agreement and as to the remaining allegations of said sentences, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof. As to the allegations in the third sentence of Paragraph 9 of the Complaint, Bufkin craves reference to the mortgage which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in the third sentence not fully consistent therewith.

11. As to the allegations in the first and third sentences of Paragraph 10 of the Complaint, Bufkin craves reference to the Investment Security Agreement which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in the first and third sentences of said Paragraph not fully consistent therewith. As to the allegations in the second sentence of Paragraph 10, Bufkin craves reference to the recorded

mortgage which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in the third sentence of said Paragraph not fully consistent therewith.

12. As to the allegations of Paragraph 11 of the Complaint, Bufkin craves reference to the Agreement in Principal which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 11 of the Complaint not included therein and not fully consistent therewith.

13. Bufkin denies the allegations of Paragraph 12 of the Complaint.

14. As to the allegations of Paragraph 13 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

15. As to the allegations in the first sentence of Paragraph 14 of the Complaint, Bufkin admits only that he was engaged to perform certain legal services for the creation of Plaintiff as a limited liability company as set forth in the operative documents and denies all remaining allegations in said sentence not fully consistent therewith. As to the allegations in the second sentence of said Paragraph, Bufkin admits only that he assisted Plaintiff in forming a limited liability company and charged a fee for this service and denies all remaining allegations in said sentence. As to the allegations in the third sentence of said Paragraph, Bufkin admits only that he had knowledge that Plaintiff intended to try and sell some of the Stoney Pointe property at some point in time and as to the remaining allegations of said sentence, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

16. Bufkin denies the allegations of Paragraph 15 of the Complaint.

17. As to the allegations of Paragraph 16 of the Complaint, Bufkin admits only that he had an agency agreement with Old Republic National Title Insurance Company. As to the remaining allegations of said Paragraph, Bufkin craves reference to the agency agreement which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 16 of the Complaint not fully consistent therewith.

18. As to the allegations of Paragraph 17 of the Complaint, Bufkin admits only that he was engaged by Five Star and Plaintiff to provide certain legal services for a real estate transaction involving the Stoney Pointe property and denies all remaining allegations of said Paragraph.

19. As to the allegations of Paragraph 18 of the Complaint, Bufkin admits only that the referenced closing was held at his office and as to the remaining allegations of said Paragraph, Bufkin craves reference to the HUD-1 Settlement Statement which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 18 of the Complaint not fully consistent therewith.

20. As to the allegations in the first and second sentence of Paragraph 19 of the Complaint, Bufkin admits only that in providing certain legal services for the real estate transaction at issue, he prepared a general warranty deed and as to the remaining allegations in said sentences, Bufkin craves reference to the general warranty deed which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in the first and second sentences of Paragraph 19 of the Complaint not fully consistent therewith. Bufkin denies the allegations contained in the third sentence of Paragraph 19.

21. Bufkin denies the allegations of Paragraphs 20, 21, 22, and 23 of the Complaint.

22. As to the allegations of Paragraph 24 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

23. Bufkin admits, upon information and belief, the allegations of Paragraph 25 of the Complaint.

24. As to the allegations of Paragraph 26 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

25. As to the allegations of Paragraph 27 of the Complaint, Bufkin admits upon information and belief only that attorney David W. Knight wrote a letter on or about August 9, 2007, and as to the remaining allegations of said Paragraph, Bufkin craves reference to the August 9, 2007 letter which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 27 of the Complaint not fully consistent therewith.

26. As to the allegations in the first sentence of Paragraph 28 of the Complaint, Bufkin has no specific recollection of a visit as referenced, and therefore denies the same and demands strict proof thereof. As to the allegations in the second sentence of Paragraph 28, Bufkin craves reference to the title insurance binder which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in said sentence of Paragraph 28 of the Complaint not fully consistent therewith.

27. As to the allegations of Paragraph 29 of the Complaint, Bufkin admits upon information and belief only that on or about August 28, 2007, Plaintiff's counsel sent a letter to Old Republic National Title Insurance Company, and as to the remaining allegations of said Paragraph, Bufkin craves reference to the August 28, 2007 letter which speaks for itself and is

the best evidence of the information contained therein, and denies any allegations contained in Paragraph 29 of the Complaint not fully consistent therewith.

28. As to the allegations of Paragraph 30 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

29. Bufkin denies the allegations of Paragraph 31 of the Complaint.

30. As to the allegations of Paragraph 32 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

31. As to the allegations in the first and second sentences of Paragraph 33 of the Complaint, Bufkin admits that Stoney Pointe Homeowners Association, Inc. filed an action, known as Civil Action No. 2008-CP-32-01569, against Plaintiff and others and filed a lis pendens against certain tracts of land owned by Plaintiff and as to the remaining allegations in the first and second sentences of Paragraph 33, Bufkin craves references to the pleadings filed by the Stoney Pointe Homeowners Association which speak for themselves and are the best evidence of the information contained therein, and denies any allegations contained in the first and second sentences of Paragraph 33 not fully consistent therewith. As to the third sentence of said Paragraph, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

32. Bufkin admits the allegations of Paragraph 34 of the Complaint.

33. As to the allegations of Paragraph 35 of the Complaint, Bufkin craves reference to the complaint in the referenced lawsuit which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 35 of the Complaint not fully consistent therewith.

34. As to the allegations of Paragraph 36 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

35. As to the allegations contained in the first sentence of Paragraph 37 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof. As to the allegations contained in the second sentence of said Paragraph, Bufkin admits only that he was aware of the lawsuit and denies all remaining allegations in the second sentence of said Paragraph not fully consistent therewith.

36. As to the allegations of Paragraph 38 of the Complaint, Bufkin admits only that a settlement was reached with the HOA pursuant to an agreement, and as to the remaining allegations of said Paragraph, Bufkin craves reference to the settlement agreement which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 38 of the Complaint not fully consistent therewith.

37. As to the allegations of Paragraph 39 of the Complaint, Bufkin admits only that in January 2009, he transmitted a copy of title insurance policy no. OX250654 to Plaintiff and as to the remaining allegations of said Paragraph, Bufkin craves reference to the title insurance policy and title insurance commitment which speak for themselves and are the best evidence of the information contained therein, and denies any allegations contained in Paragraph 39 of the Complaint not fully consistent therewith.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Oral Contracts with Agent)

38. Responding to the allegations of Paragraph 40 of the Complaint, Bufkin repeats and realleges as if set forth verbatim herein the responses set forth above.

39. Bufkin denies the allegations of Paragraphs 41, 42, 43, 44, 45, 46, and 47 of the Complaint.

AS TO THE SECOND CAUSE OF ACTION
(Reformation of Policy due to Mutual Mistake)

40. Responding to the allegations of Paragraph 48 of the Complaint, Bufkin repeats and realleges as if set forth verbatim herein the responses set forth above.

41. Bufkin denies the allegations of Paragraphs 49, 50, 51, and 52 of the Complaint.

AS TO THE THIRD CAUSE OF ACTION
(Promissory Estoppel)

42. Responding to the allegations of Paragraph 53 of the Complaint, Bufkin repeats and realleges as if set forth verbatim herein the responses set forth above.

43. Bufkin denies the allegations of Paragraphs 54, 55, 56, and 57 of the Complaint.

AS TO THE FOURTH CAUSE OF ACTION
(Breach of Insurance Contract)

44. Responding to the allegations of Paragraph 58 of the Complaint, Bufkin repeats and realleges as if set forth verbatim herein the responses set forth above.

45. As to the allegations of Paragraph 59 of the Complaint, Bufkin admits only that Plaintiff is a named insured under the title insurance policy bearing policy no. OX 250654 and dated July 6, 2007, and denies all remaining allegations of said Paragraph.

46. As to the allegations of Paragraph 60 of the Complaint, Bufkin craves reference to the title insurance policy which speaks for itself and is the best evidence of the information contained therein, and denies any allegations contained in Paragraph 60 of the Complaint not fully consistent therewith.

47. Bufkin denies the allegations of Paragraph 61 of the Complaint.

48. As to the allegations of Paragraph 62 and 63 of the Complaint, Bufkin is without knowledge or information sufficient to form a belief as to the allegations contained therein, and therefore, denies the same and demands strict proof thereof.

49. Bufkin denies the WHEREFORE clause of the Complaint and the Prayer for Relief contained therein and specifically alleges that Bufkin has no liability to Plaintiff and denies all damages claimed.

FOR A SECOND DEFENSE
(Failure to State a Claim)

50. Further answering the Complaint, and as and for a further defense thereto, Bufkin alleges that the Complaint fails to state a claim upon which relief can be granted, and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Failure to Mitigate)

51. Further answering the Complaint, and as and for a further defense thereto, upon information and belief, Plaintiff has failed to mitigate its damages, which are expressly denied, and its failure to do so constitutes a bar and/or limitation of Plaintiff's ability to recover against Bufkin.

FOR A FOURTH DEFENSE
(Comparative Negligence)

52. Further answering the Complaint, and as and for a further defense thereto, Bufkin would allege and show that even if Bufkin was negligent in any respect, which is denied, Plaintiff was comparatively negligent and/or otherwise at fault, which fault exceeded any fault on the part of Bufkin, which is denied, and which fault proximately caused Plaintiff's alleged damages, if any, which are denied, so as to bar any recovery herein pursuant to the doctrine of comparative negligence. Alternatively, Plaintiff was comparatively negligent and/or otherwise at

fault in an amount equal to or less than any fault of Bufkin, which is denied, which fault proximately caused Plaintiff's alleged damages, if any, which are denied, so as to proportionally reduce any recovery herein pursuant to the doctrine of comparative negligence.

FOR A FIFTH DEFENSE
(Negligence of Third Parties)

53. Further answering the Complaint, and as and for a further defense thereto, Bufkin alleges that any injuries and damages allegedly suffered by Plaintiff, which are denied, were due to or caused by third persons over whom Bufkin had no control, whose actions caused the alleged damages, if any, which are denied.

FOR A SIXTH DEFENSE
(Intervening/Superseding Acts)

54. Further answering the Complaint, and as and for a further defense thereto, any damages sustained by Plaintiff, which are denied, were solely caused by the acts or omissions of parties or persons other than Bufkin, over whom Bufkin had no control, which acts or omissions constitute the intervening and/or superseding cause of Plaintiff's alleged damages, if any, which are denied, and bar Plaintiff's claims in the Complaint.

FOR A SEVENTH DEFENSE
(Estoppel and Waiver)

55. Further answering the Complaint, and as and for a further defense thereto, Bufkin alleges that Plaintiff is estopped from its own conduct from asserting a claim for the recovery sought herein and also alleges that Plaintiff waived any claims against Bufkin by and through its conduct so as to bar recovery herein.

FOR AN EIGHTH DEFENSE
(Assumption of the Risk)

56. Further answering the Complaint, and as and for a further defense thereto, Bufkin alleges that the Plaintiff's claims in the Complaint are barred by the doctrine of assumption of the risk.

FOR A NINTH DEFENSE
(Incorporation of Defenses Raised by Others)

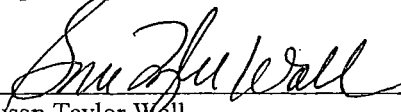
57. Further answering the Complaint, and as and for a further defense thereto, Bufkin hereby incorporates the defenses of any other Defendant as said defenses may be applicable to Bufkin.

FOR A TENTH DEFENSE
(Reservation of Rights)

58. Further answering the Complaint, and as and for a further defense thereto, Bufkin hereby gives notice that it reserves the right to assert, and does not waive, any additional or further defenses as may be revealed by additional information acquired during discovery or otherwise, and reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully answered the Complaint herein, Bufkin prays that the same be dismissed and the relief demand by Plaintiff be denied and that costs and fees be awarded to Bufkin and for such other relief as this Court deems just and proper.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT HENRY P.
BUFKIN D/B/A BUFKIN TITLE

March 24, 2011

Charleston, South Carolina

COPY

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

H & H OF JOHNSTON, LLC,

Plaintiff,

vs.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, AND HENRY P.
BUFKIN D/B/A BUFKIN TITLE,

Defendants.

FILED
2010 SEP -8 A 11: 26

WETH A. CARRIGGS
CLERK OF COURT
LEXINGTON SC

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-32-2735

**MOTION TO TRANSFER VENUE OF
DEFENDANT HENRY P. BUFKIN
D/B/A BUFKIN TITLE**

TO: WILLIAM E. BOOTH, III, ESQ., ATTORNEY FOR PLAINTIFF H&H OF
JOHNSTON, LLC

PLEASE TAKE NOTICE THAT Defendant Henry P. Bufkin d/b/a Bufkin Title
(hereinafter "Bufkin"), by and through his undersigned counsel, pursuant to S.C. Code Ann. §§
15-7-30 and 15-7-100 and Rules 12(b)(3) and 82(b) of the South Carolina Rules of Civil
Procedure, hereby moves the Court for a dismissal of this action for improper venue or, in the
alternative, for a transfer of this action from Lexington County to Newberry County.

Venue is improper in Lexington County. Pursuant to S.C. Code Ann. § 15-7-30(B), "[i]f
there is more than one defendant, the action may be tried in any county where the action properly
may be maintained against one of the defendants pursuant to this section." There are two named
defendants in this action, Bufkin and Old Republic National Title Insurance Company ("Old
Republic"). As to Bufkin, under S.C. Code Ann. § 15-7-30(C), an action against a resident
individual defendant "must be brought and tried in the county in which the: (1) defendant resides
at the time the cause of action arose; or (2) most substantial part of the alleged act or omission
giving rise to the cause of action occurred." Bufkin resides in Newberry County as alleged by

Plaintiff in the Complaint. (Complaint ¶ 3). Thus, under S.C. Code Ann. § 15-7-30(C)(1), venue is proper in Newberry County.

As to S.C. Code Ann. § 15-7-30(C)(2), the most substantial part of the alleged act or omission took place in Newberry County because the allegations against the Defendants surround Bufkin's services at the closing (Complaint ¶ 21), which, as alleged by Plaintiff, took place in Bufkin's office in Newberry County. (Complaint ¶¶ 3, 18). Thus, on the face of the Complaint, it is clear that Bufkin's alleged acts or omissions took place in Newberry County and venue is proper in Newberry County under S.C. Code Ann §§ 15-7-30(C)(1) and 15-7-30(C)(2).

The remaining defendant, Old Republic, is a corporation "licensed by the State of South Carolina to transact the business of title insurance within the State of South Carolina." (Complaint ¶ 2). Pursuant to S.C. Code Ann. §§ 15-7-30(E), (F), and (G), an action against a corporation must be brought in the county where the most substantial part of the alleged act or omission giving rise to the cause of action occurred, where the corporation's principal place of business at the time the cause of action arose, or in the case of a foreign corporation that does not possess a certificate of authority, the action may also be brought where the domestic limited liability company has its principal place of business at the time the cause of action arose. As discussed above, the most substantial part of the alleged act or omission took place in Newberry County. Old Republic's principal place of business is, upon information and belief, in Richland County. Plaintiff's principal place of business is in Edgefield County. (Complaint ¶ 1). Because Lexington County is an improper venue under any of the provisions that apply to a corporation, venue should be transferred to Newberry County.

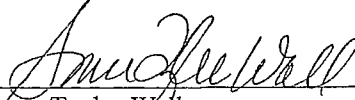
Plaintiff asserts in its Complaint that venue is proper in Lexington Country, which is the location of the property at issue in the title insurance policy, pursuant to S.C. Code Ann. § 15-7-10(1). This statute provides as follows, "An action for the following causes of action must be

tried in the county in which the subject of the action or some part of the property is situated, subject to the power of the court to change the place of trial in certain cases as provided in Section 15-7-100: (1) for the recovery of real property or of an estate or interest in real property, for the determination in any form of the right or interest, and for injuries to real property....” Plaintiff’s Complaint does not seek a determination of its rights or interests in real property, but rather, seeks damages resulting from the alleged negligence of Defendants Bufkin and Old Republic in issuing a title policy with certain exceptions. Plaintiff is not challenging its title to the property described in the Complaint because any title issues relating to this property were resolved in an underlying lawsuit brought against Plaintiff and others by the Stoney Pointe Homeowners Association, Inc. In fact, the Complaint admits that Plaintiff is vested with fee simple title. (Complaint ¶ 61). Thus, S.C. Code Ann. § 15-7-10(1) does not apply and venue in Lexington County is improper.

Bufkin resides in Newberry County and the most substantial part of the alleged act or omission took place in Newberry County; therefore, venue is proper in Newberry County under S.C. Code Ann. §§ 15-7-10(1) and 15-7-30. Consequently, pursuant to Rule 82(b), SCRC, venue should be transferred to Newberry County, where venue is proper. *See also* S.C. Code Ann. §15-7-100(1); *Whaley v. CSX Transportation, Inc.*, 362 S.C. 456, 469, 609 S.E.2d 286, 292 (2005) (“A defendant’s right to be tried in the county of his residence is a substantial right.”).

This motion is based upon the pleadings, the applicable law, and any memorandum of law or other material that may be submitted to the Court before or at the hearing on this Motion.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT HENRY P.
BUFKIN D/B/A BUFKIN TITLE

September 3, 2010

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

H & H OF JOHNSTON, LLC,

Plaintiff,

vs.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, AND HENRY P.
BUFKIN D/B/A BUFKIN TITLE,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-32-2735

**MOTION TO DISMISS OF
DEFENDANT HENRY P. BUFKIN
D/B/A BUFKIN TITLE**

TO: WILLIAM E. BOOTH, III, ESQ., ATTORNEY FOR PLAINTIFF H&H OF
JOHNSTON, LLC

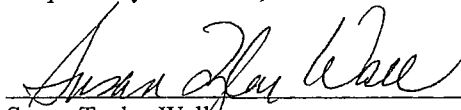
PLEASE TAKE NOTICE THAT Defendant Henry P. Bufkin d/b/a Bufkin Title (hereinafter "Bufkin"), by and through his undersigned counsel, hereby moves the Court, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-36-100(E), for an Order dismissing, with prejudice, the Complaint filed by Plaintiff H&H of Johnston, LLC. This case arises from a real estate closing in which Bufkin served as closing attorney. Plaintiff has asserted two causes of action against Bufkin for breach of oral contract with agent and promissory estoppel. All claims asserted against Bufkin should be dismissed on the grounds that Plaintiff has failed to comply with the requirements of S.C. Code Ann. § 15-36-100(E), which provides that when a plaintiff asserts a professional negligence action against an attorney, Plaintiff must file an affidavit of an expert witness contemporaneously with the complaint specifying particular negligent acts or omissions of the attorney.

Plaintiff has attempted to thwart the requirements of S.C. Code Ann. § 15-36-100(E) by framing this case as one against Bufkin in his capacity as a title agent, rather than in his capacity as a real estate closing attorney. It is clear from the face of the Complaint, however, that this

action is in reality an action against Bufkin in his capacity as an attorney and not as a title agent. The services provided by Bufkin that Plaintiff alleges were breached could only be provided by Bufkin in his capacity as an attorney. Accordingly, under Rule 12(b)(6), SCRCPP, and S.C. Code Ann. § 15-36-100(E), Plaintiff's claims against Bufkin must be dismissed for failure to state a claim.

This motion is based upon the pleadings, the applicable law, and any memorandum of law or other material that may be submitted to the Court before or at the hearing on this Motion.

Respectfully submitted,



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ATTORNEYS FOR DEFENDANT HENRY P.
BUFKIN D/B/A BUFKIN TITLE

September 3, 2010

Charleston, South Carolina

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

)
) C/A No.: 2010-CP-40-07330

)
)
) **DEFENDANT HENRY P. BUFKIN**
) **D/B/A BUFKIN TITLE'S AMENDED**
) **NOTICE OF MOTION AND MOTION**
) **FOR SUMMARY JUDGMENT**

) **DEFENDANT HENRY P. BUFKIN**
) **D/B/A BUFKIN TITLE'S AMENDED**
) **NOTICE OF MOTION AND MOTION**
) **FOR SUMMARY JUDGMENT**

) **NOTICE OF MOTION AND MOTION**
) **FOR SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE THAT Defendant Henry P. Bufkin d/b/a Bufkin Title (hereinafter “Bufkin”), by and through their undersigned counsel, hereby move the Court, pursuant to Rule 56(b) of the South Carolina Rules of Civil Procedure, for an Order granting summary judgment to Bufkin on all claims asserted by Plaintiff H & H Johnston, LLC (“Plaintiff”), in the Complaint. This case arises from a real estate closing in which Bufkin served as a closing attorney. Plaintiff has asserted two causes of action against Bufkin for breach of oral contract with agent and promissory estoppel. All claims asserted against Bufkin should be dismissed on the following grounds:

PPAB 1887387v1

estate closing attorney. The undisputed facts demonstrate, however, that this action is in reality an action against Bufkin in his capacity as an attorney and not a title agent.

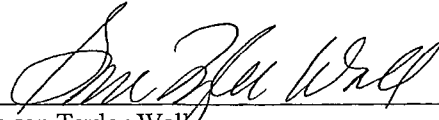
2. The undisputed evidence demonstrates that there was no mutual understanding and intent among the parties sufficient to form a contract.

3. The undisputed evidence demonstrates that Bufkin made no promise to Plaintiff regarding the title exceptions at issue in this case and that Plaintiff could not reasonably rely on any alleged promise.

4. The undisputed evidence demonstrates that Bufkin is not the proximate cause of Plaintiff's alleged damages because even if the title exceptions at issue had not been listed as title exceptions, the title policy would not have covered Plaintiff's claims. The standard exclusions in the title policy exclude from coverage any and all defects, liens, encumbrances, adverse claims or other matters agreed to or known by the insured claimant. The undisputed evidence demonstrates that Plaintiff knew and agreed to the adverse claims at issue.

This Motion is based upon the pleadings, deposition testimony and exhibits, the controlling law, a Memorandum of Law to be filed with any supporting affidavits, and such other and further material as the Court may deem appropriate.

WHEREFORE, Defendants respectfully request that the Court issue an Order granting their Motion for Summary Judgment dismissing Plaintiff's Complaint and the claims asserted therein, *with prejudice*.



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ATTORNEYS FOR DEFENDANT

HENRY P. BUFKIN D/B/A BUFKIN TITLE

October 31, 2011

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
H&H of Johnson, LLC,	)	Case No. 2010-CP-40-07330
	)	
Plaintiff,	)	
	)	
v.	)	NOTICE OF MOTION AND MOTION
	)	OF THE DEFENDANT, REPUBLIC
	)	NATIONAL TITLE INSURANCE COMPANY
Old Republic National Title	)	FOR SUMMARY JUDGMENT
Insurance Company, and Henry	)	
P. Bufkin d/b/a Bufkin Title,	)	
	)	
Defendants.	)	
	)	

TO: THE PLAINTIFF AND THE PLAINTIFF'S COUNSEL

YOU WILL PLEASE TAKE NOTICE THAT, ten (10) days after the service hereof, or as soon thereafter as counsel may be heard, the Defendant in the above matter, Old Republic National Title Insurance Company (Old Republic), by and through its undersigned counsel and pursuant to SCRCF, Rule 56, will move this Honorable Court for an order dismissing the within case as to it because there is no genuine issue of material fact and Old Republic is entitled to judgment as a matter of law.

This motion is based on the following and such other matters, pleadings, affidavits or the like which may hereafter be submitted pursuant to Rule 56.

PLAINTIFF'S CLAIMS

In its complaint the Plaintiff asserts that the Defendant, Henry P. Bufkin, d/b/a Bufkin Title (Bufkin), as an agent for Old Republic and in conjunction with a real estate closing he conducted, entered into an oral contract with the Plaintiff to issue, on behalf of Old Republic, an owner's title insurance policy which did not take exception to two title matters - (1) an unrecorded contract (P&K Contract) which gave P&K Construction a right of first refusal to purchase certain lots located on

the real property in question and (2) certain restrictive covenants which encumbered, in part, that property. The Plaintiff also asserts the inclusion in the title policy of P&K Contract and restrictive covenants exceptions was a mutual mistake and the title policy should be reformed to delete these exceptions, that Old Republic should be estopped from asserting these exceptions as a basis for denial of the Plaintiff's title claims and that Old Republic breached the "reformed" title policy because it has refused to pay the Plaintiff's claims based, in part, these of exceptions.

PERTINENT FACTS

At the July 5, 2007, closing of the subject real estate transaction, there were no discussions regarding any exceptions to the title policy that Bufkin ultimately issued, which, of course, necessarily means there were no discussions of the P&K Contract or the restrictive covenants being exceptions to the title policy. The title policy Bufkin issued, as well as the title commitment, show as exceptions to coverage both the P&K Contract and the restrictive covenants.

However, there was a general discussion of the P&K Contract at closing, specifically whether the P&K Contract remained enforceable.

Further, the P&K Contract and the restrictive covenants were entered into by the Plaintiff's predecessor in title to the subject property. The Plaintiff's predecessor in title was a limited liability company among whose 5 members was one of two members in the Plaintiff limited liability company.

Shortly after the closing, P&K Construction contacted the Plaintiff saying that it believed the P&K Contract remained enforceable and the Plaintiff could not sell any of the effected lots without the consent of P&K Construction. Shortly thereafter, suit was brought against the Plaintiff, and others, by a homeowners association in regard to the restrictive covenants. The Plaintiff resolved the P&K Contract issue by way of a cash payment to P&K Construction and ultimately settled the

homeowners association lawsuit. Neither of these settlements occurred with the prior written consent of Old Republic and the Plaintiff did not notify Old Republic of the homeowners association lawsuit until after it was settled.

ARGUMENT

I. Oral title insurance contract.

The authorities agree that before a contract of insurance, or to insure, is binding, all the essential elements and terms of the contract must be understood and mutually assented to. A mere expression of a desire by one intending to procure insurance, or a proposition made to an insurance agent to insure property, and an assent or acceptance by the agent to insure, without more, would not amount to a contract of insurance or an agreement to insure.

Fulmer v. London, Liverpool & Globe Fire Ins. Co., 172 S.C. 525, 174 S.E.466, 467 (1934), quoting *Commercial F. Ins. Co. v. Morris*, 105 Ala. 498, 18 So. 34 (1894).

The fact that there were no discussions between the parties of the P&K Contract and the restrictive covenants exceptions to the title policy necessarily precludes the Plaintiff from establishing an oral contract not to include these two exceptions in the title policy. Accordingly, the Plaintiff's claims in this respect must fail.

Further, Bufkin issued a title insurance commitment and a title insurance policy both of which contained exceptions to the P&K Contract and the restrictive covenants. Even assuming that there were discussions of these two exceptions prior to the issuance of the title insurance policy, such prior negotiations and/or agreements would merge into the title policy and evidence as to those prior discussions would be inadmissible under the parol evidence rule to alter or change the express terms of the title policy. *Muckelvaney v. Liberty Life Ins. Co.*, 261 S.C. 63, 198 S.E.2d 278 (1973). Accordingly, the Plaintiffs claims must fail.

II. Reformation based on mutual mistake.

In order to be entitled to reformation, the Plaintiff must show the omission or insertion of some material element affecting the subject matter or the terms of the contract, inconsistent with a prior parol agreement in regard to that omission or insertion. *Crosby v. Protective Life Ins. Co.*, 293 S.C. 203, 206, 259 S.E.2d 298, 300 (Ct. App. 1987).

Here, of course, there were no discussions in regard to the P&K Contract or the restrictive covenants as exceptions to the title policy. Accordingly, the Plaintiff's mutual mistake/reformation claim must also fail.

III. Breach of title policy.

There is no basis to reform the title policy to delete the P&K Contract and restrictive covenants exceptions. Accordingly, because those two title issues are specifically excepted from coverage under the title policy, these exceptions preclude any coverage in regard to the P&K Contract and the restrictive covenants.

IV. Estoppel.

Although Plaintiff does not specify what type of estoppel it is asserting, promissory estoppel is the only type appearing to apply to the Plaintiff's complaint.

The elements of promissory estoppel are lack of knowledge and of the means of knowledge of the truth as to the facts in question, some form of conduct or representation by the party against whom the estoppel is asserted, good faith reliance and detrimental change in position. *Fallaw v. Oswald*, 194 S.C. 387, 9 S.E.2d 793 (1940).

Given that there was no discussion of the P&K Contract or the restrictive covenants exceptions to the title policy, there is no "conduct or representation" by Old Republic to support an estoppel and the Plaintiff's estoppel claim must fail.

IV. Policy Defenses.

In addition to the foregoing, which clearly defeat the Plaintiffs' claims, the standard pre-printed exclusion contained in paragraph 3(a) of the title policy Bufkin issued the Plaintiff (the inclusion of which in the title policy the Plaintiff does not complain) excludes from coverage matters created, suffered, assumed or agreed to by the insured. The P&K Contract was entered into by Plaintiff's predecessor in title, a limited liability company which included, as a member, one of two members of the Plaintiff limited liability company. The same holds true for the restrictive covenants. Further, while no exceptions to the title policy were discussed at closing, the P&K Contract was.

Accordingly, both the P&K Contract and the restrictive covenants were created, suffered, assumed and agreed to by the Plaintiff and therefore, neither is covered under the title policy.

Further, paragraph 3 of the pre-printed conditions and stipulations section of the title policy (the inclusion of which the Plaintiff does not complain) requires an insured provide Old Republic with prompt notice of any litigation concerning which Old Republic may have a duty to defend under the title policy. As is set forth above, Old Republic received no notice of the homeowner's association lawsuit until after it was settled.

Finally, paragraph 9 (c) of the pre-printed conditions and stipulations section of the title policy (the inclusion of which the Plaintiff also does not complain) precludes coverage for any liability voluntarily assumed by the insured in settling a title claim without the prior written consent of Old Republic. The Plaintiff settled the P&K Contract issue and the homeowners association litigation regarding the restrictive covenants without the prior written consent of Old Republic.

Accordingly, based on the paragraph 3(a) exclusion and the conditions and stipulations paragraphs 3 and 9 (c), the Plaintiffs' claims must fail.

V. Legal Malpractice.

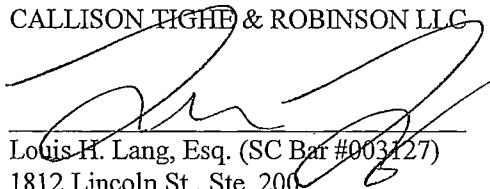
For more than 100 years, the South Carolina Supreme Court has said providing advice regarding title to real property is the practice of law. *In Re Duncan*, 83 S.C. 186, 65 S.E. 210 (1909), *State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E. 2d 15 (1987), *Doe v. McMaster*, 255 S.C. 306, 585 S.E.2d 773 (2003), *Doe Law Firm v. Richardson*, 371 S.C. 14, 636 S.E.2d 866 (2006), *Matrix v. Louis M. Frazer, et al.*, Op. No. 26859 (decided August 16, 2010), modified and reissued *Matrix Financial Services Corp. v. Louis M. Frazer, et al.*, Op. No. 26859 (decided August 8, 2011) and *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 698 S.E.2d 244 (Ct. App. 2010).

The Plaintiff's complaint shows that what it is really complaining of is the legal advice and conduct of Bufkin acting in his capacity as a closing attorney, not as an insurance agent. Accordingly, the Plaintiff's complaint must fail.

CONCLUSION

Based on the foregoing, and any further matters and argument to be submitted, there is no genuine issue of material fact as to any aspect of the Plaintiff's claims against Old Republic and Old Republic is entitled to judgment as a matter of law dismissing the Plaintiff's complaint as to it with prejudice.

CALLISON TIGHE & ROBINSON LLC


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*Counsel for Defendant, Old Republic National Title
Insurance Company*

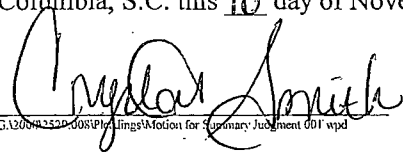
November 10, 2011
Columbia, South Carolina

CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the above and foregoing to all counsel of record in said proceedings to his/her office address with sufficient postage attached.

William E. Booth, III, Esq.
3231 Sunset Boulevard, Suite A
West Columbia, South Carolina 29250

Columbia, S.C. this 10th day of November, 2011.


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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
)
)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

H & H OF JOHNSTON, LLC,

)
)
)
)

C/A No.: 2010-CP-40-07330

Plaintiff,

vs.

)
)
)
)

**DEFENDANT HENRY P. BUFKIN
D/B/A BUFKIN TITLE'S
MEMORANDUM IN SUPPORT OF
AMENDED MOTION FOR SUMMARY
JUDGMENT**

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, AND HENRY P.
BUFKIN D/B/A BUFKIN TITLE,

)
)
)
)

Defendants.

Defendant Henry P. Bufkin d/b/a Bufkin Title (hereinafter "Bufkin"), by and through his undersigned counsel, respectfully submits this Memorandum of Law in Support of its Amended Motion for Summary Judgment, together with Affidavit of Henry P. Bufkin, Esq., attached..

I. BACKGROUND

This action arises out of a real estate transaction involving property within the Stoney Pointe subdivision in Chapin, South Carolina. Bufkin represented Five Star Development, LLC ("Five Star"), the developer of Stoney Pointe, in various loan closings and other matters related to Stoney Pointe. Thereafter, Stanley Herlong, a member of Five Star, along with his brother, Thomas Herlong, sought Bufkin's assistance in forming H&H of Johnston, LLC ("H&H" or "Plaintiff"), the Plaintiff in the instant lawsuit. H&H was formed for the purpose of acquiring ownership of land owned by Five Star in Stoney Pointe. Bufkin served as the closing attorney for the real estate purchase transaction between Five Star and H&H. H&H now asserts that Bufkin breached his duties by failing to explain to H&H what title exceptions were included on the title insurance binder, specifically, HOA assessments, development restrictions, and a construction contract with P&K. H&H asserts the following causes of action against Bufkin:

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breach of oral contract and promissory estoppel. The claims should be dismissed for the following reasons: (1) H&H has failed to comply with the requirements of S.C. Code Ann. § 15-36-100, which provides that when a plaintiff asserts a professional negligence action against an attorney, the plaintiff must file an affidavit of an expert witness contemporaneously with the complaint specifying particular negligent acts or omissions of the attorney; (2) there is no evidence that Bufkin entered into an oral contract with Plaintiff or made any promise regarding title insurance exceptions; and (3) Bufkin is not the proximate cause of Plaintiff's alleged damages because the title insurance policy would not have covered the matters at issue even if no exceptions had been listed.

II. LEGAL STANDARD

Rule 56, SCRCP, requires the entry of summary judgment when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *See Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002). Although the moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, "this initial responsibility may be discharged by 'showing' – that is, pointing out to the trial court – that there is an absence of evidence to support the nonmoving party's case." *Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). Once the moving party makes this demonstration, the opposing party "must, under Rule 56(e), do more than simply show some metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a *genuine issue for trial*." *Id.* (emphasis in original); *see also Midland Mut. Life Ins. Co. v. Harrell*, 331 S.C. 394, 397, 503 S.E.2d 189, 190 (Ct. App. 1998). The nonmoving party must specifically set forth such facts, "as would be admissible in evidence," to show that a true jury issue exists. *See S.C. R. Civ. P. 56(e)*. Under South Carolina law, where "plain, palpable and indisputable facts exist on which reasonable minds cannot differ," summary judgment in

favor of the moving party is proper. *Williams v. Chesterfield Lumber Co.*, 267 S.C. 607, 610, 230 S.E.2d 447, 448 (1976).

III. DISCUSSION

A. All Claims Against Bufkin Fail as a Matter of Law Because the Complaint Did Not Include an Affidavit of an Expert Witness as Required by S.C. Code Ann. § 15-36-100(C).

Under S.C. Code Ann. § 15-36-100, when a plaintiff asserts a professional negligence action against an attorney, the plaintiff must file an affidavit of an expert witness in support of the complaint specifying particular negligent acts or omissions of the attorney. The purpose of the statute, which falls under the Frivolous Proceedings Sanctions Act, is to prevent the filing of frivolous claims against professionals, including attorneys. When a plaintiff fails to file an affidavit contemporaneously with its complaint, the complaint is subject to dismissal for failure to state a claim. S.C. Code Ann. § 15-36-100.

Plaintiff has attempted to thwart the requirements of S.C. Code Ann. § 15-36-100 by framing this case as one against Bufkin in his capacity as a title agent, rather than in his capacity as a real estate closing attorney. It is clear from the face of the Complaint and the undisputed evidence in the case, however, that this action is an action against Bufkin in his capacity as an attorney. The services provided by Bufkin, which Plaintiff alleges were breached, could only be provided by Bufkin in his capacity as an attorney. *See State v. Buyers Service Co., Inc.*, 292 S.C. 426, 357 S.E.2d 15 (1987).

On March 10, 2011, this Court, in response to Bufkin's Motion to Dismiss, ruled that "the Complaint includes allegations concerning Bufkin's services as an attorney" and "insofar as the Complaint attempts to assert any claim against Bufkin in his capacity as an attorney, the same is dismissed for failure to state a claim pursuant to S.C. Code Ann. § 15-36-100." (Order, Exh. 1.) Since the Court's ruling on Bufkin's Motion to Dismiss, the parties have completed

discovery. Based on the admissions of Plaintiff's 30(b)(6) representative, it is undisputed that Plaintiff retained and relied on Bufkin in his capacity as a lawyer and not in his capacity as a title agent. (Deposition of Stanley Herlong, 30(b)(6) witness for H & H of Johnston, LLC at pp. 143-44, Exh. 2.)

Plaintiff's 30(b)(6) representative, Stanley Herlong, testified as follows:

Q: All right. Did you look or did you view Mr. Bufkin *as a lawyer* closing a real estate transaction?

A: Yeah.

Q: And you went to him for this closing, the H&H closing, *as a lawyer*?

A: Yes.

(*Id.* at pp. 172-74 (emphasis added), Exh. 2.)

Plaintiff was not aware of the relationship between Bufkin and Old Republic National Title Insurance Company and was not aware that Bufkin was even a title agent. (*Id.* at pp. 150-51, Exh. 2.) Therefore, Plaintiff cannot sue Mr. Bufkin in his capacity as a title agent and the claims against Bufkin are necessarily made in Bufkin's capacity as an attorney closing the transaction at issue. Thus, pursuant to the Court's previous Order on Bufkin's Motion to Dismiss, the Complaint must be dismissed as to Bufkin.

In addition, the gravamen of the claims against Bufkin are that he allegedly failed to advise Plaintiff as to the exceptions taken on the title policy. It is basic South Carolina law that only an attorney can advise a client as to matters affecting rights in real estate. See *State v. Buyers Service*, 292 S.C. 426, 357 S.E.2d 15 (1987).

Because Plaintiff's claims against Bufkin are asserted against Bufkin in his capacity as an attorney, they necessarily fail as a matter of law due to Plaintiff's failure to file an affidavit of an expert witness as required by S.C. Code Ann. § 15-36-100.

B. All Claims Fail as a Matter of Law Because There is No Evidence of a Contract or Promises Made Regarding the Title Exceptions.

"A contract exists where there is an agreement between two or more persons upon sufficient consideration either to do or not to do a particular act." *Carolina Amusement Co., Inc. v. Connecticut Nat'l Life Ins. Co.*, 313 S.C. 215, 220, 437 S.E.2d 122, 125 (Ct. App. 1993). Plaintiff claims that Bufkin breached an alleged oral contract (1) to sell Plaintiff a title policy that would not take exception to the P&K Contract; (2) to issue a title policy that would not take exception to any restrictions upon the 11.44 acres; and (3) to issue a title policy that would not take exception to the HOA assessments. Plaintiff further asserts that Bufkin promised that the title insurance policy would not take exception to the contract with P&K, any covenants and restrictions, or the HOA assessments.

The allegations are defeated by Plaintiff's own admissions. Plaintiff testified, in the deposition of its 30(b)(6) representative, as follows:

Q: ...[C]an I say that the only thing Mr. Bufkin told you about a title insurance policy is that he was going to issue one?
A: Right.
Q: That's it?
A: That's it.
Q: He didn't say anything about exceptions?
A: No.

(Deposition of Stanley Herlong, 30(b)(6) witness for H & H of Johnston, LLC at p. 159, Exh. 2.)

By Plaintiff's own admissions, there was no oral contract to provide a title policy without restrictions or that the title policy would not include exceptions. Thus, Plaintiff's breach of contract and promissory estoppel claims necessarily fail and must be dismissed.

C. All Claims Fail as a Matter of Law Because Bufkin's Alleged Acts or Omissions Were Not the Proximate Cause of Plaintiff's Claimed Damages

Even if the title exceptions had not been listed as title exceptions, the title policy would not have covered the items that Plaintiff now claims should have been covered. The Old Republic National Title Insurance Policy states as follows:

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

3. Defects, liens encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;

It is undisputed that Plaintiff had knowledge of both the covenants and restrictions and the P & K contract before the July 3, 2007 closing. Stanley Herlong was a principal of both Five Star and H&H. Pursuant to the Five Star Operating Agreement, "the act of any Member, including, but not limited to, the execution in the name of the Company of any instrument...binds the Company." (Five Star Operating Agreement, Exh. 3.) On June 22, 1998, Ralph McClendon, one of the members of Five Star, signed the Declaration of Covenants, Conditions, and Restrictions. As a member of Five Star, Stanley Herlong was bound by those actions and imputed with knowledge of the covenants and restrictions. Stanley Herlong also had constructive knowledge of the covenants and restrictions because they were a matter of public record as of June 23, 1998, the date they were filed. Thus, Plaintiff could have no claim under the title policy with respect to the covenants and restrictions even if they had not been listed as an exception.

As to the P&K Contract, Plaintiff admits knowledge through its principal, Stanley Herlong, as early as September 2003 (Deposition of Stanley Herlong, 30(b)(6) witness for H & H of Johnston, LLC at p. 159, Exh. 2.) Plaintiff again acknowledged the existence of the P & K contract with Plaintiff's real estate agent shortly before the closing. (Deposition of Stanley Herlong, 30(b)(6) witness for H & H of Johnston, LLC at p. 96, Exh. 2.) Accordingly, pursuant to the general exclusions in the title insurance policy, Plaintiff could have no claim under the title policy with respect to the P&K Contract.

Because Plaintiff had knowledge of the matters at issue, Plaintiff is barred from asserting a claim under the title insurance policy because of the policy language. Thus, even if Bufkin had issued a title policy without exceptions, as Plaintiff claims he should have done, there would be no coverage.

IV. CONCLUSION

For all the foregoing reasons and any others in the record, Bufkin respectfully requests that the Court issue an Order GRANTING Bufkin's Motion for Summary Judgment and dismissing Plaintiff's Complaint as to it, *with prejudice*.



Susan Taylor Wall
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MCNAIR LAW FIRM, P.A.
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Charleston, SC 29401
Phone: 843-723-7831
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ATTORNEYS FOR DEFENDANT
HENRY P. BUFKIN D/B/A BUFKIN TITLE

January 12, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H & H OF JOHNSTON, LLC,

Plaintiff,

vs.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, AND HENRY P.
BUFKIN D/B/A BUFKIN TITLE,

Defendants.

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2010-CP-40-07330

ORDER

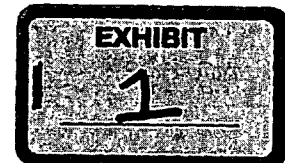
RICHLAND COUNTY
CLERK OF COURT
2011 MAR 10 PM 3:19
JENNIFER H. HOSKINS
C.D. 11-088

THIS MATTER CAME BEFORE THE COURT by way of Defendant Henry P. Bufkin d/b/a Bufkin Title's (hereinafter "Bufkin") Motion to Dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure and S.C. Code Ann. § 15-36-100. After due notice, a hearing was held on February 23, 2011 in Richland County, South Carolina. Present at the hearing were counsel for all interested parties: William E. Booth, III, Esq. for Plaintiff, Susan Taylor Wall, Esq. for Defendant Bufkin, and Jennifer Stone, Esq. for Defendant Old Republic National Title Insurance Company. The Court has carefully considered the motion, arguments of counsel, memoranda submitted in support of the parties' respective positions, and the law, and finds as follows:

IT APPEARING TO THE COURT THAT S.C. Code Ann. § 15-36-100 (B) requires the filing as part of the Complaint an affidavit of an expert witness in an action for damages alleging professional negligence for a professional listed in part (G) of S.C. Code Ann. § 15-36-100, unless the pleaded specification of negligence involves subject matter that lies within the ambit of common knowledge and experience; and

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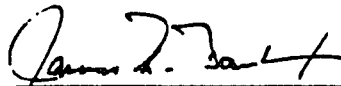


IT APPEARING TO THE COURT THAT Plaintiff did not file an Affidavit to accompany the Complaint pursuant to S.C. Code Ann. § 15-36-100, and that Plaintiff maintains that the only cause of action contained in the Complaint concerns Bufkin's alleged services as a title insurance agent for Defendant, Old Republic National Title Insurance Company; and

IT APPEARING TO THE COURT THAT the Complaint includes allegations concerning Bufkin's services as an attorney; and

NOW, THEREFORE, IT IS HEREBY ORDERED insofar as the Complaint attempts to assert any claim against Bufkin in his capacity as an attorney, the same is dismissed for failure to state a claim pursuant to S.C. Code Ann. § 15-36-100. Bufkin shall file an Answer to the Complaint within 15 days of the signing of this Order.

AND IT IS SO ORDERED.



HONORABLE JAMES R. BARBER, III

March 10, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) Case No.: 2010-CP-40-07330

H & H OF JOHNSONTON, LLC,
Plaintiff,

vs.

OLD REPUBLIC NATIONAL TITLE INSURANCE
COMPANY, AND HENRY P. BUFKIN D/B/A
BUFKIN TITLE,

Defendants.

DEPOSITION OF
STANLEY HERLONG

DATE: June 9, 2011
TIME: 10:17 a.m. to 5:00 p.m.
LOCATION: Parker Poe Adams & Bernstein, LLP
1201 Main Street
Suite 1450
Columbia, South Carolina
REPORTED BY: Beth Walters

PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, South Carolina 29466
843.670.1637 Fax: 843.216.9767
Palmettostatecr@yahoo.com



1 memory. Because this is almost three weeks, it's
2 possible because Rhonda was even talking to Empire
3 before we closed. It seems like to me maybe Ken
4 King had already told -- contacted Rhonda and told
5 her that his contract had not expired. So I'm just
6 thinking this -- that's why this wording could be
7 that way. But I mean like I said, I'll go back to
8 what I originally said. I told Rhonda before we
9 ever closed that Ralph had had a contract with Ken
10 King but it should not be an issue. Okay.

11 Q But by July the 16th -- you signed it on
12 July the 25th, but as early as July the 16th Empire
13 thinks that there is a dispute --

14 A Yeah.

15 Q Because they're the ones who prepared the
16 language.

17 A Because within a couple of days after the
18 closing, Ken King found out Rhonda was working with
19 Empire. And Rhonda even called me up before I think
20 I even went in and signed it and said, "hey, Ken
21 King has contacted me and says he has -- you can't
22 sell those lots." I said, "well, Rhonda, that
23 should not be an issue because my understanding is
24 the contract he has had expired. He hasn't lived up
25 to his agreement." That's also when I kept

1 Jeffcoat Realtors?

2 A No.

3 Q Why not?

4 A The only thing I can answer is my lack of
5 experience, I guess, in dealing with matters like
6 this.

7 Q Did you ever ask Mr. Bufkin to insure that
8 neither you nor H & H would be required to pay any
9 HOA assessments?

10 A There never was or came up at all.

11 Q So you never asked that of Mr. Bufkin, did
12 you?

13 A No. I knew Ralph had never paid any HOA.

14 Q What are you complaining of with regard to
15 Mr. Bufkin?

16 A Well, I put -- and I said I bought a home
17 from Mr. Bufkin. I even did my personal Will with
18 him. I trusted him to put us in a situation where
19 we would be able to sell the property. By putting
20 my trust in him, I trusted that P & K was no longer
21 a factor. And I guess what was really disappointing
22 me when all of this came up -- and I repeatedly
23 called Mr. Bufkin and he never would return my
24 calls -- all of the stuff you've shown me about at
25 closing.

1 I know I'm not experienced in this, but I
2 know one thing. I would have noticed if there were
3 these, whatever you call it, amendments to the title
4 insurance policy. I didn't have a clue that there
5 was anything in the title insurance policy until I
6 picked it up in his office, which I guess was
7 approximately a month later, and took it into Mr.
8 Booth. I didn't even look at it until I got --
9 well, after I picked it up because I drove straight
10 from there to Mr. Booth's office. I said, "hey, I'm
11 paying him to handle this." He sure understands all
12 of this legal talk better than I ever will. Then
13 when I got in there and stuck it in his face and he
14 starts reading it, he says, "you have a problem."

15 Q And when you say "understands legal talk,"
16 that's because he's a lawyer, correct?

17 A Right.

18 Q All right. And you're not a lawyer?

19 A I'm just a dumb country bumpkin.

20 Q And you relied on Mr. Bufkin as a lawyer,
21 correct?

22 A Yes.

23 Q If the closing had not gone through on
24 July the 5th, 2007, how would the members of Five
25 Star have paid off the \$240,000.00 loan that was due

1 computer. I don't have it signed. Take a look at
2 that, if you would, Mr. Herlong. And I would invite
3 your particular attention to subparagraphs a, b, c,
4 d, and e and ask you to take a look at those for me
5 if you would.

6 A (Reviewing document.) Okay.

7 Q Now, are you prepared to answer questions
8 in regard to those particular areas of information
9 in regard to this lawsuit that you brought against
10 or H & H has brought against Old Republic National
11 Title Insurance Company?

12 A Yes.

13 Q All right. Let me ask you this. Prior to
14 this litigation, had you ever heard of Old Republic
15 National Title Insurance Company?

16 A No.

17 Q And the name Old Republic National Title
18 Insurance Company didn't mean anything to you until
19 this lawsuit was brought?

20 A No.

21 Q Inviting your attention back to, we'll
22 just say July of 2007, the day of the closing of the
23 transaction that's at issue, what did you know, if
24 anything, about Mr. Bufkin's relationship with Old
25 Republic National Title Insurance Company?

1 A None.

2 Q During the course of that closing at which
3 you were present, do you recall any discussion at
4 that closing in which the name Old Republic National
5 Title Insurance Company was mentioned?

6 A No.

7 Q Do you know of any documents that you
8 signed at that closing which makes reference to Old
9 Republic National Title Insurance Company?

10 A I just know I signed something to get
11 title insurance, but I wasn't even at the time when
12 I left there remember what company it was with.

13 Q You mentioned that Mr. Bufkin had closed
14 your -- when you purchased your home earlier?

15 A Yes.

16 Q Was that before the July 5th, '07
17 transaction?

18 A Yes. And that could be with Old Republic
19 for all I know. I have no idea who I have my
20 homeowner's with -- I mean my title insurance.

21 Q Well, that was my question. You don't
22 know who wrote or on whose behalf Mr. Bufkin may
23 have issued you an owner's title insurance policy
24 for your personal residence?

25 A No.

1 Q Yes, sir. It's on page 11.

2 A Yes.

3 Q Did Mr. Bufkin tell you at the closing,
4 and by you again I mean H & H, that he was going to
5 issue an Old Republic title insurance policy that
6 did not take exception to any restrictions on the
7 11.44 acre tract?

8 A Yes. But, you know, you can have -- go
9 with 40 paragraphs here. I've already said, "I
10 don't -- all I know is Mr. Bufkin asked me if I
11 wanted a title insurance policy and there was no
12 other conversations that I recall as far as any
13 exceptions.

14 Q So --

15 A So what's -- that will be real clear.

16 Q Backing up then, can we -- can I say that
17 the only thing Mr. Bufkin told you about a title
18 insurance policy was he was going to issue one?

19 A Right.

20 Q That's it?

21 A That's it.

22 Q He didn't say anything about exceptions?

23 A No.

24 Q He didn't say anything about what he was
25 going to insure in terms of land? Did he say

1 before H & H purchased the property?

2 A No.

3 Q I take it you've never lived in a
4 subdivision that had those sorts of assessments or
5 Homeowners Associations or anything of that nature?

6 A No.

7 Q Your house on Lake Murray isn't in that
8 type of subdivision?

9 A No. I just said, no.

10 Q I think you testified at some point that
11 at the closing Mr. Bufkin said that Ken King could
12 be a problem to deal with. Do you remember that
13 testimony or did I make a mistake?

14 A Yes, I do. Maybe not in those exact words
15 but, you know, he said even though he's not lived up
16 to his agreement, he's the kind of guy that might
17 try to give you a problem.

18 Q And when he said that, what did you think
19 Mr. Bufkin was doing? Was he giving you legal
20 advice or just talking or what was he -- why was he
21 talking about Ken King?

22 A I took it at the time -- I trusted that he
23 was trying to inform me that this guy could become a
24 son-of-a-bitch.

25 Q The closing took place in Mr. Bufkin's law

1 office, I take it?

2 A Yes.

3 Q All right. Did you look or did you view
4 Mr. Bufkin as a lawyer closing a real estate
5 transaction?

6 A Yeah.

7 Q Did you look at him or view him as
8 anything other than a lawyer closing a real estate
9 transaction?

10 A That and a person at the time I thought
11 that I could put my trust in.

12 Q Did you know him as anything other than a
13 lawyer? Did you know him as a personal friend when
14 you say trust?

15 A No, just...

16 Q I mean you had gone to him in the past as
17 a lawyer; is that right?

18 A Right, to close on my house on the lake
19 and also to do a Will for my wife and I. And --

20 Q And -- I'm sorry.

21 A Dealing with these other notes that had to
22 be -- like CapitalBank and all.

23 Q So you went to him when he closed your
24 Lake Murray house for his services as a lawyer?

25 A Yes.

1 Q And you went to him for your personal
2 Wills for his services as a lawyer?

3 A Yes.

4 Q And you paid him legal fees for both those
5 events?

6 A Yes.

7 Q And you went to him for this closing, the
8 H & H closing, as a lawyer?

9 A Yes.

10 Q And you paid him attorney's fees for doing
11 so.

12 A Yes.

13 Q And by you again, I mean H & H?

14 A Right.

15 Q In terms of the various -- we've got two
16 amounts were paid in settlement of claims. You had
17 the \$25,000.00 paid to P & K, correct? Is that
18 right?

19 A Yes.

20 Q All right. And then another sum was paid
21 in settlement of the Homeowners Association lawsuit;
22 is that right?

23 A Yes.

24 Q And that sum was what, \$16,500.00?

25 A It sounds right. Yes.

OPERATING AGREEMENT

of

FIVE STAR DEVELOPMENT, LLC
a South Carolina limited liability company

September 1996



HH000031

STONEY POINTE HOA V. H & H OF JOHNSTON HH0031

OPERATING AGREEMENT

of

FIVE STAR DEVELOPMENT, LLC

a South Carolina limited liability company

September 1996

HH000032

STONEY POINTE HOA V. H & H OF JOHNSTON

HH000032

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FIVE STAR DEVELOPMENT, LLC
a South Carolina limited liability company

This Operating Agreement of Five Star Development, LLC, a South Carolina limited liability company, is made effective as of the Effective Date (as defined below) by and among the persons listed as members in Exhibit A.

1. DEFINITIONS

For purposes of this Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

- 1.1. **Act.** The South Carolina Uniform Limited Liability Company Act, and all amendments thereto.
- 1.2. **Additional Member.** A member other than an Initial Member or a Substitute Member.
- 1.3. **Adjusted Capital Account Deficit.** With respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Taxable Year, after giving effect to the following adjustments:
 - 1.3.1. Credit to such Capital Account of any amounts which a Member is obligated to restore (pursuant to the terms of such Member's promissory note or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5); and
 - 1.3.2. Debit to such Capital Account of the items described in §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of Regulations.
 - 1.3.3. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of § 1.704-1(b)(2)(ii)(d) of the Regulation and shall be interpreted consistently therewith.
- 1.4. **Admission Agreement.** The Agreement between an Additional Member and the Company describing the terms of admittance of the Additional Member pursuant to Section 12.3.
- 1.5. **Agreement (Operating Agreement).** This Operating Agreement and all its amendments.
- 1.6. **Articles.** The Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the South Carolina Secretary of State.
- 1.7. **Assignee.** A transferee of a Membership Interest who has not been admitted as a Substitute Member.
- 1.8. **Assignment (Assign).** Any sale, assignment, transfer, exchange, hypothecation, disposition, or other transfer (including assignments by operation of law).

1.9. **Bankrupt Member.** A Member who: (1) makes an assignment for the benefit of creditors; (2) files a voluntary petition in bankruptcy; (3) is adjudicated a bankrupt or insolvent; (4) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of this nature; or (6) seeks, consents, or acquiesces in the appointment of a trustee, receiver, or liquidator for the Member or for all or any substantial part of the Member's properties.

1.10. **Business Day.** Any day other than Saturday, Sunday, or any legal holiday observed in the State.

1.11. **Capital Account.** The account maintained for a Member or Assignee determined in Accordance with Section 7.5.

1.12. **Capital Contribution.** Any contribution of cash, property, services rendered, or promissory note, or other written obligation to contribute cash or property or to perform services made by or on behalf of a Member.

1.13. **Code (see also Regulations).** The Internal Revenue Code of 1986, as amended from time to time, and any rulings and interpretations of the Code or the Regulations.

1.14. **Commitment.** The Capital Contributions that a Member is obligated to make.

1.15. **Company.** Five Star Development, LLC, a South Carolina Limited Liability Company.

1.16. **Company Liability.** Any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

1.17. **Company Minimum Gain.** An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other changes to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Company Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with § 704 of the Code and the Regulations issued thereunder as the same may be issued, amended and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions allocated to that Member (and that Member's predecessors in interest) up to that time and the distributions made to that Member (and that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable in an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company

Minimum Gain plus their aggregate share of decreases resulting from re-evaluations of Company Property subject to one of more Company Nonrecourse Liabilities.

1.18. **Company Nonrecourse Liability.** A Company Liability to the extent that no Member or Related Person bears the economic risk of loss (as defined in § 1.752-2 of the Regulations) with respect to the liability.

1.19. **Company Property.** Any Property owned by the Company.

1.20. **Distribution.** A transfer of Property to a Member or Assignee on account of a Membership Interest as described in Sections 8 and 9 hereof.

1.21. **Dissociation.** Any action which causes a Member to cease to be a Member as described in Section 13.1 hereof.

1.22. **Dissolution Event.** An event that results in the dissolution of the Company under Section 14.1.

1.23. **Effective Date.** The term "Effective Date" shall have the meaning set forth in Section 2.4.

1.24. **Initial Capital Contribution.** The Capital Contribution agreed to be made by an Initial Member as described in Section 7.1.

1.25. **Initial Members.** Those persons identified on Exhibit A and who have executed this Agreement on or before the Effective Date.

1.26. **Majority.** The number of Members described as a "Majority" in Section 5.2.

1.27. **Majority In Interest.** The number of Members collectively owning greater than fifty percent (50%) of the total Sharing Ratios and holding greater than fifty percent (50%) of the Net Profits and Net Losses. Any matter requiring the approval of a Majority In Interest shall require the affirmative vote of both (1) those Members owning a holding greater than fifty percent (50%) of the total Sharing Ratios, and (2) those Members holding a right to greater than fifty percent (50%) of the Net Profits and Net Losses.

1.28. **Member.** An Initial Member, Substituted Member or Additional Member.

1.29. **Member Minimum Gain.** An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum gain on the last of the immediately preceding Taxable year with the Member Minimum Gain on the last day of the current Taxable Year. Notwithstanding any Section to the contrary, Member Minimum Gain and increases and decreases in member Minimum Gain are intended to be computed in accordance with §704 of the Code.

1.30. **Member Nonrecourse Liability.** Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under § 1.752-2 of the Regulations because, for example, the Member or Related Person is the creditor of a guarantor.

1.31. **Membership Interest.** The rights of a Member or, in the case of an Assignee, the rights of the assigning Member in Distributions (liquidating or otherwise) and allocations of the profits, losses, gains, deductions, and credits of the Company. These rights are the distributional rights as defined by the Act.

1.32. **Money.** Cash or other legal tender of the United States, or any obligation that is immediately reducible to legal tender without delay or discount. Money shall be considered to have a fair market value equal to its face amount.

1.33. **Net Losses.** The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.34. **Net Profits.** The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.35. **Nonrecourse Liabilities.** Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

1.36. **Notice.** A Notice is any notice, request, approval, consent, demand or other communication between the Company and a Member or between Members. Section 17.6 sets out requirements for a Notice to be effective.

1.37. **Offsettable Decrease.** Any adjustment, allocation or distribution described in §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6) of the Regulations that unexpectedly causes or increases a deficit balance in a Member's Capital Account as of the end of the taxable year.

1.38. **Organization.** A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies, and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

1.39. **Property.** Any property real or personal, tangible or intangible, including Money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

1.40. **Person.** An individual, general partnership, limited partnership, domestic or foreign limited liability company, trust, estate, association, corporation, or any other legal entity permitted to be member of a limited liability company under the laws of the State.

1.41. **Principal Office.** The term "Principal Office" shall have the meaning set forth in Section 2.7.

1.42. **Regulations.** Except where the context indicates otherwise, the permanent, temporary, proposed or temporary regulations of the Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.

1.43. **Related Person.** A person having the relationship to a Member that is described in § 1.752-4(b) of the Regulations.

1.44. **Required Funds.** The funds required to meet Company obligations.

1.45. **Sharing Ratio.** With respect to any Member, a fraction (expressed as a percentage), the numerator of which is the total of the Member's Capital Account and the denominator is the total of all Capital Accounts of all Members and Assignees.

1.46. **State.** The State of South Carolina.

1.47. **Substitute Member.** An Assignee who has been admitted to all of the rights of membership pursuant to the Agreement, including but not limited to the right to participate in the management of the Company, to receive information, and to consent or approve actions of the Company.

1.48. **Taxable Year.** The term "Taxable Year" shall have the meaning set forth in Section 10.5.

1.49. **Taxing Jurisdiction.** Any state, local, or foreign government that collects tax interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

1.50. **Term.** The term "Term" shall have the meaning set forth in Section 2.5.

2. FORMATION

2.1. **Formation.** The Members, pursuant to the terms of this Agreement, hereby form, establish, and organize the Company as a South Carolina limited liability company in accordance with the provisions of the Act. The Company's Articles are properly filed with the South Carolina Secretary of State.

2.2. **Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing the Agreement hereby agree to the terms and conditions of the Agreement, as it may from time to time be amended according to its terms.

2.3. **Name.** The name of the Company shall be "Five Star Development, LLC". The Company business shall be conducted under such name as the Members may from time to time deem necessary or advisable, provided that the name shall contain the words "limited liability company" or the abbreviation "LLC" or "LLC"; (2) the name shall not adversely affect the limited liability of any Member, and (3) appropriate amendments to the Articles and this Agreement and/or necessary filings under applicable assumed or fictitious name statutes are first obtained.

2.4. **Effective Date.** The Agreement shall be effective as of the latest date that all Initial Members have executed this Agreement.

2.5. **Term.** The Company shall be dissolved and its affairs wound up in accordance with the Act and Agreement on December 31, 2048, unless sooner terminated.

2.6. **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed in the office of the South Carolina Secretary of State.

2.7. **Principal Office.** The Principal Office of the Company shall be the principal place of business of the Company which is located at Route 4, Box 453, Leesville, SC 29070, or such other place as the Members may from time to time designate by notice to the Members. The Company may have such additional offices as the Members may, from time to time, deem necessary or advisable.

3. NATURE OF BUSINESS

3.1. The purpose of the Company is to promote real estate development. The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business in order to promote real estate development. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business. The Company exists only for the purpose specified in this Section 3.1, and may not conduct any other business without the unanimous consent of the Members. The authority granted to the Members hereunder to bind the Company shall be limited to actions necessary or convenient to this business.

4. NAMES AND ADDRESSES OF MEMBERS

4.1. The names and addresses of the Initial Members are listed in Exhibit A.

5. MANAGEMENT OF THE COMPANY

5.1. **Management By Members.** The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Members. All Members shall be entitled to vote on any matters submitted to a vote of the Members.

5.2. **Actions Requiring a Majority Vote.** Unless otherwise expressly stated in this Agreement, all actions of the company require the consent or approval of a Majority of the Members entitled to vote on the matter.

5.2.1. A Majority is more than one-half (1/2) of the number of Members entitled to vote on a particular matter.

5.2.2. Each Member shall be entitled to one vote.

5.2.3. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority unless admitted as a Substitute Member pursuant to Section 12.2.

5.2.4. A Member who has Assigned his or her Membership Interest to an Assignee, but has not been removed as a Member as provided for in Section 12.2, shall be eligible to vote and shall be counted in determining a Majority.

5.2.5. Consent or approval shall be in writing.

5.3. **Actions Requiring Consent by the Majority in Interest.** The following actions require the written consent or approval of the Majority in Interest of the Members:

5.3.1. Continuing the Company following an Event of Dissociation as provided for in Section 14.1.3;

5.3.2. Employment of a Member by the Company as provided for in Section 5.7; and

5.3.3. Removal of a Member having assigned his or her member rights.

5.4. **Actions Requiring Unanimous Consent.** The following actions require the written consent or approval of all the Members:

5.4.1. Any amendment to this Agreement;

5.4.2. Any amendment to the Articles;

5.4.3. Authorization of a Member to do any act on behalf of the Company that contravenes this Agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the Company or the conduct thereof;

5.4.4. The admission of Assignees as Substitute Members as provided for in Section 12.2;

5.4.5. The admission of Additional Members as provided for in Section 12.3.

5.4.6. Authorization for distributions as allowed or required by Sections 9.1, 9.3, or 9.4;

5.4.7. Authorization for Additional Capital Contributions as provided for in Section 7.6;

5.4.8. Authorization for tax elections as allowed by Section 10.1; and

5.4.9. The modification of a Commitment as allowed in Section 7.4.

5.5. **Authority of Members to Bind the Company.** Every Member is an agent of the Company for purposes of its business and affairs, and the act of any Member, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company's business or businesses of the kind carried on by the Company binds the Company, unless the Member so acting has, in fact, no authority to act for the Company in the particular matter and the person with whom the Member is dealing has knowledge of the fact that the Member has no such authority.

5.6. **Company Charged With Knowledge of and Notice to Member.**

5.6.1. Notice to or knowledge by any Member of any matter relating to the business or affairs of the Company shall operate as notice to or knowledge of by the Company.

5.6.2. An Additional Member shall be imputed with notice and knowledge upon becoming a Member if any other Member reasonably could and should have communicated the knowledge to the new Member.

5.6.3. Notwithstanding the above, if any Member has notice or knowledge of a matter and acts fraudulently toward the Company in respect to such information, the knowledge of the Member shall not be imputed to the Company; and, if notice is given to any Member who is acting adversely to the Company and notifier has knowledge of such adversity, such information shall not be imputed to the Company.

5.7. Employment Agreements and Compensation For Services.

5.7.1. A Member is not entitled to remuneration for services performed for the Company.

5.7.2. A Member may receive reasonable compensation for services rendered in winding up the business of the Company as provided for in the Act.

5.7.3. A Member may be employed by the Company for consideration subject to terms of employment as approved in Section 5.3.

6. RIGHTS AND DUTIES OF MEMBERS

6.1. **Statement of Membership Rights.** Upon receipt of a written request from a Member in accordance with the Act, the Company shall provide such Member with a statement of membership rights, which shall contain a description of the restrictions on the Assignment of all or part of the rights of the Member's interest in the Company contained in this Agreement and the Act.

6.2. **Liability of Members.** A Person who is a Member of the Company is not liable, solely by reason of being a Member, under a judgment, decree, or order of a court, or in any other manner for any debt, obligation, or liability of the Company, whether arising in contract, tort, or otherwise, or for the acts of omission of any other Member, agent, or employee of the Company.

6.3. **Indemnification.** The Company shall indemnify the Members as follows:

6.3.1. The Members shall be indemnified by the Company from any liability resulting from any act performed by them within the scope of the authority conferred upon them by this Agreement, except for acts of gross negligence or willful misconduct or for damages arising from any material misrepresentation; provided, however, that any indemnity under this Section 6.3.1 shall be provided out of and be limited to the extent of the Company assets only and shall not include any liabilities arising under the Securities Act of 1933, the Securities Exchange Act of 1934, and applicable state securities laws, and no Member shall have any personal liability thereof;

6.3.2. The Members shall not be liable to the Company or to any other Member for or as a result of any act, omission or error in judgment which was taken, omitted or made by them in the exercise of their judgment and good faith under this Agreement and which does not constitute willful misconduct or gross negligence; and

6.3.3. The Members may consult such legal or other professional counsel as they may select and any action taken or omitted by them in good faith, reliance on, and in accordance with, the opinion or advice of such counsel shall be full protection and justification to them with respect to the action taken or omitted.

6.4. **Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that:

6.4.1. the Member is acquiring such Member's interest in the Company for the Member's own account as an investment and without an intent to distribute the interest;

6.4.2. the Member acknowledges that such Member's interest has not been registered under the Securities Act of 1933 or any state securities laws;

6.4.3. the Member acknowledges that such Member's interest, subject also to the restrictions on transfer contained in the Agreement and the Act, may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements;

6.4.4. the financial capacity of the Member is such that the investment in the Company is not material to the Member's total financial capacity, and the Member has the financial ability to bear the economic risk of the investment and has means for providing for the Member's current needs and personal contingencies and has no need for liquidity with respect to the Member's investment in the Company;

6.4.5. the Member has such knowledge and experience in financial and business matters that the Member is capable of evaluating the merits and risks of investment in the Company, understands that investment in the Company constitutes a speculative investment with substantial market, operational, competitive and other risks, has evaluated the risks associated with investment in the Company and **HAS HAD OPPORTUNITY TO SEEK THE ADVICE OF THE MEMBER'S OWN INDEPENDENT LEGAL COUNSEL AND OTHER INDEPENDENT EXPERTS REGARDING THIS TRANSACTION;**

6.4.6. the Member acknowledges that, to the best of Member's knowledge, the purchase of the Member's interest in the Company was not solicited by the use of general advertising or solicitation, that no brokerage of similar commission is paid to anyone relating to this offering, and that there are fewer than ten (10) purchasers of interest in the Company pursuant to this offering; and

6.4.7. the Member has been given opportunity to ask questions of and receive answers with respect to the Member's investment in the Company concerning the terms and conditions of the Member's investment and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information provided to such Member in order for the Member to evaluate the merits and risks of investment in the Company.

6.4.8. The Member agrees that the inclusion of the foregoing does not constitute an interest in the Company is a security under applicable law, and the Company reserves the right to contest whether an interest in the Company constitutes a security.

6.5. **Fiduciary Duties of Members.** To the fullest extent set forth in the Act, each Member owes a fiduciary duty to the other Members and the Company. Nothing contained herein shall be interpreted in any way to increase or modify the fiduciary duties set forth in the Act which are owed by a Member to the other Members of the Company.

6.6. **Waiver of Action for Partition.** Each Member irrevocably waives during the Term any right that they may have to maintain any action for partition with respect to the property of the Company.

7. CONTRIBUTIONS AND CAPITAL ACCOUNTS

7.1. Initial Contributions.

7.1.1. Upon execution of this Agreement, each Initial Member shall make the Capital Contribution described for that Member on Exhibit A on the terms and in the value specified on Exhibit A.

7.1.2. Subject to the approval of a Majority of the Members, an interest in the Company may be issued in exchange for anything of value including cash, property, services rendered, or a promissory note, other written obligations to contribute cash or property or to perform services.

7.1.3. No interest shall accrue on any Capital Contribution, and no Member shall have the right to withdraw or be repaid any Capital Contribution except as provided in this Agreement.

7.2. Contributions of Additional Members. Each Additional Member shall make the Capital Contribution pursuant to the terms of an Admission Agreement as set forth in Section 12.3.

7.3. Commitments. A promise by a Member to contribute to the Company is not enforceable unless set forth in a writing signed by the Member.

7.4. Enforcement of Commitments. A Member is obligated to the Company to perform any written promise to contribute cash or property or to perform services, even if the Member is unable to perform because of death, disability, or other reason. If a Member does not make the required contribution of property or services, the Member is obligated, at the option of the company, to contribute cash equal to that portion of value of the Commitment that has not been contributed. Subject to the limitations set forth in the Act, a Commitment may be compromised only as provided for in Section 3.

7.5. Maintenance of Capital Accounts.

7.5.1. The Company shall establish and maintain a Capital Account for each Member and Assignee.

7.5.2. Each Member's Capital Account shall be increased by

- (1) the amount of any Money actually contributed by the Member to the capital of the Company,
- (2) the fair market value of any Property contributed as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the company takes such Property, within the meaning of § 752 of the Code), and
- (3) the Member's share of Net Profits and of any separately allocated items of income or gain, including income and gain exempt from tax (and including any income or gain allocated to the Member in accordance with § 1.704-1(b)(2)(iv)(g) of the Regulations).

7.5.3. Each Member's Capital Account shall be decreased by

- (1) the amount of any Money distributed to the Member by the Company,

- (2) the fair market value of any Property distributed to the Member as determined by the Company and the contributing Member at arm's length at the time of distribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such Property within the meaning of § 752 of the Code),
- (3) the Member's share of any non-capital expenses of the Company which are not deductible for federal income tax purposes; and
- (4) the Member's share of the Net Losses and of any separately allocated items of loss or deduction (including any loss or deduction allocated to the Member in accordance with § 1.704-1(b)(2)(iv)(g) of the Regulations).

7.5.4. Notwithstanding any provision to the contrary contained herein, each Member's Capital Account shall be determined and maintained strictly in accordance with Code § 704-(b) and the Regulations hereunder, as the same may be issued, amended and interpreted from time to time, including, as applicable, any hypothetical adjustments required thereby.

7.6. Additional Capital Contributions.

7.6.1. Additional Capital Contributions may be required of each Member to satisfy Required Funds. The obligation for Additional Capital Contributions requires the unanimous written consent of the Members.

7.6.2. Unless otherwise agreed, each Member shall be obligated to contribute based upon the Member's respective Sharing Ratio in effect as of the date of the consent for the Additional Capital Contributions.

7.6.3. Additional Capital Contributions shall be contributed by forwarding the funds to the Company within fifteen (15) days, or other period as agreed, after Notice is provided to the Members by the Company.

7.7. Failure to Meet Call for Capital Contributions.

7.7.1. If any Member (the "Defaulting Member") shall fail or refuse to contribute to the Company any Additional Capital Contributions within the required period described in Section 7.6, the other Members (the "Advancing Members") may, at their option and in addition to such rights as they may have at law or in equity, advance such funds for the account of the Defaulting Member.

7.7.2. Unless otherwise agreed among the Advancing Members, all Members desiring to advance funds shall do so on an equal basis.

7.7.3. If said advance (a "Capital Advance") is not repaid by the Defaulting Member to the Advancing Members within fifteen (15) days from the date of advancement, the Advancing Members shall have the right to amend the Sharing Ratios by Notice to the Defaulting Member.

7.7.4. Unless otherwise expressly agreed in writing, an amended Sharing Ratio, occasioned as provided above, shall not be changed by the fact that a Defaulting Member shall meet any future call of the Company within the allotted time periods or shall meet any call of the Company after the required period has elapsed from the time of advancement thereof by the Advancing Members.

7.7.5. In the event that a Capital Advance has been made, the Defaulting Member shall pay to the Advancing Members without further demand the amount of such Capital Advance, with interest at the rate quoted as the "Prime Rate" in the Money Section of the Wall Street Journal on the date of the Capital Advance, plus 1% per annum, from the date the Capital Advance was made (plus the costs of collection, including attorney's fees and costs); provided, however, that in the event the Advancing Members elect to amend the Sharing Ratio, this Section 7.7.5 shall not be applicable.

7.8. Distribution of Assets (In-kind).

7.8.1. If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Section 8 below) of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

7.8.2. A Member has no right to demand and receive any Distribution in any form other than Money.

7.9. **Sale or Exchange of Interest.** In the event of a sale or exchange of some or all of a Member's Interest in the Company, the Capital Account of the transferring Member shall become the Capital Account of the Assignee, to the extent it relates to the portion of the interest transferred.

8. ALLOCATIONS

8.1. **Allocations of Net Profits and Net Losses from Operations.** Except as may be required by § 704(c) of the Code, and after giving effect to the special allocations set forth in Section 8.2, Net Profits, Net Losses, and other items of income, gain, loss, deduction and credit shall be apportioned among the Members as follows:

8.1.1. **Profits.** Profits for any Taxable Year, or fraction thereof, shall be allocated to the Members in the following order and priority:

- 8.1.1.1. First, to the Members in an amount equal to the Losses previously allocated pursuant to Section 8.1.2.2; and
- 8.1.1.2. Second, to the Members in accordance with their Sharing Ratios.

8.1.2. **Losses.** Losses for any Taxable Year, or fraction thereof, shall be allocated in the following order and priority:

- 8.1.2.1. Except as provided in Section 8.1.2.2 below, Losses shall be allocated to the Members according to their Sharing Ratios.
- 8.1.2.2. The Losses allocated pursuant to Section 8.1.2.1 shall not exceed the maximum amount of Losses that can be allocated without causing any Member to have an Adjusted Capital Account Deficit at the end of any Taxable Year. In the event some but not all of the Members would have adjusted Capital Account Deficits as a consequence of an allocation of Losses pursuant to Section 8.1.2.1, the

limitation set forth in this Section 8.1.2.2 shall be applied on a Member by Member basis so as to allocate the maximum permissible Losses to each Member under § 1.704-1(b)(2)(ii)(d) of the Regulations. All Losses in excess of the limitation set forth in this Section 8.1.2.2 shall be allocated to the Members in accordance with their Sharing Ratios.

3.2. Special Allocations. The following special allocations shall be made in the following order:

8.2.1. Company Minimum Gain Chargeback. Except as otherwise provided in § 1.704-2(f) of the Regulations, and notwithstanding any other provision of this Section 8, if there is a net decrease in Company Minimum Gain for a Taxable Year, each Member shall be specially allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Year) in accordance with the Regulations. The allocation required by this Section 8.2.1 shall be made prior to any other allocation of Company items for the year but subsequent to all distributions for the year. This Section 8.2.1 is intended to comply with the minimum gain chargeback requirement in 1.704-2(f) of the Regulations and shall be interpreted consistently therewith.

8.2.2. Member Minimum Gain Chargeback. Except as otherwise provided in § 1.704-2(i)(4) of the Regulations, and notwithstanding any other provision of this Section 8, if there is a net decrease in Member Minimum Gain for a Taxable Year, any Member with a share of that Member Minimum Gain (as determined under § 1.704-2(i)(5) of the Regulations) as of the beginning of that Taxable Year shall be specially allocated items of income and gain for that Taxable Year (and, if necessary, for succeeding Taxable Years) equal to that Member's share of the net decrease in the Member Minimum Gain, as determined in accordance with § 1.704-2(i)(4) of the Regulations. The allocation required by this Section 8.2.2 shall be made subsequent to the allocation in Section 8.2.1 above and prior to any other allocation of Company items for the year. This Section 8.2.2 is intended to comply with the Minimum Gain Chargeback requirement in § 1.704-2(i)(4) of the Regulations and shall be interpreted consistently therewith.

8.2.3. Qualified Income Offset. In the event any Member unexpectedly receives an Offsettable Decrease, items of income and gain shall be specially allocated to such Member (consisting of a pro rata portion of each item of Company income and gain for such year) in an amount and manner sufficient to offset such Offsettable Decrease as quickly as possible in accordance with the Regulations. The allocation required by this Section 8.2.3 shall be made subsequent to the allocations in Section 8.2.1 and Section 8.2.2 above and prior to any other allocation of Company items for the year.

8.2.4. Section 754 Adjustment. To the extent an adjustment to the adjusted tax basis of any company asset pursuant to §§ 734(b) or 743(b) of the Code is required to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of his interest in the Company, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the

Members in accordance with their interests in the Company in the event that § 1.704-1(b)(2)(iv)(m)(2) of the Regulations applies, or to the Members to whom such distribution was made in the event that § 1.704-1(b)(2)(iv)(m)(4) of the Regulations applies.

8.3. **Overriding Allocations for Contributed Property.** Income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated amount the Members for tax purposes so as to take account of the variation between the basis of such property to the Company and its fair market value in accordance with § 704-(c) of the Code.

8.4. **Varying Interests in the Company.** Allocations to any Member whose Membership Interest changes during a Taxable Year or to any Member who is a Member for less than a full Taxable Year shall be made in accordance with § 708-(d) of the Code and the Regulations promulgated thereunder to take into account the Member's varying Membership Interest in the Company during the Taxable Year.

9. DISTRIBUTIONS

9.1. Interim Distributions.

9.1.1. From time to time, the Company may make distributions to the Members in accordance with their Sharing Ratios. Distributions shall be in cash or property (which need not be distributed proportionately) or partly in both.

9.1.2. Distributions require the unanimous consent of the Members.

9.1.3. The Company is not obligated to make interim distributions.

9.1.4. Distributions, if in cash, shall be paid out of the excess of Company's cash on hand over the current and reasonably anticipated needs for Required Funds and anticipated distributions for tax purposes.

9.2. **Limitations on Distributions.** No Distribution, whether cash or property, shall be made if the Company would not be able to pay its debts as they come due in the usual course of business.

9.3. **Additional Limitations on Distributions.** Distributions, other than Distributions made in accordance with Section 9.4, shall not be made before all Company Liabilities, other than Company Liabilities payable to Members, are paid in full, excepting ordinary levels of accounts payable maintained by the Company for purposes of working capital. This limitation may be relaxed with the unanimous consent of the Members and only if no provisions of the Code, the Act or Section 9.2 are violated by the distributions.

9.4. **Distributions to Pay Taxes.** Unless the Members unanimously agree otherwise, the Company shall, to the extent permitted by applicable law and Section 9.2, make Distributions to the Members and Assignees at least equal to the estimated federal and state income tax attributable to their pro rata share of the Company's net long-term and Section 1231 capital gains and non-separately computed income pursuant to the Code. This estimated tax liability shall be computed on the basis of the highest South Carolina and federal marginal rate applicable to individuals on capital gains and other taxable income for the tax year in question. Unless prevented from making any distributions under Section 9.2, applicable state law, or unanimous agreement otherwise by the Members, the total amount of the minimum mandatory

Distribution required by this Section 9.4 shall be declared and paid no later than March 15 of the calendar year following the close of the Company's Taxable Year. The Distributions made to Members of Assignees during the prior Taxable Year of the Company shall be taken into account in determining the amount, if any, of additional Distributions that must be made by the following March 15 in order to meet the requirements of this Section.

9.5. **Set Off and Recoupment.** In addition to any other available remedies, the Company shall have the right of Set Off and Recoupment against any Distributions to any Member in the event that a Member breaches this Agreement or any right of indemnification arises in favor of the Company under this Agreement. The inclusion of this special Set Off or Recoupment provision shall not effect the availability, if any, of rights of Set Off or Recoupment arising at law or in equity. The Company shall give the Members Notice in advance of the application of any Set Off or Recoupment under this Section 9.5.

10. TAXES

10.1. **Elections.** Upon the unanimous vote of the Members, the Company may make any tax elections for the Company allows under the Code or the tax laws of any state or other jurisdiction having taxing jurisdiction over the Company.

10.2. **Taxes of Taxing Jurisdictions.**

10.2.1. To the extent that the laws of any Taxing Jurisdiction require, each Member requested to do so by the Company shall submit an agreement indicating that the Member will make timely income tax payments to the Taxing Jurisdiction and that the Member accepts personal jurisdiction of the Taxing Jurisdiction with regard to the collection of income taxes attributable to the Member's income, and interest, and penalties assessed on such income.

10.2.2. If the Member fails to provide the above described agreement, the Company may withhold and pay over to a Taxing Jurisdiction the amount of tax, penalty and interest determined under the laws of the Taxing Jurisdictions with respect to the Member's income.

10.2.3. Any payments made by the Company to satisfy a Member's tax obligation shall be treated as a Distribution for purposes of Section 9. The Company may, where permitted by the rules of any Taxing Jurisdiction, file a composite, combined or aggregate tax return reflecting the income of the Company and pay the tax, interest and penalties of some or all of the Members on such income to the Taxing Jurisdiction, in which case the Company shall inform the Members of the amount of such tax, interest and penalties so paid.

10.3. **Tax Matters Partner.**

10.3.1. A Majority of the Members shall designate a Member to act as the Tax Matters Partner of the Company pursuant to § 6231(a)(7) of the Code.

10.3.2. The Tax Matters Partner shall:

- 10.3.2.1. keep all other Members informed of all administrative and judicial proceedings as required by § 6223(g) of the Code;
- 10.3.2.2. furnish all other Members a copy of each notice or other communication received;
- 10.3.2.3. not take any action contemplated by §§ 6222 through 6231 of the Code without the consent of the Members;
- 10.3.2.4. maintain the records required by § 6112 of the Code;
- 10.3.2.5. shall promptly notify the IRS of any transfer of any interest in the Company as by § 6050K of the Code;

10.3.3. Upon the death, legal incompetency or disqualification of the Tax Matters Partner, a successor to serve in such position shall be designated by a Majority of the remaining Members.

10.4. **Cash Method of Accounting.** The records of the Company shall be maintained on a cash receipts and disbursements method of accounting.

10.5. **Taxable Year.** Except as otherwise required by § 708 of the Code, the taxable year of the Company shall be an annual accounting period ending on December 31 of each calendar year during the Term of the Company.

11. ASSIGNMENT OF MEMBERSHIP INTERESTS

11.1. **Assignment.** Any Member or Assignee may dispose of all or a portion of the Member's or Assignee's membership interest by sale, gift, bequest, or other method of transfer upon compliance with this Section 11.1. Any attempted Assignment of a Membership Interest, or any part thereof, not in compliance with this Section 11.1 is null and void. No Membership Interest shall be Assigned:

11.1.1. if such Assignment, alone or when combined with other transactions, would result in a termination of the Company within the meaning of § 708 of the Code;

11.1.2. without an opinion of counsel satisfactory to the other Members that such assignment is subject to an effective registration under, or exempt from the registration requirements of, the applicable state and federal securities laws, unless this requirement is waived by a Majority of the remaining Members;

11.1.3. unless and until the Company receives from the Assignee the information and agreements that the Members may reasonably require, including but not limited to, an Admission Agreement binding the Assignee to the terms of this Agreement, any taxpayer identification number and any agreement that may be required by any Taxing Jurisdiction.

11.2. **Effect of Assignment On Assignor Member/Removal of Member.**

11.2.1. Until the Assignee becomes a Member pursuant to Section 12.2, the assignor Member continues to be a Member and to have the power to exercise any rights of a Member, subject to the other Members' right to remove the assignor Member pursuant to this Section.

11.2.2. The assignor Member is not released from his liability, if any, as a Member solely as a result of the Assignment.

11.2.3. In the event of an Assignment, the Majority in Interest of the Members who have not assigned their Membership Interests may remove the assignor Member.

11.3. **Pledge or Granting of Security Interest.** For purposes hereof, the pledge or granting of a security interest, lien, or other encumbrance in or against, any or all of the Membership Interest of a Member is not an Assignment and shall not cause the Member to cease to be a Member or to cease to have the power to exercise any rights or powers of a Member.

11.4. **Rights of Judgment Creditors.** On application to a court of competent jurisdiction by any judgment creditor of a Member, the court may charge the Membership Interest of a Member with payment of the unsatisfied amount of the judgment. To the extent so charged, the judgment creditor may accede only to the rights of an Assignee.

12. ADMISSION OF ASSIGNEES AND ADDITIONAL MEMBERS

12.1. **Rights of Assignees.** The Assignee of a Membership Interest has no right to participate in the management of the business and affairs of the Company or to become a Member. The Assignee is only entitled to receive the Distributions and return or capital, and be allocated the Net Profits and Net Losses attributable to the Assigned Membership Interest.

12.2. Admission of Substitute Members.

12.2.1. An Assignee of a Membership Interest shall be admitted as a Substitute Member and admitted to all the rights of the Member who initially assigned the Membership Interest only with the written consent of all the other Members at the time of the Assignment.

12.2.2. The Members may grant or withhold the approval of such admission for any reason in their sole and absolute discretion.

12.2.3. The consent and approval of a Member shall be evidenced in a writing dated and signed by the Member.

12.2.4. If admitted, the Substitute Member assumes the obligations of the assignor Member, including the assignor Member's obligations to make contributions to the Company.

12.2.5. The admission of a Substitute Member, without more, shall not release the assignor Member from any liability to the Company that existed prior to the approval of the Substitute Member.

12.3. **Admission of Additional Members.** Upon the unanimous written consent of the Members, the Company may permit the admission of Additional Members. The admission of Additional Members shall be subject to requirements and Commitments for Capital Contributions by each Additional Member as set out in an Admission Agreement. For the Admission Agreement to be valid and binding, the Admission Agreement shall be in writing and signed by the Additional Member.

13. DISSOCIATION OF A MEMBER/ CONTINUING THE BUSINESS

13.1. Dissociation. A Member shall cease to be a Member upon the occurrence of any of the following events:

13.1.1. The voluntary withdrawal of a Member from the Company.

13.1.2. The Assignee of a Member's entire Membership Interest becomes a Substitute Member.

13.1.3. The Member is removed as a Member in accordance with Section 11.2 hereof.

13.1.4. A Member becomes a Bankrupt Member.

13.1.5. If within one hundred twenty (120) days after the commencement of any proceeding against the Member seeking reorganization, arrangement, composition, readjustment, dissolution, or similar relief under any statute, law, or regulation, the proceeding has not been dismissed, or if within one hundred twenty (120) days after the liquidator of the Member or of all or any substantial part of such Member's properties, the appointment is not vacated or stayed, or if within one hundred twenty (120) days after the expiration of any stay, the appointment is not vacated.

13.1.6. In the case of a Member who is an individual:

13.1.6.1. The Member's death; or

13.1.6.2. The entry of an order by a court of competent jurisdiction adjudicating the Member to be an incapacitated person so that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or property.

13.1.7. The termination of a trust if a Member is a trust or is acting as a Member by virtue of being a trustee of a trust.

13.1.8. The dissolution and commencement of the winding up for a Member that is a limited liability company or a partnership.

13.1.9. The filing of a certificate of dissolution or the equivalent for a Member that is a corporation, or the lapse of ninety (90) days after the notice to the corporation of revocation without a reinstatement of its charter.

13.1.10. On application by the Company or another Member, the Member's expulsion by judicial decree because:

13.1.10.1. The Member engaged in wrongful conduct that adversely and materially affected the Company;

13.1.10.2. The Member willfully or persistently committed a material breach of this Agreement or of a duty owed to the Company or the other Members under Section 6.5 hereof or any other agreement between the Member and the Company or other Members;

13.1.10.3. It is unlawful to carry on the business of the Company with the Member; or

13.1.10.4. The Member engaged in conduct relating to the business of the Company which makes it not reasonably practicable to carry on the business with that Member.

13.1.11. If the Member is not an individual, partnership, limited liability company, corporation, trust, or estate, upon the termination of the Member's legal status or existence.

13.2. Wrongful Dissociation. If a Member's dissociation is "wrongful" as described in the Act, the wrongfully dissociating Member shall be liable to the Company and to the other Members for damages caused by the Dissociation including reasonable costs of obtaining replacement of the services the withdrawn Member was obligated to perform. The Company may offset the damages against the amount otherwise distributable at law or in equity.

13.3. Continuing the Business. Upon an event dissociating a Member, the Company Business may be continued if, within ninety (90) days after the Dissociation of such Member, a Majority in Interest of the remaining Member(s) agree in writing to continue the business of the Company.

13.4. Distributions Upon The Event of Dissociation.

13.4.1. Upon the occurrence of an event of Dissociation which does not result in the winding up of the Company pursuant to Section 14 and for Dissociations other than as described in Section 13.1.2 or Section 13.1.3, a dissociating Member is entitled to receive any Distribution which the Member was entitled to receive prior to the Dissociation. The dissociating Member shall also be entitled to receive the Member's distribution, that is, the Member's interest in the Company, as the term "distribution" (and "distributional rights") is defined in the Act.

13.4.2. The dissociated Member, or Member's estate, shall be notified within ninety (90) days of that Member's Capital Contribution and Distributions due the Member as of the date of Dissociation. In addition, the notice will inform the Member of the expected date for completion of a fair market assessment of the value of the Company for purposes of determining the member's distributional rights.

13.4.3. The Company will determine the value of the Member's distributional rights in good faith, in a timely manner, and as provided for in the Act.

13.4.4. When available, the Company will notify the Member of the value of the Member's distributional rights.

13.4.5. Within thirty (30) days of determining, to the satisfaction of the Company, the Member's distributional rights, the Company shall pay to the Member the value of the Member's distributional rights over a period of five (5) years. The Company shall make a total of six payments as follows: one initial payment equal to ten (10%) percent of the total; one payment equal to ten (10%) percent of the total twelve (12) months after the initial payment; and then four equal payments of twenty (20%) percent each due every twelve (12) months hence.

14. DISSOLUTION AND WINDING UP

14.1. Dissolution. The Company shall be dissolved and its affairs wound up, upon the first to occur of the following events:

14.1.1. The expiration of the Term;

14.1.2. The unanimous written consent of all of the Members;

14.1.3. Ninety (90) days after the Dissociation of a Member in the absence of an written agreement by the Majority in Interest of the remaining Member(s) to continue the business of the Company as allowed by Section 13.3;

14.1.4. Entry of a decree of judicial dissolution as set forth in the Act; or

14.1.5. Administrative dissolution as set forth in the Act.

14.2. Distribution of Assets Upon Winding Up. Upon the winding up of the Company, the Company Property shall be distributed as follows:

14.2.1. Payment or adequate provision for payment shall be made to creditors of the Company including, to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company; and

14.2.2. To Members in accordance with positive Capital Account balances taking into account all Capital Account adjustments for the Company's Taxable Year in which the liquidation occurs. Liquidation proceeds shall be paid by the end of the Company's Taxable Year or, if later, within ninety (90) days after the date of liquidation. Such distributions shall be in cash or property (which need not be distributed proportionately) or partly in both, as determined by a Majority of the Members.

14.3. Deficit Capital Accounts. Notwithstanding anything to the contrary contained in this Agreement, and notwithstanding any custom or rule of law to the contrary, to the extent that the deficit, if any, in the capital account of any Member results from or is attributable to deductions and losses of the Company (including non-cash items such as depreciation) or distributions of money pursuant to this Agreement to all Members in proportion to their respective interests in the Company, upon dissolution of the Company such deficit shall not be an asset of the Company and such Members shall not be obligated to contribute such amount to the Company to bring the balance of such Member's capital account to zero.

14.4. Articles of Dissolution. Upon dissolution of the Company, the Company shall file Articles of Dissolution with the South Carolina Secretary of State.

15. ACCOUNTING AND RECORDS

15.1. Records to be Maintained. The Company shall maintain the following records at the Principal Office:

15.1.1. A current and a past list, setting forth the full name and last known mailing address of each Member set forth in alphabetical order;

15.1.2. A copy of the Articles, all amendments thereto, and all other documents filed with the South Carolina Secretary of State, together with executed copies of any powers of attorney pursuant to which any articles of amendment or any filed documents have been executed;

15.1.3. Copies of the Company's federal, state and local income tax returns and financial statements, if any, for the six (6) most recent years, or if those returns and statements were not prepared for any reason, copies of the information and statements provided to or which should have been provided to, the Members to enable them to prepare their federal, state, and local tax returns for the period;

15.1.4. Copies of any effective Agreement, all amendments thereto, and copies of all written operating agreements of the Company which are no longer in effect;

15.1.5. A writing setting out the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each Member and the times at which or events upon the happening of which any additional contributions are to be made by each Member;

15.1.6. A writing stating the events, if any, upon the happening of which the Company is to be dissolved and its affairs wound up;

15.1.7. Any other writings prepared pursuant to a requirement, if any, in the Agreement or the Act.

15.2. Reports to Members. The company shall provide the following to the Members:

15.2.1. Financial Statements of the Company at least annually to the Members and Assignees at such time and in such manner as the Members may determine reasonable.

15.2.2. Information returns required by the Code and the laws of the State.

15.3. Accounts. The Company shall maintain a record of the Capital Account for each Member in accordance with Section 7.5.

16. AMENDMENT

16.1. Amendment or Modification of Agreement. This Agreement shall only be modified or amended by a written instrument agreed to by all the Members.

17. MISCELLANEOUS PROVISIONS

17.1. Entire Agreement. The Agreement represents the entire agreement among the Members and between the Members and the Company.

17.2. No Partnership Intended for Non Tax Purposes. The Members have formed the Company under the Act, and expressly do not intend hereby to form a partnership under either the South Carolina Uniform Partnership Act or the South Carolina Uniform Limited Partnership Act. The Members do not intend to be partners one to another, or partners as to any third party, to the extent any Member, by word or action, represents to another person that any other Member is a partner or that the Company is a partnership, the Member making such wrongful representation shall be liable to any other Member who incurs personal liability by reason such wrongful representation. Solely for Federal income tax purposes, each of the Members hereby recognizes that the company will be subject to all provisions of Subchapter K of Chapter 1 of the Code; PROVIDED, HOWEVER, the filing of U.S. Partnership Tax Returns shall not be construed to extend the purposes of the Company or expand the obligations or liabilities of the Company or its Members.

17.3. **Rights of Creditors and Third Parties under Agreement.** The Agreement is entered into among the Company and the Members for the exclusive benefit of the Company, its Members, and their successors and assignees. The Agreement is expressly not intended for the benefit of any creditor of the Company or any other Person. Except and only to the extent provided by applicable statute, no such creditor or third party shall have any rights under the Agreement or any agreement between the Company and any Member with respect to any Capital Contribution or otherwise.

17.4. **Interpretation and Governing Law.** When the context in which words are used in this agreement indicates that such is the intent, words in the singular number shall include the plural and vice versa, and the masculine gender shall include the feminine and the neuter shall include the masculine and feminine. The headings or titles and the table of contents shall not define, limit, extend or interpret the scope of this Agreement or any particular Section. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina.

17.5. **Venue and Jurisdiction.** The Members (i) agree that any litigation, action, or proceeding arising out of or relating to this Agreement may be instituted in a state or federal court in the State of South Carolina, (ii) waive any objection based upon improper venue or inconvenient forum, and (iii) irrevocably submit to the jurisdiction of such courts. For all purposes of this Agreement, the Members submit to the venue and consent to personal jurisdiction of such courts, and further agree that service of process upon any of them may be effected by United States mail.

17.6. **Notices.** A Notice shall be effective only if in writing and upon the first to occur of the following: (i) receipt by the Member to whom such Notice is directed; or (ii) three (3) business days after being duly deposited in the United States mail, registered or certified, return receipt requested, and addressed as provided in Exhibit A. For purposes of Notice, Members may change their respective addresses by providing Notice to the other Members.

17.7. **Waiver.** Any waiver by the Company or any Member of any breach or any term or condition hereof shall be effective only if in writing and such writing shall not be deemed to be a waiver of any subsequent or other breach, term or condition of this Agreement.

17.8. **Severability.** If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstances shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

17.9. **Agreement in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, a counterpart of the Agreement may contain more than one signature page; if so, all signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

17.10. **Third Parties.** The agreements, covenants and representations contained herein are for the benefit of the Members and are not for the benefit of any third parties including, without limitation, any creditors of the Company.

WHEREFORE, all Initial Members agree to the terms of the Operating Agreement and, having satisfied their individual Initial Capital Contribution, agree to the Sharing Ratios as set forth in Exhibit A.

IN WITNESS WHEREOF, the undersigned parties have executed this Operating Agreement

this 25 day of June, 1997.

MEMBERS

Ralph G. McClendon

Ralph G. McClendon

Richard B. Mikell

Richard B. Mikell

David G. Mikell

David G. Mikell

John S. Hertong

John S. Hertong

EXHIBIT A
to
OPERATING AGREEMENT
FIVE STAR DEVELOPMENT, LLC

WHEREAS, all Initial Members having satisfied their individual Initial Capital Contribution, the following Sharing Ratios are agreed:

MEMBER	INITIAL SHARING RATIO
Ralph J. McClendon Lake Murray Properties Route 4, Box 453 Leesville, SC 29070	TWENTY-FIVE PERCENT (25%)
Richard B. Mikell 11 Saluda Trail West Columbia, SC 29169	TWENTY-FIVE PERCENT (25%)
David G. Mikell 11 Chicorana West Columbia, SC 29169	TWENTY-FIVE PERCENT (25%)
John S. Herlong 4000 Hodges Road Monkton, Md 21111	TWENTY-FIVE PERCENT (25%)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

H & H OF JOHNSTON, LLC,

Plaintiff,

vs.

OLD REPUBLIC NATIONAL TITLE
INSURANCE COMPANY, AND HENRY P.
BUFKIN D/B/A BUFKIN TITLE,

Defendants.

C/A No.: 2010-CP-40-07330

AFFIDAVIT OF HENRY P. BUFKIN,
ESQ.

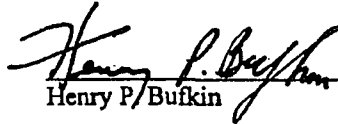
PERSONALLY APPEARED BEFORE ME, HENRY P. BUFKIN, who deposes and
states as follows:

1. I am over the age of eighteen (18) years and am fully competent to testify to the matter stated in this declaration. This affidavit is based upon my personal knowledge.
2. I am a retired military judge advocate and have been practicing law since 1975.
3. I am a South Carolina licensed attorney and practice law at the Bufkin Law Firm, LLC in Prosperity, South Carolina.
4. I represented H&H of Johnston, LLC ("H&H") and Five Star Development, LLC ("Five Star") in the real estate purchase transaction that closed on July 5, 2007. I represented both parties because I had represented both H&H and Five Star in several prior transactions.
5. I was never asked by H&H to act as a title agent and there was no discussion with H&H concerning the same. Rather, I was retained by H&H to act as closing attorney for the real estate purchase transaction that took place between H&H and Five Star on July 5, 2007.

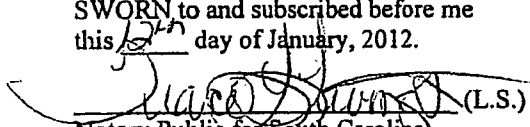
H&H

6. At the closing on July 5, 2007, I discussed the P&K contract with the representatives of H&H and Five Star. I also showed the parties at the closing the title commitment and discussed the list of exceptions with them. I never promised or offered to provide a title commitment without any exceptions, nor was I asked to do so.
7. At the closing on July 5, 2007, I offered to provide copies of all documents, including the title insurance policy with exceptions, but the parties did not wait for copies of the documents. Thus, I sent the documents after the closing.

FURTHER AFFIANT SAYETH NOT.


Henry P. Bufkin

SWORN to and subscribed before me
this 17th day of January, 2012.

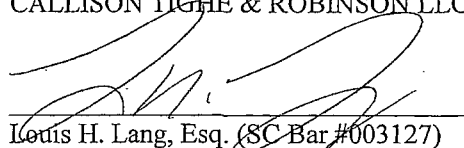
 (L.S.)
Notary Public for South Carolina
My Commission Expires: 8-31-2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
H&H of Johnson, LLC,	)	Case No. 2010-CP-40-07330
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Old Republic National Title	)	
Insurance Company, and Henry	)	
P. Bufkin d/b/a Bufkin Title,	)	
	)	
Defendants.	)	
	)	

EXHIBITS SUBMITTED IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT
FILED BY DEFENDANT, OLD REPUBLIC NATIONAL TITLE INS. CO.

Exhibit A:	Title Insurance Commitment
Exhibit B:	Title Insurance Policy
Exhibit C:	Excerpts from Operating Agreement of Five Star Development, LLC
Exhibit D:	P&K Construction Contract with Five Star Development, LLC
Exhibit E:	Release and Settlement Agreement in case bearing Civil Action Number 2008-CP-32-01569
Exhibit F:	Excerpts from Rule 30(b)(6) deposition of Plaintiff: Page 150, line 13 - page 151, line 6 Page 161, lines 7 - 19 Page 163, lines 18 - 25 Page 165, line 13 - page 166, line 25.
Exhibit G:	Excerpts from deposition of Thomas Herlong: Page 42, line 2 - page 43, line 16 Page 48, line 2 - page 49, line 8.
Exhibit H:	Affidavit of W. Ivey Hart, Esq.

CALLISON TIGHE & ROBINSON LLC


Louis H. Lang, Esq. (SC Bar #003127)

1812 Lincoln St., Ste. 200

PO Box 1390

Columbia SC 29202-1390

Telephone: 803-404-6900

Facsimile: 803-404-6902

E-Mail: louislang@callisontighe.com

*Counsel for Defendant, Old Republic National Title
Insurance Company*

January 12, 2012
Columbia, South Carolina

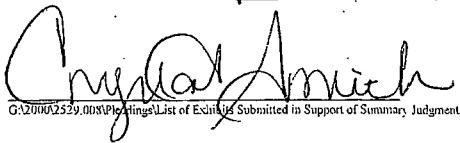
CERTIFICATE OF MAILING

I hereby certify that I have mailed a copy of the above and foregoing to all counsel of record in said proceedings to his/her office address with sufficient postage attached.

William E. Booth, III, Esq.
3231 Sunset Boulevard, Suite A
West Columbia, South Carolina 29250

Susan Taylor Wall, Esq.
McNair Law Firm, P.A.
Post Office Box 1431
Charleston, S.C. 29402

Columbia, S.C. this 12th day of January, 2012.


GA20002529.008\Pleadings\List of Exclusions Submitted in Support of Summary Judgment.vpd

Commitment To Insure

ALTA Commitment - 1982

AGREEMENT TO ISSUE POLICY



We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A. If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I
- The Exceptions in Schedule B-II.
- The Conditions below.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

CONDITIONS

1. Definitions. (a) "Mortgage" means mortgage, deed of trust or other security instrument.
(b) "Public Records" means title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located.
2. Later Defects. The Exceptions in Schedule B - Sections II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date of which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.
3. Existing Defects. If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
4. Limitation Of Our Liability. Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:
Comply with the Requirements in Schedule B - Section I
or
Eliminate with our written consent any Exceptions shown in Schedule B - Section II.
We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.
5. Claims Must Be Based On This Commitment. Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.

IN WITNESS WHEREOF, Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A, to be valid when countersigned by a validating officer or other authorized signatory.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company

400 Second Avenue South, Minneapolis, Minnesota 55401

(612) 371-1111

Authorized Signatory

ORT Form 3538
ALTA Commitment Form - 1982

By

Attest

President

Secretary

ORNTIC 0109

Commitment To Insure

ALTA Commitment - 1982



INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact _____

TABLE OF CONTENTS

	Page
AGREEMENT TO ISSUE POLICY	Back Cover
SCHEDULE A	Insert
1. Commitment Date	
2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest in the Land and Owner	
4. Description of the Land	
SCHEDULE B-I - REQUIREMENTS	Insert
SCHEDULE B-II - EXCEPTIONS	Insert
CONDITIONS	Back Cover

Schedule A

COMMITMENT

Application Number: H&HOFJOHNSTON070207

1. Commitment Date: June 28, 2007 at 09:00 AM

2. Policy (or Policies) to be issued:

(a) ALTA OWNER'S POLICY 10-17-92

Proposed Insured:

(b) ALTA LOAN POLICY 10-17-92

Policy Amount

Proposed Insured:

(c) ALTA RESIDENTIAL OWNER'S POLICY (1987)

Policy Amount \$ 845,000.00

Proposed Insured:

H & H of Johnston, LLC

(d)

Policy Amount

Proposed Insured:

3. Fee Simple interest in the land described in this Commitment is owned, at the Commitment Date, by:
Five Star Development, LLC

4. The land referred to in this Commitment is described as follows:

SEE SCHEDULE C ATTACHED HERETO

Schedule B --- Section I
COMMITMENT

REQUIREMENTS

The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
5. LENDER & CLOSING ATTORNEY - Execution by Lender and by Closing Attorney of SCID 3601 Title Insurance Financial Interest Disclosure Form. (This can be either a separate 3601 for this file, or a blanket 3601 signed by the lender for closing attorney.)
6. BORROWER & CLOSING ATTORNEY - Execution by borrower and by Closing Attorney of "Combined SCID 3601/2423 Title Insurance Financial Interest Disclosure Form and Notice to Borrower."
7. Borrower - Execution and recordation of mortgage from borrower shown herein, to lender shown herein, in the amount shown herein.
8. Borrower - Execution of Ort 101-SC "Owner's Affidavit" satisfactory to Old Republic National Title Insurance Company.
9. SELLER - Execution of ORT 111-SC "Seller's Affidavit (ReResidency) South Carolina Withholding Tax - S.C. Code Section 12-8-580 et seq", satisfactory to the Company of the withholding and payment of the proper amount of taxes.
10. SELLER-Execution, Delivery and Recordation of fee simple general warranty deed conveying the property described herein, from the owner as shown herein, to the borrower as shown herein.
11. Borrower - Execution of Ort Form 107-SC "Owner's Affidavit as to Matters of Survey" satisfactory to Old Republic National Title Insurance Company.
12. Seller - Execution of Ort 102-SC "Owner's Affidavit" satisfactory to Old Republic National Title Insurance Company.
13. Obtain and record satisfaction of mortgage from Five Star Development to The Saluda County Bank as recorded in said ROD/Clerk's office on February 18, 1998 in mortgage book 4523 at page 284 securing an indebtedness of \$1,640,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
14. Obtain and record satisfaction of mortgage from Five Star Development Corp. to CapitalBank as recorded in said ROD/Clerk's office on April 4, 2001 in mortgage book 6281 at page 1 securing an indebtedness of \$1,330,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
15. Obtain and record satisfaction of mortgage from Five Star Development to CapitalBank as recorded in said

Schedule B --- Section I
Commitment - Continued

ROD/Clerk's office on April 4, 2001 in mortgage book 6284 at page 6 securing an indebtedness of \$16,000,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.

16. Obtain and record satisfaction of mortgage from Five Star Development to CapitalBank as recorded in said ROD/Clerk's office on April 4, 2001 in mortgage book 6284 at page 16 securing an indebtedness of \$1,330,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
17. Obtain and record satisfaction of mortgage from Five Star Development to CapitalBank as recorded in said ROD/Clerk's office on April 4, 2001 in mortgage book 6284 at page 11 securing an indebtedness of \$1,600,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
18. Obtain and record satisfaction of mortgage from Five Star Development to D. C. Herlong as recorded in said ROD/Clerk's office on August 9, 2005 in mortgage book 10418 at page 264 securing an indebtedness of \$856,626.47, and any other amounts payable under the terms thereof; together with any assignments thereof.
19. Payment of 2006 property taxes.

Schedule B --- Section II

COMMITMENT

EXCEPTIONS

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

Any change in title occurring subsequent to the effective date of this Commitment and prior to the date of issuance of the title policy.

1. Taxes for the year 2007 not yet due and payable, and all subsequent years.
2. Rights or claims of parties in possession not shown of record. (This exception will be deleted in the final policy upon submission of satisfactory Ort-101 or Ort-102 "Owner's Affidavit".)
3. Mechanics', contractors' and/or materialmen's liens, and lien claims, if any, where no notice thereof appears of record. (This exception will be deleted in the final policy upon receipt of a satisfactory Ort 101-SC or Ort 102-SC "Owners Affidavit".)
4. Facts which would be disclosed by a comprehensive survey of the premises herein described.
5. The number of acres contained in the legal description is neither guaranteed nor insured.
6. Rights reserved by South Carolina Electric and Gas Company for easements, and rights to flood, affecting the area of the property hereby insured which borders on Lake Murray.
7. Riparian rights are neither guaranteed nor insured.
8. This policy does not insure title to any portion of the premises lying below the ordinary high water mark of Lake Murray or any rights in the adjoining water.
9. Easements and setback lines as shown on the subdivision plat of Stoney Pointe at Bear Creek, Sections 1 and 2 by J. Henry Walker, III.
10. Corrective deed to Town of Chapin for water and sewer system as recorded on February 14, 2003 in Book 7919 at page 189.
11. Water lines as recorded on January 27, 2003 in Book 7858 at page 172.

Schedule B --- Section II
COMMITMENT - Continued

12. Sewer agreement as recorded on February 22, 1999 in Book 5112 at page 349.
13. Easement as recorded on December 1, 1998 in Book 4978 at page 314.
14. Water lines as recorded on January 27, 2003 in Book 7858 at page 172.
15. Private Road Maintenance Agreement as recorded on December 18, 2002 in Book 7759 at page 162.
16. Declaration of covenant as recorded on June 23, 1998 in Book 4726 at page 206.
17. Sewer agreement as recorded on April 3, 2002 in Book 7113 at page 287.
18. Right of way as recorded on August 20, 1998 in Book 4820 at page 222.
19. Covenants, conditions and restrictions as recorded in said ROD/Clerk's office in deed book 4726 at page 206, 5889 at page 9, Book 5823 at page 127, Book 7759 at page 167, Book 7775 at page 249, Book 7919 at page 181, Book 7919 at page 184, Book 6317 at page 255, Book 6373 at page 104, Book 8693 at page 21, Deed Book 9164 at page 26, Deed Book 10544 at page 316, .
20. Lift station, sewer systems and easements as recorded in Book 7790 at page 91.
21. Easement as recorded on December 30, 1998 in Book 5029 at page 228.
22. Water lines for Stoney Pointe as recorded on June 23, 1999 in Book 5313 at page 227.
23. Declaration of covenant as recorded on June 23, 1999 in Book 5313 at page 275.
24. Sewer agreement as recorded on February 22, 1999 in Book 5112 at page 349.
25. Common areas conveyed to Stoney Pointe at Bear Creek homeowners association as recorded in Deed Book 10965 at page 333.
26. Unrecorded contract dated April 30, 2002 between Five Star Development and P & K Construction for the sale of 43 lots, as modified.
27. Deed for water lines as recorded in Deed Book 7858 at page 152.

OWNER'S POLICY OF TITLE INSURANCE



Policy Number **OX250654**

Issued by Old Republic National Title Insurance Company

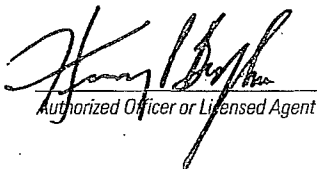
Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protectionif a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

Countersigned:


Authorized Officer or Licensed Agent

ORT Form 4309
ALTA Owners Policy of Title Insurance 6-17-06

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

By

 President

Attest

 Secretary
ORNTIC 0051

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

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

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;
 or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
 (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;

- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

ORNTIC 0052

CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to

purchase, lease, or lend in where is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

Page 3

ORNTIC 0053

CONDITIONS AND STIPULATIONS (con't)

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this

policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

CONDITIONS AND STIPULATIONS (cont)

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this

policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499.

Agent ID No.
\$ 1,492.50
File Number: H&HOFJOHNSTON070207

Premium: \$ 1,492.50

OWNER'S POLICY

Schedule A

Name and Address of Title Insurance Company: **Old Republic National Title Insurance Company**
400 Second Avenue South, Minneapolis, Minnesota 55401

File Number: **H&HOFJOHNSTON070207** Policy Number: **OX 250654**

Address Reference: **Numerous lots in Stoney Pointe at Bear Creek**
Chapin, South Carolina 29036

Amount of Insurance: **\$ 845,000.00** Premium: **\$ 1,492.50**

Date of Policy: **July 6, 2007 at 11:19 AM**

1. Name of Insured:
H & H of Johnston, LLC
2. The estate or interest in the Land that is insured by this policy is:
Fee Simple
3. Title is vested in:
H & H of Johnston, LLC
4. The Land referred to in this policy is described as follows:
See Schedule C attached hereto and made a part hereof.



OWNER'S POLICY

Schedule B

File Number: H&HOFJOHNSTON070207

Policy Number: OX 250654

EXCEPTIONS FROM COVERAGE

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

1. Taxes for the year 2008 now due and payable, and all subsequent years.
2. Facts which would be disclosed by a comprehensive survey of the premises herein described.
3. The number of acres contained in the legal description is neither guaranteed nor insured.
4. Rights reserved by South Carolina Electric and Gas Company for easements, and rights to flood, affecting the area of the property hereby insured which borders on Lake Murray.
5. Riparian rights are neither guaranteed nor insured.
6. This policy does not insure title to any portion of the premises lying below the ordinary high water mark of Lake Murray or any rights in the adjoining water.
7. Easements and setback lines as shown on the subdivision plat of Stoney Pointe at Bear Creek, Sections 1 and 2 by J. Henry Walker, III.
8. Corrective deed to Town of Chapin for water and sewer system as recorded on February 14, 2003 in Book 7919 at page 189.
9. Water lines as recorded on January 27, 2003 in Book 7858 at page 172.
10. Sewer agreement as recorded on February 22, 1999 in Book 5112 at page 349.
11. Easement as recorded on December 1, 1998 in Book 4978 at page 314.
12. Water lines as recorded on January 27, 2003 in Book 7858 at page 172.
13. Private Road Maintenance Agreement as recorded on December 18, 2002 in Book 7759 at page 162.
14. Declaration of covenant as recorded on June 23, 1998 in Book 4726 at page 206.
15. Sewer agreement as recorded on April 3, 2002 in Book 7113 at page 287.
16. Right of way as recorded on August 20, 1998 in Book 4820 at page 222.
17. Covenants, conditions and restrictions as recorded in said ROD/Clerk's office in deed book 4726 at page 206, 5889 at page 9, Book 5823 at page 127, Book 7759 at page 167, Book 7775 at page 249, Book 7919 at page 181, Book 7919 at page 184, Book 6317 at page 255, Book 6373 at page 104, Book 8693 at page 21, Deed Book 9164 at page 26, Deed Book 10544 at page 316, .
18. Lift station, sewer systems and easements as recorded in Book 7790 at page 91.
19. Easement as recorded on December 30, 1998 in Book 5029 at page 228.
20. Water lines for Stoney Pointe as recorded on June 23, 1999 in Book 5313 at page 227.
21. Declaration of covenant as recorded on June 23, 1999 in Book 5313 at page 275.
22. Sewer agreement as recorded on February 22, 1999 in Book 5112 at page 349.
23. Common areas conveyed to Stoney Pointe at Bear Creek homeowners association as recorded in Deed Book 10965 at page 333.
24. Unrecorded contract dated April 30, 2002 between Five Star Development and P & K Construction for the

ORT Form 4309 B
Schedule B for ALTA Owner's Policy of Title Insurance 6-17-06

(H&HOFJOHNSTON070207.PFD/H&HOFJOHNSTON070207/11)

ORNTIC 0057

OWNER'S POLICY

Schedule B

File Number: **H&HOFJOHNSTON070207**

Policy Number: **OX 250654**

EXCEPTIONS FROM COVERAGE

(Continued)

sale of 43 lots, as modified.

25. Deed for water lines as recorded in Deed Book 7858 at page 152.



All those pieces, parcels or lots of land situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as follows: PHASE I: LOT 43 Section 1 (TMS# 00134-01-040); LOT 40 – Section 1 (TMS# 001134-01-037). These lots are further depicted on a plat prepared for Five Star Development, LLC of Stoney Pointe at Bear Creek – Sections ONE AND TWO of PHASE I. Plat was prepared on July 6, 1998 and last revised on August 5, 1998 and recorded in the Lexington County Register of Deeds on August 13, 1998 in Slide 406 at page 1. Lots having such size, shape, location, metes and bounds as will more fully appear by reference to said plat.

This property being a portion of the property conveyed to Five Star Development Corporation, LLC (correct name Five Star Development, LLC.) by deed of D. C. Herlong and recorded on June 27, 1997 in the Lexington County Register of Deeds in Deed Book 4223 at page 19.

A Quit Claim deed was executed by Mr. D. C. Herlong to explain the incorrect name and to deed the property directly to **Five Star Development, LLC**. This deed was recorded in the Lexington County ROD Office on July 27, 2004 in Book 9443 at page 326.



ALSO: All those certain pieces, parcels or lots of land situate, lying and being in the County of Lexington, State of South Carolina being shown and delineated as follows: STONEY POINTE AT BEAR CREEK, PHASE II:

LOT NO.	TMS#
1	001134-01-068
2	001134-01-069
3	001134-01-070
5	001134-01-072
6	001134-01-073
7	001134-01-074
24	001134-01-092
25	001134-01-093
26	001134-01-094
27	001134-01-095
28	001134-01-096
29	001134-01-097
30	001134-01-098
31	001134-01-099
32	001134-01-100
33	001134-01-101
34	001134-01-102
35	001134-02-001
36	001134-02-002
37	001134-02-003
38	001134-02-004
39	001134-02-005
43	001134-02-009
59	001134-02-018
Future Development	001100-06-087

These lots are further depicted on a plat entitled STONEY POINTE AT BEAR CREEK, PHASE II – SHEET I OF II, prepared for Five Star Development, LLC by J. Henry Walker, III, PLS 14532, last revised on November 11, 2004 and recorded in the Lexington County Register of Deeds on December 2, 2004 in Book 9745 at page 224.

Plat previously recorded at Slide 702 at page 9.

This being a portion of the property conveyed to Five Star Development Corporation, LLC (correct name Five Star Development, LLC,) by deed of D. C. Herlong as recorded on June 27, 1997 in Book 4223 at page 19.

A Quit Claim Deed was executed by Mr. D. C. Herlong to explain the incorrect name and to deed the property directly to **Five Star Development, LLC**. This deed was recorded in the Lexington County ROD Office on July 27, 2004 in Book 9443 at page 326.

ALSO: All that piece, parcel or tract of land; situate, lying and being in the County of Lexington, State of South Carolina containing approximately 11.446 Acres, more or less, as shown on a plat of Stoney Pointe at Bear Creek, described as Phase III-A, but referred to as **Phase IV**. This plat was prepared by J. Henry Walker, III, PLS 148632, dated March 6, 2001 and recorded in the Lexington County RMC Office on April 4, 2001 -- Slide 609 at page 3.

This is the same property conveyed to Five Star Development Corporation, LLC, (correct name Five Star Development, LLC,) by deed of D. C. Herlong recorded in the Lexington County ROD Office in Book 6283 at page 346 on April 4, 2001.

A Quit Claim Deed was executed by Mr. D. C. Herlong to explain the incorrect name and to deed the property directly to **Five Star Development, LLC**. This deed was recorded in the Lexington County ROD Office on July 27, 2004 in Book 9443 at page 326.

TMS# 001100-06-091

LESS: All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina containing 0.055 Acre adjoining Lot 44 -- Stoney Point at Bear Creek Phase II. Property is further described on a Plat for Five Star Development, LLC dated November 2, 2006 and filed in the Lexington County Register of Deeds in Record Book 11925 at page 56.

OPERATING AGREEMENT

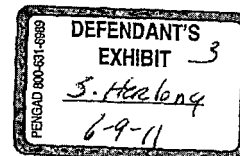
of

FIVE STAR DEVELOPMENT, LLC

a South Carolina limited liability company

September 1996

HH000031



STONEY POINTE HOA V. H & H OF JOHNSTON HH0031

OPERATING AGREEMENT

of

FIVE STAR DEVELOPMENT, LLC

a South Carolina limited liability company

September 1996

HH000032

STONEY POINTE HOA V. H & H OF JOHNSTON HH0032

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FIVE STAR DEVELOPMENT, LLC
a South Carolina limited liability company

This Operating Agreement of Five Star Development, LLC, a South Carolina limited liability company, is made effective as of the Effective Date (as defined below) by and among the persons listed as members in Exhibit A.

1. DEFINITIONS

For purposes of this Agreement (as defined below), unless the context clearly indicates otherwise, the following terms shall have the following meanings:

1.1. **Act.** The South Carolina Uniform Limited Liability Company Act, and all amendments thereto.

1.2. **Additional Member.** A member other than an Initial Member or a Substitute Member.

1.3. **Adjusted Capital Account Deficit.** With respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Taxable Year, after giving effect to the following adjustments:

1.3.1. Credit to such Capital Account of any amounts which a Member is obligated to restore (pursuant to the terms of such Member's promissory note or otherwise) or is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations §§ 1.704-2(g)(1) and 1.704-2(i)(5); and

1.3.2. Debit to such Capital Account of the items described in §§ 1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) and 1.704-1(b)(2)(ii)(d)(6) of Regulations.

1.3.3. The foregoing definition of Adjusted Capital Account Deficit is intended to comply with the provisions of § 1.704-1(b)(2)(ii)(d) of the Regulation and shall be interpreted consistently therewith.

1.4. **Admission Agreement.** The Agreement between an Additional Member and the Company describing the terms of admittance of the Additional Member pursuant to Section 12.3.

1.5. **Agreement (Operating Agreement).** This Operating Agreement and all its amendments.

1.6. **Articles.** The Articles of Organization of the Company as properly adopted and amended from time to time by the Members and filed with the South Carolina Secretary of State.

1.7. **Assignee.** A transferee of a Membership Interest who has not been admitted as a Substitute Member.

1.8. **Assignment (Assign).** Any sale, assignment, transfer, exchange, hypothecation, disposition, or other transfer (including assignments by operation of law).

1.9. **Bankrupt Member.** A Member who: (1) makes an assignment for the benefit of creditors; (2) files a voluntary petition in bankruptcy; (3) is adjudicated a bankrupt or insolvent; (4) files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any statute, law or regulation; (5) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of this nature; or (6) seeks, consents, or acquiesces in the appointment of a trustee, receiver, or liquidator for the Member or for all or any substantial part of the Member's properties.

1.10. **Business Day.** Any day other than Saturday, Sunday, or any legal holiday observed in the State.

1.11. **Capital Account.** The account maintained for a Member or Assignee determined in Accordance with Section 7.5.

1.12. **Capital Contribution.** Any contribution of cash, property, services rendered, or promissory note, or other written obligation to contribute cash or property or to perform services made by or on behalf of a Member.

1.13. **Code (see also Regulations).** The Internal Revenue Code of 1986, as amended from time to time, and any rulings and interpretations of the Code or the Regulations.

1.14. **Commitment.** The Capital Contributions that a Member is obligated to make.

1.15. **Company.** Five Star Development, LLC, a South Carolina Limited Liability Company.

1.16. **Company Liability.** Any enforceable debt or obligation for which the Company is liable or which is secured by any Company Property.

1.17. **Company Minimum Gain.** An amount determined by first computing for each Company Nonrecourse Liability any gain the Company would realize if it disposed of the Company Property subject to that liability for no consideration other than full satisfaction of the liability, and then aggregating the separately computed gains. The amount of Company Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other changes to a debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Company Minimum Gain is determined by comparing the Company Minimum Gain on the last day of the immediately preceding Taxable Year with the Company Minimum Gain on the last day of the current Taxable Year. Notwithstanding any provision to the contrary contained herein, Company Minimum Gain and increases and decreases in Company Minimum Gain are intended to be computed in accordance with § 704 of the Code and the Regulations issued thereunder as the same may be issued, amended and interpreted from time to time. A Member's share of Company Minimum Gain at the end of any Taxable Year equals: the sum of Nonrecourse Deductions allocated to that Member (and that Member's predecessors in interest) up to that time and the distributions made to that Member (and that Member's predecessors in interest) up to that time of proceeds of a nonrecourse liability allocable in an increase in Company Minimum Gain minus the sum of that Member's (and that Member's predecessors in interest) aggregate share of the net decreases in Company

Minimum Gain plus their aggregate share of decreases resulting from re-evaluations of Company Property subject to one of more Company Nonrecourse Liabilities.

1.18. **Company Nonrecourse Liability.** A Company Liability to the extent that no Member or Related Person bears the economic risk of loss (as defined in § 1.752-2 of the Regulations) with respect to the liability.

1.19. **Company Property.** Any Property owned by the Company.

1.20. **Distribution.** A transfer of Property to a Member or Assignee on account of a Membership Interest as described in Sections 8 and 9 hereof.

1.21. **Dissociation.** Any action which causes a Member to cease to be a Member as described in Section 13.1 hereof.

1.22. **Dissolution Event.** An event that results in the dissolution of the Company under Section 14.1.

1.23. **Effective Date.** The term "Effective Date" shall have the meaning set forth in Section 2.4.

1.24. **Initial Capital Contribution.** The Capital Contribution agreed to be made by an Initial Member as described in Section 7.1.

1.25. **Initial Members.** Those persons identified on Exhibit A and who have executed this Agreement on or before the Effective Date.

1.26. **Majority.** The number of Members described as a "Majority" in Section 5.2.

1.27. **Majority in Interest.** The number of Members collectively owning greater than fifty percent (50%) of the total Sharing Ratios and holding greater than fifty percent (50%) of the Net Profits and Net Losses. Any matter requiring the approval of a Majority in Interest shall require the affirmative vote of both (1) those Members owning a holding greater than fifty percent (50%) of the total Sharing Ratios, and (2) those Members holding a right to greater than fifty percent (50%) of the Net Profits and Net Losses.

1.28. **Member.** An Initial Member, Substituted Member or Additional Member.

1.29. **Member Minimum Gain.** An amount determined by first computing for each Member Nonrecourse Liability any gain the Company would realize if it disposed of the liability, and then aggregating the separately computed gains. The amount of Member Minimum Gain includes such minimum gain arising from a conversion, refinancing, or other change to debt instrument, only to the extent a Member is allocated a share of that minimum gain. For any Taxable Year, the net increase or decrease in Member Minimum Gain is determined by comparing the Member Minimum gain on the last of the immediately preceding Taxable year with the Member Minimum Gain on the last day of the current Taxable Year. Notwithstanding any Section to the contrary, Member Minimum Gain and increases and decreases in member Minimum Gain are intended to be computed in accordance with §704 of the Code.

1.30. **Member Nonrecourse Liability.** Any Company Liability to the extent the liability is nonrecourse under state law, and on which a Member or Related Person bears the economic risk of loss under § 1.752-2 of the Regulations because, for example, the Member or Related Person is the creditor of a guarantor.

1.31. **Membership Interest.** The rights of a Member or, in the case of an Assignee, the rights of the assigning Member in Distributions (liquidating or otherwise) and allocations of the profits, losses, gains, deductions, and credits of the Company. These rights are the distributional rights as defined by the Act.

1.32. **Money.** Cash or other legal tender of the United States, or any obligation that is immediately reducible to legal tender without delay or discount. Money shall be considered to have a fair market value equal to its face amount.

1.33. **Net Losses.** The losses and deductions of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.34. **Net Profits.** The income and gains of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

1.35. **Nonrecourse Liabilities.** Nonrecourse liabilities include Company Nonrecourse Liabilities and Member Nonrecourse Liabilities.

1.36. **Notice.** A Notice is any notice, request, approval, consent, demand or other communication between the Company and a Member or between Members. Section 17.6 sets out requirements for a Notice to be effective.

1.37. **Offsettable Decrease.** Any adjustment, allocation or distribution described in §§ 1.704-1(b)(2)(ii)(c)(4), 1.704-1(b)(2)(ii)(d)(5), or 1.704-1(b)(2)(ii)(d)(6) of the Regulations that unexpectedly causes or increases a deficit balance in a Member's Capital Account as of the end of the taxable year.

1.38. **Organization.** A Person other than a natural person. Organization includes, without limitation, corporations (both non-profit and other corporations), partnerships (both limited and general), joint ventures, limited liability companies, and unincorporated associations, but the term does not include joint tenancies and tenancies by the entirety.

1.39. **Property.** Any property real or personal, tangible or intangible, including Money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

1.40. **Person.** An individual, general partnership, limited partnership, domestic or foreign limited liability company, trust, estate, association, corporation, or any other legal entity permitted to be member of a limited liability company under the laws of the State.

1.41. **Principal Office.** The term "Principal Office" shall have the meaning set forth in Section 2.7.

1.42. **Regulations.** Except where the context indicates otherwise, the permanent, temporary, proposed or temporary regulations of the Department of the Treasury under the Code as such regulations may be lawfully changed from time to time.

1.43. **Related Person.** A person having the relationship to a Member that is described in § 1.752-4(b) of the Regulations.

1.44. **Required Funds.** The funds required to meet Company obligations.

1.45. **Sharing Ratio.** With respect to any Member, a fraction (expressed as a percentage), the numerator of which is the total of the Member's Capital Account and the denominator is the total of all Capital Accounts of all Members and Assignees.

1.46. **State.** The State of South Carolina.

1.47. **Substitute Member.** An Assignee who has been admitted to all of the rights of membership pursuant to the Agreement, including but not limited to the right to participate in the management of the Company, to receive information, and to consent or approve actions of the Company.

1.48. **Taxable Year.** The term "Taxable Year" shall have the meaning set forth in Section 10.5.

1.49. **Taxing Jurisdiction.** Any state, local, or foreign government that collects tax interest or penalties, however designated, on any Member's share of the income or gain attributable to the Company.

1.50. **Term.** The term "Term" shall have the meaning set forth in Section 2.5.

2. FORMATION

2.1. **Formation.** The Members, pursuant to the terms of this Agreement, hereby form, establish, and organize the Company as a South Carolina limited liability company in accordance with the provisions of the Act. The Company's Articles are properly filed with the South Carolina Secretary of State.

2.2. **Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing the Agreement hereby agree to the terms and conditions of the Agreement, as it may from time to time be amended according to its terms.

2.3. **Name.** The name of the Company shall be "Five Star Development, LLC". The Company business shall be conducted under such name as the Members may from time to time deem necessary or advisable, provided that the name shall contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC"; (2) the name shall not adversely affect the limited liability of any Member; and (3) appropriate amendments to the Articles and this Agreement and/or necessary filings under applicable assumed or fictitious name statutes are first obtained.

2.4. **Effective Date.** The Agreement shall be effective as of the latest date that all Initial Members have executed this Agreement.

2.5. **Term.** The Company shall be dissolved and its affairs wound up in accordance with the Act and Agreement on December 31, 2046, unless sooner terminated.

2.6. **Registered Agent and Office.** The registered agent for the service of process and the registered office shall be that Person and location reflected in the Articles as filed in the office of the South Carolina Secretary of State.

2.7. Principal Office. The Principal Office of the Company shall be the principal place of business of the Company which is located at Route 4, Box 453, Leesville, SC 29070, or such other place as the Members may from time to time designate by notice to the Members. The Company may have such additional offices as the Members may, from time to time, deem necessary or advisable.

3. NATURE OF BUSINESS

3.1. The purpose of the Company is to promote real estate development. The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business in order to promote real estate development. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business. The Company exists only for the purpose specified in this Section 3.1; and may not conduct any other business without the unanimous consent of the Members. The authority granted to the Members hereunder to bind the Company shall be limited to actions necessary or convenient to this business.

4. NAMES AND ADDRESSES OF MEMBERS

4.1. The names and addresses of the Initial Members are listed in Exhibit A.

5. MANAGEMENT OF THE COMPANY

5.1. Management By Members. The ordinary and usual decisions concerning the business affairs of the Company shall be made by the Members. All Members shall be entitled to vote on any matters submitted to a vote of the Members.

5.2. Actions Requiring a Majority Vote. Unless otherwise expressly stated in this Agreement, all actions of the company require the consent or approval of a Majority of the Members entitled to vote on the matter.

5.2.1. A Majority is more than one-half (1/2) of the number of Members entitled to vote on a particular matter.

5.2.2. Each Member shall be entitled to one vote.

5.2.3. Assignees shall not be considered Members entitled to vote for the purpose of determining a Majority unless admitted as a Substitute Member pursuant to Section 12.2.

5.2.4. A Member who has Assigned his or her Membership Interest to an Assignee, but has not been removed as a Member as provided for in Section 12.2, shall be eligible to vote and shall be counted in determining a Majority.

5.2.5. Consent or approval shall be in writing.

5.3. Actions Requiring Consent by the Majority in Interest. The following actions require the written consent or approval of the Majority in Interest of the Members:

5.3.1. Continuing the Company following an Event of Dissociation as provided for in Section 14.1.3;

5.3.2. Employment of a Member by the Company as provided for in Section 5.7; and

5.3.3. Removal of a Member having assigned his or her member rights.

5.4. Actions Requiring Unanimous Consent. The following actions require the written consent or approval of all the Members;

5.4.1. Any amendment to this Agreement;

5.4.2. Any amendment to the Articles;

5.4.3. Authorization of a Member to do any act on behalf of the Company that contravenes this Agreement, including any written provision thereof which expressly limits the purpose, business, or affairs of the Company or the conduct thereof;

5.4.4. The admission of Assignees as Substitute Members as provided for in Section 12.2;

5.4.5. The admission of Additional Members as provided for in Section 12.3.

5.4.6. Authorization for distributions as allowed or required by Sections 9.1, 9.3, or 9.4;

5.4.7. Authorization for Additional Capital Contributions as provided for in Section 7.6;

5.4.8. Authorization for tax elections as allowed by Section 10.1; and

5.4.9. The modification of a Commitment as allowed in Section 7.4.

5.5. Authority of Members to Bind the Company. Every Member is an agent of the Company for purposes of its business and affairs, and the act of any Member, including, but not limited to, the execution in the name of the Company of any instrument for apparently carrying on in the usual way the Company's business or businesses of the kind carried on by the Company binds the Company, unless the Member so acting has, in fact, no authority to act for the Company in the particular matter and the person with whom the Member is dealing has knowledge of the fact that the Member has no such authority.

5.6. Company Charged With Knowledge of and Notice to Member.

5.6.1. Notice to or knowledge by any Member of any matter relating to the business or affairs of the Company shall operate as notice to or knowledge of by the Company.

5.6.2. An Additional Member shall be imputed with notice and knowledge upon becoming a Member if any other Member reasonably could and should have communicated the knowledge to the new Member.

5.6.3. Notwithstanding the above, if any Member has notice or knowledge of a matter and acts fraudulently toward the Company in respect to such information, the knowledge of the Member shall not be imputed to the Company; and if notice is given to any Member who is acting adversely to the Company and notifier has knowledge of such adversity, such information shall not be imputed to the Company.

Pages 10 - 24
Intentionally Omitted

WHEREFORE, all Initial Members agree to the terms of the Operating Agreement and, having satisfied their individual Initial Capital Contribution, agree to the Sharing Ratios as set forth in Exhibit A.

IN WITNESS WHEREOF, the undersigned parties have executed this Operating Agreement

this 25 day of June, 1997.

MEMBERS

Ralph A. McClendon

Ralph A. McClendon

Richard B. Mikell

Richard B. Mikell

David G. Mikell

David G. Mikell

John S. Herlong

John S. Herlong

EXHIBIT A
to
OPERATING AGREEMENT
FIVE STAR DEVELOPMENT, LLC

WHEREAS, all Initial Members having satisfied their individual Initial Capital Contribution, the following Sharing Ratios are agreed:

MEMBER	INITIAL SHARING RATIO
Ralph J. McClendon Lake Murray Properties. Route 4, Box 453 Leesville, SC 29070	TWENTY-FIVE PERCENT (25%)
Richard B. Mikell 11 Saluda Trail West Columbia, SC 29169	TWENTY-FIVE PERCENT (25%)
David G. Mikell 11 Chicorana West Columbia, SC 29169	TWENTY-FIVE PERCENT (25%)
John S. Herlong 4000 Hodges Road Monkton, Md 21111	TWENTY-FIVE PERCENT (25%)

Five Star Development, LLC

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HH000057

STONEY POINTE HOA V. H & H OF JOHNSTON HH0057



LAKE MURRAY PROPERTIES, INC.

100 Front Street • Gilbert, SC 29054
(803) 692-9976 • (803) 359-1113 • Fax (803) 692-5049
"Serving the entire Lake Murray Area"



CONTRACT OF SALE

(This form is approved by The Georgia Association of REALTORS®, Rev. 03/01)

1. DATE

A Contract to purchase is offered this 30 day of April, 2007
by PAK CONSTRUCTION Purchaser(s)
to OWNER OF RECORD / REAL ESTATE BROKER Seller(s)

2. OFFER AND DESCRIPTION

Purchaser agrees to buy and Seller agrees to sell all that lot or parcel of land, with the buildings and improvements thereon, if any, located in LEXINGTON County, South Carolina, and being described as follows:
Street PALM STREET City CHARPIN SC Zip 29036
BUTTERFLY LOTS, 2nd EASEL, 1/2 AC. OF PALM STREET SEE ADDENDUM A

3. PRICE

The sales price is \$1,977,000.00
(A) \$ _____ Buyer/owner paid by check cash other to be paid as follows:
(B) \$ _____ held in trust by _____
(C) \$ _____ balance of down payment
(D) \$ _____ Loan amount (of the type indicated below) to be obtained by Purchaser
(E) \$ 1,977,000.00 Sales Price

4. FINANCING

FHA _____ VA _____ (see addendum for FHAVA), CONVENTIONAL _____, SELLER _____, FIXED _____, ADJUSTABLE _____
GRADUATED _____ LOAN ASSUMPTION _____ OTHER TERMS _____

5. CLOSING COSTS DISCOUNT POINTS

If a new loan is obtained, closing costs to be paid by the BUYER
prepaid home by the BUYER
PMI, FHA-MIP, VA or FHMA Funding Fee to be paid by the N/A () to be financed.
Discount Points (if any) to be paid by N/A If Seller pays discount points and/or closing costs on behalf of Purchaser, Seller will pay allowable and nonallowable costs of purchaser, not to exceed \$ 0

6. LOAN PROCESSING AND APPLICATION

Purchaser agrees to apply for financing as stated above, from the institution of his choice, and agree to provide Seller within 5 business days from the date of acceptance, confirmation from Lender that application has been made, funds advanced for credit report and appraisal. LENDER'S WRITTEN OPINION AS TO PURCHASER'S ABILITY TO OBTAIN FINANCING TO BE PROVIDED WITHIN 15 BUSINESS DAYS OF ACCEPTANCE OF THIS CONTRACT. If the Lender's opinion is not favorable, the Seller, at his option, may void the Contract within 3 days of notification by Lender/Agent and refund the earnest money in full to Purchaser. Purchaser's failure to apply as required above shall constitute a default under this Contract. Buyer further hereby gives permission to Lender to disclose pertinent information concerning the Buyer's credit-worthiness or any other information needed for the loan processing to the listing or cooperating broker(s) or agent(s).

7. CONTINGENCIES

() Complete the sale and closing of Purchaser's home located at N/A
It is further agreed that Seller will continue to market the property as long as the contingency relating to the sale and closing of Purchaser's property, in accordance with this agreement, remains in effect. Should Seller be presented another Contract, and if accepted, this Contract will be voided without notification in purchaser or agent and all earnest money refunded. Purchaser or agent will be notified of this contract being voided as soon as possible. In order for purchaser to remove this contingency, purchaser must first satisfy seller or his agent in writing that any financing required under this agreement will be granted without the sale or lease of the aforementioned property.
() Complete the closing of Purchaser's home located at N/A
which is under contract. Any documentation will be furnished upon request concerning sale of Purchaser's home.
() SEE ADDENDUM A TO THIS CONTRACT.

8. OWNER FINANCING

If owner financing is included in the financing of this property, Selling Broker and/or Listing Broker and agent(s) in this transaction makes no representation as to the credit-worthiness of Purchaser, and suggests that Seller determine for himself that Purchaser's credit is satisfactory.

9. LOAN ASSUMPTION ONLY

Purchaser agrees to assume the existing mortgage with a principal balance in an approximate amount of \$ _____
Should the principal balance be more or less, it is agreed by both parties hereto that the total sales price will be adjusted accordingly. The Purchaser is purchasing the Seller's equity for the specific amount of \$ _____ and assuming the mortgage. Seller agrees to maintain the mortgage payments, including escrow funds, in a current status until the sale is consummated. This contract is contingent upon mortgagee permitting mortgage to be assumed. Cost of transferring mortgage, recording fees and attorney fees to be paid by Purchaser.

() The escrow account for Taxes and Insurance will be assigned to the Purchaser.
Seller's Initials _____ Purchaser's Initials _____ Taxes and Insurance will not be prepaid at closing.
() The escrow account for Taxes and Insurance will be purchased by Purchaser.
Seller's Initials _____ Purchaser's Initials _____ Taxes will be prepaid to the date of closing.
() Interest accruing in arrears () to be prepaid () not to be prepaid to date of closing.
Seller's Initials _____ Purchaser's Initials _____

Seller to make the payment due N/A 20 _____ without further adjustment,
unless stated otherwise in this portion of the Contract. Purchaser is to make the payment due 20 _____
without further adjustment, unless stated otherwise in this portion of the Contract.

Existing loan to be assumed is _____ % remaining _____ years. _____ loan type, () Fixed Rate
() Adjustable/Other Rate, () with () without release of liability.

10. CONVEYANCE DATE OF CLOSING

Seller(s) agree to convey by marketable title and to have prepared a proper statutory warranty deed free of encumbrances, except as herein stated, with all stamps affixed thereto, the cost of which shall be the responsibility of seller(s). The deed shall be prepared in the name of PAK CONSTRUCTION and delivered to WHEN SELLING RESULTS ARE AVAILABLE

11. POSSESSION

The Seller will not be obligated to give possession or vacate the herein described property to the Purchaser until 24 hours after the title to the property has passed to the Purchaser or at closing. Seller agrees to deliver the property free of debris and in a clean condition. Seller shall give purchaser access to the herein described property for the purpose of a walk through inspection within twenty-four hours prior to closing. Seller warrants that to the best of their knowledge, information, and belief there are no conditions in the realty which would adversely affect the value when conditions are hidden by the furniture, fixtures, or window treatments currently in place in the property.

12. CASHIER'S CHECK

Purchaser(s) must have CASH, CASHIER'S CHECK, or CERTIFIED FUNDS, when closing this transaction.

13. FIXTURES AND PERSONAL PROPERTY

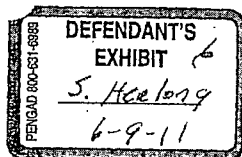
This sale includes all improvements, fixtures, appliances unless otherwise noted and certain additional property hereinafter stated. (Other items may be sold separately by Bill of Sale.) N/A

14. REMARKS

Property being sold in As is condition with the following stipulations:
TO BE SOLD TO BE PART OF EACH LOT CLOSING.
SEE ADDENDUM A

Purchaser's Initials (Signature) HAVE READ THIS PAGE.

Seller's Initials (Signature) HAVE READ THIS PAGE.



16. ADJUSTMENTS:

Taxes, water, sewer charges, fuel oil, electricity, rents and when applicable, and other assessments, including homeowners association fees, shall be adjusted as of the date of closing. Tax provisions pursuant to this Contract are to be based on the tax information available on the date of closing and are to be printed on this Contract unless otherwise stipulated in this Contract. Any increase or decrease of taxes shall be subject to an adjustment by the Purchaser and/or Seller when the current year's taxes are determined.

18. FIRE OR CASUALTY

In case this property is destroyed wholly or partially by fire or other casualty prior to delivery of deed, Purchaser or Seller shall have the right for ten (10) days after notice of such to terminate this Contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser and neither party shall have any further rights hereunder. If neither Purchaser or Seller elects to terminate the Contract, the parties shall proceed hereunder.

17. DEFAULT

If the Purchaser shall default under this Contract, the Seller shall have the option of suing for damages or rescinding this Contract. In the event the Contract is rescinded, one-half of the earnest money shall then be paid to the broker(s), not to exceed the commission due such broker, and the remaining balance of earnest money shall be paid to the Seller. Upon default by the Seller, the Purchaser shall have the option of suing for damages or specific performance, or rescinding this Contract. Upon default by the Seller, if the Purchaser elects to rescind this Contract, he will be refunded all sums paid hereunder and in addition shall be reimbursed by the Seller for actual costs incurred including but not limited to credit report, appraisal fee, survey and cost of title examination. In any action to enforce the provisions of this Contract the prevailing party and his/her(s) shall be entitled to the award of their costs, including reasonable attorney's fees.

18. MEDIATION

As parties to this transaction agree to mediation in the event a dispute arises under this contract and agree that the participation in such mediation shall be a condition precedent to the right of either party to initiate a civil action hereunder. The mediation shall take place subject to the rules and procedures established by the Greater Columbia Association of REALTORS® South Carolina Code Ann. Section 15-40-10, et seq. shall not apply to this contract.

19. ENTIRE CONTRACT; BINDING CONTRACT

The parties agree that this written Contract expresses the entire agreement between the parties, and that there is no other agreement, oral or otherwise, modifying the terms hereunder and that this Contract shall be binding on both parties, their principals, heirs, personal representatives, successors, and assigns as state law permits.

20. EARNEST MONEY

Broker does not guarantee payment of checks or checks accepted as earnest money. In opening section of this Contract, if new loan is to be applied for and loan cannot be obtained, earnest money will be refunded to the Purchaser(s) when the check clears the bank. Earnest money is to be promptly deposited in Broker's escrow account, upon acceptance by both parties of Contract. In the event of any action where-in Broker is made a party by virtue of acting as escrow agent, or in any action wherein the funds, held in escrow by Broker are subject to an action in the nature of intestate, and Broker is made a party, Broker shall be entitled to recover reasonable Attorney's fees and court cost, the same to be charged and assessed against the Purchaser(s) or Seller(s) or both as the court may decide.

21. SURVEY, TITLE EXAMINATION AND INSURANCE

The listing and selling Broker(s) and their agent(s) recommend that Purchaser have a survey of the subject property made, that Purchaser select an attorney to examine the title to the property and that Purchaser obtain all appropriate insurance coverage including that required by the lender, effective with the time of closing.

22. EXTENSION AGREEMENT

If loan has been approved but not closed within the stipulated time limit of this Contract, then both parties agree to extend said Contract for a period not to exceed 10 days from original closing date.

23. BROKERAGE FEE

Seller agrees to pay all real estate brokerage fees as specified in (A) listing agreement at time of closing. The Brokerage Fees earned upon the acceptance of this offer, but subject to any contingency specified herein.

24. CONDITION OF PROPERTY

(A) except as a new home being sold by the builder, the purchaser acknowledges that seller, except as provided in sub-paragraphs (B) - (F) of this section, gives no warranty of warranty of any kind, express or implied, and has made no representation as to the physical condition of the property, or the conditions of or existence of improvements, services, appliances or systems therein, or as to merchantability or fitness for a particular purpose as to the property or improvements thereof, and any implied warranty is hereby disclaimed by the seller.

(B) Purchaser reserves the right to inspect the property, or, at his expense, to have the subject property inspected by a home inspector or other qualified professional, including a professional qualified to inspect for hazardous substances. Seller will make the property accessible for and will cooperate with conditions for such inspection or testing. In the event repairs are necessary to place the heating, air conditioning, plumbing, electrical systems and any appliances in proper operative condition, to make the roof and basement free of leaks and the dwelling structurally sound, or to correct the presence of any hazardous substances in excess of the EPA standards for a habitable dwelling, the Seller shall be notified in writing and provided a copy of any inspections and (upon within 10 days after both parties have signed this Contract. Subject to the limitations below, Seller agrees to place the heating, air conditioning, plumbing, electrical systems and any appliances in proper operative condition, to make the roof and basement free of leaks and the dwelling structurally sound, and to correct the presence of any excessive hazardous substances. The aforementioned shall be done on or before the closing or possession, whichever occurs first. Satisfactory HVAC letter to be furnished by seller prior to closing.

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

(D) Seller shall, at his expense, have the property inspected and shall obtain a wood destruction report from a licensed and bonded structural pest control operator if any infestation, structural damage, or excessive moisture is found, the Seller agrees to have it corrected, at Seller's expense, subject to sub-paragraph (F) below.

(E) Seller represents that the property is ☐ or may be ☐ connected to ☒ public/community sewer system or to ☐ a septic tank; and to ☒ public/community water system, or to ☐ well system, ☐ located in flood zone.

(F) The cost of all repairs and treatments, if any, required by sub-paragraphs (B)-(E) and/or by a VA/FHA or other appraisal, to be paid by Seller. Should Seller refuse to pay those costs the Purchaser shall have the right to terminate this Contract. Upon such termination, the earnest money deposit of Purchaser shall be returned to Purchaser. Seller to reimburse Purchaser for loan application fees, and other actual costs incurred, not to exceed \$300.00, and neither party shall have any further rights hereunder. If Purchaser does not elect to terminate this Contract, Purchaser may make repairs at his expense and the parties shall proceed hereunder. The repairs to any other items are the sole responsibility of Purchaser. The obligations of Seller under this sub-paragraph terminate on the day of closing or the day possession is given, whichever comes first.

25. NON-RESIDENTY TAX

Seller covenants and agrees to comply with the provisions of South Carolina Code Section 12-9-310 (as amended) regarding withholding requirements of sellers who are not residents of South Carolina as defined in the said statute.

26. HOME WARRANTY COVERAGE

Both parties understand that a Home Warranty ☐ will ☐ will not be issued at closing. If applicable, the warranty premium will be paid at closing by the ☐ in the amount of \$ ☐ and issued by ☐ Broker.

27. EXPIRATION OF OFFER

This offer from Purchaser shall be withdrawn at ☐ o'clock ☐ m. on ☐ 20, unless accepted by Seller in written form prior to such time.

28. FAX

If Purchaser and Seller both initial this sentence, each agrees that receipt of a signed contract by telecopy (FAX) will be the same as receipt of an original signed contract. Seller ☒ Purchaser ☒

29. DISCLAIMER

IT IS SPECIFICALLY UNDERSTOOD AND AGREED THAT BROKERS OR AGENTS MAKE NO WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS SAME APPLIES TO THE SUBJECT PROPERTY WITH IMPROVEMENTS THEREON AND ANY IMPLIED WARRANTY RELATING THERETO IS HEREBY EXPRESSLY DISCLAIMED BY BROKERS OR AGENTS. It is specifically understood and agreed that Brokers or Agents make no warranty as to the title of the subject property, the condition of the house including but not limited to termite damage, improvements if any upon the subject property, the furnace and air conditioning units, or repairs, inspections or services rendered by others, or matters which would be reflected by a current survey of the subject property, or the accuracy of published square footage.

THIS IS A LEGALLY BINDING CONTRACT. PURCHASER HAS READ AND UNDERSTANDS THE CONTENTS AND AGREES TO THE SAME. BOTH PURCHASER AND SELLER ACKNOWLEDGE THE RECEIPT OF A COPY OF THIS CONTRACT. BOTH PARTIES DELIBERATELY ACCEPTED THE TERMS AND CONDITIONS HEREIN.

Witness as to Purchaser ☐ Date ☐ Purchaser ☐ SSN ☐

Witness as to Purchaser ☐ Date ☐ Purchaser ☐ SSN ☐

Witness as to Seller ☐ Date ☐ Seller ☐ SSN ☐

Listing Office ☐ Listing Agent ☐ Telephone Number ☐

Final Contract accepted by both parties at ☐ o'clock ☐ m. on ☐ 20, unless

EXCLUSIVE RIGHT TO SELL CONTRACT

State of South Carolina **PAK CONSTRUCTION**

A. EMPLOYMENT: In consideration of the covenants herein contained, PAK CONSTRUCTION (herein called "BROKER") agrees as follows: For the period of time beginning on 07/30/07 and ending at midnight on 09/30/07. Owner hereby grants to Broker the sole and exclusive right to sell the real property known as ALL HOMES ON 108 FRONT STREET, CHARLOTTE, SC 29036. Broker hereby accepts employment as the sole and exclusive agent of the Owner to sell the property, subject to the following terms and conditions:

B. SALE PRICE: Said property is, hereby, listed to sell for the gross sale price of \$ 8,025,000, or for such other price or upon such other terms (including exchange) to which owner may subsequently agree during the authorization period. Owner agrees to pay Broker a fee of 6% computed upon the gross sales price in any of the following events: (1) the closing of a sale of the property during the authorization period or as a result of a contract secured during the authorization period, or (2) the signing by Owner of a valid contract to sell the property but Owner fails or refuses to complete the sale as agreed; or, (3) The presentation to Owner of a valid and bona fide written offer to purchase the property which complies with the terms and conditions specified herein. A contract will be deemed to comply with the terms and conditions hereof if the offered contract is for at least the listing price stated herein, is non-contingent and is on a form adopted or recommended by a local Board of Realtors or substantially similar thereto. The fee will be due to Broker even if the Owner sells or obtains the contract to sell the property during the authorization period, or if the Owner sells or obtains the contract to sell the property within 365 days after the expiration of the authorization period, or if the Owner enters into a listing agreement with another broker during the protection period. This protection period for the Broker beyond the authorization period will be automatically terminated if the Owner enters into a listing agreement with another broker during the protection period. The fee will be due to the Broker not later than the closing date called for in any contract to sell the property or any extension thereof or upon demand if Owner refuses to accept and/or execute a contract which complies with the terms and conditions hereof. Owner agrees to pay the costs and expenses including attorney's fees incurred by Broker as a result of enforcing the provision of this agreement. The owner shall pay at closing, the real estate commission, a fee for preparing the deed, the deed stamps required on the deed, recording of satisfaction and prorated taxes as of the day of closing. The term "sale" shall include any exchange, swap or trade of the heretofore described property.

C. MARKETING THE PROPERTY: The Broker has the option, but is not required, to continue marketing the property after an offer has been accepted. Owner may terminate this option by giving written notice to Broker. Owner understands and agrees that by placing the listing in the Consolidated Multiple Listing Service the listing will be transmitted electronically and made available via the Internet to the public at large and agrees to indemnify and hold Broker and CMLS harmless from any claim, loss or damage arising therefrom.

D. INQUIRIES: Owner agrees to inform Broker of any inquiries or negotiations concerning the sale of the property.

E. PROPERTY INFORMATION: Owner agrees to furnish Broker with complete and reliable information about the ownership and operation of the property and any encumbrances or liens affecting the property. Owner warrants that, to his knowledge, there are no material defects, hidden or obvious, in or on the property, which have not been disclosed to Broker in writing. Owner further warrants that he has reviewed the information on the profile sheet attached to and made a part of this Agreement, and that all such information is accurate to the best of his knowledge.

PERSONAL PROPERTY: The real estate described herein includes all fixtures, equipment and improvements of any kind which are now attached to or planted on the premises, such as: shrubbery, trees, fences, shutters, blinds, lamp posts, mail boxes, TV antennas, clothes-line poles, curbside/canopy rods, ceiling fans, attached mirrors and light bulbs, as well as all built-ins, such as: equipment, appliances, cabinets, furniture and shelves unless otherwise agreed herein. Personal property to be transferred to the Buyer at the extra cost is as follows:

N/A

F. DISCLOSURE OF INFORMATION: Latent Defects - Owner authorizes Broker to disclose pertinent information about the property to his agents, subagents, prospective purchasers and all inquiring parties. Such disclosure shall be in the manner or form customary in the marketplace. Owner agrees to disclose, in writing, to the Broker any known latent defects of the heretofore described property which are not readily ascertainable upon view, and to indemnify and hold Broker harmless from any costs, claims, liabilities, or damages (including the cost to defend any alleged claims) arising from the Owner's failure to disclose any such defect. This indemnity shall include the costs incurred in enforcing the provisions of this indemnity, including reasonable attorney's fees. Known defects are as follows:

N/A

G. INSPECTION: Owner agrees to make property available for the inspections by Broker, his agents, subagents, buyer/broker, and prospective purchasers, as deemed reasonably necessary by Broker.

H. DISCLOSURE BY LIEN HOLDERS: Owner hereby authorizes anyone having a lien against the property to disclose complete information about the lien to Broker.

I. NON-DISCRIMINATION: It is agreed that this property is listed in full compliance with local, state and federal fair housing laws against discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin.

J. CMLS: Owner directs Broker to place the listing in the Consolidated Multiple Listing Service which will constitute an offer of cooperation to all participants in the CMLS. Owner () does () does not agree to a CMLS lockbox containing keys to be installed on the property in order to facilitate the inspection of the property by Broker and cooperating agents. Owner understands that the placing of lockbox on the property has inherent risks resulting from the potential wrongful acts of persons with access to the lockbox. Owner understands and specifically assumes this risk. Owner further acknowledges that Broker is not an insurer against the loss of personal property and agrees to release Broker and CMLS from any responsibility therefore. Owner authorizes Broker the right to display "For Sale" signs on the property and remove all other signs.

K. AGENCY RELATIONSHIPS: Agent has advised seller of Broker's general company policy regarding cooperation with Subagents, Buyers Agents or both and Owner has read Disclosure Regarding Real Estate Agency Relationships heretofore and agrees to authorize the Agent (Listing Firm) to cooperate and to compensate cooperating companies.

The form of agency in a transaction will be disclosed verbally to the Owner's Agent at the time of initial contact by all cooperating real estate agents. Further, a written disclosure of agency shall be provided to the Owner at the time an offer to purchase is submitted for the Owner's consideration.

L. NO CONTROL OF COMMISSION RATES OR FEES: Under the long established policy of CMLS, the broker's compensation for services rendered in respect to any listing is solely a matter of negotiation between the Broker and the Owner and is not fixed, controlled, suggested, recommended, or maintained by the CMLS, or by any persons not a party to the listing agreement. The compensation paid by the listing broker to a cooperating broker in respect to any listing is established by the listing broker in his offer of co-operation and is not fixed, controlled, suggested, recommended or maintained by the CMLS, or by any persons other than the listing broker and his or her subagent.

M. SPECIAL STIPULATIONS: The following stipulations shall, if conflicting with printed matter, control:

NONE

N. MEDIATION: All parties in this transaction agree to mediation in the event a dispute arises under the Contract and agree that the participation is such that mediation shall be a condition precedent to the right of either party to initiate a civil action hereunder. The mediation shall take place subject to the rules and procedures established by the Greater Columbia Association of Realtors, South Carolina Code Ann. Section 15-48-10, et seq., shall not apply to this Contract.

O. EARNEST MONEY: Owner authorizes Broker to accept and hold, on behalf of Owner, an earnest money deposit in accordance with the terms of any written contract for the sale of the property. In the event such deposit is forfeited by a prospective Purchaser, Broker may retain one-half (1/2) of such deposit, but not exceeding the total amount of Broker's fee. Should Broker incur any costs, including attorney's fees, as a result of the release of any of the earnest money deposit to Owner, Owner will reimburse Broker for such costs.

RECEIPT OF A COPY OF THIS AUTHORIZATION AGREEMENT IS HEREBY ACKNOWLEDGED.

WITNESS _____ OWNER _____ SSN _____ DATE 07/30/07

WITNESS _____ OWNER DAVID W KNIGHT PA DATE 7/30/07

LAKE Murray Prop. Inc. BY: Robert M. Condo DATE 7/30/07

BROKER'S COMPANY _____ BROKER'S SIGNATURE _____

108 FRONT STREET P.O. Box 548

CHARLOTTE, SC 29036 29036

BROKER'S MAILING ADDRESS _____ OWNER'S MAILING ADDRESS _____

PHONE 803-345-3744 PHONE 803-345-6166

THIS IS A LEGALLY BINDING CONTRACT. ALL BLANKS MUST BE FILLED IN. IF INFORMATION DOES NOT APPLY, INSERT N/A. ANY ALTERED TERMS OR CONDITIONS MUST BE INITIALED BY BOTH OWNER AND BROKER.

Rev. 7/88

ADDENDUM A

This addendum is a part of the contract between Five Star Development, LLC. (seller) and P & K Construction, Inc. (buyer), dated April 30, 2002.

1. SELLER

- A. Will provide street landscaping on Palm Street, Phase II, Stoney Pointe. Street landscaping will be completed prior to closing on any lot and will consist of the following;
- Provide a minimum of 3 palm trees 12' tall or greater, and a wrought iron fence section on each corner on Palm Street.
 - Provide Palm trees 12' tall or greater every 100' on each side of Palm Street and provide additional continuous landscaping down the lake side of Palm Street.
 - Provide shrubs around the outside of pumping station fence located on Palm Street. Shrubs will be at least 3' tall.
 - Hydroseed with a prennial mixture a minimum of 20' to the house side of all Palm Street lots.
 - Provide 8 sections of privacy fencing to be erected by buyer to divide the end of Stoney Pointe property from that adjoining on the two lots (23 and 24) at the end of Palm Street.
 - Provide sidewalks on each side of Palm Street, buyer will remit to seller a sum of \$250 at each lot closing to cover cost of sidewalk.
- B. Provide 1 dock between lots 10 and 11 prior to closing on these lots.
- SEP CLK
to P&K
for landscaping* C. Escrow \$4,200 at subsequent lot closings for construction of docks on all lots 12 through 23.
- D. Provide a gravel alley of 10' width at rear of lots 24-43 on Palm Street.
- E. Provide a minimum of 6 weeks of TV spots on the Time Warner Video Marketplace channel. Spots will appear a minimum of 12 times during these 6 weeks. Spots are to begin prior to closing of any lots.
- F. Repeat TV spots above in March 2003.
- 7/30/02
RJmc*
- filed on
1k*

HH000709

- G. Establish the following setbacks for Palm Street: Front yard- Lexington County minimum, side yard- 3 feet, and rear yard- Lexington County minimum. House sizes will be established at 1400 sq. ft. and above.
- H. Rock Clause- Seller is responsible for any unusual excavation or blasting required in the construction of basement garages due to the presence of rock.

2. BUYER

Lots 1-43

- A. Will purchase lots 10-23 for a purchase price of \$85,000 provided that all of these lots are approved for a shared dock and all conditions outlined above under SELLER are satisfied.
- B. Will purchase lots 5-9 for a purchase price of \$35,000, provided that all conditions outlined above under SELLER are satisfied.
- C. Will purchase lots 1-4 and lots 39-43 for a purchase price of \$24,000 and lots 24-38 for a purchase price of \$26,000 provided that all conditions outlined above under SELLER are satisfied.
- D. TAKE DOWN.

- 2001
- Buyer will purchase 2 lots, of the group 10 through 23 initially and agrees to purchase an additional lot from this group upon each sale of a lot from this group until January 2003. After January 2003, 2 lots will be purchased for each lot sold. Exception: If lake levels are held down through next year the schedule will remain 1 lot purchased for each lot sold.
 - Buyer will purchase 1 lot from the group 1-4, 5-9 or 24-43 initially and purchase an additional lot from this group for each lot sold.
 - Buyer will construct a minimum of 1 speculative home on lots 10-23 and 1 speculative home on lots 24-43 and agrees to maintain a speculative home as sales occur.
 - Buyer will furnish artist renderings of all homes to seller 2 weeks prior to 1st lot closing.
 - Buyer will pay sewer tap fees at closing.
 - Buyer agrees to pro rate Home Owners Association dues for all buyers of homes and forward these fees.

In the event the SELLER or BUYER fails to perform the requirements agreed upon in this addendum the other party has the right to cancel this contract. Contract may also be cancelled if at least 6 lots have not been closed by 10-1-03.

amb- 6-1-04

Seller

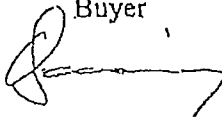
4/30/02

Five Star Elev., L.L.C.

By its Pres.

Ralph J. McClendon

Buyer



8/30/02

Mike Allen

WITNESS 04/30/02

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON) CONTRACT MODIFICATION

5/22/03

WHEREAS, P & K Construction entered into a contract dated 30 April, 2002 with Five Star Development for the acquisition of forty three (43) lots on Palm Street in Stony Pointe at Bear Creek, Phase II in Chapin, South Carolina; and

WHEREAS, as of the date of this Contract Modification, both Seller and Buyer had not completed all of their preliminary obligations, so that no lots have been conveyed from Seller to Buyer; and

WHEREAS, the above described Buyer and Seller met on May 12, 2003, to negotiate the terms required to extend the initial contract and its required performance by both parties; and

WHEREAS, the identical parties now desire to modify that original agreement, so as to provide for its current performance under the new modified terms as described below.

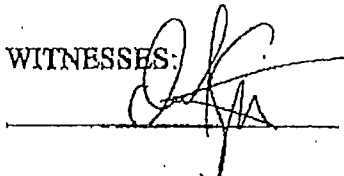
NOW THEREFORE, we the below-signed parties hereby agree to modify and extend the initial contract which was dated April 30, 2002, so that P&K Construction will purchase from Five Star Development the forty three (43) lots in Stony Pointe at Bear Creek, Phase II Subdivision under the following modified terms and conditions:

HH000635

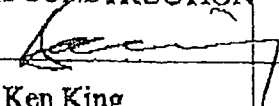
1. The purchase price of \$1,971,000.00 shall remain the same.
2. Five Star Development (Seller) agrees that it will not enter into a contract to sell these lots to any other party, so long as the terms of this modification are upheld.
3. P&K Construction agrees to provide a written letter from its bank before close of business on May 19, 2003 unconditionally confirming P&K Construction's ability to purchase the lots covered by the contract.
4. P&K Construction agrees to close and to disburse funds on the purchase on the first three (3) lots discussed by the contract not later than June 11, 2003.
5. That P&K Construction and Five Star Development agree to amend Addendum "A" to the original contract, so that P&K Construction will be responsible for all landscaping, fences, hydroseeding, scrubbery and palm trees on or around the lots being conveyed.
6. That Five Star Development will waive the \$250.00 reimbursement from P&K Construction for reimbursement of sidewalk cost.
7. That P&K Construction and Five Star Development agree that no additional docks will be provided by Five Star as part of the consideration for this contract and that Five Star Development will pay to P&K Construction \$4,200.00 out of the lot closing proceeds for lots 12 - 23 to be used as a landscaping allowance by P&K Construction.

8. That the parties agree that all other Seller requirements as listed in Addendum "A" to the 30 April, 2002 contract are either considered to be fulfilled or waived.
9. That P&K Construction and Five Star Development agree that the forty three (43) lots will be purchased in accordance with a take down schedule in Paragraph 2D in accordance of Addendum "A" in the contract, except that the First Paragraph shall read: "Buyer will purchase 2 lots, of the group 10-23 ON OR BEFORE JUNE 11, 2003, AND AGREES TO PURCHASE ONE (1) ADDITIONAL LOT FROM THIS GROUP UPON (OR WITHIN 30 DAYS OF) a sale of a lot from this group until JANUARY, 2004. After January 2004, two (2) lots will be purchased for each lot sold. EXCEPTION: If lake levels are held down after January, 2004, the schedule will remain one (1) lot purchased for each lot sold, until the lake return to full pool.

WITNESSES:

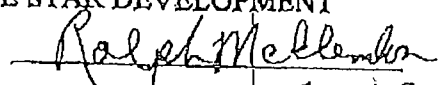
Mike Allen
05/22/2003

P&K CONSTRUCTION

By: 

Ken King

FIVE STAR DEVELOPMENT

By: 

Ralph McClendon

5/22/03

RELEASE AND SETTLEMENT AGREEMENT

THIS RELEASE AND SETTLEMENT AGREEMENT is made and entered into by and between Stoney Pointe Homeowners Associates, Inc. ("Plaintiff"), and H&H of Johnston, LLC ("HH").

WHEREAS, on or about April 10, 2008, Plaintiff commenced a legal action by the filing and service of a Summons and Complaint in the Court of Common Pleas for the County of Lexington captioned *Stoney Pointe Homeowners Association, Inc. vs. David Mikell et al.* (2008-CP-32-01569) (the "Lawsuit"); and

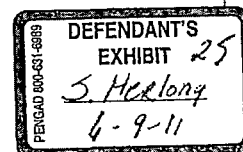
WHEREAS, the Lawsuit involved, among other things, allegations and claims by Plaintiff relating to the purchase by HH of certain real property consisting of twenty-six (26) lots and a tract of land consisting of approximately 11.94 acres, within or near a residential community known as Stoney Pointe Subdivision ("Stoney Pointe") near the Town of Chapin, County of Lexington, State of South Carolina¹; and

WHEREAS, prior to the filing of the lawsuit, Plaintiff filed a Lis Pendens against the property owned by HH; and

WHEREAS, Stoney Pointe was developed over a number of years through the efforts of Five Star Development LLC, a South Carolina limited liability company ("Five Star"), and the development included the platting of lots and the construction of roads and other infrastructure; and

¹ See, General Warranty Deed from Five Star Development, LLC undated and recorded on July 6, 2007, in the ROD Office for Lexington County in Record Book 12144 at Page 297.

HH000183_0014



WHEREAS, John S. Herlong² was named as a defendant at the time of the filing of the Lawsuit, but he was subsequently dismissed as a Defendant by Order of Judge Kinard dated July 8, 2008³; and

WHEREAS, all of the other individual defendants named in the Lawsuit as Individuals are members or employees of Five Star and they were individually involved in the work of Five Star as the original developer; and

WHEREAS, the parties entered into a Voluntary Mediation Agreement dated November 5, 2008, before the Honorable Clyde N. Davis, Jr., and as a result of discussions between them and the other defendants, a tentative settlement was reached subject to the signing of this Agreement and other actions to be taken as more fully described herein⁴; and

WHEREAS, the payments and the execution and delivery of documents contemplated by this Agreement will be done or delivered at the "Closing" to be held at the law offices of Booth Law Firm, LLC, 3231 Sunset Boulevard, Suite A, West Columbia, South Carolina, 29169, Monday, December 15, 2008, at 9:00 A.M., or as soon thereafter as agreed by counsel for the parties; and

WHEREAS, the duly appointed and acting Board of Directors of Plaintiff have considered at a duly called meeting the terms and conditions of this Release and

² John S. Herlong, also known as "Stan", is a member of Five Star Development, LLC, and he and his brother Thomas H. Herlong initially formed HH and are listed as its managers with the current ownership of HH being solely owned by Jewell H. Herlong, their mother, by Assignment dated July 15, 2007.

³ There is a pending Motion Under Rule 59(e), SCRCP, for an Order Imposing Sanctions under S.C. Code §15-36-10(g)(1)(1976) seeking attorney's fees and costs.

⁴ Five Star and the individual defendants have also reached a settlement agreement with Plaintiff and the release and settlement for the causes of actions relating to these defendants will be done by separate agreement.

Settlement Agreement and will submit for final approval this Release and Settlement Agreement to the membership or residents and lot owners of Stoney Pointe at a meeting to be held on December 13, 2008, and if approved at the members meeting, the parties contemplate that this Release and Settlement Agreement will then be executed by the duly authorized president of the Plaintiff.

NOW THEREFORE, IN CONSIDERATION of the promises, covenants and undertakings set forth below and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Payment of Assessments.

At the Closing, HH shall make a payment of \$16,300.00 to Plaintiff representing all unpaid Assessments relating to the twenty-six (26) lots owned by HH within Phase I and Phase II of Stoney Pointe as full and complete settlement of all amounts due by HH under all recorded and unrecorded imposition of liens including late fees, attorney's fees, and any other costs. At the time of the payment, the Plaintiff shall execute and deliver a receipt by the duly appointed and authorized President and Treasurer evidencing receipt of payment in full for all dues and other expenses from the date that HH acquired the twenty-six (26) lots through December 31, 2009.

2. Imposition of Restrictions.

At the closing, HH shall execute and deliver a Declaration of Covenants and Restrictions that will impose certain restrictive covenants within the parcel of land designated as 11.94 acres as shown on plat recorded in the Office of the Register of Deeds for Lexington County Recorded on April 4, 2001, in Record Book 6283 Page 343, Plat Slide 609, Page 3 (the "Undeveloped Property") less the Pond area to be

conveyed to Plaintiff as more described herein. The Covenants and Restrictions will also include the imposition of a payment of \$250 for each developed lot within the Undeveloped Property to be made to a restrictive fund or a separate escrow fund to be controlled by Plaintiff as the HOA that will be restricted for use only to the purposes set forth in that certain Amendment No. 4 recorded on December 18, 2002, and corrective Amendment No. 4 (correcting the reference to the Phase II Plat) recorded on February 14, 2003. The payment of the \$250 per lot shall only be applicable to and due at the time a lot within the Undeveloped Property is sold. It will be the responsibility of the seller⁵ to collect this fee and submit to the HOA. The imposition and recording of the Declaration by HHI shall be the only restrictions and covenants applicable to the Undeveloped Property, and Plaintiff understands and agrees that the current restrictions and covenants applicable to the developed lots in Stoney Pointe as evidenced by the Restrictions and Covenants recorded on June 23, 1998, in Record Book 4726 at Page 206, and all amendments, is not applicable to the Undeveloped Property in any respect including, but not limited to, the imposition of annual or special assessments and the requirement for architectural review. The Covenants and Restrictions will also impose a requirement that any development of individual lots along the boundary established after the transfer of the Pond will require architectural control as to a residential dwelling conforming as to design of homes and exterior of homes to be in harmony with the houses located on lots 1 through 23 along Walkbridge Way.

3. Transfer of Property Within Boundaries of the Pond Including a Four (4) Foot Buffer Area.

⁵ Seller shall be considered the builder if the builder contemplates the construction of a residential dwelling within a lot.

At the Closing, HH shall execute and deliver a Quit Claim Deed conveying all of its right, title, and interest in and to that certain parcel of land including a four (4) foot buffer area as more particularly shown and delineated on an "Easement Map" prepared for Stoney Pointe at Bear Creek by J. Henry Walker III, PLS No. 14532, dated June 21, 2001, to be recorded in the ROD Office for Lexington County along with the Quit Claim Deed (the "Pond" area). The form and sufficiency of the Quit Claim Deed shall be satisfactory to counsel for Plaintiff.

4. Representation of Approval by Board and Members.

The president of the Plaintiff/HOA after signing this agreement hereby represents and warrants that a vote has been taken in conformity with the by-laws and the recorded restrictions and that this Release and Settlement Agreement is binding upon the Plaintiff.

5. Termination or Cancellation of Amendment No. 8.

Amendment No. 8 was executed by the president of the Plaintiff dated October 10, 2007, and recorded on October 15, 2007, in Record Book 12403 at Page 100, and this Amendment, among other things, delays the time for the imposition for the annual assessment for lots until fifteen (15) days after the issuance of a county building permit to construct a residence on a lot. The Plaintiff alleges in the Lawsuit that the President did not have the necessary authority to execute this Amendment. At closing, Plaintiff shall execute and deliver a Revocation or Termination of Amendment No. 8.

6. Release by Plaintiff.

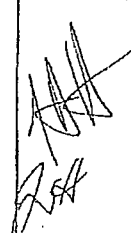
In consideration of the payment to be made by HH pursuant to Paragraph 1 above, and in consideration of the other obligations of HH as set forth herein, Plaintiff,

for itself, its successors and assigns, does hereby remise, release, acquit, and forever discharge HH, its successors, assigns, heirs, personal representatives, shareholders, members, officers, directors, partners, members, agents, insurers, servants and employees of and from any and all claims, demands, debts, rights, actions, damages (including direct, indirect, incidental and consequential damages), costs, causes of actions, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts and all claims of any nature or kind whatsoever, existing as of the date of this Agreement, whether known or unknown and whether or not relating to the Lawsuit.

7. Release by HH.

In consideration of Plaintiff's acceptance of the payments made pursuant to Paragraphs 1 and the deeding and restricting of its property as provided herein, HH, for itself, its successors and assigns, does hereby remise, release, acquit, and forever discharge Plaintiff, its successors, assigns, heirs, personal representatives, shareholders, members, officers, directors, partners, members, agents, insurers, servants and employees, of and from any and all claims, demands, debts, rights, actions, damages (including direct, indirect, incidental and consequential damages), costs, causes of actions, suits at law or in equity, expenses and fees of attorneys, expenses and fees of consultants and/or experts and all claims of any nature or kind whatsoever, existing as of the date of this Agreement, whether known or unknown and whether or not relating to the Lawsuit.

8. Withdrawal of Motion by HH.



Upon completion of the Closing, HH will withdraw its Motion Under Rule 59(e), SCRCP, for an Order Imposing Sanctions Under S.C. Code §15-36-10(g) (1)(1976) seeking attorney's fees and costs.

9. Dismissal of the Lawsuit.

By executing this Release and Settlement Agreement, the parties authorize their respective counsel of record to execute and file a stipulation of dismissal to dismiss with prejudice all claims and counterclaims in the Lawsuit against one another. Furthermore, at Closing, Plaintiff shall execute and deliver to HH a "Cancellation of Lis Pendens" terminating and canceling those certain Lis Pendens filed as 2008-LP-32-388, 2008-LP-32-390, and 2008-LP-32-391.

10. Disputed Claims.

The parties hereby acknowledge that this settlement is the compromise of doubtful and disputed claims. The payment of the settlement amount is not to be construed as an admission of liability on the part of either party, but is being made to avoid litigation.

11. Complete Bar.

The parties hereby acknowledge that this Release and Settlement Agreement is and shall be a complete bar to any subsequent action or proceeding to set aside or vacate this instrument because of a mistake in fact or otherwise.

12. Attorneys Fees and Costs.

The parties shall be responsible for their own attorney's fees and costs arising out of this dispute.

13. Binding Effect.



This Release and Settlement Agreement is binding on the parties, their personal representatives, successors, partners, agents, insurers, subcontractors, servants, employees, heirs, purchasers and assigns.

14. Choice of Laws.

This Release and Settlement Agreement shall be construed in accordance with the laws of the State of South Carolina.

15. Merger Clause.

The parties declare and represent that they have read this Release and Settlement Agreement and acknowledge that they have had the advice of counsel with respect to its execution. No promise, inducement, or agreement not herein expressed has been made by or to any party. This instrument contains the entire agreement between the parties concerning settlement of the dispute. The terms of this Release and Settlement Agreement are contractual and not a mere recital. If any paragraph or part of this Release and Settlement Agreement is found void or unenforceable, the remainder of this Release and Settlement Agreement shall not be affected.

16. Counterpart Execution.

This Release and Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have caused the foregoing Release and Settlement Agreement to be executed and delivered.



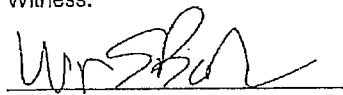
Stoney Pointe Homeowners
Association, Inc.

Witness

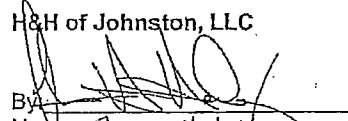
By: _____
Name: _____
Its: _____

Date: _____

Witness:

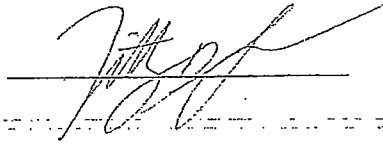


H&H of Johnston, LLC

By: 
Name: Thomas H. Herdeng
Its: Manager

Date: December 12, 2008

Witness:



H&H of Johnston, LLC

By: John S. Herlong
John S. Herlong, Its Manager

Date: 12-12-08

Release and Settlement Agreement

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Page: 10

HH000183_0023

 COPY

Page 1

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
2 COUNTY OF RICHLAND) Case No.:2010-CP-40-07330

3

4

5 H & H OF JOHNSTON, LLC,

6

Plaintiff,

7

vs.

8 OLD REPUBLIC NATIONAL TITLE INSURANCE
9 COMPANY, AND HENRY P. BUFKIN D/B/A
10 BUFKIN TITLE,

11

Defendants.

12

DEPOSITION OF
STANLEY HERLONG

13

14

15 DATE: June 9, 2011

16 TIME: 10:17 a.m. to 5:00 p.m.

17 LOCATION: Parker Poe Adams & Bernstein, LLP
18 1201 Main Street
19 Suite 1450
Columbia, South Carolina

20 REPORTED BY: Beth Walters

21

22 *****

23

24 PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, South Carolina 29466
843.670.1637 Fax: 843.216.9767
25 Palmettostatecr@yahoo.com

PALMETTO STATE COURT REPORTERS

843.670.1637

1. computer. I don't have it signed. Take a look at
2 that, if you would, Mr. Herlong. And I would invite
3 your particular attention to subparagraphs a, b, c,
4 d, and e and ask you to take a look at those for me
5 if you would.

6 A (Reviewing document.) Okay.

7 Q Now, are you prepared to answer questions
8 in regard to those particular areas of information
9 in regard to this lawsuit that you brought against
10 or H & H has brought against Old Republic National
11 Title Insurance Company?

12 A Yes.

13 Q All right. Let me ask you this. Prior to
14 this litigation, had you ever heard of Old Republic
15 National Title Insurance Company?

16 A No.

17 Q And the name Old Republic National Title
18 Insurance Company didn't mean anything to you until
19 this lawsuit was brought?

20 A No.

21 Q Inviting your attention back to, we'll
22 just say July of 2007, the day of the closing of the
23 transaction that's at issue, what did you know, if
24 anything, about Mr. Bufkin's relationship with Old
25 Republic National Title Insurance Company?

1 A None.

2 Q During the course of that closing at which
3 you were present, do you recall any discussion at
4 that closing in which the name Old Republic National
5 Title Insurance Company was mentioned?

6 A No.

7 Q Do you know of any documents that you
8 signed at that closing which makes reference to Old
9 Republic National Title Insurance Company?

10 A I just know I signed something to get
11 title insurance, but I wasn't even at the time when
12 I left there remember what company it was with.

13 Q You mentioned that Mr. Bufkin had closed
14 your -- when you purchased your home earlier?

15 A Yes.

16 Q Was that before the July 5th, '07
17 transaction?

18 A Yes. And that could be with Old Republic
19 for all I know. I have no idea who I have my
20 homeowner's with -- I mean my title insurance.

21 Q Well, that was my question. You don't
22 know who wrote or on whose behalf Mr. Bufkin may
23 have issued you an owner's title insurance policy
24 for your personal residence?

25 A No.

1 BY MR. LANG:

2 Q I know it's not a question. But I'm
3 trying to explain why I'm going there. Do you
4 understand that?

5 A And I've explained to you.

6 Q Okay.

7 A And I think pretty clearly what -- all I
8 know at closing I was getting a title insurance
9 policy on that property and I don't -- and no
10 exceptions were discussed.

11 Q All right. No exceptions were discussed.
12 No other terms of the policy were discussed, I take
13 it?

14 A Other than the amount of money I would
15 have to pay for it.

16 Q Oh, I'll get to that in a minute. So you
17 had a title policy. No other terms were discussed;
18 is that correct?

19 A Correct.

20 Q All right. Do you know sitting there
21 today whether or not there are any -- well, let me
22 back up. Back in 2007 at the time of the closing,
23 do you know if there were any covenants or
24 restrictions on that 11.44 acre tract?

25 A No.

1 Q Yes, sir.

2 A It's in that stack of Exhibits over there.

3 That's the closing statement.

4 MR. BOOTH: Can you tell him what it is.

5 MR. LANG: It's the closing statement.

6 MR. BOOTH: The closing statement.

7 DEPONENT: Is this it? Oh, yeah, yeah

8 yeah. Okay. Yeah, here it is. The very bottom.

9 All right.

10 BY MR. LANG:

11 Q Let me invite your attention, Mr.

12 Herlong, to the second page of that. And in terms

13 of -- it would be line 1108. It's kind of small.

14 A I see it.

15 Q You see it. "Title Insurance to Bufkin

16 Title \$1,492.50."

17 A Yes.

18 Q So the terms of the oral contract as you

19 understood them at the time of the closing was you

20 were going to get a title policy for \$1,400.00 and

21 some odd dollars and 50 cents, correct?

22 A Yes.

23 Q No other terms or conditions were

24 discussed at that closing; is that right?

25 A Yes.

1 Q Are they still in existence?

2 A Huh?

3 Q Are they still in existence, do you know?

4 A As far as I know they are.

5 Q You think you might have given them a
6 personal financial statement?

7 A I know I did that. I had to do that every
8 year.

9 Q But you don't recall specifically filling
10 out any loan application or anything of that nature,
11 do you?

12 A No.

13 Q You mentioned that before the closing when
14 there was discussion of this P & K contract, you
15 were concerned about it as I recall your testimony.
16 And I wasn't clear as to what your concern was. And
17 I think you said that the P & K contract could drag
18 this thing out. And I'm not --

19 A As I had told her about a year before my
20 dad died, my father and I were putting some squeeze
21 on Ralph about the lack of getting information on
22 Five Star, as to what was going on, being past due
23 at the bank. And this when he told us -- I didn't
24 even know the name -- that he had reached -- gone
25 into an agreement with this developer. Had I not

1 been told that in '03, when I went in to do this in
2 '07 -- that's the only reason even prompted me to
3 ask the question. Who's this guy that you have this
4 agreement with on Palm Street that you were telling
5 me about in 2003?

6 Q And it concerned you?

7 A It concerned me.

8 Q And it concerned you because?

9 A Because of what he had already told me in
10 2003 that this guy and I don't even -- basically
11 that every time he would sell a house, he would take
12 down another lot. But he didn't have to take -- but
13 as soon as he sold a house, he would have to take
14 down a lot. And that concerned me in 2003 that he
15 had such an agreement.

16 So when I approached him in 2007, I said,
17 "where do you stand with this developer that you
18 entered in that agreement?" And that's when I was
19 advised that the developer was in default. So the
20 agreement really didn't hold water.

21 Q And I think you testified at the closing
22 that there was some discussion about the P & K
23 contract; is that right?

24 A Yes. I asked it again have you ever found
25 it.

Page 1

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) Case No.: 2010-CP-40-07330

H & H OF JOHNSTON, LLC,
Plaintiff,

VS.

OLD REPUBLIC NATIONAL TITLE INSURANCE
COMPANY, AND HENRY P. BUFKIN D/B/A
BUFKIN TITLE,

Defendants.

DEPOSITION OF
THOMAS HERLONG

DATE: July 6, 2011

TIME: 10:03 a.m. to 12:59 p.m.

LOCATION: Parker Poe Adams & Bernstein, LLP
1201 Main Street
Suite 1450
Columbia, South Carolina

REPORTED BY: Beth Walters

PALMETTO STATE COURT REPORTERS
3022 S. Morgan's Point Road, Box 118
Mt. Pleasant, South Carolina 29466
843.670.1637. Fax: 843.216.9767
Palmettostatecr@yahoo.com

Palmetto State Court Reporters
PalmettoStateCR@yahoo.com

(843) 670-1637

1 King.

2 Q Do you recall any indication by Mr. Bufkin
3 that Ken King could be a problem, or, you know, he
4 had a personality to be a problem or cause H & H any
5 problem, or anything of that nature?

6 A Yes. In the -- in these notes I think
7 from the prior meeting, I think I even made the
8 comment, someone said Ken King could be a problem.
9 And I believe that I even made that comment in my
10 notes.

11 Q Do you recall that comment being made
12 during the course of the closing?

13 A No. I remember that comment being made in
14 the meeting prior to the closing.

15 Q Do you recall any discussion of title
16 insurance during the closing?

17 A Yes.

18 Q Tell me what you recall that discussion
19 was.

20 A Well, the sheet that has all the expenses,
21 Mr. Bufkin just said this is the cost for -- as he
22 was going through all the different expenses, I just
23 remember, "this is title insurance," and that is
24 pretty much a hundred percent of what I remember
25 hearing about title insurance, that "you have title

1 insurance and this is what it costs."

2 Q Let me invite your attention, if I could,
3 Mr. Herlong, to the Deposition Exhibit No. 13 of
4 the deposition of your brother. Are you with me?

5 A Yes.

6 Q You referred to something, a document
7 which reflected all the costs and expenses of the
8 closing. Is that the document to which you were
9 referring?

10 A Yes.

11 Q And there's an entry for a cost here,
12 "Title Insurance" on the second page of \$1,492.50.

13 A Correct.

14 Q Okay. So that was the discussion, how
15 much it would cost?

16 A Correct.

17 Q Do you remember any other document in
18 reference to title insurance at that closing?

19 A No. The -- and I fully -- because of
20 my -- you questioned me at the beginning about what
21 I do. As an investment adviser, I have to give full
22 disclosure when I'm discussing investment work. And
23 because of my background, I am absolutely confident
24 that I would remember had there been any terms of
25 exclusion in the title insurance. This is the only

1 And I had never, never heard any of this discussed.

2 Q Okay. Getting back to the purpose of the
3 March 23, 2009 letter, tell me your understanding of
4 that or the purpose of that letter.

5 A Which letter?

6 Q The one we were just talking about which
7 is Deposition Exhibit No. 29, is the one you've got
8 right in front of you.

9 A Right. Oh, the purpose, the purpose of
10 this was, now we, -- now we're asking Mr. Booth to
11 represent us because he said, "since this was not
12 disclosed to you, we have an issue with title
13 insurance company," to try to get this, this matter
14 resolved. I know nothing about this. Mr. Booth is
15 representing us. So it's my understanding that he's
16 notifying them on our behalf that we have a -- that
17 we have an issue.

18 Q He's notifying them of the P & K issue,
19 and is he notifying the title company as well of
20 the, I'm going to refer to it as the HOA lawsuit.

21 A Right.

22 Q And is that also in the March 23, 2009
23 letter?

24 A Yes.

25 Q Okay. Do you know if any notification had

1 been provided to Old Republic National Title
2 Insurance prior to the March 23, 2009 letter of the
3 HOA litigation? I'm not talking about P & K, I'm
4 talking about the HOA litigation or lawsuit.

5 A I do not. We were totally -- Stanley and
6 myself were totally -- we had discussed it with Mr.
7 Booth, and we were depending upon his counsel to
8 handle things in the timeframe that they should be.

9 Q Let me invite your attention, Mr. Herlong,
10 to Deposition Exhibit No. 25. Are you with me?

11 A Yes.

12 Q Now this, I'll tell you, or I'll represent
13 to you, is a copy of the Settlement Agreement. It's
14 called the Lease and Sign Agreement concerning the
15 HOA litigation. Are you familiar at all with this
16 document?

17 A Yes, because I signed it.

18 Q Okay. Let me invite your attention to
19 page three of the document itself, and the page
20 numbers are on the lower right-hand corner. Are you
21 with me?

22 A Yes.

23 Q Talks about "Imposition or Restrictions."

24 A Right.

25 Q It says, "I declare that H & H shall

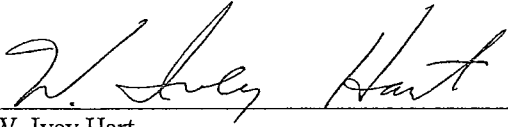
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
H&H of Johnson, LLC,	)	Case No. 2010-CP-40-07330
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF W. IVEY HART, ESQ.
	)	
Old Republic National Title	)	
Insurance Company, and Henry	)	
P. Bufkin d/b/a Bufkin Title,	)	
	)	
Defendants.	)	
	)	

W. Ivey Hart, Esq., being duly sworn, deposes and says:

1. I am Vice President, state counsel and state manager for the South Carolina office of Old Republic National Title Insurance Company (Old Republic). I have been with Old Republic for over twenty (20) years. I graduated from the University of South Carolina School of Law in 1978, and I was admitted to the South Carolina Bar that same year.
2. I have given a deposition in the above matter, having been designated to speak for Old Republic pursuant to SCRCP, Rule 30(b)(6).
3. I have reviewed Old Republic's claim files in regard to this matter, and the only claim notices in those files are attached hereto and marked collectively as Exhibit "A."
4. Old Republic does not have any policies or procedures requiring its agents to notify or advise a prospective title insurance purchaser of all adverse claims to property either existing or which might be shown on the public land records. I believe that would be the practice of law in which Old Republic can not engage.
5. If an Old Republic title insurance issuing agent has knowledge of an adverse claim to title to property concerning which he or she is going to issue an Old Republic title insurance commitment or policy, whether or not the adverse claim appears on the public land records, that adverse claim should be noted as an exception to the title insurance commitment or policy, unless the agent can remove the adverse claim prior to the issuance of the title insurance policy.

6. The proposed exceptions to coverage in a title insurance commitment are shown on Schedule B-2 of the title insurance commitment. Schedule B-2 is a material part of the title insurance commitment.
7. The exceptions to coverage in a title insurance policy are shown on Schedule B to the title insurance policy. Schedule B is a material part of the title insurance policy.

Further the affiant sayeth not.



W. Ivey Hart

Sworn and subscribed to before me this
12 day of January 2012



Notary Public of South Carolina
My Comm. Expires: March 13, 2017

G:\2000\025729.008\Plaidings\Ivey Hart Affidavit.wpd

BOOTH

LAW FIRM, LLC

WILLIAM E. BOOTH III
BOOTH@BELLSSOUTH.NET

CONSOLIDATED BUSINESS PARK
3231 SUNSET BOULEVARD, SUITE A
WEST COLUMBIA, SC 29169

P: 803.791.9211
F: 803.791.3159

August 28, 2007

ORIGINAL VIA UPS OVERNIGHT
COPY VIA FACSIMILE (617-371-1191)

Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, MN 55401

A39125
Henry P. Bufkin

Re: Application No: H&HOFJOHNSTON070207
Commitment Date: June 28, 2007 @ 9:00 A.M.
Insured: H & H of Johnston, LLC
Amount of Insurance: \$845,000.00
(Our File No. 4460.0799)

Dear Sir or Madam:

I represent H&H of Johnston, LLC and the purpose of this letter is to file a claim under the Commitment to Insure relative to the above (a copy attached).

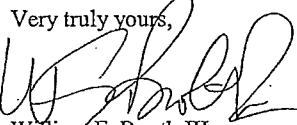
The nature of the claim involves a contract between the former owner and P&K Construction involving certain lots located in the Stoney Pointe Subdivision in or near the Town of Chapin, County of Lexington, State of South Carolina. My client has a contract to sell these lots and P&K Construction has objected to the sale and a Lis Pendens was filed.

During the last few days, my client has attempted to negotiate a settlement of this title claim. The amount of the offer of settlement is \$25,000.00, and my client feels compelled to make this payment to allow the sale of the lots.

I will provide you with further information as soon as you assign a claims person to this file. Time is of the essence in that this offer of settlement will not be extended very long.

I look forward to hearing from you on this.

Very truly yours,


William E. Booth III

WEBIII/eje

C: Stan Herlong
Thomas Herlong
Henry P. Bufkin, Esquire (Via Facsimile 803-364-4445)

4460.0799.DOC

WEBSITE  WWW.WBOOTH-LAW.COM

Exhibit "A"

ORNTIC 0103

BOOTH

LAW FIRM, LLC



WILLIAM E. BOOTH III
BOOTH@BELLSSOUTH.NET

CONSOLIDATED BUSINESS PARK
3231 SUNSET BOULEVARD, SUITE A
WEST COLUMBIA, SC 29169

MAR 23 2009

P: 803.791.9211
F: 803.791.3159

March 18, 2009

VIA CERTIFIED MAIL WITH RETURN RECEIPT (7004 2510 0005 1077 1644)

Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, MN 55401-2499

A39125
Bufkin Law
Firm

Re: Notice of Claim – Policy No. 0X 250654
(Our File No. 4640.1004)

Dear Sir or Madam:

I represent **H&H of Johnston, LLC**, a South Carolina limited liability company, and my client hereby notifies Old Republic National Title Insurance Company of claims under the above-referenced policy of title insurance. The subject real property is located in Lexington County, South Carolina, and was acquired by that certain General Warranty Deed undated and recorded on July 6, 2007, in the ROD Office for Lexington County in Record Book 12144 at Page 297. Previously, my client notified Old Republic of a claim involving an unrecorded contract dated on or about April 30, 2002, between Five Star Development and P&K Construction. The title insurance agent for the issuance of this Policy is Henry P. Bufkin, Esquire, 208 N. Main Street, Prosperity, SC 29127. **A copy of the current deed and title insurance policy are enclosed.**

Although the following is not intended to be a complete and thorough discussion of the claims, my client asserts that the title agent failed to issue and provide to my client a Title Binder prior to or at closing. The transaction involved the sale of real estate by Five Star Development, LLC, for consideration of the cancellation of certain debts owed by Five Star to D.C. Herlong. H&H was set up to administer the probate of the Herlong estate.

You will see that the brief descriptions of the claims being asserted herein does include matters listed on the Title Binder and on the Policy in Schedule B, but my client does not consider any exceptions related thereto as effective due to the fact that the Title Binder was not issued or provided to my client prior to closing and the cancellation of the debts.

The claims are described briefly as follows:

1. The payment of \$25,000 to P&K Construction for the release of certain lots from rights contained in the contract. **I enclose a copy of the contract, as well as the settlement agreement to resolve this dispute.**

4460.1004.Doc

WEBSITE @ WWW.WBOOTH-LAW.COM

ORNTIC 0048

2. The defense of a lawsuit seeking to impose assessments for Lots 1- 3, 5- 7, 24-39, 43, and 59, and lots described as "Future Development".
3. The defense of a lawsuit seeking to impose restrictions and assessments dealing with a tract of land consisting of approximately 8.0 acres.
4. The defense of a lawsuit seeking to invalidate the transfer of title for the subject property.

My client's claim of damages for is based upon the attorney's fees and costs incurred in connection with the defense of a lawsuit filed by the Stoney Pointe Homeowners Association and the resulting settlement. My client is not seeking at this time any payments made pursuant to the settlement or any loss of value for the property. **I enclose a CD-ROM containing the complaint and most of the settlement documents relating to this lawsuit.** The names of the files contained on this CD-ROM relating to the lawsuit/settlement are shown below:

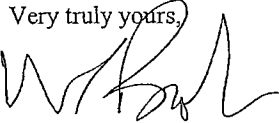
Name	Date modified	Size
 Complaint	7/2/2008 8:40 AM	2,237 KB
 Affidavit of Five Star	3/18/2009 2:40 PM	67 KB
 Assignment of Declarant Rights	3/18/2009 2:38 PM	398 KB
 Assignment of MCEC Account Number	3/18/2009 2:40 PM	22 KB
 Cancellation of Lis Pendens	3/18/2009 2:38 PM	38 KB
 Cancellation of Lis Pendens-Remaining	3/18/2009 2:38 PM	37 KB
 Certification of Vote - HOA	3/18/2009 2:39 PM	23 KB
 Mortgage	3/18/2009 2:42 PM	274 KB
 Promissory Note	3/18/2009 2:41 PM	153 KB
 Quit Claim Deed - Common Areas	3/18/2009 2:41 PM	157 KB
 Quit Claim Deed - From H and H	3/18/2009 2:42 PM	297 KB
 Receipt - Five Star	3/18/2009 2:40 PM	79 KB
 Receipt - H and H	3/18/2009 2:42 PM	25 KB
 Release and Settlement Agreement	3/18/2009 2:37 PM	584 KB
 Restrictions	3/18/2009 2:39 PM	435 KB
 Revocation of Amendment 8	3/18/2009 2:39 PM	101 KB
 Satisfaction of Lien	3/18/2009 2:40 PM	48 KB
 Stipulation of Dismissal	3/18/2009 2:37 PM	76 KB
 Withdrawal of Motion - Herlong	3/18/2009 2:38 PM	59 KB

For your information, the legal fees incurred by client does are shown on the legal bills included on the CD-ROM. The total amount of the legal fees and costs so far is:

Legal Fees	\$22,330.00
Costs	\$923.67
TOTAL	\$23,253.67

I look forward to hearing from you on this claim.

Very truly yours,



William E. Booth III

WEBIII/eje

C: Stan Herlong (w/o Enc.)
Thomas Herlong (w/o Enc.)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-40-7330

RETURN OF PLAINTIFF TO MOTIONS
FOR SUMMARY JUDGMENT
OF DEFENDANTS

2012 JAN 13 PM 3:45
RECEIVED
C.C.P. & S.S.
CLERK OF COURT

COPY

This Return is submitted by Plaintiff, H&H of Johnston, LLC (hereinafter referred to as the "Herlong Company") in opposition to the granting of the Motion for Summary Judgment filed by Defendant Henry P. Bufkin d/b/a Bufkin Title ("Bufkin") on October 25, 2011, and the Motion for Summary Judgment filed by Defendant Old Republic National Title Insurance Company (hereinafter referred to as "Old Republic") on November 10, 2011.

In summary, the Motions should be denied for the following reasons:

1. Acting as a title insurance agent and making agreements as to coverage to protect property interests is what this case is about – NOT ABOUT practicing law. Bufkin was licensed as a title insurance agent and had issuing authority from Old Republic National Title Insurance Company based upon an agency agreement dated November 16, 1994, and a license issued by the Department of Insurance. As an agent, he sold a policy of title insurance to the Herlong Company as part of a real estate closing. See attached chart, marked as Exhibit "A", showing the differences between practicing law and acting as a title insurance agent.

[Handwritten signature]
1/13/12

COPY

2. The business of selling title insurance or acting as a title insurance agent is not one of the listed professions under S.C. Code §15-36-100(G).

3. There is sufficient evidence that the essential elements for the formation of a contract to insure existed based on the Affidavit of Stanley Herlong dated January 10, 2012, AND the following evidence:

- a. Agreement, signed by Bufkin, stating that Bufkin was the "Agent" of Old Republic for the sale of title insurance, and that the Herlong Company agreed to purchase the title insurance;¹ and
- b. HUD-1 showing the premium charged for the title insurance and paid by the Herlong Company at the closing.

FACTUAL BACKGROUND

The Herlong Company was purchasing real estate consisting of twenty-six (26) subdivided lots within Phases I and II of the Stoney Pointe Subdivision, and an adjoining tract of land containing 11.44 acres. The Defendant, Bufkin, acted as the real estate closing attorney representing both the seller and buyer.² Stan Herlong, a member of the Herlong Company, agreed to purchase from Bufkin a policy of title insurance for the protection of the interests of the Herlong Company in the lots and the tract of land. (Affidavit of Stanley Herlong dated January 10, 2012, ¶18). The closing took place on July 5, 2007.

Immediately after closing, the Herlong Company entered into contracts to sell the lots and land using a real estate agent who posted signs in the yards, after which P&K

¹ See "ORT Combined 3601 and 2423", bearing Bates Number Bufkin0107 to Bufkin0110. This form further states on Bufkin0107: "The applicant (as set out herein), is a buyer, seller or lender who has been referred by the above-named producer of title business or associate of such producer to one or more of the title insurers or title agents identified above."

² Bufkin obtained a Consent to Multiple Representation.

UB
1/10/12

COPY

protested. P&K demonstrated to the Herlong Company that it had an option to purchase the lots and that the Herlong Company could not sell the lots to a third party. The Herlong Company later paid P&K the sum of \$25,000 for a release of the option agreement.

The Herlong Company was later sued by the Stoney Pointe Homeowners Association (the "HOA"). The lawsuit was filed on April 10, 2008, and the issues included the following:

1. Obligation of the Herlong Company to pay assessments for the lots.
2. Declaration that the undeveloped land was subject to assessments and restrictions.
3. Declaration that the deed for the transfer of title was invalid.

The lawsuit was settled and dismissed on December 15, 2008. Defendant Bufkin represented Five Star Development, LLC, and other parties, as defendants in the lawsuit. The Herlong Company seeks reimbursement for the legal fees, assessments paid and damages.

There was a premium for the title insurance paid by the Herlong Company at the closing. Despite also collecting a fee for the issuance of a title insurance commitment³ at the closing, Bufkin had not prepared the commitment, and did not provide any documentation or information as the title insurance agent for the terms of the title insurance to be issued.

Sometime after the closing, the Herlong Company was sued by Stoney Pointe Homeowners Association, Inc.

³ A title insurance commitment also contains a list of exceptions in Schedule B-2.

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1/13/11

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Bufkin had knowledge of the settlement discussions between the Herlongs and Five Star Development, LLC. There is evidence that the Herlongs asked about the P&K Contract as far as their ability to sale the lots quickly after closing.

ARGUMENT

The Defendants' first ground is based on the absence of an expert affidavit providing the support for legal malpractice. These arguments fail because there is a distinction between practicing law and issuing title insurance in that a title insurance policy is a form of indemnification relating to title issues. An attorney can give an opinion of title, but that opinion is not an insurance contract. Bufkin was authorized to issue title insurance by Old Republic Title, and his agreements as to coverages relate to the obligation of Old Republic to provide indemnification against title claims.

There is a similar case involving title insurance. In Marshall v. King and Morgenstern, 272 Ga.App. 515, 613 S.E.2d 7 (Ga.App. 2005), a homeowner appealed the grant of summary judgment against the closing attorney by the trial court. The Georgia Court of Appeals reversed.

The coverage dealt with in Marshall was insurance against title problems in that the homeowner found after the closing that significant percentage of his home encroached upon the neighbor's property. He had not obtained a current survey before the closing that would have shown the encroachment.

The homeowner argued that the title company, First American Title Insurance Company and the closing attorney acting as a title agent for FATIC, breached a contract by failing to provide him with title insurance that would protect against the title problems even though he had not obtained a survey. He also alleged claims for "equitable

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estoppel" and attorney fees. The evidence indicated that the homeowner had received an oral agreement with the closing attorney to sell him a title insurance policy that would protect his "interests in the property, despite his decision to forego a survey." The policy issued by FATIC did not provide such coverage unless a new survey had been obtained.

The Court held that "where there is a conflict in the evidence as to the existence of an oral contract or as to its terms, the matter must be submitted to a jury for resolution."

Clearly, the grounds asserted by the Defendants are technical in nature requiring an agreement that refers to "exceptions". They argue that since there was no discussion about "exception to the title policy", an oral contract could not have been formed. While a title policy usually contains two sections – Section B-1 and Section B-2, the list of exceptions in schedule B-2 contain reasons that the title insurance company is not required to indemnify the insured. In other words, the protection of interests in the land described in the policy does not include any items contained in Schedule B-2, the exceptions.

While Stan Herlong does not recall the actual discussion or mention of the "exceptions" to be items for which the Herlong Company would have no protection in the property, he had an agreement with Bufkin as the title insurance agent to protect the interests of the Herlong Company.

Here, there is evidence that H&H as the purchaser of the land and as the purchaser of the title insurance had an agreement that protected it from the interests of

WB
1/13/12

COPY

the P&K Contract and interests relating to the payment of assessments and being subject to other types of restrictions.

In Kelly v. South Carolina Farm Bureau Mut. Ins. Co., 316 S.C. 319, 450 S.E.2d 59 (S.C.App. 1994), the South Carolina Court of Appeals found that a reliance on statements made by a homeowner's insurance agent is sufficient for a claim of negligent misrepresentation, even if the homeowner's policy does not reflect the statements of the agent. In Kelly, Plaintiff received a quote on a homeowner's insurance policy. She told the agent she wanted the same coverage as her current insurance, including coverage of two buildings on the property that used to be used for farming but were no longer used for that purpose. The insurance agent advised her that the buildings would be covered under the policy. However, the written policy did not allow coverage of structures which were ever used as farm buildings, and the insurance company denied coverage after the structures were destroyed by Hugo. The court reasoned that reliance on the agent's representation's, despite what was in the policy, was sufficient for a claim of negligent misrepresentation.

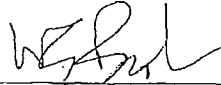
For these reasons and further argument to be made at the hearing, the Plaintiff requests that this Court deny the Motions for Summary Judgment.

USP
1/13/12

COPY

Respectfully submitted,

BOOTH LAW FIRM, LLC



William E. Booth III
3231 Sunset Boulevard, Suite A
West Columbia, SC 29169
(T) (803) 791-9211
(F) (803) 791-3159
BoothLaw@bellsouth.net

West Columbia, South Carolina
January 12, 2012

EXHIBIT "A"

Henry P. Bufkin

Acted as closing attorney for the Seller and the Buyer

Acted as a licensed insurance agent on behalf of Old Republic for the sale of title insurance

Licensed to practice by Supreme Court of South Carolina

Licensed by Department of Insurance

AGREEMENT FOR APPOINTMENT OF POLICY ISSUING AGENT FOR OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

THIS AGREEMENT, made and entered into this 16th day of November, 1994, by and between Old Republic National Title Insurance Company, a Minnesota corporation, hereinafter referred to as "Insurer", and HENRY P. BUFKIN, of the City of PROSPERITY, State of South Carolina, hereinafter referred to as "Agent", and the Law Firm of HENRY P. BUFKIN, hereinafter referred to as "Approved Attorneys".

Name: Mr. Henry Philip Bufkin
Company: Bufkin Law Firm, LLC
Address: P.O. Drawer 419
Address (cont): Prosperity, SC 29127
City, State Zip: (803) 364-2233
Phone: Newberry
Fax: 11/14/1986
County: SC Bar Admission:



South Carolina Department of Insurance

Home | SCDOI Online Services | Search SCDOI Database | Contact Us

Individual License Details

General Information

? Individual Name: HENRY P. BUFKIN
? License Type: Limited Lines
? License Status: Active
? Renewal Status: Renewed (For the year 2011 to 2013)
? SC Resident: Yes
? Effective Date: 05/04/1987

Charged a legal fee in amount of \$1,500

Charged a premium owed to ORT in the amount of \$1,492.50 – Commission payable to Bufkin Title of 60%

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-40-7330

AFFIDAVIT OF STANLEY HERLONG
IN OPPOSITION TO
MOTIONS FOR SUMMARY JUDGMENT

FILED
2012 JAN 13 PM 3:35
CLERK OF COURT
SOUTH CAROLINA

COPY

Personally appeared before me, **STANLEY HERLONG**, who being duly sworn,
deposes and states the following:

1. I am a member of H&H of Johnston, LLC, a South Carolina Limited Liability Company formed on June 26, 2007, by the filing of Articles of Organization. The other member is my brother, Thomas Herlong, and he lives in Johnston, SC. H&H was formed for the purpose of taking title to certain property in Lexington County associated with the Stoney Pointe subdivision development. Our goal in forming this LLC was to immediately sale all the land as quickly as possible to provide funds for the estate of my father, D.C. Herlong, and our mother who is living in a nursing home.

2. My father, D.C. Herlong, died on September 16, 2004, and my brother, Thomas Herlong, was designated as the personal representative.

3. My father at the time of his death was owed a substantial sum of money by the developer of Stoney Pointe – Five Star Development, LLC. Five Star was formed by my brother-in-law – Ralph McClendon. As a result of negotiations, my brother and I

JK

COPY

agreed to discharge the large debt in exchange for a portion of the property then owned by Five Star.

4. Prior to making this agreement, I needed to know what property could be acquired in exchange for the debt. I visited the Register of Deeds Office and the Assessor's Office in Lexington County in April, 2007, to research the land still listed in the name of Five Star and created a list of the unsold lots and undeveloped land. I attach as Exhibit "A" a map showing the areas where the property was located.

5. We engaged Rhonda Jacobs, now known as Rhonda Walsh, to market and help us sell the land as quickly as possible, and we drove around the area with her during a meeting on April 25, 2007. Mr. Bufkin was aware of these efforts. Since we were going to sell the land soon after closing, I had Ms. Walsh identify potential buyers. Mr. Bufkin was aware of these efforts.

6. At a meeting on May 23, 2007, my brother and I presented to McClendon our proposed agreement and Mr. Bufkin was present. At that meeting, I asked both of them to make sure I got a copy of an option contract that I had heard about several years before with a company called "P&K" and a person named "Ken King", and that I needed to make sure that option would not prevent us from selling the lots immediately after closing.

7. The closing was set for July 5, 2007, at Bufkin's office in Prosperity, SC.

8. As the representative of the perspective purchaser of the property, I chose to purchase title insurance, and I authorized Mr. Bufkin to issue the title insurance at the closing.

JSH

9. I told him that I wanted to make sure that H&H would not have to sell lots to P&K under any option agreement and that the purchaser could sell the lots to a third party. He knew the sale of land immediately was part of the agreement for me and my brother to buy the land.

10. I never considered the role of Bufkin selling the title insurance as an act of practicing law, and I knew H&H would receive a policy of title insurance through the company represented by him.

11. I needed to make sure that the purchaser would have protection for any claims of the P&K Company or assessments. This was the agreement made by Mr. Bufkin since I desired title protection for these matters.

12. H&H entered into contracts for the sale of the land several weeks. Attached as Exhibit "B" is a chart showing the contracts entered into. None of these contracts mentioned being subject to any restrictions or the possibility of assessments.

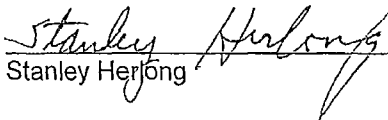
13. From the meeting in May until the closing in July, I asked Mr. Bufkin to find the contract with the company known as P & K Construction, Inc. Mr. Bufkin never produced such a contract so I believed that the P & K contract would not affect my ability to sell the excess land.

14. So, at or before the closing, H & H had an agreement with Mr. Bufkin as the title agent to do the following:

- a. To insure that H&H would be able to immediately sell the builder ready lots through a listing agreement to be entered into with Russell and Jeffcoat Realtors;

COPY

- b. To insure that H&H would not be required to pay any HOA assessments for the lots; and
- c. To insure that H&H would be able to immediately sell the 11.44 acre tract of land without being subject to restrictions or assessments.


Stanley Herlong

Sworn to before me this
11th day of January, 2012



Notary Public for South Carolina

My commission expires: ~~My Commission Expires~~ April 7, 2015

EXHIBIT "A"
Land Owned by Five Star Development, LLC

COPY

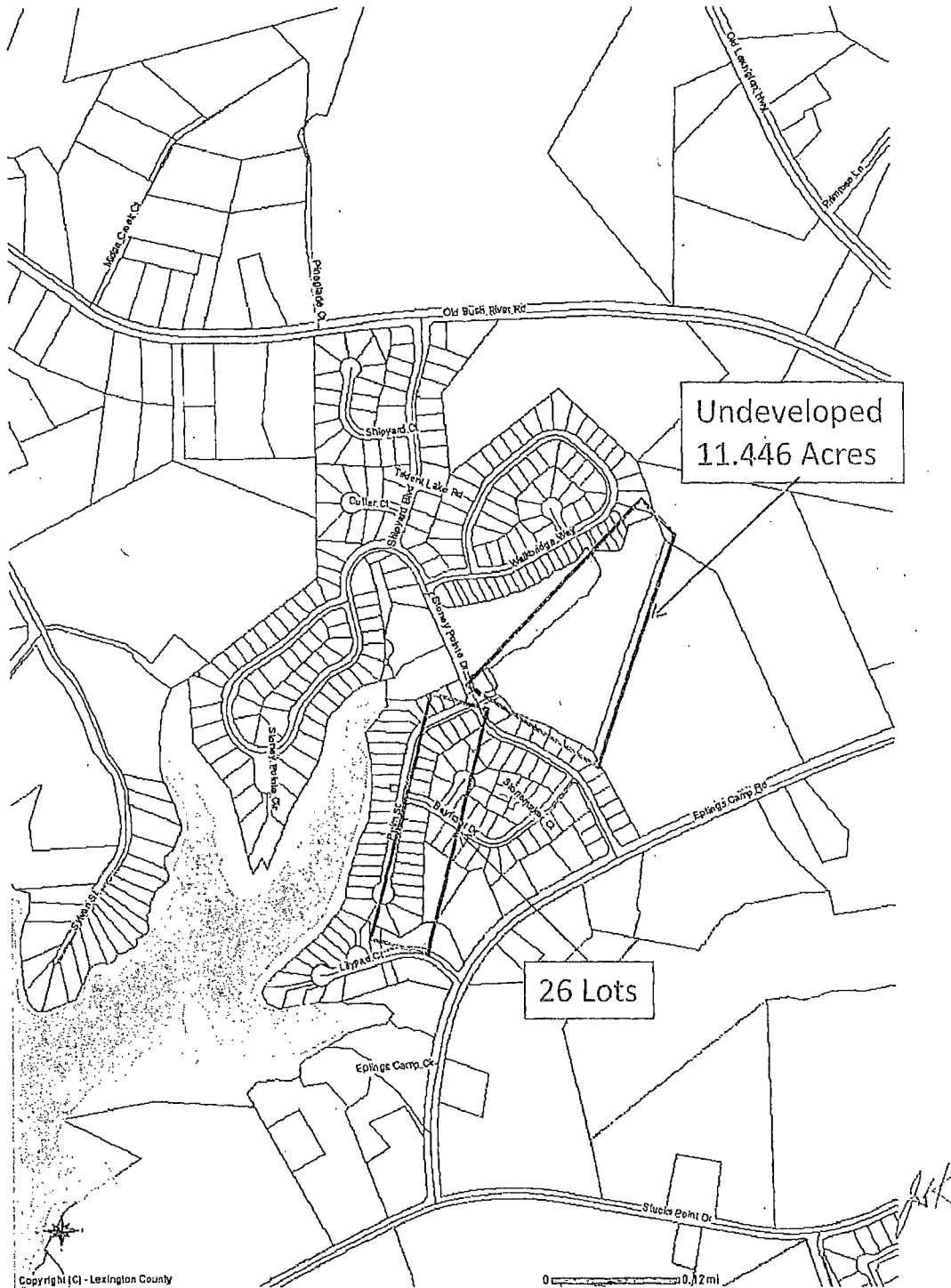
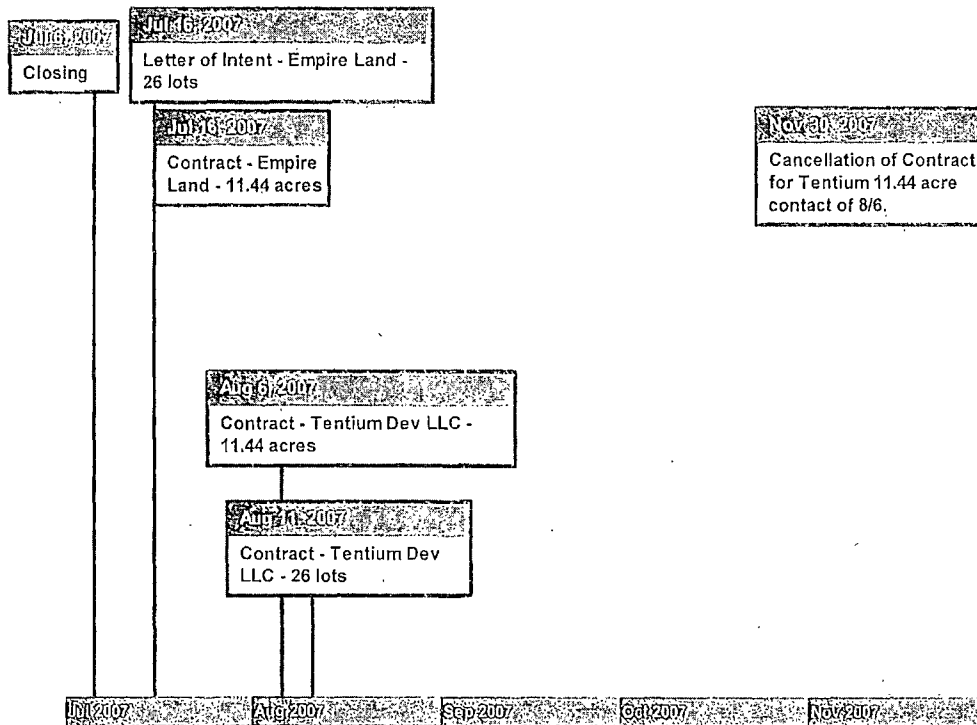


EXHIBIT "B"

COPY



COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-40-7330

AFFIDAVIT OF WILLIAM E. BOOTH III
FOR SUBMISSION OF DISCOVERY
EVIDENCE ON BEHALF OF PLAINTIFF

FILED JAN 13 PM 3:35
CLERK OF COURT
W. E. BOOTH III
C.P. & G.S.

RICHLAND COUNTY
FILED

Personally appeared before me, **WILLIAM E. BOOTH III**, who, being duly sworn,
deposes, and states the following:

1. I am an attorney-at-law admitted to practice before this Court and I practice under the name of Booth Law Firm, LLC. I am the attorney for the above-named Plaintiff. I wish to have introduced into evidence certain documentary evidence produced by the parties during discovery for consideration by the Court as to the Motions for Summary Judgment to be heard on January 19, 2012.

2. Annexed hereto as Exhibit "A" is a true and correct copy of a letter from me to Old Republic National Title Insurance Company dated March 18, 2009, and included as Exhibit 29 to the deposition of Stanley Herlong taken on June 9, 2011.

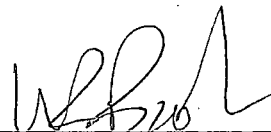
3. Annexed hereto as Exhibit "B" is a true and correct copy of the Title Insurance Commitment included as Exhibit 5 to the deposition of Ivy Hart taken on September 20, 2011.

4. Annexed hereto as Exhibit "C" is a true and correct copy of the Agreement for Appointment of Policy Issuing Agent for Old Republic National Title Insurance

W. E. Booth III
1/12/12

Company dated November 16, 1994, and provided in response to Plaintiff's Requests to Produce dated March 30, 2011, and marked as Bates Numbers Bufkin0255-Bufkin0263.

5. Annexed hereto as Exhibit "D" is a true and correct copy of ORT Combined 3601 and 2423 dated July 5, 2007, and provided in response to Plaintiff's Requests to Produce dated March 30, 2011, and marked as Bates Numbers Bufkin0107-Bufkin0110.



William E. Booth III

Sworn to before me this

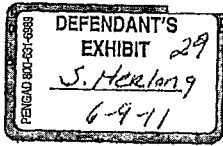
13 day of January, 2012.



Notary Public for South Carolina

My commission expires: 09/07/2017

EXHIBIT "A"
AFFIDAVIT OF WILLIAM E. BOOTH III



BOOTH
LAW FIRM, LLC

SC

COPY

WILLIAM E. BOOTH III
BOOTH.LAW@BELLSOUTH.NET

CONSOLIDATED BUSINESS PARK
3231 SUNSET BOULEVARD, SUITE A
WEST COLUMBIA, SC 29169

MAR 23 2009

P: 803.791.9211
F: 803.791.3159

March 18, 2009

VIA CERTIFIED MAIL WITH RETURN RECEIPT (7004 2510 0005 1077 1644)

Old Republic National Title Insurance Company
400 Second Avenue South
Minneapolis, MN 55401-2499

A39125
Buffkin Law
Firm

Re: Notice of Claim - Policy No. 0X 250654
(Our File No. 4640.1004)

Dear Sir or Madam:

I represent H&H of Johnston, LLC, a South Carolina limited liability company, and my client hereby notifies Old Republic National Title Insurance Company of claims under the above-referenced policy of title insurance. The subject real property is located in Lexington County, South Carolina, and was acquired by that certain General Warranty Deed undated and recorded on July 6, 2007, in the ROD Office for Lexington County in Record Book 12144 at Page 297. Previously, my client notified Old Republic of a claim involving an unrecorded contract dated on or about April 30, 2002, between Five Star Development and P&K Construction. The title insurance agent for the issuance of this Policy is Henry P. Bufkin, Esquire, 208 N. Main Street, Prosperity, SC 29127. A copy of the current deed and title insurance policy are enclosed.

Although the following is not intended to be a complete and thorough discussion of the claims, my client asserts that the title agent failed to issue and provide to my client a Title Binder prior to or at closing. The transaction involved the sale of real estate by Five Star Development, LLC, for consideration of the cancellation of certain debts owed by Five Star to D.C. Herlong. H&H was set up to administer the probate of the Herlong estate.

You will see that the brief descriptions of the claims being asserted herein does include matters listed on the Title Binder and on the Policy in Schedule B, but my client does not consider any exceptions related thereto as effective due to the fact that the Title Binder was not issued or provided to my client prior to closing and the cancellation of the debts.

The claims are described briefly as follows:

1. The payment of \$25,000 to P&K Construction for the release of certain lots from rights contained in the contract. I enclose a copy of the contract, as well as the settlement agreement to resolve this dispute.

4460.1004.Doc

WEBSITE ■ WWW.WBOOTH-LAW.COM

ORNTIC 0048



2. The defense of a lawsuit seeking to impose assessments for Lots 1- 3, 5- 7, 24-39, 43, and 59, and lots described as "Future Development".
3. The defense of a lawsuit seeking to impose restrictions and assessments dealing with a tract of land consisting of approximately 8.0 acres.
4. The defense of a lawsuit seeking to invalidate the transfer of title for the subject property.

My client's claim of damages for is based upon the attorney's fees and costs incurred in connection with the defense of a lawsuit filed by the Stoney Pointe Homeowners Association and the resulting settlement. My client is not seeking at this time any payments made pursuant to the settlement or any loss of value for the property. I enclose a CD-ROM containing the complaint and most of the settlement documents relating to this lawsuit. The names of the files contained on this CD-ROM relating to the lawsuit/settlement are shown below:

Name	Date modified	Size
Complaint	7/2/2008 8:40 AM	2,237 KB
Affidavit of Five Star	3/18/2009 2:40 PM	67 KB
Assignment of Declarant Rights	3/18/2009 2:38 PM	398 KB
Assignment of MCEC Account Number	3/18/2009 2:40 PM	22 KB
Cancellation of Lis Pendens	3/18/2009 2:38 PM	38 KB
Cancellation of Lis Pendens-Remaining	3/18/2009 2:38 PM	37 KB
Certification of Vote - HOA	3/18/2009 2:39 PM	23 KB
Mortgage	3/18/2009 2:42 PM	274 KB
Promissory Note	3/18/2009 2:41 PM	153 KB
Quit Claim Deed - Common Areas	3/18/2009 2:41 PM	157 KB
Quit Claim Deed - From H and H	3/18/2009 2:42 PM	297 KB
Receipt - Five Star	3/18/2009 2:40 PM	79 KB
Receipt - H and H	3/18/2009 2:42 PM	25 KB
Release and Settlement Agreement	3/18/2009 2:37 PM	584 KB
Restrictions	3/18/2009 2:39 PM	435 KB
Revocation of Amendment 8	3/18/2009 2:39 PM	101 KB
Satisfaction of Lien	3/18/2009 2:40 PM	48 KB
Stipulation of Dismissal	3/18/2009 2:37 PM	76 KB
Withdrawal of Motion - Herlong	3/18/2009 2:38 PM	59 KB

COPY

Old Republic National Title Insurance Company

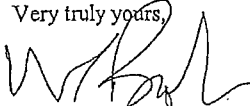
March 18, 2009
Page 3 of 3

For your information, the legal fees incurred by client does are shown on the legal bills included on the CD-ROM. The total amount of the legal fees and costs so far is:

Legal Fees	\$22,330.00
Costs	\$923.67
TOTAL	\$23,253.67

I look forward to hearing from you on this claim.

Very truly yours,



William E. Booth III

WEBIII/eje

C: Stan Herlong (w/o Enc.)
Thomas Herlong (w/o Enc.)

EXHIBIT "B" AFFIDAVIT OF WILLIAM E. BOOTH III

COPY

Commitment To Insure

ALTA Commitment - 1982



INFORMATION SHEET

The Title Insurance Commitment is a legal contract between you and the Company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy.

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT. YOU SHOULD READ THE COMMITMENT VERY CAREFULLY.

If you have any questions about the Commitment, contact _____

TABLE OF CONTENTS

	Page
AGREEMENT TO ISSUE POLICY	Back Cover
SCHEDULE A	Insert
1. Commitment Date	
2. Policies to be Issued, Amounts and Proposed Insureds	
3. Interest In the Land and Owner	
4. Description of the Land	
SCHEDULE B-I - REQUIREMENTS	Insert
SCHEDULE B-II - EXCEPTIONS	Insert
CONDITIONS	Back Cover



COPY

Commitment To Insure

ALTA Commitment Form - 1982

AGREEMENT TO ISSUE POLICY



We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A. If the Requirements shown in this Commitment have not been met within six (6) months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under this Commitment is limited by the following:

- The Provisions in Schedule A.
- The Requirements in Schedule B-I
- The Exceptions in Schedule B-II.
- The Conditions below.

This Commitment is not valid without SCHEDULE A and Sections I and II of SCHEDULE B.

CONDITIONS

1. Definitions. (a) "Mortgage" means mortgage, deed of trust or other security instrument.
(b) "Public Records" means title records that give constructive notice of matters affecting your title - according to the state statutes where your land is located.
 2. Later Defects. The Exceptions in Schedule B - Sections II may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attach between the Commitment Date and the date of which all of the Requirements (a) and (c) of Schedule B - Section I are met. We shall have no liability to you because of this amendment.
 3. Existing Defects. If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.
 4. Limitation Of Our Liability. Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:
Comply with the Requirements in Schedule B - Section I
or
Eliminate with our written consent any Exceptions shown in Schedule B - Section II.
We shall not be liable for more than the Policy Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.
 5. Claims Must Be Based On This Commitment. Any claim, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms.
- IN WITNESS WHEREOF, Old Republic National Title Insurance Company has caused its corporate name and seal to be hereunto affixed by its duly authorized officers on the date shown in Schedule A, to be valid when countersigned by a validating officer or other authorized signatory.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111

Authorized Signatory

ORT Form 3538
ALTA Commitment Form - 1982

By

President

Attest

Secretary

COPY

Schedule A

COMMITMENT

Application Number: H&HOFJOHNSTON070207

1. Commitment Date: June 28, 2007 at 09:00 AM

2. Policy (or Policies) to be Issued:

(a) ALTA OWNER'S POLICY 10-17-92

Proposed Insured:

(b) ALTA LOAN POLICY 10-17-92

Policy Amount

Proposed Insured:

(c) ALTA RESIDENTIAL OWNER'S POLICY (1987)

Policy Amount \$ 845,000.00

Proposed Insured:

H & H of Johnston, LLC

(d)

Policy Amount

Proposed Insured:

3. Fee Simple Interest in the land described in this Commitment is owned, at the Commitment Date, by:
Five Star Development, LLC

4. The land referred to in this Commitment is described as follows:

SEE SCHEDULE C ATTACHED HERETO

Schedule B --- Section I
COMMITMENT

REQUIREMENTS

The following requirements must be met:

1. Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
2. Pay us the premiums, fees and charges for the policy.
3. Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
4. You must tell us in writing the name of anyone not referred to in this Commitment who will get an interest in the land or who will make a loan on the land. We may then make additional requirements and exceptions.
5. **LENDER & CLOSING ATTORNEY** - Execution by Lender and by Closing Attorney of SCID 3601 Title Insurance Financial Interest Disclosure Form. (This can be either a separate 3601 for this file, or a blanket 3601 signed by the lender for closing attorney.)
6. **BORROWER & CLOSING ATTORNEY** - Execution by borrower and by Closing Attorney of "Combined SCID 3601/2423 Title Insurance Financial Interest Disclosure Form and Notice to Borrower."
7. Borrower - Execution and recordation of mortgage from borrower shown herein, to lender shown herein, in the amount shown herein.
8. Borrower - Execution of Ort 101-SC "Owner's Affidavit" satisfactory to Old Republic National Title Insurance Company.
9. **SELLER** - Execution of ORT 111-SC "Seller's Affidavit (ReResidency) South Carolina Withholding Tax - S.C. Code Section 12-8-580 et seq", satisfactory to the Company of the withholding and payment of the proper amount of taxes.
10. **SELLER** - Execution, Delivery and Recordation of fee simple general warranty deed conveying the property described herein, from the owner as shown herein, to the borrower as shown herein.
11. Borrower - Execution of Ort Form 107-SC "Owner's Affidavit as to Matters of Survey" satisfactory to Old Republic National Title Insurance Company.
12. Seller - Execution of Ort 102-SC "Owner's Affidavit" satisfactory to Old Republic National Title Insurance Company.
13. Obtain and record satisfaction of mortgage from Five Star Development to The Saluda County Bank as recorded in said ROD/Clerk's office on February 18, 1998 in mortgage book 4523 at page 284 securing an indebtedness of \$1,640,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
14. Obtain and record satisfaction of mortgage from Five Star Development Corp. to CapitalBank as recorded in said ROD/Clerk's office on April 4, 2001 in mortgage book 6281 at page 1 securing an indebtedness of \$1,330,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
15. Obtain and record satisfaction of mortgage from Five Star Development to CapitalBank as recorded in said

Schedule B --- Section I
Commitment - Continued

ROD/Clerk's office on April 4, 2001 in mortgage book 6284 at page 6 securing an indebtedness of \$16,000,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.

16. Obtain and record satisfaction of mortgage from Five Star Development to CapitalBank as recorded in said ROD/Clerk's office on April 4, 2001 in mortgage book 6284 at page 16 securing an indebtedness of \$1,330,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
17. Obtain and record satisfaction of mortgage from Five Star Development to CapitalBank as recorded in said ROD/Clerk's office on April 4, 2001 in mortgage book 6284 at page 11 securing an indebtedness of \$1,600,000.00, and any other amounts payable under the terms thereof; together with any assignments thereof.
18. Obtain and record satisfaction of mortgage from Five Star Development to D. C. Herlong as recorded in said ROD/Clerk's office on August 9, 2005 in mortgage book 10418 at page 264 securing an indebtedness of \$856,626.47, and any other amounts payable under the terms thereof; together with any assignments thereof.
19. Payment of 2006 property taxes.

Schedule B --- Section II
COMMITMENT

EXCEPTIONS

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

Any change in title occurring subsequent to the effective date of this Commitment and prior to the date of issuance of the title policy.

1. Taxes for the year 2007 not yet due and payable, and all subsequent years.
2. Rights or claims of parties in possession not shown of record. (This exception will be deleted in the final policy upon submission of satisfactory Ort-101 or Ort-102 "Owner's Affidavit".)
3. Mechanics', contractors' and/or materialmen's liens, and lien claims, if any, where no notice thereof appears of record. (This exception will be deleted in the final policy upon receipt of a satisfactory Ort 101-SC or Ort 102-SC "Owners Affidavit".)
4. Facts which would be disclosed by a comprehensive survey of the premises herein described.
5. The number of acres contained in the legal description is neither guaranteed nor insured.
6. Rights reserved by South Carolina Electric and Gas Company for easements, and rights to flood, affecting the area of the property hereby insured which borders on Lake Murray.
7. Riparian rights are neither guaranteed nor insured.
8. This policy does not insure title to any portion of the premises lying below the ordinary high water mark of Lake Murray or any rights in the adjoining water.
9. Easements and setback lines as shown on the subdivision plat of Stoney Pointe at Bear Creek, Sections 1 and 2 by J. Henry Walker, III.
10. Corrective deed to Town of Chapin for water and sewer system as recorded on February 14, 2003 in Book 7919 at page 189.
11. Water lines as recorded on January 27, 2003 in Book 7858 at page 172.

Schedule B --- Section II
COMMITMENT - Continued

12. Sewer agreement as recorded on February 22, 1999 in Book 5112 at page 349.
13. Easement as recorded on December 1, 1998 in Book 4978 at page 314.
14. Water lines as recorded on January 27, 2003 in Book 7858 at page 172.
15. Private Road Maintenance Agreement as recorded on December 18, 2002 in Book 7759 at page 162.
16. Declaration of covenant as recorded on June 23, 1998 in Book 4726 at page 206.
17. Sewer agreement as recorded on April 3, 2002 in Book 7113 at page 287.
18. Right of way as recorded on August 20, 1998 in Book 4820 at page 222.
19. Covenants, conditions and restrictions as recorded in said ROD/Clerk's office in deed book 4726 at page 206, 5889 at page 9, Book 5823 at page 127, Book 7769 at page 167, Book 7775 at page 249, Book 7919 at page 181, Book 7919 at page 184, Book 8317 at page 255, Book 8373 at page 104, Book 8693 at page 21, Deed Book 9164 at page 26, Deed Book 10544 at page 316, .
20. Lift station, sewer systems and easements as recorded in Book 7790 at page 91.
21. Easement as recorded on December 30, 1998 in Book 5029 at page 228.
22. Water lines for Stoney Pointe as recorded on June 23, 1999 in Book 5313 at page 227.
23. Declaration of covenant as recorded on June 23, 1999 in Book 5313 at page 275.
24. Sewer agreement as recorded on February 22, 1999 in Book 5112 at page 349.
25. Common areas conveyed to Stoney Pointe at Bear Creek homeowners association as recorded in Deed Book 10965 at page 333.
26. Unrecorded contract dated April 30, 2002 between Five Star Development and P & K Construction for the sale of 43 lots, as modified.
27. Deed for water lines as recorded in Deed Book 7858 at page 152.

2007-07-06 11:19:28:883
REC FEE: \$11.00 ST FEE: \$1.30 Exempt
CD FEE: \$0.50 Exempt Pages: 5
Lexington County R.O.D. Debra H. Gunter
DEED 862Pg 12144:257

COPY

Affidavit

STATE OF SOUTH CAROLINA) GENERAL WARRANTY
COUNTY OF LEXINGTON) DEED

KNOW ALL MEN BY THESE PRESENTS, THAT, FIVE STAR DEVELOPMENT, LLC, HEREINAFTER REFERRED TO AS GRANTOR(S), in the State aforesaid, for and in consideration of the Sum of FIVE AND NO/100 DOLLARS (\$5.00), paid to Grantor by H & H OF JOHNSTON, LLC, hereinafter referred to as the Grantee(s), in the State aforesaid, the receipt of which is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto H & H OF JOHNSTON, LLC, its successors and/or assigns, the FOLLOWING PROPERTY:

All those pieces, parcels or lots of land situate, lying and being in the County of Lexington, State of South Carolina, being shown and delineated as follows: PHASE I: LOT 43 Section 1 (TMS# 00134-01-040); LOT 40 - Section 1 (TMS# 001134-01-037). These lots are further depicted on a plat prepared for Five Star Development, LLC of Stoney Pointe at Bear Creek - Sections ONE AND TWO of PHASE I. Plat was prepared on July 6, 1998 and last revised on August 5, 1998 and recorded in the Lexington County Register of Deeds on August 13, 1998 in Slide 406 at page 1. Lots having such size, shape, location, metes and bounds as will more fully appear by reference to said plat.

This property being a portion of the property conveyed to Five Star Development Corporation, LLC (correct name Five Star Development, LLC.) by deed of D. C. Herlong and recorded on June 27, 1997 in the Lexington County Register of Deeds in Deed Book 4223 at page 19.

A Quit Claim deed was executed by Mr. D. C. Herlong to explain the incorrect name and to deed the property directly to Five Star Development, LLC. This deed was recorded in the Lexington County ROD Office on July 27, 2004 in Book 9443 at page 326.

ALSO: All those certain pieces, parcels or lots of land situate, lying and being in the County of Lexington, State of South Carolina being shown and delineated as follows: STONEY POINTE AT BEAR CREEK, PHASE II:

LOT NO.	TMS#
1	001134-01-068
2	001134-01-069
3	001134-01-070
5	001134-01-072
6	001134-01-073
7	001134-01-074
24	001134-01-092
25	001134-01-093
26	001134-01-094
27	001134-01-095
28	001134-01-096
29	001134-01-097
30	001134-01-098
31	001134-01-099
32	001134-01-100
33	001134-01-101
34	001134-01-102
35	001134-02-001
36	001134-02-002
37	001134-02-003
38	001134-02-004
39	001134-02-005
43	001134-02-009
59	001134-02-018
Future Development	001100-06-087

These lots are further depicted on a plat entitled STONEY POINTE AT BEAR CREEK, PHASE II - SHEET I OF II, prepared for Five Star Development, LLC by J. Henry Walker, III, PLS 14532, last revised on November 11, 2004 and recorded in the Lexington County Register of Deeds on December 2, 2004 in Book 9745 at page 224.

Plat previously recorded at Slide 702 at page 9.

This being a portion of the property conveyed to Five Star Development Corporation, LLC (correct name Five Star Development, LLC,) by deed of D. C. Herlong as recorded on June 27, 1997 in Book 4223 at page 19.

A Quit Claim Deed was executed by Mr. D. C. Herlong to explain the incorrect name and to deed the property directly to **Five Star Development, LLC**. This deed was recorded in the Lexington County ROD Office on July 27, 2004 in Book 9443 at page 326.

ALSO: All that piece, parcel or tract of land, situate, lying and being in the County of Lexington, State of South Carolina containing approximately 11.446 Acres, more or less, as shown on a plat of Stoney Pointe at Bear Creek, described as Phase III-A, but referred to as **Phase IV**. This plat was prepared by J. Henry Walker, III, PLS 148632, dated March 6, 2001 and recorded in the Lexington County RMC Office on April 4, 2001 – Slide 609 at page 3.

This is the same property conveyed to Five Star Development Corporation, LLC, (correct name Five Star Development, LLC,) by deed of D. C. Herlong recorded in the Lexington County ROD Office in Book 6283 at page 346 on April 4, 2001.

A Quit Claim Deed was executed by Mr. D. C. Herlong to explain the incorrect name and to deed the property directly to **Five Star Development, LLC**. This deed was recorded in the Lexington County ROD Office on July 27, 2004 in Book 9443 at page 326.

TMS# 001100-06-091

LESS: All that certain piece, parcel or lot of land, situate, lying and being in the County of Lexington, State of South Carolina containing 0.055 Acre adjoining Lot 44 – Stoney Point at Bear Creek Phase II. Property is further described on a Plat for Five Star Development, LLC dated November 2, 2006 and filed in the Lexington County Register of Deeds in Record Book 11925 at page 56.

This is the identical property conveyed to Nancy L. Cervone by deed of Five Star Development Corporation a/k/a Five Star Development, LLC, recorded on April 17, 2007 in the Lexington County ROD Office in Book 11925 at page 57.

Part of 1100-06-091 to be merged into 1134-01-132.

GRANTEE ADDRESS: 102 S. WINDWOOD ACRES Rd, BATESBURG, SC
29006

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

TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee(s), its successors and/or assigns forever.

And I do bind, Five Star Development, LLC, its Successors and/or Assigns to WARRANT AND FOREVER DEFEND all and singular the said premises unto H & H of Johnston, LLC, its Successors and/or Assigns against Five Star Development LLC, its Successors and/or Assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

Signed, Sealed and Delivered
In the Presence of

FIVE STAR DEVELOPMENT,
LLC

Harry P. Pugh

Ralph J. McCleendon
RALPH J. MCCLENDON

Donnette Martin

David Mikell
DAVID MIKELL

Richard B. Mikell
RICHARD B. MIKELL

John S. Herlong
JOHN S. HERLONG

EXHIBIT "C"
AFFIDAVIT OF WILLIAM E. BOOTH III



**AGREEMENT FOR APPOINTMENT OF POLICY ISSUING AGENT
FOR OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY**

THIS AGREEMENT, made and entered into this 16TH day of November, 1994, by and between Old Republic National Title Insurance Company, a Minnesota corporation, hereinafter referred to as "Insurer", and HENRY P. BUFKIN, of the City of PROSPERITY, State of South Carolina, hereinafter referred to as "Agent", and the Law Firm of HENRY P. BUFKIN, hereinafter referred to as "Approved Attorneys".

IN CONSIDERATION of the mutual benefits accruing, and subject to the terms and conditions hereof, the parties hereto agree as follows:

I. APPOINTMENT OF AGENT

Insurer appoints Agent a policy issuing agent for Insurer for the purpose of signing, countersigning and issuing commitments, binders, title reports, certificates, guarantees, title insurance policies, endorsements and other agreements under which Insurer assumes liability for the condition of title (hereinafter collectively referred to as "title insurance forms"), covering real estate located in all counties in the State of South Carolina:

II. LIMITATIONS ON AGENT'S AUTHORITY

Agent shall not, without written approval from Insurer:

1. Commit Insurer to a risk in excess of \$500,000.00;
2. Commit Insurer to a risk which it has, by its rules, determined to be an extraordinary or extra hazardous risk, or which Agent knows to be based upon a disputed title;
3. Commit Insurer to a risk which, by its rules, instructions or manuals, requires prior approval by Insurer;
4. Use title insurance forms other than those supplied by Insurer or alter any title insurance forms supplied by Insurer;
5. Administer or adjust any claim of loss for which Insurer may become liable;
6. Accept service of legal process on behalf of Insurer, unless required by state law, in which event Agent shall immediately forward to Insurer all documents served;
7. Incur bills or debts chargeable to Insurer;
8. Use the names "Old Republic National Title Insurance Company", "Old Republic Title" or any derivative thereof in any of Agent's advertising or as a part of Agent's name and shall cease any and all use of such names upon termination of this agreement; or
9. Issue title insurance forms covering any title in which Agent, its officers, directors, employees, partner or the attorney furnishing an opinion of title, have any interest, direct or indirect.

III. DUTIES OF AGENT

Agent shall:

1. Receive and process applications for title insurance and issue policies in a timely, prudent and ethical manner with due regard to recognized title insurance underwriting practices and in

AGREEMENT FOR POLICY ISSUING AGENT
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- accordance with the rules and instructions of Insurer, as well as in conformity with state and local laws and practice;
2. Maintain and preserve, in a separate file on each order for title Insurance placed with Agent, a copy of the title Insurance forms issued in that transaction, and all supporting documents on which the determination of Insurability is made, including, but not limited to, affidavits, lien waivers, survey plats, searches, examinations and work sheets;
 3. Maintain an accurate register of title insurance forms;
 4. Assume full responsibility for the collection of all premiums, fees and charges attributable to the issuance of title Insurance forms hereunder;
 5. Keep safely in an account separate from Agent's operating accounts all funds received by Agent from any source in connection with transactions which the Insurer's policy is involved, disburse said funds only for the purposes for which the same were entrusted, and reconcile all such accounts not less frequently than monthly;
 6. Comply with all statutes and governmental rules and regulations relating to the licensing and operation of Agent's business; and
 7. Notify Insurer immediately if Agent, for any reason, is unable to carry on the business of issuing Insurer's title insurance forms, or if there is a change in the management or ownership of Agent's business.

IV. DUTIES OF INSURER

Insurer shall:

1. Furnish Agent with title insurance forms and forms for the accounting of same;
2. Furnish Agent with rules and instructions regarding procedures for issuing title insurance forms;
3. Determine all risk assumption questions submitted by Agent; and
4. Comply with all statutes and governmental rules and regulations relating to the licensing, taxation and the operation of Insurer's business.

V. TITLE INSURANCE RATES

Agent shall be supplied with Insurer's title insurance rate schedules and shall quote, charge and collect said rates. Insurer retains the exclusive right to revise title insurance rates by reducing or increasing any specific rate, a category of rates or all rates, on a temporary or permanent basis, or by adding or deleting any rate or rates. Agent will be notified of any such revision.

VI. AGENT'S COMMISSIONS AND REPORTING SCHEDULE

Agent shall remit to insurer 40% percent of the title insurance rates specified in section V above as the underwriting fee for Insurer's assumption of the risk except that Insurer may require additional premium on commercial real estate transactions where the amount of insurance is in excess of \$5,000,000.00. Agent shall not be entitled to retain any portion of a premium charged for extra hazardous risks as defined by Insurer. In cases where, for any reason, reinsurance or coinsurance is purchased by Insurer, for purpose of determining Agent's retention, the cost of such reinsurance or coinsurance shall be deducted from the title insurance rates specified in section V above prior to the division of said rate between Agent and Insurer. The amount deducted to cover the cost of reinsurance or coinsurance shall be remitted to Insurer.

AGREEMENT FOR POLICY ISSUING AGENT
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On a monthly basis, Agent agrees to report to Insurer, using a policy register in a form approved by Insurer, all title insurance policies, endorsements and any other title insurance forms that Insurer may require to be reported, which have been issued since the previous report, and attach to the report a copy of each title insurance form covered by the report. Agent further agrees to remit to Insurer, by attaching to the above report, all amounts due Insurer under this agreement. The report and remittance will be due the Insurer on or before the 10th day of the second month following the closing date wherein the title insurance liability was created. All title insurance forms submitted to Insurer as required herein shall become the property of Insurer.

All amounts due Insurer pursuant to this agreement shall, upon receipt by Agent, be considered the property of Insurer and shall be held in trust by Agent for the benefit of Insurer in a bank account separate and apart from Agent's personal and operating accounts until such time said amounts are paid over to Insurer.

VII. RESPONSIBILITY FOR LOSS

As between Insurer and Agent, responsibility for loss (which term shall include payments to insured and third party claimants, attorney's fees and all other costs incurred in investigation of claims, negotiation of settlements and litigation) arising from the title insurance business conducted pursuant to this agreement, shall be as follows:

1. Agent is responsible for the following losses:
 - A. Defalcation, fraud or dishonesty on the part of Agent or any of its officers, directors, employees or partners, associates or members of Agent;
 - B. Intentional or negligent failure of Agent to comply with the terms and requirements of this agreement or of the rules, regulations or instructions given to Agent by Insurer;
 - C. Intentional omission from commitments or policies of reference to encumbrances or title defects disclosed by the application, by the Agent's search and examination of title, by an approved examiner's report, or certification of title, or which were otherwise known to Agent at the time of issuance of Insurance;
 - D. The improper closing or attempted closing by the Agent including but not limited to (1) loss or misapplication of customer funds, documents or other things of value entrusted Agent in any custodial or fiduciary capacity resulting in loss to Insurer, and/or (2) failure to disburse properly or close in accordance with escrow or closing instructions, and/or (3) misappropriation of escrow or closing funds by Agent, its officers or employees; and
 - E. Negligent errors or omissions in the search, or examination of title, in the preparation of title insurance forms or in other procedures involved in processing an application for title insurance.
2. Insurer is responsible for all other losses resulting from claims covered under Insurer's title insurance forms issued by Agent.
3. In the process of responding to claims of loss, Insurer shall have the exclusive right to adjust, pay or compromise all claims and the sole discretion to commence, defend against or settle legal proceedings in connection therewith.

AGREEMENT FOR POLICY ISSUING AGENT
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VIII. PREPARATION OF POLICIES AND COMMITMENTS

Agent will show as exceptions to coverage all matters such as taxes, encumbrances, liens, restrictions, easements and any other matters which constitute a defect or question as to the validity and/or marketability of the title being insured, of which the Agent has knowledge, including those matters disclosed by a proper search of the records, an opinion of title and/or an inspection of the insured land.

IX. CLAIMS

If a claim is made to Agent under any of Insurer's title insurance forms which Agent has issued or if Agent becomes aware of any circumstances which may give rise to a claim under any such exposure, Agent agrees to immediately notify Insurer at its office at 400 Second Avenue South, Minneapolis, Minnesota 55401 (Attn: Claims Department). Agent shall lend all reasonable assistance to Insurer in investigating, adjusting or contesting said claim. Unless expressly authorized by Insurer, Agent shall not administer any claim, nor make any attempt to investigate, accept or deny responsibility, settle or refer the claim to outside counsel. Agent shall make any file documents necessary to administer such claim available to Insurer.

X. INSURANCE

Agent shall immediately obtain and keep in full force and effect during the term of this contract a liability insurance policy for errors and omissions in an amount of at least \$500,000.00, together with a "Title Insurance Agent's Endorsement", issued by a company acceptable to Insurer and furnish to Insurer a copy of the policy and a copy of proof of payment of the current premium. This liability policy may have a deductible of no more than \$5,000 per loss.

Insurer may require Agent to provide satisfactory evidence of compliance with this provision.

XI. AUDITS AND CREDIT INVESTIGATIONS

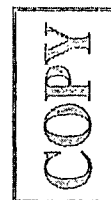
Agent hereby agrees and authorizes Insurer to conduct, at Insurer's option:

1. Periodic audits of Agent's policy inventory, title insurance files and any material, files, records or accounts, including financial and business records, relating to the issuance of title insurance forms. In addition, although it is agreed that any escrow or settlement business responsibility is strictly that of Agent, it is recognized that because Insurer issues Insured Closing Services Letters which cause Insurer to indemnify third parties against loss resulting from Agent's errors, omissions or misconduct (and for which Agent acknowledges total liability), Agent does hereby grant Insurer the right at any reasonable time or times to audit all financial and business records relating to any escrow closing or settlement functions conducted by Agent.
2. Periodic credit reports of agent, as well as investigations relative to the business, professional and personal reputation, character, personal characteristics and mode of living of agent. These matters may include matters in the nature of an investigative consumer report as defined by the Federal Fair Credit Reporting Act.

XII. APPROVED ATTORNEY

1. Approved Attorney agrees that every certificate of title issued shall accurately identify all parties with an interest in the real estate and shall set forth all objections to said title which the examination discloses. Approved Attorney agrees not to certify any title if there is, to Approved Attorney's knowledge, a dispute or difference of opinion among attorneys of the local bar or among other title insurers operating in the area wherein the particular property is located, concerning the validity and/or marketability of said title or if there is any litigation threatened or pending.
2. Approved Attorney agrees that if prior to the closing or settlement or issuance of the title policy, there shall come to the knowledge of the Approved Attorney, any matter adversely affecting the title to be insured or which would change the facts set forth in his/her application for insurance, Approved Attorney will promptly notify the Company.
3. Approved Attorney agrees not to disburse funds nor any part thereof entrusted to his/her care unless he/she has certified that the title to the premises under examination is a good, marketable and indefeasible fee simple estate in the proposed insured; and in the instance of security deeds, unless he/she has certified that the instrument will constitute a valid and subsisting lien on the interest covered thereby in the intended degree of priority. Approved Attorney will not hold any funds in escrow pending later disposition of any objections or liens without first obtaining the approval of the Company.
4. Approved Attorney agrees to maintain lawyers professional liability insurance for so long as any liability under this Agreement exists, as set out in Section X herein..
5. The relationship created by this Agreement does not extend to any escrow, closing or settlement business (hereinafter referred to as "Escrow Business") conducted by Approved Attorney, however, the Company may from time to time, as an accommodation to Approved Attorney, issue an Insured Closing Letter to a prospective insured or other party to a real estate transaction, the effect of which is to bind the Company to indemnify the addressee thereof, against loss resulting from Approved Attorney's errors, omissions or misconduct in acting as an escrow, closing or settlement agent for the parties to the transaction, all in accordance with the terms and conditions in such letter. In the event the Company incurs expenses or makes payment of a claim arising out of the conduct of any of Approved Attorney's Escrow Business, either as a result of entry of judgment against the Company or as a result of compromise and settlement, Approved Attorney shall promptly reimburse the Company of the full amount of the Company's expenditures, including attorney fees and costs of litigation or settlement negotiations. The Company shall have sole and exclusive discretion to

Compromise and settle any such claim asserted against the Company without relieving Approved Attorney of its obligation to reimburse the Company. Approved Attorney agrees to assist and cooperate with the Company to the fullest extent to obtain a satisfactory disposition of any such claim. The parties hereto agree that the manner of operation of any escrow business by Approved Attorney is a legitimate concern of the Company because of the issuance by the Company of the Insured Closing Letters. Approved Attorney, therefore, agrees that although the Approved Attorney's escrow business is outside the scope of the relationship created by this Agreement, the Company shall be permitted at any reasonable time or times to audit all financial business records relating to any escrow, closing or settlement business conducted by Approved Attorney.



The Approved Attorney shall take all necessary steps to give notice to his/her clients of this relationship and receive permission from his/her clients for the audit of the financial business records of the Approved Attorney.

Approved Attorney also agrees that while any liability remains outstanding on policy risks underwritten by the Company or under Insured Closing Letters, it shall have the right, through such representatives as it may designate, to inspect at the office of the Attorney any and all searches, abstracts, certificates, correspondence and other records relating to the Approved Attorney's certificate of title or Approved Attorney's escrow business for which an Insured Closing Letter was issued and such right shall continue to be a right in rem and shall follow and attach to said documents whenever changes occur in their ownership or possession.

XIII. TERMINATION OF AGREEMENT

1. Either party hereto may cancel this agreement by the giving of thirty (30) days written notice of cancellation by registered or certified mail to the other party. Such written notice to Insurer shall be addressed to Insurer at PO Box 11747, Columbia, SC 29211. Such written notice to Agent shall be sent to the last known business address of the Agent.
2. In the event of a material breach of this agreement by either party hereto, the other party may terminate this agreement effective immediately by giving notice to the party committing such breach. Material breach on the part of Agent includes, but is not limited to, material deviation from any directive promulgated by Insurer and furnished to Agent, failure to pay promptly when due amounts due Insurer, failure to report promptly when due title insurance forms issued or a shortage in Agent's accounts of funds entrusted to Agent by Insurer or others.
3. If during the term of this agreement, because of death or disability, or for any other reason, Agent is unable to carry on the business of issuing Insurer's title insurance forms, or if there is a substantial change in the management or ownership of Agent's business, Insurer may cancel this agreement by giving thirty (30) days written notice to Agent.
4. In the event of termination, Agent shall at once furnish to Insurer a complete accounting of all remittances due hereunder and of all commitments, policies and endorsements furnished by Insurer to Agent and deliver to Insurer all forms and all files kept pursuant to Section III, Paragraph 2 above relating to commitments and policies of Insured. Upon termination, Insurer shall have the right of unrestricted access to all files kept pursuant to Section III, paragraph 2.

XIV. VALIDATING OFFICERS

See Exhibit "A" attached hereto.

XV. WAIVER AND FUTURE COMPLIANCE

A waiver of any provision of this agreement by Insurer or Agent shall not be construed to be a waiver of compliance with such provision in the future.

AGREEMENT FOR POLICY ISSUING AGENT
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XVI. ASSIGNMENT

This agreement is not assignable, except upon written consent of the parties hereto. This agreement, however, is binding on and inures to the benefit of any corporate successor of Insurer.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed on the date and year above written.

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

Laura M. Hulst
By: LAURA M. HULST
Its: VICE PRESIDENT AND STATE MANAGER

LAW FIRM NAME: HENRY P. BUFKIN

By: Henry P. Bufkin
Its: Owner

AGENCY NAME: HENRY P. BUFKIN

By: Henry P. Bufkin
Its: Owner

AGENCY ADDRESS:

HENRY P. BUFKIN
121 N. MAIN STREET
PO DRAWER 419
PROSPERITY, SOUTH CAROLINA 29127

PHONE NUMBER: (803) 364-2233
FAX NUMBER: (803) 364-4445

AGREEMENT FOR POLICY ISSUING AGENT
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EXHIBIT "A" TO AGREEMENT FOR APPOINTMENT OF POLICY ISSUING AGENT

Set forth below are the Validating Officers of Agent #A-39125, HENRY P. BUFKIN

HENRY P. BUFKIN

AGREEMENT FOR POLICY ISSUING AGENT
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A-39125

AMENDMENT TO AGENCY AGREEMENT

The agency agreement by and between Old Republic National Title Insurance Company and Henry P. Bufkin and the Law Firm of Henry P. Bufkin dated November 16, 1994 is amended as follows:

Section II. (1) Limitations on agent's authority to read:

(1) Commit insurer to a risk in excess of \$1,000,000.00

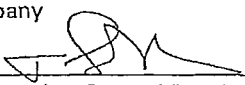
Section X. Insurance

The first sentence is hereby changed to read:

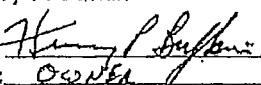
Approved Attorneys' shall immediately obtain and keep in full force and effect during the term of this contract a liability insurance policy for errors and omissions in an amount of at least \$1,000,000.00, together with a "Title Insurance Agent's Endorsement", issued by a Company acceptable to insurer and furnish to insurer a copy of the policy and a copy proof of payment of the current premium.

This change is effective March 8, 2000.

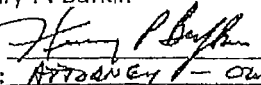
Old Republic National Title Insurance
Company

BY: 
T. Lowndes Pope, Vice President and
State Manager

Agency Name
Henry P. Bufkin

BY: 
ITS: OWNER

Law Firm Name
Henry P. Bufkin

BY: 
ITS: ATTORNEY - OWNER

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EXHIBIT "D"
AFFIDAVIT OF WILLIAM E. BOOTH III

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
ORT COMBINED 3601 AND 2423
"SCID FINANCIAL INTEREST DISCLOSURE" (3601)
AND "NOTICE TO BORROWER" (2423)

"ATTORNEY-AGENT": Under South Carolina Law, the "Attorney-Agent" is to complete sections 1 and 2 of this form; sign below in Item 1 as "Agent & Producer/Associate"; and then at, or prior to, closing have the borrower read and complete this form as set out below. This must be done before the lender's Loan Title Insurance Policy can be issued. (This form is to be used even in cases of re-finance by the same borrower.)

"BORROWER/BUYER": Under South Carolina law, the following "Title Insurance Financial Interest Disclosure Form SCID 3601" (Item 1) and "Notice to Borrower" (Item 2) is given to you. After reading this "Disclosure" and "Notice", fill out the "Application for Title Insurance" on Page 4 to indicate whether or not you want to order an Owner's Title Insurance Policy to protect you, and then sign on Page 4 to acknowledge receipt of this "Title Insurance Financial Disclosure" and "Notice to Borrower".

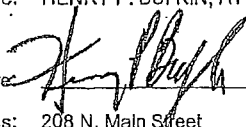
1. TITLE INSURANCE FINANCIAL INTEREST DISCLOSURE FORM
(SCID 3601)

In accordance with S.C. Code Section 38-75-960(a) (1976), as amended, the undersigned producer of title business or associate of such producer hereby advises that it has a financial interest in the following title insurer(s) or title agent(s)

NAME OF INSURER OR AGENT	ADDRESS	NATURE OF INTEREST
BUFKIN LAW FIRM		Ownership

Agent & Producer/Associate's

Name: HENRY P. BUFKIN, ATTORNEY

Signature: 

Address: 208 N. Main Street
Prosperity, SC 29127

Closing Date: July 5, 2007

ACKNOWLEDGMENT

The applicant (as set out herein), is a buyer, seller or lender who has been referred by the above-named producer of title business or associate of such producer to one or more of the title insurers or title agents identified hereinabove. The undersigned (by signing on page 4) expressly recognizes and acknowledges the financial interest of such producer or associate as disclosed hereinabove.

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OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY

ORT 2423-SC "NOTICE TO BORROWER"

1. In accordance with the requirements of Rule 69-18, Code of Laws of South Carolina, 1976, (as amended), are hereby notified:

- (A) Your mortgage lender is requiring issuance of a Loan Policy in the amount of \$. The premium and commitment fee (if applicable) for the Lender's Loan Policy is \$35.00. The Lender's Policy WILL NOT afford title Insurance protection to you in the event of a defect in the title to the real estate which you are acquiring. The Lender's Loan Policy protects ONLY the lender.
- (B) You have the RIGHT and OPPORTUNITY to purchase, simultaneously with the Lender's Loan Policy, AN OWNER'S POLICY DESIGNED TO INSURE YOU for the amount of your purchase price (or for the amount of your purchase price plus the cost of any improvements which you anticipate making). An Owner's Policy will protect you against title defects which are not set out in your Owner's Policy. A title defect can be any legal right held by someone other than the owner to claim property or to make demands on the owner of that property. There are many causes of defects that no examination can disclose. That is because they have never been recorded and thus do not appear in the title search.

An Owner's Policy protects you against hidden risks such as:

FRAUD - False claims or ownership, forged deeds, wills, signatures, conveyances, Instruments, false representations, false records of all sorts, illegal acts of trustees, guardians, administrators and attorneys.

HUMAN ERROR - Errors in copying, indexing, recording; errors by administrators, executors, trustees, guardians, and attorneys; and destruction of records.

IMPROPER DEEDS AND WILLS - Deeds by persons of unsound mind, minors; deeds delivered after death or without the grantor's consent; Invalid, suppressed, erroneous wills; missing heirs; unsettled estates; etc.

LIENS AND OTHER RIGHTS - Liens for unpaid estate, inheritance, income, property and gift taxes; homestead rights, community property rights; irregular court proceedings, court opinion reversals, lack of court jurisdiction; defective foreclosures; etc.

WHAT WILL AN OWNER'S POLICY COST? If you order an Owner's Policy with the Lender's Loan Policy (by marking item A on the next page), Old Republic National Title Insurance Company will issue an Owner's Policy to you (as set out in this "Notice to Borrower/Purchaser") in the full insurable value of the premises, which we show to be \$845,000.00, for an additional premium of \$1,527.50. This is a one-time premium. (This amount is in addition to the amount shown above for the Lender's Commitment and/or Loan Policy.) You do not have to pay yearly renewals.

(Note: Some title companies will issue an Owner's Policy in the same amount as the Lender's Loan Policy. Old Republic Title does not do this since this practice does not protect your equity in the property.)

WHAT EXCEPTIONS WILL BE IN THE OWNER'S POLICY? If you order an Owner's Policy, the following exceptions and exclusions will be on your Owner's Policy: (1) Those requirements and exceptions shown on the commitment, and/or policy issued to the lender that have not been disposed of to the satisfaction of Old Republic National Title Insurance Company; (2) The mortgage itself; (3) The printed "Exclusions from Coverage" in the Owner's Policy form; (4) unfilled Mechanics' and Materialmen's Liens if the period for filing such liens has not expired; (5) Questions of Survey; and (6) Rights and claims of parties in possession.

NOTE: ANY AFFIRMATIVE INSURANCE GIVEN IN THE LENDER'S LOAN POLICY WILL NOT BE INCLUDED IN THE OWNER'S POLICY.

The Owner's Policy will not be effective until its issuance after: (1) the requirements contained in the commitment issued to the lender have been met; (2) payment has been made for the premium for the

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Lender's Loan Policy; and (3) the additional premium for the owner's Insurance as set out above has been made.

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Johnston

- (C) You have the right to choose the title insurer notwithstanding the recommendations of any agent, representative, lender or attorney.
- (D) For services rendered to the underwriter by its authorized agent (by way of certification of title and/or execution of commitments, policies, and other instruments on behalf of the underwriter), the underwriter will compensate agent in an amount equal to approximately sixty percent of the premium for title insurance policies.
- (E) I acknowledge and have been given notice that Old Republic National Title Insurance Company will write a title insurance policy (or policies) as a part of this transaction. In so doing, Old Republic National Title Insurance Company will take on certain obligations regarding the disbursements of the proceeds of this closing. I hereby consent to an audit by Old Republic National Title Insurance Company of the closing attorney's trust account records and closing files that relate to my closing, and waive any claim of attorney client privilege of confidentiality which I may have thereto regarding said audit.

3. APPLICATION FOR TITLE INSURANCE

TO: OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY:

Pursuant to the above Notice to Borrower/Purchaser:

- A. ☒ I DO WANT an Owner's Title Insurance Policy (simultaneously with the Lender's Loan Policy) to protect me as set out above.
- B. ☐ I DO NOT WANT an Owner's Title Insurance Policy (simultaneously with the Lender's Loan Policy) to protect me, as set out above.

REMINDER: In the event you mark Item B above, stating that you DO NOT WANT an Owner's Policy, it is understood and agreed that Old Republic National Title Insurance Company shall have no responsibility to the undersigned borrower/purchaser for status of title to the real estate being acquired or for any loss by reason of complete or partial failure of title.

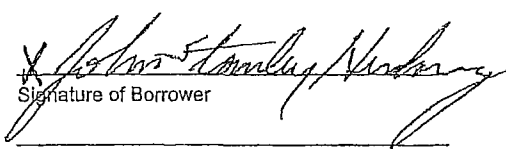
By my/our signature(s) below, I/we (am/are) acknowledging receipt of the above "Notice to Borrower/Purchaser", and have indicated above whether or not I/we want(s) to purchase Owner's Title Insurance, all as set out above.

WITNESS the hand(s) and seal(s) of the undersigned

ON THIS 5th day of July, 2007

Witness

Witness



Signature of Borrower

Signature of Borrower

SWORN TO BEFORE ME ON THIS 5th day of July, 2007

(L.S.)
, Notary Public of South Carolina
My Commission Expires:

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-40-7330

SUPPLEMENTAL
AFFIDAVIT OF WILLIAM E. BOOTH III
FOR SUBMISSION OF DISCOVERY
EVIDENCE ON BEHALF OF PLAINTIFF

JAN 17 PM 3:49
WILLIAM E. BOOTH III
C.C.P. & G.S.

RICHLAND COUNTY
CLERK OF COURT

Personally appeared before me, **WILLIAM E. BOOTH III**, who, being duly sworn,
deposes, and states the following:

1. I am an attorney-at-law admitted to practice before this Court and I
practice under the name of Booth Law Firm, LLC. I am the attorney for the above-
named Plaintiff.

2. I previously submitted an Affidavit for Submission of Discovery Evidence
on Behalf of Plaintiff on January 13, 2012. I wish to have introduced into evidence
certain further documentary evidence produced by the parties during discovery for
consideration by the Court as to the Motions for Summary Judgment to be heard on
January 19, 2012.

3. Annexed hereto as Exhibit "E" are true and correct copy of pages 13
through 20 of the deposition of W. Ivey Hart taken on September 20, 2011.

4. Annexed hereto as Exhibit "F" is a true and correct copy of page 31 of the
deposition of W. Ivey Hart taken on September 20, 2011.

WEB
1/17/12

5. Annexed hereto as Exhibit "G" are true and correct copy of pages 35 and 35 of the deposition of W. Ivey Hart taken on September 20, 2011.

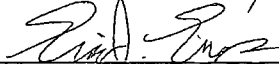
6. Annexed hereto as Exhibit "H" are true and correct copy of pages 9 and 10 of the deposition of Donnette Martin taken on September 28, 2011.

7. Annexed hereto as Exhibit "I" are true and correct copy of pages 74 and 75 of the deposition of Stanley Herlong taken on June 9, 2011.



William E. Booth III

Sworn to before me this
17th day of January, 2012.



Notary Public for South Carolina

My commission expires: July 8, 2021

1 sell title insurance. What are the qualifications
2 used by ORT in South Carolina for licensing persons
3 to sign title insurance policies?

4 A. They have to fill out an application,
5 which is a multi-page document regarding their law
6 license, regarding their expertise in real estate
7 or their experience in real state. How they
8 conduct closings as far as an escrow account, and
9 we run also a credit check on those individuals.

10 Q. Okay. But is one of the requirements
11 or qualifications that the person be a licensed
12 South Carolina attorney?

13 A. No, sir, they do not. To be a title
14 insurance agent in South Carolina, you do not have
15 to be an attorney. Now, I will add to that, a
16 majority, a large majority, of them are.

17 Q. Okay. Next question. Is a prospective
18 agent required to pass an examination prescribed by
19 the Department of Insurance?

20 A. Yes, sir, all title insurance agents
21 are.

22 Q. Does the department itself, Department
23 of Insurance, actually issue a license to the
24 agent?

25 A. Yes, sir.

1 Q. Then how does ORT appoint that title
2 insurance agent as far as selling title insurance
3 in South Carolina?

4 A. Once the person passes the title
5 insurance exam, they are given a certificate from
6 the Insurance Department. They pass that onto us.
7 If we have approved them as a title insurance
8 agent, we then contact the South Carolina Insurance
9 Department and license them to write for Old
10 Republic.

11 Q. Now, for your company in South
12 Carolina, what is the total number of licensed
13 agents as of the last time you checked?

14 A. I think the last time I looked it was
15 about 175.

16 Q. Of those 175, how many would you say
17 are licensed South Carolina attorneys as well?

18 A. I would approximately say, and this is
19 a guess because I don't have any facts, probably
20 165.

21 Some offices, some law offices, have
22 people who are agents in their office who are not
23 attorneys. The attorney may be an agent also, but
24 they sometimes will license a paralegal also.

25 Q. What is the arrangement with the agents

1 as far as receiving compensation for writing title
2 insurance in South Carolina?

3 A. As far as the premium, what they
4 receive, and they would write the policy -- excuse
5 me. They would do the closing, and the premium
6 would be collected on the HUD or the closing
7 statement, and then when the policy is issued, they
8 report the policy to us. They keep 60 percent of
9 the premium and send us the 40 percent.

10 Q. All right. Now, as far as your agents,
11 I assume your company has an agency agreement that
12 an agent signs?

13 A. Yes, an agency contract.

14 Q. It is a contract. As far as the
15 current form number that is used for your agency
16 agreement, do you know what that is?

17 A. No, sir, I do not. I don't have a
18 number on it.

19 Q. But the agreement itself is something
20 that you prepare and provide to the agent for
21 signing?

22 A. Yes. Parts of it were given to me by
23 my home office, but yes, we prepare that and then
24 they sign it.

25 Q. Okay. Does that agency agreement have

1 any rights of termination with respect to ORT? In
2 other words, the rights of ORT to cancel or
3 terminate?

4 A. Yes, sir, it does.

5 Q. What are some typical reasons that ORT
6 might cancel somebody's agency?

7 A. Well, we just -- and this is not
8 typical. We had one agent become a judge. So he
9 was closing his law office. We've had some that
10 are deceased, and obviously, they are closing their
11 office, or they merged with somebody else, and they
12 are cancelling their agency.

13 We actually had some that their real
14 estate business is so slight or they reduced their
15 real estate business, that they no longer are
16 agents or have an agency. They are only doing
17 three or four closings a year, and they chose not
18 to be an agent any longer.

19 Q. Do you have any reasons that I would
20 label as for cause reasons for terminating?

21 A. Yes, sir. We had one that was arrested
22 for drug use. We have had some that have been
23 arrested for check kiting. We have had some that
24 were doing illegal activities one way or the other,
25 and they were terminated.

1 Q. All right. Now, you may not know the
2 answer to this. As far as the agency agreements
3 are concerned, the ones you currently use, do you
4 know of any circumstances where that particular
5 form was either modified or amended for some
6 reason, the standard form?

7 A. No, sir, I do not.

8 Q. How long do they usually -- as far as
9 the duration, how long do they usually last, the
10 agency agreement?

11 A. The agency agreement lasts as long as
12 they are an agent. If there is a change in say the
13 law firm name or something like that, we may modify
14 the agreement, but it is just a modification of the
15 original agreement.

16 Q. But the agreement is with a particular
17 person, not a --

18 A. No. The agreement is with the agency
19 and the law firm.

20 Q. You said agency. Define what an agency
21 would be?

22 A. Some law firms chose to have a
23 separate -- it can be corporate or otherwise agency
24 inside of their law firm to do their title
25 insurance business. If it is a corporate agency,

1 then that agency would be writing the policies, and
2 they, in turn, would get the premium. For income
3 purposes, they do it that way.

4 Q. But as far as an agency is concerned,
5 they would have to be employees or owners that
6 would be licensed?

7 A. If there was an agency, yes. They
8 would have someone who is an employee. Although, I
9 am not sure all of them would consider themselves
10 as employees of the agency. They may still be just
11 employees of the law firm.

12 Q. But as far as the Department of
13 Insurance is required, the person needs to be
14 licensed and then he can also license the agency,
15 is that the standard?

16 A. Correct.

17 Q. You agree with that?

18 A. Correct. I think the rule for
19 Department of Insurance says if you have more than
20 one person, you have to license the agency.

21 Q. Now, Mr. Hart, I'm going to move into
22 the purpose of title insurance, and you and I have
23 talked about it a little bit.

24 Again, I refer you to Exhibit 4. Your
25 website itself has a statement or a discussion

1 about what is title insurance. Do you see that?

2 A. Which paragraph are you on?

3 Q. Do you have the one that says title
4 insurance primer?

5 A. Yes, sir, I do.

6 Q. Right underneath that. What is title
7 insurance. Do you see that?

8 A. Title insurance --

9 Q. I am not asking you to read it. I'm
10 just saying that is what is discussed. Do you
11 agree with what is in front of Exhibit 4?

12 A. Right.

13 Q. So would you agree with me the primary
14 purpose of title insurance in a real estate
15 transaction would be to eliminate risk and prevent
16 losses caused by defects in title arising out of
17 events that have happened in the past? I can
18 repeat that if you want.

19 A. I am not sure I would agree with the
20 term eliminate risk, although it may be on this
21 page. I think it is to protect the lender or owner
22 from defects arising in the past.

23 Q. Okay. Now, as far as what the agent
24 has to do, is it a requirement in your practices
25 and procedure of ORT, that the agent is going to

1 issue the policy, perform a search of the public
2 records to determine whether there are any adverse
3 claims to the subject real estate?

4 A. Yes, sir.

5 Q. Okay. And based on that search of the
6 public records, is the title insurance agent then
7 required to take exception or exceptions from
8 coverage such adverse claims unless the agent is
9 able to eliminate them prior to the policy or
10 binder being issued?

11 A. Correct.

12 Q. Now, does ORT have any practices or
13 standards requiring agents to notify or advise a
14 prospective purchaser of title insurance of all the
15 adverse claims existing or showing by the public
16 search?

17 A. No, sir.

18 Q. What is the practice or policy of ORT
19 in the case of the agent having actual knowledge of
20 an adverse claim that would not be found in the
21 public search?

22 A. If an agent has actual knowledge of a
23 defect or encumbrance on property, he should treat
24 it the same way he does anything he has notice of
25 on the public records.

1 A. Correct. The premium that is for the
2 policy is the commission.

3 Q. I would like to ask you a few questions
4 about Henry Bufkin, who is an agent of yours. I
5 assume he is still an agent of yours?

6 A. Correct, he is.

7 Q. Do you know the date that he first was
8 issued a license or an appointment by ORT?

9 A. I have no idea.

10 Q. Would you say it has been ten years or
11 more?

12 A. Absolutely. More than ten years.

13 Q. Was he an agent when you started
14 working for ORT?

15 A. I believe he was. I may be mistaken on
16 that, but I believe he was an agent way back when.

17 Q. To your knowledge, has there been any
18 interruption of him being a licensed agent?

19 A. There has never been an interruption as
20 far as I know.

21 Q. Has ORT done any audits of Mr. Bufkin's
22 title insurance business during the last ten years?

23 A. Yes, sir. We will do audits. We ask
24 them to do an annual audit in his office, and that
25 is handled by our auditor.

EXHIBIT "G"

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1 the title insurance policy is not required to also
2 submit the binder?

3 A. That is correct.

4 Q. With respect to a binder, is there any
5 sort of duration that the binder is good for?

6 A. Normally, the commitment is good for
7 six months.

8 Q. What circumstances would there be for
9 that to be extended beyond six months?

10 A. Well, we don't terminate them. And
11 obviously, if the closing has occurred within that
12 then we would stand behind our commitment. The six
13 months is normally used when a commitment is done
14 and the closing hasn't occurred. Then you would
15 endorse the commitment to bring the date forward
16 for one reason or another.

17 If a commitment is issued and the
18 closing occurs within those six months then we, Old
19 Republic, is on the hook for that.

20 Q. Now, I'm going to show you a commitment
21 that has been provided to me as the commitment
22 issued by Mr. Bufkin, and I will ask you a couple
23 of questions.

24 Can you identify that as being the
25 commitment issued by Mr. Bufkin for the transaction

1 we were talking about today?

2 A. This is a commitment issued by
3 Mr. Bufkin. I am assuming it is because I know who
4 the parties are regarding this transaction. I just
5 don't have any prior knowledge of the transaction
6 so.

7 (PLF. EXH. 5, the commitment to insure,
8 was marked for identification.)

9 BY MR. BOOTH:

10 Q. Mr. Hart, I, again, show you what has
11 been marked as Plaintiff's Exhibit Number 5, which
12 we have identified as a commitment. You said you
13 personally cannot verify this is the commitment
14 issued by Mr. Bufkin?

15 A. I say it is a commitment issued by
16 Mr. Bufkin because I see his signature on it --
17 whether it has to do with the transaction regarding
18 this thing. It appears to. I'm looking at the
19 post-insured, which I think it is the plaintiff in
20 this action.

21 Q. Let's go to the second page you are
22 looking at. The second page.

23 Looking at the second page which has
24 the caption Schedule A, does this look like the
25 standard commitment form used by ORT agents?

EXHIBIT "H"

9

1 did all of the real estate closings.

2 Q. And Sharon, what was her primary duties?

3 A. She did the probate work primarily.

4 Q. So now let's get to your primary duties
5 during the time you worked there and, again, just go
6 back ten years. That's fine. What did you
7 primarily do there? I know you mentioned a few
8 things.

9 A. Well, I kind of picked up on anything
10 that was -- any and everything that was left, you
11 know. I did the correspondence. I did checking.
12 You know, different things for Mr. Bufkin. A lot of
13 correspondence. Just anything that came up really.

14 Q. Okay.

15 A. Other than that the actual preparing of
16 the documents for the real estate closings.

17 Q. Okay.

18 A. I stopped doing that almost completely.

19 Q. All right. So again, you think that
20 happened about six years ago?

21 A. About six or eight years ago, yeah.

22 Q. Now, during the time that you were
23 there, were you aware that Mr. Bufkin was a licensed
24 insurance agent for the sale of title insurance, as
25 well as being a lawyer?

Martin, Donnette - 09.28.11

1 A. Sure.

2 Q. And were you aware that he sold title
3 insurance to buyers of real estate?

4 A. Sure.

5 Q. What do you understand the purpose of
6 buying title insurance from the viewpoint of a buyer
7 of the real estate?

8 A. Well, it's just an insurance policy in
9 case something is unforeseen that Mr. Bufkin did not
10 pick up on or whatever. The title insurance would
11 step up and defend him. Title insurance company
12 representative would defend him.

13 Q. All right. And were you aware that he
14 received a commission from the title insurance
15 company for title insurance issued for a purchase
16 transaction?

17 A. Sure.

18 Q. All right. Did you ever take care of
19 the accounting work for his business dealing with
20 title insurance?

21 A. The accounting work?

22 Q. Yes. The accounting work.

23 A. Maybe initially, I did; but as time went
24 on, no.

25 Q. Do you recall whether he maintained a

EXHIBIT "I"

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1 right. Hand you will mark as No. 10 and do you
2 recognize that as a copy of a Consent to Multiple
3 Representation that you signed both on behalf of the
4 purchaser H & H of Johnston and also as one of the
5 four principals in Five Star?

6 A Yes.

7 (ORT Combined 3601 and 2423 Financial
8 Interest Disclosure, Defendants' Exhibit No. 11 is
9 marked for identification.)

10 BY MS. WALL:

11 Q And I'll hand you what we'll mark as No.
12 11. This is an ORT Combined 3601 and 2423 Financial
13 Interest Disclosure. The second page is entitled
14 "Notice to Borrower" and this has to do with
15 borrower's title policies. And it describes on page
16 two what exceptions would be in the owner's policy.
17 It's a generalized paragraph. Do you see that near
18 the bottom of page two?

19 A Yes, I do. Yes.

20 Q And then it goes on. And if you'll turn
21 your attention to two pages later and it's a request
22 for Application for Title Insurance. And checked is
23 the box A, "I do WANT an Owner's Title Insurance
24 Policy." And then there's a signature at the
25 bottom. Is that your signature?

Herlong, Stanley - 06.09.11

1 A Yes.

2 Q Now, at the closing, who was at the
3 closing? This particular closing on July the 5th,
4 2007 who was at Mr. Bufkin's office when you were
5 there?

6 A I'm not sure I remember. I can't recall
7 if the Mikell brothers were there or not. They
8 might have signed prior to my coming. You know, I'm
9 not even 100 percent sure Ralph was there. I know
10 Mr. Bufkin was there honestly because I mean he had
11 to have different ones come in and sign. I kind of
12 think Ralph was there. I don't remember the Mikell
13 brothers being there and they could have been.

14 Q But your best recollection is Ralph
15 McClendon was there. Was your sister, his wife,
16 there?

17 A No. She only attended as I recall the
18 meeting in May.

19 Q So as you sit here today, you don't recall
20 your sister being at the closing on July the 5th,
21 2007 in Mr. Bufkin's office when you signed various
22 documents I've shown you to so far?

23 A No, I really don't. The only thing I
24 distinctly remember she went -- because I was very
25 insistent with Ralph in our proposal meeting of

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-40-7330

PLAINTIFF'S MOTION TO
ALTER OR AMEND ORDERS
GRANTING SUMMARY JUDGMENT
FOR BOTH DEFENDANTS

2012 FEB 17 AM 11:58
JEANETTE BRIDE
CLERK

The Plaintiff, H&H of Johnston, LLC, respectfully moves the Court under Rule 59 (e), SCRCP, to alter or amend the Order granting Defendant, Old Republic National Title Ins. Co. ("Old Republic"), motion for summary judgment dated and filed February 8, 2012, and to alter or amend the Order dated and filed February 8, 2012, granting summary judgment to Defendant, Henry P. Bufkin d/b/a Bufkin Title ("Bufkin").

I. IN GENERAL.

The Plaintiff respectfully moves that the Court vacate both Orders and adopt instead the order proposed by Plaintiff, attached to and incorporated in this motion as Exhibit "A", denying summary judgment to both defendants.

II. WITH RESPECT TO THE FINDING THAT BUFKIN ONLY ACTED IN HIS CAPACITY AS THE REAL ESTATE CLOSING ATTORNEY.

The Plaintiff respectfully moves this Court to find that Bufkin's agreement to provide title insurance coverages for certain adverse claims was not the practice of law requiring an attorney affidavit under S.C. Code §15-36-100.

The Plaintiff respectfully moves that this Court find that Linder v. Ins. Claims Consultants, Inc., 348 S.C. 477, 560 S.E.2d 612 (2002), is not applicable because the

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insurance adjuster was a public adjuster and not an agent for the insurance company that had issued the policy. Old Republic allows non-attorneys to issue its policies, and agents issue policies for coverages such as automobile liability and property damage for houses, and such agents are attorneys. The Orders issued by this Court seem to say that all agents issuing insurance coverages are guilty of practicing law without a license.

The Plaintiff respectfully moves that this Court find that State v. Buyers Service Co., Inc., 292 S.C. 426, 357 S.E.2d 15 (1987) and Doe v. McMaster, 355 S.C. 306, 585 S.E.2d 773 (2002) did not address the issue of issuing a title policy as being the practice of law. In these cases, the Court stated that the Supreme Court determines what is practicing law and therefore there has been no decision that issuing a title policy is practicing law.

III. WITH RESPECT TO THE FINDING THAT THERE IS NO EVIDENCE TO SUPPORT THE CLAIM OF AN ORAL CONTRACT MADE BY BUFKIN AT THE CLOSING.

The Plaintiff respectfully moves this Court to find that the facts viewed in the light most favorable to the Plaintiff show that an oral contract was made with Bufkin at the closing as the title agent for Old Republic for coverages as to adverse claims as follows:

- a. To insure that there was coverage in the event the Plaintiff would not be able to immediately sell the builder ready lots through a listing agreement to be entered into with Russell and Jeffcoat Realtors¹;

¹ See Deposition of Stanley Herlong:

Q Did you ever ask Mr. Bufkin to insure that you had the legal right to enter into the contract with Russell and Jeffcoat Realtors?

A Well, he clearly knew I had a -- was in with a real estate company. That was said from the very beginning.

WAB
2/17/12

- b. To insure that there was coverage in the event the Plaintiff would be required to pay any HOA assessments for the lots; and
- c. To insure that there was coverage in the event the Plaintiff would not be able to immediately sell the 11.44 acre tract of land without being subject to restrictions or assessments.

The Plaintiff respectfully moves this Court to also make a finding that the above facts are supported by the deposition of Stanley Herlong and his Affidavit submitted in opposition to the motion.

IV. WITH RESPECT TO THE FINDING THAT THERE IS NOT SUFFICIENT EVIDENCE TO SUPPORT THE CLAIM OF REFORMATION.

The Plaintiff respectfully moves this Court to find that since there is evidence that Bufkin as agent for Old Republic did not issue a commitment at the closing but did charge a fee for preparing and issuing a commitment, Old Republic cannot assert policy provisions or exceptions that had not been agreed upon at the closing. Thus, a jury could find that reformation of the policy should be done so that coverage for the adverse claims is part of the reformed policy.

V. WITH RESPECT TO THE FINDING THAT PLAINTIFF SHOULD BE ESTOPPED.

The Plaintiff respectfully moves this Court to find that since there is evidence that Bufkin as agent for Old Republic did not issue a commitment at the closing but did charge a fee for preparing and issuing a commitment, Old Republic cannot assert policy provisions or exceptions that had not been agreed upon at the closing. Thus, a jury could find that Old Republic is estopped requiring coverage for the adverse claims.

(Deposition of Stanley Herlong, P. 142, lines 13-18).

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2/17/12

VI. CONCLUSION.

For the foregoing reasons, the Court should vacate the two previous Orders and enter the Order attached hereto as Exhibit "A".

BOOTH LAW FIRM, LLC



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West Columbia, South Carolina
February 17, 2012

EXHIBIT "A"

COPY

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

H&H of Johnston, LLC,

Plaintiff,

vs.

Old Republic National Title Insurance
Company, and Henry P. Bufkin d/b/a
Bufkin Title,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO. 2010-CP-40-7330

ORDER DENYING MOTIONS
FOR SUMMARY JUDGMENT

This matter is before the Court for consideration of Motions for Summary Judgment filed by each of the Defendants. This action involves a title insurance policy that was issued in connection with the purchase by Plaintiff, H&H of Johnston, LLC (hereinafter referred to as "the Herlong Company"), of real estate¹ located near the Town of Chapin in the County of Lexington. The seller of the real estate was Five Star Development, LLC (hereinafter referred to as "Five Star"), and Five Star was the developer of the Stoney Pointe subdivision where the real estate is located.

The claims of Plaintiff relate to adverse claims filed by third parties and the payments made in connection with the settlement of those claims along with attorney fees and costs incurred, and relate to payments for assessments issued by the association for the Stoney Pointe subdivision. For the sale of the title insurance policy and for legal representation for the closing, Defendant, Henry P. Bufkin d/b/a Bufkin Title (hereinafter referred to as "Bufkin"), was the insurance agent for the Defendant,

¹ The real estate consisted of twenty-six (26) builder ready residential lots and approximately eleven (11) unimproved acres.

Old Republic National Title Insurance (hereinafter referred to as "Old Republic"), and he provided representation to both Five Star and the Herlong Company.

A hearing on the Motions was held before this Court on January 19, 2012, and appearances were as follows: William E. Booth III, Esquire of West Columbia for Plaintiff; Louis H. Lang, Esquire of Columbia, for Defendant Old Republic, and; Susan T. Wall, Esquire of Charleston for Defendant Bufkin.

Argument was presented by counsel and all parties submitted memoranda and affidavits² along with various documents³ in support of their positions. The original of the complete deposition of Stanley Herlong was submitted into evidence along with the twenty-nine (29) exhibits referred to during his deposition, and excerpts of the depositions of other witnesses were also submitted.

Both Defendants seek summary judgment on all causes of action contained in the Complaint on various grounds. The grounds asserted are summarized as follows:

1. Judgment for Bufkin on the ground that an affidavit of an expert should have been submitted by Plaintiff at the time of filing under S.C. Code §15-36-100(C).
2. Judgment for Bufkin on the ground that the evidence is undisputed that the alleged oral contract was not made by Bufkin prior to the closing in connection with the terms of the title insurance policy as to the claims of Plaintiff.

² Affidavit of Stanley Herlong dated Jan. 11, 2012; affidavit of Bufkin dated Jan. 12, 2012; affidavit of Hart dated Jan. 12, 2012.

³ Exhibits A – E submitted by Old Republic; Exhibit 3 submitted by Bufkin along with an Order of Judge Barber dealing with a motion; Exhibits A-D submitted by Plaintiff.

3. Judgment for Bufkin on the ground that the evidence is undisputed that Plaintiff had knowledge of and agreed to the adverse claims at issue.
4. Judgment for Old Republic on the ground⁴ that, notwithstanding any evidence of the making of an oral contract by Bufkin, the evidence is undisputed that certain policy provisions would operate to deny the claims of Plaintiff.
5. Judgment for Old Republic on the grounds that there is no evidence that there was a mutual mistake or that there was conduct or representation that would operate to estop Old Republic from denying the claims of Plaintiff.

APPLICABLE LAW FOR SUMMARY JUDGMENT MOTIONS

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 536, 611 S.E.2d 922, 925 (2005); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E.2d 733 (Ct.App. 2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct.App. 2004). In determining whether any triable issue of fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party. Medical Univ. of South Carolina v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct.App. 2005). If triable issues exist, those issues must go to the jury. Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct.App. 2005).

⁴ Old Republic joined in the grounds asserted by Bufkin as a basis for granting its motion for summary judgment.

Summary judgment is appropriate if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005); BPS, Inc. v. Worthy, 362 S.C. 319, 608 S.E.2d 155 (Ct.App. 2005).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Gadson v. Hembree, 364 S.C. 316, 613 S.E.2d 533 (2005); Montgomery v. CSX Transp., Inc., 362 S.C. 529, 608 S.E.2d 440 (Ct.App. 2004). Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. Baugus v. Wessinger, 303 S.C. 412, 401 S.E.2d 169 (1991); Nelson v. Charleston County Parks & Recreation Comm'n, 362 S.C. 1, 605 S.E.2d 744 (Ct.App. 2004). When reasonable minds cannot differ on plain, palpable, and indisputable facts, summary judgment should be granted. Ellis v. Davidson, 358 S.C. 509, 595 S.E.2d 817 (Ct.App. 2004). The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. McCall v. State Farm Mut. Auto. Ins. Co., 359 S.C. 372, 597 S.E.2d 181 (Ct.App.2004). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 (Ct.App. 2003). The nonmoving party must come forward with specific facts showing there is a genuine issue for trial. Rife, 363 S.C. at 214, 609 S.E.2d at 568.

Summary judgment is a drastic remedy and should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues.

Helena Chem. Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004); Hawkins v. City of Greenville, 358 S.C. 280, 594 S.E.2d 557 (Ct.App. 2004).

VIEW OF FACTS IN LIGHT MOST FAVORABLE TO THE PLAINTIFF

The facts in the light most favorable to the Herlong Company, the nonmoving party, are as follows:

Plaintiff is a limited liability company organized and existing under the laws of the State of South Carolina formed on June 26, 2007, for the purpose of taking title to the real estate pursuant to an agreement reached with Five Star for the repayment of the debt owed to D.C. Herlong and associated with the Stoney Pointe development. At the time of the formation, the primary goal of the sons of Mr. Herlong, Stanley and Thomas Herlong, was to immediately sell all the land as quickly as possible to provide funds for the estate of their father, D.C. Herlong⁵; and their mother who was living in a nursing home.

The closing took place on July 5, 2007. At the time of the closing, Old Republic was a title insurance company licensed by the State of South Carolina to transact the business of title insurance. Defendant Bufkin was a title insurance agent duly licensed to engage in the issuance of title insurance on behalf of Old Republic in connection with

⁵ D.C. Herlong died on Sept. 14, 2004, and at time of his death, he was owed a substantial sum of money by Five Star Development.

the purchase of real estate on behalf of buyers, and he was also licensed to practice law in the State of South Carolina⁶.

Bufkin acted as the real estate closing attorney representing both the seller and buyer.⁷ Bufkin also acted as an agent for Old Republic.⁸ The Herlong Company agreed to purchase from Bufkin a policy of title insurance for the protection of the interests of the Herlong Company in the lots and the tract of land. (Affidavit of Stanley Herlong dated January 10, 2012, ¶8). The HUD-1 Settlement Statement⁹ shows the following payments being disbursed:

1104 – Title Insurance Binder to Bufkin Title - \$35.00

1106 - Title Insurance to Bufkin Title - \$1,492.50¹⁰

Despite collecting a fee for the issuance of a title insurance commitment¹¹ at the closing, Bufkin, as the licensed and authorized agent for Old Republic, had not prepared the commitment, and did not provide any documentation or information to the Herlong Company as the perspective purchaser for the terms of the title insurance to be issued

⁶ The practice of a lawyer acting both as attorney for the parties at a real estate closing and as agent for the title insurer is a common practice in South Carolina. See, Ethics Advisory Opinion No. 92-03, and Ethics Advisory Opinion No. 91-21.

⁷ Bufkin obtained a Consent to Multiple Representation.

⁸ See "ORT Combined 3601 and 2423", bearing Bates Number Bufkin0107 to Bufkin0110. This form further states on Bufkin0107: "The applicant (as set out herein), is a buyer, seller or lender who has been referred by the above-named producer of title business or associate of such producer to one or more of the title insurers or title agents identified above." The Herlong Company signed the disclosures in which Bufkin disclosed his relationship as a title insurance agent.

⁹ Exhibit 13 to Stanley Herlong deposition.

¹⁰ Bufkin received a commission of 60% of the premium paid.

¹¹ Exhibit A for Old Republic.

other than the terms relating to the adverse claims. Prior to and during closing, both brothers asked Bufkin on numerous occasions about the P&K Contract.¹² Stanley Herlong told him that he wanted to make sure that the Herlong Company would not have to sell lots to P&K under any option agreement, and that the Herlong Company could immediately could sell the builder ready lots to a third party. He also stated that Bufkin knew the sale of land immediately was part of the agreement for him and his brother to buy the land as repayment for the debt owed their father¹³. The oral contract made with Bufkin at the closing as the title agent for Old Republic contained the following terms for the coverages as to adverse claims:

- d. To insure that there was coverage in the event the Herlong Company would not be able to immediately sell the builder ready lots through a listing agreement to be entered into with Russell and Jeffcoat Realtors;
- e. To insure that there was coverage in the event the Herlong Company would be required to pay any HOA assessments for the lots; and
- f. To insure that there was coverage in the event the Herlong Company would not be able to immediately sell the 11.44 acre tract of land without being subject to restrictions or assessments.

Both the commitment and the title policy afforded no coverages for these adverse claims as they were specifically excepted from coverage and listed in Schedule B-2.

¹² Exhibit D for Old Republic.

¹³ Bufkin was aware because he prepared both the sales contract and the warranty deed.

The P&K Contract was essentially an option or lot take down schedule for lots within the Stoney Pointe subdivision including the twenty-six builder ready lots sold to the Herlong Company. The P&K Contract and amendments were never seen by or given to either Stanley Herlong or Thomas Herlong prior to the closing, and the P&K Contract was not recorded in the Register of Deed's Office for Lexington County.

Stanley Herlong stated that he had been informed that Five Star never paid assessments and that the unimproved land was not subject to any building restrictions or assessments. While Stanley Herlong was a member of Five Star, he never participated in the activities relating to the development of Stoney Pointe because he lived in Maryland during that time, and he was never given any documentation by the local members¹⁴.

Immediately after the closing, the Herlong Company entered into contracts to sell the lots and land using a real estate agent who posted signs in the yards, after which P&K protested. P&K demonstrated to the Herlong Company that it had an option to purchase the lots and that the Herlong Company could not sell the lots to a third party. The Herlong Company later paid P&K the sum of \$25,000 for a release of the option agreement. Prior to entering into the settlement agreement and release, Old Republic denied coverage.

The Herlong Company was later sued by the Stoney Pointe Homeowners Association (the "HOA"). The lawsuit was filed on April 10, 2008, and the issues included the following:

¹⁴ His father asked him to be a member several years after the development got started. D.C. Herlong was never a member of Five Star and loaned money to Five Star because his daughter was married to Ralph McClendon who was a licensed real estate agent and the managing member.

1. Obligation of the Herlong Company to pay assessments for the lots.
2. Declaration that the undeveloped land was subject to assessments and restrictions.
3. Declaration that the deed for the transfer of title was invalid.

The lawsuit was settled and dismissed on December 15, 2008. Bufkin represented Five Star, and other parties, as defendants in the lawsuit, but he did not inform Old Republic of the claims and settlement¹⁵. The Herlong Company seeks reimbursement for the legal fees, assessments paid and damages.

DISCUSSION OF LEGAL ARGUMENTS

The issue before this Court is the interpretation and application of S.C. Code §15-36-100 which requires "in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in [subsection] (g) . . . [that] the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit." In subsection (g), "attorneys at law" are included in the list of professions, but the writing or issuing of insurance policies of any type by an agent is not listed as a profession for which the affidavit of an expert is required.

¹⁵ Failure to report is a violation of the Agency Agreement which provides in Article IX the following:

If a claim is made to Agent under any of Insurer's title insurance forms which Agent has issued or if Agent becomes aware of any circumstances which may give rise to a claim under any such exposure, Agent agrees to immediately notify Insurer. . . (Affidavit of William E. Booth III, Exhibit C).

Both Defendants argue that an attorney affidavit was required because Bufkin was practicing law for the issuance of the title insurance policy. Both arguments cite case law that involves the issue of unauthorized practice of law in connection with real estate closings for an individual residential house. The first phase of these cases started with State v. Buyers Service Company, Inc. 292 S.C. 426, 357 S.E.2d 15 (1987), involving a company in the Hilton Head area engaged in the closing business in which there was no attorney involvement in the purchase and sale of residential property and no title insurance was sold or issued.

The second phase of cases in which a fictitious John Doe was named as the plaintiff involved the refinancing of home mortgages. In the John Doe action, the Supreme Court was provided by stipulation a scenario that included a number of actions involving a residential refinancing closing. Plaintiff argues that the actions of Bufkin making an oral contract as to coverages for adverse claims to be provided by Old Republic as the insurer do not involve claims of professional negligence subject to the requirements of §15-36-100.

None of the cases cited by Defendants specifically state that only an attorney can issue a title insurance policy. In other words, it is not the unauthorized practice of law for a non-attorney to issue title insurance. See, In re Weems, 392 S.C. 70, 708 S.E.2d 742 (2011), *see also* In re Smith, 370 S.C. 343, 535 S.E.2d 87 (2006). This Court has found instructive the discussion in Ethics Advisory Opinion 92-03 as to the role of a lawyer as both handling a real estate closing and acting as an agent for the title insurer which is issuing a policy of title insurance. Clearly, Ethics Advisory Opinion 92-03 views the practice of law as separate from acting as an agent and saying that a lawyer's

responsibilities to a third person should be considered by the lawyer in agreeing to act in both capacities. The following discussion is found in Ethics Advisory Opinion 92-03:

For example, when there is a possibility of a cloud on title, but the risk of an actual encumbrance is small, the buyer or lender may want the title insurer to insure the potential problem. The insurer, on the other hand, may want to exclude the potential problem from coverage. In that situation, the lawyer's relationship with a particular insurer as its agent could "materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." The lawyer might fail to recommend that the client seek coverage from another insurer or fail to pursue negotiations with the insurer as zealously as if the lawyer was not also its agent.

The Opinion further provides as follows:

A lawyer serving as agent for a title insurer clearly has a financial interest in placing title insurance with that insurer, since the lawyer would be paid a commission by the insurer. As agent for the insurer, the lawyer is entering into a transaction with the client for the sale and purchase of insurance.

Plaintiff seeks payment under a title insurance policy. Bufkin had authority to bind Old Republic on coverage for adverse claims issues. He was not an independent contractor and even if he should not have agreed as to the coverages for the adverse claims for which Plaintiff seeks payment, he failed to provide, prior to closing, a written commitment that contained these exceptions. The written commitment did not appear until after the P&K dispute started and after Stanley Herlong had to contact Bufkin to obtain the commitment. Old Republic cannot deny coverage if such promises were made. See, Koutsogiannis v. BB&T, 365 S.C. 145, 616 S.E.2d 425 (2005).

Bufkin argues that the Herlong Company asserts that he "breached his duties by failing to explain to H&H what title exceptions were included on the title insurance binder, specifically, HOA assessments, development restrictions, and a construction

contract with P&K". (Memorandum in Support of Motion to Dismiss of Defendant Henry P. Bufkin d/b/a Bufkin Title, p. 1). But, Plaintiff seeks payment for damages due to adverse claims on the basis of indemnification and not on the basis of failure to disclose by Bufkin as an attorney,

A review of the recorded declaration would not have specifically stated that a purchaser of multiple lots for the purpose of resale would be subject to the payment of assessments.¹⁶ Bufkin could have issued a title insurance binder prior to closing that would have set forth in Schedule B-2 all of the exceptions from coverage, but he did not issue such a binder. Bufkin did not issue the final title insurance policy until after the settlement and dismissal of the HOA lawsuit. The agency agreement between Bufkin and Old Republic required him as agent to notify Old Republic in the event he learned of any claim, but he did not notify the company after the filing of the HOA lawsuit.¹⁷

In Marshall v. King and Morgenstern, 272 Ga.App. 515, 613 S.E.2d 7 (Ga.App. 2005), a homeowner appealed the grant of summary judgment against the closing attorney by the trial court.¹⁸ The Georgia Court of Appeals reversed. The coverage dealt with in Marshall was insurance against title problems in that the homeowner found after the closing that significant percentage of his home encroached upon the

¹⁶ The HOA lawsuit asserted that there was no exclusion for the developer for the payment of annual assessments, and the HOA lawsuit also asserted that the undeveloped land was subject to building restrictions and assessments.

¹⁷ Bufkin did represent all of the Defendants in that case other than the Herlong Company and Stanley Herlong.

¹⁸ Although the State of Georgia did not have the type of statute involved in this case requiring an expert affidavit, this case did involve whether or not an oral contract had been formed due to statements made by the attorney/agent. The court in that case reversed a summary judgment on behalf of the attorney/agent.

neighbor's property. He had not obtained a current survey before the closing that would have shown the encroachment.

The homeowner argued that the title company, First American Title Insurance Company and the closing attorney acting as a title agent for FATIC, breached a contract by failing to provide him with title insurance that would protect against the title problems even though he had not obtained a survey. He also alleged claims for "equitable estoppel" and attorney fees. The evidence indicated that the homeowner had received an oral agreement with the closing attorney to sell him a title insurance policy that would protect his "interests in the property, despite his decision to forego a survey." The policy issued by FATIC did not provide such coverage unless a new survey had been obtained. The Court held that "where there is a conflict in the evidence as to the existence of an oral contract or as to its terms, the matter must be submitted to a jury for resolution."

The grounds asserted by the Defendants are technical in nature requiring an agreement that refers to "exceptions". They argue that since there was no discussion about "exceptions to the title policy", an oral contract could not have been formed. While a title policy usually contains two sections – Section B-1 and Section B-2, the list of exceptions in schedule B-2 contain reasons that the title insurance company is not required to indemnify the insured. In other words, the protection of interests in the land described in the policy does not include any items contained in Schedule B-2, the exceptions.

While Stan Herlong does not recall the actual discussion or mention of the term or section called "exceptions" to be items for which the Herlong Company would have

no protection in the property, he had an agreement with Bufkin as the title insurance agent to protect the interests of the Herlong Company. Here, there is evidence that the Herlong Company as the purchaser of the land and as the purchaser of the title insurance had an agreement that protected it from the interests of the P&K Contract and interests relating to the payment of assessments and being subject to other types of restrictions.

Old Republic argues that there is no disputed fact that policy provisions 9(c) and 3(a) require the granting of summary judgment. The title insurance policy issued by Old Republic was delivered to the Herlong Company in January of 2009, after the conclusion of the litigation involving the Stoney Point subdivision in December of 2008. The right of Old Republic to deny coverage based on policy exclusions should be decided by the jury.

The Court, therefore, finds and concludes the Motions for Summary Judgment filed by the Defendants should be denied.

IT IS SO ORDERED.

Hon. DeAndrea G. Benjamin
Circuit Court Judge

_____, 2012
Columbia, South Carolina

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
2010-CP-40-07330

3
4 H & H of Johnston, LLC,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 Henry P. Bufkin, d/b/a Bufkin)
8 Title; and Old Republic)
9 National Title Insurance)
Company,)

10 Defendants.)

11 January 19, 2012
Columbia, South Carolina

12
13 B E F O R E :

14 THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

15
16 A P P E A R A N C E S :

17 WILLIAM E. BOOTH, III, ESQ.
Attorney for the Plaintiff

18
19 SUSAN TAYLOR WALL, ESQ.
Attorney for Defendant
Henry Bufkin, d/b/a Bufkin Title

20
21 LOUIS H. LANG, ESQ.
Attorney for Defendant
Old Republic National Title Insurance Company

22
23
24 DEBORAH M. McCURDY, RPR
25 Official Court Reporter

I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called
during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JANUARY 19, 2012

2 THE COURT: This is H & H of Johnston versus
3 Old Republic. It looks like two motions for
4 summary judgment, an amended motion for summary
5 judgment, and a motion to compel?

6 MS. WALL: Yes, Your Honor.

7 THE COURT: All right.

8 MR. BOOTH: Yes, Your Honor.

9 THE COURT: All right. Someone can give me
10 some background. And the motions are -- who all --

11 MS. WALL: I will be happy to let you know who
12 everyone is.

13 Your Honor, I'm Susan Wall, and I represent
14 the Defendant, Henry Bufkin, d/b/a Bufkin Title, as
15 it is set forth in the caption.

16 MR. LANG: And I'm Louis Lang, Your Honor. I
17 represent the other Defendant, Old Republic
18 National Title Insurance Company.

19 THE COURT: Okay.

20 MR. LANG: The motions for summary judgment
21 were filed first by Mr. Bufkin's counsel, and then
22 by Old Republic. And we would like to argue in
23 that order if that is okay, Your Honor.

24 THE COURT: All right.

25 MR. BOOTH: Your Honor --

1 THE COURT: And then there is an amended
2 motion for summary judgment?

3 MS. WALL: Yes, Your Honor. I just added
4 something to the original notice --

5 THE COURT: But it is the same --

6 MS. WALL: -- for the motion.

7 THE COURT: -- it is the same motion?

8 MS. WALL: It is, Your Honor. It is
9 absolutely the same. And it has been pending, oh,
10 approximately two months.

11 THE COURT: Okay. And then a motion to compel
12 filed by the Plaintiff, Mr. Booth?

13 MR. BOOTH: Yes, ma'am, William Booth,
14 representing the Plaintiff.

15 THE COURT: Do we need to handle the motion to
16 compel first?

17 MR. BOOTH: That would be fine if you want to
18 do it first. That motion was filed November 16th,
19 2011. And I assume the contents of the motion are
20 there in the file, Judge. I have my copy.

21 THE COURT: Okay. Hold on one second.

22 MR. BOOTH: Basically this is involving this
23 case. I filed a motion or filed interrogatories
24 and also filed requests to produce. And those were
25 not responded to. But the reason given in a

1 letter -- this is all I have -- but the reason is
2 that due to a scheduling order, the discovery was
3 filed too late according to the scheduling order.

4 I would argue and I put in my motion that what
5 I think counsel is talking about -- and this is
6 only -- affects Ms. Wall's client, Mr. Bufkin. He
7 is only one that we served this on.

8 So she wrote a letter, which I attached to the
9 motion. And in that letter she states that when
10 you compute the time that you would have to answer
11 interrogatories and the production, if you go the
12 full 30 days, then you would be beyond the
13 October 31 deadline by about I think four days in
14 one case and seven days in another case.

15 And I calculated those. So from her letter
16 she is saying because that time period, or that
17 maximum time period to have to respond goes beyond
18 the consent order, the scheduling order, that is
19 the reason she did not respond. That is the only
20 thing I had so far.

21 I would argue that four days or seven days is
22 not that much, but still, Judge, I don't think the
23 scheduling order says that. I think -- I initiated
24 the discovery for late September, and then with
25 respect to the scheduling order also there was not

1 a -- the trial date was not before January, so we
2 had to extend it recently. So there was no urgency
3 or no time pressure there. So I think the motion
4 to compel is proper. The information is related to
5 certain matters. And I put those actual documents
6 that I served in this motion and I served it by
7 mail and that really -- I just pulled it out the
8 other day -- when I served it by mail, that
9 automatically adds a few more days, and so that is
10 really why I said it was 30 -- I think it was 35
11 days because I mailed them instead of
12 hand-delivering it because Ms. Wall is in
13 Charleston, so I just mailed it down to her.

14 So we would ask the Court to grant the motion.
15 I have not asked for attorney's fees, I have not
16 asked for costs; all I want is a motion -- or
17 granting my motion so I can get these documents.

18 The trial itself -- again, we just got a
19 recent order from Judge Barber that the trial
20 itself won't be before February 13th, so that is --
21 for them to respond in say 10 or 15 days, that will
22 allow me to have them a week or two before the
23 trial starts.

24 So I would ask that you grant that motion so I
25 can get those documents, like I say, 10 days or 15

1 days, whatever, I mean, either one would work
2 within our timeframe. I would like them as soon as
3 possible.

4 THE COURT: All right. Yes, ma'am?

5 MS. WALL: Your Honor, thank you. If it
6 please the Court? The motion to compel that was
7 filed does have to do with a second and third set
8 of interrogatories and requests for production that
9 the Plaintiff filed as to my client.

10 We did have a consent scheduling order, which
11 as I recall was amended twice, to give counsel such
12 time -- I may be wrong in twice, but I think so --
13 but, regardless, we had an agreement among counsel
14 as to when discovery would be completed. And that
15 is what the scheduling order said, that it would be
16 completed by a certain date.

17 When I received these discovery requests, it
18 was -- the responding time was past that which all
19 counsel had already agreed to. And the reason for
20 agreeing to the scheduling order, of course, was
21 for everyone to complete their discovery. We did a
22 mediation. And thereafter we knew that we were up
23 for trial not before January 16th. And we actually
24 came to court day before yesterday to begin our
25 trial. Because it was a short week we were unable

1 to go forward, and we appeared before Judge Barber.

2 Your Honor, I might also say with regard to it
3 not only being past its time, the requests have
4 nothing to do with this suit.

5 Your Honor, this suit is about -- and I will
6 get into this in the motion for summary judgment --
7 and the reason the motion is ripe is this case is a
8 matter of law for the judge. There are no material
9 issues of fact. This is a law case.

10 The additional documents is not going to
11 change that. This is all about a closing that
12 occurred on July the 5th, 2007.

13 These additional interrogatories and requests
14 for production are asking for information dating
15 back to 2001, and I think 1998 through about 2002,
16 so that time period.

17 This case is about a closing. And it is very
18 clear in the complaint, this is about a closing
19 that occurred on July the 5th, 2007, Your Honor.

20 And I will be happy to go into the motion for
21 summary judgment because if in fact the Court
22 grants the motion, then the whole issue of
23 additional discovery becomes moot anyway.

24 But I'll certainly be happy to hear from the
25 Court as to how you would like me to proceed.

1 THE COURT: All right. Well, I understand
2 under -- having done work in federal court I
3 understand that usually if you don't -- you have to
4 file the request 30 days before discovery is up. I
5 don't -- I don't think we're as strict here and our
6 rules are as strict if it is three or four days.

7 I'm inclined to compel you all to turn over
8 the documents. And if you have an objection, then
9 of course you can put that -- whatever objection
10 you need to put into any response to his
11 interrogatories in your responses to his.

12 Of course, if I grant the motion for summary
13 judgment, then it would be a moot issue, but that
14 is how I'm ruling on the motion to compel, is that
15 for you all to go ahead and turn it over. I mean,
16 because even -- it says that dispositive motions
17 were to be held no later than December 5th, and
18 y'all are just here today -- no fault of your own,
19 I'm sure -- but, you know, that has not been heard
20 and the case is scheduled sometime in February, is
21 my understanding.

22 MS. WALL: Yes, Your Honor, that's right.

23 THE COURT: So go ahead and -- of course, it
24 is going to depend on my ruling as to your motion
25 for summary judgment. If I grant them, then that

1 won't be an issue, but if I deny it or take it
2 under advisement -- which I may do because y'all
3 have got a good bit of paperwork here for me to
4 read -- go ahead and turn it over to them in the
5 next ten days.

6 MR. BOOTH: Ten days? Okay.

7 THE COURT: All right. I'll be glad -- like I
8 said, if you can give me some background on it.

9 MR. BOOTH: I understand from counsel, we are
10 moving into the motion for summary judgment. And
11 Ms. Wall on behalf of Bufkin is going to go first.
12 I heard them say that. I will wait until they both
13 do theirs before I respond. Is that okay? I won't
14 respond in between. I think that is probably more
15 efficient.

16 THE COURT: All right.

17 Yes, ma'am?

18 MS. WALL: Thank you, Your Honor. Your Honor,
19 as I mentioned before, this is a case about a real
20 estate closing that occurred on July the 5th, 2007.

21 Mr. Bufkin, my client, was the closing
22 attorney. It is undisputed that he was retained as
23 the closing attorney to perform this closing on the
24 property that has to do with what is known as
25 Stoney Pointe in Chapin, South Carolina.

1 Briefly by way of background, Stoney Pointe
2 property was owned by several members of the
3 Herlong family, together with two persons who were
4 not part of the family, and it was owned under a
5 corporate -- a company name of 5 Star.

6 They owned the property for a number of years,
7 ran into financial difficulty. One of the owners,
8 Stanley Herlong, decided that in order to try to
9 pay off the banks and not have his personal
10 guarantee called upon, he came up with an idea on
11 purchasing portions of the Stoney Pointe
12 subdivision from 5 Star in a company named H & H.
13 That is the Plaintiff in this case. H & H is made
14 up of two of the Herlong brothers, Stanley and
15 Thomas.

16 The key here is that Stanley was a member of 5
17 Star, so he owned it under 5 Star, and then he was
18 buying it under H & H from the other members of 5
19 Star, together with his brother Thomas.

20 So it is really an interfamily purchase that
21 is a real estate purchase.

22 Now, what is important -- and, of course, as
23 we know, our Supreme Court has been absolutely
24 clear on this -- in the State of South Carolina you
25 cannot close on a real estate transaction without

1 an attorney. And we know that, Your Honor, from
2 Buyers Service, and with your permission I will
3 hand a copy of the case up to the Court.

4 Buyers Service clearly articulates the law,
5 and it has been the same since that articulation in
6 1987, that only an attorney can provide reports,
7 opinions, certificates as to the status of title to
8 real estate, only an attorney can prepare documents
9 affecting title to real property, and only an
10 attorney can handle the real estate closing.
11 Anyone else doing it, of course, is the
12 unauthorized practice of law.

13 It is undisputed that Mr. Bufkin acted as the
14 attorney for this closing in 2007. He reviewed the
15 title, he prepared a title commitment, he prepared
16 all the other operative documents to the closing,
17 and he conducted the closing. The Herlong brothers
18 were there, Thomas and Stanley, as was their
19 brother-in-law and their sister. And he conducted
20 the closing.

21 Two issues later came up that forms the
22 gravamen of this complaint. The complaint was
23 filed in 2010. And the complaint in essence
24 states -- and I will be happy to hand a copy of the
25 complaint up to the Court.

1 THE COURT: I think I have it.

2 MS. WALL: Do you have one, Your Honor?

3 THE COURT: Yes.

4 MS. WALL: Okay. It is very clear in the
5 complaint that the H & H is complaining that Mr.
6 Bufkin took exception on the title policy to two
7 items, one item being a contract known as the P & K
8 contract that had been entered into years before in
9 2002. And the P & K contract was with an entity
10 who was supposed to be taking down lots, had the
11 right to take down lots in the subdivision.

12 The second item are the restrictions and
13 covenants on the subdivision. Those restrictions
14 and covenants were originally filed long before
15 this closing in 1998 with modifications every
16 several months or years thereafter.

17 In the complaint, what is being complained of
18 is that Mr. Bufkin took exceptions on the title
19 policy to P & K contract to restrictions and
20 covenants, and he shouldn't have done so.

21 Your Honor, it is absolutely clear that this
22 is a case against Mr. Bufkin as an attorney. We
23 know that the law is, under the statute, Section
24 15-36-100, that to file an action against an
25 attorney you must accompany the complaint -- Your

1 Honor, I'll be happy to hand you a copy of the
2 statute -- you must accompany the complaint with an
3 affidavit of an expert. That was not done here.

4 THE COURT: Quick question. Now, is this a
5 professional negligence case or is this a breach of
6 contract?

7 MS. WALL: All right. They couched it as a
8 breach of contract case, but even if it is a
9 professional negligence case or a breach of
10 contract, when you are complaining against a
11 professional -- here an attorney, one of the
12 enumerated professionals -- under the statute, you
13 must accompany your complaint with an affidavit.

14 I filed originally, Your Honor, a motion to
15 dismiss. Judge Barber ruled on that motion. And
16 I'll hand you a copy of his order. He ruled that
17 insofar as any of the claims in the complaint were
18 against Mr. Bufkin as an attorney, that they were
19 dismissed.

20 Now, what has happened here is that the
21 Plaintiff is trying to get around the requirement
22 by statute by saying that Mr. Bufkin was acting as
23 a title agent, not as an attorney. But the
24 problem, fundamental legal problem here is that
25 what they are complaining of, putting exceptions on

1 the title policy and failing to advise the
2 Plaintiff of these exceptions, is something only a
3 lawyer can do by law. And therefore they cannot
4 get around the statute by trying to say, no, we're
5 not suing Mr. Bufkin as a lawyer, we're suing him
6 as a title agent.

7 Title agents cannot give legal advice;
8 otherwise, they would be in violation of Buyers
9 Service. Title agents cannot do any of the things
10 that they are complaining of, only lawyers can do
11 that, the fact that Mr. Bufkin is both a lawyer and
12 a title agent notwithstanding.

13 And if we look at his title agency contract
14 with the title company -- title company being here,
15 Old Republic -- it references him as an
16 agent/attorney. So you cannot undercut or try to
17 get around the statute that requires an affidavit
18 of an expert by trying to call a lawyer a title
19 agent and pretending that in addition he is not a
20 lawyer, because what is being complained of here is
21 his actions in his capacity as a lawyer, because
22 only a lawyer can do those things enumerated in
23 Buyers Service, which includes preparing documents
24 affecting title to real property, giving title
25 opinions, giving advice. That is why the lawyer

1 has to be there at the closing so he can give the
2 advice, answer the questions. And that is
3 precisely why our Supreme Court has required that
4 only a lawyer can close a real estate transaction.

5 THE COURT: And there is no other contract
6 other -- no other contractual --

7 MS. WALL: No, Your Honor.

8 THE COURT: -- in between him and H & H of
9 Johnston --

10 MS. WALL: No.

11 THE COURT: -- other than his legal
12 representation?

13 MS. WALL: That's correct, Your Honor. And I
14 will get to those specifics in just a moment so
15 that we can see that there is no issue of fact on
16 this and that it is in fact a law issue. And it is
17 the threshold issue in the case. It can't go
18 forward in front of a jury because this is a matter
19 for the Court.

20 All right. So what this complaint has tried
21 to do is say, well, we're going to sue Mr. Bufkin
22 as a title agent and we're going to pretend that he
23 wasn't a lawyer, but of course we can't do that
24 because only a lawyer can close and they are
25 complaining as to what went on at the closing. And

1 they are trying to get around it by saying, well,
2 there was a promise to give a title policy with no
3 exceptions in it.

4 Now, as to the first issue, the Plaintiff in
5 this case is absolutely bound by the sworn
6 testimony of its 30(b)(6) representative. That
7 representative is Stanley Herlong.

8 Stanley, remember, was both the -- one of the
9 two people in H & H, the Plaintiff, but he was also
10 one of the partners in the original owner of the
11 property, 5 Star.

12 When I sent out my notice for a 30(b)(6)
13 representative, they brought -- the Plaintiff, H &
14 H, brought Stanley, and he was the 30(b)(6)
15 representative.

16 We know under the law that the Plaintiff will
17 be bound to the sworn testimony of its 30(b)(6)
18 representative. I'll cite you to one case, Your
19 Honor, Lewis versus Atlantic, 250 S.C. 528.

20 And, in addition, a party -- here the
21 Plaintiff -- cannot come into this court with a new
22 affidavit with different testimony than he gave
23 under oath as the 30(b)(6) representative or as the
24 party -- party/Plaintiff here -- because to do so
25 is -- constitutes fraud on the court.

1 And sworn testimony cannot, for purposes of
2 defeating a summary judgment, be contradicted in an
3 affidavit.

4 There is a new case, relatively new case, Your
5 Honor, in 2004 to that effect, Cothran versus
6 Brown, 357 S.C. 210. And it cites a myriad of
7 cases from both South Carolina and the Fourth
8 Circuit to this account.

9 So what Stanley Herlong testified to as the
10 30(b)(6) representative in his sworn testimony
11 deposition, they cannot now come in and try to
12 change through his new affidavit just to try to
13 defeat summary judgment.

14 So the question now becomes, what is it that
15 Stanley testified to.

16 Your Honor, with your permission, I'll hand
17 you a copy of his sworn affidavit. I have the
18 original sealed if you would like that, Your Honor.

19 And the reason I'm handing it up is because
20 we're going to look at just a few passages which
21 are uncontradicted and so that we can see that
22 there is no material issue of fact, Your Honor.

23 MR. BOOTH: Your Honor, I would just like to
24 see what she handed up.

25 THE COURT: The deposition, it looks like.

1 MR. BOOTH: She said affidavit, and I was
2 just --

3 MS. WALL: I'm sorry, deposition. Did I? I
4 misspoke, and let me correct the record.

5 MR. BOOTH: I don't recall that being filed
6 today for this hearing, the whole deposition. I
7 remember getting some pages, excerpts.

8 MS. WALL: I'm handing her the whole
9 deposition so she doesn't think I'm only giving her
10 part of it. I want the Court to be allowed to see
11 the entire thing. I have read from -- I mean, I
12 have cited excerpts in my brief, Your Honor. I
13 think it is proper to allow the Court to see the
14 entire deposition. That is why I handed it to her.

15 So you --

16 MR. BOOTH: The only thing I would say is that
17 summary judgment, you are required to submit
18 evidence. They are the moving party. That was
19 their responsibility to submit evidence. I then
20 have two days before the hearing date approximately
21 to file opposing affidavits or opposing evidence.

22 So I looked at what she filed last week and
23 responded to that. Now she is saying she is adding
24 maybe 70, 80 percent more of his deposition than
25 she told me before she was going to submit.

1 Now, that is an objection. Certainly if you
2 want to look at the whole thing, that is fine, but
3 I do object here today as a motion for summary
4 judgment. This entire affidavit, only about
5 20 percent of it was actually -- the way I did
6 it --

7 THE COURT: Well, I think the affidavits have
8 to be filed. But are you saying you have not
9 received the affidavits?

10 MR. BOOTH: Your Honor --

11 THE COURT: Are you referring to the
12 deposition and the affidavit also?

13 MR. BOOTH: Well, I'm talking about my
14 affidavit in response. I can file my affidavit in
15 response. I don't think there is anything wrong
16 with submitting excerpts from depositions as
17 evidence to be considered because in a motion for
18 summary judgment you are required --

19 THE COURT: That's what I'm supposed to look
20 at, the deposition, the affidavit, and the
21 argument.

22 MR. BOOTH: But I disagree a little bit only
23 because I think the moving party has to tell you
24 and me what they are going to use as their
25 evidence. I don't think they can say everything

1 that has ever been submitted in this case because
2 we do have a number of depositions.

3 So it is my understanding the way the motion
4 rule works is that as the moving party she's
5 supposed to tell me -- and she did -- in her motion
6 I saw the excerpts and I have highlighted them and
7 I brought them in, but now she is adding about
8 80 percent more pages.

9 So if she had said, I want to put in the whole
10 deposition of Stanley Herlong for you to consider
11 as evidence, then that would have been different.

12 Plus, even that allows me to go into the
13 deposition to make any objections to being
14 considered as evidence, just like we would at
15 trial. So that is why I'm at a disadvantage.

16 I did supply an affidavit of Mr. Herlong to
17 respond to what they argued and what excerpts they
18 had from his deposition as well as some others.
19 And I just think that is not normal to have an
20 additional amount of evidence submitted for you
21 today to consider in the motion.

22 Yes, you can consider any evidence that any
23 party gives you, but there are rules about when she
24 has to give it and when I have a chance to respond.
25 So I just think that is the part I'm talking about.

1 MS. WALL: Your Honor, might I respond very
2 briefly? The reason I'm giving Your Honor a full
3 copy of the deposition, which I have cited to, is
4 because it is the proper way. Actually,
5 technically under Rule 56, I believe I should give
6 you the sealed original. I will be happy to do so.

7 THE COURT: And you can refer to the pages.
8 And I'm guessing that those pages are the ones
9 in --

10 MS. WALL: Yes, Your Honor. And I simply did
11 this as a way of having you -- it is a little bit
12 easier to read than the sealed.

13 THE COURT: Okay.

14 MS. WALL: But however you would like to
15 handle it, Your Honor. All right, so --

16 THE COURT: My law clerk will take this copy.

17 MS. WALL: Going back to my argument, Your
18 Honor.

19 THE COURT: I guess, just for clarification,
20 she is saying that she is going to refer to the
21 pages but she just handed up the entire deposition.

22 MR. BOOTH: Well, like I say --

23 THE COURT: And technically I think I'm
24 supposed to look at the sealed copy of the
25 deposition. And she can't go through the sealed

1 copy of the deposition and take the pages out,
2 so --

3 MR. BOOTH: It would be pretty hard.

4 MS. WALL: That's right, I can't touch that.

5 THE COURT: Because I have to open it. And
6 I'm trying to find my scissors to do that, but I
7 don't know where they are.

8 All right.

9 MS. WALL: All right, thank you, Your Honor.

10 So in the sworn testimony, which they cannot
11 now be heard to try to change, Number One, Mr. --
12 the Plaintiff, through Stanley Herlong, admitted
13 repeatedly that he hired Mr. Bufkin as an attorney.

14 Where do we see that? We see that on Page
15 144, Line 20.

16 And you relied on Mr. Bufkin as a lawyer,
17 correct?

18 Yes.

19 We see it on Page 173, which says on Line 3:

20 All right. Did you look or did you view
21 Mr. Bufkin as a lawyer closing a real estate
22 transaction?

23 The answer is: Yeah.

24 And on 174, in which it says on Line 70:

25 And you went to him for this closing, the H &

1 H closing, as a lawyer?

2 Yes.

3 And then on Line 13:

4 And by you, again, I mean H & H?

5 Right.

6 So the Plaintiff, it is uncontested, hired
7 Mr. Bufkin as an attorney. And Mr. Bufkin, as an
8 attorney, as he is required to do under Buyers
9 Service, closed the real estate transaction.

10 Now, their theory is: Well, he may have been
11 a lawyer, but he was also a title agent, and
12 therefore we get to sue him as a title agent and
13 not a lawyer, which, as we have already talked
14 about, makes no sense because only a lawyer can
15 close on a real estate transaction.

16 But the interesting thing is, Your Honor,
17 again, in this testimony of the Plaintiff, the
18 Plaintiff didn't even know that Mr. Bufkin was a
19 title agent or had any relationship with the
20 Defendant, Old Republic National Title Insurance
21 Company.

22 How do we know that? Because he was asked
23 that on Page 150, Line 21.

24 Inviting your attention back to -- well, just
25 say July of 2007, we know that is when the

1 transaction closed; on July the 5th -- the day of
2 the closing of the transaction that is at issue,
3 what did you know of, if anything, about
4 Mr. Bufkin's relationship with Old Republic
5 National Title Insurance Company?

6 And the answer is: None.

7 And then on Page 152, Line 9.

8 And you did not know at that time of
9 Mr. Bufkin's relationship or what relationship he
10 had with Old Republic National Title Insurance
11 Company, is that correct?

12 Yes.

13 So, the Plaintiff cannot now come in and say,
14 oh, we didn't hire Mr. Bufkin as a lawyer, because
15 we already know he said that is the only -- the
16 only way they hired him -- and he can't come in and
17 say, well, I'm going to sue him as a title agent
18 because I relied on him as a title agent.

19 They didn't even know he was a title agent.
20 They have admitted they only knew he was a lawyer
21 and that is why they hired him. And, again, under
22 Buyers Service, only a lawyer could have closed the
23 transaction anyway.

24 Now, their cause of action -- well, let me
25 kind of sum that up then, if I might, Your Honor.

1 So what we have is very clearly a complaint against
2 a lawyer, a man who is acting in his capacity as a
3 lawyer, which the law requires him to be acting in
4 his capacity as, because only a lawyer can close a
5 real estate transaction in the State of South
6 Carolina.

7 And they cannot get around that by couching
8 him and saying, well, we're only suing him as a
9 title agent, because a title agent has to be a
10 lawyer to be able to perform the functions that
11 they are complaining about. Preparing the title
12 commitment, he -- by putting into that exceptions,
13 the P & K contract, the restrictions and covenants,
14 and allegedly failing to tell the clients about the
15 exceptions on the title policy. All of those
16 activities can only be done by a lawyer.

17 And they didn't even know he was a title
18 agent, so they can't possibly stand here and tell
19 this Court that they are suing him as a title agent
20 only; they didn't know he was a title agent.

21 Now, moving on, Your Honor, to the second part
22 of the argument, which is going substantively into
23 the causes of action.

24 The Plaintiff has alleged against Mr. Bufkin
25 two causes of action.

1 THE COURT: Let me ask Mr. Booth. I'd like to
2 hear his response to that before you go into that.

3 MR. BOOTH: Yes. The question about whether
4 Mr. Herlong, Stanley Herlong, knew Mr. Bufkin was a
5 title agent?

6 THE COURT: No.

7 MR. BOOTH: Which part, the attorney?

8 THE COURT: The question regarding him being
9 an attorney and that you all have to file an
10 affidavit.

11 MR. BOOTH: Okay. Your Honor, I submitted as
12 part of my return this chart, which I have also got
13 here in front of me, to illustrate that in South
14 Carolina because of our rule about lawyers can only
15 do closings, most of the lawyers that do closings
16 are also title agents, and the title agent process,
17 as even the vice president of Old Republic said,
18 you don't have to be an attorney to be a title
19 agent. That is in his affidavit, which is --
20 because licensing of an insurance agent, you have
21 to go through the Department of Insurance, you have
22 to have an agreement to allow you to write the
23 title insurance, so it is a totally separate
24 process. Over here to be an attorney you have to
25 be licensed by the Supreme Court. And even on the

1 closing statement everything is separated, premium
2 for title insurance and legal fee, everything is
3 separated. So he did perform this role as a title
4 agent.

5 In the Buyers Service case that Ms. Wall
6 referred to, I think when you look at that, that is
7 a 1987 case, if you come forward a little bit to
8 what I call the Doe cases from the last decade, two
9 or three Doe cases, you'll see that all of a sudden
10 they are talking about title insurance policies.
11 Buyers Service did not include a title insurance
12 policy. In fact, the facts say that the Buyers
13 Service, who was not an attorney, sent one of their
14 employees to do an abstract of title. Just an
15 abstract, not title insurance. And that was not
16 proper. That was practicing law. But when you
17 come forward to the most recent Doe cases, Doe
18 versus McMaster, for example, where this issue came
19 up again after Buyers Service, it came up again in
20 '87. If you look at the most recent Doe cases,
21 you'll see that now it is introduced into the
22 equation issuing title insurance. And that is
23 clearly separated out from the responsibilities or
24 the practicing of law. It clearly says, issuing
25 title insurance is not the practice of law.

1 But still you have this separation here. You
2 have licensing by the Department of Insurance. And
3 in this case, Ms. Wall, when she was going through
4 the testimony of Mr. Herlong, left out the document
5 that she actually proffered into evidence during
6 his deposition, where the document says, Mr. Bufkin
7 is a title agent and Mr. Herlong on behalf of H & H
8 agreed to purchase title insurance from him. So
9 the signatures are there. That was done at
10 closing. So Mr. Bufkin's role as a title agent was
11 acknowledged in writing by both parties.

12 Stanley Herlong, who gave a deposition years
13 later, was asked about Mr. Bufkin's role in the
14 closing. And certainly he was an attorney doing a
15 closing, but the title insurance agent part was
16 still there. And that is what that document says.
17 That is a Department of Insurance required form
18 where it clearly says as a buyer of real estate if
19 you decide to buy title insurance, you don't have
20 to buy from the attorney. It even says the
21 attorney alone doesn't have the right to make you
22 buy title insurance from him, he can say you can
23 get it from anywhere you want to. And that is what
24 the Department of Insurance wanted to make sure of,
25 that a consumer had the right to select the title

1 insurance vehicle. And, again, in this case there
2 is a separation.

3 So, and then you look at the complaint itself.

4 THE COURT: Let me ask you this. It also says
5 name of insurer or agent. And it says, Bufkin Law
6 Firm.

7 MR. BOOTH: Right.

8 THE COURT: Which is not him individually as a
9 title agent. In this case it actually says -- from
10 what I'm reading, it says Bufkin Law Firm.

11 MR. BOOTH: That is correct. He operated his
12 ownership or title agency as the same name. He
13 used a d/b/a. In fact, again, if you go to the
14 HUD-1, you'll see Bufkin Title used on the HUD-1 as
15 the company that got the premium -- got the
16 premium. So on that form, again, he personally is
17 licensed as -- his licensing information here off
18 the website. So he does have that license.

19 So, again, whether he calls himself Bufkin Law
20 Firm to be an agent or whether he calls himself
21 Bufkin Title, as he did on the HUD-1, he personally
22 was a title insurance agent. He was licensed by
23 the Insurance Department. He has got his agency,
24 in this case Old Republic. So he was functioning
25 as a title agent.

1 And then you go to my complaint that we filed,
2 the first cause of action, Paragraphs 42 through 45
3 are alleging that there was an agreement to provide
4 coverage, just like if you went to buy insurance
5 coverage from a car and you wanted underinsured
6 coverage, and you told the agent I want
7 underinsured coverage and for some reason that
8 doesn't get taken care of, you can sue and have the
9 policy reformed because that agent made a promise.

10 And that's all I'm saying here is there were
11 agreements made as to coverages. Again, title
12 insurance is protection of the identification for
13 coverages, adverse claims on real estate.

14 And in this case, this particular buyer, H & H
15 bought lots here and they also bought a tract of
16 land here in that closing. So they bought title
17 insurance from Mr. Bufkin. That is on the HUD.
18 That is in that form. And they agreed to buy it.
19 Again, this is the Department of Insurance form.
20 The HUD itself is on the back. It does say Bufkin
21 Title. I forget what line number. I think you can
22 see it.

23 So that was -- again, Mr. Bufkin is personally
24 licensed and he runs a d/b/a, I guess, as Bufkin
25 Title, because right now all I see his name, it

1 doesn't say d/b/a Bufkin Title, if that is issue in
2 the case.

3 So to go back to my first cause of action,
4 Paragraphs 42 to 45, I am alleging a breach of an
5 agreement to provide coverages in the title
6 insurance, because title insurance, it is not an
7 opinion of title from an attorney, it is an
8 identification contract. Title insurance, again,
9 you have companies -- in this case, Old Republic --
10 that have the right to sell it. The agent writes
11 it, just like a car, just like a house. The agent
12 writes it. That is what Mr. Bufkin's role was.

13 Also in this transaction, no dispute about
14 that, he had to have both licenses, he had to have
15 this license for practicing and this license for
16 issuing title insurance, two separate licenses. He
17 had to have that to issue the title insurance. So
18 that is why my complaint doesn't require the
19 attorney affidavit, because I'm not suing for
20 professional malpractice, I'm suing him for
21 agreements that he made as to coverages -- in other
22 words, protection against adverse claims -- and
23 that, for summary judgment purposes, is what we
24 believe that the evidence shows, even the
25 deposition shows that again. That form I just

1 showed you came out of that deposition.

2 The question by Ms. Wall to Mr. Stanley

3 Herlong:

4 You signed this form?

5 Yes.

6 Did you know you were buying title insurance?

7 Yes.

8 Now, whether or not he understood exactly how
9 things were set up, maybe not, but that is not just
10 a summary judgment; there is a question of fact
11 that goes forward -- disputed, I mean -- that goes
12 forward.

13 So here we definitely know this is true,
14 again, Mr. Ivey Hart, the vice president of Old
15 Republic, I put excerpts of his deposition in my
16 return, and he goes through there and mentions
17 Mr. Bufkin being licensed, Mr. Bufkin having this
18 agency agreement. And then he says in his
19 deposition, you don't have to be a licensed
20 attorney to be a title agent. And he even said
21 within his company there are several -- not very
22 many, but several that sell title insurance without
23 being a licensed attorney. That is in his
24 deposition, Mr. Ivey Hart.

25 So we think those answer the question. The

1 statute itself that we're talking about as far as
2 an attorney affidavit says the expert has to give
3 an opinion about professional practices where they
4 are not malpractice. And this is not a malpractice
5 case, this is where:

6 Mr. Bufkin, you issued the title insurance?

7 Yes.

8 Did you agree to provide these coverages --
9 oral agreement -- did you agree to provide these
10 coverages?

11 Our affidavit says, yes, he promised that, he
12 agreed to that.

13 The title company -- and let me just add one
14 more thing. Usually when you go to a closing you
15 get a commitment to insure, something like this.
16 And in there where what we call exceptions are
17 listed, that was not done for this closing. This
18 document didn't even exist at the closing.

19 Mr. Bufkin didn't even have this prepared or shown
20 to my clients, even though they charged him, but
21 still, even without that, he had the ability to
22 make those promises about coverage. We know when
23 title insurance is written through an agent like
24 Mr. Bufkin, he, not because he is a licensed
25 attorney, but he, because he is a licensed agent,

1 writes up the exceptions, fills in the form, that
2 only he can do that as a licensed agent. He signs
3 it, authorized signatory. He can only do that
4 because he is licensed as an insurance agent. He
5 can't do that just as an attorney. And that is the
6 way -- that is the reason that the statute doesn't
7 even mention any type of insurance agent, not even
8 life, health, car, et cetera, et cetera. That is
9 not mentioned in any of the categories.

10 So that is why I believe that the statute
11 doesn't cover when an attorney, who is a
12 professional, breaches a contract. The statute was
13 never intended to require a Plaintiff to provide an
14 affidavit, even if -- I mean, it just doesn't make
15 any sense. The affidavit from an expert, he would
16 say he breached a contract? That is not what the
17 statute is talking about. The statute says that he
18 committed professional malpractice.

19 I'm saying that Mr. Bufkin breached a
20 contract. And of course that is why Old Republic
21 doesn't want to pay because they dispute that.
22 That is fine. They dispute there was an agreement
23 made, because when the policy was actually produced
24 years later after the closing, that is when those
25 exceptions appeared, and that is why they are

1 declining coverage. We have to get coverage for
2 the particular claims that we got. We got to have
3 proof that he made that agreement at the closing to
4 provide those coverages.

5 And the only theory I would have is a breach,
6 a breach case. That is all I've got to prove that
7 those coverages weren't agreed upon and therefore
8 Old Republic can't deny coverage because they are
9 now saying that within the exceptions that Mr.
10 Bufkin prepared later, much later, those exceptions
11 are there.

12 And they say, no, we're not going to pay them
13 now because they are excepted from coverage. And
14 that is the way title insurance usually works. It
15 describes the property and then it has exceptions.

16 So to call this an attorney malpractice case,
17 I'm not alleging that he failed to advise. That is
18 not part of my complaint. That is what Ms. Wall
19 wants to call it, a failure to advise. That is not
20 alleged. This is an agreement, a contract, not
21 failure to advise.

22 When you do that, and you have this additional
23 capacity here, that takes it away from that
24 statute. That statute doesn't cover that kind of
25 case. So that is why, Your Honor, I'm just

1 limiting it to the issue there. That is why we
2 don't think it is appropriate to dismiss him
3 because he didn't file an attorney affidavit.

4 THE COURT: Okay. Thank you.

5 MS. WALL: Your Honor, if I might briefly
6 respond to that.

7 The contract -- he keeps referencing this
8 contract between Mr. Bufkin and the Plaintiff. The
9 contract, as per the complaint, is this alleged
10 oral promise to provide a title policy without
11 exceptions.

12 Exceptions go to what property interests are
13 going to be covered and not covered. That is what
14 Buyers Service is talking about, opinions,
15 certificates, status of title, how title will
16 affect a person's rights. That is what only an
17 attorney can do.

18 Now, let's look at the document that Mr. Booth
19 just referred Your Honor to, which is the Stanley
20 Herlong signing that he wanted to have buyers
21 insurance.

22 Very front page it says that the attorney
23 is -- the agent is an attorney. It says
24 attorney/agent. Under South Carolina law the
25 attorney/agent is to complete sections blah, blah,

1 blah. I think he just handed you that, Your Honor.
2 And if he didn't, I'll be happy to hand that to
3 you.

4 MR. BOOTH: It was on that stand-up thing, if
5 you still have it.

6 MS. WALL: Well, Your Honor, I will be happy
7 to hand you my copy.

8 MR. BOOTH: Either way.

9 MS. WALL: And if I might, Your Honor, just
10 before I hand it to you, also on the very front
11 page, it says: Name of the attorney/agent, Henry
12 P. Bufkin, attorney. It says that right on the
13 front. So of course he is acting in his capacity
14 as an attorney because he is required to do so. He
15 is not a mere agent, he is an attorney/agent.

16 And it is interesting to me -- I heard
17 Mr. Booth say, well, Old Republic said that it had
18 a few agents that are not attorneys. That is
19 correct. But those few agents are paralegals, and
20 we also know under Buyers Service that a
21 paralegal -- and we know this under our ethical
22 rules -- is always supervised by a licensed
23 attorney in the State of South Carolina.

24 Now, he also says that he is complaining about
25 coverages. Well, exactly. Only an attorney can

1 give his client advice on coverages, how his title
2 to property is going to be affected by the title
3 policy. A non-lawyer agent cannot do that. It is
4 the unauthorized practice of law.

5 And then finally -- I'm trying to respond,
6 Your Honor, to the various points that he brought
7 up. He references subsequent cases to Buyers
8 Service. Those subsequent cases make it even
9 clearer what I'm saying, Your Honor.

10 For example, we have In re Lester where the
11 Supreme Court made it crystal clear, when you
12 supervise an attorney, that doesn't mean you are
13 down the hall or you've got your cell phone, you
14 actually, as the lawyer, must be physically
15 present, you must be in charge, and only you can
16 discuss with your client, here is what I'm
17 excepting, here is what I'm not excepting, this is
18 the reason why, I found this in the title search.

19 We know abstractors do title searches, but the
20 lawyer is required to review it because it is the
21 lawyer who is passing on the rights of his client
22 in purchasing property.

23 There can be no question here that this is a
24 claim against Mr. Bufkin in his capacity as a
25 lawyer, the fact that he is also a lawyer/agent

1 notwithstanding.

2 Now, Your Honor, going to the second portion
3 of my argument, which is set forth in my brief,
4 Your Honor, and that goes to the looking at the
5 actual causes of action themselves.

6 Breach of oral contract, promissory estoppel
7 is the way they are couched. And basically what it
8 says in the complaint is Mr. Bufkin promised his
9 clients at closing, the buyer/Plaintiff, that there
10 would be no exceptions on the title policy, that
11 the P & K contract would not be a problem later on,
12 the homeowners association under the restrictions
13 and covenants wouldn't be able to come back. And
14 if they did, there would be title insurance for it.

15 Only a lawyer could make such a promise. A
16 lay person can't do that because a lay person, a
17 non-lawyer, would then be passing on title rights,
18 discussing what rights you have in the title, what
19 protection you are going to be afforded or not and
20 how it will work for you. Only a lawyer can do
21 that under Buyers Services, with good reason. As
22 our Supreme Court has said, we require lawyers to
23 be involved because it is for the protection of the
24 public.

25 Now, let's look at these two causes of action.

1 They fail on their face, and there is no -- no
2 material issue of fact.

3 And, Your Honor, with your indulgence, I will
4 show you how we know that, again, from the sworn
5 testimony of the Plaintiff.

6 First of all, when you are looking at a
7 contract cause of action, we know it is black
8 letter law that for an agreement to be legally
9 enforceable the parties must manifest by way of an
10 offer to enter an agreement by one party and an
11 acceptance of this offer by another, an intention
12 to enter a contract under the terms which are
13 completely understood by both parties. This is
14 known as the meeting of the minds. All essential
15 terms must be articulated.

16 And it goes on to say that, you cannot have a
17 contract where one side had something in his mind
18 but doesn't say it. The contract has to be
19 definite and certain in its terms and must be
20 communicated. And the person to whom it is
21 communicated must assent.

22 Promissory estoppel, the same thing. There
23 must be a promise that is unambiguous in its terms.

24 Now, let's look at the sworn testimony of the
25 Plaintiff on this point. The Plaintiff admitted in

1 his deposition that he gave no instructions to
2 Mr. Bufkin with regard to issuing a title policy
3 without exceptions. He never gave those
4 instructions to Mr. Bufkin. And he admits that Mr.
5 Bufkin never told him -- this is his testimony --
6 about what the exceptions would or would not be.

7 Clearly, Your Honor, there has been no promise
8 asked, no promise made. There is no enforceable
9 oral contract by their own testimony.

10 Very briefly, when we look at, for example,
11 pages that I have cited, we look at Pages 77 and
12 78 -- 77, at Line 21:

13 What do you recall, if anything, Mr. Bufkin
14 saying with regard to the subject of the contract?

15 There we were talking about the P & K
16 contract.

17 And then he goes on to say:

18 Well, he more or less afforded what Ralph was
19 saying. He said he didn't have a copy, but it
20 appeared that they had not lived up to their
21 agreement.

22 Do you recall anything else that was discussed
23 with regard to that contract?

24 Yes. I said I was concerned. And Mr. Bufkin
25 even -- he even made the comment that Ken King --

1 who was then P & K -- could be a problem to deal
2 with. But the -- but I said -- this is the
3 Plaintiff now -- but I said, well, hey, if he is in
4 expiration of the contract, then I don't see where
5 he should be a problem.

6 That is an assumption that he is making. He
7 never said to Mr. Bufkin, make sure he is not a
8 problem, I want a title policy without this as an
9 exception, tell me about the title policy.

10 According to the Plaintiff there was no
11 discussion whatsoever about the title policy.

12 He goes on to say, Your Honor -- and I don't
13 want to overdo this, and I apologize, but it is so
14 important because these are admissions of the
15 Plaintiff.

16 And I asked him:

17 Do you recall any other discussion or comments
18 by anyone: You, Ralph, Mr. Bufkin, or anyone else
19 that you recall at that closing with regard to the
20 P & K contract?

21 And he goes on to say:

22 That pretty much was it.

23 There was no request for a promise to
24 Mr. Bufkin and no promise made by Mr. Bufkin.

25 When we turn to Page 159, the Plaintiff

1 states:

2 I have already said on Line 9, I don't -- all
3 I know is Mr. Bufkin asked me if I wanted a title
4 insurance policy and there was no other
5 conversation that I recall as far as any
6 exceptions.

7 Backing up, then, can we -- can I say that the
8 only thing Mr. Bufkin told you about a title
9 insurance policy was that he was going to issue
10 one?

11 Right.

12 That's it?

13 That's it.

14 And then finally, Your Honor, on Page 143:

15 Did you ever ask Mr. Bufkin to insure that
16 neither you nor H & H would be required to pay any
17 HOA assessments?

18 This is not the P & K contract, this is the
19 second part to the controversy.

20 There never was -- or came up at all.

21 So you never asked that of Mr. Bufkin, did
22 you?

23 No.

24 So, Your Honor, there is no contract as a
25 matter of law between the Plaintiff and Mr. Bufkin

1 to be enforced in this or to be the basis for a
2 cause of action for breach of contract or
3 promissory estoppel.

4 The Plaintiff admitted he didn't ask for a
5 promise, he didn't get a promise. The Plaintiff
6 has admitted he didn't even ask about title
7 insurance.

8 The only thing he was told according to the
9 Plaintiff is, do you want title insurance? The
10 Plaintiff says yes. And he gets it.

11 There is no oral contract that was breached
12 here just looking at the Plaintiff's own
13 admissions. And they are bound to those
14 admissions, Your Honor.

15 Finally, Your Honor, the third point that we
16 bring up in our motion for summary judgment -- and,
17 again, we believe that this is a clear matter of
18 law for the Court with regard to the necessity for
19 an affidavit that didn't occur here, Number One.
20 It is absolutely clear that there never was an oral
21 contract. There was no promise by the Plaintiff's
22 own admissions, Number Two. And then, Number
23 Three, Your Honor, there is no proximate cause in
24 this case.

25 And I know Mr. Lang will speak to this in more

1 detail because it really goes to the title policy
2 itself, but, Your Honor, even if Mr. Bufkin had not
3 excepted, had not listed his exceptions to the P &
4 K contract and the covenants and restrictions, this
5 policy would not have covered the controversy that
6 came up afterwards with P & K and the homeowners
7 association.

8 And why is that? Because there is standard
9 language, Your Honor, in the policy, Section 3 and
10 Section 9 that would defeat as a matter of law the
11 Plaintiff's claim that they should be covered.

12 Section 3 goes to -- and I don't know if Your
13 Honor has a copy of the owners policy. I'll be
14 happy to hand that up to the Court. I believe it
15 is attached. But in that policy, Section 3, which
16 is on the second page, Your Honor, under exclusions
17 from coverage, it says: Defects, liens,
18 encumbrances, adverse claims or other matters that
19 are known to the insured/claimant.

20 Now, Your Honor, it is undisputed in this case
21 that the Plaintiff, Stanley Herlong, knew about the
22 P & K contract by his own testimony as early as
23 2003. This closing is in 2007. It is undisputed
24 that it was discussed. He knew about the P & K
25 contract.

1 So even if Mr. Bufkin had not listed it as an
2 exception, the title company would not have covered
3 it because the insured, Stanley, H & H, knew of the
4 P & K contract, knew from the passages I read to
5 the Court that there was an issue.

6 Secondly, the homeowners -- the covenants and
7 restrictions that went to the property, Your Honor,
8 they clearly knew about that. They had
9 constructive knowledge. The Plaintiff has
10 constructive knowledge.

11 Why is that? Because the restrictions and
12 covenants are a matter of record. They are filed
13 in the courthouse. They were a matter of record
14 from 1998 forward. This closing was 2007. They
15 have constructive knowledge.

16 Stanley, the 30(b)(6) for the Plaintiff, was a
17 member of the original owning group, known as 5
18 Star, and then he is also the Plaintiff in this
19 case. So he knew or was under constructive -- had
20 constructive knowledge from 1998 forward of these
21 covenants and restrictions.

22 That is the law on constructive knowledge. He
23 is a principal in 5 Star, 25 percent owner. And I
24 believe that document was attached to my moving
25 papers, Your Honor. Twenty-five percent owner.

1 And there is a paragraph in the 5 Star operating
2 agreement that states that in essence the acts of
3 one owner, it binds the rest. And his
4 brother-in-law had worked with -- had made sure
5 that there -- because, of course, restrictions and
6 covenants have to be filed when you have a
7 subdivision in South Carolina -- made sure that the
8 restrictions and covenants were filed on behalf of
9 5 Star. Stanley was a member of 5 Star. He has
10 constructive knowledge. So there wouldn't have
11 been coverage anyway.

12 And then finally, there also wouldn't be any
13 coverage, Your Honor, because under that owners
14 policy of title insurance in Section 9, which is on
15 Page 4, it says in 9(c):

16 The company shall not be liable for loss or
17 damage to the insured for liability voluntarily
18 assumed by the insured in settling any claim or
19 suit without the prior written consent of the
20 company.

21 It is undisputed in this case, Your Honor,
22 that the P & K contract issue came to the floor
23 within several weeks of the closing, and Stanley
24 got together with Ken King of P & K and determined
25 to settle the matter.

1 The Plaintiff, H & H and Stanley, their lawyer
2 was no longer Mr. Bufkin at that point in time.
3 And their new lawyer didn't put the title insurance
4 company on notice until August the 28th, 2007.

5 As to the homeowner controversy under the
6 restrictions and covenants, the homeowner matters,
7 those began in 2008. They were -- went into
8 litigation. They were settled in December of 2008.
9 And the lawyer for H & H did not put the title
10 insurance company on notice until a letter dated
11 March the 18th, 2009, approximately three months
12 after the settlement. That lawyer was not
13 Mr. Bufkin.

14 So, Your Honor, for all of those reasons,
15 three separate reasons, any one of which will
16 defeat this lawsuit as a matter of law against
17 Mr. Bufkin, we ask the Court to grant our motion on
18 behalf of Mr. Bufkin, our motion for summary
19 judgment on one or all three or two of the three
20 grounds.

21 Thank you, Your Honor.

22 THE COURT: Thank you.

23 Yes, sir?

24 MR. LANG: Thank you, Your Honor. May it
25 please the Court? Louis Lang, for Old Republic.

1 Judge, our motion for summary judgment is
2 similar to Mr. Bufkin's motion, so I'm not -- I'm
3 going to try not to repeat all that -- what
4 Ms. Wall said. And I'll try to be brief. I know
5 Your Honor has been here a long time, and I
6 appreciate your patience.

7 Let me just add a couple of facts that maybe
8 weren't entirely clear..

9 Fact Number One, of course, that Ms. Wall
10 indicated, the P & K contract controversy came up
11 very shortly after the closing of the transaction
12 in July of 2007.

13 It was settled by H & H by way of a payment to
14 P & K in the amount of \$25,000. And the settlement
15 agreement occurred in August of 2007. And that
16 agreement occurred three days after Old Republic
17 was put on notice of that potential claim by
18 counsel for H & H. And that notice letter, Your
19 Honor, is attached to the affidavit of Ivey Hart,
20 which is Tab H to my submission which Your Honor
21 has in front of you. That will become important in
22 a moment, Your Honor, when I get to that exclusion
23 or that condition of the stipulation of the title
24 policy.

25 Secondly, Your Honor, as Ms. Wall indicated,

1 the HOA controversy arose in 2008. It resulted in
2 litigation. And at Tab E of my submission, Your
3 Honor, is the release and settlement agreement,
4 which settled the H & H part of that litigation.

5 And that is important again because of the way
6 the title policy is constructed. And I have a copy
7 of counsel's notice letter to Old Republic, which
8 is dated March 18th, 2009.

9 THE COURT: Which tab is that?

10 MR. LANG: That is Tab H, Your Honor.

11 So let me start where Mr. Booth ended and talk
12 about the fact that this is a case of legal
13 malpractice, it is not a case of some kind of oral
14 agreement with the issuance of a legal policy.

15 And I'm not going to repeat all that Ms. Wall
16 said, but I will only do this. I will invite the
17 Court's attention to two things. Thing Number One
18 is a submission by Mr. Booth which came -- I got
19 them January 17th, but it is an excerpt from the
20 deposition of Ivey Hart. Mr. Hart is the vice
21 president and claims counsel or managing member or
22 manager of Old Republic's office here in Columbia.

23 And what Mr. Hart was asked is this:

24 Now, does Old Republic Title have any
25 practices or standards requiring agents to notify

1 or advise a prospective purchaser of title
2 insurance of all the adverse claims existing or
3 showing on the public record?

4 The answer is: No.

5 Now, I don't know if Your Honor is familiar
6 with the way a construction -- the way a title
7 policy or title commitment functions are organized,
8 but let me just describe that very briefly to you.

9 A title commitment has a front page, which is
10 preprinted, and then two -- it has three schedules.
11 The preprinted portion, all that says, in essence,
12 is, this is a promise to issue a title policy in
13 accordance with Schedules A, B-1 and B-2.

14 Now, Schedule B-2 on a title policy, which is
15 Tab A of my submission, Schedule A talks about who
16 the prospective insured is going to be, the amount
17 of the insurance, the effective date of the
18 insurance, or commitment rather, which in this case
19 was June the 28th, 2007, as well as a description
20 of the property that is going to be subject to the
21 title policy.

22 For purposes of this discussion, Schedule B-1
23 doesn't matter too much, but Schedule B-2 is
24 crucial, because on Schedule B-2 is listed all of
25 the exceptions that are going to be included in the

1 title policy. And by exceptions I mean all those
2 things which adversely affect title, title to the
3 property that is to be insured.

4 So going back to what Mr. Hart says in his
5 deposition, Old Republic National Title Insurance
6 Company does not have any policies or procedures
7 telling its attorney/agent how to advise a
8 prospective insured of all the adverse claims that
9 might have been on the property.

10 What Mr. Booth did not ask is the next
11 question: Well, why does Old Republic not have
12 those policies and procedures?

13 And that question is answered in -- by
14 Mr. Hart in his affidavit, in which he says: We
15 don't have those policies and procedures because
16 that is the practice of law.

17 Old Republic is not a licensed attorney. We
18 cannot tell our agents, whether they are lawyers or
19 whether they are lay agents, to advise our insureds
20 of adverse interest in property because our Supreme
21 Court has said in no uncertain terms as late as
22 last summer, in August in Matrix 2, that that is
23 the practice of law.

24 Now, when an agent who is a lawyer sits at a
25 closing table, he is not sitting there as an Old

1 Republic agent. He is sitting there as an
2 attorney. So that is what Mr. Bufkin did when he
3 closed this transaction. That is what he did when
4 he was advising his clients as to the P & K
5 contract and those discussions that occurred before
6 closing. And that is all that he did in regard to
7 the P & K contract, the covenants and restrictions.
8 Anything that he did in talking to his folks about
9 the title to this property and adverse interest,
10 anything, that has to do -- that is the practice of
11 law. That is not anything that you can, you know,
12 have a nice little black line and say oh, no, we
13 are going to divide Henry Bufkin into two parts,
14 the agent and the lawyer. If he is sitting at that
15 closing table, he is the lawyer.

16 The only thing I would add, Judge, in the
17 Buyers Service case, Mr. Booth brought up the issue
18 of title insurance, and the Supreme Court talked
19 about title insurance. And this is in Buyers
20 Service. It says here -- and I'm just quoting from
21 what the Supreme Court said.

22 THE COURT: What page?

23 MR. LANG: Well, I don't know, Judge. It is
24 Page 6 of the Westlaw version of it.

25 THE COURT: Okay. All right.

1 MR. LANG: The second -- after five it goes
2 down to another paragraph.

3 The same principles which render the
4 preparation of instruments the practice of law
5 apply equally to the preparation of title
6 abstracts. And then it cites the case.

7 In Beach Abstract and Guaranty Company versus
8 The Bar Association of Arkansas, the Court relied
9 upon its earlier holding in Arkansas Bar
10 Association versus Block in holding that title
11 examination, when done for another, constitutes the
12 practice of law. The Court rejected the title
13 insurance company's arguments that the examinations
14 were performed only incidentally to its own
15 business and that no separate fee was charged.

16 What the Court is talking about there,
17 Judge -- see, this has been a controversy for 40
18 years. Title companies have wanted to cut lawyers
19 out of real estate transactions since there have
20 been title companies. The same thing banks want,
21 because they make a lot more money if they don't
22 have to deal with a lawyer.

23 Our Supreme Court has said absolutely and
24 positively not. We don't care, title company, if
25 you are not issuing a policy. That lawyer, though,

1 that is his job. That is the practice of law to
2 examine that title and report accurately, we don't
3 care to who, to you, title company, or to the
4 client, but it is the lawyer's job to examine
5 title, to report accurately the state of that
6 title. That is the practice of law. You, title
7 company, cannot do that, period.

8 That is why this case, Judge, is purely a
9 legal malpractice case. It is not, no matter what
10 you try to fit it in as, it is not a breach of
11 contract, it is not a title insurance claim, denial
12 case, it is purely the practice of law. That is
13 what they are complaining about.

14 And really what they are complaining about,
15 Judge, frankly is they are saying that there was an
16 oral contract between Hank Bufkin and H & H for
17 Hank Bufkin not to do his job as a lawyer, because
18 his job as a lawyer is to report accurately the
19 state of the title.

20 And they are suggesting in this complaint that
21 they had to deal with Hank not to report accurately
22 to leave off the P & K contract as well as the
23 restrictive covenants, and that simply didn't
24 happen.

25 Judge, that's all I'm going to say about that.

1 THE COURT: All right.

2 MR. LANG: Following up on what Ms. Wall said
3 about the oral agreement, Judge, I don't think I
4 could do any better than that, I'm sure I couldn't,
5 but I would just invite the Court's attention to
6 the case I cite in my brief which is the Fulmer
7 versus London, Liverpool and Globe Fire Insurance
8 case, which is from 1934, which quotes an 1894
9 case, which says that:

10 The mere expression of a desire by one
11 intending to procure insurance, or a proposition
12 made to an insurance agent to insure property, and
13 an assent or acceptance by the agent to insure,
14 without more, would not amount to a contract of
15 insurance or an agreement to insure.

16 At the closing -- and this is undisputed,
17 Judge, there was no request by H & H, Stanley
18 Herlong, anybody else to Mr. Bufkin: Mr. Bufkin,
19 give me a title policy that will insure over the P
20 & K contract or restrictive covenants. There was
21 no discussion on that. Undisputed. And that is a
22 material crucial part of any title insurance policy
23 any title insurance commitment. And the affidavit
24 of Ivey Hart, which is undisputed, says exactly
25 that. You can't have a deal if you don't have a

1 meeting of the minds. And there was absolutely no
2 meeting of the minds as to these two aspects of the
3 title policy.

4 I would invite the Court's attention, Your
5 Honor, to another case. What counsel tries to do
6 in his submission, as I'm sure he is going to talk
7 about this when he gets up, and I'm not trying to
8 filibuster him, again, I feel like I need to do
9 this, he cites a case of Marshall versus King
10 Morgenstern. This is a case out of Georgia in
11 which there was a similar assertion, that a
12 lawyer/agent had entered into an oral agreement to
13 provide title insurance. But this case, the
14 Georgia case is radically different from our case
15 here and the undisputed facts here.

16 In this case there was a situation where the
17 purchaser was holding -- was asked to sign an
18 affidavit that the lender had given him saying
19 that, we know you don't have a survey, and just
20 because you don't have a survey, that doesn't mean
21 that we're liable to you in case there is something
22 wrong that survey would show.

23 And the purchaser in that case said, well, to
24 the lawyer, what do I do? How do I protect myself?
25 Do I need a survey?

1 And the lawyer said, no, you don't need a
2 survey.

3 And the purchaser said, well, okay, what do I
4 do, you know, to protect myself against this?

5 And the lawyer said, I'll give you title
6 insurance.

7 That is not what happened here. What happened
8 here is there was a discussion of the P & K
9 construction contract, but there was no
10 representation, no promises made by Hank Bufkin to
11 issue a title insurance policy that would insure
12 only the P & K contract or the P & K contract also
13 the exceptions. The same thing goes for the
14 restrictions.

15 Counsel also cites a case entitled Kelly
16 versus South Carolina Farm Bureau Mutual Insurance
17 Company. That is not this case. The Kelly case
18 had to do with the assertion of, in essence -- I
19 think this was a -- this was a negligent
20 misrepresentation case in which there was an
21 assertion of a breach of contract, a breach of an
22 oral contract, as well as a negligent
23 misrepresentation made by the agents.

24 And there is no pleading in this case
25 asserting a negligent misrepresentation case. They

1 are not saying that Mr. Bufkin misrepresented the
2 status of the title, which of course would be
3 illegal anyway, but they are not saying that there
4 was any negligent misrepresentation present.

5 The only thing that is pleaded in this case is
6 this oral contract to issue this policy without
7 these two exceptions.

8 Finally, Judge, I would address the affidavit
9 submitted by Stanley Herlong, which Ms. Wall has
10 already talked about.

11 And the only thing I would say about this, of
12 course Stanley Herlong was deposed under both my
13 30(b)(6) notice and Ms. Wall's 30(b)(6) notice.
14 This affidavit doesn't purport to suggest -- it
15 doesn't say that he is speaking on behalf of H & H,
16 it just says he is a member of H & H.

17 Putting that aside for the moment, he says:

18 I told him -- that is, Hank Bufkin -- that I
19 wanted to make sure that H & H would not have to
20 sell lots to P & K under any option agreement and
21 that the purchaser could sell the lot to a third
22 party. He knew the sale of land immediately was
23 part of the agreement for me and my brother to buy
24 land.

25 That is it. He doesn't say in his affidavit,

1 which was submitted in response to these motions
2 for summary judgment, that: I told Mr. Bufkin that
3 I wanted insurance and he promised me he would give
4 me insurance.

5 Even if you credit this statement, it says
6 nothing about insurance. Nothing at all. So you
7 cannot then lever yourself up and say, well, this
8 is a promise to write insurance. Insurance wasn't
9 even mentioned, ever, in regards to the P & K
10 contract.

11 And the same thing goes for the restrictive
12 covenants.

13 Finally, in Paragraph 14, Mr. Rowell says:

14 So, at or before the closing H & H had an
15 agreement with Mr. Bufkin as the title agent to do
16 the following: To insure that H & H would be able
17 to immediately sell the builder-ready lots and for
18 a listing agreement to be entered into with Russell
19 & Jeffcoat Realtors.

20 Nothing like that ever happened, of course.
21 But even crediting that, it doesn't say: We had a
22 deal that he was going to issue title insurance to
23 do that.

24 And this is an affidavit drawn specifically to
25 respond to this motion for summary judgment. And

1 even if you credit that, it just doesn't do it.

2 The only thing else I would add is this, Your
3 Honor. I described briefly what the title
4 commitment looks like. Now let me talk very
5 briefly about what the title policy looks like.

6 The title policy has three parts. It has a
7 preprinted part, which contains -- and this is at
8 Tab B, Your Honor, of my submissions. It has a
9 preprinted part, which includes the insurer
10 clauses, the exclusions from coverage, and then a
11 part called conditions and stipulations. It has a
12 Schedule A, which is the effective date of the
13 policy, the property to be insured, the amount of
14 the insurance, and the property description, what
15 property is to be insured. And then it has a
16 Schedule B, which are the exceptions taken from the
17 commitment and put into the title insurance policy
18 Schedule B.

19 Ms. Wall alluded to an exclusion under the
20 title policy, which was Exclusion 3-A, which
21 excludes from coverage defects, liens,
22 encumbrances, adverse claims or other matters, if
23 any, created, suffered, assumed, or agreed to by
24 the insured/claimant.

25 Here we have Stanley Herlong on both sides of

1 this transaction. He is member of the LLC that was
2 selling the property and a member of the LLC that
3 was purchasing the property. He knew about the P &
4 K contract. He agreed to it.

5 Now, even if we had issued a policy without
6 the exclusions that Mr. Booth is complaining of,
7 they would have been excluded under Paragraph 3-A.

8 Last, under the conditions and stipulation
9 provisions, which is another preprinted part of the
10 policy, Schedule -- I'm sorry, Paragraph 3 talks
11 about a notice claim given by an insured/claimant.

12 The insured shall notify the company promptly
13 in writing, one, in case of any litigation as set
14 forth in Section 5-A of these conditions.

15 And then it goes on to say: If the company is
16 prejudiced by the failure of the insured/claimant
17 to provide prompt notice the company's liability to
18 the insured/claimant under the policy shall be
19 reduced to the extent of that prejudice.

20 And that relates to Paragraph 9, which is on
21 the next page. It says: Limitation of liability.
22 (C) The company shall not be liable for loss or
23 damage to the insured. The liability voluntarily
24 assumed by the insured when settling any claim or
25 suit without the prior written consent of the

1 company.

2 Those two provisions, Your Honor, are
3 important because title insurance is somewhat
4 unique in the insurance world. It -- title
5 defects -- you can't ride by a piece of property
6 and look at a piece of property and say, oh, there
7 is a title defect case.

8 Title defects exist only in the minds of men
9 and women and generally it only exists until a
10 judge says, that is a title defect, your mortgage
11 is inferior to those other's mortgage or you have
12 an easement that incumbers your property that you
13 didn't know about. It is an industry borne of
14 litigation.

15 And when title companies issue these policies,
16 they understand that they are probably going to get
17 involved in litigation if there is a claim under
18 the policy, and they have many options under these
19 policies to deal with that litigation.

20 But principally, the first thing an insured
21 has to do is notify the insurance company of
22 litigation for other claims.

23 In this circumstance, Your Honor, we were
24 notified of the P & K issue on August 28th, 2007,
25 but we did not consent in writing to the settlement

1 that was entered into between H & H and P & K. And
2 there is no dispute about that.

3 In regard to the HOA litigation, we didn't
4 know about that at all until we received
5 Mr. Booth's letter, which was dated March 18, 2009,
6 well after the settlement had already been entered
7 into and the case dismissed.

8 So, again, even had we issued a policy without
9 exclusions for the P & K contract and without
10 exclusions for the Homeowners Association covenants
11 and restrictions, these matters would not have been
12 covered because they -- both of those were settled
13 without our written consent.

14 Thank you, Your Honor.

15 THE COURT: Yes, sir?

16 MR. BOOTH: I'll be brief, Your Honor. Again,
17 I will try to cover some of this.

18 First of all, Your Honor, in the deposition of
19 Stanley Herlong, Mr. Lang, who just spoke, asked
20 him on Page 157 starting at Line 17, by Mr. Lang:

21 So you specifically recall Mr. Bufkin telling
22 you that he was going to issue to you a title
23 insurance policy that did not take exception to the
24 P & K contract?

25 Answer: Yes.

1 So that is a question of fact, the formation
2 of the contract. What was said in his affidavit
3 doesn't contradict what is in his deposition. So
4 what Mr. Lang and Ms. Wall said to support their
5 argument that evidence is undisputed, there was no
6 discussion of exception, no discussion about P & K
7 as far as not being an exception are clearly now a
8 question of fact based on that.

9 Second of all, I know this wasn't clear
10 because again until you really look at the stuff,
11 the P & K contract was not recorded. The P & K
12 contract was not recorded. So there was no
13 constructive notice involved here. It was
14 Mr. Bufkin is the one that actually negotiated that
15 contract, I think, and knew about it. And but yet
16 he promised as an agent that he would not have that
17 as an exception.

18 And then, Your Honor, the Georgia case, the
19 Georgia case -- and, again -- the very bottom of
20 this case, on this page, I mean, starting on Page
21 519, the part that I put a little bracket around
22 clearly shows -- the case in Georgia, just like our
23 case, clearly talks about an attorney/agent
24 entering into an agreement.

25 On appeal -- this is a reversal. The summary

1 judgment is being granted to the attorney and it
2 was reversed on appeal.

3 The King Defendant argued that Marshall -- the
4 King Defendant is the closing attorney firm -- that
5 Marshall, the guy that closed on a piece of
6 property with a house on it found out a few months
7 later that his house, half of his house was on the
8 adjoining lot, very disturbing, but that is what
9 happened -- is attempting to improperly vary the
10 terms of his written title insurance policy. We
11 disagree. This case involved two alleged
12 agreements, an oral agreement to sell Marshall the
13 type of title insurance that would have protected
14 him in the dispute notwithstanding the lack of a
15 survey. Number Two, the actual contract of
16 insurance issued by First American. Marshall is
17 not trying to expand the second agreement, instead
18 he has alleged that King Defendant through King
19 breached the first agreement, that being survey
20 protection.

21 So that is what we've got here. And that is
22 why I think it is a case against the title
23 insurance agent.

24 And then I am going to hand up -- Buyers
25 Service, 1987, if you go forward a little bit, you

1 run into the case I was mentioning earlier, and
2 I'll give you the cite to it if I can find it real
3 quick, which is so important to see this
4 distinction because of what is in the Doe v.
5 McMaster, which is 585 S.E.2d 773. That is where
6 title insurance policies are mentioned. And it
7 clearly in there states that issuing of title
8 insurance policies is not the practice of law.

9 There are many other things in a closing that
10 are practice of law, but not title insurance.
11 Issuing title insurance policies. Again, a policy
12 is a contract identification, so it is very
13 different.

14 A few years after Buyers Service there was an
15 ethics opinion issued because a question was asked
16 in this ethics opinion: Can an attorney who is
17 doing the closing also be a title agent? Is it an
18 ethical conflict? Is there a problem?

19 And this is probably the best discussion of
20 how the fact that in South Carolina attorneys, I
21 call it advantage, because they can generate a lot
22 of business through the sale of title insurance
23 because they control the closing, they are there at
24 the closing, they else sell title insurance at the
25 closing.

1 This opinion was specifically addressed to
2 that. Can you as an attorney when you are also a
3 title agent do both without conflicts, ethical
4 problems or anything like that. And this opinion
5 discussed it. It was just a few years after Buyers
6 Service. And that is the way business is done in
7 South Carolina.

8 Now, I would state that Mr. Hart, Ivey Hart's
9 information that Mr. Lang read to you about no
10 practices or procedures dealing with the title
11 agent being required to issue commitments or
12 whatever at closing. I mean, I read that just the
13 opposite. There is no practices or procedures that
14 a title agent can agree to protection, title
15 insurance protection, in oral agreements. Because
16 he is saying right there you don't need to have a
17 written commitment. That is okay, you can sell
18 title insurance and not actually produce a title
19 commitment. So based on that argument, or at the
20 least argument I'm making, is that that agent is
21 given carte blanche authority by Mr. Hart, who is
22 the VP, that -- he was also the 30(b)(6) witness
23 for them -- that you can't also make oral
24 agreements.

25 And that is what happened in the King case

1 from Georgia. That attorney was sued along with
2 the title company because he promised, oral
3 agreement, that even though you don't get a survey,
4 Mr. King -- not Mr. King, Mr. Marshall, who was the
5 homeowner, again, found to have half of his house
6 next door -- I am going to sell you title insurance
7 that will give you protection to survey matters.

8 Of course the title company denied it because
9 the policy that was actually issued didn't provide
10 that coverage. The whole case was about going
11 against the agent for making that promise that
12 there would be survey coverage otherwise the policy
13 issued of course after closing in fact even issued
14 after the homeowner found his house was halfway
15 over the line, it was actually issued after that,
16 the title company denied coverage.

17 They said, no, the policy that was issued says
18 you do not have survey coverage. You do not.

19 And so this Marshall fellow said, wait a
20 minute, that attorney who was your agent said at
21 the closing, you will have title insurance to cover
22 matters of survey.

23 And based on that, he didn't get a survey done
24 prior to closing, because he was asked, do you want
25 a survey.

1 So that is why this case, this case, this
2 Marshall case from Georgia is as strong as I could
3 find within my research and my ability.

4 Now, let me look through my notes, Judge.
5 Again, I know -- so in essence, Judge, of course
6 granting a summary judgment is a drastic remedy. I
7 don't think the attorney affidavit is required.
8 That is just not there. There is a separate
9 function. He is a title agent. He is charged a
10 separate fee. That is a separate function. And my
11 client can sue him for anything he does as a title
12 agent. That is all we're suing for.

13 And, Judge, I would ask you to deny the motion
14 on all the grounds asserted by counsel.

15 Thank you, Your Honor.

16 THE COURT: All right. I have all of the
17 documents. I'll take it under advisement. And
18 I'll get something back to you all soon.

19 If you all can send me proposed orders. I
20 know this is on for February 13th.

21 MR. BOOTH: That is the week, yes, ma'am. Do
22 you want proposed orders from us now? Is that what
23 you are saying?

24 THE COURT: Yes, and --

25 MR. BOOTH: Give us what, 15 days maybe?

1 MS. WALL: Your Honor, if we could do proposed
2 orders to you in ten days, and I would ask that we
3 defer my requirement to go through two more sets of
4 interrogatories, requests for production on
5 documents that predate this closing until Your
6 Honor makes a decision. Is that all right?

7 MR. BOOTH: You have already ruled on that,
8 Judge, ten days. You ruled ten days I get the
9 documents. Whether or not you decide within those
10 ten days, you have already ruled on that.

11 THE COURT: Yes, to send it. But I may have
12 something -- and -- hold on. Yes, I have already
13 ruled on that.

14 MS. WALL: I believe, Your Honor, you also
15 said that depending on what your decision was
16 obviously it would render it moot.

17 I'm just -- if we give you proposed orders
18 within ten days, if you give me 15 days to do it,
19 if in the meantime you signed an order rendering it
20 moot, I won't have had to ask my client to go
21 through boxes of documents from the early 2000s to
22 find all of this material that is being asked,
23 which our position is it is wholly irrelevant and
24 frankly burdensome. But it is very irrelevant, and
25 will clearly be irrelevant if you -- depending on

1 your ruling.

2 MR. BOOTH: I have been waiting since
3 November, so --

4 THE COURT: I understand.

5 MR. BOOTH: It is not that much, Judge. That
6 is not correct. But I'll do whatever you say,
7 Judge. I'm just trying to make a point that I
8 thought you ruled. You even said in your ruling,
9 if I take it under advisement it may run past the
10 ten days. That's what I heard you say earlier.

11 THE COURT: What I may do -- well, y'all have
12 this set for February 13th.

13 MR. BOOTH: Today is the 19th of January.

14 MS. WALL: Your Honor, would you like proposed
15 orders in five days?

16 MR. LANG: We can do that, Judge.

17 MS. WALL: We can do that, Your Honor.

18 THE COURT: Yes, but -- and I may have to have
19 Ms. Wall -- you may have to send two because your
20 issues are a little bit different than Mr. Lang's
21 regarding -- I guess one -- I guess two or three
22 things could possibly happen. I can grant both of
23 your motions for summary judgment. That would be
24 the first thing. Or I could deny both of your
25 motions for summary judgment. Or I could grant one

1 and deny the other.

2 So that is what I'm saying. I may need to get
3 two orders from you, or two orders from you.

4 MS. WALL: We can do that, Your Honor.

5 MR. BOOTH: I guess you are --

6 THE COURT: I will only need one from you.

7 MR. BOOTH: Yes, ma'am. I will be glad to
8 submit it.

9 THE COURT: As to both.

10 MR. BOOTH: But, I mean, I think what you are
11 thinking -- and, again, this is me talking, not
12 you -- but I'm thinking because part of her summary
13 judgment motion is separate from Mr. Lang's --
14 well, not actually separate. Whether or not Bufkin
15 should be dismissed. That wouldn't of course
16 necessarily get rid of the case. I would still
17 have another Defendant. So if that was the only
18 granting you made, that would still leave the case
19 open.

20 Now, if you went further and denied -- and
21 granted the motion with respect to the lack of
22 contract or whatever, then obviously that keeps in
23 both Defendants. But just dismissing Bufkin on the
24 grounds that we didn't submit an attorney affidavit
25 and what he was practicing law, then that would

1 just get him dismissed, but the second Defendant
2 would still be in the case, assuming that is what
3 you rule.

4 So that is the only reason I'm thinking
5 out-loud about those possibilities.

6 MR. LANG: Judge -- you know, I disagree. I
7 think if Mr. Bufkin was practicing law, he was
8 practicing law. And this is a legal malpractice
9 case, not a title case. In other words, if
10 Mr. Bufkin is out, Old Republic is out.

11 THE COURT: Well, what I think he is saying,
12 though, is that even regardless the title insurance
13 company is liable for the act of its agent. And
14 I'm not sure if the title insurance -- and,
15 honestly, I will tell you, that is what might be
16 the issue and why I'm taking it under advisement,
17 I'd like to look at it. I'm not sure if the title
18 insurance company is shielded by him being, you
19 know, it being a professional malpractice case.

20 And you -- I mean, and you may, you know,
21 address that in the proposed order or something
22 too. But I'll tell you, that is kind of -- I don't
23 want to say that is where I'm going, but that has
24 crossed my mind is if there -- if he is out, are
25 you all out.

1 MR. LANG: The only thing I would say in
2 response to that, Judge, is if Mr. Bufkin is out
3 because of what he said or did not say was the
4 practice of law, Old Republic cannot engage in the
5 practice of law, and so therefore he was not acting
6 as our agent at that point.

7 MR. BOOTH: I think I can still sue under the
8 policy. The policy is still there. I'm suing
9 breach of the policy.

10 MR. LANG: If the basis of the oral agreement
11 was the practice of law: I am not a lawyer, I
12 cannot be sued for legal malpractice.

13 MR. BOOTH: Part of my case --

14 MR. LANG: That is the only thing I am going
15 to say.

16 MR. BOOTH: Part of my case, the second cause
17 of action was the commitment was not issued at the
18 closing. The commitment -- I'm claiming that the
19 title company cannot now defend on a document that
20 was not in existence. That is a question of fact.
21 We allege in testimony that commitment did not come
22 into play. So we think the title company is
23 estopped from denying coverage when the
24 commitment -- because the policy in this case was
25 issued long after all these claims happened, Judge.

1 MS. WALL: Your Honor, may I --

2 MR. BOOTH: The commitment is the only thing
3 that they are denying coverage under, they denied
4 it when I made the claim under the P & K, they
5 said, no, the commitment said no coverage. So the
6 commitment itself was missing, and we think that
7 alone is grounds to keep going against the title
8 company, as well as others.

9 MR. LANG: Judge, that has never been argued,
10 Judge. And the commitment date is June 28th, 2007.

11 MS. WALL: And I meant to bring that up to
12 you, Your Honor. And if you don't have a copy,
13 I'll be happy to hand you a copy.

14 MR. BOOTH: So what is the date?

15 MS. WALL: The commitment is dated on the
16 third page, June 28th, the closing was July.

17 MR. BOOTH: We have a -- Judge, I thought that
18 is what they said.

19 MR. LANG: That is exactly what we said.

20 MR. BOOTH: The commitment that we have --
21 that is the effective date of the commitment. I'm
22 talking about when it was given to my client. And
23 the evidence will show that the commitment that we
24 got has attached to it as Exhibit C the recorded
25 deed, which the recorded deed could not have been

1 recorded until after the closing. And that is the
2 testimony, and that is what we have been arguing.

3 Now, if they want to claim that the -- the
4 binder that was issued had no Schedule C, as I
5 understand it. Well, we disagree. And the
6 effective date on the binder, again, is through the
7 date of search. But if that wasn't delivered,
8 wasn't actually in evidence -- I mean, you could --
9 binders have to be dated through some date. And
10 that binder could have been issued weeks after the
11 closing and still have that date on it. That is
12 not the date of issuance, that is the date that the
13 title manager effected it through. And that is
14 usually based on a title search.

15 MS. WALL: Your Honor --

16 MR. BOOTH: There is no date on that
17 commitment when it was issued.

18 MS. WALL: Your Honor, the final title policy
19 is in the record, and it is attached to one of
20 these documents. I believe one of the submissions
21 is July the 6th, the day after the closing, because
22 that is how a closing works. You go to closing.
23 You then file your documents, the mortgages, or
24 whatever it is, and then the final policy is dated
25 that date. It was not issued on that date. It was

1 not then sent on. And that is also not at issue in
2 this lawsuit because the P & K controversy and the
3 HOA lawsuit came up. Whenever you have a
4 controversy on title, you -- the actual sending of
5 the policy post-dates the conclusion of those
6 issues. And that is what happened.

7 MR. BOOTH: Judge --

8 MR. LANG: The only thing I can add, Judge, to
9 that is this is not a title insurance agent
10 negligence case. And that is what counsel is
11 suggesting, that somehow -- and we don't think this
12 happened -- in fact, we dispute that it did -- but
13 if the title commitment wasn't issued until after
14 the closing, that is a negligence case. He hasn't
15 sued on negligence.

16 All he said was -- and I'm looking at the
17 first cause of action -- breach of oral contract.
18 Breach of oral contract to issue without exception
19 of a P & K contract and a breach of oral contract
20 to issue without exception the covenants and
21 restrictions. That is it. This is just --

22 MR. BOOTH: Well, Cause of Action Two covers
23 that.

24 MS. WALL: This is not --

25 MR. LANG: That does not. You can't change

1 the pleadings this late in the day.

2 THE COURT: All right.

3 MR. BOOTH: Judge let me -- can I just add one
4 thing, please? No, honestly.

5 I'm not sure what I have heard now, but the
6 policy of title insurance, there is a letter from
7 Mr. Bufkin where he transmitted to my client a year
8 and a half later in closing, that is undisputed.
9 So the fact that the policy may have been sitting
10 in his file, may have been sitting in Ivey Hart's
11 file, that is irrelevant. When it got to my
12 client, there is no dispute it was delivered by
13 letter in the record a year and a half after
14 closing. So I'm not sure where their arguments are
15 about --

16 THE COURT: But I think it is when it was
17 issued. It was actually issued in July.

18 MR. BOOTH: I understand that, Your Honor. I
19 know exactly when it was issued.

20 THE COURT: Yes, but they didn't receive it is
21 what you are saying.

22 MR. BOOTH: Well, how do we know anything
23 about it until we get it. But, anyway, that is
24 what happened in the King -- in the case from
25 Georgia. Do you have those? Did you give it back

1 to us? Can I borrow it for a minute?

2 THE COURT: I think you handed that up, yes.

3 MR. BOOTH: Yes, I did.

4 THE COURT: And Georgia's structure is a
5 little bit different. They don't -- I'm not sure
6 if they require attorneys --

7 MS. WALL: Your Honor, and you can't tell from
8 the case.

9 MR. BOOTH: I really don't know.

10 MS. WALL: You can't tell from the case. Even
11 if they do, you can't tell from the case. They
12 don't say one way or the other.

13 MR. BOOTH: I'm removing this also.

14 THE COURT: He just looked it up.

15 MS. WALL: Would you like our proposed orders
16 within five days?

17 THE COURT: Can you all get them to me in five
18 days?

19 MR. BOOTH: Judge, I'm doing a brief next
20 week. I'm in a trial next week. I doubt if I can
21 make the five-day deadline. I'm first up or second
22 up on Monday.

23 THE COURT: February 13. And we are here.
24 That is about --

25 MS. WALL: Well, we can certainly -- we should

1 be able to do it in seven days, in a week. I think
2 that is proper for the Court. I think we need to
3 allow Her Honor to seek proposed orders. We can
4 just get it done.

5 MR. BOOTH: I'd like ten days, Your Honor.

6 THE COURT: All right, ten days. Thank you.

7 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea G. Benjamin, Circuit Court Judge

Case No. 10-CP-40-7330

H&H of Johnston, LLC, ... Appellant

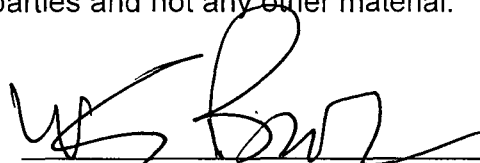
v.

Old Republic National Title Insurance Company, and
Henry P. Bufkin d/b/a Bufkin Title, ... Respondents

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

September 24, 2012



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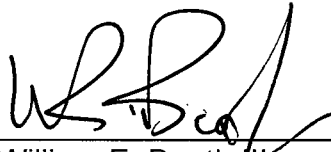
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PROOF OF SERVICE

I certify that I have served the Record on Appeal by causing to be mailed via Priority US Mail with sufficient postage affixed thereto, on September 25, 2012, addressed to the Respondent Henry P. Bufkin d/b/a Bufkin Title's attorney of record, Susan Taylor Wall, Esquire, McNair Law Firm, P.A., P.O. Box 1431, Charleston, SC 29402.

September 28, 2012



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SC Court of Appeals

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PROOF OF SERVICE

I certify that I have served the Record on Appeal by causing to be hand delivered, on September 25, 2012, at the law office of, and addressed to, the Respondent Old Republic National Title Insurance Company's attorney of record, Louis H. Lang, Esquire, Callison Tighe & Robinson, 1812 Lincoln Street, Columbia, SC 29201.

October 25, 2012



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